

Shree Guru Kripa's Institute of Management

Important Decisions in Indirect Tax for November 2011 Exams (In addition to "LATEST AMENDMENTS" in IDT Book)

Central Excise Act, 1944

| Levy of Excise Duty – Manufacture and Excisable Goods | |
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| Topic | Subject / Reference |
| Manufacture | Addition of stabilizing agent, making agent etc. does not amount to manufacture within meaning of Section 2(f) of Central Excise Act, 1944. [CCE vs. Karam Chand 2009 (236) ELT 647 (H.P)] |
| Manufacture | Purchase of CKD components from supplier and installation of the same in client's premises does not amount to manufacture and thus no levy was attracted. [CCE vs. Blow Past Ltd. 2009 (236) ELT 631 (Del.)] |
| Erection of Water Treatment Plant – Not Manufacture | Situation: The assessee was engaged in fabrication, assembly and erection of waste water treatment plant. As per the assessee, the plant could not function as such until it was wholly built including the civil construction. Since, after being completely built, waste water treatment plant became immovable, duty could not be levied on it. Decision: Mere Bringing of the duty paid parts in an unassembled form at one place, i.e. at the site does not amount to manufacture unless an excisable movable product (say a plant) comes into existence by assembly of such parts. Thus, no commercial movable property came into existence until the assembling was completed by embedding different parts in the civil works. Hence, the fabrication, assembly and erection of waste water treatment plant does not amount to manufacture and hence not liable. [Larsen & Toubro Limited v. UOI 2009 (243) E.L.T. 662 (Bom.)] |
| Activity on the CD Pack and not on the CD – Not Manufacture | Situation: The Assessee imported CD and packed each individual disc in transparent plastic cases known as jewel boxes. An inlay card containing the details of the content of the CD was also placed in the jewel box. The whole thing was then shrink wrapped and sold in wholesale. Decision: None of the activity involved any process on the imported CDs. The activities carried out did not amount to manufacture as the CD had been complete and finished when imported by the assessee. They had been imported in finished and completed form. [CCE v. Sony Music Entertainment (I) Pvt. Ltd. 2010 (249) E.L.T. 341 (Bom.)] |
| Manufacturer | Situation: The goods were actually manufactured by the assessee's sister concern (Say "B") which is also located within the same premises of the assessee (Say "A"). However, the full control and supervision of the activities are maintained by the assessee itself. Decision: In the above case, the assessee (A) shall be considered as the manufacturer and not B since effectively the control over the manufacturing process is kept with A. The definition of the manufacturer includes any person who is engaged in the production or manufacture on his own account. In this case, A shall be considered as the manufacturer. [Lamina International v. CCE., Bangalore 2009 (239) E.L.T 232 (Kar.)] |
| Aluminium Dross and Skimmings – Deemed Marketable | Aluminium Dross and Skimmings which can be bought and sold shall be deemed to be marketable after the insertion of the new explanation to Section 2(d) of the Central Excise Act. Note: New Explanation – Any article, material or substance which is capable of being bought and sold for a consideration shall be deemed to be marketable [Hindalco Industries Ltd. UOI 2009 (243) E.L.T. 481 (All.)] |
| Change in ownership – Transferee liable | Change in ownership of undertaking would not affect obligation of the person liable to pay duty. If defaulter had sold undertaking, transferee would be liable for excise duty that remained outstanding on date of transfer. [Suburban Ply & Panels (P) Ltd. 2009 (238) ELT A54 (SC)] |

| Classification | |
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| Topic | Subject / Reference |
| Common Parlance Test – Medicine Vs Cosmetics | Common Parlance test is one of the determinative tests for classification of a product whether medicament or cosmetic. A product being a tooth powder and there being no change in nature, character and uses of the said product, it has to be a cosmetic/toiletry preparation and not a medicament. [CCE vs. Baidyanath Ayurved Bhawan Ltd. 2009 (SC)] |
| Topic | Subject / Reference |
| Common Parlance Test | Common Parlance Test is cannot be applied just because the product is manufactured exclusively as per the medicinal formulae described on Ayurvedic System of treatment. Definition of one statute having different object, purpose and scheme cannot be applied mechanically to another statute. [Shree Baidyanath Ayurved Bhawan Ltd. [2009] (237) ELT 225 (SC)] |
| Parts & Accessories | Name Plates, Emblems and Logos of Plastics are not classifiable as Parts and Accessories of motor vehicles. [Pragati Silicones Pvt. Ltd. 2009 (240) ELT A117 (SC)] |
| Predominance Vs Common Parlance | Situation: The assessee produced carpets in which jute predominated by weight over every other textile material. But, Revenue contended that it should be classified as polypropylene carpet as the surface of the carpet is made of polypropylene. Decision: The Court held that the carpet shall be classified as Jute Carpet based on the predominance test. Common Parlance Test shall not be applied in this case. Further, the Court held that the department cannot raise a point in the appeal which is not mentioned in the Show Cause Notice. [CCEx., Bhubneshwar v. Champdany Industries Limited 2009 (241) E.L.T. 481 (S.C.)] |

| Valuation of Excisable Goods | |
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| Topic | Subject / Reference |
| Pre-Delivery Inspection and After Sales Service | The Assessee manufactures and sells motor carts to the dealers. The Dealers added their own margin to the price at which the vehicles were made available to them by the Assessee. This dealer's margin contained costs of pre-delivery inspection (PDI) and after sale services. Decision: PDI and after sales service charges is a payment on behalf of the assessee to the dealer by the buyer and hence includible in the Assessable Value. [Maruti Suzuki India Ltd. v. CCE 2010 (257) E.L.T. 226 (Tri. – LB)] |
| Reasonability of MRP – not tested | The Central Excise Department cannot challenge the reasonability of MRP printed on the package. It can only satisfy itself that there is a declaration of MRP in prescribed form [ITC Ltd. v. CCEx., New Delhi 2004 (171) ELT 433 (SC)]. |
| Repair & Maintenance | Assessee is entitled to deductions for repair & maintenance and rental charges for PMX machine from the assessable value. [Dhillon Kool Drinks & Beverages 2009 (238) ELT A26 (SC)] |
| Section 3 Vs Section 4 | Amounts collected under different heads viz., packing charges, facility charges, rental charges, etc. recovered from buyers for providing cylinders, tonners, canisters, etc., while supplying gas, not to be included in assessable value. [Grasim Industries Ltd. 2009 (241) ELT 321 (SC)] [Note: Provisions of Sections 3 (charging section) and 4 (valuation) are independent and section 4 cannot be considered as subject to Section 3. Hence, any item fitted to an excisable good would be liable for excise duty even if it is not excisable, provided conditions of Section 4 is satisfied] |
| Vending Machine Charges payable to another party | Machine Charges – owned by another Co. – excluded: Vending machine installed by holding company but ownership of vending machine vested in marketing company. Machine charges payable to marketing company and not to holding company, thus the charges are not includable in AV. [Pepsico India Holdings (P) Ltd. (2009) 234 ELT 385 (SC)] |
| Recovery of Transport charges at fixed rate – not includible in AV | For goods supplied by assessee to State Electricity Boards, two separate contracts were entered into – for sale of meters and for transportation and transit insurance. Though such Charges for transportation of goods were not on actual basis, it shall not be included in the Assessable Value. [Accurate Meters Ltd. (2009) 235 ELT 581 (SC)] |
| Interest inclusion – not deductible if not established | Assessee is not entitled to claim deduction of any “interest on receivables” from the sale price for determining Assessable Value if the assessee had failed to establish that price charged on goods sold to customers on credit basis contained an element of interest in-built therein as a precondition to sale. [Castrol India Ltd. 2009 (236) ELT A89 (SC)] |

| Small Scale Industries | |
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| Topic | Subject / Reference |
| Common Partners and Brand Name = Clubbing attracted | If two firms having common partners who belong to same family, were manufacturing and clearing the goods by the common brand name, manufactured in the same factory premises, having common management and accounts etc., then the clearance of the common goods under the same brand name manufactured by them can be clubbed. [CCE v. Deora Engineering Works 2010 (255) ELT 184 (P & H)] |

The Customs Act, 1962

| Levy and Exemption | |
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| Topic | Subject / Reference |
| Remission not allowable after the last date of warehousing | Situation: The assessee warehoused the imported goods from the date of its import. He also sought an extension of the warehousing period which was granted by the authorities. However, even after the expiry of the said date, it did not remove the goods from the warehouse. Subsequently, the assessee applied for remission of duty u/s 23 of the Customs Act, 1962 on the ground that the said goods had become unfit for use. (after the warehousing period). Decision: U/s 23, If the goods are lost or destroyed "at any time before clearance for home consumption" eligible for remission. Hence, it would cover the time period as per initial order plus the extended date for clearance and not any period after the lapse of the aforesaid periods. Hence, any application after the extended period is not valid and remission not allowable. [CCE v. Decorative Laminates (I) Pvt. Ltd. 2010 (257) E.L.T. 61 (Kar.)] |
| Exemption by Fraudulent means – Not Valid | An assessee imported certain goods using benefit available to a manufacturer exporter but had no manufacturing unit. The assessee is not entitled to use the benefit. If any benefit is acquired by fraudulent means, it will not confer any right to the assessee. [CC vs. CESTAT 2009 (Mad.)] |
| Exports can be only under Customs Act | Exports are to be made under the Customs Act alone and not any other Act. Hence, Specified drugs exported without permission from the competent authority under the Customs Act shall attract prosecution under the Customs Act. [D.Ramakrishnan Vs Intelligence Officer Narcotic Control Bureau 2009 (240) ELT 321 (SC)] |
| Powers of Proper Officer | Once power has been exercised u/s 4 of Customs Act, only the Proper Officer notified for that area could exercise the powers under the Act, and the Commissioner (Preventive) would have no jurisdiction. [Noble Asset Co. Ltd. 230 ELT 22 (Bom.)] |

| Classification of Goods | |
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| Topic | Subject / Reference |
| Change in form after importation – Classify based on whether there is change in use or purpose | Situation: The Assessee imported the embryo. It was incubated in controlled temperature and under hydration, a larva was born. This larva did not assume the character of a different product. Decision: If a product undergoes some change after importation till the time it is actually used, it is immaterial, provided it remains the same product and used for the purpose specified in classification. The nature of embryo was the same as the product or organism which was within egg. So, classified as feeding materials for prawns and not otherwise. [Atherton Engineering Co. Pvt. Ltd. v. UOI 2010 (256) E.L.T. 358 (Cal.)] |
| Description of goods = Based on documents filed. Int. on Duty Drawback is automatic | <ul style="list-style-type: none"> The description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criteria for the purpose of classification, if not disputed on the basis of any technical opinion or test. When the claimant is liable to pay the excess drawback, he is liable to pay interest automatically. No notice need be issued separately. [M/s CPS Textiles P Ltd. v. Joint Secretary 2010 (255) ELT 228 (Mad.)] |

| Valuation of Goods | |
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| Topic | Subject / Reference |
| Declared Price = TV if contemporaneous evidence absent | The Department has to provide contemporaneous evidence that the price declared in the invoice is not the correct price. In the absence of such evidence, the price declared shall be taken as transaction value. [CC v. Mahalakshmi Gems (231) ELT 198 (SC)] |
| Misdeclaration of Value of Goods – Burden of Proof | <ul style="list-style-type: none"> Once nature of goods have been mis-declared, the value declared on imported goods becomes unacceptable. But, it does not affect the legal position that the burden is on the Customs Authorities to establish the case of mis-declaration of goods or valuation or that the declared price did not reflect the true transaction value. In the absence of evidence of contemporaneous imports, reference to foreign journal for finding out correct international price of imported goods may not be irrelevant. [Varsha Plastics Pvt. Ltd. vs UOI 2009 (SC)] |
| Website info. – Invalid | Website information available in respect of some other model not acceptable as AV as per Customs (Valuation) Rules, 1988. [Competent Business Machines 2009 (236) ELT 629 (SC)] |

| Warehousing | |
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| Topic | Subject / Reference |
| 100% EOU = Fully treated as warehouse Use by 100% EOU w/o filing BoE = Valid | <p>The entire premises of a 100% EOU has to be treated as a Customs Warehouse if the licence granted under section 58 to the unit is in respect of the entire premises.</p> <p>Imported goods warehoused in the premises of a 100% EOU (which is licensed as a Customs bonded warehouse) and used for the purpose of manufacturing in bond as authorized u/s 65 of the Customs Act, 1962, cannot be treated to have been removed for home consumption. Hence, no need for filing ex-bond bill of entry and no payment of duty.</p> <p>[Paras Fab International v. CCE 2010 (256) E.L.T. 556 (Tri. – LB)]</p> |

SERVICE TAX

| Topic | Subject / Reference |
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| Service Tax Procedures | |
| No Composition Scheme if ST paid | Where service tax has been paid in respect of a works contract, the eligibility to exercise an option to avail the benefits of the composition scheme is excluded. [Nagarjuna Construction Company Ltd v. GOI 2010 (19) STR 321 (A.P.)] |
| Relevant Date for ST Rate | Relevant Date is the date of entry in service and not the date of billing. [CCE v. Reliance Industries Ltd. 2010 (19) STR 807 (Guj.)] |
| Deemed Registration | In case of grant of registration by the Superintendent, the time of 7 days is mandatory under the Rules and its contravention attracts the consequence of deemed registration, However, in case of the Commissioner, the same time stipulation extended by circulars is only directory. The circulars prescribe appropriate action against officers who delay registration. [Karamchand Thapar & Bros. \ (Coal Sales) Ltd. v. UOI 2010 (20) STR 3 (Cal.)] |
| Reduction in penalty | The Tribunal does not have power to reduce the penalty before the statutory minimum as given in the Act [UOI v. Aakar Advertising 2008 (11) S.T.R. 5 (Raj.)] |

| Topic | Subject / Reference |
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| Specified Taxable Services | |
| Middleman's services – Business Auxiliary | Services provided by middleman abroad in finding prospective buyers, their requirement and informing assessee about it in relation to marketing or sale of goods produced by them were covered under Business Auxiliary Services. [Nahar Spinning Mills (2009) 14 STR J163 (SC)] |

| Topic | Subject / Reference |
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| Stevedoring Service within port – not a port service | <p>Situation: The assessee was engaged in the business of handling cargo in and out of the port (Otherwise called “Stevedoring”). He is licensed to act as such by the port.</p> <p>Dispute: The Assessee classified it as Cargo Handling Service and claimed exemption in respect of handling of export cargo. The Department contended that this is a service rendered by a person authorised by the port and hence it is a Port Service. So not eligible for exemption.</p> <p>Decision: The Court held that the above business is clearly a Cargo Handling Service and hence any handling service in relation to export cargo is eligible for exemption.</p> |
| Clearing and Forwarding Agent | <p>An independent dealer of goods, who procures goods from the manufacturer and sells them from his own outlet, shall not be considered as Clearing and Forwarding Agent.</p> <p>[Valli Inc. 2009 (14) S.T.R. 528 (Tri. - Chennai)]</p> |
| SIM Card is part of telecommunication service | <ul style="list-style-type: none"> SIM card is a device through which customer gets connection from the mobile tower. Unless the SIM card is activated, service provider cannot give service connection to the customer. Hence, it can be inferred that it is an integral part required to provide mobile service to the customer. Further, SIM card has no intrinsic value or purpose other than use in mobile phone for receiving mobile telephone service from the service provider. SIM cards were not goods sold or intended to be sold to customer, but supplied as part of service. Hence, the value of SIM card supplied by the assessee would form part of the value taxable service on which service tax was payable by the assessee. <p>[CCE v. Idea Mobile Communications Ltd. 2010 (19) STR 18 (Ker.)]</p> |
| Entrance Fee collected at the airport by a person | <p>The assessee entered into a licence agreement with Calicut Airport, where he got the right to collect entrance fee from visitors to the Airport.</p> <p>Even though assessee was not providing the service in the Airport which was done by the Airport Authority, once the licence was given by the Airport Authority to the assessee to permit entry and allow enjoyment of the services provided there to the customers, assessee in fact became the service provider, though he was only acting as an agent under the licence agreement with the Airport Authority. Therefore, the assessee, being the service provider was liable to pay the service tax.</p> <p>[CCE v. P. C. Paulose 2010 (19) STR 487 (Ker.)]</p> |

CENVAT Credit Rules, 2004

| Topic | Subject / Reference |
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| Eligible CENVAT Credits | |
| ST on Advertisement related to output of another person – Eligible | <p>Situation: The Assessee is a manufacturer of Concentrates. It sold these concentrates to Bottle Companies who sell the aerated beverages to the consumers. Advertisement is incurred for promoting these aerated beverages. ST paid on such advertisement is eligible or not.</p> <p>Decision: ST on ADV. Related to the final product is eligible for credit for utilization against the payment of ED on the concentrates, as the advertisement of soft-drink enhanced the marketability of the concentrate. Further, the term “activities related to business” includes activities directly or indirectly related to the business of the assessee.</p> <p>[Coca Cola India Pvt Ltd. v. CCE (2009) 15 STR 657 (Bom.)]</p> |
| No CENVAT on inputs used for Electricity | <p>The assessee is not eligible for CENVAT on inputs used for generating electricity which are not used for its authorised purpose but diverted to its JVs and other purposes.</p> <p>[Maruti Suzuki Ltd. v CCE (2009) 240 ELT 641 (SC)]</p> |
| CENVAT on Welding Electrodes eligible | <p>Welding Electrodes used in repairs and maintenance of plant and machinery were inputs as defined and thus, entitled for CENVAT credit.</p> <p>[Ambuja Cements Eastern Ltd. v. CCE 2010 (256) E.L.T. 690 (Chhattisgarh)]</p> |

| Topic | Subject / Reference |
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| 100% EOU – Eligible for credit | 100% EOUs are entitled to take Cenvat credit of duty on inputs procured indigenously and when they were not in a position to utilize the same, they are entitled to refund under Rule 5 of Cenvat Credit Rules, 2004. [ANZ International 2009 (240) ELT A16 (SC)] |
| Droppers for Bottles – Eligible for Credit | Droppers used along with drug bottle are eligible for credit due to following reasons: <ul style="list-style-type: none"> For Dispensation or administration of the drugs in proper quantity as per medical prescription. They were necessary packaging material for marketing of drug (as per the directions given by the Controller of Drugs for India), they would be covered by the words “packing material” [CCE v. Okasa Ltd. 2009 (241) E.L.T. 359 (Bom.)] |
| CENVAT Credit on Shortages in weight of inputs | <ul style="list-style-type: none"> Whether the subject goods are hygroscopic in nature or are amenable to transit loss by way of evaporation etc. Whether the difference in weight in any particular case is on account of weighment on different scales at the despatch and receiving ends and whether the same is within the tolerance limits with reference to the Standards of Weights and Measures Act, 1976. Tolerances for hygroscopic, volatile and other cargo have to be allowed as per industry norms excluding unreasonable & exorbitant claims. Similarly, minor variations due to weighment by different machines will also have to be ignored if such variations are within tolerance limits. [CCE v. Bhuwalka Steel Industries Ltd. 2010 (249) ELT 218 (Tri-LB)] |
| CENVAT Eligible on Plastic Crates | CENVAT Credit is admissible on plastic crates used for transportation of raw material to processing units and Finished goods from machine to storage area as inputs and also as Capital Goods. [Banco Products (India) Ltd. vs CCEX, Vadodara-I 2009 (235) ELT 636 (Tri-LB)] |
| Ineligible Credits | |
| Exempted Goods exported – Whether eligible for CENVAT or not | <p>Situation: CENVAT Credit need not be reversed on inputs / input services if they are used for goods exported under Bond. However, if the exempted goods are exported under bond, is it required to reverse the CENVAT Credit?</p> <p>Decision: The Bombay High Court held that If the exempted goods are exported, then in that case also, reversal of CENVAT Credit IS NOT required.</p> <p>[Repro India Ltd. v. UOI 2009 (235) ELT 614 (Bom.)]</p> <p>Students' Notes:</p> <ul style="list-style-type: none"> However, a notification is issued by the CBEC in 2010 which specify that the goods which are exempted cannot be exported under Bond. Hence after the above notification, exempted goods, even if exported, are not eligible for CENVAT Credit. The above decision of Bombay HC has become INVALID. |
| No credit on electricity to sister units | <ul style="list-style-type: none"> Credit is disallowed on inputs used in electricity provided to sister units, vendors, joint ventures. If electricity is partly consumed for own business and partly cleared outside, the assessee is not entitled to Cenvat credit to the extent of excess electricity cleared at contractual rates to joint ventures, vendors, etc. [Maruti Suzuki Ltd.2009 (240) ELT 641 (SC)] |
| CENVAT Procedures | |
| CENVAT in case of Discrepancy | Where inputs are entered in stock register but not entered in Excel Sheet maintained in computer and there was nothing to show wrongful availment of CENVAT Credit, inputs cannot be confiscated by the department. [Green Alloys Pvt. Ltd. vs UOI 2009 (235) ELT 405 (P&H.)] |
| Validity of Private Challan for CENVAT | 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. [CCEX. v. Stelko Strips Ltd. 2010 (255) ELT 397 (P & H)] |
| No Penalty on Directors for wrong availment by Co. | Penalty cannot be levied on the directors of the Company for the wrong availment of the CENVAT by the Company. Reason: The words used are “Any person who availed the credit”, which refers to the Company. [Ashok Kumar H. Fulwadhya v. UOI 2010 (251) E.L.T. 336 (Bom.)] |

Other Common Topics

Demand, Penalty, Refund and Drawback

| Topic | Subject / Reference |
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| Demand and Adjudication | |
| Non-Disclosure of Statutory requirement – NOT suppression of facts | <p>Situation: The assessee was engaged in manufacture of toilet preparations such as after-shave lotion, deo-spray, mouthwash, skin creams, shampoos, etc. He procured Extra Natural Alcohol (ENA) from local market, to which Di-ethyl Phthalate (DEP) is added to denature it and render the same unfit for human consumption. However, this fact of mixing is not disclosed to department.</p> <p>Decision: Denaturing process in the cosmetic industry was a statutory requirement under the Medicinal & Toilet Preparations (M&TP) Act. Hence, failure on the part of the assessee to declare it could not be held to be suppression as Department, knowing the fact that the respondent was manufacturing cosmetics, must have the knowledge of the said requirement. Hence, extended period of limitation cannot be invoked.</p> <p>[CC Ex. & C v. Accrapac (India) Pvt. Ltd. 2010 (257) E.L.T. 84 (Guj.)]</p> |
| No Suppression of facts | There is no suppression of facts if interpretation of Tariff Entries involved or when conflicting court decisions exist. [Nestle India Ltd. – 2009 (237) ELT A102 (SC)] |
| No penalty if no duty payable | When duty itself cannot be imposed by invoking extended period of limitation, no order of imposing penalty u/s 114A can be sustained. Since duty could not be imposed, order imposing penalty u/s 114A of Customs Act, 1962 was not sustainable. [M.M.K. Jewellers (2009) 243 ELT A90 (SC)] |
| If No Notice – Then Order not valid | Notice and hearing are required as per principles of natural justice. Where a revision order was passed without issuing notice to parties, order was set aside, but proceedings not terminated. [Uma Nath Pandey Vs State of U.P. 2009 (237) ELT 241 (SC)] |
| Prohibited Goods | |
| No burden to prove – For normal goods | Burden cannot be cast on the importer to prove that the import is permissible if the imported goods are neither prohibited nor restricted as per the Act. [CC v. Filco Trade Centre (P) Ltd. 2009 (239) E.L.T. 19 (Guj.)] |
| Refund and Drawback | |
| Unjust Enrichment applies for loss units | <p>Merely because the assessee had sustained the loss in the relevant year, could not be a ground to hold it is not a case of unjust enrichment.</p> <p>It was evident from the CA's certificate that the duty was included while computing the cost of production of the material. Hence, the assessee could not be granted relief since it had failed to establish that the cost of the duty was not included in computing the cost of the products.</p> <p>[CCE v. Gem Properties (P) Ltd. 2010 (257) E.L.T. 222 (Kar.)]</p> |
| Drawback need not be equal to actual duty | Refund is average amount of duty paid on materials used in manufacture of export goods. Refund of amount need not be arithmetically equal to duties actually paid. [Liberty India 2009 (241) ELT 326 (SC)] |
| Refund of CD can be based on own payment; No need for appeal against Assessment Order | <ul style="list-style-type: none"> For Refund, it is not necessary that the duty paid by the importer must be pursuant to an order of assessment. The object of section 27(ii) is to cover those classes of case where the duty is paid by a person without an order of assessment. Refund claim of the appellant was maintainable u/s 27 and the non-filing of the appeal against the assessed bill of entry did not deprive the appellant to file refund claim. <p>[Aman Medical products Ltd. v. CCus., Delhi 2010 (250) ELT 30 (Del.)]</p> |
| Documents for Refund | Refund can be claimed even based on the attested GAR-7 Challan and original not required. [Narayan Nambiar Meloths v. CCus. 2010 (251) E.L.T. 57 (Ker.)] |

Appeals and Revisions

| Topic | Subject / Reference |
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| Appeals and Revisions | |
| Committee of Commissioners can file appeal | <p>Situation: As per Section 35B(2), a Committee of Commissioners of Central Excise shall review the orders of CCE(A) and direct any CEO to appeal on its behalf to the Tribunal. The question is whether the Committee can itself file the appeal against the CCE(A) order.</p> <p>Decision: When a person (say 'A') is statutorily entitled to delegate powers to another person (say 'B') to file an appeal on behalf of 'A', it implies that the power which can be delegated is the power which 'A' would be entitled to exercise. Hence, the Committee of Commissioners CAN ITSELF FILE the appeal against the order of CCE(A).</p> <p>[CCE V. Shree Ganesh Dyeing & Painting Works 2008 (232) ELT 775 (Guj.)]</p> |
| Circulars cannot override decisions | <p>HC / SC decisions will override the circulars issued by the Department. Hence, the Department shall follow the HC / SC decision even if a contradictory circular is issued by the board.</p> <p>[CCE v. Ratan Melting and Wire Industries 2008 (231) ELT 22 (SC)]</p> |
| Circulars cannot override notifications | <p>Board Circulars cannot prevail over law laid down by Apex Court. Courts cannot direct that circulars should be given effect to when a contrary decision is expressed by a Supreme Court/High Court.</p> <p>[CCE vs. Hindoostan Spinning and Weaving Mills Ltd. 2009 (SC)]</p> |
| Writ Petition against AAR | <p>Writ Petition can be filed against the ruling of the AAR. There is no express provision in the Act allowing or prohibiting an appeal against the AAR.</p> <p>[UAE Exchange Centre Ltd. V. UOI 2009 (236) E.L.T.223 (Del.)]</p> |
| No Appeal in case of Consent Order | <p>If an order was passed by CESTAT based on consent and the matter was remanded at the instance of Revenue, then Revenue could not pursue an appeal against such order in a higher forum.</p> <p>Note: A consent order is a judicial decree expressing a voluntary agreement between parties to a suit, mainly an agreement by a defendant to cease alleged illegal activities for an end to charges.</p> <p>[CC v. Trilux Electronics 2010 (253) E.L.T. 367 (Kar.)]</p> |

Settlement Commission

| Topic | Subject / Reference |
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| Settlement Commission cannot waive penalty u/s 11AC | <p>The Settlement Order made by the Settlement Commission is distinct from the adjudication order made by the Central Excise Officer. Once the petitioner has adopted the course of settlement, he has to be governed by the provisions of Chapter V. Therefore, the benefit under the proviso to section 11AC, which could have been availed when the matter of determination of duty was before a Central Excise Officer was not attracted to the cases of a settlement, undertaken under the provisions of Chapter-V of the Act.</p> <p>[Ashwani Tobacco Co. Pvt. Ltd. Vs. UOI 2010 (251) E.L.T. 162 (Del.)]</p> |
| Settlement Commission order ≠ Adjudicating Order | <p>Situation: The Assessee did not accept the duty liability determined by the Settlement Commission. Hence, the case is sent back to the adjudicating authority. However, the department adopted the duty liability of the Settlement Commission as the basis as it is also considered as the Adjudicating Authority.</p> <p>Decision: If the Settlement Commission sends the case back to the adjudicating authority, then it is to be disposed in accordance with provisions of the Act, as if, no application u/s 32E has been made. If there is no application before Settlement Commission, there can be no question of any final order of adjudication. Consequently, the order passed by the Settlement Commission under section 32L(1) cannot be considered to be the final order of adjudication.</p> <p>[Vishwa Traders Pvt. Ltd. v. UOI 2009 (241) E.L.T. 164 (Guj.)]</p> |
| Rejection of RoM based on SC decision | <p>Settlement commission is entitled to reject the 'rectification of mistake' application, filed on the basis of a Supreme Court judgement which was debatable.</p> <p>[Settlement Commission vs. CIT 2009 (234) ELT 584 (Ker.)]</p> |

| Topic | Subject / Reference |
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| Assessee's claim not considered – Order invalid | Where counter claim of assessee was not verified by Settlement Commission before passing an Order against assessee, the order is invalid. [Jai Jagdamba Malleable (P) Ltd 2009 (237) ELT 240 (SC)] |
| Settlement Commission order cant be divided | 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. [Sanghvi Reconditioners Pvt. Ltd. V. UOI 2010 (251) ELT 3 (SC)] |
| Settlement Commission Proceeding is Judicial | The order passed by the Settlement Commissioner is in judicial proceedings and it is a judicial order. Hence, the order passed by the Settlement Commissioner could not be brushed aside. It must be held good in law so long as it is not set aside. [UOI v. East and West Shipping Agency 2010 (253) E.L.T. 12 (Bom.)] |
| Settlement Commission's powers to consider erroneous refund of Drawback | The duty drawback or claim for duty drawback is nothing but a claim for refund of duty. Thus, the Settlement Commission has jurisdiction to deal with the question 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.)] |

Seizure, Confiscation and Arrest

| Topic | Subject / Reference |
|---|---|
| Seizure | |
| Seizure of goods during pendency of appeal – not Possible | Where importer clears imported goods on the basis of classification which was upheld by Commnr. Of Customs (Appeals), and duty is paid based on such classification, Customs officers cannot seize such goods for collecting duty in excess of what is assessed as per the importer's classification. Till the assessment is set aside, the Customs Officers cannot seize the goods assessed and cleared under a Heading on the ground that the goods were liable to be assessed under another heading . [Vodafone Essar South Ltd. vs. UOI 2009 (237) ELT 35 (Bom.)] |
| Rights of the possessor of goods | The person, from whose custody, goods are seized is also entitled to notice and hearing before order of confiscation is passed. Hence, notice to be given to both importer and the possessor. [Gawar Construction Ltd. v. UOI 2009 (243) E.L.T. 484 (Bom.)] |
| Confiscation | |
| Redemption for confiscation | <ul style="list-style-type: none"> Prohibited Goods: For importation or exportation of prohibited goods, where goods were confiscated, the word used is "may". Hence, in case of prohibited goods, there is discretion in the officer either to release the confiscated goods in terms as set out therein or not. Any other goods: In the case of other goods, which are confiscated, the word used is "shall". Thus, for other goods, the officer is bound to release goods. [CCus v. Alfred Menezes 2009 (242) E.L.T. 334 (Bom.)] |
| Imported goods confiscated and not redeemed – Liable to pay Customs Duty | Goods Confiscated (Section 125) Vs Goods Abandoned (Section 23): <ul style="list-style-type: none"> U/s 23, The person, who imports the goods, surrenders his title in the goods. By surrendering title in the goods, the person importing the goods ceases to have a right to claim the goods. U/s 125, The order of confiscation is passed in respect of the person who has claimed to import or export the goods. It implies that he claims title or right in the property. The person, who had imported the goods, does not cease to have liability for payment of duty because he continues to be the person who had imported the goods and claims title of the goods. Hence, section 23 cannot be considered for interpreting section 111. [Poona Health Services v. CCus. 2009 (242) E.L.T. 335 (Bom.)] |

| Topic | Subject / Reference |
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| Prohibited goods – redemption fine | The exporter can also pay redemption fine in lieu of confiscation in respect of prohibited goods. [CC vs. India Sales International 2009 (241) E.L.T. 182 (Cal.)] |
| No Redemption fine if goods not available | <ul style="list-style-type: none"> The prohibited goods can either be confiscated or can be released on payment of redemption fine. But, such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise goods not available for confiscation nor consequently redemption. Once goods cannot be redeemed, no fine can be imposed. Consequently, if the goods not available, no fine in lieu of confiscation could be imposed. [CCus v. Finesse Creation Inc. 2009 (248) E.L.T. 122 (Bom.)] |
| Sale during Confiscation | <p>Customs authorities are not authorized to auction confiscated goods during the period of pendency of appeal. Such auction is not justified.</p> <p>Customs Authorities are liable to return the entire sale proceeds without deducting duty but subject to deduction of fine and penalty with interest.</p> [Shabir Ahmed Abdul Rehman vs UOI 2009 (235) ELT 402 (Bom.)] |
| Arrest | |
| No bail against arrest under Customs Act | <p>The HC cannot grant anticipatory bail against arrest as the right to arrest is a statutory right vested as per the Customs act and cannot be taken away by the HC order.</p> [UOI Vs Padam Narain Aggarwal 2008 (231) ELT 397 (SC)] |

