

2008 (85) RLT 247 (Guj.)

(IN THE HIGH COURT OF GUJARAT AT AHMEDABAD)

Present : Hon'ble Mr. Justice D.A. Mehta
Hon'ble Ms. Justice H.N. Devani

COMMISSIONER OF CENTRAL EXCISE

Versus

BOC (INDIA) LTD.

(Tax Appeal No. 177/2005)

Dated 7.10.2005

Modvat credit — Rule 57D of C.Ex. Rules, 1944 - Gases - lost/evaporated during filling them into cylinders - to be treated as waste/loss - credit not deniable - Revenue's appeal dismissed.
(Paras 4 & 5)

2008 (85) RLT 248 (Guj.)

(IN THE HIGH COURT OF GUJARAT AT AHMEDABAD)

Present : Hon'ble Mr. Justice D.A. Mehta
Hon'ble Ms. Justice H.N. Devani

COMMISSIONER OF CENTRAL EXCISE

Versus

WEZMANN LTD.

(Tax Appeal No. 178/2005)

Dated 10.10.2005

Modvat credit — Deemed credit - Export - Refund - Rule 57F(13) of C.Ex. Rules, 1944 - on introduction of compounded levy scheme, respondents became entitled to refund of accumulated deemed credit as held both by CESTAT and Commissioner (Appeal) - no error committed by CESTAT in not following judgement which was not cited before it - Revenue's appeal dismissed.
(Paras 5 & 6)

2008 (85) RLT 250 (P&H)

(IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

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

CCE, LUDHIANA

Versus

SHREYANS INDUSTRIES LTD.

(Central Excise Appeal No. 5/2006)

Dated 12.10.2006

Cenvat credit — Rule 57AG of C.Ex. Rules, 1944 - respondents manufactured dutiable as well as exempted paper - input credit in respect of exempted paper reversed - credit need not be reversed on inputs as such or contained in semi finished goods in stock on day of opting for exemption - Revenue's appeal dismissed.
(Paras 7 & 8)

2008 (85) RLT 252 (P&H)

(IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

Present : Hon'ble Mr. Justice M.M. Kumar
Hon'ble Mr. Justice Rajiv Bhalla

CCE, CHANDIGARH-I
Versus
KANDHARI BEVERAGES LTD.
(C.E.C. No. 158/2002)
Dated 3.12.2007

Reference to High Court — Section 35H of CEA, 1944 - Modvat credit - Rule 57A of C.Ex. Rules, 1944 - Glass bottles and Plastic crates - Chartered Accountant's certificate that cost of glass bottles and plastic crates is included on pro-rata basis in sale price of aerated waters, accepted by CESTAT - a finding of facts - no question of law arises - reference application dismissed.

(Paras 4 &

5)

2008 (85) RLT 253 (Mad.)

(IN THE HIGH COURT OF JUDICATURE AT MADRAS)

Present : Hon'ble Mr. Justice K. Raviraja Pandian
Hon'ble Ms. Justice Chitra Venkataraman

CCE, TIRUCHIRAPALLI
Versus
MARIS SPINNERS LTD.
(C.M.A. No. 2993/2004 and C.M.P. No. 16761/2004)
Dated 1.11.2007

Modvat credit on capital goods — Rule 57Q of C.Ex. Rules, 1944 - Light fittings and parts thereof - entitled to credit - Revenue's appeal dismissed.

(Para 5)

2008 (85) RLT 255 (CESTAT-Ahbad.)

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

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

SAURASHTRA CEMENT LTD.
Versus
CCE, RAJKOT

(Final Order Nos. A/42-45/WZB/Ah'bad/2008-CII dt. 10.1.2008 certified on 11.1.2008 in Appeal Nos. E/930 & 2087-2089/2006)

Penalty — Monthly payment of duty - Rule 8, 25 and 27 of C.Ex. Rules, 2002 - for delay in monthly payment of duty, Rule 25 is not attracted - maximum penalty of Rs. 5000/- leviable under Rule 27 - penalty reduced to Rs. 5000/-.

(Paras 5 & 6)

2008 (85) RLT 257 (CESTAT-Kol.)

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

Present : Dr. Chittaranjan Satapathy, Member (Technical)

Shri D.N. Panda, Member (Judicial)

MODERN MALLEABLE LTD.

Versus

CCE, CALCUTTA-II

*(Final Order Nos. A/1922-1923/Kol./2007 dt. 28.11.2007 certified on 29.11.2007
in Appeal Nos. E/1608/92B & E/219/93)*

Classification — Central Excise - Transmission line parts - line consisting of conductor (cable), towers, accessories and fittings - made of iron, steel or aluminium - conductors are electrical goods but not apparatus - transmission line is not electrical apparatus/machinery - parts of transmission line to be classified under Chapter 73 or 76 depending on constituent metal and not under Chapter 85 of CETA, 1985 - appeal dismissed.
(Paras 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 8 & 10)

2008 (85) RLT 271 (CESTAT-Che.)

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

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

TECHNOWELD ALLOYS (P) LTD.

Versus

CCE, CHENNAI

*(Final Order No. 1374/2007 and Stay Order No. S/1123/2007 dt. 19.11.2007 certified on 27.11.2007 in
Application No. E/Stay/469/2007 in Appeal No. E/687/2007)*

Assessable value — Section 4 of CEA, 1944 - Rule 9 of C.Ex. Valuation (DPEG) Rules, 2000 - Related person - goods are sold to related person as well as to unrelated persons at same price - higher price charged from one customer only is not to be adopted as Rule 9 is not attracted - appeal allowed.

(Para 3)

2008 (85) RLT 273 (CESTAT-Kol.)

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

Present : Dr. Chittaranjan Satapathy, Member (Technical)
Shri D.N. Panda, Member (Judicial)

HEAVY ENGINEERING CORPORATION LTD.

Versus

CCE, RANCHI

*(Final Order No. A-1360/Kol./2007 dt. 19.7.2007 certified on 26.7.2007
in Appeal No. E/18/2005)*

Fortnightly payment of duty — Rule 173G of C.Ex. Rules, 1944 - appellants were directed to pay duty consignment-wise by debiting account current but paid duty through cenvat account - payment of duty by cenvat credit is as good as payment by debiting account current - appeal allowed.

(Para 3)

2008 (85) RLT 274 (CESTAT-Ahbad.)

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

Present : Shri M. Veeraiyan, Member (Technical)

CCE, RAJKOT

Versus

AMUL INDUSTRIES (P.) LTD. & ANR.

(Final Order Nos. A/2897-2898/WZB/Ah'bad/2007-CII dt. 22.11.2007 certified on 29.11.2007 in Appeal Nos. E/261-262/2007)

Cenvat credit - Rule 3 of CENVAT Credit Rules, 2004 - one unit of M/s. Amul Inds. got crankshaft manufactured on job work basis and supplied it to respondents on payments of duty - credit not to be denied to respondents though supplier unit is not manufacturer of crankshaft - Revenue's appeals dismissed.

(Para 4)

2008 (85) RLT 276 (CESTAT-Che.)

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

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

TAFE LTD.

Versus

CCE, MUDURAI

(Final Order No. 1360/2007 and Stay Order No. S/1107/2007 dt. 15.11.2007 certified on 23.11.2007 in Application No. E/Stay/305/2007 and Appeal No. E/484/2007)

Education cess — Section 93 of Finance Act, 2004 - Motor vehicle - Leviability - not leviable on automobile cess as it is levied under Automobile Cess Rules, 1984 by Ministry other than Ministry of Finance (Deptt. of Revenue) - appeal allowed.

(Para 4)

2008 (85) RLT 277 (CESTAT-Che.)

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

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

ARIYA FLEXI LABEL

Versus

CCE, TIRUNELVELI

(Final Order Nos. 1494-1496/2007 dt. 13.12.2007 certified on 17.12.2007 in Appeal Nos. E/355, 356 and 470/2003)

Small scale exemption — Notification No. 8/98-CE dt. 2.6.1998 and No. 5/98-CE dt. 2.6.1998 - Value of clearances - to be computed for entire financial year and not separately for its parts for purpose of determining eligibility to exemption - cases remanded.

(Para 3)

2008 (85) RLT 280 (CESTAT-Del.)

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

Present : Shri P.K. Das, Member (Judicial)

BIRLA ERICSSON OPTICAL LTD. & ANR.

Versus

CCE, BHOPAL

*(Final Order Nos. 1819-1821/2007-SM(BR) dt. 17.10.2007 certified on 9.1.2008
in Appeal Nos. E/3795-3797/2005-SM(BR))*

Cenvat credit — Payment - Rule 3 (4) of CENVAT Credit Rules, 2002 - payment of amount equal to duty on inputs/capital goods removed as such is to be made in terms of Rule 8 of C.Ex. Rules, 2002 and not at time of removal - appeals allowed.

(Para 3)

2008 (85) RLT 281 (CESTAT-Mum.)

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

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

CCE, BELAPUR

Versus

COROMANDEL FERTILIZERS LTD.

(Misc. Order No. M/61/WZB/2008-CII/SMB dt. 8.2.2008 in Application No. E/ROA/1630/2007-Mum. and Appeal No. E/1046/2006-Mum.)

Appeal by Deptt. — Restoration - Review order - Section 35B and 35C of CEA, 1944 - appeal by Deptt. was dismissed as non-maintainable as review order signed by one Commissioner was held invalid - Revenue filed fresh review order signed by two Commissioners with restoration application - such review order is not valid as it is passed after dismissal of appeal and after impugned order got merged with CESTAT's order - ROA application dismissed.

(Paras 5 & 6)

2008 (85) RLT 283 (CESTAT-Che.)

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

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

CCE, TIRUNELVELI

Versus

S.S.D. SPINNING MILLS LTD.

(Final Order No. 1343/2007 and Misc. Order No. M/785/2007 dt. 9.11.2007 certified on 14.11.2007 in Application No. E/OT1/133/2005 and Appeal No. E/558/2003)

Demand — Clandestine removal - Rule 9 of C.Ex. Rules, 1944 - Evidence - demand can not be raised on basis of probability - there has to be quantitative basis for which mathematical precision is required - Revenue's appeal dismissed.

(Para 6)

Appeal — Section 35B of CEA, 1944 - Maintainability - Revenue's appeal challenges dropping of demand - appeal maintainable even if appeal against co-noticees is not filed.

(Para 2)

2008 (85) RLT 286 (CESTAT-Ban.)

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

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

CCE, CHENNAI

Versus

CARBORANDUM UNIVERSAL LTD.

*(Final Order Nos. 1409-1411/2007 dt. 10.12.2007 certified on 14.12.2007
in Appeal Nos. E/951-953/2000)*

Assessable value — Section 4 of CEA, 1944 - Depot sales - Coated abrasive - sold to industrial consumer with 12.5% discount and to dealers with 17.5% discount from factory as well as from depot - all goods cleared to depot to be allowed 17.5% discount - Revenue's appeal dismissed.

(Para 5)

2008 (85) RLT 288 (CESTAT-Ahmadabad)

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

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

CCE, RAJKOT

Versus

RELIANCE INDUSTRIES LTD.

AND

VICE VERSA

*(Final Order Nos. A/3081-3084/WZB/Ah'bad/2007-CII dt. 18.12.2007 certified on 19.12.2007 in Appeal Nos.
E/602,603,741 & 766/2007)*

Demand — Section 11A of CEA, 1944 - Revenue neutrality - Exemption - Notification No. 67/95-CE dt. 16.3.1995 - Captive consumption - Fuel - captively used in generation of electricity which is in turn used in manufacture of dutiable as well as exempted final products - if duty was paid on fuel used in manufacture of exempted final product, its cenvat credit would have been available - exercise being revenue neutral, demand is not justified.

(Paras 5 & 6)

Exemption — Central Excise - Notification No. 67/95-CE dt. 16.3.1995 - Captive consumption - Fuel - captively used in generation of electricity which is in turn used in non-excisable activities, such as supply to residential colony - benefit of notification not admissible. **(Para 7)**

Penalty — Section 11AC of CEA, 1944 - not leviable as it is a bonafide dispute and no malafides can be attributed. **(Para 9)**

2008 (85) RLT 291 (CESTAT-Che.)

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

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

CCE, CHENNAI

Versus

RAPTAKOS BRETT & CO.

*(Final Order No. 1294/2007 dt. 23.10.2007 certified on 2.11.2007
in Appeal No. E/937/2000)*

Assessable value — Section 4 of CEA, 1944 - Interest - on receivables - not to be included. **(Para 2)**

Assessable value — Section 4 of CEA, 1944 - Discount for breakages - not admissible as breakages are after clearance of goods from factory.

(Para 3)

Refund — Unjust enrichment - Provisional assessment - Section 11B of CEA, 1944 - Rule 9B of C.Ex. Rules, 1944 - refund arising on finalisation of provisional assessment pertaining to period prior to amendment of Rule 9B on 25.6.1999, is not hit by bar of unjust enrichment.

(Para 4)

2008 (85) RLT 293 (CESTAT-Del.)

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

Present : Shri P.K. Das, Member (Judicial)

HILTOP RUBBERS (P) LTD.

Versus

CCE, MEERUT-I

*(Final Order No. 1887/2007-SM(BR) dt. 19.11.2007 certified on 10.1.2008
in Appeal No. E/99/2006-SM(BR))*

Remission of duty — Rule 21 of C.Ex. Rules, 2002 - goods destroyed in fire - remission of duty not to be denied on ground that assessee had not taken reasonable care to prevent fire - appeal allowed.

(Para 3)

2008 (85) RLT 294 (CESTAT-Del.)

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

Present : Shri P.K. Das, Member (Judicial)

CCE, CHANDIGARH

Versus

ALCON WIRE & CABLE INDUSTRIES

*(Final Order No. 257/2008-SM(BR) dt. 14.1.2008 certified on 29.2.2008
in Appeal No. E/693/2006-SM(BR))*

Penalty — Section 11AC of CEA, 1944 - Shortage - found during stock verification by visiting officers - explained due to wrong reporting of production - no evidence of clandestine removal - duty deposited before issue of show cause notice - penalty not leviable - Revenue's appeal dismissed.

(Para 2)

2008 (85) RLT 296 (CESTAT-Che.)

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

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

KARTHIGEYA MOULDS AND DIES PVT. LTD.

Versus

CCE, CHENNAI

*(Final Order Nos. 1290-1291/2007 dt. 22.10.2007 certified on 1.11.2007
in Appeal Nos. E/469-470/2007)*

Manufacture — Section 2(f) of CEA, 1944 - Rectification/Correction/Modification of moulds - not amounting to manufacture.

(Para 1)

Cenvat credit — Rule 2 of CENVAT Credit Rules, 2004 - Injection moulding machine - used for testing moulds and for manufacture of moulded components - entitled to credit - appeals allowed. (Para 2)

2008 (85) RLT 298 (CESTAT-Ban.)

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

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

CST LIMITED & ANR.

Versus

CC & CE, HYDERABAD-I

*(Final Order Nos. 636-637/2007 dt. 6.6.2007 certified on 18.6.2007
in Appeal Nos. E/939 & 940/2006)*

**Exemption — Central Excise - Notification No. 6/2002-CE dt. 1.3.2002 as amended by Notification No. 48/2004-CE dt. 10.9.2004 (Sl. No. 301) - Welded austenitic stainless steel tubes - supplied to BHEL who are executing a mega project by International Competitive Bidding - appellants as sub-contractor, are entitled to benefit of notification as goods are to be considered as supplied against International Competitive Bidding - appeals allowed.
(Para 6)**

2008 (85) RLT 300 (CESTAT-Kol.)

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

(Circuit Bench at Ranchi)

Present : Dr. Chittaranjan Satapathy, Member (Technical)
Shri D.N. Panda, Member (Judicial)

BHAWANI STEEL INDUSTRIES

Versus

CCE, RANCHI

*(Final Order No. A-1363/Kol./2007 dt. 19.7.2007 certified on 26.7.2007
in Appeal No. E/430/2005)*

**Compounded levy — Section 3A of CEA, 1944 - Determination of production capacity of furnace - appellants sought permission to change parameters of furnace and changed them after waiting for reply for a long time - change in parameters to be allowed from date of intimation of changed parameters and not from date of verification.
(Para 3)**

**Compounded levy — Penalty - imposed for changing parameters of furnace without permission - set aside as appellants applied for permission but did not get reply for a long time.
(Para 4)**

2008 (85) RLT 301 (CESTAT-Ban.)

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

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

ANDHRA SUGARS LTD.

Versus

CCE, GUNTUR

*(Final Order Nos. 938-940/2007 dt. 14.8.2007 certified on 21.8.2007
in Appeal Nos. E/72-74/2005)*

Assessable value — Section 4 of CEA, 1944 - Rule 8 of C.Ex. Valuation (DPEG) Rules, 2000 - goods transferred to sister unit - to be assessed under Rule 8 and not on transaction value of same goods sold to independent buyers - appeals allowed.

(Paras 5 & 6)

2008 (85) RLT 303 (CESTAT-Ban.)

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

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

CCE, HYDERABAD

Versus

PARIS WAVES

*(Final Order No. 1470/2007 dt. 1.1.2008 certified on 4.1.2008
in Appeal No. E/907/2005)*

Interest — Refund - Cenvat credit - Section 11BB of CEA, 1944 - interest payable for period beyond 3 months from date of filing of application for refund of unutilised accumulated cenvat credit till sanction of refund thereof - Revenue's appeal dismissed.

(Para 4)

2008 (85) RLT 306 (CESTAT-Kol.)

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

Present : Dr. Chittaranjan Satapathy, Member (Technical)
Shri D.N. Panda, Member (Judicial)

SAIL

Versus

CCE, RANCHI

*(Final Order No. A-1380/Kol./2007 dt. 16.7.2007 certified on 31.7.2007
in Appeal No. E/304/2004)*

Exemption — Central Excise - Notification No. 67/95-CE dt. 16.3.1995 - Captive consumption - goods captively used in manufacture of intermediate product which is captively used in manufacture of dutiable final product - benefit of notification admissible - appeal allowed.

(Paras 1 & 2)

2008 (85) RLT 307 (CESTAT-Ban.)

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

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

NIZAM DECCAN SUGARS LTD.

Versus

CCE, HYDERABAD-I

(Final Order Nos. 184 & 185/2008 dt. 25.2.2008 certified on 27.2.2008)

in Appeal Nos. E/117 & 507/2007)

Cenvat credit — Rule 6 of CENVAT Credit Rules, 2002 - Captive power plant - surplus electricity generated is supplied to Electricity Board - credit of duty paid on capital goods is admissible as part of electricity is used in production of dutiable sugar. (Para 7.1)

Limitation — Demand - Cenvat credit - Rule 12 of CENVAT Credit Rules, 2002 - extended time limit not invocable as assessee had informed Deptt. about setting up of captive power plant - appeals allowed. (Para 7.1)

2008 (85) RLT 311 (CESTAT-Kol.)

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

Present : Dr. Chittaranjan Satapathy, Member (Technical)
Shri D.N. Panda, Member (Judicial)

NEW TOBACCO CO. LTD.

Versus

CCE, KOLKATA-III

AND

VICE VERSA

(Final Order Nos. A/1530-1531/Kol./2007 and Stay Order No. S/649/Kol./2007 dt. 26.7.2007 certified on 10.8.2007 in Application No. S/Stay/140/2007 and Appeal Nos. E/165-166/2007)

Appeal — Section 35A of CEA, 1944 - Commissioner (Appeal) could not decide appeal without disposing of stay application - appeals remanded for disposal after decision on stay application. (Para 3)

2008 (85) RLT 312 (CESTAT-Ban.)

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

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

RUCHI INFRASTRUCTURE LTD. & ORS.

Versus

CCE, VISAKHAPATNAM-II

(Final Order Nos. 1181-1184/2007 dt. 10.10.2007 certified on 23.10.2007 in Appeal Nos. C/178/2007, E/50, 83 & 97/2007)

Cenvat credit — Rule 6 (3) (b) of CENVAT Credit Rules, 2004 - inputs used in manufacture of dutiable as well as exempted final product - 8% or 10% amount on exempted final product not payable when credit taken on inputs used in their manufacture is reversed with interest even after clearance - reference to Larger Bench not necessary - appeals allowed. (Paras 11, 11.1 & 11.2)

2008 (85) RLT 322 (CESTAT-Mum.)

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

Present : Ms. Jyoti Balasundaram, Vice President

CCE, NAGPUR

Versus

AMITASHA ENTERPRISES PVT. LTD.

(Final Order Nos. A/1175-1176/WZB/2007-CIV/SMB dt. 16.8.2007 certified on 3.9.2007 in Appeal No. E/2583/2006 & E/CO-47/2007)

Modvat credit — Rule 57C of C.Ex. Rules, 1944 - Zinc - used for galvanization of pipes cleared on payment of duty - credit admissible though process of galvanization did not amount to manufacture - Revenue's appeal dismissed.

(Paras 2 & 3)

2008 (85) RLT 323 (CESTAT-Mum.)

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

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

CCE, AURANGABAD

Versus

AHMEDNAGAR FORGINGS LTD.

(Final Order No. A/1566/WZB/2007-CIV/SMB dt. 19.11.2007 certified on 26.11.2007 in Appeal No. E/3305/2006-Mum.)

Interest — Section 11AB of CEA, 1944 - not payable on duty paid on supplementary invoice issued on account of revision of price - Revenue's appeal dismissed.

(Paras 3 & 4)

2008 (85) RLT 325 (All.)

(IN THE HIGH COURT OF JUDICATURE OF ALLAHABAD)

Present : Hon'ble Mr. Justice R.K. Agrawal
Hon'ble Mr. Justice Rajesh Kumar

CCE, ALLAHABAD

Versus

VIJAY SILK HOUSE

*(Central Excise Appeal No. 116/2005)
Dated 25.7.2005)*

Date of payment — date on which bank draft with TR-6 challan was presented to bank and not subsequent date of submission of TR-6 challan to customs, to be taken as date of payment - Revenue's appeal dismissed.

(Paras 2 & 3)

2008 (85) RLT 327 (CESTAT-Ban.)

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

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

YOKOGAWA INDIA LTD.

Versus

CC, BANGALORE

*(Final Order No. 31/2008 dt. 4.1.2008 certified on 29.1.2008
in Appeal No. C/171/2007)*

Exemption — CVD - Notification No. 6/2006-CE dt. 1.3.2006 - Software - standard software is imported - it is sold off shelf also - it is modified after importation to suit a

particular customer's requirements before installation - packaged and not customized software - benefit of notification not admissible - appeal dismissed. (Para 9)

2008 (85) RLT 331 (CESTAT-Mum.)

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

Present : Shri K.K. Agarwal, Member (Technical)

CC (IMPORT), MUMBAI

Versus

L.K. STEEL FACTORY P. LTD.

(Final Order No. A/105/WZB/2008-CII/SMB dt. 2.1.2008 certified on 29.1.2008

in Appeal No. C/773/2007)

Refund — Section 27 and 154 of Customs Act, 1962 - respondents did not claim exemption in bill of entry - subsequent claim to refund on ground of availability of exemption is to be governed by Section 27 and not by Section 154 as it is not a clerical/arithmetical error - refund not admissible as assessment was not challenged - Revenue's appeal allowed.

(Para 4)

2008 (85) RLT 333 (CESTAT-Del.)

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

Present : Shri P.K. Das, Member (Judicial)

ABDULLAH RASHEED

Versus

CC, NEW DELHI

(Final Order No. 1854/2007-SM(BR) dt. 1.11.2007 certified on 9.1.2008

in Appeal No. C/518/2007-SM(BR))

Penalty — Section 112 of Customs Act, 1962 - not leviable on owner of godown in which smuggled goods were stored by hirer of godown without knowledge of owner - appeal allowed.

(Para 4)

2008 (85) RLT 335 (CESTAT-Ban.)

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

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

MPR REFRACTORIES LIMITED

Versus

CC & CE, VISAKHAPATNAM

(Misc. Order No. M/20/2008 dt. 17.1.2008 certified on 29.1.2008 in Application No. C/ROM/99/2007 in

Appeal No. C/07/2005)

Appeal — Restoration - Section 129B of Customs Act, 1962 - Final Order reported in 2007 (82) RLT 328 is recalled as there is an error apparent on face of record since ground that impugned order was beyond the scope of show cause notice, was not considered - ROA application allowed.

(Para 3)

2008 (85) RLT 337 (CESTAT-Del.)

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

Present : Ms. Jyoti Balasundaram, Vice President

J.S. GUJRAL & ANR.

Versus

CC, NEW DELHI

*(Final Order Nos. 1840-1841/2007-SM(BR) dt. 26.12.2007 certified on 10.1.2008
in Appeal Nos. C/412-413/2007-SM(BR))*

Confiscation and Penalty — Section 111 (d) and 112 of Customs Act, 1962 - Car - type approval certificate as required under EXIM Policy not produced as specified international accredited agency refused to issue - confiscation and penalty set aside as appellants could not be held responsible for non-fulfillment of condition - appeals allowed. (Paras 4 & 5)

2008 (85) RLT 339 (CESTAT-Mum.)

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

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

KRISHNA KUMAR BHATIA

Versus

CC (I) NCH, MUMBAI

*(Final Order No. A/77/WZB/2008-CII/SMB dt. 18.1.2008 certified on 28.1.2008
in Appeal No. C/180/2007-Mum.)*

Interest — Refund - Redemption fine and Penalty - Section 27A of Customs Act, 1962 - interest payable for delay beyond prescribed period in refunding redemption fine and penalty - appeal allowed. (Paras 5 & 6)

2008 (85) RLT 341 (CESTAT-Ban.)

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

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

SANDUR MICRO CIRCUIT LTD.

Versus

CCE & C, MANGALORE

*(Final Order No. 139/2008 dt. 8.2.2008 certified on 19.2.2008
in Appeal No. C/450/2005)*

Demand — Quantification - Section 28 of Customs Act, 1962 - Exemption - Notification No. 13/81-Cus. dt. 9.2.1981 and No. 53/97-Cus. dt. 3.6.1997 - 100% EOU - appellants fulfilled export obligation partially - duty demand to be requantified after allowing proportionate abatement for exports made. (Para 6)

Interest — Section 28AB of Customs Act, 1962 - Notification No. 13/81-Cus. dt. 9.2.1981 and No. 53/97-Cus. dt. 3.6.1997 - 100% EOU - no interest is payable in respect of duty demanded on non-fulfillment of export obligation in absence of any provision for charging interest in notification. (Para 6)

Penalty — Section 112 of Customs Act, 1962 - 100% EOU - not justified when non-fulfillment of entire export obligation is on account of sudden slump in demand in export market.

(Para 6)

2008 (85) RLT 345 (CESTAT-Mum.)

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

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

MUNILAL MEHRA

Versus

CC(ADJ.), MUMBAI

*(Final Order Nos. A/32-33/WZB/2008-CI/CSTB dt. 3.1.2008 certified on 21.1.2008
in Appeal Nos. C/15 & 83/2002)*

Penalty — Section 112(b) of Customs Act, 1962 - appellant did not physically deal with offending goods but only opened bank accounts, deposited sale proceeds and transferred the amounts - not liable to penalty - appeals allowed.

(Paras 2,3 & 4)

2008 (85) RLT 347 (CESTAT-Mum.)

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

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

FIAT INDIA PRIVATE LTD.

Versus

CC(IMPORT), NHAVA SHEVA

*(Final Order Nos. A/81-82/WZB/2008-CI/CSTB dt. 21.1.2008 certified on 1.2.2008
in Appeal Nos. C/872-873/2007)*

Refund — Unjust enrichment - Section 27 of Customs Act, 1962 - Revenue deposit - shown in accounts/balance sheet as recoverable from Customs and not as part of profit and loss account - C.A.'s certificate confirmed it - bar of unjust enrichment not applicable - appeals allowed.

(Paras 5 & 6)

2008 (85) RLT 350 (CESTAT-Mum.)

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

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

VIDEOCON INDUSTRIES LTD.

Versus

CC (I), NHAVA SHEVA

*(Final Order No. A/76/WZB/2008/SMB-CII dt. 18.1.2008 certified on 28.1.2008
in Appeal No. C/393/2007-Mum.)*

Refund — Clerical error - Section 27, 149 and 154 of Customs Act, 1962 - against invoiced quantity of 3931 sets, 3624 pieces as per bill of lading received and declared in bill of entry - duty assessed and paid on 3931 sets - a clerical/arithmetical mistake - to be corrected and consequential refund to be paid in terms of Section 149 and 154 though

assessment of bill of entry is not challenged - Section 27 is not attracted - appeal allowed.
(Paras 5 & 6)

2008 (85) RLT 352 (CESTAT-Ban.)

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

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

AISWARYA MARITIME SERVICES & ORS.

Versus

CC, COCHIN

*(Final Order Nos. 1201-1203/2007 dt. 18.10.2007 certified on 13.11.2007
in Appeal Nos. C/256-258/2005)*

Penalty — Section 117 of Customs Act, 1962 - Steamer agent - supplied empty containers to shipper/exporter for transportation of misdeclared cargo - not connected with stuffing and having no knowledge of misdeclaration - penalty not leviable on findings of presumptive nature - appeals allowed.

(Para 3)

2008 (85) RLT 355 (CESTAT-Ban.)

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

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

PRAVEEN AUTOFIN PVT. LTD.

Versus

CCE, MANGALORE

*(Final Order No. 1259/2007 dt. 12.11.2007 certified on 26.11.2007
in Appeal No. ST/22/2007)*

Service Tax — Banking and other financial services - Hire purchase service - Section 65 of Finance Act, 1994 - Lending money on interest for purchase of vehicles - not taxable service prior to 31.12.2003 - appeal allowed.

(Para 5)

2008 (85) RLT 357 (CESTAT-Ahbad.)

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

Present : Shri M. Veeraiyan, Member (Technical)

CCE, VAPI

Versus

BHARTIBEN R. PATEL

(Final Order No. A/3145/WZB/Ah'bad/2007-CII dt. 11.12.2007 certified on 27.12.2007 in Appeal No. ST/41/2007)

Service Tax — Rent-a-cab service - Section 65 of Finance Act, 1994 - respondent owned one vehicle which was given on hire from April 2000 to April 2003 - as number of vehicles owned by operator was not relevant during said period, tax is payable - Revenue's appeal allowed(Paras 5 & 6)

2008 (85) RLT 359 (CESTAT-Ban.)

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

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

DIGI STUDIO & ANR.

Versus

CCE, CALICUT

*(Final Order Nos. 1249-1252/2007 dt. 31.10.2007 certified on 19.11.2007
in Appeal Nos. ST/313-316/2007)*

Service Tax — Photographic service - Exemption - Notification No. 12/2003-ST dt. 20.6.2003 - Taxable value - Section 67 of Finance Act, 1994 - value of materials and other consumables used is not to be included in taxable value of photographic service - appeals allowed. (Para 5)

2008 (85) RLT 361 (CESTAT-Ahbad.)

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

Present : Shri M. Veeraiyan, Member (Technical)

CCE, SURAT-II

Versus

GUJARAT BORISIL LTD.

(Final Order No. A/3127/WZB/Ah'bad/2007-CII dt. 11.12.2007 certified on 26.12.2007 in Appeal No. ST/101/2007)

Service Tax — Demand - Section 73 of Finance Act, 1994 - Goods transport agent's service - demand notice issued under Section 73 on 23.7.2004 for service received from 16.11.1997 to 1.6.1998, is not valid - demand rightly set aside - Revenue's appeal dismissed. (Para 7)

2008 (85) RLT 365 (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

CCE, RAJKOT

*(Final Order No. A/185/WZB/Ah'bad/2008-CII dt. 30.1.2008 certified on 11.2.2008
in Appeal No. ST/168/2007)*

Service Tax — Rate of tax - Relevant date - rate of service tax in force on date of rendering service and not on date of billing/payment, is applicable - appeal allowed. (Paras 6.1 & 7)