Important Case Laws – For Nov 2015

Sr.	Matters/ Issues	Judgement/ Decision	In Case of
		Excise - Basic Concepts	
1	Whether contaminated or badly crowned bottles amount to manufactured finished goods which are required to be entered under R.G.-1 register (Daily Stock Account), and which are exigible to payment of excise duty?	The court observed that contaminated or under filled or over filled or badly crowned caps bottles could **not** be treated as being fully **manufactured/** finished goods. Moreover, bottles filled with less or more aerated water were **not marketable** under Legal Meteorology Act. Thus, they were not required to be entered under R.G.1 register and consequently, no excise duty was payable on them. **Note**: A finished product was required to be **accounted** for **in R.G. 1 register** only after undergoing the screening test and having found that they were **fit for sale**.	Amrit Bottlers Pvt. Ltd. v. CCE 2014 (All.)
2	Whether bagasse which is a marketable product but not a manufactured product can be subjected to excise duty?	Bagasse is a waste of the sugarcane, emerges at the time of manufacture of sugar. It is used in manufacture of pulp & paper products and is classified under CETA with **NIL** rate of duty. CBEC issued a Circular clarified that in case, the rate of duty in respect of such products is 'nil'/ exempt and if CENVAT credit has been taken on the inputs which are **used for manufacture of dutiable and exempted goods** and no separate accounts have been maintained, then in terms of rule 6(3) of CENVAT Credit Rules, 2004, proportionate credit would be reversed or **6%** amount would be paid. The HC concluded that even if bagasse is a marketable product duty cannot be imposed thereon as it is a waste and **not a manufactured product** (it does not involve any manufacturing activity). [Rule 6 applies when a manufacturer manufacturers both **dutiable as well as exempted final products**. As bagasse is a non-manufactured final product, **the petitioner is not liable to reverse** 6% of the amount of bagasse sold.]	Balrampur Chini Mills Ltd. v. Union of India 2014 (All.)
3	Will rule 6 of the CENVAT Credit Rules, 2004 apply, if the assessee clears an exempted by-product and a dutiable final product?	The SC held that the term used in rule 6 is 'final product" and not 'by-product'. Hence said rule cannot be applied in case of 'by-product' when such by-product emerged as a technological necessity.	UOI v Hindustan Zinc Limited. 2014 (SC)
4	Whether the addition and mixing of polymers and additives to base bitumen with a view to improve its quality, amounts to manufacture?	The SC opined that "manufacture" could be said to have taken place only when there was transformation of raw materials into a new and different article having a different identity, characteristic and use.	CCE v. Osnar Chemical Pvt. Ltd. 2012 (S.C.)

		The Court noted that the said **process merely resulted in the improvement** of quality of bitumen. Bitumen remained bitumen. Hence the said process did not result in transformation of bitumen into a new product having a different characteristic, identity and use. The court further noted that the process carried out by the assessee had **nowhere been specified in the Sec notes or Chapter notes** so as to indicate that the said process amounts to manufacture. In the light of the above judgment, it can be concluded that the said **process doesn't amount to manufacture** nor it can be treated as deemed manufacture.	
5	Whether the process of generation of metal scrap or waste during the repair of worn out machineries/ parts of cement manufacturing plant amounts to manufacture?	The SC observed that in terms of sec 2(f), manufacture includes any process incidental or ancillary to the completion of the manufactured product. Such process in relation to manufacture means a **process** which is so **integrally connected** to the manufacturing of the end product without which, the manufacture of the end product would be impossible or commercially inexpedient. However, in the present case, it is clear that the process of repair and maintenance of the machinery in which metal/ iron scrap arise, had no contribution or effect on the process of manufacturing of the cement (end product). Therefore the **repairing activity can never be called as a part of manufacturing activity in relation to production of end product**. Hence, such scrap could not be said to be a by-product of the final product. In the light of the above discussion, it can be concluded that the generation of metal scrap or waste during the repair of the worn out machineries/parts did not amount to manufacture.	Grasim Industries Ltd. v. UOI 2011 (S.C.)
6	Are the physician samples excisable goods in view of fact that they are statutorily prohibited from being sold?	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 samples were excisable goods and were liable to excise duty.	Medley Pharmaceuticals Ltd. v. CCE & C., Daman 2011 (S.C.)
7	Whether assembling of the testing equipments for testing the final product in the factory amounts to manufacture?	It was held that **testing equipments** assembled/ developed in the factory are **saleable and marketable**. Hence, the Apex Court held that **duty was payable** on such testing equipments.	Usha Rectifier Corpn. (I) Ltd. v. CCEx., New Delhi 2011 (S.C.)
8	Can a product with short shelf-life be marketable?	The SC ruled that short shelf-life could not be equated with no shelf-life. A **shelf-life of 2 to 3 days was sufficiently** long enough for a product to be commercially marketable. Shelf-life of a product would not be a relevant factor to test the marketability of a product unless it was shown	Nicholas Piramal India Ltd. v. CCEx., Mumbai 2010 (S.C.)

		that the product had absolutely no shelf-life or the shelf-life of the product was such that it was not capable of being brought or sold during that shelf-life.	
9	Whether the theoretical possibility of product being sold is sufficient to establish the marketability of a product?	The test of marketability is that the product which is made liable to duty must be marketable in the condition in which it emerges. **The mere theoretical possibility of the product being sold is not sufficient**; there has to be sufficient proof that the product is commercially known. **The burden** to show that the product is marketable or capable of being bought or sold is entirely **on the Revenue**. Without proof of marketability, the intermediate product would not be treated as marketable and hence not liable to excise duty.	Bata India Ltd. v. CCE 2010 (SC)
Classification of Excisable Goods			
10	How will a cream which is available across the counters as also on prescription of dermatologists for treating dry skin conditions be classified if it has subsidiary pharmaceutical contents - as medicament or as cosmetics?	The SC made the following observations: a) When a product contains pharmaceutical ingredients that have therapeutic or prophylactic or curative properties, **the proportion of such ingredients is not invariably the decisive factor** in classification. b) Though a product is sold without a prescription of a medical practitioner, it does not lead to the immediate conclusion that all products that are sold over / across the counter are cosmetics. c) If a product's **primary function** is- **"care"-** it can be rendered as a cosmetic**.** **"cure"**- it is to be treated as a medicament. Hence in light of the above, the product would be classifiable as a **medicament**.	CCEx. v. Ciens Laboratories 2013 (295) ELT 3 (SC)
11	Whether a heading classifying goods according to their composition is preferred over a specific heading?	The assessee started manufacturing rockwool and slagwool using more than 25% and classified the goods under sub-heading 6807.10. Under CETA, There was a specific entry which speaks of Slagwool and Rockwool under sub-heading 6803.00 chargeable at **18%**, but there was yet another entry under sub-heading 6807.10 chargeable at **8%,** which speaks of goods in which Rockwool, Slag wool and products thereof were manufactured by use of more than 25% by weight of blast furnace slag. The SC held that in such 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 entry. Therefore, the Court opined that the goods in	Commissioner of Central Excise, Bhopal v. Minwool Rock Fibres Ltd. 2012 (S.C.)

		issue were appropriately classifiable under Sub-heading 6807.10 of the Tariff.	
12	Can the 'soft serve' served at McDonalds India be classified as "ice cream" for the purpose of levying excise duty?	**<u>Assessee's contention</u>** The assessee classified 'soft serve' under Heading 04.04 as "**other dairy produce**" chargeable to nil rate of duty. The assessee quoted that as per the definition of "ice cream" under the Prevention of Food Adulteration Act, 1955 (PFA), the milk fat content of "ice-cream" shall not be less than 10%. However the 'soft serve', containing only 5% milk fat content. The assessee further submitted that "soft serve" could not be considered as "ice-cream" as it was marketed by the assessee world over as 'soft serve'. **<u>SC's observation</u>:** The SC observed that the definition of one statute (PFA) having a different object, purpose and scheme has nothing to do with the classification of goods and could not be applied mechanically to Central Excise Act. SC further clarified that **the way** in which **a product** might be **marketed** by a manufacturer, did **not** necessarily play **a decisive role** in affecting the commercial understanding of such a product. What matters was the way in which the **consumer perceived the product (i.e. common parlance meaning)**. An average reasonable person who walked into a "McDonalds" outlet with the intention of enjoying an "ice-cream",or 'soft serve', could not be expected to be aware of intricate details such as the percentage of milk fat content. **<u>Decision</u>** In the light of the aforesaid discussion, 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 produce".	CCEx. v. Connaught Plaza Restaurant (Pvt) Ltd. 2012 (S.C.)
13	Is the amount of sales tax/VAT collected by the assessee and retained with him in accordance with any State Sales Tax Incentive Scheme, includible in the assessable value for payment of excise duty?	SC observed that amount **paid or payable** to the State Govt. towards sales tax, VAT, etc. is **excluded** while calculating transaction value. **However** amount charged towards sales tax, VAT, etc from the third party/customer and is **not paid/ payable** to the State Govt., should **not be excluded** from the transaction value. Hence it was held that unless the sales tax is **actually paid** to the State Govt., **no benefit towards excise** duty can be given under the concept of "transaction value" u/s 4(3)(d) of Central Excise Act, 1944. Therefore such **retained amount has to be treated as the price of the goods** and the	CCEx v. Super Synotex (India) Ltd. 2014 (S.C.) / CCE v. Maruti Suzuki India Limited 2014 (S.C.)

		assessee is bound to **pay excise duty** on the said sum.	
14	In a case where a product is sold below the cost price for penetrating the market, whether such price can be considered as transaction value?	The SC observed that as per Sec 4(1)(a) of the Central Excise Act, 1944, duty is paid on the "**transaction value**" in a case where- ➢ the goods are sold by the assessee, for delivery at the time and place of the removal, ➢ the assessee and the buyer of the goods are not related and ➢ the price is the **sole consideration** for the sale. If any of these ingredients is missing, the price shall not be considered as transaction value. SC opined that there was an **extra commercial consideration** in artificially depressing the price. **Full** commercial **cost** of manufacturing and selling **was not reflected** in the price as it was deliberately kept below the cost of production. Thus, **price could not** be considered as the **sole consideration** for sale. Hence the selling price could not be accepted as transaction value.	CCEx., Mumbai v. Fiat India Pvt. Ltd. 2012 (S.C.)
15	Can the pre-delivery inspection (PDI) and free after sales services charges be included in the transaction value when they are not charged by the assessee to the buyer?	The assessee (car manufacturer) did not charge the dealer for the expenses incurred by the dealer towards PDI and said services. Further, when a car was sold by the assessee to dealer, **price was the sole consideration** and the **petitioners and dealer were not related** to each other. Hence, since the requirements of sec 4(1)(a) were being complied with, the assessable value would be the transaction value. Hence, **PDI and after sales service had no bearing on assessable value**. Accordingly, the expenses incurred for PDI and said services should not be included in the transaction value of the car. **<u>Note</u>**: The PDI and free after sales services charges could be included in the transaction value- ➢ when they were charged by the assessee to the buyer. Or ➢ where, these services are provided free by the dealer on behalf of the assessee, the cost towards this is included in the dealer's margin.	Tata Motors Ltd. v. UOI 2012 (Bom.)
<u>CENVAT Credit</u>			
16	Can CENVAT credit of duties, other than National Calamity Contingent Duty (NCCD), be used to pay NCCD?	The HC held that merely because 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.	Prag Bosimi Synthetics Ltd. 2013 (Gau.)

17	Will Rule 6 of the CENVAT Credit Rules, 2004 apply, if the assessee clears an exempted by-product and a dutiable final product?	The SC held that since the term used in Rule 6 is 'final product' and **not 'by-product'**. Hence **Rule 6 of CCR would not apply** when manufacture of dutiable final product results in emergence of exempt by-product on account of technological necessity.	UOI v Hindustan Zinc Ltd. 2014 (S.C.)
18	Can CENVAT credit availed on inputs (contained in the WIP destroyed on account of fire) be ordered to be reversed under rule 3(5C) of the CENVAT Credit Rules, 2004?	The HC held that CENVAT credit would need to be **reversed only when the payment of excise duty** on final product is ordered to be **remitted**. In the present case, the **assessee has not claimed any remission** and no final product has been removed, hence, assessee **need not reverse the CENVAT credit** taken on inputs (contained in the work-in-progress) destroyed in fire.	CCE v. Fenner India Limited 2014 (Mad.)
19	Can CENVAT credit be availed on machineries purchased for being used in setting up a sugar plant in foreign country when (i) the same are not used in the factory premises and (ii) no duty is paid on final product viz., the sugar plant?	The SC observed that there are two basic conditions for availing CENVAT credit: ➢ Duty must have been **paid** on inputs/ capital goods and such inputs/ capital goods must be used in manufacture of final product in the **factory premises** of the manufacturer, ➢ Excise duty must have been **levied** on final product. The SC held that since duty **is not levied on the final product** (as plant was set up in foreign country), question of grant of any relief would not arise. Further, since the bought-out **machinery was not used in** the assessee's **factory premises**, the necessary condition for availing CENVAT credit on capital goods could not be fulfilled.	KCP Ltd. v. CCEx. 2013 (SC)
20	Whether a manufacturer is eligible to avail of CENVAT credit of service tax paid on the input services pertaining to maintenance of staff colony in a case where the factory works round the clock and is located in a remote area?	All services used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal are covered under the definition of input service. Consequently, the services pertaining to maintenance of the staff colony ought to be considered as 'input services' (as it is directly and intrinsically linked to the manufacturing activity), otherwise it would not be feasible for it to carry on its manufacturing activity. **<u>Contrary View</u>** Gujarat HC has held that rendering taxable services at the residential colony established by the assessee for the benefit of the employees, is not an activity integrally connected with the business of the assessee. Further, the definition of input service specifically excludes services provided to the employees, which are primarily used for their personal use or consumption. In that case, credit will not be allowed on maintenance services of staff colony.	ITC Limited 2013 (A.P.) Gujarat Heavy Chemicals Ltd. 2011 (Guj)

21	Whether wrongful availment of 100% CENVAT credit on capital goods in the year of purchase be upheld if wrongly availed credit of 50% is not utilized in the said year?	The HC held that if 50% CENVAT credit on capital goods pertaining to subsequent financial year which had been wrongly availed in the 1st year, had **not been not utilized** till the commencement of the subsequent financial year, **no prejudice was caused to the Revenue and thus, the same could be upheld**.	CCE v. Satish Industries 2013 (Bom.)
22	The assessee claimed the CENVAT credit on the duty paid on capital goods which were later destroyed by fire. The Insurance Company reimbursed the amount inclusive of excise duty. Is the CENVAT credit availed by the assessee required to be reversed?	The HC 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 or default to pay the said amount.	CCE v. Tata Advanced Materials Ltd. 2011 (Kar.)
23	Can CENVAT credit be taken on the basis of private challans?	The HC held that 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 (P & H)
24	Whether CENVAT credit can be availed of service tax paid on- ➢ customs house agents' (CHA) services, ➢ shipping agents' and container services, ➢ cargo handling services and ➢ services of overseas commission agents- used by the manufacturer of final product for the purpose of export, when the export is on FOB basis?	**<u>The HC elucidated that</u>**- For the purpose of CENVAT credit entitlement, input service would certainly cover those services used by the manufacturer directly or indirectly in relation to manufacture of final products and clearing of final products upto the place of removal (in the present case the place of removal would be port) even if there is no specific inclusion of such services in the definition of input service. In the present case all the given services are not specifically included in the definition of input service. **<u>Admissibility</u>**- ➢ As regards CHA service, shipping agents and container services and cargo handling services CENVAT credit is admissible. ➢ With regard to the services of overseas commission agent CENVAT credit would not be admissible [refer Cadila Healthcare Ltd. 2013]	Com. v. Dynamic Industries Limited 2014(Guj.)
25	Whether i) technical testing and analysis services availed by the assessee for testing of clinical samples **prior to commencement of commercial production** and ii) services of foreign comm.. agent- are eligible input services for claiming CENVAT?	The HC held that **technical testing** and analysis services availed for testing of clinical samples **prior to commencement** of commercial production were **directly related to the manufacture** of the final product and hence, input services were eligible for CENVAT credit as unless such trial batches were tested and approval from the regulatory authority was obtained, the final product could not be manufactured. With respect to the services provided by foreign commission agents, the HC held that since the agents were directly concerned with **sales**	CCEx v. Cadila Healthcare Ltd. 2013 (Guj.)

		rather than sales promotion, the services provided by them were not covered in main or inclusive part of definition of input service as provided in rule 2(l) of the CENVAT Credit Rules, 2004.	
26	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?	The HC observed that though both the factories/divisions are situated within a common boundary wall, it could not be said that the other division is also within the factory of the assessee as the assessee itself had described its other **division as a separate place** of business by **obtaining separate central excise registration**. Therefore the HC held that credit could be availed on eligible inputs **only to the extent** the same were **used** to produce output **within the factory registered for that purpose**. However, credit on inputs utilized to produce output which was supplied to a factory registered as a different unit would not be allowed.	Sintex Industries Ltd. vs. CCEx 2013 (Guj.)
Export Procedures			
27	Can export rebate claim be denied merely for non-production of original and duplicate copies of ARE-1 when evidence for export of goods is available?	The HC held that the procedure cannot be raised to the level of a mandatory requirement. It is to be noted that while the **conditions and limitations for the grant of rebate are mandatory**, **matters of procedure are directory**. The HC ruled that non-production of ARE-1 forms ipso facto cannot invalidate rebate claim. In such a case, exporter can demonstrate by cogent evidence that goods were exported and duty paid and satisfy the requirements of rule 18 of Central Excise Rules, 2002.	UM Cables Limited v. Union of India 2013 (Bom.)
28	In case of export of goods under rule 18 of the Central Excise Rules, 2002, is it possible to claim rebate of duty paid on excisable goods as well rebate of duty paid on materials used in the manufacture or processing of such goods?	It was held that grant of rebate of duty paid is available either on excisable goods **or** on materials used in the manufacture or processing of such goods i.e. on raw material. Thus, it is open to claim the benefit of rebate **either** on manufactured/finished goods or on raw material, **but not on both**.	Rajasthan Textile Mills v. UOI 2013 (Raj.)
DEMAND, ADJUDICATION AND OFFENCES			
29	Is interest payable under rule 7(4) [in case of provisional assessment] of the Central Excise Rules, 2002 if amount of differential duty paid in full before final assessment order is passed?	The HC observed that on finalization of provisional assessment, it is possible that duty liability determined is more than that recovered in the provisional assessment. **Liability to pay interest** under rule 7(4) **arises on any such amount payable** to CG **consequent to order for final assessment**. The Court agreed that since in the assessee‟s case, **final assessment resulted in nothing due** and payable to the Govt.; later part of rule 7(4) was not attracted. Consequently, **no interest was recoverable from them**.	Ceat Limited v. CCE & C 2015 (Bom.)

30	In case the revenue authorities themselves have doubts about the dutiability of a product, can extended period of limitation u/s 11A, for imposing penalty, be invoked alleging that assessee has suppressed the facts?	The SC held that If the appellant also had belief that the process carried out by him did not amount to manufacture and did not pay excise duty, this conduct of the appellant was a bonafide conduct and could not be treated as willful suppression of facts. Further, since Revenue authorities themselves had the doubts relating to excisability of a particular process, the bonafides of the appellant could not be doubted. Hence, extended period of limitation could not be invoked and penalty was set aside.	Sanjay Industrial Corporation v. CCE, 2015 (SC)
31	Can penalty u/s 11AC of the Central Excise Act, 1944 be imposed in a case where there are **divergent judicial pronouncements** on an issue and the **assessee chooses to follow one** of those pronouncements?	The HC held that **mens rea** (guilty mind) is an essential part for levy of penalty u/s 11AC of the Central Excise Act, 1944. Where a **provision of statute is not clear** and there are divergent judicial pronouncements, it **cannot be said that there is mens rea** on the part of the assessee **if he chooses to follow his course of action** in the light of one of the judicial pronouncements.	CCEx. v. Delphi Automotive Systems Ltd. 2013 (All.)
32	Can a former director of a company be held liable for the recovery of the excise dues of such company?	The HC observed that duty and penalty were the arrears of the company because company was the person engaged in the manufacture of goods and registered as manufacturer. There was **no provision** in the act **to recover** the arrears of the company **from its directors** and or shareholders. Since a company was a separate person having a distinct identity, independent from its shareholders and directors, company's dues could not be recovered from the directors and/or individual shareholder of the company. Thus, the recovery proceedings could be taken only against the co, as it alone was the defaulter.	Vandana Bidyut Chatterjee v. UOI 2013 (Bom.).
33	Whether time-limit u/s 11A of the Central Excise Act, 1944 is applicable to recovery of dues under compounded levy scheme?	It was held that **compounded levy scheme is a separate scheme** from the normal scheme for collection of excise duty on goods manufactured. Rules under compounded levy scheme stipulate method, time and manner of payment of duty, interest and penalty. Since the compounded levy scheme is a comprehensive scheme in itself, **general provisions** of the Central Excise Act and rules **are excluded**.	Hans Steel Rolling Mill v. CCEx., Chandigarh 2011 (S.C.)
34	Can another SCN (2nd) regarding recovery of dues and penalty be issued where the assessee has already been issued a SCN (1st) regarding confiscation of seized good and decision (adjudication) of which is pending?	The HC held that there was no legal provision requiring authorities to first adjudicate the notice issued regarding confiscation and, only thereafter, issue show cause notice for recovery of dues and penalty. Hence adjudicating authority could not be restrained from proceeding further with the SCN.	Jay Kumar Lohani v. CCEx 2012 (M.P.)
35	Is assessee required to pay interest in case of voluntary payment of time-barred duty?	The HC observed that in case **the recovery** of the unpaid or short paid duty has **become time-barred**, if the manufacturer does not pay it voluntarily, it would not be possible for the Department to recover the same. Thus, if the	C.C.E. & C. v. Gujarat Narmada Fertilizers Co. Ltd. 2012 (285) E.L.T. 336 (Guj.)

		assessee does it **voluntarily** despite completion of period of limitation, **he should not**, further **be required to pay interest.**	
36	Can Appellate Authorities or Courts permit the assessee to pay reduced penalty of 25% beyond the time prescribed u/s 11AC?	The HC answered the aforesaid question of law in affirmative. It held that an option can also be granted to the assessee to deposit the entire dues along with 25% interest and penalty within a period of 30 days of communication of the order of Tribunal. **<u>Contrary View to the above mentioned opinion</u>** The Bom. HC elucidated that reduced penalty of 25% u/s 11AC(1)(c) was required to be paid within 30 days from the date of communication of the order of the Central Excise Officer determining duty u/s 11A(10), it would not be open to the appellate authority or the Court to direct the assessee to pay 25% penalty beyond the stipulated time period.	CCEx. V. Ratnamani Metals and Tubes Ltd. 2013 (Guj.) CCEx. v. Castrol India Ltd. 2012 (Bom.)
37	In a case where the manufacturer clandestinely removes the goods and stores them with a firm for further sales, can penalty under rule 25 of the Central Excise Rules, 2002 be imposed **on such firm**?	Penalty under rule 25 could be imposed only on following categories of persons:- a) producer or manufacturer; c) registered person of a warehouse; or d) a registered dealer. Since, the **respondents were neither producers nor manufacturers of the said goods**, neither were they the registered persons of a warehouse in which the said product had been stored nor were the registered dealers, hence 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 (Del.)
38	Can a decision pronounced in the open court **in the presence of the advocate** of the assessee, be deemed to be the service of the order to the assessee?	The HC noted that an order is **deemed to be served** on the person if it is **tendered to the person** for whom it is intended **or his authorized agent.** The HC opined that the communication of the order to the authorised agent of a person, therefore, is sufficient communication. Hence the date of pronouncement of order in the open court in presence of the advocate (authorized agent) of the assessee would be deemed to be the date of service of order.	Nanumal Glass Works v. CCEx. Kanpur, 2012 (All.)
		<u>Refund</u>	
39	If Revenue accepts judgment of the Commissioner (Appeals) on an issue for one period, can it be precluded to make an appeal on the same issue for another period?	The SC 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. Tikitar Ind., 2012 (S.C.)

40	Can the excess duty paid by the seller be refunded on the basis of the debit note issued by the buyer?	The HC 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. 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 v. Techno Rubber Industries Pvt Ltd. 2011 (Kar.)
41	Can refund of an amount **mistakenly paid as excise duty** be rejected on the ground of limitation u/s 11B of the Central Excise Act, 1944?	In this case the assessee had erroneously deposited excise duty twice. The HC 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 u/s 11B. Consequently, such amount is **repayable to the assessee** by the Department.	Swastik Sanitarywares Ltd. v.UOI 2013 (Guj.).
		<u>Appeal</u>	
42	In a case where an **appeal** against order-in-original of the adjudicating authority **has been dismissed by the appellate authorities as time-barred**, can a writ petition be filed to HC against the order-in-original?	It was held that where the appeal filed against the order-in-original was dismissed as time-barred, the HC in exercise of writ jurisdiction could neither direct the appellate authority to condone the delay nor interfere with the order passed by the adjudicating authority. Consequently, **it refused to entertain the writ petition** in the instant case. **<u>Contrary View to the above mentioned opinion</u>** The HC opined that if the total length of delay is very small and the case had extremely **good ground on merits** to sustain, its non interference at that stage would cause gross injustice to the petitioner. Therefore, the HC held that such powers (writ jurisdiction) are required to be exercised very sparingly and in **extraordinary circumstances (hardship and injustice**) in appropriate cases, where otherwise the Court would fail in its duty if such powers are not invoked.	Khanapur Taluka Co-op. Shipping Mills Ltd. v. CCEx (Bom.) Texcellence Overseas v. Union of India 2013 (Guj.)
43	Can, the Commissioner (Appeals) deny the raising of the additional legal grounds by the appellant during the course of personal hearing?	The HC held that **when** production of additional **evidence** is permissible, ➢ raising of additional **grounds** on the basis of relevant facts existing on record is also permissible. ➢ Further, **legal grounds** can be raised **at any stage** before any authority. Hence, the Commissioner (Appeals) was not justified in denying the raising of such additional grounds.	Utkarsh Corporate Services, 2014 (Guj.)

44	Can an appeal be filed before the SC against an order of the CESTAT relating to clandestine removal of manufactured goods and clandestine manufacture of goods?	The SC held that the appeals relating to clandestine removal of manufactured goods and clandestine manufacture of goods are not maintainable before the Apex Court u/s 35L of the Central Excise Act, 1944.	CCE v. Fact Paper Mills Private Limited 2014 (SC)
Exemption based on value of clearances (SSI)			
45	Where clearances of a dubious company are clubbed with clearances of the original company, whether penalty can be imposed on such dubious company if all the clearances have been made by the original company?	The HC observed that merely because the dubious company was in existence, it could not be said that it undertook the transactions. The **liability could arise only when the transactions were actually undertaken by the dubious company**. If the transactions shown by the dubious company were not undertaken by the same but by the original company, then such transactions would be taken to be the transactions of the original company and clubbed with the transactions of the original co. Therefore the HC emphasized that **penalty could not be imposed** upon the dubious company who did not undertake any transaction.	CCEx v Xenon 2013 (Jhar.)
46	Whether the exempted goods on which duty has been paid by mistake by the assessee and refund thereof has also not been claimed would be excluded for computing value of clearances while claiming SSI exemption?	The SC held that merely because the assessee **by mistake paid duty** on the goods which were exempted from the duty payment under some other notification, **did not mean** that the goods would become **goods liable for duty** under the Act. Further, merely because the assessee had not claimed any refund on the duty paid by him would not come in the way of claiming benefit of the SSI exemption. Accordingly, the appeal was allowed in the favor of the assessee and the SC opined that the value of clearances in the SSI exemption notification needs to be computed **after excluding** the value of exempted goods.	Bonanzo Engg. & Chemical P. Ltd. v. CCEx. 2012 (S.C.)
47	Can the brand name of another firm in which the assessee is a partner, be considered as the brand name belonging to the assessee for the purpose of claiming SSI exemption?	It was held that the appellant was eligible to claim benefit of the SSI exemption as the proprietor of Elex Knitting Machinery Co. was one of the partners in Elex Engineering Works. Thus, being the **co-owner of the brand name** of "ELEX", he could not be said to have used the brand name of another person, in the manufacture and clearance of the goods in his individual capacity.	Commissioner v. Elex Knitting Machinery Co. 2010 (P & H)
48	Whether the manufacture and sale of specified goods, not physically bearing a brand name, from branded sale outlets would disentitle an assessee to avail the benefit of small scale exemption?	The assessee was engaged in the manufacture and sale of cookies from branded retail outlets of "Cookie Man". The assessee had acquired this brand name from M/s Cookie Man Pvt. Ltd, Australia. The assessee was selling some of these cookies in plastic pouches/containers on which the brand name described above was printed. Excise duty was duly paid, on the cookies sold in the said	CCEx vs. Australian Foods India (P) Ltd 2013 (SC)

		pouches/containers. However, on the cookies **sold loosely** from the counter of the same retail outlet, with plain plates and tissue paper, **duty was not paid**. The assessee contended that SSI exemption would be available on cookies sold loosely as they did not bear the brand name. **<u>The SC held that,</u>** The test of whether the goods is branded or unbranded, **must not be the physical presence of the brand name on the good** otherwise such an interpretation would lead to absurd results in case of goods, which are incapable of physically bearing brand names viz., liquids, soft drinks, milk, dairy products, powders etc. Such goods would continue to be branded good, as long as its environment conveys so viz., packaging/wrapping, accessories, invoices, menu cards, hoardings and display boards of outlet, furniture/props used, **the specific outlet itself in its entirety** and other such factors, all of which together or individually or in parts, **may convey that goods is a branded one**.	
		<u>Settlement Commission</u>	
49	Where a settlement application filed u/s 32E(1) and is **not accompanied** with the additional amount of **excise duty** along with interest due, can a **second application** filed u/s 32E(1), **after payment** of additional excise duty along with interest, would be maintainable?	As per Sec 132E(1)(d) if an **application is made without payment** of additional amount of excise duty accepted by him along with interest, it would be **defective and not maintainable.** However **rejection** of such an application **cannot be** taken as amounting to a **final order** and it would not bar the second application filed by the petitioner as matter was not determined on merits. Therefore, the HC held that since the earlier application was dismissed on **technical defect** for non-compliance sec 32E(1)(d) of the Act and the same was not considered and decided on merits, the **second application** filed after depositing the additional excise duty and interest would be **maintainable**.	Vadilal Gases Limited v Union of India 2014 (Guj.)
50	Whether a consolidated return filed by the assessee after obtaining registration, but for the **period prior to obtaining registration**, could be **treated as a return** u/s 32E(1) (a)?	Sec 32E(1) (a) clearly lays down that unless the applicant has filed returns, showing production, clearance and central excise duty paid in the prescribed manner, **no such application** shall be entertained. The Settlement Commission rejected the petitioner's application on the ground that **no returns** as mandated by sec 32E(1)(a) was filed (**as the units were registered only after the search was conducted**). The HC held that **rejection of** petitioner's **application** by the settlement commission was	Icon Industries v. UOI 2011 (Del.)

		absolutely **justifiable** as consolidated returns (for pre - registration period) **cannot be treated as returns**. [**<u>Note</u>**: Monthly/quarterly returns (for **post-registration period**) filed **belatedly** but before inquiry/show cause notice can be treated as returns of for the purpose of Sec 32E(1)(a) to allow filing settlement application.]	
<u>Service Tax</u>			
51	Is 'hiring of cab' different from 'renting of cab' for service tax purposes?	The HC opined that under **rent-a-cab** scheme, the hirer is endowed with the **freedom to take the vehicle** wherever he wishes, and he is only obliged to keep the holder of the license informed of his movements from time to time. However, when a person chooses to **hire a car**, the customer/ passenger is **merely enabled to make use of the vehicle** by travelling in the vehicle and is expected to pay the metered charges. The HC held that in the context of rent-a-cab scheme and hiring, they signify two different transactions.	Sachin Malhotra 2015 (Uttarakhand)
52	Whether **supply of food**, edibles and beverages provided **to the** customers, **employees** and guests **using canteen** or guest house **of the other person**, results in outdoor caterer service?	NTPC and LANCO have engaged the services of the **assessee as a caterer** to supply food, edibles etc. to persons who use the facility of the canteen (within their own establishments.) Hence, the HC opined that since the assessee provides the services as a caterer at a **place other than his own** to another person, he is an **outdoor caterer** and the charge of **service tax is attracted**. **<u>Note</u>**: The meaning of 'outdoor caterer' is not relevant under current position of law. The given service is covered under declared service [Sec 66E(i)].	Indian Coffee Workers' Co-operative Society Limited v. CCE & ST 2014 (All.)
53	Does preparation of ready mix concrete (RMC) along with pouring, pumping and laying of concrete amount to provision of service?	The SC held that the contract between the parties was to supply RMC and not to provide any taxable services. Hence, agreement to supply RMC does not constitute any taxable service.	Commissioner v. GMK Concrete Mixing Pvt. Ltd. 2015 (SC)
54	Can the service tax liability created under law be shifted by virtue of a clause in the contract entered into between the service provider and the service recipient?	The SC held that service tax is an indirect tax which may be passed on. Thus, **assessee can contract to shift its liability**. There is nothing in law to prevent them from entering into agreement regarding burden of tax arising under the contract between them.	Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran 2012 (S.C.)
55	Whether the **course completion certificate**/ training **offered by approved Flying Training Institute** and Aircraft Engineering Institutes is '**recognized by law**' (for being	In the given case the certificate/ training/ qualification offered by approved Institutes [approval granted by DGCA] is recognized under Aircraft Act and Rules. A successful candidate from an approved institute would be entitled to enforce the right,	**CCE & ST v. Garg Aviations Limited 2014 (All.)**

	eligible **for exemption** from service tax) **if such certificate** is **only for the purpose of** eligibility for **obtaining** ultimate **licence** /approval for certifying repair/maintenance/airworthiness of aircrafts?	conferred on him by the Act/ Rules in a Court of law. Hence these courses has been conferred some value in the eyes of law, even if it be only for the purpose of eligibility for obtaining ultimate licence/ approval for certifying repair/ maintenance/ airworthiness of aircrafts. The appeal filed by the Revenue would **not give rise to any substantial question of law**. Hence, the appeal filed was dismissed and the assessee was held not to be liable to pay service tax. **Note**: The expression 'recognized by law' is a very wide one. The legislature has not used the expression "conferred by law" or "conferred by statute". Thus, **even if the certificate**/ degree/ diploma/ qualification **is not the product of a statute but has approval of some kind in 'law', it would be exempt**.	
56	Whether the activity of running guest houses for the pilgrims is liable to service tax?	The HC held that since the petitioner was running guest houses by whatever name called, whether it was a shelter for pilgrims or any other name, it was providing the taxable services and was thus liable to pay service tax.	Tirumala Tirupati Devasthanams, Tirupati 2013 (A.P.)
57	A society, running renowned schools, allows other schools to use a specific name, its logo and motto and receives a non-refundable amount and annual fee as a consideration. Whether this amounts to a taxable service?	The HC held that when the petitioner permitted other schools to use their name, logo as also motto, it clearly **tantamount** to providing 'franchise service' to the said schools and if the petitioner realized the 'franchise' or 'collaboration fees' from the franchise schools, the petitioner was duty bound to pay service tax to the department.	Mayo College General Council v. CCEx. (Appeals) 2012 (Raj)
58	Whether filing of declaration of description, value etc. of input services (used in providing IT enabled services exported outside India), after the date of export of services will disentitle an exporter from rebate of service tax paid on such input services?	As per Notification No. 12/2005 ST, rebate is granted for taxable input and input services used in providing taxable service exported out of India provided the provider of taxable service should file a declaration with the AC/ DC regarding description, value of input services/ inputs used in providing taxable service to be exported, **prior to date of export of such taxable service**. In the instant case, the appellant rendered IT-enabled services such as technical support services, customer-care services, back-office services etc. to clients outside the country. For rendering such services, the appellant used **input services such as night transportation, recruitment, training, bank charges etc.** The appellant claimed rebate of the service tax paid by it on such input services. However, the **declaration was filed only after the export** of the services. The **rebate claims were rejected by the**	Wipro Ltd. v. Union of India 2013 (Del.)

		Department on the ground that the prescribed procedure in the notification was not followed by the appellant. The HC observed that nature of the services was such that they were rendered seamlessly, on continuous basis without any commencement or terminal points. it was **impossible for the appellant to anticipate the call** so that the declaration could be filed "prior" to the date of export Further, the bill/invoice for the input services were received by the appellant only after the calls were attended to and only at regular intervals, viz. monthly or fortnightly etc. **One-to-one matching of input services with exported services was impossible** since every phone call was export of taxable service. Thus, the HC was of the view that in the very nature of things, and considering the peculiar features of the appellant's business, it was difficult to comply with the requirement "prior" to the date of the export. Hence the **HC, allowed the rebate claims filed by the appellants**.	
59	Is it justified to recover service tax during search without passing appropriate assessment order?	The HC held that the amount collected by Dept., from the petitioner, during the search conducted, could not be held to be valid as it is a well settled position in law that **no tax can be collected from the assessee, without an appropriate assessment order being passed** by the authority concerned, and directed the Dept. to return to the petitioner the sum so collected from it, during the search conducted.	Chitra Builders Private Ltd. v. Addl. Comm ST 2013 (Mad.)
60	Whether sec **66E(i)** of the Finance Act, 1994 which levies service tax on the service portion of activity wherein goods being food or any other article for human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of activity, is **ultra vires** the Article 366(29A)(f) of the **Constitution**?	**<u>The substantial questions of law which arose before the HC were</u>**: **a)** Whether any service tax can be charged on sale of an item or vice versa? **<u>Observation</u>**: The HC observed that a tax on the sale and purchase of food and drinks within a State is in exclusive domain of the State. The Parliament cannot impose service tax upon the same. Similarly there is no legislative competence with the States to impose a tax on any service. **b)** Whether in view of Article 366(2A)(f) service is subsumed in sale of foods and drinks and whether such Article is violated by section 66E(i) of the Finance Act, 1994? **<u>Observation:</u>** The HC further observed that Article 366(29A)(f) of the Constitution does not indicate that the service part is subsumed in the sale of the food; it rather **separates sale** of food and drinks **from service** by way of presuming a fixed percentage of bill value as the value of taxable service. Service tax is	Hotel East Park v. UOI 2014 (Chhatisgarh)

		charged only on the service part and not on the sales part.	
61	Whether deputation of some staff to subsidiaries/ group of co's for stipulated work or for limited period results in supply of manpower service liable to service tax, even though the direction/control/supervision remained continuously with the provider of the staff and the actual cost incurred was reimbursed by the subsidiaries/group companies?	The HC held that deputation of the employees by the respondent to its group companies was only for and **in the interest of the assessee**. There is **no relation of agency and client**. The assessee company was not engaged in providing any services directly or indirectly in any manner for recruitment or supply of manpower temporarily or otherwise to a client. Therefore, they were **not liable to pay service tax**.	Comm. of Service Tax v. Arvind Mills Ltd. 2014 (Guj.)
62	Whether expenditure like travel, hotel stay, transportation and the like incurred by service provider in course of providing taxable service should be treated as consideration for taxable service and included in value for charging service tax?	<u>**Observations of the Court**</u>: The HC noted that as per Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, expenditure/ costs, such as travel, hotel stay, transportation, etc. incurred by service provider in course of providing taxable service has to be treated as consideration for taxable service and included in value. Sec 66B levies tax only on **taxable service.** Hence only taxable services needs to evaluate for the purpose of determination of tax liability and **value** of taxable service is the **gross amount charged by service provider** 'for such service'. The HC opined that it is only the consideration for the taxable service which is chargeable to tax under the relevant Sections. However, rule 5(1) goes far beyond the charging provisions as it includes the expenditure and costs - which are **incurred** by the service provider "in the course of providing taxable service" - in the value of the taxable service. The HC elaborated that power to make rules could not exceed or go beyond the Sec which provides for charge or collection of service tax. The HC further observed that rule 5(1) may also result in double taxation, if expenses like air travel tickets, had already been subjected to service tax. The HC, therefore, held that rule 5(1) of the Rules runs counter and is repugnant to Sec 66 and 67 of the Act and to that extent it is ultra-vires the Finance Act, 1994.	Intercontinental Consultants and Technocrats Pvt. Ltd. v. Union of India 2013 (Del.)

63	a) Is **rule 5(1)** of the Service Tax (Determination of Value) Rules, 2006 '**ultra vires'** the Finance **Act**, 1994? b) Can the expression '**suppression of facts'** be interpreted to include in its ambit, mere **failure to disclose** certain facts **unintentionally**?	**Facts of the Case:** The petitioner assessee was awarded a contract for carrying out loading, shifting and feeding of coal and gypsum by roads, for which High Speed Diesel would be provided free of cost by service recipient. The assessee paid service tax on the amount charged from the service recipient for the services provided which did not include the cost of the HSD supplied by the service recipient. **Point of Dispute:** The Revenue contended that the value of free HSD was to be included in the transaction value of service provided by the assessee under rule 5(1) of the Service Tax (Determination of Value) Rules, 2006. The show cause notice invoked extended period of limitation by alleging willful suppression of fact of free supply of HSD. The petitioner's major contention was that the value of HSD supplied free by the service recipient does not form part of the gross value of the service provided by them. Also, the petitioner contended that the demand raised by the Revenue under rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 was not sustainable as the said rule has been held ultra vires by the Delhi HC in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. 2013 (Del.). **<u>Observations of the Court</u>**: The HC observed that in view of the clear exposition of law that the value of the diesel supplied free of cost by the service recipient cannot constitute taxable event (value), the authorities cannot place a contrary stand by placing reliance upon the provision which has been declared ultra vires (i.e. rule 5(1) of the Valuation Rules). The HC further observed that willful suppression cannot be assumed/ presumed merely on failure to declare certain facts unless it is preceded by deliberate nondisclosure to evade the payment of tax. Therefore non-disclosure of free supply of HSD did not constitute willful suppression as same was not a taxable event and thus, the invocation of extended period of limitation by the Revenue is unsustainable.	Naresh Kumar & Co. Pvt. Ltd v. UOI 2014 (Cal.)
64	Is exemption in relation to service provided to the developer of SEZ available for a **period prior to actual manufacture** (which is the authorized operation) of final products considering these services as the services used in authorised operations of SEZ?	The HC relied on its decision passed in the case of Cadila Healthcare Ltd 2013 (Guj.) and held that the assessee shall be entitled to refund; as though the operations of the assessee did not reach to the commercial production stage, the input services of scientific and technical consultancy procured by them were in relation to the manufacture which would take place at a later date.	Comm. of Service Tax v. Zydus Technologies Ltd 2014 (Guj.)

65	Whether the recipient of taxable service having borne the incidence of service tax is entitled to claim refund of excess service tax paid consequent upon the downward revision of charges already paid?; Whether the question of unjust enrichment arises in such situation? and Can department challenge in HC regarding period of limitation for filing refund claim by the assessee which was not challenged by the adjudicating authority before the first appellate authority and CESTAT?	The HC relied on the case of Mafatlal Industries Ltd. 1997 wherein the SC held that the person who has ultimately borne the burden of duty can legitimately claim its refund. The HC observed that since the respondent, being the recipient of taxable service, had borne the incidence of service tax themselves; there was no question of unjust enrichment. Hence, the respondent was entitled to claim refund of excess service tax paid consequent upon the downward revision of the charges payable by it. Further, the HC held that once the finding of the adjudicating authority that the claim for refund was filed within the period of limitation was not challenged by the Revenue before the first appellate authority and CESTAT, **revenue could not** assert to contrary and **first time urge a point in an appeal before the Court** which was not raised in grounds of appeal before authorities below.	Indian Farmers Fertilizers Coop. Limited 2014 (All)
66	Would service tax collected but not deposited prior to 10.05.2013 be taken into consideration while calculating the amount of **₹ 50 lakh** as contemplated by clause (ii) of sec 89(1) of the Finance Act, 1994?	With effect from 10.05.2013, Sec 89(1) provides that where the assessee collected service tax (amount exceeding **₹ 50 Lakhs**) but did not deposit to the credit of CG account, the assessee will be liable for interest, penalty and maximum imprisonment of 7 years. However before 10.05.2013, prosecution for imprisonment was of maximum 3 years. The assessee contended that only the amount collected between 10.05.2013 and 21.07.2013 (six months prior to his arrest) should be considered while calculating the amount of ₹ 50 Lakh. The HC held that since the said **offence is a continuing offence,** entire amount of service tax outstanding [which is required to be deposited with the Central Government] as on 10.05.2013, would be taken into consideration while calculating the amount of ₹ 50 Lakh.	Kandra Rameshbabu Naidu (Bom.)
67	Whether the question of **chargeability or levy of service tax** on a particular activity would be **covered within** the term "determination of any question having relation to **rate of service tax or value of a service** for the purpose of assessment" as contemplated u/ss 35G and 35L of the Central Excise Act?	The HC observed that determination of any question relating to **rate of tax would** necessarily directly and proximately **involve the question**, whether activity falls within the **charging sec** and **service tax is leviable on the said activity**. All assessments necessarily have to determine and decide the rate of tax after determining and deciding whether or not activity is chargeable to tax or tax can be levied. Thus, the HC held that question of chargeability or levy of service tax on a particular activity would be covered within the term "determination of any question relating to rate of service tax or value of a service for the purpose of assessment".	Commissioner of Service Tax v. Ernst & Young Pvt. Ltd. 2014 (Del.)

		[**<u>Note</u>**: Sec 35G read along with sec 35L provides that an appeal against **"**an order of Tribunal relating to the determination of any question having a relation to the rate of duty of excise/ service tax or to the value of goods/service tax for purposes of assessment**"** shall not lie to HC. Appeal against such an order can be filed to SC.]	
68	Whether sales commission services are eligible input services for availment of CENVAT credit? If there is any conflict between the decision of the jurisdictional HC and the CBEC circular, then which decision would be binding on the Department? Also, if there is a contradiction between the decision passed by jurisdiction HC and another HC, which decision will prevail?	<u>The HC held that</u>- i) The assessee would not be entitled to CENVAT credit on sales commission services obtained by them as was decided by the jurisdictional HC in the case of Cadila Healthcare Limited (Guj.). ii) If there is any conflict between the decision of the jurisdictional HC and the CBEC Circular, then decision of the jurisdictional HC will be binding to the Department rather than CBEC Circular. iii) When there are two contrary decisions, one of jurisdictional HC and another of the other HC, then the decision of the jurisdictional HC would be binding to the Department and not the decision of another HC.	Astik Dyestuff Private Limited v. CCEx. & Cus. 2014 (Guj.)
69	Whether the amendment made by Finance Act, 2013 in sec 37C(1)(a) of Central Excise Act,1944 to **include speed post as an additional mode of delivery** of notice is merely clarificatory in nature having retrospective effect **or** does it operate prospectively?	The HC reiterated (based on earlier SC decisions) that it is well settled in law that where an amendment which is brought about is "clarificatory in nature", the same would date back to the date on which the original provision was introduced. The HC, therefore, held that insertion of words **"or by speed post with proof of delivery"** in sec 37C(1)(a) by the Finance Act, 2013 **is clarificatory** and a procedural amendment and hence, **would have retrospective effect**.	Jay Balaji Jyoti Steels Limited v. CESTAT Kolkata 2015 (Ori.)
70	Can the Commissioner (Appeals) remand back a case to the adjudicating authority u/s 85 of the Finance Act, 1994?	The HC observed that sec 85(4) of the Finance Act, 1994 is worded widely and gives ample powers to the Commissioner while hearing and disposing of the appeals to pass such orders as he thinks fit including an order enhancing tax, interest or penalty. Such powers would, therefore, **inherently contain the power** to remand a proceeding for proper reasons to the adjudicating authority.	Commissioner of Service Tax v. Associated Hotels Ltd. 2015 (Guj.)
71	Whether the period of limitation or the period within which delay in filing an appeal can be condoned, specified in terms of months in a statute, means a calendar month or number of days?	**<u>Facts of the case</u>**: The assessee received the adjudication order on 08.10.2011 and filed an appeal against the said order before Commissioner (A) on 09.04.2012 **along with an application for condonation of delay**. However, the Commissioner (A) dismissed the appeal as being time barred and declined to condone the delay.	Ashok Kumar Tiwari 2015 (All.)

		The HC observed that period of limitation of 3 months prescribed u/s 85(3) of the Finance Act, 1994 meant 3 calendar months and not 90 days and proviso to said sub - sec empowered Commissioner to condone the delay for sufficient cause so as to allow the appeal to be presented within a further period of 3 months. <u>Therefore, the period of limitation shall be calculated as follow</u>- The day on which order was received by the assessee, i.e. 08.10.2011 had to be excluded while computing the period of limitation. Since the original period of limitation and the period within which delay could be condoned expired on a public holiday, i.e. 08.04.2012, the assessee filed the appeal on the next working day, i.e. 09.04.2012. Hence the Commissioner (A) had the jurisdiction to condone the delay in filing of appeal by the assessee as the same had been filed within the stipulated time prescribed for the same.	
72	Can the appeal filed in time but to wrong authority be rejected by the appellate authority being time barred?	The HC noted that the appeal had been preferred in time, but reached different wing of the same building. The HC observed that since the appeal was received by the adjudicating officer who has passed the original order, he ought to have returned the appeal papers to the assessee to enable him to file appeal before the appropriate authority or should have handed over the appeal papers to the competent authority. Therefore, the order passed by the appellate authority cancelling the appeal on the ground that it was not received in time, could not be accepted. In the light of the above discussion, the HC directed the appellate authority to entertain the appeal of the assessee and to pass appropriate orders on merits	Chakiat Agencies v. UOI 2015 (Mad.)
		<u>Customs</u>	
73	Would CVD on an imported product be exempted if the excise duty on a like article produced or manufactured in India is exempt?	SC held that rate of additional duty leviable u/s 3(1) of the Customs Tariff Act, 1975 would be only that which is payable under the Central Excise Act, 1944 on a like article. Therefore, the importer would be entitled to payment of concessional/ reduced or nil rate of CVD if any notification is issued providing exemption/ remission of excise duty with respect to a like article if produced/ manufactured in India.	Aidek Tourism Services Pvt. Ltd. v. CCus. 2015 (SC)
74	Whether the mobile battery charger is classifiable as an accessory of the cell phone or as an integral part of the same?	In this case, the assessee classified the mobile battery charger as an integral part of the main product i.e. Nokia mobile phone. It contended that cell phone could not be operated without the charger and they are provided free along with	State of Punjab v. Nokia India Private Ltd. 2015 (SC)

		the phone. Therefore, it applied the concessional rate of tax on the mobile battery charger also, as applicable on the mobile phone. According to Department, a battery charger was not a part of the cell phone but merely an accessory thereof. Thus, concessional rate of tax applicable on cell phones was not applicable to the mobile battery chargers. **SC's Observations:** The SC decided the case in favour of Revenue and against the assessee, on the basis of the following observations: ➢ The charger has not been a part of cell phone as it is not required at the time of operation. ➢ Further, the battery in the cell phone can be charged directly from the other means also like laptop without employing the battery charger. ➢ As per the information available on the website of the assessee, it had invariably put the mobile battery charger in the category of an accessory which means that in the common parlance also, the mobile battery charger is understood as an accessory. ➢ Rule 3(b) of the General Rules for Interpretation can also not be applied in the assessee's case as merely making a composite package of cell phone and mobile battery charger will not make it composite goods for the purpose of interpretation of the provisions. Battery charger is an independent product which can be sold separately without selling the cell phone. **On the basis of above observations t**he Apex Court held that mobile battery charger is an accessory to mobile phone and not an integral part of it.	
75	Is the adjudicating authority required to supply to the assessee copies of the documents on which it proposes to place reliance for the purpose of requantification of short-levy of customs duty?	The Apex Court elucidated that for the purpose of re-quantification of short-levy of customs duty, the adjudicating authority, following the **principles of natural justice**, should supply to the assessee all the documents on which it proposed to place reliance.	Kemtech International Pvt. Ltd. v. CCus. 2013 (SC)
76	Can customs duty be demanded u/s 28 and/or sec 125(2) of the Customs Act, 1962 from a person dealing in smuggled goods when no such goods are seized from him?	<u>**The HC held the following**</u>- Sec 28 applies to a case where the **goods are imported by an importer** and the **duty is not paid** in accordance with law, for which a **notice of demand** is issued on the person. The notice issued u/s 28 of the Act to the assessee is unsustainable as the assessee did not import the goods and therefore he is not the person who is chargeable to duty under the Act.	CCus. v Dinesh Chhajer 2014 (Kar.)

		In case of notice demanding duty u/s 125(2), firstly the **goods should have been confiscated** and the duty demandable is in addition to the fine payable u/s 125(1) in respect of confiscated goods. Since no goods were seized, there could not be any confiscation and in the absence of a confiscation, question of payment of duty does not arise.	
77	Whether interest is liable to be paid on delayed refund of special CVD arising in pursuance of the exemption granted vide Notification No. 102/2007 Cus.?	In the given case the Department, rejected the assessee's claim for the interest in view of a CBEC Circular No. 6/2008 which stipulated that interest could not be granted as Notification No. 102/2007 did not have any specific provision for payment of the same on refund of duty. The HC was of the view refund procedures will be governed by the provisions of **Sec 27** and **Sec 27A** of the Customs Act, 1962 and not otherwise. The **Department cannot override the said provisions by a Circular** and deny the right which is granted by the provisions of the Customs Act, 1962. Therefore Circular No. 6/2008 was totally inconsistent with the provisions of the Customs Act, 1962. Hence, the refund application of special CVD should only be filed in accordance with the procedure specified u/s 27 of the Customs Act. [**Note**: **Sec 27** of the Customs Act, 1962 provides for **refund of duty** and **Sec 27A** of the Customs Act, 1962 provides for **interest on delayed refunds**.]	KSJ Metal Impex (P) Ltd. 2013 (Mad.)
78	Are the clearances of goods from DTA to Special Economic Zone chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962?	The HC, on the basis of the following observations, held that the clearance of goods from DTA to SEZ is **not liable to export duty** either under the SEZ Act, 2005 or under the Customs Act, 1962:- ➢ 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. In the absence of a charging provision in the SEZ Act, export duty cannot be levied on the DTA supplier by implication. ➢ With regard to the Customs Act, 1962, 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, the **charging sec for levy of customs duty is not attracted** for supplies made by a DTA	Tirupati Udyog Ltd. v. UOI 2011 (A.P.)

		unit to a unit located within the Special Economic Zone.	
79	Whether remission of duty is permissible u/s 23 of the Customs Act, 1962 when the remission application is filed after the expiry of the warehousing period (including extended warehousing period)?	The HC, stipulated that as per **Sec 23 application for remission of duty can be considered only when the imported goods have been lost or destroyed at any time before clearance for home consumption**. Therefore the HC held that the circumstances made out u/s 23 were not applicable to the present case since the destruction of the goods or loss of the goods had not occurred before the clearance for home consumption within the meaning of that sec. **When the goods are not cleared within the period or extended period as given by the authorities, their continuance in the warehouse will not permit the remission of duty u/s 23 of the Act.** Moreover, since the goods continued to be in the warehouse, even after the expiry of the warehousing period, it would be a case of goods **improperly removed** from the warehouse.	CCE v. Decorative Laminates (I) Pvt. Ltd. 2010 (Kar.)
80	Is limitation period of one year applicable for claiming the refund of amount paid on account of wrong classification of the imported goods?	The HC observed that, the period of limitation applies only when there is over payment of duty or interest under the Customs Act, 1962. However in the given case the sum so paid was not a duty or excess duty but simply money paid into the Govt. a/c. The money received by Govt. could more appropriately be called money paid by mistake by one person to another, which the other person is under obligation to repay under the Indian Contract Act, 1872. Therefore, the assessee is entitled to refund of the sum paid by it to the customs authorities.	Parimal Ray v. CCus. 2015 (Cal.)
81	Can the assessee file an application for relinquishment of title of warehoused goods after the expiration of the warehousing period/ extended period of warehousing?	The HC observed that the owner of the goods (importer) though **loses control over the goods** when he deposits them in the warehouse, but **he does not lose his title or ownership to such goods** so long as they remain in the warehouse either during the continuance of the warehousing period or even after its expiration. There is **no prohibition on relinquishing the title to such goods after the expiration** of the warehousing period or after the expiration of the extended period. Hence the owner of such goods **shall not be liable to pay duty/ interest/ penalty upon relinquishment.**	i2 Technologies Software (P) Ltd. 2007 (Kar.)

82	Whether subsequent increase in the market price of the imported goods due to inflation would lead to increase in customs duty although the	The SC held that in the instant case, the **increased price in the market cannot be considered for valuation** as there was no allegation of the supplier and the assessee.	Vishakhapatnam v. Aggarwal Industries Ltd. 2011 (S.C.)

	contract price between the parties has not increased accordingly?		
83	Can the time-limit prescribed u/s 48 of the Customs Act, 1962 for clearance of the goods within 30 days be read as time-limit for filing of bill of entry u/s 46 of the Act?	The HC noted that though sec 46 does not provide for any time-limit for filing a bill of entry by an importer upon arrival of goods, sec 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. The HC however held that the time-limit prescribed u/s 48 for clearance of the goods within 30 days cannot be read into sec 46 and it cannot be inferred that sec 46 prescribes any time-limit for filing of bill of entry.	CCus v. Shreeji Overseas (India) Pvt. Ltd. 2013 (Guj.)
84	Whether extended period of limitation for demand of customs duty can be invoked in a case where the assessee had sought a clarification about exemption from a wrong authority (Development Commissioner, in the given case)?	The Apex Court noted that sec 28 of the Customs Act clearly contemplates two situations, viz. inadvertent non-payment (limitation period of 1 year) and **deliberate default (limitation period of five years)**. For the purpose of invoking limitation period of 5 years, the intention to deliberately default is a mandatory prerequisite. The SC observed that the **assessee had shown bona fide conduct by seeking clarification from the Development Commissioner** and in a sense had offered its activities to assessment. It showed that assessee made efforts to **adhere to the law** rather than its breach. The SC therefore held that mere non-payment of duties could not be equated with collusion or wilful misstatement or suppression of facts as then there would be no form of non-payment which would amount to ordinary default.	Uniworth Textiles Ltd. vs. CCEx. 2013 (SC)
85	Can penalty for short-landing of goods be imposed on the steamer agent of a vessel if he files the Import General Manifest, deals with the goods at different stages of shipment and conducts all affairs in compliance with the provisions of the Customs Act, 1962?	The HC held that in case of short-landing of goods, if penalty is to be imposed on person-in-charge of conveyance/vessel, it can also be imposed on the agent appointed by him. Hence, duly appointed steamer agent of a vessel, would be liable to penalty. However, steamer agent, if innocent, could work out his remedy against the shipper for short-landing.	Caravel Logistics Pvt. Ltd. 2013 (Mad.)
86	Whether the smuggled goods can be re-exported from the customs area without formally getting them released from confiscation?	In the given case the passenger had grossly misdeclared the goods with intention to evade duty and to smuggle the goods into India. The passenger in his statement admitted the offence and showed his readiness to pay duty on seized goods or reshipment of the said goods. The adjudicating authority determined total value of seized goods; ordered confiscation of seized goods; imposed penalty and ordered for recovery of customs duty on the goods with interest and gave an option to assessee to redeem the goods on payment of a fine.	Hemal K. Shah 2012 (GOI)

		The assessee filed an appeal to the appellate authority which allowed him re-export of the confiscated goods. Against this order, the Department filed a revision application before the Revisionary Authority and questioned the re-export of confiscated goods The Government held that since the 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**.	
87	Does Settlement Commission have jurisdiction over baggage cases?	The HC opined that the provisions that conferred jurisdiction on the Settlement Commission (Sec 127B) cannot be construed as narrowly as it sought to be urged by the Revenue. A plain reading of the provisions of secs 127A and 127B reveals that **there is no bar/ express** or implied on the Settlement Commission - in respect **of entertaining applications** by the passengers which brought in goods through their baggage.	CCus.v. Ashok Kumar Jain 2013 (Del.)
88	Is judicial review of the order of the Settlement Commission by the HC or SC under writ petition/ special leave petition, permissible?	The Court, however, pronounced that the scope of court's inquiry against the decision of the Settlement Commission is **very narrow**, i.e. judicial review is **concerned with the decision-making process** (if the Settlement Commission has acted without jurisdiction vested in it or its decision is wholly arbitrary or mala fide or is against the principles of natural justice or when such decision is ultra vires the Act or the same is based on irrelevant considerations) **and not with the decision of the Settlement Commission**. In the instant case, the Settlement Commission directed the Revenue to refund to the assessee, the amount remaining in balance after adjustment of expenses and charges as payable in terms of sec 150 of the Customs Act, 1962 and further adjustment of fine and penalty as adjudicated by it. The refund was however, not granted despite several representations.	Saurashtra Cement Ltd. v. CCus. 2013 (Guj.)
89	Whether any interest is payable on delayed refund of sale proceeds of auction of seized goods after adjustment of expenses and charges in terms of sec 150 of the Customs Act, 1962?	**Department's View** During the pendency of this writ petition, the principal amount of the sale proceeds was paid to the assessee but the interest on the same was not paid. Since the amount paid did not represent the amount of duty or interest, the provisions of sec 27 and 27A of the Customs Act relating to claim for refund of duty and interest on delayed refunds respectively would not be applicable. **Decision** The HC observed that though no period was stipulated in the order of the Settlement Commission for the grant of refund, the entire exercise ought to have been carried out **within a reasonable period of time. All statutory powers have to be exercised within a reasonable period even when no specific period is prescribed by the provision of law**. The HC noted that there was absolutely no reason or justification for	Vishnu M Harlalka v. Union of India 2013 (Bom)

		the delay in payment of balance sale proceeds. The HC, therefore directed the Department to pay interest from the date of approval of proposal for sanctioning the refund.	
90	**Can the value of imported goods be increased if Department fails to provide to the importer, evidence** (here in this case, information obtained through a computer printout) **of import of identical goods at higher prices?**	The SC held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable. Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices. **<u>Note</u>**: This case establishes the principle that the onus to prove that identical goods have been imported at a price higher than the value of the goods declared by the importer, lies with the Department.	Gira Enterprises v. CCus. 2014 (SC)
91	Can a writ petition be filed before a HC which does not have territorial jurisdiction over the matter?	The SC observed that the very filing of writ petition by the petitioner in Delhi HC against the order in original passed by the Commissioner of Customs, Kanpur indicated that the petitioner had taken chance in approaching the HC at Delhi which had no territorial jurisdiction in the matter. The filing of the writ petition before Delhi HC was not at all bona fide.	Neeraj Jhanji v. CCE & Cus. 2014 (S.C.)
92	Whether mere 'dispatch' of a notice u/s 124(a) would imply that the notice was "given" within the meaning of Sec 124(a) and Sec 110(2) of the said Customs Act, 1962?	The Delhi HC observed that the object of Sec 124(a) is that the person from whom the goods have been seized had to be informed of the grounds on which the confiscation of the goods is to be founded. This can happen only when **such person receives the notice**. On a conjoint reading of Sec 110(2) and Sec 124(a) of the said Act, the Court opined that the notice contemplated in these provisions can only be regarded as having been "given" **when it is actually received** or deemed to be received by the person from whom the goods have been seized. The Delhi HC elaborated that it is only the heading of that Sec which uses that expression (**issue** of show notice) and the body of Sec 124(a), on the contrary, uses the exact same expression "**given**" as used in Sec 110(2) of the said Act. The HC held that since the petitioners did not receive the notice u/s 124(a) within the time stipulated in Sec 110(2) of the Act, such notice will not considered to be "given" by the Department within the stipulated time. Consequently, the Department was directed to release the goods seized. **<u>Note:</u>** Sec 124(a) of the Customs Act, 1962, inter alia, stipulates that no order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person is **given** a notice in writing informing him	Purushottam Jajodia v. Director of Revenue Intelligence 2014 (Del.)

		of the grounds on which it is proposed to confiscate the goods or to impose a penalty. Further, Sec 110(2) of the Act stipulates that where no such notice is **given** within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized.	