

2008 (87) RLT 227 (CESTAT-LB)

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

Present : Shri S.S. Kang, Vice President
Shri P.K. Das, Member (Judicial)
Shri Rakesh Kumar, Member (Technical)

AMRIT BOTTLERS (P) LTD.

Versus

CCE, ALLAHABAD

*(Misc. Order No. 181/2008-SM(BR) dt. 2.6.2008 certified on 7.7.2008
in Appeal Nos. E/2582-2583/2005)*

Demand – Section 11A of CEA, 1944 and Rule 4 and 10 of C.Ex. Rules, 2002 - Aerated waters - RG-1 stage - in CESTAT's decision in Amrit Bottler's case demand in respect of under/overfilled bottles was confirmed as no evidence of their destruction was produced - in case of Hindustan Coca Cola Beverages, CESTAT held that under/overfilled bottles are not fit for marketing and drained out on production floor, and hence not liable to duty - there is no conflict between judgements. (Paras 1,2,3 & 4)

2008 (87) RLT 229 (TCCAT-Mum.)

(Before the Textiles Committee Cess Appellate Tribunal, Mumbai)

Present : Shri J. Khosla, Presiding Officer

SKY INDUSTRIES

Versus

TEXTILES COMMITTEE

(Order dt. 15.5.2008 in Appeal No. TC/8/2008)

Cess – Textile Committee Cess - Section 5A of Textile Committee Act, 1963 - Belt - made out of cotton - liable to cess as article of cotton.

(Para 8)

Limitation – Demand - Cess - Textile Committee Cess - no limitation prescribed in Textile Committee Act, 1963 - limitation prescribed in Section 11A of CEA, 1944 is not to be adopted - demand issued on 11.12.2007 for 2004-05 is not time barred.

(Paras 1 & 9)

2008 (87) RLT 232 (CESTAT-Ahbad.)

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

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

KUMAR COTTON MILLS (P) LTD. & ANR.

Versus

CCE, AHMEDABAD

(Final Order Nos. A/1039-1040/WZB/Ah'bad/2008-CII dt. 13.5.2008 certified on 21.5.2008 in Appeal Nos. E/383-384/2007)

Clandestine removal – Rule 4 of C.Ex. Rules, 2002 - Processed fabrics - Evidence - lot register found to have entries of unaccounted fabrics - lot registered disclaimed by appellants - no verification with buyers mentioned in lot register done - allegation not

established, though Director had admitted clearance without payment of duty - appeal allowed. (Para 6)

2008 (87) RLT 234 (CESTAT-Ahbd.)

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

Present : Smt. Archana Wadhwa, Member (Judicial)

ADVANCE TUBES & PIPES (I) PVT. LTD.

Versus

CCE, VAPI

(Final Order Nos. A/370-371/WZB/Ah'bad/2008-CII dt. 3.3.2008 certified on 7.3.2008 in Appeal Nos. E/1330-1331/2007)

Penalty – Section 11AC of CEA, 1944 - Clandestine removal - duty paid before issue of show cause notice - penalty reduced to amount equal to 25% of duty amount.

(Para 4)

Clandestine removal – Demand - Section 11A of CEA, 1944 - Shortage - found during stock verification, admitted to have been removed without payment of duty - demand upheld.

(Para 3)

2008 (87) RLT 236 (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-III

Versus

CROMPTON GREAVES LTD.

(Final Order Nos. A/327-330/WZB/2008-CI/EB dt. 7.3.2008 certified on 26.3.2008 E/CO-183/2003 and Appeal Nos. E/390/2003, E/877 and 1176/2004)

Cenvat credit – Rule 57AA of C.Ex. Rules, 1944 - Transformer oil - supplied separately with transformer - eligible input - Revenue's appeals dismissed.

(Para 4)

2008 (87) RLT 237 (CESTAT-Del.)

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

Present : Hon'ble Mr. Justice S.N. Jha, President
Shri T.K. Jayaraman, Member (Technical)

U.P. STATE SUGAR CORPN. LTD.

Versus

CCE, NOIDA

(Final Order No. 32/2008-EX. dt. 11.1.2008 certified on 7.2.2008 in Appeal No. E/3028/2004)

Remission of duty – Rule 21 of C.Ex. Rules, 2002 - Molasses - because of bumper production molasses was also stored in open tanks, which, on account of high temperature, got destroyed by auto-combustion - no auto combustion took place in molasses stored in steel tanks - remission to be allowed on quantity stored in open tanks

minus quantity which could have been stored in steel tanks.
(Para 5)

2008 (87) RLT 239 (CESTAT-Mum.)

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

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

FORCE MOTORS LTD.

Versus

CCE, PUNE-I

*(Final Order No. A/358/WZB/2008-CII/SMB dt. 28.3.2008 certified on 7.4.2008
in Appeal No. E/1367/2007-Mum.)*

Cenvat credit – Rule 57AB and 57AD of C.Ex. Rules, 1944 - Inputs - used in manufacture of capital goods which are captively used in manufacture of motor vehicles and their parts - credit not admissible as capital goods are exempt from duty under Notification No. 67/95-CE dt. 16.3.1995 - appeal dismissed.

(Para 4)

2008 (87) RLT 241 (CESTAT-Ban.)

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

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

CCE, BELGAUM & ANR.

Versus

VASAVADATTA CEMENT & ANR.

(Final Order Nos. 543-544/2008 dt. 2.5.2008 certified on 9.5.2008 in E/CO/19/2008 and Appeal Nos. E/348 & 649/2007)

Cenvat credit – Rule 2(k) of CENVAT Credit Rules, 2004 - Input - Welding electrodes - used for repair and maintenance of machinery - entitled to credit as input - Revenue's appeals dismissed.

(Paras 8.6,8.15 & 8.16)

2008 (87) RLT 254 (CESTAT-Che.)

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

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

CCE, CHENNAI

Versus

CHENNAI PETROLEUM CORPORATION LTD.

*(Misc. Order No. M/213/2008 dt. 13.5.2008 certified on 15.5.2008
in Appeal No. E/456/2005)*

Reference to Larger Bench – Refinery - Chapter VII of C.Ex. Rules, 1944 - whether provisions of said chapter continued to be in force under C.Ex. (No.2) Rules, 2001 and C.Ex. Rules, 2002. (Paras 6,7,8,9,10 & 11)

Reference to Larger Bench – Refinery - Rule 143A of C.Ex. Rules, 1944 - whether benefit of special scheme for refineries under Rule 143A, continued to be available under

C.Ex. (No.2) Rules, 2001 and C.Ex. Rules, 2002.
(Paras 6,7,8,9,10 & 11)

**Exemption – Central Excise - Notification No. 67/95-CE dt. 16.5.1995 - Fuel oil -
captively used in refinery in production of raw naphtha cleared without payment of duty
to fertilizer factory - entitled to benefit of notification during period prior to June, 2001.**
(Para 2)

**Transitional provisions – Rule 32 of C.Ex. (No.2) Rules, 2001 and Rule 33 of C.Ex.
Rules, 2002 - Central Govt.'s order declaring refinery issued under Rule 143A of C.Ex.
Rules, 1944 - not saved by transitional provisions of Rule 32 & 33 - in view of contrary
judgement, issue referred to Larger Bench.**
(Paras 6,7,8,9 10 & 11)

2008 (87) RLT 263 (CESTAT-Mum.)

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

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

INDIAN OIL CORPORATION LTD.

Versus

CCE & C, GOA

*(Final Order Nos. A/360-361/WZB/2008-CI/EB dt. 1.4.2008 certified on 8.4.2008 in Appeal Nos. E/2092 &
2419/2006)*

**Assessable value – Section 4 of CEA, 1944 - Transaction value - Petroleum
products - cleared at higher price to depots/dealers and at lower price to oil companies
under oil exchange arrangement - lower price to oil companies is acceptable as it is trans-
action value.**
(Para 6)

**Natural justice – Refund - Section 11B of CEA, 1944 - rejection of refund claim on
ground of assessment not having been challenged, without putting claimant to notice, is
not proper - case remanded.**

(Paras 7 &

8)

2008 (87) RLT 265 (CESTAT-Kol.)

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

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

ADITYA BIRLA INSULATORS LTD.

Versus

CCE, KOLKATA-IV

*(Final Order No. A-501/Kol./2008 dt. 29.4.2008 certified on 5.5.2008
in Appeal No. E/254/2007)*

**Assessable value – Section 4 of CEA, 1944 - Freight and Insurance charges -
incurred for delivery of goods at buyers' premises - not includible even after 28.9.1996 and
1.7.2000 - appeal allowed.**
(Paras 7,8 & 9)

**Words & Phrases – 'Place of removal' - Section 4 of CEA, 1944 - Interpretation -
place of delivery is not place of removal.**
(Paras 7 & 9)

2008 (87) RLT 269 (CESTAT-Del.)

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

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

UTTARANCHAL IRON & ISPAT LTD. & ORS.

Versus

CCE, MEERUT

*(Final Order Nos. 315-318/2008-EX. dt. 30.5.2008 certified on 17.6.2008
in Appeal Nos. E/60-63/2007)*

Exemption – Central Excise - Notification No. 50/2003-CE dt. 10.6.2003 - Substantial expansion - installed capacity increased by more than 25% by enhancing length of furnace and replacing motors and gear boxes - increase in capacity by more than 25% by way of upgradation and modernization without installing additional machinery or without increasing capacity of each and every unit of plant, is covered by notification - benefit of notification admissible - appeals allowed. (Paras 7,8 & 9)

2008 (87) RLT 272 (CESTAT-Che.)

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

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

V.R. FOUNDRIES

Versus

CCE, COIMBATORE

(Final Order No. 367/2008 and Stay Order No. S/300/2008 dt. 22.4.2008 certified on 28.4.2008 in Application No. E/Stay/78/2008 and Appeal No. E/94/2008/MAS)

Modvat credit – Rule 57CC of C.Ex. Rules, 1944 - appellants maintained separate account of common inputs used in manufacture of dutiable and exempted final products - 8% amount on exempted final product is not payable on ground that account was not maintained properly in as much as issues of inputs for manufacture of exempted final product, were shown on theoretical basis - appeal allowed. (Paras 3 & 4)

2008 (87) RLT 274 (CESTAT-Ban.)

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

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

SRIMAN PLASTICS PVT. LTD.

Versus

CC & CE, HYDERABAD-IV

*(Final Order No. 1461/2007 dt. 10.12.2007 certified on 4.1.2008
in Appeal No. E/883/2005)*

Limitation – Demand - Section 11A of CEA, 1944 - Job worker - received raw material for job work and returned processed goods to supplier without following procedure prescribed under Notification No. 83/94-CE - extended time limit not invocable

in absence of intent to evade payment of duty - appeal allowed.

(Para 4)

2008 (87) RLT 275 (CESTAT-Del.)

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

Present : Shri S.S. Kang, Vice President

TITAWI SUGAR COMPLEX

Versus

CCE, MEERUT-I

*(Final Order No. 252/2008-SM(BR) dt. 6.12.2007 certified on 27.2.2008
in Appeal No. E/624/2006-SM(BR))*

Remission of duty – Rule 21 of C.Ex. Rules, 2002 - Sugar - lost during reprocessing of unmarketable sugar - covered by Rule 21 - remission of duty admissible - appeal allowed.
(Paras 4, 5 & 6)

2008 (87) RLT 276 (CESTAT-Del.)

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

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

KURELE INDUSTRIES & ANR.

Versus

CCE, KANPUR

*(Final Order Nos. 735-736/2008-SM(BR) dt. 30.1.2008 certified on 16.5.2008
in Appeal Nos. E/2225-2226/2006-SM(BR))*

Confiscation and Penalty – Registered dealer - Non-accountal - Rule 173Q of C.Ex. Rules, 1944 - goods lying in registered dealer's premises were found not entered in RG-23D register - Rule 173Q is not attracted - confiscation set aside but penalty upheld.
(Paras 4, 5 & 6)

2008 (87) RLT 278 (CESTAT-Ban.)

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

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

CCE, HYDERABAD

Versus

DEEPAK GALVANISING & ENGG. INDUSTRIES PVT. LTD.

*(Final Order Nos. 507-508/2008 dt. 25.4.2008 certified on 29.4.2008
in Appeal Nos. E/1196 & 1197/2007)*

Manufacture – Section 2(f) of CEA, 1944 - Cutting and punching holes - duty paid MS angles, rods, channels, plates etc are cut to size and holes punched - same are sent to parties for erection of towers - processes not amounting to manufacture - Revenue's appeals dismissed. *(Para 5)*

2008 (87) RLT 283 (CESTAT-Mum.)

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

Present : Ms. Jyoti Balasundaram, Vice President

Shri A.K. Srivastava, Member (Technical)

PIYUSH K RASTOGI

Versus

CC(I), NHAVA SHEVA

*(Final Order No. A/269/WZB/2008-CI/CSTB dt. 23.5.2008 certified on 29.5.2008
in Appeal No. C/347/2008)*

Assessable value – Section 14 of Customs Act, 1962 - Car (used) - Transaction value - enhancement of value on basis of Parkers Car Price Guide is set aside in absence of evidence of extra commercial consideration - transaction value to be accepted.

(Para 2)

Penalty and Redemption fine – Section 112 and 125 of Customs Act, 1962 - Car (used) - imported after less than one year use abroad without specific import licence, type approval certificate and road worthiness certificate, at Nhava Sheva port which was not specified - penalty and fine reduced to 5% and 10% respectively of value of car.

(Para 3)

2008 (87) RLT 285 (CESTAT-Ahbad.)

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

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

INDIAN CHARGE CHROME LTD.

Versus

CCE & C, BBSR-I

AND

VICE VERSA

(Final Order No. A-565-566/Kol./2008, Stay Order No. S/376/Kol./2008 and Misc. Order No. M-140/Kol./2008 dt. 15.5.2008 certified on 27.5.2008 in Application No. C/MA-51/2007, C/Stay/370/2005, C/CO/124/2005 and Appeal No. C/52 & 66/2005)

Words & Phrases – ‘Capital goods’ - Notification No. 13/81-Cus. dt. 9.2.1981 - Interpretation - term not defined in notification - as notification pertains to 100% EOU, definition given in EXIM Policy to be adopted.

(Para 14)

Exemption – Customs - Notification No. 13/81-Cus. dt. 9.2.1981 - 100% EOU - Front end loader, Slag pot carrier, Belt conveyor, Spares of cranes and Spares of conveyors - entitled to benefit as capital goods even prior to amendment of notification as the same are capital goods in terms of EXIM Policy - appeal by assesee allowed and Revenue's appeal dismissed.

(Paras 14,15 & 16)

Notification—Interpretation - amended entries and original entries are not to be taken as mutually exclusive - notification to be interpreted liberally to carry out its purpose.

(Para 15)

2008 (87) RLT 290 (CESTAT-Ahbad.)

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

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

CC, KANDLA

Versus

HINDUSTAN ZINC LTD.

(Misc. Order No. M/589/WZB/Ah'bad/2008-CII dt. 27.5.2008

in Appeal No. C/149/2004)

Reference to Larger Bench – Refund - Unjust enrichment - Provisional assessment - Section 18 and 27 of Customs Act, 1962 - whether refund arising out of finalisation of provisional assessments relatable to period prior to amendment of Section 18 on 13.7.2006, are hit by provisions of unjust enrichment - referred to Larger Bench in view of conflicting judgements.

(Para 4)

2008 (87) RLT 292 (CESTAT-Che.)

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

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

P.A. SADIQ

Versus

CC, COCHIN

(Final Order No. 420/2008 dt. 28.4.2008 certified on 7.5.2008

in Appeal No. C/43/2007)

Rescinding of Notification – Effect - Section 159A of Customs Act, 1962 - Section 6 of General Clauses Act - rescinding of notification does not extinguish liability of a person under it in view of provisions of Section 159A - Section 6 does not apply.

(Para 6)

Words & Phrases – Importer - Section 2(26) of Customs Act, 1962 - Notification No. 133/87-Cus. dt. 19.3.1987 - notification provided for payment of duty on goods when the same are entered for home consumption on date of presentation of fresh bill of entry for breaking up of goods - buyer of trawler for breaking it, becomes its owner and has to present fresh bill of entry and is, therefore, importer and liable to pay duty on it.

(Para

5)

Confiscation, Penalty and Redemption fine – Section 111(o), 112 and 125 of Customs Act, 1962 - breach of condition of exemption notification makes the goods liable to confiscation which is upheld - penalty and fine are reduced.

(Para 7)

2008 (87) RLT 297 (CESTAT-Ban.)

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

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

MUCHIPARA CONSUMERS COOPERATIVE STORES LTD.

Versus

CC, BANGALORE

(Final Order No. 576/2008 dt. 5.5.2008 certified on 30.5.2008

in Appeal No. C/362/2004)

Refund – Value of seized goods - confiscation of seized goods set aside in appeal - seized goods already sold by Deptt. - seizure mahazar's value and not sale proceeds to be refunded - appeal allowed. (Para 4)

2008 (87) RLT 301 (CESTAT-Che.)

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

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

AMARARAJA BATTERIES LTD.

Versus

CC, CHENNAI

*(Final Order No. 447/2008 dt. 7.5.2008 certified on 9.5.2008
in Appeal No. C/138/2007-MAS)*

Exemption – Customs - Notification No. 21/2002-Cus. dt. 1.3.2002 (Sl. No. 503) - Fibre glass sheets - in running length - to be cut to required size for use as battery separators - entitled to benefit of notification as battery separator - appeal allowed.

(Para 3)

2008 (87) RLT 303 (CESTAT-Che.)

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

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

VETRI TRADING & EXPORTS

Versus

CC, CHENNAI

*(Final Order No. 421/2008 dt. 1.5.2008 certified on 7.5.2008
in Appeal No. C/55/2008)*

Words & Phrases – ‘Export goods’ - Section 113 and 114 of Customs Act, 1962 - goods on being brought to customs area and on filing of shipping bill, become ‘export goods’ even though ‘let export order’ under Section 51 ibid has not yet been passed - Section 113 and 114 attracted to such goods.

(Para 3)

Confiscation and Penalty – Section 113(d) and 114 of Customs Act, 1962 - Charcoal - export is prohibited - ignorance of law is no defence - confiscation and penalty upheld but reduced.

(Para 4)

2008 (87) RLT 305 (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)

GURU KRIPA TEXTILES

Versus

CC, NEW DELHI

*(Final Order No. C/60/2008-Cus. dt. 13.3.2008 certified on 2.4.2008
in Appeal No. C/267/2005)*

Limitation – Appeal - Condonation of delay - Section 128 of Customs Act, 1962 - Section 10 of General Clauses Act, 1897 - impugned order-in-original received by appellants on 11.10.2004 - date of receipt is to be excluded - ninety days period expired on 9.1.2005 which was Sunday - appeal filed on 10.1.2005 is within condonable delay - delay condoned and case remanded. (Paras 2, 3 & 4)

2008 (87) RLT 306 (CESTAT-Che.)

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

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

INTERFEIGHT SERVICES (P) LTD. & ANR.

Versus

CC, CHENNAI

*(Final Order Nos. 99-100/2008 dt. 11.2.2008 certified on 20.2.2008
in Appeal Nos. C/562 & 586/2005)*

Penalty – Section 114 of Customs Act, 1962 - Misdeclaration - weight of goods mentioned as 3349.76 kgs. in shipping bill and 33497.76 kgs. in annexure to shipping bill - wrong weight entered in annexure was corrected under Section 149 ibid - not a case of misdeclaration - penalties set aside - appeals allowed.

(Para 2)

2008 (87) RLT 308 (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)

CC, AMRITSAR

Versus

POLYGLASS ACRYLIC MFG CO. PVT. LIMITED

*(Final Order Nos. 63-66/2008-Cus. dt. 13.3.2008 certified on 3.4.2008
in Appeal Nos. C/411-414/2005)*

Assessable value – Section 14 of Customs Act, 1962 - Acrylic strips - value enhanced without bringing any material for basis of enhancement on record - respondents accepted loading to save on demurrages - other imports are at same price - enhancement of value rightly set aside by Commissioner (Appeal) - Revenue's appeals dismissed. *(Paras 6.1 & 6.2)*

2008 (87) RLT 309 (CESTAT-Ahbad.)

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

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

TOP FOAM IMPEX

Versus

CC, KANDLA

*(Final Order No. A/1093/WZB/Ah'bad/2008-CII dt. 5.5.2008 certified on 27.5.2008
in Appeal No. C/49/2002)*

Confiscation and Penalty – Section 111 (m) and 112 of Customs Act, 1962 - Misdeclaration - Pile fabrics - weight in kgs. of consignment was misdeclared because of miscalculation in converting area into weight - no mala fide on part of importer as quantity in metre tallied - confiscation and penalty set aside - appeal allowed.

(Para 3)

2008 (87) RLT 311 (CESTAT-Kol.)

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

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

ROYAL ENTERPRISES

Versus

CC (PORT), KOLKATA

*(Final Order No. A-410/Kol./2008 dt. 5.3.2008 certified on 8.4.2008
in Appeal No. C/91/2004)*

Assessable value – Appeal - Section 14 and 129A of Customs Act, 1962 - appellants waived show cause notice, consented to enhancement of value and not to participate in adjudication proceedings - enhancement of value as per Chartered Engineer's certificate is not controverted - appellants can not go in appeal against their consent - assessment upheld but redemption fine reduced.

(Paras 6.2 & 6.3)

2008 (87) RLT 313 (CESTAT-Ahbad.)

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

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

INDIAN OIL CORPORATION LTD.

Versus

CC, KANDLA

*(Final Order No. A/841/WZB/Ah'bad/2008-CII dt. 22.4.2008 certified on 2.5.2008
in Appeal No. C/1391/2005)*

Deposit – Section 28B of Customs Act, 1962 - Petroleum products - sale price fixed by Govt. under Administered Price Mechanism Scheme according to which excess duty collected is to be paid into Oil Pool Account - excess duty not to be deposited in terms of Section 28B - appeal allowed.

(Para 7)

2008 (87) RLT 317 (CESTAT-LB)

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

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

HINDUSTAN ZINC LTD.

Versus

CCE, JAIPUR

(Misc. Order No. M/85/2008-ST dt. 27.6.2008 certified on 4.7.2008)

in Appeal No. ST/523/2006)

Service Tax – Tax liability - Consulting engineer’s service - Section 68(2) of Finance Act, 1994 - Rule 2(1)(d) of Service Tax Rules, 1994 - Notification No. 12/2002-ST dt. 1.8.2002 and No. 36/2004-ST dt. 31.12.2004 - service provided from outside or by NRI not having office in India - recipient of service liable to pay tax w.e.f. 1.1.2005 on issue of Notification No. 36/2004-ST and not w.e.f. 16.8.2002 when Rule 2(1)(d) was amended by Notification No. 12/2002-ST as both the notifications have to be read as complementary or supplemental to each other. (Paras 13,17 & 18)

2008 (87) RLT 325 (CESTAT-Ban.)

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

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

DATAWARE COMPUTERS & ORS.

Versus

CCE & CST (APPEALS), GUNTUR

(Final Order Nos. 479-481/2008 dt. 25.3.2008 certified on 4.4.2008

in Appeal Nos. ST/393-395/2007)

Service Tax – Business auxiliary service - Information technology service - Section 65 of Finance Act, 1994 - as per contract appellants were required to generate various MIS reports on computer and develop software for this purpose - this amounted to data processing task falling within scope of information technology service which was excluded from scope of business auxiliary service during relevant period - not taxable - appeals allowed.

(Para 6)

2008 (87) RLT 329 (CESTAT-Ahbad.)

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

Present : Smt. Archana Wadhwa, Member (Judicial)

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

JET AIRWAYS (INDIA) LTD.

Versus

CST, AHMEDABAD

(Final Order No. A/1129/WZB/Ah'bad/2008-CII dt. 9.6.2008 certified on 10.6.2008

in Appeal No. ST/122/2007)

Service Tax – Cargo handling service - Transportation of goods by air service - Section 65 of Finance Act, 1994 - transportation of goods by airline from one place to another is not cargo handling service - it is transportation of goods by air service which became taxable w.e.f. 10.9.2004 - appeal allowed.

(Paras 4, 5, 6, 7, 8, 9 & 10)

2008 (87) RLT 334 (CESTAT-Ban.)

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

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

CCE, BELGAUM

Versus

CHADHA AUTO AGENCIES

*(Final Order No. 567/2008 dt. 7.5.2008 certified on 21.5.2008
in Appeal No. ST/14/2007)*

Service Tax – Business auxiliary service - Section 65 of Finance Act, 1994 - respondents were selling two wheelers - they provided space to financial institutions who advanced loan to buyers of two wheelers - respondents received commission from financial institutions - respondents' activity is not business auxiliary service - Revenue's appeal dismissed.

(Para 4)

2008 (87) RLT 337 (CESTAT-Ban.)

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

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

NCR CORPORATION INDIA PVT. LTD.

Versus

CST, BANGALORE

*(Final Order No. 610/2008 dt. 16.5.2008 certified on 30.5.2008
in Appeal No. ST/275/2007)*

Service Tax – Erection, commissioning or installation service and Automated teller machine service - Section 65 of Finance Act, 1994 - supply of ATMs is not erection, commissioning or installation service - taxable as ATM service w.e.f. 1.5.2006.

(Paras 6 & 6.1)

Service Tax – Business Auxiliary service and Automated teller machine service - Section 65 of Finance Act, 1994 - Cash replenishment service and Care taker service - not business auxiliary service - taxable as ATM service w.e.f. 1.5.2006 - appeal allowed.

(Paras 6 & 6.1)

2008 (87) RLT 340 (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 ALUMINIUM LTD.

Versus

CCE, MYSORE

*(Final Order No. 457/2008 dt. 13.2.2008 certified on 20.3.2008
in Appeal No. ST/388/2007)*

Service Tax – Demand - Show cause notice - Section 73(3) of Finance Act, 1994 - where tax and interest have been paid, show cause notice for appropriation and penalty need not be issued.

(Para 6)

Service Tax – Penalty - Section 78 and 80 of Finance Act, 1994 - Bonafide belief - appellants bonafidely believed that tax was not payable and paid it along with interest on being pointed out - reasonable cause for not imposing penalty - appeal allowed.

(Para 6)