1 - BASIC CONCEPTS

1.	*CCE v. Fitrite Packers 2015 (324) ELT 625 (SC)*	Does printing on jumbo rolls of GI paper as per design and specification of customers with logo and name of product in colourful form, amount to manufacture?	Supreme Court's Decision: The Supreme Court held that the process of aforesaid particular kind of printing resulted into a product i.e., paper with distinct character and use of its own which it did not bear earlier. The Court emphasised that there has to be a transformation in the original article and this transformation should bring out a distinctive or different use in the article, in order to cover the process under the definition of manufacture. Since these tests were satisfied in the present case, the Apex Court held that the process amounted to manufacture.
2.	*CCE v. Osnar Chemical Pvt. Ltd. 2012 (276) ELT 162 (SC)*	Can improvement in quality of base bitumen by adding and mixing polymers and additives to it, amount to manufacture?	**Supreme Court's Decision:** In the light of the above discussion, the Supreme Court held that since the said process merely resulted in the improvement of quality of bitumen and no distinct commodity emerged, and the process carried out by the assessee had nowhere been specified in the Section notes or Chapter notes of the First Schedule, the process of mixing polymers and additives with bitumen did not amount to manufacture.
3.	*Grasim Industries Ltd. v. UOI 2011 (273) ELT 10 (SC)*	Does the process of generation of metal scrap or waste during the repair of worn out machineries/parts of cement manufacturing plant amount to manufacture?	**Supreme Court's Decision**: The Supreme Court held that the generation of metal scrap or waste during the repair of the worn out machineries/parts of cement manufacturing plant did not amount to manufacture.
4.	*Medley Pharmaceuticals Ltd. v. CCE & C. 2011 (263) ELT 641 (SC)*	Are the physician samples excisable goods even when they are being statutorily prohibited from being sold?	**Supreme Court's Decision**: The Court inferred that merely because a product was statutorily prohibited from being sold, would not mean that the product was not capable of being sold. Since physician sample was capable of being sold in open market, the physician samples were excisable goods and were liable to excise duty.
5.	*Usha Rectifier Corpn. (I) Ltd. v. CCEx. 2011 (263) ELT 655 (SC)*	Whether assembling of the testing equipments for testing the final product in the factory amounts to manufacture?	**Supreme Court's Decision**: In the light of the aforesaid observations, the Apex Court held that duty was payable on such testing equipments used for testing the final product
6.	*Nicholas Piramal India Ltd. v. CCEx., Mumbai 2010 (260) ELT 338 (SC)*	Can a product with short shelf-life be considered as marketable?	**Supreme Court's Decision**: The Supreme Court ruled that short shelf-life could not be equated with no shelf-life and would not ipso facto mean that it could not be marketed. A shelf-life of 2 to 3 days was sufficiently long enough for a product to be commercially marketable.

			Shelf-life of a product would not be a relevant factor to test the marketability of a product unless it was shown that the product had absolutely no shelf-life or the shelf-life of the product was such that it was not capable of being brought or sold during that shelf-life.
7.	*CCE v. Solid & Correct Engineering Works and Ors 2010 (252) ELT 481 (SC)*	Whether the machine which is not assimilated in permanent structure would be considered to be moveable so as to be dutiable under the Central Excise Act?	**Supreme Court's Observation and Decision**: The Court observed that as per the assessee, the machine was fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth, but because a foundation was necessary to provide a wobble free operation to the machine. It opined that an attachment without necessary intent of making the same permanent cannot constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently. Hence, the Supreme Court held that the plants in question were not immovable property so as to be immune from the levy of excise duty. Consequently, duty would be levied on them.
8.	*CCE v. Tarpaulin International 2010 (256) ELT 481 (SC)*	Does the process of preparation of tarpaulin made-ups after cutting and stitching the tarpaulin fabric and fixing eye-lets in it, amount to manufacture?	**Supreme Court's Observation and Decision**: The Apex Court opined that stitching of tarpaulin sheets and making eyelets did not change basic characteristic of the raw material and end product. The process did not bring into existence a new and distinct product with total transformation in the original commodity. The original material used i.e., the tarpaulin, was still called tarpaulin made-ups even after undergoing the said process. Hence, it could not be said that the process was a manufacturing process. Therefore, there could be no levy of central excise duty on the tarpaulin made-ups.
9.	*Ramala Sahkari Chini Mills Ltd. v. CCEx. 2016 (334) ELT 3 (SC)*	Whether the word 'include' used in a statutory definition enlarges the scope of preceding words or restricts their scope?	**Supreme Court's Decision**: The Supreme Court referring to the case of Regional Director, Employees' State Insurance Corporation v. High Land Coffee Works of P.F.X. Saldanha and Sons & Anr. [(1991) 3 SCC 617] held that that the word "include" in a statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction.
10.	*CCE v. Sony Music Entertainment (I)*	Does the activity of packing of imported compact discs in	**High Court's Decision**: The High Court observed that none of the activity

	Pvt. Ltd. 2010 (249) ELT 341 (Bom.)	a jewel box along with inlay card amount to manufacture?	that the assessee undertook involved any process on the compact discs that were imported. It held that the Tribunal rightly concluded that the activities carried out by the respondent did not amount to manufacture since the compact disc had been complete and finished when imported by the assessee. Thus, the question of law was answered in favour of assessee in favour of assessee and against Revenue.
11.	*Balrampur Chini Mills Ltd. v. Union of India 2014 (300) ELT 372 (All.)*	Whether bagasse which is a marketable product but not a manufactured product can be subjected to excise duty?	**High Court's Decision**: The High Court concluded that though bagasse is an agricultural waste of sugarcane, it is a marketable product. However, duty cannot be imposed thereon simply by virtue of the explanation added under section 2(d) of the Central Excise Act, 1944 as it does not involve any manufacturing activity. The High Court quashed the CBEC's Circular dated 28-10-2009.

2 - CLASSIFICATION OF EXCISABLE GOODS

1.	*CCEx. v. Ciens Laboratories 2013 (295) ELT 3 (SC)*	How will a cream which is available across the counters as also on prescription of dermatologists for treating dry skin conditions, be classified if it has subsidiary pharmaceutical contents - as medicament or as cosmetics?	**Supreme Court's Decision**: The Supreme Court held that owing to the pharmaceutical constituents present in the cream 'Moisturex' and its use for the cure of certain skin diseases, the same would be classifiable as a medicament under Heading 30.03.
2.	*Commissioner of Central Excise, Bhopal v. Minwool Rock Fibres Ltd. 2012 (278) ELT 581 (SC)*	Whether a heading classifying goods according to their composition is preferred over a specific heading?	**Supreme Court's Decision:** Therefore, the Court opined that the goods in issue were appropriately classifiable under Sub-heading 6807.10 of the Tariff.
3.	*CCE v. Wockhardt Life Sciences Ltd. 2012 (277) ELT 299 (SC)*	Whether antiseptic cleansing solution used for cleaning/ degerming or scrubbing the skin of the patient before the operation can be classified as a 'medicament'?	**Supreme Court's Decision**: The Apex Court held that the product in question can be safely classified as a "medicament" which would fall under Chapter Heading 3003, a specific entry and not under Chapter Sub-Heading 3402.90, a residuary entry.
4.	*CCEx. v. Connaught Plaza Restaurant (Pvt) Ltd. 2012 (286) ELT 321 (SC)*	Can the 'soft serve' served at McDonalds India be classified as "ice cream" for the purpose of levying excise duty?	**Supreme Court's Decision**: In the light of the aforesaid discussion, the Apex Court held that 'soft serve' was classifiable under Heading 21.05 as "ice cream" and not under Heading 04.04 as "other dairy produce".

3 - VALUATION OF EXCISABLE GOODS

1.	*Tata Chemicals Ltd v. Collector of Central Excise 2016 (334) ELT 580 (SC)*	Can the value of gunny bags, returned by the buyers, be excluded from the assessable value in the absence of any agreement between the seller and the buyer?	**Supreme Court's Decision**: The Supreme Court held that in the absence of factual foundation in support of the fact that such an arrangement existed between the parties, the value of gunny bags returned by the buyers could not be excluded from the assessable value.
2.	*CCEx v. Super Synotex (India) Ltd. 2014 (301) ELT 273 (SC)*	Is the amount of sales tax/VAT collected by the assessee and retained with him in accordance with any State Sales Tax Incentive Scheme, includible in the assessable value for payment of excise duty?	**Supreme Court's Decision**: The Apex Court held that such retained amount has to be treated as the price of the goods under the basic fundamental conception of "transaction value" as substituted with effect from 1.7.2000 and therefore, the assessee is bound to pay excise duty on the said sum.
3.	*Tata Motors Ltd. v. UOI 2012 (286) ELT 161 (Bom.)*	Can the pre-delivery inspection (PDI) and free after sales services charges be included in the transaction value when they are not charged by the assessee to the buyer?	**High Court's Decision**: In the light of the above discussion, the High Court held that Clause No. 7 of Circular dated 1st July, 2002 and Circular dated 12th December, 2002 (where it affirms the earlier circular dated 1st July, 2002) were not in conformity with the provisions of section 4(1)(a) read with section 4(3)(d) of the Central Excise Act, 1944. Further, as per section 4(3)(d), the PDI and free after sales services charges could be included in the transaction value only when they were charged by the assessee to the buyer.

4 - CENVAT CREDIT

1.	*Flex Engineering Ltd. v. CCEx. 2012 (276) ELT 153 (SC)*	Whether CENVAT credit of the testing material can be allowed when the testing is critical to ensure the marketability of the product?	**Supreme Court's Decision**: The Court was, therefore, of the opinion that the manufacturing process in the present case got completed on testing of the said machines. Hence, the testing material used for testing the packing machines were inputs used in relation to the manufacture of the final product and would be eligible for CENVAT credit.
2.	*CCEx. v. Prag Bosimi Synthetics Ltd. 2013 (295) ELT 682 (Gau.)*	Can CENVAT credit of duties, other than National Calamity Contingent Duty (NCCD), be used to pay NCCD?	**High Court's Decision**: The High Court held that merely because CENVAT credit in respect of NCCD can be utilized only for payment of NCCD, it does not lead to the conclusion that credit of any other duty cannot be utilized for payment of NCCD.
3.	*Bharti Airtel Ltd. v. CCEx. Pune III 2014 (35) STR 865 (Bom.)*	Is a cellular mobile service provider entitled to avail CENVAT credit on tower parts & pre-fabricated buildings (PFB)?	**High Court's Decision**: The High Court rejected the appeals of the appellant and upheld the findings of the Tribunal holding that the mobile towers and parts thereof and shelters / prefabricated buildings are neither capital goods under rule 2(a) nor 'inputs' under rule 2(k) of the CCR. Hence, CENVAT credit of the duty paid thereon by a cellular mobile service provider was not admissible.
4.	*CCE v. Haryana Sheet Glass Ltd. 2015 (39) STR 0392 (P&H)*	Is the assessee entitled to avail CENVAT credit of service tax paid on outward transportation of goods cleared from factory?	**High Court's Decision**: The High Court relied upon one of its earlier decision in the case of Ambuja Cements Ltd. v. Union of India 2009 (236) ELT 431 (P&H) and upheld the decision of the Tribunal. The High Court held that outward transportation up to the place of removal falls within the expression "input service". The place of removal, in terms of the Circular* of the Board is a question of fact. If a manufacturer is to deliver the goods to the purchaser, the place of removal would not be a factory gate of the manufacturer but that of the purchaser. In the given case, there is no evidence that the property in goods stood transferred to the purchaser at the factory door of the assessee. Therefore, the assessee is entitled to avail CENVAT credit of service tax paid on outward transportation of goods cleared from factory.
5.	*Bansal Classes v. CCE & ST 2015 (039) STR 0967 (Raj.)*	Can a commercial training and coaching institute claim CENVAT credit in respect of the input services of catering,	**High Court's decision**: The High Court upheld the Tribunal's decision. Thus, the assessee is not eligible for CENVAT credit of the service tax paid

		photography and tent services used to encourage the coaching class students, maintenance and repair of its motor vehicle and travelling expenses?	on catering, photography and tent services, maintenance and repair of its motor vehicle and travelling expenses.
6.	*Commr. of C. Ex., & S.T., LTU v. Rane TRW Steering Systems Ltd. 2015 (039) STR 13 (Mad.)*	Whether assessee is entitled to claim CENVAT credit of service tax paid on house-keeping and landscaping services availed to maintain their factory premises in an eco-friendly manner?	**High Court's decision**: The High Court agreeing with and following the ratio laid down in the aforesaid decision held that where an employer spends money to maintain their factory premises in an eco-friendly manner, the tax paid on such services would form part of the cost of the final products. Therefore, housekeeping and gardening services would fall within the ambit of input services and the assessee is entitled to claim the benefit of CENVAT credit on the same.
7.	*CCEx. & S.T. v. Tamil Nadu Petro Products Ltd. 2015 (40) STR 878 (Mad.)*	In case the assessee pays the service tax that he was not liable to pay, can it claim the CENVAT credit of such service tax?	High Court's Decision: The High Court held that if upon a misconception of the legal position, the assessee had paid the tax that it was not liable to pay and such assessee also happens to be an assessee entitled to CENVAT credit, the availing of the said benefit cannot be termed as illegal.
8.	*CCE v. Tata Advanced Materials Ltd. 2011 (271) ELT 62 (Kar.)*	Is assessee required to reverse the CENVAT credit availed on capital goods destroyed by fire when insurance company reimburses value of such capital goods inclusive of excise duty?	**High Court's Decision**: The High Court held that merely because the insurance company paid the assessee the value of goods including the excise duty paid, that would not render the availment of the CENVAT credit wrong or irregular. Excise Department cannot demand reversal of credit or payment of the said amount.
9.	*Ashok Kumar H. Fulwadhya v. UOI 2010 (251) ELT 336 (Bom.)*	Whether penalty can be imposed on the directors of the company for the wrong CENVAT credit availed by the company?	**High Court's Decision**: The Court held that the petitioners-directors of the company could not be said to be manufacturer availing CENVAT credit and penalty cannot be imposed on them for the wrong CENVAT credit availed by the company.
10.	*CCEx. v. Stelko Strips Ltd. 2010 (255) ELT 397 (P & H)*	Can CENVAT credit be taken on the basis of private challans?	**High Court's Decision**: The High Court held that MODVAT credit could be taken on the strength of private challans as the same were not found to be fake and there was a proper certification that duty had been paid.
12.	*CCE v. Fenner India Limited 2014 (307) ELT 516 (Mad.)*	Can CENVAT credit availed on inputs (contained in the work-in-progress destroyed on account of fire) be ordered to be reversed under rule 3(5C) of the CENVAT Credit Rules, 2004?	**High Court's Decision:** The High Court held that CENVAT credit would need to be reversed only when the payment of excise duty on final product is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, which deals with the remission of duty. In the present case, the assessee has not

			claimed any remission and no final product has been removed, hence, assessee need not reverse the CENVAT credit taken on inputs (contained in the work-in-progress) destroyed in fire.

6 - EXPORT PROCEDURES

1.	*Spentex Industries Ltd v. CCE 2015 (324) ELT 686 (SC)*	Whether rule 18 of Central Excise Rules, 2002 (CER) allows export rebate of excise duty paid on both inputs as well as the final product manufactured from such inputs?	**Supreme Court's Decision**: The Supreme Court held that normally the two words 'or' and 'and' are to be given their literal meaning. However, wherever use of such a word, viz., 'and'/'or' produces unintelligible or absurd results, the Court has power to read the word 'or' as 'and' and vice versa to give effect to the intention of the Legislature which is otherwise quite clear. The Apex Court held that the exporters/appellants are entitled to both the rebates under rule 18 and not one kind of rebate.
2.	*Raghav Industries Ltd v. UOI 2016 (334) ELT 584 (Mad.)*	Can rebate under rule 18 of the Central Excise Rules, 2002, be claimed of the excise duty paid on the goods exported when the duty drawback of excise duty paid on inputs and service tax paid on input services used in manufacture of such export goods has already been availed?	**High Court's Decision**: The High Court held that the Department had rightly rejected the rebate claim filed by the petitioner because when the petitioners had availed duty drawback with respect to the exported goods, they were not entitled for the rebate under rule 18 of the Central Excise Rules, 2002 as it would result in double benefit.
3.	*UM Cables Limited v. Union of India 2013 (293) ELT 641 (Bom.)*	Can export rebate claim be denied merely for non-production of original and duplicate copies of ARE-1 when evidence for export of goods is available?	**High Court's Decision**: The High Court, therefore, held that a procedure cannot be raised to the level of a mandatory requirement. Rule 18 itself makes a distinction between conditions and limitations subject to which a rebate can be granted and the procedure governing the grant of a rebate. It was held by the High Court that while the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory. The High Court ruled that non-production of ARE-1 forms ipso facto cannot invalidate rebate claim. In such a case, exporter can demonstrate by cogent evidence that goods were exported and duty paid and satisfy the requirements of rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 CE (NT).

8 - DEMAND, ADJUDICATION AND OFFENCES

1.	*Hans Steel Rolling Mill v. CCEx. Chandigarh 2011 (265) ELT 321 (SC)*	Whether time-limit under section 11A of the Central Excise Act, 1944 would be applicable to recovery of amounts due under compounded levy scheme?	**Supreme Court's Decision**: The Supreme Court held that the time-limit under section 11A of the Central Excise Act, 1944 is not applicable to recovery of dues under compounded levy scheme.
2.	*Sanjay Industrial Corporation v. CCE 2015 (318) ELT 15 (SC)*	In case the revenue authorities themselves have doubts about the dutiability of a product, can extended period of limitation be invoked alleging that assessee has suppressed the facts?	**Supreme Court's Decision**: The Supreme Court held that since Revenue authorities themselves had the doubts relating to excisability of process of profile cutting, the bona fides of the appellant could not be doubted. Hence, extended period of limitation could not be invoked and penalty was set aside.
3.	*Jay Kumar Lohani v. CCEx 2012 (28) STR 350 (MP)*	In a case where the assessee has been issued a show cause notice (SCN) regarding confiscation, is it necessary that only when such SCN is adjudicated, can the SCN regarding recovery of dues and penalty be issued?	**High Court's Decision**: The High Court held that there was no legal provision requiring authorities to first adjudicate the notice issued regarding confiscation and, only thereafter, issue show cause notice for recovery of dues and penalty.
4.	*CCEx. v. Balaji Trading Co. 2013 (290) ELT 200 (Del.)*	In a case where the manufacturer clandestinely removes the goods and stores them with a firm for further sales, can penalty under rule 25 of the Central Excise Rules, 2002 be imposed on such firm?	**High Court's Decision**: The Department aggrieved by the said order filed an appeal with High Court wherein it contended that clause (c) of rule 25(1) of the Central Excise Rules, 2002 would be applicable in the instant case. However, High Court concurred with the view of the Tribunal and concluded that rule 25(1)(c) would have no application in the present case because said clause would also apply only in respect of four categories of persons mentioned in rule 25(1) of said rules.
5.	*Nanumal Glass Works v. CCEx. Kanpur 2012 (284) ELT 15 (All.)*	Can a decision pronounced in the open court in the presence of the advocate of the assessee, be deemed to be the service of the order to the assessee?	**High Court's Decision**: The High Court held that when a decision is pronounced in the open court in the presence of the advocate of the assessee, who is the authorized agent of the assessee within the meaning of section 37C, the date of pronouncement of order would be deemed to be the date of service of order.

9 - REFUND

1.	*ICMC Corporation Ltd. v CESTAT, CHENNAI 2014 (302) ELT 45 (Mad.)*	Whether filing of refund claim under section 11B of Central Excise Act, 1944 is required in case of suo motu availment of CENVAT credit which was reversed earlier (i.e., the debit in the CENVAT Account is not made towards any duty payment)?	**High Court's Decision**: The High Court held that this process involves only an account entry reversal and factually there is no outflow of funds from the assessee by way of payment of duty. Thus, filing of refund claim under section 11B of the Central Excise Act, 1944 is not required. Further, it held that on a technical adjustment made, the question of unjust enrichment as a concept does not arise.
2.	*CCEx v. Superintending Engineer TNEB 2014 (300) ELT 45 (Mad.)*	Does the principle of unjust enrichment apply to State Undertakings?	**High Court's Decision**: The High Court followed the decision of the Apex Court and held that the concept of unjust enrichment is not applicable as far as State Undertakings are concerned and to the State.

10 - APPEALS

1.	*Commissioner of C. Ex., Mumbai-III v. Tikitar Industries 2012 (277) ELT 149 (SC)*	If Revenue accepts judgment of the Commissioner (Appeals) on an issue for one period, can it be precluded to make an appeal on the same issue for another period?	**Supreme Court's Decision**: The Supreme Court held that since the Revenue had not questioned the correctness or otherwise of the findings on the conclusion reached by the first appellate authority, it might not be open for the Revenue to contend this issue further by issuing the impugned show cause notices on the same issue for further periods.
2.	*CCE v. RDC Concrete (India) Pvt. Ltd. 2011 (270) ELT 625 (SC)*	Can re-appreciation of evidence by CESTAT be considered to be rectification of mistake apparent on record under section 35C(2) of the Central Excise Act, 1944?	**Supreme Court's Decision**: The Apex Court held that CESTAT had reconsidered its legal view as it concluded differently by accepting the arguments which it had rejected earlier. Hence, the Court opined that CESTAT exceeded its powers under section 35C(2) of the Act. In pursuance of a rectification application, it cannot re-appreciate the evidence and reconsider its legal view taken earlier.
3.	*CCE v. Fact Paper Mills Private Limited 2014 (308) ELT 442 (SC)*	Can an appeal be filed before the Supreme Court against an order of the CESTAT relating to clandestine removal of manufactured goods and clandestine manufacture of goods?	**Supreme Court's Decision**: The Supreme Court held that the appeals relating to clandestine removal of manufactured goods and clandestine manufacture of goods are not maintainable before the Apex Court under section 35L of the Central Excise Act, 1944.
4.	*Khanapur Taluka Co-op. Shipping Mills Ltd. v. CCEx. 2013 (292) ELT 16 (Bom.)*	In a case where an appeal against order-in-original of the adjudicating authority has been dismissed by the appellate authorities as time-barred, can a writ petition be filed to High Court against the order-in-original?	**High Court's Decision**: The High Court referred to the case of Raj Chemicals v. UOI 2013 (287) ELT 145 (Bom.) wherein it held that where the appeal filed against the order- in-original was dismissed as time-barred, the High Court in exercise of writ jurisdiction could neither direct the appellate authority to condone the delay nor interfere with the order passed by the adjudicating authority. Consequently, it refused to entertain the writ petition in the instant case.
5.	*Texcellence Overseas v. Union of India 2013 (293) ELT 496 (Guj.)*	Can the High Court condone the delay - beyond the statutory period of three months prescribed under section 35 of the Central Excise Act, 1944 - in filing an appeal before the Commissioner (Appeals)?	**High Court's Decision**: The High Court opined that since the total length of delay was very small and the case had extremely good ground on merits to sustain, its non interference at that stage would cause gross injustice to the petitioner. Thus, the High Court, by invoking its extraordinary jurisdiction, quashed the order which held that refund was erroneously granted. The High Court held that such powers are required to be exercised very sparingly and in extraordinary circumstances in appropriate cases, where otherwise the

			Court would fail in its duty if such powers are not invoked.
6.	*Habib Agro Industries v. CCEx. 2013 (291) ELT 321 (Kar.)*	Can delay in filing appeal to CESTAT for the reason that the authorised representative dealing with the case went on a foreign trip and on his return his mother expired, be condoned?	**High Court's Decision**: The High Court observed that there did not appear to be any deliberate latches or neglect on the part of the authorised representative to file the appeal. It held that the reason for delay in filing appeal to CESTAT, that the person dealing with the case went on a foreign trip and on his return his mother expired, could not be considered as unreasonable for condonation of delay.

11 - REMISSION OF DUTY AND DESTRUCTION OF GOODS

1.	*U.P. State Sugar Corporation Ltd. v. CCE 2016 (334) ELT 434 (All.)*	Can excise duty be remitted for the loss of molasses where the molasses were stored in an open pit instead of being stored in a steel storage tank?	**<u>High Court's Decision</u>**: The High Court held that the assessee was duty bound to keep the molasses in the three tanks to their fullest capacity. Since assessee had not utilized the three tanks to the fullest capacity, the Tribunal had been justified in granting remission of only part of the quantity of the molasses and refusing to grant remission on the balance quantity which could have been stored in the steel tank.

13 - EXEMPTION BASED ON VALUE OF CLEARANCES (SSI)

1.	*CCE v. Otto Bilz (India) Pvt. Ltd 2015 (324) ELT 430 (SC)*	Whether an assessee using a foreign brand name, assigned to it by the brand owner with right to use the same in India exclusively, is eligible for SSI exemption?	**Supreme Court's Decision**: The Supreme Court held that because of the aforesaid assignment, the assessee was using the trade mark in its own right as its own trade mark and therefore, it could not be said that it was using the trade mark of another person. The assessee was entitled to SSI exemption.
2.	*CCEx vs. Australian Foods India (P) Ltd 2013 (287) ELT 385 (SC)*	Whether the manufacture and sale of specified goods, not physically bearing a brand name, from branded sale outlets would disentitle an assessee to avail the benefit of small scale exemption?	**Supreme Court's Decision**: The Supreme Court held that it is not necessary for goods to be stamped with a trade or brand name to be considered as branded goods for the purpose of SSI exemption. A scrutiny of the surrounding circumstances is not only permissible, but necessary to decipher the same; the most important of these factors being the specific outlet from which the good is sold. However, such factors would carry different hues in different scenarios. There can be no single formula to determine if a good is branded or not; such determination would vary from case to case.
3.	*Premium Suiting (P) Ltd v. CCEx. 2016 (331) ELT 589 (All.)*	Should the clearances of two divisions of the assessee having separate central excise registration, be clubbed for determining the turnover for claiming SSI exemption?	**High Court's Decision:** The High Court affirmed the Tribunal's decision of clubbing the clearances of the goods of the two divisions of the assessee and that the assessee could not avail the SSI exemption.
4.	*CCEx v Xenon 2013 (296) ELT 26 (Jhar.)*	Where clearances of a dubious company are clubbed with clearances of the original company, whether penalty can be imposed on such dubious company if all the clearances have been made by the original company?	**High Court's Decision**: The High Court held that when it had been established that dubious company did not undertake any transactions, penalty could not be levied on the same for the transactions undertaken by the original company. The High Court emphasized that penalty could not be imposed upon the company who did not undertake any transaction.
5.	*Commissioner v. Elex Knitting Machinery Co. 2010 (258) ELT A48 (P & H)*	Can the brand name of another firm in which the assessee is a partner be considered as the brand name belonging to the assessee for the purpose of claiming SSI exemption?	**High Court's Decision**: The Tribunal held that since the assessee was a partner in the firm of whose brand name it was using, he was the co-owner of such brand name. Hence, he could not be said to have used the brand name of another person, in the manufacture and clearance of goods in his individual capacity. Thus, assessee was eligible for benefit of SSI exemption in the given case. The said decision of the Tribunal was affirmed by the High Court in the instant case.
6.	*CCE v. Deora*	Whether the clearances of	**High Court's Decision**: The High

	Engineering Works 2010 (255) ELT 184 (P & H)	two firms with common brand name, common management, accounts etc. and goods being manufactured in the same factory premises, can be clubbed for the purposes of SSI exemption?	Court held that indisputably, in the instant case, the partners of both the firms were common and belonged to same family. They were manufacturing and clearing the goods by the common brand name, manufactured in the same factory premises, with common management and accounts etc. Therefore, High Court was of the considered view that the clearance of the common goods under the same brand name manufactured by both the firms had been rightly clubbed.

14 - NOTIFICATIONS, DEPARTMENTAL CLARIFICATIONS AND TRADE NOTICES

1.	*CCE v. Honda Siel Power Products Ltd. 2015 (323) E.L.T. 644 (S.C.)*	Can the benefit of exemption notification be granted to assessee where one of the conditions to avail the exemption is not strictly followed?	**Supreme Court's Decision**: The Apex Court observed that the assessee was required to fulfill the condition in stricto senso viz. to pay the duty either in cash or through account current if it wanted to avail the benefit of exemption notification and not through adjustment of CENVAT credit which was not the mode prescribed in the aforesaid condition. It is trite that exemption notifications are to be construed strictly and even if there is any doubt same is to be given in favour of the Department. The Supreme Court held that once it is found that the conditions had not been fulfilled the obvious consequence would be that the assessee was not entitled to the benefit of said notification.
2.	*S & S Power Switch Gear Ltd. v. CCEx. Chennai-II 2013 (294) ELT 18 (Mad.)*	Where a circular issued under section 37B of the Central Excise Act, 1944 clarifies a classification issue, can a demand alleging misclassification be raised under section 11A of the Act for a period prior to the date of the said circular?	**High Court's Decision**: The High Court, thus, held that once reclassification Notification/Circular is issued, the Revenue cannot invoke section 11A of the Act to make demand for a period prior to the date of said classification notification/circular.

18 - SETTLEMENT COMMISSION

1.	*Vadilal Gases Limited v Union of India 2014 (301) ELT 321 (Guj.)*	(i) Where a settlement application filed under section 32E(1) of the Central Excise Act, 1944 (herein after referred to as 'Act') is not accompanied with the additional amount of excise duty along with interest due, can Settlement Commission pass a final order under section 32F(1) rejecting the application and abating the proceedings before it ? (ii) In the above case, whether a second application filed under section 32E(1), after payment of additional excise duty along with interest, would be maintainable?	**High Court's Decision**: High Court held that since the earlier application was dismissed on technical defect for non-compliance of the provisions of clause (d) of the proviso to section 32E(1) of the Act and the same was not considered and decided on merits, the second application filed after depositing the additional excise duty and interest would be maintainable.

SERVICE TAX

1 - BASIC CONCEPTS OF SERVICE TAX

1.	*Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran 2012 (26) STR 289 (SC)*	Can the service tax liability created under law be shifted by virtue of a clause in the contract entered into between the service provider and the service recipient?	**Supreme Court's Decision**: The Supreme Court observed that on reading the agreement between the parties, it could be inferred that service provider (contractor) had accepted the liability to pay service tax, since it arose out of discharge of its obligations under the contract. With regard to the submission of shifting of service tax liability, the Supreme Court held that service tax is an indirect tax which may be passed on. Thus, assessee can contract to shift its liability. The Finance Act, 1994 is relevant only between assessee and the tax authorities and is irrelevant in determining rights and liabilities between service provider and service recipient as agreed in a contract between them. There is nothing in law to prevent them from entering into agreement regarding burden of tax arising under the contract between them.
2.	*Commissioner v. GMK Concrete Mixing Pvt. Ltd. 2015 (38) STR J113 (SC)*	Does preparation of ready mix concrete (RMC) along with pouring, pumping and laying of concrete amount to provision of service?	**Supreme Court's Decision**: The Supreme Court upheld the decision of the Tribunal wherein it was held that the contract between the parties was to supply RMC and not to provide any taxable services. Therefore, since the Finance Act, 1994 is not a law relating to commodity taxation, the adjudication was made under mistake of fact and law fails. By this judgment, the Supreme Court dismissed the appeal filed by the Revenue.
3.	*Kishore K.S. v. Cherthala Municipality 2011 (24) STR 538 (Ker.)*	In case where rooms have been rented out by Municipality, can it pass the burden of service tax to the service receivers i.e. tenants?	**High Court's Decision**: The High Court held that Municipality can pass on the burden of service tax to the tenants.
4.	*Indian Coffee Workers' Co-operative Society Ltd. v. CCE&ST 2014 (34) STR 546* (All.)	Whether supply of food, edibles and beverages provided to the customers, employees and guests using canteen or guesthouse of the other person, results in outdoor caterer service?	**High Court's Decision**: Based on the observation made above, the High Court held that the assessee was liable for payment of service tax as an outdoor caterer.
5.	*CCE & ST v. Garg Aviations Limited 2014 (35) STR 441 (All.)*	Whether the course completion certificate/training offered by approved Flying Training Institute and Aircraft	**High Court's Decision**: The High Court upheld the decision of the Tribunal and held that the Revenue had not been able to persuade the

		Engineering Institutes is recognized by law (for being eligible for exemption from service tax) if the course completion certificate/ training/ is only for the purpose of eligibility for obtaining ultimate licence/approval for certifying repair/maintenance/airworthiness of aircrafts?	Court to take a contrary view as taken by the Delhi High Court in Indian Institute of Aircraft Engineering. The appeal filed by the Revenue would not give rise to any substantial question of law. Hence, the appeal filed was dismissed and the assessee was held not to be liable to pay service tax.
6.	*Hotel East Park v. UOI 2014 (35) STR 433 (Chhatisgarh)*	Whether section 66E(i) of the Finance Act, 1994 which levies service tax on the service portion of activity wherein goods being food or any other article for human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of activity, is ultra vires the Article 366(29A)(f) of the Constitution?	**High Court's Decision**: The High court held that section 66E (i) of the Finance Act, 1994 is intra vires the Article 366(29A)(f) of the Constitution of India. Further, the High Court held that no VAT can be charged over the amount meant for service and that the amount over which service tax has been charged should not be subject to VAT. The High Court directed the State Government to frame such rules and issue clarifications to this effect to ensure that the customers are not doubly taxed over the same amount. The rules may be in conformity with the bifurcation as provided under the Finance Act, 1994 or ensure that the Commercial Tax authorities do not charge VAT on that part of the value of the food and drink on which service tax is being assessed.
7.	*Mayo College General Council v. CCEx. (Appeals) 2012 (28) STR 225 (Raj)*	A society, running renowned schools, allows other schools to use a specific name, its logo and motto and receives a non-refundable amount and annual fee as a consideration. Whether this amounts to a taxable service?	**High Court's Decision**: The High Court held that when the petitioner permitted other schools to use their name, logo as also motto, it clearly tantamounted to providing 'franchise service' to the said schools and if the petitioner realized the 'franchise' or 'collaboration fees' from the franchise schools, the petitioner was duty bound to pay service tax to the department.

2 - PLACE OF PROVISION OF SERVICE

1.	*Wipro Ltd. v. Union of India 2013 (29) S.T.R. 545 (Del.)*	Whether filing of declaration of description, value etc. of input services used in providing IT enabled services (call centre/BPO services) exported outside India, after the date of export of services will disentitle an exporter from rebate of service tax paid on such input services?	**High Court's Decision**: The High Court, therefore, allowed the rebate claims filed by the appellants and held that the condition of the notification must be capable of being complied with as if it could not be complied with, there would be no purpose behind it.

5 - EXEMPTIONS AND ABATEMENTS

1.	*Commissioner of Service Tax v. Zydus Technologies Limited 2014 (35) STR 515 (Guj.)*	Is exemption in relation to service provided to the developer of SEZ or units in SEZ available for a period prior to actual manufacture (which is the authorized operation) of final products considering these services as the services used in authorised operations of SEZ?	**High Court's Decision**: In the instant case, the High Court referring to their previous decision in case of CCEx. v. Cadila Healthcare Ltd. held that the services rendered for a period prior to actual manufacture of final product is commercial activity/production and assessee is entitled to exemption by way of refund claimed.

6 - SERVICE TAX PROCEDURES

1.	*CIT v. Rajasthan Urban Infrastructure 2013 (31) STR 642 (Raj.)*	Whether tax is to be deducted at source under section 194J of the Income-tax Act, 1961 on the amount of service tax if it is paid separately and is not included in the fees for professional services/technical services?	**High Court's Decision**: The High Court held that if as per the terms of the agreement between the payer and the payee, the amount of service tax is to be paid separately and is not included in the fees for professional services or technical services, the service tax component would not be subject to TDS under section 194J of the Income-tax Act, 1961.

7 - DEMAND, ADJUDICATION AND OFFENCES

1.	*Chitra Builders Private Ltd. v. Addnl Comm of CEx. & ST 2013 (31) STR 515 (Mad.)*	Is it justified to recover service tax during search without passing appropriate assessment order?	**High Court's Decision**: Thus, the High Court held that the amount collected by Department, from the petitioner, during the search conducted, could not be held to be valid in the eye of law, and directed the Department to return to the petitioner the sum of ` 2 crores, collected from it, during the search conducted.
2.	*Infinity Infotech Parks Ltd. v. UOI 2013 (31) STR 653 (Cal.)*	Can extended period of limitation be invoked for mere contravention of statutory provisions without the intent to evade service tax being proved?	**High Court's Decision**: It held that mere contravention of provision of Chapter V or rules framed thereunder does not enable the service tax authorities to invoke the extended period of limitation. The contravention necessarily has to be with the intent to evade payment of service tax.
3.	*N.B.C. Corporation Ltd. v. Commissioner of Service Tax 2014 (33) STR 113 (Del.)*	Whether best judgment assessment under section 72 of the Finance Act, 1994 is an ex-parte* assessment procedure?	**High Court's Decision**: The High Court held that section 72 could per se not be considered as an ex parte assessment procedure as ordinarily understood under the Income-tax Act, 1961. Section 72 mandates that the assessee must appear and must furnish books of account, documents and material to the Central Excise Officer before he passes the best judgment assessment order. Thus, said order is not akin to an ex parte order. Such an order will be akin to an ex parte order, when the assessee fails to produce records and the Central Excise Officer has to proceed on other information or data which may be available.
4.	*CCE (A) v. KVR Construction 2012 (26) STR 195 (Kar.)*	Can an amount paid under the mistaken belief that the service is liable to service tax when the same is actually exempt, be considered as service tax paid?	**High Court's Decision**: In view of the above, the High Court held that refund of an amount mistakenly paid as service tax could not be rejected on ground of limitation under section 11B of the Central Excise Act, 1944.
5.	*Ankleshwar Taluka ONGC Land Loosers Travellers Co. OP. v. CCE Surat-II 2013 STR 352 (Guj.)*	In a case where the assessee has acted bona fide, can penalty be imposed for the delay in payment of service tax arising on account of confusion regarding tax liability and divergent views due to conflicting court decisions?	**High Court's Decision**: The High Court held that even if the appellants were aware of the levy of service tax and were not paying the amount on the ground of dispute with the ONGC, there could be no justification in levying the penalty in absence of any fraud, misrepresentation, collusion or wilful mis-statement or suppression. Moreover, when the entire issue for levying of the tax was debatable, that

			also would surely provide legitimate ground not to impose the penalty.
6.	*CCus CEx & ST v. Indian Farmers Fertilizers Coop. Limited 2014 (35) STR 492* (All)	Whether the recipient of taxable service having borne the incidence of service tax is entitled to claim refund of excess service tax paid consequent upon the downward revision of charges already paid, and whether the question of unjust enrichment arises in such situation?	**High Court's Decision**: The High Court upheld the decision of the CESTAT that since the burden of tax has been borne by the respondent as a service recipient, question of unjust enrichment will not arise as per section 11B of the Central Excise Act 1944 (as applicable to service tax under section 83 of Finance Act,1994). Further, the High Court held that once the finding of the adjudicating authority that the claim for refund was filed within the period of limitation was not challenged by the Revenue before the first appellate authority and CESTAT, Revenue could not assert to contrary and first time urge a point in an appeal before this Court which was not raised in grounds of appeal before authorities below.
7.	*Naresh Kumar & Co. Pvt. Ltd v. UOI 2014 (35) STR 506 (Cal.)*	Can the expression 'suppression of facts' be interpreted to include in its ambit, mere failure to disclose certain facts unintentionally?	**High Court's Decision**: The High Court held that willful suppression cannot be assumed and/or presumed merely on failure to declare certain facts unless it is preceded by deliberate non-disclosure to evade the payment of tax. The extended period of limitation can be invoked on clear exposition that there has been a conscious act on the part of the assessee to evade the tax by non-disclosing the fact which, if disclosed, would attract service tax under sections 66 (now section 66B) & 67 of the Finance Act, 1994. The non-disclosure of the fact which, even if, disclosed would not have attracted the charging section cannot be brought within the ambit of suppression of fact for the purpose of extension of limitation period.
8.	*CCE v. Vijaya Consultants, Engineers and Consultants 2015 (040) STR 0232 (AP)*	Can service tax be demanded by a speaking order without issuing a show cause notice but after issuing a letter and giving the assessee an opportunity to represent his case along with personal hearing?	**High Court's Decision**: The High Court held that by no stretch of imagination, the said letter could be treated as a show cause notice satisfying the requirement of section 73 of the Act. The High Court further held that the procedural requirement of issuance of notice and calling for explanation cannot be dispensed with as otherwise the demand of money in the name of tax would be in violation of the very

			procedure prescribed under the Act. The High Court thus, dismissed the appeal.
9.	*Delhi Transport Corporation v. Commissioner Service Tax 2015 (038) STR 673* (Del.)	Based on the contractual arrangement, can the assessee ask the Department to recover the tax dues from a third party or wait till the assessee recovers the same?	**High Court's Decision**: The High Court held that undoubtedly, the service tax burden can be transferred by contractual arrangement to the other party. However, on account of such contractual arrangement, the assessee cannot ask the Revenue to recover the tax dues from a third party (the other party) or wait for discharge of the liability by the assessee till it has recovered the amount from its contractors (the other party).
10.	*Jyoti Enterprises v. CCEx. & ST 2016 (41) STR 0019 (All.)*	Whether the order served on a member of the family of the assessee, is a proper service of order?	**High Court's Decision**: The High Court held that the order in original was duly served upon the assessee.
11.	*Enestee Engineering Pvt. Ltd. v. UOI 2016 (41) STR 0061 (Bom.)*	Can the period of limitation be computed from the date of forwarding of the order where such order has not been received by the assessee?	**High Court's Decision**: The High Court quashed and set aside both the orders - order of Commissioner (Appeals) and the order of Tribunal, and placed back the matter for fresh consideration before Commissioner (Appeals).

8 - OTHER PROVISIONS

1.	*Commissioner of Service Tax v. Associated Hotels Ltd. 2015 (37) STR 723 (Guj.)*	Can the Commissioner (Appeals) remand back a case to the adjudicating authority under section 85 of the Finance Act, 1994?	**High Court's Decision**: The High Court, therefore, held that section 85(4) of the Finance Act, 1994 gives ample powers to the Commissioner (Appeals) while hearing and disposing of the appeals and such powers inherently contain the power to remand a proceeding for proper reasons to the adjudicating authority.
2.	*CCus & CEx. v. Ashok Kumar Tiwari 2015 (37) STR 727 (All.)*	Whether the period of limitation or the period within which delay in filing an appeal can be condoned, specified in terms of months in a statute, means a calendar month or number of days?	**High Court's Decision**: In the given case, the Commissioner of Central Excise (Appeals) had the jurisdiction to condone the delay in filing of appeal by the assessee as the same had been filed within the stipulated time prescribed for the same.
3.	*Chakiat Agencies v. UOI 2015 (37) STR 712 (Mad.)*	Can an appeal filed in time but to the wrong authority be rejected by the appellate authority for being time barred?	**High Court's Decision**: In the light of the above discussion, the High Court directed the appellate authority to entertain the appeal of the assessee and to pass appropriate orders on merits and in accordance with law, after affording him an opportunity of being heard.

CUSTOMS & FOREIGN TRADE POLICY

1 - BASIC CONCEPTS

1.	*Tirupati Udyog Ltd. v. UOI 2011 (272) ELT 209 (AP)*	Are the clearance of goods from DTA to Special Economic Zone chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962?	**High Court's Observations and Decision**: The High Court, on the basis of the following observations, inferred that the clearance of goods from DTA to Special Economic Zone is not liable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962:- A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all. SEZ Act does not contain any provision for levy and collection of export duty for goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. In the absence of a charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier by implication. With regard to the Customs Act, 1962, a conjoint reading of section 12(1) with sections 2(18), 2(23) and 2(27) of the Customs Act, 1962 makes it clear that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India. Since both the SEZ unit and the DTA unit are located within the territorial waters of India, section 12(1) of the Customs Act 1962 (which is the charging section for levy of customs duty) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone.

2 - LEVY OF AND EXEMPTIONS FROM CUSTOMS DUTY

1.	*Mangalore Refinery & Petrochemicals Ltd v. CCus. 2015 (323) ELT 433 (SC)*	In case of import of crude oil, whether customs duty is payable on the basis of the quantity of oil shown in the bill of lading or on the actual quantity received into shore tanks in India?	**Supreme Court's Decision**: The Supreme Court set aside the Tribunal's judgment and declared that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty.
2.	*Aidek Tourism Services Pvt. Ltd. v. CCus. 2015 (318) ELT 3 (SC)*	Would countervailing duty (CVD) on an imported product be exempted if the excise duty on a like article produced or manufactured in India is exempt?	**Supreme Court's Decision**: Supreme Court held that rate of additional duty leviable under section 3(1) of the Customs Tariff Act, 1975 would be only that which is payable under the Central Excise Act, 1944 on a like article. Therefore, the importer would be entitled to payment of concessional/ reduced or nil rate of countervailing duty if any notification is issued providing exemption/ remission of excise duty with respect to a like article if produced/ manufactured in India.

4 - CLASSIFICATION OF GOODS

1.	*Keihin Penalfa Ltd. v. Commissioner of Customs 2012 (278) ELT 578 (SC)*	Where a classification (under a Customs Tariff head) is recognized by the Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?	**Supreme Court's Decision**: The Apex Court observed that the Central Government had issued an exemption notification dated 1-3-2002 and in the said notification it had classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself had classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3-2002, the said classification needs to be accepted for the period prior to it.
2.	*State of Punjab v. Nokia India Private Limited 2015 (315) ELT 162 (SC)*	Whether the mobile battery charger is classifiable as an accessory of the cell phone or as an integral part of the same?	**Supreme Court's Decision:** The Apex Court held that mobile battery charger is an accessory to mobile phone and not an integral part of it. Further, battery charger cannot be held to be a composite part of the cell phone, but is an independent product which can be sold separately without selling the cell phone.
3.	*M/s CPS Textiles P Ltd. v. Joint Secretary 2010 (255) ELT 228 (Mad.)*	(i) Will the description of the goods as per the documents submitted along with the Shipping Bill be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test? (ii) Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback?	**High Court's Decision**: The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test. The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill which had been assessed and cleared for export. Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice for the payment of interest need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.

5 - VALUATION UNDER THE CUSTOMS ACT, 1962

1.	*Gira Enterprises v. CCus. 2014 (307) ELT 209 (SC)*	Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?	**Supreme Court's Decision:** The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable. Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.

7 - IMPORTATION, EXPORTATION AND TRANSPORTATION OF GOODS

1.	*CCus v. Shreeji Overseas (India) Pvt. Ltd. 2013 (289) ELT 401 (Guj.)*	Can the time-limit prescribed under section 48 of the Customs Act, 1962 for clearance of the goods within 30 days be read as time-limit for filing of bill of entry under section 46 of the Act?	**High Court's Observation and Decision**: The aforesaid question came up for consideration before the High Court. The High Court noted that though section 46 does not provide for any time-limit for filing a bill of entry by an importer upon arrival of goods, section 48 permits the authorities to sell the goods after following the specified procedure, provided the same are not cleared for home consumption/ warehoused/ transhipped within 30 days of unloading the same at the customs station. The High Court however held that the time-limit prescribed under section 48 for clearance of the goods within 30 days cannot be read into section 46 and it cannot be inferred that section 46 prescribes any time-limit for filing of bill of entry.

9 - DEMAND & APPEALS

1.	*Kemtech International Pvt. Ltd. v. CCus. 2013 (292) ELT 321 (SC)*	Is the adjudicating authority required to supply to the assessee copies of the documents on which it proposes to place reliance for the purpose of re-quantification of short-levy of customs duty?	**Supreme Court's Decision:** The Apex Court held that for the purpose of re- quantification of short-levy of customs duty, the adjudicating authority, following the principles of natural justice, should supply to the assessee all the documents on which it proposed to place reliance. Thereafter the assessee might furnish their explanation thereon and might provide additional evidence, in support of their claim.
2.	*Thakker Shipping P. Ltd. v. CCus. (General) 2012 (285) ELT 321 (SC)*	Can Tribunal condone the delay in filing of an application consequent to review by the Committee of Chief Commissioners if it is satisfied that there was sufficient cause for not presenting the application within the prescribed period?	**Supreme Court's Decision**: In light of the above discussion, the High Court ruled that the Tribunal was competent to invoke section 129A(5) where an application under section 129D(4) had not been made within the prescribed time and condone the delay in making such application if it was satisfied that there was sufficient cause for not presenting it within that period.
3.	*Uniworth Textiles Ltd. vs. CCEx. 2013 (288) ELT 161 (SC)*	Whether extended period of limitation for demand of customs duty can be invoked in a case where the assessee had sought a clarification about exemption from a wrong authority?	**Supreme Court's Decision**: The Supreme Court held that mere non-payment of duties could not be equated with collusion or wilful misstatement or suppression of facts as then there would be no form of non-payment which would amount to ordinary default. The Apex Court opined that something more must be shown to construe the acts of the assessee as fit for the applicability of the proviso.
4.	*Neeraj Jhanji v. CCE & Cus. 2014 (308) ELT 3 (SC)*	Can a writ petition be filed before a High Court which does not have territorial jurisdiction over the matter?	**Supreme Court's Decision:** The Supreme Court observed that the very filing of writ petition by the petitioner in Delhi High Court against the order in original passed by the Commissioner of Customs, Kanpur indicated that the petitioner had taken chance in approaching the High Court at Delhi which had no territorial jurisdiction in the matter. The filing of the writ petition before Delhi High Court was not at all bona fide.
5.	*Margara Industries Ltd. v. Commr. of C. Ex. & Cus. (Appeals) 2013 (293) ELT 24 (All.)*	Can delay in filing appeal to CESTAT due to the mistake of the counsel of the appellant, be condoned?	**High Court's Decision**: The High Court held that the Tribunal ought to have taken a lenient view in this matter as the appellant was not going to gain anything by not filing the appeal and the reason for delay in filing appeal as given by the appellant was the mistake of its

			counsel who had also filed his personal affidavit.
6.	*Rishiroop Polymers Pvt. Ltd. v. Designated Authority 2013 (294) ELT 547 (Bom.)*	Can a writ petition be filed against an order passed by the CESTAT under section 9C of the Customs Tariff Act, 1975?	**High Court's Decision**: The High Court, therefore, held that it would not be appropriate for it to exercise the jurisdiction under Article 226 of the Constitution, since an alternate remedy by way of an appeal was available in accordance with law. The High Court thus, dismissed the petition leaving it open to the assessee to take recourse to the appellate remedy.
7.	*CCus. v. Dinesh Chhajer 2014 (300) ELT 498 (Kar.)*	Can customs duty be demanded under section 28 and/or section 125(2) of the Customs Act, 1962 from a person dealing in smuggled goods when no such goods are seized from him?	**High Court's Decision:** The High Court held that Tribunal was justified in holding that no duty is leviable against the assessee as he is neither the importer nor the owner of the goods or was in possession of any goods.

10 - REFUND

1.	*KSJ Metal Impex (P) Ltd. v. Under Secretary (Cus.) M.F. (D.R.) 2013 (294) ELT 211 (Mad.)*	Whether interest is liable to be paid on delayed refund of special CVD arising in pursuance of the exemption granted vide Notification No. 102/2007 Cus dated 14.09.2007?	**High Court's Decision**: The High Court, therefore, held that : It would be a misconception of the provisions of the Customs Act, 1962 to state that notification issued under section 25 of the Customs Act, 1962 does not have any specific provision for interest on delayed payment of refund. When section 27 of the Customs Act, 1962 provides for refund of duty and section 27A of the Customs Act, 1962 provides for interest on delayed refunds, the Department cannot override the said provisions by a Circular and deny the right which is granted by the provisions of the Customs Act, 1962 and CETA. Paragraph 4.3 of the Circular No. 6/2008 Cus. dated 28.04.2008 being contrary to the statute has to be struck down as bad.
2.	*Parimal Ray v. CCus. 2015 (318) ELT 379 (Cal.)*	Is limitation period of one year applicable for claiming the refund of amount paid on account of wrong classification of the imported goods?	**High Court's Observations and Decision**: The High Court observed that the provisions of section 27 apply only when there is over payment of duty or interest under the Customs Act, 1962. When the petitioners' case is that tunnel boring machines imported by it were not exigible to any duty, any sum paid into the exchequer by them was not duty or excess duty but simply money paid into the Government account. The Government could not have claimed or appropriated any part of this as duty or interest. Therefore, there was no question of refund of any duty by the Government. The money received by Government could more appropriately be called money paid by mistake by one person to another, which the other person is under obligation to repay under section 72 of the Indian Contract Act, 1872. A person to whom money has been paid by mistake by another person becomes at common law a trustee for that other person with an obligation to repay the sum received. This is the equitable principle on which section 72 of the Contract Act, 1872 has been enacted. Therefore, the person who is entitled to the money is the beneficiary or cesti qui trust*. When

			the said amount was paid by mistake by the petitioner to the Government of India, the latter instantly became a trustee to repay that amount to the petitioner. The obligation was a continuing obligation. When a wrong is continuing there is no limitation for instituting a suit complaining about it. The High Court, therefore, allowed the writ application and directed the respondents (Department) to refund the said sum to the petitioner.

12 - PROVISIONS RELATING TO ILLEGAL IMPORT, ILLEGAL EXPORT, CONFISCATION, PENALTY & ALLIED PROVISIONS

1.	*CCus. (Prev.), Mumbai v. M. Ambalal & Co. 2010 (260) ELT 487 (SC)*	Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods?	**Supreme Court's Decision**: Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods.
2.	*Manish Lalit Kumar Bavishi v. Addl. DIR. General, DRI 2011 (272) ELT 42 (Bom.)*	Is it mandatory for the Revenue officers to make available the copies of the seized documents to the person from whose custody such documents were seized?	**High Court's Decision:** The High Court held that from the language of section 110(4), it was apparent that the Customs officers were mandatorily required to make available the copies asked for. It was the party concerned who had the choice of either asking for the document or seeking extract, and not the officer. If any document was seized during the course of any action by an officer and relatable to the provisions of the Customs Act, that officer was bound to make available copies of those documents. The denial by the Revenue to make the documents available was clearly an act without jurisdiction. The High Court directed the Revenue to make available the copies of the documents asked for by the assessee which were seized during the course of the seizure action.
3.	*In Re: Hemal K. Shah 2012 (275) ELT 266 (GOI)*	Whether the smuggled goods can be re-exported from the customs area without formally getting them released from confiscation?	**Revisionary Authority's Decision**: The Government noted that the passenger had grossly mis-declared the goods with intention to evade duty and to smuggle the goods into India. As per the provisions of section 80 of the Customs Act, 1962 when the baggage of the passenger contains article which is dutiable or prohibited and in respect of which the declaration is made under section 77, the proper officer on request of passenger can detain such article for the purpose of being returned to him on his leaving India. Since passenger neither made true declaration nor requested for detention of goods for re-export, before customs authorities at the time of his arrival at airport, the re- export of said goods could not be allowed under section 80 of the Customs Act.
4.	*Caravel Logistics Pvt. Ltd. v. Joint*	Can penalty for short-landing of goods be imposed on the steamer	**High Court's Decision**: The High Court held that conjoint reading of

	Secretary (RA) 2013 (293) ELT 342 (Mad.)	agent of a vessel if he files the Import General Manifest, deals with the goods at different stages of shipment and conducts all affairs in compliance with the provisions of the Customs Act, 1962?	sections 2(31), 116 and 148 of Customs Act, 1962 makes it clear that in case of short-landing of goods, if penalty is to be imposed on person-in-charge of conveyance/vessel, it can also be imposed on the agent appointed by him. Hence, duly appointed steamer agent of a vessel, would be liable to penalty. However, steamer agent, if innocent, could work out his remedy against the shipper for short-landing. The High Court also clarified that in view of section 42 under which no conveyance can leave without written order, there is an automatic penalty for not accounting of goods which have been shown as loaded on vessel in terms of Import General Manifest. There is no requirement of proving mens rea on part of person-in-charge of conveyance to fall within the mischief of section 116 of the Customs Act.
5.	*Akanksha Syntex (P) Ltd. v Union of India 2014 (300) ELT 49 (P&H)*	Where goods have been ordered to be released provisionally under section 110A of the Customs Act, 1962, can release of goods be claimed under section 110(2) of the Customs Act, 1962?	**High Court's Decision**: The remedy of provisional release is independent of remedy of claiming unconditional release in the absence of issuance of any valid show cause notice during the period of limitation or extended limitation prescribed under section 110(2) of the Customs Act, 1962.
6.	*Purushottam Jajodia v. Director of Revenue Intelligence 2014 (307) ELT 837 (Del.)*	Whether mere dispatch of a notice under section 124(a) would imply that the notice was "given" within the meaning of section 124(a) and section 110(2) of the said Customs Act, 1962?	**High Court's Decision**: The High Court held that since the petitioners did not receive the notice under section 124(a) within the time stipulated in section 110(2) of the Act, such notice will not considered to be "given" by the Department within the stipulated time, i.e. before the terminal date. Consequently, the Department was directed to release the goods seized.
7.	*Santosh Handlooms v. CCus. 2016 (331) ELT 44 (Del.)*	In case of seizure of goods under section 110 of the Customs Act, 1962, can the show cause notice [required to be issued under section 124(a) within six months of seizure] be issued to the Customs House Agent [now Custom Broker] of the importer instead of importer himself?	**High Court's Decision**: In the light of above discussion, the High Court held that the show cause notice served on CHA [now Custom Broker] is not tenable in law.

13 - SETTLEMENT COMMISSION

1.	*Sanghvi Reconditioners Pvt. Ltd. V. UOI 2010 (251) ELT 3 (SC)*	In case of a Settlement Commission's order, can the assessee be permitted to accept what is favourable to them and reject what is not?	**Supreme Court's Decision**: The Apex Court held that the application under section 127B of the Customs Act, 1962 is maintainable only if the duty liability is disclosed. The disclosure contemplated is in the nature of voluntary disclosure of concealed additional customs duty. The Court further opined that having opted to get their customs duty liability settled by the Settlement Commission, the appellant could not be permitted to dissect the Settlement Commission's order with a view to accept what is favourable to them and reject what is not.
2.	*Saurashtra Cement Ltd. v. CCus. 2013 (292) ELT 486 (Guj.)*	Is judicial review of the order of the Settlement Commission by the High Court or Supreme Court under writ petition/special leave petition, permissible?	**High Court's Observation and Decision**: While examining the scope of judicial review in relation to a decision of Settlement Commission, the High Court noted that although the decision of Settlement Commission is final, finality clause would not exclude the jurisdiction of the High Court under Article 226 of the Constitution (writ petition to a High Court) or that of the Supreme Court under Articles 32 or 136 of the Constitution (writ petition or special leave petition to Supreme Court). The Court would ordinarily interfere if the Settlement Commission has acted without jurisdiction vested in it or its decision is wholly arbitrary or perverse or mala fide or is against the principles of natural justice or when such decision is ultra vires the Act or the same is based on irrelevant considerations. The Court, however, pronounced that the scope of court's inquiry against the decision of the Settlement Commission is very narrow, i.e. judicial review is concerned with the decision-making process and not with the decision of the Settlement Commission.
3.	*Union of India v. Cus. & C. Ex. Settlement Commission 2010 (258) ELT 476 (Bom.)*	Does the Settlement Commission have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue?	**High Court's Decision**: The High Court, thus, concluded that the duty drawback or claim for duty drawback is nothing but a claim for refund of duty as per the statutory scheme framed by the Government of India or in exercise of statutory powers under the provisions of the

			Act. Thus, the High Court held that the Settlement Commission has jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the Revenue.

15 - MISCELLANEOUS PROVISIONS

1.	*Vishnu M Harlalka v. Union of India 2013 (294) ELT 5 (Bom)*	Whether any interest is payable on delayed refund of sale proceeds of auction of seized goods after adjustment of expenses and charges in terms of section 150 of the Customs Act, 1962?	**High Court's Decision**: The High Court held that Department cannot plead that the Customs Act, 1962 provides for the payment of interest only in respect of refund of duty and interest and hence, the assessee would not be entitled to interest on the balance of the sale proceeds which were directed to be paid by the Settlement Commission. The High Court clarified that acceptance of such a submission would mean that despite an order of the competent authority directing the Department to grant a refund, the Department can wait for an inordinately long period to grant the refund. The High Court directed the Department to pay interest from the date of approval of proposal for sanctioning the refund.
2.	*Anita Grover v. CCEx. 2013 (288) ELT 63 (Del.)*	Can a former director of a company be held liable for the recovery of the customs dues of such company?	**High Court's Decision**: The Court held that since the company was not being wound up, the juristic personality the company and its former director would certainly be separate and the dues recoverable from the former could not, in the absence of a statutory provision, be recovered from the latter. There was no provision in the Customs Act, 1962 corresponding to section 179 of the Income-tax Act, 1961 or section 18 of the Central Sales Tax, 1956 (refer note below) which might enable the Revenue authorities to proceed against directors of companies who were not the defaulters.

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