

CESTAT RULING

[2011-TIOL-1727-CESTAT-BANG](#)

CCE, Hyderabad Vs M/s TFL Quinn India Pvt Ltd (Dated: February 3, 2011)

Central Excise – Refund – Original authority rejected refund claims on the ground that discounts allowed to dealers and agreements entered with dealers by assessee to allow such discounts were not disclosed to department prior to clearance of goods – Appellate Commissioner allowed refunds holding that once discounts are known at the time of clearance, the same had to be allowed resulting in Revenue appeal – In terms of Apex Court judgment in MRF Ltd case [2002-TIOL-257-SC-CX-LB](#), prompt payment discount will not form part of assessable value – In the instant case, there is no dispute that prompt payment discounts were allowed – Original authority disallowed claims only for the reason that new discount scheme disclosed to department indicated only clearances to DTA unit – Not informing the department of new scheme upfront or not following provisional assessment scheme cannot be a ground to deny refund claim – Impugned refund amounts shall be sanctioned subject to test of unjust enrichment – Section 11B of Central Excise Act, 1944

[2011-TIOL-1725-CESTAT-BANG](#)

M/s Andhra Cylinders Pvt Ltd Vs CCE, Hyderabad (Dated: September 7, 2011)

Central Excise – Stay/Waiver of Pre-deposit – Default in payment of monthly dues – Short payments of monthly dues from September 2009 made good by payment in PLA in March 2010 – Defaults in monthly payment of duty from November 2009 resulted in forfeiture of right to utilize CENVAT Credit A/c - Violation of order of forfeiture resulted in demand of irregular availment of CENVAT Credit for the period from September 2009 to August 2010 – Provisions of Rule 8(3A) mandatory and makes it obligatory for manufacturer to pay duty only from PLA in case of default in payment of monthly dues - No prima facie case made out for full waiver of pre-deposit - Since assessee paid duty through CENVAT A/c during material period and short payments of duty were made good in PLA during March 2010, direction to pre-deposit entire duty amount would result in undue hardship – Plea of financial hardship based on provisional P & L A/c not accepted - Pre-deposit of Rs. 5 lakhs in lieu of penalty imposed suffices – Rule 8(3A) of Central Excise Rules, 2002 read with Section 35F of Central Excise Act, 1944

[2011-TIOL-1723-CESTAT-AHM](#)

M/s Ashapura Exports Pvt Ltd Vs CCE, Rajkot (Dated: August 4, 2011)

Central Excise – Fixation of brand rate for duty drawback under Rule 7(1) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 – Applications filed beyond the stipulated time period of 60 days – Condonation of delay by the Commissioner - In the absence of any evidence shown by the appellants regarding delay in receipt of EP -copy by giving the exact date of receipt of EP-copy, the decision taken by the Commissioner rejecting the applications for condonation of delay is upheld - However, applications in respect of two shipping bills filed on 58 th day and 59 th day cannot be rejected - The delay is required to be considered in respect of each shipping bill separately even if one application covers more than one shipping bill – Matter remanded to the Assistant Commissioner who is the authority for fixation of brand rate.

[2011-TIOL-1717-CESTAT-AHM](#)

CCE, Daman Vs Shri Mohd Amin A S Lakha (Dated: July 28, 2011)

Central Excise - Personal penalty under Rule 209A of the Central Excise Rules, 1944 - Whether separate penalty can be imposed on the individual partner when penalty has been imposed on the firm - By proposing penalties under various provisions, the law itself distinguishes the nature of violations and responsibilities of the firm and on the person for violations committed for the sake of justice - The personal penalty on person is different from the mandatory penalty imposed on the firm under Rule 173Q(1) - Substitution of penalties is not intended in any law or legal interpretations - Argument that once the partnership firm is penalised, the individual partners on whom penalty cannot be imposed is only for argumentative propensity - The original adjudicating authority is fully justified in imposing a personal penalty on the partner other than the penalty on the partnership firm.

[2011-TIOL-1716-CESTAT-AHM](#)

CCE, Rajkot Vs M/s Nelco Ceramics (Dated: August 11, 2011)

Central Excise – CENVAT Credit – Removal of capital goods after use - Provisions of Rule 3(5) of the CENVAT Credit Rules, 2004 provide for reversal of entire/original amount of CENVAT credit availed on inputs and capital goods when they are removed "as such" are not applicable to the removal of used capital goods - There are no specific provisions which provide the manner of reversal of CENVAT credit on removal/clearance of capital goods after putting them to use for three to four years, during the period in question – Duty paid on depreciated value is just and proper – Revenue appeal against Commissioner (Appeals) order is rejected.

[2011-TIOL-1715-CESTAT-AHM](#)

CCE, Vadodara Vs M/s Specific Ventil Fabrik (Dated: November 14, 2011)

Central Excise - CENVAT Credit on service tax paid on outward transportation - No infirmity in the order of the lower authorities allowing credit in view of the fact that the goods were sold on FOR destination basis - Issue stands settled in case of CCE & ST Vs. ABB Ltd., Vadodara reported in [2011-TIOL-395-HC-KAR-ST](#) - Revenue appeal has no merit.

[2011-TIOL-1714-CESTAT-DEL](#)

M/s Diwan Saheb Fashions Pvt Ltd Vs CCE, Delhi (Dated: October 11, 2011)

Central Excise - Manufacture - Readymade garments - Stitched for an individual - Marketability - The Apex Court has clearly held in the case of ESIC that stitching of cloth amounts to manufacture. Readymade garments are stitched according to certain measurements for different sizes and if such garments can fit many customers there is no reason why a garment made for one individual cannot fit another person. Hence, such garments can be sold in the market. By this criteria, tailor-made garments stitched to the measurement of one individual is also goods which can be brought and

sold in the market and thus are excisable. (Para 26)

Manufacturer under Rule 7AA of Central Excise Rules, 1944 - Job-worker vis-à-vis supplier of textiles - Rule 7AA does not state that for textile items job-worker is not the manufacturer. It only says that the duty is to be paid by the person supplying the material as if he is the manufacturer. Hence, the appellants had no obligation to pay excise duty on garments stitched out of fabrics bought or brought by the customers. Therefore, in the case of textile goods got manufactured on job work basis during the period 2001-2004, the job worker has to discharge excise duty liability is not acceptable. (Para 28)

SSI Exemption - Clubbing of clearances - Dummy unit - The evidence on record show that the two firms had no employees, no equipment or other manufacturing facilities. The raw materials for all the three entities were managed from the same store by the same persons. Proprietors of both the firms admitted that the day-to-day affairs of both the firms were managed by the appellant (assessee). It is also accepted that the profits are shared by the family members. Hence the clearances of all the three units are required to be clubbed as the other two units are dummy units. (Para 30.1 to 30.4)

SSI Exemption - Issue of notice to Dummy unit - The proprietors of the two dummy firms are parties to the Show Cause Notices and are fully aware of the proposal to club the clearances as contained in the SCNs and they have replied to the Show Cause Notices. So the argument that there was no separate Show Cause Notices addressed to the two firms is not sustainable because these firms were proprietary concerns and the notice was issued to the Proprietors of the two concerns. Hence, there is no merit in the argument that there was no adequate notice to the parties concerned. Matter remanded to re-quantify the duty in accordance with the notification concerned. (Para 31.2)

Scope of remand order - When the remand order by a higher authority gives no rulings or findings but has given certain directions, all issues have to be examined again. (Para 12)

[Also see analysis of the Order](#)

[2011-TIOL-1713-CESTAT-DEL](#)

M/s Kodak India Pvt Ltd Vs CCE, Indore (Dated: July 25, 2011)

Central Excise - Stay/Dispensation of pre-deposit - CENVAT Credit - Service Tax on Goods Transport Agency service - Service tax paid by the Head office, registered as input service distributor and the credit was availed by the manufacturing unit on the strength of TR 6 challans - There is no dispute that the service has actually been received at the manufacturing unit - Issue of invoice by the head office as input service distributor allocating credit to the manufacturing unit would be only technical necessity, in absence of which credit cannot be prima facie denied - Pre-deposit waived.

[2011-TIOL-1709-CESTAT-AHM](#)

CCE, Ahmedabad Vs M/s Kissan Industries Ltd (Dated: June 22, 2011)

Central Excise - No extended limitation for the second Show Cause Notice on the same set of facts and question - even the earlier SCN was issued on the same

investigation and has been held to be barred by limitation. There is no justifiable reason to attribute any suppression or mis-statement to the appellant for issuance of second SCN based upon the same set of investigation by invoking the extended period of limitation. [par 8]

Valuation – Price to be accepted if not influenced by relationship - If the assessment is done on the basis of cost of production plus normal profit as against the AV adopted by them on the basis of sale price on which duty has been paid for both the periods, then also there is no short levy as such. [para 7]

[Also see analysis of the Order](#)

[2011-TIOL-1708-CESTAT-AHM](#)

M/s Voltamp Transformers Ltd Vs CCE, Vadodara (Dated: September 29, 2011)

Central Excise – Goods cleared under SFIS scheme by availing Notification No. 34/2006-CE – Debit of duty on goods cleared against SFIS scrip amounts to discharge of duty liability and does not amount to availment of exemption from duty – Impugned order invoking provisions of Rule 6 of CCR to demand 10% of value of goods set aside

[2011-TIOL-1707-CESTAT-AHM](#)

CCE & ST, Daman Vs M/s Cello Plasto Tech (Dated: August 11, 2011)

Central Excise – CENVAT Credit on goods received from 100% EOU – Admissibility of credit of Education Cess and Secondary Education Cess – Assessee can avail the credit of Education Cess and Secondary Education Cess – There is no bar on such utilisation under Rule 3(7)(a) of the CENVAT Credit Rules, 2004 – No error in the order of Commissioner (Appeals) allowing the credit.

[2011-TIOL-1700-CESTAT-MUM](#)

Babubhai Narottamdas & Co Vs CCE, Mumbai (Dated: October 28, 2011)

Excisability - Chlorination Plants – there is no evidence that the plants can be removed as such without dismantling – Strong prima facie case in favour – Pre-deposit waived: CESTAT [para 4]

[Also see analysis of the Order](#)

[2011-TIOL-1699-CESTAT-BANG](#)

M/s Chiral Bio Sciences Ltd Vs CCE, Hyderabad (Dated: August 8, 2011)

Central Excise – Clearance of goods manufactured against advanced intermediate license to DTA unit of procurer instead of 100% EOU – Applicant failed to observe

conditions of Notification No. 44/2001-CE(NT) in as much as they have not supplied goods directly to 100% EOU and not followed procedure prescribed for removal of goods at concessional rate of duty for manufacture of excisable goods – Pre-deposit of 50% of duty ordered and balance of dues waived

[2011-TIOL-1698-CESTAT-BANG](#)

M/s Lahari Recording Company Vs CCE, Bangalore (Dated: June 28, 2011)

Central Excise – Inclusion of royalty charges for master tape in assessable value of recorded audio cassette – Once a SCN was issued and withdrawn, extended period cannot be invoked and another show cause notice cannot be issued making the same allegations – Apex Court decision in Geo Tech Foundations & Constructions = [2008-TIOL-39-SC-CX](#) followed

[2011-TIOL-1694-CESTAT-AHM](#)

M/s Yash Machine Tools Vs CCE, Rajkot (Dated: August 30, 2011)

Central Excise - SSI Exemption - Brand name owned by family - Denial of exemption - Stay / Dispensation of pre-deposit - Brand name belonging to family members would enable each of the family members to use the same. SSI benefit cannot be denied. Prima facie strong case for waiver of pre -deposit. Stay granted. (Para 10 & 11)

[2011-TIOL-1692-CESTAT-DEL](#)

M/s R D Plast Vs CCE, Delhi (Dated: June 8, 2011)

Central Excise - Stay/Waiver of Pre-deposit: The only dispute is that while according to the department all sales of the brackets made by the appellant firm were of those which were manufactured in their factory, according to the appellant firm substantial quantity of brackets had been purchased from other manufacturers and in respect of that quantity of brackets, the appellant had only acted as a trader and hence in respect of those clearances no duty is chargeable. However, while the appellant firm claim to have purchased brackets from two firms, department, in course of search of their premises it was found that they do not have any manufacturing facility and the proprietors of these firms in their respective statements have stated that they had only supplied invoices to the appellant firm without supplying any goods. Therefore, prima facie, there is substance in the department's allegation that the same had been manufactured in the appellants factory. Pre-deposit of 21 Lakhs ordered.

[2011-TIOL-1690-CESTAT-BANG](#)

M/s Andhra Cylinders Pvt Ltd Vs CCE, Hyderabad (Dated: September 7, 2011)

Central Excise – Stay/Waiver of Pre -deposit – Default in payment of monthly dues – Short payments of monthly dues from September 2009 made good by payment in PLA in March 2010 – Defaults in monthly payment of duty from November 2009 resulted in forfeiture of right to utilize CENVAT Credit A/c - Violation of order of forfeiture resulted in demand of irregular availment of CENVAT Credit for the period from September 2009 to August 2010 – Provisions of Rule 8(3A) mandatory and makes it

obligatory for manufacturer to pay duty only from PLA in case of default in payment of monthly dues - No prima facie case made out for full waiver of pre-deposit - Since assessee paid duty through CENVAT A/c during material period and short payments of duty were made good in PLA during March 2010, direction to pre-deposit entire duty amount would result in undue hardship – Plea of financial hardship based on provisional P & L A/c not accepted - Pre-deposit of Rs. 5 lakhs in lieu of penalty imposed suffices – Rule 8(3A) of Central Excise Rules, 2002 read with Section 35F of Central Excise Act, 1944

[2011-TIOL-1689-CESTAT-AHM](#)

M/s Bodal Chemicals Ltd Vs CCE, Ahmedabad (Dated: October 7, 2011)

Central Excise - Stay / Dispensation of pre-deposit - CENVAT - Credit taken on capital goods which are actually inputs for manufacture of capital goods - Credit reversed and taken again as inputs - Denial of credit - The goods in question are no doubt inputs and the original authority had allowed the credit on merits. Prima facie case made out for grant of stay. (Para 2)

[2011-TIOL-1681-CESTAT-MUM](#)

ISPAT Industries Ltd Vs CCE, Raigad (Dated: October 13, 2011)

Imposition of penalty u/s 11AC of the CEA, 1944 is not sustainable if there has been no determination of duty under section 11A(2) of the CEA, 1944 – however, interest u/s 11AB is payable from 11.05.2001: CESTAT [para 3, 4]

[Also see analysis of the Order](#)

[2011-TIOL-1680-CESTAT-DEL](#)

M/s Mahajan Steel Rolling Mills Pvt Ltd Vs CCE, Ludhiana (Dated: August 12, 2011)

Central Excise Clandestine clearances Demand based on evidences collected from the weigh bridge and the raw material suppliers It will be reasonable to restrict the demand to correspond to the production of final products that is possible from the unaccounted inputs demonstrated to be received by the manufacturer after giving process loss of 10% - This calculation involves approximation and in this type of cases, it is quite often not possible to arrive at precise figures because such activities are carried on without maintaining any records - The plea that cases against the manufacturers of raw material have been dropped is not very relevant because the Revenue is in appeal against such orders also Cum-duty benefit extended.

Personal penalty Plea that for imposition of penalty under Rule 209/ Rule 26, the person concerned should have been involved with the physical removal of goods or its transport - There is nothing in the said Rules which state that only person physically concerned will be liable to penalty under the said Rules - The person at the managerial level who is ordering removal of goods is more concerned with the duty evasion than the person actually removing the goods, who will be low paid worker No reason to reduce the personal penalty.

Appeals filed by the revenue against setting aside the demand against raw material suppliers by the Commissioner (Appeals) Appeals where the cross examination of the

witnesses was not allowed though requested are remitted back to the Adjudicating authority Since clandestine manufacturing is an activity done in stealth Revenue cannot be expected to bring evidence at every stage - Other appeals by revenue are allowed.

[2011-TIOL-1679-CESTAT-DEL](#)

M/s Bhoomi Sudhar Chemical Indus Vs CCE, Chandigarh (Dated: August 12, 2011)

Central Excise - Stay / Dispensation of pre-deposit - CENVAT - Common Input used in manufacture of dutiable and exempted goods - It is not possible for the assessee to maintain separate account and inventory of inputs used for manufacture of dutiable and exempted goods for the reason that one final product is the byproduct of the other. Hence, Rule 6(3)(b)/6(3)(i) read with Rule 6(2) of CENVAT Credit Rules, cannot be invoked. Prima facie case made out for grant of stay. (Para 8.1)

[2011-TIOL-1674-CESTAT-BANG](#)

M/s Bharat Heavy Plates & Vessels Ltd Vs CCE, Visakhapatnam (Dated: July 25, 2011)

Central Excise – Valuation – Inclusion of design & engineering charges in assessable value and demand of differential duty for price escalation – Goods like boilers cannot be manufactured by assessee without design and drawings, design charges to be included in assessable value – In r/o goods cleared at enhanced prices, appellant issued proforma invoices – Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 with Section 4(1)(b) of Central Excise Act, 1944

Stay/Waiver of pre-deposit – Plea of financial hardship – Prima facie no case made out for full waiver of pre-deposit – Apex Court decision in Benara Valves Ltd = [2006-TIOL-156-SC-CX](#) followed – Pre-deposit of Rs. 2 crores ordered and balance amounts waived subject to compliance – Section 35F of Central Excise Act, 1944

[2011-TIOL-1673-CESTAT-BANG](#)

M/s Bharat Heavy Plates & Vessels Ltd Vs CCE, Visakhapatnam (Dated: July 25, 2011)

Central Excise – Classification – Storage spheres, pressed petals of LPG Horton spheres and segments for site fabrication of atmospheric storage vessels – Goods held as non-excisable by original authority reversed by first appellate authority

Classification of Boiler drums, chimney shells, ducts, fired heaters, radiation/convection coils whether classifiable under Chapter SH No. 8404 as claimed by assessee or under Chapter SH No. 8402 as claimed by Revenue

Stay/Waiver of pre-deposit – Plea of financial hardship as appellant declared sick and scheme for rehabilitation approved – Finding given by appellate Commissioner that appellant has not produced evidence to prove their case in r/o certain items – In view of facts and circumstances of the case, pre-deposit of Rs. 20 lakhs ordered – Section 35F of Central Excise Act, 1944

[2011-TIOL-1670-CESTAT-BANG](#)

CCE, Hyderabad Vs M/s Victory Electricals Ltd (Dated: August 18, 2011)

Central Excise – Goods cleared on payment of duty on original price agreed, but due to delay in supply of goods, buyer paid lesser price – Whether any deduction claimed by buyer as compensation for delay in supply of goods by manufacturer under a contract is liable for inclusion in assessable value under section 4 of Central Excise Act – Conflicting decisions on subject matter by Coordinate Benches – Issue placed before President for reference to Larger Bench

[2011-TIOL-1669-CESTAT-MUM](#)

Ceat Ltd Vs CCE, Mumbai (Dated: October 10, 2011)

Notfn 3/2001-CE - Merely because the manufacturer has not brought back the goods to his factory to avoid transportation expenses but clears the same on payment of differential duty from the premises of the OEM themselves, it does not create an interest liability u/s 11AB of the CEA, 1944 on the supplier of the goods – Appeal allowed: CESTAT [para 6.1]

Even though section 11AB does not contemplate any time limit for issue of notice for recovery of interest, when there is no specific time limit for issuing demands, such action needs to be initiated within a reasonable period of one year. [para 6.2]

[Also see analysis of the Order](#)

[2011-TIOL-1668-CESTAT-AHM](#)

M/s Parnax Lab Pvt Ltd Vs CCE , Vapi (Dated: November 16, 2011)

Central Excise -P&P Medicaments -Assessable value -Physician's sample :
Manufactured for other principals and sold on contractual obligation: Section 4 applicable that is transaction value has to be applied: [para 3,7]

Central Excise -P&P Medicaments -Assessable value -Physician's sample:
manufactured and cleared by the appellant of their own product: have to be valued based upon the pro -rata price of the sale pack of the very same said products. [para 4, 9]

Central Excise -Demand -Limitation : It is not for the assessee to declare in their monthly returns whether the duty on such clearances of physician samples was being paid on pro -rata basis of value of MRP of the identical goods or otherwise but it was for the assessee to indicate the assessable value of the said goods. Having done so, the Revenue Authorities, did not raise any question or did not ask the assessee what is the basis of the assessable value, which has been indicated by him in the monthly returns, in the absence of any such communication, assessee was justified in holding a view that the assessable value which has been worked out by him was correct. Having filed the monthly returns regularly with the authorities and the authorities having not raised any question on the issue of assessable value, the appellant has not suppressed any material facts or vital information from the department. The entire demand which has been raised and confirmed by the adjudicating authority is time barred.

2011-TIOL-1667-CESTAT-AHM
CCE, Rajkot Vs M/s Morvi Vegetable Product Ltd & Vice Versa (Dated: November 16, 2011)
Central Excise - Exempted and dutiable goods - CENVAT credit - Demand of 8% on exempted Acid Oil manufactured from soap stock emerging as by product process of refining of oil and hydrogenation - There cannot be any dispute that the appellant is not manufacturing the soap stock from fatty acid - Soap stock has to be considered as waste as held by the co-ordinate bench - The acid oil manufactured out of such waste would definitely be not covered by the provisions of Rule 6(2) of the CENVAT Credit Rule 2004, for the appellant-assessee to reverse 8% of the value of such acid oil - Order of the Commissioner (Appeals) to the extent of confirming the demand on merits is set aside.
2011-TIOL-1661-CESTAT-DEL
CCE, Meerut Vs M/s Hindustan Coca Cola Beverages Ltd (Dated: May 31, 2011)
Central Excise - CENVAT Credit - outdoor catering whether input service : The point of dispute in this case is as to whether the outdoor catering service availed by the respondent is covered by the definition of input service and whether they are eligible for Cenvat credit of the service tax paid on the outdoor catering service received by them. The original Adjudicating Authority decided this issue against the respondent, but on appeal to the Commissioner (Appeals), the Commissioner (Appeals) by the impugned order-in-appeal No. 221-222/ST/MRT-II/2009 dated 31/7/09 set aside this order of the original Adjudicating Authority and allowed the Cenvat credit in respect of outdoor catering service by holding the same to be covered by the definition of input service. In the impugned order itself the Commissioner (Appeals) has given a finding that maintaining a canteen for the workers is a requirement under the provisions of Section 46 of the Factory's Act, 1948 if the factory is employing more than 250 employees. In this case it is not under dispute under the provisions of Factory's Act are applicable.
Held : in this case the maintaining of canteen for the workers being a requirement under the provisions of the Factory's Act, the same has to be held as activity related to manufacturing business. In view of the above discussion, held that there is no infirmity in the impugned orders -in-appeal.
2011-TIOL-1660-CESTAT-DEL
CCE, Indore Vs Grasim Industries Ltd (Dated: July 21, 2011)
Central Excise - Rule 9 of CCR, 2004 - Prescribed document - Since the "debit notes" contain all the details which are required to be mentioned in the invoice and except for its name it can be treated as invoice, Cenvat credit on the basis of debit note is correct - CESTAT [para 4]
2011-TIOL-1659-CESTAT-DEL
M/s Ganpati Ispat Pvt Ltd Vs CCE, Raipur (Dated: October 14, 2011)

Central Excise- CENVAT Credit - Stay/waiver of pre-deposit - The point of dispute in this case is the eligibility for Cenvat credit in respect of angles, channels, beams, round, bars, square bars, joists etc. used in the factory. The law regarding Cenvat credit on these items is absolutely clear; if these items had been used in manufacture of any supporting structures fixed to the earth and any other structure fixed to the structures, in view of judgment of Larger Bench of the Tribunal in the case of Vandana Global Ltd. vs. CCE, Raipur reported in [\(2010-TIOL-624-CESTAT-DEL-LB\)](#), the Cenvat credit would not be available and this view stands confirmed by the judgment of the Apex Court in the case of Saraswati Sugar Mills vs. CCE, Delhi - III reported in [\(2011-TIOL-73-SC-CX\)](#). However, if these items are used for manufacture of capital goods or parts thereof, the same, in view of the definition of input as given in Rule 2 (k) of Cenvat Credit Rules, 2004, would have to be treated as input and would be eligible for Cenvat credit. In this case, while the appellant plead that the items, in question, had been used for fabrication of various items of machinery and their parts, the department disputed this claim. Appellant directed to deposit an amount of Rs. 90,000/- (Rupees Ninety Thousand) within a period of eight weeks from the date of this order. On deposit of this amount within the stipulated period, the requirement of pre-deposit of balance amount of Cenvat credit demand, interest and penalty shall stand waived and recovery thereof stayed till the disposal of the appeal.

[2011-TIOL-1656-CESTAT-AHM](#)

CCE, Ahmedabad Vs M/s Laxmi Mangal Textile (Dated: August 17, 2011)

Central Excise - Section 3A - working condition of the stenter whether it is closed or dismantled, is an important factor in deciding the levy : The Superintendent of Central Excise had very clearly recorded that both the Stenters were found closed on the date of registration itself i.e. on 07.12.1999. They had also given intimation that they intend to start Babros Stenter with effect from 10.12.1999 and the other Stenter will remain closed. It was noticed that Barbos Stenter was closed from 11.01.2000 to 21.04.2000. The assessee filed application dated 07.03.2000, and therefore it was contended by the assessee that the fact of removal of one chamber from Babros Stenter and verification of the same as well as confirmation of the closure of Primatex Stenter was intimated and the same was verified by the Superintendent of Central Excise on 20.03.2000.

The condition (c) of the Rule is also significant and it says that the stenter or stenters shall be sealed in such a manner prescribed by Commissioner of Central Excise. This condition amply demonstrates the fact that the working condition of the stenter whether it is closed or dismantled, is an important factor in deciding the levy.

[2011-TIOL-1655-CESTAT-BANG](#)

CCE, Hyderabad Vs M/s Sirpur Paper Mills Ltd (Dated: August 12, 2011)

Central Excise – Refund claim of differential duty consequent to extension of quantity discount by way of credit to wholesale dealers – Issue no longer res integra in view of allowing of refund in appellant's own case ([2011-TIOL-1646-CESTAT-BANG](#)) – No unjust enrichment and no infirmity in grant of refund through CENVAT Credit A/c

[2011-TIOL-1653-CESTAT-BANG](#)

ICOMM Tele Ltd Vs CCE, CC & ST, Visakhapatnam (Dated: September 5, 2011)

Central Excise - Time lag between Notification No. 20/06-CE dated 01.03.2006 and 40/06-CE dated 21.08.06 resulting in denial of exemption to goods supplied to 'Samyukta programme' - Exemption available during intervening period as well - Tribunal Stay order in ECIL case on similar issue - [\(2010-TIOL-981-CESTAT-BANG\)](#) followed

[2011-TIOL-1648-CESTAT-DEL](#)

M/s Triveni Engineering & Indus Ltd Vs CCE, Meerut (Dated: July 8, 2011)

Central Excise – Stay/Dispensation of pre-deposit - CENVAT Credit - CENVAT credit availed on the capital goods for use in the installation of plant and machinery which is established in the area across the road and the power generated therein claimed to have been exclusively used for captive consumption – Revenue claims that that power having been sold to grid also - The appellants cannot be said to have made out a prima facie case for waiver of total amount of demand made under the impugned order – Pre-deposit ordered.

[2011-TIOL-1647-CESTAT-BANG](#)

M/s Voltarc India Pvt Ltd Vs CCE, Guntur (Dated: September 5, 2011)

Central Excise – Demand of duty alleging clandestine manufacture and clearance of welding electrodes in the name of other companies – Plea of violation of natural justice due to delayed passage of adjudication order after lapse of seven years without supplying documents relied upon for providing effective reply to show cause notice – When interim reply to show cause notice itself was filed in a haphazard manner after lapse of seven years, claim of denial of natural justice not sustainable – Pre-deposit of Rs. 5 lakhs ordered and balance amounts waived

[2011-TIOL-1646-CESTAT-BANG](#)

CCE, Hyderabad Vs M/s Sirpur Paper Mills Ltd (Dated: June 2, 2011)

Central Excise – Refund claim of differential duty consequent to extension of quantity discount by way of credit to wholesale dealers - Issue no longer res integra as it was settled in assessee's own case - No merits in Revenue appeal

[2011-TIOL-1642-CESTAT-AHM](#)

M/s Hy Tuff Steel Pvt Limited Vs CCE, Vadodara (Dated: August 1, 2011)

Central Excise - Penalty - CENVAT Credit on MS Angles, Channels, beams, Plates, Sheets etc. - In view of the fact that there were decisions taking a view that credit is admissible on these items, it cannot be said that appellant indulged in suppression of facts/ mis-declaration with an intention to evade payment of duty. Therefore, penalty under Section 11AC of Central Excise Act, 1944 cannot be sustained. [para 5]

Central Excise - Interest - CENVAT Credit on MS Angles, Channels, beams, Plates, Sheets etc. in view of the decision of the Supreme Court in the case of UOI vs. M/s.

Ind-Swift Laboratories Limited [2011-TIOL-21-SC-CX](#), the question as to whether interest is payable in respect of cenvat credit wrongly taken but not utilised has been settled against the appellant. [para 2]

[2011-TIOL-1641-CESTAT-AHM](#)

M/s Enar Chemic Pvt Ltd Vs CCE, Vadodara (Dated: August 26 2011)

Central Excise- exemption – certificate from Drug Controller - It is not in dispute that appellant's product "Di-calcium Phosphate" is a bulk drug and is eligible for the benefit of Notification No 234/86-CE dated 03.04.1986, subject to the condition that certificate from the Drug Controller of Govt. of India is produced within a period as the said officer may allow. It is undisputed that the appellant was pursuing with the Drug Controller of India for issuance of certificate which was ultimately received by the appellant on 15.02.1988. It can be seen that the appellant was vigorously pursuing with the concerned authorities for issuance of certificate. The said certificate having been issued belatedly by the authorities, cannot be held against the appellant for denying them the benefit, for which otherwise he is eligible . [Para 6, 8]

[2011-TIOL-1640-CESTAT-AHM](#)

M/s Princeware International Pvt Ltd Vs CCE, Daman, Vapi (Dated: August 25 2011)

Central Excise - CENVAT Credit on MS Channels, Angles, Beams, Flat etc. - Penalty : If an assessee entertains a bonafide belief that he is entitled to avail credit, he cannot be found fault with. Under these circumstances, imposition of penalty in respect of credit availed on MS Channels , angles etc. cannot be sustained . [Para 2]

Central Excise - CENVAT Credit - appellant availed the credit on the basis of invoices issued by a 100%EOU on goods cleared without payment of duty : It is very clear that appellant is not new to Central Excise and it can not be said that they were ignorant or there was a bonafide mistake since they were taking credit as a fresh entrant as manufacturer. Even though the ignorance of law is not an excuse , there can be a view as regards suppression of fact and intention to evade duty etc. and it can be one of the factors to be taken into account. Penalty upheld. [Para 3]

[2011-TIOL-1636-CESTAT-AHM](#)

M/s IMP Power Ltd Vs CCE, Vapi (Dated: September 19, 2011)

Central Excise - Exemption to goods cleared to projects financed by JBIC - Clearances on certificates by Project authorities - No extended period of limitation; In various decisions of the Tribunal while dealing with identical issue where certificates were issued by project authority funded by Japan Bank of International Co-operation, it has been held that the extended period of limitation is not available. Reference in this regard is made to the latest majority decision of the Tribunal in case of M/s Polycab Wires P. Ltd. & Anr. Vs. CCE Vapi reported in [\(2008-TIOL-1292-CESTAT-AHM\)](#) As such, the demand of duty beyond the period of limitation cannot be confirmed. [para 5]

Duty can be demanded within one year : As it stands today, the provisions of Section 11A(1) of Central Excise Act, 1944, empowers the Revenue Authorities to demand any duty within the period of limitation, if said duty was not levied or paid or has been

short levied or short paid based upon any approval, acceptance or assessment relating to the rate of duty or valuation of excisable goods. In the case in hand, the Revenue Authorities had allowed the clearances of the assessee, based upon the certificates produced by them in pursuance granting the benefit of Notification No. 108/95. The said certificates are admittedly cancelled by the Project Implementing Authority. If that be so, then the provisions of Section 11A(1) will apply in full force in this case. [para 13]

Duty can be demanded even in revenue Neutral situations: The question of revenue-neutrality for non demanding of the duty is not envisaged under the provisions of Section 11A. Hence the question of revenue-neutrality could not arise in this case, though assessee may be eligible for the benefit of the terminal excise duty paid by them on the project from the DGFT authorities, subject to the provisions and the conditions of the refund as has been envisaged by the DGFT authorities. [para 17]

[Also see analysis of the Order](#)

[2011-TIOL-1635-CESTAT-DEL](#)

CCE, Indore Vs M/s Gwalior Chemicals Industries Ltd (Dated: June 1, 2011)

Central Excise - CENVAT Credit - Credit availed on documents called debit notes cum bills issued by the service providers - The debit notes cum bills are not in the nature of supplementary invoices, but are of the nature of invoices and Assistant Commissioner in the order-in-original has given a clear finding that the debit note cum bill contain all the requisite information as per the provisions of Rule 9 (1) of the Cenvat Credit Rules, 2004, that the service provider has also charged the service tax and has deposited the taxes to the exchequer and that the debit notes cum bills are in the name of the respondent - Revenue appeal seeking denial of credit has no merit.

[2011-TIOL-1634-CESTAT-DEL](#)

M/s Samtel Color Ltd Vs CCE, Ghaziabad (Dated: July 25, 2011)

Central Excise – Stay/Dispensation of pre-deposit - CENVAT Credit – Denial of credit on excess consumption of raw materials based on the report of the cost auditor appointed under Section 14A of the Central Excise Act, 1944 - In view of the submission by the Appellant that the value of waste of raw materials has not been considered by the Cost Accountants, the Appellants appear to have prima facie case in their favour against the demand based on the cost auditor's report.

Credit taken wrongly reversed by the appellant – Department disputes the reversal to the tune of 1.9 crores – The point can be examined only at the time of regular hearing – Rs 50 lakhs ordered to be deposited.

[2011-TIOL-1632-CESTAT-AHM](#)

M/s Surya Offset Vs CCE, Ahmedabad (Dated: February 4, 2011)

Central Excise - Classification - Pre-printed stationery falls under CETH 48.20: The bank slip book contains basic details such as bank's name, account-holder's name and number, amount to be deposited etc and the columns of these details are left blank. Account holders name, number, amount etc are to be filled up. This is nothing but

pre-printed stationery and hence is correctly classifiable under CETH 48.20 .; As regards the form and receipt of educational institutions, the form contains the details of pupils, details of homework etc to be filled, admission form, school leaving certificate etc. These are all in the nature of pre -printed stationery and details are to be filled in by the concerned person. Therefore, they are rightly held to be classifiable under CETH 48.20 and receipt book is clearly covered under 48.20 and just because name, address, Sales Tax registration number etc , are printed, it cannot go out of 48.20. Other items such as slip books, forms, school leaving certificate, stickers etc are all classifiable under 48.20. [para 10]

[2011-TIOL-1627-CESTAT-AHM](#)

M/s Indian Oil Corporation Limited Vs CCE, Ahmedabad (Dated: September 15, 2011)

Central Excise - Excess sales tax collected not includible in assessable value - No mala fide intention to evade by PSU: in the case of Baroda Electric Meters Ltd , Supreme Court has set aside the finding of Tribunal, that wherever freight actually paid was less than the amount collected by way of freight and transportation charges the difference was appropriated by the appellant and, therefore, the same would be a part of the assessable value. In other words, the Apex Court has held that when the freight actually paid was less than the amount collected by way of freight, the difference if retained by the appellant, it would still not form a part of the assessable value. This judgment has been followed by the various Benches of the Tribunal. It can be seen, the nature of excess freight has been held as profit on transportation and not as additional consideration, was the ratio followed, will be applicable in the case here as the nature of the amount collected by the assessee was in respect of sales tax which is paid to the supplier of the goods.

No mala fide intention to evade by PSU: the appellant being a Public Sector Undertaking, there cannot be mala fide for non-discharge of excise duty, if any, and there cannot be allegation of intention to evade duty.

Limitation: there is no dispute that the worksheet attached to Show Cause Notice had calculated the amount of differential duty which has to be demanded from the appellant, was in respect of excess sales tax collected. The said details were worked out from the invoices which were raised by the appellant during the relevant period. On perusal of the said invoices, it is found that the appellants were showing the amount which has been collected by them in form of sales tax. These will indicate that there was some kind of information given on the invoices to the authorities. No extended period.

[Also see analysis of the Order](#)

[2011-TIOL-1626-CESTAT-DEL](#)

Orient Paper Mills Vs CCE, Bhopal (Dated: June 23, 2011)

Central Excise - CENVAT Credit on inputs used in generation of electricity - Proportionate credit denied to the extent of electricity supplied to residential colony, guest house, schools and hospitals - Denial of credit is upheld in view of the Bombay High Court order in case of Indo-Rama Synthetics (India) Ltd - But no case to impose penalty - Penalty imposed by lower authority is set aside and demand of duty upheld.

[2011-TIOL-1625-CESTAT-DEL](#)

M/s Raltronics India Pvt Ltd Vs CCE, Noida (Dated: July 14, 2011)

Central Excise - Stay/Dispensation of pre-deposit - Finished goods/Inputs lying in stock and inputs in process destroyed in fire accident - Appellants have no prima facie case in respect of demand of duty on finished goods destroyed in fire in view of rejection of remission by the Commissioner which has also been upheld by the Tribunal - In respect of inputs in process, credit is not required to be reversed - In respect of input destroyed, the applicants have no prima facie case against demand of CENVAT Credit - Rs 10 lakhs ordered to be deposited.

[2011-TIOL-1620-CESTAT-DEL](#)

M/s International Engineers Vs CCE, Jalandhar (Dated: September 1, 2011)

Central Excise - Deemed Credit - Notification 58/1997 CE - Fulfillment of Conditions - There is a violation of conditions of the Notification for non declaration of payment of duty when the invoices were issued. Law does not permit belated payment of duty to extend deemed credit facility to the buyer of compounding levy inputs. There is no material on record to show due payment of duty if any made. Denial of deemed credit upheld. (Para 8)

Penalty under Rule 57 (1) (4) - Sub-rule 4 of Rule 57 I of Central Excise Rules 1944 is designed to counteract evasion. To invoke that sub-rule there should necessarily be a finding about presence of ingredients of evasion prescribed therein. As there is no finding of existence of ingredients of any intention to evade duty, no penalty is imposable. (Para 11)

Superintendent - Central Excise officer - Definition of - Strictures passed - Superintendent of Central excise issued certificates that duty has been paid. The definition of Adjudicating Authority under section 2(a) and definition of Central Excise Officers appearing in section 2(b) of Central Excise Act 1944 does not appear to have recognised a Superintendent as Adjudicating Authority or Central Excise Officer. There is no Notification available on record to appreciate that he is an officer authorised by section 2 (b) of Central Excise Act 1944 under Central Board of Revenue Act, 1963. If such an Officer is not competent and recognised by law to issue certificate the department should take action against the Officer who issued the certificates not recognised by law. (Para 5)

[Also see analysis of the Order](#)

[2011-TIOL-1619-CESTAT-BANG](#)

M/s Aditya Spinners Ltd Vs CC, CE & ST, Tirupati (Dated: August 12, 2011)

Central Excise - Demand for reversal of CENVAT credit on capital goods for which value was written off in books of accounts and imposition of equal penalty - Impugned capital goods procured before 01.03.1994 when there was no provision for availing credit on capital goods - Prima facie case for full waiver of pre -deposit

[2011-TIOL-1617-CESTAT-MUM](#)

MITC Rolling Mills Pvt Ltd Vs CCE & C, Nashik (Dated: October 13, 2011)

Cenvat Credit taken without receipt of inputs – transporter admitting that though they have lifted material from supplier, the materials were diverted to dealers elsewhere – even Director of company not able to give any satisfactory explanation or produce evidence relating to receipt – Pre-deposit ordered: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1616-CESTAT-BANG](#)

M/s VST Industries Ltd Vs CC, CE & ST, Hyderabad (Dated: August 19, 2011)

Central Excise – Denial of CENVAT credit of CVD on imported 'beetle trap' items – Items used as 'beetle trap' to drive away beetles from raw materials used in tobacco manufacture and storage area for final products are accessories to cigarette manufacturing plant – Prima facie case for full waiver of pre-deposit

[2011-TIOL-1615-CESTAT-MAD](#)

M/s EID Parry (India) Ltd Vs CCE, Chennai (Dated: September 6, 2011)

Central Excise – Provisional assessment – Demand raised after finalizing the assessment – Contention that the Superintendent has no power to revise the order passed by his superior officer – Show Cause Notice was issued after noticing a discrepancy in processing the refund claim after the finalization of the assessments – No infirmity in the order of the lower appellate authority in rejecting the appeal of the assessee.

[2011-TIOL-1610-CESTAT-BANG](#)

M/s Crest CAM CNC Systems Vs CCE, Bangalore (Dated: August 26, 2011)

Central Excise - Default in payment of duty from November 2008 to May 2009 resulting in denial of CENVAT credit utilization in the subsequent months as well as imposition of mandatory penalty under s. 11AC read with Rule 15(2) - In spite of restriction imposed, CENVAT Credit utilized after May 2009 - Returns filed for disputed period showed that duty during the period was paid in cash which amounts to mis-representation in statutory returns attracting imposition of mandatory penalty under s. 11AC and Rule 15(2) of CCR - Wrong utilization of CENVAT Credit virtually created a situation of short-payment of duty on excisable goods resulting in violation of Rule 8(3A) of CER 2002 with intent to evade payment of duty - Pre-deposit of Rs. 3 lakhs ordered

[2011-TIOL-1603-CESTAT-MUM](#)

CCE, Pune-I Vs M/s Tata Motors Ltd (Dated: October 21, 2011)

Payment of differential duty before finalization of provisional assessment is only a pre-deposit and not a payment of duty – such a pre-deposit does not in any way exhaust the interest liability – in view of conflicting decisions, matter to be considered by Division Bench: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1602-CESTAT-DEL](#)

Titan Industries Ltd Vs CCE, Bangalore (Dated: May 18, 2011)

Central Excise – CENVAT Credit – Rent-a-cab service – Records do not indicate that the cost of the service was borne by the appellant – Credit not admissible.

[2011-TIOL-1601-CESTAT-AHM](#)

M/s Electrotherm India Ltd Vs CCE, Rajkot (Dated: July 15, 2011)

Central Excise – Stay/Dispensation of pre-deposit - Recovery of erroneous refund – Whether review of order under Section 35E(2) is mandatory for recovery of erroneous refund – No prima facie case has been made out for waiver of pre-deposit in view of the earlier decisions – Rs 5 crores ordered to be deposited.

[2011-TIOL-1600-CESTAT-MUM](#)

M/s Total Oil India Pvt Ltd Vs CCE, Belapur (Dated: October 10, 2011)

Cenvatted capital goods destroyed due to natural causes in year 2005 - no provision in law to seek reversal of Cenvat credit initially availed - notfn. 39/2007-CE(N.T) requiring depreciated value to be taken cannot be applied retrospectively - applying compensation received from insurance company as value of capital goods is also unsustainable in law - assessee clearing such capital goods on scrap value on payment of duty is proper: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1599-CESTAT-MAD](#)

CCE, Chennai Vs M/s Annapoorna Re-Rolling (P) Ltd (Dated: August 18, 2011)

Central Excise – CENVAT Credit – Exemption under Notification NO 8/2003 CE – Non-payment of duty on inputs and finished goods lying in stock as on 31.3.2005 and 31.3.2006 - Lower appellate authority's order setting aside the demand is not sustainable in view of the Supreme Court's order in case of Albert David Ltd – Revenue appeal allowed partly by confirming the demand and setting aside penalty.

[2011-TIOL-1596-CESTAT-MAD](#)

CCE, Salem Vs M/s Sri Krishna Smelters Ltd (Dated: September 9, 2011)

Central Excise – CENVAT Credit accrued from 1st to 5th October utilized for payment of duty for the month of September – Not a case of default - A default in payment would be a case of not paying any duty at all – Revenue appeal has no merit – Such utilization of credit is only infringement of legal provisions as held by the lower authority – Not a case for imposing equal penalty under Rule 15(2) of the CENVAT Credit Rules 2004 – Penalty reduced to 10% of the duty amount under Rule 15(1).

[Also see analysis of the Order](#)

[2011-TIOL-1590-CESTAT-AHM](#)

M/s Bayer Abs Ltd Vs CCE, Vadodara (Dated: September 14, 2011)

Central Excise - Interest on short paid duty - payable even when duty paid is available as credit to the recipient unit of the same assessee: even where the duty is short paid by an assessee, is available as credit to the recipient unit of the same assessee, interest in terms of provisions of Section 11AB is required to be confirmed and interest is leviable.

[Also see analysis of the Order](#)

[2011-TIOL-1589-CESTAT-MUM](#)

CCE, Mumbai Vs M/s EMCO Ltd (Dated: September 8, 2011)

Valuation – Cost of transportation and insurance charges - demand confirmed on the ground that place of removal of goods sold by assessee was the buyers premises as the delivery was affected under the terms of sale - It is not lawful to draw an inference of retention of ownership in the property sold by the seller merely by reason of the fact that the seller had insured such goods during transit to buyer – SC decision in Escorts JCB Ltd. [[2002-TIOL-05-SC-CX](#)] relied upon – Revenue appeal dismissed.

[2011-TIOL-1586-CESTAT-MUM](#)

CCE, Thane Vs Maharashtra Control Panels Pvt Ltd (Dated: August 24, 2011)

Freight and insurance charges are not required to be added in the assessable value of the goods even after 01.07.2000 – issue settled by the Supreme Court in the case of CCE NOIDA vs. Accurate Meters Ltd. - ([2009-TIOL-31-SC-CX-LB](#)) - Revenue appeal rejected: CESTAT

[2011-TIOL-1585-CESTAT-MUM](#)

EMCO Ltd Vs CCE, Mumbai (Dated: June 21, 2011)

Section 11AB of the CEA, 1944 - When the normal time limit prescribed is one year from the relevant date (the date of filing of return) for recovery of the excise duty it will be reasonable to adopt the same period for recovery of interest as well – demand of interest for the period beyond one year is barred by limitation: CESTAT

[Also see analysis of the Order](#)

2011-TIOL-1583-CESTAT-MAD
M/s Raghav Industries Limited Vs CCE, Salem (Dated: September 9, 2011)
Central Excise – Inputs removed as such – Duty to be paid by 5 th of the following month: The issue involved in these cases is whether the duty which is required to be paid in respect of inputs cleared as such is required to be paid on the date of removal or it can be paid by the 5 th date of the succeeding month as in the case of removals of other manufactured goods from a factory. The appellants have paid the duty correctly by the 5 th day of the succeeding months and hence there cannot be any demand of interest against them for delayed payment.
2011-TIOL-1580-CESTAT-MUM
CCE, Kolhapur Vs M/s Ramchandra Enterprises (Dated: September 13, 2011)
Scrap generated at job worker's end - Duty demanded from supplier - merely because scrap cleared by the job worker no cause for denying cum-duty benefit u/s 4 of the CEA, 1944 while computing duty liability - Revenue appeal dismissed.
2011-TIOL-1577-CESTAT-MUM
M/s Mahindra & Mahindra Ltd Vs CCE, Nashik (Dated: September 13, 2011)
Remnants/off cuts are not classifiable as M.S. Sheets – appellant clearing the same as Waste & Scrap by classifying under Tariff Heading 7204 – Issue no longer res integra – in view of SC decision in LML Ltd off-cuts would not be classifiable as M.S. Sheets and would be classifiable as shapes under the appropriate heading of the Central Excise Tariff Act - Appeal disposed of.
2011-TIOL-1572-CESTAT-MAD
M/s Suresh Enterprises Vs CCE, Madurai (Dated: September 6, 2011)
Central Excise – Small Scale Exemption – Brand name on club soda – In earlier proceedings, the High Court has held that the appellants are not entitled for the exemption as the assessee was using the brand name of others on aerated waters which included club soda – The appellant now cannot argue that the club soda bears only monogram and hence eligible for exemption – Entire demand is sustained.
2011-TIOL-1566-CESTAT-MUM
M/s Varroc Engineering Pvt Ltd Vs CCE, Pune (Dated: October 14, 2011)
Appellant raising supplementary invoices for the price escalation received by them from their customers in respect of goods previously cleared by them and paying

differential duty – Interest payable on such differential duty in view of SC decisions in Commissioner of Customs vs. SKF India Ltd. ([2009-TIOL-82-SC-CX](#)) and CCE vs. International Auto Ltd. ([2010-TIOL-05-SC-CX](#)) – Appeal dismissed as devoid of merits: CESTAT.

[2011-TIOL-1565-CESTAT-MUM](#)

M/s Vasantdada SSSK Ltd Vs CCE, Pune (Dated: October 12, 2011)

Appellant reached the office of the Commissioner (Appeals) after the office was closed and the appeal could be filed on the next day by which time, time limit of 90 days (60 days normal period + 30 days grace period) had expired - Inasmuch as the appeal has been filed belatedly and there is no power provided to the Commissioner (Appeals) to condone the delay the appeal was dismissed as time barred - Once the appeal is dismissed as time barred, there is no way the appeal against the said order can be maintained before the CESTAT.

[2011-TIOL-1560-CESTAT-DEL](#)

M/s Kalyan Agro Industries Corporation Vs CCE, Ludhiana (Dated: April 21, 2011)

Central Excise – Manufacturer of non-alloy steel ingots availing compounded levy scheme – Non-payment of duty and short payment of duty in a few months resulted in levy of 100% penalty by department – Difficulty in running a factory or mere pendency of abatement claim, not a justification for non-payment of duty or part thereof under compounded levy scheme, levy of penalty justified – Though 100% penalty is made effective from May 1, 1998, it cannot be applied retrospectively for amounts which become due prior to the said date – Demand of duty not paid upheld along with levy of interest but penalty reduced to Rs. 20,000/- - Also, demand of duty short paid amounting to Rs. 12,500/- upheld along with levy of interest and 100% penalty as no evidence was produced in support of such short payment

[2011-TIOL-1559-CESTAT-MUM](#)

Ivory Enterprises Pvt Ltd Vs CCE, Thane (Dated: July 8, 2011)

Cenvat Credit availed on allegedly non-existent grey fabrics stock - Central Government Examiner of Questioned Documents has in his report concluded that signatures on application for registration and declarations of stocks were not made by applicants – recovery stayed: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1558-CESTAT-MAD](#)

M/s Fourrts (India) Laboratories Pvt Ltd Vs CCE, Chennai (Dated: September 12, 2011)

Central Excise - CENVAT Credit – Steel Doors used for storing medicines – Not inputs: steel doors cannot be considered as an input for medicines, when such doors are used

in the store rooms where medicines are stored and have no role in the manufacturing process. The claim before the Tribunal that steel doors should be considered as a Pollution Control Device is not at all sound. Firstly, the Pollution Control Devices are listed under the inclusive definition of "Capital Goods". The steel doors cannot be considered as equipment by any stretch of imagination and it also does not fall under any of the Chapters which are specifically listed under the definition of "Capital Goods". Schedule 'M' to the Drugs and Cosmetic Rules, 1945, which deals with good manufacturing practices and requirement of premises etc., for pharmaceutical products stipulates that in aseptic areas, doors should be of non-shedding material, and wooden doors shall not be used. It also states that doors should be made preferably of aluminium or steel material. The same rule also requires walls to be flat, furniture to be smooth and washable etc. Such stipulations do not make steel doors, a pollution control equipment, which has a different connotation. The appellants have not made out a case for availing credit on steel doors either as inputs or as capital goods.

[2011-TIOL-1553-CESTAT-AHM](#)

CCE, Ahmedabad Vs M/s Ashima Denims (Dated: April 6, 2011)

Central Excise – Manufacture and consumption of cotton yarn captively – Cost audit of records by excise authorities revealed that valuation was not in consonance with Rule 6(b)(ii) of Valuation Rules, 1975 – Assessee also engaged in purchase of yarn on cone and undertook processes of dyeing, warping, sizing etc without payment of duty – Allegation of non payment of duty on yarn of 7s count manufactured and used captively for dyeing and sizing process.

Valuation – In terms of Board Circular No.692/08/2003-CX, dt.13.2.03 overhead expenses and interest element has to be excluded from assessable value – No infirmity in order of Commissioner for arriving at assessable value on the basis of costing principles as detailed in the Circular – Principle of costing cannot be different prior to issuance of Circular and after issuance of Circular – No merits in Revenue contention, set aside.

Limitation – Assessee filed RT-12 returns regularly showing captively consumed yarn along with declared price – Classification lists also filed mentioning process of dyeing and sizing of yarn, which were approved by jurisdictional Asst. Commissioner – Range officer's endorsement about visit of factory, verification of description of product, manufacturing process and satisfaction about correctness of classification and applicability of exemption notification available on record – Assessee's factory also audited by internal audit party and AG's audit party and all details were furnished to them – When assessee's activities are in the knowledge of department, allegation of suppression regarding manufacturing, dyeing of yarn used captively either of their own yarn or purchased yarn not justified – Also when similar allegations were held as not justified in earlier proceedings before Commissioner and they were not appealed against by Revenue, principle of limitation applies – No merits in Revenue appeal.

[2011-TIOL-1549-CESTAT-AHM](#)

M/s PSL Ltd Vs CCE, Rajkot (Dated: May 4, 2011)

Central Excise – Manufacture of spirally welded steel pipes located in Kutch availed benefit of Notification No. 39/01-CE and also availed benefit of Notification No. 47/02-CE – Before clearance of goods availing exemption under Notification No. 47/02-CE, CENVAT Credit attributed to inputs used in exempted goods amounting to Rs. 76.50 lakhs reversed – Revenue alleged that instead of reversing Rs. 76.5 lakhs which is a higher amount, the appellant should have paid 8% of value of exempted goods which is Rs. 48.22 lakhs, because after expiry of Notification 39/01-CE, assessee is paying

5% of value of exempted goods – No infirmity in appellant reversing credit attributable to inputs and the action is in conformity with law laid down by High Court in Maize Products case = [2008-TIOL-596-HC-AHM-CX](#) - Amounts paid in PLA were available as refund in terms of Notification No. 39/01-CE and it does not matter if assessee pays more amount or less amount as the entire exercise is revenue neutral – When Rule 6 offers two options to an assessee and choosing of one option by the assessee cannot be faulted on the ground that subsequently they opted for second option

[2011-TIOL-1539-CESTAT-MAD](#)

CCE, Trichy Vs M/s M M Forgings Ltd (Dated: September 9, 2011)

Central Excise – CENVAT Credit – Excess Credit availed due to clerical error and reversed after audit – Interest is chargeable in view of Supreme Court decision in case of Ind-Swift Laboratories Ltd.

Penalty - The case records do not show any case of suppression, fraud etc. involved in taking the excess credit – Respondents directed to pay penalty of Rs 10,000/-

[2011-TIOL-1538-CESTAT-MUM](#)

CCE, Mumbai Vs Ratnatraya Heat Exchangers Ltd (Dated: March 8, 2011)

Insurance claim received for goods damaged by floods - Goods sold as scrap and duty paid accordingly - Department's contention that insurance claim should form additional consideration and added to assessable value not established by evidence - Appeal dismissed

[2011-TIOL-1537-CESTAT-MUM](#)

Mahindra Hinoday Industries Ltd Vs CCE, Pune (Dated: September 19, 2011)

In respect of waste and scrap generated during the course of job work, the liability to pay duty is on the job worker as he is the manufacturer – a trade notice which is contrary to the statutory provision has no existence in law: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1536-CESTAT-MAD](#)

Kothari Sugars & Chemicals Ltd Vs CC & CE, Trichy (Dated: September 7, 2011)

Central Excise - exemption under Notification 67/95 CE for molasses used captively for manufacture of Ethyl Alcohol - The proviso of Notification 67/95 is not attracted to Un-denatured Ethyl Alcohol as the same is not excisable and is excluded from the union list - Matter remanded.

[2011-TIOL-1531-CESTAT-MAD](#)

CCE, Pondicherry Vs M/s PL Haulwel Trailers (Dated: July 8, 2011)

Central Excise – CENVAT – Inputs utilized to manufacture exempted goods – Utilization of credit – As per the retrospective amendment to Rule 57 AD, for clearance of exempted goods at the material time, the assesseees are required to pay an amount equal to the CENVAT credit attributable to the inputs used in, or in relation to the manufacture of, exempted goods before or after the clearance of such goods along with interest from the date of clearance till the payment of the said amount. Matter remanded to decide the case as per the stated position of law. (Para 3)

[2011-TIOL-1526-CESTAT-MAD](#)

Sakthi Sugars Ltd Vs CCE, Salem (Dated: September 13, 2011)

Central Excise – CENVAT Credit on MS plates, sheets, angles etc used for fabrication of structural items – The appellant is not in a position to state what machinery parts have been manufactured and whether the same can come under the category of “Capital Goods” as defined in the CENVAT Credit Rules, 2004 – Credit not admissible.

[2011-TIOL-1523-CESTAT-MUM](#)

M/s Ballarshah Plywood Vs CCE, Nagpur (Dated: September 23, 2011)

Rule 8 of CER, 2002 - Default in payment of duty and utilization of Cenvat credit for payment of duty on consignment basis – demand for payment of duty in cash – assessee pays and suo motu takes credit in Cenvat of debit made earlier – demand issued for unauthorized availment of credit – Pre-deposit ordered of 25% duty and matter remanded: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1517-CESTAT-MAD](#)

CCE, Madurai Vs Pharmafabikon (Dated: August 5, 2011)

Central Excise – Refund – Bar of unjust enrichment - The bar of unjust enrichment arises in all cases where duty was paid and the burden is on the assesseees to establish that incidence of duty has not been passed on to the customers. (Para 2)

[2011-TIOL-1516-CESTAT-MAD](#)

M/s Stanpro Pharmaceuticals Ltd Vs CCE, Coimbatore (Dated: July 8, 2011)

Central Excise – SSI Exemption – Brand name – Rural Area – Benefit of SSI exemption denied on the ground that the appellant had manufactured and cleared goods bearing brand name rejecting the contention that the assesseees/ manufacturer/ job worker that their factory was situated in a rural area.

HELD - The principal manufacturer is in possession of a certificate from Tahsildar that their factory was situated in rural area. Matter remanded to the original authority to accept the certificate and pass fresh order. (Para 2 & 3)

[2011-TIOL-1514-CESTAT-DEL](#)

M/s Escorts Ltd Vs CCE, Delhi (Dated: July 7, 2011)

Central Excise - Registration - Common registration for three units given by the Assistant Commissioner withdrawn by the Commissioner retrospectively - The facility of common registration can be extended at the discretion of the Commissioner taking into account the relevant factors - It is settled law that the authority which has power to grant certain permission/facility has the power to withdraw the same - However, withdrawing the said facility retrospectively, in the given facts and when the permission was granted based on applications by the appellants and after due verification of the details is not appropriate. It is not a case of the department that the appellants have given any false particulars and obtained the facility - Rule 9 of the Central Excise Rules 2002 , Notification No 35/2001 CE(NT) and 36/2001 CE(NT).

Denial of exemption under Notification No 6/2002 CE - It is implicit in the proposal contained in the show cause notices that the exemption sought to be denied only on the grounds that they are not eligible for common registration and if common registration is upheld, then all three premises, would be treated as same factory and that clearances from one premises to another would be eligible for exemption. The department cannot now make a new case going beyond the grounds in the show cause notice.

[Also see analysis of the Order](#)

[2011-TIOL-1513-CESTAT-MAD](#)
M/s Metriplex Pumps (P) Ltd Vs CCE, Coimbatore (Dated: June 6, 2011)

Central Excise – SSI Exemption – Brand Name – The logo ‘K’ in question is not being one of common use by many pump manufacturers in the industry, the [Board's Circular No. 52/94-CX dated 1.9.94](#) would have no application. It is admitted that ‘K’ is used on the pumps as a logo and monogram. Hence the appellants are not entitled to the benefit of small scale exemption on such products. (Para 7, 9)

SSI Exemption – Same brand name – Different goods – Even if goods are different, use of a brand name on different goods, not entitled for small scale exemption. (Para 13)

[2011-TIOL-1502-CESTAT-AHM](#)
M/s Shree Mahavir Textile Mills Vs CCE, Surat (Dated: July 7, 2011)

Central Excise – Drawback – Applications for fixing brand rate of drawback filed in terms of CBEC Circular No 39/1999 Cus dated 25.6.99 rejected as time barred by the lower authorities - In the verification report of the officer, the date of receipt of application had not been mentioned and the date of verification had not been mentioned - After 12 years of submission of claim and for the failure of the officer to fill up the columns properly while submitting the verification report, taking a view that the claim itself is time bared, is unreasonable and unjust - The matter is remanded to original adjudicating authority for fresh consideration of all the issues except limitation.