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CENTRAL EXCISE:

- ✚ After printing and coating the Carbon Paper of larger size is converted or sized into Carbon Paper of smaller size and no other process or activities has been carried out and, therefore, the process carried out does not amount to manufacture and decision of the Hon'ble Supreme Court in the case of CCE, New Delhi I v. S.R. Tissues Pvt. Ltd. is squarely applicable. **Gurdev Singh Vs. CCE MANU/CE/0013/2016.**

✚ The Tribunal, following the judgment of Gujarat High Court in the case of CCE v. Ratnamani Metals and Tubes Ltd. MANU/GJ/0517/2013: 2013-TIOL-1124-HC-AHM-CX has clearly stated that if the option of 25% penalty has not been given expressly at lower levels, the same can be extended at the stage of CESTAT also. Also we find that the Bombay High Court in the case of CCE Raigad v. Castrol India has observed that though various High Courts and CBDT have directed adjudicating authority to make it expressly clear in adjudication order regarding option to pay 25% penalty. **N R Ispat & Power (P) Ltd Vs. CCE MANU/CE/0018/2016**

✚ The Show Cause Notices says that the impugned MS scrap (light) would have certainly some portion of replaced parts (of capital goods) and therefore the assessee was required to pay appropriate amount(CENVAT Credit) in terms of Rule 3(5A) ibid on clearance. Evidently, it is too vague a basis to sustain the impugned demand in-as-much-as it is not identified whether there was indeed any portion of the capital goods cleared as scrap nor any quantification thereof done. No demand can be sustained on the basis of such vague unquantified premises based on assumption/presumption. The onus was clearly on Revenue to establish that the impugned scrap was of the capital goods on which credit was taken and such onus has not been discharged. **Balakrishna Industries Ltd Vs. CCE MANU/CE/0019/2016.**

✚ It was held by CESTAT that appellants maintaining separate records for storage and use of imported and indigenous Orthoxylene - In absence of anything on record to establish that aforesaid records maintained by appellants are manipulated, exemption under notfn.

8/1997-CE, 13/1998-CE & 23/2003-CE has to be allowed.(The only condition in all these notifications was that the products should have been manufactured wholly out of raw material produced or manufactured in India.):

2016-TIOL-293-CESTAT-MUM

✚ Lubricating oil 50 Ltrs package is sold in the market through distributors and consumed by the ultimate customers and, therefore, it has to be considered as a retail sale - package is not covered under exemption of rule 34 of PC Rules, 1977 - Valuation under s.4A proposed by Department is upheld. Appeals of assessee partly allowed and of Revenue dismissed. **M/s LSR SPECIALITY OILS PVT LTD.Vs.COMMISSIONER OF CENTRAL EXCISE & CUSTOMS, MUMBAI 2016-TIOL-164-CESTAT-MUM.**

✚ The Revenue authorities demanding Central Excise Duty against the appellant on undertaking erection and commissioning of vacuum impregnation plant was held to be unsustainable and hence set aside.The reason being that expenses on erection and commissioning are post clearance expenses, hence not included in the Assessable Value u/s 4 of Central Excise Act,1944. **2016-TIOL-CESTAT-MUM.**

✚ The CESTAT cleared that Notification No. 214/86 of Central Excise only facilitates the principal supplier of raw material and jobworker to avoid payment of duty at intermediate stage i.e. at jobwork stage. The goods manufactured on jobwork basis is exempted on the ground that the excise duty is charged on the full value of final product. Hence, the jobwork goods cannot be said to exempted goods under Rule 6(3)(b) of Cenvat Credit Rules because this rule is applicable only on the clearance of exempted goods and

shall not apply in the case of the goods manufactured on jobwork basis. **2016-TIOL-400-CESTAT-MUM.**

- ✚ When the High Court has refused to grant stay against the judgment of the Tribunal, the Commissioner cannot indirectly ensure such stay by refusing to process and decide the appeals of the petitioners. This is precisely what the Commissioner has done in the present case. Refusal by Appellate Commissioner to grant refund on the ground that the Department's appeals are pending before the High Court would tantamount to ensuring stay against CESTAT order and is patently illegal-High Court. **2016-TIOL-255-HC-AHM-CUS**

SERVICE TAX:

- ✚ The matter was wrong classification of services where the respondents had wrongly utilized credits of service tax. Tribunal proceeded to pass order based on sentiments, (directing them to pay hefty fine) without following statutory provisions, which is uncalled for, particularly, while adjudicating revenue matters - Order set aside and matter remanded to original authority: High Court. **2016-TIOL-179-HC-KAR-ST.**
- ✚ Registration is a regulatory measure to bring the assessee to the fold of the law. Even if unregistered, the liability under law remains unchanged. CENVAT Credit cannot be denied on ground that Head Office is not registered as Input Service Distributor: **CESTAT 2016-TIOL-318-CESTAT-MAD.**

- ✚ When the cost of any service (Insurance service) is included to determine valuation of final product, CENVAT credit cannot be denied of service tax paid on such services. **CESTAT 2016-TIOL-322-CESTAT-MUM.**
- ✚ The Hon'ble High Court held that service tax paid on contribution or value of the canteen services enjoyed by the employees will not be available as CENVAT credit. The appellant is eligible to avail CENVAT credit to the extent of service tax paid by the canteen contractor and is not eligible to avail CENVAT credit of the service tax paid on the value of the services utilized by the employees of the appellant. CENVAT Credit admissible of Central Excise duty paid on chairs & tables: **CESTAT 2016-TIOL-367-CESTAT-MUM.**
- ✚ Merger and Acquisition services is dropped by the Commissioner and does not fall under the purview of Management Consultancy Services. Management Consultancy is clearly consultancy and technical assistance in the running of the affairs of an organization. whereas "Mergers and Acquisitions" is a highly technical and restrictive term and cannot be related to the running of the affairs of an organization. PCA/PCS/PCWA would all get covered under the definition of 'Management Consultancy Service'. Consequently service tax is not payable on M&A Services prior to 16.7.2001 under the category of 'Management Consultancy Service'.-**CESTAT. 2016-TIOL-382-CESTAT-MUM.**
- ✚ Adjudicating Authority is only bound by the orders of superior Appellate Authority like CESTAT and the observations of the Committee of Chief Commissioners (CCs) are of administrative nature and not of quasi-judicial

nature to have any binding effect on Adjudicating Authority. – CESTAT. **2016-TIOL-426-CESTAT-DEL**

CUSTOMS:

- ✚ When main order is not challenged and only Review Order is challenged, court not obliged to allow SLP. The appeal, being not maintainable, stands dismissed." **Bussa Overseas and Properties (P) Ltd. v. UOI (SC)**
- ✚ Smuggling of gold- prosecution of person charged with financing smuggling, the High Court allowed the petition and quashed the complaint pending before Additional Chief Metropolitan Magistrate, it was held that High Court was not right and justified in accepting the prayer for quashing of the proceedings. The view taken by the High Court set aside and prosecution to be continued.–Supreme Court. **2016-TIOL-15-SC-CUS**
- ✚ If the appellant is not co-operating with the authorities to ascertain the mis-declaration of the value as well as description of goods, the appellant is liable for penalty u/s 112 of Customs Act, 1962. Therefore, penalty rightly imposed and the appeal is rejected. **Dinkar Y Ghanekar Vs. Commissioner of Customs (Import), Mumbai 2016-TIOL-241-CESTAT-MUM.**
- ✚ Customs - Refund of SAD under Notification No. 102/2007, refund is admissible on timber logs sold as cut sizes - In absence of stay, order of Gujarat High Court prevails – CESTAT. The Tribunal held that even when the imported timber was sawn and sold, if the sales tax liability

was discharged, the appellants would be eligible for refund.
M/s. Agarwalla Timbers Pvt. Ltd. Vs. CC, Kandla & M/s. Variety Lumbers Pvt. Ltd. Vs. CC, Kandla 2016-TIOL-296-CESTAT-HYD

- ✚ The appellant exported jackets and pants together as per description in the Shipping Bill and claimed drawback separately doesn't attract Section 113(i) of Customs Act (mis-declaration of description or value.)As per drawback schedule, drawback is allowed on "ensemble" i.e.a set of garments but malafide intention cannot be ascribed to invoke penalty.-CESTAT. **2016-TIOL-311-CESTAT-MUM.**
- ✚ Under Customs Act, a partnership is not given a status of separate legal entity.In the absence of invoking Section 140 of Customs Act, no separate penalties under Section 112 (where minimum penalty is Rs.5000) can be imposed simultaneously on firm and its partners.- **HC Larger Bench. 2016-TIOL-186-HC-MUM-CUS-LB.**
- ✚ Contention of Adjudicating authority is found unsustainable that duty cannot be demanded on goods cleared by EoU to DTA(Domestic Tariff Area) under notfn.No.43/2001 by following *Central Excise (Removal of goods at concessional rate of duty for manufacture of Excisable goods) Rules, 2001* on ground that section 5A does not allow exemption. *The Notification No.43/2001-CE (NT) and the provisions of Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001 prescribed the procedure for clearance of the goods without payment of duty and the said notification was not under Section 5A, therefore, removal of goods under Rule, 19 (2) has been allowed. 2016-TIOL-331-CESTAT-MUM.*

✚ Custom Classification of goods –The CESTAT held that 'Paddle Wheel Aerators' used in aqua farming are classifiable as agricultural equipment. Agriculture covers not only cultivation of land and growing crops but includes animal husbandry, raising of live stock etc.Ministry of Agriculture enacted Coastal Aquaculture Authority Act, 2005 and the Regulatory Authority was created under this Act,which confirms that aqua farming by farmers is integral part of agricultural activity.Therefore,"Paddle Wheel Operators" rightly eligible for exemption. Therefore, the differential duty demanded is liable to be set aside. **2016-TIOL-385-CESTAT-MAD.**

✚ It was held by CESTAT that "Unjust enrichment" is not applicable to refund of fine and penalty. Proviso to sub-section (2) of Section 27 of Customs Act, 1962 deals with applicability of test of unjust enrichment to the duty and interest element but not to differential fine or penalty. **2016-TIOL-410-CESTAT-MAD**

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