

CESTAT RULING[2009-TIOL-1815-CESTAT-MAD](#)**M/s Fifth Avenue Vs CST, Chennai (Dated : March 23, 2009)**

Service Tax – Business Auxiliary Service vis-à-vis Business Support Service – the activities of evaluation of prospective customers for the companies, processing of purchase orders, customer management, processing of transactions, information and tracking of delivery schedules, operational assistance for marketing, formulation of customer service and pricing policies, managing distribution and logistics are taxable under Business Support Services which is taxable with effect from 1st May 2006 – demand under Business Auxiliary Service is not sustainable.

Services received from outside India are taxable only with effect from 18.4.2006 under Section 66A of the Finance Act, 1994.

[2009-TIOL-1814-CESTAT-MAD](#)**CCE, Trichy Vs M/s LEO Travels Pvt Ltd (Dated : August 21, 2009)**

Service Tax – Penalty – the lower authority has discretion to reduce the penalty under Section 76 and 78 of the Finance Act, 1994 by invoking Section 80.

[2009-TIOL-1813-CESTAT-KOL](#)**M/s New Swadeshi Sugar Mills Vs CCE & ST, Patna (Dated : May 18, 2009)**

Service Tax - Goods Transport Agency - Exemption Notification - Fulfillment of conditions - The applicant has filed affidavits/certificate of service providers to prove that credit of input or capital goods is not availed nor benefit of Notification No. 12/03 is availed. Matter remanded with directions to verify the evidence produced and pass appropriate orders. (Para 5)

[2009-TIOL-1808-CESTAT-KOL](#)**M/s Futuristic Steel (P) Ltd Vs CCE, CC & ST, BBSR-II (Dated: August 21, 2009)**

Service Tax - Penalty - service tax along with interest paid before the issue of show cause notice - there is no finding in the order of the Commissioner (Appeals) on the contention of the appellants that as per CBEC circular dated 3.10.2007, no penalty can be imposed and the proceedings deemed to be concluded under Section 73(3) of the Finance Act, 1994 - matter remanded.

2009-TIOL-1805-CESTAT-BANG
M/s Bio Campus Gvk Bio Sciences (P) Ltd Vs CCE, Hyderabad (Dated: August 13, 2009)
Service Tax – Training in biotechnology and pharmacy through software - vocational training – matter remanded: The Tribunal found that the claim for exemption classifying the appellants as “vocational training institute” under Notification No.9/2003 dated 20.6.2003 is canvassed before it for the first time in the proceedings. Such a claim was not made before the lower authorities. In the circumstances, Tribunal was inclined to remand the matter for fresh adjudication by the original authority. It would be open to the appellants to canvass their case, if necessary by producing evidence of certificate holders who passed out of the institute and have obtained employment on the strength of their having undergone the course successfully. Tribunal was in agreement with the SDR that the exemption is extended only to such institutes which impart skills which enable the trainees to obtain employment or undertake self-employment like in the case of a typewriting institute.
Also see analysis of the Order
2009-TIOL-1804-CESTAT-MUM
M/s Punjab State Container & Warehousing Corpn Ltd Vs CCE, Mumbai - II (Dated: August 10, 2009)
Applicant, a State Government undertaking ought to have taken clearance from Committee of Disputes while filing appeal as per Apex Court's decision in ONGC Ltd. [2002-TIOL-196-SC-CX], however since no committee formed, no clearance required and matter taken up for disposal – Amount paid is sufficient as pre-deposit – Stay ordered.
2009-TIOL-1803-CESTAT-MAD
M/s Needle Industries (I) Pvt Ltd Vs CCE, Salem (Dated: August 20, 2009)
Service Tax – Services provided from outside India – liability is only with effect from 18.4.2006 – the appellants paid Service Tax from 16.6.2005 – tax liability has to be re-quantified from 18.4.06 – plea of bonafide belief acceptable in view of the CBEC circular dated 08.10.2001 – Penalties under Section 76 & 78 set aside.
2009-TIOL-1802-CESTAT-DEL
National Construction Co Vs CCE, Jaipur-II (Dated: July 17, 2009)

Service Tax - Cargo handling Services - Site Formation - Mining Services - Stay / Dispensation of pre-deposit - As per scope of work and Special condition of the contract the principal activity required to be carried out by the appellant is excavation and digging. As appellant has already pre -deposited Rs.30 lakh and matter requires detailed examination, stay granted. (Para 4)

[2009-TIOL-1790-CESTAT-MUM](#)

Suzlon Infrastructure Ltd Vs CCE, Pune-III (Dated: October 7, 2009)

Tribunal is possessed of the power to do procedural justice - Even after passing dissenting orders, a Division Bench of the Tribunal can entertain an application for rectification of mistake in exercise of inherent powers for the ends of justice – New Division Bench to re -hear the case and dispose of appeal : CESTAT

[Also see analysis of the Order](#)

[2009-TIOL-1789-CESTAT-MAD](#)

M/s Polyspin Ltd Vs CCE, Tirunelveli (Dated: August 21, 2009)

Service Tax – refund of Credit of input service – refund claims ought not to be rejected for the reason that during the period in dispute, there was no liability cast upon the appellants to pay service tax under Section 66A.

[2009-TIOL-1788-CESTAT-DEL](#)

M/s Swaraj Automotives Ltd Vs CCE, Chandigarh (Dated: August 27, 2009)

ST - Cenvat credit - Assessee avails credit of tax paid on outward transportation - Revenue disallows - held, in view of the High Court decision in Ambuja Cement case and Larger Bench decision in ABB Ltd case, assessee's appeal allowed

[2009-TIOL-1785-CESTAT-AHM](#)

M/s Parmar Kishor Mandap Service Vs CCE, Rajkot (Dated: June 12, 2009)

Service Tax - Stay/dispensation of pre -deposit - whether Garbha Mahotsav organised by the Government is a religious function? - Since the issue is debatable, pre -deposit of Rs 50,000 ordered.

2009-TIOL-1784-CESTAT-AHM
M/s Express Kargo Foundation Pvt Ltd Vs CST, Ahmedabad (Dated: August 31, 2009)
Service Tax - Stay/Dispensation of pre-deposit - Business Auxiliary Service - the findings of the Commissioner (Appeals) on the question of invoking extended period are self-contradictory and prima facie extended period is not invocable - The appellants have already deposited part of the demand - pre-deposit of the balance amount waived.
2009-TIOL-1783-CESTAT-DEL
M/s C T Cotton Yarn Vs CST, Delhi (Dated: August 24, 2009)
Service tax – Delayed payment of service tax of Rs. 66 lakhs – Claim regarding no intention to evade tax to be examined in detail at regular hearing as finding in adjudication order on this count clear – Assessee directed to pre-deposit Rs. 20 lakhs on account of penalty and entire liability towards interest
2009-TIOL-1770-CESTAT-DEL
M/s Mastermind Classes Pvt Ltd Vs CCE, Indore (Dated: August 17, 2009)
Service tax – Services not liable to tax unless expressly provided by law – ‘Service to be provided’ liable to tax only from 16.06.2005 – Application fees cannot be equated to franchisee fees, not liable to be taxed – Franchisee fees and royalty not liable to tax prior to 16.06.2005 – Matter remanded to Appellate Commissioner to re-determine tax liability and penalty after considering documentary evidence
2009-TIOL-1769-CESTAT-MAD
Sharadha Terry Products Ltd Vs CCE, Salem (Dated: April 30, 2009)
Service Tax - Services received outside India - Date of Tax liability - After the enactment of Section 66A, a person who is resident in India or has business in India becomes liable to pay service tax when he receives services outside India from a person who is non-resident or is from outside India. Before enactment of Section 66A it is apparent that there is no authority vested by law to levy service tax on a person who is resident in India, but who receives services outside India. (Para 3)

2009-TIOL-1768-CESTAT-AHM
CCE & CC, Vadodara Vs M/s Ram Krishna Travels Pvt Ltd (Dated: July 29, 2009)
Service tax – Reversal of actual amount of CENVAT Credit sufficient to claim abatement in terms of Notification 1/2006-ST – Apex Court judgment in <i>Chandrapur Magnet Wires Pvt Ltd</i> 2002-TIOL-41-SC-CX followed
2009-TIOL-1765-CESTAT-BANG
M/s Overseas Air Travel & Tour Operators Trivandrum Vs CCE, CC & ST, Cochin (Dated: June 30, 2009)
Appeals – Assessee cannot be put to hardship for mistakes of counsels – Appeal restored
2009-TIOL-1764-CESTAT-KOL
M/s MSP Sponge Iron Ltd Vs CCE, CC & ST , Bhubaneswar-II (Dated: August 12, 2009)
Service Tax - Penalty - service tax along with interest paid before the issue of show cause notice - there is no finding in the order of the Commissioner (Appeals) on the contention of the appellants that as per CBEC circular dated 3.10.2007, no penalty can be imposed and the proceedings deemed to be concluded under Section 73(3) of the Finance Act, 1994 - matter remanded.
2009-TIOL-1761-CESTAT-DEL
M/s Om Transport & M/s Om Shiv Transport Vs CCE, Allahabad (Dated: August 3, 2009)
Service Tax - Goods Transport Agency - Cargo Handling Service - Stay / Dispensation of pre-deposit - The service receiver has deposited tax on GTA - As interest of Revenue is protected and stay has been granted in similar issue, stay granted in the instant case.
2009-TIOL-1757-CESTAT-DEL
CCE, Indore Vs M/s Vikram Cement (Dated: May 12, 2009)
Central Excise – CENVAT Credit on input services used outside the factory premises - The Commissioner (Appeals) rightly held that there is no provision that the services received outside the factory would not make eligibility for the credit. If the impugned service is in or in relation to the manufacture of final product, credit is admissible –

Rule 2(l) of the CENVAT Credit rules 2004.

[2009-TIOL-1756-CESTAT-MAD](#)

M/s Suja Rubber Industries Pvt Ltd Vs CCE, Pondicherry (Dated: June 19, 2009)

Service Tax – CENVAT Credit – service tax paid on GTA service for outward transportation is eligible for credit.

[2009-TIOL-1755-CESTAT-MUM](#)

Deccan Mechanical & Chemical Industries Pvt Ltd Vs CCE, Pune (Dated: September 8, 2009)

Appellant collecting Service Tax from customers and asking the department the head under which the same is to be deposited – After a long hiatus, department proffers advise - appellants bonafides proved – no reason to impose penalty u/s 76 of Finance Act, 1994

[Also see analysis of the Order](#)

[2009-TIOL-1754-CESTAT-AHM](#)

CST, Ahmedabad Vs M/s Shah Alloys Ltd (Dated: August 13, 2009)

Service tax – Denial of abatement for GTA service under Notification No. 01/2006-ST on procedural aspect in the absence of any dispute over their eligibility for benefit of notification not justified – No reason to interfere with Appellate Commissioner's order

[2009-TIOL-1739-CESTAT-MAD](#)

CCE, Chennai Vs M/s Thirumalai Chemicals Ltd (Dated: June 5, 2009)

Service Tax – CENVAT Credit – Outdoor catering service, rent-a-cab service, photography service are eligible as input services.

[2009-TIOL-1738-CESTAT-DEL](#)

M/s Shree Rajasthan Syntex Ltd Vs CCE, Jaipur-II (Dated: July 15, 2009)

Service tax - Cenvat credit - Assessee makes payment to commission agent for procuring orders from foreign buyers - Commission paid reimbursed by the foreign buyer - Revenue raises demand - to buy peace during adjudication, assessee pays tax from Cenvat account - Revenue denies credit to assessee as assessee is not a provider of output service - held, since the assessee is prevented from further using cenvat account, pre-deposit is not called for hearing the case

[2009-TIOL-1737-CESTAT-DEL](#)

CCE, Allahabad Vs M/s Ashok Singh Academy (Dated: August 28, 2009)

ST - Commercial Coaching & Training Service - Taxable service notified from 1/7/2003 - Assessee receives advance payment - claims such sum is not taxable - held, since the advance payment is for the service to be provided after the date the taxable service is notified, the tax is leviable on such a sum - Revenue's appeal allowed

[2009-TIOL-1736-CESTAT-MAD](#)

M/s Roots Industries Limited Vs CCE, Coimbatore (Dated: July 3, 2009)

Central Excise – Stay/dispensation of pre deposit – CENVAT Credit of service tax paid on outward transportation – stay granted in view of Larger Bench decision in [2009-TIOL-830-CESTAT-BANG-LB](#)

[2009-TIOL-1734-CESTAT-MUM](#)

Jawahar SSK Vs CCE, Pune (Dated: August 26, 2009)

Cenvat credit in respect of outward goods transport services and applicability extended period of limitation - Declaration of availment of cenvat credit on GTA service in monthly returns - no suppression of facts - Appeals of revenue rejected

Remand of case of assessee to original adjudicating authority for denovo adjudication in terms of Ambuja Cement Ltd. Vs UOI [2009-TIOL-110-HC-P&H-ST](#) and LB decision in ABB Ltd. [2009-TIOL-830-CESTAT-BANG-LB](#) with direction to pass appropriate orders - Appeals of party allowed by way of remand.

[2009-TIOL-1728-CESTAT-BANG](#)

M/s Sree Royalaseema Alkalies & Allied Chemicals Limited Vs CC, CCE & ST, Tirupati (Dated: May 29, 2009)

Service tax – C & F Agents service, Storage & Warehousing service, Business Auxiliary service, Maintenance & repair service etc are input services – Prima facie case for waiver of pre -deposit and grant of stay

[2009-TIOL-1727-CESTAT-DEL](#)

M/s Uttam (Bharat) Electricals Pvt Ltd Vs CCE, Jaipur-I (Dated: April 22, 2009)

Service tax – Transitional provision in Rule 11 of CENVAT Credit Rules, 2004 allows credits earned by manufacturer to be utilized for payment of excise duty in terms of Rule 3(4) – Service tax credit lying in books eligible to be allowed as credit for payment of excise duty on final products

[2009-TIOL-1726-CESTAT-MUM](#)

Choudhary Yatra Co Pvt Ltd Vs CCE, Nashik (Dated: September 4, 2009)

Appellant 'renting' their buses to ITDC and Garhwal Vikas Nigam Ltd and registering themselves as 'Rent-a-Cab' operator w.e.f 01.06.2007 – No cause to classify them as 'Tour Operator' for prior period and demand Service Tax – Prima facie case - CESTAT grants stay.

[Also see analysis of the Order](#)

[2009-TIOL-1725-CESTAT-AHM](#)

M/s Mundra Port & Special Economic Zone Ltd Vs CCE, Rajkot (Dated: August 4, 2009)

ST - ROM - Assessee pleads no specific finding given by the Tribunal on availability of credit on bank charges paid - held, since the Commissioner(A) had not discussed the issue in his order and the same was missing in the Appeal Memo, but the charges are there in the SCN, the errors are corrected and the issue remanded for fresh examination - Assessee's appeal allowed

[2009-TIOL-1724-CESTAT-AHM](#)

M/s Shiv Motors Vs CCE, Rajkot (Dated: July 8, 2009)

ST - BAS - Assessee is engaged in the business of sale of old and used vehicles and also acts as DSA for banks - receives commission from banks - Revenue raises demand and imposes penalty - Assessee pleads the gross sum of commission received also includes the income earned from sale of old vehicles which is not liable to service tax - seeks benefit of Sec 80 - held, issue remanded to the Revenue for fresh

examination and also to see whether the assessee's case qualifies for Sec 80 benefits
2009-TIOL-1714-CESTAT-BANG
M/s Karwar Dock & Port Labour Vs CCE, Mangalore (Dated: May 1, 2009)
Service tax – Handling export/import cargo by cooperative society formed for benefit of its members, not supply of manpower – Prima facie case in favour of appellants – Pre-deposit waived and stay granted
2009-TIOL-1713-CESTAT-MAD
M/s Sri Krishna Smelters Ltd Vs CCE, Salem (Dated: July 17, 2009)
Service Tax – Appeal – Delay – the appeal was filed within the stipulated period – appeal filed again after affixing the court fee stamps as directed by the Commissioner (A) – Appeal not hit by time bar.
2009-TIOL-1712-CESTAT-BANG
M/s Telco Construction Equipment Company Ltd Vs CST, Bangalore (Dated: May 12, 2009)
Service tax – Liability to pay service tax on commission received under BAS – No finding in impugned order on submissions of assessee on limitation – Assessee's submission with regard to receipt of payments in foreign exchange not produced before original authority – Matter remanded for de novo consideration
2009-TIOL-1707-CESTAT-MUM
CCE, Aurangabad Vs Chate Coaching Classes Pvt Ltd (Dated: August 25, 2009)
Misc. Application for out of turn hearing of the appeal - Considering involvement of high stakes including service tax demand of Rs.2.8 crores, the application is allowed and appeal posted for early hearing.
2009-TIOL-1705-CESTAT-BANG
M/s Sri Sai Communications Vs CCE, Guntur (Dated: May 20, 2009)

Service Tax – No assessee will take hospitalization as a ruse to delay in filing appeal – Appeal filed within extended period of three months from last day of original period of appeal condonable by Commissioner (Appeals) – Impugned order dismissing appeal set aside and matter remanded for de novo consideration

[2009-TIOL-1696-CESTAT-BANG](#)

M/s Country Club (India) Pvt Ltd Vs CCE & CST, Hyderabad (Dated: May 19, 2009)

Service tax – Charges collected from members towards allotment of plots not connected with services of club, prima facie strong case on merits – Claim of tax paid on health and fitness service to be scrutinized in detail for all centres across the country – Pre-deposit of Rs. 5 lakhs ordered

[2009-TIOL-1695-CESTAT-BANG](#)

Andhra Pradesh Paper Mills Ltd Vs CCE, Visakhapatnam (Dated: March 18, 2009)

Service tax – Assessee entitled to benefit of 75% abatement in terms of Notification 32/2004-ST while availing benefit of GTA services for transport of goods manufactured by them – Impugned order set aside

[2009-TIOL-1694-CESTAT-BANG](#)

M/s Tata Auto Comp Systems Ltd Vs CCE, Bangalore-II (Dated: June 12, 2009)

Service tax – CENVAT Credit of service tax paid on transportation services provided by assessee to pick up and drop their staff not deniable – No merit in Appellate Commissioner's order which relied on his previous order already set aside by Tribunal

[2009-TIOL-1693-CESTAT-MAD](#)

M/s BSR Enterprises Vs CST, Chennai (Dated: August 6, 2009)

Service Tax – demand has been quantified merely on the basis of the figures in the Balance Sheet – matter remanded to examine the applicability of notification No.12/2003 and question of limitation.

[2009-TIOL-1689-CESTAT-BANG](#)

Indian Institute Of Chemical Technology Vs CCE, CC & ST, Hyderabad (Dated: May 19, 2009)

Service tax – In the absence of suppression of facts with an intention to evade payment of service tax, service tax demand invoking extended period not sustainable – As demand is set aside on limitation no finding given on items classified under grant-in-aid category by assessee

[2009-TIOL-1688-CESTAT-MAD](#)

M/s Selvakumar Spinners Pvt Ltd Vs CCE, Salem (Dated: July 17, 2009)

Service Tax – Goods Transport Agency Service – CENVAT Credit utilisation for payment of Service Tax on Goods Transport Agency Service is admissible.

[2009-TIOL-1687-CESTAT-BANG](#)

CCE, Mangalore Vs SGS India (Pvt) Ltd (Dated: May 13, 2009)

Service tax - Services provided for inspection and certification of construction work leviable to tax under Technical Inspection and Certification service and not under Consulting Engineer Service - No infirmity in impugned order

[2009-TIOL-1686-CESTAT-DEL](#)

M/s BSBK Pvt Ltd Vs CCE, Raipur (Dated: August 17, 2009)

Service tax – Eligibility of abatement under Notification 1/2006-ST for Commercial Construction Service – Nexus of input service-output service not examined in detail before denying abatement – Matter referred to Commissioner for clarity on order passed specifically on utilization of input service credit for their liability against Consulting Engineer Service

[2009-TIOL-1679-CESTAT-BANG](#)

M/s Indian School Of Business Vs CC & CCE, Hyderabad (Dated: March 16, 2009)

Service Tax – Institution of higher learning imparting knowledge through courses at Post Graduate level and Research is not Commercial training or coaching center – Such institution cannot be placed on same footing as that of coaching or training imparted by tutorial colleges or institutions preparing students for imparting certain skills or preparing for examination for getting higher marks – Activity of imparting education at Post Graduate and Research level not liable to service tax under Commercial training or coaching service – Impugned order demanding tax and

imposition of penalty having no merits set aside
2009-TIOL-1678-CESTAT-BANG
M/s MSPL ltd Vs CCE, Belgaum (Dated: May 19, 2009)
Service tax – Gas cylinders transported using own vehicles and freight charges collected thereon not leviable to service tax by manufacturer of gases under GTA service – Service tax liable to be paid by person who pays freight on transportation of goods in a goods carriage in terms of Rule 2 (1)(d) (v) of Service Tax Rules, 1994 – No infirmity in impugned order
2009-TIOL-1677-CESTAT-MAD
M/s Salem Cooperative Sugar Mills Ltd Vs CCE (Service Tax), Salem (Dated: July 3, 2009)
Service Tax – Stay/dispensation of pre -deposit – Goods Transport Agency Service – prima facie the appellants' contention that they are covered under clause (1) of Notification 34/2004 ST as the amount charged was less than Rs.1500/- is not acceptable – Pre -deposit ordered
2009-TIOL-1676-CESTAT-DEL
Mr Sharwan Kumar Vs CC, Chandigarh (Dated: August 7, 2009)
Service tax – Bringing activity of body building of vehicles using materials supplied by contractee under 'Business Auxiliary Service' questionable – <i>Prima facie</i> case for full waiver of pre -deposit
2009-TIOL-1671-CESTAT-DEL
CCE, Ludhiana Vs M/s Tej Telecom (Dated: July 29, 2009)
Service tax – Whether penalties can be levied simultaneously under Sections 76 & 78 of Finance Act, 1994 – Matter remanded to Appellate Commissioner to consider issue in light of <i>Krishna Poduval</i> case 2006-TIOL-77-HC-KERALA-ST
2009-TIOL-1670-CESTAT-BANG

CCE, Tirupathi Vs M/s Precot Meridian Ltd (Dated: May 13, 2009)

Service tax – Tax liable to be paid by recipients of services from non residents only from 19.04.2006 – It is well settled law that rules are subservient to sections and if section do not provide for discharge of tax by recipient of services from non-resident having no office, then it would be a futile exercise to rely upon rules to collect tax – Impugned order upheld as no merit in revenue appeal

[2009-TIOL-1669-CESTAT-MAD](#)

M/s Madras Stock Exchange Financial Services Ltd Vs CCE, Chennai (Dated: June 1, 2009)

Service Tax – Stock Broker service – the appellants are not involved in sale and purchase of securities and do not undertake any dealings in securities in their own account – They do not fall within the definition of stock-broker – demand of service tax set aside.

[2009-TIOL-1667-CESTAT-DEL](#)

M/s M G Motors Vs CCE, Jaipur-I (Dated: July 13, 2009)

ST - Assessee is an authorised automobile dealer - also arranges auto loans for customers - gets commission - fails to pay tax - On being pointed out by the Revenue, assessee deposits tax with interest - penalty - held, it is now settled law that since there was confusion prevailing among the service providers about the tax liability and the Board had issued several clarifications in this regard and penalty is not called for under such circumstances - Assessee's appeal allowed

[2009-TIOL-1658-CESTAT-MAD](#)

M/s Savithri Digital Lab Vs CCE, Coimbatore (Dated: June 5, 2009)

Service Tax – Photography service – the value of material consumed in providing the service is not includable in the taxable value in view of the Supreme Court affirming the CESTAT order.

[2009-TIOL-1657-CESTAT-MUM](#)

R M Dhariwal (HUF) Vs CCE, Pune-III (Dated: August 13, 2009)

Commissioner's observation that appellant was a technocrat without giving any findings on the status of the applicant is unsupported by evidence -Transfer of technical know-how, brand name etc. is covered by Intellectual property service

w.e.f.10.9.2004 as held in Navinon Ltd. Vs CCE, [2004-TIOL-710-CESTAT-MUM](#), CCE Chennai Vs MRF Ltd [2004-TIOL-992-CESTAT-MAD](#) - Prima facie case is made against demand - Waiver of pre -deposit and stay of recovery granted.

Demand for service tax for the period 2001-03 under the head 'Scientific & Consulting service' in respect of royalty received as consideration for transfer of trade name and certain formulae for the manufacture of pan masala, gutka etc. - Appellants claim for 'Intellectual Property Right Service and paying service tax w.e.f. 10.9.2004 and relies on Navinon Ltd. Vs CCE, [2004-TIOL-710-CESTAT-Mum](#), CCE Chennai Vs MRF Ltd [2004-TIOL-992-CESTAT-MAD](#) which held that royalty for transfer of technical know-how could be taxed only under Intellectual Property Right services w.e.f.10.9.2004 – Issue of legality of extensive changes made in impugned order by issue of corrigendum.

[2009-TIOL-1656-CESTAT-DEL](#)

M/s Bureau Of Indian Standards Vs CC & CCE, Noida (Dated: August 25, 2009)

ST - Commercial Coaching & Training Service - Assessee is a national standard body constituted under the BIS Act - organises training programmes and charges fee from participants - Demand raised and penalty imposed - Assessee pays tax with interest after getting clarification from the Board but contests the penalty - held, since the assessee performs statutory functions and organised such training programmes as part of its consumer welfare objective, it was under the bona fide belief that its activities are not taxable - it is a fit case for invocation of Sec 80 - Assessee's appeal allowed

[2009-TIOL-1654-CESTAT-BANG](#)

CCE, Vizag Vs M/s Ex-servicemen Resettlement & Coordinate Cooperative Society Ltd (Dated: May 6, 2009)

Service tax – Ex-servicemen resettlement & coordination cooperative society providing security agency service – Under bonafide belief that only commercial concern liable to pay service – Not liable to pay penalty as there was no willful intention to evade service tax – Impugned order upheld

[2009-TIOL-1653-CESTAT-BANG](#)

M/s ECOF Industries Pvt Ltd Malur Vs CCE, Bangalore (Dated: June 15, 2009)

Service tax – Distribution of credit by ISD barred only in two instances as per Board's Circular 97/2007-ST dated 23.08.2007, not applicable in cases where credit is distributed to units manufacturing dutiable and exempted goods – Prima facie case for full waiver of pre -deposit

[2009-TIOL-1647-CESTAT-BANG](#)

M/s Karnataka State Cricket Association Vs CST, Bangalore (Dated: May 27, 2009)

Service tax – Advertising services provided by KSCA being a registered society not liable to service tax – Demand of service tax on Mandap keeper service and business auxiliary service, pre -deposit of Rs. 5 lakhs ordered

[2009-TIOL-1646-CESTAT-BANG](#)

M/s Eagleton The Golf Resort Vs CST, Bangalore (Dated: May 20, 2009)

Service tax – Charges collected for providing recreation services to corporates by Golf Resort including service of liquor, food and room – Tax cannot be levied on entire amount treating it as convention service when tax already paid under convention service and club service – Prima facie case for full waiver of pre -deposit

[2009-TIOL-1645-CESTAT-MAD](#)

CCE, Chennai Vs M/s Cafoma Auto Parts Ltd (Dated: June 15, 2009)

Service Tax – Goods Transport Agency Service – during the period prior to 2003, Section 73 of the Finance Act applied only in case of assesseees who were liable to file returns under Section 70 and the class of persons who came under the provisions of Section 71A, was not brought under the net of Section 73 prior to 2003.

[2009-TIOL-1640-CESTAT-AHM](#)

CST, Ahmedabad Vs M/s Bacha Finlease (Dated: August 11, 2009)

ST - exemption under Notification 6/2005-ST - Assessee's activities are covered under the BAS - Commissioner(A) finds that the value of taxable service is less than the exemption threshold of Rs four lakh - held, merely because the assessee fails to raise this point before the adjudicating authority there is no bar for the assessee to raise a legal issue at the first appellate stage - Revenue has no case - Revenue's appeal dismissed

[2009-TIOL-1639-CESTAT-MAD](#)

Kongu Engineering College Vs CCE, Salem (Dated: June 5, 2009)

Service Tax – penalty – plea that the appellant is an educational institution and there was a reasonable cause for failure to pay service tax is not acceptable as the demand was confirmed under extended period and Section 80 does not come to their rescue.

[2009-TIOL-1638-CESTAT-MAD](#)

M/s Vijay Television Pvt Ltd Vs CST, Chennai (Dated: May 11, 2009)

Service Tax – Stay / Dispensation of pre-deposit – Broadcasting service – the appellant paid the service tax on the licence fee collected from the distributor in India – revenue demanded service tax again on the licence fee paid by the appellants to the overseas broadcasting agency located in Hong Kong under reverse charge basis in terms of Section 66A of the Finance Act, 1994 – prima facie case for waiver of pre-deposit as the appellant would be entitled to CENVAT credit of the Service Tax demanded.

[2009-TIOL-1637-CESTAT-BANG](#)

M/s Ritesh Enterprises Vs CCE, Mangalore (Dated: May 1, 2009)

Service tax – Handling and transportation of fertilizers by labour contracted by factory does not amount to supply of labour to attract service tax under Manpower Recruitment & Supply Agency services – License given by Labour department not for supply of labour, license required for engaging labour for handling, unloading and loading of materials – Pre-deposit waived and stay granted

[2009-TIOL-1634-CESTAT-KOL](#)

CCE, Ranchi Vs M/s Giridhari Enterprises (Dated: July 30, 2009)

Service tax – Inclusion of re-imbursible amounts received from principals for transportation, communication, labour and electricity in value of taxable service – Appellate Commissioner had not examined terms of agreement to determine inclusion or exclusion thereof – Matter remanded for de novo consideration

[2009-TIOL-1633-CESTAT-AHM](#)

M/s Purnima Advertising Agency Pvt Ltd Vs CST, Ahmedabad (Dated: August 4, 2009)

Service tax – Selling of time slots on TV channels – Whether to levy service tax on entire amount collected from clients when broadcasters already pay service tax on the said activity or restrict levy only to commission/discounts received by assesseees as advertisement agency – *Prima facie*, demand for of service tax by revenue amounts to levy of service tax on same amount twice – Strong case for waiver of pre-deposit

2009-TIOL-1632-CESTAT-MUM
Kirloskar Power Equipments Ltd Vs CCE, Pune (Dated: September 17, 2009)
Appellants under bonafide doubt regarding their activity is a reasonable cause to not deposit the service tax in time - Penalties under sections 76, 77 and 78 not imposable in view of section 80 of the Finance Act, 1994 - CESTAT.
Also see analysis of the Order
2009-TIOL-1631-CESTAT-BANG
M/s Kerala State Industrial Enterprises Ltd Vs CCE, Trivandrum (Dated: June 22, 2009)
Service tax – Handling of passenger baggage and terminal charges for export consignment not liable to service tax – Renting of premises for installation of x-ray machine to Airlines, assessee ordered pre-deposit
2009-TIOL-1626-CESTAT-MUM
M/s Tata Motors Ltd Vs CCE, Pune (Dated: August 28, 2009)
Cenvat Credit – Outdoor Catering Service is an Input Service – Adjudicating and appellate authorities to scrupulously follow binding judicial precedents for sake of administering justice – Tribunal decisions in GTC Industries Ltd. 2008-TIOL-1634-CESTAT-MUM-LB and Pudumjee Pulp & Paper Mills 2009-TIOL-795-CESTAT-MUM relied upon.
2009-TIOL-1625-CESTAT-MAD
M/s A -I Chemicals Vs CCE, Trichy (Dated: June 9, 2009)
Service Tax – Stay / Dispensation of pre-deposit – service tax on goods transport agency service – the appellant are a proprietor concern and does not fall under any of the seven categories listed under Rule 2(1)(d)(v) of the Service Tax Rules 1994 – pre-deposit waived.
2009-TIOL-1624-CESTAT-MAD

M/s A S Transport Vs CCE, Trichy (Dated: July 14, 2009)

Service tax – Cargo handling service – the activities of loading and unloading of goods meant to be transported are covered under cargo handling service – Sec 65(23) of the Finance Act, 1994 and CBEC Circular dated 1.8.2002 – demand of Service Tax upheld.

[2009-TIOL-1618-CESTAT-MUM](#)

CCE, Nagpur Vs Khemka Travels (Dated: September 17, 2009)

Rent-a-Cab operator – Notification 1/2006-ST – Cenvat Credit taken erroneously reversed with interest – Benefit of notification not to be denied – CESTAT

[Also see analysis of the Order](#)

[2009-TIOL-1617-CESTAT-BANG](#)

M/s Prestige Estates Projects Pvt Ltd Vs CST, Bangalore (Dated: August 24, 2009)

Service tax – Employee left service without informing management about O-I-O issued by Commissioner for demand of tax and levy of penalties – Delay of 503 days condonable as length of delay not material but plausible reasons for delay in filing appeal

[2009-TIOL-1615-CESTAT-MUM](#)

Dic India Ltd Vs CCE, Mumbai (Dated: September 11, 2009)

Cenvat Credit on Mobile Phone service – No allegation that mobile phones were not used in or in relation to manufacture of final product – presumption is in favour of assessee – Credit allowable – Tribunal decision in Telenet Systems Pvt. Ltd. vs. CCE, Belapur [2009-TIOL-1286-CESTAT-MUM](#) relied upon – Appeal allowed with consequential relief.

[2009-TIOL-1612-CESTAT-MUM](#)

M/s International Transmission Product P Ltd Vs CCE, Mumbai (Dated: August 28, 2009)

Cenvat Credit on Goods Transport Service, Mobile phone service, credit card service and Air Travel Agent – adjudicating authority correctly allowing the credit after going through each and every aspect of documents supplied by appellants with regards to use of the impugned services in or in relation to manufacture of final products –

Commissioner(A) setting aside the order without giving a detailed reasoning is bad in law – Appeals allowed with consequential relief.

[2009-TIOL-1611-CESTAT-MUM](#)

Eaton Industrial Systems Pvt Ltd Vs CCE, Aurangabad (Dated: August 27, 2009)

Garden Maintenance Service – Cenvat credit not allowable as this service has no nexus even remotely with manufacture and clearance of excisable goods – Tribunal decision in Kirloskar Oil Engines Ltd. [2009-TIOL-790-CESTAT-MUM](#) followed – Appeal rejected.

[2009-TIOL-1606-CESTAT-DEL](#)

CCE, Indore Vs M/s Hotline CPT Ltd (Dated: May 5, 2009)

Service tax – Service tax paid on outward freight available as CENVAT Credit in view of *Ambuja Cement Ltd* [2009-TIOL-110-HC-P&H-ST](#) – No reason to interfere with Appellate Commissioner' order

[2009-TIOL-1605-CESTAT-BANG](#)

M/s ECIL Rapiscan Ltd Vs STC, Hyderabad (Dated: May 13, 2009)

Service tax – When J & K itself is outside purview of Finance Act, 1994 for service tax purposes, Rule 6 (3)(c) of CENVAT Credit Rules, 2004 not applicable – Contracts for sales and AMC cannot be vivisected for levy of tax on sales commission – Prima facie case for full waiver of pre-deposit

[2009-TIOL-1603-CESTAT-MAD](#)

M/s Fenner India Ltd Vs CCE, Madurai (Dated: May 28, 2009)

Service Tax – Clearing and Forwarding agent service - the scope of the contract between the appellants and their client does not cast any obligation whatsoever on the appellants to provide clearing and forwarding services – the appellants are only sharing the facilities of marketing / distribution networks - demand of service tax not sustainable.

[2009-TIOL-1597-CESTAT-BANG](#)

M/s Federal bank Ltd Vs CCE, Cochin (Dated: May 12, 2009)

Service tax - Collection of telephone bills, arrangement for drawing DDs, arranging payment collection services for insurance policy etc classifiable under Banking & Other Financial Service and not Business Auxiliary Service – Non-acceptance of Tribunal order not a valid reason to confirm demands

[2009-TIOL-1596-CESTAT-BANG](#)

M/s Hetero Drugs Ltd Vs CCE, Hyderabad (Dated: June 10, 2009)

Service tax – Recipient of taxable service from person residing outside India not liable to tax prior to 01.01.2005 in view of LB judgment in Hindustan Zinc Ltd [2008-TIOL-1149-CESTAT-DEL-LB](#) – Penalties set aside as service tax demand is not contested

[2009-TIOL-1595-CESTAT-MAD](#)

T V S Motor Company Ltd Vs CCE, Chennai (Dated: May 19, 2009)

Service Tax – Stay / Dispensation of pre-deposit – amount paid to Foreign Service providers for off shore services – the provision for grossing up of the amount under Section 195A of the Income Tax Act is applicable only for the payment of income tax and not for the purpose of service tax – pre-deposit waived.

[2009-TIOL-1589-CESTAT-MUM](#)

Discom Ltd Vs CCE, Aurangabad (Dated: August 13, 2009)

Service rendered by DISCOM under the 'outright contribution scheme' through their electrical engineers to the consumers of electricity falls within the ambit of "taxable service" viz. Consulting Engineer Service under section 65(105)(g) of the Finance Act, 1994 – CESTAT

Tribunal's observations –

"It is not in dispute that, in the outright contribution scheme, the electrical engineers of the appellants had rendered advice, consultancy and technical supervision for the consumers to install the necessary infrastructure for distribution of electricity. Admittedly, the infrastructure was brought in place at the cost of the consumers. It has, therefore, to be held that the service rendered by the appellant through their electrical engineers to the consumers of electricity fell within the ambit of "taxable service" under section 65(105)(g) of the Finance Act, 1994. It goes without saying that the electrical engineers of the appellant were acting as "consulting engineers"

within the scope of the definition given under section 65(31).

The taxable service was rendered during the course of installation. Even otherwise, the ownership of the property has no bearing on the question whether the appellant was rendering a taxable service as "consulting engineers", to the consumers of electricity."

Matter remanded with the following directions –

Commissioner(Appeals) to himself quantify the service tax leviable from the appellant in respect of the supervision charges collected by them from the consumers of electricity during the period of dispute as also to reconsider and decide upon the question whether any penalty is imposable on the assessee and, if so, to what extent.

[Also see analysis of the Order](#)

[2009-TIOL-1588-CESTAT-MAD](#)

Mettur Thermal Power Station Vs CCE, Salem (Dated: July 7, 2009)

Service Tax – Stay / Dispensation of pre-deposit - Business Support Service – charges collected for disposal of fly ash by the appellant engaged in generation of electricity – prima facie taxable under business support service – pre deposit of Rs. 25 lakhs ordered.

[2009-TIOL-1587-CESTAT-KOL](#)

M/s Jayshree Chemicals Ltd Vs CCE, CC & ST, Bhubaneswar-I (Dated: June 12, 2009)

Service tax – Credit availability of service tax paid on GTA service for outward transportation already settled by Larger Bench in *ABB Ltd* [2009-TIOL-830-CESTAT-BANG-LB](#) and P& High Court in *Ambuja Cements Ltd* [2009-TIOL-110-HC-P&H-ST](#) – Impugned order set aside

[2009-TIOL-1586-CESTAT-BANG](#)

M/s CMC Ltd Vs CST, Hyderabad (Dated: June 22, 2009)

Service tax – Maintenance and operation of INFINET net work not liable to tax prior to 16.06.2005 – Prima facie case for full waiver of pre-deposit

[2009-TIOL-1583-CESTAT-MUM](#)

Graphite India Ltd Vs CCE & CC, Nashik (Dated: August 27, 2009)

Lowering, laying, jointing and testing GRP pipes for Gujarat Industrial Development Corporation (GIDC) is taxable service as GIDC is a corporation primarily undertaking development of infrastructure for industries – CESTAT orders pre -deposit of Rs.50 lakhs .

Tribunal's observations –

"..., we have found a valid point ... in relation to certain pleadings contained in the memo of appeal itself. The appellants have stated that GIDC is a nodal agency of the Government of Gujarat playing a major role in providing infrastructure etc. It is stated that as per section 37 of the Gujarat Industrial Development Act, 1962, GIDC is empowered to lay, maintain, repair pipes/pipelines, conduits for the purpose of constructing any sewers or drains necessary for carrying any waste liquids of an industrial process through the said area. The memo of appeal further notes thus:

"It is crystal clear that the object of GIDC is primarily to provide infrastructure like approach roads, industrial establishment over and above providing other amenities like supply of water, electricity, gases and other amenities at affordable cost."

6. Prima facie , it appears, the pipes in question were lowered, laid and joined, tested etc. at the site of the GIDC primarily for industrial purposes thereby attracting section 65(25b) of the Finance Act, 1994. As regards similar service rendered to the Municipal Corporations, the adjudicating authority rightly concluded that the service was not taxable. The reasons are obvious. The Municipal Corporations (customers of the appellants) are neither industrial nor commercial in character. They are in the nature of governmental agencies serving the public in multifarious ways . Insofar as similar service rendered to private agencies like Birla Copper is concerned, the appellant chose to pay service tax. With regard to the industrial character and the purpose for which the pipelines were laid, jointed, tested etc. prima facie , there is no distinction between Birla Copper etc. and GIDC . We, therefore, hold that, prima facie , the appellants were liable to pay service tax under the head 'Commercial or Industrial Construction Service' in respect of this service rendered to GIDC during the period of dispute."

On limitation –

"...the fact that huge amounts were collected from GIDC as consideration for service which was rendered to them in the same manner as to private agencies was suppressed in the service tax returns. There appears to be suppression of material facts and, therefore, at this stage, we are unable to find fault with invocation of extended period of limitation."

[Also see analysis of the Order](#)

[2009-TIOL-1582-CESTAT-MAD](#)

M/s East Coast Construction & Industries Ltd Vs CST, Trichy (Dated: June 4, 2009)

Service Tax – Stay/Dispensation of pre-deposit – erection, commissioning and installation service – laying of pipe line does not amount to rendering of erection, commissioning and installation service – pre-deposit waived.

2009-TIOL-1581-CESTAT-MAD
M/s HI Tech Arai Ltd Vs CCE, Madurai (Dated: June 10, 2009)
Service Tax - the remuneration paid by the appellant-company being director's remuneration cannot be subjected to service tax – the demand is also not sustainable for the reason that the period of dispute is prior to 1.1.2005 during which no service tax is payable by the recipient of the service provided by a person from outside India who does not have any office in India.
2009-TIOL-1572-CESTAT-BANG
M/s HPCL Vs CCE, Mangalore (Dated: May 27, 2009)
Service tax – Service tax paid by joint venture company for transportation of oil through pipelines available as credit for discharging of service tax on storage & warehousing services provided to Oil Marketing Companies – Prima facie case for full waiver of Pre -deposit
2009-TIOL-1571-CESTAT-BANG
CCE, Tirupathi Vs M/s Shariff Motors (Dated: March 12, 2009)
Service tax – Service tax paid on GTA service availed for transport of vehicles from factory to show room available as credit for authorized service station attached to show room – No merit in revenue appeal
2009-TIOL-1570-CESTAT-BANG
M/s Thames Water Asia Pvt Ltd Vs CST, Bangalore (Dated: May 6, 2009)
Service tax – No reasons adduced by Commissioner for service tax demand of Rs. 48 lakhs – Matter remanded for de novo adjudication