Year 2015 had really been mixed. If the huge disappointment on the much-awaited GST being stalled with political motives was the lowest point, the Apex Court rolling out a rosary of pearls of wisdom were the real high! In our usual year-end review, we have handpicked the top rulings in the indirect tax domain, which shall have a lasting impact in the tax administration, in the days to come.

## THE "TV" SUPERSTARS

In 2000, the arrival of Transaction Value (TV) under Section 4 of the Central Excise Act, 1944 in place of the "normal price" had made all the settled concepts of Central Excise Valuation go for a thorough revisit. This 2015 saw some well-settled valuation aspects like the place of removal, additional consideration, related persons, and the discounts, all being once again tested under the TV regime. These pearls of wisdom are definitely worth a reading and memory.

- **PUROLATOR INDIA LTD V CCE - 2015 (323) E.L.T. 227 (S.C.)**

- **CCE V TVS MOTOR COMPANY LTD – 2015 TIOL 299 SC CX**

- **CC&CE V ISPAT INDUSTRIES LTD - 2015 (324) E.L.T. 670 (S.C.)**

- **CCE V DETERGENTS INDIA LTD - 2015 (318) E.L.T. 559 (S.C.)**

## INDIGESTION CURED

In a path breaking decision in the case of **Commissioner of Central Excise, Chennai Vs. Nebulae Health Care Ltd - 2015 (325) E.L.T. 431 (S.C.),** the Hon'ble Supreme Court explained and distinguished its own decision in the case of **Commissioner v Ramesh Food Products - 2004 (174) E.L.T. 310 (S.C.)** and held that a SSI manufacturer can simultaneously avail the exemption for his own branded goods without availing CENVAT and also avail CENVAT credit on third party branded goods on which full duty is paid, thus putting possible catastrophe to rest.

## THE "COMPOUNDED" LEVY

The compounded levy scheme itself is so "compounded" with its complex formulae and myriad calculations. To add salt to the injury, the rules framed thereunder were even more awful with its menacing claws.

In the landmark case of **Shree Bhagwati Steel Rolling Mills vs CCE - 2015 326 E.L.T. 209 SC,** the Hon'ble Supreme Court has struck down thedemand of penalty under Rules 96 ZO, 96 ZP and 96 ZQ of the Central Excise Rules as ultra vires Central Excise Act, 1944, arbitrary and unreasonable and violative of Articles 14 and 19 (1) (g) of Constitution of India.

## BETTER SENSE

From the day, the Hon'ble Supreme Court ruled in the case of **Commissioner v SKF India LTD - 2009 (239) E.L.T. 385 (S.C.),** that the interest under Section 11AB of the CEA would be payable on the supplementary invoices raised for price escalation from the date of the original clearance of goods, we were eagerly waiting for the ratio to be revisited. But when the Apex court affirmed the same ratio in**CCE V INTERNATIONAL AUTO LTD - 2010 (250) E.L.T. 3 (S.C.)**, along with many, our hopes also got evaporated.

Now the Hon'ble Supreme Court in the case of **Steel Authority of India Ltd V CCE - 2015-TIOL-292-SC-CX** has doubted the SKF ratio and has referred the issue to the Larger bench of the Apex Court thus resurrecting the dead hopes. We can only hope and pray at the larger bench, for once, SKF shall have no bearing!!!

## THE "VEST"ED RIGHT

In the case of **Rupa & Co Ltd V CESTAT, Chennai - 2015 (324) E.L.T. 295 (Mad.),** the Hon'ble High Court of Madras had sensibly interpreted the availability of Cenvat credit on the inputs contained in the finished products.

In a "brief" yet a beautiful decision, the High Court has held that the expression 'inputs of such finished product', 'contained in finished products' cannot be looked at theoretically with its semantics but has to be understood in the context of what a

manufacturing process is. It further held that, if there is no dispute about the fact that every manufacturing process would automatically result in some kind of loss such as evaporation, creation of by-products, etc., the total quantity of inputs that went into the making of the finished product represents the inputs of such products in entirety.

## EP(I)C DECISION

In an intense war of interpretation, the Larger Bench of CESTAT in the case of **LANCO INFRATECH LTD V CCE & ST - 2015 (38) S.T.R. 709 (Tri. - LB),** had dispensed a decision of sorts, whereby, the most complex issues of works contracts, turnkey contracts and EPC contracts were analyzed threadbare. In one of the most technical issues, the LB had rendered a classical beauty, which is nothing short of a treatise!

## SMALL AND BEAUTIFUL

In a crisp yet compelling decision where the cardinal principles are manifested loud and clear, the Hon'ble CESTAT in the case of **SIFY TECHNOLOGIES LTS V CCE & ST, LTU – 2015 (39) S.T.R. 261 (Tri. - Chennai)** has held that the nature and character of amendment decides whether such amendment would be declaratory or clarificatory and accordingly whether retrospective or not. It further held that as the declaratory laws are always prospective while the clarificatory laws are retrospective in nature.

## GRAVE (L) RATIO

When the Supreme Court delivered the decision in the case of **Larsen & Toubro Ltd. V CCE – 2015 324 E.L.T. 646 (S.C.),** no one would have thought that it would have such a concreting effect on the construction industry with a pan - India impact.

In this landmark (or landmine) decision, the Apex Court has ruled that the Ready Mix Concrete (RMC) is not the same as Concrete Mix and accordingly RMC manufactured and used at site shall not be entitled to benefit of exemption Notification No. 4/97-C.E.

## WRONG FIT

In the case of **CCE vs Fitrite Packers - 2015 TIOL 235 SC CX,** the Hon'ble Supreme Court has held that the printing of logo and name of the product of a manufacturer in the GI paper purchased from market amounts to manufacture despite holding that the end use remained the same even after such printing.

To us, it is a clear departure from the established ratio of the Hon'ble Supreme Court in the cases of **Servo-Med Industries Pvt. Ltd V Commissioner - 2015 (319) E.L.T. 578 (S.C.)** and **UOI V J.G. Glass Industries Ltd - 1998 (97) E.L.T. 5 (S.C.),** despite the fact that both the above judgments had been considered.

## THE BEST JUDGEMENT

The pace was set by the Larger bench of the Hon,ble Tribunal in the case of **Larsen & Toubro LTD - 2015 (318) E.L.T. 633 (Tri. - LB).** Though the LB decision went in favour of the Revenue by a majority, the order written by Justice G. Raghuram, President (which ultimately got vindicated) is worth reading it a million times. OMG! A divine treat to read!!!

Subsequently, upon appeal, the Hon'ble Supreme Court overruled the majority decision of the LB in the case of **CCE vs Larsen & Toubro LTD - 2015 (39) S.T.R. 913 (S.C.)** by holding that there would be no liability to service tax on works contracts before 1.6.2007.

Being the best among the best, this judgment is a must read and take the top honours to adorn the HALL OF FAME for the year 2015!!!

## THE ROTTEN APPLE

The story goes thus…

In the case of *JCB India Ltd.* - **2014-TIOL-09-CESTAT-MUM**, the Tribunal held that the parts, components and assemblies of Loader, Backhoe Loader and Road Rollers are covered by "parts, components and assemblies of Automobiles" mentioned in Third Schedule and are subject to valuation in terms of section 4A of CEA, 1944.

It further held that,

> **"***Keeping in view the facts and circumstances and nature of dispute, we are of the view that this is not a fit case for invoking the extended period of limitation as ingredients to invoke the same are absent. Accordingly, demand within the normal period of limitation is only confirmed. We also do not consider the case fit for imposing penalty under Section 11AC or Rule 25 or confiscation of goods under Rule 25. Accordingly, penalties and confiscation are set aside."*

Later when an identical issue came up before the bench in the case of **LARSEN & TOUBRO LTD J KUMAR PROFICIENT EQUIPMENT SOLUTIONS Vs CCE - 2014-TIOL-1920-CESTAT-MUM,** the bench considered the JCB decision, supra, and held against the appellant on merits but gave a relief on limitation.

Aggrieved appellant as well as the Revenue went to the High Court on merits and limitation respectively , whereby, the Hon'ble High Court remitted the matter to the Tribunal to consider afresh.

On remand, the case was again heard by the bench consisting of the Member (T), who was the same Member (T) who rendered the JCB decision, *supra.*

While holding on to the JCB ratio on merits, this time, the same Member (T) nosedives on limitation issue by distinguishing on a trivial reasoning that

M/s. JCB India Ltd. had started paying duty from April 2010, whereas in the present case, even that was not done and thus proceeded to confirm the larger period along with the penalty.

To us, in a year studded with wonderful decisions, this decision is a spoilsport, not on the merits but because of the spineless manifestation of inconsistency.