

## **2008 (86) RLT 1 (SC)**

*(IN THE SUPREME COURT OF INDIA)*

**Present** : Hon'ble Mr. Justice Ashok Bhan  
Hon'ble Mr. Justice Dalveer Bhandari

**CCE, DELHI**

**Versus**

**INSULATION ELECTRICAL (P) LTD.**

*(Civil Appeal No. 5943/2002\*)*

*Dated 27.3.2008*

**Classification — Central Excise - Rail assembly, Front seat adjuster/assembly slider and Rear back lock assembly for cars - classifiable as accessories of car under Heading 8708 and not as parts of seats under Heading 9401 of CETA, 1985.**

***(Paras 19,20 & 21)***

**Words and Phrases — "Parts" - Interpretation - part is an essential component of the whole without which the whole can not function.**

***(Para 19)***

## **2008 (86) RLT 6 (Bom.)**

*(IN THE HIGH COURT OF JUDICATURE AT BOMBAY)*

**Present** : Hon'ble Mr. Justice F.I. Rebello  
Hon'ble Mr. Justice J.P. Devadhar

**CONWOOD PRE-FAB PVT. LTD.**

**Versus**

**UNION OF INDIA**

*(Writ Petition No. 2237/2007)*

*Dated 18.10.2007*

**Appeal — Rectification of mistake - Section 35C of CEA, 1944 - non-consideration of material on record falls in category of 'rectification and not 'review' - case remanded for fresh consideration of ROM application.**

***(Paras 4 &***

***5)***

## **2008 (86) RLT 8 (Uttarakhand)**

*(IN THE HIGH COURT OF JUDICATURE OF UTTARAKHAND AT NAINITAL)*

**Present** : Hon'ble Mr. Justice P.C. Verma  
Hon'ble Mr. Justice B.C. Kandpal

**CCE, MEERUT**

**Versus**

**INDICA CHEMICALS INDUSTRIES (P) LTD.**

*(Central Excise Reference (CEXRE) No. 1/2002\*)*

*dt. 13.8.2007*

**Modvat credit — Rule 57G of C.Ex. Rules, 1944 - Bill of entry - procedural lapse - substantive benefit of credit not to be denied for inadvertent lapse on part of assessee in taking credit of entire CVD paid on bill of entry on receipt of first part of consignment -**

**Revenue's reference application dismissed.**  
**(Para 6)**

**2008 (86) RLT 9 (Bom.)**

*(IN THE HIGH COURT OF JUDICATURE OF BOMBAY AT NAGPUR)*

**Present** : Hon'ble Mr. Justice J.P. Devadhar  
Hon'ble Mr. Justice B.P. Dharmadhikari

**CCE, NAGPUR**  
**Versus**

**MAHARASHTRA ELECTROSMELT LTD.**  
*(Central Excise Appeal No. 23/2006 )*  
*dt. 20.6.2007*

**Modvat credit on capital goods — Rule 57R (5) of C.Ex. Rules, 1944 - depreciation on capital goods claimed in Income Tax return but not claimed in revised return - respondents can not be said to have claimed depreciation - Revenue's appeal dismissed.**  
**(Paras 2,3,4 & 5)**

**Words and Phrases — 'Claimed' - Rule 57R (5) of C.Ex. Rules, 1944 - Interpretation - means 'availed'.** **(Para 3)**

**2008 (86) RLT 10 (CESTAT-Ahbad.)**

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

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

**CCE, SURAT-II**  
**Versus**

**SPECIAL PROJECT FINANCE (I) P. LTD.**  
*(Final Order No. A/183/WZB/Ah'bad/2008-CII dt. 31.1.2008 certified on 11.2.2008*  
*in Appeal No. E/1844/2003)*

**100% EOU — DTA clearance - Demand - Waste and Scrap - goods sold to 100% EOU are to be counted for determining FOB value of exports for purposes of eligibility limit for DTA clearances - since waste and scrap cleared to DTA under permission from Development Commissioner, is within 50% of FOB value of exports, no duty is payable - demand on waste and scrap set aside.**  
**(Paras 4 & 6)**

**100% EOU — DTA clearance - Demand - Waste and Scrap - Section 72 of Customs Act, 1962 - inputs were imported duty free and were bonded - same were used in manufacture of finished goods - waste and scrap generated during manufacture was cleared to DTA - not a case of improper removal of bonded inputs - Section 72 is not attracted - demand on inputs contained in waste and scrap set aside - Revenue's appeal dismissed.**

**(Paras 5 &**

**6)**

**2008 (86) RLT 12 (CESTAT-Ban.)**

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

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

Shri T.K. Jayaraman, Member (Technical)

**BHORUKA GASES LTD.**

**Versus**

**CCE, BANGALORE-I**

*(Final Order No. 1420/2007 dt. 17.12.2007 certified on 24.12.2007  
in Appeal No. E/452/2007)*

**Assessable value — Section 4 of CEA, 1944 - Gases - Rental charges for cylinders - not includible even after 1.7.2000 - appeal allowed. (Para 3.2)**

**2008 (86) RLT 16 (CESTAT-Ahbad.)**

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

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

**CCE, SURAT**

**Versus**

**SHILPA COPPER WIRE INDUSTRIES**

*(Final Order No. A/167/WZB/Ah'bad/2008-CII dt. 6.2.2008 certified on 11.2.2008  
in Appeal No. E/368/2006)*

**Cenvat credit — Export - Deemed export - Refund - Rule 5 of CENVAT Credit Rules, 2004 - 100% EOU - supplied goods to another 100% EOU - entitled to refund of unutilised credit balance of duty paid on inputs - Revenue's appeal dismissed. (Para 5)**

**2008 (86) RLT 19 (CESTAT-Ahbad.)**

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

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

**J.A. ENTERPRISES**

**Versus**

**CCE, SURAT**

*(Final Order No. A/79/WZB/Ah'bad/2008-CII dt. 7.1.2008 certified on 21.1.2008  
in Appeal No. E/1115/2004)*

**Classification — Central Excise - Section line assemblies, namely Liquid line assembly, Discharge line assembly, Charging line, Header, Capillary, Stainer assembly - made of copper - used in manufacture of air conditioner - parts of general use - classifiable under Chapter 74 and not under Chapter 84 of CETA, 1985 - appeal allowed. (Paras 4 & 5)**

**2008 (86) RLT 21 (CESTAT-Mum.)**

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

**Present :** Ms. Jyoti Balasundaram, Vice President

**EMCURE PHARMACEUTICALS LTD.**

**Versus**

**CCE, PUNE**

*(Final Order No. A/133/WZB/2008-CIII/SMB dt. 29.1.2008 certified on 6.2.2008)*

*in Appeal No. E/809/2007)*

**Cenvat credit — Education cess - Rule 3 of CENVAT Credit Rules, 2004 - Inputs - received from 100% EOU - credit admissible - appeal allowed.**

**(Paras 6 & 7)**

**2008 (86) RLT 26 (CESTAT-Del.)**

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

**Present :** Hon'ble Mr. Justice S.N. Jha, President  
Shri M. Veeraiyan, Member (Technical)

**FIL INDUSTRIES LTD.**

**Versus**

**CCE, JAMMU**

*(Final Order No. 129/2008-EX. & Stay Order No. S/302/2008-EX. dt. 24.3.2008 certified on 9.4.2008 in Application No. E/Stay/06/2008 and Appeal No. E/06/2008)*

**Natural justice — Appeal - Personal hearing - Section 35A of CEA, 1944 - impugned order was served by registered post on appellants on 4.7.2006 as per sub-post Master's report and not for first time on 28.3.2007 when its copy was received by appellants in response to their letter as claimed by appellants - appeal was, therefore, filed with 228 days delay which can not be condoned by Commissioner (Appeal) - in such situation dismissal of appeal as time barred without hearing appellants is upheld - appeal dismissed.**

**(Paras 4,5 & 6)**

**2008 (86) RLT 28 (CESTAT-Che.)**

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

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

**TAFE LTD.**

**Versus**

**CCE, CHENNAI**

*(Final Order No. 39/2008 & Stay Order No. S/52/2008 dt. 18.1.2008 certified on 28.1.2008 in Application No. E/Stay/447/2007 and Appeal No. E/660/2007)*

**Export — Rebate claim - Rule 18 of C.Ex. Rules, 2002 - Jurisdiction - rebate claim sanctioned by Asstt. Commissioner other than that having jurisdiction over factory - order-in-appeal setting aside sanction order of rebate claim on ground of lack of jurisdiction is set aside when claim is admissible on merits - appeal allowed.**

**(Para 5)**

**2008 (86) RLT 30 (CESTAT-Del.)**

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

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

**CCE, JAIPUR-II**

**Versus**

**BHILWARA SPINNERS LTD. & ANR.**

*(Final Order Nos. 54-56/2008-SM(BR) dt. 21.11.2007 certified on 15.1.2008 in Appeal Nos. E/112/2006 & E/3858-3859/2005-SM(BR))*

**Cenvat credit — Refund - Export - Rule 5 of CENVAT Credit Rules, 2004 - final product exported under Advance licence scheme - duty free inputs imported for replenishment - refund of unutilised credit of duty paid on inputs used in manufacture of exported goods, is admissible if no rebate or drawback is claimed - Revenue's appeal dismissed. (Para 8)**

**2008 (86) RLT 32 (CESTAT-Che.)**

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

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

**DOLLAR COMPANY PVT. LTD.**

**Versus**

**CCE, CHENNAI-I**

*(Final Order No. 49/2008 dt. 18.1.2008 certified on 25.1.2008  
in Appeal No. E/955/2005/MAS)*

**Refund — Unjust enrichment - Section 11B of CEA, 1944 - bar of unjust enrichment not applicable where cum duty price had remained same - case remanded.**

**(Para 4)**

**2008 (86) RLT 34 (CESTAT-Del.)**

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

**Present** : Hon'ble Mr. Justice S.N. Jha, President  
Shri A.K. Srivastava, Member (Technical)

**HMT LTD. & ORS.**

**Versus**

**CCE, PANCHKULA & ANR.**

*(Misc. Order No. M/123/2008-EX. dt. 30.1.2008 certified on 13.2.2008  
in Appeal Nos. E/3521,1632 & 1788/2006)*

**Reference to Larger Bench — Cenvat credit - Rule 12 of CENVAT Credit Rules, 2002 - whether on final product being exempted from duty, credit taken on inputs as such in stock, under process and contained in final product in stock, is to be reversed/recovered - referred to Larger Bench in view of conflicting judgements.**

**(Para 14)**

**2008 (86) RLT 39 (CESTAT-Mum.)**

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

**Present** : Ms. Jyoti Balasundaram, Vice President

**CCE, NAGPUR**

**Versus**

**SOLAR EXPLOSIVE LTD.**

*(Final Order Nos. A/134 to 137/WZB/2008-CIII/SMB dt. 17.1.2008 certified on 5.2.2008 in E/CO-192-193/2007 and Appeal Nos. E/965-966/2007)*

**Refund —Section 11B of CEA, 1944 - goods cleared on higher provisional price approved for previous year - afterwards lower price was finalised for current period in terms of contract - refund of excess duty paid is admissible subject to provisions of unjust enrichment, though assessments were not provisional.**

**(Paras 3 & 4)**

## **2008 (86) RLT 43 (CESTAT-Ban.)**

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

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

**AMARA RAJA BATTERIES LTD.**

**Versus**

**CCE, TIRUPATI**

*(Final Order No. 1121/2007 dt. 10.9.2007 certified on 27.9.2007  
in Appeal No. E/952/2004)*

**Dutiability — Replacement - goods supplied as free replacement in terms of contract, are liable to pay duty. (Para 5)**

**Duty liability — Job work - Rule 57F of C.Ex. Rules, 1944 - goods sent to job worker after taking modvat credit - processed goods cleared from job worker's premises - appellants liable to pay duty. (Para 5.1)**

## **2008 (86) RLT 45 (CESTAT-Del.)**

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

**Present** : Shri S.S. Kang, Vice President  
Shri P. Karthikeyan, Member (Technical)

**VALENTINO SYNTEX PVT. LTD. & ANR.**

**Versus**

**CCE, JAIPUR**

*(Final Order Nos. 40-41/2008-EX. dt. 4.2.2008 certified on 13.2.2008  
in Appeal Nos. E/2750-2751/2007)*

**Demand — Grey fabrics - Job work - Rule 4(5)(a) of CENVAT Credit Rules, 2004 and Rule 16B of C.Ex. Rules, 2002 - appellants received duty paid yarn, took credit of yarn duty, manufactured grey fabrics, sent it to job worker for processing and on return cleared processed fabrics on payment of duty - duty demand on grey fabrics is not sustainable - appeals allowed.**

**(Paras 3 & 4)**

## **2008 (86) RLT 46 (CESTAT-Che.)**

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

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

**BHEL**

**Versus**

**CCE, CHENNAI-III**

*(Final Order No. 1448/2007 dt. 5.12.2007 certified on 10.12.2007  
in Appeal No. E/385/2002)*

**Modvat credit — Demand - Rule 57I of C.Ex. Rules, 1944 - Shortage - of inputs found during stock taking is to be set off against excess - since shortage of inputs is negligible, demand is set aside. (Paras 7 & 8)**

**Excisability — Coal ash - not manufactured product - not excisable - appeal allowed. (Para 9)**

**2008 (86) RLT 50 (CESTAT-Ahbad)**

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

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

**CCE, AHMEDABAD**

**Versus**

**SUZUKI SYNTHETICS**

*(Final Order No. A/2813/WZB/Ah'bad/2007-CII dt. 23.10.2007 certified on 19.11.2007  
in Appeal No. E/629/2007)*

**Cenvat credit — Deemed credit - Notification No. 7/2001-CE (NT) dt. 1.3.2001 - Textiles - independent processor procuring grey fabrics from outside, is entitled to deemed credit, though yarn and not grey fabrics is specified input - Revenue's appeal dismissed. (Paras 8 & 9)**

**2008 (86) RLT 54 (CESTAT-Mum.)**

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

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

**PREMRAJ INDUSTRIES**

**Versus**

**CCE, PUNE-III**

*(Final Order No. A/117/WZB/2008-CII/EB dt. 3.12.2007 certified on 22.1.2008  
in Appeal No. E/1121/2004)*

**Small scale exemption — Notification No. 8/2001-CE dt. 1.3.2001 and amending Notification No. 47/2001-CE dt. 1.10.2001 - Retrospective effect - amending notification is clarificatory in nature and retrospective in effect. (Paras 6 & 7)**

**Classification — Central Excise - Plunger, Plunger guide, Ignition element, Inner case - supplied to Ordinance factory which used them in manufacture of igniters, percussion, detonating cap or electric detonators - not containing any explosives or inflammable charges at time of clearance from factory - classifiable under Chapter of base metal and not under Heading 9306 or 3603 of CETA, 1985 - appeal allowed. (Paras 8 & 9)**

**2008 (86) RLT 65 (CESTAT-Mum.)**

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

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

**MIHIR ENTERPRISES & ANR.**

**Versus**

**CC (IMPORT), MUMBAI**

*(Final Order Nos. A/84-85/WZB/2008/CSTB-CI dt. 10.1.2008 certified on 6.2.2008  
in Appeal Nos. C/438-439/2002-Mum.)*

**Assessable value — Section 14 of Customs Act, 1962 - Rule 4 of Customs Valuation (DPIG) Rules, 1988 - Transaction value - can not enhanced on basis of either higher value shown in insurance policy or contemporaneous imports which are not on same commercial level - appeals allowed.**

**(Para 4)**

### **2008 (86) RLT 68 (CESTAT-Ahbad.)**

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

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

**VIKRAM ENTERPRISES**

**Versus**

**CC, KANDLA**

*(Final Order No. A/261/WZB/Ah'bad/2008-CII dt. 12.2.2008 certified on 21.2.2008  
in Appeal No. C/256/2004)*

**Duty liability — Kandla SEZ unit - 100% EOU - goods supplied by SEZ unit to 100% EOU against CT-3 certificate - buyer gave forged rewarehousing certificate and diverted goods to local market - duty payable by 100% EOU and not by SEZ unit.**

**(Para 5)**

**Penalty —not leviable on SEZ unit on production of forged warehousing certificate by consignee in respect of goods cleared against CT-3 certificate to 100% EOU unless there is evidence of SEZ unit's involvement in procurement of forged certificate.**

**(Para 6)**

### **2008 (86) RLT 70 (CESTAT-Mum.)**

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

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

**CC, NHAVA SHEVA**

**Versus**

**SATYAM PHARMACHEM PVT. LTD.**

*(Final Order Nos. A/30-31/WZB/2008-CI/CSTB dt. 3.1.2008 certified on 21.1.2008  
in Appeal Nos. C/88/2002 & C/12/2004-Mum.)*

**Assessable value — Section 14 of Customs Act, 1962 - Manganese metal - Transaction value - not to be enhanced on basis of rates reported in LME's Metal Bulletin in absence of contemporaneous imports at higher price - Revenue's appeal dismissed.**

**(Para 2)**

### **2008 (86) RLT 71 (CESTAT-Kol.)**

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

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

**DIC INDIA LTD.**

**Versus**

**CC (PORT), KOLKATA**

*(Final Order Nos. A-171-173/Kol./2008 dt. 1.2.2008 certified on 13.2.2008)*

*in Appeal Nos. C/58,63 & 111/2005)*

**DEPB scheme — Demand - Section 28 of Customs Act, 1962 - goods imported by purchaser of DEPB scrips which were fake and forged - duty demand upheld.**  
**(Paras 5.8,5.16,5.18)**

**Limitation — Demand - Section 28 of Customs Act, 1962 - DEPB scheme - extended time limit invocable when goods were imported by purchaser of DEPB scrips which were fake and forged. (Paras 5.12 & 5.15)**

**Penalty — Section 112 of Customs Act, 1962 - DEPB scheme - appellants imported goods under purchased forged and fake DEPB scrips - penalty set aside as investigation into aspect of criminal conspiracy is yet to be completed - case remanded for fresh decision on completion of investigation.**  
**(Para 5.21)**

### **2008 (86) RLT 82 (CESTAT-Ahbad.)**

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

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

**R.L. KALATHIA SHIP BREAKING PVT. LTD.**

**Versus**

**CC, JAMNAGAR**

*(Final Order Nos. A/380-381/WZB/Ah'bad/2008-CII dt. 3.3.2008 certified on 7.3.2008 in Appeal Nos. C/19-20/2007)*

**Refund — Unjust enrichment - Provisional assessment - Section 18 and 27 of Customs Act, 1962 - provisional assessments pertaining to period prior to amendment of Section 18 on 13.7.2006 were finalised before the amendment but consequential refund was given after the amendment -provisions of unjust enrichment of Section 27 applicable.(Paras 3,4,5 & 6)**

**Refund — Unjust enrichment - Section 27 of Customs Act, 1962 - claim that imported goods were sold at loss is not enough to prove that duty burden was not passed on to buyer - refund hit by bar of unjust enrichment - appeal dismissed.**  
**(Para 7)**

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

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

**Present :** Hon'ble Mr. Justice S.N. Jha, President  
Shri A.K. Srivastava, Member (Technical)

**DEWAN STEEL INDUSTRIES**

**Versus**

**CC, AMRITSAR**

*(Final Order No. 30/2008-Cus. dt. 6.2.2008 certified on 27.2.2008 in Appeal No. C/205/2005)*

**Confiscation and Penalty — Heavy melting scrap - Mutilation - Section 111 (m), 112 and 24 of Customs Act, 1962 - consignment found to contain serviceable iron & steel products - importer request to permit mutilation, was rejected by Commissioner - a bonafide case - goods to be assessed after mutilation - confiscation and penalty set aside.**

(Paras

12,13,14,15 & 16)

**2008 (86) RLT 89 (CESTAT-Del.)**

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

**Present** : Hon'ble Mr. Justice S.N. Jha, President  
Shri M. Veeraiyan, Member (Technical)

**S.D. KAPUR**

**Versus**

**CC, NEW DELHI**

*(Final Order No. 71/2008-Cus. dt. 1.4.2008 certified on 10.4.2008  
in Appeal No. C/551/2005)*

**Penalty — Section 112 of Customs Act, 1962 - Managing Director - no material/evidence showing intention on his part warranting penalty - in absence of any act of omission or commission specifically attributable to him, which rendered the goods liable to confiscation, penalty on MD set aside - appeal allowed.**

**(Paras 5 & 6)**

**2008 (86) RLT 90 (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)

**P.N. RAM**

**Versus**

**CCE, KANPUR**

*(Final Order No. 10/2008-Cus. dt. 17.1.2008 certified on 7.2.2008  
in Appeal No. C/210/2006)*

**Penalty — Section 114 of Customs Act, 1962 - Customs Officer - not leviable on Customs Officer for negligence and dereliction of duty without any consideration - appeal allowed.**

**(Paras 5 & 6)**

**2008 (86) RLT 92 (CESTAT-Mum.)**

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

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

**SMITA INTERNATIONAL**

**Versus**

**CC (GENERAL), MUMBAI**

*(Final Order No. A/89/WZB/2008-CI/CSTB dt. 21.01.2008 certified on 13.2.2008  
in Appeal No. C/262/2007)*

**CHA Licence — Suspension - Regulation 20 and 23 of CHA Licensing Regulations, 2004 - Evidence - Statement - Section 108 of Customs Act, 1962- statement recorded under Section 108 can not be used under Regulations as recording of evidence and offering persons for cross examination under Regulation 22 is mandatory - suspension order set aside - appeal allowed.**

**(Paras 2,3 & 4)**

## **2008 (86) RLT 95 (CESTAT-Del.)**

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

**Present** : Hon'ble Mr. Justice S.N. Jha, President  
Shri M. Veeraiyan, Member (Technical)

**NAVSHAKTI INDUSTRIES PVT. LTD.**

**Versus**

**CC, NEW DELHI**

*(Final Order No. 32/2008-Cus. & Stay Order No. 25/2008-Cus. dt. 20.2.2008 certified on 4.3.2008 in Application Nos. C/Stay/131/2008 & C/Misc./63/2008 and Appeal No. C/29/2008)*

**Appealable order — Provisional release - Section 110A and 129A of Customs Act, 1962 - order on request for provisional release of seized goods pending adjudication passed under Section 110A, is not adjudication order and hence not appealable under Section 129A - appeal dismissed as not maintainable.**

**(Paras 2 & 3)**

## **2008 (86) RLT 97 (CESTAT-Ban.)**

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

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

**STAG SOFTWARE PRIVATE LIMITED**

**Versus**

**CST, BANGALORE**

*(Final Order No. 62/2008 dt. 4.1.2008 certified on 31.1.2008 in Appeal No. ST/231/2007)*

**Service Tax — Technical inspection and certification service - Section 65 of Finance Act, 1994 - Software testing - not taxable as technical inspection and certification service as it is part of software engineering which is not liable to tax.**

**(Para 7)**

**Service Tax — Commercial coaching or training service - Section 65 of Finance Act, 1995 - Computer training - not taxable prior to 15.6.2005 - appeal allowed.**

**(Para 8)**

## **2008 (86) RLT 100 (CESTAT-Che.)**

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

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

**SUNDARAM TEXTILES LTD.**

**Versus**

**CCE, TIRUNELVELI**

*(Final Order No. 43/2008 dt. 18.1.2008 certified on 28.1.2008 in Appeal No. ST/162/2005)*

**Service Tax — Management consultancy service/Intellectual property service - Section 65 of Finance Act, 1994 - 'Total Productive Maintenance' - foreign company imparted patented training to appellants' employees for increasing productivity, morale and job satisfaction by transferring technology through audio and video devices - it**

**amounted to transfer of intellectual property and not management consultancy - not taxable during material period - appeal allowed. (Paras 5 & 6)**

**Service Tax — Tax liability - Section 68 of Finance Act, 1994 - appellants as receiver of service from abroad by foreign company, were not liable to pay tax during material time - moreover, tax could not be demanded from both. (Paras 5 & 6)**

### **2008 (86) RLT 104 (CESTAT-Che.)**

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

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

**SHRIJI ADS**

**Versus**

**CST, CHENNAI**

*(Final Order No. 29/2008, Stay Order No. S/34/2008 and Misc. Order No. M/12/2008 dt. 14.1.2008 certified on 21.1.2008 in Application No. ST/COD/588/2007 and ST/Stay/164/2007 and Appeal No. ST/223/2007)*

**Service Tax — Advertising agent's service - Tax liability - Section 68 of Finance Act, 1994 - person leasing out hoardings to advertising agent for display of advertisements is not liable to pay tax provided the other agent has paid tax on value inclusive of leasing charges for hoardings - case remanded.**

**(Paras 7.7.1 & 8)**

### **2008 (86) RLT 107 (CESTAT-Del.)**

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

**Present :** Hon'ble Mr. Justice S.N. Jha, President

**REAL MATHEMATIC CLASSES**

**Versus**

**CCE, JAIPUR**

*(Final Order No. 344/208-SM(BR) dt. 11.2.2008 certified on 7.3.2008 in Appeal No. ST/412/2007-SM(BR))*

**Service Tax — Penalty - Section 76 and 80 of Finance Act, 1994 - Commercial training or coaching - Reasonable cause - rendering service from residence is not reasonable cause for not paying tax - Section 80 not attracted - penalty @ Rs. 100/- per day of delay upheld - appeal dismissed.**

**(Para 5)**

**Service Tax — Appeal - Section 86 of Finance Act, 1994 - in appeal against order-in-revision passed under Section 84 ibid, appellant can not challenge order-in-original when no appeal was filed against it. (Para 2)**