INDIRECT TAX

CA-FINAL

(RELEVANT FOR MAY 2018 EXAMS)

Jain & Jain's

Study - Revise - Krack

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IT IS IMPORTANT TO NOTE THAT WRITING THE JUDGEMENT ALONE IS NOT SUFFICIENT; STUDENTS HAVE TO WRITE THE RATIONALE (REASONS) OF THE JUDGEMENT FOR GETTING FULL MARKS.

CASE LAWS

BASIC CONCEPTS

Subject & Issue	Case Law & Decision
Import of Goods 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 (quantity exported from outside India), say 1000 litres or on the actual quantity received into shore tanks in India, say 900 litres?	***Mangalore Refinery & Petrochemicals Ltd. – 2015 – SC*** (i) The levy of customs duty under Section 12 of the Act is only on goods imported into India. Goods are said to be imported into India when they are brought into India from a place outside India. The taxable event in the case of imported goods is "import" whereas the taxable event in the case of a purchase tax is the "purchase" of goods. A bill of lading quantity, therefore, could only be validly looked at in the case of a purchase tax but not in the case of an import duty. (ii) If the goods are pilfered after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty leviable on such goods as even then he can take the benefit of Section 13 and Section 23. This again indirectly implies that import duty is only on the goods received in India and cleared by importer. (iii) Under Section 23(2), the owner may abandon the said goods even after they have physically landed at any port in India but before any of the aforesaid orders have been made. This again indirectly implies that import duty is only on the goods received in India and cleared by importer. (iv) Further, as per Section 47, the importer has to pay import duty only on goods that are entered for home consumption. Obviously, the quantity of goods imported (i.e. received into shore) will be the quantity of goods at the time they are entered for home consumption. (v) Valuation under Section 14 is applied only on the quantity of goods imported into India and not on the quantity exported from outside India. Also, whether the rate of duty is specific of ad-volerem, levy of import duty which is only on the quantity of goods imported into India. Thus, Supreme Court set aside the Tribunal's judgment and held 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.
Export of Goods Whether export duty can be levied on goods supplied by DTA unit to SEZ unit	***Essar Steel Ltd – 2010 – SC / Tirupati Udyog Ltd – 2011 - AP*** It was held that export duty cannot be levied on goods supplied by DTA Unit to SEZ Unit (i) **Under Customs Act, 1962:** "Export" under Section 2 means "taking goods out of India to a place outside India" and "India"

(a) Under the provisions of Customs Act, 1962? (b) Under the provisions of SEZ Act, 2005?	under Section 2 includes "Territorial Waters of India". Therefore, as per Section 12 of CA, 1962 only taking the goods out of Territorial Waters of India will attract export duty. Thus, supply from DTA Unit to SEZ Unit cannot be taken as Export under CA, 1962. (ii) **Under SEZ Act, 2005:** The objectives of the SEZ Act, 2005 include making the goods and services available to Developer or Unit of SEZ, free of taxes and duties for export production, which is specifically mentioned in Section 7 of SEZ Act, 2005. Thus, supply from DTA Unit to SEZ Unit cannot be taken as Export under SEZ Act, 2005.

TYPES OF CUSTOMS DUTIES

Subject & Issue	Case Law & Decision
Excise EN for CVD (Now read as GST EN on IGST and Compensation Cess) Would countervailing duty (CVD) on an imported product be exempted if the excise duty on a like article produced or manufactured in India is exempt?	***Aidek Tourism Services Pvt. Ltd. – 2015 – SC*** It was held that rate of additional duty leviable under Section 3(1) of CTA, 1975 would be only that which is payable under the CEA, 1944 on a like article. Therefore, the importer would be entitled to payment of concessional / reduced / nil rate of countervailing duty if any notification is issued providing exemption of excise duty with respect to a like article if produced / manufactured in India. **Note:** The above judgment is still applicable for levy of IGST and Compensation Cess under Section 3(7) and Section 3(9) of CTA, 1975. Therefore, the importer would be entitled to payment of concessional / reduced / nil rate of IGST and Compensation Cess if any notification is issued providing exemption of GST / Compensation Cess with respect to a like article supplied in India.

CLASSIFICATION OF GOODS

Subject & Issue	Case Law & Decision
Classification of Mobile Phone and Battery Charger – General Interpretative Rules Whether the mobile battery charger is classifiable as an accessory of the cell phone or as an integral part of the same?	***Nokia India Private Limited – 2015 – SC*** SC held that mobile battery charger is an accessory to mobile phone and not an integral part of mobile phone due to following reasons: (i) Mobile phone is actually operated without battery charger, (ii) Battery charger can be charged from other means like laptop, power bank, etc. (iii) Battery charger is compatible with many models of cell phone (iv) Website of the company shows battery charger as accessory

	(v) In common parlance battery charger is understood as accessory of mobile phone, (vi) 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. Thus, Rule 3(b) of GIR cannot be applied Thus, concessional rate applicable on mobile phone cannot be applied to battery charger.
Classification of Laptop and Software (Windows) – General Interpretative Rules Whether the software (windows) is an integral part of laptop?	***Hewlett Packard India Sales (P) Ltd – 2007 – SC*** (i) Assessee imported laptops preloaded with operating software i.e. windows. He classified the software separately and claimed exemption on software. (ii) The court held that without operating system like windows, the laptop cannot work. Therefore the laptop along with the software has to be classified as laptop and valuation to be made as one unit.
Section Notes overrides Headings in Tariff – General Interpretative Rules Whether Section Notes & Chapter Notes have an overriding effect on headings?	***Saurashtra Chemicals – 1986 – SC*** (i) Section Notes and Chapter Notes are a part of the statue and hence are relevant in the matter of classification of goods. (ii) These notes either restrict or expand the scope of headings. The objective is to determine the coverage of the heading in the light of Section Notes and Chapter Notes. Hence, these notes have an overriding effect on the heading.
Classification and Interest on DBK (i) Will the description of 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 technical opinion or test? (ii) Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applicable for recovery of excess drawback?	***CPS Textiles (P) Ltd. – 2010 – Mad HC*** (i) It was held that the description of 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 technical opinion or test i.e. the exporter cannot change the classification contrary to the description given in the invoice and the Shipping Bill which had been assessed and cleared for export only for the purpose of claiming Duty Drawback. (ii) It was held that a separate notice is not required to be issued for payment of interest under Section 75A as interest payment is automatic, once it is held that excess drawback has to be repaid.

Classification due to Exemption Notification Where a classification 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?	***Keihin Penalfa Ltd. – 2012 – SC*** It was observed that the CG has issued an EN dated 1-3-2002 and in the said notification it has classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Government itself has classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3-2002, the said classification need to be accepted even for period before 1-3-2002. (i) An exemption notification has a prospective effect for exemption whereas it can have retrospective effect for clarifications with regards to classification of goods, nature of the product, etc. (ii) In the given case, though the exemption for the aforesaid goods may apply prospectively from the date of notification, the clarification made in the notification with regards to the classification of the aforesaid goods can very well be applicable for the prior period.
Exemption Notification and General Interpretative Rules – Section 25 Should EN be always linked with the Tariff Act?	***Maestro Motors Ltd – 2004 – SC*** (i) If a tariff heading is specifically mentioned in exemption notification, General Interpretative Rules would be applicable. (ii) If an item is specifically mentioned in exemption notification without any tariff heading, General Interpretative Rules would not be applicable. In short, exemption would be available even though for the purpose of classification by applying General Interpretative Rules, it may be otherwise. **Note:** This judgment is of Excise Law but equally applicable to Customs Law.
Exemption Notification for Smuggled Goods – Section 25 Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods?	***Ambalal & Co. - 2010 – SC*** (i) SC opined that if the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962. (ii) SC observed that one of the principal functions of the Customs Act, 1962 was to curb the ills of smuggling on the economy. Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods. Thus, it was held that the smuggled goods could not be considered as "imported goods" for the purpose of benefit of the exemption notification.
Exemption Notification for goods from SEZ to DTA – Section 25 Whether exemption in Custom Duty will also be applicable to a SEZ unit transferring the goods to DTA?	***Adani Power Ltd – 2016 – SC*** When no custom duty is payable on electrical energy imported into India, no duty would be payable on similar goods transferred from SEZ to DTA in view of Section 30 read with Section 51 of the SEZ Act. In short, exemption notification of customs will also be applicable for transfer of goods from SEZ Unit to DTA unit.

VALUATION OF GOODS	
Subject & Issue	**Case Law & Decision**
Addition in Declared Value – Rule 10 Whether royalty paid for technical know-how of converting imported raw materials to finished goods be added to value of imported raw materials?	***Denso Kirloskar Industries (P) Ltd / Essar Steel Ltd – 2015 – SC*** (i) Rule 10(1) of Import Valuation Rules, 2007 mandates the addition of royalty and license fees paid to the assessable value of imported goods, if made as a condition for sale of imported goods. (ii) In the present case there were two separate contracts. One to procure the raw materials and the other one for providing the know-how and both had no nexus. Even if the raw materials were procured from some other party, know–how would have been provided to the importer. (iii) The wording of the rules has to be constructed strictly. The statement "***as a condition for sale***" cannot be stretched to include in its meaning any items which has no relation or connection with regards to the sale of imported goods. Thus, royalty paid for technical know-how of converting imported raw materials to finished goods cannot be loaded on the assessable value of the imported raw materials.
Rejection of Declared Value – Rule 12 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 – 2014 – SC*** (i) It was held that mere existence of alleged computer printout was not proof of existence of comparable imports. (ii) 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, value of imported goods could not be enhanced on the basis of value of identical goods.
Rejection of Declared Value – Rule 12 Whether the catalogue price / list price of supplier outside India be taken as Declared Value of imported goods under Rule 3 even if import of new parts were against export of old parts (export value being 1/3 value of import value) and no export sale proceeds were received for old parts?	***GMR Energy Ltd – 2015 – SC*** SC held that it is clear that the prices stated in the invoices accompanying the bills of entry in the present case are list unit prices or catalogue prices. By no stretch of imagination can they said to be prices after re-exported items' value has been taken into account. This being the case, both the Commissioner and the Tribunal were wrong in arriving at a conclusion that the invoice price in the present case is only an incremental value price and not the price of the articles supplied by exporter in USA.

WAREHOUSING PROCEDURES

Subject & Issue	Case Law & Decision
Remission in WH – Section 23 Whether remission of duty is permissible under Section 23 of the Custom Act, 1962 when the remission application is filled after the expiry of W/H period (including extended warehousing period)?	***Decorative Laminates (I) (P) Ltd – 2010 – Kar. HC*** (i) Remission under Section 23 of the Customs Act, 1962 can be granted only when the imported goods have been lost or destroyed at any time before clearance for home consumption. (ii) As per Section 72 of the Customs Act, 1962, imported goods are said to be improperly removed from the warehouse, if they are not cleared for home consumption within the period or extended period granted by the custom authority. (iii) A conjoint reading of Section 23 and Section 72 of the Customs Act, 1962 makes it clear that if the goods are not removed within the stipulated time, it would be treated as "deemed removal" and actual removal is irrelevant. (iv) Hence the expression "any time before clearance for home consumption" as provided in Section 23 cannot be extended to a period after the lapse of the warehousing period, even though the goods are not actually removed. Thus, it was held that when the goods are not cleared within the period or extended period as given by the authorities, they were improperly removed from warehouse as per Section 72. Thus, Section 23 remission cannot be made in such cases

BAGGAGE

Subject & Issue	Case Law & Decision
Re-export of Smuggled Goods – Section 80 Whether the smuggled goods can be re-exported from the customs area without formally getting them released from confiscation by using the provisions of Section 80 which allows re-export after temporary detention of goods?	***Hemal K. Shah – 2012 – GOI*** (i) Since passenger neither made true declaration nor requested for detention of goods for re-export before customs at the time of his arrival at airport, the re-export of said goods cannot be allowed under Section 80 of CA, 1962. (ii) Moreover, the passenger had grossly mis-declared the goods with intention to evade duty and smuggled the goods into India. If he is allowed to re-export without penalising for smuggling, will only promote a safe escape route to the smugglers.

DEMAND & RECOVERY

Subject & Issue	Case Law & Decision
Demand Order not following Principles of Natural Justice 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 re-quantification of short-levy of customs duty?	***Kemtech International Pvt. Ltd. – 2013 – SC*** It was 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.
Demand Order invoking Extended Period of Limitation for SCN 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. – 2013 – SC*** (i) Supreme Court observed that the assessee had shown bona fide conduct by seeking clarification from the Development Commissioner and in a sense had offered its activities to assessment. Only on receiving a satisfactory reply from the Development Commissioner did the assessee claim the exemption. The Apex Court elaborated that even if the Development Commissioner was not the most suitable repository of the answers sought by the assessee, it did not negate the bona fide conduct of the assessee. (ii) Supreme Court 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 default. It was held that extended period of limitation under Section 28 for demand of customs duty cannot be invoked as there was not mala-fide intention (i.e. deliberate default) to for non-payment the duty.
Demand Order for Smuggled Goods not seized from Importer 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	***Dinesh Chhajer – 2014 – Kar. HC*** (i) The material on record disclosed that the assessee did not import the goods. He was not the owner of the goods but only a dealer of the smuggled goods and therefore, there was no obligation cast on him under the Act to pay duty. Thus, Section 28 is not applicable as it is applicable only where the goods are imported by an ***importer (i.e. owner)*** and the duty is not paid in accordance with law, for which a notice of demand is issued on the person. (ii) Since no goods were seized, there could not be any confiscation and in the absence of a

him?	confiscation, question of payment of duty by the person who is the owner of the goods or from whose possession the goods are seized, does not arise. Thus, Section 125 is not applicable as it is applicable only for smuggled goods where firstly the goods should have been seized and confiscated from ***importer (i.e. owner) or person who is having possession of goods*** and then, the duty demandable is in addition to the fine payable under Section 125(1) in respect of confiscated goods. Thus, it was held 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.
Recovery from Directors Can the directors of the company be held liable for the recovery of customs dues on the company?	***Anita Grover – 2013 – Del. HC*** (i) The Court held that since the company was not being wound up, juristic personality of an existing company and its former director were certainly separate and the dues recoverable from the former could not, in the absence of a statutory provision, be recovered from the latter. (ii) 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 which might enable the Revenue authorities to proceed against directors of companies who were not defaulters. Thus, it was held that recovery as per Section 142 of the Customs Act, 1962 is possible only from the defaulter i.e. the Company in this case; moreover as the Company was not being wound up.

REFUND

Refund of Wrong Payment of Duty 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 – 2015 – Cal. HC*** (i) When the importer was not liable to pay any import duty on imported goods, any sum paid by him was not duty or excess duty but simply money paid into the Government account. (ii) 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. CG instantly became a trustee to repay that amount to the assessee. The obligation was a continuing obligation. When a wrong is continuing there is no limitation for instituting a suit complaining about it. (iii) It was held limitation period of 1 Year of Section 27 is applicable to duty or interest paid under the Act. However, in this case the amount paid by assessee was not duty or excess duty but is simply money paid into the account of Government.

	Thus, it was held that the provisions of Section 27 (including time limit of 1 year) for refund of wrongly paid money cannot be applied in the present case as it applies only when there is over payment of duty or interest under the Customs Act, 1962.
Interest on Refund of Special CVD 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?	***KSJ Metal Impex (P) Ltd. – 2013 – Mad. HC*** (i) HC stated that a conjoint reading of Section 25(1) and Section 27 of the Customs Act makes it clear that the refund application of special CVD should only be filed in accordance with the procedure specified under Section 27 of the Customs Act, 1962 and that there is no method prescribed under Section 25 of the Customs Act, 1962 to file an application for refund of duty or interest. (ii) HC held that it would be a misconception of interpreting CA, 1962 to state that notification issued under Section 25 does not have any specific provision for interest on delayed payment of refund. (iii) When Section 27 provides for refund of duty and Section 27A 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 CA, 1962. **Note:** Though Special CVD is not applicable after introduction of GST, the above judgement would still be valid for refund of any duty which is by the way of exemption notification and application of interest on such refund.
Interest on Refund of Surplus Sale Proceeds 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 Harlalka V. UOI – 2013 – Bom. HC*** (i) HC observed that though no period was stipulated in Settlement Commission's Order for the grant of refund, the entire exercise ought to have been carried out within a reasonable period of time. All statutory powers have to be exercised within a reasonable period even when no specific period is prescribed by the provision of law. The High Court noted that there was absolutely no reason or justification for the delay in payment of balance sale proceeds. (ii) HC held that Department cannot plead that the CA, 1962 provides for the payment of interest only in respect of refund of duty and interest as per Section 27 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. HC clarified that Department's submission cannot be accepted as that would mean the Dept. can wait for an inordinately long period to grant the refund even after the order of Settlement Commission. Thus, HC directed the Department to pay interest from the date of approval of proposal for sanctioning the refund.

SETTLEMENT COMMISSION

Subject & Issue	Case Law & Decision
Settlement Commission for Duty Drawback Does the Settlement Commission have jurisdiction to settle cases relating to the recovery of duty drawback erroneously paid by the Revenue?	***UOI V. Settlement Commission – 2010 – Bom HC [Writ Petition]*** High Court held that Duty drawback is nothing but a remission of duty on account of a statutory provision in the Act and the Scheme framed by the Government of India. Thus, Settlement Commission has jurisdiction to deal with the question relating to recovery of duty drawback erroneously paid. In other words, duty drawback recovery proceedings will also constitute "Case" within the meaning of Section 127-A(b), CA, 1962.
Partial Acceptance of Settlement Commission's Order 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. – 2010 – SC*** 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.
Judicial Review of Settlement Commission's Order 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. – 2013 – Guj. HC*** (i) While examining the scope of judicial review in relation to a decision of Settlement Commission, the High Court noted that although the decision of Settlement Commission is final, finality clause would not exclude the jurisdiction of the High Court under Article 226 of the Constitution (Writ Petition to a High Court) or that of the Supreme Court under Articles 32 or 136 of the Constitution (Writ Petition or Special Leave Petition to Supreme Court). (ii) The Court would ordinarily interfere if the Settlement Commission has acted without jurisdiction vested in it or its decision is wholly arbitrary or perverse or mala fide 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. (iii) The Court, however, 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.

APPEALS & REVISION

Subject & Issue	Case Law & Decision
Condonation of Delay in filing Appeal by Assessee to CESTAT Can delay in filing appeal to CESTAT due to the mistake of the counsel of the appellant, be condoned?	***Margara Industries Ltd. – 2013 – All. HC*** 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.
Condonation of Delay in filing Application by Dept. to CESTAT Can Tribunal condone the delay in filing application by Commissioner consequent to review by the Committee of Chief Commissioners if it is satisfied that there was sufficient cause for not presenting it within the prescribed period by invoking Section 129A(5) for an application filed under Section 129D(4)?	***Thakker Shipping P. Ltd. – 2012 – SC*** (i) The expression, ***"including the provisions of Section 129A(4)"*** was by way of clarification and had been so said expressly to remove any doubt about the applicability of the provision relating to cross objections to the applications made under Section 129D(4); otherwise it could have been inferred that provisions relating to appeals to the Tribunal had been made applicable and not the cross objections. The use of expression ***"so far as may be"*** was to bring general provisions relating to the appeals to Tribunal into Section 129D(4). (ii) Consequentially, Section 129A(5) also stood incorporated in Section 129D(4) by way of legal fiction and must be given effect to. In other words, if the Tribunal was satisfied that there was sufficient cause for not presenting the application under Section 129D(4) within prescribed period, it might condone the delay in making such application and hear the same. Thus, HC 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 delay.
Writ Petition to High Court not having Jurisdiction Can a writ petition be filed before a High Court, which does not have territorial jurisdiction over the matter?	***Neeraj Jhanji – 2014 – SC*** SC 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. SC disapproved the practice of "Forum Shopping" as adopted by the petitioner. "Forum Shopping" is the practice adopted by the litigants to have their legal case heard in the Court, which would provide most favourable decision.

Writ Petition to High Court against order of Anti-Dumping Duty 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. – 2013 – Bom. HC*** (i) HC observed that Section 9A(8) of the Customs Tariff Act, 1975 specifically incorporates all the provisions of the Customs Act, 1962 relating to appeal as far as may be, in their application to the anti-dumping duty chargeable under Section 9A. (ii) The order of the CESTAT passed in appeal would, therefore, clearly be subject to appeal, either to High Court under Section 130 or to the Supreme Court under Section 130E of the Customs Act, 1962 if the appeal relates to the rate of duty or to valuation of goods for the purposes of assessment. In such cases, appeal proceedings are against Designated Authority and not Commissioner of Customs and the said sections have to be read accordingly. Thus, HC 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. HC dismissed the petition leaving it open to the assessee to take recourse to the appellate remedy.

CONFISCATION & PENALTY

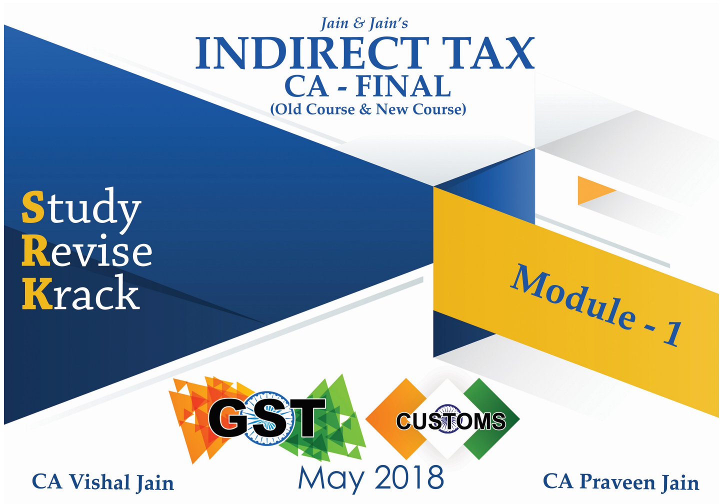
Subject & Issue	Case Law & Decision
Service of SCN to Customs Broker In case of seizure of goods under Section 110 of CA, 1962, can the show cause notice [required to be issued under Section 124(a) within six months of seizure] be issued to the Customs House Agent [now Custom Broker] of the importer instead of importer himself?	***Santosh Handlooms – 2016 – Del. HC*** (i) Keeping in view of this object and/or the purpose, the legislature has consciously provided that service of orders, decisions or summons or notices, can only be effected in the manner provided in Section 153(a) by serving it upon the person for whom it is intended, in this case, the importer. (ii) The intention for notice being served only on the intended person is to enable him to take a decision as to who would thereafter be entitled or authorized to appear for him before the concerned statutory authority. Thus, it was held that SCN served on CHA [now Custom Broker] is not tenable in law as CHA has no general authority to act in respect of every act that the owner, importer/exporter is called upon to do or may be required to do under the provisions of the Act.
SCN for Confiscation – Dispatch v. Given Whether mere dispatch of a notice under Section 124(a) would imply that the notice was "given" within the	***Purushottam Jajodia – 2014 – Del. HC*** (i) Mere dispatch by post would not be covered by the word "given" as appearing in the provision. Further the expression 'given' was distinct and different from the word "served". (ii) Section 124(a) clearly stipulates that the person should be clearly informed by a notice in writing on what grounds the goods have been confiscated or imposing penalty. This can happen only

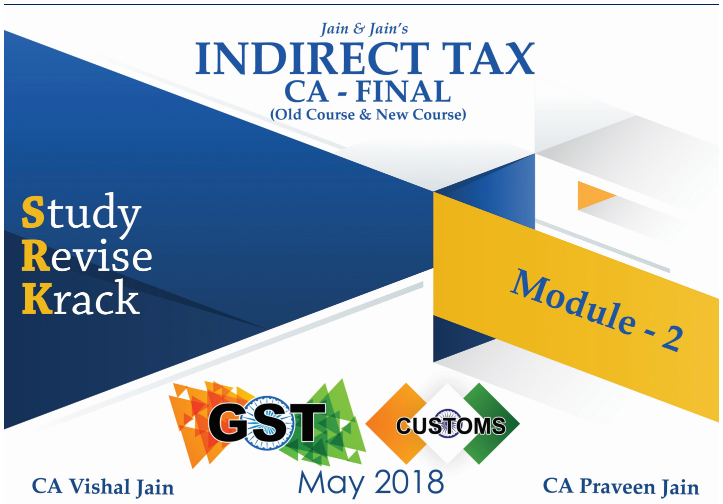
meaning of Section 124(a) and Section 110(2) of the said CA, 1962?	when the person receives the notice and is capable of reading and understanding it. (iii) On a conjoint reading of Section of 110(2) and 124 (a) "given" can be regarded as given when the person actually receives it or deemed to have received from whom the goods have been seized. Thus, it was held that since the assesse did not receive the notice under Section 124(a) within the time stipulated in Section 110(2), such notice will not 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. **Note:** The above judgment is in line with judgment of Supreme Court and Gujarat High Court. However, there are contrary views taken by Madya Pradesh High Court and Calcutta High Court.
Copies of Seized Documents Is it mandatory for the revenue officer to make available the copies of the seized documents to the person from whose custody such documents were seized?	***Manish Lalit kumar Bavishi – 2011 – Bom. HC*** 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/seeking extract and not the officer. Thus, it was held that if any document was seized during the course of any action by an officer and relatable to the provisions of the CA, 1962 that officer was bound to make available copies of those documents.
Provisional Release v. Final Release 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 UOI – 2014 – P & H HC*** The remedy of provisional release under Section 110A is independent of remedy of claiming unconditional release in the absence of issuance of any valid show cause notice during the period of limitation (6 months) or extended limitation (+6 months by Commissioner of Customs) prescribed under Section 110(2). Thus, it was held that final release under Section 110(2) is possible even where the goods have been ordered to be released provisionally under Section 110A. **Note:** There is a contrary view taken by Bombay High Court.
Smuggled Goods v. Prohibited Goods 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 – Cal. HC*** It was held that '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.

	Note: Smuggled Goods are treated as Prohibited Goods for the purpose of confiscation under Section 111 whereas Smuggled Goods are NOT treated as Prohibited Goods for the purpose of penalty under Section 112. In other words, it is possible for a provision providing for confiscation of goods to be liberally interpreted, but when a provision provides for punishment, it has to be strictly construed.

MISCELLANEOUS PROVISIONS

Subject & Issue	Case Law & Decision
Penalty on Shipping Line & Steamer Agent 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. – 2013 – Mad. HC*** (i) Section 116 of the Act imposes a penalty on the person-in-charge of the conveyance inter alia for short landing of the goods and if the deficiency is not accounted for to the satisfaction of the Customs Authorities. (ii) Section 2(31) defines "person-in-charge" to inter alia mean, the master of the vessel. (iii) Section 148 provides that the agent appointed by the person-in-charge of the conveyance or any person who represents himself as an agent of such person-in-charge, would be held liable for all the obligations imposed on such person-in-charge by or under this Act and to penalties and confiscation which may be incurred. (iv) It was 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. Thus, 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.
DGFT & Customs Is condition fulfilment certificate issued by DGFT binding on Customs Authorities?	***Pennar Industries Ltd -2015 – SC*** Hon'ble Supreme Court held that the certificate issued by DGFT was under the provisions of Foreign Trade Policy where else the actions taken by Custom Authorities are as per the provisions of the Customs Act, 1962. Thus, the certificate issued by DGFT cannot bind the Custom Authorities from taking any actions.





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