

2008 (87) RLT 561 (SC)

(IN THE SUPREME COURT OF INDIA)

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

CCE, BHOPAL

Versus

BHANSALI ENGG. POLYMERS LTD.

(Civil Appeal No. 8220/2002)*

Dated 30.4.2008

Appeal — Section 35B of CEA, 1944 - CEGAT set aside demand on ground of limitation without considering merits - case remanded. (Para 2)

2008 (87) RLT 562 (Mad.)

(IN THE HIGH COURT OF JUDICATURE AT MADRAS)

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

SRI KALAIVANI SPINNERS (P) LTD.

Versus

CESTAT, CHENNAI

(C.M.A. No. 2557/2005 and C.M.P. No. 13382/2005)*

Dated 20.2.2008

Cenvat credit — Rule 57AH and 57AE of C.Ex. Rules, 1944 - Capital goods - supplier took credit of 50% of duty paid on capital goods received by him from manufacturer and thereafter sold them to appellants during the year of their receipt - supplier reversed credit of 50% duty and showed it in invoice issued by him - appellants entitled to credit of 50% duty as shown in supplier's invoice and not 100% duty paid by manufacturer - appeal dismissed.

(Paras 3,4 & 5)

2008 (87) RLT 563 (Raj.)

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

Present : Hon'ble Mr. Justice N.P. Gupta
Hon'ble Mr. Justice Kishan Swaroop Chaudhari

HINDUSTAN ZINC LTD.

Versus

UOI & ORS.

(Central Excise Appeal No. 2/2006)*

Dated 1.7.2008

Cenvat credit — Rule 2 of CENVAT Credit Rules, 2002 - Welding electrodes - used for repairs and maintenance of plant and machinery - eligible to credit - appeal allowed.

(Paras 12,13,14 & 15)

2008 (87) RLT 566 (CESTAT-LB)

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

Present : Ms. Jyoti Balasundaram, Vice President

Shri K.K. Agarwal, Member (Technical)
Shri A.K. Srivastava, Member (Technical)

BDH INDUSTRIES LTD.

Versus

CCE (APPEALS), MUMBAI-I

*(Misc. Order No. M/159/WZB/2008-CI/SMB dt. 9.7.2008 certified on 21.7.2008
in Appeal No. E/1218/2006-Mum.)*

Refund — Section 11B of CEA, 1944 - amount debited wrongly in PLA/cenvat credit account is duty and all types of refund are required to be sanctioned by Deptt. under Section 11B - suo moto refund by assessee is not provided for under CEA, 1944 and the Rules made thereunder.

(Paras 12 &

13)

2008 (87) RLT 573 (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, BANGALORE-III

Versus

KEMWELL (PVT.) LTD.

*(Final Order No. 102/2008 dt. 29.1.2008 certified on 14.2.2008
in Appeal No. E/949/2005)*

Assessable value — Section 4 of CEA, 1944 - Transaction value - Physician samples - cleared on payment of duty to buyers - their transaction value not to include advertising cost and marketing expenses - Revenue's appeal dismissed.

(Paras 1, 4 & 5)

2008 (87) RLT 575 (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, BELGAUM

Versus

BELLARY STEEL AND ALLOYS LTD.

*(Final Order No. 17/2008 dt. 1.1.2008 certified on 28.1.2008
in Appeal No. E/500/2005)*

Cenvat credit — Rule 2 of CENVAT Credit Rules, 2002 - Pipes - used for bringing from distance of two km. to factory water which was necessary for manufacturing process - eligible capital goods - Revenue's appeal dismissed.

(Para 4)

2008 (87) RLT 577 (CESTAT-Ban.)

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

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

V-STAR CREATIONS PVT. LTD.

Versus

CCE AND C, COCHIN

*(Final Order No. 110/2008 dt. 5.2.2008 certified on 14.2.2008
in Appeal No. E/500/2006)*

Exemption — Central Excise - Notification No. 12/2001-CE dt. 1.3.2001 - Garments - notification granted exemption to goods not bearing registered brand name - appellants applied for registration of brand name in 1995 but received it in 2003 effective from 1995 - garments cleared during March and April, 2001 are entitled to exemption as at time of clearance brand name was not registered.

(Para 6.1)

Limitation — Demand - Section 11A of CEA, 1944 - Bonafide belief - extended time limit not invocable as in view of trade notice, appellants bonafidely believed that garments were exempt from duty - appeal allowed.

(Para 6.1)

2008 (87) RLT 579 (CESTAT-Del.)

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

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

RALTRONICS INDIA PVT. LTD.

Versus

CCE, NOIDA

*(Final Order No. 471/2008-SM (BR) dt. 20.3.2008 certified on 1.4.2008
in Appeal No. E/938/2006-SM (BR))*

Remission of duty — Rule 21 of C.Ex. Rules, 2002 - goods destroyed in fire - claim received from insurance company included duty on destroyed goods - assessee has failed to prove that incident occurred due to natural causes and was unavoidable - remission of duty rightly refused - appeal dismissed.

(Para 4)

2008 (87) RLT 581 (CESTAT-Del.)

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

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

SHIVA STEELS

Versus

CCE, JAIPUR

*(Final Order No. 742/2008-SM (BR) dt. 27.2.2008 certified on 16.5.2008
in Appeal No. E/2320/2006-SM (BR))*

Deposit — Section 11D of CEA, 1944 - Cenvat credit - Rule 6 (3) of CENVAT Credit Rules, 2002 - common inputs (SS flats) after taking credit used in manufacture of dutiable cold rolled patta and exempted scrap - 8% amount paid on scrap in terms of Rule 6 (3) but realised from customers - need not be deposited under Section 11D - appeal allowed.

(Paras 4 & 5)

2008 (87) RLT 583 (CESTAT-Del.)

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

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

CCE, KANPUR

Versus

LML LTD.

*(Misc. Order No. M/162/2008-SM(BR) dt. 3.1.2008 certified on 2.6.2008
in Appeal No. E/2876/2005-SM(BR))*

Appeal by Deptt. — Review - Authorisation - Section 35B of CEA, 1944 - appeal filed by Commissioner without filing copy of review order/authorisation by Committee of Commissioners - impugned order-in-appeal has, however, been reviewed in file and Revenue has produced note sheet of review file - a curable defect - Revenue to file proper review order/authorisation.

(Para 8)

2008 (87) RLT 588 (CESTAT-Ahbad.)

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

Present : Smt. Archana Wadhwa, Member (Judicial)
Shri B.S.V. Murthy, Member (Technical)

CCE & C, DAMAN

Versus

INDO GERMAN ENGINEERS & ANR.

*(Final Order Nos. A/1244-1245/WZB/Ah'bad/2008-CII dt. 25.6.2008 certified on 27.6.2008 in Appeal Nos.
E/2969-2970/2004)*

Small scale exemption — Notification No. 8/98-CE dt. 2.6.1998 and No. 8/99-CE dt. 28.2.1999 - Brand name - label on machine has logo as well as name of foreign company - satisfies definition of brand name - benefit of notification not admissible.

(Para 4)

Penalty — Rule 173Q of C.Ex. Rules, 1944 - on proprietor is set aside as penalty on both proprietary concern and proprietor is not imposable.

(Para 4)

2008 (87) RLT 590 (CESTAT-Mum.)

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

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

CCE, MUMBAI-IV

Versus

TATA HONEY WELL LTD.

*(Final Order No. A/341/WZB/2008-CI/EB dt. 25.3.2008 certified on 27.3.2008
in Appeal No. E/3554/2001)*

Exemption — Central Excise - Notification No. 48/94-CE dt. 1.3.1994 - Application software - is computer software which is covered by notification - entitled to benefit of notification - Revenue's appeal dismissed.

(Para 4)

2008 (87) RLT 593 (CESTAT-Che.)

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

Present : Shri P. Karthikeyan, Member (Technical)

RPG CABLES LTD.

Versus

CCE, MYSORE

*(Final Order No. 500/2008 dt. 23.5.2008 certified on 6.6.2008
in Appeal No. E/124/2005)*

Dutiability — Wires and Cables - Samples - destroyed during quality control test within factory - duty not payable thereon as wires and cables reach RG-1 stage and become marketable only after such test - appeal allowed.

(Para 4)

2008 (87) RLT 595 (CESTAT-Che.)

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

Present : Shri P. Karthikeyan, Member (Technical)

PALLIPALAYAM SPINNERS PVT. LTD.

Versus

CCE, SALEM

*(Final Order No. 528/2008 dt. 30.5.2008 certified on 11.6.2008
in Appeal No. E/121/2006)*

Cenvat credit — Rule 2(b) of CENVAT Credit Rules, 2002 - Capital goods - Plastic crates - used for carrying yarn at intermediate stage from one machine to another during process of manufacture - accessory to textile machinery - covered by definition of capital goods - appeal allowed.

(Para

5)

2008 (87) RLT 597 (CESTAT-Che.)

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

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

CCE, SALEM

Versus

ARUNACHALA GOUNDER TEXTILE MILLS (P) LTD. & ANR.

*(Misc. Order Nos. M/236-237/2008 dt. 4.6.2008 certified on 13.6.2008 in Application Nos. E/ROM/12-13/2008
in Appeal Nos. E/1064 & 1085/2004)*

Appeal — Rectification of mistake - Section 35C of CEA, 1944 - Final order reported in 2008 (84) RLT 229 is recalled as there is mistake of fact apparent on record.

(Para 2)

2008 (87) RLT 599 (CESTAT-Ahbad.)

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

Present : Smt. Archana Wadhwa, Member (Judicial)
Shri B.S.V. Murthy, Member (Technical)

KAVERI METALLISING & COATING INDUS. PVT. LTD.

Versus

CCE, AHMEDABAD

*(Final Order No. A/1078/WZB/Ah'bad/2008-CII dt. 2.5.2008 certified on 28.5.2008
in Appeal No. E/170/2008)*

Manufacture — Section 2(f) of CEA, 1944 - Metallising, Lacquering and Laminating - Plastic film - even after introduction of eight digit classification code in CETA, 1985, processes of metallising, lacquering and laminating duty paid plastic film does not amount to manufacture.

(Para

3)

Jurisdiction — Commissioner (Appeal) - Section 35A of CEA, 1944 - Penalty - order-in-original did not impose penalty on assessee - in absence of challenge by Revenue, Commissioner (Appeal) could not impose penalty.

(Para 2)

2008 (87) RLT 601 (CESTAT-Mum.)

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

Present : Ms. Jyoti Balasundaram, Vice President

SIMPLEX MILLS CO. LTD.

Versus

CCE & C, NAGPUR

*(Final Order Nos. A/457-458/WZB/2008-CIII/SMB dt. 13.5.2008 certified on 9.6.2008 in Appeal Nos.
E/1215/2007 & E/401/2008-Mum.)*

Cenvat credit — Refund - Additional Excise Duty (Textile and Textile Articles) - cash refund of unutilised credit balance of AED (T & TA) is not permissible when the factory has neither opted out of cenvat credit scheme nor has been closed down - appeals dismissed. **(Paras 4 & 5)**

2008 (87) RLT 603 (CESTAT-Mum.)

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

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

CCE, MUMBAI-V

Versus

MILTON PLASTICS LTD.

*(Final Order No. A/527/WZB/2008-CII/EB dt. 26.6.2008 certified on 27.6.2008
in Appeal No. E/1615/2001)*

Refund — Unjust enrichment - Section 11B of CEA, 1944 - sale price remained same before and after imposition of duty - not sufficient to establish that duty incidence is not passed on particularly when assessable value declared is much lower than price given in price list and profit earned over cost of production is more than duty paid - bar of unjust enrichment attracted.

(Para 10)

Protest — Rule 233B of C.Ex. Rules, 1944 - letter of protest filed in Range Office on 5.12.1986 and in Divisional Office on 15.12.1986 - protest effective from 5.12.1986.

(Para 9)

Natural justice — Recovery - Section 11 of CEA, 1944 - refund of duty paid on final product claimed on it being held exempted - input credit utilised for paying duty, can not be adjusted against refund claim without issuing show cause notice.

(Para 8)

2008 (87) RLT 609 (CESTAT-Mum.)

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

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

NASHIK STRIPS PVT. LTD.

Versus

CCE & C, NASHIK

(Misc. Order No. M/138/WZB/2008-CII/SMB dt. 13.6.2008 certified on 9.7.2008 in Application No. E/ROM/693/2008 in Appeal No. E/928/2007)

Appeal — Rectification of mistake - Section 35C of CEA, 1944 - rectification of mistake in Final Order reported in 2008 (86) RLT 481 allowed and corrigendum issued.

(Para 2)

2008 (87) RLT 611 (CESTAT-Che.)

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

Present : Shri P. Karthikeyan, Member (Technical)

CCE, PONDICHERRY

Versus

RAJSHREE SUGAR & CHEMICALS

(Final Order Nos. 496-497/2008 dt. 22.5.2008 certified on 6.6.2008 in Appeal Nos. E/64-65/2006/MAS)

Cenvat credit — Dutiability - Rule 3 of CENVAT Credit Rules, 2002/2004 - Waste and Scrap - arisen out of scrapping of old and used machinery - duty not payable prior to 16.5.2005 even if cenvat credit was taken on such machinery.

(Para 4)

Words and Phrases — ‘Waste and Scrap’ - Note 8A of Section XV of CETA, 1985 - waste and scrap arising out of scrapping of old and used machinery not covered by said note.

(Para 4)

2008 (87) RLT 613 (CESTAT-Ahbad.)

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

Present : Smt. Archana Wadhwa, Member (Judicial)
Shri B.S.V. Murthy, Member (Technical)

AMARSINHJI MILLS

Versus

CCE & C, RAJKOT

(Final Order No. A/1247/WZB/Ah'bad/2008-CII dt. 25.6.2008 certified on 27.6.2008 in Appeal No. E/2937/2004)

Exemption — Central Excise - Notification No. 6/2002-CE dt. 1.3.2002 - Yarn - notification granted exemption to yarn containing cotton and less than 70% polyester - yarn described as 70% polyester and 30% cotton in invoice, purchase order, and test report

on receipt of yarn by buyer showed polyester less than 70% - benefit of notification admissible - appeal allowed.

(Para 5)

2008 (87) RLT 615 (CESTAT-Che.)

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

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

CCE, COIMBATORE

Versus

PRABHASON RUBBERS (P) LTD.

(Final Order No. 564/2008 dt. 10.6.2008 certified on 17.6.2008

in Appeal No. E/738/2001)

Classification — Central Excise - Tyre repair patches - decision on classification on basis of material supplied by assessee without getting sample tested is not proper - case remanded.

(Paras 1 & 2)

2008 (87) RLT 617 (CESTAT-Che.)

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

Present : Shri P. Karthikeyan, Member (Technical)

CCE, CHENNAI

Versus

MAGTORQ (P) LTD.

(Final Order No. 540/2008 dt. 29.5.2008 certified on 9.6.2008

in Appeal No. E/15/2006/MAS)

Cenvat credit — Rule 6(3) of CENVAT Credit Rules, 2002 - respondents manufactured only one final product, namely gear boxes and cleared its one consignment availing exemption under Notification No. 10/97-CE dt. 16.3.1997 - Rule 6 not attracted as respondents manufactured one final product only and input credit had been reversed - Revenue's appeal dismissed.

(Para 3)

2008 (87) RLT 619 (CESTAT-Mum.)

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

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

CCE & C, RAIGAD

Versus

H & R JOHNSON INDIA LTD.

(Final Order No. A/529/WZB/2008-CII/EB dt. 26.6.2008 certified on 27.6.2008

in Appeal No. E/2023/2003-Mum.)

Exemption — Central Excise - Notification No. 10/97-CE dt. 1.3.1997 - Unglazed vitrified ceramic tiles - notification granted exemption to consumables supplied to research institute against certificate by its head - certificate issued by Registrar is not acceptable as he is neither head of institution nor has expertise - moreover, tiles are not

consumables - benefit of notification not admissible - Revenue's appeal allowed. (Para 6)

2008 (87) RLT 621 (CESTAT-Mum.)

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

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

SANDOZ PRIVATE LIMITED

Versus

CCE, BELAPUR

*(Final Order No. A/512/WZB/2008-CII/EB dt. 12.6.2008 certified on 26.6.2008
in Appeal No. E/134/2008-Mum.)*

Cenvat credit — Refund - Export - Rule 5 of CENVAT Credit Rules, 2004 - Notification No. 5/2006-CE (NT) dt. 14.3.2006 - refund of cenvat credit is admissible under Notification No. 5/2006-CE (NT) though exports were made prior to 14.3.2006.

(Para 5)

Cenvat credit — Refund - Export - Rule 5 of CENVAT Credit Rules, 2004 - Notification No. 5/2006-CE (NT) dt. 14.3.2006 - refund claim for one full year is admissible if not time barred - not necessary that claim should be filed every month - case remanded.

(Para 5)

2008 (87) RLT 623 (CESTAT-Ban.)

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

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

VIJAYA PACKERS

Versus

CCE & C, CALICUT

(Final Order No. 689/2008 dt. 6.6.2008 certified on 30.6.2008 in Appeal No. E/95/2007)

Limitation — Demand - Section 11A of CEA, 1944 - Bonafide belief - Board's Circular of 1970 held processes undertaken by appellants as non-dutiable - it was reversed in 1990 - appellants entertained bonafide belief that they were not liable to pay duty - extended time limit not invocable.

(Para 7)

Board's circular — Effective date - circular clarifying process undertaken by appellants as amounting to manufacture, was issued on 7.3.1990 - duty payable w.e.f. 7.3.1990 onwards only.

(Para 7)

Manufacture — Section 2(f) of CEA, 1944 — Cleaning, purifying, blending and repacking of duty paid glucose - amounting to manufacture w.e.f. 7.3.1990 when Board's circular was issued.

(Para 7)

2008 (87) RLT 628 (CESTAT-Ahbad.)

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

Present : Smt. Archana Wadhwa, Member (Judicial)

Shri B.S.V. Murthy, Member (Technical)

VIPUL ENTERPRISES

Versus

CCE, AHMEDABAD

*(Final Order No. A/1099/WZB/Ah'bad/2008-CII dt. 27.5.2008 certified on 28.5.2008
in Appeal No. E/1007/2007)*

**Small scale exemption — Notification No. 8/2003-CE - Brand name - appellants used brand name 'Vipul' registered in name of Vipul Inds. owned by proprietor's father - not house name of appellants - benefit of notification not admissible - appeal dismissed.
(Para 4)**

2008 (87) RLT 630 (CESTAT-Del.)

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

Present : Shri S.S. Kang, Vice President
Shri Rakesh Kumar, Member (Technical)

STEEL TUBES OF INDIA LTD. & ORS.

Versus

CCE, INDORE

*(Final Order Nos. 303-308/2008-EX. dt. 2.4.2008 certified on 13.6.2008
in Appeal Nos. E/1278-79, 1314, 1424-1426/2004)*

**Modvat credit — Demand - Rule 57I of C.Ex. Rules, 1944 - vehicle numbers mentioned in some invoices are not of transport vehicles - not sufficient to deny credit when there is evidence of receipt and utilisation of inputs, payments made to supplier and transporters and no evidence of diversion of inputs - appeals allowed.
(Paras 10, 11, 12 & 13)**

2008 (87) RLT 635 (CESTAT-Ban.)

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

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

BANK OF NOVA SCOTIA & ANR.

Versus

CCE, (ADJUDICATION), BANGALORE

*(Final Order Nos. 748-749/2008 dt. 3.7.2008 certified on 17.7.2008
in Appeal Nos. C/685 & 570/2007)*

**Exemption — Customs - Notification No. 80/97-Cus. dt. 21.10.1997 - Gold - imported duty free by first appellant and given on loan to second appellant who manufactured gold articles and exported them - benefit of notification not deniable on ground that foreign exchange for export goods is not received - appeals allowed.
(Paras 17 & 18)**

**Jurisdiction — Non-realisation of foreign exchange - for export goods - appropriate action to be taken by Enforcement Directorate and not by Customs.
(Para 19)**

Jurisdiction — EXIM Policy - Adjudication - Section 13 of Foreign Trade (Development and Regulation) Act, 1992 - adjudication of violation of EXIM Policy is to

be done by authorities notified under Section 13 and not by Customs Officer.

(Para 19)

Demand, Confiscation and Penalty — Section 72, 111 and 112 of Customs Act, 1962 - first appellant imported gold and warehoused it - he gave gold on loan to second appellant who exported articles made out of gold - no violation of Section 72 and 111 if foreign exchange is not realised - duty demand, confiscation and penalty set aside.

(Para 19)

2008 (87) RLT 643 (CESTAT-Del.)

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

Present : Shri S.S. Kang, Vice President
Shri Rakesh Kumar, Member (Technical)

BROOKS INTERNATIONAL & ORS.

Versus

CC, NEW DELHI

*(Final Order Nos. 163-165/2008-Cus. dt. 9.6.2008 certified on 11.7.2008
in Appeal Nos. C/171-173/2001)*

Words & Phrases — ‘Prohibited goods - Section 2(33) of Customs Act, 1962 - Rags - misdeclared as ready made garments - export value also misdeclared - prohibited goods.

(Paras 3.1 & 4)

Confiscation — Section 113(d) and 113(i) of Customs Act, 1962 - Misdeclaration - Rags - misdeclared as ready made garments - description and value misdeclared with intent to claim higher drawback - confiscation upheld.

(Para 4)

Drawback— Rule 3 of Customs and Central Excise Duties and Service Tax Drawback Rules, 1995 - Misdeclaration - Rags - were misdeclared as ready made garments - drawback not admissible as description and value of export goods was misdeclared - appeals dismissed.

(Para 5)

2008 (87) RLT 650 (CESTAT-Ban.)

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

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

CREATIVE INDUSTRIES (HYDERABAD) PVT. LTD. & ANR.

Versus

CC & CE (APPEALS-II), HYDERABAD

*(Final Order Nos. 715-716/2008 dt. 17.6.2008 certified on 25.6.2008
in Appeal Nos. C/243-244/2006)*

Exemption — Customs - Notification No. 90/94 - Cus. dt. 1.3.1994 - Project import - Regulation 7 of Project Import Regulations, 1986 - Installation certificate - Regulation does not require production of installation certificate - Chartered Engineer's certificate and Director's affidavit are sufficient to prove installation - Regulation 7 is procedural requirement - concession not deniable - appeal allowed.

(Para 10)

Natural justice — Project import - Exemption - concession to be denied after issue of show cause notice and granting personal hearing.

(Para 10)

2008 (87) RLT 652 (CESTAT-Che.)

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

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

AHP MANUFACTURING BV

Versus

CC, CHENNAI

(Final Order No. 413/2008 dt. 29.4.2008 certified on 5.5.2008

in Appeal No. C/70/2001)

Exemption — Customs - Notification No. 20/99-Cus. dt. 28.2.1999 (Sl. No. 21) - Maduramycin ammonium 1% - entitled to benefit of notification - appeal allowed.

(Para 2)

2008 (87) RLT 654 (CESTAT-Che.)

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

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

HOSUR INSTRUMENTS PVT. LTD.

Versus

CC, CHENNAI

AND

VICE VERSA

(Final Order Nos. 392-393/2008 dt. 25.4.2008 certified on 5.5.2008

in Appeal Nos. C/152 & 190/2003)

Assessable value — Section 14 of Customs Act, 1962 - Rule 9(1)(c) of Customs Valuation (DPIG) Rules, 1988 - Technical know how fee - relatable to production of instruments in India and not a condition of import of components - not to be added - assessee's appeal allowed.

(Para

2)

Assessable value — Section 14 of Customs Act, 1962 - Rule 11 of Customs Valuation (DPIG) Rules, 1988 - Loading - not justified as no reasons for 20% loading given - Revenue's appeal dismissed. (Para 3)

2008 (87) RLT 656 (CESTAT-Ban.)

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

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

ASHOKAN THAZHEPURAYIL

Versus

CC, COCHIN

(Misc. Order Nos. M/196-197/2008 dt. 29.5.2008 certified on 11.6.2008 in Application No. E/Misc./311/2006 & 434/2007 in Appeal No. C/112/2006)

Appeal — Rectification of mistake - Penalty and Redemption fine - Section 129B, 112 and 125 of Customs Act, 1962 - since order was silent on fine and penalty, there was error apparent from records - CESTAT's Final Order reported in 2006 (77) RLT 171 is modified by reducing redemption fine and penalty.

(Paras 7 & 9)

2008 (87) RLT 659 (CESTAT-Ban.)

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

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

CC, BANGALORE

Versus

INTERGARDEN INDIA PVT. LTD.

*(Final Order No. 556/2008 dt. 2.5.2008 certified on 12.5.2008
in Appeal No. C/574/2007)*

100% EOU — Utilisation of inputs - Demand - not sustainable on marginal increase in utilisation of input (vinegar) in manufacture of final product (gherkins) which is exported in absence of any evidence of misuse or DTA clearance and in view of Development Commissioner's approval of excess utilisation - Revenue's appeal dismissed.

(Para 4)

2008 (87) RLT 660 (CESTAT-Mum.)

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

Present : Shri A.K. Srivastava, Member (Technical)

RAJAN VIRJEE & CO.

Versus

CC (GENERAL), MUMBAI

*(Final Order No. A/469/WZB/2008/SMB-CI dt. 30.5.2008 certified on 9.6.2008
in Appeal No. C/1346/2002-Mum.)*

Penalty — Section 112 of Customs Act, 1962 - CHA - Abetment - Baggage - once goods are cleared through Customs on payment of duty adjudged by Dy. Commissioner and are no longer available, it can not be presumed that baggage was not bona fide and liable to confiscation - appellant can not be held arbitrarily to have aided and abetted passenger in clearance of non bona fide baggage - penalty set aside - appeal allowed.

(Paras 9, 11 & 12)

2008 (87) RLT 662 (CESTAT-Che.)

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

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

TRUSTWORTH ENTERPRISES

Versus

CC, TUTICORIN

(Final Order No. 387/2008 dt. 24.4.2008 certified on 5.5.2008)

in Appeal No. C/236/2005)

Jurisdiction — DEPB - Customs has no jurisdiction to deny or modify DEPB credit - customs can only demand duty from importer who used invalid credit.

(Paras 4 & 5)

Export — Valuation - Section 14 of Customs Act, 1962 - value can not be revised on basis of unauthenticated photocopies of documents of uncertain origin much after export contrary to official records such as shipping bill - appeal allowed.

(Para 4)

2008 (87) RLT 665 (CESTAT-Mum.)

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

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

D.H. PATKAR & COMPANY

Versus

CC(IMPORT), MUMBAI

(Final Order No. A/443/WZB/2008-CII/SMB dt. 17.3.2008 certified on 5.6.2008

in Appeal No. C/723/2007)

Penalty — Section 117 of Customs Act, 1962 - CHA - allowed his licence to be used by another person for monetary consideration - such act is contravention of CHA Licensing Regulations and not of provisions of Customs Act - penalty under Section 117 not leviable - appeal allowed.

(Paras 5 & 6)

2008 (87) RLT 667 (CESTAT-Mum.)

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

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

FONTANSEY ENGG. EXPORTS PVT. LTD.

Versus

CC(EXPORT), MUMBAI

(Final Order No. A/491/WZB/2008-CII/SMB and Misc. Order No. M/130/WZB/2008-CII/SMB dt. 29.5.2008

certified on 13.6.2008 in Application No. C/EH/1120/2008

and Appeal No. C/510/2008-Mum.)

Shipping bill — Conversion - of drawback shipping bills into DEEC shipping bills to be allowed as imports were against Advance licence and no drawback was claimed.

(Paras 7 & 8)

Appealable order — Section 129 A of Customs Act, 1962 — Commissioner's order rejecting request for conversion of shipping bill conveyed in form of letter is appealable to CESTAT.

(Para 7)

2008 (87) RLT 673 (CESTAT-Che.)

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

Present : Shri P. Karthikeyan, Member (Technical)

U.B. XPRESS (SOUTH) PVT. LTD.

Versus

CCE & ST, COIMBATORE

(Final Order No. 557/2008 and Stay Order No. S/467/2008 dt. 6.6.2008 certified on 17.6.2008 in Application No. ST/Stay/18/2008 and Appeal No. ST/25/2008)

Service Tax — Export - Rule 3 and 4 of Export of Services Rules, 2005 - Courier service - international courier service partly performed in India and partly outside prior to 17.6.2005 to be treated as export and not liable to pay service tax even if payment is not received in convertible foreign exchange - appeal allowed.

(Para 5)

2008 (87) RLT 675 (CESTAT-Ban.)

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

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

L.F.C. HIRE PURCHASE COMPANY LTD.

Versus

CC & CE (APPEALS), COCHIN

*(Final Order No. 566/2008 dt. 16.4.2008 certified on 21.5.2008
in Appeal No. ST/216/2006)*

Service Tax — Rate of tax - Relevant date - Banking and other financial services - Hire purchase service - rate of tax in force on date when hire purchase agreement is entered and not subsequent date of payment of installments, is applicable - appeal allowed.

(Para 4)

2008 (87) RLT 677 (CESTAT-Che.)

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

Present : Shri P. Karthikeyan, Member (Technical)

CCE, COIMBATORE

Versus

T. STANES & COMPANY LTD.

*(Final Order No. 495/2008 dt. 22.5.2008 certified on 30.5.2008
in Appeal No. ST/83/2006)*

Service Tax — Penalty - Section 76 and 80 of Finance Act, 1994 - Commissioner (Appeal) has discretion to reduce penalty below Rs. 100/- per day prescribed in Section 76 when short payment was on account of incorrect interpretation of statutory provision - Revenue's appeal dismissed.

(Paras 5 &

6)