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INDIRECT TAXES LAW – I (CENTRAL EXCISE & CUSTOMS)

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I INTRODUCTION

THE SURVEY examines the notable decisions of the Supreme Court of India rendered during the year 2008 on central excise and customs law. The first half of the survey analyses the verdicts of the court on various subjects of the central excise law and the second half examines the judgments on the important topics of the customs law. Generally, the decisions have been scrutinised after dividing them into different heads coming under the purview of indirect taxes. The sequence of the decisions does not indicate the priority of the decisions.

II CENTRAL EXCISE

Dutiability

In *Cipla Ltd.* v. *Commissioner of Central Excise, Bangalore*[1], the dutiability and marketability of Benzyl Methyl Salicylate (BMS) under sections 2(d) and 3 of Central Excise Act, 1944 were the issues. The commissioner (appeals) held that as BMS being drug intermediate transported by the appellant from its factory to its manufacturing factory after being packed in drums, the same was marketable and, therefore, liable to Central Excise duty. On appeal, both the tribunal and the high court also held that the product in question was marketable and dismissed the appeal. Contention of the revenue was based on the chemical weekly drug directory wherein BMS was shown as an intermediate product. It was held by the court that simply because a product is mentioned in the chemical weekly drug directory as an intermediate product, it does not mean that the product is marketable. Manufacturing activity does not prove the marketability. Product produced must be a distinct commodity known in the common parlance to the commercial community for the purpose of buying and selling. Since there was no evidence of either buying or selling, it could not be held that the product in question was marketable or was capable of being marketed. It was

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1 2008 (129) ECC 66.

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further held that the mere transfer of BMS by the appellant from its factory to its own unit for manufacture of final product did not show that the product was either marketed or was marketable. Marketability is an essential ingredient to hold whether an article is dutiable or exigible to duty of excise and therefore it is for the revenue to prove that the product is marketable or is capable of being marketed.

In *Commissioner of Central Excise,* v. *Chandigarh Gurdaspur Distillery*[2]*,* the issue was regarding the marketability of methane gas captively consumed in the manufacture of de-natured ethyl alcohol. During the process of manufacture, a residue known as spent wash comes into existence, which is reacted in a closed type digester to produce methane gas. Such methane gas was used by the respondent as fuel in the distillery. Assessee contended that the methane gas was not marketable and, therefore, no excise duty could be levied. The adjudicating authority confirmed the demand and imposed the penalty. In appeal, the appellate authority accepted the appeal and came to the conclusion that the gas was not marketable and that the department failed to discharge the burden to prove that the gas was marketable. Further appeal by the revenue was also dismissed by the high court. Hence, the issue in the present appeal was whether methane gas classifiable under Chapter Heading 2711.29 of Central Excise Tariff Act, 1985 was liable to excise duty when consumed captively and not marketed. It was held that an article does not become liable to excise duty merely because of its specification in the schedule to the Central Excise Tariff Act unless it is saleable and known to the market. Since the revenue had not been able to lead any evidence to show that the goods in question are marketable, it could not be held that Methane gas was marketable and consequently, excise duty was leviable.

State levy on goods

In *Mohan Meakin Ltd*.v. *State of H.P.*[3], the issue was whether the state has the jurisdiction to impose any restriction on the movement of industrial alcohol and/ or malt spirit of over proof strength. It was contended that the transportation of industrial alcohol and/ or rectified spirit being not within the legislative competence of the state, it cannot exercise any there over it.

The facts of the case related to sections 3(6) and 59 of the Punjab Excise Act, 1914 imposing restrictions on the movement of industrial alcohol and increase in the levy as per rule 7.9 of the Punjab Liquor Permit and Pass Rules, 1932. It was held that the state's power to exercise control of inter-state transport which is within the exclusive legislative competence of the Parliament having regard to entry 42, list I of the Seventh Schedule of the Constitution of India would be limited. Its power to impose compensatory tax and/or fee would also be limited as envisaged by article 304(b) of the Constitution. Further, the state had not made any distinction

2 2008 (128) ECC 29.
3 2009 (1) SCALE 510.

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between the import or export of spirit and potable alcohol and the fees payable under rule 7.2A, would not be on denatured spirit, rectified spirit or perfumed spirit and the transport shall not include the transport of foreign spirit or country spirit in course of export inter-state or across the customs frontier of India. Hence, the levy could not have been imposed on rectified spirit.

Under entry 51 of list II of the seventh schedule to Constitution, state is empowered to levy and charge excise duty on "alcoholic liquors for human consumption" and similarly under item no. 66, the state is empowered to levy and charge fees in respect of matters in this list *i.e.* on alcoholic liquors for human consumption. Bulk spirit on which permit/ transport fee is sought to be charged is of over proof strength and is not alcoholic liquor for human consumption. Thus, the state is not empowered to levy or charge permit/ transport fee on transport of spirit of over proof strength. Levy of any duty or fee on spirit of over proof strength is within the competence of Government of India as mentioned in entry 84 and 96 of list I. In view of this position the demand was held to be illegal and against the provisions of Constitution. The Court observed as follows:

> "State's power to exercise control of inter-state transport which is within the exclusive legislative competence of the Parliament having regard to Entry 42, List I of the Seventh Schedule of the Constitution of India would be limited and hence a State Levy cannot be imposed on rectified spirit."[4]

In *Union of India and Ors*. v. *SICOM Ltd. and Anr*.,[5] the issue was whether the realisation of the duty under the Central Excise Act, 1944 would have priority over the secured debts in terms of the State Financial Corporation Act, 1951. The respondents borrowed said sum by an indenture of mortgage from the state financial corporation and also owed a sum by way of central excise duty. Respective rights of a secured creditor and unsecured creditor over a property was the issue. It was held that a debt which is secured or which by reason of the provisions of a statute becomes the first charge over the property having regard to the plain meaning of article 372 of the Constitution must be held to prevail over the crown debt, *i.e.* debts due to the state or the king; which is an unsecured one. Common law principle, which existed on the date of coming into force of the Constitution, must yield to a statutory provision. Hence, when Parliament or state legislature makes an enactment, the same would prevail over the common law. Under section 11, right to recover must start with the sale of excisable goods. It is only when the dues of the central excise department are not satisfied by sale of such excisable goods, proceedings may be initiated to recover the dues as land

4 *Id*. at 518 para 21.
5 2009 (1) SCALE 10.

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revenue. The right of first respondent-corporation was held to be a statutory one.

Application of Limitation Act, 1963

In *Commissioner of Customs and Central Excise* v. *Hongo India (P) Ltd.*[6], the issue was whether the high court could condone the delay of 16 days in filing the reference application by the commissioner under section 35H(1) of the Central Excise Act, 1944. The high court came to the conclusion that it had no power to condone the delay as there is no provision in the Act to exclude impliedly or expressly the application of section 29(2) of the Limitation Act, 1963. In appeal, the Supreme Court held that the powers of the high court to condone the delay are not circumscribed by the statutory provisions of Section 35. Under Section 35H, on an application for reference, the high court exercises its advisory jurisdiction in a case where it is of the opinion that the substantial question of law of public importance arises. Therefore, in such a case, there is no question of a vested right accruing in favour of either party. The matter was therefore directed to be placed before the Chief Justice for appropriate directions referring it to a larger bench.

In *Commnr. of Customs, Central Excise, Noida* v. *Punjab Fibres Ltd., Noida*[7]*,* the appellants filed a reference application under section 35(H) of the Central Excise Act, beyond the period of limitation. The appellate authority refused to accept the application and the high court also dismissed the application on the ground that the court did not have power to condone the delay beyond the outer limit. Hence, the issue was whether the high court had the power to condone the delay in presentation of reference under section 35(H)(1) of the Act or not. The first proviso to section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication of order. However, if the commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. The proviso to sub-section (1) of section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. Language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days, which is the normal period for preferring appeal. Therefore, there is complete exclusion of section 5 of the Limitation Act. It was ruled by the Supreme Court that the commissioner and the high court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period as the court cannot condone the delay beyond the limit if the statute specifies the outer limit of condonation of delay.

6 2009 (233) ELT 294 (SC).
7 (2008) 3 SCC 73.

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Uniform application of precedents to similar cases

In *Commnr. of Central Excise* v. *Srikumar Agencies,*[8] the point involved was the scope of application of precedents to decide a number of cases which were clubbed and heard together. The Supreme Court examined the issue in detail and held that courts should not place undue reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. It was further noted that the observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes; they do not interpret judgments. They interpret the words of statutes; their words are not to be interpreted as statutes. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. The court held that the tribunal in this case, also did not appear to have dealt with the relevance and applicability of cases referred to by the parties. The tribunal ought to have examined the cases individually and the articles involved. By clubbing all the cases together and without analysing the special features of each case disposing of the appeals in the manner done was not proper.

Exemption

In *Commnr. of Central Excise* v. *National Organic Chemical Industries Limited*[9], the question for consideration was whether ethylene and propylene manufactured by the assessee and used in its factory in the further manufacture of the same goods would be entitled to the benefit of exemption contained in notification no. 217/86. Ethane and Methane are generated as by-products. Show cause notices were issued demanding central excise duty for ethylene and propylene used in manufacture of finished products falling under chapter 27 of Central Excise Tariff Act, 1985. The commissioner of central excise confirmed the duty demands and imposed penalty and interest for delayed payment of duty. In appeal filed by assessee, the tribunal set aside order of the commissioner. In appeal it was held that inevitable and automatic emergence of ethane and methane by itself was not a ground for denying exemption contained in the notification, as the respondent could not have manufactured ethylene and propylene without manufacturing its by-products ethane and methane. It was held that if emergence of by-product was inevitable than it could not be a ground for denying exemption from payment of central excise duty as contained in the notification.

8 2008 (160) ECR 287 (SC).
9 2008 (14) SCALE 540.

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In *Commissioner of Central Excise, Jaipur* v. *Mewar Bartan Nirmal Udyog,*[10] the circles manufactured by the assessee was claimed to be made from brass and the assessee claimed exemption under s. no. 200 of the notification no. 3/2001-CE. The said claim was denied by the department on the ground that trimmed or untrimmed circles of brass could not fall under s. no. 200 but they fall under s.no. 201 where rate of duty is Rs. 3500 PMT. It was held that the exemption notification had to be read strictly. A notification of exemption has to be interpreted in terms of its language. Where the language of the notification is plain and clear, effect must be given to it. While interpreting the exemption notification, one cannot go by rules of interpretation applicable to cases of classification under the tariff. There is a dichotomy created between trimmed/untrimmed sheets of copper and all goods other than trimmed/ untrimmed circles of copper intended for use in the manufacture of utensils which attract nil rate of duty in the said notification. Department has also not disputed the fact that the circles were manufactured by the assessee from brass. Therefore, s.no. 200 would apply and the assessee would be entitled to claim nil rate of duty under the said notification.

In Bhupendra Steel (P) Ltd. v. *Commissioner of Central Excise*[11], regarding the claim of exemption it was held that to avail exemption from excise duty, assessee had to satisfy two conditions under the notifications (i) that the products are made from any goods of description specified in the corresponding entry in column 2; and (ii) they should fall within chapter 72 of the Tariff Act, 1985.

Inherent power of the high court

In *State of Andhra Pradesh* v.*Bajjoori Kanthaiah*,[12] the High Court of Andhra Pradesh quashed the FIR filed by prohibition and excise officers alleging commission of offences punishable under the Andhra Pradesh Excise Act, 1968 and the Andhra Pradesh Prohibition Act, 1995. In all the cases the allegation was that the concerned accused was either transporting or storing black jaggery/molasses for the purpose of manufacturing illicit distilled liquor or was an abettor so far as the offence of manufacturing illicit liquor was concerned. On an application being moved under section 482 of the Code of Criminal Procedure, 1973 by the concerned accused for quashing the FIR, the high court accepted the plea holding that there was no material to show that the seized articles were intended to be used for manufacturing of illicit distilled liquor. Accordingly, the FIR in each case was quashed. In support of the appeals, counsel appearing for the state submitted that the high court's approach was clearly erroneous. These were not cases where there was total absence of material to show the commission of a crime. Whether there was adequate material already in existence or which could have been

10 2008 (231) ELT.27 (SC).
11 (2008) 7 SCC 520.
12 (2009) 1 SCC 114.

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collected during investigation and their relevance was essentially a matter of trial. The high court was not, therefore, justified in quashing the FIR. The exercise of power under section 482 of the Code was clearly indefensible.

Exercise of power under section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the high court. It only saves the inherent power that the court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule, which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law, which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine, which finds expression in the section, which merely recognises and preserves inherent powers of the high courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice. While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It would be an abuse of process of the court to allow any action, which would result in injustice and prevent promotion of justice. In exercises of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto. Ultimately, the acceptability of the materials to fasten culpability on the accused persons is a matter of trial. These are not the cases where it can be said that the FIR did not disclose commission of an offence. Therefore, the high court was not justified in quashing the FIR in this case.

In *Oma Ram* v. *State of Rajasthan and Ors.*,[13] the issue was that sections 9(B), 54(A) and 69 of the Rajasthan Excise Amendment Act, 2000 were violative of article 301 of the Constitution and sections 451 to 457 and 482 of the Code of Criminal Procedure, 1973. Rajasthan Excise Amendment Ordinance 2000, inserted section 54(A), which was later on substituted by the Amendment Act along with section 69. As per amended section 69(6)

13 (2008) 4 SCALE 745.

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whenever any means of conveyance is seized in connection with the commission of an offence under the Act, the excise commissioner or any officer authorised in this behalf by the state government shall have and notwithstanding anything contained in any law for the time being in force, any court, tribunal or other authority shall not have jurisdiction to make order with regard to the possession, delivery, disposal or release of such conveyance. The petitioners contended that the powers conferred on the courts by virtue of sections 451 to 457 of CrPC have also been curtailed and indirectly the power of revision and inherent power of the high court under section 482 of Cr PC have been curtailed. Further the petitioners contended that sections 54A and 69(6) were unconstitutional, arbitrary, unreasonable and violative of freedoms guaranteed under article 301 of the Constitution. The respondent contended that the Act was within the legislative competence of the state government and is a special Act dealing with right of the state to regulate production, transfer, storage, possession and sale of liquor or intoxicating drugs. In the present appeal it was held that the amendments were regulatory in nature and could not be regarded as violative of freedoms guaranteed under article 301 of the Constitution, as there exists similar provisions in the Excise Acts of other states also.

In *State of U.P. and Ors*. v. *Manoj Kumar Dwivedi and Ors.,*[14] the interpretation of the word *close proximity* under rule 5(4) of the U.P. Number and Location of Excise Shop Rules, 1968 was in issue. A public interest petition was filed for the opening of liquor shops in purely residential areas in breach of the UP Excise Rules. The division bench of the high court directed that all the licensed shops which were operating in close proximity of public resort, school, hospital, place of worship or factory, or to the entrance to a bazaar or a residential colony shall be enclosed with immediate effect. It was further held that the word "close proximity" under rule 5(4) of the rules should be meant to be 100 meters or 300 ft. On appeal, the apex court agreed with the view taken by the high court. However, it gave the shop owners or sub-shop owners time to make necessary arrangements to shift their shops.

Departmental clarifications

In *Commissioner of Central Excise, Bolpur* v. *Ratan Melting and Wire Industries*[15], the issue was whether the circular passed by the board or the decision of the Supreme Court would prevail. Appellant submitted that the law declared by this court is the supreme law of the land under article 141 and hence circulars cannot be given primacy over the decisions. Whereas the assessee submitted that once the circular has been issued it is binding on the revenue authorities even if it runs counter to the decision of apex court. It was held that the circulars and instructions issued by the board are no doubt binding in law on the authorities under the respective statutes. But when the

14 (2008) 4 SCC 111.
15 2008 [12] STR 416.

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Supreme Court or the high court declares the law on such a question, it would be inappropriate for the court to direct that the circular be given effect to and not the view expressed on the issue by the Supreme Court or the high court. Clarifications/circulars issued by the central government and of the state governments are not binding upon the court. It is for the court to declare what the particular provision of a statute means and not for the Executive. A circular, which is contrary to the statutory provisions, has really no existence in law.

In *Sandur Micro Circuits Ltd*. v. *Commissioner of Central Excise, Belgaum*,[16] the issue was the effectiveness of a circular contrary to a notification statutorily issued. The question was whether the circular No. 42 of 1997 dated, 19.09.1997 would prevail over the exemption notification No. 2/1995-CE dated, 04.01.1995 as the former was in direct conflict with the latter. It was held that a circular couldn't take away the effect of notifications statutorily issued. Therefore, by issuing a circular with a new condition restricting the scope of the exemption or restricting or whittling it down could not be sustained.

Penalty

In *Union of India* v. *Dharamendra Textile Processors,*[17] the issue was whether section 11AC, inserted by the Finance Act, 1996, imposing mandatory penalty on persons who evaded payment of tax should be read to contain *mens rea* as an essential ingredient. It was also mooted that whether absence of specific reference to *mens rea* is a case of *casus omissus* or not. It was held that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. Legislative *casus omissus* cannot be supplied by judicial interpretative process. In para 136 of the Union Budget 1996-97, reference had been made to the provision stating that the levy of penalty is a mandatory penalty. In the notes on clauses also the similar indication had been given. The court held that the submission that the rules 96ZQ and 96ZO of erstwhile Central Excise Rules, 1994 have a concept of discretion inbuilt in them could not be sustained in the light of the facts of the case. Hence the Court ruled that the levy of penalty under section 11AC of the Central Excise Act, 1944 is a mandatory penalty and legislative *casus omissus* cannot be supplied by judicial interpretative process.

Extended period of limitation

In *Commissioner of Central Excise, Kanpur* v. *New Decent Footwear Industries*[18], the issue involved was the extended period of limitation under section 11A of Central Excise Act. Two sets of appeals were filed before the tribunal, one by the firm and the partners — the respondents herein, and the

16 2008 (11) SCALE 328.
17 JT 2008 (11) SC 255.
18 2008 (231) ELT 26 (SC).

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second by Bata India Ltd. The appeal filed by Bata India Ltd. on the same issue was accepted. Against the respondent the demand was confirmed. The revenue did not file any appeal against the order passed in favour of Bata India Ltd. the respondent-assessee firm filed a writ petition in the High Court of Delhi challenging the order of the tribunal on merits as well as on the point of limitation which was accepted and the case was remitted to the tribunal for a fresh decision. The tribunal held that the revenue was not right in invoking the extended period of limitation under the proviso to section 11A of the Act. It was also held that as revenue had accepted the decision in the case of Bata India Ltd. arising from the same order of the original authority and there being no change on facts, appeal against the respondent could not be proceeded with. On appeal, the Supreme Court further noted that revenue was not justified in invoking the extended period of limitation.

In *Mittal Pipes Manufacturing Co*. v. *Commissioner of Central Excise, New Delhi*,[19] the extended period of limitation under section 11A of the Central Excise Act on account of mis-declaration and suppression of material facts was the issue. Show cause notice was issued on 05.05.1990 by invoking the extended period of limitation to the appellant alleging that they were evading excise duty on pre-fabricated shelters by mis-declaring the product as "steel structures" falling under sub-heading 7308.90 instead of pre-fabricated buildings falling under sub-heading 94.06 of the Central Excise Tariff Act, 1985. The tribunal found that there was suppression of material facts by the appellant and adequate opportunity had been provided to them to cross-examine and to make their submissions hence, there was no violation of the principles of natural justice. The decision of the tribunal that extended period of limitation was applicable to the facts of the case was upheld.

In *Commissioner of Central Excise, Delhi* v. *Ishaan Research Lab (P) Ltd.*[20], as to the issue was of limitation and the applicability of extended period of limitation under section 11A(1) of the Central Excise Act. It was contended that the tribunal was not right in holding that the show cause notices were barred by limitation and that the revenue would not be entitled to the benefit of extended period of limitation. In the facts of the case, no mis-statement of facts or suppression of material facts was there and the only dispute was regarding the classification of impugned products. Hence it was held by the apex court that the respondent could not be held guilty of suppression or mis-statement of facts and proviso to section 11A(1) was not applicable.

In *Commissioner of Central Excise, Tamil Nadu* v. *Southern Structurals Ltd.*[21], the respondent company was an undertaking wholly owned by the Government of Tamil Nadu and was engaged in the manufacture of

19 2008 (160) ECR 100 (SC).
20 JT 2008 (10) SC.1.
21 2008 (229) ELT 487 (SC).

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railway wagons and conveyor systems. Upon verification of their accounts, it was noticed that the respondent had entered into a contract, with the Southern Railways for manufacture and supply of 106 wagons of BTPGLN wagons, which was inclusive of cost of steel. The respondent also raised a bill for escalation price for 19 wagons that had allegedly not been debited by the respondent. Whether the respondent had suppressed the value in the invoice with a view to enjoy the benefit of duty involved on differential value was the issue for consideration. It was held that the differential duty on escalation bill had already been paid and advances were received and the price was in full knowledge of the department and it had no nexus with the contract. Since the facts regarding the receipt of advances were already in the knowledge of the revenue it could not be said that there was suppression of facts regarding advances received warranting invocation of extended period of limitation.

In *Commissioner of Central Excise, Bangalore* v. *Karnataka Agro Chemicals,*[22] the dispute was regarding the classification of micro nutrient compounds. The court held that if there is dispute as to classification of plant growth regulator (PGR), it is for the adjudicating authority to go into the composition and to find out whether 0.31% of Nitrogen would convert PGR into nutrient falling under chapter heading 31.05 of the Central Excise Tariff Act, 1985. The Court categorically stated that mere non-declaration was not sufficient to invoke the extended period of limitation but some positive act of suppression was required for invoking the same.

In this case,[23] the appellant was the manufacturer of PSC girders that were used in the construction of railway bridge for the period June 1994 to February 1995. The appellant cleared the goods without paying the excise duty. After withdrawing the first show cause notice, revenue issued another show cause notice to the appellant for excise duty after the period of limitation. The commissioner in his order confirmed the demand of duty and confiscated the girders and imposed penalty. The contention of the appellant was that the show cause notice was barred by limitation and the department had knowledge of the fact that the appellant had manufactured PSC girders in 1994. Further it was contended that there was no marketability of PSC girders, therefore the excise duty could not be levied. The tribunal held that the larger period of limitation was available but on the question of marketability the matter was referred to the larger bench wherein it was ruled that benefit of notification no. 59/90-CE cannot be extended, as the goods were not manufactured at site for the construction of building. Therefore, the goods were held to be subjected to excise duty. In the present appeal it was held that the earlier notice did not carry any allegation of suppression and the same could not have been made subsequently. It was also noted that the

22 (2008) 7 SCC 343.

23 *Geo Tech Foundations and Construction* v.*Commnr. of Central Excise, Pune*, (2008) 1 SCC 678.

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facts alleged to have been suppressed by the appellant were known to the department, in that view of the matter the extended period of limitation under section 11A of the Act had no application.

Valuation

In *Commissioner of Central Excise, Patna* v. *Shakti Tubes Ltd.*,[24] the issue was demand of duty on account of two units being 'related person'. In this case, goods were cleared on payment of duty to the sister concern of the respondent and the same was cleared by the sister concern without payment of duty in as much as the process of galvanisation did not amount to manufacture. This finding was recorded treating both the units as two separate units. It was held that the finding that the two units were separate and independent was a finding of fact, which did not call for any interference. Moreover, once the revenue accepted the decision of the tribunal in the earlier proceedings in which it was held that both units were separate and independent units, it was not justified in challenging the same subsequently to contend that both units were one and the same. The demand of duty was held to be unwarranted.

In *Commissioner of Central Excise, Belgaum* v. *Mysore Kirloskar Ltd., Karnataka,*[25] the assessee was manufacturing machine tools, their accessories, high grade castings, pollution control equipments and other incidental and ancillary equipments. It used to accept orders to manufacture engineering machines as per the drawings, patterns, jigs, fixtures and tools *etc.* developed by it. They entered into an agreement for manufacturing machines and the agreement stipulated that the machines would be manufactured as per the specifications, prototype drawings and patterns prepared by it and approved by X. As per the agreement, the price of the machines was to be stipulated by X in orders to be placed upon the assessee company. For the agreement, the assessee was paid a sum, which was accounted as other income in the accounts and balance sheet of the assessee. Show cause notice was issued demanding duty on the additional amount of consideration received by the assessee. The commissioner of central excise confirmed the duty demanded and also imposed penalty under rule 173Q of the erstwhile Central Excise Rules, 1944. On appeal, the tribunal allowed the claim. The issue before the Supreme Court was whether the amount received by the respondent towards charges for designs, drawings, tooling, jigs and fixtures *etc.* as per the agreement could have been loaded on the value of the machine made and delivered subsequently as per separate written orders or not.

The court held that the agreement was not merely for the preparation of design and drawings, but a total contract for design, drawing, manufacture of prototype, supply of the machines and payment of excise duty, *etc.* The

24 2008 (134) ECC 102.
25 (2008) 7 SCC 766.

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contract could not have been read in isolation or in parts and before adding the value of the drawings *etc*, it had to be established that the consideration had a nexus with the negotiated price of the assessable goods under clearance. Each clearance was an assessment based on a separate contract and a contract price would normally be the value for assessable goods. Thus, the order passed by the commissioner does not indicate that no machines were subsequently manufactured by the assessee after using drawings, designs, jigs, fixtures, tooling *etc.* supplied by X. Therefore, loading of the entire amount without such a finding and recovery of duty thereon was not permissible.

In *Commissioner of Central Excise, Delhi* v. *Ishaan Research Lab (P) Ltd.*[26], the valuation of goods under section 4(4) (c) of the Central Excise Act was in dispute. It was held that the respondent company-IRLP and their marketing company- MIPL were not related persons and IRLP had sold impugned products to MIPL as also to independent third parties and the least price charged to the third parties should be taken as the basis for the sales for arriving at the assessable value for such products. The case would have been different, if the products were never sold by the respondent-IRLP to the independent third parties, but only to the marketing company-MIPL, then the wholesale price charged to the wholesale dealers for such products, should have been taken as the basis for arriving at the assessable value. It was further noted that while arriving at the assessable value, discounts, freight Excise Duty, sales tax, other taxes and other permissible deductions under section 4 should be allowed in accordance with the law.

In *State of M.P.* v. *Lalit Jaggi*[27] the distinction between license fee and excise duty under Section 25 of the M.P. Excise Act, 1915 (MPEA) was the issue. Liquor policy for 2005-06 formulated by the state government provided for a procedure for depositing license fee by retailers of liquor. Clauses in subsequent circular clarifying doubts of district excise officers were challenged as *ultra vires* section 25, MPEA before the high court by a writ petition and the high court struck down clauses to be *ultra vires*. In the present appeal it was held that there existed a basic difference between excise duty and the license fee and latter was a consideration for the privilege granted by the government for manufacture and vending of liquor. It was further held that there was no levy of excise duty in enforcing the payment of the stipulated sum mentioned in the license. The Court stated thus:[28]

> Payment by licensee is the consideration for grant of license and mere fact that total consideration fixed comprises of several elements, it cannot be said that excise duty is levied upon licensee.

26 JT 2008 (10) SC 1.
27 (2008) 10 SCC 607.
28 *Id.*at.612.

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In *Commissioner of Central Excise, Chandigarh-I* v. *IPF Vikram India Ltd*,[29] the issue was the excise duty chargeable on scouring powder and the amendment of the definition of "place of removal" in the context of section 4 of the Central Excise Act, 1944 read with circular no. 251/85/96-CS dated, 14.10.1996. The assessee declared the value of the detergent less than the price at which it was being sold and in respect of scouring powder he failed to supply the depot sale price. Therefore, four show cause notices were served and the authority also imposed penalty. On appeal, the tribunal set aside the order of the authority. In the present appeal it was held that as per the clarification in the circular no. 251/85/96-CS dated, 14.10.1996 clarifying the amended definition of the "place of removal", if an independent job worker processes the goods and returns it back to the supplier of the goods, the prescription of other "place of removal" in the budget will not make any difference. Therefore, valuation can be done on the basis of price of comparable goods under rule 6 (b) (i) or failing that under rule 6(b)(ii) of the Central Excise (Valuation) Rules, 2000 on the basis of the cost of manufacture plus notional profit, in order to arrive at the nearest ascertainable equivalent of the price.

In *Commissioner of Central Excise, Vapi* v. *Kraftech Products Inc*.,[30] the interpretation of the term *multi piece package* was in question for the purpose of valuation. In the facts of the case, the goods were packed in a carton in large numbers. The issue was whether the said package containing 72 pieces of lip smoother would be a multi-piece package or not. It was held that when a lip smoother or a shampoo was packed in a carton and keeping in view the quantity contained therein, the same could not be said to be for retail sale. No person would ordinarily purchase for one's own use 72 lip smoothers or 500 pieces of shampoo. Thus, it is not a case where the goods are being sold in multi-piece package. Each sachet or each lip smoother must be sold as a unit. Hence, the exemption under rule 34 of the Standards of Weights and Measures (Packaged Commodity) Rules, 1977, extending to any package containing a commodity if the net weight of the commodity is 20 gms. or less is applicable to the case.

SSI exemption

In *CCE, Allahabad* v. *Surcoat Paints (P) Ltd*.[31], SSI exemption under the notification nos. 175/1986-CE and 1/1993- CE. read with section 11B of the Industries (Development and Regulation) Act, 1951 was in dispute. The respondent was a registered SSI, holding a permanent registration certificate issued by the general manager, district industries, centre of director of industries and was availing of SSI exemption as envisaged under the said notification amended. Another company controlled by the same management

29 2008 (129) ECC 198.
30 AIR 2008 SC 2238.
31 2008 (160) ECR 290 (SC).

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dealt with the same products as the respondent and the issue was whether the respondent was subsidiary to the said undertaking under section 11B of the Act and hence not entitled to SSI exemption. The tribunal reversed the order passed by the commissioner of central excise, primarily relying on its earlier decision in *Agra Leather Goods Pvt. Ltd*. and held that the respondents were entitled to exemption. Since, the revenue had accepted the decision given by the tribunal in *Agra Leather Goods* case, precluded from challenging the similar order passed in respect of another unit.

In *Nirlex Spares Pvt. Ltd.* v. *Commissioner of Central Excise,*[32] the exemption for small scale industry under notification no. 175/86 CE. and the printing of a monogram with the brand names/trade names was in issue. The question was whether the appellant was making use of a monogram of a related person, 'the Marketing Company' as a brand name for the goods manufactured and cleared by it and therefore, not entitled to exemption in view of paragraph 7 read with explanation VIII of the said notification. It was held that there was nothing on record to show that the said monogram belonged to or was owned by the marketing company. Record showed that the design printed on the letterheads and sales invoices of the marketing company was totally different. Hence, the monogram could not be said to be descriptive enough to serve as an indicator of nexus between the goods of the appellant and the marketing company. Therefore, the alleged monogram could not be said to be the brand name or trade name of the marketing company and the benefit of exemption provided by the notification was held to be available to the appellant.

Interest on duty

Union of India v. *Shreeji Colour Chem Industries*,[33] the interest on delayed refund of excise duty under section 11BB of Central Excise Act, 1944 was in issue. Whether the interest would accrue from the date on which the application for refund was filed or not was also discussed. It was held that if the claim of interest is on equitable ground, a written demand thereof is imperative and since no such written demand was made in terms of section 11BB (1), the respondent was entitled to interest for the period when the matter was being adjudicated by the deputy commissioner, who had sanctioned the refund.

In *Excise Commissioner and Ors*. v. *Ajith Kumar*,[34] the issue related to the application of rule 25A of the Kerala Abkari Shops (Disposal in Auction Rules) Amendment Rules, 2000 and the interpretation of the G.O. (P) No. 88/2000/TD dated 02.06.2000 providing for waiver of interest. The respondent was a licencee under the Abkari Act (Act 1 of 1077) for the period 01.04.1993 to 31.03.1994. He conducted business for the said period

32 (2008) 2 SCC 628.
33 (2008) 9 SCC 515.
34 (2008) 5 SCC 495.

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only, as his licence was cancelled by an order dated 13.08.1993. Subsequently the shop came under the management of the department and during the period from 31.08.1993 to 31.03.1994, the department had collected a total sum of Rs. X towards Abkari dues. A writ petition was filed by the respondent which was allowed wherein it was directed that the amount collected would be adjusted towards liability due from the appellant. By G.O. (P) No. 88/2000/TD dated 02.06.2000, the State of Kerala provided for the waiver of interest up to 75 per cent on the defaulted amount of revenue due. Representation filed before the appellants on or about 12.09.2001 was dismissed and consequently a revenue recovery notice was issued. Writ petition filed before the high court was allowed by a single judge and the intra court appeal was dismissed by a division bench while holding that exemption was hedged by two conditions precedent, being: (1) the taxes and duties shall be paid with reduced interest on or before 31st August, 2000; and (2) that the defaulter who opts for payment of arrears thereunder would make an application to the assistant excise commissioner in writing on or before 15.07.2000. As the matter was pending adjudication before the high court, the respondents were unable to file any such application on or before 15.07.2000 for waiver of interest or pay any amount on or before 31.08.2000. If the benefit of the said notification could not be availed of by the respondents because of the pendency of the writ petition, the high court could not be said to have committed any jurisdictional error in passing the impugned judgment. If there was a default on the part of the respondents as a licencee, interest would be charged only for the period during which licence amount was not paid. Interest cannot be charged when no amount was due.

Manufacture

In *Commissioner of Customs and Central Excise* v. *Textile Corporation, Marathwada Ltd.*,[35] the issue was whether the facilities in the factory of the assessee for carrying out bleaching, dying, printing and mercerising of textile fabrics would invite levy of excise duty at each stage of manufacture. It was held that if the assessee would pay the duty at each and every stage of manufacturing, it would be entitled to MODVAT credit and the whole exercise would be revenue neutral.

In *Prachi Industries* v. *Commissioner of Central Excise, Chandigarh,*[36] the issue was whether the process of swaging undertaken by the assessee on swaging machine on duty paid MS tubes falling under heading 73.06 of the schedule to the Central Excise Tariff Act, 1985, amounts to "manufacture" within the meaning of section 2(f) of the Central Excise Act. The assessee is a small-scale unit, buying duty paid MS tubes from its manufacturers. After receiving the same, assessee cuts the same into requisite lengths and

35 2008 (134) ECC 197.
36 2008 (4) SCALE 745.

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the cut MS tube is thereafter put in the swaging machine in which dies are fitted which imparts "folds" to the flat surface of the MS tube/pipe. As to the question whether swaging constituted manufacture in terms of section 2(f) of the Act, it was held that swaging is a process which imparts a change of lasting character to the plane MS pipe or tube by use of dies which exists in the machine. After the process of swaging the identity of the plane MS pipe or tube undergoes a change both in terms of form, shape and user. MS tube/pipe after insertion in the swaging machine receives "folds" on a portion of the plane MS tube/pipe depending upon the die in the swaging machine. It is the die, which gives accurate shape to the work piece. Rotary swaging machine with different dies therein imparts a change of lasting character to the plane pipe or tube by use of dies and a work-piece having a distinguishable identity comes into being depending on the shape of the die and the punch used. Hence, it was held that while the goods undergoes the swaging process, a work piece of a different shape and use emerged, therefore, the process of swaging amounted to manufacture under section 2(f) of the Central Excise Act.

Classification

In *Commissioner of Central Excise, Delhi* v. *Ishaan Research Lab (P) Ltd.*,[37] the classification of ayurvedic medicines as against cosmetics was the issue involved. The show cause notice demanding duty on products manufactured by the respondents classifying them under chapter 33 and issued by the revenue was affirmed by the commissioner of customs. It was further held that IRLP and its marketing company, IMPL were related persons and that the revenue was entitled to the extended period of limitation. On appeal the appellate tribunal held that 22 products manufactured by the respondents were classified as "ayurvedic medicines" at the rate of 10 per cent *ad valorem* under the sub-heading 3003.30 and the remaining 70 products were held to be the "cosmetic" and "toilet preparations" falling under chapter 33. Further it was stated that IRLP and IMPL were not related persons and the revenue was not entitled to the extended period of limitation. In deciding the issue as to whether ayurvedic medicines are classifiable under sub-heading 3003.30 at the rate of 10 per cent *ad valoerm* or under chapter 33 of Central Excise Tariff Act, 1985 as cosmetics and "toilet preparations" attracting duty at the rate of 40 per cent *ad valorem*, the apex court held that all impugned products contained elements having ayurvedic medicinal value and were produced under the drugs licence issued under the Drugs and Cosmetics Act, 1940. Merely because the product could be put to cosmetic use that would not by itself make it a cosmetic product provided there was a rightful claim that it was an ayurvedic product on the factual basis, and it contained the medicinal ayurvedic medicament. Hence, it was held that the impugned products were

37 JT 2008 (10) SC.1.

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medicinal products and as such were covered by chapter 30 and not under chapter 33.

In *Camlin Limited* v.*Commnr. of Central Excise, Mumbai*[38], the issue was whether marker ink would be covered by chapter sub-heading 3215.90 of Central Excise Tariff as against CSH 3215.10. It was held that Indian central excise tariff creates two categories namely, "writing ink" and a residuary entry "other". HSN on the other hand creates categories for "printing ink", "other" and than residuary entry of "other". Scheme and entry of HSN is completely different from the Indian tariff entry. Hence, when the entries in the HSN and the said tariff are not aligned, reliance cannot be placed upon HSN for the purpose of classification of goods under the said tariff. Marking inks mentioned in HSN in category C (4) are based on silver nitrate whereas impugned marker ink does not contain silver nitrate. Indian tariff classification puts "all" writing inks together. Hence, marker inks would fall under chapter sub-heading 3215.10, which is exempted, from the payment of excise duty.

In *Commissioner of Central Excise, Ghaziabad* v. *International Tobacco Co. Ltd*.[39], the issue was whether impugned good is "other than filter cigarettes" falling under chapter sub-heading 2403.11 of the Central Excise Tariff or whether it falls under chapter sub-heading 2403.13 as filter cigarette. Report of the chemical analyser was also in favour of the respondent. It was held that the basic character, function and use are more important than the name used in trade parlance. Rules of Interpretation of the tariff come into play only if the classification cannot be determined according to the terms of the headings and any relative section or chapter notes. It was held that keeping in view the basic character, function and use of the product in question; it would come under chapter sub-heading 2403.11.

In *Godrej Industries Ltd.* v. *D.G. Ahire Assistant Collector of Central Excise,*[40] the appellant was manufacturing "liquid hair dyes" since May, 1974, when there was no specific entry relating to "hair dyes". However "hair lotion" was specified in item 14F under the Central Excise Act, 1985. A residuary entry was introduced in the tariff item 68, according to which all the other goods not specified elsewhere will be liable to pay tax under this entry. Appellant started paying duty under the tariff item 68 for the impugned product with effect from 01.03.1975 and the classifying list was also approved by the authorities. Respondent issued a show cause notice to the appellant asking why impugned goods should not be classified under tariff item 14 F and charged duty accordingly. Appellant submitted that the product did not fall under 14 F, as it was a hair dye. Respondent rejected the submission and imposed duty. Further it also issued two show cause cum demand notices to the appellant. In the writ petition filed by the appellant,

38 (2008) 9 SCC 82.
39 2008 (231) ELT 207(S.C.)
40 JT 2008 (7) SC 628.

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the high court held that the said goods were covered under the tariff item 14F. Hence present appeal. The issue before the Supreme Court was whether the impugned goods manufactured by the appellant covered under tariff item 14F or tariff item 68 and whether the high court erred in classifying the impugned goods under tariff item 14F. It was held that nothing had been disclosed from any of the technical information that the appellant's product was anything more than a hair colouring agent or that it was or could be used to have a soothing cleansing or antiseptic action while washing out one's hair. From the chemical analysis of the appellant's product nothing has also been shown as to whether the same could be applied to the scalp for restoration or nourishment of hair, which could bring it within the definition of "lotion" as a medicinal product. Even in common parlance or trader's jargon a hair dye, unless it had other properties besides the capacity to darken hair, could not be equated with hair lotion. While in a generic sense a hair dye may also be referred to as hair lotion, for the purposes of a taxing statute, its chemical composition and actual usage become relevant. Thus it was concluded that the high court was in error and the demand of the revenue for payment of tariff according to tariff item 14F was unwarranted.

In *Commissioner of Customs and Central Excise, Goa* v. *Phil Corporation Ltd.*,[41] the respondent manufactured processed cashew nuts, peanuts, almonds by dry roasting, oil roasting, salting, seasoning and packed them in different containers and cleared them under its brand name. Show cause notice was issued to the respondent demanding duty under chapter 20(2001.10). The respondent submitted that its products were correctly classifiable under chapter heading 0801.00 of the Central Excise Tariff Act, 1985 and chargeable to nil rate of duty and hence there was no requirement to register with the central excise authorities. The commissioner of customs and central excise held that the goods were to be classified under chapter 2001.10 and chargeable to duty and confirmed the demand and imposed penalty and redemption fine in lieu of confiscation of the seized goods and machinery. In appeal, both the tribunal and the high court allowed the appeal of the respondent and held that the goods cleared by them were not assessable to duty. In the present appeal to the Supreme Court by the revenue, it was held that the HSN explanatory notes to chapter 20 categorically stated that the products in question were so included in chapter 20 and that its products were excluded from chapter 8. Hence, the goods were held to be classified under chapter 20 of the Central Excise Tariff Act, 1985 and liable to excise duty.

Modvat/Cenvat credit

In *Commissioner of Central Excise and Customs* v. *MDS Switchgear Ltd.*,[42] the inflation of the value of the intermediate goods by adding MODVAT credit for inputs under rule 57 I of the Central Excise Rules, 1944

41 2008 (2) SCALE 260.
42 2008 (159) ECR 94 (SC).

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and rounding off the value to higher figure under section 11 A (1) of the Central Excise Act, 1944 was disputed. When the clearance of the goods was done at lower value than the landing cost of semi-finished goods received, whether MODVAT credit should be allowed under rule 57I read with proviso to section 11A (1) was the real issue involved in the case. It was held that as long as there was no loss to the revenue under the said circumstances, credit could be allowed.

In *Commissioner of Central Excise, Vadodara* v. *Gujarat State Fertilizers and Chem. Ltd.*,[43]assessee was receiving duty paid low sulphur heavy stock (LSHS) used in the manufacture of steam which in turn was used in the manufacture of fertilizer. Final product *viz*., fertilizer was exempted from the whole of excise duty leviable thereon and the assessee availed modvat credit of inputs under rules 57(B),57(C) of the erstwhile Central Excise Rules 1944. The assistant commissioner disallowed modvat credit holding that it should not be allowed on any such quantity of inputs which were used in the manufacture of final products which were exempted from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty. Appeal filed by the assessee before the commissioner (appeals) was dismissed and before the tribunal, the appeal of assessee was allowed which was confirmed by the high court. It was held by the apex court that in view of the law laid down by the tribunal and upheld by the court in *Ballarpur Industries Limited* v. *Collector of Central Excise, Belgaum,* assessee was entitled to modvat credit for LSHS.

III CUSTOMS

Adjudication

In *Kothari Filaments and Anr.* v. *Commissioner of Customs (Port) Kolkata*,[44] the application of the principles of natural justice during adjudication of the order of confiscation under sections 111(d) and 111(m) of Customs Act, 1962 on account of mis-declaration of imported goods was in question. The appellant contended that their foreign supplier had sent the impugned item by mistake and the exporter had accepted that fact also. It was alleged by the appellant that documents collected during the enquiry by the department were not supplied to them although reliance was placed thereupon. It was also contended that the inconclusive overseas enquiries relied upon by the commissioner of customs had resulted in the violation of the principles of natural justice. The show cause notice also did not indicate the nature of enquiry and conclusions drawn from the contents of the documents relied on. In appeal before the Supreme Court, it was noted that the statutory authorities under the Customs Act, 1962 exercise quasi-judicial function and hence, the commissioner of customs either could not have

43 2008 (138) ECC 77.

44 2009 (1) SCALE 117.

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passed the order on the basis of the materials which were known only to them or could not have adverted to the report of the overseas enquiries. It was further held that a person charged with mis-declaration was entitled to know the ground on the basis which he would be penalised. The appellant was held to be entitled to a proper hearing that would include supply of the documents in accordance with the principles of natural justice.

In *Sunitadevi Singhania Hospital Trust* v. *Union of India,*[45] the appellant, a charitable trust, ran a hospital on no profit basis, imported certain equipments invoking notification no 64/88 Cus. The appellant contended that it had complied with all the conditions laid down in the notification and thus, was not liable to pay any redemption fine or penalty. The issue was since the factual position being distinct and different from the main matter heard by the tribunal, was it a fit case to exercise the court's extraordinary jurisdiction under article 142 of the Constitution and also whether non-appreciation and/ or improper appreciation of facts had resulted in an error apparent on the face of the record in the impugned order. It was held that from the tribunal, which is the final court of fact, an assessee is entitled to obtain a judgment wherein all its contentions have been considered. In the present case the tribunal failed to notice that it had inherent power of recalling its own order if sufficient cause was shown thereof. The principles of natural justice also envisage that a mistake committed by the tribunal in not noticing the facts involved in the appeal, would attract the ancillary and/or incidental power of the tribunal necessary to discharge its functions effectively for the purpose of doing justice between the parties. While the judges' records are considered to be final, it is now a trite law that when certain questions are raised before the court of law or tribunal but not considered by it, and when it is brought to its notice, the appropriate authority should consider the question as to whether the said contentions are correct or not. Accordingly, when the tribunal failed to consider the matter on merit, the order was set aside under article 142 of the Constitution of India with a direction to the tribunal to hear the appellant afresh on merit.

In *Union of India* v. *Padam Narain Aggarwal,* the legality of the conditions imposed by the high court on the power of customs officer to summon witnesses was in issue. In the facts of the case, the respondents were summoned under section 108 of the Customs Act, 1962 to give their statements in the inquiry. Due to the non-coorporation by the respondents complaints were filed against them, against which the respondent filed an application for anticipatory bail. The high court disposed off the application directing the customs authorities not to arrest the respondents of any non-bailable offence without ten days prior notice. In the present appeal, the issue was whether the impugned order of the single judge called for any interference or not. It was held that the application for anticipatory bail

45 2008 (15) SCALE 464.

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during the stage of summoning parties under section 108 of the Customs Act is premature in nature. The statutory power conferred on the customs officer to summon the parties to give evidence under section 108 cannot be interfered with by a magistrate, as the section does not contemplate magisterial intervention. It was also held that in the present case, the order passed by the high court is a blanket one and seeks to grant protection to the respondents in respect of any non-bailable offence. The order illegally obstructed, interfered and curtailed the authority of the customs officers from exercising the statutory power to arrest a person who is said to have committed a non-bailable offence by imposing a condition of giving ten days prior notice, a condition not warranted by law. Thus, the order passed by the high court to the extent of directions was held to be invalid.

Confiscation of goods

In *Commissioner of Customs, New Delhi* v. *Sony India Ltd.,*[46] the issue was the applicability of rule 2(a) of the General Rules for Interpretation under the first schedule of import tariff. In the facts of the case, the appellant confiscated the goods of the respondent under section 111(m) of the Customs Act, 1962 for evading duty by misdeclaring the goods as CTV components instead of CKD kits of CTVs. Further it was asserted by the appellant that the respondent violated the Exim Policy of 1992-97 by importing CKD kits of CTVs without import licences and therefore was liable to confiscation under section 111(d) of the Act. On the other hand, the respondents contended that the goods in question were components and cannot be treated as complete colour television sets (CTVs) and hence the demand of duty and confiscation were unsustainable. It was held that the meaning of expression "as presented" in rule 2(a) would imply that the same referred to presentation of the incomplete or unfinished or unassembled or disassembled articles for assessment and classification purpose. It was further held that the goods would have to be assessed in the form in which they were imported and presented to the customs and not on the basis of the finished goods manufactured after subjecting them to some process after the import was made. The impugned goods were not having the essential character of CTVs and the complicated processing of imported parts had to be done before they could be fitted in the assembly of CTVs. HSN explanatory notes to rule 2(a) had to be applied while considering the relevant tariff entry and it would apply only when the imported articles presented and unassembled or disassembled can be put together by means of simple fixing device or by riveting or welding. The court held that rule 2(a) would not be applicable to the present case since there was no question of the goods having the essential character of CTVs.

46 2008 (12) SCALE 706.

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Anti-dumping duty

In *Tata Chemicals Ltd.* v. *Union of India*[47], an earlier special leave petition filed against the judgment and order of CEGAT was dismissed with the observations that the orders of the designated authority, Ministry of Commerce, New Delhi, were recommendatory; and that an appeal lies against determination as contemplated by rule 18 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 had yet to be made by the central government. Subsequently, a two judge bench hearing the special leave petitions noted that the challenge before the CEGAT was not only against the determination of the designated authority but also against the customs notification dated 27.10.1998 whereby anti-dumping duty was imposed. The bench felt that there was conflict in the two orders; hence the matter was referred to a three-judge bench.

It was held that the customs notification dated 27.10.1998 was not apparently considered by the two-judge bench when the matter was taken up. As also under the order dated 24.08.2000, determination as contemplated by rule 18 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 had taken place with the issuance of the notification dated 27.10.1998 and, therefore, the appeal could be maintainable in CEGAT. Impugned order has brought out the clearly distinctive features and reflects the correct position in the SLPs. The dismissal of the earlier SLP by order dated 11.05.2000 was on account of the fact that the relevant aspects were not brought to the notice of the bench. Hence, the appeals before the CEGAT were clearly maintainable when challenge was to the determination made was clear from the issuance of the notification dated 27.10. 1998.

In *Designated Authority, Ministry of Commerce* v. *Lubrizon (India) Pvt. Ltd.,*[48] the designated authority issued preliminary notification on 05.11.2002 under rule 5 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. Subsequently, the final notification was issued imposing anti-dumping duty on different types of Acyclic alcohol. It was held that the duty was leviable for five years from the date of issue of preliminary notification unless extended.

Procedural lapses

In *General Instruments Company* v. *Union of India*,[49] the court examined the implications on account of minor procedural lapses *viz.,* the issuance of special import licence (SIL) instead of project import license. In this case, the appellant applied to the joint chief controller of imports &

47 2008 (4) SCALE 401.
48 2008 (231) ELT 206 (SC)
49 (2008) 11 SCC 775.

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exports for issuance of an import licence with duty exemption entitlement certificate to avail of customs duty exemption on the import of certain raw materials required in the manufacture of capital goods for a project, fully financed by the Government of India. The controller of imports & exports instead of project import license issued a SIL to the appellant under AM 84 Policy, permitting the appellant to import listed raw materials, without payment of customs duty. A show cause notice issued stating that supplies made by the appellant were not treated as discharge of export obligation in terms of condition (a) of the licence and the appellant was declared to be a defaulter thereby debarring it from getting any licence under the duty exemption scheme or under any other provisions of the import-export policy announced from time to time. The high court held that once it is accepted that it was a mistake to issue SIL to the appellant and the conditions attached to the bond and the licence were wholly impossible to perform, the licensing authorities ought to have taken remedial steps immediately, particularly when rule 8 of the Foreign Trade (Regulation) Rules, 1963, empowered JCCI to rectify the error by amending the licence. In appeal to the Supreme Court, it was also held that no man should suffer a wrong by technical procedural irregularities as rules or procedures are the handmaids of justice and not the mistress of the justice. It was further noted that although the appellant suffered loss on account of confusion in the nature of the licence to be issued to it, appellant's main prayer for conversion of SIL into a project import licence was granted, hence, the wrong caused stands remedied to a large extent.

Exemption

In *Commissioner of Customs, (Prev.) Gujarat* v. *Reliance Petroleum Ltd.*,[50] the respondent imported a crane, as second hand equipment for setting up refinery and the original manufacturer of the two parts of the equipment were different. The respondent claimed benefit of exemption as per notification no.55/97 Cus., which was denied by the lower authority. But the commissioner held that the items were entitled to the benefit of exemption as mounted cranes primarily used for hauling, pressing or changing and classifiable under chapter heading 84.26 or 84.31 even if presented with the tractor. The tractors with its operating equipment were to be classified separately under chapter heading 87.01 and the tribunal upheld the same. In the present appeal the issue was whether a crane when placed on a vehicle, which the appellant wrongly stated to be a 'motor vehicle', would fulfil the description of a mobile crane or a 'material handling equipment'. It was held that the notification must be interpreted in a broad manner and the first appellate authority had arrived at a finding of fact that the purpose for which the crane had to be used was an ordinary mobile crane and it was to be shifted

50 (2008) 7 SCC 220.

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from place to place covering a huge area and its services were required at a large number of places. Further, it was also noted that the crane, technically given as heavy duty crane was, in fact, a mobile crane with a self-propelled modular transport system to provide mobility and entitled to the benefit of exemption.

In *Union of India* v. *Inter Continental,*[51] the assessee was engaged in the business of trading in various commodities including crude palm oil and crude palmolin of non-edible grade. The assessee got them cleared after paying duty at the rate of 35 per cent as per entry 29 of notification no. 17/ 2001-Cus.instead of clearing the same after paying duty at the rate of 75 per cent as per entry 34 of the same notification. Provisional assessment was allowed directing the assessee to produce end-use certificate as per the board's circular no. 40/2001-Cus., dated 13.07.2001 whereby a new condition of the production of the end-use certificate for availing concessional rate of duty was added to the notification. As to the question whether said condition would restrict the scope of the said exemption notification, it was held by the court that the department could not, by issuing a circular subsequent to the notification, add a new condition to the notification thereby either restricting the scope of the exemption notification or whittling it down.

In *Lohia Sheet Products* v. *Commissioner of Customs, New Delhi,*[52] the appellants imported duty paid copper/brass waste and/or scrap and used the same in the manufacture of handicrafts. The benefit of the notification no. 8/96-CE exempting the goods from countervailing duty was denied by the tribunal on the ground that the copper waste and scrap used by the appellants had been imported and not generated in the factory of production. In the present appeal, the appellant contended that an amount equivalent to the excise duty was paid at the time of import of the waste and scrap and they could not be asked to pay the countervailing duty under section 3 of the Central Excise Act, 1944 and if the benefit of the notification were not given to the appellants, it would mean double payment of duty. Chapter heading 7404.10 of the Customs Tariff Act, 1975 mentions that if a manufacturer uses copper waste and scrap within the factory of production for the manufacture of unrefined or unwrought copper, copper sheets or circles and handicrafts, then it would be entitled to the exemption under the impugned notification. Hence, the issue in the present appeal was whether the appellants were required to pay countervailing duty under section 3 of Customs Tariff Act, 1975 or not. It was held that the appellants had satisfied all the three conditions as they had used the copper/brass waste and/or scrap within the factory of production, and for the manufacture of handicrafts and entry 7404.10 nowhere uses the word 'generated' or 'imported'. Stipulating a condition that only that scrap would be entitled to exemption, which has

51 2008 (226) ELT 16 (SC)
52 (2008) 11 SCC 510.

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been generated in the factory of production, was held to be unwarranted and unsustainable. If the benefit of the notification was not given to the appellants it would mean double payment of duty and hence, the appellants would be entitled to the benefit of the exemption notification no. 8/96-CE.

Contempt of court

In *Commissioner of Customs (Port), Kolkata* v. *Cosmo Steel (P) Ltd. and Ors.,*[53] the issue was relating to non-compliance with the directions of the court by the department and the invocation of the law against the contempt of court. In the facts of the case, there was a court order for releasing assessee's consignments on furnishing of bond and bank guarantee by the assessee. The commissioner contended that the amount of bank guarantee directed to be furnished was not appropriate due to which he had not released consignments. It was ruled by the court that in case of any dispute regarding the amount of bank guarantee, the department should have approached the court and the commissioner was not empowered to breach the court's order. The court further noted that the act of the commissioner amounted to contempt of court and directed him to release the consignment and refund the demurrage charges paid for the period from which the release order was passed.

Classification

In *Deepak Agro Solution Ltd.* v. *Commissioner of Customs, Maharashtra*[54], the appellant imported 200 MT of "Brimstone 90" and filed the bills of entry classifying the impugned goods under chapter heading 25.03 of the Customs Tariff Act, 1975. The goods contained about 90 per cent of Sulphur and 10 per cent of Bentonite by way of inert filler and were used for agricultural purposes. The deputy commissioner of customs opined that the imported goods were classifiable under chapter heading 38.08 of the Customs Tariff Act, 1975. The commissioner (appeals) also allowed the same and in appeal before the tribunal, it was held that it would come within sub-heading. 3808.90. In the present appeal, the issue was whether the impugned goods are classifiable under chapter heading 25.03 or chapter heading 38.08 of the Customs Tariff Act, 1975.

It was held that an entry is to be given its ordinary meaning and if any goods fit in within one entry, the same for any purpose would not be held to be included in the other and in particular the residuary. It is difficult to hold that the headings of the chapter would cover only the products that are in the crude state or comes within the purview of other activities contained therein. Entry 2503, which is of broad nature speaks of Sulphur of all kinds other than those, which are specifically mentioned therein. Sulphur does not find a place in chapter 38 which deals with agricultural operation and the tribunal's

53 2008 (157) ECR 7 (SC).
54 (2008) 8 SCC 358.

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opinion that it would come within the sub-heading 3808.90, was held to be impermissible in law.

Duty-drawback

In *Rochiram and Sons* v. *Union of India,*[55] the appellant imported watch parts for use in the manufacture of wrist-watches on which import duty was imposed. Assessee did not deposit the import duty in cash but made a debit in the duty entitlement pass book. Thereafter, some of the parts imported were found to be defective/unusable and hence assessee applied for re-exporting the same which was allowed. After re-export, it filed a claim for duty drawback under section 74 of the Customs Act, 1962 and the original authority rejected the claim of the assessee. In the present case it was held that the refund of a claim made by the assessee could be denied on the principle of undue enrichment if the assessee had passed on the burden to the consumers. This principle would be equally applicable to the revenue as well since it cannot have the double advantage. Therefore, the revenue cannot be allowed to enrich itself by denying the duty drawback as well as by refusing adjustment of duty paid by way of debit in DEPB.

In *Gurcharan Singh* v. *Directorate of Revenue Intelligence,*[56] cognizance of the offence of illegal claim of drawback under sections 2 (33), 113, 132 and 135 of the Customs Act, 1962 was in issue. The appellant floated various firms in false and fictitious names and claimed duty drawback for alleged export of readymade garments under certain assumed names. The appellant and others made a statement under section 108 of the Customs Act that they had conspired to export inferior quality of readymade garments, which had been over-invoiced. Application for discharge filed by the appellant was dismissed by the trial judge as well as by the high court. The appellant contended that even if the allegations made in the complaint petition were taken to be correct in its entirety, they did not disclose an offence under section 135 of the Act. Hence, the main issue was whether the amendment to section 135 of the Act, in the year 2003, was clarificatory in nature with retrospective effect and constituted an offence or not. It was held that by virtue of section 135(1)(a) of the Act, if any person is knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition contained therein shall be punishable. Thus, it deals with two types of offences *viz*, one which relates to evasion of duty and other relates to prohibitions, which in turn relates to "prohibited goods" which is defined in section 2(33) of the Act and the word "or" used therein must be read disjunctively and not conjunctively. It was further held that the nature of prohibition would attract the provisions of section 113(d), which uses the words "contrary to any prohibition imposed by or under this Act or any other law for the time being in force".

55 2008 (129) ECC 195.
56 JT 2008 (4) SC 383.

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Accordingly, the prohibition of importation and exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods and in the event, the conditions are not fulfilled, it may amount to prohibited goods. In the present case, the complaint *prima facie* disclosed an offence under section 135 of the Act and hence the high court was right in refusing to quash the proceedings against the appellants.

Territoriality/jurisdiction

In *Aban Loyd Chiles Off* v. *Union of India*[57], the appellants were oil-rig operators engaged in the drilling operations for exploration of offshore oil, gas and other related activities. Drilling operations were carried on at oil rigs/ vessels, which were situated outside the territorial waters of India. The appellants sought permission to clear the ship stores/spares for use on its rig without payment of customs duty and the same was refused. In the present appeal, it was contended by the appellant that as oil rigs were located in exclusive economic zones beyond the territorial waters of India, they would fall outside the territory of India and therefore the stores consumed on the oil rigs would be deemed to have been consumed by a foreign going vessel. On the other hand the revenue contended that even if the oil rig is accepted as a vessel that carries on its operation in an area over which coastal states have limited sovereign rights, the Indian Customs Act, 1962 applies. Whether oil rigs engaged in operations in the exclusive economic zone/ continental shelf of India, falling outside the territorial waters of India, are "foreign going vessels" as defined by section 2 (21) and are entitled to consume imported stores thereon without payment of customs duty in terms of section 87 of the Customs Act, 1962. It was also held that the territorial waters is within the limit where the coastal state has a sovereign right or power to enact or extend any law, and the advantage to a foreign going vessel will not be available under sections 86 and 87 of the Act to such vessels. If the foreign going vessel is located within a territory over which the coastal state has complete control and has sovereign right to extend its fiscal laws to such an area with or without modifications and the stores were consumed in the area to which the Customs Act, 1962 has been extended, reference or reliance to the vessel being a foreign going vessel shall be of no consequence and the customs duty would be leviable as the goods are consumed within the territory to which the Customs Act has been extended as per the Maritime Zones Act, 1976 and the International Convention on the Law of the Sea, UNCLOS, 1982. Fact that the stores were unloaded and consumed within the maritime boundary or within the limit of Customs Act, section 12 will be attracted as it would be construed that there would have been an import within the territory of India to which the Customs Act applies. Thus, oil rigs carrying on operations in the designated area is not a foreign going vessel as the same would be deemed to be a part of Indian territory, *i.e.*, going from

57 (2008) 11 SCC 439.

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the territory of India to an area which also deemed to be part of the territory of India. No customs duty or any other duty can be levied while the goods are in transit to the deemed territory of India by any other country although they have gone out of the territorial waters of India.

Valuation

In *Commissioner of Customs, Mumbai* v. *J.D. Orgochem Ltd.,*[58] enhancement of the assessable value under section 14(1) of the Customs Act, 1962 read with rules 4, 7, 7A and 8 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 was in question. In this case the respondent had imported the same goods from the same supplier earlier at a higher price. But by letter, the respondent categorically informed the assistant collector customs, Mumbai, that in the international market the raw material prices were declining every day. The deputy commissioner of customs in his order opined that the transactional value declared by the importer should be rejected and rule 5 of the GATT Valuation Rules, 1988 should be applied. On appeal, the appellate authority affirmed the finding of the deputy commissioner by rejecting the contention of the appellant that the onus was on the department to show that the invoice price was not genuine. The tribunal, however, upheld the transaction value. Now in the present appeal it was held, that rule 4 had a direct nexus with section 14(1) of the Customs Act, 1962 and the term" ordinarily" used in Section 14(1) was interpreted by the court, *inter alia,* to mean that there should be an "extra ordinary" or "special" situation so as to enable the competent authority to opine that the transactional value declared by the importer should be disbelieved. The court observed:[59]

> It is not suggested that the customs authorities are bound by such declaration. It however, has to rely on contemporaneous evidence to show that the invoice does not reflect the correct value. Where, however, there are no contemporaneous imports, the value is to be determined in terms of Rule 7 by a process of deduction as envisaged therein.

The respondent produced evidence in regard to the subsequent transactions wherein the 'shipper' had further reduced the prices. According to them, the value of the said goods was declining because of the fact that there is more supply and demand is less in the international market. Since the assessing authority did not consider the contentions given by the respondent, it was held that the enhancement of transaction value declared by them was not legal and proper.

58 2008 (16) SCALE 669.
59 *Id*., 570 at para 19.

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In *Commissioner of Customs* v. *Ferodo India Pvt. Ltd.,*[60] the addition of the technical know-how fees and royalty to the price of the imported goods was in question. In this case, the respondent (buyer/licensee) and a foreign collaborator/licensor entered into a technical assistance and trademark agreement (TAA) between them. As per the agreement, the licensor agreed to permit manufacture of brake liners and brake pads (licensed products) by the licensee and disclose the relevant secret processes, formula and information to the licensee. The licensee was obliged to pay a licence fee along with royalty, based on the net sales value of licensed products sold, consumed or otherwise disposed of. The adjudicating authority held that the technical know-how fees and royalty were related to the imported goods and were a condition of sale for the import thereof and consequently, the adjudicating authority loaded the CIF value of the imported goods with the proportionate amount of know-how fees and royalty, which was confirmed by the commissioner (appeal). On appeal to the tribunal, it was held that the know-how fees and the royalty payments stood related to the brake liners and brake pads to be produced in India and not to the imported goods. In the present appeal the issue was whether reliance could be placed by the department only on the consideration clause in the agreement for arriving at the conclusion that payment for royalty was includible in the price of the important components. The court further observed:[61]

> Department in every case is not only required to look at TAA, it is also required to look at the pricing arrangement/agreement between the buyer and his foreign collaborator. As every importer/buyer is obliged to pay not only the price for the imported goods but he also incurs the cost of technical know-how which is paid to the foreign supplier, such adjustments would attract Rule 9(1))(c) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. The payment of royalty/licence fees was entirely relatable to the manufacture of brake liners and brake pads (licensed products) and in no way related to the imported items. If the consideration clause indicates that the importer/buyer had adjusted the price of the imported goods in the guise of enhanced royalty or if the department finds that the buyer had misled the department by such pricing adjustments then the adjudicating authority would be justified in adding the royalty/licence fees payment to the price of the imported goods.

Hence, the court ruled that the in the instant case no such circumstances as above mentioned exist to hold that the technical know-how fees and royalty are to be added to the price of the imported goods.

60 (2008) 4 SCC 563.
61 *Id.* at para 19.

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In *Commissioner of Customs, Kolkata* v. *Initiating Explosives Systems I Ltd.*[62], the Supreme Court held that the burden to prove that the goods in question were under-valued by the respondent lies on the revenue.

Settlement commission

In *Rexnord Electronics and Controls Ltd*. v. *Union of India,*[63] the jurisdiction of the Settlement Commission under sections 127A and 127H of the Customs Act, 1962 in waiving the interest payable under the bond furnished by the appellant before the Director General of Foreign Trade under the Foreign Trade (Development and Regulation) Act, 1992 was in issue. The central government issued a notification bearing no. 160/92-Cus, dated 20.04.1992 in terms whereof an undertaking was required to be furnished before the Directorate General of Foreign Trade. The appellant, an exporter, failed to meet its obligations in terms of the undertaking. Against the demand notice issued for payment of duty along with interest, appellant filed applications before the settlement commission. Accordingly, the appellant was directed to pay the total duty amount together with interest while granting immunity from prosecution and penalty. The high court dismissed the writ petition questioning the direction of the settlement commission and hence the present appeal. The appellant contended that since interest payable under the bond have a direct nexus with the payment of excise duty, the settlement commission had the requisite jurisdiction to waive the whole or a part of interest payable under the bond also. On the other hand the respondent contended that having regard to the scheme of settlement, the settlement commission had absolutely no jurisdiction in the matter. The main question before the court was whether the term "interest" used in section 127 H would include within its fold interest payable under the bond furnished by the appellant before the director general of foreign trade. It was held that if customs duty is not paid, the interest is payable in terms of section 28AA of the Customs Act, 1962. Further, in case, the interest is payable in terms of the bond, executed in favour of a different authority, and not in terms of the statutory scheme, department would not be able to proceed in terms of section 28 of the Act. If any interest became payable under the Act, the settlement commission will have the requisite jurisdiction to grant immunity in respect thereof either wholly or in part interest payable under the bond is not an interest payable under the Act. The Court observed that as the settlement commission did not have any jurisdiction to waive the amount of interest payable under the bond, no jurisdictional error was committed by it in directing the payment of the amount which was otherwise payable.

Thus it was ruled that the appellant was bound to pay the interest payable under the bond.

62 2008 (224) ELT 343 (SC)

63 JT 2008 (3) SC 572.

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Re-export of goods

In *Union of India* v. *Shakti LPG Ltd.*[64], re-export of goods under sections 69(1) and 72 of the Customs Act, 1962 was the issue. In this case, goods imported by the respondent had been warehoused initially for a period of one year, but was extended time and again on the request of the respondent. They intimated the appellant for surrendering the goods, as the purpose for which they had been imported could not be implemented. The respondent also requested for permission to re-export under section 69(1) of the Act and cancellation of auction on the day of auction. However, the commissioner rejected the permission for re-export and the high court disposed of the writ petition by accepting the undertaking to re-export the goods without calling upon the respondents to pay the duty. They sought clarification as to whether the order passed was with consent of both the parties or not. The division bench observed that though the order did not specifically states that it was an order by consent but the understanding was that it was in fact so. In the present appeal, the appellants contended that once the maximum period of the bond had expired, the goods vested with the Union of India under section 72 and the respondents were divested of all rights therein. On the other hand the respondent contended that the main order was indeed a consent order and it had been so clarified by the high court itself and as such the question of any interference therein was to be ruled out. Hence it was held by the court that the respondent having surrendered its title in the goods, it was not open to contend that the surrender had been withdrawn subsequently and the goods are allowable for re-export.

In *Commissioner of Customs, Calcutta and Anr*.v. *Biecco Lawrie Ltd*.,[65] by virtue of section 15(1)(b) of the Customs Act, the rate of duty and tariff valuation applicable to any imported goods cleared from the ware house under section 68 of the Act shall be the rate and valuation in force on the date on which the goods are actually removed from the warehouse.

Compounding of offences

In *Union of India* v. *Anil Chanana,*[66] compounding of the offences under sections 132 and 135(1)(a) of the Customs Act, 1962 was the issue. In this case, the respondent was arrested for offences punishable under sections 132 and 135 of the Act, for failure to declare the dutiable goods in customs declaration form and for having walked through the green channel with the intent to evade the payment of duty and for making wilful mis-statements and suppression of material facts. On an application by the respondent, the compounding authority compounded the offences punishable under sections 132 and 135(1)(a) of the Act and imposed the fine. Hence, the issue in the present appeal was whether the respondent was eligible for

64 (2008) 4 SCC 496.
65 (2008) 3 SCC 264.
66 (2008) 4 SCC 175.

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compounding of the offences punishable under sections 132 and 135(1)(a). It was held that section 137(3) of the Act, talks about compounding of any offence falling under chapter XVI which covers sections 132 and 135 and therefore, "compounding" falls under section 137 which deals with cognizance of offences. The basic rule of "disclosure", underlying section 137(3), is that if there were demonstrable contradictions or inconsistencies or incompleteness in the case of the applicant then application for compounding cannot be entertained. Applications for compounding ought to be disallowed if there were such contradictions, inconsistencies or incompleteness. In this case, neither the respondent fulfilled his obligations nor the compounding authority discharged its statutory duty of making proper enquiries. Therefore, it was held that the application for compounding the offences under sections 132 and 135(1)(a) of the Act was not maintainable.

IV CONCLUSION

The year under survey has seen some important decisions on excise law governing the procedural rights of the parties especially during adjudication and departmental enquiries. At the same time, the Court has tried to set the balance between the conflicting interests of revenue and assessees and this can be noticed from decisions governing valuation, mis-declaration, suppression of facts and classification of goods. As regards the decisions on customs law, the general trend of ignoring the minor discrepancies as to procedural non-compliance by the parties has been followed this year also. The decisions on classification, valuation and re-export of the goods are a few examples in this regard. The decision relating to the non-compliance with the directions of the court by the department and the invocation of the law against the contempt of court is also worth noticing in this context.

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