Customs Case Laws Summary (May 2016)

CHAPTER 1 - BASIC CONCEPTS

Sr.	Question	Answer	Decision	Case Law
1	Are the clearances of goods from DTA to SEZ chargeable to export duty under the SEZ Act, 2005 or the custom Act, 1962?	NO	The high court, on the following observations, 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: 1) A charging section has to be construed strictly. If a person has not been brought to the ambit of the charging section by clear words, he cannot be taxed at all. 2) SEZ Act does not contain any provision for levy and collection of export duty for goods supplied by DTA to a unit in SEZ. In the absence of a charging provision, export duty cannot be levied on DTA supplier by implication. 3) Since both SEZ and DTA are located within territorial waters of India, no duty is attracted on such supplies	Tirupati Udyog Ltd. 2011 (AP). *Biocon Ltd. 2011 (AP) similar view taken by Karnataka HC*

CHAPTER 2 - LEVY OF AND EXEMPTIONS FROM CUSTOM DUTY

Sr.	Question	Answer	Decision	Case Law
1	Would CVD on an imported product be exempted if the excise duty on a like article produced or manufactured in India is exempt ??	YES	**SC** held that rate of additional duty leviable u/s 3(1) of CTA, 1975 would be only that which is payable under CEA 1944 on a like article. Therefore, importer would be entitled to payment of concessional / reduced / nil rate of CVD if any notification is issued providing exemption / remission of excise duty w.r.t a like article if produced / manufactured in India	Aidek Tourism Services Pvt. Ltd. 2015
2	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)	NO	**HC** overruling tribunal decision that Sec 23 provisions are not applicable since goods are not lost / destroyed before clearance for home consumption. When goods are not cleared within the period or extended period, their continuance in warehouse will not permit the remission of duty	Decorative Laminates (I) Pvt. Ltd 2010 (Kar.)

CHAPTER 4 - CLASSIFICATION OF GOODS

Sr.	Question	Answer	Decision	Case Law
1	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	YES	**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 for the prior period to it	Keihin Penalfa Ltd. 2012
2	Whether mobile battery charger is classifiable as an accessory of the cell phone or as an integral part of the same ??	ACCESSORY	**The Apex Court** held that mobile battery charger is an accessory to the mobile phone and not an integral part of it. Further, battery charger cannot be held to be a composite part of the cell phone, but is an independent product which can be sold separately w/o selling the cell phone	Nokia India Private Limited 2015

3a	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?	YES	The **High court** affirmed the fact. The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the Invoice and the shipping bill which had been assessed and cleared for Export.	M/s CPS Textiles (P) Ltd 2010 (Mad.)
3b	Whether a separate notice is req. to be issued for payment of intt. which is mandatory & automatically applies for recovery of excess drawback'	NO	While interpreting **Sec 75A(2),** No notice need to be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.	

CHAPTER 5 - VALUATIONS UNDER THE CUSTOMS ACT

Sr.	Question	Answer	Decision	Case Law
1	Can the value of imported goods be increased if department fails to provide to the importer, the evidence of import of identical goods at higher prices ??	NO	**SC** held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that import transactions were not comparable. **Thus in given case, value of imported goods could not be enhanced** on basis of value of identical goods **as department was not able to provide evidence of import of identical goods at higher prices.**	Gira Enterprises 2014

CHAPTER 7 - IMPORTATION, EXPORTATION AND TRANSPORTATION OF GOODS

Sr.	Question	Answer	Decision	Case Law
1	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	NO	**Sec 46** - Prescribes for filing of BOE in relation to imported goods, at any time after the delivery of import manifest, by the importer with the proper officer but does not prescribe any time limit in which it should be filed. **Sec 48** - If within 30 days after unloading of goods, if not cleared or warehoused or transhipped, then such goods after notice to importer and prior permission of proper officer be sold by person having custody **The high court however 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.	Shreeji Overseas (India) Pvt. Ltd. 2013 (Guj.)

CHAPTER 8 - WAREHOUSING

Sr.	Question	Answer	Decision	Case Law
1	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	NO	1) The entire premises of a 100% EOU has to be treated as a warehouse if the license granted under to the unit is in respect of the entire premises. 2) 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 2010 (Tri-LB)

CHAPTER 9 - DEMAND AND APPEALS

Sr.	Question	Answer	Decision	Case Law
1	Is the adjudicating authority required to supply to the assessee copies of the documents on which it proposes to place reliance for the purpose of requantification of short-levy of customs duty?	YES	The **Apex Court** held 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. 2013
2	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	YES	The **HC ruled that** the tribunal was competent to invoke sec. 129A (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. 2012 (SC)
3	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	NO	The **supreme court observed** that **assessee has act bonafide** by seeking clarification irrespective of the fact that development commissioner was not a suitable authority to be asked. But the **bonafide act of assessee can't be negated.** The SC reiterated that burden of **proving any form of malafide lies on the shoulders who is alleging it**. The **SC held** that mere non-payment of duties could not be equated with collusion or willful misstatement or suppression of facts as then there 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. 2013
4	Can a writ petition be filed before HC which does not have territorial jurisdiction over the matter ??	NO	**SC observed** that very filing of writ petition by the petitioner in Delhi HC against the order in original passed by commissioner of customs, kanpur indicated that petitioner has taken chance in approaching the HC at Delhi which had no territorial jurisdiction in the matter. The filing of writ petition before Delhi HC was not at all bonafide	Neeraj Jhanji 2014
5	Can delay in filing appeal to CESTAT due to the mistake of the counsel of the appellant, be condoned?	YES	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. 2013 (All.)
6	Can a writ petition be filed against an order passed by the CESTAT under section 9C of the Customs Tariff Act, 1975?	NO	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 open to the assessee to take recourse to the appellate remedy.	Rishiroop Polymers Pvt. Ltd. 2013 (Bom.)
7	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?	NO	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.	Dinesh Chhajer 2014 (Kar.)

CHAPTER 10 - REFUND

Sr.	Question	Answer	Decision	Case Law
1	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?	YES	The **High Court** held that : 1) 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. 2) 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. 3) 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. 2013 (Mad.)
2	Is limitation period of one year applicable for claiming the refund of amount paid on account of wrong classification of the imported goods ??	NO	HC observed that provisions of Sec 27 apply only when there is over payment of duty or interest under the customs Act, 1962. In the instant case, it was not a duty or excess duty but simply money paid into the government account. Therefore, there was no question of any refund by the government. **The money received by the government could more appropriately be called money paid by one person to another, which the other person is under the obligation to repay u/s 72 of Indian Contract Act, 1872.** **When the said amount was paid by mistake by the petitioner to the government of India, latter instantly became a trustee to repay that amount to petitioner.** The HC therefore, allowed the writ application and directed the respondents (Department) to refund the said sum to petitioner	Parimal Ray 2015 (Cal.)

CHAPTER 12 - ILLEGAL IMPORT, EXPORT, CONFISCATION, PENALTY AND ALLIED PROVISIONS

Sr.	Question	Answer	Decision	Case Law
1	Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods	YES	The **Apex court opined** that if these goods were to be considered same, then there would have been no need for 2 different definitions in the Act. The court observed that one of the principal functions of the customs is to curb the ills of the smuggling. **Hence, it was held that it would be contrary to the purpose of exemption notification to given benefit meant for imported goods to smuggled goods**	M. Ambalal & Co. 2010
2	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	YES	**High court** held that as per section 110(4), it is apparent that custom officers were mandatorily required to make available the copies of the document asked for. It was the party concerned who has the option to either ask for the copies or extract and not the officer. The denial of the revenue to make the documents available was clearly an act without jurisdiction. **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 2011 (Bom.)

3	Whether the smuggled goods can be re-exported from the customs area without formally getting them release from confiscation	NO	The Government noted that the passenger had grossly mis- declared the goods with intention to evade duty and smuggle the goods into India. As per section 80, if baggage of passenger contains goods which are dutiable and prohibited in repect of which declaration u/s 77 has been made to proper officer, then he may detain such articles for the purpose of being returned to him while leaving India **Since passenger neither made true declaration nor requested for detention of goods for re-export, before custom authorities at the time of arrival at airport, the re-export of said goods cannot be allowed under Section 80 of Customs Act.**	Hemal K. Shah 2012 (GOI)
4	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?	YES	The **High Court held** that conjoint reading of sections 2(31), 116 and 148 of Customs Act, 1962 makes it clear that <u>in case of short-landing of goods, if penalty is to be imposed on person-in-charge of conveyance/vessel, it can also be imposed on the agent appointed by him.</u> Hence, duly appointed steamer agent of a vessel, would be liable to penalty. However, steamer agent, if innocent, could work out his remedy against the shipper for short-landing. 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. 2013 (Mad.)
5	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?	YES (6m expiry from seizure of goods)	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. 2014
6	Whether mere dispatch of a notice u/s 124(a) would imply that the notice was "given" within the meaning of Sec 124(a) and Sec 110(2) of the said customs Act, 1962	NO	High Court held that since the petitioners did not receive the notice u/s 124(a) within the time limit stipulated in Sec 110(2) of the Act, such notice will not be considered to be "Given" by the department within stipulated time, i.e. before the terminal date. Consequently, the department was directed to release the goods seized	Purushottam Jajodia 2014 (Del.)

CHAPTER 13 - SETTLEMENT COMMISSION

Sr.	Question	Answer	Decision	Case Law
1	In case of a settlement comm.'s order, can the assessee be permitted to accept what is favorable to them & reject what is not	NO	The **Apex court** held that the application u/s 127B of the Customs Act, 1962 is maintainable only if the duty liability is disclosed. The disclosure contemplated is in the nature of voluntary disclosure of concealed additional customs duty The court opined that having opted to get their customs duty liability settled by the settlement commission, **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 2010

2	Is judicial review of the order of the Settlement Commission by the High Court or Supreme Court under writ petition/special leave petition, permissible?	YES, but restricted	The court would ordinarily interfere if the Sett Comm. has acted w/o jurisdiction vested in it or its decision is wholly arbitrary or perverse or malafide or is against the principles of natural justice or when such decision is ultra vires the Act or the same is based on irrelevant considerations. The Court pronounced that the scope of court's inquiry against the decision of the Settlement Commission is very narrow, i.e. judicial review is concerned with the decision-making process and not with the decision of the Settlement Commission.	Saurashtra Cement Ltd. 2013 (Guj.)
3	Does the settlement comm. have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the revenue	YES	The **HC thus concluded** that the duty drawback or claim for duty drawback is nothing but a claim for refund of duty as per the statutory scheme framed by the government of India or in exercise of the statutory powers under the provisions of the Act. **Thus the HC held that the settlement commission has jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the revenue**	UOI V. Cus. & C. Ex Settlement commission 2010 (Bom.)

CHAPTER 15 - MISCELLANEOUS PROVISIONS

Sr.	Question	Answer	Decision	Case Law
1	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?	YES	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 2013 (Bom)
2	Can a former director of a co. be held liable for the recovery of the customs dues of such company	NO	As per provisions of Sec 142, HC elucidated that it was only the defaulter against whom the steps might be taken for recovery and in this case company is the defaulter. The court held that since the company was not being wound up, the juristic personality the company and its former director would certainly be separate and in absence of statutory provision, dues from company cannot be recovered from director. The court held that **there is no provision 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 directors of companies who were not the defaulters.**	Anita Grover 2013 (Del.)

CASE LAWS MENTIONED IN RTP

CHAPTER 2 - LEVY OF AND EXEMPTIONS FROM CUSTOM DUTY

Sr.	Question	Answer	Decision	Case Law
1	In case of Import of Crude Oil, whether customs duty is payable on the basis of the quantity of oil shown in bill of lading or on the actual quantity received into shore tanks in India ??	ACTUAL QTY	SC set aside the Tribunal's judgement and declared that the quantity of crude oil "actually received" into shore tank in a port in India should be the basis for payment of customs duty.	Mangalore Refinery and Petrochemicals Ltd. 2015