

AMENDMENTS FOR NOV-2011 EXAMINATION

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SUMMARY OF RECENT IMPORTANT CASE LAWS

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Sr No	CASE LAWS	COURT	DECISION	Page No.
BASIC CONCEPTS				
1	Mehta & Co. [2011] (Most expected)	(SC)	The items like chairs, beds, tables, desks, etc., manufacture at client site & affixed to the ground could be said to be moveable assets and liable to excise duty.	2
2	Medley Pharmaceuticals Ltd. [2011]	(SC)	physician samples distributed to medical practitioner as free samples is marketable & goods liable to Excise duty.	2
3	Usha Rectifier Corpn. (I) Ltd. v. CCEx. [2011]	(SC)	Testing equipments manufactured instead of importing the same & used captively - Marketable and Liable to excise duty.	3
4	Orissa Bridge & Construction (2011)	(SC)	The fabrication of shuttering plates, vertical props and Derricks made from Steel angle, MS plates, MS sheets and pipes amount to manufacture & are marketable product & liable to Excise Duty	4
5	Shital International [2010] (SC)	(SC)	The processes of shearing and back-coating carried on by the assessee amounts to manufacture or not	5
6	Nicholas Piramal India Ltd. CCEx. [2010] 260 (SC)	(SC)	Crude Vitamin A which was captively consumed was commercially known and was capable of being marketed, hence liable for payment of excise duty	6

Sr No	CASE LAWS	COURT	DECISION	Page No.
7	TARPAULIN INTERNATIONAL 2010 (S.C.) (Most expected)	(SC)	The process like cutting, stitching and fixing of eye-lets on tarpaulin made-ups does not amounts to manufacture.	7
8	Bata India Limited-2010 (S.C.)	(SC)	Unvulcanised sandwiched fabric assembly produced in the Assessee's factory is not is commercially distinct or marketable product.	8
9	TIKITAR INDUSTRIES 2010 (S.C.)	(SC)	the process of converting straight grade bitumen into blown grade bitumen through Oxidation, known as blowing process, does not amount to manufacture	9
10	Solid & Correct Engg. Works - 2010 (S.C.)	(SC)	Asphalt Drum Mix Plant by using duty paid components is movable property and tantamount to manufacture of excisable goods.	9
11	Bemcee Ltd. - 2010 (S.C.)	(SC)	slitting/shearing of steel coils to produce sheets does not constitutes 'manufacture' for the purpose of levy of Central Excise Duty	10
12	SONY MUSIC ENTERTAINMENT (I) PVT. LTD-2010 (H.C.)	(H.C.)	The activity of packing imported Compact discs in a jewel box along with inlay card would not amount to manufacture	10
EXCISE VALUATION				
13	Kwality Ice Cream Co. [2010]	(SC)	Interest-free deposit on account of commercial expediency not amounts to additional consideration to treat as related person	18

Sr No	CASE LAWS	COURT	DECISION	Page No.
14	Makson Confectionery [2010] (S	(SC)	There was no need to declare RSP on the packs/jars containing 100 'Eclairs'/Max Caramel' (Wholesale package). Accordingly, the packs/jars were assessable u/s 4 at transaction value; not u/s 4A on the basis of RSP.	19
15	XEROGRAPHIC LTD. 2010 (S.C.)	(SC)	Price between Assessee and buyers is on principal to principal basis. Hence Normal price is the value of goods.	20
16	MARUTI SUZUKI INDIA LTD. 2010 (Tri. - LB) (Most expected)	Tri.	Any amount collected by the dealer towards pre-delivery inspection or after sale services from the buyer of the goods on the behalf of manufacturer is includible in value of goods sold by manufacturer to dealer	20
SSI				
17	M/S ACE Auto Co. Ltd. [2011] (SC) (Most expected)	(SC)	Assessee using the symbol of 'TATA' on clutch plates & pressure plate along own Brand name 'ACE' & clear such goods into the Market is not eligible for SSI exemption	23
18	Parle Bisleri Pvt. Ltd. v. CCEx. [2011] 263 ELT 15 (SC)	(SC)	Some effective financial control and management between two companies - Clearances to be clubbed for SSI-exemption	24
19	UNISON ELECTRONICS PVT LTD-2009 (S.C.)	(SC)	United Tele Shopping (in short UTS') and Tele Shopping Network (in short 'TSN') sticker on the package is the brand name of another person which makes them ineligible for the SSI exemption	25

Sr No	CASE LAWS	COURT	DECISION	Page No.
CLASSIFICATION OF GOODS				
20	Xerox India Ltd. [2010] (Most expected)	(SC)	The printing function emerges as the principal function and gives the Multi-Functional Machines its essential character. Therefore, multi	27
21	N.I. SYSTEMS (INDIA) P. LTD. 2010 (S.C.)(VV IMP) (Most expected)	(SC)	PXI Controllers, I.O. Modules and Chassis were rightly classified under Chapter 90 as parts and accessories of Automatic Regulating or Controlling Instruments and Apparatus in terms of CTH 9032.90.00.	28
22	L.M.L. Ltd. v CC [2010]	(SC)	CD ROMs containing images of drawings and designs of engineering goods classified the same under heading 8524.39 (Recorded CD ROMs, liable to duty).	29
DEMAND & REFUND				
23	HANS STEEL ROLLING MILL [2011] (Most expected)	(SC)	The provisions of Section 11A of the Central Excise Act, 1944 are not applicable to the recovery of amounts due under the compound levy scheme	32
24	NIRMAL PRODUCTS (2010) (Tri)	(SC)	Serving of SCN by courier is invalid in law	33
25	International Auto ltd - 2010 (S.C.) (IMP)	(SC)	Interest under section 11AB is leviable on voluntary delayed or deferred payment of duty for whatever reasons.	33

Sr No	CASE LAWS	COURT	DECISION	Page No.
26	Hero Cycles Ltd. - 2010 (S.C) (IMP)	(SC)	It is duty department to assess the goods and impose duty according to law. The fact that the assessee has paid the duty under mistake of law and or in the instant case by oversight cannot result in being assessed to duty which was otherwise not payable. In our opinion, this will be a case of manifest injustice and Department should grant refund.	34
APPEAL, REVIEW & RIVISION				
27	AMCHONG TEA ESTATE 2010 (S.C.) (Most expected)	(SC)	Commissioner (Appeals) cannot condone the delay beyond period of 30 days.	35
SETTLEMENT COMMISSION				
28	Qualimax Electronics Pvt. Ltd. [2010] (Most expected)	(H.C)	Application for Settlement of cases after passing the Adjudication order is not maintainable	38
29	UOI v/s Customs & Excise Settlement Commission - 2010		Settlement Commission had jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the Revenue.	38
30	AUSTRALIAN FOODS LTD.- 2010	(H.C)	<ul style="list-style-type: none"> • Settlement commission does not have the power to decide question of Law: • Cookies cleared to Hotels/Airways were assessable u/s 4 at transaction value 	39

Sr No	CASE LAWS	COURT	DECISION	Page No.
SERVICE TAX				
IMPORTANT CASE LAWS				
31	Association of Leasing & Financial Service Companies [2010] (SC) (Most expected)	(SC)	Levy of Service Tax by Central Govt. on Finance lease/ Hire purchase is constitutionally valid even though such transactions are already subject to VAT	63
32	BSBK Pvt. Ltd. (2010)	(TRI)	"Advice, consultancy or technical assistance" in the case of turnkey contracts attract service tax and these turnkey contracts can be vivisected.	63
33	Indian Railways Catering & Tourism Corporation (IRCTC) Ltd. [2010]	(H.C)	Supply of food and beverages on board is purely of sale of goods. Hence, only VAT is levible & there is no levy of service tax.	64
34	IDEA MOBILE COMMUNICATION LTD-2010 (H.C.) (Most expected)	(H.C)	The value of SIM card supplied by the assessee forms part of taxable service on which service tax is payable by the assessee.	64
CUSTOMS ACT , 1962				
35	SBEC Sugar Ltd. [2011] (SC) (Most expected)	(SC)	If the goods are cleared from the warehouse after the expiry of the permitted warehousing period then it is deemed to have been improperly removed & duty rate applicable on the date of expiry of the permitted warehousing period	66
36	Decorative Laminates (I) Pvt. Ltd. 2010 (Most expected)	(SC)	No remission under Sec 23 is available on imported goods destroyed in warehouse after extension period.	67

Sr No	CASE LAWS	COURT	DECISION	Page No.
37	M. Ambalal & Co. [2010] (SC)	(SC)	Smuggled goods shall not be treated as Imported goods & not eligible for exemption.	68
38	PRABHU DAYAL PREM CHAND 2010 (S.C.)	(SC)	Assessment purely on the basis of LME Bulletin without any corroborative evidence of imports at or near that price is not permissible under law.	69
39	Pernod Ricard India (P) Ltd. [2010] (SC)	(SC)	Adjustment to transaction value of similar goods should be based on demonstrated evidence. In absence thereof, the adjustment is invalid.	69
40	Atherton Engineering Co. Pvt. Ltd. - 2010 (H.C.)	(H.C)	Artemia cyst (brine shrimp eggs) should be classified as feeding materials for prawns under the heading 2309. These embryos might not be proper prawn feed at the time of importation but could become so, after incubation.	71
41	ESSAR STEEL LIMITED-2010 (H.C.)	(H.C)	Clearance from DTA unit to the SEZ only for allowing export benefits to seller and for levy of export duty under Sec 12 of customs Act. Hence, no Export duty is payable goods which are cleared from DTA unit to the SEZ.	71

CENVAT CREDIT RULES, 2004

Sr No	CASE LAWS	COURT	DECISION	Page No. (Add. Sheet)
42	Ind-Swift Laboratories Ltd. [2011] (SC) (Most expected)	(SC)	In case of wrong availment of cenvat Credit the interest is chargeable under sec 11AB from the date of wrong availment of credit & not from date when it is utilised.	33
43	Biopac India Corporation Ltd. [2010]	(H.C.)	If capital goods are destroyed by fire in a factory then is it not required to reverse cenvat credit	34
44	Bansal alloys & metals ltd.-2010 (imp)	(tri)	As per Rule 3(5) it is clear that the manufacturer shall be required to pay an amount equal to the credit in respect of such input or capital goods removed as such. Rule 3(5) does not indicate for payment of equal amount in respect of credit of input service.	34
45	Tata engineering & locomotive co. Ltd. 2010	(H.C.)	Laboratory test or quality check is always in relation to the manufacture of finished goods. Laboratory is also located within the premises of factory of production. Hence Cenvat Credit is available on raw material destroyed in laboratory test.	35