



Lakshmikumaran
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attorneys

exceeding expectations
SINCE 1985

Emerging Trends in Tax Litigation

A PRESENTATION BY SANDEEP SACHDEVA

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Agenda

INDIRECT TAX

- Tariff Classification
- Incentives vs Discount
- Cross-Charge
- RoDTEP
- Interplay with IBC
- Enquiry upon SWS
- GST on Mining Rights
- Miscellaneous Issues

CLASSIFICATION RELATED DISPUTES

Westinghouse - Issue Involved

Electrical Relays –
Signaling Equipment

Exclusive use in
Railways

8536 v/s 8608

Parts and
Accessories

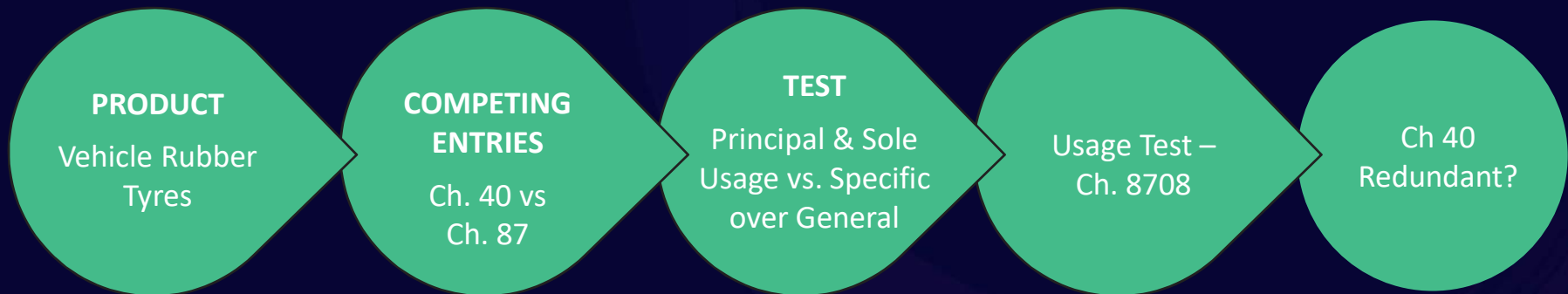
Note 2(f) of Sec. XVII –
Excludes Electrical
Machinery

Note 3 of Sec. XVII –
Covers parts which are
solely or principally
used

Westinghouse - SC observations

- Note 2 (f) excludes only independently marketed goods.
- *“parts which are suitable for use solely or principally with an article in Chapter 86 cannot be taken to a different Chapter as the same would negate the very object of group classification.”*
- GRI 1: GRI applicable only in case of vagueness from Headings, Section and Chapter Notes.
- GRI 3: Invokable only when goods are classifiable under two or more Headings.
- Principal & Sole Use Test favored.
- Ratio laid down in earlier SC decisions:
 - *GS Auto*
 - *Cast Metal*
 - *Uni Products*
 - *Shikori Auto Components*

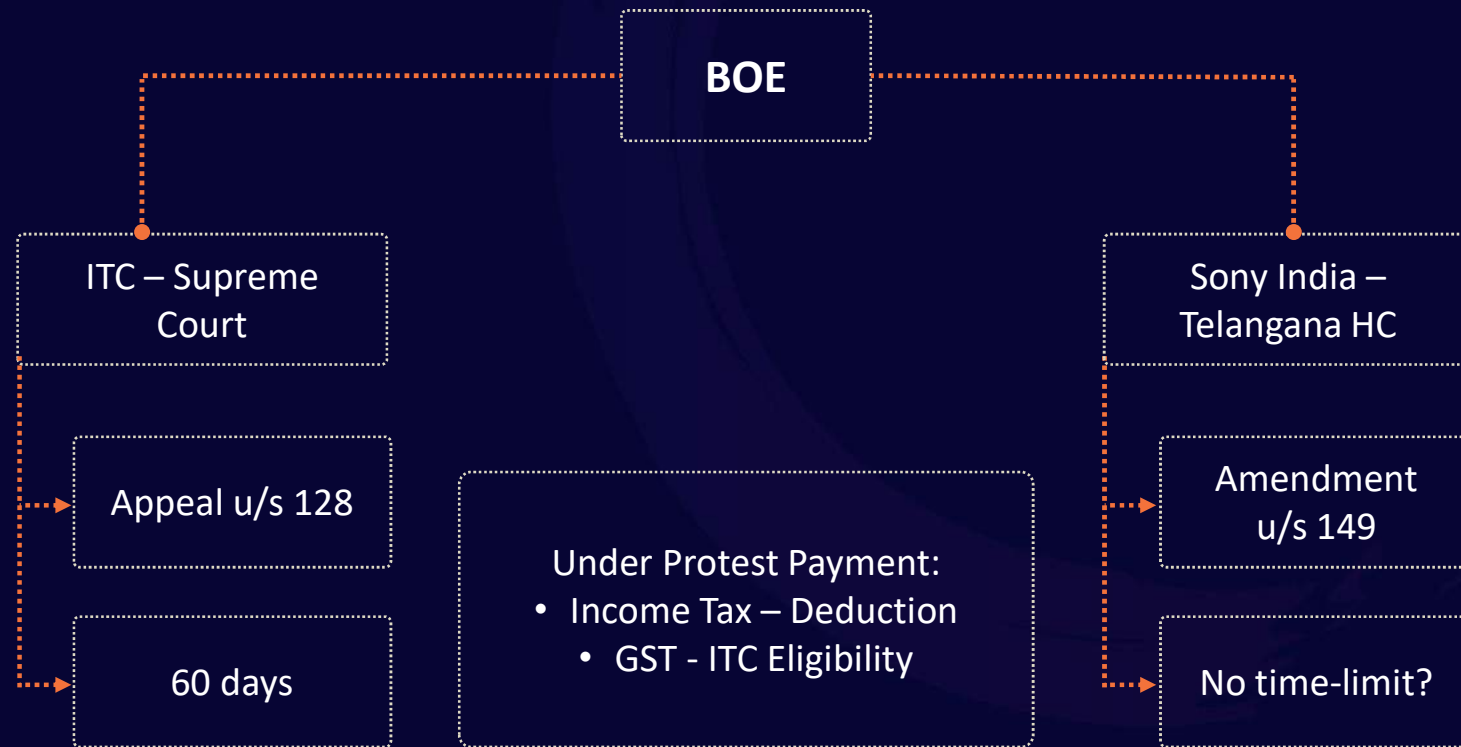
Case Study - Tyre



Industry Implications



BOE – Appeal or Amendment



DISCOUNTS & INCENTIVES

Discount



Discount

- Performance / Turnover Based Discounts

- Eg. Manufacturer to Dealer

- Part & Parcel of Original Supply

- Supply Price Reduction

Incentive



Incentive

- Performance / Turnover Based Incentives

- Eg. Insurance Company to Agents

- Part of Original Supply or Distinct Supply?

- Tax Treatment?

Case Study

DISCOUNT

- TV Manufacturer to Dealer
- Original Sales – Rs. 100
- Discount – Rs. 10
- Taxable Value of Manufacturer – Rs. 90

INCENTIVE

- TV Manufacturer to Dealer
- Original Sales – Rs. 100
- Incentive – Rs. 10?
- Taxable Value of Manufacturer – 100
- Taxable value in the hands of dealer-?

Case Study

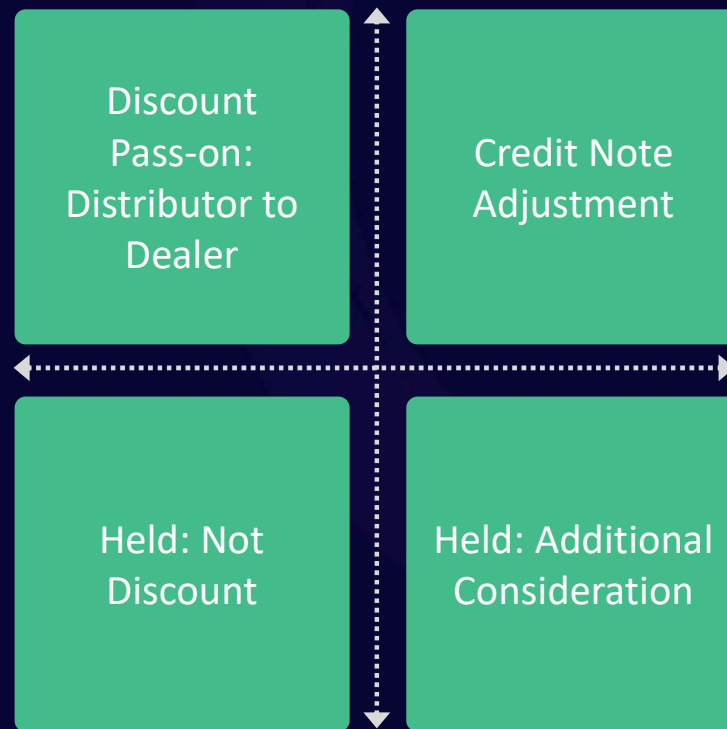
INCENTIVES OR DISCOUNT?

- Incentives by Manufacturer to Dealers for promoting sales:
 - Near-to-expiry goods
 - Promote new products
- Original Supply of goods or service vs Distinct Supply vs Discount vs Reimbursement:
 - Rate
 - Exemption

CHALLENGES

- Discount vs Incentive
 - Risk of short tax payment
 - Risk of ITC being denied (absence of supply)

Case Study – Santosh Distributors (AAAR)



Way forward



CROSS-CHARGE

Practical Issues

SEZ Cross-Charge

Past Years - ITC

FOC Tradename/
Trademark

OECD - Benefit Test

Immovable
Property Related
Cross-Charge

Cross-Border
Support Functions

Related Party -
Control?

CSR, Gift, Employee
related

RODTEP

Practical Issues

No Claim in earlier BOE

Transfer of Scrip - ITC Reversal

Post-export changes in export Price?

Interest from 1 Jan 2021?

Gokul Overseas – Guj HC
Pasha International – Mad HC

INTERPLAY WITH IBC

IBC



SECTION 16 OF
CGST ACT –
PAYMENT OF TAX



PRESS RELEASE
27TH GST COUNCIL
MEETING – RECOVERY
FROM SUPPLIER



SECTION 31 OF IBC -
FINAL SETTLEMENT OF
DUES (INCLUDING GOVT.
DUES)



TAX NOT AT ALL PAYABLE
VS TAX NOT PAID?

GGs Infrastructure – Bom HC
Jagat Janani – Ors HC

ENQUIRY UPON SOCIAL WELFARE SURCHARGE

Social Welfare Surcharge

Charging Section

Section 110 of Finance Act, 2018

Surcharge at 10% of duties levied and collected

Exemption from BCD

Basic Customs Duty not payable:

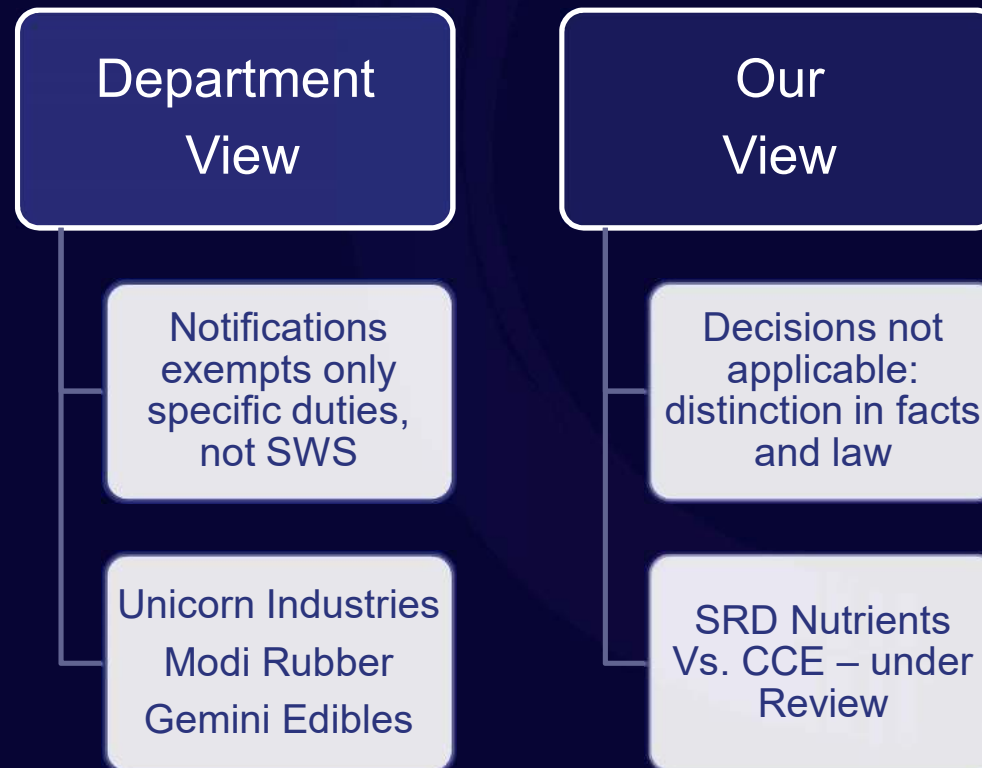
N No. 18/2015-Cus ;
N No. 16/2015-Cus ;
N No. 52/2003-Cus

Example

Goods Rs. 100;
BCD Rs. 10;
Exempted (say EPCG Scheme)

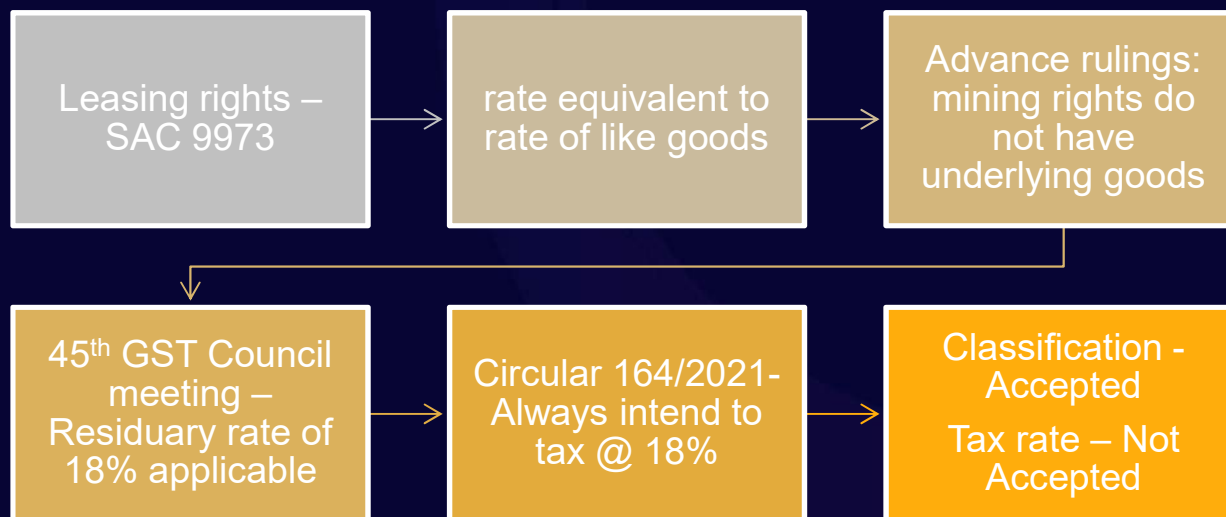
If BCD not collected, whether surcharge applicable and on what amount ?

Social Welfare Surcharge

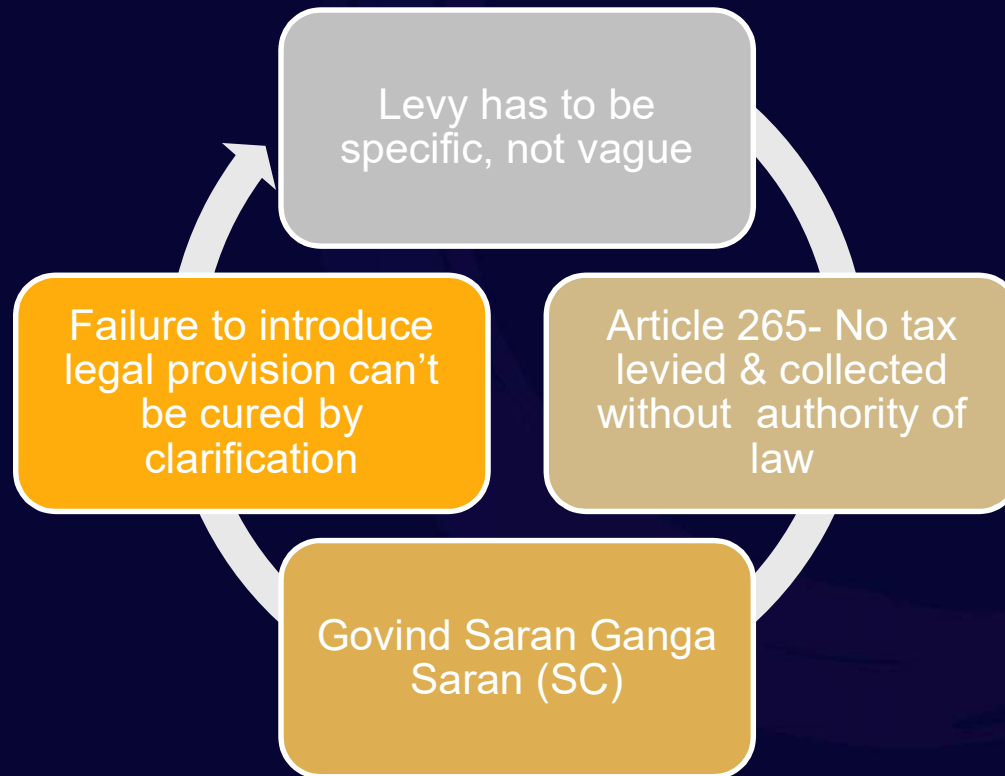


GST ON MINING RIGHTS

GST on mining Rights



GST on mining Rights



MISCELLANEOUS ISSUES

Issues

