

**Message From Chairperson:**

"The launch of "Vidhi Varta", fulfills a long standing need for disseminating news and information about the latest legal developments. I congratulate Member (L&J) and the Editorial Team for their initiative in bringing out the inaugural issue."

**From the Desk of Member (L & J)**

I applaud the Directorate of Legal Affairs' initiative to bring out the newsletter, "Vidhi Varta". It will be the mouthpiece of the DLA which co-ordinates with the legal and judicial wings of CBEC as well as with the field officers. It would communicate, educate, and impart knowledge to the departmental officers and stakeholders. "Vidhi Varta" news issues shall always continue to be authentic and authoritative and accessible. I request all the zonal nodal officers to forward the articles and news to keep us updated about happenings in their regions.

Editorspeak

We would like to thank the Member (L&J) for initiating the thought to launch the news letter Vidhi Varta. It would disseminate information and views concerning the department's legal and judicial matters. It would enable the officers to keep abreast about the legal nuances emerging from the decisions of various legal foras.

News

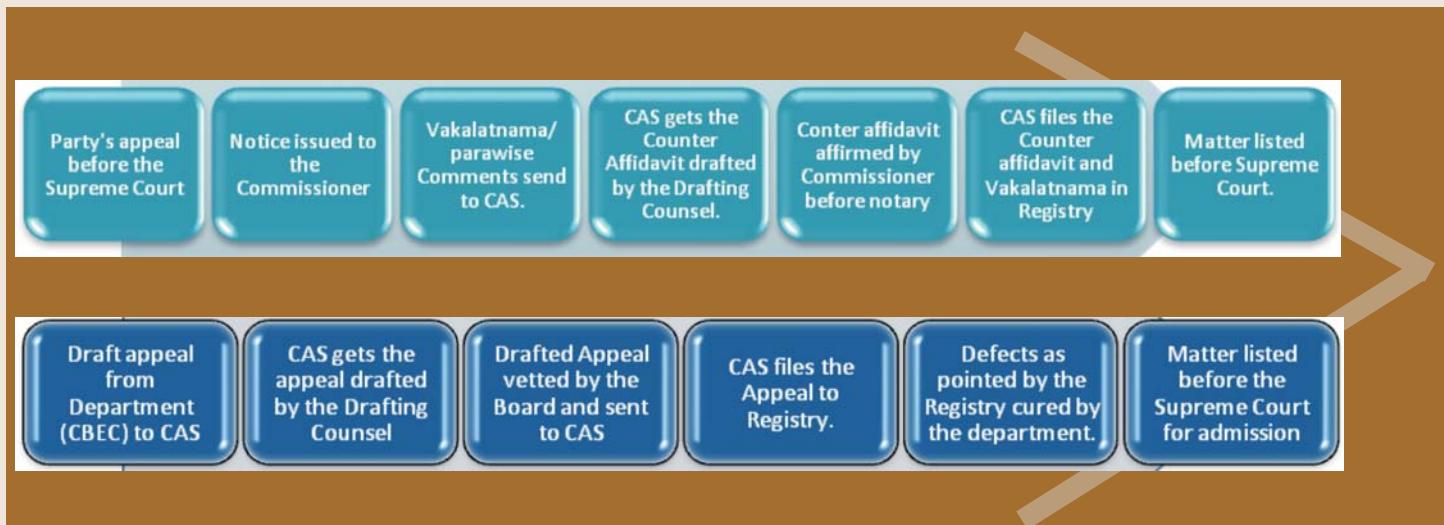
- Sh S H Kapadia, Chief Justice of India, superannuated on 29th September 2012. He has been succeeded by Sh Altmas Kabir, the 39th Chief Justice of India.
- Sh B K Parsad has been appointed Additional Government Advocate (AGA), on superannuation of Sh Arvind Kumar Sharma on 30th September 2012. Henceforth, all the vakalatnamas should be given in favour of Sh B K Prasad.
- Justice Arijit Pasayat has been appointed as Chairman of Authority for Advanced Rulings.
- Sh. Rajendra Prasad has been appointed as Chairman, Settlement Commission.
- ☒ Supreme Court has taken a serious view about the delays in filing of the Departmental Appeals. Apex Court has directed the Chairman, CBEC, to enquire into the reasons for delay and fix responsibility in the case of CCE Nasik vs Rajmal Lakhi Chand and another [SLP (Civil) No. 28857 of 2011]
- ☒ In the case of Bharti Airtel [Civil Appeal No 5989-5990/2012] while disposing of the stay application, the Supreme Court has directed the appellants to deposit a sum of Rs 218 crore.
- ☒ In Department's appeal before the Apex Court in the case of FIAT India [Civil Appeal No 1648-1649], the court has held that if the goods are being sold at the price less than the cost price then there is enough reason to reject the transaction value and arrive at the assessable value on the costing basis.
- ☒ A quarterly E.C.S. law reporter incorporating decisions of CESTAT is being brought out.
- ☒ Directorate of Legal Affairs and Legal and Judicial sections of CBEC initiated an effort to sensitize the field formations about the procedures of filing appeals/ counter affidavits before the Apex Court. Two seminars at Delhi and at Vishakapatnam have already been conducted.
- ☒ Member (L&J) launched the website [www.cenexgstvizag1.gov.in] of Vishakapatnam Central Excise zone on 13th October 2012. The website has links with the websites of CBEC, Supreme Court, High Court & CESTAT.



APPEALS TO SUPREME COURT

The appellate process before the Apex Court is governed by the Supreme Court Rules, 1966 available at www.supremecourtofindia.nic.in.

The flow charts below depict the process to be followed for filing the Department appeals/ party's appeals admitted by the Apex Court.



Shortcomings noticed in the Department's legal responses

- Vakalatnama is not filed in time.
- Vakalatnama is filed in improper format or without proper signature and stamp
- The documents filed in the court are not accompanied by a proper affidavit.
- The documents served on the party by way of publication in newspaper, should be reported to the court on an affidavit along with the copy of the complete newspaper and not a clipping of the concerned news item
- Improper documents are filed along with the appeals.

Mandatory Requirements

- All Vakalatnames should be duly signed and stamped with the round seal of the Commissioner.
- Copies of SCN and Relied Upon Documents along with the adjudication and appellate orders should necessarily be filed with the paperbook

➤ Officers not below the rank of AC/ DC should be deputed to deal with the Central Agency Section. Officers should invariably carry their official stamps for any attestation/ certification needed.

➤ Documents concerning the case must be submitted to the Supreme Court Monitoring Cell (SMC) through authorized persons only.

➤ As per CBEC's instructions, Court fees is to be paid by DLA.

Recommended

- The website www.courtnic.nic.in to ascertain the latest position about the case and also to reconcile the Commissionate's records with those of the court.
- The Judgment Information System (JUDIS) judis.nic.in consists of the Judgments of the Supreme Court of India and several High Courts.
- Communication through e-mail with DLA is the preferred communication mode and should be resorted to as far as possible.



RECENT DECISIONS

SUPREME COURT



Osnar Chemical Pvt. Ltd. Vs. CCE, Bangalore 2012 (276)ELT 162(SC)

The process of mixing of polymers and additives to heated bitumen merely results in its quality improvement and the same does not amount to 'manufacture' since no new product emerges as a result of the processes undertaken.



Baby Devassy Chully @Bobby Vs UOI 2012-TIOL-99-SC-COFEPOSA

It is the subjective satisfaction of the detaining authority to invoke the detention order issued under COFEPOSA. In matters affecting the personal liberty of a person, the High Courts should pass the order speedily in the interest of justice.



N.K. Bajpai Vs. Union of India & Anr. 2012-TIOL-28-SC-CESTAT

Section 129(6) of the Customs Act, 1962, which restrains an erstwhile Member of the CESTAT from appearing in appeals before it, is not ultra vires the Constitution of India



Columbia Sportswear Company Vs. DIT, Bangalore SLP (C) No. 31543 of 2011 decided on 30th July 2012

When an advance ruling of the Authority is challenged before the High Court under Articles 226 and/or 227 of the Constitution, the same should be heard directly by a Division Bench of the High Court and decided finally as expeditiously as possible



CCE Mumbai vs. FIAT India 2012-TIOL-58-SC-CX

"Normal price" is the amount paid by the buyer for the purchase of goods. In the present case, it is the stand of the revenue that 'loss making price' cannot be the 'normal price' and that too when it is spread over for nearly five years and the consideration being only to penetrate the market and compete with other manufacturers who are manufacturing more or less similar cars and selling at a lower price. If the price declared is below the cost of manufacture then the same cannot be regarded as normal price under section 4(1)(a) of the Central Excise Act, 1944. Thus in such cases, the valuation of goods shall be done on the basis of the cost of manufacture plus profits.



CCE Visakhapatnam vs. M/s. Mehta & Co. 2011-TIOL-17-SC-CX

The period of limitation specified in Section 11A is not limited by the date of knowledge of the taxpayer's activity or the date of submission of the information to the department by the taxpayer. The period of limitation shall be determined in accordance with the provisions of Section 11A of the Central Excise Act, 1944, subject to the fulfilment of the condition specified in the said Section.



Winstons Tan vs UOI 2012-TIOL-94-SC-SAFEMA

Sale of property after issuance of notice for forfeiture but prior to issuance of the Order of forfeiture is not a valid sale as the seller has lost all his rights to sell the property after issuance of the notice for forfeiture.

HIGH COURT



Nanumal Glass Works Vs. CCE Kanpur 2012-TIOL-539-ALL-CX

In terms of Section 37C(a) of the Central Excise Act, 1944, in case the decision is tendered to the person or his authorized agent, the same shall be deemed to be served on the person. When a decision is pronounced in the open court in the presence of the advocate of the party, who is authorized agent within the meaning of Section 37C, the service of order shall be the date of pronouncement of order.



Swastik Sanitarywares Ltd. Vs. UOI 2012-TIOL-757-HC-AHM-CX

Excise duty paid erroneously twice on the same clearance does not amount to a double deposit of the Excise duty. The second deposit is a pure mistaken deposit which revenue is not entitled to hold.



Commissioner of Service Tax Service Tax Commissionerate, Bangalore Vs M/s Karnataka State Beverages Corporation Ltd

Service Tax – Levy of service tax on demurrage charges collected from buyers for delay in lifting of goods from godowns – Since the issue amounts to determination of tax, appeal not maintainable before High Court – Revenue at liberty to approach Apex Court



Commissioner of Central Excise & Service Tax Large Taxpayer Unit Banashankari-III Vs M/s Karnataka Soaps & Detergents Ltd Sandalwood Oil Division, Mysore

Central Excise - Delayed payment of duty - Interest payable even if duty is paid before issue of Show Cause Notice : Explanation (2) to Sub-Section 2(B) clarifies the doubt to the effect that the interest under Section 11AB of the Act, shall be payable on the amount paid by the person under this sub-section and also on the amount of short-payment of duty, if any, as may be determined by the Central Excise Officer, but for this sub-Section. Once there is a delay in payment of duty, interest follows

CESTAT

Brar Steel Vs CCE 2012-TIOL-1413-CESTAT-MUM

In case the CENVAT Credit is taken on the basis of the forged/ fake documents, without actual receipt of the inputs, then in terms of the Rule 173Q of the Central Excise Rules, 1944, apart from imposition of penalty, the goods, land plant and machinery are all liable for confiscation.

Voltamp Transformers Vs CCE 2012 (276) ELT 238(T)

Clearance of final products without payment of duty by utilizing the SFIS scrips shall not amount to exempted supplies.

Ratmani Metals and Tubes Ltd. Vs. CCE 2012(276) ELT 376 (T)

Area based exemption shall not be available in respect of those final products which are manufactured using plant and machinery installed after the cut-off date.

Telco Construction Equipment Company Ltd. vs. CCE, Belgaum, Order no. 01/2011 & 570/2012 dated 22.09.2010 & 09.08.2012 respectively.

To qualify as an input service, the activity must have nexus with the business of the assessee.

Hindustan Industries Ltd. Final Order No. 1246-126/2012-Ex & Misc Order No. 880-884/2012-Ex dated 20.07.2012

Interest on a duty liability confirmed, is required to be deposited by automatic operation of law. For this no SCN is required and no limitation period is applicable.

Alcatel Lucent India Ltd Vs CCE 2012-TIOL-1452-CESTAT-Bangalore

When the assessee fails to pay the sum due to government knowingly, and wait for the show cause notice to make the payments, the conduct of such assessee invites a penal action under Rule 25 of Central Excise Rules, 2002.

POT POURRI

- ❖ 316 Companies and 73 audit firms have been found guilty for violating accounting principles and for other financial irregularities in the last three years. The Ministry of Corporate Affairs has filed prosecutions against the said companies and audit firms under the provisions of Companies Act, 1956 for the alleged violations
- ❖ The Madras High Court has directed the department to issue licence to a person who has passed the CHA examination under the earlier CHA Regulations of 1984. It has been held that such person need not pass the examination again under the CHA Regulations, 2004
- ❖ CESTAT decides that wordings of an anti dumping notification being very specific requiring that both the criteria of the product description and Tariff Classification must be met before anti dumping duty can be levied on a product.

सम्पादक मण्डल

सुश्री संध्या बालिगा, संरक्षक

सदस्य (एल एण्ड जे) केन्द्रीय उत्पाद एवं सीमा शुल्क बोर्ड

श्री संजीव श्रीवास्तव, आयुक्त

श्री के.पी. सिंह, अपर आयुक्त

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