

CESTAT RULING[2011-TIOL-1519-CESTAT-MUM](#)**CCE, Chandigarh Vs M/s Satyam Digital Photo Lab (Dated: September 20, 2011)**

Service Tax – Photography service – Valuation – Value of materials and consumables used in the course of providing the service is includable in the taxable value as held by the Larger Bench in case of Agrawal Colour Photo Industries – Section 67 of the Finance Act, 1994.

Limitation - If an official of CBEC was not aware of the correct legal position in the matter then the members of the public cannot be faulted for having acted in good faith relying on the said clarification – Even if suppression or mis -statement, if any, is based upon the available information in the field or on the basis of precedent decisions of the higher authorities, the mere fact of non-providing information by itself, cannot be held to be a ground for invocation of longer period of limitation - There was bonafide doubt about the inclusion of the cost of material in the cost of services and no malafide can be attributable to the appellant so as to invoke the extended period of limitation – Demand beyond normal period is barred by limitation.

[Also see analysis of the Order](#)

[2011-TIOL-1518-CESTAT-MUM](#)**Hajarilal Jangid Vs CC, CE & ST, Nagpur (Dated: July 20, 2011)**

Service Tax – Maintenance & Repair service – Delay in remitting service tax but tax liability discharged before issue of show cause notice – When assessee discharges service tax liability on his own ascertainment or on the basis of ascertainment by Central Excise officers and informs the Central Excise officer of payment of such service tax then, no notice shall be served on assessee – Imposition of penalties under sections 76, 77 and 78 not warranted – Impugned order set aside

[2011-TIOL-1510-CESTAT-DEL](#)**Balvinder Singh Neel Vs CCE, Indore (Dated: August 12, 2011)**

Service Tax – Demand of service tax based on difference in amounts shown in IT return and ST return – Contention that amount shown in IT return inclusive of entertainment tax and bad debts not sustainable in as much as IT return filed in Saral Form was for Income from Business or Profession only and no question of reporting receipt of entertainment tax or service tax from customers as income – Balance sheet prepared by CA, undated and only to escape service tax demands, not accepted as evidence – Plea of overlapping of demands in two show cause notices – Scrutiny of records show that first demand was for 2005-06 and April 2006 on the ground that appellant not eligible for exemption to small units – Second demand was for larger period but covered only the differential value of amounts shown in IT returns and ST returns – Plea of overlapping of demands not sustainable.

Penalty - When appellant had paid substantial portion of demand before issue of O-I-O, plea for payment of 25% penalty under s. 78 allowed – Adjudicating authority directed to allow option of paying 25% - Matter remanded for limited purpose

2011-TIOL-1509-CESTAT-MUM
Hazira Cryogenic Engg & Const Mgnt Pvt Ltd Vs CST, Mumbai (Dated: August 5, 2011)
Service Tax – Stay/Dispensation of pre-deposit – Demand of service tax on services received from outside India for the period prior to 01.01.2005 – Prima facie case made out for waiver of pre-deposit.
2011-TIOL-1508-CESTAT-DEL
M/s Microsoft Corporation (I) (P) Ltd Vs CST, New Delhi (Dated: November 9, 2011)
Service provided to Principal situated in Singapore to market products in India – whether Export of service or service provided in India – Matter referred to Third Member: Points of Difference referred to Third member:
Also see analysis of the Order
2011-TIOL-1507-CESTAT-MUM
M/s Y N Warehousing Company Vs CCE, Nagpur (Dated: September 26, 2011)
In respect of services rendered by C&F Agents, only the commission or remuneration paid to C&F Agent is taxable before the introduction of Service Tax (Determination of Value) Rules, 2006 – reimbursement of handling, establishment charges and godown rent not includible in taxable value – Prima facie strong case in favour – order passed in a stay matter has no precedential value and, therefore, cannot be relied upon - Stay granted: CESTAT
Also see analysis of the Order
2011-TIOL-1506-CESTAT-DEL
CCE, Indore Vs M/s Sadhana Colour Film Processing Lab (Dated: September 6, 2011)
Service Tax – Photography service – Value of paper, chemicals and packing materials used for providing service whether includible in taxable value – Though, Larger bench decision in M/s. Agrawal Colour Photo Industries vs. Commissioner = 2011-TIOL-1208-CESTAT-DEL-LB held that value of services in relation to photography would be the gross amount charged including cost of goods and material used and consumed in the course of such services, since there were decisions of Tribunal in favour of assessee, doubts regarding inclusion cost of materials in value of services bonafide– Extended period of limitation cannot be invoked – Appellant liable to pay tax for demand within period of limitation – Penalty waived in terms of s. 80 of Finance Act, 1994
2011-TIOL-1505-CESTAT-DEL
M/s Rajasthan State Beverages Corpn Ltd Vs CCE, Jaipur (Dated: August 5,

2011)
Service Tax – Appellant, a state government undertaking engaged in buying and selling of beer and liquor intended to be sold for consumption in that state– Activities undertaken by appellant in terms of state policy wherein all liquor manufacturers are required to sell their product to appellant who in turn would sell the same to retailers – When purchase and sale of liquor routed through appellant's company in terms of liquor policy of the state, activity cannot be held as taxable under BAS – Full waiver of pre-deposit ordered and stay granted
2011-TIOL-1501-CESTAT-MUM
M/s Diageo India Pvt Ltd Vs CCE, Thane (Dated: September 26, 2011)
ST - Appellant, owner of different brands of IMFL getting the same manufactured from contract bottling units under agreements – whether franchisee service - issue is debatable - under which category the activity undertaken by the applicants shall be covered and from whom the Service Tax is to be recovered is also in jeopardy – Pre-deposit waived and stay granted: CESTAT
Also see analysis of the Order

2011-TIOL-1500-CESTAT-DEL
M/s Shree Rajasthan Syntex Ltd Vs CCE, Jaipur (Dated: August 23, 2011)
Service Tax – Goods Transport Agency service – Rule 2(p) and 2(r) of the CENVAT Credit Rules 2004 - The issue of whether CENVAT credit can be utilized for payment of service tax is settled in favour of the appellants in a number of decisions – Decision of Tribunal in ITC case relied on by the revenue has no application to the facts of the case.
2011-TIOL-1499-CESTAT-DEL
M/s Triveni Engg & Industries Ltd Vs CCE , Meerut (Dated: August 18, 2011)
Service Tax – Goods Transport Agency service – Admissibility of Notification No 34/2004 ST – Benefit of Notification is admissible for the respondent assessee who is liable to pay service tax as recipient of the service under Rule 2(1)(d)(v) of the Service Tax Rules, 1994.
2011-TIOL-1493-CESTAT-BANG
M/s Nagarjuna Construction Company Ltd Vs CC & CE, Hyderabad (Dated: February 3, 2011)
Service Tax – Works relating to relates to water supply/lift irrigation/sewage pumping - service in relation to infrastructure provided by different State Governments – Prima facie not taxable – Stay granted. The applications pertaining to similar demands had been considered by this Tribunal earlier. In Ramky Infrastructure Ltd. Vs, CCE, Hyderabad - (2010-TIOL-699-CESTAT-BANG) and Lanco Infratech Ltd. Vs. CST, Hyderabad - (2009-TIOL-2139-CESTAT-BANG) , the activities involved related to

services rendered by the respective appellants to the Government of Andhra Pradesh in the form of turnkey projects executed by them for the construction of dams, tunnels, distributory system to feed various ayacut, land, etc. Consistent with earlier decisions, complete waiver of pre-deposit and stay of recovery of the dues, ordered.

[2011-TIOL-1492-CESTAT-DEL](#)

M/s Jain Colour Lab Vs CCE, Bhopal (Dated: September 8, 2011)

Service Tax – Photography service – Value of paper, chemicals and packing materials used for providing service whether includible in taxable value – Though, Larger bench decision in M/s. Agrawal Colour Photo Industries vs. Commissioner [2011-TIOL-1208-CESTAT-DEL-LB](#) held that value of services in relation to photography would be the gross amount charged including cost of goods and material used and consumed in the course of such services, since there were decisions of Tribunal in favour of assessee, doubts regarding inclusion cost of materials in value of services bonafide – Extended period of limitation cannot be invoked – Appellant liable to pay tax for demand within period of limitation – Penalty waived in terms of s. 80 of Finance Act, 1994

[2011-TIOL-1490-CESTAT-BANG](#)

M/s Sarovar Hotels Pvt Ltd Vs CC, CE & ST, Hyderabad (Dated: August 12, 2011)

Service Tax – Cleaning Service – Services provided to Indian School of Business – Not rendered to a Commercial building – Pre-deposit waived and stay granted: In the light of decision of the Tribunal in the case of Indian School of Business - [2009-TIOL-1679-CESTAT-BANG](#), the impugned services cannot be considered to have been rendered to a commercial building and therefore, the applicant has made out a case for waiver of pre-deposit of dues as per the impugned order. Therefore, there will be waiver of pre-deposit of dues as per the impugned order and stay of recovery thereof till the disposal of appeal.

[2011-TIOL-1487-CESTAT-AHM](#)

M/s Laxmi Enterprise Vs CCE, Vadodara (Dated: August 4, 2011)

Service Tax – Eligibility of CENVAT Credit on window glass, air conditioner, electrical transformer as capital goods and credit of service tax paid on general insurance, banking and erection/commissioning services – Prima facie appellants have strong case – Full waiver of pre-deposit granted

[2011-TIOL-1486-CESTAT-DEL](#)

M/s Tata International Ltd Vs CCE, Indore (Dated: August 24, 2011)

Service Tax – Appellants engaged in manufacture of leather garments, leather footwear and parts of footwear – Goods sold abroad after availing services of overseas commission agents – Tax not liable to be paid before 18.04.2006 – As regards, services availed after this date, appellant directed to furnish statements of payments made for services received after 18.4.2006, service tax dues on such payments and service tax actually paid to original authority – Matter remanded for verification of amounts

2011-TIOL-1481-CESTAT-MUM
M/s Nashik Sarva Sevabhavi Trust Vs CC & CCE, Nashik (Dated: August 8, 2011)
Service Tax – Activity of supplying labour for harvesting & transportation of sugarcane from farmer's fields to sugar factory – No prima facie case for full waiver of pre-deposit – Pre -deposit of Rs. 7.5 lakhs ordered
Also see analysis of the Order
2011-TIOL-1480-CESTAT-AHM
M/s The Agriculture Products Market-Committee Vs CCE, Vadodara (Dated: August 5, 2011)
Service Tax – Appellant engaged in providing 'renting of immovable property service' – Eligibility of CENVAT Credit on window glass, air conditioner, electrical transformer as capital goods and credit of service tax paid on general insurance, banking and erection/commissioning services – Prima facie appellants have strong case – Full waiver of pre -deposit granted
2011-TIOL-1479-CESTAT-AHM
M/s Umedica Laboratories Pvt Ltd Vs CCE, Vapi (Dated: August 11, 2011)
Service Tax – Liability to pay tax on services received from non resident commission agent – Appellant required to pay service tax on gross amount charged by non resident service providers, provisions of Rule 6 of Service Tax Rules not applicable – Since complete details of transactions available in the records, penalty under s.78 reduced to 50% of service tax not paid, penalty under s. 76 set aside – Appellate Commissioner's order modified to this extent
2011-TIOL-1478-CESTAT-DEL
CCE, Jaipur Vs M/s Rajasthan Spinning & Weaving Mills Ltd (Dated: July 28, 2011)
Service Tax – GTA Service – Eligibility to avail CENVAT Credit of service tax paid on GTA service through debit entry in CENVAT A/c – Payment of service tax made through debit entry in CENVAT A/c and debit entry made on the basis of LRs which contain all details including a note that service tax had to be paid by consignee – Debit entry in CENVAT A/c a valid proof of payment of service tax and available as credit – No infirmity in order passed by Appellate Commissioner
2011-TIOL-1477-CESTAT-MUM
King Metal Works Vs CCE, Mumbai (Dated: September 9, 2011)
Appellants are engaged in the manufacture of stainless steel, aluminium utensils and cutlery - Credit is available in respect of the inputs and input services used in the manufacture of final product being exported irrespective of the fact that the final

product is otherwise exempted – rejection of refund claim filed under Rule 5 of the Cenvat Credit Rules by treating the same under Notification 41/2007-ST is not sustainable – matter remanded for examination in light of High Court decisions in Repro India Ltd. vs. UOI ([2007-TIOL-795-HC-MUM-CX](#)) and CCE vs. Drish Shoes Ltd. ([2010-TIOL-350-HC-HP-CX](#)) . .

[2011-TIOL-1476-CESTAT-MAD](#)

M/s Bonfiglioli Transmissions Private Limited Vs CCE, Chennai (Dated: August 23, 2011)

Service Tax – CENVAT - Input Service - 'Rent a cab' - As there is no dispute that the assessee has utilised the service of 'rent a cab' for transportation of their employees from their residence to their company for official work, credit of service tax paid is available. The case is remitted to the adjudicating authority to ascertain whether any amount has been recovered from the employee or the worker towards transportation charges and if so, credit to that extent is not admissible (Para 2 & 3)

[2011-TIOL-1470-CESTAT-DEL](#)

M/s Oberoi Flight Services Vs CST, Delhi (Dated: June 26, 2011)

Service Tax – Activity of providing food, beverages and amenities to passengers in airport lounges on behalf of airlines not taxable under Airport Service – Services offered by assessee to passengers is on behalf of the airlines and therefore, the services rendered have to be construed as Business auxiliary service

[Also see analysis of the Order](#)

[2011-TIOL-1469-CESTAT-AHM](#)

M/s Apex Colour Lab Vs CCE, Rajkot (Dated: September 30, 2011)

Service Tax - Liability to pay service tax on sale, purchase of SIM cards from BSNL - No order on merits can be passed by Tribunal in as much as Appellate Commissioner dismissed appeal only for non-compliance of stay order - Tribunal cannot go into merits of case when merits were not considered by lower authority - Appellant directed to pre-deposit Rs. 3 lakhs since issue involved in the case is against appellant for the period within limitation - Appellate Commissioner directed to restore appeal and decide matter on merits after ascertaining compliance with regard to pre-deposit

[2011-TIOL-1468-CESTAT-MAD](#)

M/s Caterpillar India Private Limited Vs CST, Chennai (Dated: March 10, 2011)

Service Tax – SPTI Unit engaged in export of services – Rebate claims under Notification 12/2005 ST denied on the ground that the services exported are software engineering services and are exempted from payment of service tax – The services exported by the appellants are rightly classifiable under Consulting Engineer Service - Software is utilised by the assessee for rendering services but this does not amount to rendering of "Software Engineering Service" by the appellants – Rebate claims are admissible - Matter remanded to verify other issues.

2011-TIOL-1463-CESTAT-MAD
M/s Sterlite Industries (I) Ltd Vs CCE, Tirunelveli (Dated: June 2, 2011)
Service Tax – CENVAT – Transport of goods by rail prior to 01.05.2006 – Service Tax paid and credit taken – The assessee has taken only credit of tax paid by them which in the first instance was not payable. There can be no demand against them as no revenue has been lost to the exchequer by merely taking credit of the amount which in the first place was not recoverable from them. (Para 5)
2011-TIOL-1462-CESTAT-DEL
CST, Delhi Vs M/s Solutions (Dated: April 15, 2011)
Service Tax – Commissioner Appeals does not have power of remand – When it is possible for Appellate Commissioner to take a decision about correctness or otherwise of O-I-O on the basis of records available, no requirement to direct original authority to conduct verification – Matter remanded to Appellate Commissioner to decide matters based on records available
2011-TIOL-1459-CESTAT-DEL
CST, Delhi Vs M/s Shaloo Agencies (Dated: April 13, 2011)
Service Tax – Real estate agent service – Instead of paying tax on gross amount received, assessee paid tax after deduction of element of service tax from gross amount received – Appellate Commissioner's direction to adjudicating authority to verify claim of assessee regarding inclusion of service tax in gross amount received does not amount to remand of matter – No merit in Revenue appeal
2011-TIOL-1458-CESTAT-MUM
M/s Behr India Ltd Vs CCE, Pune (Dated: July 25, 2011)
Service Tax – Liability to pay service tax on activity of purchase and sale of goods on principal to principal basis - 'Commission agent' is a person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person deals with various activities prescribed in the definition – A person who purchases and sells goods on his own behalf and does not act on behalf of others not a 'commission agent' – Prima facie case for full waiver of pre-deposit
2011-TIOL-1457-CESTAT-DEL
M/s Power Grid Corporation Of India Ltd Vs CST, New Delhi (Dated: April 21, 2011)
Service Tax – Leased circuit service – Leasing of bandwidth on broadband telecommunication network established on the infrastructure set up for transmission of power – Appellant a licensee under s. 4 of Indian Telegraph Act, 1885 – Revenue's argument that 'inclusive' definition of 'leased circuit' has to be read independent of 'means' definition not sustainable – Link provided by assessee to customers who are

licensed as telegraph authority not a dedicated link, not covered by definition of 'leased circuit' – Telegraph authority receiving interconnecting service cannot be regarded as a subscriber – Service provided to customers who are not registered as 'telegraph authority' only taxable – Since non payment of tax was due to interpretation of statute which was beyond the grasp of an ordinary tax payer and not resulting from suppression or misstatement or any act with intent to evade duty, demand hit by limitation as well

[2011-TIOL-1453-CESTAT-DEL](#)

CST, Delhi Vs ITC Hotels Ltd (Dated: September 29, 2011)

Service Tax - Amalgamation - Date of amalgamation is the date from which the High Court allowed amalgamation, not date of filing application with ROC - High Court allowed amalgamation with effect from 1.4.2004. Entire formalities were completed and the application was filed with the Registrar of the Companies on 23.3.2005. Supreme Court observed that the scheme of amalgamation would not take effect on and from the date of the order sanctioning the scheme but would relate back to the transfer date as presented in the amalgamation scheme. The business carried out by the subsidiary company should be deemed to have been carried on and for on behalf of the transferee company. As such, by taking into account the other facts and circumstances of the case, the Court observed that subsequent to the sanction of the scheme, formalities of filing certified copies of the order before the Registrar of the companies, the allotment share etc. may take some time but the date of amalgamation would be the date as presented in the scheme.

Service to Self - Not taxable: The appellant cannot be held to be providing services to itself. The Tribunal in the case of Precot Mills - [2006-TIOL-818-CESTAT-BANG.](#) has held that for levability of service tax, there should be a service provider and a service receiver. No one renders service to oneself, as such, there can be no question of levability of service tax. Having held that the amalgamation is effective from 1.4.2004, the service provided by the respondent has to be considered as provided to himself, in which case, no service tax would arise against them.

[Also see analysis of the Order](#)

[2011-TIOL-1452-CESTAT-AHM](#)

M/s Rolex Rings Pvt Ltd Vs CCE, Rajkot (Dated: September 26, 2011)

Service Tax – Delayed payment of tax on GTA service resulting in demand of interest – SCN issued for recovery of interest belatedly without alleging suppression or mis-declaration hit by limitation

[2011-TIOL-1451-CESTAT-AHM](#)

M/s Subin Telecom Vs CCE, Rajkot (Dated: October 5, 2011)

Service Tax – Payment of tax with interest though registration was obtained earlier and returns were filed belatedly, covered under section 73(3) of Finance Act, 1994, penalty under s. 78 not sustainable – Penalty under s. 78 imposable only when service tax was not paid on account of mis-declaration, fraud, suppression of facts, collusion etc with intent to evade payment of duty – Appellant eligible to claim benefit of small service provider exemption under Notification No. 6/05-ST – No infirmity in impugned order

2011-TIOL-1448-CESTAT-DEL
M/s Paul Merchants Ltd Vs CCE, Chandigarh (Dated: October 29, 2011)
<p>Service Tax - Money Transfer from abroad - Whether Export or Service rendered in India - Matter referred to Third Member: Are the provisions of Export of Service Rules, 2005 and Circulars issued by CBEC clarifying the scope of the said Rules in conflict with the theory of equivalence; Whether the issue as to what constitutes export of services is to be determined with reference to provisions in Export of service Rules, 2005 only?; Whether the destination of the impugned service to be determined on the basis of location of the consumer of the service in India or the location of the person abroad who requested for the service to be provided in India; Whether the amounts paid to sub-representatives is excludible from the value of taxable service.</p>
Also see analysis of the Order
2011-TIOL-1447-CESTAT-DEL
M/s Jadon Contractors Vs CCE, Kanpur (Dated: August 16, 2011)
<p>Service Tax – Supply of Manpower Service – The appellants have supplied manpower to BHEL and BHEL paid the appellants as per the rates approved – Period of dispute before amendment of the entry of Section 65(105)(k) – The issue is no longer res integra in view of the previous decisions of the Tribunal cited by the Appellants – No reason to take a different view.</p>
2011-TIOL-1441-CESTAT-MUM
M/s Grey Worldwide (I) Pvt Ltd Vs CST, Mumbai (Dated: August 19, 2011)
<p>Service Tax – Agreement with media house for providing services of media bookings, issue release instructions on their behalf, supervise production/programs for sponsored telecasts etc taxable under category of BAS – Receipt of write backs and discounts received from media house for advertisements liable to service tax – Pre-deposit of Rs. 85 lakhs ordered – Balance amounts stayed during pendency of appeal</p>
Also see analysis of the Order
2011-TIOL-1440-CESTAT-BANG
M/s AVT Natural Products Ltd Vs CCE, Cochin (Dated: August 1, 2011)
<p>Service Tax – Job Work - process of decaffeination of black tea amounts to manufacture – Pre-deposit waived and Stay granted : Prima facie, the products emerging after processes undertaken by the applicant which is decaffeinated tea is commercially different from the black tea supplied by the supplier who is another 100% EOU. In fact, caffeine is another product, which has emerged during the processes undertaken by the applicant, which is also returned back to the supplier. Further, the processes involved is a chemical process known as solvent extraction method and considering the nature of raw materials, the processes undertaken on the said raw materials and the end product, prima-face, in agreement with the claim of the applicant that they are undertaking manufacture of excisable goods on job work basis. In these circumstances, the demand of service tax, prima-facie, is not justified. Pre -deposit waived and recovery of the dues till the disposal of the appeals stayed.</p>

2011-TIOL-1433-CESTAT-DEL
M/s Chopra Bros (India) Pvt Ltd Vs CCE, Panchkula (Dated: September 9, 2011)
Service Tax – Stay/Dispensation of pre-deposit – Commercial or Industrial Construction service – No detailed arguments with proper evidence presented in the Appeal Memorandum except mentioning repeatedly that the order-in-original was perverse - Work sheets showing computation of tax not presented in understandable form – Not a fit case for waiver of pre-deposit – Rs 12 lakhs ordered to be deposited.
2011-TIOL-1432-CESTAT-BANG
Suntec Business Solutions Pvt Ltd Vs CCE, C & ST, Thiruvananthapuram (Dated: August 1, 2011)
Service Tax – BAS – Services rendered outside India; IT Services Not Taxable prior to 16-5-2008; Pre-deposit of 1.6 Crores ordered: The activities undertaken by the Subsidiaries appear to be on behalf of the applicant in relation to the agreement entered into between the applicant and the customers, but, prima facie, these activities have been carried out in the foreign countries. Further, the claim on behalf of the applicants that the services rendered are in the nature of Information Technology services and, therefore, not taxable prior to 16.05.2008 appears acceptable. The appellant submits that the tax liability for the period from 16.05.2008 is approximately Rs. 1.62 crores. Pre-deposit of 1.6 Crores ordered.
2011-TIOL-1429-CESTAT-DEL
Banas Sands Ttcp Ltd Vs CCE, New Delhi (Dated: February 14, 2011)
Collection of toll tax on behalf of MCD on the entry of commercial vehicles in the State of Delhi is a sovereign function and cannot be termed as Business Auxiliary Services - Prima facie case in favour – Pre-deposit waived and stay granted.
2011-TIOL-1428-CESTAT-MUM
Security Guards Board Vs CCE, Thane (Dated: May 6, 2011)
Security Guards Board implementing the scheme under the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 - Demand of tax Service of Rs. 12.90 Crores is for the period May, 2006 to March, 2007 under two heads viz. "Security Agency" and "Manpower Recruitment Agency" - substitution of word "person" for the expression "commercial concern" w.e.f 01.05.2006 seems to indicate that the definition of "Security Agency", as amended, is free from the "commercial" element - In the result, a statutory organization or body discharging even sovereign function without any commercial ingredient therein can also render "security agency" service - Prima facie, therefore, the appellant is liable to pay service tax under the head "Security Agency" service on the amounts collected by them from various registered establishments to whom security guards were deployed by the appellant.
Neither in the show-cause notice nor in the order nor in the submissions of the Revenue representative there is anything to indicate that this appellant rendered 'Manpower Recruitment Agency' service at any time during the period of dispute –

ambiguity in O-in-O regarding duty amount – on wages and allowances of Rs.79.81 Crores service tax that can arise is 9.77 crores – Pre-deposit ordered of 50% of this amount of 9.77 Crores considering the fact that the appellant is a statutory organization having to look after the welfare of security guards – since no plea or any evidence of financial hardships produced, amount to be deposited within six weeks.

[2011-TIOL-1426-CESTAT-MAD](#)

CCE, Tirunelveli Vs M/s Sterlite Industries (I) Ltd (Dated: August 4, 2011)

Service Tax – EOU – CENVAT Credit on CHA Services at Port – Entitled: the issue stands settled in favour of the assesseees by the decision of the Karnataka High Court in Commissioner Vs. ABB Ltd. & Others - [2011-TIOL-395-HC-KAR-ST](#) holding that up to 1.4.2008, credit is admissible on service tax paid on services which are availed even beyond the point of clearance of goods.

[2011-TIOL-1425-CESTAT-MAD](#)

The India Cements Ltd Vs CCE, Tirunelveli (Dated: July 27, 2011)

Service Tax – Input Service – Transportation Charges from 'place of removal' – Credit entitled up to 1.4.2008 – Matter Remanded: the issue in dispute stands covered by the recent decision of the Karnataka High Court in the case of CCE & ST LTU, Bangalore Vs ABB Ltd. - [2011-TIOL-395-HC-KAR-ST](#) . The High Court has held that transportation charges incurred by the manufacturer for clearance of final product from place of removal, upto 1.4.2008 are included in the definition of "input service" and that credit is admissible till this date. Following the ratio of the above decision, which is applicable on all fours to the facts of the present cases and which partly upholds the decision of the Larger Bench of the Tribunal in ABB Ltd., and noting that the period in dispute in the cases of M/s. India Cements Ltd., M/s. Sterlite Industries (I) Ltd. covered both pre as well as post-1.4.2008 and also noting that the period involved in the case of M/s. Wheels India Ltd. is entirely beyond 1.4.2008, cases remanded for fresh decision in the light of the Karnataka High Court's judgment to the adjudicating authority who shall pass fresh orders.

[2011-TIOL-1422-CESTAT-MAD](#)

CCE, Chennai Vs M/s Thyssen Krupp Jbm Pvt Ltd (Dated: July 26, 2011)

Service Tax-Import of Services – Taxable only after 18-04-2006: the issue in dispute regarding levy of service tax for the period in dispute stands settled against the Revenue by the Apex Court's decision in Union of India Vs. Indian National Shipowners' Association – [\(2009-TIOL-129-SC-ST\)](#) holding that liability to service tax upon a service receiver arose only if the services were provided outside India post – 18.04.2006, when Section 66A was introduced in the Finance Act, 1994. The period in dispute in the present case being prior to the above mentioned date, no liability to tax arises and therefore the impugned order upheld and the appeal rejected.

[2011-TIOL-1421-CESTAT-DEL](#)

Bhootpurva Sainik Society Vs CCE & ST, Allahabad (Dated: September 8, 2011)

Service Tax – Security Agency service – Association/Societies of Ex-servicemen supplying security personnel are not liable to pay service tax for the period prior to

18.4.2006 as the Associations/Societies cannot be treated as "Commercial Concerns" - Section 65(94) of the Finance Act, 1994.

The decision in the case of BCCI stands not followed by the Tribunal in Punjab Ex-Servicemen Corpn . on the sole ground that the same was based upon the Supreme Court decision - The said fine distinction drawn by the Tribunal in the case of Punjab Ex-Servicemen corpn would not negate the effect of the precedent decision in the case of BCCI as also the other judgments.

[Also see analysis of the Order](#)

[2011-TIOL-1420-CESTAT-DEL](#)

M/s Kalyan Projects Construction Co Vs CCE, Chandigarh (Dated: August 5, 2011)

Service Tax – Stay/Dispensation of pre-deposit – Erection, Commissioning and Installation Service – Denial of 67% abatement under Notification No 1/2006 ST on the ground that value of material was not separately shown in the invoices – No prima facie case has been made out for waiver of pre-deposit.

[2011-TIOL-1416-CESTAT-MUM](#)

M/s Hindustan Lever Ltd Vs CCE, Nasik (Dated: July 27, 2011)

Service recipient made liable to pay service tax under the category of C&F agency services and Goods Transport operator - as rule 2(1)(d) of Service Tax Rules, 1994 has been held as ultra vires, demands are not sustainable: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1415-CESTAT-DEL](#)

M/s Vodafone Essar Digilink Ltd Vs CCE, Lucknow (Dated: August 5, 2011)

Service Tax – Stay/Dispensation of pre-deposit – Dutiable and exempted service – Non-maintenance of separate accounts – Appellants submit that the restriction of utilisation of CENVAT Credit to the extent of 20% is not applicable for capital goods – Prima facie case has been made out for waiver of pre-deposit.

[2011-TIOL-1413-CESTAT-MUM](#)

CCE, Raigad Vs Echjay Forgings Pvt Ltd (Dated: September 12, 2011)

GTA Service - Even though the service is deemed to be an output service that does not make the recipient of the service a provider of the output service in the absence of another deeming provision - the taxable service received by assessee on which they were liable to pay service tax as service recipient under the provisions of Section 68 (2) of the Finance Act, 1994 read with Rule 2 (1) (d) of the Service Tax Rules, 1994 could not be treated as their 'output service' and, therefore, Service tax is required to be paid in cash and not by utilizing Cenvat credit : CESTAT.

There were differing views on the matter by various judicial authorities during the

relevant time and, therefore, the appellants cannot be said to have indulged in any willful mis-statement of facts or suppression of facts with a view to evade service tax - matter also involves interpretation of the provisions of laws - in such a scenario imposition of penalty is not warranted.

[2011-TIOL-1411-CESTAT-AHM](#)

M/s Hardik Indl Corporation Vs CCE, Daman (Dated: September 14, 2011)

Service Tax - Distributor not C&F Agent: The factual matrix of this case clearly indicates that the appellant never acted as C&F agent or a consignment agent as rightly held by Member (Judicial). It is correctly argued by the Counsel and held by Member (Judicial) that it is not open to a C&F agent to sell the goods to independent parties and at a cost which can be decided by himself. In the case in hand, it is very clear that the appellant is allowed to sell the goods even at a price lower than the prices which were indicated by IPCL. All these indicate that the appellant had acted as a distributor and not as C&F agent of IPCL.

[Also see analysis of the Order](#)

[2011-TIOL-1410-CESTAT-BANG](#)

GE BE Pvt Ltd Vs CCE & ST, Bangalore (Dated: August 8, 2011)

Service Tax- Intellectual Property Service – Revenue Neutrality – Pre-deposit waived and Stay ordered - Counsel has also pleaded revenue-neutrality as a ground for waiver of pre-deposit and stay of recovery. It is submitted that, if Service Tax is required to be paid on the transaction in question, CENVAT credit thereof will be available to them as recipient of the service by virtue of Section 66A of the Finance Act, 1994. Considering the plea of revenue-neutrality raised by the counsel, inclined to grant waiver of pre-deposit and stay of recovery in this case.

[2011-TIOL-1409-CESTAT-MAD](#)

CCE, Tirunelveli Vs Global Software Solutions (P) Ltd (Dated: August 3, 2011)

Service Tax - Mere failure to obtain registration and pay service tax is not sufficient to hold that the assessee suppressed the rendering of a service: failure to take registration is not a ground to invoke extended period of limitation and a positive act on the part of the assessee is imperative to invoke the extended time limit. The burden of establishing suppression lies upon the Revenue and such burden has not been discharged in the present case. No reason to interfere with the impugned order.

[2011-TIOL-1405-CESTAT-DEL](#)

M/s National Project Construction Corpn Ltd Vs CCE, Raipur (Dated: August 5, 2011)

Service Tax – 'Raw water reservoir' and 'ash dyke' cannot be equated with a dam, not exempted from levy of service tax – A taxing entry brought into the statute at a later stage does not mean that legislature is prevented to tax an activity in terms of a former entry embracing an activity defined by law for taxation – Pre-deposit of Rs. 75 lakhs ordered

[Also see analysis of the Order](#)

[2011-TIOL-1404-CESTAT-MAD](#)

CCE, Chennai Vs M/s Futura Polyesters Limited (Dated: July 8, 2011)

Service Tax - Management Consultant Service – Filing of Documents with Statutory Authorities – No change or improvement in the management of an organisation -Not management Service : filing of requisite documents with the Registrar of Companies, and other statutory authorities, carrying out local statutory requirements and other registrations under various laws and statutes such as registration under Service Tax, Custom, Central Excise Act, Export-Import Policy etc. These services do not involve any change or improvement in the management of an organisation and does not require any specialised knowledge of a Management Consultant but these services are only in the nature of compliance with the statutory requirements.

[2011-TIOL-1403-CESTAT-BANG](#)

M/s E-Seva Vs CC, CE & ST, Hyderabad (Dated: August 8, 2011)

Service Tax- E-Seva – Collection of User Charges from public – Pre-deposit ordered: counsel has argued that the services were rendered for the sovereign and that the beneficiaries were members of the public and, therefore, Service Tax was not leviable on the user charges collected by the assessee. It has also been submitted that no service was rendered to the government/private agencies for whom various fees and charges were collected from members of the public. These arguments have been vehemently contested by JCDR. On a perusal of Stay Order No. 1003/2009, similar arguments made before this Bench in the earlier case did not impress the Bench and that a pre-deposit was ordered. In the present case, however, over Rs.8.5 lakhs have been already paid by the assessee towards demand of Service Tax of over Rs.47/-lakhs. This payment, would suffice the purpose of Section 35F of the Central Excise Act.

[2011-TIOL-1399-CESTAT-KOL](#)

M/s Bharat Sanchar Nigam Ltd Vs CCE & ST, Patna (Dated: March 28, 2011)

ST - pre-deposit - interest and penalty - Revenue denies cenvat credit availed on the basis of photocopies of invalid duty-paying documents - Assessee pleads that the document was in the name of Circle office and credit availed by subordinate office - Also argues that the demand raises has included receipts from exempted services - Held, since the duty-paying documents are not valid, it is prima facie not a fit case for waiver of pre-deposit - Stay granted with pre-deposit of Rs 1.5 Cr

[2011-TIOL-1397-CESTAT-AHM](#)

CCE, Vapi Vs M/s Fabkem India (Dated: August 10, 2011)

ST - Wrong availment of Cenvat Credit on outward freight charges - Commissioner (A) relies on Larger Bench decision and allows assessee's appeal - Revenue is in appeal before HC - also refers to amendment in Notification No 10/2008-CE as clarificatory - Held, Karnataka HC has, on the same issue, taken a view that the credit would be admissible up to the place of remove till April 1, 2008 and the amendment is not clarificatory - Revenue's appeal devoid of merit.

2011-TIOL-1393-CESTAT-MAD
JBM Auto System Pvt Ltd Vs CCE, Chennai (Dated: July 18, 2011)
Central Excise – CENVAT – Input Service – Man power supply service availed for garden maintenance – The State Pollution Control Board as per Section 41A of the Factories Act, 1948 has granted consent to the assessees to manufacture goods subject to condition of gardening in the plant premises. Therefore, the garden maintenance service has a nexus with the activity of the business of manufacture by the assessees. Hence, credit of service tax paid on man power supply service availed for garden maintenance work is allowed. (Para 2)
2011-TIOL-1392-CESTAT-MAD
M/s Inox Air Products Ltd Vs CCE, Pondicherry (Dated: May 6, 2011)
Service Tax – Adjustment of excess Service Tax paid – Recipient of service – "Assessee" has been defined under Section 65(7) of the Finance Act, 1994 to mean 'a person liable to pay service tax'. The assessee as recipients of Goods Transport Service are liable to pay Service Tax, they come under the category of "assessee" and, therefore, Rule 6(3) of the Service Tax Rules, 1994 squarely applies to them. (Para 2)
2011-TIOL-1391-CESTAT-MAD
M/s P K Associates Vs CCE, Trichy (Dated: May 23, 2011)
Service Tax – Construction Services – Delay in filing appeal with Commissioner (Appeals) – Condonation of delay – The period of condonation of delay cannot be enlarged beyond what is prescribed in the statute. (Para 3)
2011-TIOL-1390-CESTAT-DEL
M/s Cox & King (India) Pvt Ltd Vs CCE, Jaipur (Dated: August 26, 2011)
Service Tax – Leviability of tax on outbound tours – When planning, organizing, scheduling are done in India, it would mean that service is partly performed in India and partly outside India, covered by Board Circular No. 117 dated 31.10.2009 – Prima facie case for waiver of pre-deposit
Also see analysis of the Order
2011-TIOL-1389-CESTAT-BANG
M/s Cox & Kings (India) Ltd Vs CC, Hyderabad (Dated: July 28, 2011)
Service Tax – Liability to pay service tax on outbound tours when 'tour operator' as well as customers/recipients located in India – When planning, organizing, scheduling are done in India, it would mean that service is partly performed in India and partly outside India, covered by Board Circular No. 117 dated 31.10.2009 – Prima facie case for waiver of pre-deposit

Also see analysis of the Order
2011-TIOL-1388-CESTAT-MUM
CCE, Mumbai Vs GEE Ltd (Dated: July 19, 2011)
<p>Services availed by a manufacturer for outward transportation of final products from the place of removal is to be treated as input services in terms of Rule 2(I) (ii) of Cenvat Credit Rules, 2004 for the period prior to 01.04.2008 - LB decision in ABB Ltd. Vs. Commissioner of Central Excise, Bangalore (2009-TIOL-830-CESTAT-BANG-LB) as upheld by Karnataka HC relied upon: CESTAT</p> <p>Contention of Revenue representative that the respondent could not show that they have included in the assessable value an element of service tax paid on GTA is an allegation that is not a part of the original proceedings covered in the SCN - Revenue appeal dismissed.</p>
2011-TIOL-1384-CESTAT-DEL
M/s Safal Colour Lab Vs CCE, Bhopal (Dated: September 9, 2011)
<p>Service Tax – Photography service – Valuation – Value of paper, chemicals and packing materials are not excludable from the value – Demand upheld for the normal period – Extended period cannot be upheld in view of the conflicting orders of the Tribunal and in absence of mala fide intention – No case for imposing penalty.</p>
2011-TIOL-1383-CESTAT-MUM
Mahindra & Mahindra Ltd Vs CCE, Mumbai (Dated: June 27, 2011)
<p>Service of cost service charges incurred by dealers on behalf of the appellant - whether Input Service - demand of Rs.1.55 Crores - since identical issue dropped by CCE, Nashik, unconditional waiver of pre-deposit granted as both Commissioners are having different view on the issue: CESTAT</p>
2011-TIOL-1375-CESTAT-BANG
M/s Somaya Marketing Vs CST, Bangalore (Dated: May 23, 2011)
<p>Service Tax – Sale of SIM cards not liable to service tax – Tribunal decision in Devangi Communications (2009-TIOL-2285-CESTAT-BANG) followed – Full waiver of pre-deposit ordered and stay granted till disposal of appeal.</p>
2011-TIOL-1374-CESTAT-BANG
CC, Bangalore Vs M/s NEO Foods Pvt Ltd (Dated: May 6, 2011)
<p>Service Tax – Eligibility of refund of service tax paid on maintenance & repair service, technical service, cleaning service etc – Only ground taken in Revenue appeal is that services on which refund was allowed had no bearing on manufacturing activity – Lower authorities allowed refund by holding that services received are directly related to manufacture – Revenue did not make out a prima facie case for allowing their stay</p>

application
2011-TIOL-1373-CESTAT-MAD
M/s Pallipalayam Spinners Private Ltd Vs CCE, Salem (Dated: April 15, 2011)
Central Excise – CENVAT – Utilisation of credit for payment of service tax on Goods transport Agency Service – CENVAT Credit not admissible for payment of service tax on Goods Transport Agency Service availed for the period subsequent to 18.04.2006. Demand of duty upheld but penalty set aside. (Para 2)
2011-TIOL-1368-CESTAT-MAD
Park Digital Colour Lab Vs CCE, Madurai (Dated: July 1, 2011)
Service Tax – CENVAT – Photography Services – Failure to debit in CENVAT Credit account – Interest – Penalty – Non-debit in CENVAT credit account of service tax is a technical ground and demand of service tax is not justifiable. Matter remanded to adjudicating authority to verify if sufficient credit was available for deducting the actual service tax liability. (Para 2)
2011-TIOL-1367-CESTAT-DEL
M/s Sangam (India) Ltd Vs CCE, Jaipur-II (Dated: July 4, 2011)
Central Excise - Business Auxiliary Service - Service received from Overseas agent - Whether service tax can be discharged through CENVAT credit by service recipient - Output Service - Stay / Dispensation of pre-deposit - Service received from offshore service provider cannot be treated as output service as it does not satisfy the second condition of the definition of output service in Rule 2 (p), that the service has to be provided to a client, customer, subscriber policy holder or any other person as there is no client or customer in this case. In Rule 5 of the Import of Service Rules, there is a specific provision that taxable service provided from outside India and received in India shall not be treated as 'output service' for the purpose of availing credit of excise duty paid on any input or service tax paid on any input services under Cenvat Credit Rules, 2004. Further, payment of service tax on service received is not mentioned in Rule 3 (4) of CENVAT Credit Rules, 2004, hence the service tax payment by a service receiver cannot be made by utilising the Cenvat credit. This is not a fit case for full waiver of pre-deposit. Pre-deposit ordered. (Para 5 & 8)
2011-TIOL-1365-CESTAT-BANG
CST, Bangalore Vs M/s Texport Overseas Pvt Ltd (Dated: May 9, 2011)
Service Tax – Revenue filed appeals against remand orders passed by Appellate Commissioner – Pursuant to remand order of Appellate Commissioner, original authority already passed orders sanctioning refund of certain amounts of service tax – Nothing on record to indicate that department has not accepted the orders passed by original authority – Revenue appeals infructuous
2011-TIOL-1362-CESTAT-MAD

<p>Thinksoft Global Services Ltd Vs CST, Chennai (Dated: June 6, 2011)</p> <p>Service Tax – Stay/Dispensation of pre-deposit – Technical testing and analysis services of IT software is prima facie not liable for service tax before 16.5.2008 – Pre-deposit waived.</p>
<p>2011-TIOL-1358-CESTAT-BANG</p>
<p>M/s Kernex Microsystems (India) Ltd Vs CC, CE, & ST, Hyderabad (Dated: June 14, 2011)</p> <p>Service Tax – Eligibility of CENVAT credit of service tax paid on services in respect of advertisement hoardings, designing of DVD film, TV advertisement campaign – Services availed in connection with IPO and proceeds of IPO proposed to be used for setting up new factories and improve capacities such as R&D facilities, which is squarely covered by the phrase 'financing, share registry and related activities' in the definition of 'input service' – Prima facie case for full waiver of pre-deposit</p>
<p>2011-TIOL-1357-CESTAT-MAD</p>
<p>M/s International Clearing And Shipping Agency Pvt Ltd Vs CST, Chennai (Dated: May 9, 2011)</p> <p>Service Tax – Custom House Agent service – Valuation – Exclusion of Reimbursement charges - Circular No. 119/13/2009-ST dated 21.12.2009 clarifying the question as to the situations in which such charges namely, reimbursement charges are excluded is applicable for the earlier period also as the Circular is only clarificatory in nature – Matter remanded.</p>
<p>2011-TIOL-1356-CESTAT-MAD</p>
<p>CCE (ST), Pondicherry Vs M/s Fairline Worldwide Express (Dated: June 16, 2011)</p> <p>Service Tax – Rectification of Mistake (ROM) - There is no statutory provision for filing application for rectification in case of service tax appeals. ROM application dismissed. (Para 1)</p>
<p>2011-TIOL-1351-CESTAT-MAD</p>
<p>CCE, Madurai Vs Dinesh Digital Color Lab (Dated: July 13, 2011)</p> <p>Service Tax - CENVAT – Proper documents – The invoices raised by the importer on his customer who in turn raised invoices on the present assessee though not a proper document as prescribed under Rule 9 of the CCR, 2004, cannot result in denial of credit on technical grounds. Credit of CVD paid is available to the assessee. (Para 2)</p> <p>Penalty – Penalty under Section 76 & 78 cannot coexist. Since penalty under Section 78 already imposed penalty under Section 76 not warranted. Penalty under Section 77 is imposable for non-filing of ST-3 returns. (Para 2)</p>
<p>2011-TIOL-1350-CESTAT-BANG</p>

CC, CE & ST, Hyderabad Vs M/s Country Club (India) Limited (Dated: May 20, 2011)

Service Tax – Appeals – Assessee and Revenue both filed appeals against order of lower authority – While assessee's appeal was taken up for hearing and remanded to lower authority for consideration of issues as per remand order, departmental appeal was not brought to the notice of the Bench in spite of notice to both the parties – Based on the premise that lower authority had not yet passed the remand order, in the interest of justice, in terms of Rule 41 of CESTAT (Procedure) Rules, 1982, lower authority directed not to pass any order till Revenue appeal disposed of

[2011-TIOL-1349-CESTAT-BANG](#)

M/s Biesse Manufacturing Co Ltd Vs CCE, Bangalore (Dated: June 21, 2011)

Service Tax – Eligibility of CENVAT credit of service tax paid on 'group health insurance' policy taken for employees and their families and 'transit insurance' taken on domestic purchase, sales.

[2011-TIOL-1348-CESTAT-MUM](#)

Tata Consultancy Services Ltd Vs CCE & ST, Mumbai (Dated: July 18, 2011)

Refund of service tax on services provided to SEZ – Notfn. 9/2009-ST – Appeal to be heard by Division Bench as SMB is not competent to hear the matter: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1347-CESTAT-MAD](#)

M/s Chola Business Services Ltd Vs CST, Chennai (Dated: June 13, 2011)

Service Tax – Self adjustment of excess service tax paid – Stay / Dispensation of pre-deposit – The adjustment of excess service tax paid in one month against short payment in another month is permissible as the assessee filed half-yearly returns which are required to be assessed at the end of six month period. Stay granted. (Para 1)

[2011-TIOL-1346-CESTAT-AHM](#)

M/s Castrol India Ltd Vs CCE, Vapi (Dated: August 16, 2011)

Central Excise – CENVAT Credit – Credit on outward transportation is admissible in view of the Karnataka High Court order in case of M/s ABB Ltd.

[2011-TIOL-1336-CESTAT-DEL](#)

M/s Career Launcher India Ltd Vs CST, Delhi (Dated: July 26, 2011)

Service Tax – Stay/Dispensation of pre-deposit – Commercial Training or Coaching service – Exemption under Notification No 12/2003 ST for the study material – No prima facie case is made against the Commissioner's finding that the study material

was part and parcel of the coaching service and the entire amount was received against composite invoice – 30% of the tax demanded ordered to be deposited.

[2011-TIOL-1335-CESTAT-DEL](#)

M/s Consortium Securities Pvt Ltd Vs CST (Dated: August 2, 2011)

Service Tax – Stay/Dispensation of pre -deposit – Banking and other Financial services – Demand of service tax on IPO commission and Delay pay-in charges – Adjudicating authority had addressed various contentions raised by the appellants – No prima facie case has been made out for waiver of pre-deposit – Pre-deposit of Rs 25 lakhs ordered.

[2011-TIOL-1334-CESTAT-DEL](#)

CCE, Allahabad Vs M/s Centre For Excellence (Dated: August 10, 2011)

Service Tax – Commercial Training and Coaching Service - Dispute being related to interpretation of law, longer period cannot be invoked - The period involved in the appeal is the initial period of introduction of coaching services to the service tax and created a lot of confusion – A lot of correspondence was exchanged between the appellant and the Revenue and the Show Cause Notice was issued only on 20.7.2006 – No error in Commissioner (Appeals)' order holding that the demand was barred by limitation.

[2011-TIOL-1330-CESTAT-MAD](#)

M/s K K Academy Pvt Ltd Vs CST, Chennai (Dated: July 7, 2011)

Service Tax – Commercial Training or Coaching services - Abacus Training to students is recreational in nature and hence is exempt service: the issue stands settled by the Bangalore Bench of this Tribunal in the case of Fast Arithmetic Vs. Asst. Commr. of C.Ex& S.T., Mangalore . Hence, following the ratio of the said decision, Abacus training is held to be recreational training and therefore, also held that the same comes under the exempted category of services. Consequently, the impugned demand in respect of such training is set aside along with the penalty amount imposed in respect of such training.

Imparting training to Teachers who could either get employment in a Franchisee or open own training centre is Vocational Training and exempt: As regards the Abacus training imparted to the teachers, such training enables such teachers to either get employment in a franchisee imparting similar training or to open their own training centres and thereby get self-employed. Either way, the training received by them prepares them to get employment/self-employment and such training, therefore, would come under vocational training. Since vocational training comes under the exempted category of services, the demand confirmed in respect of Abacus training to teachers is also set aside along with the penalty imposed in respect of the same.

[Also see analysis of the Order](#)

[2011-TIOL-1329-CESTAT-BANG](#)

M/s Brilliance Collage Vs CCE, Trivandrum (Dated: June 7, 2011)

Service Tax – Commercial Training & Coaching service – Liability to pay service tax on sale of books, notes – Sale of books, notes an independent business from that of commercial training or coaching on which there is no denial of discharge of service tax liability – Plea of appellant not considered by adjudicating authority in its proper perspective and reliance was misplaced on Board's Circular dated June 20, 2003 which provides that cost of standard text books should be deducted from the value of taxable service – Value of books, notes and subscription to journals cannot form part of value of taxable service of commercial training or coaching service – Prima facie case for full waiver of pre-deposit – Recovery stayed till disposal of appeals

[2011-TIOL-1328-CESTAT-MAD](#)

Bureau Of Indian Standards Vs CST, Chennai (Dated: June 13, 2011)

Service Tax – Technical Testing and Inspection Services – Intellectual Property Service – Hallmark – Stay / Dispensation of pre-deposit – Hallmark is not a brand name or trade name or intellectual property of the assessee but a universally recognized quality mark to certify purity of jewellery articles and prima facie it is only a symbol indicating the purity of gold/silver jewellery, which has been implemented by the Government of India, in public interest. Administering the Hallmarking scheme in India by the appellant cannot be considered as intellectual property service. Stay granted. (Para 2)

[2011-TIOL-1325-CESTAT-DEL](#)

CC, Kanpur Vs M/s Kamlia Kant & Co (Dated: August 17, 2011)

Service Tax – Franchisee Service – There is no condition in the contract that the franchisee should have been manufacturing goods only under the brand name of the franchisor – No error in the order of Commissioner (Appeals) in setting aside the demand – Section 65(105)(zze) of the Finance Act, 1994.

[2011-TIOL-1322-CESTAT-BANG](#)

M/s KVJ Builders & Developers P Ltd Vs CCE, Cochin (Dated: June 7, 2011)

Service Tax - Construction service – Inclusion of cost of materials supplied free by service recipients in taxable value - Though, issue arguable, appellant prima facie entitled to benefit of abatement of 67% – Pre-deposit of Rs. 27 lakhs ordered - Recovery of balance amounts stayed till disposal of appeal

[2011-TIOL-1321-CESTAT-AHM](#)

M/s Mundra Port & Special Economic Zone Ltd Vs CCE, Rajkot (Dated: September 28, 2011)

Service Tax - Business Support Services : Freight and Terminal Sharing from Railways: MICT has been given right and authority to finance, design, operate and maintain the Contracted Assets at the container terminal and they are also within their right to further construct the assets without any additional cost to the appellant company, for the purpose of providing services to their clients. Not covered under Service Tax.

[Also see analysis of the Order](#)

2011-TIOL-1320-CESTAT-DEL
M/s Shree Rajasthan Syntex Ltd Vs CCE, Jaipur (Dated: August 23, 2011)
Service Tax – Goods Transport Agency Service – Whether service tax on Goods Transport Agency service can be discharged from CENVAT account – The issue stands settled in favour of the assessee in a number of judgements – Impugned orders set aside.
2011-TIOL-1315-CESTAT-BANG
M/s Dapson Engineers Vs CCE, Mysore (Dated: June 6, 2011)
Service Tax – Demand of service tax partly admitted and only modalities of quantification contested – Since appellant only contested modalities of quantification of demand, balance amount of admitted liability along with interest on the entire amount of admitted liability to be pre-deposited – Pre-deposit of penalty waived
2011-TIOL-1310-CESTAT-BANG
M/s Centre For Development Of Advanced Computing Vs CCE, C& ST, Thiruvananthapuram (Dated: June 6, 2011)
Service Tax – Commercial Training or coaching service – SCN issued on 16.07.2009 for demanding service tax for the period from July 2004 to March 2009 – In appellants own case 2008-TIOL-2011-CESTAT-BANG Tribunal held that service tax was not leviable on appellant being a non-profit registered society – With retrospective amendment of law in 2010, though issue on merits goes against appellant, plea of limitation admissible in as much as appellant had bonafide belief due to favourable decision from Tribunal – Pre-deposit of Rs. 9.06 lakhs which is within limitation period ordered and recovery of balance amounts stayed till disposal of appeal
Maintenance & Repair service – Amount of Rs. 3.26 lakhs already deposited sufficient to hear appeal – Pre-deposit of balance amounts waived and recovery stayed till disposal of appeal
2011-TIOL-1309-CESTAT-BANG
M/s Grasim Industries Vs CCE, Bangalore (Dated: May 30, 2011)
Service Tax – Eligibility of credit of service tax paid on GTA service utilized for transportation of finished goods from factory to customer's premises – Issue no longer res integra, settled in favour of assessee by Karnataka High Court – Pre-deposit fully waived and stay granted
2011-TIOL-1308-CESTAT-DEL
M/s S P Construction Vs CCE, Jaipur (Dated: August 5, 2011)
Service Tax – Repair and Maintenance service rendered in respect of Kota Thermal Power Station – Demand of service tax is sustainable on merits – Extended period cannot be invoked – Demand confined to normal period of limitation without any

penalty – Matter remanded for re-quantification.

[2011-TIOL-1307-CESTAT-BANG](#)

M/s Trade Vision India (P) Ltd Vs CST, Bangalore (Dated: June 15, 2011)

Service Tax – Activity of installation of raised pavement markers and road marking with reflectorised thermoplastic paint on national highways – Service tax not charged separately in invoices but nevertheless paid to exchequer – Refund claim filed for service tax paid inadvertently allowed by original authority – On review in terms of section 84, Commissioner held that appellant not eligible for refund as there was failure to provide conclusive evidence that amount collected by them did not include service tax – Fact that appellant paid service tax without any consultation or hesitation or compulsion shows that service tax element was taken into account for working out the amount to be received for the purpose of rendering service – Unless appellant shows through costing account made for tenders that service tax element was not taken into account and borne by them only, difficult to disregard conclusion in Commissioner's Review order – Section 73A provides that any amount collected as service tax to be deposited with Government – Pre-deposit of Rs. 1 lakh ordered – Pre-deposit balance amounts waived and reco very stayed

[2011-TIOL-1306-CESTAT-BANG](#)

Shri Sudheer Kumar Vs CCE, Mangalore (Dated: June 6, 2011)

Service Tax – Construction of commercial complex pursuant to contract with Town Municipal council – Demand contested on the ground that tax cannot be leviable against a State functionary – Appellant has not made out a prima facie case for waiver of pre-deposit – Pre-deposit of entire amount of Rs. 4.87 lakhs ordered

[2011-TIOL-1298-CESTAT-MAD](#)

Bay Forge Ltd Vs CCE, Puducherry (Dated: June 17, 2011)

Service Tax – Business Auxiliary Service – Certain grinding and annealing charges collected from the supplier of the raw materials for making good the defects noticed – Demand of Service Tax under Business Auxiliary Service is set aside as no service has been rendered to the raw material supplier.

[2011-TIOL-1297-CESTAT-BANG](#)

M/s APW President Systems Ltd Vs CCE, Bangalore (Dated: January 4, 2011)

Service Tax – Credit of service tax paid on rent-a-cab service, repair & maintenance service, catering service and group insurance service – Issue no longer res integra, credit not deniable – Impugned order denying credit incorrect, liable to be set aside

[2011-TIOL-1296-CESTAT-BANG](#)

CCE, Hyderabad Vs M/s Aet Labs Pvt Ltd (Dated: June 24, 2011)

Service Tax – Eligibility of CENVAT Credit of service tax paid on out-door catering services, travel agent service, rent-a-cab service and insurance for staff and whether accumulated credit eligible as refund when output services are exported – Issue of eligibility of credit no longer res integra – No infirmity in impugned order

[2011-TIOL-1293-CESTAT-BANG](#)

M/s G J Multiclave (India) P Ltd Vs CCE, Calicut (Dated: June 13, 2011)

Service Tax – Activity of collecting bio-medical wastes from hospitals and incinerating/destroying in incinerator owned by IMA and run by appellant – Pre-deposit of Rs. 10 lakhs ordered – Recovery of balance amounts stayed till disposal of appeal