Appendix – B

Customs case law summary

TAXABLE EVENT IN CASE OF IMPORT OF GOODS:

CASE NAME	ISSUE	DECISION
Garden Silk Mills Case (SC)	What is the taxable event in case of import?	Import commences as soon as goods cross territorial waters but it is completed when it crosses customs barriers and bill of entry for home consumption is filed
	If there is a reduction in price during transit, which price is relevant for valuation?	As import is complete only when goods become part of mass of goods in India, the price prevailing at the time of importation should be considered i.e., the reduced price.
Kiran Spinning Mills Case (SC)	In case of warehoused goods, when the customs barriers are crossed?	When they are taken out of customs and brought to mass of goods in India. Logically, date of filing ex-bond bill of entry for home consumption.

RELEVANT DATE FOR DETERMINATION OF RATE OF DUTY:

CASE NAME	ISSUE	DECISION
Bharat Surfacants Pvt. Ltd. Case (SC)	What is considered as the date of arrival if the ship first enters but leaves due to non availability of space?	"Date of arrival" is the date of final arrival. If ship enters territorial waters and then leaves due to non availability of space, the date on which it finally arrives is taken as the date of arrival for determining rate of duty.
Rajkumar Knitting Mills P. Ltd. Case (SC)	Whether date of contract is relevant?	For determining relevant date for rate of duty, date of contract is not relevant. Only the date of importation is relevant.
Samar Timber Corporation Case (HC)	What is the date of filing BOE, if it is originally filed and again re-filed after correction?	Relevant date of bill of entry is the date of presentation of bill of entry but not date of re-presentation after correction. **Note:** This situation arises in case of amendment of bill of entry.

INTERPRETATION OF EXEMPTION NOTIFICATION:

CASE NAME	ISSUE	DECISION
Kasinka Trading Case (SC)	Whether Government has right to withdraw or modify exemption notification?	"Power to exempt" includes power to modify or withdraw the notification. However, it can be done in the public interest. **Note:** Doctrine of promissory estoppel (I.e., Cannot go back on a promise) is not applicable in case of exemption notification.
Pankaj Jain Agencies Case (SC)	What is the effective date of a notification?	Notification is to take effect from the date of its publication in official gazette.
ITC Ltd. Case (SC)	What if gazette is not available on the date of issue of notification?	Date of issue of notification will not affect the operativeness and enforceability particularly when there are radio announcements and press releases.
Tullow India Operations Ltd. (SC)	Can the benefit of exemption notification be denied due to non fulfillment of condition beyond the importer's control?	If a condition is not within the power and control of importer and depends upon the acts of public functionaries, exemption cannot be denied on account of non-compliance of such condition.
Hanil Era Textile Ltd. Case (SC)	When a notification does not put a restrictive clause, can the department add such clause in interpretation?	Imported DG sets are exempted if the same is used for generation of power for manufacture of exported goods. When surplus power generated is sold, the exemption cannot be denied as there is no words in the exemption notification that it should be "exclusively used".

EXEMPTIONS UNDER CUSTOMS:

CASE NAME	ISSUE	DECISION
Mangalore Refinery and Petro-chemicals Ltd. Case (SC)	Whether customs duty payable on the short landing of goods I.e., the quantity imported is less then the quantity mentioned in invoice?	• Levy of customs duty is only on goods imported into India • When the goods are not imported, there cannot be levy and consequently Sec. 13/22/23 cannot be applied. • However, if the imported goods are lost (or) pilfered (or) destroyed then there is levy and the above sections can be applied for claiming the benefit.

CLASSIFICATION OF GOODS IN TARIFF:

CASE NAME	ISSUE	DECISION
Saurashtra Chemicals Case (CESTAT)	Whether section notes and chapter notes in the tariff have overriding effect on headings while interpretation of tariff?	1. Section notes and Chapter notes are part of Statute and relevant for classification. 2. These notes sometimes restrict and sometimes expand the scope of headings. 3. Therefore, they have overriding effect on the headings.
Maestro Motors Ltd. Case (SC)	Whether exemption notification applicable to similar goods if tariff heading is mentioned in notification?	• If a tariff heading is specifically mentioned in the exemption notification, then such notification is applicable to those goods which are falling under that tariff heading and not applicable for other goods • However, if a product is mentioned in the notification, then such notification is applicable to all such products whether falling in same heading or different heading
Hewlett Packard India Sales (P) Ltd. (SC)	Whether import of software preloaded in laptops to be classified along with laptop imported?	Generally, import of software is exempted under customs (as the same is under GST). However, when laptop is imported with preloaded software, then software is part of laptop and classified as laptop and such exemption cannot be given for software, even though its value is ascertainable seperately.

INTERPRETATION OF EXEMPTION NOTIFICATION:

CASE NAME	ISSUE	DECISION
Keihin Penalfa Ltd. Case (SC)	Where a product is classified under a heading as per exemption notification, can the same classfication be relied upon for the period prior?	• Government issued an exemption notification dated 1/3/2002 and classified Electronic automatic regulators under a heading • Since, such product is classified under a heading w.e.f 1/3/2002, the same classification should be accepted by department for the period prior to 1/3/2002.

VALUATION UNDER CUSTOMS:

CASE NAME	ISSUE	DECISION
Bombay Dyeing Case (SC)	Whether vendor inspection charges incurred by exporter on his own to be included in value?	vendor inspection charges by foreign supplier on his own and not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods.
Denso Kirloskar Industries P. Ltd. Case (SC) & Essar Steel Ltd. Case (SC)	Whether technical knowhow charges payable by importer, after import be included in the value of imported goods?	This cost is, thus, incurred after the importation of the goods and therefore cannot be loaded on to the assessable value of the imported goods. These cost is for manufacture of products after setting up of the plant.
Hyderabad Industries Ltd. (SC)	Whether Cannalizing agent commission is includable in AV?	the commission or service charges paid to the canalizing agent are includible in the assessable value as these cannot be termed as buying commission.
Agarwal Industries Ltd. Case (SC)	What is the relevant price, if there is an increase in market price?	If the goods are sold at the contracted price, it should be AV, even though there is an increase in the price in international market, unless there is a allegation regarding the collusion of importer and exporter.
Gira Enterprises Ltd. Case (SC)	Can the value declared by rejected, without giving OBH?	Importer should be given an OBH before rejecting the declared value based on alleged printout containing the increased value of comparable imports.

PROCEDURES UNDER CUSTOMS:

CASE NAME	ISSUE	DECISION
Board of Trustees (HC)	Can department demand duty on pilfered goods from Port Trust authorities by considering them as custodian of goods?	1. As per sec. 45(3), the liability to pay duty is of the person, in whose custody the goods remain as an approved person. 2. Therefore, this provision applies only to the private custodians who are required to be approved by department. 3. Accordingly, the major ports and airports covered under Major Port Trust Act, 1963 who do not require any approval, are not custodians. 4. Thus, the Department cannot demand duty from Port Trust on the pilferage.

CASE NAME	ISSUE	DECISION
Prathiba Processors Case (SC)	Whether interest is payable if the warehoused goods are exported from warehouse after 60 days from the date of warehousing order?	• When goods are not chargeable to duty or exempt from duty at the time of clearance from warehouse, interest cannot be levied on a non-existing liability • Therefore, if the duty is nil, interest is also nil.
Kesoram Rayon Case (SC)	What is the relevant date for rate of duty if the goods are not cleared within permissible warehousing period?	Goods which are not removed within the permissible warehousing period are said to be improperly removed and the rate of duty prevailing on the date of expiry of warehousing period is relevant for computation of customs duty.
Biecco Lawrie Ltd. Case (SC)	Out of customs order is passed upon filing ex-bond BOE but the goods are not cleared. If there is an increase in rate of duty, can the same be collected?	Supreme Court has held that where duty on the warehoused goods is paid and out of charge order for home consumption is made by the proper officer, the goods allowed to be retained for storage in the warehouse as permitted under section 49 are not treated as warehoused goods and importer would not be required to pay anything more.

PROCEDURES UNDER CUSTOMS:

CASE NAME	ISSUE	DECISION
Allied Photographics Case (SC)	Whether doctrine of unjust enrichment be applicable in case of duty paid under protest?	• Doctrine of unjust enrichment applies even when duty is paid under protest. • It has been held that even if there is no change in price before and after assessment (i.e. before and after imposition of duty), it does not lead to the inevitable conclusion that incidence of duty has been passed on to the buyer, as such uniformity may be due to various factors.
Priya Blue Industries Ltd. Case (SC)	Whether refund claim is an alternative to appeal?	When the importer do no agree to the assement made by the officer but the duty is paid as per assessment order, the correct mode of redressal is to file an appeal but cannot file a refund application. A refund claim is not an appeal proceeding.

CASE NAME	ISSUE	DECISION
SRF Ltd. Case (CESTAT)	Customs duty paid in excess on import of capital goods. The price of finished goods remains same before and after import of capital goods. Whether refund is subject to unjust enrichment?	• The incidence of duty can be passed directly or indirectly. • Where the capital goods are used for manufacture, the duty paid on their import will go into the costing of the goods manufactured and sold, and can thus be passed on to the buyers. • uniformity in price before and after assessment does not lead to inevitable conclusion that duty burden has not been passed • Therefore, doctrine of unjust enrichment is applicable