Summary of Case Laws-Excise

Last Minute Reading - For May and Nov - 2014

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Indirect Tax Law

Excise – Case Studies

Chapter Name	Name	Conclusion of the case
Basic Concept:-		
1.	**Steel Authority of India Ltd. 2012 (S.C.)**	The Process of Washing of iron ore for removal of foreign material from such dose not amount to manufacture.
2.	**Osnar Chemicals Pvt. Ltd. 2012 (S.C.)**	The Supreme Court Held that since. 1. The said process merely a resulted in the improvement of quality of bitumen and no distinct commodity emerged and, 2. The Process carried out by the assessee had nowhere been specified in Section Notes or Chapter Notes of the First schedule, The process of mixing polymers and additives with bitumen did not amount to manufacture.
3.	**Grasim Industries Ltd. 2011 (S.C.)**	The Supreme Court held that the generation of metal scrap or waste during the repair of the worn out machineries/parts of cement manufacturing plant did not amount to manufacturing.
4.	**Medley Pharmaceutical Ltd. 2011 (S.C.)**	The Court inferred that merely because a product was statutorily prohibited from being sold, would not mean that the product was not capable of being sold. Since physician sample was capable of being sold in open market, the physician sample were excisable goods and were liable to excise duty.
5.	**Usha Rectifier Corporation. (i) Ltd. 2011 (S.C.)**	Since, Assessee's stand that that testing equipment were developed in the factory to avoid importing of such equipment with a view to save foreign exchange, confirmed that such equipment were salable and marketable. Hence, the apex court held that duty was payable on such testing equipment.
Classification of Excisable Goods:-		
6.	**Minwool Rock Fibres Ltd. 2012 (S.C.)**	In a classification dispute, an entry which was beneficial to the assessee was required to be applied. Further, tariff heading specifying goods according to its composition should be preferred over the specific heading.
7.	**Workhardt Life Sciences Ltd. 2012 (S.C.)**	Antiseptic cleansing solution used for cleaning/ degerming or scrubbing the skin of the patient before the operation can be classified as a 'Medicament'.
8.	**Connaught Plaza Restaurant (Pvt.) Ltd. 2012 (S.C.)**	The apex court held that 'Soft Serve' was classifiable under Heading 21.05 as "ice cream" and not under Heading 04.04 as "Other Dairy Product", as per trade parlance test. In absence of any statutory definition or technical description or scientific meaning of the goods, the classification is to be based on the common parlance test.
Valuation of Excisable Goods:-		
9.	**Fait India Pvt. Ltd. 2012 (S.C.)**	Where a product is sold below the cost price for penetrating the market, Such price cannot be considered as transaction value.

10.	**Tata Motors Ltd. 2012 (Bom.)**	The High Court held that Clause no.7 of Circular dated 1st July, 2002 and Circular dated 12th December, 2002, were not in conformity with the provision of section 4(1)(a) read with section 4(3)(d) of the central excise act, 1944. Further, as per section 4(3)(d), the PDI and Free after sales service charges could be included in the transaction value only when they were charged by the assessee to the buyer.
CENVAT Credit:-		
11.	**Flex Engineering Ltd. 2012 (S.C.)**	CENVAT Credit of the Testing Material would be eligible, when the testing is critical to ensure the marketability of the product.
12.	**Tata Advanced Material Ltd. 2011 (Kar.)**	The High Court Observed that merely because the Insurance Company paid the assessee the value of goods including the excise duty paid, that would not render the availment of the CENVAT Credit wrong or irregular. At the same time, it did not provide a reason to the Excise Department to demand reversal of credit to pay the said amount.
13.	**Cadila Healthcare Ltd. 2013 (Guj.)**	The High Court held that:- 1. Technical Testing and analysis services availed for testing of clinical sample prior to commencement of commercial production were directly related to the manufacturing of the final product and hence, were input services eligible for CENVAT Credit. 2. Since the agent were directly concerned with sales rather than sales promotion, the service provided by then were not covered in main or inclusive part of definition of input service as provided in rule 2 (I) of the CENVAT Credit Rules, 2004.
14.	**Sintex Industries Ltd. 2013 (Guj)**	Two Units of manufacturer surrounded by a common boundary wall cannot be considered as one factory for the purpose of CENVAT Credit, if they have separate central excise registrations.
Demand, Adjudication And Offences:-		
15.	**Hans Steel Rolling Mill 2011 (S.C.)**	Supreme Court held that the time limit under section 11A of the Central Excise Act, 1944 is not applicable to recovery of dues under compounded levy of tax.
16.	**Jay Kumar Lohani, 2012 (M.P)**	The High Court held that there was no legal provision requiring authority to the first adjudicate the notice issued regarding confiscation and, only thereafter, issue show cause notice for recovery of dues and penalty.
17.	**Gujarat Narmada Fertilizers Co. Ltd., 2012 (Guj)**	The High Court held that the assessee was not required to pay interest in case of voluntary payment of time-barred duty.
18.	**Castrol India Ltd., 2012 (Bom.)**	The High Court held that Tribunal could not permit the assessee to pay 25% penalty beyond the time prescribed (30 days) under the first and second proviso to section 11AC(1)(c)
19.	**Balaji Trading Co., 2013 (Del.)**	High Court concurred with the view of the tribunal and concluded that rule 25(1) (c) would have no application in the present case. **Rule 25(1)(c) of the central excise Rules 2002 provides that in case of manufacture, production or storage of any goods without having applied for registration certificate, a penalty not exceeding the duty on such goods or Rs. 2000, whichever is greater is leviable on the producer, manufacturer, registered person of a warehouse or a registered dealer committing such contravention.

20.	**Nanumal Glass Works, 2012 (All)**	The High Court held that when a decision is pronounce 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 other would be deemed to be the date of service of order.
REFUND:-		
21.	**Tikitar Industries, 2012 (S.C.)**	The Supreme court held that since the Revenue had not questioned the correctness or otherwise of the finding 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 period.
22.	**Techno Rubber Industries Pvt. Ltd., 2011 (Kar.)**	The High Court elucidated that once 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. If the buyer of the goods has paid that excess duty, he would have been entitled to the said refund. Hence, the excess duty paid by the seller be refunded on the basis of the debit note issued by the buyer.
23.	**Gem Properties (P). Ltd. 2010 (Kar.)**	The High Court answered the question of law in Favour of the Revenue. It ruled that assessee could not be granted relief because it had failed to establish that the cost of the duty was not included while computing the cost of the product.
Appeals:-		
24.	**Raja Mechanical Co. (P) Ltd., 2012 (S.C.)**	The Court is observed that if for any reason an appeal is dismissed on the ground of limitation and not on merits that order (order of adjudication authority) would not merge with the orders passed by the first appellate authority. The Apex Court opined that the High Court was justified in rejecting the request made by the assessee for directing the Revenue to state the case and also the question of law for its consideration and decision. In view of the above discussion, Supreme Court rejected the appeal.
25.	**RDC Concrete (India) Pvt. Ltd. 2011 (S.C.)**	The Apex Court held that CESTAT had reconsidered its legal view as it concluded differently by accepting the arguments which it had rejected earlier. Hence, the Court opined that CESTAT exceeded its powers under section 35C(2) of the Act. In pursuance of a rectification application, it cannot re-appreciate the evidence and reconsider its legal view taken earlier.
26.	**Gujchem Distillers 2011 (Bom.)**	CESTAT Cannot decide an appeal on a totally new ground which had not been urged before adjudicating authority.
27.	**Rjendra Narayan 2012 (Del.)**	The Court held that keeping in view the facts of the case and that the construction was done virtually all over Delhi and construction sites were interconnected, practically prefabrication was done on construction site only. Therefore, it allowed the appeal in the favour of the respondent-assessee.
28.	**Mihani Network 2012 (MP)**	The high Court 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 filed for stay.
Exemption Based On Value of Clearances (SSI):-		
29.	**Bonanzo Engg. & Chemical Pvt. Ltd., 2012 (S.C.)**	The exempted goods on which duty has been paid by mistake by the assessee and refund thereof has also not been claimed would be excluded for computing value of clearances while claiming SSI Exemption.

30.	**Deora Engineering Works 2010 (P & H)**	The Clearance of two firms having common brand name, goods being manufactured in the same factory premises, having common management and account etc. can be clubbed for the purpose of SSI Exemption
31.	**Australian Foods India (P) Ltd., 2013 (S.C.)**	The Supreme Court held that it is not necessary for goods to be stamped with a trade or brand name to be considered branded goods for the purpose of SSI exemption. A scrutiny of the surrounding circumstances is not only permissible, but necessary to decipher the same the most important of these factors being the specific outlet from which the good is sold. However, such factors would carry different hues in different scenarios. There can be no single formula to determine if a good is branded or not; such determination would vary from case to case.
Notifications, Departmental Clarification and Trade Notice.		
32.	**Darshan Boardlam 2013 (Guj)**	The High Court held that any clarification issued by the board is binding upon the central Excise Officer who are duty-bound to observed and follow the circular.
Settlement Commission:-		
33.	**Maruthi Tex Print & Processors Pvt. Ltd., 2012 (Mad.)**	The Settlement commission cannot decline to grant immunity from prosecution after confirming the demand and imposing the penalty without placing burden on the department to prove the clandestine manufacture and clearance of goods.
RTP MAY-2014		
Classification of Excisable Goods:-		
1.	**Ciens Laboratories 2013 (S.C.) (RTP MAY-14)**	A product that is used mainly in curing or treating ailments of diseases and contains curative ingredients, even in small quantities, is to be treated as a medicament.
CENVAT Credit:-		
2.	**Prag Bosimi Synthetics Ltd. 2013 (Guj.) (RTP MAY-14)**	The high court held that merely CENVAT credit in respect of NCCD can be utilized only for payment of NCCD, it does not lead to the conclusion that credit of any other duty cannot be utilized for payment of NCCD. Therefor CENVAT Credit of duties, other than National Calamity Contingent Duty (NCCD), can be used to pay NCCD.
3.	**KCP Ltd. 2013 (S.C.) (RTP MAY-14)**	CENVAT Credit cannot be availed on machinery purchased for being used in setting up a sugar plant in foreign country when, 1. The same are not used in the factory premises, and 2. No duty is paid on final product.
Export Procedure		
4.	**UM Cables Limited, 2013 (Bom)**	The high Court held that non-production of ARE-1 Forms *ipso facto* cannot invalidate rebate claim. In such case, exporter can demonstrate by cogent evidence that goods were exported and duty paid and satisfy the requirement of rules 18 of central Excise Rule, 2002 read with Notification No. 19/2004 CE (NT)
Demand, Adjudication and Offences.		
5.	**Delphi Automotive System Ltd., 2013 (All.)**	Penalty U/S 11AC of the Central Excise Act, 1944 cannot be imposed in a case where there are divergent judicial pronouncements on an issue and the assessee chooses to follow one of those pronouncements.

6.	**Vandana Bidyut Chatterjee, 2013 (Bom)**	Former Director of a company cannot be held liable for the recovery of the excise dues of such company.
7.	**Ratnamani Metals and Tubes Ltd. 2013 (Guj.)**	Appellate Authorities or Courts cannot permit the assessee to pay reduced penalty of 25% beyond 30 days of the communication of the order of the adjudicating authority as prescribed under section 11AC
Refund		
8.	**Swastik Sanitarywares Ltd. 2013 (Guj)**	The high court held that payment made by the assessee the second time could not be considered as duty deposited or paid. Hence, repayment of such amount could not be seen as a refund claim made under section 11B. Consequently, such amount is repayable to the assessee by Department.
Appeals		
9.	**Khanapur Taluka Co-op Shipping Mills Ltd. 2013, (Bom.)**	The high Court held that where the appeal filed against the order-in-original was dismissed as time-barred, the High Court in exercise of writ jurisdiction could neither direct the appellate authority to condone the delay nor interface with the order passed by the adjudicating authority. Consequently, it refused to entertain the writ petition in the instant case.
10.	**Texcellence Overseas, 2013 (Guj)**	**Provision in Law:** As per section 35 of Central Excise Act, 1944, an appeal needs to be filed with the Commissioner (Appeals) within 60 day from the date of the communication of the order sought to be appealed against. However, the Commissioner (Appeals) is empowered to condone the delay for a period of 30 days if he is satisfied with the sufficiency of cause to the delay. **Decision:** The High Court opined that since the total length of delay was very small and the case had extremely good ground on merits to sustain, its non-interface at that stage would cause gross injustice to the petitioner. Thus, the High Court, by invoking its extraordinary jurisdiction, quashed the order which held that refund was erroneously granted. The High Court held that such power are required to be exercised very sparingly and in extraordinary circumstance in appropriate cases, where otherwise the Court would fail in its duty if such power are not invoked.
11.	**Habib Agro Industries, 2013 (Kar.)**	The High Court observed that there did not appear to be any deliberate latches on the part of the authorized representative to file the appeal. It held that the reason for delay in filling appeal to CESTAT, that the person dealing with the case went on a foreign trip and on his return his mother expired, could not be considered as unreasonable for condonation of delay.
Exemption Based on Value of clearances (SSI)		
12.	**Xenon, 2013 (Jhar.)**	The High Court held that when it had been established that dubious company did not undertake any transaction, penalty could not be levied on the same for the transaction undertaken by the original company. The High court emphasized that penalty could not be imposed upon the company who did not undertake any transaction.
Notifications, Departmental Clarification And Trade Notice		
13.	**S & S Power Switch Gear Ltd. 2013 (Mad.)**	The High Court Held that once reclassification Notification/ Circular is issued, the Revenue cannot invoke section 11A of the Act to make demand for a period prior to the date of said classification notification/ circular.