		recovered from its directors when the private limited company was under liquidation		
Vandana Bidyut Chatterjee	Can a former director of a company be held liable for the recovery of the excise dues of such company?		• In a similar case of Anita Grover (Del.) that a former director of a company cannot be held liable for the recovery of the customs dues of such company. • *State ratio decidendi of anita grover case.*	
Delphi Automotive Systems Ltd.	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?	Section 11AC -- Where any excise duty:- (a) has not been levied (b) has not been paid (c) has been short-levied (d) has been short-paid (e) has been erroneously refunded by the reason of:- • fraud • collusion • any wilful mis-statement • suppression of facts • contravention of any of the provisions of this Act or of the rules made thereunder **WITH INTENT TO EVADE PAYMENT OF DUTY,** the person who is liable to pay duty as determined under section 11A(10) shall also be liable to pay a penalty.	• Mens rea (guilty mind) is an essential part for levy of penalty under section 11AC. • 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.	No penalty u/s 11AC can be levied
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?	S & S Power Switch Gear Ltd.	Section 37B -- CBEC shall issue instructions to officers who are bound to follow them. These instructions or orders can be for the purpose of ensuring uniformity in the classification of excisable goods or with respect to levy of duty of excise on goods. However, such orders cannot be passed to direct any officer to dispose of a case in a particular manner or interfere with the discretion of CIT(A).	• A demand under Section 11A of the Act cannot be raised for any date prior to the date of the Board Circular and the time-limit as provided under Section 11A of the Act is not available to the Department.	*The principle enunciated in this judgment is that a deptt cir,issued u/s37B,which clarifies a classification issue,can only apply PROSPECTIVELY from date of cir. & cannot be applied retrospectively.*
		Appeal procedures		
Texcellence Overseas	Can the High Court condone the delay - beyond the statutory period of 3 months prescribed	Section 35 of CEA,44 -- An appeal needs to be filed with CCE(A) within 60 days from the date of the communication of the order sought to be appealed against. However, CCE(A) is empowered to condone the delay for a period	• None of the appellate authorities had decided the Q. on merit after the second round of litigation began and therefore, the Q. of merger would not arise until the matter is decided on merits. • Department did not dispute the fact that the	High Court, by invoking its extraordinary jurisdiction, quashed the

	under section 35 of the Central Excise Act, 1944 - in filing an appeal before the Commissioner (Appeals)?	of 30 days if he is satisfied with the sufficiency of the cause of the delay.	petitioner had extremely good case on merit. • Petitioner, while challenging the impugned order before the Commissioner (Appeals), had also preferred an application for condonation of delay and substantiated the same with sufficient and acceptable grounds. • Total length of delay was very small (*2 months)*and the case had extremely good ground on merits to sustain. • HC held that such powers are required to be exercised very carefully and in extraordinary circumstances in appropriate cases, where otherwise the Court would fail in its duty if such powers are not invoked.	order which held that refund was erroneously granted.
Vadilal Gases Limited	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	Clause (d) of 1st proviso to section 32E(1) of CEA –No applN. To setcom shall be made unless the applicant, while filing the application, has not deposited the additional amount of excise duty accepted by him along with interest due.	• If an application is made without complying with the first proviso, it would be defective and not maintainable. • Applications which are defective and non-maintainable in terms of the first proviso to section 32E(1) cannot be *decided or rejected or declared to have abated* under section 32F(1). • Setcom in its discretion may allow time to applicants to remove the defects. • Rejection of application cannot be taken as amounting to a final order, as that would render the mandatory bar created by clause (d) of proviso to section 32E(1) useless. • Order rejecting the application for non-compliance with clause (d) of proviso to section 32E(1) would amount to administrative/technical order and it would not bar the second application filed by the assesee after depositing the additional excise duty and interest would be maintainable.	

	duty along with interest, would be maintainable?			
Habib Agro Industries	Can delay in filing appeal to CESTAT for the reason that the person dealing with the case went on a foreign trip and on his return his mother expired, be condoned?	<u>Section 35B of CEA,</u>44 –Appeal to CESTAT shall be filed within three months from the date on which the order sought to be appealed against is communicated to the CCE/other party preferring the appeal. --**CESTAT MAY ADMIT AN APPEAL AFTER THE EXPIRY OF 3M, IF IT IS SATISFIED THAT THERE WAS SUFFICIENT CAUSE FOR NOT PRESENTING IT WITHIN THAT PERIOD**.	• Reason shown [*foreign trip/mother's death]* cannot be considered as unreasonable. • There does not appear to be any deliberate neglect on the part of the authorised representative to file the appeals. In that view,	Order of the Tribunal is set aside & matter is remanded back to the Tribunal
Margara Industries Ltd.	Can delay in filing appeal to CESTAT due to the mistake of the counsel of the appellant, be condoned?		• Appellant's counsel had admitted his mistake by filing personal affidavit. • CESTAT ought to have taken a merciful view in the matter when the appellant cannot be said to have acted malafidely and would not have gained anything from not filing the appeal within limitation.	Tribunal ought to have condoned the delay