

Circular No. 1063/2/2018-CX

F. No. 116/2/2018-CX 3
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

New Delhi, North Block
16th of February, 2018

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners of
Central Tax & Central Excise (All)

Web-master, CBEC

Madam/Sir,

**Sub: Orders of Supreme Court, High Courts and CESTAT accepted by the Department
and on which no review petitions, SLPs have been filed– reg.**

Field formations send SLP & CA proposals to the Board. Many of them after examination are not approved and such decisions of High Courts & Tribunals thus attain finality. It has been decided to disseminate such information to the field formations. Attention is invited to sixty three orders of different High Courts summarized in this Circular which have been accepted by the Department. In fourteen of these orders, Hon'ble High Courts have decided various questions of law. In the rest forty nine cases the Hon'ble High Courts have delivered judgments on the basis of some settled case law or have decided points of facts or have dismissed the appeal on monetary grounds. The said orders have been compiled in this Circular so that cases pending in the field can be expeditiously decided, if the questions of law or facts involved are identical.

2. The Circular has two parts, namely Part I and Part II, where Part I comprises of the orders of various High Courts in which points of law have been decided and Part II comprises orders which have been decided on facts or have been dismissed on monetary limits. All the orders have been accepted by the Department and against them no SLP etc has been preferred in the Hon'ble Supreme Court.

3. This exercise has been undertaken as an endeavour to reduce litigations so that cases on similar questions of law or identical case on facts pending in your jurisdictions can be decided.

PART I:

1. (a) Decision of the Hon'ble High Court of Rajasthan dated 29.02.2016 in the case of Savitri Concast Ltd. in DB C.W.P 4784/2012, 5285/2012 & 5286/2012,

(b) Decision of Hon'ble Punjab & Haryana High Court dated 14.09.2015 passed in CEA No. 20 of 2015 in the case of Commissioner, Central Excise Commissionerate, Chandigarh-I vs M/s Quality Steels, Mandigobindgarh,

(c) Decision of the Hon'ble High Court of Gujarat dated 13.10.2015 in Tax Appeal No. 1581 of 2007 in the case of M/s Kohinoor Dyg & Ptg Mills (P) Ltd., Surat.

1.1 Department has accepted the aforementioned decisions where the Hon'ble High Courts dismissed the departmental appeals relying on the decision of the Hon'ble Supreme Court dated 24.11.2015 in the case of M/S Shree Bhagwati Steel Rolling vs Commissioner of Central Excise & Others.

1.2 In the case of M/S Shree Bhagwati Steel Rolling vs Commissioner. Of Central Excise & Others, the Hon'ble Supreme Court examined the question of law whether interest and penalty provisions under rules 96 ZO, 96 ZP and 96 ZQ which were framed to effectuate the provisions of section 3A of the Central Excise Act, 1944 are consistent with the provisions of the Act and held that they are ultra vires. An excerpt from the judgment is reproduced below,

“...imposition of a mandatory penalty equal to the amount of duty not being by statute would itself make rules 96ZO, 96 ZP and 96 ZQ without authority of law. We, therefore, uphold the contention of the assesseees in all these cases and strike down rules 96ZO, 96 ZP and 96 ZQ insofar as they impose a mandatory penalty equivalent to the amount of duty on the ground that these provisions are violative of Article 14, 19(1)(g) and are ultra vires the Central Excise Act.”

2. (a) Decision of the Hon'ble High Court of Gujarat dated 08.01.2016 in the matter of Commissioner of Central Excise vs Dashion Ltd in Tax Appeal No. 415 of 2013 & 662 of 2014 [2016-TIOL-111-HC-AHM-ST],

(b) Decision of the Hon'ble High Court of Rajasthan dated 08.02.2016 in the matter of Commissioner Central Excise Commissionerate, Jaipur vs National Engineering Industries Ltd CEA No. 3/2016 [2016-TIOL-922-HC-RAJ-CX]

2.1 Department has accepted the judgments where the Hon'ble High Courts dismissed the Department's appeal *inter alia* holding that substantial benefit cannot be denied because of procedural irregularity.

2.2 In the case of Dashion Ltd. the assessee was engaged in manufacture of water treatment plant and other connected items and was availing benefit of CENVAT credit on the duty paid on inputs, capital goods and input services as permissible under CENVAT Credit Rules, 2004. The assessee had five manufacturing units and had its registered office at Vatva, Ahmedabad. The assessee was also providing several taxable services such as erection and commissioning, repairing and maintenance of water treatment plant, etc.

2.3 The revenue authorities, during scrutiny of the records of the assessee, noticed that it was availing the credit of service tax paid for various services by one unit for the purpose of clearance of other unit. After gathering details from the assessee, the adjudicating authority issued show cause notice calling upon the assessee as to why the CENVAT credit of service tax on input service should not be recovered with interest and penalties. In the show cause notice itself, the adjudicating authority had referred to sub-rule (3) of Rule 15 of the Rules of 2004 as basis for such proposal. Two primary objections of the Department were that the assessee had not registered itself under the Service Tax (Registration of Special Category of Persons), Rules 2005 and that the tax credit from one unit was utilized for discharging tax liability of another unit instead of pro rata distribution amongst different units. The adjudicating authority confirmed the duty demands with interest and penalties.

2.4 Therefore, the points of law examined were that the assessee had utilized credit from one unit for the purpose of duty liability of its other unit without pro rata distribution by the input service distributor and further the assessee had not registered itself under the Service Tax (Registration of Special Category of Persons), Rules 2005.

2.3 Hon'ble High Court dismissed the department's appeal holding that such view was not sustainable as there was no previous restriction of this nature under Rule 7 of the CENVAT Credit Rules, 2004. Further non-registration of ISD is only a procedural irregularity for which substantial benefit of CENVAT credit cannot be denied when all the necessary records have been maintained by the respondent.

3. Decision of the Hon'ble High Court of Allahabad dated 27.04.2016 in the matter of M/s Bhushan Steel Ltd CEA No. 32/2016.

3.1 Department has accepted the aforementioned order of the Hon'ble High Court of Allahabad where the Hon'ble High Court upheld the decision of the CESTAT on the point of law that CENVAT credit of duty availed in excess and not proportionate to the assessable value of raw materials in terms of section 4 of the Central Excise Act, 1944, received by the party from their vendor is admissible to the manufacturer.

3.2 The issue that was examined in the order was that in case of sales of HR Coils by Tata Steel Limited to Bhushan Steel Ltd., the practice was that manufacturer, Tata Steel Limited, Jamshedpur stock transfers the goods to its own depot at Ghaziabad, situated in the premises of the consignment agent by issue of an invoice on which purportedly excise duty and education cess is paid. Bhushan Steel purchases the said HR Coils from the depot of Tata Steel Limited on issue of dispatch advice cum invoice, which bears a much lower price than the price shown on the invoice for removal of goods from the factory on stock transfer to depot. However, while availing the CENVAT credit, Bhushan Steel had taken credit on the basis of full amount shown on the invoice issued to Tata Steel depot on stock transfer.

3.3 CESTAT decided in favour of the party holding that supplier had not claimed any refund on account of reduction in price, relying on CBEC Circular No. 877/15/2008-CX dated 17.11.08 and Hon'ble Supreme Court decision in CCE vs MDS Switchgear Ltd. [2008 (229) ELT 485 (SC)]. The Hon'ble High Court upheld the decision of the CESTAT and dismissed the departmental appeal.

4. Decision of the Hon'ble High Court of Gujarat dated 17.12.2015 in the matter of Apar Industries (Polymer Division) vs Union of India in Special Civil Application No. 7815 of 2014 [2015-TIOL-2859-HC-AHM-CUS]

4.1 Department has accepted the order of the Hon'ble High Court of Gujarat in the case of Apar Industries (Polymer Division) vs Union of India in Special Civil Application No. 7815 of 2014. The issue examined in the order is as follows, Manufacturer exporter, M/s Apar Industries (Polymer Division) filed Rebate claims in incorrect format under Rule 19 instead of as required under Rule 18. The same was re-filed correctly but department held that the subsequent filing was time barred. The Hon'ble Court held that the intention of claiming rebate was clear and first application should have been treated by the department as rebate application. Whatever defect arose from the incorrect filing could have been rectified. In such situations, re-submission should be seen as a continuous attempt and therefore in the matter department was directed to examine the rebate claims of the petitioner on merits.

5. Decision of the Hon'ble High Court of Rajasthan in Jaipur dated 24.04.2016 in the matter of Balakrishna Industries Ltd. EXCIA No.17/2015

5.1 Department has accepted the aforementioned order of the Hon'ble Court where the Hon'ble Court dismissed the Departmental appeal.

5.2 The issue pertains to violation of provisions of Advance License/ Authorization as provided under Foreign Trade Policy 2004-09 and procedure prescribed under Notification No. 44/2001-CE (NT) dated 26.06.2001. The procedure required that an assessee availing Advance license/Authorization scheme procure raw materials duty free, but in the present case it was found that goods were procured on payment of duty and CENVAT credit was availed subsequently.

5.3 M/s Balakrishna Industries Ltd., the assessee obtained invalidation letters from the DGFT in favour of its suppliers for duty free supply of raw materials. But the assessee procured the goods on payment of Central Excise duty and availed CENVAT credit. This appeared to be in contravention of FTP and also of Notification No. 44/2001-CE (NT) dated 26.06.2001, as the scheme did not permit payment of duty by the supplier manufacturer.

5.4 Further, the supplier of the raw materials also supplied their goods at lower rate against the invalidated authorization (than the rate without invalidation). In this way, they facilitated M/s BKI to take CENVAT credit of duty paid which was in fact part of assessable value.

5.5 After Demand was confirmed assessee went to CESTAT which vide final order dated 23.07.2014 allowed the appeal of the party. Departments' appeal before the Hon'ble High Court of Rajasthan was dismissed observing that the same issue was decided by the Bombay High Court in CCE, Thane 1 vs OLEFINE Organic Pvt. Ltd which attained finality when the Department's appeal was dismissed by the Hon'ble Supreme Court.

6. Decision of the Hon'ble High Court of Delhi dated 22.08.2016 in the case of Sun Pharmaceutical Industries Ltd. W(C) No. 7120/2001

6.1 Department has accepted the aforementioned order of the Hon'ble High Court where the Hon'ble Court condoned the time bar which is provided in Section 11B of the Central Excise Act, 1944 for applying for rebate in view of Gujarat High Court's order in the matter of Choice Laboratories where the Hon'ble Court *inter alia* held that "*Petitioners had bonafide filed their appeal before a forum which lacked jurisdiction.*"

6.2 The issue examined in the order is as follows, M/s Sun Pharmaceutical Industries Ltd. filed a rebate claim which was rejected by the jurisdictional Deputy Commissioner on the grounds that the time limit for filing rebate in terms of Rule 12 (1) (a) of the Central Excise Rules, 1944, has been prescribed with reference to Section 11 B of the Central Excise Act, 1944, under condition no. (iv) of the notification no. 41/94-CE (NT) dated 22.09.1994, issued under said Rule 12 (1). The limitation period of 6 months for filing rebate as prescribed under said

Section 11 B was absolute and the Act does not have any provision for relaxation to Rules or notification which can transcend, modify or abbreviate the provision of the Act.

6.3 The assessee filed an appeal before the Commissioner (Appeals) against the said OIO. The Commissioner (Appeals) rejected the appeal. The assessee then filed a Revision Application against the said OIA. The JS (RA) rejected the application.

6.4 The assessee then filed a writ petition before the Delhi High Court. The High Court vide order dated 22.08.2016 allowed the appeal of the assessee by condoning the time bar which is provided in Section 11B of the Central Excise Act, 1944 for applying for rebate. The decision of the Hon'ble Court has been accepted by the Department as the point of law has already been decided by the Gujarat High Court in *Choice Laboratories* where it was held as follows,

“In that view of the matter, it can be stated that the petitioners were prosecuting the remedy before a wrong forum though under bona fide belief. Surely, the time spent in pursuing such remedy cannot be ignored while considering the question of limitation or delay caused in filing the revision application. In the revisional order, we do not find any mention or reference to such proceedings and the detail affidavit on behalf of the petitioners explaining the grounds why the revision was not filed immediately upon availability of the appellate order. As per the Limitation Act, there is a clear distinction between the delay which can be condoned upon sufficient cause being shown and the period which should be excluded for considering limitation. The time spent in prosecuting remedy before a wrong forum under bona fide belief would fall under exclusion clause as per Section 14 of the Limitation Act. Particularly, when the Tribunal directed its registry to return the papers for presentation before appropriate forum and the case of the petitioners is that such documents were not supplied, the entire issue has to be looked from the angle of the petitioners. Petitioners had bona fide filed their appeal before a forum which lacked jurisdiction.”

This view has been reiterated by the Bombay High Court in *EPCOS India* case also.

7. Decision of the Hon'ble High Court of Gujarat dated 01.10.2015 in the case of M/s Thakkar Tobacco Products Pvt. Ltd in Tax Appeal No. 619 of 2015

7.1 Department has accepted the aforementioned order of the Hon'ble High Court of Gujarat where the Hon'ble Court dismissed the departmental appeal on the question of law, whether manufacturer has the option of *suo-moto* abatement of duty in the event of closure of factory for a continuous period of 15 days or more without first depositing the duty in terms of rule 10 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008, on the following grounds,

- a) As per provisions of the Central Excise Act, 1944 and the PMPM Rules abatement is to be granted and the statute does not prescribe any order of abatement to be passed by the any authority such as DC/AC.

- b) In the erstwhile Central Excise Rules, 1944, there was an express provision which provides for claim of abatement would be allowed by an order passed by the Commissioner of Central Excise. When the intention of the government is that amount is to be refunded in as specific manner, then an express provision is provided. However the impugned rule does not make any such provision.
- c) The Board Instruction from F.No.267/16/2009-CX-8 dated 12.03.2009 is not applicable in the present case as Rule of PMPM rules does not speak of any order of abatement.

8. Decision of the Hon'ble High Court of Karnataka at Bangalore dated 09.04.2015 in the case of M/s PNB Metlife India Insurance Company Ltd., Bangalore.

8.1 Department has accepted the aforementioned order of the Hon'ble High Court of Karnataka. The issue examined in the order was, whether Reinsurance is an input service which is used for providing output service, namely, Insurance and whether CENVAT Credit taken on re-insurance service is admissible. Hon'ble High Court held that re-insurance is a statutory obligation and the same is co-terminus with the Insurance Policy. Issuance of insurance policy by insurer, and then taking of re-insurance by it, is a continuous process. Re-insurance is therefore an input service.

9. Decision of the Hon'ble High Court of Madras dated 20.03.2015 in CMA 828 of 2008 in respect of M/s SESCOT Sheet Metal Works Ltd.

9.1 Department has accepted the aforementioned order of the Hon'ble High Court of Madras. The issue examined by the Hon'ble Court was whether unjust-enrichment would apply to State Government undertaking which applied for refund under Notification No. 111/ 88-CE dated 1.3.88. Hon'ble Supreme Court in Mafatlal Industries case referred as [2002-TIOL-54-SC-CX-CB] held that the doctrine of unjust enrichment will not apply to the State, as the State represents the people of the country. Relying on the same Hon'ble High Court observed that department itself accepted that party is a State funded, State controlled and State monitored organisation supplying goods to Civil Supplies Corporation, which is another organ of the State. Such goods are used in relation to Public Distribution System. Hon'ble High Court therefore allowed the party's appeal.

10. Decision of the Hon'ble High Court of Gujarat dated 28.01.2016 in the case of M/s Ketan Pottery Works & Ors in Special Civil Application 13882 13883/2015 [2016-TIOL-388-HC-AHM-CX]

10.1 Department has accepted the decision of the Hon'ble High Court of Gujarat in the case of M/s Ketan Pottery Works & Ors in Special Civil Application 13882 13883/2015 where the Hon'ble High Court held that the phrase "and Nepal" appearing in Explanation Clause (G) to SSI Notification No.8 of 2003 is unconstitutional with effect from 01.03.2012.

10.2 The issue involved was that, under SSI Exemption Notification No. 8/2003 dated 01.03.03, Explanation (G) provided that clearances for home consumption shall include clearances for export to Bhutan and Nepal. Revision of Treaty between India and Nepal made exports to Nepal at par with export to any other country effective from 01.03.12. The term "clearances for home consumption", which included clearances for export to Nepal and Bhutan ought to have been changed by deleting reference to exports to Nepal. However the said notification was not amended due to oversight. The Hon'ble Court held that this will be plainly discriminatory and hence declared the portion "and Nepal" appearing in Explanation Clause (G) to SSI Notification No.8 of 2003 unconstitutional with effect from 01.03.2012.

11. Decision of the Hon'ble High Court of Rajasthan dated 23.04.2016 in the matter of Barijoriwala's Rolling Mills Pvt. Ltd in DB CWP No. 2/2014 [2016-TIOL-3184-HC-RAJ-CX]

11.1 Department has accepted the aforementioned order of Hon'ble High Court where the Hon'ble High Court lowered the requirement of pre-deposit to 15 per cent of duty or penalty as the case may be, from 25 per cent as was ordered by the CESTAT as the Hon'ble High Court had pronounced same judgment in several other cases.

11.2 The CWP filed by the assessee challenged the CESTAT's direction to pre-deposit 50% of the duty confirmed in terms of second proviso to Sec 35F of CEA 1944. The Hon'ble High Court directed the assessee to deposit 15% of demand to restore the appeals before CESTAT in light of the fact that Section 35 A of CEA, 1944 was amended by Finance Act 2014 stipulating payment of 7.5% and 10% of duty as pre-deposit for the first and subsequent appeal.

PART II

1. Decision of the Hon'ble High Court of Delhi dated 17.09.2015 in the matter of Flevel International vs Commissioner of Central Excise [2015-TIOL-2230-HC-DEL-CX]

1.1 Department has accepted the order of the Hon'ble High Court of Delhi in the matter of Flevel International vs Commissioner of Central Excise [2015-TIOL-2230-HC-DEL-CX] where the Hon'ble Court set aside the order of the CESTAT by *inter alia* holding that the Department did not concede to the assessee's request for cross examination and the Hon'ble Court was satisfied that the impugned majority order of the CESTAT on the issue of clandestine removal of 606 ACs by the Appellant without payment of duty suffers from serious errors and, therefore, cannot be sustained in law.

1.2 In the matter, allegation of clandestine clearances of ACs in guise of compressors from 3 units was investigated from the standpoint of eligibility for exemption under Notification No. 75/87-CE dated 1st March 1987. The Hon'ble High Court held that no serious attempts were made to secure presence of witnesses in adjudication proceedings. And, in cases of clandestine removal, a certain standard is expected of the Department before a finding can be reached against an Assessee. No evidence gathered to show procurement of basic raw material for alleged manufacture.

2. Decision of the High Court of Allahabad dated 08.12.2015 in the matter of CCE, Lucknow vs VK Tulsian in Central Excise Appeal No. 13 of 2015 [2016-TIOL-88-HC-ALL-CX]

2.1 Department has accepted the order of the Hon'ble High Court of Allahabad in the matter of CCE, Lucknow vs XYZ in Central Excise Appeal No. 13 of 2015 *inter alia* holding that the activities of V.K Tulsian is in the nature of money laundering and not specified under rule 26 and 27 of the Central Excise Rules, 2002 so penalty under the said rules would not be attracted.

2.2 On the matter imposition of penalty under rule 26 & 27 of the Central Excise Rules, 2002 on the CA, Sh. VK Tulsian who was alleged to have abetted in evasion of excise duty by issuing a false certificate for the cash seized from gutka manufacturer. The Hon'ble Court held that respondent cannot be said to have acted in a manner so as to hold him an abetter in relation to the commission of any offence as described under Rule 26. Therefore no substantial question of law was involved.

3 Decision of the High Court of Bombay dated 01.02.2016 in the matter of M/s SV Jiwani in Central Excise Appeal No. 252/2014 [2016-TIOL-503-HC-MUM-ST]

3.1 Department has accepted the order of the Hon'ble High Court of Gujarat in the case of M/s SV Jiwani in Central Excise Appeal No. 252/2014 where the Hon'ble High Court had *inter alia* held on the question framed, whether input service credit could have been availed without exercising the options provided in Rule 2A of the Service Tax (Determination of Values) Rules, 2006 or whether CENVAT credit can be claimed after discharging the liability in full, that having paid the service tax in full, Revenue is not incurring any loss of revenue, hence the Court should not undertake an academic exercise.

3.2 In the matter the issue that was examined by the Hon'ble Court was that, whether input service credit could have been availed without exercising the options provided in Rule 2A of the Service Tax (Determination of Values) Rules, 2006 after having discharged the tax liability in full. It was held by the Hon'ble Court that that having paid the service tax in full, Revenue has not incurred any loss of revenue hence Court should not undertake an academic exercise.

4. Decision of the Hon'ble High Court of Gujarat dated 28.01.2016 in the matter of Commissioner, Central Excise and Service Tax versus M/s Inducto Steel Ltd

4.1 Department has accepted the order of the Hon'ble High Court of Gujarat in the matter of Commissioner, Central Excise and Service Tax versus M/S.Inducto Steel Ltd in Tax Appeal No. 126/2016 where the Hon'ble High Court while relying upon the decision of the Gujarat High Court in Krishna Processors vs. Union of India, which was subsequently upheld by the Hon'ble Supreme Court in its judgment in Shree Bhagwati Rolling Mills dated 24.11.2015 dismissed the tax appeal of the Department.

4.2 The matter pertained to suppression of annual capacity of furnace by M/s Inducto Steel Ltd engaged in the manufacturing of MS Ingots which were notified under Section 3A of the Central Excise Act, 1944 vide Notification No. 30/1997 dated 01.08.1997.

5. Decision of the Hon'ble High Court of Madras dated 07.10.2015 in Tamil Nadu Co-op. Textile Processing Mills Ltd. CMA No. 3557/2006

5.1 Department has accepted the decision of the Hon'ble High Court of Madras in CMA No. 3557/2006 in the case of M/s Tamil Nadu Co-op Textile Processing Mills Ltd., where the Hon'ble High Court allowed the party's appeal in the matter involving whether demand for extended period under section 11A of the Central Excise Act, 1944 is maintainable on the grounds of suppression of facts etc. by pronouncing an order whereby the demand for duty was struck down on limitation grounds.

5.2 The Hon'ble High Court of Madras allowed the party's appeal *inter alia* on the grounds that though the party was not allowed to process and clear power loom fabrics without payment

of duty the percentage of such clearances was a mere 3.3% of the total clearances and the party was not aware of such fabrics being power loom i.e. delivery challans did not mention it.

6. Decision of the Hon'ble High Court of Gujarat dated 29.01.2016 in the case of Rivaa Textiles Industries Ltd. CA 629/2015 and TA No.933/2006

6.1 Department has accepted the order of the Hon'ble High Court of Gujarat in the case of M/s Rivaa Textiles Industries Ltd. in Civil Application (OJ) 629/2015 in Tax Appeal No. 933/2006 where the Hon'ble High Court vide order dated 13.01.2015 in Tax Appeal No. 933 of 2006 dismissed the appeal of the department and also dismissed the Review Petition with the observation that considering the facts and circumstances and the reasons recorded in the earlier judgment no valid ground is made out for review.

6.2 It was examined whether demand for extended period under section 11 A of the Central Excise Act, 1944 is maintainable when from the same investigation already a separate demand for separate period has been raised. Hon'ble High Court of Gujarat dismissed department's appeal relying on ratio of decision of Hon'ble Supreme Court in the case of Nizam Sugar Factory [2006 (197) ELT 465 (SC)].

7. Decision of the Hon'ble High Court of Madhya Pradesh (Indore Bench) dated 09.05.2016 in the matter of Anant Commodities Pvt. Ltd. & others R.P. No. 131/2016 (arising out of CEA No. 11/2010)

7.1 Department has accepted the aforementioned order of the Hon'ble High Court of Madhya Pradesh where the Hon'ble High Court dismissed the department appeal on monetary limits.

7.2 In the case, assessee filed refund claim in terms of Notification No 41/2007 in respect of Service tax paid on services utilised by them for export of goods. Refund was rejected on few services on the ground that they are not covered under Notification No 41/2007. Commissioner (Appeal) allowed the party's appeal and observed that conditions mentioned in the said notification have been fulfilled. On appeal, Hon'ble CESTAT dismissed Department's Appeal. On further appeal before the Hon'ble MP High Court at Indore, the appeals were disposed of on monetary limit.

8. Decision of the Hon'ble High Court of Delhi dated 02.12.2015 in the case of M/s Vishnu & Co. Pvt. Ltd & Others in CEAC 62/2014 with 73-90/2014.

8.1 Department has accepted the aforementioned order of the Hon'ble High Court of Delhi where the Hon'ble High Court dismissed the departmental appeal holding that there is no substantial question of law involved.

8.2 In the case, the assessee was engaged in the manufacturer of 'Vimal' Gutkha/ Pan Masala. DGCEI issued two SCNs alleging suppression of production and clandestine removal. Adjudicating authority confirmed the said demands. On party's appeal, CESTAT confirmed demand, interest & penalty in respect of one order, setting aside the other order observing *inter alia* that case was based on ambiguous records maintained by transporters and oral statements of employees of transporters. Therefore there was no linkage showing that goods transported were booked by VPCL and were of Vimal brand gutka and further statements were also retracted in cross examination. Further it was held that clandestine removal cannot be proved on the basis of third party records without any positive evidence to link them to VCPL. Testing was done on a small quantity of product which is unsafe to be relied upon to establish the identity of product and no buyers were identified. On further appeal by the Department before the Hon'ble High Court, the same was dismissed as there was no substantial question of law and also that view taken by CESTAT is based on a thorough analysis of the evidence on record and is a plausible one.

9. Decision of the Hon'ble High Court of Allahabad dated 20.01.2016 in the case of Murari Lal Harish Chand Jaiswal CEA No. 203/2012 [2016 (333) E.L.T. 385 (All.) + Order of HC]

9.1 Department has accepted the aforementioned order of the Hon'ble High Court where the Hon'ble High Court dismissed the departmental appeal holding that on the issue there is no substantial question of law involved.

9.2 The issue is about clandestine removal of tobacco products without maintaining the statutory records. Commissioner confirmed demand of Rs.4.96 crore with equal penalty and penalty on directors. On appeal, CESTAT set aside the order. Department's appeal was dismissed by the Hon'ble High Court as no substantial question of law arose for consideration.

10. (a) Decision of the Hon'ble High Court of Rajasthan in the matter of Barijoriwala's Rolling Mills Pvt. Ltd in DB CWP No. 2/2014

(b) Decision of the Hon'ble High Court of Rajasthan in the matter M/s M. M. Brothers in DB Excise (ST) Appeal No. 7555/2015 [2016-TIOL-3184-HC-RAJ-CX]

10.1 Department has accepted the aforementioned order of Hon'ble High Court where the Hon'ble High Court lowered the requirement of pre-deposit to 15 per cent of duty or penalty as the case may be, from 25 per cent as was ordered by the CESTAT as the Hon'ble High Court had pronounced same judgment in several other cases.

10.2 The CWP filed by the assessee challenged the CESTAT's direction to pre-deposit 50% of the duty confirmed in terms of second proviso to Sec 35F of CEA 1944. The Hon'ble High Court directed the assessee to deposit 15% of demand to restore the appeals before CESTAT in light of

the fact that Section 35 A of Central Excise Act, 1944 was amended by Finance Act 2014 stipulating payment of 7.5% and 10% of duty as pre-deposit for the first and subsequent appeal.

11. Decision of the Hon'ble High Court of Rajasthan dated 14.09.2016 in the matter of Dinesh Fragrance Civil Review Petition 133/2016 in CWP No.3243/2015

11.1 Department has accepted the aforementioned order of the Hon'ble High Court of Rajasthan where the Hon'ble High Court allowed the appeal of the assessee upholding the maximum speed of the machine as 700 pouch packing per minute and further directed the department to re determine the duty in accordance with the findings arrived at by the Hon'ble Court.

11.2 Review Petition was filed by the Department. The Hon'ble High Court dismissed the petition as no facts were overlooked while passing order dated 12.04.16. The issue related to production of Pan Masala Pouches with the help of pouch packing machine and paying duty as per Notification No.42/2007-CE dated 01.07.2008 till the issuance of amending Notification No.5/2015-CE & 06/2015-CE both dated 01.03.2015. Department was directed to re-determine the duty based on the packing speed of the machines. Writ Petition was allowed against the Assistant Commissioner's order determining the monthly duty liability.

12. Decision of the Hon'ble High Court of Punjab & Haryana dated 12.08.2016 in the case of Microtek Forgings CEA No. 32/2016 [2016-TIOL-1866-HC-P&H-CX].

12.1 Department has accepted the order of the Hon'ble High Court where the Hon'ble Court replying on the judgment of the Apex Court in the matters of 'Maruti Suzuki India Ltd. vs. CCE Delhi, 2014(307) ELT 625(SC) and Super Synotex (India) Ltd. vs. CCE Jaipur, 2014 (301) ELT 273 dismissed the departmental appeal.

12.2 In the case, CESTAT relying on Apex Court decision in the case of 'Maruti Suzuki India Ltd. vs. CCE Delhi, 2014(307) ELT 625(SC) and Super Synotex (India) Ltd. vs. CCE Jaipur, 2014 (301) ELT 273 had held that amount of sales tax concession retained by the respondent is required to be added in the assessable for levy of Central Excise Duty. However CESTAT held that extended period of limitation would not apply. Deciding the departmental appeal, High Court has held that CESTAT in its order has observed that under Circular dated 30.06.2000 CBEC had clarified that such amount retained by the assessee is not required to be added to the assessable value. This view was negated by Apex court in the above said orders. Since there was no clarity on the issue, the assessee cannot be said to be at fault, hence extended period would not be available to raise the demand.

13. Decision of the Hon'ble High Court of Bombay dated 03.11.2014 in WP No. 2920/2014 in the case of JCB India Ltd vs UOI & Ors and WP No. 9431/2014 in the case of Sandvik Asia Pvt. Ltd vs UOI.

13.1 Department has accepted the aforementioned order of the Hon'ble High Court where the Hon'ble Court disposed of the Writ Petitions by relying on its earlier decisions dated 01.09.2014 in case of M/s Alfa Laval (India) Ltd and M/s Sandvik Asia Pvt. Ltd.

13.2 The issue that was examined was whether prior to 22.11.2014, statutory provisions did not prevent the party to first claim the benefit of AIR Drawback and thereafter claim Brand Rate Drawback.

14. Decision of Hon'ble High Court of Gujarat dated 02.12.2014 in the department's Tax Appeal No. 1274/2014 in the case of M/s Fact Paper Mill Ltd, Morhi.

14.1 Department has accepted the order of the Hon'ble High Court of Gujarat dated 02.12.2014 in the department's Tax Appeal No. 1274/2014 in the case of M/s Fact Paper Mill Ltd, Morhi, where the Hon'ble High Court dismissed the Departmental Appeal holding that no question of law arose on the matter.

14.2 On the issue, the assessee was manufactures of Paper and Paper Board. Case was booked on allegations of clandestine removal. Demand was confirmed on basis of confessional statement. CESTAT allowed party's appeal observing that confessional statements had been retracted and the retraction was not dealt with by the adjudicating authority. Further, the installed capacity would not justify any production much in excess of declared production. Departmental went in Appeal before the Hon'ble High Court which held that no question of law arises in the case and therefore dismissed the appeal.

15. Order of Allahabad High Court dated 11.09.2014 passed in Central Excise Appeal No. 276/2006 in the case of Commissioner of Customs & Central Excise, Noida vs M/s Silver Oak Laboratories Pvt. & Ors

15.1 Department has accepted the order of the Hon'ble Allahabad High Court dated 11.09.2014 passed in Central Excise Appeal No. 276/2006 in the case of Commissioner of Customs & Central Excise, Noida vs M/s Silver Oak Laboratories Pvt. & Ors where the Hon'ble High Court dismissed the Departmental Appeal holding that the submission of the learned counsel of the department is erroneous and that rule 57E of the Central Excise rules, 1944 is not applicable in the instant case.

15.2 In the matter the appellant manufactures cosmetic preparations. The Settlement Commission while deciding the application filed under section 127 B of the Customs Act, 1962 ordered for payment of differential CVD and also directed that DRI shall issue a certificate

indicating payment of such differential amount basing on which the appellant could avail CENVAT credit thereof. The legality of CENVAT credit availed, based on the certificate issued by DRI, was questioned by Noida Commissionerate. CESTAT allowed the credit. HC dismissed the Department's appeal observing that the certificate issued by DRI in consequence of order of Settlement Commission is perfectly legal and held that Rule 57E of CENVAT Credit Rule was not applicable in the instant Case.

16. Decision of Allahabad High Court dated 13.01.2014 in Central Excise Appeal Defective No. 1/2015 in the case of Commissioner of Central Excise, Meerut vs M/s Paramount Pesticides Ltd.

16.1 Department has accepted the decision of the Hon'ble Allahabad High Court dated 13.01.2014 in Central Excise Appeal Defective No. 1/2015 in the case of Commissioner of Central Excise, Meerut vs M/s Paramount Pesticides Ltd., where the Hon'ble High Court held that they did not find any reason to interfere in the impugned order dated 06.03.2014 passed by the Appellate Tribunal. It further held that the appeal fails and it is dismissed with the observation that the Appellate Tribunal will endeavour to decide the matter finally after hearing all the parties concerned within four months from the date of production of certified copy of this order.

16.2 In the case assessee is engaged in manufacture of pesticides. The issue involved was whether after the insertion of third proviso in Section 35C(2A) of Central Excise Act, 1944 w.e.f 10.5.2013, the Tribunal was correct in granting stay beyond specified maximum time limit prescribed in the section. The Central Excise duty was not deposited by the assessee within the prescribed time limit as per Rule 8(3A) of the Central Excise Rule, 2002 the remaining duty should have been paid within the extended one month time limit which the party failed to do. By order in original dated 17.5.2012 demand was confirmed, against which the party filed an appeal in the Tribunal. Tribunal granted stay and also extended it until further orders. Hon'ble HC dismissed the departmental appeal observing, that in the matter there was no reason to interfere.

17. Order of the Hon'ble Bombay High Court order dated 11.03.2015 in CEA No. 65/2005 in the case of Commissioner of Central Excise, Thane-II vs Bright Brothers.

17.1 Department has accepted the order of the Hon'ble Bombay High Court order dated 11.03.2015 in CEA No. 65/2005 in the case of Commissioner of Central Excise, Thane-II vs Bright Brothers where the Hon'ble High Court has upheld the order of Tribunal holding that penalty under section 11AC could not have been imposed as necessary ingredients for section 11 AC are missing and also adjudication order fails to give a categorical finding in reference to the ingredients of section 11AC.

17.2 In the matter assessee is manufacturer of Plastic moulded components of motor vehicle and allegedly undervalued the goods. Demand was confirmed and penalty imposed under section

11AC observing that there were two conflicting orders of the Tribunal and the matter was resolved by a Larger Bench in case of Mutual Industries Ltd. v. CCE [2000 (117) E.L.T. 578 (Tri.)] where it was held that so long as the mould is being used in the manufacture of the finished product it contributes certain value to be added to the value of finished products. This additional value must necessarily go in assessing the duty payable on the finished product under Excise Law. On appeal by the assessee, Tribunal set aside the penalty imposed under section 11AC and remanded the case for re-quantification of duty. Department contested setting aside of penalty. HC observed that the penalty provisions may be termed as mandatory, but the imposition itself has to precede the satisfaction in terms of Section 11AC. Once there was a scope for entertaining a doubt, and there is no wilful mis-statement or suppression of facts, then, penalty is not called for as the Tribunal did not find anything on record, barring a statement, to conclude that this was a case of suppression.

18. Decision of Hon'ble High Court of Gujarat's order dated 09.12.2014 in the Tax Appeal No. 1230/2014 in the case of Commissioner of Central Excise and Customs, Rajkot vs M/s Major Cement Pvt. Ltd.

18.1 Department has accepted the decision of the Hon'ble High Court of Gujarat's order dated 09.12.2014 in the Tax Appeal No. 1230/2014 in the case of Commissioner of Central Excise and Customs, Rajkot vs M/s Major Cement Pvt Ltd where the Hon'ble High Court dismissed the tax appeals of the department and upheld the findings of the tribunal on the grounds that the test report dated 07.05.2008 were unreliable and the statements of the persons relied upon by the department should have been allowed to be cross examined.

18.2 In the case SCN issued on wrong availment of CENVAT Credit, without receipt of 'pet coke', on basis of fabricated invoices. SCN indicated drawal of samples on 26.04.08 but this reference was dropped in the corrigendum issued to the SCN. Department relied on report of samples drawn on 03.05.08 from a private lab to suggest that the goods did not confirm to the specification of pet coke. Tribunal held that Samples were not correctly drawn and thus the test report was not reliable. Further the cross examination of the persons whose statements were relied were not allowed by the Department. High Court accepted CESTAT judgement and dismissed departmental appeal.

19. Decision of Delhi High Court dated 28.01.2015 passed in CEAC No. 6/2015 in the case of Commissioner of Central Excise, Delhi-1 vs Kuber Tobacco Products (P) Ltd & Ors

19.1 Department has accepted the order of the Hon'ble Delhi High Court dated 28.01.2015 passed in CEAC No. 6/2015 in the case of Commissioner of Central Excise, Delhi-1 vs Kuber Tobacco Products (P) Ltd & Ors where the Hon'ble High Court held that the Department's appeal had no question of law involved and was meritless and so being infructuous was dismissed.

19.2 Issue relates to clandestine manufacture and clearance of tobacco products. Commissioner (Appeal) allowed assessee's appeal observing that revenue had failed to establish any nexus between the ownership of the brand and the manufacturing unit. CESTAT upheld the appellate order observing that certain persons have surfaced during investigation and have claimed the ownership of the said goods. Departmental appeal was dismissed by the High court.

20. Decision of the Delhi High Court dated 25.03.2015 passed in CEAC No. 13/2015 in the case of M/s Dalmia Bharat Sugar and Industries Ltd. vs Commissioner of Central Excise & Service Tax, LTU, New Delhi

20.1 Department has accepted the aforementioned order of the Hon'ble High Court where the Hon'ble High Court allowed the appeal of the assessee in CEAC No. 13/2015 by setting aside the order of the CESTAT and directing the CESTAT to decide the case on merits. In the matter, CESTAT vide stay order No. 50233/2015-EX (DB) dated 20.01.2015 directed the assessee to deposit an amount of Rs 5 crore for compliance with the provision of Section 35F within a period of 8 weeks.

20.2 Commissioner confirmed the demand for non-maintenance of separate accounts of input services used in or in relation to manufacture of dutiable and exempted goods. CESTAT directed the assessee to pre-deposit within 8 weeks. Assessee filed appeal in High Court which was set aside with direction to CESTAT to decide the case on merits.

21. Decision of Hon'ble High Court of Gujarat dated 26.02.2015 in Tax Appeal No. 761 of 2007 in the matter of M/s Bharat Bhai Ajitrai Doshi Director of M/s Magalam Industries Ltd vs CCE, Bharuch

21.1 Department has accepted the aforementioned order of the Hon'ble Court where it was held that the tax appeal is not maintainable and both the CESTAT and the Hon'ble High Court set aside the confiscation under section 111(p) of the Customs Act, 1962 for the reason that notification No. 205/84 was amended declaring "synthetic yarn" as notified goods under section 11B of Chapter IV A of the Customs Act, 1962 vide Notification No. 5/93-Cus (NS) dated 15.1.1993.

21.2 In the case, POY was purchased through Advance intermediate transferable licence under the cover of various DEEC books and bills of entry and the said yarn was allegedly sold in the open market without fulfilling the export obligations. CESTAT opined that confiscation under section 111(p) of the Customs Act, 1962 cannot be upheld since notification no. 205/84 was amended declaring "synthetic yarn" as notified goods under Section 11 (B) of Chapter IVA of the Act ibid vide Notification no. 5/93-Cus (NS) dated 15.01.1993. Hence penalty under Section 112 of the Customs Act, 1962 as imposed on the appellant cannot be upheld as per the decision in the case of S.S. Gupta vs. CC [2001 (132)ELT.441 (Tri.Del)] and accordingly allowed the appeal filed by the party. The Hon'ble High Court of Gujarat in the matter dismissed the appeal of the department as not maintainable.

22. Decision of Bombay High Court dated 30.03.2015 in the case of M/s Kaushal Silk Mills Pvt. Ltd.

22.1 Department has accepted the order of the Hon'ble Bombay High Court dated 30.03.2015 in the case of M/s Kaushal Silk Mills Pvt. Ltd where the Hon'ble High Court held that since in the matter no substantial question of law was involved so no interference in the order of the CESTAT was warranted.

22.2 In the case the price of the grey fabrics were inflated by supplying the bills of various assesseees and Grey fabric suppliers who were found to be fake or non-existent. This inflated grey price resulted in availment of excess deemed credit by the processor who in turn passed on the undue benefit to the exporters. In appeal filed by the party, CESTAT held that the processing units did not have the knowledge of the over invoicing of the grey fabrics and the allegation of suppression against them is not sustainable and the extended period of limitation cannot be invoked. Hon'ble High court, deciding the departmental appeal, held that the view taken by the learned Tribunal is neither impossible nor perverse. Since in the matter no substantial question of law arose so the appeal was dismissed.

23. Decision of the Hon'ble High Court of Gujarat dated 23.03.2015 in Tax Appeal No. 816 of 2008 in the matter of M/s Videocon Industries Ltd. Videocon House, Chavaj, Bharuch

23.1 Department has accepted the order of the Hon'ble High Court of Gujarat in Tax Appeal No. 816 of 2008 in the matter of M/s Videocon Industries Ltd. Videocon House, Chavaj, Bharuch where the Hon'ble High Court rejected tax appeal No. 816/2008 and thereby confirmed CESTAT order dated 23.10.2007.

23.2 The issue involved was remission of duty on destruction of final product and credit taken on inputs used in manufacture of such final product. Hon'ble High Court dismissed the departmental appeal relying on its earlier decision in CCE Ahmedabad-II vs Intas Pharmaceuticals Limited [2013(289) ELT 256 (Guj)]. The Hon'ble Court held that remission application was filed on 09.05.2000, whereas Rule 3(5C) came into force w.e.f 7.9.2007.

24. Decision of the Hon'ble High Court of Rajasthan, Jaipur dated 26.02.2015 in the matter of M/s Shankar Products, behind factory No. 667, Road No. 9 (F) (2), VKI Area, Jaipur.

24.1 Department has accepted the order of the Hon'ble High Court of Rajasthan, Jaipur in the matter of M/s Shankar Products, behind factory No. 667, Road No. 9 (F) (2), VKI Area, Jaipur where the Hon'ble High Court dismissed the appeal of the department and upheld the decision of CESTAT where the CESTAT held that where department had knowledge and had issued an earlier notice on the similar ground, it cannot be said that there was any suppression.

24.2 Department issued a SCN dated 28.08.08 demanding duty for the period April 2004 to June 2008 invoking extended period on ground that the process undertaken by the appellant amounts to manufacture and they had suppressed the relevant facts from the department. On the basis of the same facts another SCN for subsequent period from July 2008 to 4.12.2008 was issued on 6.7.2010 again invoking the extended period, which in view of the Apex Court's judgement in the case of Nizam Sugar Factory (supra) is not permissible. High Court, Rajasthan dismissed the departmental appeal.

25. Decision of the Delhi High Court dated 13.04.2015 in the matter of CEAC No. 2/2015 in the matter of Commissioner of Central Excise, Delhi-I vs M/s Ambeecee Consolidated Enterprises (India) Pvt Ltd & Ors

25.1 Department has accepted the order of the Delhi High Court dated 13.04.2015 in the matter of CEAC No. 2/2015 in the matter of Commissioner of Central Excise, Delhi-I vs M/s Ambeecee Consolidated Enterprises (India) Pvt Ltd & Ors where the Hon'ble High Court held that in the matter no substantial question of law was involved.

25.2 Assessee was manufacturer of SS Ingots. Unaccounted stock of finished goods was found in the factory. SCN was issued and demand was confirmed. In assessee's appeal CESTAT followed its earlier decision in case of D.P. Industries, who used to convert these clandestinely removed SS Ingots into flats and also cleared such flats clandestinely. The evidences in case of assessee and DP Industries were same. Hon'ble High Court dismissed the departmental appeal observing that Revenue's grievance concerns only factual findings based upon appreciation of evidence. It is not disputed that with respect to clandestine removal and the liability sought to be imposed upon the assessee, the evidence between the two units i.e. the assessee and D.P. Industries was common.

26. Decision of the Hon'ble High Court of Gujarat dated 20.07.2015 in Tax Appeal No. 381 of 2015 in the matter of CCE, Rajkot vs M/s Tata Chemicals Ltd., Jamnagar

26.1 Department has accepted the order of the Hon'ble High Court of Gujarat in Tax Appeal No. 381 of 2015 in the matter of CCE, Rajkot vs M/s Tata Chemicals Ltd., Jamnagar where the Hon'ble High Court dismissed the departmental appeal relying on the decision of the Hon'ble Supreme Court in the case of Ranbaxy Pharmaceuticals vs Union of India, (2011) 10 SCC 292.

26.2 In the matter, refund claims of the assessee were rejected by the AC on the grounds that D-3 intimations were not proper. CEGAT in its order dated 13.08.2003 ordered that the D-3 intimations were proper and provisions of Rule 173-L were met, hence there was no deficiency on the part of the assessee. Order of CESTAT was accepted by the department and refund was granted. Assessee claimed interest of Rs. 74 Lakhs from date of filing of refund claim. Tribunal relied upon decision of Apex Court in case of Ranbaxy Pharmaceuticals Limited v. Union of India [2011-TIOL-105-SC-CX] where it has been held that the law to pay the interest

commences from the date of expiry of three months from the date of receipt of application and not from the decision. Departmental appeal was therefore dismissed.

27. Decision of the Hon'ble High Court dated 03.09.2014 in the matter of M/s Bajrang Castings Pvt. Ltd and five others in Tax Appeal No. 824 of 2014

27.1 Department has accepted the order of the Hon'ble High Court dated 03.09.2014 in the matter of M/s Bajrang Castings Pvt. Ltd and five others in Tax Appeal No. 824 of 2014 where the Hon'ble High Court held that in the matter that since there was no question of law involved, interference by the Court in the decision of the CESTAT was not warranted.

27.2 In the matter, allegation was availment of CENVAT credit on invoices without actually receiving the goods. Also that non-CENVATable bazar scrap was used in manufacture of MS Ingots. Such irregular credit was used for payment of licit clearances to avoid payment of duty from PLA. CESTAT ordered that demands were based upon the statements of transporters or drivers of the trucks which were not corroborated by any evidence. No investigation was conducted at consignors' place or at the place where the said goods are alleged to have been supplied. In the absence of cogent evidence the demand is not sustainable. Deciding departmental appeal, High Court observed that there is no perversity in the findings recorded by CESTAT and no substantial question of law arise.

28. Decision of the Hon'ble High Court of Allahabad in CEA No. 181 of 2015 in the matter of CCE Kanpur vs M/s Rajat Industries.

28.1 Department has accepted the order of the Hon'ble High Court of Allahabad in CEA No. 181 of 2015 in the matter of CCE Kanpur vs M/s Rajat Industries where the Hon'ble High Court dismissed the appeal of the department holding that no substantial question of law was involved.

28.2 In the matter, party was working under Pan Masala packing machines (capacity determination and collection of duty rules, 2008). It filed an abatement claim in terms of rule 10 of PMPM Rules for the period when pouch packing machines remained suspended. Claim sanctioned. Department contended that as per rule 10 of PMPM rules and intimation of closure of production is mandatory to be filed at least 3 working days prior to closure of such production, the condition was not met in this case. High Court observed that department after due intimation had reached the premises and had sealed the unit. No substantial question involved, therefore Departmental appeal was dismissed.

29. Decision of Hon'ble High Court of Allahabad dated 25.08.2015 in Central Excise (Defective) Appeal No. 01/2005 in the case of CCE Noida vs M/s Matsushita Television and Audio India Ltd., Noida

29.1 Department has accepted the order of Hon'ble High Court of Allahabad dated 25.08.2015 in Central Excise (Defective) Appeal No. 01/2005 in the case of CCE Noida vs M/s Matsushita Television and Audio India Ltd., Noida where the Hon'ble High Court in the matter involving taking CENVAT credit on photocopy of Bills of Entry the Hon'ble High Court held that the inputs were received in the factory under the cover of a triplicate copy of bill of entry which was subsequently misplaced so upheld the assessee's contention.

29.2 In the case, assessee received duty paid goods under triplicate copy of Bill of Entry, which was misplaced. The MODVAT credit was availed on the basis of exchange control copy bill of entry. Department contended as triplicate copy of bill of entry as required under Clause (c) of Sub Rule (3) of Rule 57G could not be subsequently produced by the assessee for defacement, credit was not admissible. Tribunal allowed the credit holding that the said document was verifiable. In departmental appeal HC upheld CESTAT's decision.

30. Decision of the Hon'ble High Court of Gujarat in Tax Appeal No. 363 of 2015 in the matter of CCE, Rajkot vs M/s Reliance Ports & Terminals Ltd., Jamnagar.

30.1 Department has accepted the order of the Hon'ble High Court of Gujarat in Tax Appeal No. 363 of 2015 in the matter of CCE, Rajkot vs M/s Reliance Ports & Terminals Ltd., Jamnagar where the Hon'ble High Court dismissed the departmental appeal holding that since the questions proposed by the appellant were not subject matter of the show cause notice and also do not arise out of the impugned order of passed by the Tribunal.

30.2 In the matter, CERA pointed irregular availment of CENVAT Credit of service tax paid under section 66A as recipient of "Consulting Engineer" and "Banking Services", etc, which allegedly were not "input services". Credit was also alleged to have been availed on capital goods before their actual installation. Commissioner dropped the demand. Department filed appeal before CESTAT and later the HC. It was held by appellate authority that SCN did put the assessee to show cause as to whether the services are "input services" or whether the capital goods were used for providing "output services". Appeal was dismissed.

31 Decision of the Hon'ble High Court of Allahabad dated 11.08.2015 (in Central Excise Appeal No. 662/2012) in the case of Commissioner of Central Excise, Noida vs M/s Damini Printers Pvt. Ltd., Noida.

31.1 Department has accepted the order of the Hon'ble High Court of Allahabad dated 11.08.2015 dated 11.08.2015 (in Central Excise Appeal No. 662/2012) in the case of

Commissioner of Central Excise, Noida vs M/s Damini Printers Pvt. Ltd., Noida where the Hon'ble High Court dismissed the department's appeal on monetary limits.

31.2 In the case, Hon'ble High Court of Allahabad dismissed Department's appeal on the grounds monetary limitations for appeal without expressing any opinion on merits. On this issue SC in the case of Commissioner IT vs Suman Dhamija – 2015(325) ELT 11 (SC) held that the monetary policy is not retrospective. However High Courts of Karnataka and Gujarat have also distinguished the SC decision to the effect that the same applies to IT matters where the policy is with specific to the effect that the same shall not govern the cases filed before the date of said policy – 2014(306)ELT153 (Guj), 2011(268) ELT 344 (Kar).

32. Decision of the Hon'ble High Court of Gujarat in the case of M/s Vishnu Pouch Packing Pvt. Ltd in Special Civil Application No. 12154 of 2015

32.1 Department has accepted the order of the Hon'ble High Court of Gujarat in the case of M/s Vishnu Pouch Packing Pvt. Ltd in Special Civil Application No. 12154 of 2015 where the Hon'ble High Court allowed the Special Civil Application filed by VPPL No. 12154/2015 praying to issue a writ of mandamus or order quashing and setting aside the decisions and directions contained in communication dated 30.06.2015 issued by DGCEI to various units of VPPL and fixed the production capacity of PPMs installed and operated at factory premises for relevant period under rule 5 of PMPM rules.

32.2 In the case, recovery of differential duty (Production based duty on Pan Masala) vide letters and not vide proper SCN invoking recovery under section 11A of CE Act was examined and was held to be a breach of principles of natural justice. Party's Special Civil Application allowed to the effect that there has been violation of principles of natural justice, quashed the said letters and also allowed the department to initiate action under PMPM Rules and section 11A of the CE Act.

33. Decision of Hon'ble High Court of Allahabad dated 13.10.2015 in Central Excise Appeals No. 251-256 of 2015 in cases (a) CCE, Noida vs M/s Dharampal Satyapal Ltd., (b) CCE, Noida vs Shri Chiranjiv Roy Choudhory., (c) CCE vs Rajiv Kumar (d) CCE, Noida vs Sh. Nareshh Dhir € CCE, Noida vs Sh. J.D. Desai and (f) CCE, Noida vs Sh. Amit Singhai.

33.1 Department has accepted the aforementioned order of the Hon'ble High Court of Allahabad which held that in the matter no substantial question of law was involved.

33.2 Court dismissed Department's appeal on the grounds that Tribunal has found that as per the technical literature the pouch packing machine was a duplex machine having single track with innovation that on the same line, at a time, two pouches are cut and filled resulting in higher production and that the duty is per pouch packing machine per month and not on actual number of pouches produced.

34. Decision of the Hon'ble High Court of Gujarat in the case of M/s Shree Rama Multi-Tech Limited in Misc. Civil Application (OJ) No. 199/2012 in Tax Appeal No. 896/2011.

34.1 Department has accepted the order of the Hon'ble High Court of Gujarat in the case of M/s Shree Rama Multi-Tech Limited in Misc. Civil Application (OJ) No. 199/2012 in Tax Appeal No. 896/2011 where the Hon'ble High Court held *inter alia* that there was no statutory provision permitting the revenue authorities to direct reversal of credit already taken, the question of imposing any condition for reversal while granting remission of duty in terms of rule 21 of the Central Excise rules would certainly not arise.

34.2 Issue was whether reversal of CENVAT Credit is required on the inputs used in manufacturing the final product when such final product was destroyed and remission of duty was also allowed. Court in its order dt 29.08.12 held that there was no scope of reversal of credit taken prior to September 7, 2007 [date of introduction of sub-rule (5C) of rule 3 of CCR] if the finished product becomes unfit for human consumption, unless any condition has been imposed for remission of duty in terms of Rule 21 making it clear that the credit already taken is to be reversed. *Italicized/underlined* portion of earlier judgement dt 29.08.12 deleted in review petition filed by the department.

35. Decision of Hon'ble Karnataka High Court in CEA No. 33/2014 in the case of Commissioner of Service Tax, Bangalore vs M/s Vodafone Essar South Ltd.

35.1 Department has accepted the order of the Hon'ble Karnataka High Court in CEA No. 33/2014 in the case of Commissioner of Service Tax, Bangalore vs M/s Vodafone Essar South Ltd where the Hon'ble High Court dismissed the appeal of the Department as not maintainable after observing that the question is to be decided by the Apex Court in an appeal to be filed under Section 35 L (b) of the Act and not by it under Section 35G of the Act.

35.2 In the matter, party filed refund claim for the Service tax paid on service provided to a foreign telecom operator to enable the subscribers of the said foreign telecom operator to avail international inbound roaming facility on the basis of Not. No. 36/2007 -ST dated 15.06.2007. The said refund claim was rejected on grounds that ST was paid before the notification coming into being, besides on issues on merits. High court dismissed departmental appeal on grounds of jurisdiction as issue involved interpretation of notification and that appeal shall lie before the Apex court.

36. Decision of Hon'ble High Court of Madras in CMA No. 4050/2008 in the case filed by the Department against CESTAT Final order No. 479/2008 dated 14.05.2008 in the case of M/s Sakhti Sugars Ltd., Appakudal, Bhavani Taluk & Order of the Hon'ble High Court of Madras in CMA No. 1570/2009 in the case filed by the Department against CESTAT Final order No. 802/2007 dated 26.06.2007 in the case of M/s Sakhti Sugars Ltd., Appakudal, Bhavani Taluk.

36.1 Department has accepted the aforementioned order of the Hon'ble High Court of Madras where the Hon'ble Court disposed the appeal of the department as not maintainable after observing that the question is to be decided by the Apex Court in an appeal to be filed under section 35 L (b) of the Act and not by it under Section 35 G of the Act and thus disposed the case with a liberty to the Department to move before the Supreme Court.

36.2 In the matter, allegation was non-payment of Central Excise duty on molasses, which was captively consumed in the factory, by wrongly claiming exemption under Notification No. 67/95-CE dated 16.03.95 as the molasses was used to manufacture Neutral spirit/ rectified spirit which is non-excisable. Exemption under said Notification is available where final products are dutiable. Hon'ble High Court held that as the issue pertains to rate of duty payable, but for the notification, the appeal should be made to the Hon'ble Supreme Court. Departmental Appeal was therefore dismissed.

37. Decision of the Hon'ble High Court of Madras dated 21.11.2014 in CMA No. 2424 of 2007 in case of M/s Vadapalani Press.

37.1 Department has accepted the aforementioned order of the Hon'ble High Court of Madras where the Hon'ble High Court pronounced that the issue under consideration is what will be the rate of duty payable, but for the notification in question and held that this appeal is not maintainable under section 35 G of Central Excise Act and for the foregoing reasons did not go into the merits of the question of law raised for consideration.

37.2 The issue involved allegation of wrong availment of SSI exemption under Notification No. 8/2003-CE dated 01.03.2003 against the clearances made under the guise of FORM H sales. Hon'ble High Court dismissed the departmental appeal since issue involved rate of duty and appeal should at the Hon'ble Supreme Court.

38. Decision of the Hon'ble High Court of Madras dated 19.12. 2014 in CMA No. 68/2009 in the case Commissioner of Central Excise vs M/s HCL Peripherals

38.1 Department has accepted the aforementioned order of the Hon'ble High Court of Madras where the Hon'ble High Court held that the issue pertains to rate of duty that is payable by the respondent (HCLP) but for the notification in question relying on the following judgments, namely,

- (i) Navin Chemicals Manufacturing and Trading Co. Ltd vs Collector of Customs, 1993 (68) ELT3 (SC).
- (ii) Commissioner of Central Excise vs Vadapalani Press (2014-TIOL-2208-HC-MAD-CX)

held that the present appeal is not maintainable and the department is at liberty to file appeal before the Hon'ble Supreme Court.

38.2 In the matter, allegation of classifying the Kiosks under CTH 84710000 of CETA, 1985 and availing exemption benefit as applicable to computers was examined. The dispute is whether Kiosks can be classified under CTH 84710000 assigned for Automatic Data Processing Machine and units thereof and whether Kiosks is eligible for full exemption of duty under Notification No. 23/2004 dated 09.07.2004 or not. As issue pertains to rate of duty or valuation, Hon'ble High Court dismissed departmental appeal with liberty to move the Hon'ble Supreme Court.

39. Decision of the Hon'ble High Court of Madras dated 28.08.2014 in CMA No. 463/2007 filed by M/s Emkay Alloys (P) Ltd., against the Final order No. 1425/2005, dated 07.10.2005 of the Hon'ble CESTAT, Chennai

39.1 Department has accepted the aforementioned order of the Hon'ble High Court of Madras where the Hon'ble High Court *inter alia* held that the appeal is partly allowed by way of remand in terms of the order of the Tribunal dated 16.04.2007 made in Final order No. 410/07 in Appeal No. E/158/2007.

39.2 Issue relates to manufacture of Ingots and Billets of non-alloy steel, for which the party was supposed to pay duty under Compounded Levy Scheme as said goods were notified under that scheme w.e.f 01.08.1997 and excise duty was to be discharged on the basis of Annual Capacity of Production. Two ACP Orders (dated 16.09.1997 and 09.07.1998) were issued fixing the duty payable. Party did not discharge the liability and therefore 6 SCNs were issued for different periods. One SCN was based on ACP Order dated 04.05.1998 and rest five were based on ACP Orders issued on 09.07.1998. Commissioner adjudicated all six cases confirming the duty. On appeal CESTAT upheld the demand.

39.3 Later ACP order dated 16.09.1997 was challenged by the assessee and CESTAT in its final order allowed the appeal by way of remand. Against the CESTAT Order wherein the demand by the department was found to be sustainable in law, appeal was filed in Madras HC. The HC pronounced that the consequent to order passed by the Tribunal, SCN dated 04.05.1998 based on ACP order dated 16.09.1997 will have to be reworked and SCN is required to be issued only after appropriate ACP order is passed.

40. Decision of the Hon'ble High Court of Karnataka dated 01.04.2015 at Bangalore in CEA No. 58/2014 and CEA No. 03-05/2015 in the case filed by the Department against M/s BEML & Others

40.1 Department has accepted the aforementioned order of the Hon'ble High Court of Karnataka holding that in the matter there is no substantial question of law dismissed the departmental appeal.

40.2 Issue involved was central excise duty liability on goods falling under Chapter 84 w.e.f. 29.04.11 as levied in Finance Act 2011. Assessee paid duty from 01.04.2011, but did not pay duty for the period from 29.04.2010 to 31.03.2011. SCN issued by revenue under extended period which was set aside by the Tribunal since no suppression was involved. Hon'ble High Court dismissed the Departmental appeal as no question of law was involved.

41. Decision of the Hon'ble High Court of Hyderabad dated 17.06.2015 in CEA No. 41/2015 in the case of M/s Sri. Chaitanya Educational Committee, Poranki, Vijaywada.

41.1 Department has accepted the aforementioned order of the Hon'ble High Court of Hyderabad where the Hon'ble High Court dismissed the departmental appeal and confirmed the CESTAT order.

41.2 Issue involved was non-payment of service tax on Taxable Service, namely, Commercial Coaching and Training Services. Demand of Rs. 339736617 was confirmed for period 2011-12. Party filed appeal and CESTAT disposed stay application directing for pre-deposit Rs 6 crore. On same issue party was issued another SCN and Apex court directed the party to deposit one third of the confirmed demand excluding the cess and penalty. CESTAT direction for Rs 6 Cr. is just 20% of the duty. Hon'ble High Court held that view taken by Tribunal is a possible view. Order of pre-deposit is made exercising the discretionary powers and same cannot have any precedent value. Departmental appeal was therefore dismissed.

42. Decision of the Hon'ble High Court of Madras dated 04.06.2015 in CMA No. 3420 & 3421 of 2008 in the case of M/s Dalmia Cements Ltd.

42.1 Department has accepted the aforementioned order of the Hon'ble High Court of Madras where the Hon'ble High Court relying upon the judgment of High Court of Allahabad in the case of Hero Motors of identical nature stated that the Tribunal's decision does not require any interference.

42.2 In the matter, assessee availed credit on inputs and capital goods used in creation of power plant. The plant was leased to another company. Department was of the view that such goods were deemed to have been removed and party was liable to pay the amount of credit

availed in terms of Rule 3(5) of CENVAT Credit Rules 2004. Also, after leasing out the power plant from 15.03.2005 to 15.03.2006, DCL wrongly availed CENVAT credit as these inputs/ Capital goods/input services were not used in the factory of DCL for manufacture of dutiable final product i.e. Cement. Hon'ble High Court of Allahabad decided against the department as the power plant was leased out and not "sold".

43. Decision of the High Court of Hyderabad dated 01.07.2017 for the state of Telangana and the State of Andhra Pradesh in CEA No. 27 of 2004 in the case of M/s Hetero Drugs Ltd., Bonthapally village, Medak District.

43.1 Department has accepted the aforementioned order of the Hon'ble High Court of Hyderabad where the Hon'ble High Court held that in the absence of any perversity of fact and based on the submissions made by the learned standing counsel for the Department the impugned Final Order can't be interfered with. It also held that in the present appeal there was no challenge with respect to the aspect of the limitation and that the appeal is devoid of merits.

43.2 In the matter, assessee imported r/m to manufacture pharmaceutical drugs engaging a CHA. CHA utilised demand drafts issued by different parties to discharge customs duty liability while clearing the goods from the customs bonded warehouse. Party took credit of CVD. The demand of credit availed on basis of forged/fake documents was confirmed. CESTAT set aside the Commissioner's OIO stating that Hetero Drugs is not responsible for the alleged acts of their CHA and company has availed the credit of CVD which it tendered by the demand draft. CESTAT also led that there was no knowledge on the part of Hetero Drugs Ltd that the Bill Of Entry being sent to them was fabricated. Department's appeal dismissed by High Court.

44. Decision of the Hon'ble High Court of Odisha dated 27.07.2015 in WP (C) No. 4494/2010 filed by M/s Scan Sponge Iron Ltd.

44.1 Department has accepted the aforementioned order of the Hon'ble High Court of Odisha where the Hon'ble High Court disposed of the instant writ petition relying on decision of the same court passed in WP (C) No.29680 of 2011 dated 23.04.2013 in case of M/s Vasundhara Metalliks Pvt.Ltd. which was disposed of in terms of the judgment of the Hon'ble High Court of Odisha dated 13.04.2011 in WP (C) No. 16132 of 2010 in case of M/s Aryan Ispat Ltd., wherein Notification No. 32/2006-CE (NT) dated 30.12.2006 was quashed by the Hon'ble High Court of Odisha and declared Rule 12CC of Central Excise Rules, 2002 and Rule 12AA of CENVAT Credit Rules, 2004 as ultra vires to Central Excise Act, 1944 and the Constitution of India and also held that the Notification No. 32/2006 issued under the said rule is not sustainable under law.

44.2 The issue involved was that the assessee, namely, M/s Scan Sponge Iron Ltd was engaged in clandestine removal of finished goods from two factory units. The same was detected during a search. The party filed writ petition in the Hon'ble High Court against the confirmed demand. Hon'ble High Court, based on previous judgement in similar case quashed Notification

No 32/2006-CE dated 30.12.2006 and declared rule 12 CC of Central Excise Rules 2002 and Rule 12 A of CENVAT Credit Rules, 2004 as ultra vires to the Central Excise Act 1944.

45. Decision of the Hon'ble High Court of Madras dated 11.06.2015 in CMA No. 1182/2008 in the case of Commissioner of Central Excise vs M/s Integral Coach Factory

45.1 Department has accepted the aforementioned order of the Hon'ble High Court which upheld the CESTAT's order No. 1106/2007 dated 03.09.2007 and dismissed the Departmental Appeal.

45.2 In the matter, assessee manufactured steel freight containers and passenger coaches for Indian Railways. They sold ferrous and non-ferrous scrap arising out of manufacture without payment of Excise Duty. Although, CESTAT and Hon'ble High Court passed judgements in favour of the party stating that under Notification No. 89/95-CE dated 18.05.1995 scrap arising in the course of manufacture of exempted goods is exempted from the payment of excise duty, the department contested the claim on the grounds that M/s ICF had cleared the components of coaches and containers to private entities on payment of excise duty, which violated two of the three conditions laid down by Notification No. 62/95 CE dated 16.03.1995. Hon'ble High Court approved the finding of Tribunal that so long as the goods manufactured are exempted goods, waste parings, scrap arising in the course of the manufacture of exempted goods would be entitled for exemption as per Notification No. 89 /95-CE dated 18.5.1995.

46. Decision of the Hon'ble High Court of Hyderabad for the State of Telangana and State of Andhra Pradesh dated 08.10.2015 in CEA No. 107/2015 in the case of M/s Bharat Dynamics Ltd [2016-TIOL-33-HC-AP-CX]

46.1 Department has accepted the aforementioned order of the Hon'ble High Court of Andhra Pradesh where the Hon'ble Court dismissed the CEA filed by the Department reiterating and confirming the views expressed by the Tribunal.

46.2 In the matter, allegation was that party took CENVAT credit on inputs used for manufacturing exempted goods in violation of Rule 6 (1) of CENVAT Credit Rules, 2004 and did not pay the interest at the time of reversal of the said credit. On party's appeal CESTAT held that in March, 2010, party asked the department to clarify if clearance of goods to M/s.B.E.L. is exempted. Pending clarification they took CENVAT credit during Sep'10 to Mar'11 since some of the job workers did not return all the inputs within 180 days till Sep'10 and the party had to reverse the credit. To reverse the credit, they had to take credit. When there was no clarification received from the department till March, 2011, the assessee had no option but to clear two consignments in March, 2011 on payment of excise duty of Rs.90, 94, 851 by utilizing the CENVAT Credit. On getting the clarification from TRU, CBEC in April, 2011, the appellant reversed the entire amount of CENVAT credit. In the circumstances, CESTAT held that it cannot be said that the credit had been taken by the appellant wrongly. When credit is not taken

wrongly, the question of payment of interest does not arise in terms of provisions of Rule 14 of CENVAT Credit Rules, 2004. Upholding CESTAT order, Hon'ble High Court held that departmental Appeal is devoid of merits and therefore dismissed it.

4. The aforementioned orders of the various High Courts have been accepted by the Board. It is requested that cases pending in your jurisdictions pertaining to the questions of law or identical case on facts decided in the said orders may kindly be decided expeditiously.

5. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

Shankar Prasad Sarma
Under Secretary to the Government of India