

TELEGRAM : CFCCANAL
Website : www.cesat.gov.in

RECEIVED
Smart - 15107254000000

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BUILDING, WEST BLOCK No.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Appeal No. E 12-116-2008-2010

Smart - 15107254000000

Assistant Registrar
Principal Building, New Delhi

1. **SH. HER VISHWESHWAR**
2. **NO. 414, AREA 1, PUDUCHI - 605 005 DIST. DHAR(MP)**
3. **LETTER NO. 155/2008**

CHENNAI

I am directed to transmit herewith a copy of final order No. 414/2008-2010

Smart - 15107254000000

passed by the Tribunal under Section 35A of Central Excises Act, 1944.

D. 15/7/08
15/7/08
Smart - 15107254000000

Copy to :

1. Respondent

2. COLLECTOR

3. CH. EXCISE

4. CH. EXCISE

5. CH. EXCISE

6. CH. EXCISE

7. CH. EXCISE

8. CH. EXCISE

9. CH. EXCISE

10. CH. EXCISE

11. CH. EXCISE

12. CH. EXCISE

13. CH. EXCISE

14. CH. EXCISE

15. CH. EXCISE

16. CH. EXCISE

17. CH. EXCISE

18. CH. EXCISE

Smart - 15107254000000

16. HOD, THE C. & E. T. B. NEW DELHI

17. HOD, THE C. & E. T. B. NEW DELHI

18. HOD, THE C. & E. T. B. NEW DELHI

19. HOD, THE C. & E. T. B. NEW DELHI

Without green sheet

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi-110066

Court No.III

Date of hearing. 15.7.2008

Central Excise Appeal Nos.1230 to 1232 of 2006

Arising out of the Order in original No.08/COMMR./CEX/IND/2006 dated 25.1.2006 passed by the Commissioner, Central Excise, Indore.

For Approval and Signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellants

Respondent

M/s Eicher Motors Ltd. and others
M/s Bhagirath Coach & Metal
Fabricators Pvt. Ltd.
Shri Ashok Sharma, Director

vs.

C.C.E.,
Indore

Appearance

Shri Ravi Raghvan, Advocate for the appellants and
Shri H.K. Thakur, Authorized Departmental Representative (Jt.CDR) for
the Revenue

Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

FINAL Order No. 492-494/08-EX

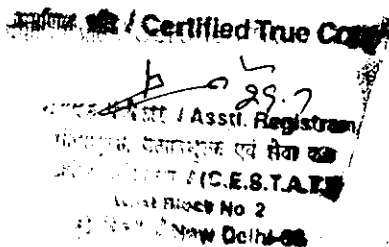


Per Archana Wadhwa:

Learned Advocate Shri Ravi Raghvan appearing for the appellants submits that the issue was referred to the Larger Bench and stands answered by the Larger Bench against the assessee M/s Bhagirath Coach & Metal Fabricators Pvt. Ltd., on the issue of adoption of assessable value, while discharging the duty on motor vehicles manufactured by them. He refers to Misc. Order No.568-570/08-Ex dated 6th June, 2008 passed by the Larger Bench and fairly agrees that in view of the said judgment, the demand of duty against M/s Bhagirath Coach & Metal Fabricators Pvt. Ltd., is required to be confirmed. He however, prays for setting aside the penalty on the ground that the issue was not free from doubt and that is why, the matter was referred to Larger Bench, in view of the earlier conflicting decisions. By relying upon the Tribunal decision in the case of Heubach Colour Pvt. Ltd. 2007 (211) ELT 406 (Tri-Ahmd.), he submits that imposition of penalty upon all the appellants was not justified.

2. After hearing the learned Jt.CDR, we confirm the demand of duty against M/s Bhagirath Coach & Metal Fabricators Pvt. Ltd.. As regards the penalty imposed upon all the appellants, we agree with the learned Advocate that there being conflicting decisions ^{on} to which the matter was referred to the Larger Bench and no mala fide can be attributed to the assessee so as to impose penalty. Accordingly, while confirming duty demand, we set aside the penalties imposed upon all the appellants.

(The operative part of the order was pronounced in the open Court)



[Archana Wadhwa]
Member [Judicial]

[M. Veeraiyan]
Member [Technical]

