CATEGORY A				
Name	Issue	Related law	Logic behind decision	Conclusion
EXCISE				
Basic Concepts				
Balrampur Chini Mills Ltd.	Whether bagasse which is a marketable product can be subjected to ED	Circular 904/24/09-CX:-If duty on bagasse or other waste product arising during course of mfr & capable of being sold is Nil or exempt from duty vide E/N.Then mfrr is required to reverse ccr on inputs used in mfr of exempted & dutiable goods @ 6% of value of exempted goods u/r 6(3) of CCR,04	• SC held that bagasse is not a manufactured product. • ExplN. to S.2(d) deems bagasse as a marketable product but it does not make it a manufactured product. • Reversal u/r 6(3) is required where assessee **MANUFACTURES** exempt goods as well as dutiable product. • Since bagasse is not a mfrd product.R.6(3) does not apply to it.	HC quashed CBEC circular 904/24/09-CX
CER,2002				
UM cables Ltd.	Can export rebate claim be merely for non-prodN. of org. & duplicate copies of ARE-1 when evidence for export of goods is available	N/N 19/2004 specifies conditions as well as procedure for grant of rebate of ED paid on exported goods or R/M u/r 18 of CER,02	• Procedure cannot be raised to the level of a mandatory requirement. • While conditions &limitations for grant of rebate are mandatory, matters of procedure are directory. • Procedure specified in N/N 19/2004 is aimed to satisfy excise authority that the goods have been exported & duty on R/M//FG has been paid.Exporter may satisfy the authorities by producing other convincing evidence about that export of goods & payment of ED.	Bombay HC ruled that non-prodN. Of ARE-1 forms cannot invalidate claim.
Rajasthan Textile Mills	In case of export of goods u/r 18 of CER,02 ,is it possible to claim rebate of duty on excisable goods as well as of duty paid on materials used in mfr of such goods	Rule 18-Where any goods are exported, the Central Government can grant rebate of the duty paid on such excisable goods **OR** the rebate of duty paid on materials used in the manufacture or processing of such goods exported. *(Assessee contended that ''or'' should be read as ''and'')*	• Word ''or'' is read as ''and'' only when literal rule of interpretation gives absurd meaning.However,in the present case the word ''or'' clearly indicates the intention of legislature to provide benefit of rebate of duty paid on either R/M or FG. • There are 2 separate notN. For claiming rebate on R/M & FG exported. (N/N-19/2004 for R/M & N/N-21/2004 for FG).it indicates that rebate cannot be claimed simultaneously on both. • Similar form ARE-2 for claiming rebate of duty paid on R/M as well as for claiming rebate of duty paid on FG does not mean that erabte is available on both.	Contention of assessee is not correct
Balaji Trading Co.	In a case where the	Rule 25 of CER,02 --Provides for penalty on	• Rule 25 does not apply to Balaji Trading Co. BECAUSE	no penalty can be

	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?	**ANY PRODUCER, MANUFACTURER, REGISTERED PERSON OF A WAREHOUSE OR A REGISTERED DEALER** not exceeding the duty on the excisable goods in respect of which any of the specified contravention have been committed, or `2,000, whichever is greater. The offending goods are also liable to confiscation.	penalty can be imposed on 4 mentioned persons only. • BTC is neither producers nor manufacturers of the goods nor are they the registered persons of a warehouse in which the said goods had been stored. The respondents are also not the registered dealers.	imposed under Rule 25 on Balaji Trading Co.
CCR,2004				
Satish Industries	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?	<u>Rule 4 of CCR,04</u> --Credit of ED paid iro capital goods received in a factory or in the premises of the provider of output service or outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory at any point of time in a given financial year as under: a. Upto 50% in the same financial year b. Balance in one or more subsequent financial years provided the capital goods is still in the possession and use of the manufacturer or the output service provider.	• No prejudice was caused to the revenue	If 50% ccr on CG pertaining to subsequent FY which had been wrongly availed in the 1st year had not been not utilized till the commencement of the subsequent FY, the same could be upheld.
Prag Bosimi synthetics Ltd.	Can ccr. of duties other thsn NCCD br used to pay NCCD.	Rule 3(7)(b) of CCR,04 provides that ccr of NCCD & other duties shall be utilized for payment of ED leviable under various statutes **RESPECTIVELY.**	• HC stressed on the word ''respectively'' as it confined utilization of ccr of duty under a particular statute for payment of duty under that statute only. • However,it does not imply vice-versa. • Merely because ccr of NCCD can be utilized only for payment for oayment of NCCD,it does not mean that ccr of any other duty cannot be utilized fro payment of NCCD. (***Note-*** *CENVAT credit of only National Calamity Contingent duty (NCCD) shall be utilised for payment of the said NCCD payable on mobile phones)*	
KCP Ltd.	Can ccr be vailed on m/c purchased for being used in setting up a sugar plant in	<u>Conditions for availing ccr on inputs</u>: -Duty must be paid on inouts -Such inputs should be used in mfr of final product in factory of mfrr	• Since the sugar plant was set-up in Vietnam,it could not be said that the plant was mfrd in the factory of assessee.Thus,no duty was paid on sugar	

	foreign country when the same are not used in factory premises & no duty is paid on FP viz.sugar plant	-ED must be levied on final product Goods u/c 84 of CEA shall be treated as capital goods u/s 2(a) & ccr. on duty paid can be availed if these are used (1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or (2) outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory	plant.Therefore,there would not be any Q. of availing cr. of duty paid on inputs. • Bought-out m/c was not used in mfr of m/c(which had been transported along with bought-out m/c to Vietnam) i.e. bought-out m/c was not used in assessee's factory premises.Therefore,necessary condition for availing ccr. on CGs could not be fulfilled.	
Tata motors Ltd.	Can PDI & free after sales services charges be included in TV when <u>they are not charged by assesse to buyer.</u>	<u>Sec. 4(3)(d)</u> - "transaction value" means the price **ACTUALLY PAID OR PAYABLE** for the goods, when sold, and includes in addition to the amount charged as price, any amount that the **BUYER IS LIABLE TO PAY** to (.....)	• As per S. 4(3)(d) any sum can be included in TV only when they were charged by assese from buyer	Bombay HC
Castrol India Ltd.	Can appellate authorities/courts permit assesse to pay penalty of 25% beyond 30 days of communication of order of adjudicating authority as prescribed under S. 11AC.	In case of fraud txn captured during any audit,investigation or verification[Captured Txn]—If amount of duty+Intt is paid within 30 days,then,penalty is reduced to 25% of duty from 50%.However,reduced penalty is also required to be paid within 30 days of comm. Of order of CEO.	• Section 11 AC is intended to encourage payment of tax due at the earliest without resorting to unnecessary lawsuits. • If appellate authority is allowed to permit assesse to pay 25% of penalty within 30 days of communication of appeal order, it would defeat the object of which incentive under this section is given. • However where Duty was increased by the appellate authority in the appellate proceedings, Then Reduced Penalty i.e 25% of the increased Duty allowed if paid within 30 days of the communication of the order for the appellate authority. The Gujarat High Court has taken a view contrary to the abovementioned opinion of • *(Bombay High Court in case of Ratnamani Metals and Tubes Ltd. wherein the High Court held that an option can also be granted to the assessee to deposit the entire dues along with interest and 25% penalty within a period of 30 days of communication of the order of Tribunal.)*	
Metal Weld Electrodes	Which remedy is available against a predeposit order passed by CESTAT?? Is it an APPEAL to HC or a WRIT PETITION to HC.	<u>Section 35F of CEA/S.129E of CA,62</u> --Where in any appeal, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of the authorities or any penalty levied under this Act, the person appealing against such decision or order shall first deposit the duty demanded or penalty levied with the	• There is a vital difference between sub-sections (1) and (2) of section 35G.The words "in appeal" is visibly absent under sub-section (2). • The words "in appeal" cannot be confined to mean only final orders passed in appeal. INTERIM ORDERS ARE ALSO ORDERS PASSED IN APPEAL; they are not passed outside the scope of appeal or as independent orders.	Order passed by the CESTAT in terms of section 35F of the Central Excise Act, 1944 is appealable in terms of section 35G of the Excise

		adjudicating authority. Section 35G of CEA/130 of CA,62 – (1) An appeal shall lie to the HC from "**EVERY ORDER PASSED IN APPEAL** by CESTAT" (not being order relating to AV or RoD), if the HC is satisfied that the case involves a substantial Q. of law (2)CCE or the other party aggrieved by "**ANY ORDER PASSED BY** THE APPELLATE TRIBUNAL" may file an appeal to the HC	• Unless there is a specific bar in the statute itself against filing appeal against interim orders,the scope of filing appeal contemplated under Sections 35G cannot be narrowed down. • There cannot be any uniform presumption that no substantial Q. of law would arise in all pre-deposit orders.It would depend upon facts/circumstances of each case. • The contention of the assesse that granting of short time to comply with the predeposit orders would prevent them from filing an appeal before the HC is not correct.	Act, 1944
		Classification		
Elex Knitting Machinery Co.	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?	Benefit of exemption could be availed only when the company is manufacturing the goods under its own brand name or the brand name being used belonged to a sister concern of that company.	• Proprietor of Elex Knitting Machinery Co. was one of the partners in Elex Engineering Works. • Being the co-owner of the brand name of ELEX, he could not be said to have used the brand name of **anothe**r person.	Appellant was eligible to claim benefit of the SSI exemption
		Demand & Recovery		
Can the directors of the company be held liable for the recovery of CUSTOMS dues on the company?	Anita Grover	Section 142 of CA,62 -- Either of the two methods can be followed to recover the dues :- → To deduct the amount so payable from any money owing to **SUCH PERSON**. →By detaining and selling any goods belonging to **SUCH PERSON.** If the amount cannot be recovered from such ,either of the procedures can be followed to recover the dues :- →Prepare a Certificate specifying the amount due from **SUCH PERSON** and send it to the Collector of the district in which **SUCH PERSON** owns any property or resides or carries on his business. Thereon the said collector shall recover the dues as if it were an	• Defaulter is the person from whom dues are recoverable under the Act, which in the present case undoubtedly is the company. • Section 142 and the relevant rules make it clear beyond doubt that it is only the defaulter against whom steps may be taken under Rules. • There is no provision in the Customs Act, 1962 corresponding to ITA & CST. • Since a company was a separate person having a distinct identity, independent from its shareholders and directors,the dues recoverable from the COMPANY cannot, in the absence of a statutory provision, be recovered from the DIRECTOR.	A former director of a company cannot be held liable for the recovery of the CUSTOMS dues of such company.