

## **2008 (85) RLT 1 (SC)**

*(IN THE SUPREME COURT OF INDIA)*

**Present** : Hon'ble Dr. Justice Arijit Pasayat  
Hon'ble Mr. Justice P. Sathasivam

**CC & CE, NOIDA**  
**Versus**

**PUNJAB FIBRES LTD.**

*(Civil Appeal No. 4647/2007 with C.A. Appeal Nos. 4677, 4678 and 5261/2007)*

*Dated 14.2.2008*

**Jurisdiction — High Court - Reference application - Condonation of delay - Section 35H of CEA, 1944 - High Courts have no power to condone delay in filing reference application - Revenue's appeals dismissed.**

*(Paras 8,9 10 & 11)*

## **2008 (85) RLT 5 (H.P.)**

*(IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA)*

**Present** : Hon'ble Mr. Justice Deepak Gupta  
Hon'ble Mr. Justice Surinder Singh

**INDO FARM TRACTORS & MOTORS LTD.**

**Versus**

**UNION OF INDIA**

*(C.W.P. No. 895/2005)*

*Dated 16.7.2007*

**Cess — Tractor - Automobile Cess Rules, 1984 - Section 9 of Industries (Development and Regulation) Act, 1951 - cess is leviable on tractors under the Act - since Rules do not cover tractors, there is no machinery provided for its collection - cess not recoverable till machinery for its recovery is provided.**

*(Para 13)*

**Education cess — Leviability - Finance Act, 2004 - cess leviable on notional basis when goods are exempt from Basic and Additional Excise duties.**

*(Paras 16 & 17)*

**Exemption — Central Excise - Tractors - notification exempting tractors from Central Excise duty, does not extend to Automobile cess.**

*(Paras 15 16)*

**Words and phrases — 'Automobile' - Rule 2(b) of Automobile Cess Rules, 1984 - Interpretation - automobile as defined in Rule does not cover tractor.**

*(Paras 10,11 & 12)*

**Writ petition — Article 226 of Constitution of India - maintainable when no machinery is provided for collection and recovery of cess and there is, therefore, no forum for ventilating grievance.**

*(Para 14)*

## **2008 (85) RLT 10 (CESTAT-Che.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Chennai)*

**Present** : Shri P.G. Chacko, Member (Judicial)

Shri P. Karthikeyan, Member (Technical)

**VARNICA HERBS**

*Versus*

**CCE, PONDICHERRY**

*(Final Order No. 1331/2007 dt. 23.10.2007 certified on 14.11.2007  
in Appeal No. E/111/2006)*

**Assessable value — Section 4 and 4A of CEA, 1944 - Rule 34(1)(b) of Standards of Weights and Measures (Packaged Commodities) Rules, 1977 - Hair dyes - 6/10 sachets of 8/4 grams each were cleared in monocartons - since sachet of hair dye is sold to ultimate consumer in retail, and its weight is less than 20 grams prescribed in Rule 34(1)(b), it is not to required to be marked with MRP - to be assessed under Section 4 and not 4A - appeal allowed. (Paras 10 & 11)**

**2008 (85) RLT 15 (CESTAT-Ban.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Bangalore)*

**Present :** Dr. S.L. Peeran, Member (Judicial)

**DAYA SHANKAR TIWARI PROP.  
PRADEEP ORGANICS & CHEMICALS**

*Versus*

**CCE, HYDERABAD**

*(Final Order No. 1143/2007 dt. 18.9.2007 certified on 10.10.2007  
in Appeal No. E/1060/2006)*

**Penalty — Rule 26 of C.Ex. Rules, 2002 - not leviable if goods are not held liable to confiscation - appeal allowed. (Para 3)**

**2008 (85) RLT 17 (CESTAT-Ban.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Bangalore)*

**Present :** Dr. S.L. Peeran, Member (Judicial)  
Shri T.K. Jayaraman, Member (Technical)

**LANCO INDUSTRIES LTD.**

*Versus*

**CCE, TIRUPATI**

*(Final Order No. 1281/2007 dt. 12.11.2007 certified on 28.11.2007  
in Appeal No. E/138/2007)*

**Cenvat credit — Rule 9 of CENVAT Credit Rules, 2004 - Supplementary invoice - Merger - goods cleared to sister unit before merger of sister unit with appellant unit - differential duty paid on supplementary invoice after merger - appellants entitled to credit of duty paid on supplementary invoice as merger does not extinguish the right accrued to transferee unit before merger. (Para 7)**

**Cenvat credit — Rule 9 of CENVAT Credit Rules, 2004 - Supplementary invoice - duty demand upheld in impugned order as not contested without any findings on suppression of facts - penalty and interest set aside as demand paid before issue of show cause notice and credit on supplementary invoice admissible - appeal allowed. (Para 7)**

**2008 (85) RLT 20 (CESTAT-Mum.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Mumbai)*

**Present** : Shri M.V. Ravindran, Member (Judicial)

**CEAT LIMITED**

**Versus**

**CCE, MUMBAI-III**

*(Final Order No. A/1452/WZB/2007-CIV/SMB dt. 16.10.2007 certified on 5.11.2007  
in Appeal No. E/18/2007-Mum.)*

**Cenvat credit — Rule 57AE of C.Ex. Rules, 1944 - Bill of entry - photocopy of bill of entry certified by Customs is not valid for taking credit in respect of goods imported through post as certificate as per prescribed procedure is required.**

***(Para 5)***

**Penalty — Section 11AC of CEA, 1944 - Cenvat credit - taken on photocopy of bill of entry - Section 11AC is not attracted - penalty set aside.**

***(Para 6)***

### **2008 (85) RLT 22 (CESTAT-Ahbad.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Ahmedabad)*

**Present** : Shri M. Veeraiyan, Member (Technical)

**I.C. TEXTILES LTD.**

**Versus**

**CCE, VADODARA**

*(Final Order Nos. A/2893-2894/WZB/Ah'bad/2007-CII dt. 21.11.2007 certified on 29.11.2007 and Appeal Nos. E/201 & 253/2007)*

**Export — Limitation - Proof of export - Notification No. 45/2001-CE(NT) dt. 26.6.2001 - goods cleared for export under bond were returned to factory and subsequently exported - time limit for producing proof of export to run from date of second clearance for export - case remanded.**

***(Para 6)***

### **2008 (85) RLT 24 (CESTAT-Kol.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Kolkata)*

**Present** : Dr. Chittaranjan Satapathy, Member (Technical)

**ICI INDIA LTD.**

**Versus**

**CCE, KOLKATA-IV**

*(Final Order No. A/1132/Kol./2007 dt. 11.6.2007 certified on 19.6.2007  
in Appeal Nos. E/335/2005)*

**Refund — Unjust enrichment - Section 11B of CEA, 1944 - refund claim filed on 12.6.1990 before amendment of Section 11B in respect of duty paid under protest pending appeal which was decided in favour of appellants - bar of unjust enrichment not applicable - appeal allowed.**

***(Para 4)***

### **2008 (85) RLT 26 (CESTAT-Ahbad.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Ahmedabad)*

**Present** : Smt. Archana Wadhwa, Member (Judicial)  
Shri M. Veeraiyan, Member (Technical)

**THACKER PULVERISING CO.**

**Versus**

**CCE, RAJKOT**

*(Final Order No. A/3000/WZB/Ah'bad/2007-CII dt. 6.12.2007 certified on 10.12.2007 in Appeal No. E/1394/1997)*

**Manufacture — Section 2(f) of CEA, 1944 - Conversion of iron scrap into powder - amounting to manufacture - appeal dismissed. (Para 6.2)**

**Trade notice — CESTAT's order - CESTAT held process amounting to manufacture while trade notice clarified otherwise - CESTAT's order to prevail. (Para 6.2)**

**2008 (85) RLT 28 (CESTAT-Ahbad.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Ahmedabad)*

**Present** : Smt. Archana Wadhwa, Member (Judicial)  
Shri M. Veeraiyan, Member (Technical)

**CCE, VAPI**

**Versus**

**HARISH INDUSTRIES ENGINEERS**

**AND**

**VICE VERSA**

*(Final Order Nos. A/29-31/WZB/Ah'bad/2008-CII dt. 3.1.2008 certified on 10.1.2008 in E/CO/120/2004 and Appeal Nos. E/901,1264/2004)*

**Classification — Central Excise - Perforated nickel screen - accessory and not part of printing machinery - classifiable under Heading 8443.10 and not under Heading 8443.90 of CETA, 1985. (Para 3)**

**Limitation — Demand - Section 11A of CEA, 1944 - extended time limit not invocable as correct description of goods was given in classification list. (Para 5)**

**2008 (85) RLT 30 (CESTAT-Ban.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Bangalore)  
(Circuit Bench at Hyderabad)*

**Present** : Hon'ble Mr. Justice R.K. Abichandani, President  
Shri T.K. Jayaraman, Member (Technical)

**CCE, HYDERABAD-II**

**Versus**

**AMI SANAG MICROMATION LTD.**

*(Final Order No. 1085/2007 dt. 6.9.2007 certified on 27.9.2007  
in Appeal No. E/814/2005)*

**Assessable value — Section 4 of CEA, 1944 - Computer system - value of co-processor is to be included - Revenue's appeal allowed. (Paras 3 & 4)**

**2008 (85) RLT 31 (CESTAT-Mum.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Mumbai)*

**Present** : Shri T. Anjaneyulu, Member (Judicial)

**SPEB ADHESIVES PVT. LTD.**

**Versus**

**CCE, BELAPUR**

*(Final Order No. A/1104/WZB/2007-CIV/SMB dt. 10.8.2007 certified on 17.8.2007  
in Appeal No. E/3304/2005-Mum.)*

**Cenvat credit — Rule 3 of CENVAT Credit Rules, 2002 - credit taken in February and March 2003 on inputs received from March 2001 to January 2003 - such belated credit is not deniable - appeal allowed. (Para 2)**

### **2008 (85) RLT 33 (CESTAT-Che.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Chennai)*

**Present** : Shri P.G. Chacko, Member (Judicial)  
Shri P. Karthikeyan, Member (Technical)

**PANAMID TREADS PVT. LTD. & ANR.**

**Versus**

**CCE, TRICHY**

*(Final Order Nos. 1346-1347/2007 dt. 15.11.2007 certified on 19.1.2008  
in Appeal Nos. E/386-387/2003/MAS)*

**Cenvat credit — Rule 57AG of C. Ex. Rules, 1944 - Small scale exemption - Notification No. 8/2000-CE dt. 1.3.2000 - on opting for notification credit on inputs contained in waste and scrap need not be reversed - appeal allowed. (Paras 6 & 7)**

### **2008 (85) RLT 35 (CESTAT-Che.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Chennai)*

**Present** : Shri P.G. Chacko, Member (Judicial)  
Shri P. Karthikeyan, Member (Technical)

**SRI LAKSHMI SARASWATI TEXTILES (ARNI) LTD.**

**Versus**

**CCE, PONDICHERRY**

*(Final Order No. 1356/2007 dt. 14.11.2007 certified on 23.11.2007  
in Appeal No. E/550/2007)*

**Exemption — Central Excise - Notification No. 30/2004-CE dt. 9.7.2004 - Yarn - benefit of notification admissible on reversal of input credit - appeal allowed. (Paras 2,3 & 4)**

### **2008 (85) RLT 38 (CESTAT-Kol.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Kolkata)*

**Present** : Shri D.N. Panda, Member (Judicial)

**HINDUSTAN ZINC LTD.**

**Versus**

**CCE, RANCHI**

*(Final Order No. A/1875/Kol./2007 Stay Order No. S/785/Kol./2007 and Misc. Order No. M/385/Kol./2007 dt. 15.11.2007 certified on 22.11.2007 in Application No. E/ (ROA)-217/2005, E/Stay/505/2003 and Appeal No. E/154/2003)*

**Appeal — Restoration - Rule 20 of CESTAT (Procedure) Rules, 1982 - appellants could not appear because of bandh - appeal restored. (Para 4)**

**Cenvat credit — Rule 57AC of C.Ex. Rules, 1944 - Capital goods - credit taken before installation is not to be denied as it would become available on installation - assessee to pay interest from date of taking credit to date of installation. (Paras 4.2, 4.3)**

**Penalty — Rule 57AH of C.Ex. Rules, 1944 - Cenvat credit - penalty leviable for taking credit on capital goods before their installation in contravention of provisions of Rule. (Para 4.4)**

### **2008 (85) RLT 41 (CESTAT-Mum.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Mumbai)*

**Present :** Ms. Jyoti Balasundaram, Vice President  
Shri K.K. Agarwal, Member (Technical)

**RAYMONDS LTD. & ORS.**

**Versus**

**CCE, NASHIK**

*(Final Order Nos. A/838-840/WZB/2007-CI(EB) dt. 14.11.2007 certified on 16.11.2007 in Appeal Nos. E/1186,1331 & 1332/2004)*

**Exemption — Central Excise - Notification No. 4/97-CE dt. 1.3.1997 (Sl. No. 152) - Shoddy blankets - blankets made of shoddy yarn and having predominant wool, are blankets of wool and entitled to benefit of notification - appeals allowed. (Paras 9 & 10)**

### **2008 (85) RLT 45 (CESTAT-Mum.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Mumbai)*

**Present :** Shri M.V. Ravindran, Member (Judicial)

**CCE, PUNE**

**Versus**

**SHREYAS INTERMEDIATES LTD.**

*(Final Order No. A/1599/WZB/2007-CIV/SMB dt. 12.11.2007 certified on 5.12.2007 in Appeal No. E/439/2007-Mum.)*

**Modvat/Cenvat credit — Rule 57CC of C.Ex. Rules, 1944/Rule 6 of CENVAT Credit Rules, 2002 - Job work - Furnace oil - credit admissible on furnace oil used by job worker in manufacture of goods on job work basis and returned to principal manufacturer without payment of duty - Revenue's appeal dismissed. (Paras 5 & 6)**

### **2008 (85) RLT 47 (CESTAT-Ban.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Bangalore)*

**Present :** Dr. S.L. Peeran, Member (Judicial)  
Shri T.K. Jayaraman, Member (Technical)

**PRAKASA SPECTRO CAST PVT. LTD.**

*Versus*

**CCE (APPEALS), GUNTUR**

*(Final Order Nos. 1254-1255/2007 dt. 12.11.2007 certified on 19.11.2007  
in Appeal Nos. E/142 & 194/2006)*

**Assessable value — Section 4 of CEA, 1944 - Rule 6 of C.Ex. Valuation (DPEG) Rules, 2000 - Transaction value - Additional consideration - Castings - Pattern - as ordered by buyer of castings is developed and used in making castings - pattern and castings are cleared on payment of duty on transaction value to buyer of castings - no additional consideration is received for developing pattern - Rule 6 not applicable - transaction value acceptable - appeals allowed. (Para 6)**

**Limitation — Demand - Section 11A of CEA, 1944 - extended time limit not invocable as appellants had informed their activities to Deptt.**

*(Para 6)*

**2008 (85) RLT 49 (CESTAT-Ahbad.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Ahmedabad)*

**Present :** Smt. Archana Wadhwa, Member (Judicial)

**CCE, AHMEDABAD-I**

*Versus*

**OMKAR EXPORTS**

*(Final Order No. A/2932/WZB/Ah'bad/2007-CII dt. 30.11.2007 certified on 4.12.2007 in Appeal No. E/996/2007)*

**Refund — Section 11B of CEA, 1944 - Drawback - respondents paid back during investigation the excess drawback amount received by them - no show cause notice issued for 4 years - respondents entitled to refund - Revenue's appeal dismissed.**

*(Para 6)*

**2008 (85) RLT 51 (CESTAT-Ahbad.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Ahmedabad)*

**Present :** Smt. Archana Wadhwa, Member (Judicial)

Shri M. Veeraiyan, Member (Technical)

**SOLITAIRE MACHINE TOOLS LTD.**

*Versus*

**CCE, VADODARA**

*(Final Order No. A/2671/WZB/Ah'bad/2007-CII dt. 9.10.2007 certified on 19.10.2007 in Appeal No. E/8/1999)*

**Demand — Validity - Section 11A of CEA, 1944 - 100% EOU - two machines in excess of requirement cleared to DTA in terms of DGFT's permission - duty demanded in first show cause notice not contested - second show cause notice demanding higher amount of duty inclusive of duty demanded in first notice in respect of same clearance is not valid - demand and penalty as per second show cause notice set aside - appeal allowed.**

*(Para 5.2)*

**2008 (85) RLT 53 (CESTAT-Ahbad.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Ahmedabad)*

**Present** : Shri M. Veeraiyan, Member (Technical)

**CCE, AHMEDABAD-II**

**Versus**

**ALFA ICA (I) LTD.**

*(Final Order No. A/2796/WZB/Ah'bad/2007-CII dt. 5.11.2007 certified on 12.11.2007 in Appeal No. E/273/2006)*

**Interest and Penalty — Section 11AB and 11AC of CEA, 1944 - Shortage - not leviable in case of mere shortage of inputs in absence of any evidence of clandestine removal-Revenue's appeal dismissed.(Paras 4 & 5)**

**2008 (85) RLT 55 (CESTAT-Ban.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Bangalore)*

**Present** : Shri T.K. Jayaraman, Member (Technical)

**CCE, HYDERABAD-IV**

**Versus**

**SUNDER STEELS LTD.**

*(Final Order No. 1153/2007 dt. 28.9.2007 certified on 10.10.2007 as rectified by Corrigendum dt. 29.1.2008\* in Appeal No. E/36/2007)*

**Corrigendum**

“Please refer to the Final Order No. 1153/2007 dt. 28.9.2007 [reported in 2008 (84) RLT 614] in the matter of CCE, Hyderabad-IV vs. M/s. Sunder Steels Ltd. in Appeal No. E/36/07. Now it is observed that some lines in the pages 2/3 are missing while printing hence the fresh copy of the order is forwarded herewith for further necessary action.”

**Corrected Final Order is reproduced below :**

**Interest — Refund - Modvat credit - Section 11BB of CEA, 1944 - respondents claimed refund of excess duty paid after adjusting admissible input modvat credit on 21.10.1999 and took credit thereof on 10.11.2005 after CESTAT's order - entitled to interest under Section 11BB after 3 months from date of filing of refund claim, though credit was taken within 3 months of CESTAT's order - Revenue's appeal dismissed. (Para 4)**

**2008 (85) RLT 59 (SC)**

*(IN THE SUPREME COURT OF INDIA)*

**Present** : Hon'ble Mr. Justice S.H. Kapadia  
Hon'ble Mr. Justice B. Sudershan Reddy

**COMMISSIONER OF CUSTOMS**

**Versus**

**FERODO INDIA PVT. LTD.**

*(Civil Appeal No. 8426/2002\* with C.A. Nos. 8417/2003, 981, 3076 & 3203/2006 & 284/2007)*

*Dated 21.2.2008*

**Assessable value — Section 14 of Customs Act, 1962 - Rule 9(1)(c) and 9(1)(e) of Customs Valuation (DPIG) Rules, 1988 - Technical know-how fee and Royalty - relatable to manufacture of brake liners and brake pads in India and not condition of sale of imported goods - no evidence that fee and royalty are some other payments so as to attract**

**Rule 9(1)(e) - not to be added - Revenue's appeals dismissed.**  
**(Paras 20,21 & 26)**

**2008 (85) RLT 67 (SC)**

*(IN THE SUPREME COURT OF INDIA)*

**Present** : Hon'ble Mr. Justice S.H. Kapadia  
Hon'ble Mr. Justice B. Sudershan Reddy

**WEP PERIPHERALS LTD.**

**Versus**

**CC, CHENNAI**

*(Civil Appeal No. 2757/2006\* with Civil Appeal Nos. 4519/2006 & 3679/2005)*

*Dated 21.2.2008*

**Assessable value — Section 14 of Customs Act, 1962 - Rule 9(1)(c) of Customs Valuation (DPIG) Rules, 1988 - Shuttles - Royalty and Licence fee - paid in terms of technical assistance agreement to foreign supplier of shuttles for manufacture of printers - price reduced because of bulk purchase - no evidence that royalty and licence fee was condition of sale of shuttles - not to be added - appeal allowed.**

**(Paras 3 & 4)**

**2008 (85) RLT 69 (SC)**

*(IN THE SUPREME COURT OF INDIA)*

**Present** : Hon'ble Mr. Justice Tarun Chatterjee  
Hon'ble Mr. Justice H.S. Bedi

**UNION OF INDIA & ORS.**

**Versus**

**SHAKTI LPG LTD. & ANR.**

*(Civil Appeal No. 1356/2008 with C.A. No. 1357/2008\*)*

*Dated 18.2.2008*

**Relinquishment of title — Warehoused goods - Section 68 of Customs Act, 1962 - once title to warehoused goods is surrendered, importer can not withdraw his offer of surrender.**

**(Para 9)**

**Re-export — Warehoused goods - Section 69 of Customs Act, 1962 - Board's circular dt. 14.1.2003 - importer can not ask for re-export of warehoused goods after the same have been put to auction and importer has surrendered title to goods - Revenue's appeals allowed.**

**(Paras 9 & 12)**

**2008 (85) RLT 76 (P&H)**

*(IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH)*

**Present** : Hon'ble Mr. Justice M.M. Kumar  
Hon'ble Mr. Justice Ajay Kumar Mittal

**CC, AMRITSAR**

**Versus**

**ATM INTERNATIONAL**

*(Customs Appeal No. 8/2007)*

*Dated 23.8.2007*

**Penalty — Section 112 of Customs Act, 1962 - DEPB scheme - DEPB scrips obtained fraudulently by forging bank certificate of export and realisation - scrips cancelled ab-initio by licensing authority - though respondents were not importers, their act of fraudulently obtaining scrips has rendered goods liable to confiscation - no prejudice is caused by non-mention of specific clause of Section 112 in show cause notice - penalty leviable though goods were not confiscated as the same were not available - Revenue's appeal allowed.**  
*(Paras 10 & 11)*

### **2008 (85) RLT 83 (P&H)**

*(IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH)*

**Present :** Hon'ble Mr. Justice Adarsh Kumar Goel  
Hon'ble Mr. Justice Rajesh Bindal

**CCE, JALANDHAR**

**Versus**

**BIRLA VXL LIMITED**

*(Central Excise Appeal No. 95/2006 (O&M))*

*Dated 2.11.2006*

**DEEC scheme — Export obligation - Evidence - finished goods exported direct from job worker's premises - shipping bills and other documents verified by customs - export obligation discharged beyond doubt - no question of law arises - Revenue's appeal dismissed.**

*(Paras 5,6,7 &*

*8)*

### **2008 (85) RLT 84 (CESTAT-Che.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Chennai)*

**Present :** Shri P.G. Chacko, Member (Judicial)  
Shri P. Karthikeyan, Member (Technical)

**STERLITE INDUSTRIES (INDIA) LTD.**

**Versus**

**CC, TUTICORIN**

*(Final Order Nos. 1522-1529/2007 dt. 26.12.2007 certified on 3.1.2008*

*in Appeal Nos. C/178-184 & 194/2007)*

**Interest — Provisional assessment - Section 18 (3) of Customs Act, 1962 - not leviable in case of provisional assessments done prior to insertion of Section 18 (3) on 13.7.2006 but finalised afterwards - appeals allowed.**

*(Paras 2, 3 & 4)*

### **2008 (85) RLT 86 (CESTAT-Ban.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Bangalore)*

**Present :** Dr. S.L. Peeran, Member (Judicial)  
Shri T.K. Jayaraman, Member (Technical)

**SHINE PETROLEUM PVT. LTD. & ANR.**

**Versus**

**CC, MANGALORE**

*(Final Order Nos. 1220-1221/2007 dt. 30.10.2007 certified on 19.11.2007*

*in Appeal Nos. C/287/2006 & C/265/2007)*

**Assessable value — Section 14 of Customs Act, 1962 - Rule 9 (2) of Customs Valuation (DPIG) Rules, 1988 - Freight - Demurrage charges - paid for rentention of vessel beyond free lay time - not to be added for period prior to 26.9.2006 - appeals allowed.**  
**(Para 10.1)**

**Board's circular — Effective date - Assessable value - Section 14 of Customs Act, 1962 - Rule 9 (2) of Customs Valuation (DPIG) Rules, 1988 - Freight - Demurrage charges - circular dt. 26.9.2006 is effective prospectively only.**  
**(Para 10.1)**

### **2008 (85) RLT 92 (CESTAT-Che.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Chennai)*

**Present :** Shri P.G. Chacko, Member (Judicial)  
Shri P. Karthikeyan, Member (Technical)

**HSI AUTOMOTIVE LTD. & ORS.**

**Versus**

**CC, CHENNAI**

*(Final Order Nos. 1394-1403/2007 Stay Order Nos. S/1154-1162/2007 and Misc. Order Nos. M/819-822/2007 dt. 15.11.2007 certified on 28.11.2007 in Application Nos. C/Stay/102,117,141 & 151/2003, C/Stay/4/2007 and C/Stay/7/2004, C/Stay/112, 147,148/2004, C/EH/205,231,281,327/2003 and Appeal Nos. C/153, 174, 221, 238/2003, C/7, 10, 189, 241, 242 & 139/2004)*

**Assessable value — Section 14 of Customs Act, 1962 - Rule 9(1)(c) of Customs Valuation (DPIG) Rules, 1988 - Technical know-how fee and Royalty - lump sum amount or as percentage of sale price of goods manufactured in India paid to foreign supplier of components and raw materials required for manufacture of goods under supplier's licence - payment related to post importation activity of manufacture of goods in India and is not pre-condition for sale of components and raw materials - such fee and royalty are not to be added - appeals allowed.**

**(Paras 11,12,13,14,15 & 16)**

### **2008 (85) RLT 101 (CESTAT-Ahbad.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Ahmedabad)*

**Present :** Smt. Archana Wadhwa, Member (Judicial)  
Shri M. Veeraiyan, Member (Technical)

**RELIANCE INDUSTRIES LTD.**

**Versus**

**CC, JAMNAGAR**

*(Final Order No. A/3167/WZB/Ad'bad/2007-CII and Stay Order No. S/1428/WZB/Ah'bad/2007-CII dt. 19.12.2007 certified on 31.12.2007 in Application No. C/Stay/1233/2007 and Appeal Nos. C/413/2007)*

**Limitation — Appeal - Section 128 of Customs Act, 1962 - on request speaking order on assessment of bills of entry was issued - relevant date for computing limitation for filing appeal is date of communication of speaking order and not earlier date of return of assessed bills of entry - appeal not time barred - case remanded for decision on merits.**

**(Paras 4 & 5)**

### **2008 (85) RLT 103 (CESTAT-Che.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Chennai)*

**Present** : Shri P.G. Chacko, Member (Judicial)  
Shri P. Karthikeyan, Member (Technical)

**SANDIP EXPORTS LTD.**

**Versus**

**CC (EXPORT), CHENNAI**

*(Final Order No. 1418/2007 and Stay Order No. S/1183/2007 dt. 27.11.2007 certified on 29.11.2007 in Application No. C/Stay/180/2007 and Appeal No. C/296/2007)*

**Penalty — Section 114A of Customs Act, 1962 - appellants filed bill of entry for goods purchased on high sea sale basis but did not pursue their clearance - seller got provisional release of goods from customs on payment of duty - penalty leviable on seller who is held liable to pay duty - penalty on buyer (appellant) set aside - appeal allowed.**  
**(Para 4)**

### **2008 (85) RLT 105 (CESTAT-Mum.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Mumbai)*

**Present** : Ms. Jyoti Balasundaram, Vice President  
Shri A.K. Srivastava, Member (Technical)

**SUNIL KUMAR JAIN & ORS.**

**Versus**

**CCE & C, NAGPUR-I**

*(Final Order Nos. A/627-631/WZB/2007/CSTB-CI dt. 8.11.2007 certified on 16.11.2007 in Appeal Nos. C/671/2004-Mum. & E/2227-2230/2004-Mum.)*

**Exemption — Customs - Notification No. 53/97-Cus. - Procedural lapse - 100% EOU - Furnace oil - sent to another 100% EOU of manufacturer and used therein - benefit of notification not deniable on ground of procedural lapse of not obtaining permission for such diversion - demand and redemption fine set aside.**  
**(Paras 5 & 7)**

**Exemption — Customs - Notification No. 53/97-Cus. - 100% EOU - Transit loss - Demand - Furnace oil - received short in factory from port - normal transit loss in liquid cargo is admissible - demand set aside as there is no findings whether transit loss was normal or not.** **(Para 6)**

**Demand — Quantification - Section 11A of CEA, 1944 - 100% EOU - DTA clearance - Yarn and Waste - cleared to DTA by misdeclaring description - duty demand to be reworked in light of Larger Bench's decision on applicable rate of duty - case remanded.** **(Paras 8 & 9)**

### **2008 (85) RLT 111 (Raj.)**

*(IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR)*

**Present** : Hon'ble Mr. Justice Rajesh Balia  
Hon'ble Mr. Justice Manak Lall Mohta

**WESTERN RAJASTHAN COLOUR LAB ASSOCIATION**

**Versus**

**UNION OF INDIA**

*(D.B. Civil Writ Petition No. 888/2004)*

*Dated 20.7.2007*

**Service Tax — Taxable value - Section 67 of Finance Act, 1994 - Photography service - cost of material not to be excluded by bifurcating gross receipt - petition dismissed.**  
**(Paras 10,11 & 12)**

**2008 (85) RLT 113 (CESTAT-Del.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, New Delhi)*

**Present :** Shri S.S. Kang, Vice President  
Dr. T.V. Sairam, Member (Technical)

**S.P. SHARMA**

**Versus**

**CCE, LUDHIANA**

*(Stay Order No. S/559/2007 dt. 24.10.2007 certified on 5.12.2007 in Application No. ST/Stay/2170/2007 and Appeal No. ST/503/2007)*

**Service Tax — Pre-deposit - Section 35F of CEA, 1944 - Maintenance and repair service - Section 65 of Finance Act, 1994 - Painting of building undertaken under work contract - not taxable prior to amendment made in 2006 - pre-deposit waived.**

**(Para 4)**

**2008 (85) RLT 114 (CESTAT-Che.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Chennai)*

**Present :** Shri P. Karthikeyan, Member (Technical)

**CCE, COIMBATORE**

**Versus**

**SURYA SANDS (P) LTD.**

*(Final Order No. 1300/2007 dt. 30.10.2007 certified on 5.11.2007 in Appeal No. ST/136/2005/MAS)*

**Service Tax — Penalty - Section 76 and 77 of Finance Act, 1994 - Goods transport agent's service - tax for period from 16.11.1997 to 1.6.1998 was paid after issue of show cause notice in November, 2002 but before adjudication - penalty not leviable - Revenue's appeal dismissed. (Para 4)**

**2008 (85) RLT 117 (CESTAT-Mum.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Mumbai)*

**Present :** Shri M.V. Ravindran, Member (Judicial)

**J.K.D. POPAT & CO.**

**Versus**

**CCE, NASHIK**

*(Final Order No. A/1614/WZB/2007-CIV/SMB dt. 16.11.2007 certified on 6.12.2007 in Appeal No. ST/45/2007-Mum.)*

**Service Tax — Penalty - Section 76 of Finance Act, 1994 - quantum of penalty to be imposed is discretionary - enhancement of penalty equal to tax is set aside - appeal allowed.**  
**(Paras 3 & 4)**

**2008 (85) RLT 118 (CESTAT-Che.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Chennai)*

**Present** : Shri P. Karthikeyan, Member (Technical)

**CHITRAKOOT STEEL & POWER PVT. LTD.**

**Versus**

**CCE, CHENNAI**

*(Final Order No. 1420/2007 and Stay Order No. S/1189/2007 dt. 29.11.2007 certified on 7.12.2007 in Application No. E/Stay/419/2007 and Appeal No. E/626/2007)*

**Service Tax — Cenvat credit - Rule 3 (5) of CENVAT Credit Rules, 2004 - Goods transport agent's service - inputs/capital goods removed as such by reversing credit taken thereon - Service Tax paid on inward transportation of the same, need not be reversed in absence of any provision - appeal allowed.**

**(Para 5)**

**2008 (85) RLT 120 (CESTAT-Che.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Chennai)*

**Present** : Shri P.G. Chacko, Member (Judicial)

**PROFESSIONAL COURIERS**

**Versus**

**CST, CHENNAI**

*(Final Order No. 1468/2007 and Stay Order No. S/1234/2007 dt. 7.12.2007 certified on 13.12.2007 in Application No. ST/Stay/138/2007 and Appeal No. ST/193/2007)*

**Service Tax — Export - Courier agency - Rule 3 and 4 of Export of Services Rules, 2005 - service performed partly in India and partly outside - consideration received by appellants in Indian currency - prior to amendment of Rule 3 (2) w.e.f. 16.6.2005, such international service was not liable to tax - appeal allowed.**

**(Para 5)**

**2008 (85) RLT 122 (CESTAT-Che.)**

*(In the Customs, Excise & Service Tax Appellate Tribunal, Chennai)*

**Present** : Shri P.G. Chacko, Member (Judicial)

**RAMANASEKAR STEELS LTD.**

**Versus**

**CCE, CHENNAI**

*(Final Order No. 1271/2007 dt. 16.10.2007 certified on 26.10.2007 in Appeal No. ST/102/2005)*

**Service Tax — Penalty - Section 77 and 80 of Finance Act, 1994 - declaration of assessee as 'sick' by BIFR is not reasonable cause for non-filing of return - penalty under Section 77 is leviable on 'sick' service provider.**

**(Para 4)**

**Service Tax — Penalty - Section 76 and 80 of Finance Act, 1994 - assessee was declared 'sick' by BIFR - it is reasonable cause for delay in payment of tax - penalty waived.**

**(Para 5)**