

Central Excise Updates

Important cases

1. *Commissioner Of Central Excise ,Thrissur Vs. M/s Apollo Tyres Ltd, Challakudy:2009-TIOL-676-CESTAT-BANGALORE*

Facts: The polythene films were purchased for the purpose of wrapping own inputs and intermediate products. This was later removed as scrap for sale.

Issues: The revenue proceeded against the respondents on ground that duty liability had to be discharged on scrap.

Decision: It was held that such scrap does not arise in the case of manufacture of any product. The polythene film is purchased by respondents and used merely for wrapping up the inputs and intermediate products in course of manufacture of rubber tyre and other rubber products. When it is discarded the film may have some commercial value. But there is no logic in demanding duty on such scrap

2. *Commissioner Of Central Excise Thane-II Vs. Conwood Pre-Fab Pvt Ltd Super Tiles & Marbles Pvt Ltd:2009-TIOL-675-CESTAT-MUMBAI*

Facts: Paver blocks classified under SH 6810 11 90 and benefit of exemption claimed under Notification 10/2006 –CE Sr. No. 23 as hollow building blocks including aerated or cellular light weight concrete blocks and slabs. Assessee says that the blocks are understood by the common people to be used for building activity.

Issues: Revenue contends that goods are correctly classifiable as solid concrete blocks other than building blocks under SH 6810 99 90 and denying the benefit of Notification No.10/2006-CE.The appellant argues that building blocks are those that are used in a building as a vertical structure.

Held: It was held that the paver blocks in question used for paving roads , parking areas and other open spaces are classifiable as building blocks under SH 6810 11 90 which is an entry specific enough to cover building blocks .There is no question of classifying under the residual entry.

3. *M/s HCL Infosystems Ltd Vs. CCE, Pondicherry: 2009-TIOL-535-CESTAT-MAD.*

Facts: The appellant is engaged in manufacture and clearance of computers from their factory and branches. When the computers are installed at the buyer's premises, installation charges are charged separately in the invoices.

Issues: The revenue demanded Central Excise Duty on installation charges collected on grounds that the same is includible in transaction value as per Section 4 of Central Excise Act, 1944

Decision: Unless charges recovered for installation are found to be manipulated to suppress the correct sale price of the computers, installation charges cannot be included in the transaction value for the assessment of computers. Installation charges are not collected in connection with or by reason of sale of computers. Installation of computers is not after sales service of the computers sold - excise duty and service tax cannot be levied on the same activity: CHENNAI CESTAT.

4. *M/s Reliance Industries Ltd Vs CCE & CC, Rajkot (Dated: March 17, 2009): 2009-TIOL-530-CESTAT-AHM.*

Facts: The period of dispute relating to the present appeals is December 2003 to December 2004. During this period, the assessee supplied polymer granules to different categories of buyers, giving them cash discount, quantity discount, trade discount etc. Some of those buyers were holders of advance licenses. In respect of the supplies made to them, additional discounts were given, which were not taken into account for payment of duty of excise. It is not in dispute that CENVAT credit of the amount of duty paid by the assessee on the goods in question was taken by

their buyers. If that be so, similar credit of any differential duty, if paid by the assessee, can also be taken by the buyers.

Issues: The relevant show-cause notices issued by the department alleged that the additional discounts offered by the assessee to advance license holders represented additional consideration in the facts of the case and, therefore, the assessee was required to pay differential duty on the goods supplied to such buyers.

Decision: Held, where it is shown that any duty found payable by an assessee would be available as CENVAT credit to the recipient of the goods, such duty cannot be demanded from the former. The Revenue neutrality issue with reference to CENVAT credit is held in favour of the assessee.

5. *Raptakos Brett Co Ltd Vs. The Commissioner Of Central Excise , Raigad: 2009-TIOL-680-CESTAT-MUMBAI*

Facts: Duty of Rs. 143497 is confirmed against the appellants for physician samples distributed free of cost by taking account of proportionate cost of regular medicines and not based on cost data.

Issues: Penalty of Rs.15000 be imposed

Decision: No malafide intention is attributable to the appellants and hence no penalty imposable as issue was not free from doubt during the relevant period of 2000 as to basis of valuation on which duty was to be collected

6. *M/s Vinny Overseas (P) Ltd Vs CCE, Ahmedabad:2009-TIOL-678-AHM*

Facts: Appellants procure fabrics on job work basis. They state that M/s Mohanlal Mahaverchand for whom they do job work is related and therefore value is to be based on Valuation Rules and not the export price of M/s Mohanlal Mahaverchand.

Issues: Learned D.R holds that there is no evidence put forth by appellants that they and M/s Mohanlal Mahaverchand have direct/indirect/mutual interest in

business of each other. Hence the valuation of goods manufactured on job work is to be based on Honourable Supreme Court decision in Ujagir Prints Ltd

Decision: New Section 4 of Central Excise Act, 1944 read with Central Excise Valuation (Determination of Valuation of Excisable Goods) Rules 2000 is not applicable to this case. There is no other evidence of being related persons except that the partners of M/s. Mohanlal Mahaverchand are also directors of appellant company

7. *Commissioner Of Central Excise ,Chennai vs. M/s Caress Beauty Care Products (P) Ltd:2009-TIOL-533-CESTAT-MAD*

Facts: Respondents cleared Clinic Plus Shampoo of 8ml in multi piece package in corrugated boxes with 60 strips of sachets having 16 nos. of individually packaged labeled pieces of shampoo sachets totalling 960 nos. Duty is discharged under Section 4 of Central Excise Act 1944

Issues: The multi piece packages should have been valued under Section 4A

Decision: There is no merit in the revenues appeal

8. *M/s Industrial Chemicals & Monomers Ltd Vs. Commissioner Of Central Excise , Madras:2009-TIOL-534-CESTAT-MADRAS*

Facts: The cost of transportation from one place of removal to another place of removal namely depot has not been included in assessable value

Issues: Transport cost for clearing goods from one place of removal to another namely depot is not deductible from assessable value of goods

Decision: Agreed with the contention of revenue that cost of transport is not deductible