

IDT May 18 Case law SUMMARY	
How to read this short note on Case Law?	
1	ICAI generally never ask the case law which are asked earlier , hence the case law which are cross marked may be focused less.
2	It is recommended to study material issued by ICAI along with this notes , and at time revision before exam date only this notes may be referred.
3	Case law which are most important , as per my estimate, are highlighted in the notes and it is recommended to focus more on it.

Summary of ALL Case Laws including RTP Case Law on IDT for May 2018 CA Final Attempt			
No.	Matter	Parties & Court	Decision
Ch 1 - Unit 2 - Levy and Exemption			
1	Are the clearance of goods from DTA to Special Economic Zone chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962?	Tirupati Udyog Ltd. v. UOI 2011 (272) E.L.T. 209 (A.P.)	The High Court, on the basis of the following observations, inferred that the clearance of goods from DTA to Special Economic Zone is not liable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962:- • A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all. • SEZ Act does not contain any provision for levy and collection of export duty for goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. In the absence of a charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier by implication. • With regard to the Customs Act, 1962, a conjoint reading of section 12(1) with sections 2(18), 2(23) and 2(27) of the Customs Act, 1962 makes it clear that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India. Since both the SEZ unit and the DTA unit are located within the territorial waters of India, Section 12(1) of the Customs Act 1962 (which is the charging section for levy of customs duty) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone.
2	In case of import of crude oil, whether customs duty is payable on the basis of the quantity of oil shown in the bill of lading or on the actual quantity received into shore tanks in India?	Mangalore Refinery & Petrochemicals Ltd v. CCus. 2015 (323) ELT 433 (SC)	The Supreme Court set aside the Tribunal's judgment and declared that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty.
CLASSIFICATION OF GOODS			
1	Where a classification (under a Customs Tariff head) is recognized by the Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?	Keihin Penalfa Ltd. v. Commissioner of Customs 2012 (278) E.L.T. 578 (S.C.)	The Apex Court observed that the Central Government had issued an exemption notification dated 1-3-2002 and in the said notification it had classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself had classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3- 2002, the said classification needs to be accepted for the period prior to it.
2	Whether the mobile battery charger is classifiable as an accessory of the cell phone or as an integral part of the same?	State of Punjab v. Nokia India Private Limited 2015 (315) ELT 162 (SC)	The Supreme Court decided the case in favour of Revenue and against the assessee holding that the battery charger is not a part of the mobile/cell phone but an accessory to it, on the basis of the following observations: (i) Had the charger been a part of cell phone, cell phone could not have been operated without using the battery charger. However, as a matter of fact, it is not required at the time of operation. Further, the battery in the cell phone can be charged directly from the other means also like laptop without employing the battery charger, implying thereby, that it is nothing but an accessory to the mobile phone. (ii) As per the information available on the website of the assessee, it had invariably put the mobile battery charger in the category of an accessory which means that in the common parlance also, the mobile battery charger is understood as an accessory. (iii) A particular model of Nokia make battery charger was compatible with many models of Nokia mobile phones and also many models of Nokia make battery chargers are compatible with a particular model of Nokia mobile phone, imparting various levels of effectiveness and convenience to the users. (iv) Rule 3(b) of the General Rules for Interpretation of the First Schedule of the Customs Tariff Act, 1975 can also not be applied in the assessee's case as merely making a composite package of cell phone and mobile battery charger will not make it composite goods for the purpose of interpretation of the provisions. Conclusion :- The Apex Court held that mobile battery charger is an accessory to 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 without selling the cell phone.
3	(i) Will the description of the goods as per the documents 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? (ii) Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback?	M/s CPS Textiles P Ltd. v. Joint Secretary 2010 (255) ELT 228 (Mad.)	The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test. 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. Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice for the payment of interest need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.
VALUATION UNDER THE CUSTOMS ACT, 1962			

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No.	Matter	Parties & Court	Decision
1	Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?	Gira Enterprises v. CCus. 2014 (307) E.L.T. 209 (SC) (May-16 Exam)	The Supreme Court 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 the import transactions were not comparable. Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.
IMPORTATION, EXPORTATION AND TRANSPORTATION OF GOODS			
1	Can the time-limit prescribed under section 48 of the Customs Act, 1962 for clearance of the goods within 30 days be read as time-limit for filing of bill of entry under section 46 of the Act?	CCus v. Shreeji Overseas (India) Pvt. Ltd. 2013 (289) E.L.T. 401 (Guj.)	The High Court however held that the time-limit prescribed under section 48 for clearance of the goods within 30 days cannot be read into section 46 and it cannot be inferred that section 46 prescribes any time- limit for filing of bill of entry.
DEMAND & APPEALS			
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?	Kemtech International Pvt. Ltd. v. CCus. 2013 (292) E.L.T. 321 (S.C.)	The Apex Court elucidated that for the purpose of re- quantification of short-levy of customs duty, the adjudicating authority, following the principles of natural justice, should supply to the assessee all the documents on which it proposed to place reliance. Thereafter the assessee might furnish their explanation thereon and might provide additional evidence, in support of their claim.
2	Whether extended period of limitation for demand of customs duty can be invoked in a case where the assessee had sought a clarification about exemption from a wrong authority?	Uniworth Textiles Ltd. vs. CCEx. 2013 (288) ELT 161 (SC)c	The Supreme Court held that mere non-payment of duties could not be equated with collusion or wilful misstatement or suppression of facts as then there would be no form of non-payment which would amount to ordinary default. The Apex Court opined that something more must be shown to construe the acts of the assessee as fit for the applicability of the proviso.
3	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?	CCus. v Dinesh Chhajer 2014 (300) E.L.T. 498 (Kar.) (May-15 Exam)	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.
REFUND			
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?	KSJ Metal Impex (P) Ltd. v. Under Secretary (Cus.) M.F. (D.R.) 2013 (294) ELT 211 (Mad.)	The High Court held that : (i) It would be a misconception of the provisions of the Customs Act, 1962 to state that notification issued under section 25 of the Customs Act, 1962 does not have any specific provision for interest on delayed payment of refund. (ii) When section 27 of the Customs Act, 1962 provides for refund of duty and section 27A of the Customs Act, 1962 provides for interest on delayed refunds, the Department cannot override the said provisions by a Circular and deny the right which is granted by the provisions of the Customs Act, 1962 and CETA. (iii) Paragraph 4.3 of the Circular No. 6/2008 Cus. dated 28.04.2008 being contrary to the statute has to be struck down as bad.
2	Is limitation period of one year applicable for claiming the refund of amount paid on account of wrong classification of the imported goods?	Parimal Ray v. CCus. 2015 (318) ELT 379 (Cal.) (MOST IMP)	The High Court observed that the provisions of section 27 apply only when there is over payment of duty or interest under the Customs Act, 1962. When the petitioners' case is that tunnel boring machines imported by it were not exigible to any duty, any sum paid into the exchequer by them was not duty or excess duty but simply money paid into the Government account. The Government could not have claimed or appropriated any part of this as duty or interest. Therefore, there was no question of refund of any duty by the Government. The money received by Government could more appropriately be called money paid by mistake by one person to another, which the other person is under obligation to repay under section 72 of the Indian Contract Act, 1872. A person to whom money has been paid by mistake by another person becomes at common law a trustee for that other person with an obligation to repay the sum received. This is the equitable principle on which section 72 of the Contract Act, 1872 has been enacted. Therefore, the person who is entitled to the money is the beneficiary or cesti qui trust*. When the said amount was paid by mistake by the petitioner to the Government of India, the latter instantly became a trustee to repay that amount to the petitioner. The obligation was a continuing obligation. When a wrong is continuing there is no limitation for instituting a suit complaining about it. The High Court, therefore, allowed the writ application and directed the respondents (Department) to refund the said sum to the petitioner.
Appeal and revision			
1	Can Tribunal condone the delay in filing of an application consequent to review by the Committee of Chief Commissioners if it is satisfied that there was sufficient cause for not presenting the application within the prescribed period?	Thakker Shipping P. Ltd. v. Commissioner of Customs (General) 2012 (285) E.L.T. 321 (S.C.)	The High Court ruled that the Tribunal was competent to invoke section 129A(5) where an application under section 129D(4) had not been made within the prescribed time and condone the delay in making such application if it was satisfied that there was sufficient cause for not presenting it within that period.

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2	Can a writ petition be filed before a High Court which does not have territorial jurisdiction over the matter?	Neeraj Jhanji v. CCE & Cus. 2014 (308) E.L.T. 3 (S.C.)	The Supreme Court observed that the very filing of writ petition by the petitioner in Delhi High Court against the order in original passed by the Commissioner of Customs, Kanpur indicated that the petitioner had taken chance in approaching the High Court at Delhi which had no territorial jurisdiction in the matter. The filing of the writ petition before Delhi High Court was not at all bona fide.
3	Can delay in filing appeal to CESTAT due to the mistake of the counsel of the appellant, be condoned?	Margara Industries Ltd. v. Commr. of C. Ex. & Cus. (Appeals) 2013 (293) E.L.T. 24 (All.)	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.
4	Can a writ petition be filed against an order passed by the CESTAT under section 9C of the Customs Tariff Act, 1975?	Rishiroop Polymers Pvt. Ltd. v. Designated Authority 2013 (294) E.L.T. 547 (Bom.)	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.
PROVISION RELATING TO ILLEGAL IMPORT, EXPORT CONFISCATION, PENALTY AND ALLIED PROVISION			
1	Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods?	CCus. (Prev.), Mumbai v. M. Ambalal & Co. 2010 (260) E.L.T. 487 (SC)	The Apex Court held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods.
2	Is it mandatory for the Revenue officers to make available the copies of the seized documents to the person from whose custody such documents were seized?	Manish Lalit Kumar Bavishi v. Addl. DIR. General, DRI 2011 (272) E.L.T. 42 (Bom.)	The High Court held that from the language of section 110(4), it was apparent that the Customs officers were mandatorily required to make available the copies asked for. It was the party concerned who had the choice of either asking for the document or seeking extract, and not the officer. If any document was seized during the course of any action by an officer and relatable to the provisions of the Customs Act, that officer was bound to make available copies of those documents. The denial by 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 documents asked for by the assessee which were seized during the course of the seizure action.
3	Whether the smuggled goods can be re-exported from the customs area without formally getting them released from confiscation?	In Re: Hemal K. Shah 2012 (275) ELT 266 (GOI)	The Government noted that the passenger had grossly mis-declared the goods with intention to evade duty and to smuggle the goods into India. As per the provisions of section 80 of the Customs Act, 1962 when the baggage of the passenger contains article which is dutiable or prohibited and in respect of which the declaration is made under section 77, the proper officer on request of passenger can detain such article for the purpose of being returned to him on his leaving India. Since passenger neither made true declaration nor requested for detention of goods for re-export, before customs authorities at the time of his arrival at airport, the re-export of said goods could not be allowed under section 80 of the Customs Act.
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?	Caravel Logistics Pvt. Ltd. v. Joint Secretary (RA) 2013 (293) ELT 342 (Mad.) (Nov-15 Exam) (Nov - 16 Exam)	The High Court held that conjoint reading of sections 2(31), 116 and 148 of Customs Act, 1962 makes it clear that 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. 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.
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?	Akanksha Syntex (P) Ltd. v. Union of India 2014 (300) E.L.T. 49 (P & H) (Nov - 17 Exam)	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.
6	Whether mere dispatch of a notice under section 124(a) would imply that the notice was "given" within the meaning of section 124(a) and section 110(2) of the said Customs Act, 1962?	Purushottam Jajodia v. Director of Revenue Intelligence 2014 (307) E.L.T. 837 (Del.)	The High Court held that since the petitioners did not receive the notice under section 124(a) within the time stipulated in section 110(2) of the Act, such notice will not be considered to be "given" by the Department within the stipulated time, i.e. before the terminal date. Consequently, the Department was directed to release the goods seized.
7	In case of seizure of goods under section 110 of the Customs Act, 1962, can the show cause notice [required to be issued under section 124(a) within six months of seizure] be issued to the Customs House Agent [now Custom Broker] of the importer instead of importer himself?	Santosh Handlooms v. CCus. 2016 (331) ELT 44 (Del.) (May 17 Exam)	The High Court held that the show cause notice served on CHA [now Custom Broker] is not tenable in law.

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8	Whether the expression 'goods in respect of which any prohibition is in force' refers to smuggled goods or prohibited goods?	Gopal Saha v. UOI 2016 (336) ELT 230 (Cal.)	The High Court inferred that expression 'goods in respect of which any prohibition is in force' in the context of section 112 implies goods which are prohibited from being imported and not goods which have been smuggled into the country in contravention of the procedure established by law for the import thereof. Consequently, the order imposing penalty on the petitioner was set aside and the matter was remanded for such limited purpose for the imposition of other permissible penalty.
SETTLEMENT COMMISSION			
1	In case of a Settlement Commission's order, can the assessee be permitted to accept what is favourable to them and reject what is not?	Sanghvi Reconditioners Pvt. Ltd. V. UOI 2010 (251) ELT 3 (SC)	The Apex Court held that the application under section 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 further 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 Commission's order with a view to accept what is favourable to them and reject what is not.
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?	Saurashtra Cement Ltd. v. CCus. 2013 (292) E.L.T. 486 (Guj.)	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.
3	Does the Settlement Commission have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue?	Union of India v. Cus. & C. Ex. Settlement Commission 2010 (258) ELT 476 (Bom.)	The High Court 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 statutory powers under the provisions of the Act. Thus, the High Court held that the Settlement Commission has jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the Revenue.
MISCELLANEOUS PROVISIONS			
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?	Vishnu M Haridalka v. Union of India 2013 (294) ELT 5 (Bom) (Nov-15 Exam)	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.
2	Can a former director of a company be held liable for the recovery of the customs dues of such company?	Anita Grover v. CCEx. 2013 (288) E.L.T. 63 (Del.)	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 the dues recoverable from the former could not, in the absence of a statutory provision, be recovered from the latter. There was no provision in the Customs Act, 1962 corresponding to section 179 of the Income-tax Act, 1961 or section 18 of the Central Sales Tax, 1956 (refer note below) which might enable the Revenue authorities to proceed against directors of companies who were not the defaulters.