

## CESTAT RULING

[2011-TIOL-1726-CESTAT-MAD](#)

**M/s Rajalakshmi Paper Mills Private Limited Vs CCE, Madurai (Dated: September 9, 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?

Issue decided in favour of the appellants in [2011-TIOL-1013-CESTAT-MAD](#). 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.

[2011-TIOL-1724-CESTAT-DEL](#)

**M/s Vigyan Gurukul Vs CCE, Jaipur (Dated: September 9, 2011)**

Service Tax - Amount realized prior to Service provided - Services provided after Rate of service tax enhanced - Rate of service tax applicable - Section 65 (105) of Finance Act, 1994, defines taxable services including service to be provided and Rule 6 of service tax Rules prescribes payment of tax on consideration received during the calendar month without any reference to actual providing of service. Explanation in Rule 6(1) does not make any provision as to which rate of tax will apply - whether on date of receipt of value or on date of providing service. The explanation provides that the service provider need to pay tax only on that portion of value for which service tax has been provided. In the instant case the service provider paid tax on the full value received. As the explanation is not clear about the rate of tax, the relevant time the rate that was applicable at the time of receipt of value of service will apply in a case where the assessee chose to pay tax on the advance amount received.. (Para 11 & 12)

[2011-TIOL-1720-CESTAT-AHM](#)

**M/s Shree Rama Multi-Tech Ltd Vs CST, Ahmedabad (Dated: November 18, 2011)**

Service Tax – When Service Tax and Interest Paid, No penalty; According to the section 73(3), when intimation is received from service tax assessee that he has paid service tax and if he has intimated that he is not liable to pay interest, the provisos to Section 73(3) come into play. Therefore, in this case, after receiving a letter from the appellant on 19.12.2008, intimating the payment of service tax and disputing the liability of interest, the Central Excise officers should have determined the amount of short payment of service tax (which happens to be an interest element in this case), and should have proceeded to recover the amount in the manner specified in this Section and the period of one year counts from the date of intimation. This means that if interest was not paid, the main Section comes into play once again. Therefore, after receiving the intimation on 19.12.2008 the Central Excise officers should have determined the interest payable and communicated to the assessee and if the

assessee did not pay the same, they had one year period for issue of show cause notice. In this case, without intimating to the assessee that he is liable to pay interest and they should pay the same, the officers proceeded to issue show cause notice straightaway. [ para 5]

By evading the payment of service tax, the appellant stands to lose rather than getting any undue benefit: there was no need for the appellants to resort to suppression or mis -declaration since whatever service tax was to be paid, they were eligible for the credit. By evading the payment of service tax, the appellant stands to lose rather than getting any undue benefit. By delaying payment of service tax, the assessee had to pay interest on the amount which is not available as cenvat credit. Therefore, in this case, suppression of fact or mis -declaration could not have been invoked for imposition of penalty under Section 78 of the Finance Act, 1994. [ para6 ]

[Also see analysis of the Order](#)

[2011-TIOL-1719-CESTAT-MAD](#)

**Popular Vehicles & Services Ltd Vs CST, Chennai (Dated: September 2, 2011)**

Service Tax – Free after sale service– Commissioner (Appeals) dismissed the appeals as the appeals were filed belatedly – In view of directions of the Madras High Court to take on file the appeals, the Commissioner (Appeals) is required to dispose of the appeal on merits – However, since the Commissioner (Appeals) had allowed the earlier appeal on the same issue by the same assessee, the appeals are allowed instead of remanding to the Commissioner (Appeals).

[2011-TIOL-1718-CESTAT-BANG](#)

**M/s Narendra Security And House Keeping Services Vs CCE, Visakhapatnam (Dated: August 12, 2011)**

Service Tax – Non-payment of service tax on services rendered – Tax paid before issue of SCN – SCN issued for appropriation of service tax and imposition of penalties – Lower appellate authority while invoking section 80 already considered that assesseees were small time entrepreneurs – Tax liability paid by them was not recovered from their customers – When appellant was a registered service provider from 1998 and Cargo Handling service having been introduced from 2002, Revenues argument that assessee cannot feign ignorance of law also relevant – Considering the facts and circumstances, penalty reduced from Rs. 5 lakhs to Rs. 2 lakhs – Sections 78, 80 of Finance Act, 1994

[2011-TIOL-1712-CESTAT-BANG](#)

**Shri Mahabala Mannur Vs CCE, Mangalore (Dated: June 30, 2011)**

Service Tax - Construction services - Inclusion of value of free supply materials for computation of service tax - If value of free supply materials were to be included in gross value, benefit of Notification No. 15/04-ST cannot be restricted - Adjudicating authority directed to consider whether records maintained by assessee/supplier sufficient to conclude appellants eligibility of Notification No. 15/04-ST - No clarity on values adopted by adjudicating authority for computing service tax demands - Matter remanded to original authority for consideration of all issues afresh - No opinion expressed on merits

<a href="#">2011-TIOL-1711-CESTAT-BANG</a>
<b>Desai Homes Vs CCE, Cochin (Dated: September 8, 2011)</b>
Service Tax – Stay/Waiver of pre -deposit – Service tax collected from customers by rendering Construction of Complex Service and Commercial or Industrial Construction Service not deposited with exchequer – Demand raised by revisionary authority under Section 84 of Finance Act, 1994 by invoking section 11D of Central Excise Act, 1944 as made applicable to Service Tax – Prima facie no case made out for waiver of pre - deposit – Pre -deposit of entire amount of service tax ordered – Balance of dues waived – Section 84 of Finance Act, 1994 read with Section 11D and Section 35F of Central Excise Act, 1944 as made applicable to Service Tax vide Section 83 of Finance Act, 1994
<a href="#">2011-TIOL-1710-CESTAT-AHM</a>
<b>M/s XSIS Power Systems Pvt Ltd Vs CST, Ahmedabad (Dated: November 24, 2011)</b>
Service Tax - Erection Commissioning and Installation Service - Demand - Penalty - Invocation of extended period - Stay / Dispensation of pre-deposit - The Commissioner (Appeals) has given a clear finding that the amount received by the service provider under the "Delivery, Servicing & Installation" of UPS is clearly covered under "Erection, Commissioning and Installation". The fact of non-payment of Service Tax was detected by the Department during the course of Audit and extended period is rightly invocable. Pre -deposit ordered. (Para 7)
<a href="#">2011-TIOL-1706-CESTAT-BANG</a>
<b>M/s MPP Technologies Pvt Ltd Vs CCE, Bangalore (Dated: August 12, 2011)</b>
Service Tax – Eligibility of CENVAT Credit in r/o GTA service – Issue no longer res integra , covered in favour of appellants by High Court judgment in ABB Ltd = <a href="#">2011-TIOL-395-HC-KAR-ST</a> – Rule 2(I) of CENVAT Credit Rules, 2004
<a href="#">2011-TIOL-1705-CESTAT-BANG</a>
<b>M/s Bharati Airtel Ltd Vs CCE, Hyderabad (Dated: September 6, 2011)</b>
Service Tax – Stay/Waiver of Pre -deposit - Eligibility of CENVAT Credit of excise duty paid on towers and parts thereof - In similar matters assessee obtained stay from Coordinate Benches - Pre-deposit waived and stay granted – Rule 3 of CENVAT Credit Rules, 2004 - Section 35F of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994
<a href="#">2011-TIOL-1704-CESTAT-MAD</a>
<b>Tamil Nadu Tourism Development Corporation Ltd Vs CST, Chennai (Dated: September 7, 2011)</b>

Service Tax – Stay/Dispensation of pre-deposit – Business Exhibition Service – Conducting exhibition to showcase the achievements of the State Government – The stalls are also allotted to small traders and artisans to sell/promote/showcase/market their product or service – Prima facie, the assessee can be held to providing Business Exhibition Service – Pre-deposit of Rs 3,00,000/- ordered.

[2011-TIOL-1703-CESTAT-AHM](#)

**M/s Navratan S G Highway Properties Pvt Ltd Vs CST, Ahmedabad (Dated: November 28, 2011)**

Service Tax – Waiver of Pre-deposit/Recovery of Stay: CENVAT Credit on input services used for construction of mall – Pre-deposit waived and recovery stayed: It can be seen from the definition of input service that it is an inclusive definition which grants credit to the services which in relation in setting up..... premises of provider of output service. Prima-facie we find that the decision of the Tribunal in the case of Sai Samhita Storages P. Ltd. Vs. C.C. & C.E ., Visakhapatnam - [\(2010-TIOL-1751-CESTAT-BANG\)](#) covers the issue in favour of the assessee . the appellant has made out a prima-facie case for the waiver of pre -deposit of the amounts involved. The application for waiver of pre -deposit of the amounts involved is allowed and recovery thereof stayed till the disposal of appeal.

[Also see analysis of the Order](#)

[2011-TIOL-1702-CESTAT-DEL](#)

**M/s Maruti Suzuki India Ltd Vs CCE, Delhi (Dated: July 25, 2011)**

Service Tax – Eligibility of CENVAT Credit of service tax paid on Event Management Services used for organizing annual day functions for employees – Activity related to employee welfare has no nexus with business of manufacturing as held by High Court of Bombay in Manikgarh Cement = [2010-TIOL-720-HC-MUM-ST](#) – Prima facie , no case made out for full waiver of pre-deposit – Pre-deposit of Rs. 13 lakhs ordered

[2011-TIOL-1701-CESTAT-DEL](#)

**National Engineering Industries Ltd Vs CCE, Jaipur (Dated: September 5, 2011)**

Just because commission was received by the Appellant through Indian Railways in Indian rupees as Indian Railways made payment to General Motors Corporation in foreign currency after deducting the commission payable to GMC, it cannot be said that the service provided by the Appellant to GMC, USA is not export of service - service provided by the Appellant to GMC, USA has to be treated as 'export of service' under Rule 3(3) of the Export of Service Rules and therefore, the terms of the provisions of Rule 5 ibid, the Appellants were eligible for refund of the service tax paid on such service exported to GMC, USA. [para 7]

There is no cogent evidence on record to find that the exporter had any office in India - when the exporter had no office in India, the proviso to sub-rule (3) of Rule 3 of the Export Service Rules, 2005 does not apply - Instead of appellant earning foreign exchange, the foreign exchange which otherwise would have flown out of India, due to import by Indian Railways, has been conserved - object of export of service has been fulfilled: CESTAT [para 8].

[2011-TIOL-1696-CESTAT-BANG](#)

**Goldman Sachs Services Pvt Ltd Vs CST, Bangalore (Dated: August 11, 2011)**

Service Tax – Assessee registered under STPI scheme as 100% EOU and engaged in export of services like BAS, ITSS – Refund claims filed under Rule 5 of CCR, 2004 for refund of service tax paid on input services for different periods partially rejected on the ground that services exported were not taxable output services – Appellants claim before the original authority that in terms of Rule 5 of CENVAT Credit Rules, 2004, credit was eligible to them whether services exported by them were taxable or not, not dealt with by original authority or lower appellate authority – Payments made to input service providers electronically and production of bank statements with hard copies of invoices from input service providers corroborating payments for service charges and service tax also not dealt with by lower authorities – Impugned orders set aside and matter remanded to original authority to consider the issues afresh on merits by providing reasonable opportunity to appellants – Rule 5 of CENVAT Credit Rules, 2004 read with Export of Services Rules, 2005 and Paras 6.8, 6.11 of EXIM Policy

[Also see analysis of the Order](#)

[2011-TIOL-1695-CESTAT-BANG](#)

**M/s Vimoth Kutty Vs CCE, Mangalore (Dated: August 1, 2011)**

Service Tax – Appellate Commissioner cannot condone delay in filing appeal beyond 30 days – Law laid down by Apex Court in Singh Enterprises vs. CCE [2007-TIOL-231-SC-CX](#) followed

[2011-TIOL-1691-CESTAT-BANG](#)

**CCE, Guntur Vs M/s Sri Chakra Cements Ltd (Dated: August 12, 2011)**

Service Tax – GTA service utilized during the period from February 2006 to January 2007 to be regarded as input service – Issue no longer res integra in view of Karnataka High Court judgment in ABB Ltd = [2011-TIOL-395-HC-KAR-ST](#) – No merits in Revenue appeal

[2011-TIOL-1688-CESTAT-AHM](#)

**M/s Chandan Steel Ltd Vs CCE, Vapi (Dated: July 29, 2011)**

Central Ex cise / Service Tax - Stay / Dispensation of pre-deposit - CENVAT - Maintenance Service - Services availed outside factory premises - The assessee fairly conceded that they are not eligible for cenvat credit of service tax paid on services availed outside factory premises. Duty involved already debited. Stay on recovery of penalty granted subject to assessee depositing the interest payable. (Para 3 & 4)

<a href="#">2011-TIOL-1687-CESTAT-AHM</a>
<b>CCE, Surat Vs M/s Atul Ltd (Dated: July 19, 2011)</b>
Central Excise - Input Service - Credit of Service tax on outward transportation of final goods - The credit of service tax paid on the freight charges for outward transportation of final goods from the place of removal is available. (Para 1)
<a href="#">2011-TIOL-1686-CESTAT-AHM</a>
<b>Vasu Construction Vs CCE, Daman (Dated: June 17, 2011)</b>
Service Tax – Stay/Dispensation of pre-deposit – Site Formation and clearance service vis-à-vis Construction Service – Abatement of 67% of the value under Notification No.15/2004-ST, dt.10.9.04 and Notification No.1/2006-ST, dt.1.3.06 denied by splitting the value into site formation service and construction service - The efforts of the lower authority to de-link the site formation activity from main activity of construction and to hold that the same falls under the category of Site Formation & Clearance Excavation & Earthmoving and Demolition service, does not appear to be in accordance with the law – Prima facie case made out for full waiver of pre-deposit.
<a href="#">2011-TIOL-1684-CESTAT-MUM</a>
<b>Tata Aig Life Insurance Co Ltd Vs CCE, Thane (Dated: November 16, 2011)</b>
ST - Appellant registered under the category of Insurance Auxiliary Services and paying Service Tax on behalf of insurance agents as deemed service provider – Cenvat Credit taken of such payments and utilized – Prima facie case in favour – Stay granted: CESTAT [ para 7 ]
<a href="#">Also see analysis of the Order</a>
<a href="#">2011-TIOL-1683-CESTAT-KOL</a>
<b>M/s S K Sarawagi &amp; Co Pvt Ltd Vs CST, Kolkata (Dated: April 8, 2011)</b>
Service Tax – Refund claim of service tax paid on services used for export of iron ore rejected by lower authority on the ground that assessee failed to produce documents to correlate input services with export of goods – Assessee directed to produce documents before original authority for verification – Matter remanded
<a href="#">2011-TIOL-1682-CESTAT-MAD</a>
<b>CCE, Madurai Vs M/s Shiva Tex Yarn (Dated: August 18, 2011)</b>
Service Tax – Refund U/N 41/2007 – Not eligible during the relevant period if drawback is claimed: It is well settled that a notification, unless it is clarificatory in nature, will only be prospective and will take effect only from the date of issue of notification. Since the notification cannot be considered to have retrospective effect, the benefit is not admissible under notification to the assessees, as they have

admitted that they had availed duty drawback on export.
<a href="#">2011-TIOL-1675-CESTAT-MUM</a>
<b>Tata Steel Ltd Vs CCE, Mumbai-I (Dated: October 24, 2011)</b>
Input Service - Stay/Waiver of Pre-deposit - Denial of Cenvat credit on the ground that the appellant had received ISD invoices from Head Office pertaining to input services not used in or in relation to manufacture of goods at Borivali plant is not warranted in law - till the time rule 7 is amended only two conditions have to be satisfied for distribution of credit - first is that the credit should not exceed the amount of service tax paid and second restriction is that the credit should not be attributable to services used in the manufacture of exempted goods or exempted services - Pre-deposit waived and recovery stayed: CESTAT [ para 3]
<a href="#">Also see analysis of the Order</a>
<a href="#">2011-TIOL-1672-CESTAT-BANG</a>
<b>M/s Blue Star Limited Vs CC, CCE &amp; ST, Hyderabad (Dated: August 12, 2011)</b>
Service Tax – Stay/Waiver of pre-deposit – Sale of goods viz., air-conditioners treated as trading activity and an exempted service – Demand raised under Rule 6 of CCR, 2004 for availing credit on input services used in trading activity without maintaining separate accounts – Sale of goods for a consideration on payment of VAT cannot be treated as an exempted service– Pre-deposit waived and stay granted – Rule 6 of CENVAT Credit Rules, 2004 read with Section 35F of Central Excise Act, 1944 as made applicable to Service Tax vide Section 83 of Finance Act, 1994
<a href="#">2011-TIOL-1671-CESTAT-BANG</a>
<b>M/s Blue Star Limited Vs CCE, CC &amp; ST, Cochin (Dated: September 8, 2011)</b>
Service Tax – Stay/Waiver of Pre-deposit – Liability to pay 8% amounts under Rule 6(3) for providing output services to certain units in Special Economic Zones – Services rendered to SEZ units to be treated as export of service and would not be reckoned as exempted service for the purpose of Rule 6(3) of CCR, 2004 – Rule 6(3) of CENVAT Credit Rules, 2004 – Section 35F of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994
<a href="#">2011-TIOL-1666-CESTAT-AHM</a>
<b>Shri Manish Agarwal Vs CST, Ahmedabad (Dated: June 13, 2011)</b>
Service Tax - Business Auxiliary Service - Export of Services - Commission amount is received by the service provider in foreign currency from the foreign client for providing the services for sale of foreign goods in India. As per Board circular No.111/5/2009-S.T., dated 24-2-2009 the commission earned on foreign services is not liable to Service Tax. The said circular clarifies that the location of the service receiver is the important factor and not the place of performance. Where the benefit in terms of promotion of a business of a foreign company accrued, the fact that the

place of performance was in India the same would not be taxable. (Para 7)
<a href="#">2011-TIOL-1665-CESTAT-AHM</a>
<b>M/s Doshion Limited Vs CST, Ahmedabad (Dated: July 5, 2011)</b>
<p>Service Tax - Maintenance or Repair Services - Stay / Dispensation of pre-deposit - The essence of the contract is to supply of potable water of specified standard. Maintenance of the water supply plant is incidental and there is no separate contract for maintenance and repair. Strong case made out for waiver of pre-deposit. Stay granted. (Para 5)</p> <p>Modification of interim order - Power of Tribunal - Tribunal has powers to modify stay orders, which are interim in nature. (Para 5)</p>
<a href="#">2011-TIOL-1664-CESTAT-DEL</a>
<b>M/s Kataria Transport Corp Ltd Vs CST, Delhi (Dated: June 2, 2011)</b>
<p>Service Tax – Whether activities in the nature of loading, unloading, packing, unpacking etc provided as intermediary to GTA service provider taxable as GTA service – If intermediary service is subservient to the original transaction, mere breaking of original transaction in transit does not bring out a different transaction – If the character of the service provided by the intermediary in transit is GTA service without the original transaction coming to an end, the service provided by intermediary may not be construed to be a different transaction – But all intermediate transactions may not necessarily be characterized as original transaction unless and until both the transactions are integrally and indispensably related or connected to each other – Notification No. 1/2009-ST and Circular No. 104/2008 may enable original authority to record findings, testing the true nature of the transactions by the parties - Lower authority directed to make a thorough verification of chain of evidence, consignment notes, origin and destination of the transactions, understanding of consignor and the consignee, contract of GTA service provider with the intermediary, before arriving at a rational conclusion – Matter remanded to original authority for passing a reasoned and speaking order</p>
<a href="#">Also see analysis of the Order</a>
<a href="#">2011-TIOL-1663-CESTAT-DEL</a>
<b>M/s Paramount Communication Ltd Vs CCE, Jaipur (Dated: September 2, 2011)</b>
<p>Service Tax – Levy of tax on 'Business Exhibition Services' received by recipient in India in connection with participation in trade fairs organized in Middle Eastern countries and South Africa – When service of Business Exhibition is performed outside India and this service cannot be regarded as import under s. 66A read with Rule 3 of Taxation of Import of Services Rules, 2006, when there is no performance in India, prima facie case for full waiver of pre-deposit – Recovery stayed till disposal of appeal</p>
<a href="#">2011-TIOL-1662-CESTAT-DEL</a>



**M/s Vichara Technology India Pvt Ltd Vs CST, Delhi (Dated: August 4, 2011)**

Service Tax - Software Consultancy Service - Export of Service - Refund of un-utilized credit - Refund of un-utilised credit denied on the ground that the services used have no close and direct nexus in providing output services which have been exported. The matter is remanded to Commissioner (Appeals) for denovo decision strictly in accordance with the directions contained in the Board Circular No.120/01/2010-S.T. dated 19/1/2010 . (Para 5)

[2011-TIOL-1658-CESTAT-MUM](#)

**IDEAL Road Builders Pvt Ltd Vs CST, Mumbai (Dated: September 9, 2011)**

Functions performed by National Highway Authority of India or its contractor cannot be considered as sovereign functions nor the fees collected acquires the nature of tax or duty so as to be outside the scope of service tax – Service of Toll collection on behalf of NHAI would come under the category of Business Auxiliary Service – Pre - deposit ordered: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1657-CESTAT-DEL](#)

**M/s Tyagi Associates Vs CCE, Meerut-II (Dated: September 14, 2011)**

Service Tax – Erection, Commissioning and Installation service – Service tax collected, but not deposited - There is no clear finding whether the entire tax demanded falls in the category of tax collected from the customers but not deposited with the Government - Provisions of Section 12D of Central Excise Act read with Section 83 of Finance Act, 1992 have not been invoked in the show cause notice - No attempt has been made by the Revenue to demarcate the value corresponding to erection of structures which was not taxable prior to 1.5.06 – Impugned order set aside and matter remanded to the original authority.

[2011-TIOL-1654-CESTAT-BANG](#)

**CCE, Thiruvananthapuram Vs BSNL (SSA) Kollam (Dated: August 1, 2011)**

Service Tax – In assessee's appeal, Tribunal remanded matter to Appellate Commissioner with direction to consider re-quantification of service tax short paid, if any – Issue raised in Revenue's appeal against the same O-I-O pertains to penalties under sections 77 & 78 – Matter remanded to Appellate Commissioner to consider this aspect as well

[2011-TIOL-1650-CESTAT-MUM](#)

**M/s All Cargo Global Logistics Ltd Vs CCE, Raigad (Dated: October 5, 2011)**

"Cargo Handling Services" and "Storage & Warehousing Services" - Appellant running a container freight station and functioning as custodian of the bonded warehouses

under Customs Act - In respect of un-cleared cargo, they had undertaken auction of the goods - Board's Circular No. 11/1/2002-TRU dated 1.8.2002 clarifies that Service Tax is not leviable on the activities of the custodian when he auctions abandoned cargo and VAT/ST is paid in respect of such cargo - Strong prima facie case - Pre-deposit waived of adjudged dues.

[2011-TIOL-1649-CESTAT-MUM](#)

**CCE, Pune Vs M/s Bosch Chassis Systems India Ltd (Dated: September 27, 2011)**

Outdoor Catering Service – Cenvat Credit - once the tax is borne by the ultimate consumer of the services, namely the workers, manufacturer could not take the credit of that part of the service tax – Revenue appeal allowed.

No cause for imposition of penalty as Commissioner (A) had allowed the benefit based on the LB decision in GTC Industries ( [2008-TIOL-1634-CESTAT-MUM-LB](#) ) and which portion of the order allowing the benefit of CENVAT credit even in cases where the worker has borne the cost of the food has been set aside by the Bombay High Court in Commissioner of Central Excise Nagpur, Vs. Ultratech Cement Ltd. ([2010-TIOL-745-HC-MUM-ST](#))

Decision of Gujarat High Court in Commissioner of Central Excise Ahmedabad-I Vs. Ferromatik Milacron India Ltd. ([2010-TIOL-851-HC-AHM-ST](#)) distinguished - it is not clear from the facts of that case whether the tax on Outdoor Catering Service was borne by the workers and employees of the company.

[2011-TIOL-1645-CESTAT-AHM](#)

**M/s M K Industries Vs CCE, Daman (Dated: July 22, 2011)**

Service Tax – If service tax paid on services obtained from foreign commission agents is admissible as credit, then service tax paid on commission agent's services within the country would also be admissible as credit

[Also see analysis of the Order](#)

[2011-TIOL-1644-CESTAT-AHM](#)

**CCE, Ahmedabad Vs M/s Pierlita India Pvt Ltd (Dated: July 28, 2011)**

Service Tax – Availment of CENVAT credit of service tax paid on input services for the period from December 2006 to February 2008 in March 2008 – Credit cannot be denied on the ground that it was not availed immediately – No merit in Revenue appeals

[2011-TIOL-1643-CESTAT-AHM](#)

**M/s Cadila Pharmaceuticals Ltd Vs CCE, Ahmedabad (Dated: September 29, 2011)**

Service Tax - Services utilized for export of goods - Refund - Port services - Storage

and Warehousing - Insurance - Technical Testing and Analysis services - Notification No.41/2007-ST, dt.6.10.07 - CENVAT Credit or refund cannot be denied to the service receiver on the ground that the service provider was not authorized by the port. In respect of storage or warehousing service the same is required to be approved by the competent authority for claiming refund of service tax paid. In the case of Technical Testing & Analysis services refund is allowed only when such service is received in terms of written agreement with the buyer. Service receiver to provide evidence regarding payment of insurance for the export goods to claim eligible refund. Adjudicating authority to examine records and pass fresh orders. (Para 2, 4 & 6)

[2011-TIOL-1639-CESTAT-MUM](#)

**M/s Sanjogita Construction Vs CCE, Nagpur (Dated: September 23, 2011)**

Appellant collecting Service Tax from customers but not paying to the exchequer – when case detected, tax paid along with interest – since there is no communication in “writing” to the department about payment of service tax, issuance of SCN u/73 of FA, 1994 and imposition of penalty u/s 76 is proper: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1638-CESTAT-DEL](#)

**M/s Bairathi Developers Pvt Ltd Vs CCE, Jaipur (Dated: September 2, 2011)**

Service Tax – Stay/Dispensation of pre-deposit – Construction of complex service - Prior to insertion of Explanation to Section 65(105) ( zzzh), prima facie, the activity of construction of flats by the builder/developer for various prospective buyers against the flat agreement entered into by them could not be called the service of construction of residential complexes – Pre-deposit waived.

[2011-TIOL-1637-CESTAT-DEL](#)

**M/s Rohani Sharmik Theka Sahakari Samiti Ltd Vs CCE, Jaipur (Dated: September 2, 2011)**

Service Tax - Cargo Handling Service - Site formation and clearance excavation and earth moving and demolition services - Mining Services - Stay / Dispensation of pre-deposit - Revenue relying on Board's Circular No.232/2/2006-CX.4 dated 12/11/2007 wherein it had been clarified that excavation/drilling and removal of the overburdens are taxable under the category of "site formation and clearance, excavation and earth-moving and demolition service" w.e.f. 16/6/05 classified the activities of the service provider accordingly.

HELD - The contract is essentially for mining of the gypsum and other activities of removal of over burden, loading of gypsum in trucks and levelling of mine/area, maintenance of the ramps and/or access roads etc. are ancillary or incidental to the main area of the mining. Case made out for grant of unconditional stay. Pre-deposit of service tax, interest and penalty is waived and stay is granted during the pendency of appeal . (Para 4)

[2011-TIOL-1630-CESTAT-DEL](#)

**M/s Amitdeep Motors Vs CCE, Allahabadr (Dated: September 19, 2011)**

Service Tax - Liability to pay service tax on accessories fitted at the time of sale of motor vehicles treating it as 'authorized service station service' - When sales tax is paid on the gross value of motor vehicles including accessories, no liability to pay service tax - Imposition of penalty not sustainable - Impugned order set aside

[Also see analysis of the Order](#)

[2011-TIOL-1629-CESTAT-DEL](#)

**M/s The Financer's Vs CCE, Jaipur (Dated: September 19, 2011)**

Service Tax – Liability to pay tax on commission received for services provided as direct selling agent to banks – When clarification sought by appellants from DGST in April 2004 on their tax liability not provided for by department, appellants were under bonafide belief that they were not liable to pay tax – When appellants have not disputed tax liability and sought for waiver of penalties under bonafide belief that tax was not payable, benefit under s. 80 allowed for waiver of penalties

[2011-TIOL-1628-CESTAT-DEL](#)

**Shashi Kant Mishra Vs CCE, Allahabad (Dated: September 9, 2011)**

Service Tax - Rent-a-Cab operator service - Exemption under Notification No 9/2004 ST dated 9.7.2004 cannot be denied to the appellants on the ground of not obtaining registration with the department - The appellant is also entitled for small scale exemption under Notification No 6/2005 ST dated 1.3.2005 and also eligible for cum-tax benefit - Penalties under Section 76 and 78 cannot be imposed for the same offence - Penalty under Section 76 is set aside and the benefit of 25% penalty should be extended - Penalty under Section 77 is upheld and penalty under Section 75A is waived - Matter remanded.

[2011-TIOL-1623-CESTAT-BANG](#)

**M/s Momentum Strategy Consultants Pvt Ltd Vs CST, Bangalore (Dated: August 17, 2011)**

Service Tax – Levy of service tax on advertising agency service rendered to foreign company where consideration was received in foreign exchange – Service rendered in the interregnum between Notifications 2/03-ST and 21/03-ST when there was no exemption in force in r/o taxable services for which consideration was received in convertible foreign currency – Notification No. 21/03-ST issued independently granting exemption from service tax on taxable service for which consideration was received in convertible foreign exchange and had nothing to do with Notification 6/99-ST – No material on record to show that during interregnum period, Central Government issued any clarification disclosing consistent policy in favor of providers of such taxable services – Only question that survives consideration was whether services were actually exported – No clear finding by original authority – Appellant's emphatic claim that services were exported to be examined by original authority, matter remanded – Issue of limitation also to be examined

<a href="#">Also see analysis of the Order</a>
<a href="#">2011-TIOL-1622-CESTAT-DEL</a>
<b>M/s Shobha Digital Lab Vs CCE, Bhopal (Dated: August 23, 2011)</b>
Service Tax - Valuation - Inclusion of cost of paper in taxable value of photography service - Issue no longer res integra in view of LB decision in Agrawal Colour Advance Photo System case - <a href="#">(2011-TIOL-1208-CESTAT-DEL-LB)</a> - When there were divergent views on the issue, no malafide can be attributed to assessee to invoke extended period of limitation - Demand of tax invoking extended period of limitation set aside - Appellant liable to pay service tax within the period of one year limitation, lower authorities directed to re-quantify demand accordingly - When no malafide can be attributed to assessee, penalties waived under section 80
<a href="#">2011-TIOL-1621-CESTAT-DEL</a>
<b>CCE, Kanpur Vs M/s Shivangi Steel Pvt Ltd (Dated: September 15, 2011)</b>
Service Tax - Activity of merely procuring orders for principal on commission basis not covered under C & F Agent's service - LB decision in Larsen & Toubro Ltd = <a href="#">(2006-TIOL-814-CESTAT-DEL-LB)</a> followed - No reason to interfere with order of Appellate Commissioner
<a href="#">2011-TIOL-1614-CESTAT-DEL</a>
<b>CCE, Raipur Vs M/s G K Motors (Dated: September 1, 2011)</b>
Service Tax – Assessee engaged in sale of motor vehicles as well as providing authorized service station service – Eligibility of CENVAT Credit of service tax paid on GTA service, advertisement service, insurance service, audit fee, valuation charges, repair and maintenance, courier service etc – Services received by assessee cannot be said to be exclusively used in or in relation to providing output service – Credit eligible only in respect of services which are used in or in relation to providing output services of authorized service station and not for trading activity – Since this aspect was not discussed in impugned order, matter remanded to original authority for re-quantification of eligible CENVAT credit after verifying as to which of the services were used in or in relation to providing authorized service station service – Impugned order of Appellate Commissioner to the extent of setting aside penalty under s. 76 upheld, since the issue involved relates to eligibility of CENVAT credit
<a href="#">2011-TIOL-1613-CESTAT-DEL</a>
<b>CCE, Raipur Vs M/s Jethson Builders Pvt Ltd (Dated: September 19, 2011)</b>
Service Tax – Demand set aside by Appellate Commissioner on the ground that main contractor paid tax and levy of tax on sub contractor i.e. assessee would amount to double taxation, subject to verification by original authority of tax paid by main contractor – Matter remanded to original authority for carrying out verification as to whether main contractor paid tax and decide consequential duty liability on assessee – Since Revenue agitated against impugned order only on facts, matter remanded only

to verify factual position and not re-deciding matter on legal issues

[2011-TIOL-1612-CESTAT-DEL](#)

**M/s Jagatjit Industries Ltd Vs CCE, Ludhiana (Dated: June 2, 2011)**

Service Tax – Activity of receiving royalty from manufacturers for manufacturing liquor under license from brand name owner (appellant) on payment of royalty and activity of manufacturing liquor using others' manufacturing facility by paying a consideration – SCN issued proposing recovery of tax under 'management consultant's service' – In the first round of litigation, Tribunal remanded matter to Commissioner to consider issue afresh in the light of Board's letter F. No. 249/1/2006-CX dated 27.10.2008 – In the second round of litigation, Commissioner held the activity as taxable under 'Franchise service' – SCN is the foundation of adjudication which may give rise to civil or evil consequences under the law for which adjudication order should not travel beyond SCN – Appellant may raise an alternate plea in its defence before a court of law but decision in a case has to flow from the material facts on record, evidences governing the case and the law applicable to settle the matter in controversy – Prima facie, case for full waiver of pre-deposit during pendency of appeal

[Also see analysis of the Order](#)

[2011-TIOL-1609-CESTAT-DEL](#)

**M/s Sopariwala Exports Pvt Ltd Vs CCE, Vadodara (Dated: September 13, 2011)**

Service Tax – Eligibility of Notification No. 1/06-ST and Notification No. 12/03-ST for completion and finishing services – Provisions of Notification No. 1/06-ST not applicable to completion and finishing services, abatement of 67% not available - Since amount on which VAT was paid is value of materials used for providing services, this material cannot be said to have been sold in terms of section 2(h) of CEA, 1944 read with section 65(121) of Finance Act, 1994 - In view of LB decision in Aggarwal Colour Advance Photo System & Ors vs. CCE, Bhopal - [\(2011-TIOL-1208-CESTAT-DEL-LB\)](#) benefit of Notification No.12/2003-ST not available – Pre -deposit of Rs. 18 lakhs ordered

[2011-TIOL-1608-CESTAT-AHM](#)

**M/s Sopariwala Exports Pvt Ltd Vs CCE, Vadodara (Dated: August 8, 2011)**

Service Tax – Non-payment of education cess on service tax paid on commissions paid to foreign agents during FYs 2005-06 and 2006-07 – Audit report and SCN issued simultaneously to assessee and reply given to audit report but not to SCN resulting in ex-parte decision by original authority based on reply given to audit report – Appellants claim that service tax was paid by them during 2005-06 also even when there is settled law that tax was payable only w.e.f. 18.04.2006 on import of services and excess payments have to be adjusted against non payments – Bonafide mistake on the part of appellant in not putting forth their defences properly before original authority – Non-payment of education cess a bonafide omission and not with an intention to evade duty – In view of peculiar circumstances, matter remanded to original authority with direction to provide opportunity to appellant and to verify facts and arrive at fresh decision

[2011-TIOL-1606-CESTAT-AHM](#)

**M/s Housing & Development Corporation Ltd Vs CST, Ahmedabad (Dated: November 25, 2011)**

Section 80 : An alternative submission was made that the provisions of Section 80 are invocable in this case. According to Section 80 of Finance Act, 1994, "provision of Section 76, 77 or 78, no penalty shall be imposable on the assessee for any failure referred to any such provision, if the assessee proves that there was a reasonable cause for the said failure." Tribunal considered that the appellant being a wholly owned government company and the fact that they did not pay Service Tax only on prepayment charges and reset charges and also in view of the fact that accounting treatment given to these items as additional interest has been accepted by the Income Tax department, would be sufficient for invoking provisions of Section 80 of Finance Act, 1994. Accordingly, while upholding the demand of Service Tax and interest, penalties imposed under various Sections of Finance Act, 1994 are set aside.

Service Tax - Banking - Prepayment/reset charges for loans - liable to tax; Charges collected for restructuring of loans and prepayment of loans is a way of value addition. The very fact that the cost that the customer has to pay for the facilities of prepayment/reset, is named as prepayment "charge" and reset "charge", immediately conveys that the same is in the nature of fee in lieu of some service/facility. The cost of the service for the customers increases or decreases with the increase or decrease of these charges. Thus, the reset charges and prepayment charges can be considered as the cost incurred by the borrower towards value added services like restructuring of the loan and prepayment of loan. Hence, the same charges are liable for Service Tax.

Limitation - no different treatment for a Government Company: It is settled law that Government Company is not Government and it has to be taken note that even Government departments make the payments for the services received from another department. Therefore, the fact that the appellant is a wholly owned government company, does not mean that they need not have to follow the law of land or take it lightly and plead ignorance of law or being a wholly a government company, seek differential treatment. The fact remains that the appellant was required to declare the income received once the law was amended and they were required to seek clarification, if there was doubt. Therefore, the appellant could not have interpreted the law according to their understanding without taking sufficient care for their interpretation. In the absence of any evidence to show that the appellant had intimated the Department or had obtained legal opinion, invocation of extended period on the ground of suppression of facts has to be upheld.

Section 80 : An alternative submission was made that the provisions of Section 80 are invocable in this case. According to Section 80 of Finance Act, 1994, "provision of Section 76, 77 or 78, no penalty shall be imposable on the assessee for any failure referred to any such provision, if the assessee proves that there was a reasonable cause for the said failure." Tribunal considered that the appellant being a wholly owned government company and the fact that they did not pay Service Tax only on prepayment charges and reset charges and also in view of the fact that accounting treatment given to these items as additional interest has been accepted by the Income Tax department, would be sufficient for invoking provisions of Section 80 of Finance Act, 1994. Accordingly, while upholding the demand of Service Tax and interest, penalties imposed under various Sections of Finance Act, 1994 are set aside.

[Also see analysis of the Order](#)

[2011-TIOL-1605-CESTAT-AHM](#)

**M/s Akshar Courier Service Vs CCE, Vadodara (Dated: October 27, 2011)**

Service Tax - Input Service - CENVAT - Invoice not in the name of service receiver - Stay/Dispensation of pre-deposit - The service tax paid has been accounted for in the books of accounts of service receiver. Service provider has given a letter that in reality he is dealing with the appellant only and he is aware that a dummy name is used for providing a cover for transactions of the appellant. The document contains details which are essential as per proviso to Rule 9 (2) of Central Excise Rules.

HELD - The service receiver has been able to make out prima facie case in their favour for grant of unconditional stay. Pre-deposit of service tax, interest and penalty is waived and stay is granted during the pendency of appeal. (Para 4)

[2011-TIOL-1604-CESTAT-BANG](#)

**M/s National Geophysical Research Institute Vs CCE, Hyderabad (Dated: April 18, 2011)**

Service Tax - Scientific or Technical Consultancy service - Liability to pay service tax on NGRI for undertaking R&D projects viz., sponsored projects, collaborative projects, grant-in-aid projects and composite projects - Data collected by NGRI put to use by clients for cost-effective laying of pipelines, maintenance and protection of monuments like Charminar, facilitate uranium exploration by AMD etc - In order to constitute 'Scientific or Technical Consultancy Service', appellant should have rendered advice to its clients on the basis of data collected by it - Though records show that appellant gathered data such as profile of sub-surface earth and scientific interpretation useful to them, records do not show that they gave expert opinion based on data gathered - Matter remanded to Commissioner for fresh decision after studying project reports generated on completion of research conducted by NGRI for its clients

Valuation - Allowing cum-tax benefit for the period prior to 18.04.2006 - When amount is collected for provision of services, total compensation received from customers to be treated as inclusive of tax unless service tax is paid by customer separately - Principle of cum -tax benefit available all along and to be applied even prior to 18.04.2006 - On remand, valuation aspect to be considered afresh by Commissioner and principle of cum -tax benefit to be allowed if appellant found to be liable to pay service tax

[2011-TIOL-1598-CESTAT-MAD](#)

**M/s Sindhu Cargo Services Ltd Vs CST, Chennai (Dated: September 5, 2011)**

Service Tax – Stay/Dispensation of pre-deposit – Business Auxiliary Service – Promoting / Marketing the services provided by various Airlines/Steamer Agents – No prima facie case made out for waiver of pre-deposit – Rs 25 lakhs ordered to be deposited.

[2011-TIOL-1594-CESTAT-DEL](#)

**CST, New Delhi Vs M/s JRC Grid Engineers Pvt Ltd (Dated: October 18, 2011)**



Service Tax – Construction of Complex Service – Penalty – The adjudicating authority has extended the benefit of Section 80 considering the confusion prevailing in the field and the reasonable cause for non-payment of service tax – Merely because the service tax was paid by the respondents at the start of the investigations by the Revenue, by itself cannot be indicative of the fact that there was malafide intention and suppression on the part of the assessee – No merit is revenue's appeal seeking imposition of penalty.

[2011-TIOL-1593-CESTAT-DEL](#)

**M/s Kaveri Coal Suppliers Vs CCE, Kanpur (Dated: February 22, 2011)**

Service Tax – Appellants engaged in financing clients for purchase of coal and also arranging for transportation of coal – Liability to pay service tax under C & F Agents service for the period from 2000-01 to 2003-04 – Appellants registered and paying tax under BAS from 2004 – Tax paid under protest and penalties levied under Ss. 75A, 76, 77 & 78 – When appellants are currently registered under BAS, Revenue cannot contend that for prior period they were providing services of Clearing & Forwarding Agents – SCN also time barred – Impugned orders set aside

[2011-TIOL-1592-CESTAT-DEL](#)

**M/s Wipro BPO Solutions Ltd Vs CST, Delhi (Dated: October 5, 2011)**

Service Tax - No Registration required if no tax liability; a person providing taxable services would be liable to obtain service tax registration only if he was liable to pay the service tax. Moreover, neither in Rule 5 of the Export of Services Rules nor in the Notification No.12/2005-ST issued under this rule, there is any condition that the person claiming rebate must have service tax registration. In view of this, the rebate claim under Rule 5 of the Export of Services Rules or in the Notification No.12/2005-ST cannot be rejected just because the assessee did not have service tax registration which, he would not be required to obtain, if his output services was being exclusively exported and as such, he was not liable to pay any tax on the services being provided to his offshore clients.

Rebate - filing of declaration though procedural, has to be complied with: though the requirement of filing of declarations prior to export of the services and its verification by the jurisdictional Asstt ./ Dy. Commissioner is a procedural requirement, the purpose of this procedure is to ensure that there is no evasion of duty by misuse of this facility. The Apex Court in the case of M/s. Indian Aluminium Company Ltd. vs. Thane Municipal Corporation has held that not observing even a procedural condition is not to be condoned if such non-observance facilitates commission of fraud and introduces administrative inefficiency and inconvenience.

[Also see analysis of the Order](#)

[2011-TIOL-1591-CESTAT-BANG](#)

**M/s CMC Ltd Vs CCE, Hyderabad (Dated: April 19, 2011)**

Service Tax – Lending of modular part time semester wise course leading to Diploma in Advanced Software Technology under franchise agreements – Liability to pay service tax on 25% of amount retained by CMC Ltd out of course fee paid by students for DSAT Course – Service tax being discharged by the appellant under Commercial

Training or Coaching service w.e.f 01.07.2004 and claim for benefit of Notification No. 9/03-ST – Agreements entered into with franchisees satisfy all four clauses of definition of 'franchise service', liable to be taxed under 'Franchise Service' – Services provided to be viewed in the light of definitions given in the notification and the same cannot be extended to 'franchise service' given by appellant – Bonafide belief that provision of training in computer software not liable to tax and eligible for benefit of Notification No. 9/03-ST accepted, penalties not leviable – Commissioner's revisionary order imposing penalties set aside

[2011-TIOL-1587-CESTAT-DEL](#)

**Jeevan Lal Jain Vs CCE, Raipur (Dated: August 3, 2011)**

Service Tax – Construction of Complex service – Nothing on record to suggest that appellant was put to notice by lower appellate authority for additional levy of service tax – Order of appellate authority cryptic and unreasoned, liable to be set aside – Since, adjudicating authority has rightly considered defence plea in relation to penalties by invoking section 80, penalty of Rs. 29.12 lakhs imposed by lower appellate authority on the original demand confirmed by original authority, waived – Lower appellate authority directed to hear appellants for proposal of additional tax demand and pass speaking order

[Also see analysis of the Order](#)

[2011-TIOL-1584-CESTAT-AHM](#)

**CCE Vapi & Vadodara Vs M/s Prestress Wire Industries (Dated: July 15, 2011)**

Service Tax - GTA Service - Declaration on consignment note - Input Service - CENVAT - Credit of service tax paid on GTA service for outward transport of goods from beyond the place of removal is available as credit. (Para 3, 4 & 5)

[2011-TIOL-1581-CESTAT-MUM](#)

**M/s Mahindra & Mahindra Ltd Vs CCE, Pune (Dated: October 12, 2011)**

Purpose of providing input service tax distribution is in the context of "common" services availed by various units of a single corporate entity - It is not a mechanism for transfer of credit from one unit to another - Appellant should have registered themselves as a LTU for transferring such credit - Pre-deposit ordered: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1579-CESTAT-MUM](#)

**Semco Electric Pvt Ltd Vs CCE, Pune (Dated: October 7, 2011)**

Service tax paid on clearing and forwarding service, maintenance and repair service, technical testing and analysis service, catering service, telephone and mobile telephone service, management consultancy service and GTA service – since these are

eligible Input services appellant is eligible for refund on the service tax paid on the services availed and utilised in the manufacture and export of goods – decision in own case [2011-TIOL-965-CESTAT-MUM](#) relied upon – Appeal allowed with consequential relief: CESTAT.

[2011-TIOL-1578-CESTAT-MUM](#)

**Reliance Clinical Research Services Pvt Ltd Vs CST, Mumbai (Dated: October 10, 2011)**

Activity of technical testing and analysis undertaken for the purpose of clinical testing of drugs and formulations are liable to service tax with effect from 1.5.2006 – Tribunal in the case of B.A. Research India Ltd vs Commissioner of Service Tax, Ahmedabad ([2010-TIOL-509-CESTAT-AHM](#)) has held that the Explanation which is added to Section 65 (106) of the Finance Act, 1994 with effect from 1.5.2006 is not clarificatory in nature – Prima facie strong case for waiver of pre-deposit.

Since appeal filed by the Revenue against the decision of the Tribunal in the case of B.A. Research India is admitted by the Gujarat High Court on 31.3.2011 both sides are at liberty to mention after the decision is pronounced.

[2011-TIOL-1575-CESTAT-MUM](#)

**Garware Polyester Limited Vs CCE, Aurangabad (Dated: October 13, 2011)**

Seminar fees, exhibition fees, patent application work, international conference fees, octroi service, valuation of property - whether input service - Adjudicating authority merely taking a "look" at the services and deciding their eligibility without giving any findings is unfortunate - matter remanded: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1574-CESTAT-DEL](#)

**M/s Meinhardt Singapore Ptd Ltd Vs CCE, New Delhi (Dated: October 20, 2011)**

Service Tax - Stay/Dispensation of pre-deposit - Service Tax deposited on investigation by the department - Penalty - Plea that tax was not paid due to financial crunch cannot be appreciated inasmuch as even the tax liability was not informed to the Revenue by way of filing ST 3 return - 25% of the penalty ordered to be deposited.

[2011-TIOL-1573-CESTAT-DEL](#)

**M/s Moving Picture Company (India) Limited Vs CST, New Delhi (Dated: September 15, 2011)**

Service Tax - CENVAT - Document for availing credit - Stay / Dispensation of pre-deposit - The service provider provides the services of production of T.V. and Radio programmes from their studio in Mumbai, while their administrative office/head

office is in Gurgaon, where they have Central Excise registration. There is no dispute that the invoices on the basis of which the Cenvat credit taken are in respect of the services which had been received by them. Just because the invoices are in the name of their Mumbai office, while their head office/administrative office is at Gurgaon, the Cenvat credit cannot be denied. Stay granted. (Para 4)

[2011-TIOL-1568-CESTAT-DEL](#)

**BSNL Vs CCE, Jaipur (Dated: July 19, 2011)**

Service Tax - Telephone Service - Leased Lines - Leased lines provided through ACSR/copper wire provide voice communication and hence covered under the existing entry for telephone service even prior to the period 16.07.01. The leased line provided through iron wire which provides only data communication is not covered under the ambit of telephone service prior to 16.07.01. (Para 5)

[2011-TIOL-1567-CESTAT-DEL](#)

**M/s Janta Travels Pvt Ltd Vs CCE, Delhi (Dated: October 4, 2011)**

Service Tax – Stay/Dispensation of pre-deposit – Business Auxiliary Service – Air Travel Agency receiving incentive for using the Computerised Reservation System of M/s Galileo India Pvt. Ltd. and M/s. Abacus Distribution (India) Pvt Ltd – Whether amounts to rendering service of promoting and marketing of the two companies – Prima facie appears to be covered under the definition of Business Auxiliary Service – 50% of the tax amount ordered to be deposited.

[2011-TIOL-1564-CESTAT-MUM](#)

**Swami Samarth Catering Service Vs CCE & CC, Aurangabad (Dated: October 13, 2011)**

Appellant providing Outdoor catering services and receiving payments but not discharging service tax liability - since liability accepted, pre-deposit ordered and matter remanded - cum-tax benefits and small scale exemption to be considered by adjudicating authority: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1563-CESTAT-DEL](#)

**M/s Sunrise Education Vs CCE, Kanpur (Dated: October 19, 2011)**

Service Tax – Stay/Dispensation of pre-deposit – Commercial Training or Coaching Service – Exemption to Vocational Training Institute under Notification No 24/2004 ST Dated 10.9.2004 – Issue is arguable – 50% of the tax ordered to be deposited.

<a href="#">2011-TIOL-1562-CESTAT-DEL</a>
<b>M/s XL Laboratories Pvt Ltd Vs CCE, Jaipur (Dated: September 15, 2011)</b>
Service Tax – Stay/Dispensation of pre-deposit – Appellant participated in Business Exhibition Service conducted in Vietnam – Whether to be treated as service received from outside India - Business Exhibition Service falls under Rule 3(ii) of Taxation of Services (provided from outside India and received in India) Rules, 2006 and is taxable in the hands of recipient of the service only if the service is performed in India – Prima facie case made out for full waiver of service tax, interest and penalty.
<a href="#">2011-TIOL-1557-CESTAT-MAD</a>
<b>M/s SRC Projects Pvt Ltd Vs CCE, Salem (Dated: September 5, 2011)</b>
Service Tax – GTA – Board's Circular clarifying that 'provision of ancillary/intermediate services in relation to the transportation of goods, such service would form part of the 'GTA service' and not 'Cargo Handling Service' – not placed before Adjudicating Authority – Case remanded:
<a href="#">2011-TIOL-1556-CESTAT-AHM</a>
<b>M/s Meghachem Industries Vs CCE, Ahmedabad (Dated: April 4, 2011)</b>
Service Tax – CENVAT Credit of service tax paid on CHA services and courier services not deniable – High Court decisions in Ultratech Cement Ltd = <a href="#">2010-TIOL-745-HC-MUM-ST</a> followed
<a href="#">2011-TIOL-1554-CESTAT-DEL</a>
<b>BSNL Vs CCE, Ghaziabad (Dated: July 14, 2011)</b>
Service Tax – Restriction of credit utilization to 20% in terms of Rule 6(3)(c) not applicable to credit availed on capital goods – As regards demand on account of irregular credit availed without proper documents, since appellant has produced original duty paying documents, the matter requires reconsideration – With regard to demand of service tax based on audit report, since the audit report only mentions non-taxable services and not taxable services, matter requires re-consideration by adjudicating authority
<a href="#">Also see analysis of the Order</a>
<a href="#">2011-TIOL-1552-CESTAT-AHM</a>
<b>M/s Cadmach Machinery Co (P) Ltd Vs CCE, Ahmedabad (Dated: August 24, 2011)</b>
Service Tax - Input Service - CENVAT - CENVAT Credit is admissible for all the services which are related to manufacture. Definition of input service includes services which are integrally connected with business of manufacture of final product. (Para 5, 11)
Outdoor Catering Service - Input Service - CENVAT - Credit of Service Tax paid on

outdoor catering service is admissible. The amount paid by worker/staff to the assessee, has to be treated as exclusive of Service Tax and after deducting this amount and balance amount, the service tax paid would be available as credit. (Para 9)

Valuation of Immoveable Property - Input Service - CENVAT - Valuation of property is done to know the life of the factory and machine to avoid casualty and also to arrive at quantum of depreciation admissible. This is relatable to business of manufacture and therefore credit is admissible. (Para 10.1)

Consulting Engineer - Input Service - CENVAT - Consulting Engineers service used in relation to technical knowhow for manufacture of pharmaceutical machinery. This is relatable to manufacture and therefore credit admissible. (Para 10.2)

Air Travel Agent Service - Authorised service station - Input Service - CENVAT - Matter already decided by Divisional Bench that credit is admissible on Air Travel Agent service and Authorised service centre. (Para 10.3)

Tour Operator Service - Input Service - CENVAT - Tour Operator service was availed in respect of clients who came to the assessee in relation to promotion of sale of the goods. This activity is relatable to manufacture and hence CENVAT Credit is admissible in respect of this service. (Para 10.4)

Business Exhibition Service - Input Service - CENVAT - Business Exhibition Service, is for display of final products, explaining the function and purpose of machine which is in relation to promotion of sale and is integral part of the manufacture. Therefore, credit of Service Tax paid on Business Exhibition Service is admissible. (Para 10.5)

[2011-TIOL-1548-CESTAT-MAD](#)

**M/s Tamilnadu Cements Corporation Ltd Vs CCE, Tiruchirapalli (Dated: September 5, 2011)**

Service Tax – CENVAT Credit on outward transport – Matter remanded: The issue in dispute relates to admissibility of CENVAT credit on outward transport of goods from the place of removal. For the period upto 01.04.2008, the Hon'ble Karnataka High Court has held in the case of Commissioner of Central Excise & Service Tax, Bangalore Vs. M/s. ABB Ltd., Vadodara & Ors. – ([2011-TIOL-395-HC-KAR-ST](#)), that CENVAT Credit is admissible of such service. However, for the period post 01.04.2008, this Bench has already remitted the issue for fresh decision to the adjudicating authority. Since the period in dispute in the present case is both prior as well as subsequent to 01.04.2008, the impugned order set aside and the case remitted for fresh decision to the adjudicating authority.

[2011-TIOL-1545-CESTAT-MUM](#)

**CC & CE, Nagpur Vs The Akola District Central Cooperative Bank (Dated: October 13, 2011)**

In addition to its primary business activity of banking service, respondent co-operative bank collecting electricity bill payments from various customers of Maharashtra State Electricity Board and receiving commission from MSEB - not liable to Service Tax under BAS: CESTAT

[Also see analysis of the Order](#)

<a href="#">2011-TIOL-1544-CESTAT-DEL</a>
<b>M/s C S Mechanical Works Pvt Ltd Vs CCE, Ghaziabad (Dated: May 4, 2011)</b>
Service Tax – Job work of de-shelling and re-shelling of old and worn out sugar mill rollers prima facie covered by definition of 'maintenance & repair service' - CBEC Clarification dated 27.07.2005 does not mention about services provided by manufacturers - Pre -deposit of Rs. 10 lakhs ordered
<a href="#">2011-TIOL-1543-CESTAT-DEL</a>
<b>M/s Siddhartha Tubes Ltd Vs CCE , Indore (Dated: October 4, 2011)</b>
Service Tax – GTA – Abatement and payment of tax from Credit account - in the impugned order, there is neither any discussion nor any findings on this issue.: Though there are two issues involved in these appeals - whether during the period of dispute from Jan. 2005 to September, 2005, the appellants were eligible for benefit of exemption notification No.32 /04-ST and whether during this period, they could pay the service tax on the GTA services as recipient through cenvat credit. Though in both the appeals, bulk of the service tax demand is based on the denial of exemption under Notification No.32 /04-ST, in the impugned order, there is neither any discussion nor any findings on this issue. The impugned order discusses only the issue as to whether during the period of dispute, the appellant could discharge their service tax liability in respect of GTA services received through cenvat credit by treating the GTA services so received as their output service. The order thus is incomplete. In view of this, the same is set aside and the matter is remanded back to the Commissioner (Appeals) for de novo decision of the appeals after hearing the appellants.
<a href="#">2011-TIOL-1542-CESTAT-BANG</a>
<b>M/s IVRCL Vs CCE, Hyderabad (Dated: October 4, 2011)</b>
Service Tax – Works Contract – Certain Works for Government – Stay granted on the basis of Board Circular and pervious decisions: The issues raised in this case are highly debatable and that, for the present purpose, the precedent cited by the Counsel can be followed. stay were granted on similar facts in favour of those parties. Prima facie , the Board's clarification works in favour of the present appellants. In this view of the matter, waiver of predeposit and stay of recovery are allowed in respect of the amounts adjudged against the appellants.
<a href="#">Also see analysis of the Order</a>
<a href="#">2011-TIOL-1541-CESTAT-AHM</a>
<b>M/s Precision Wires India Ltd Vs CCE, Vapi (Dated: July 28, 2011)</b>
Service Tax - Commission Agent - CENVAT - Input Service - Without sales promotion, the business activity cannot take place and sales promotion is necessarily a part of business activity. As inclusive part of the definition of input service contains the expression "activities in relation to business", credit of duty paid to Commission Agent is admissible as cenvat credit. (Para 6)
Show cause notice - Scope of - The grounds not raised in the show cause notice for raising the demand cannot be considered for confirmation of the demand .(Para 5)

<a href="#">2011-TIOL-1540-CESTAT-AHM</a>
<b>CCE, Vadodara Vs M/s Sagar Springs Pvt Limited (Dated: July 29, 2011)</b>
Service Tax - Goods Transport Agency Service - CENVAT - Input Service - Credit of service tax paid on GTA Services for transportation of goods beyond the factory gate is admissible for the period prior to 01.04.2008 as the definition of input services was amended with effect from 01.04.2008 by substituting the word "up to" in place of "from" in clause (ii) of Rule 2 (i) of Cenvat Credit Rules. Transportation charges incurred by the manufacturer for clearance of final products from the place of removal has to be treated as included in the definition of input services. (Para 3)
<a href="#">2011-TIOL-1535-CESTAT-DEL</a>
<b>M/s ESPN Software (I) (P) Ltd Vs CST, Delhi (Dated: May 4, 2011)</b>
Service Tax – Distribution of channels in India and Nepal via Cable Television system, Satellite Master Antenna Television system and DTH service – Liability to pay service tax on subscription fees collected from subscribers/sub-distributors for providing access to channels – Appellant shares 35% of revenue collected and all activities of appellant viz., setting up of infrastructure, payment of salaries of employees etc including promotion, undertaken from their own revenue share – Contention that impugned services are covered under 'Broadcasting services' from 16.06.2005 not a sufficient reason to conclude that appellants activity not covered under BAS prior to that date– Appellants activity similar to instances clarified in Board Circular dated 23.02.2009 where theatre owner or film distributor are not doing any service to each other but work towards furtherance of their business – Theatre owner may advertise for promotion of film being displayed in theatre but this promotional activity not on behalf of film distributor – When appellant undertakes delivery of signals and promotes his own business through promotional activities, prima facie strong case in favour of appellants – Pre-deposit waived and stay granted
<a href="#">2011-TIOL-1530-CESTAT-MAD</a>
<b>CCE, Tiruchirapalli Vs Tamil Nadu Newsprint And Papers Ltd (Dated: August 5, 2011)</b>
Service Tax – CENVAT – Services received beyond place of removal – GTA – CHA Services – For the period prior to 01.04.2008, credit is admissible on post-clearance services. For the later period the matter is remanded for fresh decision by the adjudicating authority. (Para 2)
<a href="#">2011-TIOL-1529-CESTAT-AHM</a>
<b>M/s Gail India Ltd Vs CCE, Surat (Dated: June 17, 2011)</b>
Service Tax - CENVAT - Capital goods - Input Service - Stay / Dispensation of pre-deposit - M/s GAIL, Hazira are liable to pay the Service Tax on the services of transportation of gas through pipeline undertaken by them. Another station at Vaghodia is a technical necessity so as to boost the pressure of the gas for further transportation to the ultimate place. Vaghodia station is also a part of the same M/s GAIL, Hazira who are discharging their Service Tax liability on the entire activity of transportation of the gas through pipeline. Prima facie, the appellant is entitled to avail CENVAT Credit of duty paid on the capital goods or input services availed in respect of their Vaghodia station. Strong case made out for waiver of pre-deposit.



Stay granted. (Para 7)
<a href="#">2011-TIOL-1528-CESTAT-AHM</a>
<b>M/s Shanpar Industries Pvt Ltd Vs CCE, Vadodara (Dated: September 14, 2011)</b>
Service Tax – Liability to pay service tax on commission paid to overseas agents – It is settled law that prior to 18.04.06, no Service Tax liability arises as recipient of services – Since the appellant did not contest service tax liability and interest thereon, no findings recorded – Levy of penalty by Commissioner as revisionary authority unwarranted in as much as tax liable to be paid only w.e.f. 18.04.2006 – Penalty under s. 78 set aside
<a href="#">2011-TIOL-1527-CESTAT-DEL</a>
<b>M/s Kanoria Sugar &amp; General Mfg Co Ltd Vs CCE, Allahabad (Dated: March 30, 2011)</b>
Service Tax – Delay in payment of service tax on GTA service availed by manufacturer of sugar and molasses – Except stating that manufacturer had financial problems in discharging tax liability, no other reason given to avail benefit of s. 80 – Not a valid reason for waiver of penalty imposed under s. 76 – No infirmity in order passed by Appellate Commissioner
<a href="#">2011-TIOL-1522-CESTAT-MAD</a>
<b>Nebulla Computers Pvt Ltd Vs CST, Chennai (Dated: September 2, 2011)</b>
Service Tax – Penalty – Tax paid with interest prior to issue of show cause notice – Penalty set aside in view of the provisions of Section 73(3) of the Finance Act, 1994.
<a href="#">2011-TIOL-1521-CESTAT-MAD</a>
<b>Trichy Institute Of Management Studies (P) Ltd Vs CCE, Trichy (Dated: September 7, 2011)</b>
Service Tax – Commercial Training or Coaching service – Levy of service tax on parallel colleges – Demand set aside in view of the Tribunal's order in assessee's own case.