

2008 (87) RLT 793 (P&H)

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

Present : Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Rakesh Kumar Garg

CCE, CHANDIGARH

Versus

SHAKTI ROLL COLD STRIPS PVT. LTD.

(CEA No. 5/2008)*

Dated 7.7.2008

Modvat credit — Rule 57GG of C.Ex. Rules, 1944 - Invoice - Scrap - registered dealer-supplier of scrap had no godown and transport vehicles mentioned in invoices did not have capacity to carry invoiced load - CESTAT's findings of facts that scrap was received against payments made, used in manufacture of final product which was cleared on payment of duty and credit was, therefore, not deniable, are not disputed - no merits in Revenue's appeals - no question of law arises - Revenue's appeal dismissed.

(Paras 5 & 6)

2008 (87) RLT 796 (Guj.)

(IN THE HIGH COURT OF GUJARAT AT AHMEDABAD)

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

COSMONAUT CHEMICALS & ANR.

Versus

UNION OF INDIA & ANR

(Special Civil Application No. 12862/2004 with S.C.A. No. 1174/2005)*

Dated 30.7.2008

Limitation — Rebate claim - Section 11B of CEA, 1944 - Para 2.4 of Chapter IX of CBEC's Manual of Supplementary Instructions - where delay in filing rebate claim is on account of time taken by Central Excise/Customs Departments in supplying export promotion copy of shipping bill duly endorsed for export, claim is not to be rejected on ground of limitation even though it is filed after prescribed time limit. *(Paras 15,18,21 & 22)*

Interpretation — Subsidiary legislation - not to be interpreted as to defeat the cause of justice. *(Para 19)*

2008 (87) RLT 804 (CESTAT-Del.)

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

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

CENTURY DENIM & ORS.

Versus

CCE, INDORE

AND

VICE VERSA

(Final Order Nos. 395-399/2008-EX. dt. 27.6.2008 certified on 8.7.2008 in Appeal Nos. E/887/2002, 406/2003, E/1805/2000 and E/590-591/2005)

Words & phrases —Raw material - Notification No. 8/97-CE dt. 1.3.1997 - Interpretation - imported indigo pure dye used for dyeing warp yarn in course of manufacture of blue denim - to be treated as raw material and not consumable as indigo dye is present in blue denim and it gives defining characteristics to blue denim which can not come into existence without process of dyeing

“Since Indigo dye is present in denim fabrics and it is this dye which gives the denim cloth its defining characteristics and blue denim cloth can not come into existence without the process of dyeing of warp yarn prior to weaving, Indigo dye has to be treated as raw material for denim fabrics.”
(Paras 6.2,6.2.1, 6.2.3, 6.2.4 & 6.3)

Words & phrases — ‘Wholly’ - Notification No. 8/97-CE dt. 1.3.1997 - Interpretation - means entirely and not pre-dominantly - as notification is to be interpreted strictly as it is worded, even small percentage of imported raw material in cost of production does not make denim as wholly made out of indigenous raw material.

(Para 7.2)

Exemption — Central Excise - Notification No. 8/97-CE dt. 1.3.1997 - 100% EOU - DTA clearance - Blue denim - imported indigo pure dye used for dyeing warp yarn in course of manufacture of blue denim - benefit of notification not admissible as imported indigo dye is raw material and denim is not wholly made from indigenous raw materials.
(Paras 6,7 & 8)

Limitation — Demand - Section 11A of CEA, 1944 - 100% EOU - unit was using imported indigo dye in manufacture of blue denim - though it was not mentioned in classification list, Deptt. was aware of this fact as unit was under Physical Control, D-3 intimation of receipt of dye was given and dye was being rewarehoused for which certificate was issued by officers - extended time limit not invocable.

(Para 9.1)

Penalty — Section 11AC of CEA, 1944 - not leviable as demand for normal period only is sustainable.

(Para 9.1)

2008 (87) RLT 819 (CESTAT-Ahbad.)

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

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

TATA CHEMICALS LTD.

Versus

CCE, RAJKOT

*(Final Order No. A/1243/WZB/Ah'bad/2008-CII dt. 25.6.2008 certified on 27.6.2008
in Appeal No. E/1227/2007)*

Cenvat credit — Rule 6(3)(b) of CENVAT Credit Rules, 2004 - Pet coke and Furnace oil - used after 16.5.2005 for generation of exempted steam which is captively used in manufacture of electricity which is, in turn, used captively in manufacture of dutiable final products (soda ash & brine) as well as exempted final product (salt) - amount @ 8% to be paid on value of steam which is first exempted final product in terms of Rule 6(3)(b) - then amount @ 8% need not be paid on any other product.

(Paras 6 &

9(a))

Cenvat credit — Rule 6(3)(b) of CENVAT Credit Rules, 2002/2004 - Soda ash - used in manufacture of exempted brine which is used in manufacture exempted salt - duty subsequently paid on soda ash - 8% amount on salt need not be paid.

(Paras 7 & 9(b))

Cenvat credit — Rule 6 of CENVAT Credit Rules, 2002/2004 - HDPE bags - used for packing soda ash - since duty is now paid on soda ash, credit on bags is admissible.

(Paras 8 & 9(c))

2008 (87) RLT 826 (CESTAT-Che.)

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

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

RATTAN STEEL WORKS & ANR.

Versus

CCE, CHENNAI

AND

VICE VERSA

*(Final Order Nos. 665-667/2008 dt. 7.7.2008 certified on 10.7.2008
in Appeal Nos. E/1776-1777/99 and E/978/2000)*

Limitation — Demand - Clandestine removal - Section 11A of CEA, 1944 - Rule 9 of C.Ex. Rules, 1944 - investigation completed in April, 1997 - demand notice issued in August 1998 is time barred - demand and penalty set aside - assessee's appeals allowed and Revenue's appeal dismissed.

(Para 6)

2008 (87) RLT 829 (CESTAT-Mum.)

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

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

TARAPUR CABLE (INDIA) PVT. LTD.

Versus

CCE, MUMBAI-III

*(Final Order No. A/539/WZB/2008-CII/EB dt. 9.4.2008 certified on 8.7.2008
in Appeal No. E/2938/1999)*

Small scale exemption — Notification No. 175/86-CE dt. 1.3.1986 - Clubbing of clearances - part of appellant's factory premises and machinery leased out to another company - clearances by lessee company from leased out factory premises to be clubbed - denial of exemption upheld.

(Paras 10 &

13)

Limitation — Demand - Section 11A of CEA, 1944 - extended time limit invocable as by supplying copy of lease deed, appellants had not disclosed that clearances of lessee were not included in their clearances.

(Para 12)

2008 (87) RLT 833 (CESTAT-Kol.)

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

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

TATA STEEL LIMITED

Versus

CCE, JAMSHEDPUR

(Final Order No. A-680/Kol./2008 and Misc. Order No. M-186/Kol./2008 dt. 24.6.2008 certified on 3.7.2008 in Application No. E/Misc./190/2008 and Appeal No. E/202/2006)

Words and Phrases — ‘Integrated steel plant’ - Notification No. 13/2000-CE dt. 1.3.2000 - Interpretation - plant manufacturing steel, steel products and iron from iron ore or iron ore concentrate, is integrated steel plant.

(Para 9)

Exemption — Central Excise - Notification No. 13/2000-CE dt. 1.3.2000 - Iron & steel products - manufacturer-appellant producing steel, steel products and iron from iron ore concentrate, is integrated ‘steel plant’ and entitled to benefit of notification - appeal allowed.

(Para 11)

Board’s circular — Effective date - Board’s circular clarifying legal position is effective retrospectively and not from date of its issue. (Para 7)

2008 (87) RLT 837 (CESTAT-Che.)

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

Present : Shri P. Karthikeyan, Member (Technical)

G.T. EXPORTS

Versus

CCE, COIMBATORE-IV

(Final Order No. 662/2008 dt. 4.7.2008 certified on 10.7.2008 in Appeal No. E/203/2006/MAS)

Cenvat credit — Rule 5 of CENVAT Credit Rules, 2004 - Export - Refund - appellants purchased duty paid fabrics, subjected them to certain processes not amounting to manufacture in terms of Section 2 (f) of CEA, 1944 and exported them - refund of input credit taken on fabrics is admissible - appeal allowed.

(Para 6)

2008 (87) RLT 839 (CESTAT-Ahbad.)

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

Present : Smt. Archana Wadhwa, Member (Judicial)

CCE, AHMEDABAD

Versus

ROOPALEE DYG. & PTG. WORKS

AND

VICE VERSA

(Final Order Nos. A/1058-1059/WZB/Ah'bad/2008-CII dt. 15.5.2008 certified on 27.5.2008 in Appeal Nos. E/95, 685/2007)

Remission of duty — Rule 21 of C.Ex. Rules, 2002 - goods lost as factory was set ablaze by mob during riots - setting ablaze factory by mob during riots is unavoidable accident in terms of Rule - remission of duty admissible.

(Para 3)

Demand — Section 11A of CEA, 1944 - not to be set aside pending decision on remission application.

(Para 4)

2008 (87) RLT 841 (CESTAT-Ahbad.)

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

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

NARMADA KHAND UDYOG SAHAKARI MANDLI LTD.

Versus

CCE, SURAT

*(Final Order No. A/1315/WZB/Ah'bad/2008-CII dt. 9.7.2008 certified on 11.7.2008
in Appeal No. E/1139/2007)*

Cenvat credit — Interest - Rule 13 of CENVAT Credit Rules, 2004 - excess credit taken reversed suo moto before issue of show cause notice - interest payable for period during which credit was utilised. (Para 4)

Cenvat credit — Penalty - Section 11AC of CEA, 1944 - excess credit taken due to clerical error was reversed suo moto and Deptt. informed - Section 11AC not attracted - penalty set aside. (Para 4)

2008 (87) RLT 843 (CESTAT-Del.)

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

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

CCE, CHANDIGARH

Versus

C.S. ZIRCON PRODUCTS PVT. LTD.

*(Final Order No. 376/2008-EX. dt. 24.6.2008 certified on 1.7.2008
in Appeal No. E/3309/2006)*

Classification — Central Excise - Zirconium washed & dried frit - manufactured from Zircon sand - classifiable under Heading 2825 and not Heading 2615 of CETA, 1985 - Revenue's appeal allowed. (Paras 3.1 & 4)

2008 (87) RLT 846 (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

Versus

VOLTAS LTD.

*(Final Order No. 675/2008 dt. 26.5.2008 certified on 30.6.2008
in Appeal No. E/1097/2005)*

Excisability — Ducts - Section 2(d) of CEA, 1944 - ducts installed at site for air conditioning system - not excisable - Revenue's appeal dismissed.

(Para 3)

2008 (87) RLT 848 (CESTAT-Del.)

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

Present : Shri M. Veeraiyan, Member (Technical)
Shri D.N. Panda, Member (Judicial)

CCE, CHANDIGARH

Versus

PFIZER LTD.

(Final Order No. 526/2008-EX. dt. 22.7.2008 certified on 7.8.2008

in Appeal No. E/3707/2006)

Assessable value — Section 4 of CEA, 1944 - Rule 8 of C.Ex. Valuation (DPEG) Rules, 2000 - Bulk drug - Stock transfer - sold to independent parties at price fixed under Drugs (Price Control) Order, 1995 and also transferred to sister unit - stock transfer to be assessed at value of sale to independent parties and not on basis of cost of production - Revenue's appeal dismissed.

(Para 6)

2008 (87) RLT 850 (CESTAT-Che.)

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

Present : Shri P. Karthikeyan, Member (Technical)

CCE, COIMBATORE

Versus

CHEMPLAST SANMAR LTD.

(Final Order No. 658/2008 dt. 4.7.2008 certified on 9.7.2008

in Appeal No. E/523/2001/MAS)

Cenvat credit — Rule 2 of CENVAT Credit Rules, 2004 - Boicide H-300 and Boraquat C50B - used to curb biological growth in water and heat exchangers; HCL - used for regeneration of D.M. water plant and in cooling towers; Hydrazine hydrate - used to prevent oxidation in pipes carrying feed water to boiler, - having nexus with manufacturing of PVC resin (final product) - eligible to credit - Revenue's appeal dismissed.

(Para 4)

2008 (87) RLT 853 (CESTAT-Mum.)

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

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

JAYANTI S. JAIN

Versus

CC (ADJ.), MUMBAI

(Final Order No. A/347/WZB/2008-CII/CSTB dt. 29.10.2007 certified on 3.7.2008

in Appeal No. C/721/2002-Mum.)

Confiscation — Section 111 (d) of Customs Act, 1962 - Gold - seized from cavity in car - appellants produced proof of payment of duty on gold biscuits by NRI passengers,

power of attorney by NRIs in favour of husband of appellant for custody and disposal of gold, criminal case filed by NRIs against appellants in connection with seized gold and Court's order - confiscation set aside as legal import of gold on payment of duty is established.
(Paras 7 & 10)

Release of seized gold — appellant is wife of person who died after seizure of gold from his car - court recognised appellant as person responsible and issued process against her in criminal case filed by importer of gold - seized gold to be released to appellant who had become owner of gold - if gold already disposed of, market value of gold at time of seizure to be paid to appellant.
(Paras 9 & 10)

2008 (87) RLT 861 (CESTAT-Del.)

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

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

JASJEET SINGH MARWAHA

Versus

CC, NEW DELHI

*(Final Order No. 160/2008-Cus. dt. 4.6.2008 certified on 11.7.2008
in Appeal No. C/484/2007)*

CHA licence — Suspension - Regulation 20 of CHA Licensing Regulations, 2004 - in respect of import made in 2002, case was adjudicated in October, 2006 upholding charge of forgery and imposing penalty - there is no delay in issuing suspension order in January, 2007 - there is no ground to interfere with impugned order as appeal against Commissioner (Appeal)'s order reducing penalty, is still pending in CESTAT - appeal dismissed.
(Paras 7 & 8)

2008 (87) RLT 863 (CESTAT-Mum.)

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

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

CHIRAG ENTERPRISES

Versus

CC (EP), MUMBAI

*(Final Order No. A/343/WZB/2008-CI/CSTB dt. 25.6.2008 certified on 3.7.2008
in Appeal No. C/1515/2002-Mum.)*

Appeal — Assessment - Section 129D and 2(2) of Customs Act, 1962 - bill of entry assessed but goods not cleared - bill of entry can be re-assessed on new facts coming to light without filing appeal against original assessment of bill of entry as assessment includes re-assessment.

(Para 6)

Assessable value — Section 14 of Customs Act, 1962 - Transaction value - can be enhanced on basis of contemporaneous imports of identical/similar goods but not on basis of quotation obtained from local market.

(Para 7)

Confiscation and Penalty — Section 111(d) and 112 of Customs Act, 1962 - violation of provisions of repealed Act alleged - in absence of notification under Section 11 prohibiting import in violation of current Act, confiscation and penalty set aside.
(Paras 4(vii), 4(ix) and 8)

2008 (87) RLT 867 (CESTAT-Del.)

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

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

RAJDEEP SINGH

Versus

CC, AMRITSAR

*(Final Order No. 137/2008 -Cus. dt. 17.6.2008 certified on 23.6.2008
in Appeal No. C/475/2005)*

Assessable value — Section 14 of Customs Act, 1962 - Rule 4 and 8 of Customs Valuation (DPIG) Rules, 1988 - Car (second hand) - Transaction value - to be accepted in terms of Rule 4 when there is no evidence of invoice price being bogus - depreciated value derived on basis of price given in Parker's Car Guide is not to be adopted under Rule 8 - appeal allowed.
(Paras 3,3.1,4 & 5)

2008 (87) RLT 870 (SET.COM.)

(Settlement Commission : Customs & Central Excise, Mumbai)

Present : Shri S.S. Renjhen, Vice Chairman
Shri B.S. Ganu, Member

IN RE : B.N. THAKKAR & CO. & ORS.

*(Order No. 121/Final Order/CUS/MGR/2008 dt. 23.6.2008
in Settlement Application No. 2072 -2098/2008)*

Settlement — Section 127H of Customs Act, 1962 - CHA committed fraud by forging bank stamp about payment of cess and export duty on shipping bills and obtaining 'let export orders' - duty evaded with interest payable - penalty is also imposed on CHA - immunity from penalty to co-applicants and from prosecution to all granted - goods already exported are not confiscated.
(Paras 9.1 & 9.2)

2008 (87) RLT 875 (CESTAT-Del.)

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

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

HUTCHISON MAX TELECOM PVT. LTD.

Versus

CCE, MUMBAI

*(Final Order Nos. ST/124-125/2008 dt. 1.7.2008 certified on 16.7.2008
in Appeal Nos. ST/73-74/2004)*

Service Tax — Telephone service - Taxable value - Section 67 of Finance Act, 1994 - Sim card - imported on payment of duty and sales tax paid on their sales - value of sim

card not to be included - appeals allowed.

(Paras 5 & 6)

2008 (87) RLT 878 (CESTAT-Del.)

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

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

R.S. TRAVELS

Versus

CCE, MEERUT

*(Final Order No. 131/2008-ST dt. 15.7.2008 certified on 18.7.2008
in Appeal No. ST/459/2006)*

Service Tax — Words and Phrases - ‘Rent-a-cab operator’s service’ and ‘Transport service’ - Section 65 of Finance Act, 1994 - Interpretation - giving cab, with or without driver, to client for certain period of time for some consideration with cap on total run and operator provides fuel and during period of renting vehicle is at disposal and under control of client - it is rent-a-cab operator’s service - providing cab with driver for going from one place to another on per kilometer or lump sum charges based on distance and control remains with operator/driver, it is transport service and not rent-a-cab operator’s service.

(Para 5)

Service Tax — Limitation - Demand - Section 73 of Finance Act, 1994 - extended time limit not invocable as appellants corresponded with Deptt. and did not suppress any fact.

(Para 6)

2008 (87) RLT 883 (CESTAT-Che.)

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

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

CCE, MADURAI

Versus

BHAKYA BEAUTY PARLOUR

*(Final Order No. 601/2008 dt. 20.6.2008 certified on 26.6.2008
in Appeal No. ST/89/2005)*

Service Tax — Penalty - Section 76 of Finance Act, 1994 - penalty lower than mandatory minimum prescribed in section can not be imposed.

(Paras 3 & 4)

Service Tax — Penalty - Section 78 of Finance Act, 1994 - reduction in penalty in absence of intention to evade tax is upheld. (Paras 3 & 4)

2008 (87) RLT 884 (CESTAT-Che.)

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

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

P. CHANDRAN

Versus

CCE (ST), SALEM

(Stay Order No. S/589/2008 dt. 7.7.2008 certified on 8.7.2008 in Application No. ST/Stay/68/2008 in Appeal No. ST/81/2008)

Service Tax — Pre-deposit - Section 35F of CEA, 1944 - Commercial and industrial construction service - Taxable value - Section 67 of Finance Act, 1994 - Notification No. 15/2004-ST dt. 10.9.2004 as amended by Notification No. 4/2005-ST dt. 1.3.2005 - cost of cement and steel supplied by service recipient is not to be included as for inclusion of their cost, material should have been supplied and used by service provider - pre-deposit waived. (Para 2)

2008 (87) RLT 886 (CESTAT-Del.)

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

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

KOCHHAR ENTERPRISES

Versus

CCE, CHANDIGARH

(Final Order No. 982/2008-SM (BR) and Stay Order No. S/382/2008 -SM (BR) dt. 3.4.2008 certified on 27.6.2008 in Application No. ST/Stay/404/2008 -SM (BR) and Appeal No. ST/106/2008-SM (BR))

Service Tax — Jurisdiction - Commissioner - Order-in-revision - Rectification of mistake - Section 74 and 84 of Finance Act, 1994 - Commissioner can amend order-in-revision passed under Section 84 for rectifying any mistake apparent from records - case remanded. (Para 5)

2008 (87) RLT 887 (CESTAT-Mum.)

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

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

WESTERN INDIA SHIPYARD LTD.

Versus

CCE & ST, GOA

(Final Order No. A/356/WZB/2008/CSTB-CI dt. 24.6.2008 certified on 14.7.2008 in Appeal No. ST/104/2006-Mum.)

Service Tax — Port service - Section 65 of Finance Act, 1994 - Ship repairing at dry dock - appellants were given land and waterfront on lease by Port Trust to undertake ship repairing in dry docks built by appellants - not rendering port service as authorised person of Port Trust - not covered by port service - appeal allowed.

(Paras 6, 8 & 9)