SUPREME COURT RULING (CENTRAL EXCISE)

2015-TIOL-194-SC-CX

CCE Vs Hindustan Lever Ltd (Dated: August 25, 2015)

Central Excise - Classification - Vaseline Intensive Care Heel Guard is medicament: The issue involved in the appeal is as to whether Vaseline Intensive Care Heel Guard (for short, 'VHG') is to be treated as merely a skin care preparation or it is a medicament having curing properties. While contrasting the two Entries, namely, Entry 3304.00 on the one hand and 3003.10 on the other, it can be discerned that if it is a product for care of the skin, then it would fall under Chapter Heading 3304.00 but if it is for the cure of skin disease then the product in-question would be medicament; meaning thereby the inquiry has to be whether it is a care product or a product meant for cure. (para 6)

The product in question, Vaseline Intensive Care Heel Guard, is marketed as a solution for cracked heels and it is claimed that this solution is specially developed by the scientists at Vaseline Research. The composition of this product includes salicylic acid I.P. 1.5% w/w. lactic acid 8.0% w/w. Triclosan 0.1% w/w. Cream base - q.s. Salicylic acid is described as keratolytic substance having bacteriostalic and fungicidal properties used in the treatment of fungus infection of the skin. The Tribunal, while deciding that the aforesaid product is a medicament, pointed out that the product was formulated and essentially used for treatment of 'cracked heels', protection from further cracks in the human heels due to extreme climatic conditions and low humidity, constant exposure of feet to water and due to absence of shoe or other protection while walking. It also found that this product was manufactured under a drug licence as drug authorities had treated the same as a medicament. The Tribunal also found that the usage of this product was related to the effect of therapeutic or mitigating substance of prophylactic substances added. Thus, the effect of mitigation of an external condition is primary effect and the effect of smoothing the skin was secondary in nature and, therefore, it was to be treated as a medicament and classified under Chapter 30. (para 16)

The decision of the Tribunal holding the product in question to be a medicament and, therefore, covered by Chapter Heading 3003.10 is perfectly justified and does not call for any interference. (para 19)

Also see analysis of the order

2015-TIOL-193-SC-CX

M/s Purolator India Ltd Vs CCE (Dated: August 25, 2015)

Central Excise - Valuation - Cash Discount has to be taken into account in arriving at "price" even under Section 4 as amended in 2000: It can be seen that Section 4 as amended introduces the concept of "transaction value" so that on each removal of excisable goods, the "transaction value" of such goods becomes determinable. Whereas previously, the value of such excisable goods was the price at which such

goods were ordinarily sold in the course of wholesale trade, post amendment each transaction is looked at by itself. However, "transaction value" as defined in sub-clause (3)(d) of Section 4 has to be read along with the expression "for delivery at the time and place of removal". It is clear, therefore, that what is paramount is that the value of the excisable goods even on the basis of "transaction value" has only to be at the time of removal, that is, the time of clearance of the goods from the appellant's factory or depot as the case may be. The expression "actually paid or payable for the goods, when sold" only means that whatever is agreed to as the price for the goods forms the basis of value, whether such price has been paid, has been paid in part, or has not been paid at all. The basis of "transaction value" is therefore the agreed contractual price. Further, the expression "when sold" is not meant to indicate the time at which such goods are sold, but is meant to indicate that goods are the subject matter of an agreement of sale. (Para 18)

When sold does not mean the time: The expression "actually paid or payable for the goods, when sold" only means that whatever is agreed to as the price for the goods forms the basis of value, whether such price has been paid, has been paid in part, or has not been paid at all. The basis of "transaction value" is therefore the agreed contractual price. Further, the expression "when sold" is not meant to indicate the time at which such goods are sold, but is meant to indicate that goods are the subject matter of an agreement of sale.(para 18)

Also see analysis of the order

2015-TIOL-191-SC-CX

M/s Dhanvi Trading And Investment Pvt Ltd Vs CCE (Dated: May 15, 2015)

Central Excise - SSI Exemption - Brand name of another person not eligible for the exemption:- No doubt, when the brand name or trade name of another person is used by an SSI unit then the SSI unit shall not be entitled to the exemption from payment of excise duty under the Notification No. 175/86.However, what is relevant is that the other unit of whose brand name or trade name is used, should be a unit which is not eligible for grant of exemption under this Notification. In the present case, M/s Vikshara Trading itself was a SSI unit which has been claiming exemption and the same was allowed by the Tribunal in ' C.C.E., Ahmedabad v. Vikshara Trading and Investment Pvt. Ltd .' and the said judgment of the Tribunal has been upheld by Supreme Court which is reported in - 2003-TIOL-97-SC-CX . Accordingly, the impugned judgment of the Tribunal is set aside and held that the appellant shall be entitled to the exemption under the aforesaid Notification.

2015-TIOL-190-SC-CX

CCE Vs M/s Indorama Synthetics (I) Ltd (Dated: August 21, 2015)

Central Excise - Valuation - Additional Consideration - transfer of the right to procure duty free imported raw material is additional consideration, to be included in value: additional monetary consideration, in addition to the price being paid for the goods, i.e. transfer of advance import licence in favour of the seller by the buyer enabling the seller of the goods to effect duty free import of the raw materials and bringing down the cost of production/procurement, is a consideration, the monetary value of which has to be considered under the provisions of the Rules, i.e. Rule 6 thereof. It needs to be emphasized at the cost of repetition that the resultant effect of invalidating the advance licence by the buyer was issuance of licence for intermediate supply in favour of the assessee and the said licence ensured certain benefits in favour of the assessee. In the present case, on these facts, we have to simply see as to whether the definition of 'transaction value', as contained in Section 4 of the Act read with Rule 6 of the Rules, would encompass this benefit as amounting to additional consideration. It would come within the ambit of additional consideration indirectly

flowing from the buyers to the assessee. (para 17,19)

Supreme Court Judgement in *IFGL* case affirmed, *Mazagon Dock* distinguished: I *n Commissioner of Central Excise, Bhubaneswar - II v. IFGL Refractories Ltd.* - 2005-TIOL-103-SC-CX , the Supreme Court had held that *in pursuance of the contract of sale, there is directly a flow of additional consideration from the buyer to the seller. The value thereof has to be added to the price.* Though the Counsel sought a re-consideration of this judgement, the Supreme Court did not agree. The Supreme Court distinguished the judgement in the case of *Commissioner of Central Excise, Bangalore v. Mazagon Dock Ltd.* - *2005-TIOL-111-SC-CX .*, wherein it was held that subsidy given by the Government need not be included in the assessable value. This judgement has no bearing on the present matter.

Also see analysis of the order

2015-TIOL-185-SC-CX

M/s Tamil Nadu Petroproducts Ltd Vs CCE (Dated : August 5, 2015)

Central Excise - Valuation - Related person - though there is no interconnection within the definition of "related person" as it stood at the relevant time, there is mutuality of interest in that the purchaser could be said to have an indirect interest in the business of the appellant and vice versa.

Central Excise - Cost plus principle - sales made to arm's length purchasers were way below cost. A best judgment assessment must be made reasonably and not arbitrarily. To apply the cost plus principle on facts where arm's length sales are made at well below cost is to choose a principle that would work arbitrarily as the endeavour of the assessing authority is to arrive at an arm's length wholesale cash price to value the aforesaid manufactured articles for purposes of levy of excise duty. That portion of CESTAT order which applies the cost plus principle set aside and to re-calculate the duty payable on the basis of the difference between the price charged to the arm's length purchasers and the price charged to related person.

2015-TIOL-184-SC-CX

M/s Greaves Ltd Vs CCE & C (Dated : August 6, 2015)

Central Excise - Section 11A - Demand Limitation - the issue as to what factors should be taken into consideration for arriving at the cost of production was clarified by the Department in its Circular dated 30.10.1996 and on that basis in the case of Commissioner of Central Excise, Ahmedabad vs. Asarwa Mills - 2015-TIOL-82-SC-CX , this Court took the view that the assessees could not be faulted with for taking into consideration some of those paras prior to the issuance of the said clarificatory circular.

2015-TIOL-183-SC-CX

Cimmco Birla Ltd Vs CCE (Dated : April 24, 2015)

Central Excise - manufacture - marketability - The appellant was getting contract for manufacturing of Railway wagons from the Indian Railways. Inputs for manufacture of these wagons were supplied by the Indian Railways, meaning thereby the appellant was only doing job work. Insofar as Railway wagons are concerned, they are exempted form duty w.e.f. 1.3.1993. The only question as to whether the inputs/parts which were used for manufacturing of Railway wagons are to be subjected to excise duty. It is not in dispute that these are intermediate products and captively used and

would come within the definition of "manufacture". However, before these goods could be exigible to the excise duty, it was also incumbent upon the Department to prove that the said parts were marketable. A specific contention was taken by the assessee that the goods in question are not marketable. However, the Department did not lead any evidence to demonstrate that these products are marketable. On this ground alone the present appeal is liable to succeed.

2015-TIOL-182-SC-CX

CCE Vs M/s Baron International Ltd (Dated : April 10, 2015)

Central Excise - Valuation - interest on loan given to jobworker - Respondent (BIL) is a distributor of AKAI products & purchased "AKAI" brand Color TV Sets manufactured in India on job work basis from manufacturers including M/s. JR Electronics. (JRE). There existed a provision for payment of 18% interest on all the loans and advances made to JRE by BIL. The tribunal rejected the contention that the certificate given by Charted Accountants' regarding the payment of interest of JRE was cover-up operation and concluded that JRE had accepted loans which were returned with interest to the manufacturer and hence the services were adequately compensated. Thus, relationship between BIL & JRE was on principal to principal basis and the value charges by the job workers reprinted the assessable value. Therefore, no benefit was even secured by the BIL on the basis of the alleged relationship.

2015-TIOL-177-SC-CX

M/s Tata Chemicals Ltd Vs CCE (Dated: August 6, 2015)

Central Excise – Valuation – Cost of returnable gunny bags used for packing the excisable goods – whether there was an agreement to return the packing material – Difference of opinion in Supreme Court Bench:

Per: Justice Dipak Misra : I arrive at the irresistible conclusion that the letters spell out an arrangement between the assessee and the buyers. The tribunal has not accepted the stand of the appellant on the ground that it is not an arrangement and on that basis has remanded the matter to the adjudicating authority for computation of the actual amount of duty payable by the appellant. Once I accept that it has the nature and character of an arrangement, then the authority is required to ascertain from the record whether the buyers continued to have a choice to return the packing material for reuse. I need not indicate the method of verification of the existence of the arrangement for the period in question. Once the existence arrangement and choice to return the packing material for reuse are established for the period in question in view of the second decision in Triveni Glass Limited (supra), the packing cost would not be included. If the assessee succeeds in establishing the choice mentioned in the documents which I have accepted to be an arrangement, and is prevalent during the relevant period i.e. 1981 to 1985, the appellant shall be given the benefit.

Resultantly, the appeals are allowed and the orders passed by the forums below are set aside and the matter is remanded to the adjudicating authority for adjudication .

Per: Justice Gopala Gowda : the tribunal has rightly rejected the claim of the appellant so far as the exclusion of the cost of packing material with the value of soda ash is concerned and hence, it is liable to pay the tax liability for the same in the light of the findings and observations made in this judgment. The appeals are dismissed.

Also see analysis of the order

2015-TIOL-176-SC-CX

M/s Jayaswal Neco Ltd Vs CCE (Dated: August 6, 2015)

Central Excise - Default in fortnightly payment of duty - debit from Modvat Account is permissible: The moot question is as to whether it was not permissible for the appellant to utilize the Cenvat Credit during the aforesaid period of two months when facility for payment of duty fortnightly under Rule 173G was suspended. To put it otherwise, when the duty during this period was to be paid on consignment basis, it was also incumbent to pay the same in cash only and utilisation of Cenvat Credit was also forfeited during this period.

Payment from Modvat credit is as good as tax paid: The mode of payment of duty through Cenvat Credit is as good as making payment through account current. This Court in Commissioner of Central Excise, Pune v. Dai Ichi Karkaria Limited - 2002-TIOL-79-SC-CX-LB described credit under the Modvat scheme to be "as good as tax paid".

When we understand the character of Cenvat Credit in the aforesaid manner, the answer to the question posed easily becomes available, namely, even during the period when the facility of payment of excise duty in instalments on fortnightly basis is not available and remains suspended for a period of two months, the only obligation for the assessee is to pay the duty on each clearance and not on deferred basis. At the same time, insofar as manner of duty is concerned, it can be either through account current or Cenvat Credit.

No estoppel against law: the Tribunal was not correct in observing that merely because the appellant paid the aforesaid portion of duty subsequently in cash, it had accepted the legal position that payment of duty through Cenvat Credit Account was not permissible under the provisions of Rule 173G (1)(e) of the Rules. Whether such a course of action was permissible or not had to be examined in the light of the legal provisions. There is no estoppel against law. Merely because the appellant had yielded to the demand of the Revenue to pay that portion of duty also in cash, would not mean that the appellant was precluded from taking a stand that such mode of payment through Cenvat Credit Account even during the period when facility of payment of duty by instalments had been withdrawn for two months, was permissible. It had taken a specific defence in this behalf and, therefore, the Tribunal was required to examine the matter in the light of the aforesaid Rule.

The Modvat Scheme: it also required to emphasize that the Central Government introduced a scheme namely MODVAT Scheme in the Central Excise Law as introduced by a separate Chapter containing Rule 57A to 57(U) from 1986. As per the MODVAT credit scheme introduced by the aforesaid Rules, the manufacture of certain final products which are excisable goods specified in the notification issued by the Government, is allowed credit of any duty to excise paid by him on the input which is used in the manufacture of the final product. The credit of specified duty allowed is to be utilised towards payment of duty excise allowable on the final product whether under the Act or under any other Act as the case may be by the notification issued and subject to such conditions as may be specified. As per Rule 57F, the inputs on which credits have been taken may be used in or in relation to the manufacture of final products and the inputs may be removed for home consumption or for export under bond. As per this rule, all the removals of inputs for home consumption shall be made on payment of duty equal to the amount of credit availed in respect of such inputs and under the cover of invoice prescribed under Rule 52A. The inputs can also be removed as such or after they have been partially processed by the manufacturer of the final products to a place outside the factory under the cover of a challan specified in that behalf by the Central Board of Excise and Customs, for the purpose of test, repair etc. carrying out any operation necessary for manufacture of final products and return the same to his factory within the specified period. The inputs on which credit has been taken may be used for the manufacture of final products or can be removed after payment of duty for home consumption. Rule 57-I provides for recovery of credit wrongly availed of or utilised in an irregular manner. It provides for

recovery of the duty credit of which was wrongly availed and if the manufacturer has taken the credit by reason of fraud or willful misrepresentation, suppression of facts etc. with the intention to evade payment of duty then he shall, apart from his liability to pay the amount equivalent to the credit, be liable to pay penalty equal to the same amount plus interest under Section 11AA.

The Scheme is thus, a self-contained one, dealing with its applicability, eligibility of credit of duty on certain inputs, adjustment to be made on the credit of inputs used in final products, manner of utilisation of inputs, procedure to be followed by the manufacturer, procedure to be followed by the persons who have availed credit issued in invoice and finally provision for recovery of credits wrongly availed and a provision for imposing penalty for violation of the provisions and availing wrong credit. With the introduction of this new scheme, the assessee had the option to pay excise duty by availing credit of the duty paid on inputs provided he is a manufacturer of the finished products making use of such inputs.

Also see analysis of the order

2015-TIOL-175-SC-CX

CCE Vs M/s Sarvotham Care Ltd (Dated: May 14, 2015)

Central Excise - Shampoo manufactured by the assessee is basically a medicine: Assessee manufactures 'Ketoconazole Shampoo' and 'Nizral Shampoo' which are sold in the bottles of 50 ml and 5 ml. Dispute is about the classification of the product for the purposes of payment of central excise duty. The assessee had filed the declaration classifying the said product under CSH 3003.10 of the Central Excise Tariff Act, 1985 on the ground that it is basically a medicine. However, as per the appellant/Revenue, the appropriate classification of this product is under CSH 3305.99 as it perceives the product as 'preparation for use on hair'.

The product known as 'Nizral Shampoo' gives the nomenclature of the product as shampoo. However, the assessee claims that it is a patent or proprietary medicament as its essential characteristics is therapeutic in nature. *The use is suggested only on the advice of a Doctor and there is a suggestion that Doctor should be consulted for any further information. The respondent has also provided the literature/material showing that dandruff is a disorder which affects the hairy scalp. It is generally triggered by a single celled organism which is kind of fungus, with scientific name 'Pityrosporum Ovale'. For treatment of this disease, Nizral Shampoo 2% (i.e. shampoo containing 2% 'Ketoconazole') is shown as 'a new medicine' use whereof cures clears a dandruff. It is suggested that it should be used once a week and on other days, normal shampoos may be used which clearly shows that 'Nizral Shampoo' is to be used like a medicine, unlike other normal Shampoos.*

Also see analysis of the order

2015-TIOL-167-SC-CX

CCE Vs M/s Tejo Engineering Services Pvt Ltd (Dated: July 29, 2015)

Central Excise - Manufacture - whether cutting of the conveyor belting into required sizes amounts to manufacture : Mere cutting of the lengthy conveyor belt into smaller sizes would not amount to manufacture, ipso facto, unless it is shown that as a result of the said cutting, it was transferred into a new product which was a marketable product. Revenue has failed to bring out these aspects. Squarely covered by the judgment of this Court in Servo-Med Industries Pvt. Ltd. v. Commissioner of Central Excise, Mumbai - 2015-TIOL-103-SC-CX .

2015-TIOL-166-SC-CX

M/s Ankur Steels Vs CCE (Dated: July 15, 2015)

Central Excise - Deemed Credit - When deemed credit is allowed as per the notification, payment of duty is not mandated - Assistant Commissioner's order upheld: The Original Adjudicating Authority had recorded a finding of fact that there was no melting of the aforesaid inputs while manufacturing the bars and rods of the iron and steel. The adjudicating authority also recorded a finding that the goods in question which were purchased by the appellant as scrap from the Railways and became inputs for it to manufacture its own goods were not dutiable. Further no evidence was produced by the Revenue to the effect that they were exempt from the excise duty when purchased by the Railways originally. The adjudicating authority remarked that once the goods were dutiable, there was a presumption that duty was paid unless the Department is able to show that the Railways was exempt from payment of excise duty. The adjudicating authority thereafter applied the notifications dated 13.07.1992 and 01.03.1994 and held that in these circumstances, the deeming provisions contained in those notifications would get attracted and the appellant shall be entitled to the MODVAT credit at the rate of Rs. 920/- per tonne which is the rate specified in the said notifications.

Commissioner (Appeals), Tribunal and High Court fell into the same error denying the deemed MODVAT credit to the appellant on the ground that the appellant had not paid duty on the raw material.

Orders passed by the Commissioner (Appeals), Tribunal and High Court set aside and the order of the Assistant Commissioner which had allowed the said credit to the appellant is restored.

Also see analysis of the order

2015-TIOL-165-SC-CX

CCE Vs M/s Goodyear South Asia Tyres Pvt Ltd and Ors (Dated: July 22, 2015)

Central Excise - valuation - Related Person - Mutuality of interest - the person who is sought to be branded as a "related person" must be a person who is so associated with the assessee that they have interest, directly or indirectly, in the business of each other. It is not enough that the assessee has an interest, direct or indirect, in the business of the person alleged to be a related person nor is it enough that the person alleged to be a related person has an interest, direct or indirect, in the business of the assessee. It is essential to attract the applicability of the first part of the definition that the assessee and the person alleged to be a related person must have interest, direct or indirect, in the business of each other.

No doubt, the two buyers had given Rs. 85.66 crores interest free loan to the assessee. However, that by itself may not be a reason to hold them as related persons within the meaning of Section 4(4)(c) of the Act. In the absence of any mutuality of interest existing between them, giving of this interest free loan could have been a basis to include the notional interest while arriving at the cost of product sold by the assessee to the two buyers. However, instead of doing that, the appellant wanted to make use of this factor to hold that the assessee and the two buyers are "related persons" which position is difficult to comprehend.

2015-TIOL-164-SC-CX

CCE Vs M/s Dhar Cement Ltd (Dated: July 21, 2015)

Central Excise - Concessional Duty on Cement based on annual capacity of the plant as certified by Commissioner of Industries - matter remanded: CESTAT vide the impugned order has allowed the appeal simply on the ground that Commissioner of Industries has certified that the installed capacity of the plant was less than 1,98,000 tonnes per annum during the relevant period and this certificate would bring the issue in favour of the respondent. Directorate of Industries had conceded that it had no wherewithal to ascertain the installed capacity and it simply went by the report of SISI . On the other hand, the Revenue is relying upon plethora of material on the basis of which it is argued that the installed capacity is much more than 1,98,000 tonnes per annum. Some of the material produced is that of respondent itself and it is argued that the respondent had accepted that its installed capacity was more than 1,98,000 tonnes per annum. In a case like this, the CESTAT should have considered the material placed by the Revenue and only then come to a conclusion as to whether the certificate issued by Commissioner of Industries should be acted upon or not. Matter remanded so that the material on which the Revenue relied upon is also discussed by the CESTAT and then a finding be arrived at to this effect.

2015-TIOL-163-SC-CX

CCE Vs M/s Emco Ltd (Dated: July 31, 2015)

Central Excise - Valuation - Transaction Value - whether transportation and insurance cost to be included in value - What is to be determined is the 'place of removal' and that depends on the facts of each case; - "'Place of removal' is the place or premises from where the excisable goods are to be sold after their clearance from the factory and from where such goods are removed. Thus, 'place of removal', in a given case becomes a crucial determinative factor for the purpose of valuation. In the present context, if it is found that transportation charges and transit insurance charges were incurred after the 'place of removal', then they are not to be included. On the other hand, if these charges are incurred before the 'place of removal' then they are to be included while arriving at the transaction value. Again, in the context of the present case, what is to be determined is as to whether the 'place of removal' was the factory gate of the respondent or it was the premises of the purchaser at the time of delivery of these goods. In Commissioner of Central Excise, Noida v. Accurate Meters Ltd. - 2009-TIOL-31-SC-CX-LB , the Court took note of few more decisions, including the case of Escorts JCB Ltd. , and reiterated the aforesaid principles but at the same time also emphasising that the place of removal depends on the facts of each case.

Perfunctory manner in which the appeal of the assessee is allowed by Tribunal, cannot be countenanced. - The perfunctory manner in which the appeal of the assessee is allowed, cannot be countenanced. If the Tribunal was confirming the decision of the Authority below, may be detailed discussion was not required as the reasons given in detail could be found in the order appealed against, though even in such a case brief reasons are to be given by the Tribunal, in particular, to meet the arguments which are advanced by the appellant while challenging such an order. However, in the instant case, there is a detailed discussion in the order of the Commissioner on the facts of the case. Those facts are not adverted to or dealt with. The decision of the Commissioner is overruled with single observation that the case is covered by the judgment in Escorts JCB Ltd ., without discussing as to how it was so covered. This is notwithstanding the fact that the decision as to which is the 'place of removal' depends upon the facts of each case."

Also see analysis of the order

2015-TIOL-160-SC-CX

UoI Vs M/s N S Rathnam & Sons (Dated: July 29, 2015)

Central Excise - Iron and steel obtained by breaking up of ships - two different notifications for two similar assessees not correct : when the benefit of concessional

right is restored by a notification, there cannot be any discriminatory treatment to some persons who fall in the same category. Both the categories of importers paid the duty as leviable under Customs Tariff Act. Once a choice is given under the said Act and the duty is paid accordingly, merely because the rate of duty arrived at is different would not be rational basis for excluding the other class.

The two Notifications both dated 27.03.1987 pertain to same goods namely those falling under Heading 72.15 and 73.09 of the second Schedule to the Act. Customs duty is leviable on these goods under Section 3 of the Customs Tariff Act. The said duty can be paid under any of the two methods. When two methods are permissible under the statutory scheme itself, obviously option is that of the assessee to choose in all those methods to pay the custom duty. Duty, thus, paid is to be naturally treated as validly paid. Merely because with the adoption of one particular method the duty that becomes payable is lesser would not mean that two such persons belong to different categories. The important factors for the purposes of parity are same in the instant case, viz. the goods are same; they fall under the same Heading and the custom duty is leviable as per the Act which has been paid. Therefore, the impugned Notification giving exemption only to those persons who paid a particular amount of duty, namely Rs. 1,400/- per LDT, would not mean that such persons belong to a different category and would be entitled to exemption and not other persons like the respondent herein who paid the duty on the same goods under the same Act but on the formula which he opted and which is permissible, which rate of duty comes to Rs.1,035/- per LDT.

Also see analysis of the order

2015-TIOL-159-SC-CX

Shabina Abraham Vs CCE & C (Dated: July 29, 2015)

Central Excise - whether an assessment proceeding under the Central Excises and Salt Act, 1944, can continue against the legal representatives/estate of a sole proprietor/manufacturer after he is dead.: while interpreting the provisions of the Central Excises and Salt Act, legal heirs who are not the persons chargeable to duty under the Act cannot be brought within the ambit of the Act by stretching its provisions. There is in fact no separate machinery provided by the Central Excises and Salt Act to proceed against a dead person when it comes to assessing him to tax under the Act. In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency.

Also see analysis of the order

2015-TIOL-158-SC-CX

M/s Poonam Spark Pvt Ltd Vs CCE (Dated: July 29, 2015)

Central Excise - Manufacture - Concurrent finding of fact on manufacture by all three lower authorities accepted: The question of law which arises for consideration in the present case is whether the activity of mounting of Water Purification and Filteration System (WPFS) on a base frame carried out by the assessee amounts to manufacture or not. A finding of fact is arrived at by all the three Authorities that the activity undertaken by the appellant amounts to "manufacture" within the meaning of Section 2(f) of the Central Excise Act, 1944, since the end result of the process or activity resulted in new and different commercial product. On the basis of the findings which are concurrent findings of all the Courts below, the correct legal principle has been applied.

Also see analysis of the order

2015-TIOL-157-SC-CX

CCE Vs M/s Global Health Care Products Partnership Firm and Ors (Dated: July 28, 2015)

Central Excise - Classification - Close-Up Whitening dental cleaner is not a 'toothpaste' but other form of dental hygiene and, therefore will have to be classified under sub-heading 3306.90: the Chapter Heading makes it clear that it covers various preparations for oral and dental hygiene. These preparations specifically include dentifrices. Examples of such oral and dental hygiene are also given, like toothpaste, tooth powder, denture fixative pastes and powders. Out of these, two products which are covered by sub-heading 3306.10 are toothpaste and tooth powder. Other oral and dental hygiene preparations fall under the reminder sub-heading, i.e. 3306.90, nomenclature of which is 'Other'.

Relevance of HSN : The Supreme Court in the case of Camlin Limited v. Commissioner of Central Excise, Mumbai 2008-TIOL-165-SC-CX held that if the entries under HSN and the entries under the Central Excise Tariff are different, then reliance cannot be placed upon HSN Notes for the purposes of classification of goods under Central Excise Tariff. The issue, therefore, has to be decided dehors HSN Notes as aid thereof cannot be taken in the instant case.

Also see analysis of the order

2015-TIOL-156-SC-CX

CCE Vs M/s Prince Gutka Ltd (Dated: July 16, 2015)

Central Excise - Clandestine Removal: the adjudicating authority had dropped the proceedings accepting the explanation furnished. In view thereof, the CESTAT has held that there could not have been second show cause notice on the same cause of action. In this behalf no error in the order passed by the CESTAT.

Central Excise - Under-valuation: the adjudicating authority had studied not only the evidence but also discussed the same in the show cause notice. He found that even when those particulars and materials which are against the assessee as disclosed in the show cause notice, the assessee said nothing in defence. This is precisely the reason given by the adjudicating authority in confirming the demand. The findings of the CESTAT that adjudicating authority has not given any reasons or discussed the evidence, not agreed with. Thus, insofar as the issue of under-valuation is concerned, there is substance in these appeals and to that extent order of the CESTAT is contrary to law and is accordingly set aside.

2015-TIOL-154-SC-CX

Saral Wire Craft Pvt Ltd Vs CC, CE & ST (Dated: July 20, 2015)

Central Excise – Adjudication Order served on 'kitchen boy' of the assessee, is not proper service: *It is an anathema in law to decide a matter without due notice to the concerned party. Every effort must be taken to meaningfully and realistically serve the affected party so as not merely to ensure that he has knowledge thereof but also to enable him to initiate any permissible action. The Appellant justifiably submits that it was statutorily impermissible for the Respondents to serve the Adjudication Order on a "kitchen boy", who is not even a middle level officer and certainly not an authorized agent of the Appellant. The version of the Appellant that it*

learnt of the passing of the Adjudication Order dated 30.3.2012 only when, in the course of the recovery proceedings, the Department's officials had visited its unit, is certainly believable.

"it is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all."

The Inspector who ostensibly served the copy of the Order should have known the requirements of the statute and therefore should have insisted on an acknowledgement either by the Appellant or by its authorized agent. The Inspector had a statutory function to fulfil, not a mere perfunctory one. The Appeals are accordingly allowed and the impugned Orders are set aside.

Also see analysis of the order

2015-TIOL-153-SC-CX

Chackolas Spinning And Weaving Mills Ltd Vs CCE (Dated: July 16, 2015)

Central Excise - valuation under Central Excise (Valuation) Rules, 1975 - captive consumption - Even if losses are made, notional profit has to added to cost of production to determine assessable value.

2015-TIOL-151-SC-CX

M/s Coastal Paper Ltd Vs CCE (Dated: July 21, 2015)

Central Excise - Paper - Exemption - Paper made out of pulp from rags entitled for concessional rate: Notification provides concessional rate of duty to kraft paper made out of pulp containing not less than 75% by weight of pulp made from materials other than bamboo, hardwood, softwood, reeds or rags. It is admitted that the assessee in this case made kraft paper out of pulp of rags cut out of old gunny bags. The Revenue contends that the assessee is not entitled to the benefit of the said notification as they used pulp made out of rags in the manufacture of kraft paper. Commissioner allowed the exemption; Tribunal reversed Commissioner's order.

Held: when the expression 'rags' is not defined in the Notification, it has to be assigned a particular meaning which defines the purpose for which such a Notification was issued giving by plain meaning, even when there is a total disconnect between the said meaning and the Notification, may lead to absurd results as it would exclude the non-conventional material in the form of waste from jute bags or gunny bags even when this very material was there in the 'Positive List' and qualified for exemption.

Almost all the books on the subject uniformly define 'rag' or 'rag pulp' as one, which is made from cotton waste or cotton textile material. On the other hand, the counsel appearing for the Revenue could not point out to a single dictionary or any technical literature which even remotely suggests that jute gunny bags come under the category of 'rags' in the context of paper technology.

The impugned decision of the Tribunal does not stand judicial scrutiny and warrants to be set aside. The appeal is allowed, the order of the Tribunal is quashed and the order passed by the Commissioner is restored.

Also see analysis of the order

2015-TIOL-149-SC-CX

CCE Vs M/s Kap Cones (Dated: July 20, 2015)

Central Excise -Appeals - Review by Committee of Chief Commissioners - Whether Tribunal can condone delay in the order passed by Committee: A committee of Chief Commissioners, issued order No.35/2011, dated 25.10.2011, under Section 35(E)(i) & (ii) of the Central Excise Act, 1944, directing the Commissioner to file an application before the Tribunal under Section 35(E) (4) of the Act. The order was received by the Commissioner on 31.10.2011. The Commissioner filed an application before the Tribunal under Section 35(E)(4) of the Act, which was treated as an appeal, accompanied by a separate application for condonation of delay of 8 days. The Tribunal dismissed the appeal by holding that as the order passed by the Committee of Chief Commissioner's is barred by limitation and it has no jurisdiction to condone this delay, the appeal is not maintainable. The Tribunal has placed reliance upon a judgment of the Supreme Court in CCE v. M.M.Rubber Co., - 2002-TIOL-111-SC-CX . The High Court upheld the order of the Tribunal.

In CCE v. Monnet Ispat & Energy Ltd. - 2010-TIOL-1133-CESTAT-DEL-LB , the larger bench of the Tribunal held that the Tribunal has ample power to condone the delay in filing the appeal including the one filed under Section 35E(4) of the said Act. The period which can be condoned in relation to filing of the appeal under Section 35E(4) of the said Act would include the period availed by the review committee in terms of Section 35E(1) or 35E(2) of the said Act.

The Supreme Court agreed with the view of the Larger Bench noting the members deciding the lis by the impugned order should have kept themselves abreast to the Full Bench decision of the tribunal so that there would not have been two views as regards the same proposition.

Also see analysis of the order

2015-TIOL-147-SC-CX-LB

CCE Vs Sanden Vikas India Pvt Ltd

Central Excise - Exemption Notification - Car air conditioners - The Notification provides that for purposes of the Notification, the term "car air-conditioner kit" or "car air-conditioning kit" shall exclude that kit or assembly of parts which contains automotive gas compressor with or without magnetic clutch. The Explanation has the effect of taking away the automotive gas compressor (with or without magnetic clutch) from out of the car air-conditioning kit. The car air-conditioning kit which comprises of parts of car air-conditioner remains as part of item no. 8 of the notification. The Explanation cannot be so construed as to remove the term "car air-conditioner kit" or "air-conditioning kit" itself from item No. 8 of the Notification. What follows is that 'car air-conditioning kit minus automotive gas compressor with or without magnetic clutch' will remain in the description of goods against item no. 8 of the Notification and that the excluded part of the kit, namely, automotive gas compressor with or without magnetic clutch, will cease to be part of item no.8 and will be liable to duty separately. Division Bench Decision of the Supreme Court in 2003-TIOL-101-SC-CX is not erroneous.

Central Excise - Whether interpretation as per Rule 2(a) would be applicable to the Notification . Rule 2(a) of Rules for the Interpretation of Schedule reads as follows:-

"2. (a) Any reference in a heading to goods shall be taken to include a reference to those goods incomplete or unfinished, provided that, the incomplete or unfinished goods have the essential character of the complete or finished goods. It shall also be taken to include a reference to those goods complete or finished (or falling to be classified as complete or finished by virtue of this rule), removed unassembled or

disassembled."

Held: "It needs no special emphasis to state that rules or principles of interpretation are always subject to context and not binding commands on iron cast imperatives."

Also see analysis of the order

2015-TIOL-137-SC-CX

CCE Vs Indian Petrochemicals Corpn Ltd (Dated: May 12, 2015)

Central Excise - Classification of petroleum products - C4 Raffinate and propylene - Classification under 2711.19 correct and eligible for exemption under notification No. 6/2000 - CE dated 1.3.2000.

2015-TIOL-136-SC-CX

Kali Aerated Water Work Vs CCE (Dated: May 8, 2015)

Central Excise - SSI Exemption - 'kalimark' trade mark belonged to several persons including the assessee - assessee using this trade mark entitled to SSI exemption. It is clear from the records that the trade name 'Kalimark Aerated Water Works' and trade mark mentioned in the said agreement would remain vested in all the parties including the appellant and the appellant was also allowed to use the same. The agreement further provides that the user of this trade mark, therefore, shall not make any payment of royalty or remuneration to any other party. This very fact was correctly appreciated by the Commissioner who decided the appeal in favour of the appellant.

Also see analysis of the Order

2015-TIOL-135-SC-CX

CCE Vs M/s Vetcare Organics Pvt Ltd (Dated: May 8, 2015)

Central Excise - SSI Exemption - Use of Brand Name of another person - assessee using the brand name of another person with his permission - Permission will not make the assessee owner of the brand name - Not entitled for SSI benefit. Tribunal Order set aside.

2015-TIOL-133-SC-CX

CCE Vs M/s Stangen Immuno Diagnostics (Dated: March 19, 2015)

Central Excise - SSI Exemption - Brand Name - Even if the goods are different, so long as the trade name or brand name of some other company is used the benefit of the notification would not be available. - matter remanded

The assessee is the manufacturers of composite diagnostics or laboratory regents and pharmaceutical goods. It is registered as a small scale industrial unit (SSI unit). The assessee was using the brand name 'Stangen' on the goods manufactured by it. It is an admitted case that this brand name 'Stangen' was affixed on the packing of the goods and even on the goods manufactured. The assessee started availing the benefit of exemption/concessional rate of duty under Notification No.175 /86-CE dated

1.3.1986 which grants exemption or concessional rate of excise duty to the SSI units.

In the year 1997 a show cause notice was issued to the respondent by the appellant/Excise Department stating that the respondent is wrongly claiming the benefit of the aforesaid Notification inasmuch as use of the brand name 'Stangen' and also the logo belonged to Dr.K.Anji Reddy, Chairman of Dr.Reddy's Laboratories (DRL). It was stated that DRL is the manufacturer of bulk drugs falling under Chapter 30 of the Central Excise Tariff Act, 1985, and the trade mark 'Stangen' and related logo are used on the printed labels foils of the P & P medicine manufactured by DRL and also appear on the classification list filed by the DRL.

The assessee replied to the show cause notices in which it was admitted that Dr.K.Angi Reddy is the Chairman of Dr. Reddy Group of Industries which includes the respondent Company as well as DRL. The defence, however, was that Dr. K.Angi Reddy had not assigned the trade mark either to the assessee firm or any other manufacturer. It was also mentioned that the assessee as well as the DRL are Public Limited Companies having separate legal entities of their own with their own independent spheres of activities. The contention was that DRL manufactured altogether different products than the products mentioned by the assessee Company. A plea was also raised that Dr. K.Angi Reddy in his individual capacity was not a manufacturer within the meaning of said expression as defined in the Central Excise Act. By raising the aforesaid submissions request was made to drop the proceedings. The Adjudicating Authority dropped the proceedings. CESTAT upheld this and Revenue is in appeal before Supreme Court.

Earlier Supreme Court decisions on the issue:

Commissioner of Central Excise, Chandigarh-I Vs. Mahaan Dairies - 2004-TIOL-52-SC-CX : it makes no difference whether the goods on which the trade name or mark is used are the same in respect of which the trade mark is registered. Even if the goods are different, so long as the trade name or brand name of some other company is used the benefit of the notification would not be available. Further, in our view, once a trade name or brand name is used then mere use of additional words would not enable the party to claim the benefit of the notification.

It is clear from the above that the Court was of the view that even if the goods are different, so long as brand name or trade name of some other Company is used, the benefit of Notification would not be available.

Commissioner of Central Excise, Chandigarh-II vs. Bhalla Enterprises - 2004-TIOL-90-SC-CX reiterated the same principle.

Matter remanded.

2015-TIOL-131-SC-CX

CCE Vs M/s Dabur India Ltd (Dated: May 12, 2015)

Central Excise - classification - livfit premix, Ayucal Premix and Caldhan suspension - 2302: Preparations of a kind used in animal feeding, including dog and cat food; There are several reasons given by the Tribunal in classifying these products as animal feed supplements. One important reason in support which is noted by the Tribunal is that the Department's own laboratory, namely, CRCL has opined that livfit Vet is not described in authoritative books for Aurvedic medicines and it can be considered animal feed supplement. Insofar as Ayucal premix is concerned, here again, CRCL has opined that it should be animal feed supplement. Thus, insofar as these two products are concerned, Government's own laboratory has classified them

as animal feed supplement and not veterinary medicament.

No reason to interfere with the judgment of the Tribunal.

2015-TIOL-130-SC-CX

CCE Vs M/s Amritlal Chemaux Ltd (Dated: May 5, 2015)

Central Excise - manufacture - labelling or re-labelling of containers and re-packing from bulk to retail packs : insofar as the process of label or relabeling of containers is concerned, it would amount to manufacture only if the other condition, viz., repacking from bulk to retail pack is also satisfied. The aforesaid view gains credence from other fact, i.e., where the second process is treated as manufacture, viz., "adoption of any other treatment to render the product marketable to the consumer", the expression 'any other treatment' and that too, with intention to render it marketable clearly shows that insofar first part is concerned, both the conditions have to be satisfied.

2015-TIOL-129-SC-CX

UoI Vs M/s Asahi India Safety Glass Ltd (Dated: May 7, 2015)

Central Excise - Settlement Commission - High Court has the power to decide the principle of law on the admitted facts : the High Court has simply stated the correct legal position where the Settlement Commission had gone wrong in law. Thus, the High Court has simply applied the correct principle of law on the admitted facts. This was well within the powers of the High Court while exercising its jurisdiction under Art.226 of the Constitution.

Central Excise - Modvat Credit - Defective inputs - once the inputs have gone into the manufacturing process, Modvat credit is to be allowed: - Process in manufacture or in relation to manufacture implies not only the production but the various stages through which the raw material is subjected to change by different operations. It is the cumulative effect of the various processes to which the raw material is subjected to, manufactured product emerges. Therefore, each step towards such production would be a process in relation to the manufacture. Where any particular process is so integrally connected with the ultimate production of goods that but for that process manufacture or processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture.

Also see analysis of the Order

2015-TIOL-128-SC-CX

Crompton Greaves Ltd Vs CCE (Dated: May 5, 2015)

Central Excise - Valuation (prior to 2000) - Clearance to own unit - Comparable price correct method - Highest price to other buyer of a single unit cannot be the basis for assessable value : The Revenue/Department found that the price shown for various models of VIT cleared for captive consumption of the appellant's own unit at Nasik is much lesser than the price at which the appellant had been selling such products to the other parties. This resulted in issuance of the show cause notice dated 25.5.2001 for the period 1996-2000. A differential duty of Rs.94,48,210 /- was proposed to be demanded therein. The respondent replied to this show cause notice in which the prime contention raised was that even if Nasik unit was its own unit and it would be treated as related party, the prices at which the goods were cleared, for Nasik unit was negotiated price and at arms length. On that basis it was pleaded that the price declared for clearance of such goods for Nasik unit should be accepted. The Assessing

Officer rejected the aforesaid plea of the appellant and confirmed the demand raised in the show cause notice. The rejection was on the ground that Nasik unit was to be treated as "related party", such price as declared cannot be taken into consideration in view of the provision of Section 4(1)(a) of the Central Excise Act, 1944. For the purpose of valuation the adjudicating authority resorted to the Valuation Rules. He took into consideration the instance of those models of VIT which were identical in nature and supplied to third party and the highest comparable price i.e. the highest price at which the goods were sold to the third party.

2015-TIOL-127-SC-CX

M/s Gajra Gears Ltd Vs CC&CE (Dated: May 7, 2015)

Central Excise - Classification - Pallets - The appellant makes use of material handling equipments like hand trolley or fork lift etc. These trolleys and fork lift are placed on iron/steel or aluminum known as "3 FAG Pallets". These pallets are manufactured by the appellant in its own factory and captively used for the aforesaid purpose. The appellant had filed its declaration claiming classification under Chapter Heading 84.31. As per the Department the goods in question are to be classified under Chapter Heading 7326.90. It is not in dispute that the impugned pallets are made of iron or steel. It is the contention of the respondents that these pallets are in the nature of material handling equipment and are specifically designed to put up in process goods for shifting or transfer and as the pallets are suitable for use solely or principally with the machinery of heading No.84.27 (fork-lift trucks) these are to be classified under Heading 84.31. For being classified under Heading 84.31, the goods should be first a 'part' and secondly 'suitable for use solely or principally' with the machinery of heading Nos. 84.5 to 84.30. The impugned pallets are not parts of fork-lift trucks as they are complete without these pallets. - Department's view confirmed.

Central Excise - Captive Consumption - Exemption: The appellant in respect of the aforesaid pallets, claimed benefit of Notification No.67/95-CE dated 16.3.1995, as amended and prevalent on the date when the dispute arose, namely, in the year 1999. Tribunal has held that the Notification exempts capital goods, as defined in Rule 57Q of the Central Excise Rules, 1944, manufactured in a factory of production and at the material time as per the definition of capital goods given in Rule 57Q, goods falling under the Chapter were not covered within the said definition.

Supreme Court Held : It is an admitted position, as explained by the appellant itself, that these pallets which are manufactured/assembled in the factory of the appellant are in the nature of material handling equipment, to keep and carry work in progress goods from one machine to the other. Thus, the use of the pallets is for carrying out the material from one machine to the other. It cannot, therefore, be said that these goods are used in relation to the manufacture in or in relation to the manufacture of the final products.

2015-TIOL-126-SC-CX

CCE Vs M/s Oswal Yarns Ltd (Dated: May 8, 2015)

Central Excise - Classification- yarn - the goods in question, viz., manufacturing yarn out of synthetic waste, rags, silk waste and wool waste are subject to levy of excise duty under entry 5509.90. Tribunal's order upheld.

2015-TIOL-125-SC-CX

M/s Thermax Babcock And Wilcox Ltd Vs CCE (Dated: May 8, 2015)

Central Excise - valuation - bought out items - It is contended that the assessee had removed boilers in unassembled form at the factory site according to the excise authorities. The Tribunal has decided this issue in favour of the Revenue accepting its plea that without these parts a boiler cannot function. It is this part of the Tribunal's order which is assailed in the present appeal. Counsel pointed out that though in the show cause notice such bought out parts were mentioned in annexure D thereto, while computing the demands which were raised in the show cause notice, no excise is demanded on the above item. If that be so, there is no need to go into the issue raised by the appellant in this appeal as the decision of this appeal either way would not affect the appellant if the duty itself is not demanded thereupon. While dismissing this appeal, it is clarified that if there was no such amount demanded in the show cause notice, the direction contained in para 10 and 11(b) of the impugned order of the Tribunal to the jurisdictional officer to determine and recover the duty from the appellant shall have to go. However, it is only if the Officer is satisfied that no demand was made in respect of aforesaid items while computing the demand.

2015-TIOL-121-SC-CX

M/s Dharampal Satyapal Ltd Vs DCCE (Dated: May 14, 2015)

Central Excise - Recovery of duty - Whether recovery proceedings can be initiated without show-cause notice under Section 11A of the Excise Act, which is mandatory? NO: Can recovery proceedings can be initiated without show-cause notice under Section 11A of the Excise Act, which is mandatory ? No doubt, the Department was seeking to recover the amount paid by virtue of Section 154 of the Act of 2003 which was enacted retrospectively and the constitutional validity of the said Section had already been upheld by this Court in R.C. Tobacco (supra) at the time of issuance of notice for recovery. Further, no doubt, the effect of the said amendment retrospectively was to take away the benefit which was granted earlier. However, the question is whether before passing such an order of recovery, whether it was necessary to comply with the requirement of show-cause notice? The appellant wanted to contend that Section 11A of the Excise Act was applicable, which requires this procedure to be followed. Even if that provision is not applicable, it is fundamental that before taking any adverse action against a person, requirement of principles of natural justice is to be fulfilled. It is also trite that when a statute is silent, with no positive words in the Act or Rules spelling out need to hear the party whose rights or interests are likely to be affected, requirement to follow fair procedure before taking a decision must be read into statute, unless the statute provides otherwise.

Whether there is a conflict between the three Judge Bench judgment in J.K. Cotton 2002-TIOL-559-SC-CX-LB and R.C. Tobacco - 2005-TIOL-115-SC-CX ? NO: In JK Cotton, the retrospective amendment of rules were held valid, but demands were subject to Section 11A. In RC Tobacco, the retrospective withdrawal of exemption notification was upheld. The judgment in J.K. Cotton was specifically taken note of and discussed in R.C. Tobacco. Paragraph 13 of the judgment in R.C. Tobacco would reflect that the appellant therein had specifically relied upon the judgment in J.K. Cotton in support of the submission that retrospectivity was harsh and excessive since there is, in fact, a retrospective imposition of excise duty. It was also argued that justification of such retrospective imposition of tax must be overwhelming and no such overriding consideration had been disclosed. The submission went to the extent of pleading that if the appellant is called upon to pay the excise duty now it will cripple its unit. More pertinent was another submission, which is relevant for our purpose, that the demand which was raised could not be sustained as it was made without issuing any show-cause notice and was in contravention of Section 11A of the Act. In support of this view, few judgments, including J.K. Cotton, were relied upon. The Court, however, did not find any merit in the aforesaid submissions. In the aforesaid scenario, when the Court was conscious of the principle laid down in J.K. Cotton and explained the same in a particular manner while deciding the appeal in R.C. Tobacco, it cannot be argued that the judgment in R.C. Tobacco runs contrary to J.K. Cotton.

Also see analysis of the Order

2015-TIOL-117-SC-CX
M/s HPL Socomac Ltd Vs CCE (Dated: May 8, 2015)
Central Excise - Valuation - Reduction in contract price after clearance - Since duty has been paid on the basis of the original price in the purchase order, the difference between the said rate and the reduced rate has to be refunded: Since duty has been paid on the basis of the original price in the purchase order, the difference between the said rate and the reduced rate of Rs.600/- per meter for 35000 meters which came to Rs.21,24,920/- would have to be repaid to the appellant. This amount had been claimed by the appellant on 20.11.2002 and had been turned down by the impugned orders. The said amount will now as a consequence of the setting aside of these orders be ordered to be repaid to the appellant together with interest at 9% per annum from November, 2002 till the date of payment.
Also see analysis of the Order
2015-TIOL-116-SC-CX
CCE Vs M/s JVS Foods Pvt Ltd (Dated: May 8, 2015)
Central Excise - Exemption - supply of nutritious food (product) falling under sub-heading 1901.10 to the Government of Rajasthan under the World Food Programme project . It is not in dispute that in terms of paras 9.10 and 9.26 of the Exim Policy when the aforesaid food products are supplied to the weaker sections of the society free of cost, there is no excise duty payable thereon. The only requirement is that there has to be certificates produced from the concerned authorities that goods were in fact distributed free of cost to the weaker sections under the aforesaid programme which is duly approved by the State Government. Tribunal has taken note of and discussed those certificates in the impugned order and on the basis of which a finding of fact is arrived at that the assesse had in fact distributed the goods free of cost to the economically weaker sections of the society. In these circumstance, the respondent could not be fastened with any liability to pay the excise duty.
2015-TIOL-115-SC-CX
CCE Vs M/s Neycer India Ltd (Dated: May 11, 2015)
Central Excise - Valuation - cost of bought out items not to be added - The Department/Revenue wanted to add the value of Handle assembly, Ball valve assembly, overflow assembly, Syphon assembly, Outlet flange assembly and Flush pipe assembly, while arriving at the valuation of the flushing cisterns manufactured by the assessee. It is an admitted position that the aforesaid fittings are not manufactured by the assessee. It is also an admitted position that the assessee supplied the same to those buyers only who asked for that and in such a situation the assessee buys the aforesaid components from the market and supply to the buyers at their option. Tribunal has rightly declined to add the value of the aforesaid components which are not the part of flushing cistern manufactured by the assessee.
2015-TIOL-114-SC-CX
CCE Vs M/s Pethe Brake Motors Pvt Ltd (Dated: May 01, 2015)
Central Excise - SSI Exemption - Surname of the Director, not a brand name of another person: This is not in dispute that the assessee is an SSI unit. It was denied exemption from excise duty admissible under Notification No.1 /93-CE dated 28.2.1993 on the ground that it was using branded name of another person and

therefore in terms of para 4 of the said Notification it was not entitled to the exemption. The finding of fact as recorded by the Tribunal in the impugned judgment is that the assessee was not using the branded name of another person and the name used was the surname of the Director of the assesse, viz., 'PETHE'. This finding of fact clearly means that the case does not fall within the mischief of para 4 of the aforesaid Notification No.1/93.

2015-TIOL-109-SC-CX

CCE Vs Raj Petroleum Products & Ors (Dated: May 11, 2015)

Central Excise - Appeals - Appeal to High Court or Supreme Court. Appeal filed in Supreme Court instead of High Court. Revenue allowed to file appeal in High Court within one month.

2015-TIOL-108-SC-CX

CCE Vs M/s National Engg Industries (Dated: May 7, 2015)

Central Excise Valuation – Sales Tax incentive not includible in assessable value till 1.7.2000 and includible after that . The respondent assessee had availed sales tax benefits in the sense that the sales tax was paid at concessional rates under the sales tax incentive scheme which was floated by the State of Rajasthan. The question arose as to whether the benefit of sales tax which was availed by the respondent would be included while fixing the value of the product for the purpose of payment of excise duty. This issue squarely stands covered by the judgment of this Court in Commissioner of Central Excise, Jaipur-II vs Super Synotex India Limited - 2014-TIOL-19-SC-CX . In that case the Court has taken the view that assessee would be entitled to claim deductions towards sales tax from the assessable value of the sales tax which is retained by the assessee. The Court also pointed out that this position had changed after the amendment in Section 4 w.e.f . 1.7.2000 and in arriving 'transaction value' said sales tax benefit which was retained by the assessee, would be included while fixing the 'transaction value'.

2015-TIOL-107-SC-CX

CCE Vs M/s Andhra Pradesh Paper Mills Ltd (Dated: May 5, 2015)

Central Excise - Fully exempted paper cleared with simultaneous availment of MODVAT /CENVAT credit on inputs used - Demand of 8% on sale price of exempted goods in terms of Rule 57CC/57AD of Central Excise Rules, 1944 and Rule 6 of CENVAT Credit Rules, 2004 - Demand set aside by the Tribunal by applying the ratio of Orissa Extrusions case reported in - 2002-TIOL-240-SC-CX - Revenue in appeal against the order of Tribunal.

Held: Issue is squarely covered by the judgment of Supreme Court in case of Amrit Paper Vs CCE - 2006-TIOL-85-SC-CX - Revenue appeal allowed by following the ratio of Amrit Paper case.

Penalty - In the peculiar facts of this case, particularly when there was conflict of judicial opinion before the issue stood settled by the judgment of this Court in Amrit Paper case, it is not a case where penalty should be imposed by the respondent - Penalty set aside while upholding the order of Adjudicating Authority as far as duty demand is concerned.

2015-TIOL-105-SC-CX

M/s P&B Laboratories Ltd Vs CCE (Dated: May 5, 2015)

Central Excise - Classification - fixed dos combination of Vitamin B-1, B-6 and B-12 injectible as well as tablets form - The goods were classified under Chapter Heading 2936.00 by Delhi Bench of CESTAT, accepting the case of the Revenue; Mumbai Bench classified these very goods under Heading 3003.10 as claimed by the assessee. Both are in appeal before the Supreme Court. In the meanwhile Larger Bench of the CESTAT classified the product under 3003.10. Department did not appeal against this order. Classification under 3003.10 confirmed.

2015-TIOL-103-SC-CX

M/s Servo-Med Industries Pvt Ltd Vs CCE (Dated: May 7, 2015)

Central Excise - Manufacture - sterlilisation of syringes and needles does not amount to manufacture: By an order dated 31.12.1997, the Assistant Commissioner Central Excise held that the process of sterilization was essential to complete manufacture before the products are sold in the market. This being so, the process of sterilization was found to be an integral and inextricable part of the manufacturing process to make the product marketable. It was further held that the process of sterilization brings about a transformation of the product by making something non-sterile sterile.

Supreme Court held : The added process of sterilization does not mean that such articles are not complete articles in themselves or that the process of sterilization produces a transformation in the original articles leading to new articles known to the market as such. A surgical equipment such as a knife continues to be a surgical knife even after sterilization. If the Department were right, every time such instruments are sterilized, the same surgical instrument is brought forth again and again by way of manufacture and excisable duty is chargeable on the same. This would lead to an absurd result and fly in the face of common sense. If a surgical instrument is being used five times a day, it cannot be said that the same instrument has suffered a process which amounts to manufacture in which case excise duty would be liable to be paid on such instruments five times over on any given day of use.

Neither the character nor the end use of the syringe and needle has changed post-sterilization. The syringe and needle retains its essential character as such even after sterilization.

Tests for manufacture:

(1) Where the goods remain exactly the same even after a particular process, there is obviously no manufacture involved. Processes which remove foreign matter from goods complete in themselves and/or processes which clean goods that are complete in themselves fall within this category.

(2) Where the goods remain essentially the same after the particular process, again there can be no manufacture. This is for the reason that the original article continues as such despite the said process and the changes brought about by the said process.

(3) Where the goods are transformed into something different and/or new after a particular process, but the said goods are not marketable. Examples within this group are the Brakes India case and cases where the transformation of goods having a shelf life which is of extremely small duration. In these cases also no manufacture of goods takes place.

(4) Where the goods are transformed into goods which are different and/or new after a particular process, such goods being marketable as such. It is in this category that manufacture of goods can be said to take place.

Also see analysis of the Order

2015-TIOL-102-SC-CX

CCE & C Vs M/s Kraps Chem Pvt Ltd (Dated: May 1, 2015)

Central Excise - Classification of Guar Dal Powder - Appeal - Judicial Discipline - when there is conflict of opinion between two benches, Tribunal should refer the issue to a Larger Bench : After finding a conflict of opinion rendered by two coordinate Benches, the only course of action open for the Tribunal was to refer the matter to the larger Bench to resolve this conflict. Matter remanded to be decided by Larger Bench of the Tribunal within six months.

2015-TIOL-99-SC-CX

M/s BPL Ltd Vs CCE (Dated: May 5, 2015)

Central Excise - classification - eligibility of exemption notifications - The appellant is engaged in the manufacture of excisable goods falling under Chapter 85 and 90. From January 1997 onwards the appellant had been manufacturing and clearing two models of D.C. Defibrillators which are known as Model No. DF2389R with recorder and Model 2389 without recorder. The appellant had filed classification declaration from time to time and classified the items under C.E.T. heading 9018 and claimed exemption under Notification No.8/96 dated 23.09.1996 and Notification No.4/97 dated 01.03.97 respectively. The Revenue, however, took a view that the said Defibrillators were not eligible to the benefit of the aforesaid exemption Notifications. Therefore, by letter dated 17.02.98 it directed the appellant to modify its classifications declaration as only miniaturized implantable defibrillators were eligible to the benefit of the Notification.

The Supreme Court approved the reasoning and rational given by the Tribunal in coming to the conclusion that the goods of the appellant would not qualify the description contained in Notification Nos.8/96 and 4/97. It is trite that strict interpretation is to be given to the exemption notifications and it is upon the assessee to approve that he fulfills all the conditions of eligibility under such Notifications.

Limitation Issue open : It was contended that the declaration given by the appellant was bona fide and such bona fides were clear from the fact that law on this issue was not free from doubt which can be gathered from the fact that even the impugned judgment of the Tribunal is not unanimous as the Member (Judicial) had taken a different view which was in favour of the appellant. However, it is found that the Third Member did not decide this issue and left it for the regular bench to consider the same, with the direction that the appeal would be placed before the regular Bench. Without awaiting the decision, the appellant filed the present appeal challenging the impugned order passed by the Third Member. Since the decision rendered by the majority, is affirmed, it will now be for the Tribunal to consider the issue of limitation.

Also see analysis of the Order

2015-TIOL-98-SC-CX

UoI Vs Uttam Steel Ltd (Dated: May 5, 2015)

Central Excise - Rebate - Limitation - the period of one year as amended in Section 11B from 12.5.2000, not applicable to claims already time barred: The respondent was engaged in the manufacture and export of steel products. They exported galvanized corrugated sheets. The goods were shipped on board on 25.5.1999 and 10.6.1999 respectively in two lots. As per the law prevailing at the relevant time, the respondent had to file claims for rebate within six months from the date of shipment i.e. on or before 20.11.1999 and 10.12.1999 respectively. However, claims for rebate on both counts were filed only on 28.12.1999 beyond the period of six months under Section 11B of the Central Excise Act, 1944 as it stood at the relevant time.

By an order dated 4.10.2001, the Deputy Commissioner (Rebate) rejected the claim for rebate on the ground that they were time barred.

Section 11B was amended on 12.5.2000 where the period of six months was substituted by a period of one year. Since the rebate application was filed within the period of one year from the date of the two shipments, the respondent contended that they were within time.

By an order dated 15.2.2002, the appellate authority allowed the respondent's appeal holding that the extended period of one year was available to the respondent, the period prescribed for limitation being procedural law and, therefore, retrospective in nature. Against this order, the Central Government by an order dated 16.8.2002 allowed the revision applications of the Union holding that the extended period of limitation of one year was not available to the assessee. The assessee's writ petition being Writ No.557 of 2003 was allowed by the impugned judgment dated 12.8.2003 by the Bombay High Court.

Held : The effect of the amendment of Section 11B on 12th May, 2000 is that all claims for rebate pending on this date would be governed by a period of one year from the date of shipment and not six months. This, however, is subject to the rider that the claim for rebate should not be made beyond the original period of six months. On the facts of the present case, since the claims for rebate were made beyond the original period of six months, the respondents cannot avail of the extended period of one year on the subsequent amendment to Section 11B.

The argument that on a bond being provided under Rule 13, the goods would have been exported without any problem of limitation rejected, as the exporter in the present case chose the route under Rule 12 which, as has been stated above, is something that can only be done if the application for rebate had been made within six months.

Also see analysis of the Order

2015-TIOL-97-SC-CX

M/s Phaarmasia Ltd Vs CCE (Dated: April 22, 2015)

Central Excise - Valuation - Job work - "other works overhead" element should have been taken into consideration in arriving at the assessable value ; the Counsel for the appellant submitted that he was not questioning the order on merit insofar as it holds that the 'other works overhead' should have been calculated in the cost which was to be calculated by the appellant for payment of excise duty. However, he submitted that the Department could not invoke the extended period of limitation.

Central Excise - Demand - Limitation - Suppression proved - appeal dismissed : the assessees have suppressed the facts and contravened the provisions of the Central

Excise Act and the rules made there under with intent to evade payment of duty; No doubt, the cost audit report was supplied by the P&G. However, based thereupon, it is the appellant which had worked out the final costing and it is the chartered accountant of the appellant which had prepared the said costing and submitted to the Department. Therefore, the appellant cannot feign ignorance or be pretentious about its innocence in allegedly acting upon the cost audit report as supplied by P&G.

Also see analysis of the Order

2015-TIOL-96-SC-CX

Nirlon Ltd Vs CCE (Dated: April 23, 2015)

Central Excise - Valuation - goods cleared at factory gate and for captive consumption in another factory not same - not comparable;

Central Excise - Demand - limitation - no mala fide intentions - and revenue neutral - demand beyond normal period and penalty set aside: The question is about the intention, namely, whether it was done with bona fide belief or there was some mala fide intentions in doing so. It is stated that when the entire exercise was revenue neutral, the appellant could not have achieved any purpose to evade the duty. Therefore, it was not permissible for the respondent to invoke the proviso to Section 11A (1) of the Act and apply the extended period of limitation. Once it is found that there was no mala fide intention on the part of the appellant, the penalty is set aside as well.

Also see analysis of the Order

2015-TIOL-92-SC-CX

M/s Escorts Ltd Vs CCE (Dated: April 29, 2015)

Central Excise – manufacture – Transmission Assembly for tractors – excisable and dutiable – appeal allowed on limitation: Although the definition of "goods" is an inclusive one, it is clear that materials, commodities and articles spoken of in the definition take colour from one another. In order to be "goods" it is clear that they should be known to the market as materials, commodities and articles that are capable of being sold. The facts in the present case show that Transmission Assemblies of tractors are commercially known products. The fact that not a single sale of such Assembly has been made by the appellants is irrelevant. This being the case, we are of the view that the Transmission Assembly of the tractor on the facts before us is clearly an intermediate product which is a distinct product commercially known to the market as such. On this ground therefore, the appellants are not liable to succeed.

Limitation: It is clear that on facts in the present case there was no suppression on the part of the appellants nor was there any willful attempt to evade duty. As stated by the appellant, the appellant has been manufacturing tractors from 1965 onwards. There has never been any change in the manufacturing process. In the year 1994-95, IC engines were stated by the department to contain Transmission Assemblies, which were dutiable. On receiving a reply from the appellant, the department did not levy any excise duty on such Transmission Assemblies. The show-cause notice itself stated that the issue of manufacture and captive consumption of Transmission Assemblies for tractors is the same as that for IC engines. These facts, coupled with the fact that not a single Transmission Assembly of tractors manufactured by the appellant had been sold makes it clear that there was no suppression or any intent to evade excise duty in the present case.

Also see analysis of the Order

2015-TIOL-90-SC-CX-LB

M/s Kisaan Gramodyog Sansthan Vs CCE (Dated: April 22, 2015)

Central Excise - Appeal to the Tribunal - Pre-deposit: Appellant made the pre-deposit after losing the case in Supreme Court - no prejudice would be caused to either side if the Tribunal is directed to accept the "pre-deposit amount" as deposited by the appellants and hear the appeal on merits. : Tribunal directed to accept the "pre-deposit amount" paid by the appellants, which is in compliance with its earlier order and then decide the appeal on merits, in accordance with law and without reference to the period of limitation; all contentions of both the parties left open. This order shall not be treated as precedent in any other case.

2015-TIOL-88-SC-CX

M/s KRCD (I) Pvt Ltd Vs CCE (Dated: April 23, 2015)

Central Excise - Valuation - Additional Consideration - Manufacture of music CD on job work- whether the royalty paid by the copyright holder to the music artist, is to be included in the value of the job worker - 'No' Rules Supreme Court.

Facts : The appellant manufactures duplicate CDs from a master tape/CD issued to them by a distributor who had copyright in the contents of the CD. The artist/lyricist who is the owner of copyright parts with the copyright for a certain consideration (royalty) to a producer of music which music/picture is then captured on video CD and CD. The producer in turn parts with such copyright in favour of a distributor who, ultimately, gets the said CDs duplicated as is done by the appellant on job work basis, and who then sells the CDs in the market to the ultimate customer. The programme which is duplicated on the CD is owned by the customer who is either himself the distributor or is a copyright owner. The distributor/copyright holder then, upon receipt of the duplicate copies from the appellant loads part of the royalty paid to the music producer on each such CD which is then sold to the ultimate customer in the market. The entire stock of duplicate CDs can only be sold to the distributor/copyright holder and to nobody else.

The Assistant Commissioner, The Commissioner (Appeals) and the CESTAT held that the royalty charges incurred by the distributor/copyright holder is liable to be included in the assessable value of the CDs.

Board Circular : CBEC had in Circular No. 619/10/2002-CX ., dated 19-2-2002, clarified, " cost would include the royalty amount paid/payable by the music company for acquiring exclusive rights for the music/movie and the cost incurred in getting the original score recorded in a studio (if this has been incurred by the copyright owner). In such cases the most reasonable method would be to ascertain the royalty amount and studio hire charges contained in the wholesale price of the CDs at which the copy right owner sells, to its dealers, at arms length ."

Supreme Court observed : In the present case, Section 4(1)(a) of the Central Excise Act will not apply for the simple reason that price is not the sole consideration for the sale as a master tape had to be handed over by the distributor/copyright holder to the appellant. Since Section 4(1)(b) applies, the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, would apply. Both parties agree that Rule 6 would be applicable to the facts of the present case.

As per Rule 6 the value of the goods shall be deemed to be the aggregate of the transaction value and the amount of money value of any additional consideration that may flow directly or indirectly from the buyer to the assessee. Both parties relied

upon the explanation to further their case. Since the explanation is determinative of the present case, it is important to note that where the master tape is supplied by the distributor who is the copyright holder to the appellant, whether free of charge or at a reduced cost such master tape must be used in connection with the production and sale of goods by the assessee. What is clear from the present transaction is that the master tape contains within it music/picture in digital form. There is no doubt whatsoever that the music/picture supplied on the master tape ought to be valued and has been valued as additional consideration that flowed from the buyer to the assessee, and its value has been accepted at rupee one per CD.

So far as the royalty payable for such music is concerned, even if we agree with the learned counsel for the Department that such royalty is inextricably connected with the music and therefore would be used in connection with the production of the duplicate CDs, yet the explanation requires that such use must not merely be in connection with production but must also be in connection with the sale of such duplicate CDs. The entirety of the duplicate CDs is sold only to the distributor who is the copyright holder. Obviously therefore the copyright value in the duplicate CD is not used in connection with the sale of such goods inasmuch as no part of the copyright which may have been passed on by the distributor to the assessee is used by the assessee in selling the duplicate CDs to the distributor who is himself the owner of the copyright. Clearly therefore on the assumption that the music/picture embedded in the master tape is inextricably bound with the copyright thereof, the copyright is not "used" by the appellant while selling the duplicate CDs to the distributor. The distributor having paid a lump sum royalty to the producer of the music, then sells, after the job work done by the appellant, the duplicate CDs in the market with the cost of the royalty loaded thereon.

Given the fact that no part of the royalty can be loaded on to the duplicate CDs produced by the appellant, the circular dated 19.2.2002 which deals with apportionment of royalty would have no application to the facts of the present case.

The impugned order is set aside and appeal allowed, Refund, if any can be claimed.

2015-TIOL-87-SC-CX

CC & CE Vs M/s Roofit Industries Ltd (Dated: April 23, 2015)

Central Excise - Section 4 - Valuation - Goods delivered at the premises of the buyer - freight, insurance and unloading charges to be included in value:

It is the case of the Revenue that the assessee had received work orders from various Government authorities and private contractors and the agreements entered into by the assessee with the above mentioned parties were for designing, manufacturing, providing at site, laying, jointing and testing of PSC pipes of specified sizes. The agreement required the assessee, for delivery of the finished goods not at the factory gate, but the premises of the buyer.

Adjudicating authority original confirmed the demand on account of under valuation and on the ground that place of removal finished goods was the buyer's premises and not at the factory gate for the period of 01.01.1996 to 30.06.2000.

CESTAT allowed the appeal of the assessee reasoning that the issue is settled in Escorts JCB Ltd. v. Commissioner of Central Excise - **2002-TIOL-05-SC-CX** .

Revenue is in appeal before the Supreme Court. Assessee was not represented in spite of notice. So, the Supreme Court decided the issue after hearing the Revenue Counsel.

As per Section 4 of the Central Excise Act;

(i) The duty of excise is chargeable on excisable goods with reference to the value of those goods.

(ii) The value of the goods is deemed to be the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade.

(iii) The said normal price is to be seen at the time of delivery and place of removal.

(iv) 'Place of removal' is specifically defined and for our purposes, it is to be a place or premises from where the excisable goods are to be sold after their clearance from the factory and from where such goods are removed.

Thus, place of removal, in a given case, become determinative factor for the purpose of valuation.

Place of Removal : The principle of law, thus, is crystal clear. It is to be seen as to whether as to at what point of time sale is effected namely whether it is on factory gate or at a later point of time i.e. when the delivery of the goods is effected to the buyer at his premises. This aspect is to be seen in the light of provisions of the Sale of Goods Act by applying the same to the facts of each case to determine as to when the ownership in the goods is transferred from the seller to the buyer. The charges which are to be added have put up to the stage of the transfer of that ownership inasmuch as once the ownership in goods stands transferred to the buyer, any expenditure incurred thereafter has to be on buyer's account and cannot be a component which would be included while ascertaining the valuation of the goods manufactured by the buyer. That is the plain meaning which has to be assigned to Section 4 read with Valuation Rules.

In the present case, most of the orders placed with the respondent assessee were by the various Government authorities. The goods were to be delivered at the place of the buyer and it is only at that place where the acceptance of supplies was to be affected. Price of the goods was inclusive of cost of material, central excise duty, loading, transportation, transit risk and unloading charges etc. Even transit damage/breakage on the assessee account which would clearly imply that till the goods reach the destination, ownership in the goods remain with the supplier namely the assessee. As per the 'terms of payment' clause contained in the procurement order, 100% payment for the supplies was to be made by the purchaser after the receipt and verification of material. Thus, there was no money given earlier by the buyer to the assessee and the consideration was to pass on only after the receipt of the goods which was at the premises of the buyer. From the aforesaid, it would be manifest that the sale of goods did not take place at the factory gate of the assessee but at the place of the buyer on the delivery of the goods in question.

These are clear finding of facts on the aforesaid lines recorded by the Adjudicating authority. However, the CESTAT did not take into consideration all these aspects and allowed the appeal of the assessee by merely referring to the judgment in the case of Escorts JCB Ltd. Obviously the exact principle laid down in the judgment has not been appreciated by the CESTAT.

Order of the CESTAT is set aside and present appeal is allowed restoring the order passed by the Adjudicating authority.

2015-TIOL-85-SC-CX

CC & CE Vs M/s Dempo Engineering Works Ltd (Dated: April 15, 2015)

Central Excise - Classification - pontoons - Tribunal held that the product is not marketable and, therefore, would not attract any excise duty - This issue was not raised in reply to SCN - Tribunal to give a speaking order - Matter remanded: The respondent-Company is manufacturing floating pontoons which it describes as ' Pantoon with spuds'. According to the respondent these goods are covered by Chapter Heading 8905.00 which attracts nil duty. On the other hand, the Department took the position that the goods are classifiable under chapter Heading 8907.00 which attracts duty @ 20%. This resulted in issuance of show cause notice dated 4.1.1996. The respondent submitted that its product should not be classified under Chapter 8907.00. The Commissioner passed the Order-in-Original dated 12.3.1996 affirming the contents of the show cause notice and holding that his product would fall under Chapter Heading 8907.00. The Tribunal has come to the conclusion that the product is not marketable and, therefore, would not attract any excise duty. After discussing this aspect in detail the Tribunal at the end has also returned the finding that the manufacture of ' Pantoon with Spuds' is classified under 8905.00.

Held : In case, the Tribunal was not agreeing with the order of the Commissioner, the order of the Tribunal should have been a speaking order dealing with the reasoning given by the Commissioner and stating as to why the said reasoning was faulty. Matter remanded to Tribunal to decide the issue of classification by passing a speaking order.

Also see analysis of the Order

2015-TIOL-83-SC-CX

CCE Vs M/s Andrew Yule And Co Ltd (Dated: April 15, 2015)

CX - Exemption to goods supplied to Universities, National Laboratories etc. - Matter remanded to consider evidence whether the goods were used for research purposes: The respondents in these appeals have been supplying power transformers to certain institutes which are IITs, Universities, National Laboratories, etc. The question is as to whether these equipments supplied by the respondents are covered by Notification No.10 /97 CE dated 1.3.1997. The said Notification exempts the supply of equipments to certain types of institutions from payment of Central Excise in case the conditions mentioned in the Notification are fulfilled. The Counsel appearing for the respondents, intends to rely upon some material, which she submits has been downloaded from the web sites of the IITs , Universities, etc. to whom the goods were supplied, in order to demonstrate that the goods supplied were meant for research. Since this material was not produced before the commissioner, he did not have any occasion to verify the same or to consider the effect thereof. Matter remanded to adjudicating authority to consider the issue afresh after giving opportunity to the respondents to place the material before him.

Also see analysis of the Order

2015-TIOL-82-SC-CX

CCE Vs M/s Asarwa Mills (Dated: April 10, 2015)

Central Excise - Valuation - value of administrative overheads, bonus, gratuity, interest, conversion charges and depreciation charges, includible - Extended period not applicable as no intentional misdeclaration with the purpose to avoid payment of correct excise duty: for the first time, only in October, 1996, it was clarified that the cost of material, labour cost and overheads including administrative cost, advertising expenses, depreciation, interest, etc., would be included in the cost of production. There was some misunderstanding about the inclusion of these costs for the purposes of attracting excise duty, not only with the assessees but within the Department as well. Therefore, error if any was clearly bona fide and not with the object of evading excise duty. It cannot be said that the

assessee-companies made intentional misdeclaration with the purpose to avoid payment of correct excise duty.

Also see analysis of the Order

2015-TIOL-81-SC-CX

UoI Vs Dharampal Satyapal Ltd (Dated: April 7, 2015)

Central Excise - North East exemption for tobacco withdrawn retrospectively - Retrospective withdrawal already upheld by Supreme Court - High Court order not valid: The High Court has held that principle of promissory estoppel shall apply and once a promise was given by the Union of India to give the assurance that no such duty would be charged, for a period of 10 years, it was not open for the Union of India to withdraw the same. During the pendency of the appeal, the Supreme Court in R.C. Tobacco Pvt. Ltd. And Anr. vs. Union of India and Another - 2005-TIOL-115-SC-CX had upheld the validity of retrospective withdrawal of exemption - High Court order no more valid.

2015-TIOL-77-SC-CX

M/s Sonalac Paints And Coatings Ltd Vs CCE (Dated: April 15, 2015)

Central Excise - SSI Exemption - Reversal of Cenvat Credit on availing exemption . Reversal at a later date will not disentitle the assessee from availing the exemption : The assessee had a credit balance of Rs.86 ,222 /- whereas the closing balance of stock was nil on 1.4.2000, when it started availing the exemption. The amount of Rs.86 ,222 /- related to the credit of inputs was debited by the assessee on 03.10.2000 i.e. on a later date. The Department sought to deny the SSI exemption. The Commissioner took the view that merely because the earlier credit of Rs.86 ,222 /- was debited on 03.10.2000 would not deny the benefit of the exemption Notification to the appellant which was otherwise available. This interpretation given by the Commissioner on the facts of the present case is completely valid and correct. Contrary view taken by the CESTAT is unsustainable.

2015-TIOL-76-SC-CX

CCE Vs M/s Alembic Chemical Works Co Ltd (Dated: April 1, 2015)

Central Excise - Exemption - Bulk drugs - formulation - Notification No. 8/95-CE - even if the formulation is processed out of or containing one bulk product the condition of Notification stands satisfied.

The respondent assessee is the manufacturer of various medicines and products including the product called ' Strepto Pencillin Injection' which falls under Chapter Heading No. 2941.10 of the Schedule to the Central Excise Tariff Act, 1985. The assessee had been claiming benefit of excise duty under Notification No.8 /95 dated 9.2.95 and on the application thereof the concessional rate of duty @ 10% is payable.

Revenue took the stand that the assessee was not entitled to concessional rate of duty under the aforesaid Notification on the ground that the aforesaid product is combination of streptomycin and penicillin. The assessee on the other hand contended that even if one of the bulk drugs is included in the formulation that would satisfy the definition of 'formulations'

Explanation (ii) to (iv) defines 'formulations' as:

"Formulation" means medicaments processed out of or containing one or more bulk drugs, with or without the use of any pharmaceutical aids (such as diluents, disintegrating agent, moistening agent, lubricant, buffering agent, stabilizer or preserver) which are therapeutically inert and do not interfere with therapeutically or prophylactics activity of the drugs, for internal or external use, or in the diagnosis, treatment, mitigation or prevention of disease in human beings or animals, but shall not include any substance to which the provisions of the drugs and Cosmetics Act, 1940 (23 of 1940) do not apply."

Supreme Court held: On reading the aforesaid definition, it is found that the plea taken by the respondent/assessee is correct and has to be accepted, and is rightly accepted by the Tribunal. As per the definition, even if the formulation is processed out of or containing one bulk product the condition of Notification stands satisfied. No error in the order passed by the Tribunal.

2015-TIOL-75-SC-CX

CCE Vs M/s S K Industries (Dated: April 13, 2015)

Central Excise - Classification of Milk N Nut - Assessee claimed the classification of the product under Chapter Heading No.2001.10 as preparation of vegetable, fruits, nuts and parts of plants. The Assistant Commissioner, Commissioner (Appeals) and the Tribunal held that the product was preparation of vegetables, fruits, nuts and parts of plants and therefore rightly classified under Chapter Heading 2001.10 and cannot be treated as sugar confectionery. Revenue is in appeal in Supreme Court - all the three authorities below have arrived at finding of fact that the product in question is vegetable preparation and is not sugar confectionery. These are finding of facts. No reason to interfere - Appeal Dismissed.

2015-TIOL-72-SC-CX

CCE Vs M/s Quality Exports And Chemicals (Dated : April 7, 2015)

Central Excise - If the Tribunal had not scrutinized the documents, the only option for the High Court was to remit the case back to the authorities below for fresh consideration : The High Court, no doubt, has remarked that the CEGAT did not look into the various documents which were produced by the respondent and did not record the statement of the consignors and consignees who had given the affidavit, etc. To this extent, the High Court may be justified. However, if the matter was not dealt with by the CEGAT affirmatively, without scrutiny of the relevant documents, the only option for the High Court was to remit the case back to the authorities below for fresh consideration in the light of documents filed by the respondent. On the contrary, the High Court proceeded to decide the issue on the premise that documents filed by the respondent are authentic and treating the case put forth by the respondent as gospel truth. That cannot be countenanced.

Matter remanded to Commissioner.

2015-TIOL-71-SC-CX

CCE Vs M/s Pitamber Coated Paper Ltd (Dated : March 30, 2015)

Central Excise - manufacture - whether coating on uncoated paper would amount to manufacture - *No different commodity emerges after the coating having distinct features, name use and character. The coated paper continuous to be paper for printing and writing. The view taken by the Commissioner in the impugned order that the assessee is manufacturing two products, namely uncoated paper and coated paper cannot be accepted. Uncoated paper emerges at one stage of the*

manufacturing process of coated paper. A reading of the exemption notification would clearly show that it grants an exemption from payment of duty on paper and paper board articles made therefrom upto clearance of 3500 Mts. When the same is manufactured from the stage of pulp and using non-conventional raw material. The objective is apparently to promote use of non-conventional raw material in making paper, paperboard and articles of paper and paperboard. If the interpretation sought to be given by the Revenue is accepted, it will defeat the very objective.

2015-TIOL-70-SC-CX

M/s Jayaswal Neco Ltd Vs CCE (Dated : March 13, 2015)

Central Excise - Modvat Credit on Capital Goods under old Rule 57Q of the Central Excise Rules, 1944 - Railway track material used for handling raw materials, process goods - Commissioner denied the relief to the appellant on an extraneous ground, i.e., railway tracks were used for other purposes as well, namely, apart from conveying hot metal and hot pigs, it was used for carrying raw materials and finished goods as well. This can hardly be a ground to deny the relief inasmuch as by incidental use of the railway tracks for some other innocuous purpose, it does not lose the character of being an integral part of the manufacturing process. The Commissioner has further observed in his order that the railway track is not utilised directly or indirectly for producing or processing of goods or bringing about any change for manufacture of final product. This conclusion, obviously, is completely erroneous and amounts to misreading of the process. It is apparent that the use of railway tracks is related to the actual production of goods and without the use of the said railway track, commercial production would be inexpedient.

Held: appellant eligible for modvat credit.

2015-TIOL-69-SC-CX

M/s Assam Petrochemicals Ltd Vs CCE (Dated : April 8, 2015)

Central Excise - North East Exemption - Expansion before the relevant date - not eligible for exemption:

As per Notifications 32 and 33/99-CE dated 8.7.1999, exemption was to apply to:

1. New industrial units which have commenced their commercial production on or after the
24th day of December, 1997.

2. Industrial units existing before the 24th day of December, 1997 but which have undertaken substantial expansion by way of increase in installed capacity by not less than twenty five per cent on or after the 24th day of December, 1997

The appellant was an existing unit and extended its capacity by more than 50%. Machinery etc. for this purpose was installed on 30.9.1997. However, the production started on 16.2.1998. In order to get the benefit, the substantial expansion had to be undertaken on or after 24.12.1997.

The Department denied the benefit on the ground that the installation took place **before** the cut off date that is 30.9.1997.

Tribunal concluded, "After careful consideration we do not find any ambiguity in the language of the Notifications. The Notifications as well as C.B.E.C.'s clarifications relied upon by the appellants are very clear that in the case of existing manufacturing units, the date on which the capacity of the unit is enhanced, should be the relevant date in terms of Clause 3(b) of the Notifications. The date of commencement of

commercial production is mentioned in Clause 3(a) of the Notification, is applicable to the new industrial units only. We also agree with the Commissioner (Appeals) that Clause (4) of the Notifications regarding commercial production applies only to new units. The appellants' unit is existing unit and the expansion was completed prior to 24.12.97."

The Supreme Court agreed with the Tribunal.

2015-TIOL-68-SC-CX

M/s Vir Rubber Products P Ltd Vs CCE (Dated : March 27, 2015)

Central Excise - SSI Exemption - computation of Previous year's clearance - value of clearances of others' brands not eligible for SSI exemption, not to be included:

Facts: The appellant was engaged in the manufacture of certain articles from vulcanized rubber as bushes for use in the motor vehicles. The appellant is a Small Scale Industrial unit. The appellant has its own brand name "VIR" and has been manufacturing these products under the said brand name and supplying the same to various customers. In addition, the appellant was also having job orders from some automobile companies like Hindustan Motors, Kinetic Honda, etc.

For manufacture of spare parts placed by these automobile companies are concerned, on the said goods, the appellant had been putting the identification mark such as "HM", "PAL", "KH", etc. The goods which were supplied to these automobile companies used to be cleared by the appellant on payment of excise duty. However, in respect of manufacture of its own goods under the brand name "VIR", the appellant claimed SSI benefit in terms of Notification No. 1/93 which provides for exemption from payment of excise duty on fulfillment of certain conditions. It is admitted case that the appellant fulfils all the conditions mentioned in the aforesaid notification except one, in respect of which the dispute has arisen. This condition under the notification stipulates that the aggregate value of clearances in the preceding financial year should be less than Rs.3 crores. There is a lis as to whether the appellant fulfils this condition or not.

While interpreting this notification, the Department included the value of goods supplied to the automobile companies under the brand name 'HM" "PAL", "KH", etc. and on that basis, came to the conclusion that the total value of goods cleared by the assessee in the previous financial year was much more than Rs.3 crores.

Supreme Court Findings : Once we come to the conclusion that in respect of those goods where brand name of other party is used on manufactured goods and that other party is not a SSI unit, exemption is not available, it would lead to inevitable result that the value of such goods cannot be added as well, while considering the value of the goods cleared by the assessee in the previous year.

Held : value of the goods meant for "HM", "PAL", "KH", etc. could not have been included while considering as to whether the appellant is entitled to the benefit of the Notification or not. Once that is excluded and the case is confined to the brand name 'VIR' which is the appellant's own brand name and in respect of which the appellant had claimed exemption, the value of goods cleared in the previous year was less than Rs.3 crores.

2015-TIOL-67-SC-CX

Shalimar Wires Industries Ltd Vs CCE (Dated : April 6, 2015)

Central Excise - manufacture - intermediary product - Tribunal remanded the matter on certain aspects - all issues remanded

2015-TIOL-66-SC-CX

M/s Satnam Overseas Ltd Vs CCE (Dated : March 18, 2015)

Central Excise - manufacture - classification - assessee is engaged in the packing combination of mixture of raw rice, dehydrated vegetables and spices in the name of 'Rice and Spice'. Rice Spice is a combination of Raw Rice, Dehydrated vegetables and certain spices and condiments mixed in a pre-determined proportion and that blended together in a mixer for uniformity and the blended mixer is heated, if required, to sterilize the product. The mixed product is the packed in pouches with Nitrogen flushing for a longer shelf life.

Department's contention is that the product is to be classified under Heading 2108 of the Central Excise Tariff Act, 1985, as Miscellaneous Edible preparation not elsewhere specified or included.

Assessee's contention is that the process does not amount to 'manufacture' within the meaning of Section 2(f) of the Central Excise Act, 1944. It was also argued that, in any case, the product was not classifiable under Heading 2108 of the Central Excise Tariff Act, 1985 as claimed by the Revenue but it should be covered under Heading 11.01. That Heading applies to products of the milling industry, including flours, groats, meal and grains of cereals, and flour, meal or flakes of vegetables on which nil duty is payable.

Held: mere addition in the value, after the original product has undergone certain process, would not bring it within the definition of 'manufacture' unless its original identity also under goes transformation and it becomes a distinctive and new product.

It is clear that mere addition of dehydrated vegetables and certain spices to the raw rice, would not make it a different product. Its primary and essential character still remains the same as it is continued to be known in the market as rice and is sold as rice only. Further, this rice, again, remains in raw form and in order to make it edible, it has to be cooked like any other cereal. The process of cooking is even mentioned on the pouch which contains cooking instructions. Reading thereof amply demonstrates that it is to be cooked in the same form as any other rice is to be cooked. Therefore, it is not correct to say that there is a transformation into a new commodity, commercially known as distinct and separate commodity.

As it is held that it does not amount to 'manufacture' as the essential characteristics of the product, still remains the same, namely, rice, a natural corollary would be that it continues to be the product of the milling industry and would be classifiable under sub-heading 11.01. Rate of duty on this product, in any case, is 'nil'.

2015-TIOL-65-SC-CX

M/s Oswal Chemicals & Fertilizers Ltd Vs CCE (Dated : March 30, 2015)

Central Excise - Refund - Buyer can claim refund - Section 11-B does provide for the purchaser making the claim for refund provided he is able to establish that he has not passed on the burden to another person. It, therefore, cannot be said that Section 11-B is a device to retain the illegally collected taxes by the State. This is equally true of Section 27 of the Customs Act, 1962

Central Excise - Refund - The assessee is claiming refund for the period from

25.09.1996 to 16.10.1996. In terms of Section 11B, the application for refund was to be made within six months. Limitation of six months would not apply where any duty has been paid under the protest. Even filing of the appeal should be treated as protest. In this case even if appeal is treated as a form of protest that was much beyond six months period from the date of purchase. Application for refund time barred.

2015-TIOL-64-SC-CX

CCE Vs Grasim Industries (Dated : March 13, 2015)

Central excise - refunds - Unjust Enrichment principle applicable to capital goods captively consumed: Whether the doctrine of unjust enrichment is applicable in the case of refund of duty paid on 'capital goods' used captively. The principle of unjust enrichment is applicable even when the goods are used for captive consumption. No doubt, in the *Solar Pesticide case*, the goods with which the Court was concerned was raw material, imported and consumed in the manufacture of the final product. The question is as to whether this principle would be extended to capital goods also, as it was in respect of raw material. This was left open in *Mafatlal Industries* case. If a particular material is used for manufacture of a final product, that has to be treated as the cost of the product. Insofar as cost of production is concerned, it may include capital goods which are a part of fixed cost as well as raw material which are a part of variable cost. Both are the components which come into costing of a particular product. Therefore it cannot be said that the principle laid down by the Court in *Solar Pesticides* would not extend to capital goods which are used in the manufacture of a product and have gone into the costing of the goods.

Also see analysis of the Order

2015-TIOL-62-SC-CX

CCE Vs Morarjee Brembana Ltd (Dated : April 1, 2015)

Central Excise - EOU - Clearance to DTA - the duty of excise has to be the amount equal to the aggregate of the duties of customs which would be leviable under Section 12 of the Customs Act, on like goods produced or manufactured outside India - Valuation has to be as per the Customs Act - the sale price charged to customer in India of the goods under assessment cannot be considered as a price in the course of International trade. - Matter remanded.

2015-TIOL-61-SC-CX

CCE Vs M/s Gas Authority of India Ltd (Dated : April 9, 2015)

Central Excise - Classification - Lean Gas: natural gas after extraction of LPG, remains natural gas and, therefore, lean gas is also to be classifiable under sub-heading 2711.21 and entitled to the exemption under Notification No.179/85. The CESTAT decision in 2002-TIOL-123-CESTAT-DEL approved.

2015-TIOL-60-SC-CX

M/s Holostick India Ltd Vs CCE (Dated : March 30, 2015)

Central Excise - Classification - security holograms - The appellant manufactures security holograms. At the very beginning of the manufacturing process, they use coated metallised film which is classified under Tariff entry 39.20.36 after which the said film is embossed. Post embossing, there is adhesive coating and release coating which results in a hologram which ultimately is cut to size and utilised by customers of

the appellant for security purposes. In the show cause notice dated 04.02.2000, the Department sought to classify the security hologram under Tariff entry 39.19 of the Central Excise Tariff. The appellant disputed this and stated that, in fact, the holograms ought to be classified under Tariff entry 49.01. The Commissioner, Central Excise, by an order dated 01.01.2002 agreed with the Department's classification and classified the said goods under Tariff entry 39.19. An appeal to the CESTAT by the appellant was dismissed. The Tribunal by the impugned judgment dated 19.12.2003, agreed with the Commissioner.

The first important thing to notice is that the original coated metallised film that has been used by the appellant has already been classified under sub-Heading 3920.36 as a flexible metallised film of plastic. The fact that it got laminated later would not take it out of this particular sub-Heading. The only question which arises is, after such classification, which is not disputed by the appellant, whether the relevant tariff entry would be 39.19 or 49.01.

On a cursory reading of entry 39.19, it becomes clear that it is part of a general scheme dealing with various items of plastics and must be read together with 39.20 as 39.20 begins with the expression "Other plates....". So read, it is clear that what is important is that various sheets, films, etc. of plastic should become "self adhesive" in order to attract 39.19. If, in addition, there is printed matter on such sheets, films etc., the question is whether the end product is properly classifiable under 49.01 which refers to other products of the printing industry or whether it falls within self adhesive sheets, films, etc. The first thing to be noticed about tariff entry 49.01 is that it refers to printed books, newspapers and pictures.

It is clear therefore, that the question resolves itself into whether printing is only incidental to the primary use of the goods or is something more than something merely incidental. The final product which emerges is a product which is used for security purposes. It is important to remember therefore, that the primary use of the product is security and not the quality of being adhesive. Here again, a simple example will suffice. Take an adhesive tape with a monogram printed upon it. The primary use of such tape is by virtue of its adhesiveness to bind and package containers in which goods are to be stored and transported. Obviously, in such an example, the printed monogram of such adhesive tape would be incidental to the primary use of the said goods - the adhesive tape. By way of contrast, in the present case, the factor of adhesiveness is incidental to the primary use to which the goods are put, namely, that they are to be used for security purposes.

The security hologram part of the product in question is primary and the self adhesive part only incidental insofar as the user of the said goods is concerned.

2015-TIOL-59-SC-CX

CCE Vs M/s Inarco Ltd (Dated : March 16, 2015)

Central Excise - Classification - blended marble vinyl flooring - The respondent is the manufacturer of blended marble vinyl flooring which comes under the chapter 68 of the Schedule of Central Excise Tariff, 1985 Act under sub-heading No. 6807. The order of the Assistant commissioner also shows that in the test conducted by the Department the percentage of plastic (PVC) which was found was as low as 13.3% while the content of limestone was as high as 84.9%. It has also come on record that the plastic was primarily used as a binder. Even after noticing these facts, the only consideration which weighed with the Assistant Commissioner was that the main characteristics of the material was plastic. It is here where the Assistant Commissioner fell in error, which error is rightly corrected by the Commissioner (Appeals).

In the facts of the present case it is to be examined as to whether the said essential character is that of plastic or the limestone. Though no technical material was placed by either side before the Courts below, the CEGAT noted that use of limestone to the

extent of 84.10% and use of plastic only as a binder clearly indicated that characteristic of lime stone that confers upon the material its use, in the present case. Department could not produce any evidence in support of its contention that the goods are known as plastic tiles in the market and therefore this ground was rightly rejected. It may be reiterated that the onus lies on the Department to show that the goods were to be classified under sub-heading 3918.10, which onus the Department has failed to discharge.

2015-TIOL-56-SC-CX

CCE Vs M/s Detergents India Ltd (Dated: April 8, 2015)

Central Excise - Valuation (prior to the 2000 amendment of Section 4) - Related Person - Normal Price - just because two companies are related by their holding/subsidiary relationship, the normal price does not change., especially when the goods were sold to related persons at a higher price than to independent buyers.

2015-TIOL-55-SC-CX

CCE Vs M/s Cosme Farma Laboratories Ltd (Dated: April 7, 2015)

Central Excise - Manufacture - Job worker is manufacturer - the term 'manufacturer' or the loan licensee used under the provisions of the Drugs and Cosmetics Act, 1940 has nothing to do with the manufacturing activity or term 'manufacture' under the provisions of the Central Excise Act, 1944. Whether a person has manufactured a particular item or whether a person is a manufacturer is a question of fact.

Central Excise - Valuation - **Job work** - Once it has been determined that the job workers are the manufacturers, the assessable value of the goods would be a sum total of cost of raw material, labour charges and profit of the job workers, as per circular No.619/10/2002-CX dated 19th February, 2002 and the law laid down by Supreme Court in the case of Pawan Biscuits and other cases. **The facts** : The respondent is a manufacturer of medicaments having license under the provisions of the Drugs and Cosmetics Act, 1940. The respondent not only manufactures certain medicaments but also gets certain medicaments manufactured through other job workers so the respondent is a loan licensee - who is also permitted to get drugs manufactured at different places under the provisions of the Drugs and Cosmetics Act, 1940 and Rules made thereunder. Under the agreement entered into between the respondent on one hand and the job workers on the other hand, raw material as well as packing material is supplied to the job workers and as per the instructions of the respondent loan licensee, the job workers manufacture the medicaments under the supervision of the loan licensee, i.e. the respondent so as to see that the quality of the medicaments manufactured by the job workers is as prescribed by the loan licensee.

The Issue : whether the respondent, who was getting its medicaments manufactured through the job workers, can be considered to be an independent manufacturer and another question is about the assessable value of the medicaments manufactured by the job workers for the purpose of assessment under the Central Excise Act, 1944.

2015-TIOL-54-SC-CX

M/s Pasupati Spinning And Weaving Mills Ltd Vs CCE (Dated: March 23, 2015)

Central Excise - Demand - Limitation - as the declaration and RT 12 returns being

vital documents submitted by the assessee did not mention the vital word "hanks", they suppressed a material fact which, to their knowledge, would not bring their sewing thread within the exemption Notification. No merit in appeal - Dismissed.

2015-TIOL-50-SC-CX

M/s Plasopan Engineers (I) Pvt Ltd Vs CCE (Dated : March 11, 2015)

Central Excise - Classification of doors and windows - Tribunal's findings factually incorrect - Appellant allowed to withdraw appeal and file rectification application before Tribunal - Tribunal to consider the matter on merits - Revenue also allowed to make submissions before Tribunal.

2015-TIOL-49-SC-CX

CCE Vs M/s Shree Rajasthan Syntex Ltd (Dated : March 24, 2015)

Central Excise - Valuation - Assessable Value/Transaction Value - Sales Tax Incentive - 75% of Sales tax collected retained with the assessee as incentive - Not includible in AV prior to 1.7.2000 - Includible in transaction value after 1.7.2000: decision in Commissioner of Central Excise, Jaipur II vs. Super Synotex (India Ltd.) - 2014-TIOL-19-SC-CX followed.

Central Excise – Penalty - in a case like the present one, where the legal position and interpretation of unamended Section 4 and the position after the amendment in the said provision with effect from 1.7.2000 was in a fluid state, it would not be appropriate to levy the penalty.

2015-TIOL-48-SC-CX

M/s Sunrays Engineers Pvt Ltd Vs CCE (Dated : March 20, 2015)

Central Excise - LPG Cylinders - Reduction in price - Refund - Limitation - Price of cylinders reduced retrospectively by Oil Companies - The period for which refund is sought is July, 1999, to October, 2000. The notification revising the rate of excise duty was issued on 31.10.2000 and given retrospective effect that is, w.e.f., 01.07.1999. Thus, only on the issuance of this notification, the excise duty was reduced. It would, therefore, be clear that 31.10.2000 is the trigger point which entitled the appellant to claim the refund. In the absence of any such notification there was no cause of action in favour of the appellant to make any such application for refund. As a natural consequence, therefore, the period of limitation has to be reckoned from 31.10.2000. It is not in dispute that application for refund was filed on 19.06.2001 and the period of limitation at that time was one year. The applications for refund were, therefore, clearly within limitation. Do not understand the logic or rationale behind the order of the CESTAT counting the period from July, 1999 for which the excess amount was sought to be refunded. The order of the CESTAT is, therefore, palpably wrong and erroneous in law.

2015-TIOL-40-SC-CX

CCE Vs M/s Ispat Industries Ltd (Dated : March 25, 2015)

Central Excise - Valuation - whether the cost of transportation charges from the

factory gate to the depot is includible in the transaction value - Tribunal has arrived at a categorical finding that the respondent is not responsible to pay the cost of transport from the place of removal to the place of delivery i.e. from the factory gate to the depot separately. In terms of Rule 5 of the Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000, such a cost of transport which is also separately shows, is not includable in the valuation for the purpose of excise duty - No error in the judgment of the Tribunal.
2015-TIOL-34-SC-CX
CCE Vs M/s Tubes & Structurals (Dated : March 11, 2015)
Central Excise - SSI Exemption - Brand Name - No exemption if the brand name of another person is used. Facts: Tata Iron and Steel Company Ltd. (TISCO) has given authorization to the respondent to manufacture TISCOG. This not only gives authorization to the respondent to manufacture the goods i.e. Steel Cog Stool as per the TISCO patent design but also gives right to the respondent to market the said goods. The respondent has been receiving orders from various parties to manufacture and supply it to them the Steel Cog Stools with the patent design for which authorization is given by TISCO Ltd. The respondent did not pay any excise duty on the premise that it was entitled to the exemption under the Notification 1/93-CE. When the show cause notice was issued to the respondent to pay the excise duty, defence of the respondent was that the respondent was not affixing the said brand name TISCOG on the goods which were supplied by respondent to the parties from which he received the orders. It was stated that such a name was mentioned only in the invoices which were raised by the respondent. This contention was not accepted by the Commissioner in his order, but Tribunal allowed the appeal. Revenue is before Supreme Court. Held: the impugned order of the CEGAT is untenable and not in accordance with law. It is not necessary that there has to be affixation of the name or mark on the goods. Penalty: non-payment of duty by the respondent was bona fide act, having nurtured a belief that it was not liable to pay the excise duty on the goods. Penalty set aside.
2015-TIOL-33-SC-CX
CCE Vs M/s Sannihita Elect W W Ind Cop Soc Ltd (Dated : March 13, 2015)
Central Excise – Exemption to goods manufactured in rural areas by registered co-operative societies - it has been established by the respondent that the conditions contained in the exemption Notification are satisfied. Not only this, the respondent is armed with a certificate issued by the Department of the Electronic to the effect that the individual components were assembled in the factory of the respondent which is in a rural area. No question of law arises for consideration in the present appeal.
2015-TIOL-32-SC-CX
M/s Ralson (India) Ltd Vs CCE(Dated : March 13, 2015)
Central Excise - No exemption for an intervening period - Compunded rubber was exempted from 25.5.1987. This was withdrawn on 1.3.1994 (by mistake), along with exemption for 389 products. On 28.3.1994, the exemption was restored. Thus there

was no exemption for the period from 1.3.94 to 27.3.94.

Issue no more res integra . Identical issue decided in W.P.I.L . Ltd. vs. Commissioner of Central Excise, Meerut, U.P - 2005-TIOL-51-SC-CX-LB . The assessee in that case took the plea by arguing that since the decision of the exemption vide Notification dated 1.3.94 was an inadvertent error and the Government realizing this mistake had reintroduced the exemption it will be treated as only corrective and clarifica tory in nature. This contention was accepted by the Supreme Court . The ratio followed.

2015-TIOL-31-SC-CX

Ghatge Patil Industries Ltd Vs CCE (Dated : March 16, 2015)

Central Excise – Valuation – Cost of free issue materials. Tribunal remanded the case to adjudicating authority for fresh adjudication. Assessee challenges that order in the Supreme Court. In the meanwhile adjudicating authority passes order again on remand. Against that order, assessee's appeal allowed by CESTAT. Against CESTAT Order, Revenue in appeal before Supreme Court.

2015-TIOL-30-SC-CX

M/s Maruti Suzuki India Ltd Vs CCE (Dated : March 12, 2015)

Central Excise - Modvat/Cenvat Credit - Clearance of inputs after partial process - Motor vehicle parts like bumpers, grills, etc., on which the process of Electro Deposition Coating, namely, EDC took place (which was in the nature of anti-rust so that the shelf life of the said bumpers, grills, etc., would be generally increased), cleared by reversing the credit taken. Revenue demands duty on the value addition (200 crores).

Held: it would be clear that the "input" that is removed from the factory for home consumption is bumpers, grills, etc., being spare parts of motor vehicle s procured by the appellant. ED coating which would increase the shelf life of the spare parts and provide anti-rust treatment to the same would not convert these bumpers, etc., into a new commodity known to the market as such merely on account of value addition.

2015-TIOL-29-SC-CX

Hindustan Spinning & Weaving Mills Ltd Vs CCE (Dated : March 11, 2015)

Central Excise - Valuation - Section 4(old) - Value of goods captively consumed - Comparable goods - the proper officer shall make such adjustments as appear to him reasonable, taking into consideration all relevant factors, and in particular, the difference, if any, in the material characteristics of the goods to be assessed and of the comparable goods.

Penalty set aside.

2015-TIOL-19-SC-CX

CCE Vs M/s Blue Star Ltd (Dated : March 10, 2015)

Central Excise - Clearance to EOUs - Limitation - The Tribunal has noted that there was in fact a disclosure of the aforesaid fact in CT(3) certificate which was submitted

by the respondent to the Department. It is noted that no clearance could have taken place without the knowledge of the officer as to the ultimate destination of the goods and the fact that they were cleared without payment of duty in terms of the exemption notification which was specified in the application. On that basis, the Tribunal has held that proviso to Section 11(A)(1) of the Act will not get attracted and thus, the show cause notice was beyond the period limitation as specified under Section 11(A)(1) of the Act.

Held : Going through the material on record, the Tribunal is justified in taking the aforesaid view. Thus, there is no merit in this appeal and the same, accordingly, stands dismissed.

2015-TIOL-18-SC-CX

CCE Vs M/s Addisons Paints & Chemicals Ltd (Dated : March 9, 2015)

Central Excise - Valuation - cost of packing - finished products manufactured are packed in tins and plastic containers which are then put in carton boxes and sold to the wholesale dealers for the purpose of transportation. The question is not for what purpose the packing is done. The test is whether the packing is done in order to put the goods in a marketable condition. Another way of testing would be to see whether the goods are capable of reaching the market without the type of packing concerned. Each case would have to be decided on its own fact. It must also be remembered that Section 4(4)(d)(i) specifies that the cost of packing is includible when the packing is not of a durable nature and returnable to the buyer. Thus, the burden to show that the cost of packing is not includible is always on the assessee. Also under Section 4(a) the value is to be the normal price at which such goods are ordinarily sold in the course of wholesale trade for delivery at the time and place of removal. - para 7

The test is whether packing done in order to put the goods in marketable condition and whether the goods are capable of reaching the market without the type of packaging concerned. At the same time, the Court has also emphasised that each case will have to be decided on its own facts and the crucial aspect to be kept in mind is that the goods are generally sold in the wholesale market at the "factory gate" - para 8

Refund Claim of Rs . 1,22,740/- filed in 1989: these containers were placed in paper cartons of various sizes for transportation "from the factory gate" for sale to individual customers or as stock transfers. Therefore, on the facts of this case, the test laid down in the judgment in the case of Hindustan Safety Glass Works Ltd. would not be applicable. Even otherwise, the amount involved is only Rs.1 ,22,740 /-. Counsel for the respondent submits at Bar that his client has not even taken this amount from the Department. No merit in this case. It is, accordingly, dismissed. - para 9, 10

2015-TIOL-17-SC-CX

M/s Sanjay Indl Corpn Vs CCE (Dated : March 10, 2015)

Central Excise - Demand - Suppression - Limitation -:The appellant is engaged in the business of cutting larger steel plates into smaller size and shapes as required by the customers. It is abundantly clear that even as per the Department, there were certain doubts relating to excisability of the process of profile cutting. In view thereof, if the appellant also had nurtured this belief that the process carried out by him does not amount to manufacture and did not pay the excise duty, we can safely infer that this conduct of the appellant was a bona fide conduct and cannot be treated as contumacious or willful suppression. Thus, on the facts of this case, proviso to Section 11A(1) of the Act would not be attracted. The imposition of penalty upon the appellant is unwarranted. Penalty set aside - duty confirmed as uncontested.

2015-TIOL-16-SC-CX
CCE Vs M/s Hindustan Zinc Ltd (Dated : March 10, 2015)
Central Excise - Rectification of Mistake - CEGAT has dismissed the application with the observations that the issue raised in the rectification application was not argued at the time of hearing of the main case. This aspect could not be disputed by the senior counsel appearing for the Department. No error in the order passed by the Tribunal.
2015-TIOL-14-SC-CX
CCE Vs M/s Classic Strips Pvt Ltd (Dated : March 9, 2015)
Central Excise - Classification of printed trade advertising material - the process of manufacturing undertaken by the assessee i.e. printing is done by using thermocopied machine and therefore, it would fall under the head 49.01. By no stretch of imagination, such goods can be classified under the head 94.05 as no lamps and lighting fittings or search lights or spotlights are used by the assessee for the purpose of illuminated signs or illuminated name plates and sign boards. Finding of the Tribunal upheld. No merit in these revenue appeals and the same are dismissed.
2015-TIOL-01-SC-CX-LB
UoI Vs Claris Lifesciences Ltd (Dated : January 5, 2015)
Central Excise - 100% EOU - DTA Clearances - No Third Time Cess; Supreme Court dismisses Revenue SLP against Gujarat High Court decision reported in 2013-TIOL-802-HC-AHM-CX .