

CESTAT RULING

[2009-TIOL-1269-CESTAT-AHM](#)

M/s Sanghvi Aerospace Pvt Ltd Vs CCE, Ahmedabad (Dated: June 25, 2009)

Member (Technical):

Central Excise – Clearance of wires and cables specially designed for aircrafts, satellite launch vehicles and battle tanks – Eligible for benefit of Notification No. 10/97-CE but not Notification 6/2002-CE and Notification No. 64/95-CE – Since appellant is eligible for one of the exemption notifications, exemption benefit allowed and impugned order set aside

Member (Judicial):

Central Excise – Clearance of wires and cables specially designed for aircrafts, satellite launch vehicles and battle tanks – Eligible for benefit of exemption Notification 10/97-CE – Since Commissioner disallowed benefit of either notifications, appeal allowed in totality in view of eligibility of exemption notification 10/97-CE and extension of the same by Member (Technical) – No comments on Technical Member's disallowance of Notification 6/2002-CE – No difference of opinion

[Also see analysis of the Order](#)

[2009-TIOL-1268-CESTAT-MAD](#)

CCE, Chennai-II Vs M/s Caterpillar India Pvt Ltd (Dated: April 1, 2009)

Central Excise – CENVAT Credit – inputs removed as such – the respondent was required to pay an amount equal to the credit availed in respect of inputs or capital goods at the time of their removal as such – entitled for refund of excess duty paid – matter remanded to examine from the angle of unjust enrichment.

[2009-TIOL-1267-CESTAT-DEL](#)

M/s Indo Micronutrients Vs CCE, Indore (Dated: May 6, 2009)

Central Excise – Order for payment of pre -deposit not complied with, appeal liable for dismissal due to non-compliance with provisions of Section 35F

[2009-TIOL-1266-CESTAT-MUM](#)

M/s Semco Electric Pvt Ltd Vs CC & CCE, Pune-I (Dated: June 10, 2009)

Export of goods – Theft of goods from containers – applicant has lodged a complaint and made a claim for insurance - no case for grant of waiver of the duty demanded – financial hardship pleaded - *prima-facie* case for grant of waiver of amount of interest and penalty.

2009-TIOL-1261-CESTAT-MUM**M/s Narsingirji Mills Vs CCE, Pune (Dated: February 20, 2009)**

Entry 52.7 to Notification 8/96-CE covers cotton fabrics simpliciter - if the process of calendering of cotton fabrics is considered as not amounting to manufacture, then the entry 52.15 to notification 8/96-CE would become otiose and meaningless – Duty demand upheld – CESTAT

Appellant admitting that they do not fulfill the condition mentioned in Sr. no. 52.15 of Notification 8/96 -CE – Cotton fabrics subjected to the process of calendering is not exempted as condition not satisfied – CESTAT upholds demand of duty and rejects appeal.

Also see analysis of the Order**2009-TIOL-1257-CESTAT-BANG****CCE, Bang III Vs M/s HVAC Systems Pvt Ltd (Dated: March 3, 2009)**

Central Excise – Ducts emerging at site during installation of heat ventilators and air conditioning systems do not pass the test of marketability and hence not excisable – No infirmity in impugned order

2009-TIOL-1254-CESTAT-MUM**CCE & CC, Aurangabad Vs Gaurav Agro Pipes (Dated: June 2, 2009)**

Defective goods accompanied by letters issued by customers and Cenvat Credit taken thereon - such letters are not the documents specified under rule 9 for the availment of cenvat credit - procedure prescribed under rule has to be followed for claiming benefit there under and is a basic tenet of law recognized by the Supreme Court – Commissioner(A)'s order set aside and Revenue appeal allowed.

2009-TIOL-1250-CESTAT-MUM

M/s Ajinkya Enterprises Vs CCE, Pune III (Dated: July 23, 2009)

Department cannot approbate and reprobate – when the applicant has taken Cenvat credit and paid duty, which as per the Department is not payable, yet having accepted the same, Revenue cannot refuse Cenvat on inputs – CESTAT grants stay from recovery of nearly two Crores.

[Also see analysis of the Order](#)

[2009-TIOL-1249-CESTAT-BANG](#)

M/s Hindustan Zinc Limited Vs CCE & CC, Visakhapatnam (Dated: January 5, 2009)

Central Excise – CENVAT – Annual stock taking - Shortages of Input written off – Denial of credit - It is undisputed that the shortages of zinc dust and calcine were found by the appellants on their own and having found the shortages had written off the value from the books of accounts. There is no allegation that the said inputs were removed from the factory premises of the appellants clandestinely. Further inputs which were found short, were received in the factory premises of the appellants and consumption has taken place. The appellants are consuming zinc dust and calcine in huge volumes and the inputs which are put to use by the appellants is lost during the process of manufacture. So, the loss of inputs has taken place in the process of manufacture, therefore, it cannot be said that the inputs have not been used in or in relation to the manufacture of final products. (Para 6.2)

[2009-TIOL-1248-CESTAT-BANG](#)

CC & CCE, Tirupati Vs M/s Lanco Industries Ltd (Dated: April 28, 2009)

Central Excise – Refund – unjust enrichment – when the debit notes and credit notes are issued and effected, which are not disputed, it cannot be assumed, that incidence of burden of excise duty has been passed on to the purchaser – revenue appeal has no merit in view of the HC order in case of M/s AK Spintex Ltd. and Anr. – [2009-TIOL-12-HC-RAJ-CX](#).

[2009-TIOL-1245-CESTAT-KOL](#)

M/s Burdwan Iron & Steel Co Pvt Ltd Vs CCE, Bolpur (Dated: June 4, 2009)

Central Excise – Clandestine removal of MS Ingots – Private records show higher production than statutory records and admitted by appellants – Difference in cost of raw material as per accounts compared with receipt invoices – Pre-deposit of Rs. 17.5 lakhs ordered

[2009-TIOL-1244-CESTAT-MAD](#)

M/s Indian Organic Chemicals Ltd Vs CCE, Chennai (Dated: May 25, 2009)

Central Excise – CENVAT Credit on capital goods transferred to another company – there is no physical removal from the factory but the entire factory together with capital goods were hived off to another company – credit cannot be disallowed.

Penalty – the appellants reversed the irregular credit before issue of show cause notice – penalty reduced to 25% of the credit involved.

[2009-TIOL-1243-CESTAT-AHM](#)

CCE, Rajkot Vs M/s Mahalaxmi Extrusions (Dated: March 23, 2009)

Central Excise – Rule 4 of CENVAT credit Rules does not debar availing depreciation on balance of 50% of the duty, which is not availed as CENVAT Credit – No merit in Revenue appeal – Tribunal decision in Suprajit Engineering [2007-TIOL-180-CESTAT-BANG](#) followed – Impugned order of Appellate Commissioner upheld

[2009-TIOL-1234-CESTAT-AHM](#)

M/s Baroda Conductors Pvt Ltd Vs CCE, Daman (Dated: April 1, 2009)

Central Excise – Duty paid raw materials cleared for job work without documentation – When one unit of factory accounted receipt of raw materials and taken credit of duty paid thereon, no justification to conclude onward transfer to another unit for job work as malafide – Case cannot be based on assumption of future evasion – Duty demand set aside – Penalty of Rs. 5000 levied for procedural infraction and balance of penalties set aside

[2009-TIOL-1233-CESTAT-BANG](#)

Power Grid Corp Of India Ltd Vs CCE, Bangalore (Dated: January 29, 2009)

Central Excise – Duty paid consequent to delay in sanction of world bank loan to power project available as refund subsequent to loan approval – Impugned order set aside

[2009-TIOL-1232-CESTAT-BANG](#)

CCE, Visakhapatnam Vs M/s Rashtriya Ispat Nigam Ltd (Dated: February 18, 2009)

Central Excise – CENVAT credit available on items which are used in repair & maintenance, storage of liquids, accessories of plant & machinery, material handling equipment & parts – No merit in revenue appeals – Impugned order upheld

[2009-TIOL-1226-CESTAT-MUM](#)

Saurabh Suryakant Mehta Vs CCE, Raigad (Dated: June 17, 2009)

Appeal dismissed by Commissioner(A) for non compliance with pre -deposit order – Any order passed on an application for stay/waiver of pre -deposit has to be a speaking order and reasons for directing such pre -deposit should be stated – Order set aside and consequently final order dismissing the appeal is also set aside – matter remanded – Apex Court decision in Ravi Gupta vs. CST, Delhi [[2009-TIOL-47-SC-CT](#)] relied upon .

[2009-TIOL-1225-CESTAT-BANG](#)

M/s Petron Engineering & Construction Limited Vs CCE & CC, Visakhapatnam (Dated: March 12, 2009)

Central Excise – Supply, fabrication and erection of primary reformer package at site – Parts fabricated piece by piece at site and fitted to reformer package does not amount to manufacture – Demand of duty not sustainable, penalties set aside – Impugned order set aside

[2009-TIOL-1224-CESTAT-BANG](#)

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

Central Excise – Valuation of goods cleared from factory as stock transfer and subsequent clearance in ream form from depot – Appellant has not made out a strong case for complete waiver of pre -deposit – Pre -deposit of Rs. 5 lakhs ordered and stay granted

[2009-TIOL-1223-CESTAT-MUM](#)

Bajaj Auto Ltd Vs CCE, Aurangabad (Dated: May 29, 2009)

Interest is mandatory under rule 14 of Cenvat Credit Rules, 2004 but since intent to evade payment of duty is not attributed to the assessee, penalty under Rule 15(2) of the CCR, 2004 is not imposable

[Also see analysis of the Order](#)

[2009-TIOL-1220-CESTAT-BANG](#)

M/s Saravana Alloy Steel (P) Ltd Vs CCE, Bangalore (Dated: May 7, 2009)

Central Excise – Allegation of clandestine removal of CTD Bars and MS Ingots – An amount of Rs. 50 lakhs already paid – Pre-deposit of additional amount of Rs. 50 lakhs ordered

[2009-TIOL-1213-CESTAT-MUM](#)

M/s Samrudhi Industries Vs CCE, Nagpur (Dated: June 9, 2009)

Pipes were utilized for supply of water from the reservoir to the water treatment plant and from there partly for human consumption and partly for industrial use - Explanation to sr.no.7 of notification no.6/06CE clarifies that water treatment plant does not include a plant supplying water for industrial purposes –merely because the word “plant” has not been used in clause 3, sr. no.7 of notification 6/2006-CE, the same could not be said to have been excluded from the explanation - *prima-facie* arguments against the confirmation of duty demand is not convincing – Pre -deposit ordered of duty amount of Rs.5.54 crores – however, since appellants are disputing the interpretation of the provisions regarding the exemption notification, the complete waiver for penalty.

[2009-TIOL-1211-CESTAT-BANG](#)

M/s Sapthagiri Cements Private Limited Vs CCE, Visakhapatnam (Dated: February 9, 2009)

Central Excise – Issues decided in appeal brought out again in ROM application – Matters already decided by Tribunal after looking into every aspect of the evidence on record – A decision on a debatable point of law or fact, or failure to apply the law to a set of facts, which remains to be investigated cannot be corrected by way of rectifications – Tribunal cannot recall its own order, proper mechanism is to approach a higher court – No merits in ROM application

[2009-TIOL-1210-CESTAT-MAD](#)

M/s Tamilnadu Textile Corporation Ltd Vs CCE, Coimbatore (Dated: April 17, 2009)

Central Excise – refund of interest – refund of interest cannot be rejected on the ground that the same is not governed by the provisions of Section 11 B of the Central Excise Act, 1944 – matter remanded to examined the aspect of unjust enrichment.

<u>2009-TIOL-1205-CESTAT-MUM</u>
Klassic Wheels Pvt Ltd Vs CCE, Aurangabad (Dated:June 4, 2009)
Supplementary invoices – interest – Demand of interest set aside based on a Five Member order [that was never delivered]
<u>Also see analysis of the Order</u>
<u>2009-TIOL-1204-CESTAT-MAD</u>
M/s Hindustan Motors Limited Vs CCE, Chennai-II (Dated: May 20, 2009)
Central Excise – Valuation – Advertisement charges incurred by the dealers are not includable in the value of the motor vehicles.
<u>2009-TIOL-1203-CESTAT-BANG</u>
CCE, Bangalore-III Vs M/s Himalaya Drug Company (Dated: April 28, 2009)
Central Excise – Face Wash Gel cleared with Anti-Dandruff Shampoo – duty was paid on Anti-Dandruff Shampoo under Section 4A and Face Wash Gel offered free – no infirmity in the order of the lower adjudicating authority in setting aside the demand of duty by including the cost of face wash in MRP.
<u>2009-TIOL-1202-CESTAT-BANG</u>
M/s Spectra Lamps Pvt Ltd Vs CCE, Mysore (Dated: April 3, 2009)
Central Excise – Earlier order of Tribunal considered the facts pertaining to the service of order-in-original and upheld the Appellate Commissioner's order of dismissal of appeal on limitation – No reason to recall Tribunal's order

<u>2009-TIOL-1198-CESTAT-KOL</u>
M/s Nicco Corp Ltd Vs CCE, Kolkata-III (Dated: April 6, 2009)

Central Excise – Goods cleared to ship builders against certificates indicating goods as ship stores for Indian Navy – Benefit of Notification 64/95-CE not available – Since goods are supplied against false certificates and are not intended for use as per certificates extended period invokable – DGCEI has all India jurisdiction and SCN issued by officials of DGCEI under Central Excise Act not beyond jurisdiction – CESTAT decision in Copier Force India case [2009-TIOL-75-CESTAT-MAD](#) distinguished

[Also see analysis of the Order](#)

[2009-TIOL-1197-CESTAT-MAD](#)

M/s HTL Ltd Vs CCE, Chennai (Dated: April 22, 2009)

Central Excise – valuation – inclusion of interest on advances – the original authority finalized the assessment without carefully considering the relevant case law in relation to addition of wage arrears in the assessable value and wrongly decided includability of interest on advances without studying its includability with reference to the settled law. There is also no meaningful discussion and finding on the includability of interest on loan portion of capital employed by HTL received from DOT – matter remanded.

[2009-TIOL-1196-CESTAT-BANG](#)

M/s SRK Products (Pvt) Ltd Vs CCE, Bangalore-II (Dated: February 11, 2009)

Central Excise – Amount deposited under interim orders of Tribunal in a dispute to be refunded with interest from date of pre -deposit – Impugned order denying interest set aside – Rejection of refund claim of duty debited in PLA for non payment of service tax on carriage inwards upheld as there is no evidence of duty payment under protest

[2009-TIOL-1193-CESTAT-MUM](#)

CCE & CC, Nagpur Vs Ultratech Cement Ltd (Dated: June 2, 2009)

Cenvat credit on telephone service in respect of mobile phones provided to and used by assessee's employees – no case of Revenue that burden cast on manufacturer to prove that phones were used directly or indirectly in or in relation to manufacture or clearance of final products or in connection with business activity has not been discharged – Credit available - Gujarat High Court decision in the case of Commissioner V/s. Excel Crop Care Ltd. [[2008-TIOL-568-HC-AHM-CX](#)] relied upon – Revenue appeal dismissed.

[2009-TIOL-1186-CESTAT-BANG](#)

M/s Swastik Engineering Vs CCE, Bangalore (Dated: April 27, 2009)

Central Excise – Brass strips, phosphor bronze strips and copper strips obtained after cutting & slitting of coils and subjected to further process – Denial of input credit later on the ground that processes does not amount to manufacture not justified when assessee was advised to register and pay duty – Prima facie strong case on merits – Full waiver of pre -deposit and stay granted

2009-TIOL-1185-CESTAT-BANG**M/s Taher Ali Industries & Projects (P) Ltd Vs CCE, Visakhapatnam (Dated: January 15, 2009)**

Central Excise – When there is no SCN or Adjudication order, no appeal maintainable in a case which is still under investigation – Impugned order of Appellate Commissioner dismissing appeal as not maintainable upheld

2009-TIOL-1182-CESTAT-MUM**Hindustan Coca Cola Beverages Pvt Ltd Vs CCE, Thane I (Dated: June 23, 2009)**

Return of empty glass bottles/crates by one bottling unit to another on payment of duty - Availment of Cenvat Credit - CESTAT grants waiver of pre-deposit of Rs.3 Crores

CESTAT decision in Hindustan Coca Cola Beverages Pvt. Ltd. [[2007-TIOL-712-CESTAT-MUM](#)] relied upon.

Also see analysis of the Order**2009-TIOL-1181-CESTAT-KOL****M/s Greenply Industries Ltd Vs CCE, Kolkata VII (Dated: March 9, 2009)**

Central Excise - No evidence on record to show that imported timber logs on which CENVAT credit was availed and stored outside factory premises, were not used in manufacture of dutiable final products and diverted by appellants – Prima facie case in favour of appellants – Duty paid on defective inputs cleared from storage yard – Pre - deposit of Rs. 80,000 ordered in lieu of penalty and balance amount of Rs. 5.8 crores waived

2009-TIOL-1180-CESTAT-MUM

CCE, Nagpur Vs Indorama Synthetics (I) Ltd (Dated: June 12, 2009)

Penalty under rule 15 of CCR, 2004 - Cenvat Credit – Duty paid furnace oil used for generation of electricity, part of which used in manufacture of excisable goods and part diverted to residential colony – since matter was agitated by respondent for a long period before a hierarchy of judicial fora, there is no question of malafides – during period of dispute, availment of credit cannot be said to have been ill-motivated – Vacation of penalty by lower appellate authority proper in law – Revenue appeal dismissed.

[2009-TIOL-1173-CESTAT-BANG](#)

CCE & C, Hyderabad Vs M/s Jay Engineering Works Ltd (Dated: April 24, 2009)

Central Excise – Valuation – Section 4 vis-à-vis Section 4 – electric fans supplied to Government Departments under DGS&D rate contract are assessable under Section 4A of the Central Excise Act, 1944 – Commissioner (A) order setting aside the demand of duty under Section 4 is upheld.

[2009-TIOL-1169-CESTAT-BANG](#)

M/s Jocil Ltd Vs CC & CCE, Guntur (Dated: February 17, 2009)

Central Excise – Suo moto availment of credit of excess duty paid in PLA – When there is no malafide intent penalty under Rule 25 not leviable

[2009-TIOL-1164-CESTAT-MUM](#)

M/s Sanjivani SSK Ltd Vs CCE, Aurangabad (Dated: March 2, 2009)

Molasses manufacturer paying Central Excise duty and procurer availing Cenvat Credit – No cause for denying credit by taking recourse to Rule 4(2) of the Central Excise Rules, 2002

Tribunal decision in Sagar Industries & Distilleries Pvt. Ltd. [[2006-TIOL-2008-CESTAT-MUM](#)] relied upon.

[Also see analysis of the Order](#)

[2009-TIOL-1163-CESTAT-DEL](#)

CCE, Jalandhar Vs M/s Khanna Paper Mills Ltd (Dated: April 23, 2009)

Central Excise – Manufacturing entities set up at different points of time coming under same management subsequently, to be regarded as separate units for availing benefit of exemption notifications for paper products – SC decision in *Rollatainers Ltd 2004-TIOL-67-SC-CX* followed – Impugned order upheld

[2009-TIOL-1162-CESTAT-BANG](#)

CCE, Hyderabad Vs M/s Kedia Vanaspatti Ltd (Dated: September 25, 2008)

Central Excise – Money Credit accrued to a manufacturer in one unit and remaining unutilized, eligible for utilization by another unit of same manufacturer – No merits in revenue appeal – Impugned order upheld

[2009-TIOL-1159-CESTAT-MUM](#)

CCE, CC& ST, Nashik Vs M/s Jyoti Structures Ltd (Dated: June 16, 2009)

Wrongly availed exemption notification, no mens rea proved by Revenue - no cause for imposition of penalty under section 11AC of the CEA,1944 - CESTAT dismisses Revenue appeal.

Apex Court decision in Union of India Vs. M/s. Rajasthan Spinning & Weaving Mills ([2009-TIOL-63-SC-CX](#)) and Commissioner of Customs and Central Excise Vs. M/s. Lanco Industries Ltd ([2009-TIOL-63-SC-CX](#)) relied upon.

[Also see analysis of the Order](#)

[2009-TIOL-1158-CESTAT-BANG](#)

M/s Bharat Petroleum Corp Ltd Vs CCE, Kochi (Dated: January 13, 2009)

Central Excise – Clearance of Naphtha to NTPC Power plant at Kayamkulam without payment of duty under Notification 6/2002-CE objected by Revenue as capacity mentioned in certificate slightly differs with that of Notification – Revenues objection repugnant to common sense as there is no other power plant at Kayamkulam – Impugned orders set aside

[2009-TIOL-1157-CESTAT-BANG](#)

M/s Andhra Pradesh Paper Mills Ltd Vs CCE & CC, Visakhapatnam (Dated: January 23, 2009)

Central Excise – CENVAT Credit not deniable on supporting structures of plant and machinery – Impugned order set aside

[2009-TIOL-1154-CESTAT-MAD](#)

CCE, Madurai Vs TVS Srichakra Ltd (Dated: May 26, 2009)

Central Excise – rubberized tyre cord warp sheet falls under Chapter Heading 59.06 and eligible for exemption under Notification 67/95 CE when used captively in the manufacture of tyres.

[2009-TIOL-1149-CESTAT-DEL](#)

Hindustan Petroleum Corp Ltd Vs CCE, Lucknow (Dated: May 19, 2009)

Mere absence of clearance from COD or delay in obtaining the clearance from COD cannot be a ground for dismissal of the appeal or any application - CESTAT recalls order and restores appeal.

Tribunal's observations -

- + It is settled law that the remedy of appeal is a creation of statute and no such remedy can be availed unless the statute under which the proceedings are initiated specifically provides for such remedy.
- + At the same time, once such a remedy is provided under a statute, the right in that regard arises with the initiation of the original proceedings themselves.
- + Considering the same, rejection of the appeal on any ground contrary to the statutory provisions would result in great injustice to the party and would virtually negate the right of appeal which is otherwise assured to the aggrieved party under the statute.
- + As regards the requirement of clearance from COD, the same is not in terms of the statutory provisions either under the Central Excise Act or under the Customs Act or the Finance Act under which the Service Tax matters are dealt with but is in terms of specific directions issued by the Apex Court in ONGC's case ([2002-TIOL-196-SC-CX](#)).
- + The requirement of clearance from COD for such litigation, however, cannot be construed to empower the Court or Tribunal to dismiss the proceedings for want of clearance from COD.
- + The Apex Court in ONGC's case (supra) ([2002-TIOL-196-SC-CX](#)), has very clearly stated that - "...in the absence of the clearance, the proceedings would not be proceeded with."

+ The expression 'proceeded with' cannot be construed as empowering the Court or Tribunal "to terminate" the proceedings. It would certainly empower the Court or Tribunal to refrain from taking further steps in such proceedings in the absence of clearance from COD.

+ The power of the Committee being restricted to the efforts for reconciliation and in the absence thereof to grant clearance for litigation, it is obvious that the decisions of the Apex Court in ONGCs' case do not amount to taking away the right of the litigant to file the appeal which is statutorily assured to them under the relevant provisions of the statutes.

+ Once it is shown that the original order of dismissal of the appeal itself was absolutely bad in law and this aspect having brought to the notice of the Tribunal, it will be the duty of the Tribunal to recall such order and avoid injustice to the aggrieved party.

Application for Restoration of Appeal allowed and Appeal restored.

[Also see analysis of the Order](#)

[2009-TIOL-1148-CESTAT-DEL](#)

CCE, Chandigarh Vs M/s Dabur India Ltd (Dated: April 30, 2009)

Central Excise – Abatement of additional sales tax and octroi on equalized basis allowable but expenses to be segregated exclusively in respect of excisable goods cleared by assessee for respective years – Impugned order of Appellate Commissioner and Original authority set aside and matter remanded for redetermination of actual abatement

[2009-TIOL-1147-CESTAT-MAD](#)

M/s Kanchi Kapooram Ltd Vs CCE, Chennai (Dated: May 15, 2009)

Central Excise – semi finished goods destroyed in fire – the appellant is not required to reverse the credit on inputs contained in semi finished goods destroyed.

[2009-TIOL-1146-CESTAT-BANG](#)

M/s Apple Lab Ltd Vs CCE, Hyderabad (Dated: January 30, 2009)

Central Excise – Amount of 8% paid in terms of Rule 57CC and recovered from customers not required to be deposited with Government – Provisions of Section 11D not applicable – LB decision in Unison Metals [2006-TIOL-1337-CESTAT-DEL-LB](#) followed

<u>2009-TIOL-1140-CESTAT-MUM</u>
M/s Ballarsha Plywood Vs CCE & CC, Nagpur (Dated: March 5, 2009)
Rule 6 of the CCR, 2004 – when sawing is not a process employed in the manufacture of particle board, dust which arises cannot be called 'saw dust' so as to bracket it as exempted excisable goods – CESTAT waives pre -deposit and orders stay.
<u>Also see analysis of the Order</u>
<u>2009-TIOL-1139-CESTAT-BANG</u>
M/s B P Mobiles Vs CCE, Mysore (Dated: April 8, 2009)
Central Excise – Assessee's payment of excess amount over and above the actual demand in SCN factually correct and Tribunal's order for adjustment of this amount for outstanding dues in order – No merits in Revenues ROM
<u>2009-TIOL-1138-CESTAT-BANG</u>
M/s Apollo Tyres Ltd Vs CCE, Calicut (Dated: April 15, 2009)
Central Excise – Tubes and flaps along with tyres assembled and strapped together and cleared to OEMs cannot be regarded as clearance 'as such' – Not covered under Rule 3(5) of CENVAT Credit Rules, 2004 – Full waiver of pre -deposit and stay granted
<u>2009-TIOL-1133-CESTAT-MUM-LB</u>
CCE, Mumbai-III Vs M/s Supreme Petrochem Ltd(Dated:June 12, 2009)
Valuation – Central Excise – pre 1.7.2000, the expenses of loading of excisable goods within the factory for clearance to a buyer are liable to be included in the assessable value of the goods irrespective of who incurred such expenses ...for the period prior to 1.7.2000, the principle which was laid down by the Apex Court in Bombay Tyre International (supra) and subsequently followed In Indian Oxygen (supra) has got to be applied and, accordingly, the expenses of loading of goods within the factory are includable in the assessable value of the goods for the period prior to 1.7.2000 irrespective of who incurred such expenses.
For the period from 1.7.2000 also, it is liable to be included in the assessable value of the goods unless it is proved by the assessee that the burden of such expenses was not borne by them – ...Cost of loading of the goods cannot be

treated as part of cost of transportation under Rule 5 of the Central Excise Valuation Rules, 2000 as Rule 5 would be applicable only to a case where the goods are sold for delivery at a place other than the place of removal and for the further reason that, even in Bombay Tyre International, transportation from factory gate (place of removal) to the place of sale/delivery was treated differently from outward handling of goods up to factory gate and in the instant case, the place of removal and the place of sale/delivery were one and the same, namely the factory.

[Also see analysis of the Order](#)

[2009-TIOL-1132-CESTAT-BANG](#)

M/s Electronic Control Corporation Vs CCE & CC , Cochin (Dated: February 26, 2009)

Central Excise – Clandestine manufacture & clearance of electric chokes – Method adopted by adjudicating authority to correlate purchase of raw materials with finished products manufactured & cleared not convincing – Production & clearance calculations arrived at by adjudicating authority does not even correlate with statement given in this regard by assessees and other available evidences – Matter remanded to original authority for de novo decision after granting hearing to assessees

[2009-TIOL-1131-CESTAT-BANG](#)

M/s Aurobindo Pharma Ltd Vs ACCE, Hyderabad (Dated: March 4, 2009)

Central Excise – Clearance of bulk drugs viz., etavirenz, nelfinavir mesylate, didanosine, indinavir, nevirapine and stavudine eligible for exemption in terms of S. No. 47A of Notification 4/2006-CE and not S.No. 47B as claimed by Revenue – Commissioner's order set aside and Commissioner (Appeals) order upheld

[2009-TIOL-1121-CESTAT-MAD](#)

M/s Burn Standard Co Ltd Vs CCE, Salem (Dated: April 28, 2009)

Central Excise – Stay / dispensation of pre-deposit - CENVAT Credit – common inputs used in dutiable and exempted goods - the appellants are not required to pay 10% of the sale price of the exempted products if they have not availed, or reversed subsequently, the credit relatable to inputs that have gone into production of exempted final products – complete waiver of pre-deposit granted.

[2009-TIOL-1117-CESTAT-BANG](#)

M/s C Krishnaiah Chetty & Sons Private Limited Vs CCE, Bangalore (Dated: March 6, 2009)

Central Excise – Supply of raw materials for manufacture of gold jewellery – Raw material supplier cannot be held as manufacturer –Mere embossing of initials of raw material supplier for easy identification cannot be equated with affixing of brand name – Pre-deposit waived and stay granted

[2009-TIOL-1113-CESTAT-BANG](#)

M/s L G Polymers India Pvt Ltd Vs CCE, Visakhapatnam (Dated: February 26, 2009)

Central Excise – Revenue cannot re -argue same points earlier decided in appeal through an ROM – Section 35C to be pressed into service only when there is an error apparent on record.

[2009-TIOL-1112-CESTAT-BANG](#)

M/s IBEX Gallagher Pvt Ltd Vs CCE, Bangalore (Dated: October 21, 2008)

Central Excise – Solar powered electric power fencing is not excisable goods – Impugned order set aside

[2009-TIOL-1109-CESTAT-DEL](#)

CCE, Delhi-III Vs M/s Grand Prints Pvt Ltd (Dated: April 15, 2009)

Central Excise – Committee of Commissioners – Law as comprised under Section 35B(2) nowhere requires a detailed order to be passed expressing formation of opinion about the need to file an appeal – Circulation of file with relevant papers among Committee members and assent thereto by members, sufficient to conclude that opinion was formed by Committee, no meeting required

Authorization to file appeal – Proper reading of entire noting as a whole in relevant file obviously reveals that those notings relate to the issue of filing of appeals against the order passed by Commissioner (Appeals) – Respondents having not filed any reply to the applications filed by revenue and merely arguing that there was no case to form opinion about the need to file appeals in the face of records clearly revealing the contrary, are of no substance – Expression "CCE-Delhi-III" has been recorded subsequent to recording of the formation opinion to file the appeals in the noting, which indicates that the officer named with description as above was the officer authorized to file the appeals – Miscellaneous applications allowed

Application for early hearing rejected as no case made out for early hearing

[Also see analysis of the Order](#)

[2009-TIOL-1108-CESTAT-BANG](#)

M/s GMR Industries Ltd Vs CCE, Visakhapatnam (Dated: January 20, 2009)

Central Excise – Credit not deniable on MS plates, Channels, Angles, Welding electrodes used for manufacture/fabrication of storage tanks in the factory

[2009-TIOL-1107-CESTAT-MAD](#)

M/s Ashok Leyland Ltd Vs CCE, Chennai (Dated: May 11, 2009)

Central Excise – Valuation – goods cleared to Regional Sales Offices (RSOs) and sold to Govt departments at a price higher than the dealer price – demand of duty on the excess amount charged is upheld – extra amount realized to be treated as cum-duty.

[2009-TIOL-1100-CESTAT-DEL](#)

M/s Euro Cotspin Ltd Vs CCE, Chandigarh (Dated: May 8, 2009)

Central Excise – 100% EOU – Evidence on record to show clearances to DTA in excess of permissible limits – While deemed export to be treated at par with physical exports for determining quantum of clearances permitted to DTA, no evidence forthcoming in de novo proceedings – Plea to treat clearance value to DTA as cum duty price agreed – No evidence put forth on record to support claim of financial hardship – Pre-deposit of Rs. 50 lakhs ordered

[2009-TIOL-1099-CESTAT-DEL](#)

M/s Cosmos Ispat Pvt Ltd Vs CCE, Raipur (Dated: March 26, 2009)

Central Excise – Compounded levy introduced during closure of factory – Option exercised for compounded levy on re-opening of factory applicable only prospectively – Duty demand for prior period not sustainable – Impugned order modified and held that duty payable only from date of re-opening of factory

[2009-TIOL-1096-CESTAT-BANG](#)

M/s Sujana Metal Products Ltd Vs CC & CCE, Hyderabad (Dated: May 1, 2009)

Central Excise – Supplies to SEZ Developer – amendment to Cenvat Credit Rules retrospective – Stay granted: the SEZ Act, 2005 provides for the exemption of supplies made to a developer. Moreover, the amendment to Cenvat Credit Rules,

2004 should be taken to be clarificatory in nature as the word "substituted" has been used.

[Also see analysis of the Order](#)

[2009-TIOL-1095-CESTAT-AHM](#)

M/s Sarla Polyester Ltd Vs CCE & CC, Vapi (Dated: May 29, 2009)

Central Excise – Polyester covered yarn and Nylon covered yarn manufactured by applying the process of conventional covering classifiable under Chapter 5402.62 and 5402.61 – When facts are known to the department extended period cannot be invoked – Manner of computation of duty remanded to Commissioner for reconsideration

[2009-TIOL-1094-CESTAT-DEL](#)

M/s Dabur India Ltd Vs CCE, Ghaziabad (Dated: March 17, 2009)

Central Excise – When respondent has no objection, rectification application allowed with requisite directions to modify earlier order

[2009-TIOL-1090-CESTAT-DEL](#)

Dabur India Ltd Vs CCE, Ghaziabad (Dated: August 4, 2008)

Central Excise – Manufacture & dutiability of clove oil and sandalwood oil received in bulk and repacked into small quantity – No evidence on record to show assessees undertook any process on oils received – In the absence of chapter note for goods classifiable under Heading 33.01 of Central Excise Tariff which provides that packing and repacking amount to manufacture, repacking from bulk to retail does not amount to manufacture – Duty demand set aside

Classification of Saunf ka ark – Product manufactured exclusively in accordance with formula described in authoritative book mentioned in First Schedule to Drugs & Cosmetics Act under drug licence issued by competent authority – Evidence to show that Ark sold as medicine – Classifiable under sub-heading 3001.31 – Revenue's proposal to classify under 3301.00 rejected

[2009-TIOL-1085-CESTAT-MAD](#)

CCE, Tiruchirapalli Vs Suja Rubber Industries (Dated: April 21, 2009)

Central Excise – default in payment of monthly duty liability – Since the last date for payment was Sunday; duty was paid next day – no case of default under Rule 8 of the Central Excise Rules.

[2009-TIOL-1083-CESTAT-BANG](#)

M/s Dodsal Corporation Pvt Ltd Vs CCE, Bangalore (Dated: March 4, 2009)

Central Excise – Whether pizza cleared in packed containers classifiable under Chapter 19 as bakery product or Chapter 16.01 as preparation of meat – In view of a decision favouring appellants and different interpretations given by departmental authorities, larger period not invokable – Full waiver of pre-deposit granted and recovery stayed

[2009-TIOL-1080-CESTAT-MAD](#)

M/s Rajalakshmi Textile Processors Pvt Ltd Vs CCE, Salem (Dated: April 22, 2009)

Central Excise – refund – unjust enrichment – the appellant job workers operating under compounded levy scheme – duty paying documents do not indicate the duty element - Assessee could not establish their case that they had not passed on excess duty paid, with the help of these documents - The alternative course open to them to discharge the burden cast on them u/s 12B of the Act probably was with reference to their accounts; the structure of the composite price and how they had accounted the proceeds in the material period - This, strangely, the assessee has not attempted – no infirmity in the order of the lower authorities holding that the refund is hit by bar of unjust enrichment.

[2009-TIOL-1074-CESTAT-MUM](#)

Choksi Enterprise Vs CCE, Mumbai II (Dated: June 11, 2009)

For a Modvat case of year 1989, the appellate authority chose to apply rule 9 of the Cenvat Credit Rules, 2001 - Non-application of mind is writ large on the order of the Commissioner(Appeals) – CESTAT remands matter .

[Also see analysis of the Order](#)

[2009-TIOL-1073-CESTAT-BANG](#)

M/s Federal Mogul Tpr India Ltd Vs CCE, Bangalore (Dated: March 12, 2009)

Central Excise – Credit availed on duty paid by job worker – Once duty has been paid credit can be taken – Prima facie case in favour of appellants – Full waiver of pre-

deposit and stay granted

[2009-TIOL-1072-CESTAT-BANG](#)

Ultra Tech Cement Ltd Tadipatri Mandal Vs CCE, Tirupati (Dated: February 25, 2009)

Central Excise – No infirmity in assessee taking suo moto credit in CENVAT A/c of amount reversed earlier, after receipt of favourable order from lower authority – Pre-deposit waived and stay granted

[2009-TIOL-1070-CESTAT-MAD](#)

M/s Virgo Industries (Engineers) Pvt Ltd Vs CCE, Chennai (Dated: April 20, 2009)

Central Excise – excisability of Signages – Signages are not immovable goods as contended by the appellants – Signages are capable of being assembled at the premises of the appellants and do not emerge as an immovable property on assembly or erection - An item which is fixed in the earth can continue to be movable and excisable if the same is capable of being shifted from one place to another without having to dismantle the same into the constituent components. Undisputedly signages are capable of being assembled at the premises of the appellants and then transferred to the site of its erection after dismantling the same. Demand of duty and invoking larger period upheld penalty on the Managing Director upheld but quantum reduced (Rule 26 of Central Excise Rules, 2002)

[Also see analysis of the Order](#)

[2009-TIOL-1069-CESTAT-DEL](#)

M/s Nahar Spg & Wvg Mills Ltd Vs CCE, Bhopal (Dated: February 23, 2009)

Central Excise – Time of removal in respect of goods removed from the place of removal shall be deemed to be the time at which such goods are cleared from the factory – Excess duty paid on price at the time of clearance from factory and lower price charged on the same day at depot sufficient to establish that there is no unjust enrichment – No need to chase the goods and see at what price they are sold at the depot – Impugned order set aside and order of original authority sanctioning refund restored

[2009-TIOL-1068-CESTAT-BANG](#)

M/s Kaveri Pet And Polyforms Pvt Ltd Ernakulam District Vs CCE, Cochin (Dated: January 23, 2009)

Central Excise – Supply of moulds and dies free of cost, value of which amortized in the value of final products viz., plastic moulded chairs, tables etc manufactured on job work basis – In the absence of mutuality of interest in the business of each other, job worker and raw material supplier cannot be regarded as related persons – No merits in impugned order – Demand of differential duty, interest and imposition of penalty set aside

[2009-TIOL-1060-CESTAT-DEL](#)

M/s Pahwa Chemicals Pvt Ltd Vs CCE, Delhi-IV (Dated: April 29, 2009)

Central Excise – Appellate authority has inherent power of granting interim relief in exercise of its appellate jurisdiction – Tribunal fully empowered to pass such order as it may find necessary to secure ends of justice – Tribunal's direction to pay interest & penalty during hearing of stay application cannot be subjected to review subsequently – Once a point has been held against appellant during pendency of appeal, it is not open for appellant to file successive applications in relation to same point – Mere failure to mention correct procedure of law regarding liability to pay interest would not be fatal - Merely because authorities had sought to levy interest under provisions other than it was disclosed in the show cause notice, it cannot be a ground to contend that there would be justification for stay of recovery of interest during the pendency of appeal

[2009-TIOL-1059-CESTAT-DEL](#)

M/s PNC Construction Co Ltd Vs CCE, Lucknow (Dated: April 29, 2009)

Central Excise – Essentiality certificate under Notification 108/95-CE received subsequent to purchase of goods – Relevant date for claim of refund of duty paid is date of purchase of goods and not the date of issue of essentiality certificate – No infirmity in impugned order

[2009-TIOL-1058-CESTAT-DEL-LB](#)

M/s Moser Baer India Ltd Vs CCE, Noida (Dated: June 26, 2009)

Central Excise - EOUs liable to pay SAD for DTA Clearances, if exempted from Sales Tax/VAT: In respect of clearances on which sales tax is exempted, SAD components should be included while determining and in respect of clearances on which sales tax is paid, the SAD component should not be included.

[Also see analysis of the Order](#)

[2009-TIOL-1057-CESTAT-MUM](#)

CCE, Mumbai II Vs Hercules Mech Works (Dated: June 15, 2009)

Amount payable in terms of Rule 57CC of the CER, 1944 not recoverable under Rule 12 of the Cenvat Credit Rules, 2002 – CESTAT dismisses Revenue appeal.

Tribunal decision in Pushpaman Forgings vs. Commissioner of Central Excise, Mumbai VII [[2002-TIOL-276-CESTAT-Mum](#)] as affirmed by Supreme Court relied upon.

[Also see analysis of the Order](#)

[2009-TIOL-1056-CESTAT-MAD](#)

M/s Servo Packaging Ltd Vs CCE, Pondicherry (Dated: April 30, 2009)

Central Excise – CENVAT Credit – reduction of price by the supplier of inputs – the issue stands settled by the Tribunal that the appellant is eligible for full CENVAT Credit as also clarified by the CBEC.

[2009-TIOL-1055-CESTAT-MAD](#)

CCE, Madurai Vs Sundaravel Fireworks Industries (Dated: April 28, 2009)

Central Excise – SSI exemption – Brand name - it is crystal clear that brand name in question belonged to SFPL (Sundaravel Fire works Pvt. Ltd) which is a separate legal entity from SFI. Since SFI has used the brand name of another person viz. SFPL on its goods, it is not entitled to the benefit of the exemption in terms of the notifications in question.

[2009-TIOL-1050-CESTAT-MAD](#)

M/s Bombay Burmah Trading Corp Ltd Vs CCE, Coimbatore (Dated: April 17, 2009)

Central Excise - Interest debited from Cenvat account and claimed as refund due to payment of Interest in cash again - the appellant are not entitled for refund of Interest debited from CENVAT account - there are no provisions in the Statute to grant refund of interest.

[2009-TIOL-1048-CESTAT-MAD](#)

M/s Technico Engineering Pvt Ltd Vs CCE, Bangalore (Dated: April 30, 2009)

Central Excise – CENVAT Credit – removal of capital goods – interest – plea that the removal is not by the assessee, but by the finance company is not acceptable - the appellant is liable to pay interest.

[2009-TIOL-1047-CESTAT-BANG](#)

M/s Xerox India Ltd Vs CC & CCE, Hyderabad (Dated: February 4, 2009)

Central Excise – Manufacture & Dutiability of kits of photo copiers cleared from depot after procuring components/assemblies through imports/indigenously – Pre-deposit of Rs. 40 lakhs ordered out of a demand of Rs. 34.70 crores duty/penalty

[2009-TIOL-1046-CESTAT-MUM](#)

HD Fire Protect Pvt Ltd Vs CCE, Mumbai-III (Dated: June 13, 2009)

Appellate authority choosing to follow either of the conflicting decisions without indicating the reasons there for – matter now stands resolved by the High Court ruling – since conflict obliterated, CESTAT remands the case.

[2009-TIOL-1043-CESTAT-DEL](#)

Radhey Shaym Gupta Vs CCE, Ludhiana (Dated: April 20, 2009)

Central Excise – Application for waiver of pre-deposit and stay of Appellate Commissioner's order – Assessee to point out arbitrariness on the part of lower authority in refusing to exercise discretion under proviso to Section 35F – When records reveal that lower authority applied its mind and directed pre -deposit of entire amount and refused to exercise discretion to waive pre -deposit of entire amount or part thereof, no reason to interfere with such order – Mere contention that Appellate Commissioner did not consider merits of the case before order of pre -deposit not a ground to interfere – No plea of financial hardship – Stay of impugned order cannot be granted – Assessee to comply with order of pre -deposit and report compliance

[Also see analysis of the Order](#)

[2009-TIOL-1037-CESTAT-MAD](#)

CCE & ST, LTU, Chennai Vs M/s Ashok Leyland Ltd (Dated: April 17, 2009)

Central Excise – CENVAT Credit – credit taken reversed before utilization along with interest – the respondents are entitled for refund of interest paid on such credit reversed – revenue appeal has no merit.

<u>2009-TIOL-1036-CESTAT-MAD</u>
CCE, Trichy Vs SRF Ltd (Dated: April 22, 2009)
Central Excise – exemption under Notification 67/95 CE cannot be denied to the grey fabric consumed for manufacture of rubberized textile fabric on the ground that no additional duty of excise is leviable on the final products - the benefit is available unless the final products manufactured out of such inputs are exempt from the whole of the duty of excise or additional duty of excise leviable thereon or are chargeable to nil rate of duty – revenue's contention that the impugned goods, the intermediate product woven from nylon/polyester filament yarn falls under chapter 54.06 is upheld.
<u>2009-TIOL-1034-CESTAT-MAD</u>
M/s Almonard P Ltd Vs CCE, Chennai IV (Dated: April 17, 2009)
Central Excise – CENVAT Credit – dutiable and exempted goods – payment of 10% under rule 6 (3)(b) – matter remanded for fresh decision in view of Larger Bench decision in case of M/s Nicholas Piramal (I) Ltd vs. CCE, Thane <u>2008-TIOL-1877-CESTAT - MUM-LB</u>
<u>2009-TIOL-1033-CESTAT-MUM</u>
CCE, Raigad Vs M/s Mahalaxmi Seamless Ltd (Dated: April 28, 2009)
Common cenvatted inputs used for job work as well as for manufacture of dutiable final products – no need to reverse credit on inputs used for job work – LB decision in Sterlite Industries [<u>2005-TIOL-305-CESTAT-Mum-LB</u>] upheld by Bombay High Court in C.E Appeal no. 76 of 2008 – Revenue appeal not sustainable, hence dismissed.
<u>2009-TIOL-1026-CESTAT-MAD</u>
CCE, Chennai Vs M/s Jain Rubber (P) Ltd (Dated: March 16, 2009)
Central Excise – Classification – Latex Bulbs - The list of items covered under entry 40.14 and explained in the note under the entry in HSN are all not capable of use as such independently; some of them such as bulbs for syringes form part of other appliances. The latex bulb in question used in an IV set is a hygienic article of vulcanized rubber other than hard rubber belonging to the family of articles cited in the explanation under entry 40.14 of HSN. Hence, the item is appropriately classifiable under CSH 4014.90. (Para 4)

[2009-TIOL-1025-CESTAT-MUM](#)

M/s Jai Prakash Strips Ltd Vs CCE & CC, Nashik (Dated: June 9, 2009)

If applicant is aggrieved with the order of pre -deposit of Tribunal, remedy lies elsewhere and not by way of modification of the order – Modification application dismissed.

[2009-TIOL-1023-CESTAT-MUM](#)

M/s System Engineers Vs CCE, Pune-I (Dated: May 1, 2009)

Refund of amount paid during investigations is also to be subjected to the test of unjust enrichment in view of Apex Court decision in Sahakari Khand Udyog Mandal Ltd. [[2005-TIOL-48-SC-CX-LB](#)] – ROM application cannot seek to reargue the matter or call upon the Tribunal to review the basis of its decision – ROM dismissed.

[2009-TIOL-1019-CESTAT-MUM](#)

M/s Walchandnagar Industries Ltd Vs CCE, Pune III (Dated: June 2, 2009)

Section 4 of CEA, 1944 - Chief Design Engineer stating that the Electrical centrifuges could not work without assembly of the bought out items – being essential parts their value includable in assessable value – Pre-deposit ordered.

[2009-TIOL-1011-CESTAT-MUM](#)

CCE, Mumbai-V Vs M/s Perfect Dies Works (Dated: April 27, 2009)

Opting out of SSI exemption – reversal of Cenvat credit – assessee declared stocks of inputs and finished goods as Rs.54,781/- whereas in the work sheets prepared by the Chartered Accountant, after exclusion of non-modifiable stock, show the value of modifiable stock lying on 31.03.2004 as Rs.11,22,618/- - charge of suppression sustainable – matter remanded to Commissioner(A) – Revenue appeal allowed.

[2009-TIOL-1010-CESTAT-MUM](#)

Amol Paper Mills Pvt Ltd Vs CCE, Raigad (Dated: June 1, 2009)

Duty with interest paid prior to issuance of show cause notice – whether covered under section 11A(2B) of the CEA, 1944 and whether imposition of penalty u/s 11AC can be resisted – matter remanded to original authority to examine issue in light of

P&H High Court decision in CCE, Rohtak vs. J.R.Fabrics (P) Ltd. – [[2009-TIOL-259-HC-P&H-CX](#)]

[2009-TIOL-1008-CESTAT-MAD](#)

CCE, Coimbatore Vs Shree Narasimha Textiles (P) Ltd (Dated: April 1, 2009)

Central Excise – ROM – Contention that the CESTAT had no jurisdiction to decide the cases involving loss of goods in transit – Held : The Tribunal proceeded on the basis of the submissions made by both sides and held that where goods have been cleared for export and are shown to have been examined, assessed and allowed for export and the jurisdictional Assistant Commissioner admitted proof of export, the Department could not raise a claim for duty on the ground that the goods had not been exported - Tribunal did not treat the case before it as one for remission of duty. No error in the earlier order.

[Also see analysis of the Order](#)

[2009-TIOL-1006-CESTAT-BANG](#)

M/s Jindal Stainless Ltd Vs CCE& CC, Visakhapatnam (Dated: January 20, 2009)

Central Excise – Valuation – CAS-4 – Goods cleared to sister units - Revenue Neutral - Duty has been paid on the basis of the certificate of the qualified Cost Accountant. The values adopted by the appellant appear to be more than the value in terms of CAS 4. Moreover, the entire exercise is revenue neutral because whatever duty is paid at the end of the appellant's factory would be taken as cenvat credit by the sister unit. Hence, the elements of expenditure included by the Commissioner (A) viz., (1) Gratuity; (2) Selling and Packing Expenses; (3) Exchange Rate; (4) preliminary expenses which were written off; (5) interest determined on the loan taken; and (6) Charity and donations, is not proper. (Para 6.1)

[2009-TIOL-1002-CESTAT-DEL](#)

M/s Eastern Medikit Ltd Vs CCE, Gurgaon (Dated: May 13, 2009)

No penalty can be imposed under section 11AC of the Central Excise Act, 1944 in respect of non-payment of the amount due under Rule 6(3)(b) of the Cenvat Credit Rules, 2002

[Also see analysis of the Order](#)

[2009-TIOL-1001-CESTAT-MUM](#)

CCE, Thane-II/Nagpur Vs Axiom Impex International Ltd (Dated: June 3, 2009)

No case of the Revenue that the mobile phones in question were used by the factory workers/employees of the respondent for purposes unconnected with the business activity – Cenvat Credit available in view of Gujarat High Court decision in Excel Crop Care Ltd. [[2008-TIOL-568-HC-Ahm-CX](#)] relied upon – Revenue appeal dismissed.

[2009-TIOL-996-CESTAT-MAD](#)**M/s Berger Paints India Limited Vs CCE, Pondicherry (Dated: April 15, 2009)**

Central Excise – valuation – MRP based assessment – Base Paints cleared to dealers who sell the same after mixing with colourants to the ultimate consumers – Base Paints in non-standard packages is statutorily recognized by including 'Base paint' in Schedule III to the Standard of Weights and Measures (Packaged Commodities) Rules 1977 by introducing the entry at Sl. No. 20 of the Schedule. – demand of duty by assessing the goods under Section 4 of the Central Excise Act, 1944 is set aside.

[Also see analysis of the Order](#)

[2009-TIOL-992-CESTAT-MUM](#)**M/s Onkar Furniture Vs CCE, Mumbai-II (Dated: May 6, 2009)**

Same reasons which are applicable for non imposition of penalty u/s 11AC of the CEA, 1944 are applicable for non invocation of longer period of limitation - Prima facie extended period of Limitation is not applicable – strong case for complete waiver of pre-deposit of duty and penalty – Tribunal order [2009-TIOL-575-CESTAT-MUM](#) relied upon.

[2009-TIOL-986-CESTAT-MUM](#)**CCE, CC & ST, Raigad Vs M/s Waman Industrial Chemicals Ltd (Dated: May 26 2009)**

Common input LDO/Furnace oil is used for processing of job work goods – No cause for reversal of Cenvat Credit as held by Larger Bench in Sterlite Industries [[2005-TIOL-305-CESTAT-MUM-LB](#)] – Revenue appeal dismissed.

[2009-TIOL-985-CESTAT-MUM](#)

M/s Madhu Tex Industries Ltd Vs CCE, Thane-I (Dated: March 25 2009)

Under valuation - Job workers doing processing of cotton man made fabrics received from merchant manufacturers/traders – for the mis-declaration of merchant manufacturers, extended period is not invokable in the absence of any finding that the assessee knew or deliberately failed to declare the correct cost of grey fabrics – there is no legal requirement thrust on the processors to verify the correctness of the declaration furnished by owners – Demand barred by limitation and penalties set aside - SC decision in Lajya Dyeing & Bleaching [[2008-TIOL-56-SC-CX](#)] followed.

[2009-TIOL-984-CESTAT -MUM](#)

M/s Cummins Generator Technologies India Ltd Vs CCE, Aurangabad (Dated: May 22 2009)

Cenvat Credit of Service Tax paid on Outdoor catering services – no mention in the pleadings as to the number of workers in the factory and as to whether the cost of supply of food in the factory canteen formed a part of the assessable value of excisable goods – matter remanded to adjudicating authority to examine the above issues in the light of the LB decision in GTC Industries – [2008-TIOL-1634-CESTAT -MUM-LB](#).

[2009-TIOL-983-CESTAT -MUM](#)

CCE, Mumbai-V Vs Shri Shyamsunder Hegde (Dated: April 29, 2009)

Respondents have paid the entire duty and twenty five percent of duty as penalty with interest within 30 days of communication of Order-in-Original – condition in proviso (1) and (2) of section 11AC fulfilled – no further penalty payable u/s 11AC of the Central Excise Act, 1944.

[2009-TIOL-980-CESTAT -BANG](#)

M/s Srivari Metcast Pvt Ltd Vs CC & CCE , Hyderabad (Dated: February 25, 2009)

Central Excise – Private records furnished by assessee themselves serves as evidence for clandestine removal of duty paid raw materials – Demand of duty by invoking extended period upheld

[2009-TIOL-977-CESTAT -MUM](#)

M/s Dharamsi Morarji Chemical Co Ltd Vs CCE, Raigad (Dated: January 23, 2009)

Rule 6 of CCR, 2004 - Sulphuric acid cleared to independent buyers by following the procedure of warehousing as laid down under Concessional Rate of duty for manufacture of Excisable Goods Rules, 2001 is only postponement of duty and not equivalent to exemption from duty – SC decision in Ballarpur Industries Ltd. [[2007-TIOL-153-SC-CX](#)] distinguishable – Strong *prima facie* case – Pre-deposit dispensed and recovery stayed.

[2009-TIOL-976-CESTAT -BANG](#)

Neo Foods Pvt Ltd Vs CC, Bangalore (Dated: January 16, 2009)

Central Excise – 100% EOU – Exempted goods exported - Service Tax – Un-utilised credit – Refund - Rule 6 (6) (v) of Cenvat Credit Rules, 2004 covers all exports of final products by a 100% EOU and, therefore, would not be hit by Rule 6 (1) as far as the entitlement to Cenvat Credit on input/input service used in relation to the manufacture of final products exported by a 100% EOU is concerned. Consequently, the appellants would be entitled for the refund of unutilized credit. (Para 11)

Principles of Excise taxation – Exports vis-à-vis home clearances - The basic principle in excise taxation is that the excise duty/service tax should be only in respect of goods/services consumed within the country. If the goods/services are exported, they should not suffer any excise duty/service tax. (Para 8)

Export under Bond – Execution of bond by 100% EOU - Every 100% EOU executes a B-17 bond, which is comprehensive. The bond is executed by 100% EOU to cover any revenue loss on account of procurement of inputs without payment of duty. There is also an export obligation for every 100% EOU. They execute a letter of undertaking with the Development Commissioner to fulfil the export obligations. In these circumstances, the export of goods by a 100% EOU should be considered as export under bond. (Para 9.2)

[2009-TIOL-972-CESTAT -MUM](#)

CCE, Aurangabad Vs Concept Pharmaceuticals Ltd (Dated: May 19, 2009)

Inputs exclusively used for manufacture of exempted final products – once the 8% amount is paid under rule 6 of the CCR, 2004, the credit cannot be questioned – CESTAT

[Also see analysis of the Order](#)

[2009-TIOL-971-CESTAT -BANG](#)

M/s Glaxo Smithkline Consumer Healthcare Ltd, Rajahmundry Vs CC & CCE, Visakhapatnam (Dated: December 12, 2008)

Central Excise – Valuation – CAS-4 – Royalty charges – Revenue neutral – The appellants clear goods in bulk to their packing stations, where retail packings are

cleared on payment of duty in terms of Section 4A. Principles enunciated under CAS-4 applicable when goods are cleared in bulk. The royalty charges based on sales are already included in the price fixed for retail sales. Hence, the entire exercise appears to be revenue neutral. There is no merit in the impugned order. (Para 6)

[2009-TIOL-970-CESTAT -BANG](#)

M/s Mysore Cements Ltd Tumkur District Vs CCE, Bangalore (Dated: February 18, 2009)

Central Excise – Availability of exemption notification 4/06-CE for clearance of cement to institutional consumers – Prima facie case in favour of appellants – Full waiver of pre -deposit in view of Tribunal decision in Chettinad Cement Corporation Ltd. vs. CCE, Trichy – [2009-TIOL-139-CESTAT -MAD](#) and stay granted

[2009-TIOL-965-CESTAT -BANG](#)

CCE, Guntur Vs M/s Andhra Sugars Ltd (Dated: December 31, 2008)

Central Excise – CENVAT Credit – whether credit is admissible on cement used for construction of supporting structures for plant and machinery – matter placed before president for constitution of Larger Bench.

[Also see analysis of the Order](#)

[2009-TIOL-964-CESTAT -BANG](#)

M/s MSPL Gases Ltd Vs CCE, Mysore (Dated: February 17, 2009)

Central Excise – Includibility of fixed facility charges in assessable value of gases supplied, prima facie case in favour of appellants – Full waiver of pre-deposit in view of Tribunal decision in BOC India vs. CCE, Jamshedpur [2005-TIOL-190-CESTAT -KOL](#) and stay granted

[2009-TIOL-963-CESTAT -BANG](#)

M/s Ruchi Infrastructure Limited Vs CCE, Visakhapatnam (Dated: February 18, 2009)

Central Excise – If there is no illegality or invalidity in taking CENVAT credit on the date of entitlement, right to utilize such credit against further duty liability become indefeasible and cannot be recovered – CESTAT Larger Bench decision in HMT Ltd vs. CCE, Panchkula [2008-TIOL-1884-CESTAT -DEL -LB](#) followed – Impugned order set aside

[2009-TIOL-958-CESTAT -MUM](#)**M/s Mita Fasteners Pvt Ltd Vs CCE, Belapur (Dated: May 11, 2009)**

Where the amount to be recovered is for a period beyond the normal period of limitation, it is necessary that the ingredients for invoking the longer period of limitation under section 11A should be alleged in the show-cause notice and established by the Revenue – CESTAT sets aside demand on ground of limitation and allows appeal.

Common inputs used for manufacturing dutiable final product and exempted job worked goods – rule 6(3)(b) of the CCR, 2002 invoked for recovery of amount of 8% - original authority setting aside demand on merits but Revenue appeal allowed by Commissioner(A) – before Tribunal appellant says that although they have a strong case on merits, they would challenge the demand as being time barred – inasmuch as no ingredients mentioned in section 11A, which mutatis mutandis applies in terms of rule 12 of the CCR, 2002, for invoking the larger period of limitation has been invoked in show cause, demand is time barred.

Apex Court decision in Kaur & Singh vs. CCE, New Delhi [[2002-TIOL-724-SC-CX](#)] referred.

[Also see analysis of the Order](#)

[2009-TIOL-956-CESTAT -BANG](#)**M/s Divi's Laboratories Ltd Vs CC & CCE, Hyderabad (Dated: January 16, 2009)**

Central Excise – Erroneously sanctioned Rebate – Show cause notice for recovery of interest - The appellants are liable to pay interest under Section 11AB on the erroneously sanctioned rebate in the light of Explanation 2 to Section 11A 2(B). The assessee is duty bound to pay the interest without waiting for any show cause notice. When the assessee himself comes forward to pay the money, which is not due to him, the issue of show cause notice becomes unnecessary and that's why Section 11A(2B) has been enacted. Further, the action of the lower authority in adjusting the said interest from the amount due to the appellant is legally correct in the light of Section 11 of the Central Excise Act. (Para 6)

[2009-TIOL-952-CESTAT -MUM](#)**CCE, Mumbai-III Vs TAS Engineering Co Pvt Ltd (Dated: May 5, 2009)**

Section 35C(2) of the CEA, 1944 - ROM application filed after 471 days along with COD – CESTAT has no power to condone delay and admit applications filed beyond six months period.

[Also see analysis of the Order](#)

[2009-TIOL-951-CESTAT -MUM](#)

Indoworth India Ltd Vs CCE, Nagpur (Dated: May 6, 2009)

Development Commissioner cancelling the provisional permission given earlier on the ground that for determining the DTA sale entitlement only physical exports were to be taken into consideration and not deemed exports – Revenue has a strong *prima facie* case – CESTAT orders pre-deposit of Rs. Four Crores.

[Also see analysis of the Order](#)

[2009-TIOL-950-CESTAT -BANG](#)

M/s Interscape Vs CCE, Bangalore (Dated: February 17, 2009)

Central Excise – Taxability of furniture being covered by various judgments of Supreme Court, *prima facie* case made out for waiver of pre-deposit – Matter remanded to Commissioner (Appeals) to decide the case on merits without insisting any pre -deposit

[2009-TIOL-946-CESTAT -MUM](#)

Elder Pharmaceuticals Ltd Vs CCE, Belapur (Dated: May 19, 2009)

Common inputs and services used in or in relation to manufacture of dutiable and exempted final products - Assessee unable to maintain separate accounts of common input services and chooses to reverse the Cenvat credit on *pro rata* basis – Department raises and confirms a demand of 10% of Rs.3,96,852/- in terms of Rule 6(3) of the CCR, 2004 and imposes equivalent penalty for the period April 2006 to March 2007.

[Also see analysis of the Order](#)

[2009-TIOL-943-CESTAT -MUM](#)

Pinkesh Jain Vs CCE, Thane II (Dated: April 23, 2009)

Non submission of re -warehousing certificates in respect of grey fabrics supplied duty free to 100% EOU – Duty liability lies with consignor - consignee confirming that they

have not received the goods – Sh. Pinkesh Jain admitting that goods were diverted to DTA unit without payment of duty – suppression stands established – intention to evade payment of duty by adopting fraudulent means is evident – demand not barred by limitation – Pre -deposit ordered.

[2009-TIOL-942-CESTAT-MAD](#)

M/s DCW Ltd Vs CCE, Tirunelveli (Dated: April 3, 2009)

Central Excise – CENVAT – Capital Goods – Education Cess – Quantum of Credit - The restriction of cenvat credit to 50% of the duty paid on capital goods on receipt of capital goods in a factory in the same financial year as envisaged in the sub-rule 2(a) of rule 4 of CENVAT Credit Rules is also applicable to the credit of education cess. (Para 3)

[2009-TIOL-938-CESTAT-MAD](#)

CCE, Trichy Vs M/s BHEL (Dated: March31,, 2009)

Central Excise – classification – parts of Boiler cleared in SKD / CKD form are to be classified as Boilers under CSH 8402.10 – no merit in revenue's appeal seeking to reclassify the goods as parts of Boilers.

[Also see analysis of the Order](#)

[2009-TIOL-937-CESTAT-BANG](#)

M/s R B Precision Components Vs CCE, Bangalore (Dated: February 2, 2009)

Central Excise - Clamps, Plate panel, Washers, Connector pin, Rotor Cover, Support Shelf for freezer, Heater protector, Clip-knob, Buffel cover, Plate timer defrost etc are classifiable under Chapter 73.26 as pressed/stamped articles of iron or steel and not as parts of Refrigerator under 8418.90

[2009-TIOL-932-CESTAT-MUM](#)

M/s Box Pack Engineering Vs CCE, Pune - I (Dated: May 13, 2009)

During period of forfeiture appellant fraudulently took credits in PLA without depositing amounts with the exchequer and cleared the goods by debiting account current – subsequently making valid payment of duty along with interest – *prima facie* penalty imposable u/s 11AC of the CEA, 1944 – CESTAT orders pre-deposit of 50% penalty.

[Also see analysis of the Order](#)

[2009-TIOL-931-CESTAT -AHM](#)

M/s Diamond Cables Ltd Vs CCE, Vadodara (Dated: April 24, 2009)

Central Excise – When goods are cleared to sister unit and returns filed with authorities intimating the same extended period not invocable – No malafide attributable to assessee when the entire exercise is revenue neutral – Penalties set aside

[2009-TIOL-930-CESTAT -BANG](#)

M/s Gokaldas Intimate Wear Pvt Ltd Vs CCE, Bangalore-II (Dated: (Dated: February 24, 2009)

Central Excise – Input credit availed legally not deniable when assessee opts for availing benefit of Notification No. 30/2004-CE for clearance of final products without payment of duty – Larger bench decision in HMT Ltd & Ors vs. CCE, Panchkula [2008-TIOL-1884-CESTAT-DEL-LB](#) followed

[2009-TIOL-922-CESTAT -MAD](#)

CCE, Madurai Vs United India Foods (Dated: April 1, 2009)

Central Excise – SSI Exemption – Opting out - SSI units which paid duty at normal rate at commencement of financial year are, thereafter, eligible for SSI exemption during same year. (Para 2)

[2009-TIOL-921-CESTAT -DEL](#)

Indian Sugar & General Engg Corpn Vs CCE, Faridabad (Dated: January 21, 2009)

Central Excise – Turnkey project for installation of reactor in refinery – Design and engineering charges attributable to finished goods viz., reactor only to be included in assessable value – No evidence adduced by revenue to show that entire engineering and designing charges of 2,80,000 US\$ relate to reactor only – Impugned order set aside

[2009-TIOL-920-CESTAT -BANG](#)

CC & CCE, Guntur Vs M/s Osnar Chemicals Pvt Ltd (Dated: December 23, 2008)

Central Excise – Conversion of base bitumen into polymer modified bitumen does not result in a complete new product – Process does not amount to manufacture – When service tax is paid on the same process dept cannot attempt to levy excise duty – Impugned order upheld – No merits in Revenue appeal

[2009-TIOL-919-CESTAT -BANG](#)**M/s ABB Ltd Vs CCE, Bangalore (Dated: February 20, 2009)**

Central Excise – No bar in assessee with LTU to pre-deposit at any of their factories – When Commissioner (Appeals) at Bangalore LTU has power to take up an appeal of Kolkata unit of assessee, pre-deposit made by its Vadodara unit cannot be held as invalid – Matter remanded for consideration of appeal without insisting on further pre-deposit

[Also see analysis of the Order](#)**[2009-TIOL-918-CESTAT -BANG](#)****CCE, Hyderabad -I Vs M/s Hyderabad Chemical Products Ltd A P (Dated: February 5, 2009)**

Central Excise – MS Plates/Angles/Beams/Joists are capital goods eligible for CENVAT Credit – Impugned order upheld

[2009-TIOL-917-CESTAT -BANG](#)**OTIS Elevator Company (India) Ltd Vs CCE, Bangalore (Dated: February 8, 2009)**

Central Excise – Valuation of parts and components cleared from factory to customers sites for erection and installation of lifts, cleared to National Service Centre for Annual Maintenance Contract, and also for modernization as per works contracts with customers – Such contract being an indivisible contract and no sale value of items cleared available, transaction value cannot be determined from total contract value by means of deductions – As value under Section 4(1)(a) not available valuation to be determined as per cost construction method in terms of Rule 11 of Central Excise (Valuation) Rules, 2000 – Adoption of particular method of valuation without notice to assessee is violation of principles of natural justice – Order beyond the scope of SCN – When appellants filed classification list under Rule 173C declaring value there was no suppression of facts – Earlier SCNs issued on same aspect decided by Joint Commissioner by dropping the proceedings and no appeal filed by Revenue against such decision - Invocation of extended period not justified – SCN not sustainable and impugned order set aside

[2009-TIOL-910-CESTAT -BANG](#)

M/s Otis Elevator Co (India) Ltd Vs CCE, Bangalore (Dated: February 10, 2009)

Central Excise – Clearance of parts/components for installation and commissioning of lifts at site in terms of composite contract to be valued as per cost construction method in terms of Rule 11 read with Section 4 – Issue squarely covered by Tribunal order in appellants own case – Impugned order set aside

[2009-TIOL-909-CESTAT -MAD](#)

GEC Alsthom India Ltd Vs CCE, Tiruchirapalli (Dated: April 13, 2009)

Central Excise – Valuation - Post manufacturing expenses - Interest on receivables - The appellants have not discharged the burden of showing that the interest on receivables was inbuilt into the price charged, it is not deductible from the assessable value. (Para 2)

[2009-TIOL-908-CESTAT -BANG](#)

CCE & CC, Guntur Vs M/s Andhra Cements Ltd (Dated: March 2, 2009)

Central Excise – Oxygen, nitrogen and welding electrodes used for maintenance & repair of plant & machinery are inputs within the meaning of Rule 2(k) of CENVAT Credit Rules, 2004 – Definition of inputs very wide to cover maintenance & repair – Impugned order upheld

[2009-TIOL-906-CESTAT -BANG](#)

Andhra Cements Limited Vs CCE, CC & ST, Guntur (Dated: February 19, 2009)

Central Excise – Default in payment of excise duty under Rule 8 of CER, 2002 - Amount debited in CENVAT A/c towards duty liability to be regarded as discharge of all duty liability by appellant in view of overriding provisions of Section 22 of SIFRA, 1985 and Order of BIFR – Order demanding interest and penalty set aside

[2009-TIOL-904-CESTAT -MUM](#)

CCE, Pune-III Vs M/s John Deere Equipments Pvt Ltd (Dated: May 11, 2009)

To any prudent man, ambiguity is writ large on the order of the Commissioner(Appeals) – Observing thus, CESTAT remands matter to appellate

authority

[Also see analysis of the Order](#)

[2009-TIOL-903-CESTAT-AHM](#)

M/s Diamond Cables Ltd Vs CCE, Vadodara (Dated: April 24, 2009)

Central Excise – When goods are cleared to sister unit and returns filed with authorities intimating the same extended period not invocable – No malafide attributable to assessee when the entire exercise is revenue neutral – Penalties set aside

[2009-TIOL-898-CESTAT-MUM](#)

CCE, Nagpur Vs M/s Bilt Graphic Paper Products Ltd (Dated: March 20, 2009)

Assessee sending papers in roll to job worker for coating purposes and clearancing from job worker's end for which permission in terms of rule 4(6) granted by Assistant Commissioner – Job worker purchasing some chemicals for processing paper and later preparing fresh invoices in assessee's name for passing on Cenvat credit – assessee availing Cenvat Credit – Prima facie, assessee is not entitled to avail Cenvat as rule 3(1)(i) and rule 4(1) of the CCR, 2004 requires that inputs must be received in the factory – Pre-deposit ordered.

[2009-TIOL-897-CESTAT-MUM](#)

M/s Gujarat Reclaim & Rubber Products Ltd Vs CCE, Pune (Dated: March 24, 2009)

Crumbbed rubber powder obtained by crushing small pieces of rubber cuttings having same properties and characteristics as input waste is not dutiable as mere changing of physical form does not amount to manufacture – Tribunal decision in own case ([2006-TIOL-283-CESTAT-MUM](#)) followed – Appeal allowed.

[2009-TIOL-896-CESTAT-MAD](#)

M/s Titan Industries Ltd Vs CCE, Chennai (Dated: March 24, 2009)

Central Excise – Provisional Assessment - Refund – Limitation - Refund of the excess duty paid under Rule 9(B)(5) is not governed by the provisions of Section 11B of the Central Excise Act. Only the differential duty allowed as consequential relief following

a successful appeal against the order of finalization granting refund by the proper officer under Rule 9(B)(5) is governed by the provisions of Section 11B. There is no need for the assessee to claim refund of the excess duty paid ascertained on finalization of provisional assessment. (Para 2)

Provisional Assessment - Refund – Unjust enrichment - Section 11B did not apply to grant of refund arising out of finalization of provisional assessment prior to 25.6.99. Refund would not entail unjust enrichment of the assessee. (Para 3)

Provisional Assessment – Valuation – Clearances from Depot - Admissible deductions – The appellants had claimed amount of each abatement based on a percentage of End Consumer Price ascertained considering the total sales of the outlets and expenditure under each head such as freight and discount, instead of ascertaining the expenses incurred by the outlets relatable to the clearances by the appellant unit and the applicable percentage. Matter remanded to recalculate abatement relating to expenses incurred on account of sales of goods cleared from the appellants unit. (Para 4)

[2009-TIOL-895-CESTAT -MUM](#)

Mek Slotted Angles (I) Ltd Vs CCE, Belapur (Dated: March 24, 2009)

Remand ordered by Tribunal was for the limited purpose of quantification of duty – no mention about penalty – in such circumstance, the adjudicating authority could not have imposed any penalty under rule 173Q – Penalty u/r 209A on the Managing Director can be imposed only if he had dealt with any excisable goods in the manner contemplated in the rule – Appeal allowed.

[2009-TIOL-891-CESTAT -MUM](#)

M/s Pooja Fab Vs CCE, Thane-I (Dated: March 25, 2009)

Metal containers produced on job work basis out of raw materials supplied by Asian Paints – No sale involved - Profit of 26% shown in balance sheet included other profits also – since job work charges include the profit element and it is not the revenue's case that something more than that is being charged, addition of 26.04% for assessment purpose is superfluous and redundant – Appeal allowed.

[2009-TIOL-890-CESTAT -MUM](#)

Taiyo Lucid Pvt Ltd Vs CCE, Aurangabad (Dated: March 13, 2009)

Erroneous Refund – A manufacturer is eligible to claim refund of Cenvat Credit taken on input used in the manufacture of such product cleared for export under bond/undertaking and no refund can be claimed in r/o Cenvat Credit taken on input used in the manufacture of final product but not cleared for export – No prima facie case – Pre -deposit of amounts involved ordered.

[2009-TIOL-889-CESTAT -AHM](#)

M/s JBF Industries Ltd Vs CCE, Vapi (Dated: February 25, 2009)

Central Excise – NCCD not leviable on goods cleared to 100% EOU – Assessee under bonafide belief that NCCD not leviable on POY when finished goods viz., texturized yarn exempt from payment of NCCD – When duty paid before issue of SCN penalty not leviable, hence set aside

[2009-TIOL-884-CESTAT -MUM](#)

M/s Bannari Amman Sugars Ltd Vs CCE, Salem (Dated: March 6, 2009)

Central Excise – Notification – Interpretation of – Notification No.23/03-CE extends benefit to goods manufactured wholly from indigenous raw materials. Use of imported consumables will not disentitle an EOU to the benefit of the said notification. (Para 5)

Words and Phrases – Raw materials vis -à-vis Consumables - The meanings of these expressions as assigned in the EXIM Policy in force during the material period - 'Consumables' means any item which participated and is required for a manufacturing process but did not form part of the end product. These are substantially or totally consumed during the manufacturing process. 'Raw material' means basic materials which are needed for the manufacture of goods whether they had been previously manufactured or are processed or are still in a raw or natural state. (Para 4)

[2009-TIOL-883-CESTAT -AHM](#)

M/s Adi Artech Transducers Pvt Ltd Vs CCE & CC, Vadodara-II (Dated: February 28, 2009)

Central Excise – When shortage of inputs accepted by assessee and duty amount debited, it cannot be disputed later on the ground that department has not adduced evidence for clandestine removal – It is incumbent upon assessee to explain shortages convincingly – Demand of duty and imposition of penalty under Rule 25 confirmed – Penalty under S. 11AC set aside

[2009-TIOL-882-CESTAT -DEL -LB](#)

Vandana Global Ltd Vs CCE, Raipur (Dated: May 27, 2009)

CESTAT Larger Bench – Referral of matters to Larger Bench – Preliminary objection by Revenue that matters shall be referred to the Larger Bench only when a final view is arrived at by a division bench, referral at stay stage being illegal and invalid, rejected – When a coordinate bench holds a contrary view on a decision rendered on a given

matter by another coordinate bench, such matters can be referred to the Larger Bench at any stage of the proceedings – Once decision is taken by referral bench which is in conflict with the precedent decision, whether the wording used in the order of the referral bench is "prima facie view" or "final view" is immaterial as long as inconsistency in the earlier judgment has been brought out – Member (T) in Leading judgment

[Also see analysis of the Order](#)

[2009-TIOL-881-CESTAT -MUM](#)

Oil & Natural Gas Corporation Vs CCE, Raigad (Dated: March 4, 2009)

Whether post 01.07.2000 duty on LPG is to be paid on the basis of transaction value or on the basis of Administered Pricing Mechanism (APM) fixed by the Government – Tribunal decision in GAIL [[2002-TIOL-398-CESTAT -Del-LB](#)] and Mangalore Refinery is to the effect that valuation of petroleum products should be based on APM price – Pre -deposit waived and Stay granted – Early hearing as high stakes involved.

[2009-TIOL-880-CESTAT -AHM](#)

M/s Rivaa Textile Industries Ltd Vs CCE, Surat (Dated: January 7, 2009)

Central Excise - Removal of a chamber from stenter requires re -fixation of annual capacity and does not entail closure of stenter warranting abatement under Rule 96ZQ(7) – Competent authority after giving permission to remove the chamber should have re -fixed annual capacity and examined duty liability if any during closure of chamber – Impugned order set aside and matter remanded to original authority

[2009-TIOL-879-CESTAT -AHM](#)

M/s Ahmedabad Packaging Industries Ltd Vs CCE, Ahmedabad (Dated: April 23, 2009)

Central Excise – When matter pertaining to refund attained finality Appellate Commissioner has no jurisdiction to sit in judgment over the order passed by his predecessor – If Revenue is aggrieved with Commissioner (Appeals) order sanctioning refund, should have challenged the order before Tribunal – Matter remanded for de novo consideration of interest claim on delayed refund

[2009-TIOL-875-CESTAT -MUM](#)

IVP Ltd Vs CCE, Mumbai-III (Dated: March 6, 2009)

Condonation of delay - jurisdiction has to be conferred and cannot be assumed - Tribunal is a creature of the statute itself and there can be no inherent power beyond what is prescribed under Section 35C of the Central Excise Act – Tribunal

Tribunal's observations –

The ROM application is, admittedly, beyond the period of six months prescribed under sub-section (2) of section 35C of the Central Excise Act. There is no provision under section 35C for condonation of any delay beyond the said period of six months, which legal position is also not in dispute.

The question is whether, for computing the period of six months, section 14 of the Limitation Act could be applied. In the case of Vijay Brothers and Others, it appears, the appellant spent some time in prosecuting legal proceedings under Article 226 of the Constitution of India against an order of adjudication passed by the proper officer under the Customs Act. They realized the mistake and filed an appeal with the Commissioner(Appeals), which was belated with reference to the provisions of section 128 of the Customs Act. The Hon'ble High Court held that the time taken by the party for bona fide proceedings before the High Court could be excluded in computing the period of limitation for appeal filed under section 128 of the Act. Against the High Court's decision, the Union of India filed a Civil Appeal which came to be dismissed for non-prosecution, by the Supreme Court. Neither the decision of the High Court in Vijay Brothers and Others nor the order passed by the Apex Court dismissing the Civil Appeal for non-prosecution is of any aid to the present applicant inasmuch as section 14 of the Limitation Act, which provided for exclusion of time spent for bona fide proceedings in Court without jurisdiction, in computing the period of limitation for any suit was applied in the said case in relation to an appeal filed by the party with the Commissioner(Appeals) under section 128 of the Customs Act, which provision inter alia provided for condonation of delay of appeal.

A similar situation is discerned in the case of Pasupati Overseas Pvt Ltd., Cairn Energy India Pty. Ltd. etc.. In those cases also, section 14 of the Limitation Act was applied or directed to be applied in computing the period of limitation for filing appeals under statutory provisions, which inter alia prescribed power for the appellate authority to condone the delay of appeal.

In this scenario, we do not think that the principles laid down by the Apex Court in the case of Mst. Katiji and Others for dealing with delay condonation will be applicable to the instant case wherein section 35C(2) did not provide for any power for the Tribunal to condone any delay of an application filed there under for rectification of mistake in a final order.

Referring to the High Court decision in Delta Impex, the Bench concluded that jurisdiction has to be conferred on any appellate authority by Parliament and it could not be assumed inasmuch as though Parliament prescribed a period of six months for the filing of an application for rectification of mistake in a final order passed by this Tribunal, they did not choose to confer jurisdiction on this Tribunal to condone any delay beyond this period.

Coming to the appellant's contention that the ROM was being filed with reference to the High Court's order, the Bench noted that the said order gave liberty to the appellant to approach the Tribunal, and no further. Inasmuch as their Lordships did not specifically permit the party to file a belated application for rectification of mistake in the Tribunal's final order, the Bench observed that no liberty, unlimited or unbridled, was allowed by the High Court.

Held - Tribunal is a creature of the statute and did not have any liberty to take actions militating against any provisions of law.

ROM application dismissed as time barred and along with it the COD application.

[Also see analysis of the Order](#)

[2009-TIOL-874-CESTAT-MUM](#)

Kirloskar Oil Engines Ltd Vs CCE, Aurangabad (Dated: April 6, 2009)

Whether Catering Service is an Input service – Matter remanded to original authority to verify the relevant facts so as to find out whether the Larger Bench decision in GTC Industries [[2008-TIOL-1634-CESTAT-Mum-LB](#)] allowing such credit is applicable.

[2009-TIOL-873-CESTAT-AHM](#)

M/s Olive Healthcare Vs CCE, Daman (Dated: March 26, 2009)

Central Excise – CENVAT credit admissible on plastic crates used within the factory for movement of raw materials and final products – Larger Bench decision in Benco Products (India) Ltd [2009-TIOL-421-CESTAT-AHM-LB](#) followed

[2009-TIOL-870-CESTAT-MUM](#)

Siddeshwar Textile Mills Pvt Ltd Vs CCE, Pune III (Dated: April 20, 2009)

Cotton fabric is subjected to bleaching and then coated to get Plastic Coated fabric which is cleared on payment of BED and AED - Notification 67/95-CE does not grant exemption from AED to bleached cotton fabrics – Being a revenue neutral exercise CESTAT sets aside demand of Rs.30.80 lakhs

Cotton fabrics subjected to process of bleaching to get bleached cotton fabrics (SH 5207.21) – Same is captively consumed for the manufacture of plastic coated fabrics (5903.90) – Benefit of captive consumption notification 67/95-CE not available in respect of AED leviable on bleached cotton fabrics as the notification does not make any reference to the AED leviable under the AED(GSI) Act, 1957 - SC decision in Union of India vs. Modi Rubber [2002-TIOL-393-SC-CX](#) relied upon.

AED demanded of Rs.30,80,348/- is instantly available as credit and can be utilized for payment of AED on Plastic coated fabrics – appellant has already paid AED of Rs.32,59,126/- on Plastic coated fabrics cleared from the factory – Revenue neutral exercise - in effect the duty confirmed stood paid by the appellants in the form of the AED paid on the coated fabrics through the PLA during the period in question .

No allegation that the appellant intended to evade payment of duty – larger period of limitation under proviso to section 11A(1) of the CEA'44 not invoked – Apex Court in the case of Mahindra and Mahindra Ltd. ([2005-TIOL-01-SC-CX-LB](#)) relied by

Revenue not applicable to facts of case.

[Also see analysis of the Order](#)

[2009-TIOL-867-CESTAT-AHM](#)

CCE, Ahmedabad Vs M/s Neptune Textile Mills Ltd (Dated: February 27, 2009)

When the buyer and the manufacturer are in the know that the product manufactured and cleared were to be used in manufacture of bandages of PP Grade, the goods are correctly classifiable under heading 58.03 and not as Mosquito net fabrics – Tribunal.

Revenue appeal failing to make a mention in its appeal memorandum about the setting aside by the Commissioner(Appeals) of confiscation of the goods ordered and the penalties imposed on the Managing Director and the Partner of M/s Gujarat Healthcare, the consignee, by the adjudicating authority. Holding that such a reference was necessary in the appeal memorandum to make the appeal a complete one, the Tribunal allowed the appeal of the Revenue to the extent it was appealed against and did not disturb the order of the Commissioner(Appeals) to the extent it was not challenged.

[Also see analysis of the Order](#)

[2009-TIOL-866-CESTAT-DEL](#)

M/s New Holland Tractors (India) Pvt Ltd Vs CCE, Noida (Dated: February 24, 2009)

Central Excise – Input credit taken legally not required to be reversed when finished good viz., tractors become exempt subsequently – Larger Bench decision in M/s HMT & ors [2008-TIOL-1884-CESTAT-Del-LB](#) followed – Impugned orders set aside