# Legal Updates in Indirect Tax Law

## Central Excise Law

| Nature | Provision |
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| | **LEVY AND MANUFACTURE** |
| **Mere Improvement in quality – Not Manufacture** | **Facts:** The Manufacturer added polymers and additives to base bitumen to produce Polymer Modified Bitumen (PMB) or Crumbled Rubber Modified Bitumen (CRMB). Whether this process amounts to manufacture or not?<br>**Decision:** Manufacture can take place only when there is transformation of raw materials into a new and different article having distinct identity, characteristic and use. Mere addition of materials to make the product better does not amount to manufacture.<br>**[CCE Vs Osnar Chemical Pvt Ltd 2012 276 ELT 162 (SC)]** |
| **Payment of ED on Non–Excisable goods** | Merely because the Assessee mistakenly paid excise duty on goods which are not liable for excise duty, it would not make them as excisable goods. Even if the Assessee had not claimed any refund of such excess ED, goods would not be categorized as excisable.<br>**[Bonanza Engineering and Chemical Pvt Ltd Vs CCE 2012 – TIOL – 25 – SC – CX]** |
| **Manufacture** | Removal of foreign materials from iron ore to make it iron ore concentrates is not a manufacture. **[CCE Vs Steel Authority of India Ltd 2012 283 ELT A112 (SC)]** |
| **Manufacture** | **Situation:** A roll of aluminum foil was cut horizontally to make separate pieces of the foil and word 'PULL' was embossed on it. Thereafter fixed number cigarettes were wrapped in it. Aluminum foil, being a resistant to moisture, was used as a protector for the cigarettes and to keep them dry.<br>**Decision:**<br>• Cutting and Embossing does not transform aluminum foil into distinct and identifiable commodity.<br>• It did not change the nature and substance of foil. The said process did not render any marketable value, only made it usable for packing.<br>• There were no records to prove that embossed aluminum foils used for packing cigarettes were distinct marketable commodity. Hence, process did not amount to manufacture.<br>**[CCE Vs GTC Industries Ltd 2011 266 ELT 160 (Bom.)]** |
| **Manufacture of Prohibited goods** | • Physicians' samples shall be excisable and dutiable even if there is a prohibition on sale of such samples under the Drugs Rules.<br>• Valuation of Physicians' Samples shall be on pro–rata basis for the relevant period.<br>**[Medley Pharmaceuticals Ltd Vs CCE, 2011 TIOL 9 (SC)]** |
| **Manufacture of testing equipments** | Manufacture of Testing Equipments for captive consumption is liable for excise duty, if it is marketable / saleable. Liability shall arise irrespective of whether the goods are removed out of the factory or dismantled after usage. **[Usha Rectifier Corporation India Ltd Vs CCE 2011 TIOL 8 (SC)]** |
| **Marketability – Capacity to market and not actual marketing required** | The Assessee produced "Crude Vitamin–A", which is consumed for producing animal feed supplements. The Assessee did not market "Crude Vitamin–A". The product has a life of 2 to 3 days.<br>**Decision:**<br>• Where the product is commercial known and **is capable of being marketed**, then such goods shall be liable for excise duty, subject to other conditions. It is not necessary that the goods should be actually marketed by the manufacturer.<br>• Further, **only** where a product has **NO** shelf life or the shelf life is insufficient to market the product, then only it is considered as "Not Marketable". In the given case, as the product has a life of 2 to 3 days, it **shall be considered as marketable.**<br>**[Nicholas Piramal India Ltd Vs CCE 2010 TIOL 101 (SC)]** |
| **Marketability – Hypothetical assumption invalid** | It is the duty of the Department to prove that a particular product is capable of being marketed. Mere hypothetical possibility of purchase and sale without any additional proof / material shall not be a valid ground for considering a product a marketable. **[Bata India Ltd vs CCE 2010 (252) E.L.T. 492 (S.C.)] (RTP)** |
| **Activity on the CD Pack and not on the CD – Not Manufacture** | **Situation:** The Assessee imported CD and packed each individual disc in transparent plastic cases known as jewel boxes. An inlay card containing the details of the content of the CD was also placed in the jewel box. The whole thing was then shrink wrapped and sold in wholesale.<br>**Decision:** None of the activity involved any process on the imported CDs. The activities carried out did not amount to manufacture as the CD had been complete and finished when imported by the Assessee. They had been imported in finished and completed form.<br>**[CCE v. Sony Music Entertainment (I) Pvt. Ltd. 2010 (249) E.L.T. 341 (Bom.)]** |

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| **Place of Manufacture / Construction** | **Facts:** The Assessee was contracted by the Delhi Metro Rail Corporation Ltd. (DMRCL) to construct pre–fabricated components of different segments to be used in elevated viaducts etc.. A specific premises was allotted by DMRCL. The said premises constituted the construction site. From the said construction site, components were moved to different locations where elevated viaducts of the tunnel were being constructed. The question is whether the Assessee is eligible for Notification No.1/2011 dt. 17.02.2011 exempting the "goods manufactured at the site of construction for use in construction work at such site"<br>**Decision:** The Court held that that the construction was done virtually all over Delhi and since construction sites were inter–connected, practically pre–fabrication was done on construction site only. Hence, the Assessee is eligible for exemption. **[CCE Vs Rajendra Narayan (2012) 281 ELT 38 (Del.)]** |
| **CLASSIFICATION OF EXCISBALE GOODS** | |
| **Moisturex is a medicament and not a cosmetic** | **Facts:** "Moisturex" is a product prescribed by the dermatologist for treating dry skin conditions. Is it a medicament or cosmetic?<br>**Decision:** The court decided the product as medicament and not as cosmetic based on defined criteria<br>**Intention of usage – Commercial Parlance:** Criteria are as follows:<br>(a) The curative attributes of such ingredients<br>(b) Merely because a product is sold over the counter without prescription, it shall not be classified as "cosmetics". Medicines may also be sold over the counter.<br>(c) Further, the nature of the product must be decided based on the understanding of the product's users. If a product's primary function is "care" and not "cure", it is not a medicament. Cosmetic products are used in enhancing or improving a person's appearance or beauty, whereas medicinal products are used to treat or cure some medical condition. A product that is used mainly in curing or treating ailments or diseases and contains curative ingredients even in small quantities, is to be branded as a medicament. **[CCE Vs CIENS Laboratories, CCE Vs Time Pharma 2013 TIOL 38 (SC)]** |
| **Specific Entry must be preferred over Residual Entry** | **Facts:**<br>(a) Wockhardt Life Sciences Ltd. was the manufacturer of Povidone Iodine Cleansing Solution USP and Wokadine Surgical Scrub.<br>(b) The Assessee stated that the products were antiseptic and used by surgeons for cleaning or de–germing their hands and scrubbing surface of skin of patient before operation. It submitted that the products were medicament and hence, it would fall under the specific tariff head for medicaments, i.e. Chapter 3003 (liable at 15%) and not under Chapter 34 (liable at 18%).<br>(c) Revenue's stand was that the products are detergents and therefore, they are not medicaments. They should be classified under the residual category "Others" [Tariff 3402.90]<br>**Decision:**<br>(a) The Supreme Court observed that the products are primarily used for external treatment of the human–beings for the purpose of the prevention of the disease. Medicaments are products which can be used either for therapeutic or prophylactic usage. Since the product is basically and primarily used for the prophylactic uses, the product was a medicament. [**Note:** The term "Prophylactic usage" means products meant for prevention of disease. "Therapeutic usage" means products meant for curing the disease].<br>(b) The factors that require to be considered for the classification of the goods are the composition, the product literature, the label, the character and the use to which the product is put.<br>(c) In the given case, the purpose of the product is to prevent the infection or disease. Therefore, the product can be classified as a "medicament" which would fall under chapter sub–heading 3003 which is a specific entry and not under chapter sub–heading 3402.90 "Others", which is a residuary entry. **[CCE v. Wockhardt Life Sciences Ltd. 2012 (277) E.L.T. 299 (S.C.)]** |
| **Beneficial Interpretation** | In case of 2 specific heads dealing with the same commodity, classification can be made under the clause that is most beneficial to Assessee. **[CCE Vs Minwool Rock Fibres Ltd 2012 TIOL 18 SC CX]** |
| **Assembly, testing and disassembling** | **Situation:**<br>The Assessee manufactures all components of Television Receivers at its factory itself. It assembles them to become a Television Receiver, and tests them for quality control purposes with testing equipments. After such testing, the Television Receivers are disassembled.<br>Such disassembled components are separately identified under a single invoice, and sent to its satellite units. They are assembled again at satellite units fixing the other required components also. The question is whether such product to be classified as "Parts of TV Receivers" or "TV Receivers" **at the Factory Gate.** |

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| | **Decision:** The Supreme Court held that such products shall be classified as TV Receivers at the Factory Gate itself, due to the following reasons –<br>(a) The components are assembled together and tested as TV Receiver at the Factory Gate, even though they are not fitted with satellite units.<br>(b) Hence, based on Rule 2(a) of the General Interpretative Rules, the above components are sufficient to give essential character to the TV Receivers. Hence, such components should be classified as "TV Receiver" and not as "Parts of TV Receiver", at the Factory Gate.<br>**[Salora International Ltd Vs CCE 2012 284 ELT 3 (SC)]** |
| **Reliability of experts** | In case of technical words used in the Notification, the experts in the relevant field may be relied upon ,in understanding the meaning of the words used therein. **[CC Vs Konkan Synthetic Fibres (2012) 278 ELT 37 (P&H)]** |
| **Classification** | Where a classification is recognized by the Government in a Notification any point of time, the same can be made applicable in a previous classification where there is no change in the Tariff.<br>**[Keihin Penalfa Ltd vs Commissioner of Customs 2012 (278) E.L.T. 578 (S.C.)]** |
| **Documents filed** | **Description of goods = Based on documents filed:** The description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criteria for the purpose of classification, if not disputed on the basis of any technical opinion or test. **[CPS Textiles P Ltd vs Joint Secretary 2010 (255) ELT 228 (Mad.)]** |
| **VALUATION OF EXCISABLE GOODS** | |
| **Pre–Delivery Inspection and After Sales Service charged by dealers from buyer – included** | • Transaction Value is not confined to the amount actually paid in present alone but also includes future considerations relating to sale.<br>• The inclusions in transaction value are extensive whereas the exclusions are restrictive and exhaustive.<br>• **Conclusion:** Any amount collected by the dealers as pre–delivery inspection or After Sales Service from the buyer of the goods based on the agreement between the dealer and the manufacturer shall be deemed as payment to the dealer for the benefit of the manufacturer and hence it is part of Assessable Value.<br>**[Maruthi Suzuki India Ltd Vs CCE (2010) 257 ELT 226 (Tri – LB)]** |
| **Pre–Delivery Inspection and After Sales Service** | **Facts:**<br>• Tata Motors Ltd (Petitioner) is the manufacturers of cars. They sold their cars to their Subsidiary Companies – M/s TMLD, which in turn sold cars to the dealers. The Petitioner appointed various persons as Dealers to sell the car in the market. On selection of a person for being appointed as a Dealer, an agreement was entered into between the Petitioner and the said Dealer.<br>• Further, on account of the dealership agreement, the Dealer was required to carry out Pre–Delivery Inspection (PDI) before the car was actually delivered to the customer. After the car was delivered to the customer, the Dealer was required to conduct specified number of free services of the said car as set out in the Owner's Manual.<br>• Department contended the costs of pre–delivery inspection and free services must be included in the Assessable Value of Cars sold by the Petitioner.<br>**Decision:** The High Court decided that such costs shall not be included in Assessable Value because of the following reasons:<br>• It did not charge the Dealer for the expenses incurred by the dealer towards PDI and free services. When a car was sold by the Petitioner to Dealer, price was the sole consideration and the Petitioners and Dealer were not related to each other.<br>• Hence, since the requirements of Sec. 4(1)(a) were being complied with, the Assessable Value would be the Transaction Value [determined as per Sec. 4(3)(d)]. Accordingly, the expenses incurred for PDI and said services should not be included in the Transaction Value of the car.<br>**[Tata Motors Ltd vs UOI 286 ELT 161 (Bom.)]**<br>***Note: This decision is contradictory to the decision in Maruthi Suzuki India Ltd Vs CCE.*** |
| **Notional Interest on Advances recd.** | When small deposits were made by Dealers/Distributors with manufacturers and goods were sold at same prices to parties making deposits and parties not making deposits, the notional interest on account of deposit, is **not** includible in the Assessable Value, as price is not influenced by such deposits.<br>**[CCE Vs PD Gupta 2012 284 ELT A58 (SC)]** |
| **MRP Valuation not applicable for industrial goods** | If the package of goods contains a specific mention that they were specifically packed for exclusive use of industries as Raw Materials and not intended to be displayed for sale at a Retail Outlet, the valuation shall be done u/s 4 and not u/s 4A of the CEA, 1944.<br>**[UOI Vs Controls and Switchgears Contractors Ltd 2011 274 ELT A109 (SC)]** |

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| **Reimbursement from Manufacturer to Dealer – not includible in AV** | **Situation:** Free after sale service was provided by Auto Dealer. The Auto Manufacturer reimbursed the dealer for the same. The question is whether such reimbursement be considered as an additional consideration from Dealer to Manufacturer?<br>**Decision:** The reimbursement was a cost borne by Manufacturer. It was not an additional consideration flowing from Dealer to Manufacturer and was not includible in Assessable Value of autos cleared to Dealers. **[CCE Vs Yamaha Motors India Pvt Ltd 2012 278 ELT A21 (SC)]** |
| **Accessories supplied by Customer – Free of Cost – Need not be included** | **Facts:** The Assessee manufactured the plastic tubes for toothpaste. The caps for such tubes are provided by the customer free of cost. Such caps were fitted to the tubes manufactured before the removal from the factory. The Assessee did not include the value of caps while determining ED on the plastic tubes manufactured. Whether such exclusion is correct?<br>**Decision:** The cap supplied by the customer is only an accessory and is not an integral part of the plastic tube supplied. Hence, such cap fitted will be considered only as a bought out item. The cost of bought out item will not be included as part of the Assessable Value of the manufactured product. Hence, such cost of such caps will not be included for valuation of plastic tubes. Assessee's valuation is correct. **[Essel Propack Ltd Vs CCE 2011 TIOL 112 SC – CX]** |
| **Supply of raw materials and technical know–how by customer** | **Situation:** Assessee has carried out food processing activity on behalf of another party. The other party supplied Raw Materials, Packing Materials and technical know–how for such processing.<br>**Decision:** The Supreme Court decided that if the parties were not related persons, then this activity would be considered as an hired labour only, and hence the other party would be liable. If the persons are Related Parties, then the valuation as specified in the Central Excise (Determination of value of Excisable Goods) Rules, 2000 would apply. **[CCE Vs Food and Health Care Specialities 2012 277 ELT 3 (SC)]** |
| **CENTRAL EXCISE PROCEDURES** | |
| **Exemption from Registration** | Registration under the Central Excise is not required for an Unregistered Premises which is used solely for affixing a sticker or for re–printing / re–labeling / re–packing of pharmaceutical products under Chapter 30 of the First Schedule to the Central Excise Tariff Act, 1985 with lower ceiling price to comply with the notifications issued by the National Pharmaceutical Pricing Authority under Drugs (Prices Control) Order, 2013. **[Notification No.11/2013 dt. 02.08.2013]** |
| **Monthly return for SSIs** | Manufacturers of Processed Yarn, Unprocessed Fabrics, Readymade garments have to file their returns within 10th from the end of relevant month instead of quarter. **[Notfn. No.32–CX dt. 30.12.2011]** |
| **Returns Filing** | Manufacturers who procure inputs at concessional rate under "Central Excise (Removal of goods at concessional rate of duty for manufacture of Excisable Goods" shall file their returns on quarterly basis instead of monthly basis. **[Notification No.13/2012 dt. 17.03.2012]** |
| **Returns Filing** | The following Assessees can file their returns within 10 days from the end of every quarter –<br>• Assessees who avail exemption under Notification No.1/2011 dt. 01.03.2011<br>• Manufacturers of products of coal, articles of jewellery, articles of goldsmiths' or silversmiths' wares of precious metal, fertilizers. **[Notification No.23/2012 – CX (NT) dt. 18.04.2012]** |
| **Person liable in case of Job Work of Jewellery** | In case of Job Work on jewellery, only the Principal Manufacturer shall be liable for registration, payment and all other compliances under the Central Excise Act and the related rules.<br>Further, the jewellery need not contain the brand name or trade name, to be affixed or embossed on them. **[Notification No.8/2012 dt. 17.03.2012]**<br>***Impact: Option was given to Job Worker to carry out all compliances under Excise. Such option is now withdrawn, implying that only Principal Manufacturer has to carry out such procedures.*** |
| **SSI and Related Parties – use of Brand Name** | **Facts:** The Assessee Elex Knitting Machinery Co. manufactured goods under the brand name "ELEX", belonged to ELEX Engineering works. The Department denied the benefit of the SSI Exemption Notification on the ground that they had manufactured and cleared the goods another person's the brand name. It is to be noted that the Proprietor of M/s Elex Knitting Machinery Co. is a Partner in M/s ELEX Engineering Works.<br>**Decision:** The Assessee 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. Hence, he will be considered as the co–owner of the brand name of Elex. So 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. **[CCE vs. Elex Knitting Machinery Co. 2012 (283) E.LT. A18 (S.C.)]** |
| **Records to be furnished by Assessee** | Every Assessee, First Stage and Second Stage Dealers, shall provide the following records to CCE / C&AG / CA / CWA nominated for doing audit:<br>(a) Records maintained by him as per Central Excise Rules<br>(b) Cost Audit Reports u/s 233B of the Companies Act, 1956<br>(c) Income Tax Audit Report u/s 44AB of the Income Tax Act, 1961 **[Notfn No.22/2012 dt. 30.03.2012]** |

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| | **INTERPRETATION OF EXEMPTIONS** |
| **Interpretation of Exemption Notification** | A provision for exemption, concession or exception has to be construed strictly and if the exemption is available only on complying certain conditions, the conditions have to be complied with. Substantial Compliance with the conditions is not enough to avail exemption.<br>**[Indian Oil Corporation Limited Vs CCE 2012 TIOL 04 SC – CX]** |
| **Interpretation of Exemption Notification** | An Exemption Notification must be interpreted strictly when the words of the notification are clear, simple and unambiguous. It has to interpreted in the light of the words employed by it and not on any other basis. **[CCE Vs Favourite Industries 2012 – TIOL – 30 – SC – CX]** |
| **Exemption – Branded Jewellery** | As per Notification No.5/2006 dt. 01.03.06, exemption shall not apply in respect of jewellery on which brand is indelibly affixed / embossed. However, if the brand name is affixed on the package / warranty card / quality certificate, it shall be eligible for exemption. **[Instruction No.354/38/2011 – TRU dt. 02.03.2012]** |
| **Common Brand Name** | X & Co. and Y & Co. are run by family members and both of them were using the mark 'Minimax' for last number of years. But, the use of the brand by Y& Co. may be prior in point of time. However, Y&Co. has not got registered brand name 'Minimax' either under the Trade Mark Act or any other Act. The brand 'Minimax' has not acquired any such reputation that it can be associated with Y & Co. Whether removals of X & Co. should be considered as removal under other persons' brand name?<br>**Decision:** As the brand "Minimax" has not acquired any specific identity for Y & Co, such brand shall be treated as owned by both the parties and hence exemption will be available for X & Co.<br>**[CCE VS Minimax Industries 2012 282 ELT A106 (SC)]** |
| | **Circulars and Adjudication** |
| **CBEC's Circulars cant interfere with adjudication** | **Situation:** CBEC issued a Circular which classified the products imported by an Assessee as "scraps and wastes". Assessee also imported under the same category only. However, CBEC issued another circular which classified the same products under "used rails". Whether the Adjudicating authority, while deciding the assessment, is bound by such Circulars?<br>**Decision:**<br>• Classification of the imports as "scraps or wastes" / "used rails" is a question of fact.<br>• During this adjudication process, the Assessing Authority is considered as a "Quasi–Judicial Authority". Such authority is not bound by the CBEC's Circulars. It shall consider such Circulars as only an evidence to be verified.<br>• Hence, the Assessing Authority is expected to exercise his independent judgement during such assessments. CBEC can only issue directions in relation to classification, but cannot interfere with the Quasi–Judicial Authority's decisions.<br>**[UOI Vs Madras Steel Re–Rollers Association 2012 278 ELT 584 SC]** |
| | **WAREHOUSE** |
| **Rule 20 – Warehousing** | • All excisable goods shall be allowed to be removed from the factory of production for the purpose of storage in a Godown or Retail Outlet of a Duty Free Shop in the Departure Hall or Arrival Hall of International Airport.<br>• Such Godown or Retail Outlet is licensed under the Customs Act as a Warehouse.<br>• Such goods are meant for sale to passengers going out of India / passengers and crew arriving from abroad.<br>• Further, such sale is against the receipt of foreign exchange.<br>**Impact: All excisable goods removed from the factory shall be subject to payment of duty. However, if such goods are removed as mentioned above, then it shall not be liable at the time of removal as per Rule 20 (Notification No.07/2013 dt. 23.05.2013)**<br>The godown of the abovementioned Retail Outlet or Duty Free Shop shall be deemed to be registered under Rule 9 of the Central Excise Rules, 2002. **(Notification No.09/2013 dt. 23.05.2013)** |
| | **EXPORTS** |
| **Exports to Nepal** | Exports to Nepal will be subject to the same procedure as exports to other countries.<br>**(Notification No.24/2011 – CX (NT) dt. 05.12.2011)**<br>Exports to Nepal shall be exempt from excise duty by the refund procedure u/r 18 of Central Excise Rules, 2002 or under Bond Procedure u/r 19 of the Rules. In case of Refund Procedure, the duty amount will be directly credited to the Government of Nepal and not to the Indian Exporters.<br>Further, there is no specific condition that the consideration must be in convertible forex. Hence, exports to Nepal are permissible irrespective the mode of currency received, provided the exports are in accordance with RBI Guidelines. **[Circular No.941/04/2012 – CX dt. 26.03.2012]** |

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| **Recovery of Duty** | |
| **Recovery of duty** | The provisions of Section 28AAA of the Customs Act in relation to recovery of duties shall also apply to the recoveries under the Central Excise Act. **[Notification No.29/2012 – CE (NT) dt. 10.10.2012]** |

# Customs Law

| Nature | Provision |
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| **Basic Concepts of Customs** | |
| **Customs Broker** | **W.e.f. 10.05.2013,** Section 146 is being substituted to change the nomenclature of "customs house agents" to "customs brokers" considering the global practice and internationally accepted nomenclature. |
| **Authorised Representative** | Section 146A is being amended W.e.f. 10.05.2013 so as to –<br>(a) substitute the phrase "customs house agent" with the phrase "customs broker",<br>(b) include any offence committed under the Finance Act, 1994 as a disqualification for person to act as an authorized representative in customs matters. |
| **Liability of Agents** | **W.e.f. 10.05.2013,** Sub–section (3) of section 147 is being amended to expand the scope of agents of the owner, importer or exporter of any goods to cover any liability under the Customs Act also |
| **Classification** | **Issue:** Where a classification (under a Customs Tariff head) is recognized by the Government in a notification at any point of time, can the same be made applicable in a previous classification (i.e. for prior periods) in the absence of any conscious modification in the Tariff?<br>**Decision:** The Central Government had issued an exemption notification dated 1–3–2002 and in the said notification it had classified the product under a particular sub–heading. Since the Revenue itself had classified the goods in dispute under Chapter sub–heading from 1–3–2002, the said classification needs to be accepted for the period prior to it. **[Keihin Penalfa Ltd. v. Commissioner of Customs 2012 (278) ELT 578 (SC)]** |
| **Prohibited Goods** | **Prohibited Goods under Section 11 –**<br>Filter Rod of a kind used in the manufacture of cigarettes or bidis, except when such goods are used for the manufacture of Filter Cigarettes or Bidis, are prohibited for import under Section 11 of the Customs Act, 1962. **[Notification 20/2012 – Cus dated 16.03.2012]** |
| **Intellectual Property Rights (IPR)** | **Intellectual Property Right (Imported Goods) Enforcement Rules, 2007:**<br>**Enforcement of IPR on imported goods – Clarification on "Parallel Imports":**<br>Import of original/genuine products (not counterfeit or pirated) which are sold/ acquired legally abroad and imported into the country, by persons other than the intellectual property right holder without permission/ authorisation of the IPR holder, is known as 'parallel imports'. Import of Patented Products and Goods under Trademark are allowed under the Customs Act. However, import of designs is not allowed. **[Circular No.13/2012 – Cus. dt. 08.05.2012]** |
| **Exporty Duty on Clearances to SEZ** | A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all. SEZ Act does not contain any provision for levy and collection of export duty for goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. The Customs Act, 1962 makes it clear that Customs Duty can be levied only on goods imported into or exported beyond the territorial waters of India. Since both the SEZ unit and the DTA unit are located within the territorial waters of India, Customs Duty is not attracted neither under the Customs Act, 1962 or SEZ Act, 2005. **[Tirupati Udyog Ltd vs UOI 2011 (272) ELT 209 (AP)]** |
| **Remission of Duty for Belated Clearances from Warehouse** | u/s 23, remission is allowable only when the imported goods have been lost or destroyed at any time before clearance for home consumption. Therefore, the expression ***"at any time before clearance for home consumption"*** would mean the time period as per the initial order of warehousing or before the expiry of the extended date for clearance and not any period thereafter the lapse of the aforesaid periods. The said expression cannot extend to a period after the lapse of the extended period merely because the licence holder has not cleared the goods within the stipulated time. **[The same would be a case of goods improperly removed from the warehouse as per section 72].** The Remission claim is therefore not allowable. **[CCE vs Decorative Laminates (I) Pvt Ltd 2010 (257) ELT 61 (Kar)]** |

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| **Credit based on challan copies** | **Documents for Refund:** Refund can be claimed even based on the attested GAR 7 Challan and original not required. **[Narayan Nambiar Meloths v. CCus. 2010 (251) E.L.T. 57 (Ker.)]** |
| **Exemption** | |
| **Exemption for import of trophies** | Trophy imported into India by the National Sports Federation recognised by the Central Government or any registered Sports Body, for being awarded to the winning team in the International Tournament including Bilateral Tournament and World Cup event to be held in India is exempt. **[Notification No.14/2013 dt. 01.03.2013]** |
| **Exemption from Export Duty** | **W.e.f. 10.05.2013,** Full exemption from export duty is being given retrospectively on flat rolled products of iron or non–alloy steel, plated or coated with zinc falling under headings 7210 and 7212 vide notification No. 27/2011–Customs, dated 01.03.2011 from 01.03.2011. |
| **BILL OF ENTRY – CUSTOMS PROCEDURES** | |
| **Bill of Entry not Required** | Ocean going vessel was confiscated by Customs and sold in auction to the Assessee. The Assessee is not required to file Bill of Entry. The vessel has not been imported by the Assessee but has been purchased by them in an auction held by the Customs Department. The vessel was not imported by the Petitioners but was sold as a property of the CG within the territory of India. **[Chaudhary Industries Vs UOI 2012–TIOL–811–HC–AHM–CUS]** |
| **Baggage Rules** | |
| **Baggage Rules** | **W.e.f. 10.05.2013, Baggage Rules have been amended to –**<br>1. Raise the duty free allowance in respect of jewellery for an Indian passenger who has been residing abroad for over one year or a person who is transferring his residence to India from Rs.10,000 to Rs.50,000 in case of a gentleman passenger and from Rs.20,000 to Rs.1,00,000 in case of a lady passenger.<br>2. Raise the duty free allowance for crew member of vessel/aircraft from Rs.600 to Rs.1500. |
| **Baggage Rules – Annexure 1** | Flat Panel (LCD/LED/Plasma) Television has been added to the list of items under Annexure I **[Notification 84/2013–Cus(NT),dt. 19–08–2013]** |
| **Detention of Baggage** | As per the provisions of section 80 of the Customs Act, 1962 when the baggage of the passenger contains article which is dutiable or prohibited and in respect of which the declaration is made under section 77, the proper officer on request of passenger can detain such article for the purpose of being returned to him on his leaving India.<br>However in the instant case, the passenger had grossly mis–declared the goods with intention to evade duty and to smuggle the goods into India. Since passenger neither made true declaration nor requested for detention of goods for re–export, before customs authorities at the time of his arrival at airport, the re–export of said goods could not be allowed under section 80 of the Customs Act. **[Hemal K. Shah 2012 275 ELT 266]** |
| **WAREHOUSING PROCEDURE** | |
| **Removal from Warehouses** | Duty Credit Scrips under Schemes like SFIS, VKGUY, FMS, FPS, SHIS can be utilized for clearance of goods from Customs Bonded Warehouses, subject to prescribed conditions. **(C.No.50/2011–Cus. Dt. 09.11. 11)** |
| **Permission to Land at other places** | **W.e.f. 10.05.2013,** Section 29 is being amended to empower the Board to permit landing of vessels and aircrafts at any place other than customs Port or customs Airport. |
| **Time Limit for Payment of Duty** | **W.e.f. 10.05.2013,** Sub–section (2) of section 47 is being amended to reduce the interest free period for payment of import duty from five days to two days. |
| **Deposit without warehousing** | **Deposit without warehousing:** Section 49 is being amended to restrict the period of storage of imported goods, pending clearance, in a public or private warehouse to thirty days and to provide that the Commissioner of Customs may extend the period of storage for further period not exceeding thirty days at a time. – **Section 49 W.e.f. 10.05.2013** |
| **Clearance of W/H Goods** | **W.e.f. 10.05.2013,** Section 69 is being substituted to provide that any warehoused goods may be exported to a place outside India without payment of import duty if a shipping bill or a bill of export in prescribed form or label or declaration accompanying the goods as referred to in section 82 (Export of Goods through post) has been presented in respect of such goods. |
| **Calculation of Interest in respect of W/H Goods** | It has been clarified that the period of 90 days, for the payment of interest in respect of Warehoused goods shall commence from the date of deposit of such good sin the warehouse **[Circular 39/2013–Cus, dated 1.10.2013]** |

| Nature | Provision |
|---|---|
| **Time limit for filing BOE** | Section 46 does not provide for any time–limit for filing a bill of entry by an importer upon arrival of goods, section 48 permits the authorities to sell the goods after following the specified procedure, provided the same are not cleared for home consumption/ warehoused/ Transhipped within 30 days of unloading the same at the customs station. It was held that the time–limit prescribed under section 48 for clearance of the goods within 30 days cannot be read into section 46 and it cannot be inferred that section 46 prescribes any time–limit for filing of bill of entry. **[CCus v. Shreeji Overseas (India) Pvt. Ltd. 2013 (289) E.L.T. 401 (Guj.)]** |
| **Relaxation for PSUs** | **Grant of exemption from furnishing Security/Bank guarantee by Central/State Govt. Undertakings for storing sensitive goods in private bonded warehouses –** All Central and State Public Sector Undertakings shall be exempt from furnishing Bank guarantee or other form of security for storing sensitive goods in the Duty Free Shops operated by them. Other procedures like execution of Double Duty Bond, etc. shall continue to apply. **[Circular No. 26/2012–Customs dated 10.09.2012]** |
| **100% EOU = Fully treated as warehouse** | The entire premises of a 100% EOU has to be treated as a Customs Warehouse, if the licence granted u/s 58 to the unit is in respect of the entire premises**.** |
| **CLASSIFICATION OF CUSTOMS DUTIES** | |
| **Exemption from ACD u/s 3(5)** | The Government of India has notified a list of 102 categories of goods which are exempt from ACD u/s 3(5). **[Notification No.21/2012 dt. 17.03.2012]** |
| **Refund of SAD (i.e.) ACD u/s 3(5)** | Refund of Special Additional Duty can also be issued based on Certificate from CWA / CA / Statutory Auditors. ***Impact: Earlier, only CA's / Statutory Auditor's Certificate was permitted.*** **[Circular No.01/2012 dt. 05.01.2012]** |
| **Exemption from SAD** | Merely because in some cases, the imported indoor units of split air conditioners in pre–packed form bearing MRP were sold along with domestically manufactured outdoor units, it cannot be concluded that the indoor units were not intended for retail sale. There is evidence on record that indoor units have been sold as stand alone articles in retail. SAD exemption available. **[Daikin Air–conditioning India Pvt Ltd Vs Commissioner Of Customs 2012–TIOL–871–CESTAT–MUM]** |
| **Refund of ADD** | The Central Government has notified Refund of Anti–Dumping Duty (Paid in excess of Actual Margin of dumping) Rules, 2012 for granting refund of Excess ADD paid by the Importer. **(Notification No.5/2012 – Cus (NT) dt. 19.01.2012)** |
| **Extension of Safeguard Duty** | **Safeguard Duty on Goods imported from the People's Republic of China:** If the Central Government is of the opinion that such article continues to be imported into India from the People's Republic of China so as to cause or threatening to cause market disruption to domestic industry, the Central Government may, notwithstanding the measures taken by the domestic industry towards adjustment to such market disruption or any threat arising thereof, if considers necessary that such duty should continue, extend the period of imposition of such Safeguard Duty for a period not beyond the period of ten years from the date on which the Safeguard Duty was first imposed. **[Amendments to Sec 8C of the Customs Tariff Act, w.e.f 28.05.2012]**<br>**Impact:** Earlier the words, "imported into India from the People's Republic of China in increased quantities" was present. Now the words "in increased quantities" have been removed. Hence, it can be concluded that for **extension** of SGD, the articles need not be imported in increased quantities. Whereas for the **original imposition** of SGD, the same words "in increased quantities" remains. |
| **Goods subject to further process – Valuation under Sec 4 for CVD** | Film rolls imported in bulk and CVD paid as per Sec.4 of the CEA, 1944. Goods later sent to packer who carried out the processes of packing into individual cartons bearing the MRP and declarations required under the PCR, 1977 and discharging Central Excise Duty u/s 4A of CEA, 1944 being a manufacturing activity. In view of the above, importer not required to pay CVD as per S.4A of the CEA, 1944 **[Phil Marketing Services Pvt Ltd 2012–TIOL–1101–CESTAT–MUM]** |
| **VALUATION** | |
| **Pre–loaded Software** | In case of Import of Telecom Hardware with **pre–loaded software**, the Value of Software is to be included in AV. The software pre–loaded in the equipments imported and which is undisputedly essential not only for its functioning but for ***giving identity to the equipments*** cannot be treated as separate items. [The above decision has been distinguished from the case of ***Vodafone Essar Gujarat Ltd. Vs. Commissioner of Customs (Imports) [2009 (237) E.L.T. 458]***, since in the Vodafone case there was enough evidence to show that in trade practice, the impugned software were separately marketable and was also separately sold, hence the value was excludible. Whereas in the present case, the software was loaded in the flash memory (a form of EEPROM) which is generally considered as part of the Equipment] **[Bharti Airtel and Others vs Commissioner of Customs 2012–TIOL–746–CESTAT–BANG]** |

| Nature | Provision |
|---|---|
| **Duty Deferment** | **W.e.f. 10.05.2013,** Section 143A w.r.t duty deferment is omitted |
| **Goods used for testing** | **W.e.f. 10.05.2013,** Section 144 is being amended to provide that there shall be no duty liability on **any sample of goods** which is consumed or destroyed during the course of testing or examination. The earlier threshold limit for duty to exceed Rs.5/– has been removed |
| **Misdeclaration of value** | **Facts:** Wringley India Pvt. Ltd. had imported second–hand machinery along with spare parts from its sister concern located at Spain. However, the Certificate issued by the Load Port Chartered Engineer was not enclosed along with the Bill of Entry, and only the Invoice was submitted. Since the Appellant did not submit the Valuation Report, the Customs Authorities referred the matter for valuation to Local Valuer who found that the report originally issued by Load Port Chartered Engineer was showing a higher value of goods than the value declared by the Appellant to the Customs Authorities. Wringley India then paid duty on that high value indicated as per the original report of the Load Port Chartered Engineer.<br>**Decision:** The High Court held that the Appellant made an attempt to mis–declare the value of the imported goods and to misguide the Department, which was evident from the fact that when the Customs Department directed the Appellant to obtain the Certificate from the Local Chartered Engineer, even at that time they did not disclose the true value assessed by the Load Port Chartered Engineer. Hence, this was a clear case of misdeclaration of value of goods, hence the same are liable for confiscation u/s 111(m)<br>**(Wringley India Pvt.Ltd. v. CC (274) E.L.T. 172 (Mad.)]** |

# SERVICE TAX

| Section | Provision |
|---|---|
| | **Service** |
| **Transfer of Right to use** | **Issue:** Whether the activity of erection of Pandal / Shamiana activity involves transfer of right to use such pandal / shamiana to the customer? Is it included in service?<br>**Clarification:**<br>• Normally, the activity of erection of Pandal / Shamiana is coupled with other services like supply of Furniture, Sound System, Lighting, etc.<br>• Such activity prepares a place to hold a function or event. However, effective possession and control over such pandal or shamiana remains with the service provider, even if the specially made–up space for temporary use is handed over to the customer.<br>• Hence, the activity of providing Pandal and Shamiana along with erection and other incidental activities, do not amount to transfer of right to use goods. So, Such activity is liable for service tax.<br>**[Circular No.168 / 3 / 2013 dt. 15.04.2013]** |
| | **Levy of Service Tax** |
| | **Declared Services** |
| **Levy of Service Tax on Works Contract** | Building/Construction contract is a 'works contract' and goods like cement, concrete, steel, bricks etc. are liable to VAT, even if they lose their identity as goods.<br>If contract with Flat Purchaser is entered only after construction is completed, goods used in construction cannot be deemed to have been sold by Builder, since at that time there was no purchaser and no VAT can be levied.<br>Value of goods chargeable to sales–tax/VAT has to be value of goods at time of incorporation of goods in works even though property passes on later.<br>Value addition made to goods transferred after agreement is entered into with flat purchaser can only be made chargeable to tax by State Government.<br>**[Larsen & Toubro Ltd vs State of Karnataka 38 Taxmann 98 (SC)]** |
| | **Registration** |
| **Penalty for Registration [Sec. 77]** | If any person who is liable to pay Service Tax or required to take registration, fails to take registration in accordance with the Service Tax provisions, he shall be liable to a penalty upto ₹ 10,000 |

| Section | Provision |
|---|---|
| **Taxable Services** | |
| **Exemptions** | |
| **DTH Operation not covered in Negative List** | DTH Operation does not give admission to any specified place or location for entertainment. Hence, such operation is not a place–related entertainment, and cannot be covered in Negative List. **[TATA Sky Limited vs State of MP [2013] 33 taxmann.com 357 (SC)]** |
| **Interpretations – Education (Sec.65B)** | **"Approval Vocational Education Course"** includes Courses run by State Council for Vocational training and hence not liable for Service Tax.<br>**"Approval Vocational Education Course" excludes** courses run by Institute affiliated to the National Skill Development Corporation set up by the Government of India. |
| **Interpretations –Manufacture** | **(Sec.65B):** Process amounting to manufacture or production includes a process on which duties of excise are leviable under the "Medicinal and Toilet Preparations (Excise Duties) Act, 1955. |
| **Reference (Sec.66BA)** | Any reference to Section 66 in the Finance Act, 1994 or any other Act shall be construed as reference to Section 66B. |
| **Negative List – Agriculture (Sec.66D)** | Agricultural Operations in relation to testing of the agricultural produce shall be included in the Negative List.<br>**Note:** Earlier, seed testing alone was covered. After amendment, all types of testing are covered. |
| **Exemption for Canteen** | Services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948, having the facility of air–conditioning or central air–heating at any time during the year is exempt. **(Notification No.14/2013 dt. 22.10.2013)** |
| **Transportation of Goods by Rail / Vessel** | Transportation of Milk by rail is exempt. The term "food stuff" includes milk.<br>**[Circular No. 167/2/2013 dt. 01.01.2013]** |
| **Exemption for Life Insurance** | Services of Life Insurance Business provided under following schemes are also exempted–<br>Janashree Bima Yojana (JBY), or Aam Aadmi Bima Yojana (AABY), **[Notification No. 49/2012 dt. 24.12.2012]** |
| **Modifications in Exemptions** | W.e.f. 1st April 2013, the following amendments are made relating to exemptions as specified in Notification No.25/2012 dt. 20.06.2012:<br>1. Services provided by Educational Institutions in relation to renting of immovable property or auxiliary educational services are taxable. [Impact: Such services by the Educational Institution were exempt. Now, the exemption for the above services are available only when they are provided to the Educational Institution]<br>2. Services provided by way of temporary transfer or permitting the use or enjoyment of the following rights are exempt –<br>(a) Copyright relating to original literary, dramatic, musical or artistic works (covered u/s 13(1)(a) of Copyright Act, 1957).<br>(b) Copyright of Cinematograph Films for exhibition in a Cinema Hall or Cinema Theatre.<br>[Impact: Earlier, copyright of Cinematograph Films covered u/s 13(1)(a) are exempt. Now, copyright in relation to cinematograph films would be exempt, irrespective of whether or not it is covered under the Copyright Act.]<br>3. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess. If such establishment has the facility of air–conditioning or central air–heating in any part of the establishment, at any time during the year, then it is liable for Service Tax. [Impact: Earlier, Restaurants were taxable only when alcoholic beverages were served. Now, any Restaurant with AC / heating system is taxable.]<br>4. Transportation of the following products from one place in India to another place by rail or a vessel are taxable – (a) Petroleum or Petroleum Products, (b) Postal Mail or Mail Bags, (c) Household Effects.<br>[Impact: Earlier the transportation of above products were exempt from Service Tax]<br>5. Services by a Goods Transport Agency relating to the following products shall also be exempt –<br>(a) Foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil (excluding alcoholic beverages)<br>(b) Chemical fertilizers and Oil cakes<br>(c) Newspaper or Magazines registered with the Registrar of Newspapers,<br>(d) Relief Materials meant for victims of natural or man–made disasters, calamities, accidents, mishap or |

| Section | Provision |
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| | (e) Defence or Military Equipments<br>(f) Agricultural Produce [Impact: Earlier, exemption was available only for fruits, vegetables, eggs, milk, food grains or pulses. It is extended to agricultural produce.)<br>6. Services by way of Vehicle Parking to General Public are taxable. [Impact: Earlier, such service was exempt from Service Tax]<br>7. Services provided to Government or Local Authority or Governmental Authority by way of repair or maintenance of an aircraft is taxable. [Impact: Earlier such service was exempted].<br>8. Exemption is withdrawn for charitable activities relating to advancement of any other object of general public utility. [Impact: Earlier, exemption was given for services for advancement of objects of general public utility. This is now withdrawn.]<br>**[Notification No. 03/2013 dt.01.03.2013]** |
| **Exemption for Skill building Institutes** | The following services are exempt from Service Tax: Any Services Provided by –<br>(a) the National Skill Development Corporation set up by the Government of India,<br>(b) a Sector Skill Council approved by the National Skill Development Corporation,<br>(c) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation,<br>(d) a training partner approved by the National Skill Development Corporation or the Sector Skill Council.<br>In relation to (a) National Skill Development Programme implemented by the National Skill Development Corporation or, (b) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme or, (c) any other Scheme implemented by the National Skill Development Corporation. **[Notification No. 13/2013 dt.10.09.2013]** |
| **Exemption for education** | All Services in relation to education are exempt under Negative List and as per the Notification No.25/2012 **(Circular No.172/7/2013 dt. 19.09.2013)** |
| **Restaurant Services – Issues** | 1. In a complex where air conditioned as well as non–air conditioned restaurants are operational but food is sourced from the common kitchen, will Service Tax arise for the non–air conditioned restaurant?<br>**Conclusion:** If the AC and Non–AC restaurants are clearly demarcated, the service provided in the Non–AC restaurant is not liable for service tax, even if the food is served from a common kitchen. Such service shall be deemed to exempted service, and CENVAT Credit Rules shall apply accordingly.<br>2. In a AC Restaurant, if the services are provided by the restaurant in other areas like swimming pool or any other open area attached to the restaurant, whether ST to be paid?<br>**Conclusion:** Services provided by the AC Restaurant in such areas are liable for ST, since the AC must be attached in any part of the establishment.<br>3. Whether Service Tax is leviable on goods sold on MRP basis across the counter as part of the Bill / Invoice?<br>**Conclusion:** If goods are sold on MRP basis and covered under Legal Metrology Act, they have to be excluded from total amount for the determination of value of service portion.<br>**(Circular No.173/8/2013 dt. 07.10.2013)** |
| **Exemption for Services provided to Exporters under Foreign Trade Policy Schemes** | Nature of Exemption: Input Services shall be exempt if used by exporters, who hold the Focus Market Duty Credit Scrip / Focus Product Duty Credit Scrip / Vishesh Krishi and Gram Udyog Yojana Duty Credit Scrip issued by the Regional Authority under the Foreign Trade Policy.<br>**Conditions for availing exemption:**<br>(a) The Scrip should be issued against exports to the countries notified in the Appendix to the Handbook of Foreign Trade Procedures.<br>(b) The Scrip is registered with the Customs Authority at the port of registration.<br>(c) The Scrip Holder shall be located in the taxable territory.<br>(d) The Scrip Holder may either be the Original Holder or Transferee Holder. He should present the scrip to the Customs Authority along with a letter & an Invoice / Challan or Bill issued by the Service Provider.<br>(e) The Customs Authority shall debit the Service Tax leviable, in or on the reverse of the Scrip.<br>(f) The date of debit in the scrip, by the Customs Authority shall be treated as the date of payment of Service Tax.<br>(g) If the actual due date of payment of ST is prior to the date of debit in the Scrip, or the actual tax rate is in greater than the rate of ST mentioned in the invoice, the Scrip Holder shall pay additional Service Tax along with interest.<br>(h) The Scrip Holder shall present the scrip debited by the said Customs Authority within 30 days to the Jurisdictional CEO, with an undertaking to pay any short paid Service Tax along with interest. |

<table>
<tr><th>Section</th><th>Provision</th></tr>
<tr><td></td><td>(i) Based on the written advice and undertaking, the CEO shall verify, the details of Service Tax leviable, which were debited by the said Customs Authority, keep a record of payment of such service tax and interest.<br>(j) The Service Provider shall retain a copy of the scrip, and verified by the CEO, and duly attested by the Scrip Holder in support of the exemption taxable services.<br>The Scrip Holder shall be entitled to avail the drawback or CENVAT credit of the Service Tax, against the Service Tax debited in the scrip and validated by the CEO.<br>[Notification Nos.06/2013, 07/2013 and 08/2013 dt. 18.04.2013]</td></tr>
<tr><th colspan="2">Abatement</th></tr>
<tr><td>Abatement for construction service changed</td><td><table>
<tr><th>Nature of Service</th><th>Taxable Value</th><th>Abatement</th></tr>
<tr><td>Construction of a Complex, Building, Civil Structure for a Residential Unit having carpet area upto 2,000 Sq.ft.</td><td>25%</td><td>75%</td></tr>
<tr><td>Construction of a Complex, Building, Civil Structure for a Residential Unit where the amount charged is less than ₹ 1 Crore</td><td>25%</td><td>75%</td></tr>
<tr><td>Other Constructions</td><td>30%</td><td>70%</td></tr>
</table>
(a) CENVAT Credit on inputs used for providing the taxable service has not been taken under the CENVAT Credit Rules, 2004,<br>(b) The value of land is included in the amount charged from the Service Receiver.<br>Impact: Earlier, the taxable value is 25% for all constructions, irrespective of the nature and size of construction. Now, the taxable value is increased to 30% for all constructions except those as mentioned above. [Notification No.9/2013 dt. 08.05.2013]</td></tr>
<tr><th colspan="2">Point of Taxation Rules 2011</th></tr>
<tr><td>Reminder Notices by LIC – Not considered as invoice</td><td>• Reminder Notices / Letters are being issued by the Insurance Companies to the Policy Holders to pay renewal premiums.<br>• Such Reminder Notices solicit furtherance of service and does not evidence any service.<br>• Service arises only if Reminder Notices are accepted by Policy Holder. Hence, such Reminder Letters for insurance policies are not Invoices and would not invite levy of Service Tax. [Circular No.166 / 1 / 2013 dt. 01.01.2013]</td></tr>
<tr><th colspan="2">EXPORT OF SERVICES</th></tr>
<tr><td>Non–filing of declaration for exemption</td><td>Facts: Service Provider is engaged in export of IT Enabled Services (Call Centre / BPO services). However, it did not file the declaration of value, description, etc. of Input Services used in providing such ITES, prior to provision of services. The Department rejected to grant rebate for service tax paid on such input services.<br>Conclusion: The High Court allowed the rebate to the Service Provider on the following grounds –<br>The nature of the services was such that they were rendered seamlessly, on continuous basis without any commencement or terminal points.<br>Since the calls were received and attended to in the call centre on a continuous basis, it was impossible for the Service Provider to determine the date of export and anticipate the calls. So the declaration could not be filed “prior” to the date of export.<br>Hence, the Service Provider is eligible for rebate, even if the claims are made within a reasonable time from the date of exports. (Wipro Ltd Vs Union of India 2013 (29) STR 545 (Del.))</td></tr>
<tr><th colspan="2">VALUATION</th></tr>
<tr><td>Exclusions of reimbursements</td><td>Facts: As per Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, whether the expenditure like travel, hotel stay, transportation, etc. incurred by the Service Provider in course of providing taxable service be treated as consideration for taxable service and included in value for charging Service Tax?<br>Conclusion: The High Court observed that Rule 5(1) may result in double taxation, and such double taxation can happen only when it is clearly mentioned / intended in the Act itself. It can never be imposed by implication. Hence, the High Court concluded that Rule 5(1) is contradictory to the Finance Act, 1994 and is ultra vires the provisions of the Service Tax. (Intercontinental Consultants & Technocrats Pvt Ltd Vs UOI 2013 29 STR 9 (Del)).</td></tr>
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| Section | Provision |
|---|---|
| **SERVICE TAX PROCEDURES** | |
| **Documents for ST Registration** | • Documents to be filed for Registration under ST are: (a) Copy of PAN (b) Proof of Residence (c) Constitution of the Applicant, (d) Power of Attorney in favour of Authorised Person(s).<br>• The above documents are to be filed within 15 days from the date of filing application for registration.<br>• The time limit of 7 days shall be counted from the date the application for registration is complete in all respects. **(Order No.2/2011 – Service Tax dt. 13.12.2011)** |
| **Return Filing** | Service Tax Returns (Form ST – 3) for the period 01.07.2012 to 30.09.2012 must be filed on or before 25.03.2013. **(Notification No.1/2013 dt. 22.02.2013)** |
| **Service Tax Voluntary Compliance Encouragement Scheme, 2013 – Refer Page No.17.10** | |

# CENVAT Credit Rules, 2004

| Topic | Subject / Reference |
|---|---|
| **DEFINITIONS** | |
| **Buyer is not responsible for non–payment by seller** | **Case:** The Assessee claimed Excise Duty based on the Invoices issued by the Manufacturer of inputs. The Manufacturer of Inputs failed to pay the Excise Duty. The Competent Authority contended that the Assessee is responsible to take all reasonable steps to ensure that the appropriate duty is paid on the inputs used in the manufacture of their final product.<br>**Decision:** The Assessee is not responsible, if the Supplier defaults in making payment of the Excise Duty. The Assessee is not expected to verify with the Department whether the Supplier had paid duty. The manufacturer of final products must take reasonable care that the inputs acquired by him are goods on which the appropriate duty of excise as indicated in the documents accompanying the goods, has been paid. **(CCE Vs Kay Kay Industries 2013 TIOL 41 SC CX)** |
| **Eligibility to CENVAT Credit** | **Facts:** 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 Registrations?<br>In order to receive continuous and uninterrupted supply of electricity, the Assessee installed DG Sets/Electricity Generation Plant to be used in the factory of the Textile Division and it used furnace oil as fuel in the generation of electricity. The Assessee availed CENVAT Credit on Furnace Oil used as fuel for the generation of electricity, which was used for captive consumption in their own factory. When the Assessee's other unit required electricity, the Assessee supplied part of the electricity so generated to its other unit.<br>The Department rejected a specified portion of credit in the first factory, as it was sold by the Assessee to another factory.<br>**Conclusion:** 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 (Textile Division). However, credit on inputs utilized to produce electricity which was supplied to a factory registered as a different unit (Plastic Division) would not be allowed. The High Court rejected the contention of the Assessee that separate registration of two units situated within a common boundary wall would not make them two different factories.<br>**[Sintex Industries Ltd Vs CCE 2013 287 ELT 261 (Guj.)]** |
| **Credit on goods purchased and sold without usage in manufacturing process cannot be claimed** | **Case:** The Assessee entered into a contract with M/s Vina Sugars, Vietnam for supply and installation of a sugar plant at Vietnam. In this regard, the Assessee manufactured certain machines in their own factory which were to form part of the Sugar Plant.<br>**Decision:**<br>• Bought out machineries are exported as such along with the machinery manufactured by the Assessee, for setting up a Sugar Plant in Vietnam. Duty was not paid on the Sugar Plant.<br>• To avail the CENVAT Credit, the input on which Excise Duty is paid must be used in the manufacture of the final product in the factory of the Assessee.<br>• Machinery purchased by the Appellant had not even been tested or was not even unwrapped in the factory of the Appellant. In case of such an admitted fact, it cannot be said that the machinery so purchased from others was used by the Appellant in the manufacture of the Sugar Plant. |

| Topic | Subject / Reference |
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| | The Assessee had only acted as a trader or as an exporter in relation to the machinery purchased by it, which had been exported and used for setting up a Sugar Plant in a foreign country. In any case, it cannot be said to have manufactured that Plant in its factory. **(KCP LTD Vs CCE 2013 TIOL 42 SC CX)** |
| **Technical Testing – eligible** | Technical Testing and Analysis services availed by the Assessee for testing of clinical samples prior to commencement of commercial production is eligible for CENVAT Credit. As the samples removed are subject to ED, the related testing is eligible for credit. **(CCE Vs Cadila Health Care Ltd 2013 30 STR Guj)** |
| **Non–reversal of CENVAT u/r 3** | If the manufacturer of goods or the provider of output service fails to pay the amount payable under Rule 3(5), 3(5A), and 3(5B), the same will be recovered in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken. **[Notification No.: 03/2013 dated 01.03.2013]** |
| **Credit on Inputs used for Testing** | Goods are used in testing customised machines, as part of manufacture. Material on which CENVAT Credit is claimed by the Assessee, are not physically used in the manufacture of the said machine but used for testing the F&S machines would be covered within the sweep of the expression "in or in relation to the manufacture of the final products", as appearing in Rule 57A of the Rules. **Note:** Though this decision is in relation to Rule 57A of the Erstwhile Central Excise Rules, 1944, the ratio of the decision will still be applicable to the CENVAT Credit Rules, 2004.<br>**[Flex Engineering Limited Vs CCE 2012 TIOL 01 SC CX]** |
| **Credit of Service Tax on Maintenance Service** | The respondent Company manufactures paper and paper boards. It availed service tax credit on the input services pertaining to maintenance of plantation. The plantation activity had an obvious nexus with the manufacturing activity of the respondent Company. Credit in respect of the same is therefore allowable. **[CCE vs ITC Limited 2012 TIOL 199 HC AP ST]** |
| **Definition of Inputs** | The Definition of Inputs under Rule 2(k) has been amended to the effect that Input also excludes – any goods used for –<br>• construction or execution of works contract of a building or a civil structure or a part thereof,<br>• laying of foundation or making of structures for support of capital goods,<br>except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act.<br>***Impact:*** With the introduction of Negative List based Taxation w.e.f. 01.07. 2012, Section 65(105) [containing the list of Taxable Services] has been withdrawn. Hence, the reference to the provisions of Section 65(105) have been replaced with the actual description of Services. |
| **Structural Components of Boiler – inputs** | • Boilers are a combination of various systems such as Coal Handling System, Coal Feeding System, Draft Air System, Demineralisation Plant, etc. These systems consist of many parts including structural components which are essentially the part of the Boiler by way of technical specifications. Hence, they are classifiable as parts of boilers and so considered as inputs.<br>• Such components shall not be excluded from the definition of inputs.<br>**[Circular No.964/07/2012 – CX dt. 02.04.2012]**<br>• Whether a particular structural component is a part of the Boiler or a component to make structure for supporting the Boiler is a question of facts and needs to be examined on a case to case basis. CENVAT Credit is not admissible in respect of the structural components used for laying of foundation or making of structures for support of capital goods/Boiler **[Circular No. 966/09/2012–CX.1, dated 18–5–2012]** |
| **CENVAT Credit of tooth brush cleared with tooth paste – Eligible** | **Facts:** The Assessee manufactured tooth paste. But, tooth brush was bought out and sold along with the tooth paste as a single pack. Assessee did not charge any separate price for such tooth brush. Whether the ED paid on such tooth brush be eligible for CENVAT Credit as input?<br>**Decision:**<br>The definition of "input" includes accessories of the final products cleared along with the final product, provided the value of such accessories included as part of the value of final products.<br>In the given, as the tooth brush is cleared along with the final product, it will be considered as input and eligible for CENVAT Credit.<br>**Note:** Further, as the value is not separately charged for such tooth brush, the value would have been included as part of the value of tooth paste itself.<br>**[CC Vs Prime Health Care Products 2011 (272) ELT 54 (Guj.)]** |
| **Order passed by Settlement Commission** | (a) U/s 127M of the Customs Act, 1962, the order passed by the Settlement Commissioner is in the nature of judicial proceedings, and it is a judicial order. Further, Revenue had not challenged the said order. |

| Topic | Subject / Reference |
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| | (b) Hence, the order passed by the Settlement Commissioner could not be brushed aside.<br>(c) It must be held good in law, so long as it is not set aside.<br>**[UOI vs. East and West Shipping Agency (2010) 263 ELT 12 (Bom)]** |
| **Exempted Goods** | "Exempted Goods" includes goods for which concessional rate of 1% is being availed as per Notification No.1/2011 or Notification 12/2012 (Sl. No 67 and 128) **[Notification No.21/2012 dt. 27.03.2012]**<br>Consequent Amendments have also been made to Rule 3 provide that credit in respect of the above shall also not be allowable. **[Notification No.21/2012 – CE (NT) dt. 27.03.2012]** |
| **Exempted Services – New Definition** | **[Notification 21/2012 – CE(NT) dt. 27.03.2012]** "Exempted Service" means a –<br>(1) Taxable Service which is exempt from the whole of the service tax leviable thereon, or<br>(2) Service, on which no Service Tax is leviable under section 66B of the Finance Act, or<br>(3) Taxable Service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken,<br>but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules.<br>**Impact:** 1. Reference to Sec. 66 has been changed to Sec. 66B (which is the new charging section in Service Tax). 2. Exempted Service shall not include Services which are exported**.** |
| **Output Services** | "Output Service" means any service provided by a Provider of Service located in the taxable territory, but shall not include a service –<br>• Specified in sec. 66D of the Finance Act, or<br>• Where the whole of Service Tax is liable to be paid by the Recipient of the Service.<br>**Impact*:*** The definition of Output Service has been completely changed **w.e.f. 01.07.2012.** |
| **Utilisation of Credit** | W.e.f 01.07.2012, Rule 3 has been amended to specify that Cenvat Credit cannot be allowed for payment of duty where the Service Receiver is liable to pay Service Tax. |
| **Credit of Duty wrongly charged** | **Facts:** The Assessee received duty paid Hydrogen and Argon gas from 'P', which were used for welding purposes. Before welding, these gases were mixed at Assessee's premises using a facility/machinery set up in Assessee's premises by Supplier 'P'. 'P' charged facility charges for such facility/machinery on which 'P' paid Excise Duty. The Assessee took credit of such duty paid on Facility Charges. Department denied such credit contending that such duty did not relate to any inputs received by the Assessee.<br>**Issue involved*:*** Whether the Assessee was eligible for credit on such duty?<br>**Decision*:*** There was no dispute about the fact that the Assessee had taken CENVAT credit of the duty paid by them. Whether the duty is paid rightly or wrongly, is not the concern of the Assessee who is only a recipient of the goods/service. So long as duty is paid either on the goods or the service, the Assessee is rightly entitled for the credit. Hence, credit was admissible. **[Racold Thermo Ltd vs CCE 2012 TIOL 1611 CESTAT MUM]** |
| **Reversal of Capital Goods – Removal of Used Capital Goods** | Rules 3(5) and 3(5A) are amended to prescribe that in case the Capital Goods on which CENVAT credit has been taken are cleared after being used then the amount payable shall be either the amount calculated on the basis of CENVAT credit taken at the time of receipt reduced by a prescribed percentage or the duty on transaction value whichever is higher. – **[Notification No.18/2012 – CE (NT) w.e.f 01.04.2012]** |
| **Availability of Credit to Service Provider** | At present, credit on goods can be taken only after they are brought to the premises of the Service Provider. Rule 4 is being amended to allow a Service Provider to take credit of inputs or Capital Goods, whenever the goods are delivered to him, subject to maintenance of documentary evidence of their delivery and location. **[Notification No.18/2012 – CE (NT) w.e.f 01.04.2012]** |
| **New Rule 5 – Refund for Exports** | Existing Rule 5 to be replaced with a new rule to simplify the procedure for refund of unutilized credit on the account of Exports **– [Notification No.18/2012 – CE (NT) w.e.f 01.04.2012] –** |
| **Refund for Exports – Procedures and Safeguards** | **Procedures and Safeguards** for Sanction of Exports under Rule 5 of the Cenvat Credit Rules, 2004, have also been notified – **[Notfn. No. 27/2012 –CE (N.T.) dt 18.06.2012]** |
| **New Rule 5B – Refund to Service Providers providing services taxed on reverse charge basis** | **Refund of CENVAT Credit to Service Providers providing services taxed on reverse charge basis – w.e.f. 01.07.2012 –** A provider of service providing services taxed on reverse charge basis (except services where the whole of Service Tax is payable by the Receiver of Service) and being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilised CENVAT credit subject to procedure, safeguards, conditions and limitations, as may be notified. |

| Topic | Subject / Reference |
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| **Payment of Amount under Rule 6(3)** | Any person exercising option under Rule 6(3)(i) shall pay an amount equal to **6%** of the value of exempted goods and services – **Notification 18/2012 CE NT w.e.f 01.04.2012**<br>**Impact:** Earlier 5% of the value of exempted goods and services had to be paid. |
| **Transport of Passengers by Rail** | In case of transportation of goods or passengers by rail the amount required to be paid under Rule 6(3)(i) shall be an amount equal to 2% of the value of the exempted services. |
| **Rule 6 not to apply to export services** | The provisions of Rule 6 shall not be apply where taxable services are provided, without payment of service tax, to a **SEZ unit** or to a **SEZ Developer** for their authorised operations or when a **service is exported**.<br><br>**Impact:** Rule 6 has been amended to specifically provide that Export Services and Services rendered to SEZ (in the nature of Deemed Export) are not Exempt Services.<br>Rule 6(8) has been introduced to provide that Export Services shall not be considered as Exempt Services even when the payment has not been received within the time limit allowed by RBI. |
| **Clearances under Notfn. 214/86 for Job work – Credit Available** | Credit is admissible on the inputs used in goods manufactured under job work by availing exemption under Notification No 214/86 CE. Even though the intermediate products manufactured by the Job Worker are exempt from duty, the Final Products of the Principal Manufacturer are liable to duty and hence Credit is admissible. **[CCE Vs Happy Forging Ltd 2011–TIOL–34–HC–P&H–CX]** |
| **New Rule 10A – Transfer of SAD** | Rule 10A is inserted to permit transfer of unutilized credit of Additional Duty of Customs u/s 3(5) lying in balance at the end of each quarter to another factory of the manufacturer.**[Notification No.18/2012 – CE (NT) w.e.f 01.04.2012] –**<br>1. **Applicability:** A manufacturer or producer of final products, having more than one registered premises, for each of which registration has been obtained on the basis of a common Permanent Account Number under the Income–tax Act, 1961,<br>2. **Transfer:** The above manufacturer may transfer un–utilised Credit of Additional Duty leviable under sub–section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises at the end of a quarter, to another registered premises by –<br>• Making an entry for such transfer in the records maintained under rule 9.<br>• Issuing a Transfer Challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned above.<br>and such recipient premises may take CENVAT credit on the basis of the transfer challan<br>3. **Returns:** The manufacturer or producer shall submit the monthly return, as specified under these rules, separately in respect of transferring and recipient registered premises. |
| **New Rule 7 – Input Service Distributor** | Manner of distribution of credit by input service distributor – **[Notification No.18/2012 – CE (NT) w.e.f 01.04.2012]** |
| **Documents Eligible for Credit – Rule 9** | Rule 9 is being amended to allow availment of credit on the tax payment challan in case of payment of service tax by the service receiver on reverse charge basis. **[Notification No.18/2012 – CE (NT) w.e.f 01.04.2012]** |
| **CONDITIONS FOR AVAILMENT OF CENVAT** | |
| **CENVAT Credit on Shortages in weight of inputs:** | CENVAT Credit must be allowed in the following cases, even if there is a loss during transit:<br>• If the subject goods are hygroscopic in nature or are amenable to transit loss by way of evaporation (if the loss is within the industry norms) (or)<br>• If the difference in weight in any particular case is on account of weighment on different scales at the despatch and receiving ends and whether the same is within the tolerance limits with reference to the Standards of Weights and Measures Act, 1976.<br>**[CCE v. Bhuwalka Steel Industries Ltd. 2010 (249) ELT 218 (Tri–LB)]** |
| **CENVAT Credit against arrears of duty** | **Issue:** In case of arrears of duty related to a past period, demanded by the CEO u/s 11A, whether the manufacturer can utilize CENVAT Credit for payment of such arrears, even if such credit accrued to him after the related period? **Decision:** As per CENVAT Credit Rules, 2004, CENVAT Credit as on the last day of the relevant month / quarter shall alone be utilized to make payment of duty for the relevant month / quarter. This payment of duty represents self–assessed duty paid by the Manufacturer himself u/r 8 of CER, 2002. However, the above arrears are paid by the Manufacturer on specific demand by CEO u/s 11A of the Act, and hence is not same as regular self–assessed duty. So, the regular provision relating to CENVAT Credit utilization cannot be applied in this case. CENVAT Credit available upto date of payment can be used for paying such arrears. **[Circular No. 962/05/2012 – CX dt. 28.03.2012]** |

| Topic | Subject / Reference |
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| **Insurance Compensation received including ED = No reversal required** | **Facts:** The Assessee – Manufacturer purchased some capital goods and claimed the excise duty paid on them as CENVAT Credit. However, the said capital goods (which were insured) were destroyed by fire. The Insurance Company reimbursed the amount to the Assessee, including the Excise Duty. The Excise Department demanded the reversal of the CENVAT credit by the Assessee on the ground that the Assessee had availed a double benefit.<br>**Decision:**<br>(a) As per CENVAT Credit Rules, 2004, CENVAT credit taken / utilized irregularly has to be paid or reversed.<br>(b) Merely because the Insurance Company had paid the assessee the value of goods including the excise duty, it would not render the availment of the CENVAT credit wrong or irregular. Hence, there was **no double benefit involved.**<br>**[CCE v. Tata Advanced Materials Ltd. 2011 (271) E.L.T. 62 (Kar.)]** |
| **Validity of Private Challan for CENVAT** | Credit could be taken on the strength of Private Challans as the same were not found to be fake, and there was a proper certification that duty had been paid. **[CCEx. v. Stelko Strips Ltd. 2010 (255) ELT 397 (P & H)]** |
| **PAYMENT OF INTEREST** | |
| **Payment of Interest** | **Notification 18/2012 – w.e.f. 17.03.2012 –**<br>Interest under Rule 14 shall be applicable only where the CENVAT Credit has been ***taken and*** **utilised wrongly** or has been erroneously refunded.<br>**Impact:** Earlier, Interest liability was applicable when the Credit was wrongly taken or utilised wrongly. Hence, even where the credit was taken wrongly but was not utilized, interest was leviable. This view was upheld in the case of **[UOI vs Indswift Laboratories Ltd 2011 265 ELT 3]**. Now with this amendment, interest liability will arise only when the credit wrongly taken is also utilized. |
| **Recovery of CENVAT Credit** | |
| **Recovery of CENVAT Credit not reversed** | 1. **Non–Compliance:** If the Manufacturer or the Service Provider fails to pay / reverse the amount to be paid / reversed in the following situations –<br>(a) Removal of Capital Goods as scrap,<br>(b) Write off of Inputs / Capital Goods,<br>(c) Remission of Duty on lost goods,<br>2. **Consequence:** Such amount shall be recovered in the same manner as if the CENVAT Credit is wrongly taken. **[Notification No. 03/2013 dt. 01.03.2013]** |
| **Sale against Duty Credit Scrip** | Manufacturers may remove goods to the exporters against the Duty Credit Scrip issued to them.<br>The holder of the said Scrip is eligible for CENVAT Credit of excise duties, for the amount debited in the said scrip.<br>From the Manufacturers' perspective, such removal shall **not** be considered as removal of exempted goods, and hence there is no need for reversal of credit under Rule 6(3).<br>**[Circular No.973/07/2013 dt. 04.09.2013]** |
| **PENALTY** | |
| **No Penalty on Directors for wrong availment by Co.** | Penalty cannot be levied on the Directors of the Company for the wrong availment of the CENVAT by the Company.<br>**Reason:** The words used are "any person who availed the credit", which refers to the Company.<br>**[Ashok Kumar H. Fulwadhya v. UOI 2010 (251) E.L.T. 336 (Bom.)]** |
| **Recovery of penalties imposed on the deceased** | If penalties imposed on an individual could not be recovered due to his death, then such amount could be recovered, as per the various legal decisions and pronouncements in this regard.<br>**(Instruction [F.NO.296/110/2012–CX–9], dt. 18–6–2013)** |
| **Appeals and Revisions** | |
| **Applicability for Monetary limit for Redemption Fine** | **Issue:** CBEC has prescribed threshold limit for the Department to file appeal to the Tribunal / HC / SC. If a particular case involves redemption fine alone or redemption fine and penalty, then how to determine the threshold limit?<br>**Conclusion:** Redemption Fine is an option given to the Importer, to pay the fine instead of confiscation. However, penalty is imposed on a person for violation of law. Hence, technically Redemption Fine and Penalty are different. However, on a broader understanding, both of them are applicable only for violations. Hence, while determining the threshold limit, Redemption fine must be included along with penalty.<br>**[Instruction No.390/Misc./163/2010 – JC dt. 03.06.2013]** |

| Topic | Subject / Reference |
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| **CENTRAL GOVERNMENT's POWERS** | |
| **CG's Power to impose restrictions (Rule 12AAA of CCR, 2004)** | **CG's Powers:** The Central Government may specify the nature of restrictions relating to utilization of credit and suspension of registration in case of dealer and type of facilities to be withdrawn.<br>**Situation:** If CG is of the opinion that it is necessary to take measures to avoid misuse of the CENVAT Credit. **[Notification No.3/2012 dt. 12.03.2012]** |
| **CG's Power to impose restrictions (Rule 12CCC of CER, 2002)** | **CG's Powers:** The Central Government may specify the nature of restrictions including suspension of registration in case of dealer and type of facilities to be withdrawn.<br>**Situation:** If CG is of the opinion that it is necessary to take measures to avoid evasion of duty or default in payment of duty. **[Notification No.4/2012 dt. 12.03.2012]** |
| **Prohibited activities and Restrictions to be imposed by CG** | **[Notification No.5/2012 dt. 12.03.2012]** |

**Exemption for services provided to Special Economic Zone (Notification No.12/2013 dt. 01.07.2013)**

1. **Mode of Exemption:**
   (a) **Ab–initio Exemption:** If the specified services received by the SEZ Unit / the Developer are used exclusively for the authorised operations, the person liable to pay service tax has the option not to pay the service tax ab initio.
   (b) **Exemption by Refund procedure:** If the specified services received by the SEZ / the developer are not used exclusively for the authorized operations, the SEZ may claim the service tax paid as refund proportionately.
2. **Conditions for Ab–Initio Exemption:**
   (a) **Approved List of Services:** The SEZ Unit or the Developer shall get an approval of the list of the services as are required for the authorised operations on which the SEZ Unit or Developer wish to claim exemption from Service Tax. Such Approval shall be obtained from the Approval Committee
   (b) **Form of Declaration:** The SEZ Unit or the Developer shall furnish a declaration in Form A–1, verified by the Specified Officer of the SEZ.
   (c) **Authorisation:** Based on the declaration made in Form A–1, an authorisation shall be issued by the DC / AC of Central Excise in Form A–2.
   (d) **Furnishing of Authorisation:** The SEZ Unit or the Developer shall provide a copy of said authorisation to the Provider of specified services. On the basis of the said authorisation, the Service Provider shall provide the specified services to the SEZ Unit or the Developer without payment of Service Tax.
   (e) **Quarterly Returns:** The SEZ Unit or the Developer shall furnish a quarterly statement to the Superintendent of Central Excise in Form A–3. It should contain the details of specified services received by it without payment of Service Tax.
   (f) **Undertaking:** The SEZ Unit or the Developer shall furnish an undertaking, in Form A–1, that in case the specified services are not exclusively used for authorised operations, it shall pay to the Government, an amount that is claimed by way of exemption from service tax and cesses along with interest as applicable.
3. **Approved List of services:** The SEZ Unit or the Developer shall get an approval of the list of the services as required for the authorised operations, from the Approval Committee, on which SEZ Unit or Developer wishes to claim refund.
4. **Eligible Services:** Refund of Service Tax can be claimed on – (i) the specified services that are not exclusively used for authorized operation, or (ii) the specified services on which ab–initio exemption is eligible but not claimed.
5. **Amount of Refund:** Service Tax paid on the specified services that are common to the authorised operations in an SEZ and the operation in Domestic Tariff Area, shall be distributed amongst the SEZ Unit and the DTA unit(s) as per Rule 7 of the CENVAT Credit Rules (as per Input Service Distributor).
6. **Application:** The SEZ Unit / Developer shall register itself under the Central Excise Act, 1944 and shall file the claim for refund to the DC / AC in Form A–4.
7. **Payment of ST:** The SEZ Unit / Developer should pay the ST to the person liable to pay ST or under the Reverse Charge Mechanism.
8. **Records:** The SEZ Unit / Developer should maintain the detailed records of receipt and use of the services for the authorized operations of the SEZ.

**9. Procedure for claiming Refund:**

- **Appropriate Authority:** AC / DC of Central Excise [**Note:** In case of Unregistered SEZs, Declaration shall be filed by such SEZs or Units, and then Service Tax Code shall be allotted to them].
- **Time Limit:** Within one year from the end of the month in which the ST is actually paid.
- **Enclosures to Refund Claim:** Documents evidencing - (a) Copy of list of Specified Services, (b) Payment of Service Tax, (c) Declaration by SEZ Developer or Unit, claiming such exemption.
- **Time Limit for Sanction:**

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| 80% | Within 15 days (after verification by the AC / DC) |
| Balance | Maximum 30 days (can be extended upto 45 days) |

**10. Erroneous Refund:** In case of erroneous refund of Service Tax paid on specified services, such Service Tax refunded shall be recovered as a recovery of Service Tax erroneously refunded.

**Reversal of Credit on removal of Capital Goods (Notification No.12/2013 dt. 27.09.2013)**

**Reversal of Credit in respect of used Capital Goods removed as such –**

1. **Situation:** Capital Goods, on which CENVAT credit has been taken, are removed after being used.
2. **Amount of Reversal:** The Manufacturer / Service Provider shall pay / reverse the **higher** of the following amounts –
   (a) CENVAT Credit availed **less** % of deduction (on original credit) from the date of credit (or)
   (b) Transaction Value × Excise Duty Rate
3. **% of deduction:**

| **Computers and Computer peripherals – For each quarter or part thereof** | | | | |
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| **Year of Sale** | 1st year | 2nd year | 3rd year | 4th & 5th year |
| **% of deduction** | 10% | 8% | 5% | 1% |
| **Capital Goods (other than Computers and Computer peripherals) –** 2.5% per quarter or part thereof | | | | |

**Reversal of Credit in respect of used Capital Goods removed as scrap –**

**Amount of reversal:** If Capital Goods are removed as scrap, then the amount of reversal shall be equal to the amount of duty leviable on the Transaction Value of sale of Scrap.

**A. Basics – Refund of Cenvat Credit under Rule 5** –

1. **Applicability:** Rule 5 as substituted by **Not. 18/2012 ST** is applicable for all exports on or after 1st April 2012.
2. **Eligibility:** The following category of persons shall be allowed refund –
   (a) A Manufacturer who clears a final product / intermediate product for export without payment of duty under bond or letter of undertaking, or
   (b) A Service Provider who provides an output service which is exported without payment of Service Tax.
3. **Refund: (based on Export to Total Turnover)**

$$\text{Refund Amount} = \frac{\text{Export Turnover of Goods} + \text{Export Turnover of Services}}{\text{Total turnover}} \times \text{Net CENVAT Credit}$$

4. **Meaning of Terms:**

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| **Refund Amount** | Maximum refund that is admissible. |
| **Net CENVAT Credit** | Total CENVAT Credit availed on Inputs and Input services by the Manufacturer or the Output Service Provider **Less** Amount reversed under Rule 3(5C) (Reversal on Account of Remission of Duty), during the relevant period. |
| **Export Turnover of Goods** | Value of Final Products and Intermediate Products cleared during the relevant period and exported without payment of Central Excise Duty, under bond or letter of undertaking. |
| **Export Turnover of Services** | Payments received during the relevant period for Export Services<br>**Add:** Export Services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period<br>**Less:** Advances received for Export Services for which the provision of Service has not been completed during the relevant period |
| **Export Service** | Service which is provided as per of Rule 6A of the Export of Service Rules, 1994, whether the payment is received or not. |

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| **Relevant period** | Period for which the claim is filed. |
| **Total Turnover** | Sum total of the value of –<br>• All Excisable Goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported,<br>• Export Turnover of Services (as above) and value of all other services, in the relevant period,<br>• All Inputs removed as such. |
| **No Refund** | No Refund shall be allowed if the Manufacturer / Service Provider claims –<br>(a) Drawback under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995,<br>(b) Rebate of Duty under the Central Excise Rules, 2002,<br>(c) Rebate of Service Tax under the Services Rules, 1994. |
| **ED on Capital Goods** | CENVAT Credit in respect of Capital Goods cannot be claimed as Refund. |

**B. Safeguards:** Refund of CENVAT Credit under Rule 5, shall be subjected to the following safeguards, conditions and limitations, namely –

1. **Refund Claim:** The Manufacturer or provider of Output Service shall submit only one refund claim for every quarter. However a person exporting goods and services simultaneously, may submit two refund claims – one in respect of goods exported, and other in respect of the Export of Services every quarter.
2. **Period:** The following shall be the periods wherein the Refund Claim shall be filed –

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| First quarter | 1st April to 30th June of every year |
| Second quarter | 1st July to 30th September |
| Third quarter | 1st October to 31st December |
| Fourth quarter | 1st January to 31st March |

3. **Determination of certain values:**

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| **Export Value of Goods** | Value of goods cleared for export during the quarter = Sum Total of all goods cleared by the exporter for Exports during the quarter, as per the monthly / quarterly Return filed by the Claimant. |
| **Total Value of Goods** | Total Value of Goods cleared during the quarter. Sum Total of value of all goods cleared by the Claimant during the quarter, as per the monthly / quarterly Return filed by the Claimant. |
| **Value of Export Services** | In respect of Services, for the purpose of computation of Total Turnover, the value of Export Services shall be as specified in Rule 5. |
| **Value of Other Services** | For the value of all services other than export during the quarter, the time of provision of services shall be determined as per the provisions of the Point of Taxation Rules, 2011. |

4. **Maximum Refund:** The amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made, or at the time of filing of the Refund Claim, **whichever is less**.
5. **Refund to be Debited**:
   (a) The amount claimed as Refund under Rule 5 shall be debited by the Claimant from his CENVAT Credit account, at the time of making the claim.
   (b) In case the amount of refund sanctioned is **less** than the amount of refund claimed, then the Claimant may take back the credit of the difference between the amount claimed and amount sanctioned.

**C. Procedure for Refund Claim:**

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| **Application by** | Manufacturer / Provider of Output Service | |
| **Application to** | AC/ DC of Central Excise in whose jurisdiction –<br>• The Factory from which the final products are exported is situated.<br>• The Registered Premises of the Provider of Service from which output services are exported is situated. | |
| **Time** | Before the expiry of the period specified in u/s 11B of CEA, 1944 | |
| **Form and Signatory** | The Refund Application (**Form A)** should be signed as under | |
| | **Entity** | **Signatory** |
| | Proprietary Firm | Proprietor |
| | Hindu Undivided Family | Karta |
| | Partnership Firm | Any Partner |
| | Limited Company | Board of Directors |
| | Others | Authorized Signatory |

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| **Documents to be submitted** | • Copies of Customs Certified ARE–1 Form, along with the copies of Shipping Bill and Bill of Lading in case of export of goods.<br>• Copies of Bank Realization Certificate, in respect of the services exported.<br>• Certificate signed by the Auditor (statutory or any other) certifying the correctness of refund claimed in respect of export of services. |
| **Procedure to be followed by AC / DC** | • The AC / DC to whom the application for refund is made, may call for any document, if he has reason to believe that information provided in the Refund Claim is incorrect or insufficient, and may cause further enquiry to be made before sanctioning of refund claim.<br>• At the time of sanctioning the refund claim, the AC / DC shall satisfy himself in respect of the correctness of the claim, and the fact that goods cleared for export or services provided have actually been exported.<br>• The Refund Claim of Exporter of goods or services may be allowed in full or part, as the case may be. |

# Common Topics

| Section | Provision |
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| | **Advance Rulings** |
| **"Activity" for Advance Rulings** | The term "Activity" means any production or manufacture of goods and includes any new business of production or manufacture proposed to be undertaken by the existing Producer or Manufacturer.<br>**Note:** Earlier, proposed manufacture / production was not covered. |
| **Advance Rulings** | **W.e.f. 10.05.2013,** Clause (a) of section 28E is being substituted so as to include any new business of import or export proposed to be undertaken by the existing importer or exporter within the meaning of "activity" |
| **Eligible questions for advance ruling** | Advance Ruling can be sought as to admissibility of credit of Excise Duty paid on inputs or credit of Service Tax paid on input services used in or in relation to manufacture of excisable goods.<br>**Note:** Earlier, eligibility of Credit on Input Service was not covered under Advance Ruling. |
| **Order of AAR can be challenged** | The orders of the AAR can be challenged before the High Court under Article 226 or the Supreme Court under Article 136. The High Court was in agreement of the view that if an Advance Ruling of the authority should not be permitted to be challenged before the High Court then the same would negate the basic structure of the Constitution. **[2012 TIOL 665 HC AHM ST]** |
| **Residents eligible for application** | Central Government notified "**Resident Public Limited Company**", as class of Residents who can make application to the Authority for Advance Rulings.<br>Public Limited Company means Public Company defined u/s 3(1)(iv) of the Companies Act, 1956. Resident means Resident as defined in Sec. 2(42) of Income Tax Act, 1961 as far it applies to a Company. **[Notification No. 04/2013 dt. 01.03.2013]** |
| | **Demand, Recovery, Refund, Drawback** |
| **Sec.11A: Service of statement = Service of Notice** | The Central Excise Officer shall serve a statement containing the details of ED not levied / not paid / short levied / short paid / erroneously refunded and such statement shall be deemed to be a service of notice, if the grounds relied upon for the subsequent period are the same as mentioned in the earlier notice.<br>**Note:** Earlier, such statements are not considered as valid notice, as it is not authorized under the Act. |
| **Service of Summons etc.** | Any decision or order passed or any summons issued under the Central Excise Act may also be served by speed post with Proof of Delivery or by Courier approved by the CBEC.<br>**Note:** Earlier, only Registered Post with acknowledgement due was allowed. |
| **Section 11 – Recovery of amounts due** | The Authorized Person may deduct or require any other Central Excise Officer or Proper Officer to deduct the amount payable by a person from any money owing to him.<br>The amount owing to such person may be in the hands of or under the control of the authorized person / such other Officer.<br>**Note:** Earlier, only the Authorized Person is allowed to set off the refund due against amount payable by a person. However, now powers are conferred on him to direct any other CEO/Proper Officer to adjust the amounts. |
| **Section 11(2) – Garnishee Order** | The CEO may issue notice to any other person (who has to pay money to the Assessee or holds Assessee's money), to pay to the credit of the Central Government, such amount of dues to the Government, either on the regular due date or within the time specified in the notice.<br>The Person to whom such notice is issued shall comply with such notice. If such notice is issued to a Post Office / Banking Company / Insurer, it is not necessary to produce any Pass Book / Deposit Receipt / Policy Document for the purpose of any entry / endorsement. |

| Section | Provision |
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| | In case the above person fails to make the payment, he shall be deemed as person in default for the amount specified in the notice and all consequences will follow.<br>**Note:** Earlier, the above power to recover the money directly from Assessees' Debtors or Banks is not available under the Central Excise Act, 1944. |
| **Section 11DDA – Provisional attachment** | The Central Excise Officer can provisionally attach the property of the Assessee, subject to prior approval of the CCE (in writing), if any notice is already served on him u/s 11D of the Central Excise Act, 1944.<br>**Note:** Earlier, provisional attachment can be made only for certain notices. Now, it is allowed for all types of notices. |
| **Issue of SCN** | **Situation:** If an Appellate Authority or Tribunal or Court concludes that the notice issued by the Department is not sustainable because the reasons for the charge of – (a) Fraud, (b) Collusion, (c) Wilful Misstatement, (d) Suppression of facts, or (e) Contravention of law, are not established.<br>**Effect:** The CEO shall determine the Service Tax payable for the period of 18 months, as if the above notice was issued for the offences committed in the last 18 months.<br>**Note:** SCN can be issued within 5 years from the relevant date if the Service Tax is evaded due to reasons mentioned above. However, if the Appellate Authority decides such SCN as invalid, then the demand cannot be raised based on invalid SCN. Hence, a fresh SCN has to be served to the person liable to raise the demand. However, even such SCN can be issued only within 18 months from the relevant date. But, as the decision of the appellate authority might take some time to be pronounced, the above 18 months limitation would have expired. Hence, even the regular demand from the person liable cannot be raised due to limitation of time. Hence, as per the above amendment, if the original SCN is not valid, then such SCN shall be deemed to cover the offences for a period of 18 months instead of 5 years. |
| **Deliberate Default – Department to prove** | **Facts:**<br>• Assessee, an 100% EOU, was contemplating claim of exemption from Customs Duty, for which it addressed a query to Development Commissioner. The Development Commissioner replied in affirmative quoting a Circular of Ministry of Commerce.<br>• The Assessee claimed such exemption. Later, it was found that exemption was not available to Assessee. The Department invoked extended period of limitation alleging "wilful misstatement" or "suppression of facts" by Assessee.<br>**Decision:**<br>• Every non–payment / non–levy of tax does not attract extended period.<br>• There must be some specific action on behalf of the Assessee to support intention of wilful default. For Operation of extended period of limitation, intention to deliberately default is a mandatory pre–requisite and inadvertent non–payment does not attract the extended period of limitation.<br>• Burden of proving malafide on part of Assessee lies on the Department which alleges it and the Assessee cannot be asked to substantiate his bonafide conduct.<br>• Further, the extended period of limitation finds application only when specific and explicit averments challenging bonafides of conduct of Assessee are made in the Show Cause Notice.<br>**[Uniworth Textiles Ltd Vs CCE 31 Taxmann 67 (SC)]** |
| **Provisional Attachment** | Powers of Provisional attachment shall also be applicable in case of Demand has been raised under Sec. 28AAA of the Customs Act, 1962. |
| **Payment of Interest** | **Amendment to Section 75A(2) w.e.f. 08.04.2011 –**<br>**Interest on Delayed payment of Drawback:** Consequent to replacement of Sec. 28AB with Sec. 28AA (Finance Act, 2011), where there is delay in payment of Drawback to the Importer, interest will be payable as per Sec. 28AA (and not under Sec. 28AB) |
| **Service of SCN is mandatory** | **Facts:** The Appellant Assessee filed an order on in May 2010. The date of the order appealed against is 31.03.08. The Department contended that the appeal is invalid as it is beyond 3 months from the date of order i.e. 31.03.08. Assessee contended that it received a copy of the notice on February 2010.<br>**Decision:** It is necessary for the Department to serve the notice on the Assessee and not just issue the notice. As there is no service on the assessee on 31.03.08, the appeal filed by the Assessee is valid, as it is within 3 months from February 2010. |
| **Authority to issue SCN** | **Facts:** Whether the Additional Director General of Central Excise Intelligence has jurisdiction to issue Show Cause Notice?<br>**Decision:** Additional Director General of Central Excise, Intelligence is authorised to act as a Commissioner of Central Excise and hence is considered as a Central Excise Officer. There is no specific approval required for him to issue SCN. **[Raghunath International Ltd vs UOI (2012) 280 ELT 321 (All.)]** |

<table>
<tr><th>Section</th><th>Provision</th></tr>
<tr><td>Procedure under Compounded Levy Scheme different from regular procedure</td><td>Facts: Assessee opted for the Compounded Levy Scheme for determination and payment of Excise Duty under Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997. The Department issued Show Cause Notice u/s 11A demanding Additional Duty from the Assessee. The question is whether the Department's notice is valid or not.<br>Decision: The Department cannot issue notice u/s 11A for non–payment under Compounded Levy Scheme.<br>Reasoning:<br>• As the Assessee is governed by Compounded Levy Scheme, the regular provisions of the Act relating to assessment shall not be applicable.<br>• The elements of one scheme of tax administration cannot be extended to a different scheme of tax administration, as it would disturb the smooth functioning of that unique scheme.<br>• The time limit prescribed u/s 11A of the Act shall not be applicable for recoveries under Compounded Levy Scheme.<br>• [Hans Steel Rolling Mill Vs CCE (2011) TIOL 30 (SC)]</td></tr>
<tr><td>Statutory Requirement of any process – No Suppression of Facts</td><td>Facts: The Assessee is engaged in the manufacture of Cosmetics. The assessee manufactured Di–Ethyl Alcohol by addition of Extra Natural Alcohol (ENA) to Di–Ethyl Phthalate (DEP). This process is adopted to denature it, and render the same unfit for human consumption. However, the Assessee did not disclose the manufacture of Di-Ethyl Alcohol to the Department. Hence, the Department alleged suppression of facts.<br>Decision: The Court held that the above non-disclosure does not amount to suppression, because the denaturing process is a statutory requirement to denature the products as per the Medicinal and Toilet Preparations Act. Hence, the Department is presumed to be aware of this requirement, and so the Assessee has not suppressed any facts. [CC Vs Accrapac India P Ltd (2010) 257 ELT 84 (Guj)]</td></tr>
<tr><td>Revision of assessment in SCN</td><td>Argument that since Customs Officers increased value once at the time of imports to a certain extent, further proceedings cannot be initiated by the Department is not based on any provisions in statute and appears to be not consistent with Sec. 28 of the Customs Act [A G Incorporation and Others vs Commissioner of Customs 2012–TIOL–898–CESTAT–DEL]</td></tr>
<tr><td>Time Limit for recovery of demand after the issue of demand confirmatory order</td><td><table>
<tr><th>Situation</th><th>When Recovery Procedure to be initiated?</th></tr>
<tr><td>If Appeal is not filed against the order of lower authority</td><td>Recovery must be initiated after the expiry of the prescribed period for filing appeal.</td></tr>
<tr><td>If Appeal is filed without stay application</td><td>Immediately after such an appeal is filed. There is no need to wait for completion of the statutory time period.</td></tr>
<tr><td>If Appeal is filed with a stay application</td><td>30 days after the filing of appeal, if no stay is granted / after the disposal of stay petition as per the conditions of stay, whichever is earlier.</td></tr>
<tr><td>In case of appeal to High Court or Supreme Court against Tribunal or High Court Order</td><td>Immediately on the issue of the order, if no stay in operation.</td></tr>
</table>
[Circular No.967/01/2013 dt. 01.01.2013)</td></tr>
<tr><td>Interest on Refund</td><td>If an Assessee is eligible for refund due to the finalization of the provisional assessment order, then such refund will be eligible for interest as mentioned in the refund Sec. 11BB, i.e. 6% p.a. from the end of 3 months from the date of application for refund till the date of payment. [Notification No.02/2013 – CE dt. 01.03.2013]</td></tr>
<tr><td>Refund of Customs Duty</td><td>W.e.f. 10.05.2013, Section 27 is being amended to provide that if the amount of refund claimed is less than rupees hundred, the same shall not be refunded</td></tr>
<tr><td>Show Cause Notice</td><td>W.e.f. 10.05.2013, Section 28 is being amended to provide that show cause notice will not be served where the amount demanded is less than rupees one hundred.</td></tr>
<tr><td>Provisional Attachement</td><td>W.e.f. 10.05.2013, Section 28BA is being amended to provide for provisional attachment of property belonging to any person to whom notice under sub–section (4) of section 28 has been served.</td></tr>
<tr><td>Recovery of Dues</td><td>New clause (d) of section 142 has been inserted W.e.f. 10.05.2013, to provide for the following –<br>1. For recovery of money due to the Central Government from any other person other than the defaulter after giving such other person a notice in writing,<br>2. The person to whom such notice has been issued shall be bound to comply, and<br>3. If the person to whom the notice is issued fails to comply, he shall be deemed to be a defaulter in respect of the amount specified in the notice.</td></tr>
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| Section | Provision |
|---|---|
| **Extended Period of Limitation** | Extended period of limitation for demand of customs duty cannot be invoked in a case where the assessee seeks a clarification about exemption from a wrong authority. The Supreme Court held that mere non–payment of duties could not be equated with collusion or willful misstatement or suppression of facts. Something more must be shown to construe the acts of the assessee as fit for the applicability of the extended period of limitation. **[Uniworth Textiles Ltd. vs. CCEx. 2013 (288) ELT 161 (SC)]** |
| **Date of Service of Order** | It was held that when a decision is pronounced in the open court in the presence of the advocate of the assessee, who is the authorized agent of the assessee within the meaning of section 37C, the date of pronouncement of order would be deemed to be the date of service of order. **[Nanumal Glass Works v. CCEx. Kanpur, 2012 (284) ELT 15 (All)]** |
| **Refund u/s 11B** | Provisions of section 11B of the Central Excise Act, 1944 apply to a claim of refund of excise duty/service tax only, and could not be extended to any other amounts collected without authority of law. 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.)]** |
| **Non–speaking Orders** | **Issue:** Whether non–filing of additional documents despite several opportunities being given to the assessee to produce the same, could be a sufficient ground for passing a non–speaking order?<br>**Decision:** It was held that 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, especially when on the basis of similar documents furnished by the assessee in the past, the claims had been allowed. Thus, deciding the petition in favour of the assessee, the order of the adjudicating authority was set aside. **[DBOI Global Service Pvt. Ltd. vs UOI 2013 (29) STR 117 (Bom)]** |
| **Recovery of Dues from Former Director** | **Issue: Can a former director of a company be held liable for the recovery of the customs dues of such company?**<br>The juristic personality the company and its former director would certainly be separate and the dues recoverable from the former could not, in the absence of a statutory provision, be recovered from the latter. There was no provision in the Customs Act, 1962 corresponding to section 179 of the Income–tax Act, 1961 or section 18 of the Central Sales Tax, 1956 (refer note below) which might enable the Revenue authorities to proceed against directors of companies who were not the defaulters. **[Anita Grover vs CCE. 2013 (288) ELT 63 (Del)]** |
| **Refund under Notification** | The impugned claim of refund was made under Notification No. 102/07-Cus. In terms of the same, claim of refund is to be made within one year from the payment of tax. Where the Assessee had made the claim within one year from the date of final assessment (pursuant to provisional assessment) the Claim is time barred. Notification No. 102/07-Cus is a self contained code and provisions under Section 27 cannot be read into the same. **[Global International vs CCE (2012) TIOL 934 CESTAT Del]** |
| **Interest on Refund – start date** | Refund Claim was allowed but credited to the Consumer Welfare Fund. Subsequently, the Tribunal however, allowed the refund. The Assessee is eligible for the interest from three months after the date of filing of the refund application till the amount of refund is sanctioned to him, and not from the date of the Tribunal's order. **[Gupta Steel (Ship Breakes) vs Commissioner of Customs, (2012) TIOL 1256 CESTAT Ahm]** |
| **Interest on Refund – start date** | Interest on Refund must be paid only from the date starting after 3 months from the date of application till the actual date of refund of duty. It shall not be calculated from the original date of payment of excess duty. **[Kanyaka Parameshwari Engineering Ltd. v. Comm of Cus & Cx 2012 (26) STR 380 (A.P)]** |
| **Unjust Enrichment applies for loss units** | **Merely because the Assessee had sustained the loss** in the relevant year, **could not be a ground** to hold it is not a case of unjust enrichment. It was evident from the CA's Certificate that the duty was included while computing the cost of production of the material. Hence, the Assessee could not be granted relief since it had **failed to establish that the cost of the duty was not included** in computing the cost of the products. **[CCE v. Gem Properties (P) Ltd (2010) 257 ELT 222 (Kar.)]** |
| **Interest on Refunds – Start Date** | **Decision**: Interest u/s 11BB becomes payable, if on an expiry of a period of 3 months from the date of receipt of the application for refund, the amount claimed is still not refunded. The date of sanction of the refund by the AC / DC or the order of the Appellate Authorities has no bearing on determining the date from which interest u/s 11BB becomes payable. **[Ranbaxy Laboratories Ltd. vs UOI 2011 (273) E.L.T. 3 (SC)].** |
| **Interest on Refund** | As per explanation to Sec.11BB, if an Appellate Authority passes an order, then such appellate order shall be deemed as a refund order u/s 11B(2). Hence, even in that case also, interest on refund shall be computed from the date of expiry of 3 months from original date of refund application. **[Ranbaxy Laboratories Ltd Vs UOI 2011 273 ELT 3 (SC)]** |

| Section | Provision |
|---|---|
| **Quoting of Wrong Section number does not invalidate the otherwise correct SCN** | **Issue:** Quoting wrong provisions in the Show Cause Notice whether takes away the power to levy interest u/s 11 AB of the Central Excise Act, 1944.<br>**Facts and Decision:** In the SCN, the AC had specifically mentioned as to why interest should not be charged u/s 11AC. Factum of charging of interest was already there in the SCN. Instead of mentioning Sec. 11AB, he had mentioned Sec. 11AC. The same does not affect the contents of notice, as it is well established that mere quoting of a wrong provision would not invalidate the notice, if the proposed action can be justified under any statutory provision. **[CCE vs Basti Sugar Mills Ltd (2012) TIOL 37 HC All CX]** |
| **Refund of service tax collected on exempted services** | The Assesee claimed refund of Service Tax paid on exempted services. However, the Department rejected the same on the ground that the application is made after the prescribed period.<br>**Decision:** The amount collected on the exempted services cannot be considered as Service Tax as there is no authority in law to collect such amount. Hence, the provisions relating to time limit for refund application is not applicable in relation to refund claims for amounts, which are not Service Tax itself. **[CCE (A) vs KVR Construction 2012 (26) STR 195 (Kar.)]** |
| **Interest on Final Assessment** | For the purpose of Levy of Interest, there is no requirement that the various goods of the assessee have to be treated separately when an Assessee is permitted to pay duty in pursuance of a provisional assessment order. Therefore the liability to pay interest arises only when there is a shortfall in payment after all the goods of the Assessee are taken into account. **[Toyota Kirloskar Auto Parts Pvt Ltd Vs CCE 2012 TIOL 10 HC KAR CX]** |
| **Time limit for demand of interest u/s 11AB** | The period of limitation which applies to a claim for the principal amount should also apply to the claim for interest thereon. The period of limitation prescribed for demand of duty u/s 11A is normally 1 year / 5 years. Demand of interest beyond the same is barred by limitation. **[Kwality Ice Cream Company Vs UoI 2012 TIOL 252 HC DEL CX]** |
| **Unjust Enrichment when Duty is indicated as NIL in invoice** | In the commercial invoices, the column relating to Central Excise Duty is kept 'blank' meaning thereby that the sale price does not include the Central Excise Duty element. Thus, the commercial invoices clearly indicate that the customers were made known that the Central Excise Duty is borne by the Assessee, and the same is not passed on to the customers. Refund Claim not hit by unjust enrichment. **[UoI vs N G Thakkar & Sons (2012) TIOL 280 HC CX]** |
| **Unjust Enrichment – Buyer refusing to pay** | **Decision:** Where it is admitted that the Department has received excess duty, they are bound to refund it to the person who has paid the excess duty. In the instant case, when the Buyer had refused to pay excess duty claimed and had raised a Debit Note, the only inference to be drawn was that the Assessee had not received that excess duty which he had paid to the Department. Consequently, Department was bound to refund to the Assessee, the excess duty calculated. **[CCE vs Techno Rubber Industries P Ltd (2011) 272 ELT 191 (Kar.)]** |
| **Unjust Enrichment – Certificate of CA** | Section 27 of Customs Act mandates on the Importer to produce such documents to establish that the amount of duty has not been passed on by him to any other person. However, the Importer had not produced any document other than the certificate issued by the CA to substantiate its refund claim. The Certificate issued by the CA was merely a piece of evidence acknowledging certain facts. It would not automatically entitle a person to refund in the absence of any other evidence. Hence, the Importer could not be granted refund merely on the basis of the said certificate. **[Commissioner of Customs vs BPL Ltd. 2010 (259) E.L.T. 526 (Mad.)]** |
| **Circulars and Adjudication** | |
| **Nature of Settlement Commission Order** | The assessee is not permitted to accept what is favourable to him and reject what is not, in the order of the Settlement Commission. |
| **Appeals and Revision** | |
| **Stay order by Appellate Tribunal** | If the CESTAT has not disposed the appeal within 180 days from the date of stay order, then such period of stay can be extended for further period of 185 days on an application made by the party, and such delay is not due to such party. However, if the appeal is not disposed of within 365 days from the date of order, then the stay order shall vacate on the expiry of 365 days.<br>**Note:** Earlier, the Stay Order shall vacate on the expiry of 180 days itself. |
| **Stay of Proceedings** | **Amendment to section 129B**, **W.e.f. 10.05.2013**: In cases where the delay in disposing of the appeal is not attributable to the appellant, the Tribunal may extend the period of stay by a period not exceeding 185 days subject to the condition that if the appeal is not disposed of within the total period of 365 days from the date of order, the stay order shall stand vacated. |
| **Single Member bench** | **W.e.f. 10.05.2013,** Section 129C is being amended to enhance the monetary limit of the Single Member Bench of the Tribunal to hear and dispose of appeals from Rs.10 lakh to Rs.50 lakh |

| Section | Provision |
|---|---|
| **Form for Appeal to Tribunal** | **In the Customs (Appeals) Rules, 1982, for rule 7, the following rule is substituted:**<br>Form of appeal or application to the Appellate Tribunal.–<br>1. An appeal under section 129A(2) or an application under section 129D(4) of the Act to the Appellate Tribunal to be made in Form No. C.A.– 5.<br>2. The appeal or application, in Form No. C.A.–5 is to be filed in quadruplicate accompanied by an equal number of copies of the decision or order (one of which at least should be a certified copy) passed by:<br>(a) the Appellate Commissioner of Customs under section 128 of the Act, as it stood immediately before the appointed day, or by the Commissioner (Appeals) under section 128A of the Act and a copy of the order passed by the Committee of Commissioners of Customs under 128A(2) of the Act.<br>(b) the Commissioner of Customs and a copy of the order passed by the Committee of Chief Commissioners of Customs. |
| **Res Judicata** | **Decision of the Case:** 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 might 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) ELT 149 (SC)]** |
| **Condonation of Delay** | **Issue:** Can the deposit of 50% of tax amount be made a condition for condoning the delay in filing of an appeal?<br>**Decision:** It was held that the condition of depositing 50% of tax amount for condoning the delay is illegal and that the CESTAT ought not to have mixed the issue with the separate application filed for stay. **[Mihani Network v. CCus. & CEx. 2012 (285) ELT 182 (MP)]** |
| **Procedure before Appellate Tribunal** | The President or any other Member of the Appellate Tribunal can dispose off the case, sitting singly, if the amount of fine or penalty involved does not exceed ₹ 50 Lakhs.<br><br>**Note:** Earlier, the amount prescribed was ₹ 10 Lakhs |
| **Rejection Order due to limitation of time would not merge with the main order of the original authority** | CCE(A) rejected the appeal made by the Assessee against the original authority's order, due to the fact that the appeal is made beyond the specified time. The Assessee filed an appeal with the CESTAT against such dismissal order. CESTAT dismissed the appeal on the reasoning that the CCE(A)'s rejection of appeal due to belated appeal is valid. Assessee filed further appeal in the High Court, stating that the CESTAT's order is not valid on the following grounds: (a) Once CCE(A) rejected the Assessee's appeal, it implies that he accepted the order of the original authority in entirety. (b) Hence, CESTAT should consider the entire merits of case and not just the factor of limitation of time.<br>**Decision:** The Supreme Court held that if an appeal is dismissed on the grounds of limitation and not on merits, such a dismissal order would not merge with the orders passed by the original authority. Hence, CESTAT need not consider the merits of the case while deciding on such appeal filed against CCE(A)'s rejection order due to limitation of time.<br>**[Raja Mechanical Co. (P) Ltd. v. CCE 2012 (279) E.L.T. 481 (S.C.)]** |
| **Appeals to CCE(A)** | **W.e.f. 28.05.2012**, Appeals to CCE(A) shall be presented within **2 months** from the date of receipt of the decision or order of the Adjudicating Authority. However the CCE(A) may condone the delay in filing the said appeal upto a period of 1 month if sufficient cause is shown to the satisfaction of the CCE(A). |
| **Appeals to CESTAT** | **W.e.f. 28.05.2012**, Appeals to CESTAT to be made within 3 months from the receipt of the order by the Assessee. For Departmental Appeals, the time limit is 4 months from the date of receipt of the order.<br>**Impact:** Earlier a uniform time limit of 3 months was prescribed for all appeals. |
| **CESTAT re–considering earlier evidence in application for rectification of mistake – not permissible:** | **Facts:** In pursuance of the rectifying application, the CESTAT concluded that an Officer of the Department, who was working as Assistant Director (Cost) and who was also Cost Accountant, was not competent to ascertain value of the goods. The submissions, which were made before the CESTAT by the Respondent-Assessee while arguing the rectification application, were also advanced before the CESTAT when the appeal was heard at an earlier stage.<br>**Decision:** This clearly shows that the CESTAT took a different view in pursuance of the rectification application. The arguments not accepted at an earlier point of time, were accepted by the CESTAT after hearing the rectification application. There was no mistake apparent on record when the CESTAT decided the original case. Hence, CESTAT exceeded its powers and it tried to re-appreciate the evidence, and it re–considered its legal view taken earlier in pursuance of a rectification application. **[(CCE vs RDC Concrete (India) P Ltd CX 77 dt 09.08.2011) (SC)]** |
| **Condonation of delay by Tribunal** | If the Assessee is not able to file the appeal within 3 Months from the date of communication of the CCE / CCE(A)'s order, then the CESTAT may condone the delay, sufficient cause is available.<br>**Impact:** Earlier, there was no specific provision for condonation of delay. |

| Section | Provision |
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| **Re–opening of decided issue** | **Facts:** The Assessee was engaged in bituminization of the Insulation Board. This process was held as "not a manufacture" by the CCE(A). The Department did not challenge this decision and hence the decision attained finality. Later, the department issued SCN treating the above process as manufacture for a difference period. Is this valid?<br>**Decision**: Once the department did not challenge the Appellate Authority's appeal, the order attained finality and hence cannot be re–opened by the Department for another year.<br>**[CCE v. Tikitar Industries, 2012 (277) E.L.T. 149 (S.C.)]** |
| **Refund of Predeposit** | When an Appellate Authority orders refund of pre-deposit, it is the duty of the Assessing Authority, to refund the same. The Refund is to be granted even without a formal request by the Assessee, failing which the Assessing Authority is bound to pay interest u/s 35FF. **[Commissioner of Customs vs Shree Simandar Enterprises (2012) TIOL 624 HC Kerala]** |
| **Powers of CESTAT to reduce Penalty** | In respect of the penalties u/s 114A, where the Adjudicating Authority has not given the option to pay 25% of duty along with interest within 30 days of receipt of the order for final settlement, the CESTAT has the powers to do so. **[A G Incorporation and Others vs Commissioner of Customs 2012–TIOL–898–CESTAT–DEL]** |
| **Fresh evidence before CESTAT – Valid** | **Situation:** A CA Certificate with detailed analysis was presented before CESTAT as evidence. However, it was not presented during adjudication. Whether such evidence is valid?<br>**Decision:** Fresh evidence can be submitted before CESTAT, even if not presented during adjudication. CESAT shall consider the additional evidence either as supportive to the existing evidences or as a new evidence. Parties must be given opportunity to produce additional evidence.<br>**[Toyota Kirloskar Motor Pvt. Ltd Vs CCE 2011 274 ELT 321 (SC)]** |
| **Dismissed Appeals cannot be revived** | If an appeal is dismissed by the CESTAT and such dismissal is also subsequently upheld in the High Court, can the CESTAT revive such appeal again?<br>**Decision:** As the CESTAT's order has merged with the order of High Court, the CESTAT has no jurisdiction to restore such appeals. **[Lindt Exports 278 ELT 587 (Del.)]** |
| **Decision based on Grounds which are completely new** | CESTAT had disposed of the appeal on a ground which was not urged by the Respondents before the Adjudicating Authority. So, the CESTAT had disposed of the appeal on a totally new ground, which was not laid before the Adjudicating Authority.<br>It was held by the High Court that if the CESTAT not been satisfied with the approach of the Adjudicating Authority, it 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. **[CCE vs Gujchem Distillers (2011) 270 ELT 338 (Bom)]** |
| **Levy of Service Tax – Appeal to SC** | The question as to whether the Assessee is liable to pay Service Tax falls squarely within the exception carved out in Sec. 35G of Central Excise Act, 1944, *'an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment'*. Therefore, HC has no jurisdiction to adjudicate the said issue. The appeal lies to the Apex Court u/s 35L of Central Excise Act, 1944, which alone has exclusive jurisdiction to decide the said question. **[CCEx. & ST v. Volvo India Ltd. 2011 (24) S.T.R. 25 (Kar.)]** |
| **Duty paid second time – unjust enrichment not to apply** | Adjudicating Authority raised demand ignoring the payment by the Assessee which was complied with by the Assessee. It is a tax which the petitioner has already paid separately, and second time under the insistence of the Department which he is asking for being refunded. Under the circumstances, the question of unjust enrichment cannot be applied. **[C C Patel & Associates Pvt Ltd Vs UoI 2012 TIOL 742 HC AHM ST]** |
| **Consent Order – No Appeal** | If an order was passed by CESTAT based on consent, and the matter was remanded at the instance of Revenue, then Revenue could not pursue an appeal against such order in a higher forum.<br>**Note: A Consent Order** is a judicial decree expressing a voluntary agreement between parties to a suit, mainly an agreement by a Defendant to cease alleged illegal activities for an end to charges. **[CC vs Trilux Electronics (2010) 253 ELT 367 (Kar.)]** |
| **Arbitrary order of CESTAT – Invalid** | No arbitrariness: Tribunal granted full waiver of deposit u/s 35F of CEA, 1944 in an identical case of another Assessee, but ordered the Petitioner to deposit ` 8 Crores as pre-deposit. Application seeking recall of the order of pre-deposit was rejected by the Tribunal, by holding that it was the discretion of the Tribunal to pass interim orders depending on the facts and circumstances of each case. It was held that discretion does not mean the arbitrary fiat of the person in the office passing the orders. The decision has to be informed, by reasons, objectivity and transparency. **[Pearl Enterprises vs UOI (2012) TIOL 21 HC HP CX]** |

<table>
<tr><th>Section</th><th>Provision</th></tr>
<tr><td>Power of HC to direct condonation of delay</td><td>When a period of limitation is prescribed for filing of an appeal and the extent of the power to condone the delay is also prescribed by the statute, the exercise of the writ jurisdiction under Article 226 of the Constitution would clearly be not warranted to direct the adjudicatory or appellate authority to condone the delay [M/s Raj Chemicals Vs UoI 2012 TIOL 278 HC MUM CX]</td></tr>
<tr><td colspan="2">Search and Seizure</td></tr>
<tr><td>Search and Seizure</td><td>W.e.f 08.04.2011, The provisions of Indian Penal Code relating to search and seizure shall apply to search and seizure under Central Excise Act. However, the powers will vest with the Commissioner of CE. [Sec. 12F(2)]</td></tr>
<tr><td>Cognizable Offences</td><td>W.e.f. 28.05.2012, Certain Offences under the Customs act – cognizable:
<table>
<tr><td>Where the offences are relating prohibited goods or evasion or attempted evasion of duty exceeding ₹ 50 Lakhs</td><td>The offences shall be cognizable.</td></tr>
<tr><td>Other Offences</td><td>Non Cognizable</td></tr>
</table>
Notwithstanding anything contained in the Code of Criminal Procedure, all offences under the Act shall be bailable. [Sec. 104]</td></tr>
<tr><td>Powers of Adjudication</td><td>Amendment to Sec. 122 – w.e.f. 28.05.2012 –<br>Adjudication of Confiscations and Penalties: In every case under this Chapter in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged, –
<table>
<tr><th>Where the value of the goods liable to confiscation does not exceed</th><th>Adjudicating Authority</th></tr>
<tr><td>₹ 50,000</td><td>Gazetted Officer of Customs lower in rank than an AC / DC</td></tr>
<tr><td>₹ 5,00,000</td><td>AC / DC</td></tr>
<tr><td>without limit</td><td>CC / JC</td></tr>
</table></td></tr>
<tr><td>No redemption fine if no confiscation</td><td>Where the Adjudicating Authority has not ordered confiscation of goods, and the Department has not challenged the same in appeal, question of imposition of Redemption Fine and personal penalty does not arise. [Commisioner of Customs vs Star PVG Exports (2012) TIOL 977 CESTAT MUM]</td></tr>
<tr><td>Theft of Confiscated Goods</td><td><ul><li>In case of theft of confiscated goods, the Department is liable to make good the loss to the Assessee. Because, on confiscation, the goods vest with the Government.</li><li>Interest is also payable to the Assessee on the said amount.</li><li>Demurrage Charges are not payable by the assessee for any delay, if the Department could not sell off the confiscated goods within the time period allowed by the Court.<br>[Moti Lal Gupta Vs CCE 2012 279 ELT A78 (SC)]</li></ul></td></tr>
<tr><td>Cacellation of Confiscation order for lack of evidence</td><td>Where there is a confiscation of goods because of their under–valuation, Tribunal cannot cancel the confiscation order for the want of evidence from the Foreign Supplier. The Confiscation Order is valid.<br>Reason: The High Court considered that it would be illogical that a person who was a party to under–valuation would give evidence to the Department to prove the case that the Invoice raised by him on the respondent was a bogus one, and that they had received underhand payment of the differential price. [CCus. v. Jaya Singh Vijaya Jhaveri (2010) 251 ELT 38 (Ker)]</td></tr>
<tr><td>Release of Goods seized if no SCN is issued</td><td>Goods seized under Section 110 of the Customs Act, 1962 released provisionally u/s 110A. No SCN issued within the time limit of one year prescribed under Section 110(2), then the Goods shall be deemed to be released unconditionally. [Jatin Ahuja Vs UoI 2012 TIOL 986 HC DEL CUS]</td></tr>
<tr><td>Seized goods cannot be held indefinitely</td><td>The goods seized cannot be indefinitely held without any order u/s 110. The High Court observed that Sec. 110(2) provides that when any goods are seized u/s 110(1) and no notice in respect thereof is given u/s 124 (a) within 6 months of the seizure of the goods, the goods shall be returned to the person from whose possession, the goods were seized. The proviso to Section 110(2), however, empowers the Commissioner of Customs to extend the aforesaid period of 6 months by a further period of not exceeding six months, on sufficient cause being shown. [SJ Fabrics P Ltd vs UOI (2011) 268 ELT 475 (Cal)]</td></tr>
<tr><td>Copy of Documents Seized to be provided</td><td>Facts: The Assessee sought copies of the documents seized from his Office Premises under panchanama, and printouts drawn from the Laptop during his attendance in DRI. However, Revenue Officers replied that the documents would be provided to him on completion of the investigation.<br>Decision: The High Court held that from the language of Sec. 110, it was apparent that the Customs Officers were mandatorily required to make available the copies asked for. It was the party concerned who had the choice of either asking for the document/seeking extract and not the Officer. [Manish Lalit Kumar Bavishi vs Addl. DIR. General, DRI (2011) 272 ELT 42 (Bom)]</td></tr>
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| Section | Provision |
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| **Smuggled Goods – entitlement for exemption** | "Smuggled Goods" could not be considered as "Imported Goods" for the purpose of benefit of the Exemption Notification. If the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962. One of the principal functions of the Customs Act was to curb the ills of smuggling on the economy. Hence, it would be contrary to the purpose of Exemption Notifications, to give the benefit meant for Imported Goods to Smuggled Goods. **[Commissioner of Customs (Preventive) vs M Ambalal & Co. (2010) 260 ELT 487 (SC)]** |
| **Seizure of Goods – Issue of SCN** | **Requirement of issuing Show Cause Notice under Section 124 of the Customs Act, 1962 to the owner of goods within stipulated period of six months of the seizure of goods or during extended period:** In cases where investigation may not be completed owing to some difficulties, the Commissioner has power to extend the time limit on two conditions, namely, (i) total period for issue of Show Cause Notice (SCN) does not exceed one year, and (ii) sufficient cause is shown by the Commissioner while extending the time limit. **[Circular No 7/2013 dated 07.02.13]** |
| **Offences, Penalties and Prosecution** | |
| **Payment before SCN = No SCN** | If the Assessee himself paid the amount of Service Tax along with appropriate interest, then the Department cannot for issue SCN demanding such amount along with penalty.<br>**[CCE & ST v. Adecco Flexione Workforce Solutions Ltd. 2012 (26) S.T.R 3 (Kar)]** |
| **Waiver of penalty of 75%** | Penalty shall be 25% of the total duty demanded, only if the additional duty demanded, interest and such penalty are paid within 30 days from the date of communication of the order. **[Sec. 11AC(1)(d)]**<br>***Note: Earlier, for the levy of concessional penalty of 25%, only the additional duty and interest are to be paid within 30 days. Now, even the 25% Penalty should also be paid within 30 days.*** |
| **Bailable offences** | **Amendment to Section 104 W.e.f. 10.05.2013**– The following specified offences punishable under section 135 shall be non–bailable, namely –<br>(a) evasion or attempted evasion of duty exceeding Rs.50 lakh,<br>(b) prohibited goods notified under section 11 which are also notified under sub–clause (C) of clause (i) of sub–section (1) of section 135,<br>(c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds Rs. 1 crore,<br>(d) Fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds Rs.50 lakh.<br>Sub–section (7) provides that all other offences except those specified in sub–section (6) shall be bailable. |
| **Offences and prosecution** | **W.e.f. 10.05.2013,** The threshold limit for punishment in an offence relating to evasion or attempted evasion of duty or fraudulently availing of or attempting to avail of drawback or any exemption from duty in connection with export of goods, has been increased from Rs.30 lakh to Rs.50 lakh for the purpose of Imprisonment upto 7 years |
| **Penalty u/r 25** | **Facts:** Prabhat Zarda Factory was engaged in manufacturing zarda which had the brand name of "Ratna". It clandestinely cleared 'Ratna' Zarda and stored them with Balaji Trading Co. for further sales. Balaji Trading Co. were allegedly the related concerns of Prabhat Zarda Factory.<br>**Issue:** Can penalty u/r 25 of the CE Rules, be imposed on the Balaji Trading Co. who were merely traders of such products and not registered with the department?<br>**Decision:** Since, the respondents were neither producers manufacturers of the said zarda, neither were they the registered persons of a warehouse in which the said zarda had been stored nor were the registered dealers, penalty under rule 25 (higher of duty payable on excisable goods in respect of which contravention has been committed or ` 2,000), could not be imposed on the respondents. **[CCEx. v. Balaji Trading Co. 2013 (290) E.L.T. 200 (Del.)]** |
| **Penalty u/s 76** | The Karnataka High Court 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. As per section 73(3), no notice shall be served against persons who had paid tax with interest, the authorities can initiate proceedings against defaulters who had not paid tax and not to harass persons who had paid tax with interest on their own. If the notices were issued contrary to this section, the person who had issued notice should be punishable and notthe person to whom it was issued. **[CCE & ST v. Adecco Flexione Workforce Solutions Ltd. 2012 (26) S.T.R 3 (Kar)]** |
| **No Penalty in case of debatable issues** | The High Court held that even if the appellants were aware of the levy of service tax and were not paying the amount on the ground that the entire issue for levying of the tax was debatable, there could be no justification in levying the penalty in absence of any fraud, misrepresentation, collusion or wilful mis–statement or suppression. **[Ankleshwar Taluka ONGC Land Loosers Travellers Co. OP. v. C.C.E, Surat–II 2013 29 STR 352 Guj.]** |

| Section | Provision |
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| **Prosecution** | Knowingly evading payment of Service Tax is included as one of the grounds for initiating prosecution proceedings under Section 89. |
| **Compounding of Offences** | Notification 17 / 2012 ST **w.e.f. 29.05.2012**, has extended the provisions of Compounding of Offences to Offences, under Service Tax also.. Service Tax (Compounding of Offences) Rules 2012 have been prescribed as per which the procedure for compounding has been specified. |
| **Benefit of reduced Penalty u/s 11AC** | Order-in-Original of the Adjudicating Authority did not mention about the benefit of reduced penalty of 25%, if the penalty is deposited within 30 days of from the date of communication of the demand. Hence, the Tribunal was right in extending the benefit of reduced penalty, if demand is paid within 30 days of the order of the Tribunal. **[CCE vs Beas Scientific Dyers (2012) TIOL 91 HC P&H CX]** |
| **Offences are bailable / non–cognizable** | All the offences under the Central Excise Act and the Customs Act are bailable and non–cognizable, even if such offence may lead to an imprisonment of maximum upto 7 years.<br>**Note:** As per Code of Criminal Procedure (CCP), if an offence is committed under other laws leading to an imprisonment of 7 years, such offences are non–bailable and cognizable. However, as per the provisions of the Central Excise Act / Customs Act, they are bailable / non–cognizable irrespective of anything mentioned in CCP. Hence, Specific Act prevails over the general provisions.<br>**[Om Prakash Vs UOI 227 ELT 321 SC]** |
| **Person Liable to pay Penalty u/s 112** | Penalty u/s 112 of the Customs Act, 1962 can be imposed both upon a Partnership Firm as well as on its Partners. The deeming fiction in Sec. 140(2) making Director of company or [a Partner of a Firm] liable to penalty, would not be confined to criminal prosecution, but extends to adjudication proceeding as well. The Apex Court judgement in the case of *Standard Chartered Bank vs Directorate of Enforcement* has been followed. **[Textoplast Industries vs Additional Commissioner of Customs (2011) 272 ELT 513 (Bom.)]**<br>***Note**: The Gujarat High Court, in case of CCE & C, Surat–II vs Mohammed Farookh Mohammed Ghani (2010) 259 ELT 179, has held that separate penalty u/s 112 could not be imposed on the Partners, in addition to the penalty on the Partnership Firm. However, the Gujarat High Court, while deciding the said case, has not considered the principle enunciated by the Supreme Court in the Standard Chartered Bank case.* |
| **Mens Rea – Section 112** | Penalty u/s 112 can be imposed only if **"duty was sought to be evaded"**. Being a penal provision, it requires to be strictly construed. The process of "seeking to evade" involves a mental element and the concept of the status "sought to be evaded" is arrived at only by a conscious attempt to evade. Hence, unless it is established that a person has, by his omissions or commissions, led to a situation where duty is sought to be evaded, there cannot be an imposition of penalty in terms of Sec. 112(a)(ii) of the Act. **[OT Enasu vs UOI 2011 (272) ELT 51 (Ker)]** |
| **Section 9 – Monetary limit for maximum imprisonment** | Imprisonment upto 7 years and fine is applicable in case of offences relating to excisable goods involving an excise duty liability more than ₹ 50 Lakhs.<br>**Note:** Earlier, the amount prescribed was ₹ 30 Lakhs, but now enhanced to ₹ 50 Lakhs |
| **Section 9A – Cognizable offences** | In case of offences relating to excisable goods which (a) involve evasion of payment of duty under the Act or (b) avail and utilize the credit of any duty against ED liability in contravention of the provisions of the Act, such offences shall be cognizable and non–bailable if the ED involved exceeds ₹ 50 Lakhs<br>**Note:** Earlier, all the offences are non–cognizable offences, irrespective of the nature or amount. Now, the offence as mentioned above is cognizable. |
| **Section 20 and Section 21 – Bail for assessee** | The officer in charge of Police Station / the Central Excise Officer to whom a person is forwarded, can admit such person to bail only when the offence is non–cognizable under the Act.<br>**Note:** Earlier, all the offences are non–cognizable, and hence all were eligible for bail. However, after amendment, offences relating to excisable goods which (a) evade the payment of duty under the Act or (b) avail and utilize the credit of any duty against ED liability in contravention of the provisions of the Act, such offences shall be cognizable and non–bailable if the amount of ED involved exceeds ₹ 50 Lakhs. |
| **Offences by Companies (Sec. 78A)** | Where a Company has committed any of the following contraventions –<br>(a) Evasion of Service Tax,<br>(b) Issuance of Invoice / Bill / Challan without provision of taxable service,<br>(c) Availment or utilization of credit of taxes / duties without actual receipt of taxable service or excisable goods, either fully or partly in violation of the relevant provisions,<br>(d) Failure to pay any amount collected as Service Tax to the credit of the Central Government beyond 6 months from the due date.<br>**Consequence:** Any Director / Manager / Secretary / other Officer of the Company, who is in charge of the business of the Company at the time of contravention and knowingly contravened, shall be liable to penalty upto ₹ 1 Lakh. |

| Section | Provision |
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| **Applicability of CE provisions** | Section 9A(2) of the Central Excise Act is applicable to the Service Tax Assessees.<br>**Note:** Earlier, entire Section 9A was applicable instead of Section 9A(2). |
| **Imprisonment for offences (Sec. 89)** | (a) In the case of offences mentioned in points (1) (2) & (3), where the amount exceeds ₹ 50 Lakhs, the imprisonment shall be upto 3 years (for the first and subsequent times).<br>(b) In the case of offences mentioned in Point (4), where the amount exceeds ₹ 50 Lakhs, the imprisonment shall be upto 7 years (for the first and subsequent times).<br>(c) In the case of other offences, imprisonment shall be upto 1 year (for the first time) and upto 3 years (for the subsequent time). |
| **Cognizable Offences (Sec.90)** | If there is a failure to pay any amount collected as service tax to the credit of the Central Government beyond 6 months from the due date, such offence shall be cognizable and non–bailable if the Service Tax involved exceeds ₹ 50 Lakhs. |
| **Powers to arrest (Sec.91)** | (a) If the CCE has reason to believe that any person has committed the offence mentioned in Sec.89 and which involves an amount exceeding ₹ 50 Lakhs, he may authorize any CEO (above the rank of Superintendent), by a general or special order, to arrest the person.<br>(b) If the offence is cognizable, every Officer authorized to arrest the person, shall inform such person of the grounds of arrest, and produce him before a Magistrate within 24 hours.<br>(c) If the offence is non–congnizable and bailable, the AC / DC shall have the same powers and be subject to the same provisions as an Officer in charge of a Police Station has under the Code of Criminal Procedure, 1973.<br>(d) All arrests shall be as per the Code of Criminal Procedure, 1973. |
| **Settlement Commission** | |
| **Settlement of Cases** | The provisions of the Excise Act dealing with Settlement of Cases Section 31 to Section 32P, have been made applicable to Service Tax. The Service Tax (Settlement of Cases) Rules, 2012 have been notified in this regard. **[Notification 16/2012 ST w.e.f. 29.05.2012]**. |
| **Filing of Consolidated Returns for the period prior to Registration** | **Facts:** The Petitioner got its units registered after few days of the search conducted in its units. Thereafter, it filed consolidated return with the Department for the period prior to search. The Settlement Commission rejected the application on the grounds that the units were registered only after the search was conducted, and prior to that there was no registration and no returns as required u/s 32E were filed.<br>**Decision:** The HC noted that Sec. 32E clearly provides that unless the Applicant has filed returns, showing production, clearance and Central Excise duty paid in the prescribed manner, no application shall be entertained. Returns as required u/s 32E can only refer to returns filed under Rule 12 of the Central Excise Rules, 2002. Where the Assessee had filed a consolidated returns for the period prior to search, the same cannot be a return filed under Rule 12, and hence the Settlement Commission was right in rejecting the said application. **[Icon Industries v. UOI 2011 (273) E.L.T. 487 (Del.)]** |
| **Settlement Commission – Granting of Immunity** | **Issue:** Can the Settlement Commission decline to grant immunity from prosecution after confirming the demand and imposing the penalty without placing the burden on the Department to prove the clandestine manufacture and clearances of goods?<br>**Decision:** It was held that if a person, who suffered a show cause notice on the charge of evasion of duty, finally wants to settle the matter before Settlement Commission, by making full disclosure admitting certain omissions/commissions, the Settlement Commission, should decide the matter only after placing the burden on the Department to prove the nature of goods cleared without payment of duty.<br>However, in the present case, the Settlement Commission confirmed the demand on the assessee without placing the burden on the Department to prove their case.The High Court was of the view that the Settlement Commission should not have refused the benefit of immunity from prosecution<br>**[Maruthi Tex Print & Processors Private Ltd. 2012 281 ELT 509 (Mad)]** |
| **Settlement Commission Proceedings are Judicial Proceedings** | The order passed by the Settlement Commission is in judicial proceedings and it is a judicial order. In the given case, the Appellants had not challenged the said order. Hence, the order passed by the Settlement Commission could not be brushed aside. It must be held good in law so long as it is not set aside. **[UOI vs East and West Shipping Agency 2010 (253) E.L.T. 12 (Bom)]** |

| Section | Provision |
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| **Power of waiver by Settlement Commission** | (a) Benefit under the Proviso to Sec. 11AC could not be granted by the Settlement Commission in the cases of settlement.<br>(b) The Order of settlement made by Settlement Commission is distinct from the adjudication order made by CEO.<br>(c) Therefore, the benefit under the proviso to Sec. 11AC, which could have been availed when the matter of determination of duty was before a Central Excise Officer would not be attracted to the cases of a settlement, undertaken under the provisions of Chapter–V of the said Act.<br>**[Ashwani Tobacco Pvt Ltd Vs UOI 2010 (251) ELT 162 (Del)]** |
| **Rejection of immunity by Settlement Commission** | **Facts:** The Settlement Commission declined to grant immunity from prosecution after confirming the demand and imposing the penalty. Is this correct? It should be noted that in the given case, the Department did not clearly prove the evasion of duty by the Manufacturer.<br>**Decision:** The High Court granted immunity from prosecution and rejected the Settlement Commission's order on the following grounds:<br>(a) If an allegation of clandestine manufacture and clearances is made, the department should establish the charge including the nature of the goods and its value for determining the appropriate demand of duty.<br>(b) The Settlement Commission should decide the matter after placing the onus of proving the evasion on the Department. The Commission's order had been made without identifying the Department's responsibilities, it should not have refused the immunity from prosecution. **[Maruthi Tex Print & Processors P. Ltd. v. CCE (2012) 281 E.L.T. 509 (Mad.)]** |
| **Customs House Agent – Misconduct** | • **Facts:** The Custom House Agent License of Barbara Shipping Agency (BSA) was suspended on the ground that Authorised Agent of BSA had committed misconduct by taking active part in the act of smuggling, and has thus violated the Custom House Agent Licensing Regulations, 2004. During pendency of the misconduct proceedings, BSA approached Settlement Commission. The Settlement Commission, after hearing all the parties held that Revenue had failed to prove that the Authorised Agent of BSA, i.e. Custom House Agent (CHA) had a conscious knowledge of mis–declaration of goods.<br>• **Decision:** Tribunal decided the case in favour of BSA, on the basis of the order of the Settlement Commission and dropped the misconduct proceedings against them. Revenue challenged the Tribunal's order alleging that the order passed by the Settlement Commission was ab–initio, null and void being without jurisdiction. |