

Central Excise Updates

Important Notification:

Notification 6/2009-CE: Amends Notification No .64/95-CE dated 16.4.95 (which exempts goods supplied for defence and other specified purposes from whole of duty of excise and additional duty thereon) to provide exemption to machinery, equipment, instruments, components, spares, jigs, fixtures, dies, tools, accessories, computer software, raw materials and consumables required for Program AD of Ministry of Defence if supplied to the program AD of the ministry of Defence and a certificate from the member secretary is obtained prior to the clearance of the goods Program Management Board, Program AD or Program Director AD, Defence Research and Development Laboratory, Hyderabad , to the effect that such goods are intended for the said Program AD, and is produced to the proper officer.

Important Case Laws:

1. *M/s EID Parry India Ltd Vs Commissioner Of Central Excise , Thrichy: 2009-TIOL-711-CESTAT-MAD*

Facts: Cenvat Credit was taken on turbine, boiler, Electrostatic precipitator, water treatment plant and equipments used to set up captive power plant in sugar factory of appellants. The plant generated electricity, which was used to manufacture sugar, which is a dutiable final product.

Issues: Credit had been denied on the ground that captive power plant is immovable property and therefore not taxable.

Decision: The appeal allowed. Credit available.

2. *M/s Chennai Petroleum Corporation Ltd (CPCL) Vs. Commissioner Of Central Excise:2009-TIOL-710-CESTAT-MAD*

Facts: M/s Chennai Petroleum Corporation Ltd (CPCL) manufactures various petroleum products and sells most of the production through M/s Indian Oil

Corporation (IOC) which is related to CPCL as per section 4 of Central Excise Act .In accordance with the provisions of Section 4(1)(b) of the Act read with Rule 9 and 10(a) of Central Excise Valuation Rules 2000 duty on excisable goods cleared to IOC is based on the respective value at which the products are sold by IOCL to independent buyers.

Issues: Demand of duty was made on difference between Refinery transfer price (RTP) charged to IOC by CPCL and the corresponding sale price by IOC in cases where the consignments had been resold at a lower price by IOC as compared to RTP.

Decision: In terms of Rule 10 of Valuation Rules when the excisable goods are not sold except through an interconnected undertaking, value is determined as per Rule 9 of Valuation Rules which means assessable value shall be the price charged by related person when the excisable goods are arranged to be sold through a related person.

3. *Pleasantime Products Vs CCE, Mumbai-I:2009-TIOL-712-CESTAT-MUM*

Facts: The applicants have filed a rectification application before the Tribunal which passed the order determining the classification of only one of the three products in dispute, namely, "Scrabble Deluxe / Original / Classic / Regular" under CETH 9504.90 as parlour games and *not recording any finding on classification* of the remaining two products, namely, Scrabble Junior and Scrabble Dice. These were certain errors that were apparent on record in the said order as per the assessee.

Issues: The applicants are seeking to have the classification issue reviewed in guise of rectification application which is not permissible as the Tribunal admittedly has no power to review its own order." Scrabble Junior" and" Scrabble Dice" are also classifiable like "Scrabble Original" under CET Sub-heading 9504.90 as parlour games.

Decision: The plea of *bona fide* belief that Scrabble was exempt from payment of duty is not available to the assessees as they had sought clarification from the

proper officer on 05/09/1994 and yet did not mention Scrabble in the body of the declaration filed with the department. Section 11AC penalty was introduced in the statute book only on 28/09/1996 and, therefore, *no penalty under Section 11AC can be imposed for the period prior to the above date*; applicants are liable to penalty equal to the duty payable for the period subsequent to 28/09/1996 up to January, 2001 and this amount is required to be re-computed by the Commissioner. There is no need for re-computing the duty liability on cum-duty price basis either.

4. CCE Pune Vs. Maharashtra Scooters Ltd :2009-TIOL-722-CESTAT-MUM

Facts: The respondents manufacture two wheeler vehicle parts falling under C.S.H. No 8211.00,8208.00, and 7318.00 of the Central Excise Tariff Act 1985.

Issues: The 17 show cause notices issued to the assessee during 1992-99 purporting to add 2% of value of goods as design and drawing charges in respect of the cost of drawings /specifications supplied to them and to recover duty on additional added value.

Decision: The price is agreed and contracted between assessee and their customers. The assessee has not recovered anything over and above the price contracted. There is no flow back from the customer to the assessee of any additional consideration.

5. Indian Nippon Electricals Ltd Vs. Commissioner Of Central Excise, Chennai:2009-TIOL-721-CESTAT-CHENNAI

Facts: Appellants cleared capital goods paying duty on depreciated value.

Issues: It is proposed to recover differential duty compared to respective amounts of credit availed by appellants in terms of Rule 3(4) of Cenvat Credit Rules 2000(CCR)

Decision : Manufacturer is liable to reverse the credit availed at the time of receipt of the capital goods when the capital goods are removed as such after use for some time.

**6. Commissioner of Central Excise ,Mumbai V. M/s Modern Silk Industries:
2009-TIOL-753-CESTAT-MUM**

Facts: The fabrics were converted into embroidery and then processes are carried out on it by the assessee.

Issues: The department has chosen to demand duty on dyeing and bleaching by issuing SCN by classifying the processed embroidered fabric under CSH.54.06 of Central Excise Tariff Act 1985 instead of CSH.58.05 of CETA 1985 which attracts nil rate of duty in terms of Notification No. 41/97-CE dated 1.3.97.

Decision: Once the fabrics have been converted into embroidery it cannot go back to base fabrics which are subject to process of dyeing, bleaching. Hence the embroidery merits classification under chapter heading 58.05 and as such the exemption envisaged under Notification No.41/97 is available.

7. Parekh Aluminex Ltd vs CCE, Vapi:2009-TIOL-771-CESTAT-AHM

Facts: Appellants manufactured table ware, kitchenware and other household articles of aluminium falling under Chapter No.7615 of Central Excise Tariff. Waste and scrap is also generated during manufacture. After the finished products became exempted from 1.3.2003 appellants started operating under Notification No.43/2001-CE (NT) dt. 6.6.2001 for the procurement of duty free raw material.

Issues: Revenue has contended that duty is payable in view of para (V) of the relevant notification on the waste and scrap that is generated.

Decision: Unless there is a condition that waste and scrap are exempted, if they have arisen from inputs which are duty paid the revenue has no case.

**8. M/s La Opala RG Ltd Vs. Commissioner of Central Excise Ranchi and
vice versa:2009-TIOL-746-CESTAT-KOL**

Facts: The assessee appellants have taken common inputs for manufacture of glass and glassware some of which are dutiable and some of which are exported and the remaining are exempt having been produced by mouth blown process. The appellants have declared vide their letter dated 20.03.03 that they will consume 12.18% of the inputs for the manufacture of dutiable goods on which credit has been taken.

Issues: The department's case is that since they have not maintained separate inventory store of dutiable and exempted goods the assessee is required to pay 8% of the value of exempted goods as required under Rule 6 of the Cenvat Credit Rules.

Decision: In view of the fact that the Assessee Appellants have maintained separate accounts and have intimated the department well in advance about the percentage of inputs they would have used in the production of dutiable goods and have ab initio not taken credit of duty on inputs meant for use in the manufacture of exported goods duty demand against them is not justified.

**9. *M/s Asiatic Gases Ltd Vs. Commissioner of Central Excise ,Mumbai-III:
2009-TIOL-781-CESTAT-MUM***

Facts: Appellants received 15 invoices all dated 3.8.1999 issued by M/s BOC India Ltd and took MODVAT credit of the duty paid on calcium carbide covered by those invoices on 11.8.1999.

Issues: Subsequent investigations conducted by the department revealed that the appellants had not received the input in their factory.

Decision: MODVAT credit of Rs.4.7 Lakhs taken by the appellants on the strength of 15 invoices issued by M/s BOC India Ltd is not admissible as inputs are not received in the factory and not used in or in relation to final product.

10. *CCE, Nagpur Vs. M/s Shri Siddhabali Ispat Ltd:2009-TIOL-782-CESTAT-MUM*

Facts: The respondents are engaged in manufacture of sponge iron falling under Chapter Heading No.7203.00 of the Central Excise Tariff Act 1985. Respondents have availed Cenvat Credit of Rs. 83330 on welding electrodes falling under Chapter Heading No.8311.00 and these were used for repair of the capital goods and such Cenvat Credit has been used to pay duty on their final products.

Issues: Revenue appeals against it holding that welding electrodes used in the factory premises are not eligible for Cenvat Credit.

Decision: Cenvat Credit is available in respect of welding electrodes used for the fabrication of supporting structure of plant and machinery.

11. CCE Vapi Vs. M/s Apar Industries Ltd:2009-TIOI-727-CESTAT-AHM

Facts: Whether interest is payable on differential duty accrued and paid through supplementary invoices subsequent to actual dispatch due to price variations /escalation loss in the contract/purchase order.

Issues: Revenue has appealed that interest has to be paid.

Decision: Appeal is rejected. **Note: There is however a later decision in this regard which requires interest to be paid.**

12. M/s Polylight Industries Ltd Vs. CCE, Vapi:2009-TIOL-728-CESTAT-AHM

Facts: The appellant is engaged in the manufacture of vulcanized non-cellular rubber sheets classifiable under Chapter 40 of the Schedule to the Central Excise Tariff Act 1985. It is cleared domestically and for export. Whether the said product is classifiable under Heading 4008.21 or the same would fall under Heading No. 4008.29 is based on : If sold to traders who sell to manufacturers or to manufacturer of shoes by the appellants then classified under Heading No.4008.21 by assessee. Where there is no direct evidence if the said sheets which are known as neo-lite sheets are used in the manufacture of footwear then classification is done under Heading No.4008.29 .

Issues: The Commissioner held that as the majority of clearances are to traders whose final purchasers are not known and the end product user is not known at the time of clearance hence classification under 4008.21 cannot be upheld.

Decision: Statements recorded by the department prove that the ultimate purchasers have used the sheets for the manufacture of footwear soles. Even if there is stray use of said sheet for the purpose other than specified it will not take it away from coverage of Sub-Heading 4008.21.