

**CESTAT RULING (SERVICE TAX)**

[2013-TIOL-1621-CESTAT-MUM](#)

**CST Vs M/s Kaya Skin Clinic (Dated: September 20, 2013)**

ST - As ST demands were computed in respect of each treatment/procedure, therefore, Commissioner ought to have examined each one of them and decided the matter – Matter remanded and Commissioner directed to examine in respect of all remaining treatments/procedures and thereafter decide the matter – Revenue appeals allowed in above terms: CESTAT [para 4]

[2013-TIOL-1617-CESTAT-MAD](#)

**M/s Cauvery Enterprises Vs CST (Dated: June 12, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Supply of manpower service - The character of the activity, whether it is actually manufacturing activity or supply of manpower, the difference can be a very thin depending on what exactly was the responsibility of the applicant and what exactly was the responsibility of the client - Considering the amount already paid, pre-deposit of Rs 5 lakhs ordered.

[2013-TIOL-1616-CESTAT-MAD](#)

**Bharat Matrimony.Com Pvt Ltd Vs CCE & ST (Dated: May 30, 2013)**

Service Tax - Penalty - Online information and database access and or retrieval service - Appeal against order of Commissioner (Appeals) upholding penalty under Section 75A - Finding of the Commissioner (Appeals) is proper and reasonable - No reason to interfere with the same.

Penalty imposed by the Commissioner under Section 76 for subsequent period - After the initial proceedings, the appellants have been paying service tax regularly - In view of the same, penalty imposed under Section 76 by the Commissioner is not sustainable and the same is set aside.

[2013-TIOL-1613-CESTAT-DEL](#)

**CST Vs M/s Japan Airlines International Co Ltd (Dated: September 18, 2013)**

ST - Review by Committee - mere signing on draft note mechanically does not constitute sufficient compliance with the requirement of application of mind by the

Chief Commissioners comprising the Committee to the twin requirements of the decision making process namely, due consideration of the material pertaining to the adjudication/appellate order and the appropriateness/desirability of preferring an appeal - issue no longer res integra - appeal does not measure up to the standards spelt out by the decisions in this regard - Revenue appeal defective, hence rejected: CESTAT [ paras 3 & 4]

[Also see analysis of the Order](#)

[2013-TIOL-1612-CESTAT-DEL](#)

**Kandhari Beverages Pvt Ltd Vs CCE & ST (Dated: September 19, 2013)**

ST - BAS - US corporate entity had authorised its 100% subsidiary M/s Coca Cola India Pvt. Ltd. to manufacture and sell the beverage syrup/concentrate used in the manufacture of beverages of brands owned by the US entity to bottlers in India; that the assessee is a bottler having a "bottler agreement" with the US entity; that under the bottlers agreement assessee advertises the beverages manufactured by it; that a percentage of such expenses incurred are reimbursed by the US entity; and that in the circumstances, the assessee must be considered as having provided the taxable service of promotion/marketing of beverages manufactured/produced/belonging to US corporate entity, falling within BAS - Tribunal in circumstances substantially similar to the facts in the present case, in the case of Ludhiana Beverages Pvt. Ltd. & Wave Beverages Pvt. Ltd. have granted of waiver of pre -deposit in full on the prima facie view that no service is being rendered under BAS - however, there is a prima facie case for Revenue as well on examination of 'bottlers agreement' - in totality of circumstances, pre -deposit of 50% of ST liability plus proportionate interest ordered for obtaining stay: CESTAT [ paras 4 & 5]

[2013-TIOL-1611-CESTAT-MAD](#)

**Goodearth Maritime (P) Ltd Vs CST (Dated: June 5, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Demand of service tax under Section 66A - Ship Management service - Before the adjudicating authority the applicant did not make any submission that the payments remitted abroad were in relation to the payments made to applicant's own staff and did not demonstrate evidence to prove this contention - The definition as given in "Ship Management Service" would cover arrangements of crew, victualling and supporting of such crew - Such service if done by any person located abroad is covered by clause (iii) of Rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 - The service becomes taxable once the recipient is located in India and provider is located outside India - Prima facie these conditions are satisfied.

Demand on payment made for canvassing for cargo for space under Business Auxiliary service - Business Auxiliary service is covered under clause (iii) of Rule 3 of Taxation of services (Provided from outside India and Received in India) Rules, 2006 - Pre -deposit of Rs 1.3 crores ordered.

[2013-TIOL-1610-CESTAT-MAD](#)

**M/s Prasad Corporation Ltd Vs CST (Dated: June 25, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Video Tape Production Service - Specialised data processing activities such as graphics, special effects, animation etc - No prima facie case for waiver of pre-deposit - Applicant directed to deposit Rs 40 lakhs.

[2013-TIOL-1607-CESTAT-MUM](#)

**CC & CE Vs Hundekari Transport Service (Dated: September 11, 2013)**

ST - Revenue appeal below Rs.5 lakhs is rejected by CESTAT -Even though appeal was filed prior to issue of [CBEC Instruction in F.No.390/Misc./163/2010-JC., Dated: August 17, 2011](#) prescribing mandatory limits for filing appeal by Revenue, in the light of the decision of High Court of Karnataka in the case of Commissioner of Income Tax, Bangalore vs. Ranka&Ranka [[2012-TIOL-178-HC-KAR-IT](#)] appeal is not maintainable – Revenue Appeal rejected: CESTAT

[2013-TIOL-1606-CESTAT-MUM](#)

**Inox Air Products Ltd Vs CCE (Dated: August 2, 2013)**

ST - appellant manufacturing Industrial gases & also supplying vacuum insulated storage tanks to customers for a fixed term by charging Rs.27,500/- per month - as per the agreement, the tank always remains the property of the appellants and the same was only loaned for use to their customers; the customers are not entitled to sell or offer for sale, mortgage and pledge the tanks - ST confirmed under the category of "Banking & Other financial services" on charges so collected - Demand not tenable as appellant not a banking company or a financial institution or commercial concern in relation to banking & other financial services - Appeal allowed: CESTAT [para 8]

[Also see analysis of the Order](#)

[2013-TIOL-1605-CESTAT-MUM](#)

**Inox Air Products Ltd Vs CCE (Dated: August 1, 2013)**

ST - appellant manufacturing Industrial gases & also supplying vacuum insulated storage tanks to customers for a fixed term by charging Rs.27,500/- per month - as per the agreement, the tank always remains the property of the appellants and the same was only loaned for use to their customers; the customers are not entitled to sell or offer for sale, mortgage and pledge the tanks - ST confirmed under the category of "Banking & Other financial services" on charges so collected - Demand not

tenable as appellant not a banking company or a financial institution or commercial concern in relation to banking & other financial services - Appeals allowed: CESTAT [para 8]

[Also see analysis of the Order](#)

[2013-TIOL-1604-CESTAT-MUM](#)

**M/s Phoenix Mills Ltd Vs CST (Dated: March 12, 2013)**

ST - Appellant has set up a commercial complex (Mall) and has given premises on leave and licence basis to various licencees - appellant provides the user (licencee) with furniture, fixtures, amenities, infrastructure for which they collect 'amenities/service charges' - appellant also providing facilities for Dish Antenna and recovers charges - Revenue alleging that appellant is providing infrastructure support to its clients/licencee in relation to support services of business and commerce and hence taxable under "Business Support Services" - common area maintenance charges/outgoing charges/parking maintenance/upkeep charges also collected and ST on the same is demanded under the head "Management, Maintenance and Repair service" - appellant submitting that as far as demand under BSS are concerned, they were collecting charges for maintenance, furniture, fixture and amenities inside the unit let out and the 'Promotional and Marketing Charges' were being collected on per square feet basis & that they have been paying ST on rent and other charges under the category "Renting of Immovable Property Service" w.e.f 01.06.2007. Held : since all the charges collected by the appellant are on per square feet basis, prima facie the charges collected from licencee are in the nature of rent - appellant has made out a prima facie case in favour - Pre-deposit waived and Stay granted: CESTAT [paras 4.4 & 6]

[2013-TIOL-1598-CESTAT-MUM](#)

**CST Vs Diotek India Ltd (Dated: April 17, 2013)**

ST – Appellant paying ST as provider of "Online information and data base access or retrieval or both" – registration fee collected from clients - same is adjusted to the first purchase made and in case no purchase is made the registration fee is not refunded - in view of the fact that registration fee is not to be refunded as such, same is required to be added to the gross value of taxable service on which the respondents are liable to pay service tax – Revenue appeal allowed: CESTAT [para 8]

Limitation – Respondent had not declared the fact regarding collection of "Registration fees" from clients in their ST-3 returns – it is only during scrutiny of records the same was detected – allegation of suppression of taxable value with intent to evade payment of ST is sustainable: CESTAT [para 9]

[Also see analysis of the Order](#)

[2013-TIOL-1597-CESTAT-AHM](#)

**M/s Tejabha Lakhubha & Co Vs CCE & ST (Dated: July 25, 2013)**

ST - From the bills raised by the appellants it is seen that the same are for works like lifting of salt, supervision charges, salt loosening, truck loading charges, excavating, loading and transportation etc. - in the SCN certain figures have been taken from the profit and loss account of the appellants and demands have been made without any segregation of service-wise amounts – in the absence of proposal in SCN as to the liability under the precise provision demand may not be sustainable – activity conducted within the factory premises may also not be chargeable under Cargo Handling Services – Revenue also has not brought out any evidence to the effect that man-power by numbers have been provided by appellant – prima facie case made out for complete waiver of adjudged dues – Stay granted: CESTAT [ para 4]

[2013-TIOL-1596-CESTAT-AHM](#)

**M/s Tejas Agency Vs CCE & ST (Dated: June 20, 2013)**

Penalty - Where an assessee has paid both the service tax and interest before issuance of a show cause notice under the Act, sub-Section 3 of Section 73 of the FA, 1994 prohibits initiation of proceedings for recovery of penalty - Appeals allowed: CESTAT [ paras 4 & 5]

[2013-TIOL-1590-CESTAT-MAD](#)

**PSK Engineering Constructions & Co Vs CCE (Dated: June 17, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Construction of houses for fishermen who lost their houses in tsunami by Rural Development Society - Demand of service tax under Construction of residential complex service - Plea that the complex is for personal use and is excluded from the definition under Section 65 (91a) of the Finance Act, 1994 - Going by the definition of "residential complex", where the person getting the residential units is retaining such units with himself such complexes can be clearly considered to be for personal use even if the houses are given for residence of others on rent or free of rent - However prima facie it appears that if the property in the residential unit is transferred to another person the residential unit may not be considered to be for personal use even if such transfer is done without any consideration - Pre-deposit of Rs 10 lakhs ordered.

[2013-TIOL-1588-CESTAT-MUM](#)

**M/s Madhur Enterprises Vs CCE (Dated: July 15, 2013)**

ST - Appellant undertaking cleaning services for educational institutions - Demand raised for payment of ST under 'Supply of Manpower Services' - as per s.65(24b) of FA, 1994, cleaning services undertaken in respect of non-commercial buildings and

<p>premises are not liable to service tax - Prima facie case in favour - Pre-deposit waived and stay granted: CESTAT [para 4]</p>
<p><a href="#">Also see analysis of the Order</a></p>
<p><a href="#">2013-TIOL-1587-CESTAT-MUM</a></p>
<p><b>Geico Paint Shop India P Ltd Vs CCE &amp; ST (Dated: May 27, 2013)</b></p>
<p>Rule 6A of the CESTAT (Procedure) Rules - Registry issuing SCN and directing appellant to file one more appeal for the reason that the O-in-O under challenge dealt with two SCNs - there is no bar in the Act or in the Rules to the passing of consolidated orders by the adjudicating authority and, therefore, a single appeal filed against such an order cannot be held to be irregular – SCN is devoid of merit and is discharged: CESTAT [para 2]</p>
<p><a href="#">2013-TIOL-1586-CESTAT-AHM</a></p>
<p><b>CST Vs M/s SKSE Securities Limited (Dated: June 20, 2013)</b></p>
<p>ST – since services provided by sub-brokers were also taxable services in respect of which relevant ST is liable to be remitted by such sub brokers, in respect of the very same service, no ST is again remittable by the principal Stock broker - Once Tribunal has pronounced on an aspect having a clear and direct application in a subsequent case, such judgment, absent any overarching norm by any superior court must constitute the non- derogable norm in conformity with which subsequent assessment or adjudication should proceed - Recipist and futile endeavours by Revenue for utopian perfection tends to undermine the stability of law and impose wholly avoidable litigation costs on the exchequer besides burdening the docket of this Tribunal – Costs imposed on Revenue of Rs.1000/- payable to assessee for inflicting on it a wholly unjustified litigative trauma – Appeal dismissed: CESTAT [ paras 4 &amp; 5]</p>
<p><a href="#">2013-TIOL-1584-CESTAT-MAD</a></p>
<p><b>M/s Sundaram Asset Management Company Ltd Vs CST (Dated: June 3, 2013)</b></p>
<p>Service Tax - Stay/Dispensation of pre-deposit - The appellant are engaged in the business of managing the assets of various schemes of Mutual Fund - Availment of CENVAT Credit on the advertisement service which is used to promote the Mutual Fund business - The output service of the applicant is to provide financial advice to mutual fund to invest the funds - Prima facie, advertisement service cannot be treated as input service - Pre-deposit of Rs 25 lakhs ordered.</p>
<p><a href="#">2013-TIOL-1583-CESTAT-MAD</a></p>

**Bismi Engineering Contractors Vs CCE & ST (Dated: July 9, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Construction of residential complex service - Construction of houses for Tamil Nadu Police Housing Corporation Ltd - Prima facie case for waiver of pre-deposit in view of stay granted earlier in identical cases.

[2013-TIOL-1582-CESTAT-DEL](#)

**Shri Surendra Singh Rathore Vs CCE (Dated: July 27, 2013)**

ST - BAS - Multilevel Marketing Service Scheme - commission received by the appellants from FSL is the result of the marketing/promotion of FSL products by the appellants and constitutes a service (Business Auxiliary Service) - appellate and adjudication orders are impeccable on this analysis and warrant no interference - appeals rejected: CESTAT [ para 7]

Penalty - s. 76, 77 & 78 of FA, 1994 - Bonafide belief - no ambiguity in the statutory definition of Business Auxiliary service that could have sustained or given rise to any bona-fide belief as to the activities of the appellants being not Business Auxiliary Service - penalties confirmed: CESTAT [ para 8]

[Also see analysis of the Order](#)

[2013-TIOL-1581-CESTAT-MAD](#)

**Bay Container Terminal Pvt Ltd Vs CST (Dated: June 20, 2013)**

Service Tax - Stay/Dispensation of Pre-deposit - Demand of service tax under Management, Maintenance or repair service on the ground that the cost of materials was not included - Appellant claim the benefit of Notification No 12/2003 ST and submit that they have placed the balance sheet and other documents before the audit officers to establish the value of the goods - However, the said documents were not placed before adjudicating authority - No prima facie case for waiver of pre-deposit - Rs 20 lakhs ordered as pre-deposit.

[2013-TIOL-1577-CESTAT-MUM](#)

**H&R Johnson (India) Ltd Vs CCE (Dated: September 2, 2013)**

CENVAT - Input Service - SCNs issued to appellant for overlapping periods by both, CCE, Raigad and CST, Mumbai for recovery of allegedly incorrectly availed CENVAT Credit of ST distributed by HO registered as ISD - department unsure who is to adjudicate so referring the matter to CBEC and is awaiting response - since jurisdiction issue goes to the root of case and which has not been considered by adjudicating authority, Order by CCE, Raigad set aside and matter remanded: CESTAT

[para 5]
<a href="#">2013-TIOL-1576-CESTAT-MUM</a>
<b>Kala Sagar Vs CST (Dated: August 20, 2013)</b>
<p>ST - Clauses (c) and (d) of Section 65 (25b) of FA, 1994 do not specify that they should be undertaken in respect of a new building only - repair, alteration, renovation or restoration or similar services would be mostly applicable to old buildings only - t herefore, the argument of the appellant that since the activities have been undertaken in respect of an old building and not a new building, service tax liability is not attracted would be ignoring the explicit provisions of law - It would amount to qualifying the word ' building ' mentioned with an adjective "old" - It is a well settled position that a statute has to be interpreted in the way it has been worded by the legislature and no words can be added to or excluded from the statutory provisions - t herefore, completion and finishing services, repair, alteration or renovation and restoration or similar services provided, whether in respect of a new building or an old building would attract service tax liability under Section 65 (25b) - on the question of limitation &amp; imposition of penalties since there is a difference of opinion, matter placed before President for referring matter to the Third Member: CESTAT</p>
<a href="#">Also see analysis of the Order</a>
<a href="#">2013-TIOL-1575-CESTAT-MAD</a>
<b>Cag Enterprises Vs CCE, CC &amp; ST (Dated: May 21, 2013)</b>
<p>Service Tax - Stay/Dispensation of pre-deposit - After sales service of two wheelers - Demand of service tax on the cost of spares reimbursed by the vehicle manufacturer - Prima facie, there cannot be levy of service tax on value of spare parts used in repair service of motor vehicles - In such activity the cost of materials and the service itself can be clearly vivisected and is perceived as separate components by customers - Pre-deposit waived.</p>
<a href="#">2013-TIOL-1574-CESTAT-MAD</a>
<b>Vishranti Homes (P) Ltd Vs CCE (Dated: April 12, 2013)</b>
<p>Service Tax - Stay/Dispensation of pre-deposit - Construction of residential and commercial complex service - Demand of service tax on land owner share of construction in exchange of land - Contention that the construction was done free of cost - Considering the huge amount of black money that exchanges hands in land deals and since the so called "free construction" is done for a party who made land available and not to a totally independent party, the contention is not tenable - Work commenced before 01.06.2007 - Assessee may not be eligible to opt for benefit of the new scheme of composition as per Rule 3 (3) of Works Contract Rules - Rs one crore ordered as pre-deposit.</p>



<a href="#">2013-TIOL-1568-CESTAT-MUM</a>
<b>Kpit Cummins Infosystems Ltd Vs CCE (Dated: March 6, 2013)</b>
ST - Section 66A is attracted only when services are received in India by a person situated in India even if such persons may have permanent establishment abroad - If the services rendered abroad have been subject to local taxation, the question of levying service tax in India on the very same transactions would not arise at all - CCE, Pune-I has not considered any of the issues germane to the matter - Appeal allowed by way of remand: CESTAT [paras 5.1, 5.2, 5.3 & 6]
<a href="#">Also see analysis of the Order</a>
<a href="#">2013-TIOL-1567-CESTAT-AHM</a>
<b>M/s Patel Infrastructure Pvt Ltd Vs CCE (Dated: August 7, 2013)</b>
Service Tax - Maintenance and repairs of roads - In view of the retrospective amendment made vide Section 97 of the Finance Act, 2012, demand does not sustain.  Commercial or Industrial construction service - Except two constructions, the remaining are non-commercial in nature - Demand set aside and matter remanded in respect of the two constructions.  Demand under Business Auxiliary service for toll collection on the highways - Issue covered in favour of the appellants by precedent decisions of the Tribunal - Demand set aside.
<a href="#">2013-TIOL-1566-CESTAT-MAD</a>
<b>Sana Engineering Company Vs CCE &amp; ST (Dated: July 14, 2013)</b>
Service Tax - Stay/Dispensation of Pre-deposit - Supply of Industrial cranes - Service Tax paid from 16.5.2008 when new entry for taxing "supply of tangible goods" came into force - Revenue demanded Service Tax for the period prior to 16.05.2008 on ground that services rendered would be covered under "Business Support Service" which came into force from 1.5.2006 onwards - Prima facie, "Business Auxiliary Service" is in nature of residual entry and cannot cover an activity, like making tangible goods available to another person which was subsequently covered by a specific entry - Pre-deposit waived and recovery stayed.
<a href="#">2013-TIOL-1565-CESTAT-KOL</a>

**M/s Unicon (India) Vs CST (Dated: July 31, 2013)**

Service Tax - Commercial and Industrial Construction service - Finishing services such as glazing, plastering, painting etc - Denial of benefit of Notification No 1/2006 ST - Alternative plea for benefit of Notification No 12/2003 ST - This plea has not been made before the adjudicating authority and accordingly not considered - Appellant directed to deposit the admitted liability and the matter is remanded to the Adjudicating Authority for consideration of alternative plea.

[2013-TIOL-1556-CESTAT-MUM](#)

**Status Car Rentals Vs CCE (Dated: September 4, 2013)**

ST - Appellants are not having any tourist bus hence are not covered under the scope of 'Tour Operator Service' - consequently benefit of notfn. 39/97-ST not available - demand upheld - since appellant was filing ST-3 returns, penalties set aside in terms of s.80 of FA, 1994 - Appeal disposed of: CESTAT [para 6]

[Also see analysis of the Order](#)

[2013-TIOL-1555-CESTAT-DEL](#)

**Hotline Display Devices Vs CC & CE (Dated: August 23, 2013)**

Service Tax - Demand of service tax under Consulting Engineer service - The definition of the expression "consulting engineer" would include a company - In the light of consistent view and interpretation of the relevant provisions by the Karnataka and Calcutta High Courts and on analyses of the facts and circumstances of the case, in particular the debit notes raised by the appellant, the conclusion is compelling that the petitioner had rendered taxable service as 'consulting engineer' but failed either to obtain registration, file returns or remit its tax liability - Invocation of the extended period of limitation and the order of assessment as confirmed in appeal confirming demand of service tax, interest and penalty are impeccable - The order under appeal warrants no interference.

[2013-TIOL-1554-CESTAT-MAD](#)

**Hardy Exploration & Production (India) Inc Vs CST (Dated: May 28, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Demand of service tax under reverse charge on freight and equipment rental charges paid to the foreign contractor - The agreement is a service agreement in relation to survey and exploration of minerals, oils and gas services and rental of equipment is part of the service - No prima facie case for waiver of pre-deposit - Rs 30 lakhs ordered as pre-deposit.

[2013-TIOL-1551-CESTAT-KOL](#)

**M/s United Udyog Vs CCE (Dated: August 5, 2013)**

ST – Penalty – s.76 of FA, 1994 – delay in filing returns and payment of ST - financial difficulty cannot be considered as a 'reasonable cause' for exercising discretion provided u/s 80 of FA, 1994 for waiver of penalty u/s 76 - appellant has also not shown that they could not pay tax on account of any bonafide mistake or under the impression that tax was not payable due to interpretation so as to constitute a 'reasonable cause' – penalty rightly held as imposable by Commissioner (A) in revisionary proceedings - as penalty not quantified and since appellants' claim for benefit of provisions of s. 73(3) on the ground that they paid substantial amount of ST along with interest not considered, matter remitted back to adjudicating authority to decide case afresh: CESTAT [ paras 5 & 6]

[2013-TIOL-1550-CESTAT-MUM](#)

**Varun Shipping Co Ltd Vs CST (Dated: December 14, 2012)**

ST - Supplying Tangible goods for use service - appellant paying ST of Rs.1,26,80,302/- in the month of December, 2008 even though they had not received consideration for the services rendered - said payment was reflected as 'advance tax paid' in the return filed for the period October 2008 to March 2009 but not separately intimated to the jurisdictional Superintendent in terms of rule 6(1A) of STR, 1994 - upon receipt of consideration in April 2009, appellant adjusted the advance payment towards the tax liability and showed the same in the returns for April 2009 to September 2009 - Department alleging that the payment made in December 2008 is not advance tax but an excess payment and, therefore, they could not suo motu adjust the excess payment and the same was in violation of rule 6(4B) of the STR, 1994 and demanding ST - Held : Since liability to pay tax arose only in April, 2009, the payment made in December 2008 can only be an advance payment of tax and not an excess payment - although this contention was raised before adjudicating authority he has simply dismissed the same saying that it is only an afterthought to cover up their lapse - there was no need for the appellant to make such a submission - order of adjudicating authority reflects complete non-application of mind - order set aside and appeal allowed: CESTAT [para 5.1]

[2013-TIOL-1549-CESTAT-MAD](#)

**TVS Finance And Services Ltd Vs CCE (Dated: June 12, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Banking and other Financial services - Applicants paying cheque dishonouring charges to the banks and are collecting the amounts from their customers - Prima facie, handling dishonoured cheques is in relation to "Banking and Financial Services" and consideration received for such activity is taxable under section 65 (105) (zm) both in the hands of bank as well as the applicant - Also the applicants have been availing credit of service tax on such services and the case is akin to removal of inputs without payment of duty on which CENVAT Credit had been availed - No prima facie case for waiver of pre-deposit - Rs 1 crore ordered as pre-deposit.

<a href="#">2013-TIOL-1545-CESTAT-DEL</a>
<b>M/s Rajiv Gandhi Memorial College Of Aeronautics Vs CCE (Dated: January 21, 2013)</b>
Service Tax – Stay/Dispensation of pre-deposit – Commercial Training or Coaching service - The applicants are not issuing any certificate/diploma/degree recognized by law - They are only providing the coaching and training in the area of aircraft maintenance and training only for the practical experience - Prima facie the applicant does not fall under the exclusion category of the services - Applicant does not have a case for complete waiver of pre-deposit – Rs 6 lakhs ordered as pre -deposit.
<a href="#">2013-TIOL-1544-CESTAT-MAD</a>
<b>M/s Prince Foundation Ltd Vs CST (Dated: April 5, 2013)</b>
Service Tax - Stay/Dispensation of pre-deposit - Construction of residential complex service - Service Tax on land owners' share - The applicant had not furnished any evidence to establish any difference in specification / quality between the construction provided to the land owners and others - Prima facie, the Commissioner is justified in adopting comparable price - No Prima facie case for waiver of pre -deposit - Re 75 lakhs ordered as pre -deposit.
<a href="#">2013-TIOL-1541-CESTAT-MUM</a>
<b>CCE Vs Aztecsoft Ltd (Dated: March 5, 2013)</b>
ST - Information technology service was brought under the service tax net with effect from 16/05/2008 - Consequently, the activity of testing and analysis of IT software was also brought into the tax net by amending the definition - If IT software was already included within the scope of technical testing and analysis service, there was no need for any amendment to be specifically made in Section 65(106) - testing and analysis of IT software would be leviable to service tax only with effect from 16/05/2008 - Revenue appeal dismissed: CESTAT
<a href="#">Also see analysis of the Order</a>
<a href="#">2013-TIOL-1540-CESTAT-MUM</a>
<b>Reliance Infratel Ltd Vs CST (Dated: June 10, 2013)</b>
ST - S. 67 of FA, 1994 - Amounts of Rs. 1210 Crores and Rs. 283 Crores given by M/s RCOM to appellant (RIL) by way of expenses towards setting up and also by way of payments to vendors for supply of materials - When such payments have been made

before the appellant firm came into existence, it is not understood as to how this amount can be treated as consideration received for the services rendered by the appellant - it is seen from the books of accounts that the said amounts have been repaid by the appellant during the same FY - if advances were received towards services rendered, the same would get adjusted in the bills received - perusal of invoices also does not reflect adjustment of these amounts in any manner - only payment made towards services provided can be brought under the ambit of consideration received and not any other amount - At best, the interest saved by the appellant by securing interest-free loans from the holding company can be considered as a consideration for the services rendered and not the loans per se - If service tax liability is computed on such interest amount, it works out to approximately Rs. 12 crore - Appellant directed to make pre -deposit of Rs. 12 crores for obtaining stay: CESTAT [paras 5.1, 5.2, 6 & 7]

[Also see analysis of the Order](#)

[2013-TIOL-1539-CESTAT-MAD](#)

**Cadd Centre Training Services (P) Ltd Vs CCE (Dated: June 19, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Commercial coaching and training service - Benefit of Notification No 12/2003 ST for training material sold denied on the ground that the materials are not standard text books - Prima facie case made out for waiver of pre -deposit.

[2013-TIOL-1538-CESTAT-MAD](#)

**M/s Suryabala Autos (P) Ltd Vs CCE & ST (Dated: June 17, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Free service provided during the warranty period - Service tax paid on the cost of service - Dispute on inclusion of value of spare parts which is reimbursed by the vehicle manufacturer - Prima facie, the meaning of 'sale' used in the Finance Act, 1994, and in Rules made thereunder, has to be understood as it is defined in the Central Excise Act, 1944 and as per such definition at Rule 2(h) there is a sale of property when there is transfer of possession of goods by one person to another for valuable consideration - Service Tax is payable only on the value of service, not on the value of goods - *Prima facie* case made out for waiver of pre -deposit.

[2013-TIOL-1532-CESTAT-MUM](#)

**Bharati Tele-Ventures Ltd Vs CCE (Dated : June 7, 2013)**

ST - Service tax has to be paid on the gross amount charged for the supply of SIM cards - decision of Bombay High Court has to be considered as " per incuriam " - benefit of Notification No.12/2003-ST not available - rate of tax that should apply in respect of ST is the rate prevalent at the time of rendering of the service and not the rate prevalent at the time of receipt of consideration or the rate prevalent on the date

of payment of tax as that would create uncertainties – if adjudicating authority has held that normal period of limitation applies because records were audited by department, same logic should apply in respect of demands raised in respect of application of rate of tax on the balance of talk time available in respect of pre-paid SIM cards/re-charge coupons and the rental advance – penalty u/s 76 of FA, 1994 upheld but no penalty u/s 78 as no suppression proved – interest payable – appeal disposed of: CESTAT [paras 5.3, 5.5, 5.9, 5.10, 5.11 & 5.12]

[Also see analysis of the Order](#)

[2013-TIOL-1531-CESTAT-MAD](#)

**Alaguindiran Auto Private Ltd Vs CCE (Dated : July 10, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Free service provided during the warranty period - Service tax paid on the cost of service - Dispute on inclusion of value of spare parts which is reimbursed by the vehicle manufacturer - As held by the Supreme Court in BSNL case, in a composite transaction involving both supply of material and providing of service the state governments and the central government can tax only the respective aspects falling within its legislative competence and both the governments cannot levy tax on the same aspect - Prima facie case for waiver of pre-deposit.

[2013-TIOL-1530-CESTAT-MAD](#)

**M/s Aircel Ltd Vs CCE & ST (Dated : July 2, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Mobile telephone services - Payment of service tax by the appellant as well as by their associate in respect of services provided during roaming - Adjustment of such excess payment under Rule 6(3) of the Service Tax Rules, 1994 by the appellant - Demand of service tax by denying such adjustment - Prima facie case made out for waiver of pre-deposit as there is no loss of revenue.

[2013-TIOL-1523-CESTAT-BANG](#)

**M/s Bharat Sanchar Nigam Ltd Vs CCE (Dated : July 5, 2013)**

Appellant BSNL has no respect for law and they are not in a hurry to defend their case also before the Tribunal except submitting that they have paid tax properly and reworked after the adjudication order was passed and paid the differential tax after the issue was raised by the department. Their claim is that the documents were available but volume is large and departmental officers can verify. There is cooperation from the department whereas there is total non-cooperation from the appellant. Matter remanded for the purpose of verification as to whether documents on the basis of which CENVAT credit has been taken are available and credit taken is correct. Further taking into account the attitude of the appellants before the Tribunal, it is impossible to remand the matter without putting them to terms. Having regard to

the facts and circumstances of the case and taking into account the fact that the appellants have deposited an amount of Rs.22,00,000/-, they are directed to deposit another amount of Rs.50,00,000/- (Rupees Fifty lakhs only) - Predeposit ordered

[2013-TIOL-1519-CESTAT-MAD](#)

**M/s N C John & Sons (P) Ltd Vs CCE (ST) (Dated : May 29, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Goods Transport Agency service - Abatement under Notification No 32/2004 ST - Condition of non-availment of CENVAT Credit by the transporters - Consolidated declaration from the concerned transport operators would be sufficient for granting abatement under Notification No. 32/2004-ST - Pre-deposit waived.

[2013-TIOL-1518-CESTAT-MUM](#)

**TCS E-Serve Ltd Vs CST (Dated : May 29, 2013)**

ST - Citi Bank group has entrusted processing of banking transactions electronically to appellant - since computerized data processing is excluded from scope of BAS, question of confirmation of demand under BAS does not arise - Demand also not sustainable because SCN allegations and ground for confirmation are at variance; the SCN is time-barred and the services are liable to be treated as export - Order set aside and appeal allowed: CESTAT [paras 5.1, 5.2, 5.5, 5.6 & 5.7]

Observations of the Bench -

SCN allegations & O-I-O recording of facts at variance -

+ In the show cause notice it was alleged that the customers of the bank submitted physical documents at the bank's branches and the appellant performed computerised processes on the input submitted to the bank using the bank's systems and saved the output on the bank's system, which amounted to services incidental or auxiliary to the customer care services rendered by the bank, whereas the reasoning recorded in the impugned order is that the appellant collected data from the clients' customers, and the banks during the course of providing banking services also provided customer care services, and the services rendered by the appellant to the bank would be incidental or auxiliary to the customers care services provided by the bank. Thus, there is a complete variation between the ground alleged in the show cause notice and the grounds on which the demands have been confirmed. On that ground alone the impugned order is liable to be set aside.

Principle of Classification

The banks are providing to its customers banking and financial services and the customer care services, if any, provided by the bank would also be classifiable under the main function of 'banking and financial services' offered by the bank since as per the principle of classification, it is the main function services which gives the essential character that has to be considered for classification. Since the banks provide essentially banking and financial services the question of appellant providing any service incidental or ancillary to any customer care service would not arise at all. The

appellant is providing service in relation to banking and financial by way of computerised data processing. Since computerised data processing is included under 'Information Technology Services' which is specifically excluded from the scope of BAS, thus the activity undertaken by the appellant stood excluded from BAS during the impugned period. The activity became taxable under BSS w.e.f 01/05/20065 since exclusion under BAS was omitted and the activity was specifically covered under BSS. Therefore, during the period of demand there was no service tax liability on the appellant on the computerised data processing undertaken by the appellant in respect of banking transactions.

The "comma" in coma

The explanation to BAS reads as follows:

"Explanation- For the removal doubts, it is hereby declared that for the purposes of this clause "information technology service" means any service in relation to designing, developing or maintaining of computer software, or computerised data processing or system networking, or any other service primarily in relation to operation of computer systems."

After the words 'system networking', there is a 'punctuation' mark and thereafter 'or any other service primarily in relation to operation of computer systems' follows. In view of the punctuation mark after the words 'system networking', the words 'primarily in relation to operation of computer systems' applies only to "any other services" and not in respect of the services specifically delineated in the said explanation such as designing, developing, maintaining of the computer software or computerised data processing or system networking. The insertion of a ',' has not been taken note of while issuing the above clarification.

In view of the above, the reliance placed by the Commissioner (AR) on the Board's clarification is totally mis -placed as the said clarification itself is wrong.

Limitation

The appellant had intimated to the department as early as in October, 2003 about the activities undertaken by them vide letter dated 20/10/2003. However, the department issued the show cause notice only on 23/10/2008 i.e., after a lapse of more than five years. Thus the show cause notice is grossly time-barred and the appellant succeeds on limitation also.

Export of Service

There is merit in the argument of the appellant that since bulk of the service has been rendered to clients located abroad and the payments has been received in convertible foreign exchange, the appellant is not liable to pay service tax on the export of services undertaken by them. In any case the exemption under Notification No. 21/2003 dated 20/11/2003 would have been available to them since the consideration for the services rendered was received in foreign currency. For the period prior to 20/11/2003, Board's circular dated 24/05/2003 clarifies that no service tax would be leviable on export of services for which consideration is received in convertible foreign exchange.

[Also see analysis of the Order](#)



[2013-TIOL-1517-CESTAT-MUM](#)

**Welspun Maxsteel Ltd Vs CCE (Dated : July 30, 2013)**

CENVAT - It is an admitted fact that prior to 10/09/2004 the appellant was not registered as an output service provider - If that be so, the question of availing or taking any credit in respect of input service received prior to 10/09/2004 would not arise ab initio - What could have been carried forward under Rule 11 of the CCR, 2004 is the CENVAT credit earned by them - Revenue is correct in denying the CENVAT Credit availed - as appellant has already made pre-deposit before Commissioner(A), same is sufficient for hearing appeal - Stay granted: CESTAT [para 6.2]

[Also see analysis of the Order](#)

[2013-TIOL-1516-CESTAT-DEL](#)

**M/s Mahesh Sunny Enterprises Pvt Ltd Vs CST (Dated : August 21, 2013)**

ST - appellant engaged in the management of cars/scooter parking facilities at Indira Gandhi International Airport, New Delhi and also entering into a Licence Agreement with Airports Authority of India (AAI) for management of computerized car parking facilities at various locations of International Cargo Complex, IGI Airport, New Delhi - another agreement was made between the appellant and Airport Authority of India for management of car parking facilities at Jaipur - activities are taxable service with effect from 10.09.2004 under the category "Airport Services" - appellant not challenging levy of ST but challenging invocation of extended period of limitation - since assessee had never disclosed the material fact of providing such taxable services and was charging consideration from the service recipients throughout the period 10.09.2004 and 31.03.2006, without paying any ST to the government account, these actions amount to suppression of material fact from the Department - Demand upheld - Assessee appeal rejected: CESTAT [ para 4]

ST - Penalty u/s 78 - Commissioner upholding demand but granting waiver from penalty under S. 80 of the FA, 1994 holding that the reasonable cause for not paying the tax has been shown by the appellant/assessee - Revenue in appeal.

Held : Once it is held by the Commissioner that extended period is invocable and there was suppression of fact on behalf of assessee there cannot be any reasonable cause for failure of payment of service tax - finding of the Commissioner with regard to benefit granted under S. 80 of Act in not imposing the penalty under S. 78 of the FA, 1994 not agreed upon - this portion of order set aside - Penalty u/s 78 imposable - Revenue appeal allowed: CESTAT [ para 5]

[2013-TIOL-1510-CESTAT-MUM](#)

**Prof Ulhas Vasant Bapat Vs CCE (Dated : August 14, 2013)**

ST - Commercial Coaching & Training Service - Notf. 9/2003-ST - Appellant conducting English language academy and seeking exemption on the ground that what is taught is a 'foreign language' - if the Apex body dealing with Vocational

Training in India, National Council for Vocational Training, does not consider training in languages as vocational training, it is not conceivable how training in languages can be treated as vocational training for the purpose of notification 9/2003-ST or 24/2004-ST - clarification issued by the Board also would not matter as taxability is determined not by the Circulars or Notifications but by the provisions of law - Appeal dismissed: CESTAT [paras 5.6 & 5.7]

Reliance placed on the Tribunal decision in the case of ICM English Centre ([2012-TIOL-247-CESTAT-BANG](#)) is of no help as the view taken in the case was a prima facie view at the time of considering grant of stay and, therefore, has no precedential value: CESTAT [para 5.4]

When even after undergoing training in English languages for years together both in school and colleges, it is difficult to attain proficiency, it is inconceivable that in a matter of two weeks, any proficiency or skill can be imparted or achieved by undergoing training for a mere two weeks - claim of the appellant lacks credibility and conviction: CESTAT [para 5.5]

[Also see analysis of the Order](#)

[2013-TIOL-1509-CESTAT-MAD](#)

**M/s Sundaram Finance Ltd Vs Commissioner (Dated : April 22, 2013)**

Service Tax – Stay/Dispensation of pre-deposit – Demand under Business Auxiliary service – Appellant acting as collection agent for Bank under an agreement and are paid collection management fee – No prima facie case for waiver of pre-deposit – Rs 60 lakhs ordered as pre-deposit.

[2013-TIOL-1506-CESTAT-MUM](#)

**Almech Enterprises Vs CST (Dated : March 5, 2013)**

ST - Completion and finishing services are not entitled for the benefit of notfn. 1/2006-ST but Notfn. 12/2003-ST applies to all services – benefit has to be allowed if the assessee has documentary proof specifically indicating the value of the goods and materials sold and if no credit has been taken of duty paid thereon – in view of documentary evidence produced, matter remanded to adjudicating authority to consider claim of benefit of notfn. 12/2003-ST and question of time bar: CESTAT [para 5.1]

[Also see analysis of the Order](#)

[2013-TIOL-1504-CESTAT-DEL](#)

**M/s Ujjawal Parivahan Sahakari Samiti Ltd Vs CCE (Dated : August 21, 2013)**

ST – s. 65A – Classification of service - Appellants providing services to M/s Rajasthan State Mines and Minerals Ltd. - since Cargo Handling Services does not give essential character of activities of the appellants, prior to 10.09.2004 the activities undertaken do not fall under Cargo Handling Service as loading/unloading are only incidental and not the main activity of the appellants - activities undertaken are more in the nature of processing of raw and crude limestone to get Low silica limestone gitties of desired sizes and these are more appropriately termed as processing activities and not production of goods – not covered under BAS for the period 10.09.2004 to 15.06.2005 – appeals allowed: CESTAT [ paras 11, 14 & 15]

[Also see analysis of the Order](#)

[2013-TIOL-1500-CESTAT-MUM](#)

**Welspun Maxsteel Ltd Vs CCE (Dated : July 30, 2013)**

CENVAT – Rule 2(l) of CCR, 2004 – Shipping fee paid on the tugs and barges used for transportation of raw materials from mother vessel to jetty paid by appellant under the category of “port services” – whether Input service– if the service had been provided by an outside agency the question of taking credit would not have arisen at all – merely because appellant had undertaken the operations it cannot be said that the service would become an Input service– issue needs examination – as for previous period credit allowed without examining the issue in detail, therefore, at interim stage, pre -deposit waived and stay granted: CESTAT [para 6.1]

[Also see analysis of the Order](#)

[2013-TIOL-1499-CESTAT-MUM](#)

**Welspun Maxsteel Ltd Vs CCE (Dated : July 30, 2013)**

CENVAT – Rule 2(l) of CCR, 2004 – Shipping fee paid on the tugs and barges used for transportation of raw materials from mother vessel to jetty – ST paid by appellant under the category of “port services” – whether Input service– if the service had been provided by an outside agency the question of taking credit would not have arisen at all – merely because appellant had undertaken the operations it cannot be said that the service would become an Input service– issue needs examination – as for previous period credit allowed without examining the issue in detail, therefore, at interim stage, pre -deposit waived and stay granted: CESTAT [para 6.1]

[Also see analysis of the Order](#)

[2013-TIOL-1498-CESTAT-MAD](#)

**M/s Poompuhar Shipping Corpn Ltd Vs CCE (ST) (Dated : May 21, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Demand of service tax on unloading of coal from ships in port-docks - The applicants contend the charges are reimbursable expenditure - As the applicant was taking CENVAT credit on the input services it would prima facie appear that the impugned services availed by them is input service for applicant rather than a reimbursable expense - According to the applicant, they are eligible for credit of about Rs.5,74,12,309/- not yet utilized - The appellants are directed to deposit the entire amount of service tax demanded.

[2013-TIOL-1497-CESTAT-AHM](#)

**M/s Dalma Energy LLC Vs CCE & ST (Dated : April 16, 2013)**

ST - M/s. Dalma Energy LLC entered into a contract with Gujarat State Petroleum Corporation Ltd. under which a contract for supply of Drilling Rig along with all auxiliary equipment, personnel and Services was provided by the appellant for drilling & development of wells – period involved is from 01.06.2007 to 31.01.2008 - Revenue alleging that the activity is classifiable under "Mining Services" whereas appellant submitting that the activity undertaken is only a pre-mining and exploration activity and cannot be covered under Mining services and that the same have to be classified under 'Supply of tangible goods services' w.e.f from 16/05/2008 when these services were brought under Service Tax net. Held : From the contract entered between the appellant and the GSPCL it is evident that the services provided by the appellant are not simply providing of the drilling equipment but appellant is also expected to obtain several permissions and also undertake the training of staff of GSPCL etc. - service provided is clearly covered by Mining Services since the same was in relation to Mining - issue is no more res- integra in view of the judgment in the case of Atwood Oceanics Pacific Ltd. - In view of the settled law, it is held that the adjudicating authority has correctly classified the services provided by the appellant as 'Mining Services' before 16.05.2008 – Demand upheld: CESTAT [ paras 5 & 6]

Penalty – sections 76 & 78 of FA, 1994 – appellant has paid the entire dispute Service Tax along with interest after adjudication – in view of provisions of s. 80 of the FA, 1994, penalties set aside because appellants were under the bonafide view that ST was not liable: CESTAT [ para 7]

[2013-TIOL-1496-CESTAT-DEL](#)

**IILM Institute For Higher Education Vs CCE (Dated : April 16, 2013)**

Service Tax - "Commercial Coaching or Training" - Prima facie, the process leading to the conclusion in *Magnus Society* does not appear to be founded on any normative analysis of the expression "coaching" or "training" and the distinction sought to be made between accretion of skills in particulars areas vis -a- vis what the Division Bench characterises as higher education like MBA, computer operation etc. also does not appear based on any fundamental distinction between hierarchies of learning. What is "higher learning" and what not so, also requires to be considered, if relevant to interpretation of the relevant provisions of the Act. Issue referred to Larger Bench.

[2013-TIOL-1494-CESTAT-MUM](#)

**Brightest Circle Jewellery Pvt Ltd Vs CST (Dated : May 14, 2013)**

ST - BAS - Reverse charge - under an agreement entered between the assessee, DTC and De Beers Centenary AG ("DeBeers"), the latter two being companies registered in the UK and Switzerland respectively, it was agreed that DTC would undertake promotional campaigns for promotion of licensed products including marketing - payments were made by appellant to DTC towards reimbursement of its share of the actual marketing expenditure incurred for promotion of "Nakshtra" brand of jewellery during the period December 31, 2005 to 2006 and 2007 - Revenue demanding ST by alleging that the same constitutes a Business Auxiliary Service u/s 66A of FA, 1994 - Demand confirmed of Rs. 1,13,13,784/- along with interest and equivalent penalty - Stay application filed before CESTAT. Held: Service provided by DTC is in relation to promotion or marketing of the sale of diamond jewellery manufactured by the assessee and this constitutes BAS as defined in the Act - no justification for grant of waiver of assessed liability nor grant of stay - Pre-deposit ordered of the adjudicated amounts for obtaining stay: CESTAT [paras 8 & 9]

[2013-TIOL-1493-CESTAT-BANG](#)

**M/s Interplex Electronics India Pvt Ltd Vs CST (Dated: April 3, 2013)**

Service Tax- electroplating of connector components on job-work amounts to manufacture – No Service Tax payable: the process undertaken by the appellant amounts to manufacture and therefore they are not liable to pay service tax in view of the specific exclusion in the definition of 'business auxiliary service' which provides that if the process amounts to manufacture, no service tax would be liable to be paid.

Exemption under Notification No.8/2005-Service Tax : Since exemption under Notification No.24/2003 is not an unconditional exemption, the appellant has a case for eligibility for exemption under Notification No.8/2005 also even if it is assumed that the process does not amount to manufacture.

[Also see analysis of the Order](#)

[2013-TIOL-1490-CESTAT-KOL](#)

**M/s Rail Tel Corporation Of India Ltd Vs CST (Dated: June 12, 2013)**

Service Tax – Stay/Dispensation of pre-deposit – Valuation – Inclusion of reimbursable expenditure in value– In view of the Delhi High Court order striking down Rule 5(1) of the Service Tax Valuation Rules, 2006, prima facie case made out for waiver of pre-deposit.

CENVAT credit availed on invoices issued in the name of Head Office, not registered as Input service distributor – 10% of the Credit ordered as pre-deposit.

[2013-TIOL-1488-CESTAT-BANG](#)

**M/s IVRCL-KBL-MEIL JV Vs CST (Dated: October 1, 2013)**

Service Tax - Works Contract Service in relation to execution of a works contract in respect of canals - Lift Irrigation covered by Exemption Notification 41/2009: The appellant submitted that the services provided by them in respect of works are in respect of Lift Irrigation Schemes for lifting the water from source to the canal and for further transmission of water. After considering the submissions and the meaning of the words 'in respect of', prima facie conclusion is that the expression covers the work undertaken which is in relation to canals. Undisputedly, the pump house and other facilities were erected by the appellant to lift the water from lower level to higher level of canals. In these circumstances, the appellant has made out prima facie case for complete waiver in view of the fact that the period involved is subsequent to October 2009 and during the relevant period, exemption notification was available.

Meaning of 'in respect of' : The Tribunal considered the meaning of 'in respect of'. According to 'The Law Lexicon' (The Encyclopaedic Legal & Commercial Dictionary) Reprint 2004, the expression 'in respect of' is wider in its connotation than 'in' or 'on'. The law Lexicon also says that the words 'in respect of' are wide enough to permit changes being made as terminals so long as any of these things, viz. stations, sidings, wharves, depots, warehouses, cranes and other similar matters have been proved and are being maintained. According to S.B. Sarkar's "Words & Phrases of Excise & Customs" (3rd Edition), the words 'in respect of' have the widest possible scope. They import such meanings as 'in relation to', 'with reference to', or 'in connection with'. The phrase 'in respect of' is probably the widest of any expression intended to convey some connection between two related subject matters.

[Also see analysis of the Order](#)

[2013-TIOL-1487-CESTAT-MUM](#)

**M/s Mumbai International Airport Pvt Ltd Vs CST (Dated: July 4, 2013)**

ST - Development Fee is charged as part of the air fare or the cost of the ticket by the Airlines - When an airline ticket is issued to a passenger it pre-supposes access to the aeroplane, otherwise, the issue of a ticket becomes meaningless - It is like asking a passenger who has a ticket to travel by train/bus to take platform/entry ticket so that he can board the train/bus - if the access to a road is not leviable to Service Tax, it does not stand to any logic or reason that access to the airport/airplane by a passenger should be subjected to levy of Service Tax - none of the issues germane to the exigibility to service tax has been considered by the adjudicating authority at all - matter needs fresh consideration - Matter remanded: CESTAT [paras 5.4, 5.9 & 6]

[Also see analysis of the Order](#)

[2013-TIOL-1486-CESTAT-DEL](#)

**M/s Patanjali Yogpeeth Trust Vs CCE (Dated: May 3, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Organising Yoga Camps - Amount received from the participants as donation - Demand of service tax under Health and Fitness service - What is covered under the definition of 'health and fitness service' is basically the services for physical well being and the definition specifically mentions yoga as the service meant for physical well being - Prima facie, various yoga courses, residential as well as non-residential, being organized by the appellant are for general physical well being - No prima facie case on merits - In view of prima facie case on limitation, pre-deposit of Rs 40 lakhs ordered.

[2013-TIOL-1480-CESTAT-DEL-LB](#)

**M/s Great Lakes Institute of Management Ltd Vs CST (Dated: September 20, 2013)**

Service Tax - "Commercial training or coaching" - Education taxable irrespective of the nomenclature or description of the institute or establishment: Section 65(105) (zc), 65(26), 65 (27):

Education, Training, Coaching - No difference in Service Tax Law: The provisions of the Act enact a specific regime of taxation, under a distinct field of legislation authorised to Parliament. In the absence of authorization under the provisions of the Act, to refer to provisions in any other enactment to identify the scope and contours of expressions used in the Act, identifying etymological nuances, distinctions or searching for explication of meaning of expressions used in the Act, by recourse to definitions or meaning of similar or analogous expressions in other legislation, is inappropriate. The various pedagogic, lexicographic or textual authorities cited at the Bar to explain the distinction between the concepts of "education", "training" or "coaching" also do not offer appropriate or coherent guidance to aid comprehension of the scope of the relevant expressions defined in the Act. In our considered view, what "commercial training or coaching" means must be ascertained exclusively from the relevant provisions of the Act and applying the appropriate interpretative principles in case of grammatical, syntactic or contextual ambiguity.

"Commercial training or coaching" taxable irrespective of the nomenclature or description: The taxable service of "commercial training or coaching" occurs when any institute or establishment is engaged in the activity of imparting skill, knowledge or lessons on any subject or field (excluding sports), irrespective of whether such imparting of skill, knowledge or lessons is in respect of particular discipline or a broad spectrum of disciplines/ academic areas; irrespective of the nomenclature or description of the institute or establishment, as a coaching or training centre or an educational institution; regardless of whether an institute or establishment is incorporated by or registered under any law; and irrespective of distinctions on the basis of curriculum, course content, teaching methodology, course duration or otherwise. Activities of imparting skills, knowledge, lessons on any subject or field or when provided by any entity, institution or establishment which is excluded by a specific and legislated exclusionary clause would alone be outside the fold of the taxable activity.

[Also see analysis of the Order](#)

[2013-TIOL-1479-CESTAT-DEL](#)

**Malaysia Airline System Berhad Vs CST (Dated: August 16, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Demand of service tax under Section 66A on the services of Computerised Reservation System received from outside India - Considering the fact that in identical cases, matter has been referred to the Third Member in view of the conflicting views between the two members, pre-deposit waived.

[2013-TIOL-1473-CESTAT-AHM](#)

**M/s Reliance Ports & Terminals Ltd Vs CCE & ST (Dated: August 7, 2013)**

Service Tax - No tax payable on services provided to SEZ Unit: SEZ Act, SEZ Rules, Notification No.9/2009-Service Tax, Notification No.15/2009-Service Tax: From the provisions contained in Section 26 (1)(e) of the SEZ Act, read with Rule 30 (10) of the SEZ Rules, 2006, it can be seen that no service tax is payable on the services provided by a service provider to a SEZ unit. Further, Sec. 51 of the SEZ Act also makes an over-riding provision that SEZ Act shall have effect even if there is anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any other law. It is accordingly held that Notification No.9/2009-ST and amended Notification No.15/2009-ST have been only issued to operationalize the exemption/immunity available to SEZ unit under Sec. 26(1)(e) of the SEZ Act, 2005.

[Also see analysis of the Order](#)

[2013-TIOL-1472-CESTAT-MUM](#)

**Manugraph India Ltd Vs CCE (Dated: July 16, 2013)**

ST - Appellant is a recipient of service - during the impugned period July 1997 to August 1999, appellant was not liable to file ST return u/s 70 of the FA, 1994 and the provisions of FA, 1994 were amended by FA, 2003 when a separate section 71A was inserted and the appellant became liable to file return thereafter - so also, s. 73 was amended by FA, 2004 to provide for demanding ST from assesseees who were required to file returns u/s 71A - in view of the same, SCN issued in 2002 and the order confirming demand is not sustainable in law - Appeal allowed - Pre-deposit made in terms of stay order of Commissioner (A)'s order to be refunded forthwith: CESTAT [para 5]

[2013-TIOL-1471-CESTAT-MUM](#)

**CCE Vs Christopher John Louzado (Dated: July 5, 2013)**

ST - Refund - Business auxiliary services provided by a commission agent - appellant distributors of Mutual funds on commission basis paying ST and later claiming refund on the ground that they are entitled for exemption in terms of notfn. 13/2003-ST - adjudicating authority denying refund but Commissioner (A) allowing appeal - Revenue in appeal - benefit of Notification No. 13/2003-S.T. is available to mutual funds since they are "goods" as defined in clause (7) of Section 2 of the Sale of Goods



Act, 1930 - Board Circular 66/15/2003-S.T. dated 05/11/2003 wherein it was clarified that mutual funds are not 'goods' and, therefore, benefit of Notification NO. 13/2003 dated 20/06/2003 would not apply to commission agents of mutual funds has been set aside by AP High Court in the case of Karvy Securities Ltd. vs. Union of India [2004-TIOL-58-HC-AP-ST](#) - since no stay has been obtained by the Revenue against the said order, the decision of AP High Court is the law prevailing today - no merit in Revenue appeal, hence dismissed: CESTAT [paras 4 & 5]

[2013-TIOL-1467-CESTAT-MUM](#)

**Kingfisher Airlines Ltd Vs CST (Dated: March 18, 2013)**

ST - when penalty has been dropped by invoking section 80 of the FA, 1994, the extended period of limitation is not invocable - Prima facie strong case in favour – Pre -deposit waived and Stay granted: CESTAT [para 7]

[Also see analysis of the Order](#)

[2013-TIOL-1463-CESTAT-MUM](#)

**M/s Kingfisher Training & Aviation Services Ltd Vs CCE (Dated: March 21, 2013)**

ST - Transportation of baggage is not an individual or a separate service, but it is a component of the principal service of "Transportation of passengers' service by air" - Collection of "excess baggage charges" by airline, when weight of baggage exceeds the free allowance limits, from the passengers does not mean that they are transporting goods by air - Prima facie case in favour - Stay granted: CESTAT

[Also see analysis of the Order](#)

[2013-TIOL-1458-CESTAT-DEL](#)

**M/s Larsen Toubro Ltd Vs CST (Dated: September 9, 2013)**

Service Tax - Works Contract Service - whether a composite contract can be vivisected to tax service portion prior to 1.6.2007 - Matter referred to Five Member Bench : since there is a conflict of opinion between larger Bench decisions of this Tribunal Jyo ti Ltd ; Indian Oil Tanking Ltd. and BSBK Pvt. Ltd ., in the interests of precedential coherence, the issue whether a composite contract, involving transfer of property in goods and services which is taxable only from 1.6.2007, onwards and not earlier thereto, in view of the provisions of Section 65(105)(zzzza), could be vivisected and service components of such composite contract could subjected to tax by classification of such service components under other pre existing taxable services such as commercial or industrial construction service or erection, installation and commissioning service, construction of residential complex service etc. for the period

prior to 1.6.2007, must be referred to a larger bench of five members. - para 15

Larger Bench v Third Member Decisions : wherever pursuant to a conflict opinion in a decision by a Division Bench, the conflict is referred to a third member of this Tribunal for resolution, the resultant judgement must be considered as the judgement of a full Bench, as if it were a judgement of a larger Bench (three Member) sitting en banc . - para 14

[Also see analysis of the Order](#)

[2013-TIOL-1457-CESTAT-AHM](#)

**M/s Par Drug Vs CCE (Dated: September 3, 2013)**

ST - Appellant paying ST on GTA service under reverse charge by debiting CENVAT credit account - this issue was a subject matter of litigation - on being pointed out, the entire amount of ST was paid through TR-6 challan much before issuance of SCN - since the service tax was debited from CENVAT there cannot be any intention to evade - fit case for setting aside penalties imposed u/s 76 and 78 of FA, 1994 by virtue of s.80 of FA, 1994 - penalties set aside and appeals allowed: CESTAT [para 4]

[2013-TIOL-1456-CESTAT-MUM](#)

**CCE Vs Kirloskar Brothers Ltd (Dated: February 25, 2013)**

ST - supply of designs and drawings by the foreign service provider is not Technical advice under Consulting Engineers Service - designs and drawings are classifiable as goods under the Customs Tariff and liable to Customs duty, hence consideration paid is not leviable to service tax: CESTAT [para 6.1]

Receipt of technical know-how from UK based company for which royalty is paid is also not covered under the ambit of 'Consulting Engineer's Service': CESTAT [para 10.1]

[2013-TIOL-1455-CESTAT-AHM](#)

**M/s Arvind Mills Ltd Vs CST (Dated: July 26, 2013)**

Service Tax - Manpower recruitment and Supply service - Appellant deputing their employees to work in subsidiary/group companies and collecting salaries - Service tax liability is on a commercial concern engaged in providing any service, which is recruitment or the supply of man power - Appellant is a composite textile mill and is not a commercial concern it engaged in primarily in recruitment or supply of man power - Issue is squarely covered by the precedent decision of the Tribunal - Appeal allowed.

<a href="#">2013-TIOL-1452-CESTAT-BANG</a>
<b>Mendu Sambasiva Rao Vs CC, CE &amp; S TAX (Dated: July 9, 2013)</b>
Service Tax – Commissioner (Appeals) dismisses Stay application and Appeal without hearing. Appeal restored on pre -deposit of tax and interest: The appellate authority had scheduled hearing of the stay petition on 28.12.2011, as requested by the assessee. On 28.12.2011, the stay application was disposed of ex-parte, granting waiver of pre -deposit only to the extent of the penalty component, on the condition of deposit of the assessed service tax and the applicable interest, by 13.1.2012. By the order dated 17.1.2012, the appeal was dismissed for failure of pre -deposit as ordered on 28.12.2011. On behalf of the appellant, it is contended that he did not receive notice (of the rescheduled hearing of the stay application on 28.12.2011), before that date. No infirmity either in the order of the Commissioner (Appeals) dated 28.12.2011 (directing pre -deposit of tax and interest) as a condition for waiver of pre-deposit of the penalty, nor with the order dated 17.1.2012 dismissing the appeal for failure of pre -deposit. Appeals restored on pre -deposit of tax and interest.
<a href="#">Also see analysis of the Order</a>
<a href="#">2013-TIOL-1451-CESTAT-MUM</a>
<b>Syntel International Private Ltd Vs CCE (Dated: July 2, 2013)</b>
ST - on-site jobs rendered directly at the customers' premises abroad by the appellant's related companies from their offices situated outside India on behalf of the appellant -appellant makes the payment to the foreign service-providers - department alleging that service tax is leviable in India on reverse charge basis - whether the on-site activities undertaken abroad is liable to service tax in India, especially when VAT/GST liability had been discharged abroad - CBEC in a case relating to IT Software Services had clarified that, on-site services rendered abroad would not be treated as services provided from India - matter remanded for examination in the light of the decision in Tech Mahindra Ltd. & Tata Technologies Ltd. : CESTAT [paras 5.1, 5.2 & 5.3]
<a href="#">2013-TIOL-1450-CESTAT-MUM</a>
<b>Shri Chatushringi Seva Samittee Vs CCE (Dated: September 4, 2013)</b>
ST - Mandap keeper - Charitable Trust managing the affairs of the temple letting out stalls in the open place adjoining temple for selling toys, garlands, flowers, food etc. during Navratri festival not liable to pay Service Tax as "Mandap Keeper" - orders set aside and appeals allowed: CESTAT [paras 5 & 6]

[2013-TIOL-1448-CESTAT-MAD](#)

**Tamil Nadu Petroproducts Ltd Vs CCE & ST (Dated: June 7, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Business Auxiliary service - Consideration received for providing the service of effluent treatment - Prima facie, the applicant was providing service of effluent treatment and such service is classifiable as Business Auxiliary Service - Therefore, after considering the financial difficulties submitted, to strike a balance of convenience of the interest of both the parties, the applicant is directed to make a pre-deposit of Rs 25 lakhs.

[2013-TIOL-1446-CESTAT-BANG](#)

**Freightlinks International (India) Pvt Ltd Vs CCE, CC & ST (Dated: July 23, 2013)**

Service Tax- Commissioner has not explained reasons - We hope that at least this time all the submissions made by the appellant shall be considered and a well-reasoned order shall be passed by the original adjudicating authority: CESTAT

[Also see analysis of the Order](#)

[2013-TIOL-1442-CESTAT-DEL](#)

**M/s Galaxy Mercantiles Ltd Vs CCE (Dated: July 24, 2013)**

CENVAT – Whether credit is available on Inputs and Capital goods used for Constructing of Mall by contractor which Mall, shops therein, are rented out by appellant and appellant paying service tax under the category of “Renting of Immovable Property” – Work contract Service is an Input Service – Pre-deposit ordered of 35% of the Credit involved on inputs and capital goods alone: CESTAT by Majority.

[Also see analysis of the Order](#)

[2013-TIOL-1441-CESTAT-DEL](#)

**CST Vs Pentagon Financial Consultants Pvt Ltd (Dated: July 15, 2013)**

Service Tax – Penalty – Service Tax paid before the issue of Show Cause Notice – However part of interest not paid before the issue of notice – Waiver of penalty by the Commissioner (Appeals) is not correct - Order-in-Original restored with penalty under Section 76.

[2013-TIOL-1440-CESTAT-DEL](#)

**M/s Indian Coffee Workers Co-Operative Society Ltd Vs CCE (Dated: August 29, 2013)**

ST – Outdoor Catering Service – Appellant is a Co-operative Society - Under an agreement, the appellant agreed to provide food to NTPC employees from a premises provided by NTPC – similar service provided to M/s LANCO - where any person supplies either directly or indirectly, any food for any purpose or occasion at a place other than the provider's own place and including the place provided by the person receiving such service, the taxable service of "Outdoor Caterer" comes into existence and the amount received from the service recipient for providing such service constitutes the taxable value – Demand upheld - no existence of any circumstance justifying a bonafide belief that appellant was not a provider of a taxable service – Penalties correctly imposed: CESTAT [ paras 6, 8 & 11].

Jurisdiction - objection to jurisdiction being raised for the first time orally before the Tribunal and there being no failure of justice occasioned by the Allahabad Commissionerate exercising jurisdiction in respect of the provision of a service which had occurred within the limits of the territorial jurisdiction of the said Commissionerate , the Bench is disinclined to invalidate the proceedings on the basis of this contention: CESTAT [ para 9]

[2013-TIOL-1436-CESTAT-MUM](#)

**CST Vs Sai Service Station Ltd (Dated: April 16, 2013)**

ST - Commission received from various banks/finance institutions or through M/s MUL for arranging loan to their prospective buyers by acting as Direct Sales Agent comes under BAS - commission received on account of sales of vehicles/target incentive, sale of spare parts for promoting and marketing of products are in the form of trade discounts and cannot be treated as BAS: CESTAT [paras 15 & 18]

Limitation - MUL was paying ST on the commission received from various banks/finance institutions and had advised the appellant to get registered and pay service tax but the appellant even after getting registered in October, 2004 had failed to do so - no merit in contention that extended period cannot be invoked: CESTAT [para 16]

Since M/s MUL has already paid Service Tax on the gross amount of commission received from various banks/financial institutions including the commission passed on to the appellant, demanding ST on the same amount would amount to double taxation - demand of Rs.20,36,250/- correctly dropped by adjudicating authority: CESTAT [para 17]

[Also see analysis of the Order](#)

[2013-TIOL-1435-CESTAT-DEL](#)

**M/s J J Foam Pvt Ltd Vs CCE (Dated: June 25, 2013)**

ST – appellant appointed as Sales Promotion Agent - As per Agreement the appellants shall supervise, obtain & promote the sale of products or "AI" in the territory of Delhi and nearby areas and shall look after the timely delivery & approval of goods, and shall be responsible for the payment of invoices of products sold to customers against the order procured by them and all the expenses incurred by the appellants for performing its obligation including promoting the sale and canvassing of orders for the products shall be in appellants account - appellant are entitled to commission for the performance of their above obligation - activities undertaken by the appellants are more in nature of promotion of sale of the goods of "AI" and, therefore, do not fall under the category of Market Research Agency Service – Order set aside and appeal allowed: CESTAT [ para 5]

[2013-TIOL-1428-CESTAT-MAD](#)

**M/s State Bank Of India Vs CCE (ST) (Dated: May 28, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Demand of service tax on amount transferred from another branch on account of profit made of FOREX transactions - In appellant's own case, pre-deposit was waived by the Tribunal - Prima facie case made out for waiver of pre-deposit.

[2013-TIOL-1427-CESTAT-MAD](#)

**M/s RRRB Energy Ltd Vs CST (Dated: May 3, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Erection, Commissioning or Installation of Wind Energy Generators - Inclusion of Land Development charges and No objection certificate charges paid to Electricity Board - Pre-deposit of Rs 20 lakhs ordered.

[2013-TIOL-1424-CESTAT-MUM](#)

**B G Shirke Construction Technology Pvt Ltd Vs CCE (Dated: July 13, 2013)**

ST - Public facility means facilities owned by governments - Sports Stadium constructed for conducting Games is non-commercial construction - merely because some amount is charged for using facility, it cannot become commercial – Appellant not liable to Service Tax under 'Commercial or Industrial Construction Service' – Appeal allowed: CESTAT [paras 6.1, 6.2, 6.3 & 7]

[Also see analysis of the Order](#)

[2013-TIOL-1423-CESTAT-MUM](#)

**Geico Paint Shop India Pvt Ltd Vs CCE & ST (Dated: July 2, 2013)**

ST - Manpower Supply Service - Appellant entered into an agreement with their holding-company M/s. Geico SpA, Italy for secondment of personnel to the Indian entity on a temporary basis - During the secondment, the personnel so seconded would remain as the employees of the Indian entity - Part of the salaries of the employees were paid in Indian currency and part of the salary was paid in Italy through their holding-company - Revenue alleging that the transaction involved is of supply of labour by the foreign entity to the Indian entity and liable to service tax - Demand confirmed of Rs.97.03 lakhs with penalties and interest - appeal to CESTAT. Held :- method of disbursement of salary cannot determine the nature of transaction - deputation of employees within the group companies would not come within the purview of supply of labour services - in view of precedent decisions granting stay, pre-deposit waived and stay granted: CESTAT [paras 5 & 6]

[2013-TIOL-1422-CESTAT-DEL](#)

**M/s Essel Shyam Communication Ltd Vs CC & CCE & ST (Dated: April 5, 2013)**

Service Tax – Stay/Dispensation of pre-deposit – Demand of service tax on the activity of uplinking to various broadcasting agencies under Business Support service - Rs.67.39 lakh already paid is sufficient for the purpose of hearing the appeal.

Supply of DSNG vehicles on hire to the clients - Demand of service tax under Supply of Tangible goods service – Considering the fact that the appellants have paid the VAT, prima facie the same would not be covered by the definition of supply of tangible goods service under section 65(105)( zzzzj ) of the Finance Act,1994.

[2013-TIOL-1418-CESTAT-MUM](#)

**CCE Vs Kirloskar Oil Engines Ltd (Dated: July 3, 2013)**

ST - M/s. Kirloskar Oil Engines Ltd. entered into an agreement with M/s. Swaraj Engines Ltd., Punjab, for supply of technical know-how and assistance for manufacture of oil engines by the latter - M/s. Swaraj Engines Ltd. were required to pay the respondent royalty @ 3% of the invoice price of the licensed products manufactured by them - department viewing that the said transaction attracts service tax liability under “Consulting Engineer's Service” - Supply of technical know-how and technical assistance does not come within the purview of Consulting Engineer's Service and such services merit classification under IPR Service - order passed by Commissioner (A) legal and proper - no merit in Revenue appeal hence dismissed: CESTAT [para 6.1 & 6.2]

[2013-TIOL-1414-CESTAT-BANG](#)

**M/s Chaitanya Enterprises Vs CCE (Dated: September 04, 2013)**

Service Tax – Laying of optical fibre cables for BSNL and other telecom service providers - The appellant has claimed that this activity does not amount to rendering of any service. CBEC Circular dated 24/5/2010 clarifies the issue which is in favour of the assessee. On considering the circular, this Tribunal in the case of Nicco Corporation Ltd. and in the case of Sanjeev Kumar Jain have taken a view which is in favour of the assessee. The appellant has made out a strong prima facie case for waiver of the predeposit of the amount involved. Application for waiver of predeposit of the amount involved is allowed and recovery thereof stayed till the disposal of the appeal.

[Also see analysis of the Order](#)

[2013-TIOL-1413-CESTAT-MUM](#)

**Shree Krishna Service Vs CCE (Dated: August 12, 2013)**

ST - Material collected by Adjudicating authority after completion of personal hearing and the same used for confirmation of demand – Principles of natural justice violated – matter remanded: CESTAT [paras 10 & 11]

[2013-TIOL-1410-CESTAT-MAD](#)

**Chettinadu Constructions Vs CCE (Dated: February 25, 2013)**

Service Tax – Valuation – Stay/Dispensation of pre -deposit - Commercial and Industrial Construction - Abatement under Notification No.15/04 and 1/06 disallowed on the ground that value of materials supplied by person receiving service not added in the gross consideration - Demand worked out based on figures in P&L Account rather than contract-wise figures where position regarding supply of free materials for each contract comes out clearly - Revenue's argument that construction of schools and colleges will come within the meaning of Commercial or Industrial Construction prima-facie not acceptable - Issue highly contentious – Pre-deposit waived.

[2013-TIOL-1409-CESTAT-MAD](#)

**Chitra Constructions Pvt Ltd Vs CST (Dated: May 9, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Construction of residential complex service - Prima facie there is tax liability to be paid by the applicant going by the decision of the Tribunal in the case of LCS City Makers Pvt. Ltd - Considering the financial difficulty pleaded, pre-deposit of Rs 30 lakhs ordered.

[2013-TIOL-1407-CESTAT-DEL](#)



**BMW India Pvt Ltd Vs CST (Dated: August 19, 2013)**

**Service Tax - Business Auxiliary Service** : the petitioner claims immunity under the provisions of Export of Service Rules, 2005 relying on the judgment of the Larger Bench in *Paul Merchants Ltd. vs. C.C.E., Chandigarh* - ([2012-TIOL-1877-CESTAT-DEL](#)). In view of the decision in *Paul Merchants Ltd.*, prima facie the issue is in favour of the petitioner/assesse.

**Service Tax - 'manpower recruitment or supply agency'** : the petitioner relies on interim order passed in appeals preferred by *M/s Volkswagen India (Pvt.) Ltd.; ITC Ltd. vs. C.S.T., New Delhi*; *UTI Asset Management Co. Ltd. vs. C.S.T., Mumbai* ; and a final order in *Paramount Communication Ltd. vs. C.C.E., Jaipur* - ([2013-TIOL-774-CESTAT-MUM](#)); ([2012-TIOL-855-CESTAT-DEL](#)); ([2012-TIOL-1822-CESTAT-MUM](#)) and ([2013-TIOL-37-CESTAT-DEL](#)) respectively. In view of consistent orders passed granting waiver of pre-deposit in aforesaid orders and the final order in *Paramount Communication Ltd.*, we see a strong prima facie case in favour of the petitioner in respect of the adjudicated tax liability under 'manpower recruitment or supply agency' service.

[2013-TIOL-1404-CESTAT-MUM](#)

**Vidarbha Cricket Association Vs CCE (Dated: June 14, 2013)**

ST - Whether the appellant 'Vidarbha Cricket Association' is to be considered as a 'Charitable Organization' & is to be held not liable to ST in respect of the services rendered to its members under 'Club or Association Service' - Difference of opinion between M(J) and M(T) - Matter placed before President for reference to Third Member: CESTAT

[Also see analysis of the Order](#)

[2013-TIOL-1403-CESTAT-DEL](#)

**MGF Developers Ltd Vs CST (Dated: August 19, 2013)**

Service Tax – Stay/Dispensation of pre-deposit – Demand of service tax on the amount received as transfer charges for substituting the names of new purchasers of immovable property in the place of purchasers who had initially agreed to purchase the property – Prima facie, the activity is covered under the definition of real estate agent service, as defined in Section 65 (88) of the Finance Act, 1994 – 50% of the tax demanded with proportionate interest ordered as pre-deposit.

[2013-TIOL-1402-CESTAT-MUM](#)

**CCE Vs M/s Cummins Inc (Dated: June 28, 2013)**

ST - M/s Cummins INC, USA supplied technical assistance and know-how to their Indian counterpart M/s Cummins India Ltd., Pune to manufacture diesel engines and various components thereof as per the specification/designs developed by them - For the services rendered, Indian entity was liable to pay annual technical support fee by way of royalty - activity undertaken would more appropriately fall under "Intellectual Property Service" and, therefore, the demand of ST under "Consulting Engineers Service" is not sustainable in law - order passed by appellate authority is legal and proper - Revenue appeal dismissed: CESTAT [paras 6.1 & 7]

[2013-TIOL-1398-CESTAT-MAD](#)

**Isha Homes (India) Pvt Ltd Vs CST (Dated: May 07, 2013)**

Service Tax - Stay/Dispensation of Pre-deposit - Service Tax on construction service - Construction of individual residential villas in a gated compound - Service Tax demanded on ground that since the same compound had more than 12 houses and common facilities like sewage treatment plant, water treatment plant, swimming pool, gymnasium etc, the activity is covered under Section 65(91a) of the Finance Act, 1994 - Highly contentious issue and can be decided only by going into the details of the facts of the case - Pre-deposit ordered.

[2013-TIOL-1394-CESTAT-DEL](#)

**M/s ITC Ltd Vs CST (Dated: July 24, 2013)**

Service Tax - Demand under Business Auxiliary Service - Show Cause Notice - Vague and incoherent charges - The show cause notices were issued on the basis of a prima facie assumption by Revenue that the assessee was assessable to levy of service tax for providing BAS - The reasons for such prima facie assumption of Revenue were however not specified in the show cause notices. Mere extraction of the entire provisions of Section 65(19) of the Act does not fulfill the requirement.

Show cause notices dated 21.4.2010 and 20.4.2011 are invalid - This infirmity is incurable - The show cause notices are therefore quashed - Since the adjudication order is the consequence of the invalid show cause notices, it is also quashed - Revenue at liberty to initiate proceedings afresh, by issuance a fresh show cause notice, clearly setting out the reasons, but in accordance with law.

[Also see analysis of the Order](#)

[2013-TIOL-1393-CESTAT-MAD](#)

**Chandra Automobile India Pvt Ltd Vs CCE (Dated: May 6, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Payment of Service tax on goods used while providing "free service" by an authorized agent during the warranty period - Applicant is authorized agent and paying service tax on the value of services

provided - Revenue demanded service tax on the value of goods used while providing free service on ground that there is no sale of goods involved and hence benefit of exemption under Notification No. 12/03-ST dt. 20.6.2003 cannot be extended - Entire dispute arises out of the fact that such service is commonly referred to as "free service" but is not free service at all - Cost of parts is paid by the manufacturer to the agent - Person who pays for the parts is the person to whom goods are sold - Hence there is sale of goods and the benefit of exemption notification No.12/03-ST dt. 20.6.2003 is prima facie available to the applicant - Pre-deposit waived.

[2013-TIOL-1392-CESTAT-MAD](#)

**M/s Chennai Citi Centre Holdings Pvt Ltd Vs CST (Dated: June 7, 2013)**

SERVICE TAX - Management, Maintenance and Repair Service - Stay/Dispensation of Pre-deposit - Assessee rented/leased out shops/part of business complex to different clients and paying service tax on rental income - Amount spent on maintenance of common facilities like central hall, lifts, public convenience facilities etc. recovered from clients separately - Service tax demanded on such recovered amounts under Management, Maintenance and Repair Service - No clear proof of payment of Service Tax on such amount by other agencies submitted - Pre-deposit of 50% of tax amount ordered - Pre-deposit of balance dues waived and recovery stayed.

[2013-TIOL-1386-CESTAT-MUM](#)

**Thomson Reuters India Pvt Ltd Vs CST (Dated: June 18, 2013)**

ST - as per the agreement, the services rendered is one of the collecting, collating, verifying data and transmission of the same to the foreign-sister concern of the appellant - it does not seem to be of the nature of any management or repair services as alleged in the SCNs - Data furnished by the appellant is used by the foreign entity for inclusion in their products for dissemination to the customers situated worldwide - In other words, the activity of the appellant supports the business undertaken by the foreign entity abroad - prima facie service rendered merits classification under 'Business Support Services' - BSS is covered under Rule 3(iii) of the Export of Services Rules and since services were rendered from India and consideration is received in convertible foreign exchange, the transaction would amount to exports and ST is not attracted - allegation of the department that the appellant has repatriated export proceedings by declaring dividends is factually incorrect as balance sheets for the relevant years do not reveal the same - appellant has made out a strong prima facie case in favour for grant of Stay - Pre-deposit waived & Stay granted: CESTAT

[Also see analysis of the Order](#)

[2013-TIOL-1385-CESTAT-DEL](#)

**CCE Vs M/s Reliant Advertising (Dated: April 9, 2013)**

Service Tax - The assessee is a commercial concern engaged in providing advertisement services to a client, in relation to advertisement i.e. in relation to sale of space or time and was not charged for sale of space for advertisement in the print media - He receives requisitions for arranging advertisements either directly by an advertiser or from another advertising agency and is also engaged on occasions in passing on material received from an advertiser directly without any value addition, to the advertising medium or in some instances by making value additions by way of advertising inputs – The activity of the petitioner falls within the taxable service of “advertising agency” as defined in Section 65(105)(zzzm) – Order of Commissioner (Appeals) is set aside and order in original confirming demand is restored.

[2013-TIOL-1384-CESTAT-AHM](#)

**M/s Gujarat Jhm Hotels Ltd Vs CCE & ST (Dated: July 8, 2013)**

Service Tax – Stay/Dispensation of pre -deposit – CENVAT Credit on input service, Management and Business Consultancy service – Restriction of 20% under Rule 6 of the CENVAT Credit Rules, 2004 – Prima facie case for waiver of pre -deposit as 100% credit is admissible under Rule 6(5) – Pre -deposit waived.

[2013-TIOL-1380-CESTAT-DEL](#)

**Deputy Commissioner Of Police Vs CCE (Dated: February 6, 2013)**

ST – Security Agency – prima facie reading of the definition in s. 65(94) of FA, 1994 shows that an agency engaged in commercial activity of providing security service is brought to tax – Police department of State of Rajasthan does not appear to have carried out any business of security service – subject to testing of matter further if the Police Act provides otherwise, stay application is allowed: CESTAT

[2013-TIOL-1378-CESTAT-MUM](#)

**K-Air Speciality Gases Pvt Ltd Vs CCE (Dated: March 25, 2013)**

ST - appellant imported helium gas in reusable and returnable containers - rental charged by supplier for use of containers whether liable to Service Tax under category of 'Supply of goods for tangible use' - supply of cylinders is part of sale of gas and it is not a separate activity in itself - rental charges form part of value of the goods sold - prima facie case in favour - Pre-deposit waived and stay granted: CESTAT

[Also see analysis of the Order](#)

[2013-TIOL-1377-CESTAT-MAD](#)

**Sun TV Network Ltd Vs CST (Dated: June 4, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Aircraft given on charter to other companies - Whether taxable under Supply of tangible goods or under Transportation of passengers by air - Prima facie, the service is classifiable under the head Supply of tangible goods - Pre -deposit of Rs 12 lakhs ordered in addition to the amount already paid.

[2013-TIOL-1376-CESTAT-BANG](#)

**M/s Sri Chaitanya Educational Committee Vs CCE (Dated: July 2, 2013)**

Service Tax – Commercial Coaching or Training - Pre-deposit of Rs.25crores - In the absence of contrary decisions of Division Benches, the claim of the appellant that this Tribunal's stay order directing pre-deposit needs to be modified when the matter was referred to the Larger Bench is not sustainable. Modification Petition Rejected:

[2013-TIOL-1375-CESTAT-BANG](#)

**M/s Sri Chaitanya Educational Committee Vs CC, CE & ST (Dated: April 5, 2013)**

Service Tax – Commercial Coaching or Training – Even without considering the case on merits, the Hon'ble Supreme Court, on a similar set of facts of the same assessee, directed the appellant to predeposit 1/3 of the amount of service tax demanded. It is pertinent to note that such direction for predeposit was ordered vis -à-vis a demand confirmed against the assessee entirely for the larger period of limitation. If that be so, fortiori , the appellant is liable to predeposit in larger proportions in the instant case where the entire demand of service tax is admittedly within the normal period. Nevertheless, in a reasonable approach, the predeposit restricted to 1/3 of the total demand of service tax and education cesses. After taking into account the payment already made by the appellant and appropriated by the adjudicating authority, the appellant directed to predeposit an amount of Rs.25 crores (Rupees twenty five crores only) within eight weeks (this much time specially prayed for by the counsel for the appellant). Pre -deposit of Rs.25 crores ordered – CESTAT

[2013-TIOL-1370-CESTAT-MUM](#)

**CST Vs Hyundai Heavy Industries Co Ltd (Dated: June 7, 2013)**

ST - pipes or pipeline does not come under the category of 'plant, machinery or equipment' and, therefore, laying of pipeline does not come within the scope of 'Commissioning or Installation Service' - In any case, laying of pipelines has been specifically covered under 'Commercial Construction Service' which came into effect from 16/06/2005 - period involved is 01/07/2003 to 31/03/2004 - demand rightly dropped by Commissioner, Service Tax - Revenue appeal dismissed: CESTAT [para5.1]

[Also see analysis of the Order](#)

[2013-TIOL-1369-CESTAT-DEL](#)

**TSC Travel Services Pvt Ltd Vs CCE (Dated: July 22, 2013)**

ST - BAS - appellant purchasing airline tickets from GSA/IATA to service its customers/air travellers - record shows that the appellant has not received any commission from GSA/IATA but has sold the tickets to its passengers for a margin - adjudicating authority concluding that this constituted an indirect commission received by the petitioner from GSA/IATA and confirming ST demand - transaction *prima facie* appears to be a mere trading activity - strong *prima facie* case in favour of appellant for grant of waiver of pre-deposit of adjudged dues - Stay ordered: CESTAT [paras 2 & 3]

[2013-TIOL-1368-CESTAT-MAD](#)

**STC Technologies Pvt Ltd Vs CST (Dated: May 27, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Commercial Coaching and Training service - Exclusion of cost of material - The material appears to be a type which has no separate value when dissociated with the service provided - This matter can be examined during the hearing of the appeal - No prima facie case made out for waiver of pre-deposit - Rs 40 lakhs ordered as pre -deposit.

[2013-TIOL-1363-CESTAT-MUM](#)

**CST Vs HDFC Bank Ltd (Dated: August 16, 2013)**

ST - Whether the commission/discount earned by the acquiring bank from the Merchant Establishment is liable to service tax under the category of banking and financial services for the period prior to 01/05/2006 - Matter referred to Larger Bench: CESTAT

Observations of the Bench:

+ In respect of credit card services, considering the essential nature of the service, from a layman's point of view and interpreting the legal provisions as they stood at the relevant time from a common sense perception, in our considered view, the service provider is the bank which issues the card and the service recipient is the credit card holder, who receives the credit.

+ The CBE&C, the apex body for levy and collection of service tax, also understood the scheme of levy as discussed above as is evident from letter F.No. B-11/1/2001-TRU dated 09/07/2001 clarifying the scope of the levy in respect of credit card services at the time of its inception. From the clarification, it is clear that the service

related to provision of credit facility by the banks to the credit card holder. Thus it is the card holder who is the customer specified in the taxable service returned to in section 65(72)(zm) and the levy is on the consideration received by the bank from the cardholder by way of various types of fees/charges.

+ Subsequently, vide Finance Act, 2006, credit card services were excluded from banking and other financial services and brought under "credit card, debit card, charge card or other payments card services" under Section 65 (33a) of the Finance Act. The definition and concept of service underwent a significant change to include services only in respect of credit cards but also other types of cards such as debit card, charge card and other payment cards and the scope of the term "service provider" was also widened to include not only the bank issuing the card but also acquiring bank, various transaction processors, ATM service providers, brand name/trade mark holders and so on as defined in sub-clauses (ii) to (vii) of clause (33a). Sub-clause (i) covered the services rendered by the issuing bank to the cardholder which was previously covered under sub-clause (ii) of clause (12) of section 65 prior to 01/05/2006. Thus both the concept of service and the service provider underwent significant changes in 2006.

+ The banking and financial service under which credit cards services were taxed prior to 1-5-06 covered only the services rendered by a bank to its customer. From the instructions issued by Ministry in this regard vide instructions dated 09/07/2001, the customer was the credit card holder who was provided with the credit facility and who paid various charges to the issuing bank. Thus, the customer referred to in Section 65 (12) was only the card holder and not anybody-else. The transactions with the merchant establishments or with the acquiring bank or the credit association were not under the ambit of tax. These transactions were brought under the tax net only with effect from 01/05/2006 under the new entry "Credit card, debit card, charge card or other payment card services". It is a settled position in law that whenever a new entry is made in the tariff schedule covering various services rendered, the same is taxable only from the date of its inception and not prior to that date as held by the High Court of Bombay in the case of Indian National Ship Owners Association - [2009-TIOL-150-HC-MUM-ST](#) and affirmed by the Apex Court.

+ When credit card services were brought under the tax net in 2001, what was brought under the levy was the service rendered by the issuing bank to the credit card holder. Subsequently in 2006, the coverage of credit card services was expanded to bring into tax net the transactions/services between Merchant Card Association and Acquiring Bank, Acquiring Bank and Credit Card Association and Credit Card Association and Issuing Bank. In addition other types of card services, such as, debit card, charge card and other payment card were also brought under the tax net. This widening of the coverage is effective only from 2006 onwards and not retrospectively from 2001 onwards.

+ In the ABN Amro case, a co-ordinate bench of this Tribunal has taken a view that in view of the expression "in relation to" preceding banking and financial services occurring in taxable service defined under section 65 (72)(zm) and such an expression is expansive in nature and scope, and therefore all services rendered in relation to credit card services, whether by merchant establishments, acquiring banks or others would be chargeable to service tax even prior to 1-5-2006. We respectfully disagree with the said view taken for the following reason. The expression "in relation to" qualifies only the "credit card services" and not the customer who is the service recipient nor the service provider, the issuing bank. Thus only the scope of credit card services is expanded by the said term. The credit card services comprises of a number of services such as extending credit for the purchase of goods and services, withdrawal of cash up to permissible limits, payment of utility bills, payments for travel, foreign exchange transactions and so on. All such services for which credit is given by the issuing bank would get covered under the levy. In our considered view, all other transactions involved in operationalising the credit card services became taxable only with effect from 1-5-2006 when the new entry relating to "credit card, debit card, charge card or any other payment card service" was brought under the tax

net vide sections 65 (33a) read with 65 (105)(zzzw).

+ Since a different view is taken than that held by the Tribunal in the case of ABN Amro - ([2011-TIOL-1147-CESTAT-DEL](#)) matter referred to Larger Bench.

[Also see analysis of the Order](#)

[2013-TIOL-1362-CESTAT-MUM](#)

**CCE Vs Central Cables (Dated: July 23, 2013)**

ST - section 85(4) of the Finance Act, 1994 does not confer any power of remand to the Commissioner (Appeals), therefore, the order passed by the lower appellate authority is not sustainable - Revenue appeal allowed and Commissioner (A) directed to decide case on merits and determine tax liabilities, interest and penalties himself: CESTAT [paras 4.1 & 5]

[2013-TIOL-1361-CESTAT-MUM](#)

**Board Of Control For Cricket In India Vs CST (Dated: August 6, 2013)**

ST - Applicant entered into contract with Taj TV Ltd., Dubai/Mauritius & TWI Ltd. of UK to produce audio-visual coverage of the cricket match for broadcasting the same - as the service providers are non-residents, applicant as a recipient was held liable to pay Service Tax u/s 66A of the FA, 1994 - applicant are not disputing the nature of activities noted in the adjudication order - prima facie there is no merit in the contention of the applicants that the applicants are not covered under the scope of 'programme producer service' - since applicants have not made out a case for total waiver of the adjudged dues, pre-deposit ordered of 50% and report compliance: CESTAT [para 11]

[2013-TIOL-1357-CESTAT-MUM](#)

**Raheja Universal Pvt Ltd Vs CST (Dated: March 28, 2013)**

ST - appellant sharing common expenditure with group companies - transaction does not involve any of the categories mentioned in BAS - by sharing common facilities appellant does not promote or market the services of the group companies nor the services rendered can be considered under the category of services incidental or ancillary to the marketing services - in any case appellant has been discharging ST under BSS from 01/05/2006 and department has been accepting such payment - prima facie demand is not sustainable for the period 2003-04 to 2005-06 as the services rendered do not come under the category of BAS at all - pre-deposit waived & Stay granted: CESTAT [para 5.1]

Management, Maintenance or Repair Service - Appellant collecting development and maintenance fees from flat buyers to discharge payments towards local taxes, water



and electricity charges - appellant was acting as a pure agent and was performing custodial functions - demand of ST under 'Management, maintenance or repair services' does not appear to be sustainable - pre-deposit waived & Stay granted : CESTAT [para 5.2]

[Also see analysis of the Order](#)

[2013-TIOL-1356-CESTAT-DEL](#)

**M/s BSNL Vs CCE (Dated: April 22, 2013)**

Service Tax - Non-compliance with the order of pre-deposit - Tribunal ordered pre-deposit of entire tax of Rs 2,68,70,843/- - The applicant filed special leave petition against the order of High Court directing the petitioner to deposit Rs one crore - The Supreme Court dismissed the petition directing the petitioner to deposit the amount ordered by the Tribunal - Deposit of Rs 1 crore cannot be treated as compliance with the Supreme Court order - Appeal dismissed for non-compliance.

[2013-TIOL-1355-CESTAT-MAD](#)

**B M Vijay Kumar Vs CST (Dated: June 13, 2013)**

Service Tax Stay/Dispensation of pre-deposit Renting of Immovable property Demand of service tax on security deposit Security deposit is returned after the completion of the tenure agreement and do not represent the consideration of service Prima facie case made out for waiver of pre-deposit.

[2013-TIOL-1351-CESTAT-MUM](#)

**CCE Vs M/s Central Panchyat (Dated: June 28, 2013)**

ST - Marriage as a social institution existed much before the religions came into being and, therefore, it is futile to argue that the marriage is a religious function - law itself recognizes registered marriage as a legally valid form of marriage and there is no religious sanctity attached to such registered marriages - Therefore, the mode of conducting the marriages either by following religious rituals or otherwise does not make marriage a 'religious function' - explanation introduced by Finance Act, 2007 is only by way of abundant caution and, therefore, insertion of the same does not affect the levy of Service Tax on Mandap Keeper Service rendered in connection with marriages - ST payable: CESTAT [paras 6.1 & 6.2]

Limitation & Penalty - In view of the Tribunal's decision in the case of Krishapur Mutt case, the appellant could have been under the bona fide belief that their activity of letting out of hall for conducting marriage is not taxable - Accordingly, benefit of doubt given to the appellant to hold that Service Tax demand is sustainable only for the normal period of limitation - since issue relates to interpretation of the statute, penalties are not warranted: CESTAT [para 6.3 & 6.4]

<p><a href="#">Also see analysis of the Order</a></p>
<p><a href="#">2013-TIOL-1350-CESTAT-MAD</a></p>
<p><b>The Indian Hume Pipe P Ltd Vs CCE &amp; ST (Dated: June 6, 2013)</b></p>
<p>Service Tax - Stay/Dispensation of pre-deposit - Laying of pipelines for water supply project awarded by Tamilnadu Water Supply and Drainage Board - Prima facie TWAD is a non-commercial organization - Pre-deposit waived in view of the decision in favour of the appellant on earlier occasion.</p>
<p><a href="#">2013-TIOL-1349-CESTAT-MUM</a></p>
<p><b>Mahindra &amp; Mahindra Ltd Vs CCE (Dated: July 19, 2013)</b></p>
<p>CENVAT - Service Tax paid on security services provided at housing complex and club rooms, telephones installed at residence of officers/club rooms are Input services - applicants have a prima facie case for total waiver of pre-deposit - Stay granted: CESTAT [para 6]</p>
<p><a href="#">2013-TIOL-1345-CESTAT-MUM</a></p>
<p><b>M/s Laxmi Tyres Vs CCE (Dated: August 06, 2013)</b></p>
<p>Counsel submitting that he had "weakly" mentioned about time bar aspect during his oral submissions - since plea not taken at the time of hearing or in the cross-objection no infirmity in order - ROM dismissed: CESTAT</p>
<p><a href="#">2013-TIOL-1344-CESTAT-AHM</a></p>
<p><b>M/s Repro India Ltd Vs CCE (Dated: July 3, 2013)</b></p>
<p>Refund - Notfn. 9/2009-ST - Appellant, located in SEZ area, discharging ST liability u/s 66A of FA, 1994 and claiming refund - If the Board is of the view that S. 66A is not a charging section by itself and the charging section remains 66, taking a holistic approach towards the issue wherein it is not disputed that the appellant is situated in SEZ area, has paid the service tax and the goods are exported, denial of the refund claim to the appellant only on hyper technicalities, seems to be incorrect - <i>Prima facie</i> appellant eligible for refund and order passed by Commr (A) seems incorrect - case made out for waiver of pre-deposit - Stay granted: CESTAT [ paras 4 &amp; 5]</p>
<p><a href="#">Also see analysis of the Order</a></p>

<a href="#">2013-TIOL-1343-CESTAT-MAD</a>
<b>Sri Mahavir Enterprises Vs CCE &amp; ST (Dated: March 12, 2013)</b>
Service Tax - Stay/Dispensation of Pre-deposit - Man-power Recruitment or Supply Agency - Payment of Service tax by sub-contractor - Assessee contention that main contractor has paid tax but no evidence produced - Revenue submission that assessee collected service tax on the entire amount charged by the service provider including the amount received through the main contractor - No dispute regarding liability to tax of the applicant and no evidence produced for payment of tax - Pre-deposit ordered.
<a href="#">2013-TIOL-1342-CESTAT-MAD</a>
<b>Sri Mahavir Enterprises Vs CCE &amp; ST (Dated: May 27, 2013)</b>
Service Tax - Application for admission of additional evidence and modification of stay order - Payment of Service Tax by sub-contractors - No force in the contention that prior to issue of Board's circular No.96/7/2007-ST dated 23.08.2007 there was no tax liability on sub-contractors - Effort being made to show that main contractor has discharged liability - Scheme for levy and collection of tax does not support such a system - No dispute that additional evidence was not placed before the Adjudicating Authority or Tribunal earlier - Applicant not filed any clear evidence regarding payment or tax either by himself or by the main contractor - Application for modification of stay order rejected - Pre-deposit ordered.
<a href="#">2013-TIOL-1341-CESTAT-MAD</a>
<b>M/s Sree Rosh Properties (P) Ltd Vs CST (Dated : 30.5.2013)</b>
Service Tax - Stay/Dispensation of pre-deposit - Construction of flats on undivided portion of land sold to the buyers - No prima facie case for waiver of pre-deposit - Rs 44.5 lakhs ordered as pre-deposit.
<a href="#">2013-TIOL-1338-CESTAT-MUM</a>
<b>M/s V G Enterprises Vs CCE (Dated: July 15, 2013)</b>
ST - fabrication or erection of tank at site brings into existence an immovable property and, therefore, it cannot be said that the appellant has undertaken any manufacturing activity as defined u/s 2(f) of the CEA, 1944 - activity undertaken would qualify as Erection, Commissioning and Installation services - Pre-deposit ordered: CESTAT [para 5]

[Also see analysis of the Order](#)

[2013-TIOL-1337-CESTAT-KOL](#)

**M/s Mahadeolal Nathmal Vs CST (Dated: July 4, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Transportation of Chassis / Vehicles of M/s TELCO from the factory to regional offices - Demand under Manpower supply service - Prima facie, the applicant are engaged in transportation of the chassis from the factory and the same cannot be taxed under Manpower supply service on the ground that drivers were supplied for movement of the chassis - Pre -deposit waived.

[2013-TIOL-1336-CESTAT-KOL](#)

**M/s Exterior Interiors Pvt Ltd Vs CST (Dated: July 16, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Commercial coaching or Training service - The Adjudicating Authority had taken into consideration the submissions of the appellant and held that they are not eligible for exemption under Notification No 9/2003 ST and 24/2004 ST as vocational training - No prima facie case for waiver of pre-deposit - 50% of the tax amount ordered as pre-deposit.

[2013-TIOL-1331-CESTAT-DEL-LB](#)

**Bhayana Builders Pvt Ltd Vs CST (Dated: September 6, 2013)**

Service Tax - Valuation - value of goods and materials supplied free of cost by a service recipient to the provider of the taxable construction service, would be outside the taxable value or the gross amount charged

Section 67; Rule 3 of the Service Tax (Determination of Value) Rules, 2006; Notification No. 15/2004-ST as amended; Notification No. 1/2006-Service Tax; Notification No. 12/2003-Service Tax; Notification No. 18/2005-ST:

Interpretation of Explanation inserted in Notification No 15/2004 ST vide Notification No 4/2005 ST – Interpretation of the word “used” – Noscitur principle - The noscitur principle posits that a statutory term is recognised by its associated words i.e. in an associational context, whereby the word or phrase is not construed as if stood alone but in the light of its surroundings - The word used is structurally associated in the Explanation with the earlier two words (supplied or provided) and the three words are employed to define the meaning of the expression gross amount charged, an expression that occurs in the preamble to Notification No. 15/2004 -ST - The noscitur principle could be gainfully employed to identify the legal meaning of the word used from several grammatical/ literal meanings of the said word, by employing the associational context.

Exemption under Notification No 12/2003 ST - The benefits under this Notification are only in respect of the value of goods and materials sold by a service provider to the recipient of a taxable service - In the case of free supplies by the recipient there is no sale or transfer of title in the goods and materials in favour of the service provider, at any point of time. Therefore when free supplied goods and materials are incorporated into the construction would be no sale by the provider to the recipient either. Notification No. 12/2003-ST would therefore be inapplicable – Contention of the revenue that the assessee have an alternative recourse proceeds on a fallacious comprehension of Notification No. 12/2003-ST.

Question before the Larger Bench:

Whether the value of the material supplied by the recipient of the taxable service free of cost (hereinafter, for convenience referred to as "free supplies") should also be included, for availing the benefits under Notification No. 15/2004-ST, dated 10.09.2004 as amended by Notification No. 4/2005-ST dated 01.03.2005. The later Notification added an "Explanation" to Notification No. 15/2004-ST.

Held :

(a) The value of goods and materials supplied free of cost by a service recipient to the provider of the taxable construction service, being neither monetary or non-monetary consideration paid by or flowing from the service recipient, accruing to the benefit of service provider, would be outside the taxable value or the gross amount charged, within the meaning of the later expression in Section 67 of the Finance Act, 1994; and

(b) Value of free supplies by service recipient do not comprise the gross amount charged under Notification No. 15/2004-ST, including the Explanation thereto as introduced by Notification No. 4/2005-ST.

[Also see analysis of the Order](#)

[2013-TIOL-1329-CESTAT-MUM](#)

**M/s Air India Ltd Vs CCE (Dated: June 24, 2013)**

ST - In return for forbearance on the part of AI in not operating on certain routes hitherto being operated by AI, sharing domain knowledge and allowing AICL to use brand name, royalty payments were received - ST demand on the entire amount without explaining how foregoing of rights or sharing of domain knowledge would come under IPR services is not sustainable - as to what is the consideration for usage of brand name should have been arrived at by utilizing the services of experts in the field - in absence of same, demand cannot be sustained - whether retrospective amendment of MOU to provide for payment of royalty only for foregoing of rights for not operating on certain routes is permissible should also be examined by adjudicating authority - as appellant is a GOI undertaking and has been ailing for a long time, pre-deposit not ordered - Matter remanded: CESTAT [paras 5.1, 5.2 & 6]

[Also see analysis of the Order](#)

[2013-TIOL-1328-CESTAT-DEL](#)

**Automobile Sterling Vs CCE & ST (Dated: July 15, 2013)**

ST – Penalty - appellant's contention that the service tax and interest have been paid before issue of show cause notice have been found wrong as some part of the interest was paid after issue of SCN - Benefit of non-imposition of penalty on this count is not available - Provisions of Section 73(3) of FA, 1994 are also not available as element of suppression of is proved – Appeal dismissed: CESTAT

S.83A of FA, 1994 only provides for monetary limit for imposition of penalty and it has nothing to do with imposition of penalty per se – no force in contention that since s. 83A has not been invoked penalty is not imposable – request for waiver of penalty u/s 80 of FA, 1994 is also not acceptable in view of suppression of facts: CESTAT

[2013-TIOL-1327-CESTAT-KOL](#)

**M/s Bharat Sanchar Nigam Ltd Vs CCE (Dated: July 11, 2013)**

Service Tax – Demand of Service tax on BSNL – Payment made to DOT has been accepted by the department as discharge of service tax in another Commissionerate and also in similar case, the Tribunal has remanded the matter to the adjudicating authority for re-consideration of the payment made to DOT as discharge of liability towards Service Tax – Impugned order is set aside and the appeal is allowed by way of remand.

[2013-TIOL-1326-CESTAT-MUM](#)

**Hariram Packaging & Polymers Vs CCE (Dated: July 3, 2013)**

ST - Appellant entered into agreement with M/s Haldia Petrochemicals Ltd. in terms of which appellant was appointed as a Del Credere Agent for marketing products manufactured by Haldia Petrochemicals Ltd. - goods were directly supplied by Haldia Petrochemicals Ltd. to customers and appellant did not handle the goods but were only responsible for procuring orders and ensuring payments - in terms of second agreement appellant acted as Consignment stockist/agent - Demand raised of ST by classifying services as "Clearing & Forwarding Agency Service" - it is settled that Del Credere Agency Services & Consignment agency service does not come within the purview of "Clearing & Forwarding Agency Service" but under "Business Auxiliary Service" - since the services were rendered by appellant before introduction of BAS w.e.f 01/07/2003, demands not sustainable - Appeals allowed: CESTAT [para 5.1]

[2013-TIOL-1322-CESTAT-MUM](#)

**M/s Seva Automotive Pvt Ltd Vs CCE (Dated: July 9, 2013)**

ST - Authorized Service Station - Cost of spare parts sold during rendering of service cannot form part of the transaction value - Board Circular dated 23/08/2007 also confirms this position - Matter remanded: CESTAT [para 4]

[Also see analysis of the Order](#)

[2013-TIOL-1321-CESTAT-MUM](#)

**Bombay Stock Exchange Ltd Vs CCE (Dated: July 3, 2013)**

Penalty - Retrospective imposition of ST by FA, 2010 on Commercial Training or Coaching rendered by non-commercial organizations - Tribunal had also held in a number of cases that ST would not be attracted - since law was amended retrospectively, penalty cannot be imposed u/s 78 of the FA, 1994 which envisages existence of mala fide, suppression of facts etc. - penalty set aside - as part payment has been made of penalty imposed u/s 78, same is required to be refunded forthwith to appellant: CESTAT

[2013-TIOL-1317-CESTAT-MUM](#)

**M/s Ishwar Natthuji Vaidya Vs CCE (Dated: August 5, 2013)**

ST - Construction of 'platforms' in APMC market prima facie cannot be held to be taxable under Commercial and Industrial Construction Service - Pre-deposit waived and stay granted: CESTAT [para 5]

[2013-TIOL-1316-CESTAT-DEL](#)

**DHV India Pvt Ltd Vs CST (Dated: July 31, 2013)**

ST - Order passed in remand proceeding - No precedent for the Commissioner to have passed strictures against the Tribunal nor any authority for such brazen insubordination to the appellate jurisdiction and without comprehension of the limitation of his jurisdiction and the limits of his authority - Order quashed & matter remanded: CESTAT [ para 15]

Observing that the Tribunal might have found some flaw in the earlier adjudication order but surprisingly "without any request either by the departmental representative or by the representative of the assessee, the CESTAT remanded for fresh adjudication" - Commissioner has wholly misconceived the limits of his jurisdiction pursuant to the specific order of remand passed by this Tribunal and has tried to overreach and trench into the domain of this appellate authority. [ para 14]

Adjudicating authority holding that the earlier adjudication order was a well-reasoned and a just and legal order again amounts to overruling Tribunal's judgment - adjudication order is also wholly bereft of independent analysis and determination of the issues raised - there is neither any analysis nor discussion on the elaborate written submissions filed by the assessee nor of the precedents referred to or cited during the course of personal hearing - approach towards this critical quasi-judicial function is laconic, casual, flippant and wholly negligent - No speaking order was passed recording independent reasons, despite the direction in the judgment of this Tribunal - Order quashed as unsustainable and matter remanded to the Commissioner, Service Tax, New Delhi: CESTAT [ paras 15, 16 & 17]

[Also see analysis of the Order](#)

[2013-TIOL-1315-CESTAT-AHM](#)

**M/s Ambica Enterprise Vs CCE & ST (Dated: July 8, 2013)**

Service Tax - Stay/Dispensation of pre-deposit - Manpower supply service - In terms of the contract, it is very clear that the liability to discharge service tax, professional tax etc is on the contractor - No prima facie case for waiver of pre-deposit - Entire demand of service tax is ordered to be deposited.

[2013-TIOL-1307-CESTAT-MUM](#)

**Bhatawadewkar & Co Vs CCE (Dated: June 27, 2013)**

ST - Appellant is an Engineer and is engaged in the profession of surveyor/loss assessor u/s 64 of the Insurance Act, 1938 - CBEC has vide Circular 34/3/3001 dated 30/04/2001 has clarified that service provided by any qualified engineer in the area of Insurance survey or loss assessment are not in the nature of services in an engineering discipline - such activity is not covered within the scope of "Consulting Engineer Service" - appeal succeeds: CESTAT [para 4]

[2013-TIOL-1301-CESTAT-MUM](#)

**M/s Agricultural Produce Market Committee Vs CCE (Dated: June 24, 2013)**

ST - market fee collected licencees by Agricultural Produce Marketing Committee under the provisions of Maharashtra Agriculture Produce Marketing (Regulation) Act, 1963 is classifiable under BAS and the same is exempted under notification 14/2004-ST - Appeal allowed: CESTAT [para 5.1]

Renting of immovable property service - Service Tax payable on renting of shops in the market area - since appellant has paid ST along with interest question of imposing penalty for late payment does not arise - Appeal allowed: CESTAT [para 5.3]

[2013-TIOL-1296-CESTAT-MUM](#)

**M/s HDFC Standard Life Insurance Co Ltd Vs CST (Dated: June 24, 2013)**

ST - From the budget-speech and the Circulars issued by the Board at various points of time, what emerges so far as the Life Insurance is concerned is that prior to 1.5.2011 the Service Tax was leviable on the risk premium and nothing else - If that be so, it is not understood as to how the various charges collected by the insurer in addition to the risk premium can be taxed under 'Life Insurance Service' - various contentions raised by the appellant have not been examined in detail by the adjudicating authority, who has simply made a sweeping observation that the agency processing fees, lapse charges, backdating alteration charges and policy reinstatement charges were recovered in relation to the life insurance service provided by the noticee and these charges are linked to the risk cover of the policy - Order set aside and matter remanded: CESTAT [paras 5.2, 5.3 & 5.4]

[Also see analysis of the Order](#)

[2013-TIOL-1295-CESTAT-MAD](#)

**M/s C H Robinson Worldwide Freight India Pvt Ltd Vs CST (Dated: March 14, 2013)**



Service Tax - Stay/Dispensation of Pre-deposit - Service tax on Ocean Freight - When Bill of Lading is issued and the applicant is acting in a joint activity, they are entitled to their profit and such an activity cannot be considered as procurement of service for exporter/importer, as alleged by Revenue - However, such submissions is not clearly coming in the reply to the Show Cause Notice and in the Order-in-Original and these facts needs to be decided at the time of hearing of the appeal - Pre-deposit of Rs 75 lakhs ordered.

[2013-TIOL-1292-CESTAT-MAD](#)

**M/s Digital Magic Visual India Ltd Vs CST (Dated: July 14, 2013)**

Service Tax – Stay/Dispensation of pre-deposit - Commercial Training or Coaching Service – Assessee providing training in the field of visual effects and visual communication and animation using computers – Exemption claimed under Notification No. 24/2004-ST dated 10.9.2004 as vocational training institute – Revenue contention that training imparted using computer cannot be covered by the said exemption and that the training is actually a computer training - Training provided by the assessee is type where not much knowledge about the contents of a software is imparted but the skill to use a software is imparted - Matter needs detailed examination in final hearing – Pre-deposit ordered