In – Direct Tax

SUMMARY OF RECENT CASE LAWS RELEVANT FOR NOVEMBER, 2015 – CA FINAL YEAR EXAMS

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S.NO.	ISSUE	DECISION	CASE LAW
CENTRAL EXCISE			
1	Whether bagasse which is a marketable product but not a manufactured product can be subjected to excise duty?	The High Court concluded that though bagasse is an agricultural waste of sugarcane, it is a marketable product. However, duty cannot be imposed thereon simply by virtue of the explanation added under section 2(d) of the Central Excise Act, 1944 as it does not involve any manufacturing activity. The High Court quashed the CBEC's Circular dated 28-10-2009.	**Balrampur Chini Mills Ltd.** v. Union of India 2014 (300) ELT 372 (All.)
2	Can improvement in quality of base bitumen by adding and mixing polymers and additives to it, amount to manufacture?	The Supreme Court concluded that the process of mixing polymers and additives with bitumen did not amount to manufacture.	CCE v. **Osnar Chemical Pvt. Ltd.** 2012 (276) E.L.T. 162 (S.C.)
3	Whether the metal scrap or waste generated during the repair of his worn out M/c/parts of cement manufacturing amts. to manufacture?	It held that generation of metal scrap or waste during the repair of his worn out M/c/parts of cement manufacturing plant does NOT amts. to manufacture	**Grasim Industries Ltd** V. UOI 2011 (273) ELT 10 (SC)
4	Are the physician sample excisable goods in view of the fact that they are statutorily prohibited from being sold?	The court inferred that the physician sample were excisable goods and were liable to Excise Duty.	**Medley Pharmaceuticals Ltd.** V. CCE & C., Daman 2011 (263) E.L.T. 641 (SC)
5	Whether assembling of the testing equipment for testing the final product in the factory amounts to manufacture?	Such equipment was saleable & marketable. Hence, the apex court held that duty was payable on such testing equipment.	**Usha Rectifier Corpn. (I) Ltd.** V. CCEx, New Delhi 2011 (263) E.L.T. 655 (SC)
6	Does a product with a short shelf-life satisfy the test of Marketability?	Supreme court ruled that a product with shelf-life of 2 to 3 days was marketable & Hence Excisable.	**Nicholas Piramal India Ltd.** V. CCEx, Mumbai 2010 (260) E.L.T. 338 (SC)
8	Whether the M/c which is not assimilated in permanent structure would be considered to be moveable so as to be dutiable under the central excise Act?	The Apex court held that the plant in Q. were NOT immovable property so as to be immune from the levy of excise duty. Consequently, duty would be levied on them.	CCE V. **Solid & Correct Engineering works & ORS** 2010 (252) ELT 481 (SC)
9	Does the process of preparation of tarpaulin made ups after cutting & stitching the tarpaulin fabrics & fixing the eye lets amts. to manufacture?	The Apex court opined that stitching of tarpaulin sheets & making eyelets did NOT change the basis characteristics of the raw material & end product, so would NOT amts. to Manufacture.	CCE V. **Tarpaulin International** 2010 (256) ELT 481 (SC)
10	Does the process of cutting & embossing aluminum foil for packing the cigarettes amounts to manufacture?	There were no records to suggest that cut to shape/embossing aluminum foils used for packing cigarettes were distinct marketable commodity. Hence process did NOT amount to manufacture as per Section 2(F) of CE Act, 1944.	**GTC Industries Ltd.** V. CCEx 2011 (266) E.L.T. 160 (Bom.)
11	Does the activity of packing of imported compact discs in a jewel box along with inlay card amts. to manufacture?	The court held that activities carried out by the respondent did NOT amt. to manufacturing, since the CD had been complete & finished when imported by the assessee.	CCE V. **Sony Music Entertainment (I) (P) Ltd** 2010 (249) ELT 341 (Bom.)
12	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 Supreme Court held that owing to the pharmaceutical constituents present in the cream 'Moisturex' and its use for the cure of certain skin diseases; the same would be classifiable as a medicament under Heading 30.03.	CCEx. v. **Ciens Laboratories** 2013 (295) ELT 3 (SC)
13	In case of specific classification viz-à-viz classification based on material used/composition of goods, which one should be adopted?	The assessees contention was that the appropriate classification for their product was under Chapter sub-heading No. 6807.10 of the Act while the Department contended that the appropriate classification was under Chapter sub-heading No. 6803.00 of the Act. This was the subject matter of the appeal before the Supreme Court. Therefore, the Court opined that the goods in issue were appropriately classifiable under Sub- heading 6807.10 of the Tariff.	Commissioner of Central Excise, Bhopal v. **Minwool Rock Fibres Ltd.** 2012 (278) E.L.T.581 (S.C.)
14	Whether antiseptic cleansing solution used for cleaning/ degerming or scrubbing the skin of the patient before the operation can be classified as a 'medicament'?	The Apex Court held that the product in question can be safely classified as a "medicament" which would fall under Chapter Heading 3003, a specific entry and not under Chapter Sub-Heading 3402.90, a residuary entry.	CCE v. **Wockhardt Life Sciences Ltd.** 2012 (277) E.L.T. 299 (S.C.)

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15	Can the "soft serve" served at McDonalds India be classified as "ice cream" for the purpose of levying E/duty?	The apex court held that "soft serve" was classified under heading 21.05 as "ice cream" & not under heading 04.04 as "other dairy produce".	CCE V. **Connaught plaza restaurant (P) Ltd.** 2012 (286) ELT 321 (SC)
16	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?	The Apex Court held that such retained amount has to be treated as the price of the goods under the basic fundamental conception of "transaction value" as substituted with effect from 1.7.2000 and therefore, the assessee is bound to pay excise duty on the said sum.	CCEx v. **Super Synotex (India) Ltd.** 2014 (301) E.L.T. 273 (S.C.)
17	Can the Pre-delivery inspection (PDI) & free after sales service charges be included in the tranx value when they are not charged by the assesse to the buyer?	The high court held that clause no. 7 of circular dt. 1 st July, 2002 & circular dt. 12 Dec., 2002 were not in conformity with the prov. of sec. 4(1) (a) read with sec. 4(3) (d) of CE act, 1944. Further as per sec. 4(3) (d) the PDI & free after sales service charges could be incl. in the tranx value only when they were charged by the assese to the buyer.	**Tata Motors Ltd.** V. UOI 2012 (286) ELT 161 (Bom.)
18	Can CENVAT credit of duties, other than National Calamity Contingent Duty (NCCD), be used to pay NCCD?	The High Court 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.	CCEx. v. **Prag Bosimi Synthetics Ltd.** 2013 (295) ELT 682 (Gau.)
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 Supreme Court held that CENVAT credit could not be allowed to the assessee as no duty was paid on sugar plant set up in a foreign country. Further, since the bought-out machinery was not used in the assessee's factory premises, the necessary condition for availing CENVAT credit on capital goods could not be fulfilled.	**KCP Ltd.** v. CCEx. 2013 (295) ELT 353 (SC)
20	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 High Court held that if 50% CENVAT credit on capital goods pertaining to subsequent financial year which had been wrongly availed in the first 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 (298) E.L.T. 188 (Bom.)
21	In case the testing is critical to ensure marketability of manufactured product i.e. the manufacture is not complete without testing; is CENVAT credit of the testing material allowed?	The Supreme Court held that the process of manufacture would not be complete if a product is not saleable as it would not be marketable. Thus, the duty of excise would not be leviable on it.	**Flex Engineering Ltd.** v. Commissioner of Central Excise, U.P. 2012 (276) E.L.T. 153 (S.C.)
22	Is assessee required to reverse the CENVAT credit availed on capital goods destroyed by fire when insurance company reimburses value of such capital goods inclusive of excise duty?	The High Court held 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. Excise Department cannot demand reversal of credit or payment of the said amount.	**Tata advanced Material Ltd.** V. CCEx 2011 (271) E.L.T. 62 (Kar.)
23	Whether penalty can be imposed on the director of the co. for the wrong CENVAT credit availed by the co.?	The court observed that CENVAT credit had been availed by the co. & penalty U/R 13(1) was imposable only on the person who had availed CENVAT credit, who was a manufacture. The petitioner director of the co. could NOT be said to be manufacture availing CENVAT credit.	**Ashok Kumar Fulwadhya** V. UOI 2010 (251) ELT 336 (Bom.)
24	Can CENVAT credit be taken on the basis of private challans?	The court held that credit be taken on the strength of private challans as the same were NOT found to be fake & thr was a proper certificate that duty had been paid.	CCEx V. **Stelko Strips Ltd** 2010 (255) ELT 397 (P&H)
25	Whether (i) technical testing & analysis service availed by the assesse for testing of clinical samples prior to commencement of commercial production & (ii) services of commission agent are eligible input service for claiming Cenvat?	The high court held that technical testing & analysis service availed for testing of clinical samples prior to commencement of commercial production were directly related to the manufacture of the final product & hence, were input service eligible for Cenvat credit.	CCEx V. **Cadila Healthcare Ltd.** 2013 (30) STR 3 (Guj.)

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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 registration?	The high court held that credit could be availed on eligible inputs utilized in the generation of electricity only to the extent the same were used to produce electricity within the factory registered for that purpose & credit on input utilized to produce electricity which was used for a factory registered as a different unit would not be allowed.	**Sintex industries Ltd.** V. CCEx 2013 (287) ELT 261 (Guj.)
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 High Court held that the procedure cannot be raised to the level of a mandatory requirement. Rule 18 itself makes a distinction between conditions and limitations subject to which a rebate can be granted and the procedure governing the grant of a rebate. It was held by the High Court that while the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory. The High Court ruled that non-production of ARE-1 forms ipso facto cannot invalidate rebate claim. In such a case, exporter can demonstrate by cogent evidence that goods were exported and duty paid and satisfy the requirements of rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 CE (NT).	**UM Cables Limited** v. Union of India 2013 (293) ELT 641 (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?	The court held that under rule 18 of the Central Excise Rules, 2002, 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 (298) E.L.T. 183 (Raj.)
29	Can penalty under section 11AC of the Central Excise Act, 1944 be imposed in a case where there are divergent judicial pronouncements on an issue and the assessee chooses to follow one of those pronouncements?	The High Court held that mens rea (guilty mind) is an essential part for levy of penalty under section 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 (292) E.L.T. 189 (All.)
30	Whether time-limit under section 11A of the central excise Act, 1944 is applicable to recovery of dues under compound levy scheme?	It was held that the time-limit under section 11A of CE Act, 1944 is NOT applicable to recovery of dues under compound levy scheme.	**Hans Steel Rolling Mill** V. CCEx, chandigarh 2011 (265) E.L.T. 321 (SC)
31	In a case where the assesse has been issued a show cause notice regarding confiscation, is it necessary that only when such SCN is adjudicated, can the SCN regarding recovery of dues & penalty be issued?	The high court held that there was no legal prov. requiring authorities to first adjudicate the notice issued regarding confiscation & only therefore, issue show cause notice for recovery of dues & penalty.	**Jay Kumar Lohani** V. CCEx 2012 (28) STR 350 (MP)
32	Can appellate authorities or courts permit the assesse to pay reduced penalty of 25% beyond the time prescribed u/s 11AC?	The high court held that tribunal could not permit the assesse to pay 25% penalty beyond the time prescribed under the first & second prov. to erstwhile sec. 11AC [now sec. 11AC (1) (C)]	CCEx V. **Castrol India Ltd.** 2012 (286) ELT 194 (Bom.)
33	In a case where the manufacturer clandestinely removes the goods & stores them with a firm for further sales, can penalty u/r 25 of the CE Rules, 2002 be imposed on such firm?	The high court concurred with the view of the tribunal & concluded that rule 25 (1) © would have no appl. in the present case.	CCEx V. **Balaji Trading Co.** 2013 (290) ELT 200 (Del.)
34	Can a decision pronounced in the open court in the presence of the advocate of the assese, be deemed to be the service of the order to the assessee?	The high court held that when a decision is pronounced in the presence of the advocate of the assese, who is the authorized agent of the assese within the meaning of sec. 37C, the dt. Of pronouncement of order would be deemed to be the dt. of service of order.	**Nanumal Glass Works** V. CCEx Kanpur, 2012 (284) ELT 15 (All.)

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35	Whether filing of refund claim under section 11B of Central Excise Act, 1944 is required in case of suo motu availment of CENVAT credit which was reversed earlier (i.e., the debit in the CENVAT Account is not made towards any duty payment)?	The High Court held that this process involves only an account entry reversal and factually there is no outflow of funds from the assessee by way of payment of duty. Thus, filing of refund claim under section 11B of the Central Excise Act, 1944 is not required. Further, it held that on a technical adjustment made, the question of unjust enrichment as a concept does not arise.	**ICMC Corporation Ltd.** v CESTAT, CHENNAI 2014 (302) E.L.T. 45 (Mad.)
36	Does the principle of unjust enrichment apply to State Undertakings?	The High Court held that the concept of unjust enrichment is not applicable as far as State Undertakings are concerned and to the State.	CCEx v. **Superintending Engineer TNEB** 2014 (300) E.L.T. 45 (Mad.)
37	In a case where an appeal against order-in-original of the adjudicating authority has been dismissed by the appellate authorities as time-barred, can a writ petition be filed to High Court against the order-in-original?	The High Court referred to the case of Raj Chemicals v. UOI 2013 (287) ELT 145 (Bom.) wherein it held that where the appeal filed against the order-in-original was dismissed as time-barred, the High Court in exercise of writ jurisdiction could neither direct the appellate authority to condone the delay nor interfere with the order passed by the adjudicating authority. Consequently, it refused to entertain the writ petition in the instant case.	**Khanapur Taluka Co-op. Shipping Mills Ltd.** v. CCEx. 2013 (292) E.L.T. 16 (Bom.)
38	Can the High Court condone the delay - beyond the statutory period of three months prescribed under section 35 of the Central Excise Act, 1944 - in filing an appeal before the Commissioner (Appeals)?	The High Court held that such powers are required to be exercised very sparingly and in extraordinary circumstances in appropriate cases, where otherwise the Court would fail in its duty if such powers are not invoked.	**Texcellence Overseas** v. Union of India 2013 (293) ELT 496 (Guj.)
39	Can delay in filing appeal to CESTAT for the reason that the authorized representative dealing with the case went on a foreign trip and on his return his mother expired, be condoned?	The High Court observed that there did not appear to be any deliberate latches or neglect on the part of the authorised representative to file the appeal. It held that the reasons for delay in filing appeal to CESTAT, that the person dealing with the case went on a foreign trip and on his return his mother expired, could not be considered as unreasonable for condonation of delay.	**Habib Agro Industries** v. CCEx. 2013 (291) E.L.T. 321 (Kar.)
40	If Revenue accepts judgment of the Commissioner (Appeals) on an issue for one period, can it be precluded to make an appeal on the same issue for another period?	The Supreme Court observed that since the Revenue had not questioned the correctness or otherwise of the findings on the conclusion reached by the first appellate authority, it may not be open for the Revenue to contend this issue further by issuing the impugned show cause notices on the same issue for further periods.	*Commissioner of C. Ex., Mumbai-III v.* ***Tikitar Industries****, 2012 (277) E.L.T. 149 (S.C.)*
41	Can re-appreciation of evidence by CESTAT be considered to be rectification of mistake apparent on records under section 35C (2) of the CE Act, 1944?	The court opined that CESTAT exceeded its power under section 35C (2) of the CE Act, 1944. In pursuance of a rectification application, it CANNOT re-appreciate the evidence & reconsider its legal view taken earlier.	**RDC Concrete (I) Pvt. Ltd.** 2011 (270) E.L.T. 625 (SC)
42	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 High Court held that when it had been established that dubious company did not undertake any transactions, penalty could not be levied on the same for the transactions undertaken by the original company. The High Court emphasized that penalty could not be imposed upon the company who did not undertake any transaction.	CCEx v **Xenon** 2013 (296) ELT 26 (Jhar.)
43	Whether an assessee can claim the benefit of SSI exemption on the brand name of another firm if its proprietor is also a partner in such other firm?	The Supreme Court held that the appellant was eligible to claim benefit of the SSI exemption as the proprietor of Elex Knitting Machinery Co. was one of the partners in Elex Engineering Works. And hence being the co-owner of the brand name of Elex, he could not be said to have used the brand name of another person, in the manufacture and clearance of the goods in his individual capacity.	Commissioner v. **Elex Knitting Machinery Co.** 2012 (283) E.L.T. A18 (S.C.)
44	Whether the clearance of two firms having common brand name, goods being manufactured in the same factory premises, having common mgmt & a/c's etc can be clubbed for the purposes of SSI exemption?	The High court held that the clearance of the common goods under the same brand name manufactured by both had been rightly clubbed.	CCE V. **Deora Engineering Work** 2010 (255) ELT 184 (P&H)

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45	Whether the manufacture & sale of specified goods, not physically bearing a brand name, from branded sale outlet would disentitle an assessee to avail the benefit of small scale exemption?	The SC held that it is not necessary for goods to be stamped with a trade or brand name to be considered as branded goods for the purpose of SSI exemption. A scrutiny of the surrounding circumstances is not only permissible, but necessary to decipher the some; the most important of these factors being the specific outlets from which the goods is sold. However such factors would carry different hues in different scenarios. There can be no single formula to determine if a good is branded or not, such determination would vary from case to case.	CCEx Vs. **Australian Foods India Pvt. Ltd.** 2013 (287) ELT 385 (SC)
46	Where a circular issued under section 37B of the Central Excise Act, 1944 clarifies a classification issue, can a demand alleging misclassification be raised under section 11A of the Act for a period prior to the date of the said circular?	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.	**S & S Power Switch Gear Ltd.** v. CCEx. Chennai-II 2013 (294) ELT 18 (Mad.)
47	(i) Where a settlement application filed under section 32E(1) of the Central Excise Act, 1944 (herein after referred to as 'Act') is not accompanied with the additional amount of excise duty along with interest due, can Settlement Commission pass a final order under section 32F(1) rejecting the application and abating the proceedings before it ? (ii) In the above case, whether a second application filed under section 32E(1), after payment of additional excise duty along with interest, would be maintainable?	The High Court held that since the earlier application was dismissed on technical defect for non-compliance of the provisions of clause (d) of the proviso to section 32E(1) 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 (301) E.L.T. 321 (Guj.)
48	Whether a consolidated return filed by the assesses after obtaining registration, but for the period prior to obtaining registration, could be treated as a return under clause (a) of the first proviso to sec. 32E (1)?	The High court rejected the submission of the petitioner that filing of consolidated return covering all the past period would serve the purpose.	**Icon Industries** V. UOI 2011 (273) ELT 487 (Del.)
	SERVICE TAX		
49	Can service tax be levied on the services rendered in connection with a chit fund business?	The High Court held that, either way, the services of a foreman of a chit business do not constitute a taxable service. Consequently, the High Court quashed Notification No. 26/2012-S.T. dated 20.06.2012 to the extent of the entry in Serial No. 8 thereof.	***Delhi Chit Fund Association*** *v. UOI 2013 (30) S.T.R. 347 (Del.)*
50	Whether the service tax liability created under law can be shifted by a clause entered in the contract?	The Supreme Court held that service tax is indirect tax which may be passed on. Thus, assessee can contract to shift their liability. There is nothing in law to prevent them from entering into agreement regarding burden of tax arising under contract between them.	***Rashtriya Ispat Nigam Ltd.*** *v. Dewan Chand Ram Saran 2012 (26) S.T.R. 289 (S.C.)*
51	In case whr rooms have been rented out by municipality, can it pass the burden of S/tax to service receiver i.e. tenant?	The court held that municipality can pass the burden of S/tax on service receiver.	**Kishore K. S.** V. cherthala Municipality 2011 (24) STR 538 (Kar.)
52	Were services provided to the pilgrims taxable under short term accommodation service?	The Andhra Pradesh High Court held that the petitioner was religious and charitable institution and was running guest houses by whatever name they were called, whether it was a shelter for pilgrims or any other name for a considerable time and thus was liable to get itself registered under 'Short term accommodation service' and pay service tax on the same.	***Tirumala Tirupati*** *Devasthanams, Tirupati V. Superintendent of Customs, Central Excise, Service Tax (2012-TIOL-97-HC-AP-ST)*

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53	Can a software be treated as goods & if so, whether its supply to a customer as per an "End User License Agreement" (EULA) would be treated as sale or service?	The High court reiterated that software is goods as per article 366 (12) of the constitution. Further, the court was of the view that such tranx taking place betw. members of ISODA & its customer, the software is NOT sold as such, but only the content of the data stored in the software are sold which would only amts. to service & NOT Sale.	**Infotech Software Dealers Association (ISODA)** V. UOI 2010 (20) STR 289 (Mad.)
54	Whether S/tax is chargeable on the buffer subsidy provided by the Govt. for storage of free sale sugar, under the category of storage & W/H services?	The court held that the storage of specific quantity of free sale sugar could NOT be treated as Providing storage & W/H services to GOI.	CCE V. **Nahar Industrial Enterprises Ltd** 2010 (19) STR 166 (P&H)
55	A society running renowned school allows other schools to use a specific name, its logo & motto and receives a non-refundable amount & annual fee as a consideration. Whether this amounts to a taxable service?	The high court held that when the petitioner permitted other schools to use their name, logo as also motto, it clearly tantamounted to providing "franchise service" to the said schools & if the petitioner realized the "franchise" or "collaboration fees" from the franchise schools, the petitioner was duty bound to pay s/tax to the dept.	**Mayo College General Council** V. CCEx (Appeal) 2012 (28) STR 225 (Raj.)
56	Whether filing of declaration of description, value etc. of input service used in providing IT enabled service (call Centre / BPO service) exported outside India, after the date of export of service will disentitle an exporter from rebate of service tax paid on such input service?	The high court allowed the rebate claims filed by the appellants & held that the condt. of the notification must be capable of being complied with as if it could not be complied with, there would be no purpose behind it.	**Wipro Ltd.** V. UOI 2013 (29) STR 545 (Del.)
57	Whether expenditure like travel, hotel stay, transportation & the like incurred by service provider in course of providing taxable service should be treated as consideration for taxable service & incl. in value for charging s/tax?	The high court held that rule 5 (1) of the rules runs counter & is repugnant to sec. 66 & 67 of the act & to that extent it is ultra-virus the Finance Act, 1994.	**Intercontinental Consultant & Technocrats Pvt. Ltd.** V. UOI 2013 (29) STR 9 (Del.)
58	Whether tax is to be deducted at source under section 194J of the Income-tax Act, 1961 on the amount of service tax if it is paid separately and is not included in the fees for professional services/technical services?	The High Court held that if as per the terms of the agreement between the payer and the payee, the amount of service tax is to be paid separately and is not included in the fees for professional services or technical services, the service tax component would not be subject to TDS under section 194J of the Income-tax Act, 1961.	CIT v. **Rajasthan Urban Infrastructure** 2013 (31) STR 642 (Raj.)
59	Is rule 5A(2) of the Service Tax Rules, 1994 ultra vires the Finance Act, 1994?	The High Court held that section 5A(2) is not ultra vires. It is in consonance with section 72A of the Finance Act, 1994.	**A.C.L. Education Centre (P) Ltd.** v. UOI 2014 (33) S.T.R. 609 (All.)
60	Is it justified to recover service tax during search without passing appropriate assessment order?	The High Court held that the amount collected by Department, from the petitioner, during the search conducted, could not be held to be valid in the eye of law, and directed the Department to return to the petitioner the sum of Rs. 2 crores, collected from it, during the search conducted.	**Chitra Builders Private Ltd.** v. Addl. Commr. of CCEx. & ST 2013 (31) STR 515 (Mad.)
61	Can extended period of limitation be invoked for mere contravention of statutory provisions without the intent to evade service tax being proved?	It was held that mere contravention of provision of Chapter V or rules framed thereunder does not enable the service tax authorities to invoke the extended period of limitation. The contravention necessarily has to be with the intent to evade payment of service tax.	**Infinity Infotech Parks Ltd.** v. UOI 2013 (31) STR 653 (Cal.)
62	Would service tax collected but not deposited prior to 10.05.2013 be taken into consideration while calculating the amount of Rs. 50 lakh as contemplated by clause (ii) of section 89(1) of the Finance Act, 1994?	The High Court 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 Rs. 50 lakh as contemplated by section 89(1)(ii) of the Finance Act, 1994.	**Kandra Rameshbabu Naidu** v. Superintendent (A.E.), S.T., Mumbai-II 2014 (34) S.T.R. 16 (Bom.)
63	Whether best judgment assessment under section 72 of the Finance Act, 1994 is an ex-parte assessment procedure?	The High Court held that section 72 could per se not be considered as an ex parte assessment procedure as ordinarily understood under the Income-tax Act, 1961. Section 72 mandates that the assessee must appear and must furnish books of account, documents and material to the Central Excise Officer before he passes the best judgment assessment order. Thus, said order is not akin to an ex parte order.	**N.B.C. Corporation Ltd.** v. Commissioner of Service Tax 2014 (33) S.T.R. 113 (Del.)

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64	Whether penalty is payable even if service tax and interest has been paid before issue of the show cause notice?	The Karnataka High Court held that the authorities had no authority to initiate proceedings for recovery of penalty under section 76 of the Act when the tax payer paid service tax along with interest for delayed payments promptly. If the notices were issued contrary to this section, the person who had issued notice should be punishable and not the person to whom it was issued.	CCE & ST v. **Adecco Flexione Workforce Solutions Ltd.** 2012 (26) S.T.R 3 (Kar)
65	Will service tax paid mistakenly arouse service tax liability?	The Hon'ble High Court of Karnataka, distinguishing the landmark judgment by Supreme Court in the case of *Mafatlal Industries v. UOI 1997 (89) E.L.T. 247 (S.C.)* relating to refund of duty/tax, held that service tax paid mistakenly under construction service although actually exempt, is payment made without authority of law. Mere payment of amount would not make it 'service tax' payable by the respondents. In view of the above, it was held that refund of an amount mistakenly paid as service tax could not be rejected on ground of limitation under Section 11B of the Central Excise Act, 1944.	*CCE (A) v.* ***KVR Construction*** *2012 (26) STR 195 (Kar.)*
66	In a case whr the assesse has acted bona fide; can penalty be imposed for the delay in payment of s/tax arising on account of confusion regarding tax liability & divergent views due to conflicting court decision?	The HC held that even if the appellant were aware of the levy of s/tax & were not paying the amount on the ground of dispute with the ONGC, there could be justification in levying the penalty in absence of any fraud, misrepresentation, collusion or willful mis-statement or suppression. Moreover, when the entire issue for levying of the tax was debatable, that also would surely provide legitimate grounds not to impose the penalty.	**Ankleshwar Taluka ONGC Land Loosers Travellers Co. OP** V. CCE, surat II 2013 (29) STR 352 (Guj.)
67	Can the Committee of Commissioners review its decision taken earlier under section 86(2A) of the Finance Act, 1994, at the instance of Chief Commissioner?	The Karnataka High Court held that once the Committee of Commissioners, on a careful examination of the order of the Commissioner (Appeals), did not differ in their opinion against the said order of the Commissioner (Appeals) and decide to accept the said order, the matter ends there. The said decision is final and binding on the Chief Commissioner also. The Chief Commissioner is not vested with any power to call upon the Committee of Commissioners to review its order so that he could take decision to prefer an appeal. Such a procedure is not contemplated under law and is without jurisdiction.	C.C.E. & S.T. (LTU), Bangalore v. **Dell Intl. Services India P. Ltd.** 2014 (33) S.T.R. 362 (Kar.)
CUSTOMS			
68	Are the clearances of goods from DTA to SEZ chargeable to export duty under the SEZ Act, 2005 or the custom Act, 1962?	The high court inferred that the clearance of goods from DTA to SEZ is NOT liable to export duty either under the SEZ Act, 2005 or under custom Act, 1962.	**Tirupati Udyog Ltd.** V. UOI 2011 (272) E.L.T. 209 (AP)
69	Whether remission of duty is permissible u/s 23 of the custom Act, 1962 when the remission application is filled after the expiry of W/H period (Incl. extended warehousing period)?	The High court held that when the goods are NOT cleared within the period or extended period as given by the authorities, their continuances in the W/H will NOT attract sec. 23 of the Act.	CCE V. **Decorative Laminates (I) (P) Ltd** 2010 (257) E.L.T. 61 (Kar.)
70	Where a classification (under a Customs Tariff head) is recognized by the Government in a notification any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?	The Apex Court observed that the Central Government has issued a exemption notification dated 1-3-2002 and in the said notification it has classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself has classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3-2002, the said classification need to be accepted.	***Keihin Penalfa Ltd.*** *v. Commissioner of Customs 2012 (278) E.L.T. 578 (S.C.)*

S.NO.	ISSUE	DECISION	CASE LAW
71	Will the description of the goods as per the doc. Submitted along with the shipping bill be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test? Whether a separate notice is req. to be issued for payment of intt. which is mandatory & automatically applies for recovery of excess drawback?	The High court held that the description of the goods as per the doc. Submitted along with the shipping bill be a relevant criterion for the purpose of classification & NO notice need to be issued separately as the payment of intt. becomes automatic, once it is held that excess drawback has to be repaid.	M/s **CPS Textiles (P) Ltd** V. Joint Secretary 2010 (255) E.L.T. 228 (Mad.)
72	Can the time limit prescribed u/s 48 of the custom act, 1962 for clearance of the goods within 30 days be read as time limit for filing of bill of entry u/s 46 of the act?	The high court held that the time limit prescribed u/s 48 for clearance of the goods within 30 days cannot be read into section 46 & it cannot be inferred that sec. 46 prescribes any time limit for filing of BOE.	CCUs V. **Shreeji Overseas (India) Pvt. Ltd.** 2013 (289) ELT 401 (Guj.)
73	Whether the issue of the imported goods warehoused in the premises of 100% EOU for manufacture/production/processing in 100% EOU would amts. to clearance for home consumption?	The Tribunal held that imported goods warehoused in the premises of a 100% EOU (which is licensed as a custom bonded W/H) & used for the purpose of manufacturing in bond as authorized u/s 65 of the custom Act, 1962, CANNOT be treated to have been removed for home consumption.	**Paras Fab International** V. CCE 2010 (256) E.L.T. 556 (Tri-LB)
74	Is the adjudicating authority required to supply to the assesse copies of the documents on which it proposes to place reliance for the purpose of re- quantification 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. Thereafter the assessee might furnish their explanation thereon and might provide additional evidence, in support of their claim.	**Kemtech International Pvt. Ltd.** v. CCus. 2013 (292) E.L.T. 321 (S.C.)
75	Can delay in filing appeal to CESTAT due to the mistake of the counsel of the appellant, be condoned?	The High Court held that the Tribunal ought to have taken a lenient view in this matter as the appellant was not going to gain anything by not filing the appeal and the reason for delay in filing appeal as given by the appellant was the mistake of its counsel who had also filed his personal affidavit.	**Margara Industries Ltd.** v. Commr. of C. Ex. & Cus. (Appeals) 2013 (293) E.L.T. 24 (All.)
76	Can a writ petition be filed against an order passed by the CESTAT under section 9C of the Customs Tariff Act, 1975?	The High Court held that it would not be appropriate for it to exercise the jurisdiction under Article 226 of the Constitution, since an alternate remedy by way of an appeal was available in accordance with law. The High Court thus, dismissed the petition leaving it opens to the assessee to take recourse to the appellate remedy.	**Rishiroop Polymers Pvt. Ltd.** v. Designated Authority 2013 (294) E.L.T. 547 (Bom.)
77	Can customs duty be demanded under section 28 and/or section 125(2) of the Customs Act, 1962 from a person dealing in smuggled goods when no such goods are seized from him?	The High Court held that Tribunal was justified in holding that no duty is leviable against the assessee as he is neither the importer nor the owner of the goods or was in possession of any goods.	CCus. v. **Dinesh Chhajer** 2014 (300) E.L.T. 498 (Kar.)
78	Can tribunal condone the delay in filing of an appl. consequent to review by the committee of chief comm. if it is satisfied that there was sufficient cause for not presenting the appl. within the prescribed period?	The HC ruled that the tribunal was competent to invoke sec. 129 A (5) whr an appl. u/s 129D (4) had not made within the prescribed time & condone the delay in making such appl. if it was satisfied that thr was sufficient cause for not presenting the appl. within the prescribed period.	**Thakker Shipping Pvt. Ltd.** V. comm. of custom (General) 2012 (285) ELT 321 (SC)
79	Whether ext. period of limitation for demand of customs duty can be invoked in a case whr the assesse had sought a clarification about exemption from a wrong authority?	The SC held that mere non-payment of duties could not be equated with collusion or willful misstatement or suppression of facts as then thr would be no form of non-payment which would amount to ordinary defaults. The apex court opined that something more must be shown to construe the acts of the assesse as fit for the appl. of the proviso.	**Uniworth Textile Ltd.** V. CCEx 2013 (288) ELT 161 (SC)

S.NO.	ISSUE	DECISION	CASE LAW
80	Whether interest is liable to be paid on delayed refund of special CVD arising in pursuance of the exemption granted vide Notification No. 102/2007 Cus dated 14.09.2007?	The High Court held that : (i) It would be a misconception of the provisions of the Customs Act, 1962 to state that notification issued under section 25 of the Customs Act, 1962 does not have any specific provision for interest on delayed payment of refund. (ii) When section 27 of the Customs Act, 1962 provides for refund of duty and section 27A of the Customs Act, 1962 provides for interest on delayed refunds, the Department cannot override the said provisions by a Circular and deny the right which is granted by the provisions of the Customs Act, 1962 and CETA. (iii) Paragraph 4.3 of the Circular No. 6/2008 Cus. dated 28.04.2008 being contrary to the statute has to be struck down as bad.	**KSJ Metal Impex (P) Ltd.** v. Under Secretary (Cus.) M.F. (D.R.) 2013 (294) ELT 211 (Mad.)
81	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 High Court held that duly appointed steamer agent of a vessel, would be liable to penalty. However, steamer agent, if innocent, could work out his remedy against the shipper for short-landing. The High Court also clarified that in view of section 42 under which no conveyance can leave without written order, there is an automatic penalty for not accounting of goods which have been shown as loaded on vessel in terms of Import General Manifest. There is no requirement of proving mens rea on part of person-in-charge of conveyance to fall within the mischief of section 116 of the Customs Act.	**Caravel Logistics Pvt. Ltd.** v. Joint Secretary (RA) 2013 (293) ELT 342 (Mad.)
82	Where goods have been ordered to be released provisionally under section 110A of the Customs Act, 1962, can release of goods be claimed under section 110(2) of the Customs Act, 1962?	The remedy of provisional release is independent of remedy of claiming unconditional release in the absence of issuance of any valid show cause notice during the period of limitation or extended limitation prescribed under section 110(2) of the Customs Act, 1962.	**Akanksha Syntex (P) Ltd.** v Union of India 2014 (300) E.L.T. 49 (P & H)
83	Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods?	The Apex court held that the smuggled goods could NOT be considered as "Imported Goods" for the purpose of benefit of the exemption notification.	**M. Ambalal & Co.** V. CCus. (Prev.), Mumbai 2010 (260) E.L.T. 487 (SC)
84	Is it mandatory for the revenue officer to make available the copies of the seized documents to the person from whose custody such doc. Were seized?	The High court directed the revenue to make available the copies of the document asked for by the assessee, which was seized during the course of the seizure action.	**Manish Lalit kumar Bavishi** V. Addl. DIR General, DRI 2011 (272) E.L.T. 42 (Bom.)
85	Whether the smuggled goods can be re-exported from the customs area without formally getting them release from confiscation?	The Government noted that the passenger had grossly mis- declared the goods with intention to evade duty and smuggle the goods into India. So the re-export of said goods cannot be allowed under Section 80 of Customs Act.	***Hemal K. Shah*** *2012 (275) ELT 266 (GOI)*
86	Is judicial review of the order of the Settlement Commission by the High Court or Supreme Court under writ petition/special leave petition, permissible?	The Court held 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 and not with the decision of the Settlement Commission.	**Saurashtra Cement Ltd.** v. CCus. 2013 (292) E.L.T. 486 (Guj.)
87	In case of a settlement comm.'s order, can the assessee be permitted to accept what is favorable to them & reject what is not?	The court opined that the appellant could NOT be permitted to dissect the settlement comm.'s order with a view to accept what is favorable to them & reject what is not	**Sanghvi Reconditioners (P) Ltd** V. UOI 2010 (251) E.L.T. 3 (SC)
88	Does the settlement comm. have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the revenue?	The High court held that the settlement comm. has jurisdiction to deal with the Q. relating to the recovery of drawback erroneously paid by the revenue.	UOI V. **Cus. & C. Ex Settlement commission** 2010 (258) E.L.T. 476 (Bom.)

S.NO.	ISSUE	DECISION	CASE LAW
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 section 150 of the Customs Act, 1962?	The High Court held that Department cannot plead that the Customs Act, 1962 provides for the payment of interest only in respect of refund of duty and interest and hence, the assessee would not be entitled to interest on the balance of the sale proceeds which were directed to be paid by the Settlement Commission. The High Court clarified that acceptance of such a submission would mean that despite an order of the competent authority directing the Department to grant a refund; the Department can wait for an inordinately long period to grant the refund. The High Court directed the Department to pay interest from the date of approval of proposal for sanctioning the refund.	**Vishnu M Harlalka** v. Union of India 2013 (294) ELT 5 (Bom)
90	Can a former director of a co. be held liable for the recovery of the customs dues of such company?	The court held that thr was no prov. in the custom act, 1962 corresponding to sec. 179 of the IT acts, 1961 or sec. 18 of the CST, 1956 which might enable the revenue authorities to proceeds against director of co. who were not the defaulters.	**Anita Grover** V. CCEx 2013 (288) ELT 63 (Del.)

Note:

- ✓ Refer to Module of ICAI for more clarity, it's only meant for quick revision.
- ✓ Once counter check each case law's decision at your end too.
- ✓ There has been some amendment's in past six months in bare law, due to which there is NO relevance of few case laws narrated above. But such case laws have been considered in case law module of ICAI, so it is hereby included in summary.

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