

CASE LAWS (EXCISE)

1) Can improvement in quality of base bitumen by adding and mixing polymers and additives to it, amount to manufacture?

❖ Relevant Case –

- CCE v. Osnar Chemical Pvt. Ltd. (2012) (SC)

❖ Supreme Court's Decision –

- The Supreme Court held that –
 - Mere improvement in quality did not amount to manufacture. It is only when the change or a series of changes take the commodity to a point where commercially it could no longer be regarded as the original commodity but was instead recognized as a new and distinct article that manufacture could be said to have taken place.
 - As per section 2(f)(ii) of the Central Excise Act, 1944, the expression manufacture includes any process which is specified in relation to any goods in the Section or Chapter Notes of First Schedule to the Tariff Act.
 - Therefore, since the said process merely resulted in the improvement of quality of bitumen and no distinct commodity emerged, and the process carried out by the assessee had nowhere been specified in the Section notes or Chapter notes of the First Schedule, the process of mixing polymers and additives with bitumen did not amount to manufacture.

2) Does the process of generation of metal scrap or waste during the repair of worn out machineries/parts of cement manufacturing plant amount to manufacture?

❖ Relevant Case –

- Grasim Industries Ltd. v. UOI (2011) (SC)

❖ Supreme Court's Decision –

- The Apex Court held that –
 - For imposition of excise duty u/s 3 of the Central Excise Act, two conditions-goods being excisable goods u/s 2(d) and being manufactured u/s 2(f), need to be satisfied conjunctively.
 - The metal scrap and waste were excisable goods u/s 2(d) of the Act. The manufacture in terms of section 2(f), inter alia, includes any process incidental or ancillary to the completion of the manufactured product. The 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, the process of repair and maintenance of the machinery of the cement manufacturing plant, in which metal scrap and waste arise, had no contribution or effect on the process of manufacturing of the cement, (the end product). The metal scrap and waste was the by-product of the repairing process.
 - Therefore, the generation of metal scrap or waste during the repair of the worn out machineries/parts of cement manufacturing plant did not amount to manufacture.

3) Are the physician samples excisable goods even when they are being statutorily prohibited from being sold?

❖ Relevant Case –

- Medley Pharmaceuticals Ltd. v. CCE & C. (2011) (SC)

❖ Supreme Court's Decision –

- The Supreme Court held that –
 - Merely because a product was statutorily prohibited from being sold, would not mean that the product was not capable of being sold.
 - Moreover, the Drugs and Cosmetics Act, 1940 (Drugs Act) and the Central Excise Act, 1944 operated in different fields. The restrictions imposed under Drugs Act could not lead to non-levy of excise duty under the Central Excise Act thereby causing revenue loss.
 - Therefore, since physician sample was capable of being sold in open market, the physician samples were excisable goods and were liable to excise duty.

4) Whether assembling of the testing equipment's for testing the final product in the factory amounts to manufacture?

❖ Relevant Case –

- Usha Rectifier Corpn. (I) Ltd. v. CCEX. (2011) (SC)

❖ Supreme Court's Decision –

- The Supreme Court held that –
 - Once the appellant had themselves made admission regarding the development of testing equipments in their own Balance Sheet, which was further substantiated in the Director's report, it could not make contrary submissions later on.
 - Assessee's stand that testing equipments were developed in the factory to avoid importing of such equipments with a view to save foreign exchange, confirmed that such equipments were saleable and marketable.
 - Therefore, duty was payable on such testing equipments used for testing the final product.

5) Can a product with short shelf-life be considered as marketable?

❖ Relevant Case –

- Nicholas Piramal India Ltd. v. CCEX., Mumbai (2010) (SC)

❖ Supreme Court's Decision –

- The Supreme Court held that –
 - Short shelf-life could not be equated with no shelf-life and would not ipso facto mean that it could not be marketed. 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 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.

6) Whether the machine which is not assimilated in permanent structure would be considered to be moveable so as to be dutiable under the Central Excise Act?

❖ **Relevant Case –**

- CCE v. Solid & Correct Engineering Works and Ors (2010) (SC)

❖ **Supreme Court's Decision –**

- The Court observed that –
 - The machine was fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth, but because a foundation was necessary to provide a wobble free operation to the machine.
 - Therefore, an attachment without necessary intent of making the same permanent cannot constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently.
 - Hence, the plants in question were not immovable property so as to be immune from the levy of excise duty. Consequently, duty would be levied on them.

7) Does the process of preparation of tarpaulin made-ups after cutting and stitching the tarpaulin fabric and fixing eye-lets in it, amount to manufacture?

❖ **Relevant Case –**

- CCE v. Tarpaulin International (2010) (SC)

❖ **Supreme Court's Decision –**

- The Apex Court opined that –
 - Stitching of tarpaulin sheets and making eyelets did not change basic characteristic of the raw material and end product. The original material used i.e., the tarpaulin, was still called tarpaulin made-ups even after undergoing the said process.
 - The process did not bring into existence a new and distinct product with total transformation in the original commodity.
 - Hence, the process was not a manufacturing process and no duty would be levied.

8) Does the process of cutting and embossing aluminium foil for packing the cigarettes amount to manufacture?

❖ **Relevant Case –**

- CCE v. GTC Industries Ltd. (2011) (Bom.)

❖ **High Court's Decision –**

- The High Court pronounced that –
 - Cutting and embossing did not transform aluminium foil into distinct and identifiable commodity. It did not change the nature and substance of foil. The said process did not render any marketable value to the foil, but only made it usable for packing.
 - Cut to shape/embossed aluminium foils used for packing cigarettes could not be considered as distinct marketable commodity and hence, it was not liable to excise duty.

9) Does the activity of packing of imported compact discs in a jewel box along with inlay card amount to manufacture?

❖ **Relevant Case –**

- CCE v. Sony Music Entertainment (I) Pvt. Ltd. (2010) (Bom.)

❖ **High Court's Decision –**

- The High Court held that –
 - None of the activity that the assessee undertook involved any process on the compact discs that were imported.
 - Therefore, the activities carried out by the respondent did not amount to manufacture since the compact disc had been complete and finished when imported by the assessee.

10) Whether bagasse which is a marketable product but not a manufactured product can be subjected to excise duty?

❖ **Relevant Case –**

- Balrampur Chini Mills Ltd. v. Union of India (2014) (All.)

❖ **High Court's Decision –**

- The High Court held that –
 - Supreme Court in its judgement given vide order dated 21.7.2010 in Civil Appeal No.2791 of 2005 has held that reversal of 8% amount (now 6%) is not applicable in case of bagasse as the same is not a final product, but a waste. Bagasse is never manufactured, but it only emerges as a waste from the crushing of sugarcane for the manufacture of final product, namely, sugar and thus, rule 6(2) and rule 6(3) would not be applicable.
 - Explanation added to section 2(d) deems the goods, which are capable of being bought and sold, to be marketable.
 - Therefore, 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.
 - Hence, The High Court quashed the CBEC's Circular dated 28-10-2009.

11) Whether contaminated, under or over filled bottles or badly crowned bottles amount to manufactured finished goods which are required to be entered in R.G.-1 register, and which are exigible to payment of excise duty?

❖ **Relevant Case –**

- Amrit Bottlers Private Limited v. CCE (2014) (All.)

❖ **High Court's Decision –**

- The High Court held that –
 - 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.
 - Under filled or over filled or badly crowned caps bottles were not marketable under the Legal Metrology Act, 2009. Consequently, such goods could not be entered in R.G. 1 register.

- Therefore, no excise duty was payable on contaminated, under filled, over filled and badly crowned bottles.

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?

❖ **Relevant Case –**

- CCEx. v. Ciens Laboratories (2013) (SC)

❖ **Supreme Court's Decision –**

- The Apex Court held that –
 - The cream was not primarily intended to protect the skin but was meant for treating or curing dry skin conditions of the human skin.
 - When a product contains pharmaceutical ingredients that have therapeutic or prophylactic or curative properties, the relevant factor is the curative attributes of such ingredients that render the product a medicament and not a cosmetic.
 - 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 across the counter are cosmetics.
 - Prior to adjudicating upon whether a product is a medicament or not, it ought to be seen as to how do the people who actually use the product, understand it to be. A product that is used mainly in curing or treating ailments or diseases and contains curative ingredients, even in small quantities, is to be treated as a medicament.
 - Hence, 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.

13) Whether a heading classifying goods according to their composition is preferred over a specific heading?

❖ **Relevant Case –**

- Commissioner of Central Excise, Bhopal v. Minwool Rock Fibres Ltd. (2012) (SC)

❖ **Supreme Court's Decision –**

- The Supreme Court held that –
 - There was a specific entry which speaks of Slagwool and Rockwool under sub-heading 6803.00 chargeable at 18%, but 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.
 - It was not in dispute that the goods in question were those goods in which more than 25% by weight of one or more of red mud, press mud or blast furnace slag was used.
 - In a classification dispute, an entry which was beneficial to the assessee was required to be applied. Further, tariff heading specifying goods according to its composition should be preferred over the specific heading.
 - Hence, the goods were appropriately classifiable under Sub-heading 6807.10 of the Tariff.

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’?

❖ **Relevant Case –**

- CCE v. Wockhardt Life Sciences Ltd. (2012) (SC)

❖ **Supreme Court’s Decision –**

- The Supreme Court held that –
 - The factors to be considered for the purpose of the classification of the goods are the composition, the product literature, the label, the character of the product and the use to which the product is put to.
 - The product in question is used by the surgeons for the purpose of cleaning or degerming their hands and scrubbing the surface of the skin of the patient. Therefore, the product is basically and primarily used for prophylactic purposes i.e., to prevent the infection or diseases, even though the same contains very less quantity of the prophylactic ingredient.
 - Thus, the product can be 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.

15) Can the ‘soft serve’ served at McDonalds India be classified as “ice cream” for the purpose of levying excise duty?

❖ **Relevant Case –**

- CCEx. v. Connaught Plaza Restaurant (Pvt) Ltd. (2012) (SC)

❖ **Supreme Court’s Decision –**

- The Apex Court held that –
 - The object of the Excise Act is to raise revenue whereas the provisions of PFA are for ensuring quality control. Thus, the provisions of PFA have nothing to do with the classification of goods subjected to excise duty under a particular tariff entry.
 - The manner, 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 notwithstanding marketing strategies.
 - In the absence of a statutory definition or technical description, interpretation ought to be in accordance with common parlance principle and not according to scientific and technical meanings.
 - Further, a trade notice issued by the Mumbai Commissionerate relating to classification of softy ice-cream being sold in restaurant etc. dispensed by vending machine, indicated the commercial understanding of ‘soft-serve’ as ‘softy ice-cream’.
 - Therefore, soft serve was classifiable as “ice cream” and not as “other dairy produce”.

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?

❖ **Relevant Case –**

- CCEx v. Super Synotex (India) Ltd. (2014) (SC)

❖ **Supreme Court's Decision –**

- Supreme Court held that –
 - The amount paid or payable to the State Government towards sales tax, VAT, etc. is excluded as it is not an amount paid to the manufacturer towards the price, but an amount paid or payable to the State Government for the sale transaction.
 - What is not payable or to be paid as sales tax/VAT, should not be charged from the third party/customer, but if it charged and is not payable or paid, it is a part and should not be excluded from the transaction value.
 - Unless the sales tax is **actually paid** to the Sales Tax Department of the State Government, no benefit towards excise duty can be given under the concept of "transaction value" under section 4(3)(d) of Central Excise Act, 1944, for it is not excludible.
 - Thus, 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.

❖ **Notes:**

- The Supreme Court in the case of **CCE v. Maruti Suzuki India Limited (2014) (SC)**, held that –
 - There was no mention in the decision of the HPC about adjustment of this amount of sales tax concession against any scheme or any capital subsidy. The entitlement certificate also did not give any indication of deferment of tax or capital subsidy.
 - Therefore, since assessee retained 50% of the sales tax collected from customers which was neither actually paid to the exchequer nor actually payable to the exchequer, transaction value u/s 4(3)(d) of the Central Excise Act, 1944, would include the amount of such sales tax.

17) Whether CENVAT credit of the testing material can be allowed when the testing is critical to ensure the marketability of the product?

❖ **Relevant Case –**

- Flex Engineering Ltd. v. CCEx. (2012) (SC)

❖ **Supreme Court's Decision –**

- The Supreme Court held that –
 - The process of testing the customized packing machines was inextricably connected with the manufacturing process. Since, until this process was carried out in terms of the covenant in the purchase order, the manufacturing process was not complete; the machines were not fit for sale and hence, not marketable at the factory gate.
 - Therefore, the manufacturing process in the present case got completed on testing of the said machines.
 - Hence, the testing material used for testing the packing machines were inputs used in relation to the manufacture of the final product and would be eligible for CENVAT credit.

18) Will rule 6 of the CENVAT Credit Rules, 2004 apply, if the assessee clears an exempted by-product and a dutiable final product?

❖ **Relevant Case –**

- UOI v Hindustan Zinc Limited. (2014) (SC)

❖ **Supreme Court's Decision –**

- The Supreme Court held that –
 - Since in rule 6 of the CENVAT Credit Rules, 2004 the term used is 'final product' and not 'by-product', said rule cannot be applied in case of 'by-product' when such by-product emerged as a technological necessity.
 - If the Revenue's argument is accepted, it would amount to equating by-product with final product thereby obliterating the difference, though recognised by the legislation itself.
 - Therefore, Rule 6 of the CCR would not apply when manufacture of dutiable final product results in emergence of exempted by-product on account of technological necessity.

19) Can CENVAT credit of duties, other than National Calamity Contingent Duty (NCCD), be used to pay NCCD?

❖ **Relevant Case –**

- CCEx. v. Prag Bosimi Synthetics Ltd. (2013) (Gau.)

❖ **High Court's Decision –**

- The High Court held that –
 - As per rule 3(1) of the CENVAT Credit Rules, 2004 [CCR], a manufacturer or producer of a final product is allowed to take CENVAT credit of NCCD.
 - Rule 3(4) of CCR provides that CENVAT credit may be utilized for payment of any duty of excise on any final product.
 - Rule 3(7) of CCR limits the utilization of CENVAT credit in respect of NCCD as also other duties mentioned in rule 3(7)(b).
 - Rule 3(7)(b) provides that CENVAT credit in respect of NCCD and other duties shall be utilized towards payment of duty of excise leviable under various statutes respectively.
 - Therefore, 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.

20) Is assessee required to reverse the CENVAT credit availed on capital good destroyed by fire when insurance company reimburses value of such capital goods inclusive of excise duty?

❖ **Relevant Case –**

- CCE v. Tata Advanced Materials Ltd. (2011) (Kar.)

❖ **High Court's Decision –**

- The High Court held that –
 - The assessee had paid the premium and covered the risk of this capital goods and when the goods were destroyed in terms of the insurance policy, the insurance company had compensated the assessee. It was not a case of double benefit to assessee.
 - Therefore, 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. Excise Department cannot demand reversal of credit or payment of the said amount.

21) Whether penalty can be imposed on the directors of the company for the wrong CENVAT credit availed by the company?

❖ Relevant Case –

- Ashok Kumar H. Fulwadhya v. UOI (2010) (Bom.)

❖ High Court's Decision –

- The High Court held that –
 - The words “any person” used in rule 15(1) of the CENVAT Credit Rules, 2004 clearly indicate that the person who has availed CENVAT credit shall only be the person liable to the penalty.
 - Thus, directors of company could not be said to be manufacturer availing CENVAT credit and penalty cannot be imposed on them for the wrong CENVAT credit availed by the company.

22) Can CENVAT credit be taken on the basis of private challans?

❖ Relevant Case –

- CCEx. v. Stelko Strips Ltd. (2010) (P & H)

❖ High Court's Decision –

- The High Court held that –
 - In the case of **CCE v. M/s. Auto Spark Industries**, it was held that
 - Once duty payment is not disputed and it is found that documents are genuine and not fraudulent, the manufacturer would be entitled to MODVAT credit on duty paid on inputs.
 - In the case of **CCE v. Ralson India Ltd. (2006) (P & H)**, it was held that
 - If the duty paid character of inputs and their receipt in manufacturer's factory and utilization for manufacturing a final product is not disputed, credit cannot be denied.
 - Therefore, MODVAT 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.

23) 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 commission agent are eligible input services for claiming CENVAT?

❖ Relevant Case –

- CCEx v. Cadila Healthcare Ltd. (2013)

❖ High Court's Decision –

- The High Court held that –
 - i). With respect to 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, were input services eligible for CENVAT credit.
 - ii). With respect to the services provided by foreign commission agents, since the agents were directly concerned with sales 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. Thus, not eligible for CENVAT credit.

24) 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?

❖ **Relevant Case –**

- Sintex Industries Ltd. vs. CCEx (2013) (Guj.)

❖ **High Court's Decision –**

- The High Court held that –
 - The assessee itself had described the factory of its other division as a separate place of business by applying for separate central excise registration and obtained the registration.
 - Therefore, 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 (textile division). So, credit on inputs utilized to produce electricity which was supplied to a factory registered as a different unit (plastic division) would not be allowed.

25) Whether CENVAT credit can be availed of service tax paid on customs house agents' (CHA) services, shipping agents and container 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?

❖ **Relevant Case –**

- Commissioner v. Dynamic Industries Limited (2014) (Guj.)

❖ **High Court's Decision –**

- The High Court held that –
 - Any service used by the manufacturer directly or indirectly in relation to manufacture of final products and clearing of final products upto the place of removal would certainly be covered within the definition of input service. In this case, the place of removal would be the port.
 - As regards customs house agent service and shipping agents and container services, the definition of input service would cover these services, considering the nature of services and the place of removal being port. The services of overseas commission agent have not been used directly or indirectly in the manufacture or clearance of final product.
 - Therefore, CENVAT credit in respect of (i) customs house agents services, (ii) shipping agents and container services and (iii) cargo handling services is admissible, but the CENVAT credit availed for the services of overseas commission agent is not allowed.

26) Can CENVAT credit availed on inputs (contained in the work-in-progress destroyed on account of fire) be ordered to be reversed under rule 3(5C) of the CENVAT Credit Rule, 2004?

❖ **Relevant Case –**

- CCE v. Fenner India Limited (2014) (Mad.)

❖ **High Court's Decision –**

- The High Court held that –
 - Gujarat High Court in the case of **CCE v. Biopac India Corporation Limited (2010)** held that –
 - The goods destroyed in fire after being used for many years cannot be said as not used in the manufacture of final product and the assessee need not reverse the credit availed on such inputs.
 - Further, rule 3(5C) can be invoked where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002.
 - Therefore, as 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.

27) Is a cellular mobile service provider entitled to avail CENVAT credit on tower parts & pre-fabricated buildings (PFB)?

❖ **Relevant Case –**

- Bharti Airtel Ltd. v. CCEx. Pune III (2014) (Bom.)

❖ **High Court's Decision –**

- The High Court held that –
 - A combined reading of rule 2(a)(A)(i), 2(a)(A)(iii) and 2(a)(2) indicates that only the category of goods mentioned in rule 2(a)(A)(i) and 2(a)(iii) and which are used for providing output services can qualify as capital goods.
 - Since the various components of the BTS had independent functions, it could not be classified as single integrated/composite system so as to be capital goods. So, tower and parts thereof and PFB would not fall under rule 2(A)(a)(i) of CCR.
 - It would be misconceived and absurd to accept that tower is a part of antenna. The towers are structures fastened to the earth on which the antennas are installed and hence, cannot be considered to be an accessory or part of the antenna.
 - Since the towers were admittedly immovable structures and non-marketable and non-excisable and hence, could neither be regarded as capital goods under rule 2(a) nor could be categorized as 'inputs' under rule 2(k) of the CCR.
 - Therefore, the mobile towers and parts thereof and shelters / prefabricated buildings are neither capital goods under rule 2(a) nor 'inputs' under rule 2(k) of the CCR. Hence, CENVAT credit of the duty paid thereon by a cellular mobile service provider was not admissible.

28) (i) Whether sales commission services are eligible input services for availment of CENVAT credit? (ii) If there is any conflict between the decision of the jurisdictional High Court and the CBEC circular, then which decision would be binding on the Department? (iii) Also, if there is a contradiction between the decision passed by jurisdiction High Court and another High Court, which decision will prevail?

❖ **Relevant Case –**

- Astik Dyestuff Private Limited v. CCEx. & Cus. (2014) (Guj.)

❖ **High Court's Decision –**

- The High Court held that –
 - i). If there is any conflict between the decision of the jurisdictional High Court and the CBEC Circular, then decision of the jurisdictional High Court will be binding to the Department rather than CBEC Circular. Therefore, the assessee would not be entitled to CENVAT credit on sales commission services obtained by them.
 - ii). Merely because there might be a contrary decision of another High Court is no ground to refer the matter to the Larger Bench.
 - iii). When there are two contrary decisions, one of jurisdictional High Court and another of the other High Court, then the decision of the jurisdictional High Court would be binding to the Department and not the decision of another High Court.

29) Is interest payable under rule 7(4) of the Central Excise Rules, 2002, if amount of differential duty is paid in full before final assessment order is passed?

❖ **Relevant Case –**

- Ceat Limited v. CCE & C (2015) (Bom.)

❖ **High Court's Decision –**

- The High Court held that –
 - Liability to pay interest under rule 7(4) arises on any such amount payable to Central Government consequent to order for final assessment under rule 7(3).
 - If amount of differential duty is paid in full before the final assessment order is passed, provisions of rule 7(4) will not be applicable and hence, the interest would not be payable.

30) 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?

❖ **Relevant Case –**

- UM Cables Limited v. Union of India (2013) (Bom.)

❖ **High Court's Decision –**

- The High Court held that –
 - The objective of the procedure laid down in Notification No. 19/2004 CE (NT) dated 06.09.2004 and CBEC's Manual of Supplementary Instructions 2005 is to facilitate the processing of a rebate claim and to enable the authority to be duly satisfied that the two fold requirement of goods (i) having been exported and (ii) being duty paid is fulfilled.

- A 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.
- Therefore, while the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory.
- Hence, non-production of ARE-1 forms ipso facto cannot invalidate rebate claim. The 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) dated 06.09.2004.

31) 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?

❖ **Relevant Case –**

- Rajasthan Textile Mills v. UOI (2013) (Raj.)

❖ **High Court’s Decision –**

- The High Court held that –
 - The word “or” is interpreted as ‘and’ only when the literal interpretation of the word produces absurd results. However, in rule 18, if word “or” is taken to be disjunctive, no absurd result occurs.
 - Rule 19 provides benefit on the finished goods i.e. any excisable goods can be exported without payment of duty from the factory of producer. However, it does not provide for rebate of duty paid on the materials used in manufacture or processing of such goods.
 - Notification No. 19/2004-C.E. (N.T.) dated 06.09.2004 provides rebate of the whole of the duty paid on all excisable goods while Notification No. 21/2004-C.E. (N.T.) dated 06.09.2004 provides the rebate of whole of the duty paid on materials. Issuance of two difference notifications makes it clear that both the benefits cannot be claimed simultaneously.
 - Since a combined Form ARE-2 can be used to claim both the benefits, i.e. the rebate on finished goods or on inputs used in manufacture of such goods, it cannot be inferred out that the rebate is available on both i.e., finished goods as well as on the inputs.
 - Therefore, 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, but not on both.

32) Whether time-limit under section 11A of the Central Excise Act, 1944 would be applicable to recovery of amounts due under compounded levy scheme?

❖ **Relevant Case –**

- Hans Steel Rolling Mill v. CCEx. Chandigarh (2011) (SC)
- Prince Agro & Allied Industries v. Commissioner (2012) (SC)

❖ **Supreme Court’s Decision –**

- The Apex Court held that –
 - Compounded levy scheme is a separate scheme from the normal scheme for collection of excise duty on goods manufactured. Since the compounded levy scheme is a comprehensive scheme in itself, general provisions of the Central Excise Act and rules are excluded.
 - Therefore, importing one scheme of tax administration to a different scheme is inappropriate and would disturb smooth functioning of such unique scheme.
 - Hence, the time-limit under section 11A of the Central Excise Act, 1944 is not applicable to recovery of dues under compounded levy scheme.

33) In case the revenue authorities themselves have doubts about the dutiability of a product, can extended period of limitation be invoked alleging that assessee has suppressed facts?

❖ **Relevant Case –**

- Sanjay Industrial Corporation v. CCE (2015) (SC)

❖ **Supreme Court's Decision –**

- The Supreme Court held that –
 - Since Revenue authorities themselves had the doubts relating to excisability of process of profile cutting, the bona fides of the appellant could not be doubted.
 - Hence, extended period of limitation could not be invoked and penalty was set aside.

34) In a case where the assessee has been issued a show cause notice (SCN) regarding confiscation, is it necessary that only when such SCN is adjudicated, can the SCN regarding recovery of dues and penalty be issued?

❖ **Relevant Case –**

- Jay Kumar Lohani v. CCEx (2012) (MP)

❖ **High Court's Decision –**

- The High Court held that –
 - Since the subsequent show cause notice only formed prima facie view in regard to allegation, it could not be said to be issued after pre-judging the question involved in the matter.
 - Since it was not a case of show cause notice being issued without jurisdiction, adjudicating authority could not be restrained from proceeding further with the SCN.
 - Therefore, 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.

35) 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?

❖ **Relevant Case –**

- CCEx. v. Balaji Trading Co. (2013) (Del.)

❖ **High Court's Decision –**

- The High Court held that –
 - The penalty under rule 25(1) could be imposed only on four categories of persons: -
 - i). producer;
 - ii). manufacturer;
 - iii). registered person of a warehouse; or
 - iv). a registered dealer.
 - The respondents were neither producers nor manufacturers, neither were they registered persons of a warehouse in which the zarda had been stored nor were registered dealers.
 - Therefore, Rule 25(1)(c) would have no application in the case because said clause would also apply only in respect of four categories of persons mentioned in rule 25(1) of said rules.

36) 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?

❖ **Relevant Case –**

- Nanumal Glass Works v. CCEx. Kanpur, (2012) (All.)

❖ **High Court's Decision –**

- The High Court held that –
 - Section 37C(a) of the Central Excise Act, 1944, containing the provisions relating to service of decisions, orders, summons etc., 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**.
 - Therefore, when a decision is pronounced in the open court in the presence of the advocate of the assessee, who is the authorized agent of the assessee as per section 37C, the date of pronouncement of order would be deemed to be the date of service of order.

37) Whether the amendment made by Finance Act, 2013 in section 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?

❖ **Relevant Case –**

- Jay Balaji Jyoti Steels Limited v. CESTAT Kolkata (2015) (Ori.)

❖ **High Court's Decision –**

- The High Court held that –
 - Since for both “registered post” as well as “speed post”, receipts are required to be issued when articles are delivered, both “speed post” and “registered post” satisfy the requirement of section 28 of the Indian Post Office Act, 1898. The only difference between the two is that the charges payable for ‘speed post’ are higher as the same ensures delivery at an early date.
 - 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 original provision was introduced.
 - Therefore, insertion of words “or by speed post with proof of delivery” in section 37C(1)(a) of the Central Excise Act, 1944 is clarificatory and a procedural amendment and hence, would have retrospective effect.

38) 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)?

❖ **Relevant Case –**

- ICMC Corporation Ltd. v CESTAT, CHENNAI (2014) (Mad.)

❖ **High Court's Decision –**

- 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, on a technical adjustment made, the question of unjust enrichment as a concept does not arise.

39) Does the principle of unjust enrichment apply to State Undertakings?

❖ **Relevant Case –**

- CCEx v. Superintending Engineer TNEB (2014) (Mad.)

❖ **High Court's Decision –**

- The High Court held that –
 - Supreme Court in case of **Mafatlal Industries Ltd. v. Union of India (1997) (SC)** held that – The doctrine of unjust enrichment is a just and salutary doctrine. No person can seek to collect the duty from both ends. The power of the Court is not meant to be exercised for unjustly enriching a person. The doctrine of unjust enrichment is inapplicable to State. State represents the people of the country. No one can speak of the people being unjustly enriched
 - Therefore, the concept of unjust enrichment is not applicable as far as State Undertakings are concerned and to the State.

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?

❖ **Relevant Case –**

- Commissioner of C. Ex., Mumbai-III v. Tikitar Industries, (2012) (SC)

❖ **Supreme Court's Decision –**

- The Supreme Court held that –
 - The Revenue had not questioned the correctness or otherwise of the findings on the conclusion reached by the first appellate authority.
 - Therefore, 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.

41) Can re-appreciation of evidence by CESTAT be considered to be rectification of mistake apparent on record under section 35C(2) of the Central Excise Act, 1944?

❖ **Relevant Case –**

- CCE v. RDC Concrete (India) Pvt. Ltd. (2011) (SC)

❖ **Supreme Court's Decision –**

- The Apex Court held that –
 - It is well settled law that a mistake apparent on record must be obvious and patent mistake and the mistake should not be such which can be established by a long drawn process of reasoning.
 - CESTAT had reconsidered its legal view as it concluded differently by accepting the arguments which it had rejected earlier.
 - Hence, CESTAT exceeded its powers u/s 35C (2) of the Act. In pursuance of a rectification application, it cannot re-appreciate the evidence and reconsider its legal view taken earlier.

42) Can an appeal be filed before the Supreme Court against an order of the CESTAT relating to clandestine removal of manufactured goods and clandestine manufacture of goods?

❖ **Relevant Case –**

- CCE v. Fact Paper Mills Private Limited (2014) (SC)

❖ **Supreme Court's Decision –**

- The Supreme Court held that –
 - The appeals relating to clandestine removal of manufactured goods and clandestine manufacture of goods are not maintainable before the Apex Court under section 35L of the Central Excise Act, 1944.

43) 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?

❖ **Relevant Case –**

- Khanapur Taluka Co-op. Shipping Mills Ltd. v. CCEx. (2013) (Bom.)

❖ **High Court's Decision –**

- The High Court referred to the case of **Raj Chemicals v. UOI (2013) (Bom.)** 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.

44) 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)?

❖ **Relevant Case –**

- Texcellence Overseas v. Union of India (2013) (Guj.)

❖ **High Court's Decision –**

- The High Court held that –
 - Since the total length of delay was very small and the case had extremely good ground on merits to sustain, its non-interference at that stage would cause gross injustice to petitioner.
 - Thus, by invoking its extraordinary jurisdiction, quashed the order which held that refund was erroneously granted.
 - 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.

45) Can delay in filing appeal to CESTAT for the reason that the authorised representative dealing with the case went on a foreign trip and on his return his mother expired, be condoned?

❖ **Relevant Case –**

- Habib Agro Industries v. CCEx. (2013) (Kar.)

❖ **High Court's Decision –**

- The High Court held that –
 - There did not appear to be any deliberate laches or neglect on the part of the authorised representative to file the appeal.
 - Therefore, the reason 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.

46) Does the Commissioner (Appeals) have the power to review his own order of pre-deposit?

❖ **Relevant Case –**

- M/s Venus Rubbers v. Additional Commissioner of Central Excise, Coimbatore (2014) (Mad.)

❖ **High Court's Decision –**

- The High Court held that –
 - There is no provision of law under the Central Excise Act, 1944 which gives power to the Commissioner (Appeals) to review his order.
 - However, such a power is available to the Tribunal under section 35C(2) of the Central Excise Act, 1944 to rectify any mistake apparent on the record.
 - Therefore, when there is no power under the statute, the Commissioner (Appeals) has no authority to entertain the application for review of the order.

47) 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?

❖ **Relevant Case –**

- CCEx vs. Australian Foods India (P) Ltd (2013) (SC)

❖ **Supreme Court's Decision –**

- The Supreme Court made the following significant observations:
 - Physical manifestation of the brand name on goods is not a compulsory requirement. Packaging/wrapping, accessories, uniform of vendors, invoices, menu cards, hoardings and display boards of outlet, furniture/props used, the specific outlet and other such factors, all of which together or individually or in parts, may convey that goods is a branded one.
 - The test of whether the goods is branded or unbranded, must not be reduced to a label or sticker that is affixed on a good.
 - Once it is established that a specified good is a branded good, whether it is sold without any trade name on it, or by another manufacturer, it does not cease to be a branded good of the first manufacturer.
- The Supreme Court 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 same; the most important of these factors being the specific outlet from which the good is sold.
 - 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.

48) 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?

❖ **Relevant Case –**

- CCEx v Xenon (2013) (Jhar.)

❖ **High Court's Decision –**

- The High Court held that –
 - Merely because the dubious company was in existence, it could not be said that it undertook the transactions. Its existence could not itself create any liability; the liability could arise only when the transactions were actually undertaken by the dubious company.
 - Therefore, 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 penalty could not be imposed upon the company who did not undertake any transaction.

49) 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?

❖ **Relevant Case –**

- Commissioner v. Elex Knitting Machinery Co. (2010) (P & H)

❖ **High Court's Decision:**

- The High Court held that –
 - Since the assessee was a partner in the firm of whose brand name it was using, he was the co-owner of such brand name. Hence, he could not be said to have used the brand name of another person, in the manufacture and clearance of goods in his individual capacity.
 - Thus, assessee was eligible for benefit of SSI exemption in the given case.

(Further affirmed by the Supreme Court in CCEX v. Elex Knitting Machinery Co. 2012)

50) Whether the clearances of two firms with common brand name, common management, accounts etc. and goods being manufactured in the same factory premises, can be clubbed for the purposes of SSI exemption?

❖ **Relevant Case –**

- CCE v. Deora Engineering Works (2010) (P & H)

❖ **High Court's Decision –**

- The High Court held that –
 - Indisputably, the partners of both the firms were common and belonged to same family. They were manufacturing and clearing the goods by the common brand name, manufactured in the same factory premises, with common management and accounts etc.
 - Therefore, the clearance of the common goods under the same brand name manufactured by both the firms had been rightly clubbed.

51) 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?

❖ **Relevant Case –**

- S & S Power Switch Gear Ltd. v. CCEx. Chennai-II (2013) (Mad.)

❖ **High Court's Decision –**

- The High Court held that –
 - Supreme Court in **H.M. Bags Manufacturer v. Collector of Central Excise (1997)** held that –
 - 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.
 - 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.

52) (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?

❖ **Relevant Case –**

- Vadilal Gases Limited v Union of India (2014) (Guj.)

❖ **High Court's Observations –**

- The High Court observed that –
 - Clause (d) of the proviso to section 32E(1) of the Act clearly lays down that no application u/s 32E(1) shall be made unless the applicant has paid the additional amount of excise duty accepted by him along with interest due under section 11AB.

Therefore, if an application is made without complying with the first proviso, it would be defective and not maintainable.

- Settlement Commission in its discretion may allow time to the applicants to remove the defects or may direct that the applications be returned.
- Under section 32F(1) only valid applications which do not suffer from any bar created by the first proviso to section 32E(1) can be considered and decided according to the procedure provided in the section.

Therefore, the 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).

- 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 petitioner.
- Moreover, second application would not be barred under section 32-O as no direction had been issued under section 32L (the application was rejected as not entertainable).

❖ **High Court's Decision –**

- 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.

53) 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?

❖ **Relevant Case –**

- Tata Motors Ltd. v. UOI (2012) (Bom.)

❖ **High Court's Observations –**

- The High Court observed as follows –
 - The petitioners did not charge the dealer for the expenses incurred by the dealer towards PDI and said services. When a car was sold by the petitioner to dealer, price was the sole consideration and the petitioners and dealer were not related to each other. Hence, since the requirements of section 4(1)(a) were being complied with, the assessable value would be the transaction value, as per section 4(3)(d). Accordingly, the expenses incurred for PDI and said services should not be included in the transaction value of the car.
 - Petitioner would undertake the responsibility to provide the benefit of warranty to customer only when the customer had availed PDI and after sales services. However, it had no bearing on assessable value.
 - In Clause 7 of Circular dated 01.07.2002, reference to rule 6 of Central Excise (Determination of Price of Excisable Goods) Rules, 2000 was not correct. Valuation rules, in the first place, would not apply in the instant case as this transaction did not fall within the ambit of section 4(1)(b) because the transaction of sale of car was governed by provisions of section 4(1)(a).
 - The said circular wrongly held that the expenses incurred by dealer towards PDI and said services were on behalf of manufacturer. Thus, such expenses could not be said to form as one of the considerations for sale of goods. Expenses incurred towards PDI and said services could not be equated with advertisement and publicity charges. It was contrary to the provisions of section 4(1)(a) read with section 4(3)(d).

❖ **High Court's Decision –**

- The High Court held that –
 - Clause No 7 of Circular dated 01.07.2002 & Circular dated 12.12.2002 were not in conformity with the provisions of section 4(1)(a) read with section 4(3)(d) of the Central Excise Act, 1944.
 - Further, as per section 4(3) (d), the PDI and free after sales services charges could be included in the transaction value only when they were charged by the assessee to the buyer.