

CESTAT RULING

[2011-TIOL-1114-CESTAT-DEL](#)

M/s A G Engineers Vs CCE, Ghaziabad (Dated : June 2, 2011)

Service Tax - Valuation - Clearing and Forwarding Service - Reimbursement of Expenses - Penalty - Reimbursed expenditure is to be included in taxable value. However, due to the confusion prevailing at the relevant period, penalty stands waived. (Para 5)

[2011-TIOL-1113-CESTAT-DEL](#)

M/s A G Engineers Vs CCE, Ghaziabad (Dated : May 31, 2011)

Service Tax - Maintenance or Repair Service - Authorised Agent - Assessee is a dealer of branded goods. But there is no evidence that the appellant acted under any contract or as an authorised service provider. Taxation cannot be under presumption. Demand set aside along with penalties and interest. (Para 4)

[2011-TIOL-1112-CESTAT-MUM](#)

M/s Zenith Computers Ltd Vs CCE, Thane (Dated : July 25, 2011)

Allegation in the demand notice is promotion of brand name viz. INTEL INSIDE and MICROSOFT technologies and not promotion of branded goods - such activity has come into taxable net w.e.f 01.07.2010 and not earlier – Strong prima facie case – Pre-deposit of Service Tax waived and stay granted: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1111-CESTAT-DEL](#)

M/s IDEA Cellular Ltd Vs CCE, Meerut (Dated : January 13, 2011)

Service Tax – CENVAT Credit – Credit is admissible on services relating to hiring of conference room, Customer care service and insurance charges for valuables and cash in transit.

[2011-TIOL-1105-CESTAT-MAD](#)

M/s Ramaniyam Real Estates (P) Ltd Vs CST, Chennai (Dated : May 26, 2011)

Service Tax – Stay/Dispensation of pre-deposit–Reference to Larger Bench - Matter cannot be referred to a Large Bench solely on account of prima-facie dis-agreement

with the earlier orders of the Tribunal.

Financial hardship - Merely because a prima-facie case is made out, an interim order should not be passed waiving the requirement of predeposit unless the balance of convenience is also clearly in favour of waiving the requirement of predeposit and there should not be likelihood of prejudice to public interest.

Commercial Construction Service –Plea that service tax is not payable for the period prior to 1.6.2007 is prima facie not acceptable – Pre-deposit ordered.

Limitation – No prima facie case has been made out on limitation.

[2011-TIOL-1104-CESTAT-BANG](#)

M/s Price Waterhouse Vs CST, Hyderabad (Dated : February 1, 2011)

Service Tax – Liability to pay service tax on services rendered to foreign companies, allegation of availment of input credit beyond prescribed limits under Rule 6 of CENVAT Credit Rules and availability of exemption notification 59/98-ST – Demand of service tax raised and confirmed by adjudicating authority as per Annexure -I to SCN, prima facie export of services – Certifications done by appellant for compliance with US Law for their client may get the benefit of Notification No.59/98-ST as amended by 15/2002-ST – Other contentions to be considered at the time of final disposal of appeal – Amount of Rs. 19.37 lakhs deposited sufficient to hear and dispose of appeals – Pre -deposit of balance amounts waived and stay granted

[2011-TIOL-1099-CESTAT-BANG](#)

CCE, C & ST, Cochin Vs M/s Parkson Estates & Industries (Dated : January 20, 2011)

Service Tax – Provision of bulk storage facility, blending and packing of tea in warehouse resulting in demand of service tax under storage & warehousing service, packing service & cargo handling service – Tea being agricultural produce not liable to tax under storage & warehousing service – Impugned order of Appellate Commissioner setting aside demand of tax on this account upheld and Revenue appeal rejected – As regards packing service, Appellate Commissioner mixed up value and taxability without recording any findings – Impugned order to this extent set aside and matter remanded for de novo consideration of this issue

[2011-TIOL-1098-CESTAT-BANG](#)

M/s Jaya Hume Pipes Pvt Ltd Vs CCE, Guntur (Dated : February 4, 2011)

Service Tax – Activity of laying pipelines for drinking water projects prima facie considered as not taxable – Tribunal decision in Nagarjuna Construction Co. Ltd = ([2010-TIOL-789-CESTAT-BANG](#)) followed – Full waiver of pre-deposited ordered

[2011-TIOL-1097-CESTAT-BANG](#)

M/s Ramky Infrastructure Ltd Vs CCE, Hyderabad (Dated : March 7, 2011)

Service Tax – Execution of contracts for Government of Andhra Pradesh – Tribunal stay order in assessee's own case = ([2010-TIOL-699-CESTAT-BANG](#)) followed – Prima facie case for full waiver of pre-deposit - Stay granted

[2011-TIOL-1093-CESTAT-BANG](#)

M/s Deep Foundations Vs CCE, Cochin (Dated : January 31, 2011)

Service Tax – Activity of 'piling work' prima facie amounts to construction service – Value of materials supplied by recipient of services gets benefit of Notification No. 12/2003-ST – Issue regarding liability of service tax on balance amounts to be decided at final hearing – Pre-deposit of Rs. 25 lakhs ordered

[2011-TIOL-1091-CESTAT-DEL](#)

M/s J K Sugar Ltd Vs CCE, Meerut (Dated : February 15, 2011)

Central Excise – CENVAT Credit – Credit is admissible on HR Plates/Sheets and welding electrodes used for repair and maintenance of plant and machinery.

Input Service – Credit is admissible on Rent-a-cab and mobile phone services.

Rule 4(7) of the CENVAT Credit Rules, 2004 – Credit availed before making payment – The gap is only of five days between the date of taking credit and payment of service tax - The lapse is only of technical nature, it is not correct to deny the credit.

[2011-TIOL-1090-CESTAT-BANG](#)

M/s Keral State Road Transport Corporation Vs CCE, Cochin (Dated : December 10, 2010)

Service Tax – Sale of space in bus stands and on buses for advertisement – Issue of service tax liability being discharged by persons who have taken space from appellant not addressed by lower authority – Matter remanded to adjudicating authority for deciding issue afresh, without expressing any opinion on merits

[2011-TIOL-1086-CESTAT-MUM](#)

M/s Ashoka Infraways Pvt Ltd Vs CCE, Nasik (Dated : May 5, 2011)

Service Tax - Appellant constructing Road Project on BOT basis – Toll charges collected from the users of the Highway towards "management, maintenance or repair" service - Where the department itself maintained doubt on whether service tax could be levied on "management, maintenance or repair" of roads, highways etc. any bona fide belief on the part of the appellants that they might not be liable to pay service tax on such activities, cannot be suspect – Extended period of limitation prima facie not invocable – Pre-deposit waived and stay granted: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1085-CESTAT-BANG](#)

Hindustan Petroleum Corporation Limited Vs CCE, Visakhapatnam (Dated : January 24, 2011)

Service Tax – Liability to pay service tax on recipient of services prior to 18.04.2006 covered by Bombay High Court judgment in Indian National Shipowners Association case = ([2008-TIOL-633-HC-MUM-ST](#)) – Full waiver of pre -deposit ordered and stay granted

[2011-TIOL-1084-CESTAT-BANG](#)

M/s Bharat Heavy Electricals Limited Vs CCE, Bangalore (Dated : January 13, 2011)

Service Tax – Credit of service tax paid on input services used in manufacture of dutiable and exempted goods without maintaining separate accounts – Liability under Rule 6(3) would be fully discharged if assessee paid/reversed credit attributable to input services used in manufacture of exempted services – Assessee discharged duty liability within six months of enactment of Finance Act, 2010 – Matter remanded to Commissioner to re -determine liability in accordance with law

[2011-TIOL-1082-CESTAT-MUM](#)

CCE & ST Vs The Supreme Industries Ltd (Dated : June 8, 2011)

Even prior to 19.04.2006 Service Tax on GTA service cannot be paid through CENVAT credit but has to be paid only through PLA – Since the President of CESTAT decides the constitution of the Larger Bench and since in the case of ITC Ltd., the President was one of the Members, it is implied that the issue in Panchmahal case stands settled: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1081-CESTAT-BANG](#)

M/s Sandhar Automach Vs CCE, Bangalore (Dated : February 4, 2011)

Service Tax – Eligibility of CENVAT Credit on canteen services provided to employees – Credit of service tax paid by canteen contractor not deniable – Amount of service tax charged from amount paid by employees not eligible as credit – Impugned order to the extent it denies credit of service tax paid by canteen operator liable to be set aside and to the extent it denies the credit of service tax paid by employees upheld – Lower authority directed to ensure correctness of amounts calculated by assessee of service tax credit on amount paid by employees and recover it with interest

[2011-TIOL-1080-CESTAT-BANG](#)

M/s Utopia India Pvt Ltd Vs CST, Bangalore (Dated : February 25, 2011)

Service Tax – Refund of service tax paid on input services utilized for export of BAS and BSS services to clients located outside India – Chartered Accountant service, Manpower recruitment and supply service, Outdoor catering service, General insurance service, Security service and Technical inspection & certification service are input services – Issue of eligibility of credit/refund of tax paid on these services no longer res integra , refund of tax paid on such services not deniable – As regards 'asset management service' no findings recorded by Appellate Commissioner for denial of refund – Matter remanded to lower authority to this extent

[2011-TIOL-1075-CESTAT-BANG](#)

Smt Vinitha Nambiar Vs CST, Bangalore (Dated : April 1, 2011)

Service Tax – Penalties imposed for failure to furnish returns & pay service tax – When assessee could manage affairs of business during material period it cannot be held that assessee could not pay tax owing to mental strain and pressure – No evidence brought on record by assessee to support the contention that there was no intention to evade service tax – Penalty levied under s. 78 justified – Levy of penalty twice the amount of tax demanded excessive, reduced to amount equal to service tax

[2011-TIOL-1074-CESTAT-BANG](#)

State Bank Of India Vs CST, Bangalore (Dated : January 17, 2011)

Service Tax – Non-inclusion of postage and telegram charges in taxable value of 'banking and financial s

ervices' rendered by appellant – Amount of Rs. 8 lakhs pre-deposited pursuant to order of Appellate Commissioner sufficient to hear appeal – Pre-deposit of balance amounts waived

[2011-TIOL-1072-CESTAT-BANG](#)

M/s Sudhakar Plastic Ltd Vs CCE, Hyderabad (Dated : January 21, 2011)

Service Tax - ROM Applications - Appellants sought only waiver of penalties levied and did not dispute liability of CENVAT Credit wrongly availed whereas Tribunal's Final orders set aside the entire orders of lower authorities - Final orders in effect set aside demand of CENVAT Credit wrongly availed by assesseees - Final orders modified accordingly

[2011-TIOL-1071-CESTAT-BANG](#)

M/s GE India Industrial Pvt Ltd Vs CCE, Bangalore (Dated : January 21, 2011)

Service Tax – Payment of service tax by recipient of GTA service through CENVAT Credit A/c – As matter is referred to Larger Bench, full waiver of pre-deposit ordered

and stay granted
2011-TIOL-1070-CESTAT-BANG
Federal House Construction Co-Operative Society Ltd Vs CCE, Cochin (Dated : January 31, 2011)
Service Tax – Liability to pay tax under 'construction of complex' service – Claim of appellant regarding payment of Rs. 35.35 lakhs under protest to be accepted as pre-deposit subject to confirmation – Pre-deposit of balance amounts waived
2011-TIOL-1068-CESTAT-BANG
M/s NCS Storage Systems (P) Ltd Vs CCE, Visakhapatnam (Dated : January 4, 2011)
Service Tax – Short payment of service tax due to wrong calculation of service tax payment – In the absence of any representation or records contesting demand, no prima facie case made out for waiver of pre-deposit – Pre-deposit of Rs. 85,000/- ordered
2011-TIOL-1067-CESTAT-BANG
Shri GD Subraya Sheregar Vs CCE, Mangalore (Dated : March 18, 2011)
Service Tax – Activity of improvement/re-asphalting of existing roads for NHAI, PWD etc – Impugned order set aside and matter remanded in lieu of Tribunal Final Order No. 1481/2010 dated 28.10.2010 = (2011-TIOL-300-CESTAT-BANG)
2011-TIOL-1065-CESTAT-BANG
M/s Bharat Fritz Werner Ltd Vs CCE, Bangalore (Dated : January 6, 2011)
Service Tax – Eligibility of CENVAT Credit on architect service, authorized service station service, interior decorator service, real estate agent's service and stock broker service – When services are directly or indirectly used for the purpose of business, credit not deniable – Impugned order set aside
2011-TIOL-1061-CESTAT-BANG
M/s Larsen & Troubo Limited Vs CCE, Hyderabad (Dated : March 28, 2011)
Service Tax – Erection of onshore terminal for receiving, processing/purification and distribution of natural gas whether liable to tax under 'commercial or industrial construction service – Tribunal stay order in assessee's own case = (2010-TIOL-669-CESTAT-BANG) followed – Pre-deposit of Rs. 6 crores ordered

[2011-TIOL-1060-CESTAT-DEL](#)

National Engineering Industries Ltd Vs CCE, Jaipur (Dated : May 19, 2011)

Service Tax - Export of Services – Commission received by appellant from General Motors through Indian Railways in Indian Rupees – Refund of service tax paid cannot be denied on the ground no foreign exchange was received and thereby conditions of Rule 3(2)(b) of Export of Services Rules, 2005 were not fulfilled.

[2011-TIOL-1059-CESTAT-MUM](#)

M/s Maharashtra Seamless Ltd Vs CCE, Raigad (Dated : July 7, 2011)

Electricity produced in wind mill situated away from the factory transferred to Maharashtra State Electricity Board Power Grid which in turn supplies equivalent quantum to appellant's factory – Services used for such wind mills are Input Services for manufacturer – Cenvat Credit available: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1058-CESTAT-MAD](#)

Indusind Bank Ltd Vs CST, Chennai (Dated : April 18, 2011)

Service tax – Stay/Dispensation of pre-deposit – Commission received from the vehicle dealers for financing the vehicles – Prima facie taxable service under Business Auxiliary Service as the assessee acted as a commission agent – Pre -deposit ordered.

[2011-TIOL-1057-CESTAT-MAD](#)

A Suthanther Assumtha Vs CST, Chennai (Dated : February 28, 2011)

Service Tax – Tour Operator – Open remand – Matter remanded earlier to verify if the vehicle was a 'Tourist Vehicle' as provided in the Motor Vehicle Act and whether the assessee was in possession of valid permit. Now, earlier remand order is converted to an open remand to consider the aspect of limitation and protection under Section 80 of the Act as well. (Para 2)

[2011-TIOL-1052-CESTAT-MUM](#)

CCE, Kolhapur Vs Helios Food Additives Pvt Ltd (Dated : July 21, 2011)

Assessee having manufacturing activities at Chiplun, Ratnagiri but providing taxable service of 'renting of immovable property' at Mumbai – Assistant Commissioner, Service Tax, Mumbai has jurisdiction to issue demand notice and not A.C., C.Ex., Ratnagiri – Order of Commr(A) upheld and Revenue appeal dismissed: CESTAT

[Also see analysis of the Order](#)

2011-TIOL-1051-CESTAT-MAD
KKSK Leather Processors Pvt Ltd Vs CCE, Salem (Dated : March 31, 2011)
Service tax – Refund of Service tax under Notification No 41/2007 ST on sales commission paid for goods exported – Refund rejected on the ground of time bar – Matter remanded in the light of GTN Engineering (I) Ltd. Vs CCE Coimbatore (2011-TIOL-149-CESTAT-MAD) .
2011-TIOL-1050-CESTAT-MAD
M/s Sundaram Fasteners Ltd Vs CCE, Chennai (Dated : April 11, 2011)
Service Tax – CENVAT – Input Service – Rent-a-cab service – Transporting of employees to the factory and back has a direct nexus with the assessee's business of manufacture of final product. Assessee is entitled to credit of service tax paid on 'van hire' charges. (Para 2)
2011-TIOL-1045-CESTAT-MUM
Endurance Technologies Pvt Ltd Vs CCE, Aurangabad (Dated : July 13, 2011)
Repairs and maintenance Service of Wind mills used for producing Electricity situated away from the factory are also Input Services – there is no mandate in law that Services should be used in the factory unlike inputs - no reason for denial of Cenvat Credit: CESTAT
Also see analysis of the Order
2011-TIOL-1044-CESTAT-BANG
CST, Bangalore Vs M/s Indian Institute Of Management (Dated : March 30, 2011)
Service Tax – Liability to pay service tax on campus recruitment programs – Board Circular No. 86/4/2006-ST dated 1.11.2006 has clarified that institutes like IITs or IIMs not liable to pay service tax on this activity for the period prior to 1.5.2006 – No infirmity in Appellate Commissioner's order
2011-TIOL-1043-CESTAT-MAD
CCE, Madurai Vs M/s Kodai Automobiles Ltd (Dated : May 4, 2011)
Service Tax – Review of order passed by the Commissioner under Section 84 of the Finance Act, 1994 – With effect from 19.8.2009, reviewing power of Committee of Chief Commissioners does not cover the orders passed under Section 84 of the Finance Act.

2011-TIOL-1036-CESTAT-BANG
M/s G R Power Switchgear Ltd Vs CCE, Hyderabad (Dated : January 4, 2011)
Service Tax – Refund – Tax paid in excess without availing abatement benefit of Notification No. 13/08-ST – CA certificate produced to claim that excess service tax not passed on to customers – If appellant is eligible for benefit of abatement, then amount of service tax paid is in excess, which is not liable to be paid – Matter remanded to adjudicating authority for de novo consideration of the issue – Appeal allowed by remand without expressing any opinion on merits
2011-TIOL-1035-CESTAT-BANG
M/s Deepak Tools Heat Treaters (P) Ltd Vs CCE & ST, Mangalore (Dated : January 10, 2011)
Service Tax – Goods produced on job work basis by heat treatment process – Activity of 'production or processing of goods for, or on behalf, of the client' brought into amended definition of BAS only from 16.06.2005 – Prima facie case made out for full waiver of pre-deposit – Stay granted
2011-TIOL-1034-CESTAT-BANG
M/s Kerala State Beverages Vs CCE, CC & ST, Thiruvananthapuram (Dated : March 17, 2011)
Service Tax – Liability to pay service tax under BAS for the activity of procurement and distribution of IMFL and FMFL – Appellants charged from suppliers service charges, display charges, warehousing charges, transfer charges, labeling charges etc resulting in demand of service tax with interest and levy of penalties – Appellant engaged in an activity akin to trading and the activities undertaken by appellant nothing but sale of liquor and cannot be held as services rendered to distilleries – Impugned orders set aside
2011-TIOL-1033-CESTAT-BANG
CCE, Hyderabad Vs M/s Geological Survey Of India (Dated : January 17, 2011)
Service Tax – When Appellate Commissioner sets aside levy of penalty under s. 78 and Revenue's challenge to impugned order only in relation to penalty aspect, in absence of executable order question of stay does not arise
2011-TIOL-1030-CESTAT-DEL
M/s Hero Honda Motors Vs CCE, Delhi (Dated : July 4, 2011)
Central Excise - CENVAT - Input Service - Courier Service - Outward freight from place of removal - Stay / Dispensation of pre-deposit - Assessee dispatches the goods to their customers through courier. When the sale is not on FOR destination basis and

the freight is not part of the assessable value and when the assessee has not produced any evidence to show that the assessable value of the goods included the courier charges for dispatching the same to the customers, it is not a fit case for full waiver of pre-deposit. Pre-deposit ordered. (Para 7 & 8)

[2011-TIOL-1028-CESTAT-BANG](#)

G Chandrababu, Proprietor Vs CCE, CC & ST, Thiruvananthapuram (Dated : March 14, 2011)

Service Tax – Construction of Residential Complex service – Appellant entered into agreement for sale of undivided interest in land and another agreement with prospective builders for construction of residential complex – Records clearly indicate that appellants were owners of land and properties were developed and sold to prospective buyers – Adjudicating authority's view that only completed flat sold without any receipt of advance is sale and rest of transactions would fall under category of services not correct proposition of law – Merely because appellant received advances from prospective buyers, transaction of sale cannot be regarded as services – Prima facie case for waiver of pre-deposit

[2011-TIOL-1023-CESTAT-BANG](#)

BSNL Vs CCE, Mangalore (Dated : January 17, 2011)

Service Tax – Liability to pay service tax on discount/trade discount/commission paid by BSNL to PCO operators – No dispute that appellant discharged service tax on amounts collected from PCO operators – Prima facie case for full waiver of pre-deposit

[2011-TIOL-1022-CESTAT-BANG](#)

M/s Apitco Limited Vs CC, CCE & ST, Hyderabad (Dated : February 7, 2011)

Service Tax – Scientific & Technical Consultancy service – Taxability of grant-in-aid received from State Government for implementation of welfare projects for poor and minorities – Service tax not leviable in view of Tribunal order in appellants own case for earlier period = ([2010-TIOL-1564-CESTAT-BANG](#)) – Impugned order set aside

[2011-TIOL-1021-CESTAT-BANG](#)

M/s Abacus Brain Study (P) Limited Vs CCE, Hyderabad (Dated : January 24, 2011)

Service Tax – Activity of coaching children basing on ancient Japanese methods of mathematical calculation with 'abacus' instrument – Abacus training for children a recreational activity, eligible for benefit of Notification 9/03-ST dated 20.06.2003

[2011-TIOL-1020-CESTAT-BANG](#)

Swarna Tollway (Pvt) Ltd Vs CC & CCE, Guntur (Dated : May 12, 2011)

Service Tax – Liability to pay service tax under Business Auxiliary Service for collecting toll from users of National Highways under a 'concession agreement' and 'assignment agreement'

NHAI concluded an agreement with a Malaysian company CIDBI for design, engineering, financing, procurement and construction, completion, operation, maintenance and toll collection of the aforesaid highways on BOT basis – In terms of this agreement NHAI entered into a further agreement viz., 'concession agreement' with CIDBI for a period of 30 years to accept the exclusive right, license and authority to implement the project

Tripartite 'assignment' agreement entered into by NHAI, CIDBI and appellant for assignment of appellant as 'concessionaire' for execution of highways project and collection of toll tax – Notification dated 13.05.2009 issued by Ministry of Road Transport and Highways authorized appellant as the 'concessionaire' in terms of 'concession agreement' entered into by NHAI and CIDBI – Appointment of appellant as 'concessionaire' by amending the preamble of principal notification has retrospective effect – Appellant cannot be regarded as an 'agent' of CIDBI as held in the impugned order, not liable to pay any service tax – Impugned orders set aside

[2011-TIOL-1015-CESTAT-MAD](#)

M/s Madras Radiators & Pressings Ltd Vs CCE, Chennai (Dated : April 15, 2011)

Central Excise – Stay / Dispensation of pre-deposit - CENVAT – Input Service - Credit of service tax paid on transport charges for bringing back packing material – In view of the Tribunal decisions that containers and empty cylinders being used for packing the final products are to be treated as inputs used by manufacturers in or in relation to the manufacture of final products and credit of service tax is admissible, waiver of pre-deposit is granted. (Para 1)

[2011-TIOL-1014-CESTAT-MAD](#)

M/s Parameswari Textiles Vs CCE, Tiruchirapalli (Dated : January 21, 2011)

Service Tax – Refund of service tax under Notification No 41/2007 ST dated 06.10.2007 rejected on the ground that the service availed, i.e., Technical Testing and Analysis service was not specific to export goods - The original authority has found a broad co-relation between the invoice issue by the Testing & Analysis Service Provider and the export goods - It is the policy of the Government to encourage exports and not to burden the export consignments with domestic taxes like the service tax, which is paid in relation to the input service - The order passed by the original authority allowing the refund of input service tax in respect of the impugned export goods is fair and requires to be upheld.

[2011-TIOL-1013-CESTAT-MAD](#)

Rajalakshmi Paper Mills Pvt Ltd Vs CCE, Madurai (Dated : March 11, 2011)

Service Tax - Goods Transport Agency – Person liable to pay service tax – Whether the assessee is liable to pay service tax when he has not paid the freight amount to the transporters but has been paid by the consignment agents from the amount

received by them from the ultimate buyers?

HELD - As per Rule 2(1)(d)(v) of the Service Tax Rules, 1994 both the assessee and the consignment agents fall under the category 'person who are liable to pay service tax'. When the consignment agents have not paid the freight amounts on behalf of the assessee, the consignment agents are liable to pay service tax since they have paid the freight amount themselves. Demand of service Tax has to be made on the consignment agents and not on the assessee. (Para 5)

[2011-TIOL-1010-CESTAT-MUM](#)

Aurangabad Auto Engg Pvt Ltd Vs CCE, Aurangabad (Dated : June 1, 2011)

Input Services used for job work – Cenvat Credit cannot be denied: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1009-CESTAT-DEL](#)

Upper Doab Sugar Mills Vs CCE, Meerut (Dated : February 9, 2011)

Service Tax - Goods Transport Agency - Exemption Notification - Interpretation - Applicability of - Assessee claims that Notification No. 34/2004-S.T. is for "service provided by a goods transport agency" and as the exemption makes no mention of the person paying tax, the exemption should be available to service provided by goods transport agency even in situation where the recipient is paying the tax.

HELD - The Notification No. 34/2004-S.T., dated 3-12-2004 has not intended to give exemption with reference to the person paying tax. The expression ' mutatis mutandis ' is not appearing in the notification. But spirit of the notification is to be understood keeping in view the social philosophy attached to the notification. Prescription of the small value limit to the transport cost indicates that Government did not intend to tax the activity carried out by small transport agencies. Cannot deny such a benefit to activities carried out by small transporters. (Para 5)

[2011-TIOL-1008-CESTAT-DEL](#)

Ved Contractors Pvt Ltd Vs CCE, Delhi (Dated : May 30, 2011)

Service Tax - Valuation - Material supplied by contractee - Stay / Dispensation of pre-deposit - Value of material provided by the contractee to be included in the assessable value. However as the matter is under challenge in the High Court, pre-deposit is not insisted. (Para 6)

Classification - Works Contract vis -à-vis Commercial or Industrial Construction Service and Construction of Complex Service - Stay / Dispensation of pre-deposit - Prior to the introduction of 'works contract' service, the long term service rendered to be classified under appropriate heading depending on the nature of the activity carried out by the assessee. Pre-deposit is ordered.

The Board has conceived that long term contracts having elements of certain nature of taxable service were intended to be brought to the ambit of the changed classifications to fall in to the entry of works contract, this does not appear to alter the nature of activity carried out by an assessee in the past. The work is recognized by its nature and incidence of tax depends on the nature of activity. The prospectivity and

retrospectivity taxation is not the intention of the Board as is apparent from the Circular. Board has deliberately used the word "undergo a change" in the Circular to provide a more convenient classification of the past activity considered to taxable under the frame of works contract. (Para 7)

[2011-TIOL-1005-CESTAT-DEL](#)

M/s Intertoll India Consultants (P) Ltd Vs CCE, Noida (Dated : May 19, 2011)

Service Tax- sub contractor collecting toll charges on Delhi- Noida toll bridge- Not liable to Service Tax before or after 10/09/2004 : It can be seen from the above definition, a person is considered as customer of a business house when he has repeated dealings with the business house. By any stretch of imagination, individual using the DND bridge and pays toll to the authority cannot be considered as a customer. The definition of the BAS either prior to 10/09/2004 or post 10/09/2004 has to be considered from the point of view of whether the appellant has provided any customer care services on behalf of the client. First and foremost, it is to be noted that NTBCL is not a client of the appellant as the appellant is not promoting any customer care service of NTBCL . There is no visible activity done to please the user of the DND bridge to take care of their needs or something which is done which induces to come again and again to the said DND bridge. It may be noted that the users of DND bridge may be paying the toll fees reluctantly as that is the only means to connect the two banks of the rivers.

No tax for the past on a new service : The activity of the appellant would be covered under the 'Management, Maintenance and Repair of immovable property services'. Such services are liable to be taxed from 16/06/2005. A category which specifically covered under the Service Tax liability from a specific date cannot be taxed under any other headings prior to that date is the law which has been settled by the High Court of P&H in the case of CCE Vs. Lal Path Lab (P) Ltd .

[Also see analysis of the Order](#)

[2011-TIOL-1004-CESTAT-DEL](#)

M/s Vicky Enterprises Vs CCE, Jaipur (Dated : May 31, 2011)

Service Tax - Cargo Handling Service - Non-payment of service tax - Waiver of Penalty under Section 80 - On account of Board Circular No. B 11/1/2002-TRU dated 1/8/02 that the cargo handling service provided by a person in individual capacity would not be taxable, the assessee being a proprietary concern, has not paid service tax. Since non-payment of service tax was due to the impression given by the Board's Circular that an individual providing cargo handling service would not be covered under the service tax, it is a fit case for waiver of penalty. (Para 4)

[2011-TIOL-1003-CESTAT-DEL](#)

Shri Vijay Kumar Vs CCE, Ludhiana (Dated : June 20, 2011)

Service Tax - Business Auxiliary Service - Taxability - The appellant claims that they were providing only infrastructure and manpower for carrying out the object of the Principal. As per the agreement, it was the responsibility of the appellant to improve the efficiency of business of their client. One of the objective of the agreement was promoting or marketing of goods of that company. Liability to pay service tax is upheld. (Para 8 & 9)

[2011-TIOL-994-CESTAT-DEL](#)

M/s Vodafone Essar Digilink Ltd Vs CCE, Panchkula (Dated : May 9, 2011)

Service Tax - CENVAT - Capital Goods - Towers & pre-fabricated buildings - Stay / Dispensation of pre-deposit - Assessee has availed Cenvat credit on towers, pre-fabricated buildings and an accessory thereof treating them as capital goods. In view of the High Court Order granting waiver of pre-deposit in an identical case, stay granted. (Para 4)

[2011-TIOL-993-CESTAT-DEL](#)

M/s Zullu Security (India) Pvt Ltd Vs CCE & ST, Lucknow (Dated : May 9, 2011)

Service Tax - Demand - Audit objection - Limitation - Stay / Dispensation of pre-deposit - Differential demand has arisen on the ground of audit objection raised by the audit party. The allegations in the show cause notice regarding the suppression of the facts of rendering of the services and receiving the amount from the clients are very sketchy. Prima facie case made out for waiver of pre-deposit. Stay granted. (Para 4)

[2011-TIOL-992-CESTAT-BANG](#)

M/s Swarna Tollway Pvt Ltd Vs CCE, Guntur (Dated : February 7, 2011)

Service Tax – Construction of national highway on BOT basis – Notification issued by Ministry of Road Transport and Highways authorizing persons who build and transfer the highways to collect toll tax – Toll tax collected exempted from payment of service tax – Demand of service tax on toll charges does not have a strong basis – Prima facie case made out for full waiver of pre-deposit

[2011-TIOL-991-CESTAT-BANG](#)

IVRCL Infrastructures & Projects Ltd Vs CCE, CC & ST, Hyderabad (Dated : January 10, 2011)

Service Tax – Commercial or Industrial Construction Service – Laying of pipelines for drinking water supply projects, prima facie not leviable to tax under Commercial or Industrial Construction Service - Full waiver of pre-deposit and stay granted – Tribunal order in [2010-TIOL-222-CESTAT-BANG](#) followed