

2008 (87) RLT 681 (CESTAT-Ahbad.)

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

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

TRANSPEK INDUSTRY LTD.

Versus

CCE, VADODARA-I

*(Final Order No. A/1127/WZB/Ah'bad/2008-CII dt. 28.5.2008 certified on 6.6.2008
in Appeal No. E/1965/2003)*

Classification — Central Excise - Micronutrient - containing nitrogen - classifiable as 'other fertilizer' under Heading 3105 and not as 'plant growth regulator' under Heading 3808.20 of CETA, 1985 - appeal allowed.

(Paras 3, 4 & 5)

2008 (87) RLT 683 (CESTAT-Ahbad.)

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

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

CCE, AHMEDABAD-III

Versus

MINAXI TEXTILES LTD.

*(Final Order Nos. A/1346-1350/WZB/Ah'bad/2008-CII dt. 2.7.2008 certified on 15.7.2008 in Appeal Nos.
E/730-734/2007)*

Interest — Refund/Rebate - Section 11BB of CEA, 1944 - refund claim rejected by adjudicating authority was allowed by Commissioner (Appeal) - interest payable after 3 months from date of filing of claim - Revenue's appeal dismissed.

(Para 3)

2008 (87) RLT 687 (CESTAT-Del.)

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

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

CCE, RAIPUR

Versus

PANKAJ OXYGEN LTD.

*(Final Order No. 373/2008-EX. dt. 17.6.2008 certified on 1.7.2008
in Appeal No. E/3503/2005)*

Assessable value - Section 4 of CEA, 1944 - Gases - Transportation charges - collected for transporting gases in specifically designed vehicles to customers - not to be included - Revenue's appeal dismissed.

(Paras 5.1 & 5.2)

2008 (87) RLT 688 (CESTAT-Del.)

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

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

Shri M. Veeraiyan, Member (Technical)

CCE, JALANDHAR

Versus

PRINCE AGRO & ALLIED INDUSTRIES

(Final Order No. 379/2008-EX. and Misc. Order No. M/618/2008-EX. dt. 23.6.2008 certified on 1.7.2008 in Application No. E/COD/187/2008 and Appeal No. E/1044/2008)

Appeal - Rule 6A of CESTAT (Procedure) Rules, 1982 - only one appeal is to be filed when there is one order-in-original and one order-in-appeal though there are two respondents - second (supplementary) appeal dismissed as being infructuous.

(Paras 1,2 & 3)

2008 (87) RLT 689 (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

HVAC SYSTEMS (PVT.) LTD.

(Final Order No. 205/2008 dt. 29.2.2008 certified on 12.3.2008 in Appeal No. E/627/2005)

Excisability — Ducts - fabricated with sheet metal at site and used for installation of heat ventilation and air conditioning systems - part of immovable property - not excisable goods - Revenue's appeal dismissed.

(Para 5)

2008 (87) RLT 692 (CESTAT-Ahbad.)

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

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

D.S. ENTERPRISES

Versus

CCE, AHMEDABAD

(Final Order No. A/1193/WZB/Ah'bad/2008-CIII dt. 30.5.2008 certified on 13.6.2008 in Appeal No. E/101/2008)

Penalty — Section 11AC of CEA, 1944 and Rule 173Q of C.Ex. Rules, 1944 - composite penalty under Section 11AC and Rule 173Q imposed, is not composite penalty as Section 11AC was not in existence during relevant period - penalty upheld but reduced.

(Para 3)

2008 (87) RLT 693 (CESTAT-Ahbad.)

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

Present : Smt. Archana Wadhwa, Member (Judicial)

NANDESHWARI PACKAGING LTD.

Versus

CCE, AHMEDABAD

(Final Order No. A/1017/WZB/Ah'bad/2008-CII dt. 12.5.2008 certified on 21.5.2008 in Appeal No. E/534/2007)

Refund — Section 11B of CEA, 1944 - appeal allowed on ground of demand being time barred with consequential relief subject to provisions of law - consequential refund claim can not rejected on merits on ground that appeal was not allowed on merits - appeal allowed.
(Paras 5 & 6)

2008 (87) RLT 695 (CESTAT-Ban.)

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

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

HINDALCO INDUSTRIES LIMITED

Versus

CCE, COCHIN

(Final Order No. 47/2008 dt. 14.1.2008 certified on 31.1.2008

in Appeal No. E/1107/2006)

Cenvat credit — Rule 4 (2) (b) of CENVAT Credit Rules, 2002 - Capital goods - balance 50% duty credit can be taken in subsequent year, though capital goods had been removed on payment of duty - appeal allowed.

(Para 4)

2008 (87) RLT 697 (CESTAT-Mum.)

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

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

SKODA AUTO INDIA PVT. LTD.

Versus

CCE, AURANGABAD

(Final Order No. A/502/WZB/2008-CII/SMB dt. 16.5.2008 certified on 24.6.2008

in Appeal No. E/1319/2007-Mum.)

Limitation — Refund - Relevant date - Notification No. 6/2002-CE dt. 1.3.2002 - Motor vehicle - Taxi - six months time limit for claiming refund is to be computed from date on which duty is paid in terms of Rule 8 of C.Ex. Rules, 2002 and not from date of invoice.
(Para 7)

2008 (87) RLT 699 (CESTAT-Del.)

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

Present : Smt. Archana Wadhwa, Member (Judicial)

Shri M. Veeraiyan, Member (Technical)

CCE, CHANDIGARH

Versus

DEEWAN MODERN BREWERIES LTD. & ORS.

(Final Order Nos. 406-410/2008-EX. dt. 1.7.2008 certified on 9.7.2008 in Appeal Nos. E/2694, 2844, 3034/2000 and E/251-252/2001)

Limitation — Demand and Penalty - Section 11A of CEA, 1944 - Rule 173Q of C.Ex. Rules, 1944 - CEGAT's Final Order reported in 2001 (43) RLT 917 was set aside by Supreme Court and case remanded to CESTAT - as Commissioner (Appeal) has not considered appellant's plea on limitation and penalty, the case is remanded to him.

(Para 3)

2008 (87) RLT 700 (CESTAT-Ban.)

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

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

FLASH FORGE (P) LTD.

Versus

CC & CE (APPEALS), VISAKHAPATNAM

*(Final Order No. 639/2008 dt. 29.5.2008 certified on 24.6.2008
in Appeal No. E/196/2007)*

Fortnightly payment of duty — Rule 8 of C.Ex. (No.2) Rules, 2001 - facility can not be forfeited without issue of show cause notice - payment of duty from cenvat credit account during period of forfeiture is also payment of duty - appeal allowed.

(Para 7)

2008 (87) RLT 703 (CESTAT-Mum.)

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

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

AMAR ISPAT (P) LTD. & ORS.

Versus

CCE, THANE-I

*(Final Order Nos. A/524-526/WZB/2008-CI/EB dt. 25.6.2008 certified on 27.6.2008 in Appeal Nos.
E/2465,2466 & 2654/2006)*

Clandestine removal — Rule 4 of C.Ex. Rules, 2002 - Steel ingots - Evidence - allegation based on power consumption and norms of input - output based on consumption of power/fuel per metric ton - no corroborative evidence in form of private records, statements, receipt of unaccounted excess raw material or production/sale of ingots - quantum of power consumed and norms of production are not determined correctly - allegation not proved for period prior to August 2004 - demand set aside.

(Paras

3,4,5,6,7 & 8)

Clandestine removal — Rule 4 of C.Ex. Rules, 2002 - Steel ingots - Evidence - allegation established by physical shortage of finished goods, statements of customers and brokers and private records - demand upheld for August and September 2004.

(Paras 2 & 12)

Penalty — Section 11AC of CEA, 1944 - reduced in view of reduced duty demand which stands paid before issue of show cause notice.

(Para 10)

2008 (87) RLT 709 (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, NASIK

Versus

INNOVA RUBBER LTD.

(Final Order No. A/541/WZB/2008-CII/EB dt. 12.6.2008 certified on 8.7.2008 in Appeal No. E/1645/2003)

Small scale exemption — Notification No. 1/93-CE dt. 28.2.1993 - Brand name - Rubber parts - respondents claimed exemption without taking input modvat credit in respect of their own branded goods and paid duty on goods bearing brand name of another person after taking input modvat credit - benefit of notification admissible in respect of their own goods - Revenue's appeal dismissed. (Paras 8,9,10,11 & 12)

2008 (87) RLT 712 (CESTAT-Del.)

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

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

SUMO STEELS (P) LTD.

Versus

CCE, MEERUT-I

*(Final Order No. 445/2008-Ex. dt. 7.7.2008 certified on 16.7.2008
in Appeal No. E/25/2006)*

Recovery — Section 11 of CEA, 1944 - Section 142 (c) (ii) of Customs Act, 1962 - proviso to Section 142 (c) (ii) authorising recovery of dues from property in hand of successor, was introduced in 2004 - dues for period prior to insertion of proviso can not be recovered from successor - case remanded.

(Para 5)

2008 (87) RLT 715 (CESTAT-Mum.)

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

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

CCE, MUMBAI-IV

Versus

VENUS INDUSTRIES & O RS.

(Final Order Nos. A/530-533/WZB/2008-CI/EB dt. 25.6.2008 certified on 3.7.2008 in Appeal Nos. E/3772-3775/2002-Mum.)

Classification — Central Excise - 'Around the world', 'Moneyply', 'Moneyply delux', 'Indoor badminton tennis', 'City traffic' and 'Four wins' - games played by more than one child for win - neither educational toys nor sports goods - classifiable as table or parlour games under Heading 9504.90 and not under Heading 9503 of CETA, 1985.

(Paras 5 & 6)

Small scale exemption — Notification No. 1/93-CE dt. 28.2.1993 - Brand name - Marketing company's name - appeared on label or package as 'Marketed by.....' or 'brought to you by.....' with logo/brand name of marketing company - branded goods - not entitled to benefit of notification.

(Paras 8 & 11)

Limitation — Demand - Section 11A of CEA, 1944 - extended time limit invocable as appellants did not inform Deptt. about use of another person's brand name - Revenue's appeals allowed.

(Para 12)

Exemption — Central Excise - Notification No. 64/88-CE dt. 1.3.1988 and No. 81/90-CE dt. 20.3.1990 - 'Around the world', 'Moneyply', 'Moneyply delux', 'Indoor badminton tennis', 'City traffic' and 'Four wins' - not sports goods - benefit of notification is not admissible.
(Paras 5 & 13)

2008 (87) RLT 721 (SC)
(IN THE SUPREME COURT OF INDIA)

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

CC (IMPORTS), BOMBAY

Versus

HICO ENTERPRISES

(Civil Appeal No. 2418/2006)*

Dated 29.4.2004

Exemption — Customs - Notification No. 203/92-Cus. dt. 19.5.1992 - DEEC scheme - Advance licence - importer-transferee of licence is not required to prove that exporter-transferor of licence had fulfilled export obligation when in show cause notice there is no allegation of infraction against exporter-transferor of licence - appeal dismissed.
(Paras 3 & 5)

2008 (87) RLT 723 (SC)
(IN THE SUPREME COURT OF INDIA)

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

CC, CALCUTTA

Versus

INDIAN RAYON & INDUSTRIES LTD.

(Civil Appeal No. 8371/2002)*

Dated 16.7.2008

Exemption — Customs - Notification No. 158/95-Cus. and No. 94/96-Cus dt. 16.12.1996 - Re-import - Option - on re-importation of goods, respondents opted for benefit of Notification No. 158/95-Cus. and executed bond for re-export of goods - respondents can not subsequently change their option to Notification No. 94/96-Cus. on non-fulfillment of condition of Notification No. 158/95-Cus.
(Para 13)

Exemption — Customs - Notification No. 94/96-Cus. dt. 16.12.1996 - Re-import - benefit under Sl. No. 1 (e) is available in case exports were made under DEEC or EPCG Schemes and not in case of exports made under DEPB scheme - Revenue's appeal allowed.
(Para 14)

Exemption — Customs - Notification No. 94/96-Cus. dt. 16.12.1996 - Re-import - benefit under Sl. No. 1(d) is available when goods were exported under normal procedure in terms of Rule 13 of C.Ex. Rules, 1944 and not when exports were made under export promotion schemes as per EXIM Policy.
(Paras 15 & 17)

2008 (87) RLT 729 (Del.)

(IN THE HIGH COURT OF DELHI)

Present : Hon'ble Mr. Justice Madan B. Lokur
Hon'ble Mr. Justice V.B. Gupta

L.T. OVERSEAS LTD.

VERSUS

COMMISSIONER OF CUSTOMS

(CUSAA No. 1/2007)*

Dated 19.3.2008

Confiscation, Penalty and Redemption fine — Section 111(d), 112 and 125 of Customs Act, 1962 - Re-import - Rice - on re-importation found to be infested with dead insects, larvae - prohibited goods - confiscation, penalty and redemption fine upheld - appeal dismissed. (Paras 4 & 5)

2008 (87) RLT 731 (Guj.)

(IN THE HIGH COURT OF GUJARAT AT AHMEDABAD)

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

CC (PREVENTIVE)

Versus

MUSTAN TAHERBHAI

(Tax Appeal No. 1430/2006)*

Dated 15.7.2008

Duty liability — Ship for breaking - Section 15 of Customs Act, 1962 - Notification No. 163/65-Cus. dt. 16.10.1965 - ship manufactured under Customs bond by Hindustan Shipyards Ltd. was owned by M/s. Shipping Corporation of India (SCI) and sold by SCI to respondents for scrapping in terms of permission granted to SCI on 4.4.1997 by D.G. (Shipping) - though bill of entry was required to be filed by respondents in terms of notification and memorandum of agreement provided for duty liability to be discharged by respondents, they were not liable to pay duty which was to be paid by SCI at rate in force on 4.4.1997, the date on which SCI received permission for scrapping the ship - no question of law arises from CESTAT's order - Revenue's appeal dismissed.

(Paras 8 & 9)

2008 (87) RLT 734 (CESTAT-Che.)

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

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

KESTREL COATS PVT. LTD.

Versus

CC, CHENNAI

(Final Order Nos. 604-607/2008 dt. 24.6.2008 certified on 26.6.2008

in Appeal Nos. C/144-146 & 182/2005)

Confiscation — Section 111(d) of Customs Act, 1962 - 100% EOU - Photocopiers (old/used) - appellants as trading unit was entitled to import them under Exim Policy prior to 31.3.2002 - trading unit in existence prior to 31.3.2002 were allowed to continue

under EOU scheme till expiry of LOP - no contravention of EXIM Policy effective from 1.4.2002 in respect of imports till expiry of LOP of such units - goods not liable to confiscation.

(Paras 6 & 7)

Confiscation — Section 111(m) of Customs Act, 1962 - Misdeclaration - value declared as per invoice found to be misdeclared in view of higher value appraised by chartered engineer - confiscation upheld. (Para 10)

Binding effect - Supreme Court's Order - summary dismissal of SLP/civil appeal does not mean affirmance of impugned decision. (Para 9)

Penalty and Redemption fine - Section 112 and 125 of Customs Act, 1962 - Photo copiers (old/used) - value misdeclared - redemption fine and penalty reduced to 10% of value and 20% of fine respectively. (Para 11)

2008 (87) RLT 739 (CESTAT-Che.)

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

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

L. SANKAR

Versus

CC, CHENNAI

*(Final Order Nos. 599-600/2008 dt. 20.6.2008 certified on 26.6.2008
in Appeal Nos. C/266,268/2005)*

Penalty - Section 114 of Customs Act, 1962 - Abetment - CHA - signed shipping bill for consideration of Rs. 200/- but had nothing to do with custom formalities for export - for misdeclaration of export goods in shipping bill, appellant can not be held guilty of abetment - penalty set aside.

(Paras 3,4 & 6)

2008 (87) RLT 740 (CESTAT-Che.)

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

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

SPECTRA INNOVATIONS LTD.

Versus

CC, CHENNAI

*(Final Order No. 461/2008 dt. 8.5.2008 certified on 12.5.2008
in Appeal No. C/119/2003)*

Exemption — Customs - Notification No. 23/98-Cus. dt. 2.6.1998 (Sl.No. 188) - 'Pentium II 266 MHZ Box Type' and 'Celeron 266 MHZ Box Type' - parts of computer - entitled to benefit of notification - appeal allowed.

(Para 3)

2008 (87) RLT 742 (CESTAT-Ban.)

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

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

CC & CE, HYDERABAD -II

Versus

VIJAI ELECTRICALS LTD.

*(Final Order No. 694/2008 dt. 12.6.2008 certified on 30.6.2008
in Appeal No. C/268/2008)*

Limitation - Refund - Section 27 and 154 of Customs Act, 1962 - because of some glitch in EDI system there was some calculation error by adopting wrong rate of duty and by denying exemption claimed in bill of entry - this was brought to notice of customs before out of charge was given - claim covered by Section 154 - not time barred - Revenue's appeal dismissed.

(Paras 2 & 3)

2008 (87) RLT 743 (CESTAT-Ahbad.)

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

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

DEFIANCE CLOTHING CO.

Versus

CC, KANDLA

*(Final Order No. A/1096/WZB/Ah'bad/2008-CII dt. 27.5.2008 certified on 28.5.2008
in Appeal No. C/1094/2000)*

100% EOU — Demand - Shortage - capital goods imported duty free were found missing from EOU premises - raw material was also found short - case to be adjudicated after referring the matter to Development Commissioner - case remanded.

(Para 4)

2008 (87) RLT 745 (CESTAT-Ban.)

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

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

WIPRO LIMITED

Versus

CC (APPEALS), CHENNAI

*(Final Order No. 213/2008 dt. 10.3.2008 certified on 13.3.2008
in Appeal No. C/340/2005)*

Classification — Customs - Electronic panel/Patch panel - accessory in computer system and used for connecting hardware - not used for electric control or distribution of electricity - classifiable under Heading 8473 and not under Heading 8537 of CTA, 1975 - appeal allowed.

(Paras 4.1 & 4.2)

2008 (87) RLT 747 (CESTAT-Mum.)

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

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

CC (EXPORT), MUMBAI

Versus

M.K. INDUSTRIES & ORS.

(Final Order Nos. A/364-378/WZB/2008/CSTB-CI dt. 10.6.2008 certified on 9.7.2008 in Appeal Nos. C/637,783,818-820,822,823,836,837,839,840,841,847,851 & 852/2002-Mum.)

Confiscation — Section 111 (o) of Customs Act, 1962 - goods can not held liable to confiscation in absence of Revenue's contention that there is contravention of provisions of Section 111 (o). (Para 6)

Penalty — Section 112 (b) of Customs Act, 1962 - not leviable on co-noticees when goods are not confiscated or held liable to confiscation. (Para 7)

2008 (87) RLT 754 (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 SOYA INDUSTRIES LTD.

Versus

CC, (APPEALS), BANGALORE

(Final Order No. 645/2008 dt. 26.5.2008 certified on 24.6.2008 in Appeal No. C/149/2007)

Words & Phrases — 'Warehoused goods' - Section 2(44) of Customs Act, 1962 - goods physically warehoused, and not goods for which into bond bill of entry is filed but are yet to be physically deposited in warehouse, are warehoused goods. (Para 6.1)

Rate of duty — Warehoused goods - Section 15 of Customs Act, 1962 - at the time of filing ex-bond bill of entry only part of consignment covered by into-bond bill of entry was physically warehoused - quantity already warehoused to be assessed at rate of duty in force at time of filing ex-bond bill of entry in terms of Section 15(1)(b) - remaining quantity not physically warehoused at that time to attract rate of duty in force at time of payment of duty in terms of Section 15(1)(c) - appeal dismissed. (Paras 6 & 6.1)

2008 (87) RLT 759 (CESTAT-Che.)

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

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

WRIGLEY INDIA PVT. LTD.

Versus

CC, CHENNAI

(Final Order No. 656/2008 dt. 3.7.2008 certified on 9.7.2008 in Appeal No. C/96/2008)

Assessable value — Section 14 of Customs Act, 1962 - Machinery (second hand) - imported from related person - chartered engineer's certificate of valuation of machinery obtained at load port, not produced - value certified by local chartered engineer to be adopted. (Para 4)

Confiscation and Penalty — Section 111(m) and 112 (a) of Customs Act, 1962 - Misdeclaration - Machinery (second hand) - imported from related person - value misdeclared - confiscation and penalty upheld but redemption fine and penalty reduced. (Para 4)

Re-export — Machinery (second hand) - because of 2 years taken in customs litigation, machinery is no longer fit for intended use - appellants' request for re-export is allowed. (Para 5)

2008 (87) RLT 762 (CESTAT-Ahbad.)

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

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

CCE, VAPI

Versus

SHRI YOGI STEEL P. LTD.

AND

VICE VERSA

(Final Order Nos. A/1321-1322/WZB/Ah'bad/2008 -CII dt. 8.7.2008 certified on 11.7.2008 in Appeal Nos. E/1211 & 1262/2007)

Natural justice — Show cause notice - Section 124 of Customs Act, 1962 - goods seized from appellant company were provisionally released on furnishing security - show cause notice issued to director of company is not show cause notice to company as they are separate legal entities - seizure is deemed to have been lifted in absence of show cause notice to company - security furnished at time of provisional release of seized goods and appropriated, is to be refunded to appellant company. (Para 6)

2008 (87) RLT 765 (CESTAT-Che.)

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

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

TITAN INDUSTRIES LTD.

Versus

CCE, CHENNAI

(Final Order No. 583/2008 dt. 12.6.2008 in Appeal No. E/517/2001)

Exemption — Customs - Notification No. 36/96-Cus. dt. 23.7.1996 (Sl. No. 122) - Horological raw material - Stainless steel flats - used in manufacture of strap parts not mentioned at Sl. No. 21 of list 3 of notification - exemption not admissible. (Para 3)

Exemption — Customs - Notification No. 11/97-Cus. dt. 1.3.1997 (Sl. No. 116) - Horological raw material - Stainless steel flats - used in manufacture of strap parts not mentioned at Sl. No. 22 of list 4 of notification - exemption not admissible. (Para 3)

Exemption — Customs - Notification No. 36/96-Cus. dt. 23.7.1996 (Sl. No. 122) - Horological raw material - Stainless steel flats (cold rolled or hot rolled) - used in manufacture of bezel rings and back covers not mentioned at sl. no. 21 of list 3 of notification and not used in manufacture of watch case bezels covered by said sl. no. - benefit

of notification not admissible.

(Para 3)

Exemption — Customs - Notification No. 11/97-Cus. dt. 1.3.1997 (Sl. No. 116) - Horological raw material - Stainless steel flats (cold rolled) - used in manufacture of watch case bezel not covered by Sl. No. 22 of list 4 of notification and specified watch back covers and bezel ring - not entitled to benefit of notification.

(Para 3)

Interpretation — Exemption Notification - to be interpreted literally and not liberally.

(Para 3)

Jurisdiction - Central Excise Officer - Rule 8 of Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 - Penalty - Section 112 of Customs Act, 1962 - Central Excise Officer in charge of factory is not empowered by Rule 8 to impose penalty on importer under Section 112 for misuse of exemption.

(Para 4)

2008 (87) RLT 768 (CESTAT-Ban.)

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

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

ADARSH REALTY & HOTELS PVT. LTD.

Versus

CC, BANGALORE

*(Final Order No. 679/2008 dt. 30.5.2008 certified on 30.6.2008
in Appeal No. C/262/2008)*

Classification — Customs - Tiles - Bottichino marble tiles - tiles having surface layer of 2mm thickness containing calcite (artificial marble) and bottom layer of 10mm thickness as vitrified tiles - certificate from country of origin classified tiles as porcelain tiles - classifiable under Heading 6907 10 10 of CTA, 1975.

(Para 6)

Anti-dumping duty — Notification No. 73/2003-Cus. dt. 1.5.2003 - Tiles - declared as artificial marble tiles but found to be vitrified tiles as per certificate from country of origin i.e. China - liable to pay anti-dumping duty - appeal dismissed.

(Para 6)

2008 (87) RLT 770 (CESTAT-Ahbad.)

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

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

C.L. GUPTA

Versus

CC, KANDLA

*(Final Order No. A/1334/WZB/Ah'bad/2008-CII dt. 27.6.2008 certified on 14.7.2008
in Appeal No. C/234/2007)*

Interest — Assessment - Section 47 and 17 of Customs Act, 1962 - levy of interest under Section 47 is not part of assessment of bill of entry under Section 17.

(Para 4)

Refund — Interest - Section 27 of Customs Act, 1962 - refund of interest not leviable under Section 47 ibid, can be claimed without challenging assessment of bill of entry - case remanded. (Para 4)

2008 (87) RLT 772 (CESTAT-Del.)

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

Present : Shri S.S. Kang, Vice President

TEEJ IMPEX PVT. LTD.

Versus

CC, ICD, TKD, NEW DELHI

*(Final Order No. 536/2008-SM(BR) dt. 14.3.2008 certified on 8.4.2008
in Appeal No. C/639/2007-SM(BR))*

Confiscation and Penalty — Section 111 (d) and 112 of Customs Act, 1962 - Hydrogenated vegetable oil (Vanaspati ghee) - on test melting point found to be 41.9°C as against permissible maximum melting point of 40°C - confiscation and penalty upheld - appeal dismissed. (Paras 5, 6 & 7)

2008 (87) RLT 774 (CESTAT-Che.)

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

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

M.G.M. ENTERTAINMENTS PVT. LTD.

Versus

CC, CHENNAI

(Final Order No. 398/2008, Stay Order No. S/307/2008 & Misc. Order No. M/195/2008 dt. 25.4.2008 certified on 5.5.2008 in Application No. C/EH/367/2003, C/Stay/181/2003 and Appeal No. C/294/2003)

Assessable value — Section 14 of Customs Act, 1962 - Rule 9 (1) (c) of Customs Valuation (DPIG) Rules, 1988 - Franchise fee, Licence fee and Technical know how fee - condition of sale of imported goods - to be added - appeal dismissed. (Para 3)

2008 (87) RLT 777 (CESTAT-Che.)

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

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

ALSTOM PROJECTS INDIA LTD.

Versus

CCE, COIMBATORE

(Final Order No. 651/2008 and Stay Order No. S/563/2008 dt. 4.7.2008 certified on 8.7.2008 in Application No. ST/Stay/110/2008 and Appeal No. ST/127/2008)

Service Tax — Cenvat credit - Rule 2 and 3 of CENVAT Credit Rules, 2004 - Input service/Output service - Goods transport agent's service (GTA) - Utilisation - appellants are manufacturer of excisable goods and not out put service provider - GTA service received by appellants is input service and not output service - credit can not be utilised for paying Service Tax on GTA service. (Paras 3 & 4)

Service Tax — Penalty - Section 76 of Finance Act, 1994 - not leviable for wrongly utilising cenvat credit for paying Service Tax on goods transport agent's service received by appellants. (Para 4)

2008 (87) RLT 780 (CESTAT-Ban.)

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

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

BHARAT SANCHAR NIGAM LTD.

Versus

CCE, THIRUVANANTHAPURAM

*(Final Order No. 676/2008 dt. 30.5.2008 certified on 30.6.2008
in Appeal No. ST/66/2007)*

Service Tax — Telephone service - Inter connectivity usage charges - Section 65 of Finance Act, 1994- not taxable - appeal allowed. (Para 5)

2008 (87) RLT 782 (CESTAT-Che.)

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

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

KALIAPPA GOUNDER THIRUMANA MANDAPAM

Versus

CCE, COIMBATORE

(Final Order No. 650/2008 and Stay Order No. S/562/2008 dt. 4.7.2008 certified on 8.7.2008 in Application No. ST/Stay/40/2008 and Appeal No. ST/53/2008)

Service Tax — Penalty - Section 76 of Finance Act, 1994 - appellants were registered as mandap keeper - paid service tax late - penalty set aside as tax was paid before issue of show cause notice. (Paras 4 & 5)

Service Tax — Penalty - Section 77 of Finance Act, 1994 - appellants were registered as mandap keeper - filed return late - penalty sustainable. (Paras 4 & 5)

2008 (87) RLT 783 (CESTAT-Mum.)

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

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

CCE, NASIK

Versus

CABLE CORPORATION OF INDIA LTD.

*(Final Order No. A/528/WZB/2008-CIII/SMB dt. 27.6.2008 certified on 8.7.2008
in Appeal No. E/1618/2007-Mum.)*

Service Tax — Cenvat credit - Rule 2 (1) of CENVAT Credit Rules, 2004 - Input service - Rent-a-cab service - used for bringing employees to factory - input service as being used in relation to manufacture or as part of business activity for promoting business - credit admissible - Revenue's appeal dismissed. (Para 7)

2008 (87) RLT 786 (CESTAT-Ban.)

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

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

ARYAN ENERGY (P) LTD.

Versus

CC & CE, HYDERABAD -I

*(Final Order No. 624/2008 dt. 22.5.2008 certified on 30.5.2008
in Appeal No. ST/355/2006)*

Service Tax — Business auxiliary service - Mining service - Section 65 of Finance Act, 1994 - Washing/Beneficiation of coal - is part of mining activity as per mining laws - liable to service tax as mining service w.e.f. 1.6.2007 - not business auxiliary service - appeal allowed. (Paras 15 & 16)