

**CESTAT RULING**

[2012-TIOL-392-CESTAT-BANG](#)

**CCE, Bangalore Vs Honeywell Technology Solutions Lab Pvt Ltd (Dated : October 18, 2011)**

Service Tax – Refund of unutilized credit under Rule 5 of CCR, 2004 – Lower appellate authority remanded the matters to original authority with a direction to check the nexus between input and output services in terms of Board Circular No. 120 dated 19.01.2010 – Board Circular dated 19.01.2010 requires that refund claims should be supported by a CA Certificate – Commissioner (A) oblivious of the fact that he did not have power of remand – Impugned orders set aside and matters remanded to original authority with a direction that all the parties need to be given a reasonable opportunity of producing Chartered Accountant's certificate – Original authority directed to hear parties before any claims were to be held as time barred – Parties at liberty to cite relevant case laws and adduce evidence

[2012-TIOL-387-CESTAT-DEL](#)

**M/s Mayo College Vs CST, Jaipur (Dated : February 8, 2012)**

Service Tax - Convention Services - Demand - The service taxable under Section 65(105) (zc) of the above Act is the service provided by any person to a client in relation to holding a convention in any manner. Thus, the service for being taxable has to be provided to a client. In this case, the delegates who had attended the conference were not clients of the assessee. It is the assessee, who out of the money collected from the delegates made arrangement for the mutual benefit of delegates in the conference.

HELD - No service tax is chargeable on the amount charged from its members for provided services of organizing the conference to itself. Appeal allowed. (Para 5)

[2012-TIOL-386-CESTAT-DEL](#)

**M/s Spentex Industries Ltd Vs CCE, Indore (Dated : February 2, 2012)**

Service Tax - Refund of Service Tax paid on input services used in the export of excisable goods - Delay in refund claim - The contention that the claim was filed within one year from the date of payment of service tax to the service provider has been found to be false. Though the assessee was specifically put to notice, no evidence was produced to rebut the findings of the Revenue. Appeal dismissed. (Para 2)

[2012-TIOL-385-CESTAT -MUM](#)

**Union Bank Of India Vs CCE & ST (LTU), Mumbai (Dated : March 7, 2012)**

Payment made by Union Bank of India to Society for Worldwide Inter-bank Financial Telecommunication (SWIFT) for transfer of funds to member Banks is liable to Service tax under 'Banking and other Financial Services' on reverse charge basis – no prima facie case in favour – Pre-deposit ordered: CESTAT [ para 2 ]

[Also see analysis of the Order](#)

[2012-TIOL-384-CESTAT -DEL](#)

**M/s G S Sondh Fabricators Vs CCE, Ludhiana (Dated : February 2, 2012)**

Service Tax - Commissioning and Installation - Demand - Service provider claims he is not in receipt of show cause notice, is eligible for exemption for small unit and did not get opportunity to argue his case either before the adjudicating authority or the appellate authority. Matter remanded to the adjudicating authority to decide the case afresh. (Para 3)

[2012-TIOL-383-CESTAT -DEL](#)

**Vandana Travels & Tours Vs CCE & ST, Allahabad (Dated : January 25, 2012)**

Service Tax - Rent-a-cab Service - Demand - Service provider claims he is not in receipt of show cause notice, is eligible for exemption for small unit and did not get opportunity to argue his case before the adjudicating authority. Partial pre-deposit ordered. Matter remanded to the adjudicating authority to decide the case afresh. (Para 7)

[2012-TIOL-379-CESTAT -DEL](#)

**Hero Honda Motors Ltd Vs CST, New Delhi (Dated : March 12, 2012)**

Service Tax - Intellectual Property - Using the brand name of motorcycle company on Oil Company's products - Taxable Service: Admittedly, the goods manufactured by the oil companies are to be used in the vehicles manufactured by the appellant companies and have a strong connection with the same. The appearance of the trade mark "Hero Honda" and "Hero Honda 4T plus" on the oil company's products definitely indicates a connection between the said companies and the appellants product. If the oil companies would have used the said trade mark without entering into an agreement with the appellant, the same would have amounted to infringement of their right in terms of the sub-clause (4) of the Trade Mark Act. This explains the need to enter into

an agreement with the appellant and for payment of royalty to them.

Service Tax - Limitation : he law on invocation of extended period stands declared by the Supreme Court in a number of decisions. Such invocation of longer period can be adopted by the Revenue only when there is suppression or mis -statement on the part of the assessee 'with an intent to evade payment of duty' Such intention should be manifested from the actions, behaviour of the appellant. The Supreme Court in the case of Padmini Products has held that there should be some positive act on the part of the assessee to suppress the information from the department or wilful mis - statement with intent to evade payment of duty.

Penalty : As it is already held that there is no suppression or mis -statement on the part of the appellant with any malafide intent, penal provision cannot be invoked against them . Accordingly, the entire penalty, imposed upon them is set aside.

[Also see analysis of the Order](#)

[2012-TIOL-378-CESTAT -DEL](#)

**M/s ACE Calderys Ltd Vs CCE, Bhopal (Dated : January 16, 2012)**

Service Tax - Business Auxiliary Service - Franchisee Service - Excise duty paid on whole value - Demand - Stay / Dispensation of pre -deposit - Goods bearing brand name of the appellant assessee are manufactured and sold by franchisees to customers in their own capacity. Service Tax under the head 'Business Auxiliary Service' is paid by the assessee on the amounts received from the franchisees. In another type of transactions the assessee sells the goods and obtains the sale proceeds for the goods manufactured by the franchisees, but transfers the manufacturing costs to the franchisee. Excise duty is paid on the actual sale price. Revenue demands service tax under the head 'Franchisee Services' on the amounts received by the assessee from the franchisee.

HELD - There are far too many cases where the brand name owners get goods manufactured by job-workers with their brand name, purchase the goods from the job-workers and sell the goods to the consumers at a higher price. No service tax is being paid or demanded in such cases. Further, excise duty is paid on the sale value and this is a case of revenue neutrality. Stay granted. (Para 17)

[2012-TIOL-377-CESTAT -AHM](#)

**CCE, Vadodara Vs M/s Emico Elecom (India) Ltd (Dated : December 15, 2011)**

Central Excise - CENVAT Credit - Outward Freight - Input service - No reference to extended period in show cause notice – CENVAT credit of service tax paid on outward freight is available as it falls within the definition of input service. (Para 3)

[2012-TIOL-374-CESTAT -MAD](#)

**CCE, Madurai Vs M/s National Cell Com (Dated : October 13, 2011)**

Service Tax – Power to remand by the Commissioner (Appeals) – Commissioner (Appeals) has the power to remand service tax appeals.

[2012-TIOL-373-CESTAT-AHM](#)

**M/s Jageti & Co Vs CST, Ahmedabad (Dated : December 2, 2011)**

Service Tax - Small Service Provider - Service Tax paid before issuance of SCN - Demand proceedings dropped - Refund - When the small service provider was not paying Service Tax and Revenue had accepted that they are eligible for exemption and not liable to Service Tax, it is surprising that the original adjudicating authority came to the conclusion that since the invoice had shown only gross amount, Service Tax has been collected from the customers. Only when Service Tax was payable and was held to be payable, the question of determination of gross amount included Service Tax or not, would arise. Showing the tax paid under protest as revenue expenditure in Profit & Loss Account, does not mean that what was paid before issue of Show Cause Notice was subsequently collected from the customers. Appeal allowed with consequential relief. (Para 7 & 8)

[2012-TIOL-369-CESTAT-MAD](#)

**M/s Amalgamations Repco Ltd Vs CCE, Chennai (Dated : October 28, 2011)**

Central Excise - CENAVAT Credit of service tax paid on CHA service - The earlier decisions of the Tribunal are not well founded as they are based on premises like place of removal being stretched to cover the actual place of delivery i.e. the port area, and the activities relating to business being stretched to cover activities like CHA service which takes place much after the manufacturing activity is over and in the course of despatch of the goods in the course of export.

However, it is the undisputed policy of the Government not to burden the export goods with domestic taxes as has been noted in various decisions of the Tribunal - We do not want to make domestically produced goods, when exported to the foreign market, to become uncompetitive - Secondly, no country wants to export the domestic taxes meant to be levied on domestic consumption of goods and services - Government under Notification No.17/2009-ST dated 7.7.2009 has since granted exemption to various taxable services provided to an exporter - The only way freeing export goods from domestic taxes can be ensured for the period relevant to these appeals is to allow credit of the service tax paid on the CHA and other services in respect of the export consignments.

[Also see analysis of the Order](#)

[2012-TIOL-368-CESTAT-BANG](#)

**M/s Integra Micro Software Services Pvt Ltd Vs CST, Bangalore (Dated : September 7, 2011)**

Service Tax - Stay/Application for waiver of pre-deposit – Activities undertaken like development and testing of software, modification and upgradation of software whether liable to tax under 'Manpower supply service' or 'IT software service' - Agreements entered with clients are not for mere supply of manpower but for undertaking activities relating to development of software to the satisfaction of clients including modification and upgradation of said software – Prima facie case made out for full waiver of pre-deposit – Full waiver of pre-deposit ordered and stay granted – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[2012-TIOL-367-CESTAT-BANG](#)

**CST, Bangalore Vs M/s Sterling Commerce Solution India Pvt Ltd (Dated : September 7, 2011)**

Service Tax – Refund of unutilized CENVAT Credit under Rule 5 of CCR 2004 – Appellate Commissioner partially allowed certain services as input services subject to production of CA Certificate to original authority as per Board Circular No. 120/01/2010-ST dated 19.1.2010 – Since decision of Commissioner (A) is not under challenge on merits by Revenue but only the order of remand to original authority, ends of justice would be served if case is remanded to original authority by Tribunal for the limited purpose of ensuring compliance with procedure laid down in Circular No. 120 dated 19.01.2010 – Original authority directed to afford opportunity to appellant to produce CA Certificate and sanction refund claims subject to production of CA Certificate to its satisfaction – Rule 5 of CENVAT Credit Rules, 2004

[2012-TIOL-366-CESTAT-BANG](#)

**M/s Travel Corporation India Ltd Vs CCE, Cochin (Dated : September 22, 2011)**

Service Tax – Stay/Application for waiver of pre-deposit – Liability to pay service tax on activities related to arrangement of 'out bound tours' – Activities undertaken include booking of air tickets, visa formalities, arrangement for hotel stay outside India, food, local travel at places outside India – Service tax already paid under Air Travel services for tickets booked from a place in India to first destination outside India and from last place outside India to first destination in India – Board's Circular F.No.B.43/10/97-TRU, dated 22.8.1997 has treated activities of out-bound tours as outside the purview of service tax – Prima facie case for full waiver of pre-deposit – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[2012-TIOL-365-CESTAT-BANG](#)

**CST, Bangalore Vs M/s Ciber Sites India Pvt Ltd (Dated : October 5, 2011)**

Service Tax – Refund of unutilized credit on input services under Rule 5 of CCR, 2004 – Claims rejected by original authority on the ground that nexus not established

between input and output services but allowed by lower appellate authority – Revenue filed appeals on the ground that lower appellate authority did not have power to remand – Impugned orders passed without jurisdiction, liable to be set aside but reasons recorded by Commissioner (Appeals) for sending the matters to original authority held valid – Matter remanded to original authority for fresh decision in the light of Board’s Circular dated 19.01.2010 – Lower authority directed to grant personal hearing and provide reasonable opportunity to assessees to produce CA certificates – Rule 5 of CENVAT Credit Rules, 2004

[2012-TIOL-364-CESTAT -BANG](#)

**CST, Bangalore Vs M/s Easiprocess Pvt Ltd (Dated : September 16, 2011)**

Service Tax – Refund of unutilized credit on input services under Rule 5 of CENVAT Credit Rules, 2004 – Lower appellate authority’s order to the extent of directing lower authority to verify eligibility of refund in view of Board Circular dated 19.01.2010 amounts to remand order, liable to be set aside – Matter remanded to original authority to consider issues afresh in terms of Board Circular dated 19.01.2010 – Lower appellate authority’s categorical rejection of refund claim in r/o certain input services, not in appeal by respondent, order to that extent upheld – Rule 5 of CENVAT Credit Rules, 2004 – Section 85 of Finance Act, 1994

[2012-TIOL-363-CESTAT -BANG](#)

**M/s New Mangalore Port Trust Ltd Vs CST, Mangalore (Dated : September 12, 2011)**

Service Tax – Stay/Application for waiver of pre-deposit – Port Trust entrusted the work of providing and operating crane inside port area after calling for tenders and entering into agreements with service providers – Service providers discharged service tax liability on amounts received from clients – As per section 42 of Major Port Trust Act, Port Trust empowered to render certain services either by themselves or through persons duly authorized by Port Trust – In the instant case, provision of crane services permitted to be rendered by third parties pursuant to agreements entered into by Port Trust and said third parties against payment of license fees – Prima facie no case for levy of service tax on such activity by treating it as ‘Franchise service’ rendered by Port Trust to the said service providers as contended by Revenue – Prima facie case for full waiver of pre -deposit – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[2012-TIOL-358-CESTAT -MUM](#)

**M/s Safe & Sure Marine Services Pvt Ltd Vs CST, Mumbai (Dated : February 23, 2012)**

Earlier the better principle should be adopted for classifying the service - since ‘Manpower Recruitment or Supply Agency Service’ came into Service Tax net before ‘Ship Management Service’, prima facie , the appellants are liable to discharge the Service Tax liability under the category of ‘Manpower Recruitment or Supply Agency

Service – Pre-deposit ordered of Rs.85 lakhs: CESTAT [ para 5.2, 5.3, 5.4, 6, 7 ]

Argument that after 1.5.2006, there is a specific service namely "Ship Management Service" which covers supply of crew for the ship and, therefore, the activity is liable to be taxed only on or after 01.5.2006 does not stand to any logic or reason - as per the provisions of section 65A of the Finance Act, 1994, the service which is more specific has to be preferred over the service which is general in nature . [ para 5.2 ]

Payment of ST by sub-contractor - Under the Value Added Tax regime, which applies to Service Tax also, the provider of taxable services has to discharge the service tax liability and if such services are used as input services by other service provider or manufacturer of the goods down the line, they can avail input service credit on the Service Tax paid by the input service provider. There is no exemption on input service or input service provider under the law. The entire scheme of invoice based Value Added Tax, which is in force, envisages payment of tax at each stage of taxable event and availment of credit of tax so paid at the subsequent stage. If this tax regime, which is in force, has to be given any meaningful effect, then it is mandatory that the service tax liability is discharged as and when taxable services are rendered by the service provider....[ para 5.3 ]

Limitation - since the appellant had collected the tax from their customers but never informed the department of the same, the extended period is rightly invoked. [ para 5.4 ]

[Also see analysis of the Order](#)

[2012-TIOL-357-CESTAT-BANG](#)

**CCE, Bangalore Vs M/s H & R Johnson (India) Ltd (Dated : September 23, 2011)**

Service Tax – Eligibility of CENVAT Credit of service tax paid on outdoor catering service used for supply of food to factory employees – Outdoor catering service availed for supply of food to factory employees integrally connected with the business of manufacturing excisable goods – Service tax paid thereon admissible as credit to a manufacturer – Impugned order upheld and matter remanded to original authority to verify the quantum of cost borne by the workers and quantify eligible credit in terms of Bombay High Court judgment in Ultratech Cement Ltd - [2010-TIOL-745-HC-MUM-ST](#) – Rule 2(1) of CENVAT Credit Rules, 2004

[2012-TIOL-356-CESTAT-BANG](#)

**CST, Bangalore Vs M/s General Motors India Pvt Ltd (Dated : September 13, 2011)**

Service Tax – Refund of unutilized credit under Rule 5 of CENVAT Credit Rules, 2004 – Original authority rejected claim in one case on the ground that there was no nexus with between 'input services' and 'output services' exported and granted partial refund in another case – Appellate Commissioner reversed orders of original authority on nexus issue and directed grant of refund based on CA Certificates to be produced by assessee, resulting in Revenue's appeal challenging Appellate Commissioner's power to remand – Matter remitted by Appellate Commissioner to original authority deals with a substantive issue regarding nexus between input and output services, which

amounts to 'remand' – Remand order of Appellate Commissioner set aside and matters remanded to original authority to decide afresh refund claims after providing opportunity to claimants to produce CA certificates in terms of Board Circular dated 19.01.2010 – Section 85 of Finance Act, 1994

[2012-TIOL-352-CESTAT -BANG](#)

**M/s Hindustan Aeronautics Ltd Vs CCE, Bangalore (Dated : October 3, 2011)**

Service Tax – Stay/Application for waiver of pre-deposit – Activity of repair and overhaul of aircrafts for IAF, Army, Navy, Coast Guard and other civilian customers and service tax paid under 'Maintenance and repair service' – Valuation of taxable service whether to include materials used for provision of service – Prima facie case in favour of appellants – Pre-deposit waived and stay granted – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide Section 83 of Finance Act, 1994

[2012-TIOL-351-CESTAT -BANG](#)

**M/s India Sugars And Refineries Ltd Vs CCE, Mangalore (Dated : September 23, 2011)**

Service Tax – CENVAT Credit of service tax paid on outward transportation (GTA service) available for period prior to 01.04.2008 – Impugned order set aside – Rule 2(1) of CENVAT Credit Rules, 2004

[2012-TIOL-350-CESTAT -MAD](#)

**M/s Sakthi Celcom Vs CCE, Coimbatore (Dated : September 16, 2011)**

Service Tax – Business Auxiliary Service – Penalty – Consolidated penalty imposed by the original adjudicating authority not challenged by the appellant - Commissioner under order-in-revision has merely converted the consolidated penalty imposed under the three Sections 76, 77 and 78. Penalty cannot be set aside in the absence of any appeal against imposition thereof by the adjudicating authority. (Para 3)

[2012-TIOL-348-CESTAT -MUM](#)

**Bharat Heavy Electricals Ltd Vs CCE, Nagpur (Dated : January 20, 2012)**

Non-availment of CENVAT credit on inputs/input services applies to "case" - in respect of a contract where the assessee has not taken input credit prior to 01.03.2006 and input/input service tax credit on or after 01.03.2006, the assessee would be rightly entitled for the benefit under the notification no. 15/2004-ST as replaced by notification no. 1/2006 dated 01.03.2006 - there is nothing in these notifications



which prevents an assessee from not availing CENVAT credit and paying service tax on 100% of the contract value in respect of one particular contract and availing abatement and not availing CENVAT credit in respect of another contract – Demand of Rs. 30 Crores set aside and matter remanded: CESTAT ... para 4.2, 4.4

Centralised registration is only a facility for accounting purposes and filing of the returns and the same has nothing to do with the availment of benefit under an exemption notification. ... para 4.3

Interpretation of law taken by the lower adjudicating authorities was not correct the demands were set aside and the matter was remanded for consideration afresh and re-computation of the differential service tax demand, if any... para 4.4

[Also see analysis of the Order](#)

[2012-TIOL-347-CESTAT-BANG](#)

**CST, Bangalore Vs M/s Tutor Vista Global Pvt Ltd (Dated : September 20, 2011)**

Service Tax – Eligibility of CENVAT Credit on input services utilized for export of output services – Appellate Commissioner ordered lower authority to verify nexus of input services with outputs services pursuant to Board Circular No. 120/2010-ST dated 19.01.2010 which was not available when original authority passed O-I-O – Appellate Commissioner's direction to lower authority amounts to passing of remand order which is barred in terms of section 35A of Central Excise Act – CESTAT has power to remand – Matter remanded to original authority to decide matter afresh – Impugned orders set aside – Section 35A of Central Excise Act, 1944 read with Rule 3 of CENVAT Credit Rules, 2004

[2012-TIOL-346-CESTAT-KOL](#)

**CCE, CC & ST, Siliguri Vs M/s Riddhi Siddhi Oil Industries (Dated : November 9, 2011)**

Service Tax - Goods Transport Agency - Penalty under Section 78 - The ingredients of Section 78, viz. suppression of facts, willful mis-statement or violation of provisions of law with intent to evade tax do not exist in the instant case. No evidence has been adduced that there was deliberate attempt on the part of the assessee to evade service tax. Penalty under Section 78 not imposable. (Para 6)

[2012-TIOL-344-CESTAT-BANG](#)

**M/s Bharat Sanchar Nigam Limited Vijayawada Vs CCE, Guntur (Dated : September 21, 2011)**

Service Tax - Stay/Application for waiver of pre-deposit – Eligibility of exemption Notification 3/94-ST in relation to Coin Collection Box – Pre-deposit of Rs. 20 lakhs ordered - Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

<a href="#">2012-TIOL-343-CESTAT-MUM</a>
<b>CST, Mumbai Vs P N Writer &amp; Co Ltd (Dated : January 18, 2012)</b>
Rs. 7.5 Crores Anti-evasion case flops - Activity of storage and retrieval of records of banks and corporate houses viz. discharged cheques, vouchers, agreements, books of accounts etc. which were not intended for sale and do not have any commercial value – Not leviable to Service Tax under the category of "Storage and Warehousing of goods" as "goods" should be saleable: CESTAT [ para 7.3, 8 ]
<a href="#">Also see analysis of the Order</a>
<a href="#">2012-TIOL-342-CESTAT-MUM</a>
<b>Reliance Industries Ltd Vs CCE &amp; ST, Mumbai (Dated : January 5, 2012)</b>
Service of Insurance of workers and export goods – Input Services in view of Karnataka HC decision in Toyota Kirloskar Motor P. Ltd. expanding the definition of Input Service rule 2(l) of CCR, 2004 – Prima facie case in favour – Pre-deposit waived and stay granted: CESTAT [para 2]
<a href="#">2012-TIOL-341-CESTAT-MUM</a>
<b>M/s Biochem Pharmaceutical Industries Vs CCE, Mumbai (Dated : December 19, 2011)</b>
Free replacement of the expired pharmaceutical products – goods manufactured in factory are transported to depot on stock transfer basis on payment of appropriate duty - as the show-cause notice specifically mentions that replacement is made from depots, no cause for recovery of any duty- good prima facie case – pre-deposit waived and stay granted – Stay petition allowed: CESTAT. [para 6]
<a href="#">2012-TIOL-335-CESTAT-MUM</a>
<b>B P Sangle &amp; Construction P Ltd Vs CCE, Nashik (Dated : January 5, 2012)</b>
Applicants engaged in the activity of laying and commissioning of sewage pipeline for Nashik Municipal Corporation – in view of Tribunal decision in the case of Nagarjuna Construction Co. <a href="#">2010-TIOL-789-CESTAT-BANG</a> such type of activity is not covered under works contract services - applicant has made out a strong prima facie case in favour – Pre-deposit waived and stay granted. [para 3]

[2012-TIOL-333-CESTAT -MAD](#)

**M/s R V Refractories Vs CCE, Trichy (Dated : September 23, 2011)**

Service Tax – Penalty under Section 78 of the Finance Act, 1994 – Since the entire exercise is revenue neutral, as credit of the entire amount of tax is available, extended period cannot be invoked – Penalty is set aside.

[2012-TIOL-332-CESTAT -BANG](#)

**CCE, Bangalore Vs M/s Kochi Logistics Services Pvt Ltd (Dated : October 4, 2011)**

Service Tax – Liability to pay service tax on 'compliance service charges' collected from EOUs and STPs under 'CHA service' – Actual nature of work not mentioned by CHA except stating that amounts were collected for processing of drawback claims – Role of CHA clearly includes filing of shipping bills for exports – Work of CHA relating to processing of drawback claims in r/o export consignments starts even before shipping bills for claim under drawback are filed, as CHA is expected and required to advise exporters regarding the entry in Drawback schedule under which drawback claims are to be filed – Appellate Commissioner clearly erred in holding that activity of respondents did not fit into the scope of CHA service – Impugned order set aside and matter remanded to Commissioner (A) for fresh consideration on merits – Section 65(105)(h) of Finance Act, 1994

[2012-TIOL-328-CESTAT -MUM](#)

**Sandeep Vilas Kotnis Vs CCE, Kolhapur (Dated : February 14, 2012)**

Service rendered to MHADA for construction of buildings under the re-development scheme does not come under the definition of "construction service" under the Finance Act, 1994 – however, construction of civil structure for MTDC and BSNL is prima facie chargeable to Service Tax – Pre-deposit ordered: CESTAT [ para 5,6,7 & 8 ]

[Also see analysis of the Order](#)

[2012-TIOL-327-CESTAT -BANG](#)

**M/s Infosys Technologies Ltd Vs CST, Bangalore (Dated : September 20, 2011)**

Service Tax – Stay/Application for waiver of pre -deposit – Demand of tax under 'Club or Association service' on membership fees collected from employees by employee welfare trust constituted by appellant company – Demand raised based on an audit report which was contested by appellant who claimed that they were under bonafide belief that tax not payable for the period prior to 01/05/06 – Registration obtained and tax paid for the period after 01/05/06 in view of explanation inserted under

section 65 of Finance Act, 1994 w.e.f 01/05/06 – On similar issue tax demand raised and order passed by authorities in another jurisdiction – No investigation conducted in the current jurisdiction prior to or after issue of audit report in 2008 – Present demand raised subsequently – Prima facie case for full waiver of pre-deposit on limitation – Pre-deposit waived and stay granted – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[2012-TIOL-326-CESTAT -BANG](#)

**M/s Mfar Construction Pvt Ltd Vs CCE, Bangalore (Dated : September 8, 2011)**

Service Tax – Stay/Application for waiver of pre-deposit – Commercial or Industrial Construction service – Liability to pay service tax on advance amounts received and inclusion of cost of free supply materials in taxable value – Claim of appellant that taxable payable under 'Works contract service' w.e.f. 01.06.2007 prima facie not acceptable – Claim of appellant that Commissioner did not record findings in respect of duplication of demand amounting to Rs. 81 lakhs and that appellant discharged tax liability on free supply materials in respect of two clients acceptable – No justification in not including value of free supply materials selectively – Plea of limitation prima facie not acceptable as appellant had not shown value of free supply materials and their non-inclusion in the gross amount – Pre-deposit of Rs. 25 lakhs ordered – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[2012-TIOL-325-CESTAT -MUM](#)

**M/s J M Financial Services P Ltd Vs CST (Dated : February 3, 2012)**

IPO financing fees, Processing fees and Recovery of common expenses from co-user of the premises prima facie not leviable to Service Tax under the category of Business Auxiliary Services/Business Support Services – Pre-deposit waived and stay granted from recovery of adjudged dues of Rupees 5 Crores: CESTAT [ para 3.1, 3.2, 3.3 & 4 ]

[Also see analysis of the Order](#)

[2012-TIOL-324-CESTAT -MUM](#)

**M/s Shapoorji Pallonji & Co Ltd Vs CCE, Pune (Dated : January 24, 2012)**

Applicants, registered under the category of "Commercial or Industrial Construction Services" and availing Notfn. no. 15/2004 dated 10.9.2004 up to 1.3.2006 and thereafter Notification No. 1/2006 dated 1.3.2006 - condition of non-availment of credit of Service Tax paid on input services inserted w.e.f 01.03.2006 - credit availed by the applicants after 1.3.2006 pertains to the input services received prior to 1.3.2006 and they have not availed any credit for input services received after 1.3.2006 – benefit of notfn 1/2006-ST denied and duty confirmed of Rs.2.49 Crores – when input services were received by the applicant, there was no bar for availment of CENVAT Credit - Notification also does not specify that the assessee is not entitled for

the CENVAT Credit of input services availed prior to 1.3.2006 – following CESTAT decision in B. G. Shirke Construction Tech P. Ltd. ([2008-TIOL-1798-CESTAT-MUM](#)) - Pre-deposit waived and stay granted from recovery of entire amount of Service Tax, interest and penalty. [para 6, 7]

[2012-TIOL-323-CESTAT-MUM](#)

**Tata Technologies Ltd Vs CCE, Pune (Dated : January 5, 2012)**

Applicant engaged in the activity of providing consultant engineering service to M/s. Tata Johnson Controls Automotive Ltd. which in turn is engaged in exporting engineering and designing service to their service recipients located outside India and getting the remuneration in convertible foreign exchange – it is the view of the Department that since the applicant does not receive remuneration in convertible foreign exchange they are liable to Service Tax - service provided by the applicant gets merged in the service provided by M/s. Tata Johnson Controls Automotive Ltd. and exported outside India - prima facie applicant is entitled for the benefit of the said circular no. 56/5/2003-ST dated 25.4.2003 – Pre-deposit waived and stay granted : CESTAT. [para 3, 4]

[2012-TIOL-317-CESTAT-BANG](#)

**M/s Krison Sai Tool Crafts Vs CCE, Hyderabad (Dated : September 13, 2011)**

Service Tax - Stay/Application for waiver of pre-deposit - Activity of rethreading/regrinding of old damaged and worn-out thread rolling dies returned from customers - Old thread removed and resultant blank subject to rethreading on a special machine viz., thread grinding machine - Activity claimed as 'manufacture' based on Note 6 of section XVI of CETA 1985 and not exigible to service tax - Prima facie Note 6 of section XVI of CETA not applicable to impugned activity - As appellant is a SSI unit, partial pre-deposit of Rs. 3 lakhs ordered – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[2012-TIOL-316-CESTAT-MAD](#)

**M/s Prasad Corporation Limited Vs CST, Chennai (Dated : September 19, 2011)**

Service Tax – Delayed payment of Service Tax along with Interest – Penalty under Section 76 – Penalty for failure to pay tax in time does not arise when the service tax has been paid together with interest after a delay. (Para 3)

[2012-TIOL-315-CESTAT-AHM](#)

**M/s Tradex Polymers Pvt Ltd Vs CST, Ahmedabad (Dated : December 21, 2011)**

Service Tax – Business Auxiliary service – Appellants engaged as distributors and get commission from principals on which service tax is discharged – Amounts due to the principal collected and remitted by appellant after retention of 'early payment incentive' – Demand of service tax on this component – Retaining 'early payment incentive' amounts to provision of incentive to appellant, not liable to service tax – Impugned order set aside

[2012-TIOL-313-CESTAT-AHM](#)

**M/s Aurochem Vs CCE, Vadodara (Dated : January 3, 2012)**

Service Tax - Commission Agent - Limitation - Demand Time Barred - Stay / Dispensation of pre-deposit - Service provider accepting the demand has paid service tax for the period Oct-2004 to Mar-2005 but not paid for the period July to Sept-2004. No ST-3 return is filed prior to Oct-2004.

HELD - Once liability is accepted, the service tax is required to be paid for the complete period of demand. Pre -deposit ordered. (Para 3)

[2012-TIOL-312-CESTAT-MAD](#)

**CCE, Salem Vs M/s R S Construction (Dated : September 26, 2011)**

Service Tax - Appeal filed beyond condonable time limit before Commissioner (Appeals) - Rectification of Mistake - Maintainability of - Penalties under Section 76 & 78 - Appeal dismissed on the ground of time bar and not on merit which was also upheld by the Tribunal. Application under Section 74 has been filed by the assessee for rectifying the mistake of imposing of penalties simultaneously on Sections 76 & 78 of the Act, as penalties under both the sections was not permissible in view of specific amendment made to the Act by the Finance Act, 1998, with effect from 10.05.2008.

HELD - Direction issued to the original authority to consider the appeal of the assessee cannot be said to be a mistake. ROM filed by the Department is rejected. (Para 3)

[2012-TIOL-311-CESTAT-BANG](#)

**CST, Bangalore Vs M/s GE Medical Systems India Pvt Ltd (Dated : September 8, 2011)**

Service Tax – Refund of unutilized credit under Rule 5 of CENVAT Credit Rules, 2004 – Original authorities rejected claims in certain cases on the ground that there was no nexus with between 'input services' and 'output services' exported and granted partial refund in other cases – Appellate authority in certain instances reversed orders of original authorities on nexus issue and directed quantification of refund based on CA Certificates to be produced by assessees – In other cases directions issued to original authority to consider afresh nexus issue resulting in Revenue's appeal challenging Appellate Commissioner's power to remand – CST (A) not empowered to make an order of remand by virtue of bar in 85(5) of Finance Act, 1994 – Remand order of

Appellate Commissioner set aside and matters remanded to original authority to decide afresh refund claims after providing opportunity to claimants to produce CA certificates and re-quantify refund claims – Section 85 of Finance Act, 1994

[2012-TIOL-309-CESTAT-BANG](#)

**M/s Jayakrishnan & Co Vs CCE, Calicut (Dated : September 13, 2011)**

Service Tax - Stay/Application for waiver of pre-deposit - Demand of service tax under the head 'Commercial or Industrial Construction service' for the period from 10/09/04 to 31/03/09 - Tax liability discharged under 'Works Contract service' w.e.f 01/06/07 under composition scheme - Service agreement or bills raised do not indicate that appellant was executing 'Works Contract' as a composite contract not capable of being specifically classified under 'Commercial or Industrial Construction Service' - Benefit of Notification No. 15/04-ST not given by lower authority on ground that cost of free supply materials not included in taxable value - No dispute that cost of free supply not included in taxable value - If cost of free supply included in taxable value, prima facie, appellant can claim benefit of exemption notification - Pre-deposit of Rs. 25 lakhs ordered - Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[2012-TIOL-306-CESTAT-AHM](#)

**M/s Electrical Research & Development Association Vs CCE, Vadodara (Dated : January 11, 2012)**

Service Tax - Stay/Dispensation of pre-deposit - Commercial Coaching and Training service - Adjudicating authority dropped the demand on the ground that the appellant was a non-profitable organisation - In view of the retrospective amendment made to the definition of Commercial coaching and Training service, Commissioner as revisionary authority revised the Order-in-Original - The issue involved is to be considered from the factual matrix as to whether there was any suppression of facts on the part of the assessee - Pre-deposit of Rs 50,000/- ordered.

[2012-TIOL-305-CESTAT-AHM](#)

**M/s Ask Management Consultancy Services Pvt Ltd Vs CCE, Vadodara (Dated : January 2, 2012)**

Service Tax - Demand of service tax due to different between the income shown in the Income tax returns and the ST 3 returns - Finding of the Commissioner (Appeals) that the appellants had shown higher income in income tax returns to paint a rosy picture of the financial affairs of the company - Such finding is beyond the allegations of the Show Cause Notice - Appellants contend that the receipts in Bank Statements include various other amounts - Matter remanded to the original authority for verification of actual receipts.

[2012-TIOL-304-CESTAT -MUM](#)

**M/s Interglobe Enterprises Ltd Vs CCE, Mumbai (Dated : January 10, 2012)**

Appellant promoting and marketing vacations and trips conducted by foreign principals - since no show-cause notice was issued and no adjudication order was passed, no appeal was maintainable before the Commissioner (A) - as such order passed by Commr(A) is not an order in the eyes of law - Appeal allowed: CESTAT [para 5]

[Also see analysis of the Order](#)

[2012-TIOL-303-CESTAT -MAD](#)

**Pure Enviro Engineering Pvt Ltd Vs CST, Chennai (Dated : October 12, 2011)**

Service Tax - Maintenance or Repair Service - Consulting Engineer Service - Sub-contractor - Demand - Services of maintenance provided as sub-contractor, but service tax not paid as the main contractor had paid the service tax. The document evidencing payment of service tax by the main contractor could not be produced before the original adjudicating authority. Now, as the same is available, matter remanded to the original authority for fresh decision. (Para 2)

[2012-TIOL-302-CESTAT -BANG](#)

**M/s APL (India) Private Limited Vs CCE, C & ST, Cochin (Dated : September 19, 2011)**

Service Tax - Stay/Application for waiver of pre-deposit - Collection of terminal expenses at different foreign ports by steamer agent on behalf of steamers - Amounts collected related to services to be rendered at foreign ports on behalf of master of vessel - Prima facie demand of service tax not sustainable - Full waiver of pre-deposit ordered - Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994.

[2012-TIOL-301-CESTAT -BANG](#)

**M/s S R Communication Systems Vs CCE, Hyderabad (Dated : September 20, 2011)**

Service Tax - Stay/Application for waiver of pre-deposit - Demand of service tax with interest for the period from 6/05 to 3/09 and levy of penalties - Prima facie demand of tax for the period upto March 2008 time barred and tax payable for the latter period - Pre-deposit of Rs. 7 lakhs ordered and balance dues waived - Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994.



[2012-TIOL-296-CESTAT -MUM](#)

**Arihant Telecommunication Vs CCE, Nashik (Dated : January 6, 2012)**

Appellant paying VAT to the State Government on sale of SIM cards and under bona fide belief Service Tax was also paid under the same challans – later, amount transferred to Central Government account – matter remanded for verification: CESTAT [ para 5 ]

[Also see analysis of the Order](#)

[2012-TIOL-295-CESTAT -MUM](#)

**M/s Deluxe Tyre Retreading Vs CCE, Nashik (Dated : January 13, 2012)**

Appellant under the bona fide belief that activity of tyre retreading is not liable to Service Tax - documents regarding purchase of inputs which were used in the said activity were not produced before adjudicating authority - since invoices produced by the appellant before CESTAT covers almost 35% of the amount of service provided, further deposit ordered of Rs. 1 lakh and after compliance matter to be heard afresh by adjudicating authority - Appeal as well as stay applications disposed of: CESTAT [para 4]

[2012-TIOL-294-CESTAT -MUM](#)

**Gammons (I) Ltd Vs CCE, Nagpur (Dated : January 5, 2012)**

Applicant undertaking activity of erection, commission and installation of transmission towers on behalf of Power Grid Corporation India Ltd. and classifying their activity under works contract service - Revenue alleging that activity is classifiable under the category of erection, commission and installation service and they are liable to pay service tax at the rate applicable - in view of Board Circular no. B1/16/2007-TRU dated 22.5.2007 activities undertaken by the applicant are covered under works contract services - prima facie demands are not sustainable - Stay granted: CESTAT [para 2]

[2012-TIOL-292-CESTAT -MUM](#)

**M/s Phoniex Engineering Vs CCE, Nagpur (Dated : November 14, 2011)**

Repairs, renovation, widening of roads etc. is not a 'Commercial or Industrial Construction Service' - in view of clarification given by CBEC in Circular dated 23.02.2009, appellant has established a prima facie case in their favour - Pre-deposit waived and stay granted: CESTAT [para 6]

[Also see analysis of the Order](#)

[2012-TIOL-291-CESTAT-DEL](#)

**M/s Ankita Constructions Vs CCE, Raipur (Dated : November 17, 2011)**

Service Tax - Non-payment of service tax in spite of the fact that the service tax had been collected from the clients - Since during the period of dispute, the ST-3 returns had not been filed, penalty under Section 77 would be attracted and, hence, the same has been correctly upheld - Penalty under Section 78 - Though the appellant were regularly receiving payment from NMDC for the services provided, neither any service tax paid nor any returned was filed - Even if the appellant had any doubt about their service tax liability, at least they should have sought clarification from the department or disclosed the amount received by them for taxable services provided by filing ST-3 return - Provisions of Section 78 are attracted and penalty imposed under Section 78 is upheld.

[2012-TIOL-290-CESTAT-DEL](#)

**M/s R K Transport Company Vs CCE, Raipur (Dated : January 25, 2012)**

Service Tax - Cargo Handling Service vis-à-vis Goods transport Service - Activities of mining, loading and unloading - Service Tax paid by the receiver of the service under Goods Transport Agency Service and revenue demanded service tax from the appellant under Cargo Handling Service - Nothing in the contracts indicates that the contracts had any significant component of cargo handling other than, transportation - In the activities carried out by the appellants there appears to be a small component of loading and unloading of cargo - It is well settled that handling or transportation of goods within a factory or mining area does not amount to cargo handling because at that stage the goods are not cargo within the common meaning of the word - In the contracts under consideration there is a predominant activity of transportation - The cargo handling activity is incidental to transportation - Revenue's attempt to convert such services into cargo handling service to deny the abatement available to value of services of Transportation of Goods by Road is too farfetched to find any legal support - Contention of the appellants that they are rendering Transportation service is accepted - Demand set aside.

[2012-TIOL-287-CESTAT-MAD](#)

**M/s Jothi Engineering Co Vs CCE, Coimbatore (Dated : September 19, 2011)**

Service Tax - Construction of Complex service - Construction of quarters for Police officials under a contract with Tamil Nadu Police Housing Corporation - Following the

ratio of [2010-TIOL-1734-CESTAT-MAD](#) impugned orders set aside and matter remanded for fresh decision.

[2012-TIOL-283-CESTAT-BANG](#)

**M/s Nitesh Estates Ltd Vs CCE, Bangalore (Dated : September 14, 2011)**

Service Tax – Stay/Application of waiver of pre-deposit – Liability to pay service tax on construction of apartments for a client who in turn allotted it to its employees for residential use – Though issue highly debatable, Board's Circular No. 332/16/2010, dated 24.05.2010 in favour of appellant – Activity undertaken by appellant would fall within the ambit of exclusion clause of the definition of "residential complex" in section 65(105)(zzzh) – Pre-deposit waived and stay granted – Section 65(105)(zzzh) of Finance Act, 1994 – Section 35F of Central Excise Act, 1944 as made applicable to section 83 of Finance Act, 1994

[2012-TIOL-282-CESTAT-MAD](#)

**State Bank Of India, Salem Vs CCE, Salem (Dated : September 29, 2011)**

Service Tax – Short payment of Service Tax – Penalty under Section 76 – There was excess payment in three financial years and short payment in one financial year. Penalty under Section 78 set aside as there was no intention to evade payment of duty. Although extended period cannot be invoked the service provider has paid the service tax short paid along with interest. HELD – This is a fit case to invoke the provisions of Section 80. Penalty imposed set aside. (Para 5)

[2012-TIOL-281-CESTAT-BANG](#)

**M/s Golfinks Embassy Business Park Vs CST, Bangalore (Dated : September 21, 2011)**

Service Tax - Stay/Application for waiver of pre-deposit - Appellant paying service tax under Management, Maintenance & Repair service for maintaining areas coming under software park in terms of a maintenance agreement – Liability to pay service tax on charges collected towards 'back up power supply' which is for sale of electricity generated from DG sets owned by appellant - Transaction involved only 'sale of electricity' and hence, value of electricity sold cannot be part of value of 'Management, Maintenance or Repair Services' - Prima facie case for full waiver of pre-deposit - Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[2012-TIOL-280-CESTAT-BANG](#)

**M/s DTDC Courier & Cargo Ltd Vs CCE & ST, Bangalore (Dated : September 14, 2011)**

Service Tax – Stay/Application for waiver of pre-deposit – Authorization of several parties as courier service providers who received parcels/packets/letters from customer – Appellant acted as co-loader by collecting parcels /packets/letters from the said service providers and arranging to deliver at different destinations - Activities of applicant as 'Co-loader', prima-facie, falls under category of BAS inasmuch as applicant has rendered such services to other parties who provided courier services – Since, applicant failed to disclose relevant details to department, extended period invocable – Pre -deposit of Rs. 25 lakhs ordered – Recovery of balance dues stayed – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[2012-TIOL-278-CESTAT -BANG](#)

**M/s Schneider Electric India Pvt Ltd Vs CST, Bangalore (Dated : September 16, 2011)**

Service Tax - Stay/Application for waiver of pre-deposit – Refund of CENVAT Credit on input services in terms of Rule 5 of CENVAT Credit Rules, 2004 – Appellant engaged in provision of IT Software Service introduced w.e.f 16.06.2008 registered with service tax on 18.06.2008 – Refund of CENVAT Credit for period prior to date of registration denied by Commissioner through review order – Once service tax is leviable from 16.05.2008, prima facie it is not correct to deny benefit of credit on input services utilized from the said date – Original authority ordered sanction of refund of entire amount – Prima facie case for full waiver of pre-deposit of amount ordered to be recovered by review order – Pre-deposit waived and stay granted – Rule 5 of CENVAT Credit Rules, 2004 – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[2012-TIOL-276-CESTAT -BANG](#)

**M/s Globosport India (P) Ltd Vs CST, Bangalore (Dated : September 22, 2011)**

Service Tax – Stay/Application for waiver of pre-deposit – Tri-partite agreements entered into by appellant with companies and celebrities for promotion of products/brands – Tax paid on entire amounts received from companies under the head of 'Event Management' category – Demand raised on 20% amount retained as commission under head 'Business Auxiliary Service' – Prima facie, treating 20% of the amount retained by appellant as representing payment for another service rendered by them to celebrities not sustainable – Full waiver of pre-deposit ordered and stay granted – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[2012-TIOL-275-CESTAT -BANG](#)

**M/s Fiza Developers And Inter Trade Pvt Ltd Vs CCE & ST, Bangalore (Dated : October 5, 2011)**

Service Tax – Stay/Application for waiver of pre-deposit – Liability to pay service tax on civil works undertaken for erection of wind mills under 'erection, commissioning and installation service' – Pre-deposit of Rs. 25 lakhs ordered – Section 35F of Central

Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[2012-TIOL-273-CESTAT-BANG](#)

**Arjun Tours & Travels Pvt Ltd Vs CST, Bangalore (Dated : December 22, 2011)**

Service Tax - Appeals - Appeal against revisionary order passed by Commissioner exercising powers under section 84 of Finance Act, 1994 - No provision for appeal to Tribunal against an order passed by Commissioner of Service Tax under section 84 of Finance Act, 1994 after amendment to section 86 w.e.f 19.08.2009 through Finance Act, 2009 - Any order passed by Commissioner of Central Excise under section 84 of Finance Act, 1994 as a revisionary authority after 19.08.2009 not appealable before CESTAT

[2012-TIOL-272-CESTAT-MUM](#)

**M/s Raymond Uco Denim Pvt Ltd Vs CCE, Nagpur (Dated : January 6, 2012)**

Service Tax paid by job-worker although entitled to exemption notfn. 8/2005-ST - since Revenue has accepted the tax paid and no action has been initiated against job worker, prima facie case in favour - as regards credit taken on courier service employed for transportation of 'samples' to various customers, since no evidence produced to show that courier expenses are part of price of samples, pre-deposit ordered of Rs. 10 lakhs: CESTAT [ para 9 ]

[Also see analysis of the Order](#)

[2012-TIOL-271-CESTAT-AHM](#)

**CC & C, Vadodara-II Vs M/s Hindalco Industries Ltd (Dated : December 14, 2011)**

Service Tax – Royalty paid to Foreign Service provider during the year 2003 – Liability to pay tax on the service receiver – Assessee paid service tax on an objection raised by the department – Demand of interest and penalty – Prior to 18.4.2006, there is no liability to pay Service Tax - When there is no liability to pay Service Tax, even if the Service Tax is paid, the question of recovery of interest and imposition of penalty does not arise.

[2012-TIOL-270-CESTAT-AHM](#)

**M/s Cargo Motors (Guj) Pvt Ltd Vs CC, Vadodara (Dated : November 30, 2011)**

Service Tax – Business Auxiliary Service - Services like arranging finance from various Banks, insurance of the vehicles, coating/colour, incentive/labour etc - Since the appellant has not contested the merit of Service Tax liability before the adjudicating authority, taking up the issue on merits before the subsequent appellate authority will be incorrect position of law - Hence Service Tax and interest thereon is confirmed – Penalty – This is a fit case to invoke the provisions of Section 80 of the Finance Act, 1944 and to set aside the penalties imposed on the appellant under Sections 76, 77 and 78 of the Act for the reason that various decisions of the Tribunal are holding that the activities rendered by the appellant could not have been taxed under the category of 'Business Auxiliary Services'.

[2012-TIOL-266-CESTAT-AHM](#)

**CCE & ST, Vapi Vs M/s Veena Industries Ltd (Dated : December 15, 2011)**

Service Tax - Payment under wrong Service Tax Code - Adjustment of payment in correct accounting code - The service provider has paid the service tax on "installation and commissioning" which is in fact the payment of service tax for "annual maintenance and repairs" service category. The plea of the service provider that while making the payment, wrong service tax code relating to "erection, installation and commissioning" was indicated, merits to be considered and having regards to facts of the case and Board's Circular No.58/7/2003-ST, dated 20.05.03 adjustment of payment in the correct account code is allowed. (Para 5)

[2012-TIOL-265-CESTAT-AHM](#)

**M/s Kiran Motors Ltd Vs CCE, Surat (Dated : December 1, 2011)**

Service Tax - Authorised Service Station for vehicle manufacturer - Banking and Financial Services - Demand - CENVAT - New Grounds - Extended period - The assessee received a part of amount paid to the vehicle manufacturer by the Banking and Financial Institutions for vehicle loans given to customers – The assessee submits that the manufacturer has already paid service tax on the incentive received, they are not liable to pay service tax and hence interest is also not payable - Also the assessee took CENVAT credit of service tax paid on vehicles serviced by other service stations - Demand was raised for recovery of CENVAT credit and interest since assessee did not contest the service tax - It is also submitted that Tribunals have held that CENVAT credit is admissible on trading activity. Matter remanded to the lower authority as these aspects were not raised earlier for fresh consideration. (Para 4)

[2012-TIOL-262-CESTAT-MUM](#)

**M/s Mercedes Benz India Private Ltd Vs CCE, Pune I (Dated : December 23, 2011)**

Manufacturing of motor vehicles and trading activity of imported motor vehicles – common input services – whether rule 6 of the CCR, 2004 applicable – applicant has not made a prima facie case in view of Tribunal decision in Orion Appliances – Pre-deposit ordered of Rs.50 lakhs: CESTAT [para 9]

[Also see analysis of the Order](#)

[2012-TIOL-261-CESTAT -DEL](#)

**M/s Flair Filtration Pvt Ltd Vs CCE, Jaipur-I (Dated : November 17, 2011)**

Service Tax - CENVAT Credit on outward transport service - According to the judgement of Karnataka High Court CENVAT credit in respect of the outward transportation from the factory/Depot to the customer's premises would be available only when the sale is on FOR destination basis in the sense that during transit, the risk of the loss/damage to the goods was of the assessee and the transportation charges were integral part of the assessable value on which the excise duty has been paid - Appellant's plea that the sale is on FOR destination basis need to be verified - Matter remanded to the Commissioner (Appeals).

[2012-TIOL-260-CESTAT -BANG](#)

**M/s Andhra Bank Vs CC, CE & ST, Hyderabad (Dated : October 3, 2011)**

Service Tax – Stay/Application for waiver of pre-deposit – Demand of service tax for the period from 10.09.2004 to 31.03.2006 through SCN issued on 26.11.2008 contested on the ground of limitation – SCN merely mentions non-declaration of P & T charges collected from customers for providing Banking and Other Financial Services in ST-3 returns – SCN did not allege any suppression of facts with intention to evade payment of tax – Prima facie case for full waiver of pre-deposit – Stay granted – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide Section 83 of Finance Act, 1994

[2012-TIOL-258-CESTAT -BANG](#)

**M/s Vertex Trading And Services Pvt Ltd Vs CST, Bangalore (Dated : October 11, 2011)**

Service Tax – Stay/Application for waiver of pre-deposit – Liability to pay service tax on overriding commission received for canvassing of purchase orders for Singapore based company – Prima facie , appellant supported by Board's Circular No.111/5/2009-ST dated 24.2.2009 and Rule 3(1)(iii) read with Rule 4 of Export of Service Rules, 2005 – Pre-deposit waived and stay granted – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[2012-TIOL-257-CESTAT -BANG](#)

**CCE, Mysore Vs M/s J K Tyre & Industries Ltd (Dated : September 28, 2011)**

Service Tax – Eligibility of CENVAT Credit of service tax paid on 'outdoor catering service' – CENVAT credit on 'outdoor catering service' available if assessee produces evidence of (a) strength of factory workers being above 250 in each factory and (b) there is no recovery from workers towards cost of service – Lower authority to conduct verification and give reasonable opportunity to adduce evidences – Rule 2(1) read with Rule 3 of CENVAT Credit Rules, 2004

[2012-TIOL-256-CESTAT-MAD](#)

**M/s Shyamali Exports Vs CST, Chennai (Dated : October 14, 2011)**

Service Tax – Stay/Dispensation of pre-deposit - Refund of service tax in case of exports – Relevant date – Date when payment for services exported was received is the relevant date – Prima facie case has been made out for waiver of pre -deposit.

[2012-TIOL-253-CESTAT-MAD](#)

**Truetzschler India Pvt Ltd Vs CCE, Coimbatore (Dated : October 12, 2011)**

Service Tax - Stay/Dispensation of pre-deposit - Consulting Engineer Service - Demand of service tax on reimbursement amount received by the service engineers for rendering service of erection and commissioning of textile machineries – Prima facie case made out for waiver of pre -deposit as prima facie the service would fall under "Erection, Commissioning and Installation service", but not under "Consulting Engineer service".

[2012-TIOL-250-CESTAT-BANG](#)

**Thomas Cook (India) Ltd Vs CCE, Hyderabad (Dated : September 19, 2011)**

Service Tax - Stay/Application for waiver of pre-deposit - Liability to pay service tax on 'out bound tours' under 'Tour operator service' - Activities undertaken include booking of air tickets, visa formalities, arrangement for hotel stay at places outside India, food, local travel in places outside India – Tax already paid by appellant under the head 'Air Travel service' on airfares from India to the first destination in foreign country and for airfares from last destination abroad to first destination in India - Board's Circular No. 43/10/97-TRU dated 22.08.97 clarifies that outbound tours outside purview of levy of service tax - Stay already granted in a similar case by Tribunal = [\(2011-TIOL-1389-CESTAT-BANG\)](#) - Prima facie case for full waiver of pre-deposit – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994



[2012-TIOL-248-CESTAT -MAD](#)

**International Agricultural Processing (P) Ltd Vs CCE (ST), Madurai (Dated : October 27, 2011)**

Service Tax – Refund of service tax under Notifications No 41/2007 ST dated 6.10.2006 and 17/2009 ST dated 7.7.2009 - Notification No 41/2007 had a condition that the storage and warehouse is exclusively used for the purpose of storage or warehouse of the export goods - There is no such condition in the successor notification applicable from 7.7.2009 - Since the appellants have stored some inputs in addition to export goods in the impugned warehouse, refund is allowed only for the period with effect from 7.7.2009 – Matter remanded for re-calculation of refund amount.

[2012-TIOL-247-CESTAT -BANG](#)

**M/S ICM English Centre Vs CST, Bangalore (Dated : October 11, 2011)**

Service Tax – Stay/Application for waiver of pre-deposit – Liability to pay service tax on the activity of providing training courses in English, German, French to enable students to seek employment in call centres – If English is to be considered as foreign language, appellant can claim benefit of exemption under Notifications No.9/2003-ST and No.24/2004-ST – Appellant already registered with department and paying tax under 'Franchise services' and did not pay tax for the activity of training in English under the head 'Commercial training or coaching service' under a bonafide belief that they were eligible for exemption under relevant notifications – Prima facie, appellant cannot be held to have suppressed facts with an intent to evade payment of tax – Full waiver of pre-deposit ordered and stay granted – Section 35F of Central Excise Ac, 1944 as made applicable to Service Tax vide section 83 of Finance Act, 1994

[2012-TIOL-243-CESTAT -MAD](#)

**M/s Siemens Limited Vs CCE, Pondy (Dated : September 16, 2011)**

Service Tax – Suo moto adjustment of excess Service Tax paid - Demand – Stay / Dispensation of pre-deposit – Demand confirmed as suo motu adjustment was not carried out towards service tax liability for the succeeding month or quarter as required in terms of Rule 6 (4A) of the Service Tax Rules, 1994, but excess payment was made in October 2006 whereas adjustment was made in June 2007 - Adjustment made immediately after issue of credit note. Prima facie case made out for waiver of pre-deposit. Stay granted. (Para 2)

[2012-TIOL-242-CESTAT -BANG](#)

**M/s Heidelberg Cements India Ltd Vs CCE, Bangalore (Dated : September 30, 2011)**

Central Excise/Service Tax - Appeal filed before Commissioner (A) in Form ST-4 against O-I-O passed by original authority for recovery of irregular CENVAT credit with interest - On the one hand appeal filed in Form ST-4 whereas section 35 of CEA mentioned in cause title - No mention of section 85(3) of Finance Act, 1994 in COD application before Appellate Commissioner - Appellant confused with regard to invocation of appropriate provisions - Matter remanded to Appellate Commissioner to reconsider COD application

[2012-TIOL-241-CESTAT-KOL](#)

**M/s Choudhury Industries Pvt Ltd Vs CST, Kolkata (Dated : November 4, 2011)**

Service Tax – Delay of 23 days in filing appeal before Commissioner (A) – Appeal condonable by Commissioner (A) within further three months under section 85 of Finance Act, 1994 – Apex Court decision in Collector, Land Acquisition vs. MST Katiji & Ors - ( [2002-TIOL-444-SC-LMT](#) ) followed – Impugned order set aside and matter remanded to Commissioner (A) for deciding case on merits

[2012-TIOL-240-CESTAT-DEL](#)

**M/s Municipal Corporation, Jalandhar Vs CCE, Ludhiana (Dated : January 23, 2012)**

Service Tax- Is Advertisement Tax collected by Municipal Corporation liable to Service Tax? Issues to be referred to Third Member:

i) Is the activity of the Appellant, in the background of the facts of this case, prima-facie covered by Section 65(105)(zzzm) of the Finance Act, 1994 for being subjected to service tax as service in relation to sale of time or space for advertisement?

ii) Can the advertisement tax collected by the Appellant from M/s Shri Durga Publicity and Others on their advertisement revenue, under the Appellant's resolutions ratified by Government of Punjab, be prima-facie called consideration for the service in relation to sale of advertising space alleged to have been provided by them?

iii) Is the Department case against the Appellant without any basis and hence the requirement of pre-deposit under Section 35F of Central Excise Act, 1944, as made applicable to service tax matters by Section 83 of the Finance Act, 1994, must be waived or the Department has prima-facie case and pre-deposit as proposed by the learned Member (Judicial) must be ordered for hearing of the appeal?

[Also see analysis of the Order](#)

[2012-TIOL-239-CESTAT-MAD](#)

**M/s RRB Energy Limited Vs CST, Chennai (Dated : October 13, 2011)**

Service Tax - Stay/Dispensation of pre-deposit - Part of the demand is prima facie time barred - Part of the demand already paid - Demand was raised for tax under a particular category, while the impugned order demands tax in another category, which was not the case made out in the show-cause notice - Prima facie case made out for waiver of pre -deposit.

[2012-TIOL-238-CESTAT -AHM](#)

**M/s Invest Mentore Securities Ltd Vs CCE, Ahmedabad (Dated : December 7, 2011)**

Service Tax - Stock Broker Service - Demand of Service Tax on NSE/BSE transaction charges and DEMAT Charges - Stay/ Dispensation of pre -deposit - Stay granted in similar cases. Hence stay petition allowed. (Para 2)

[2012-TIOL-234-CESTAT -DEL](#)

**M/s Madhav Nagrik Sahkari Bank Ltd Vs CCE, Indore (Dated : January 25, 2012)**

Service Tax - "Banking and Other Financial Services" – A bank run by Co-operative Society liable to pay tax: The Short point for decision in these appeals is whether a co-operative society is covered by the expression "or any other body corporate, or any other person" used in sub-section 65 (105) (zm) and sub-section 65 (12). Tribunal did not agree that the expression is used in Finance Act 1994 for giving exemption to co-operative societies. By borrowing this expression from Companies Act, it brings in all the entities covered by Finance Act, 1994 section 2 (7) of the Companies Act, into the ambit of Finance Act, 1994 and if there was no other expression which could have brought co-operative societies into the scope of the entry it would have remained outside the scope of section 65 (105) (zm). If there is an expression which can otherwise cover co-operative societies it would get covered. So, the real point to be examined is whether the expression "any other person" can bring in co-operative society; The very fact that section 2 (7) of the Companies Act specifically excluded co-operative society shows that in many respects co-operative society is of the same genus as a company. It was necessary to keep the co-operative society out of the many controls of the Companies Act. So, it is specifically excluded though both are of the same genus. The fact that co-operative societies are controlled not by the elaborate procedure of companies Act but by similar but simplified controls through different enactments does not mean that for taxing the services rendered by co-operatives, such societies would be on a different footing as compared to services provided by a company unless and until such intention is specifically manifested in the taxing statute itself. Since no specific exclusion is made in Finance Act, 1994, co-operative societies will be covered by the expression "any other person" used in section 65(105) (zm) and 65(12) of Finance Act, 1994.

Penalty : This is a case where the appellants were registered as a service tax assessee and paying service tax. From one point of time they just stopped, on their own, paying such tax arguing that they had a new interpretation. There was no ground for adopting a new interpretation and penalty under section 76 is rightly imposed. Punjab & Haryana High Court has held in the case of First Flight Couriers Ltd- [\(2011-TIOL-67-HC-P&H-ST\)](#) that simultaneous penalties under sections 76 and 78 are not warranted. In the present case, penalty under 76 is more appropriately payable than penalty under section 78. So, the penalty under section 76 upheld and penalty under section 78 set aside.

[Also see analysis of the Order](#)

[2012-TIOL-233-CESTAT -BANG](#)

**M/s Bangalore Development Authority Vs CST, Bangalore (Dated : September 21, 2011)**

Service Tax – Stay/Application for waiver of pre-deposit – Franchise service received by Indian company not taxable prior to 18.04.2006 – Prima facie case for full waiver of pre-deposit – Section 35F of Central Excise Act, 1944 as made applicable to section 83 of Finance Act, 1994

[2012-TIOL-232-CESTAT -MAD](#)

**M/s City Union Bank Limited Vs CCE (Service Tax), Trichy (Dated : October 7, 2011)**

Service Tax – Stay/Dispensation of pre-deposit – CENVAT Credit on Share Registry Services – Prima facie case has been made out for waiver of pre-deposit in view of the Stay order passed by the Tribunal in [2011-TIOL-349-CESTAT-BANG](#)

[2012-TIOL-227-CESTAT -MAD](#)

**M/s Prakash Shipping Agencies Vs CST, Chennai (Dated : October 13, 2011)**

Service Tax – Stay/Dispensation of pre-deposit - CHA service – Brokerage received during the period from 01.07.2003 to 31.07.2007 – Prima facie case has been made out for waiver of pre-deposit.

Demand of service tax on reimbursable expenses – No prima facie case has been made out as the Commissioner held that no supporting documents were produced.

[2012-TIOL-226-CESTAT -BANG](#)

**CST, Bangalore Vs M/s Central Warehousing Corporation (Dated : September 27, 2011)**

Service Tax - Stay on refund order - Refund granted by Appellate Commissioner on the ground that CWC had not rendered any Storage and warehousing service and amount paid by them cannot be treated as service tax, accepted by Revenue in first round of litigation - In second round of litigation, Appellate Commissioner allowed the claim as not hit by time limitation - No challenge by Revenue in appeal memo on reliance placed by Appellate Commissioner on Board' Circular or Tribunal's decision - No valid ground raised to stay operation of order

<a href="#">2012-TIOL-225-CESTAT-MAD</a>
<b>M/s Hindustan Oil Exploration Co Ltd Vs CST, Chennai (Dated : September 19, 2011)</b>
<p>Service Tax – Stay/Dispensation of pre -deposit – Services received from outside India – Inclusion of TDS, Indian direct tax borne by the service recipient - There is no specific exclusion in the Finance Act, 1994 to exclude the income tax paid in respect of the amount paid for the services received from abroad - At the same time, prima facie, it appears that the gross amount charged for the services cannot be said to include income tax deducted at source as per the income tax statute.</p> <p>Local expenditure relating to booking of airfare, accommodation etc., in respect of the foreign service provider –The appellants have claimed that in respect of these charges and services also service tax has been paid by the appellants to the concerned service providers - Prima facie, for the same services provided, for which taxes have been paid by the concerned service providers and collected from the appellants, a second demand cannot be raised against the appellants.</p>
<a href="#">2012-TIOL-222-CESTAT-BANG</a>
<b>M/s ITC Ltd Vs CCE, Bangalore (Dated : September 21, 2011)</b>
<p>Service Tax – Stay/Application for waiver of pre -deposit – Eligibility of CENVAT Credit of service tax paid on GTA service utilized for transport of cigarettes from factory gate to warehouse - Board's Circular F. No. 137/3/2006-CX.4, dated 02.02.2006 or High Court decision in ABB Ltd - <a href="#">(2011-TIOL-395-HC-KAR-ST)</a> not applicable after 01.04.2008 – However, Appellate Commissioner allowed claim of appellant in subsequent case relying on Board Circular ibid – Prima facie case for full waiver of pre-deposit – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994</p>
<a href="#">2012-TIOL-221-CESTAT-AHM</a>
<b>M/s ASE Capital Markets Limited Vs CCE, Ahmedabad (Dated : November 22, 2011)</b>
<p>Service Tax - Stock Broker Service - Demand of Service Tax on NSE/BSE transaction charges and DEMAT Charges - Stay / Dispensation of pre-deposit - Stay granted in similar cases. Hence stay petition allowed. (Para 2)</p>
<a href="#">2012-TIOL-220-CESTAT-AHM</a>
<b>M/s ADF Foods Ltd Vs CCE, Ahmedabad (Dated : November 24, 2011)</b>

Service Tax - Refund of Service tax paid on services used for export of goods - Terminal Handling Charges - Stay / Dispensation of pre-deposit - Refund of service tax paid on terminal handling charges originally sanctioned, demanded under order of revision. Terminal handling charges is not one of the services notified in Notification No.41/2007-ST, which provides for refund of Service Tax paid on various services used in exported goods. Prima facie no case made out for waiver of pre-deposit. (Para 2 & 5)

[2012-TIOL-213-CESTAT-AHM](#)

**M/s Rajvi Stock Broking Ltd Vs CST, Ahmedabad (Dated : November 25, 2011)**

Service Tax - Stock Broker Service - Demand of Service Tax on NSE/BSE transaction charges and DEMAT Charges - Stay / Dispensation of pre-deposit - Stay granted in similar cases. Hence stay petition allowed. (Para 2)

[2012-TIOL-212-CESTAT-AHM](#)

**M/s Sun-N-Step Club Ltd Vs CCE, Ahmedabad (Dated : November 22, 2011)**

Service Tax - Business Auxiliary Service - Health Club and Fitness Service - Club or Association Service - Demand - Stay / Dispensation of pre-deposit - Service tax liability on the amounts received from caterers or decorators under Business Auxiliary Services, is arguable. Also, service tax liability under the Health and Fitness Centre and Club Association services have been confirmed by taking wrong figures. Prima facie case not made out for complete waiver of pre-deposit. Conditional stay granted . (Para 5)

[2012-TIOL-209-CESTAT-MUM](#)

**M/s Bharti Airtel Ltd Vs CCE, Pune (Dated : January 6, 2012)**

Service Tax - CENVAT Credit – Cell Towers, prefabricated building, printer, office chair – neither Capital Goods, nor inputs for providing cellular telephone service: No doubt, components, spares and accessories falling under Rule 2(a)(A)(iii) can be held to be 'capital goods' for the purpose of CENVAT credit if these are shown to be components, spares and accessories of goods falling under any of the Chapters or Headings of the CETA Schedule specified in sub-clause (i). In the present case, the appellant's bid to show that the 'Cell Site' is goods falling under Chapter 85 specified in sub-clause (i) has failed and consequently their plea for treating the tower and parts thereof as components falling under sub-clause (iii) has to be rejected.

Tower is not component of antenna : A component or part of any goods means something which is required to make such goods a finished item. In other words, only those articles which would go into the composition of another article can be considered to be components or parts of the latter. This is just a matter of common sense. What might occur to the common man's prudent mind is also reflected in the meaning of the word 'component' found in dictionaries of the English language. In the

present case, GSM and MW antennas are finished goods classifiable under specific Tariff heading. The tower on which the antennas are placed cannot be considered as their component. The tower does not enter into the composition of the antennas. It is not a constituent part of the antennas. Therefore the argument that the tower should be considered as a 'component' of antenna to be classified as capital goods under Rule 2(a)(A)(iii), is rejected.

Towers as Inputs : If the towers and parts thereof are not capital goods falling under Rule 2(a)(A) of the CENVAT Credit Rules, 2004, it is argued, they are liable to be recognized as 'inputs' under Rule 2(k). If any item has to be brought within the ambit of this definition, it has to be, firstly, "goods" and, secondly, "used for providing any output service". The first requirement in this case is not met by the towers which are admittedly immovable structures and ipso facto non-marketable and non-excisable.

Pre Fabricated Buildings : PFBs fall under Chapter 94 which is not specified in sub-clause (i). They are not components or accessories of any goods specified in that sub-clause either. Thus PFBs have no place in sub-clause (iii) also. Hence CENVAT credit cannot be claimed on PFBs as capital goods. The same conclusion can also be reached in respect of office chairs which are goods of Chapter 94. In the absence of evidence that the chairs or printers were used for providing mobile telephone service, both these items would stay outside the ambit of the definition of "input" also.

[Also see analysis of the Order](#)

[2012-TIOL-208-CESTAT -BANG](#)

**M/s India Sugars And Refineries Ltd Vs CCE, Mangalore (Dated : September 23, 2011)**

Service Tax – Stay/Application for waiver of pre-deposit – Liability to pay service tax on GTA service availed by cane growers from fields to appellant's factory – Freight paid to transporters on behalf of cane growers – Prima facie case in favour of appellants – Pre-deposit waived and stay granted – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[2012-TIOL-207-CESTAT -BANG](#)

**M/s Margadarsi Financiers Vs CCE, Hyderabad (Dated : October 10, 2011)**

Service Tax – Stay/Application for waiver of pre-deposit – Demand of tax under 'renting of immovable property service' on royalty/rent collected for building given for commercial activity on 'leave and licence' basis under MOU – Lessee liable to pay 6% royalty on sales in showroom to lessor (appellant) over a ten year period – No prima facie case in favour of appellant – Pre-deposit of Rs. 34 lakhs ordered – Section 35F of Central Excise Act, 1944 as made applicable to Service Tax vide section 83 of Finance Act, 1994

[2012-TIOL-200-CESTAT -MAD](#)

**M/s Kasturi & Sons Ltd Vs CCE, Chennai (Dated : September 19, 2011)**

Service Tax - Stay/Dispensation of pre-deposit - Making available space on the website of the appellants is prima facie taxable under Section 65(105)(zzzm) of the Finance Act, 1994 - Plea that the service would amount to export of service prima facie is not acceptable - On limitation also no prima facie case has been made out - Pre-deposit of Rs 35 lakhs ordered.

[Also see analysis of the Order](#)

[2012-TIOL-199-CESTAT -DEL](#)

**M/s Jubilant Life Sciences Ltd Vs CCE, Noida (Dated : November 29, 2011)**

Service Tax – Stay/Dispensation of pre-deposit – Banking and other Financial Service received from outside India – The appellants have received services provided by the underwriters which is taxable under Section 65(105)(z) read with Section 65(116) & 65(117) - The services of managing the issue is covered by the definition of Banking and other Financial Services (Merchant Banking Services) as defined in Section 65 (105)( zm ) read with Section 65(12) of Finance Act, 1994 and Section 2(e) of SEBI Merchant Bankers Rules – Prima facie, the services received are taxable – Pre-deposit of Rs 50 lakhs ordered.

[2012-TIOL-198-CESTAT -DEL](#)

**M/s Vikas Metalliks & Energy Ltd Vs CCE, Raipur (Dated : October 24, 2011)**

Service Tax – Stay/Dispensation of pre -deposit – CENVAT Credit on M.S. Beams, M.S. Channels, H.R. Sheets, MS Angles etc denied on the ground that these items were used for providing support structures – Appellant's contention that the same were not used for supporting structures is a question of fact and the same can be decided only at the time of final hearing.

CENVAT Credit on Tippers – In addition to main a ctivity of crushing and screening of iron ore lumps, the other activities such as unloading of iron ore lumps at the railway siding, arranging its transportation to the factory and loading of the processed goods into the trucks are auxiliary activity and their activity would have to be classified as Business Auxiliary Service only and in that event the tipper used by them cannot be treated as capital goods – Pre-deposit ordered.

[2012-TIOL-195-CESTAT -MUM](#)

**Percept D'mark (India) Ltd Vs CST, Mumbai (Dated : November 8, 2011)**



Arranging of celebrities for promotion and publicity is not an advertisement agency service prior to 01.07.2003 - Strong prima facie case - Pre-deposit waived and Stay ordered: CESTAT [para 4]

[Also see analysis of the Order](#)

[2012-TIOL-194-CESTAT-AHM](#)

**M/s Kalpataru Power Transmission Ltd Vs CCE, Ahmedabad (Dated : January 2, 2012)**

Service Tax – Stay/Application for waiver of pre-deposit – Order passed by lower authority held that appellants activity did not come under Consulting Engineers service but w.e.f 01.07.2003 it was liable to tax under Erection, Commissioning and Installation service – Appellant not put to notice about classification of their activity under Erection, Commissioning and Installation service – When SCN does not put the appellant to notice for classification under a particular service head but proposes to classify the activity under another head for the entire period of demand, prima facie case for full waiver of pre-deposit – Lower authority dropped proceedings for classifying activity under Consulting Engineers service and Revenue did not appeal against this portion of order – Board Circular dated 08.08.2007 specifically directs that services undertaken by appellant classifiable under category of Erection, Commissioning and Installation service for which appellant was not put on notice – Full waiver of pre-deposit ordered and stay granted

[2012-TIOL-190-CESTAT-KOL](#)

**M/s Nicco Corporation Ltd Vs CST, Kolkata (Dated : November 16, 2011)**

Service Tax – Eligibility of credit of service tax paid on outward transportation of goods – Credit claimed based on clarification issued in Board Circular dated 23.08.2007 that credit allowable if freight charges are included in cost of final products – No evidence put forth to support the claim that freight cost was part of price of final products – Prima facie no case made out for waiver of pre-deposit on this aspect

Liability to discharge service tax under BAS – Appellant engaged in activity which is classifiable under BAS but claimed benefit of Notification No. 21/05-ST – Since appellant engaged in activity involving goods like petridish, dental powder, medical equipments, semi-conductors, irradiation of O ring, LDPE Gaskets etc which are not covered by the said notification, in addition to gems and jewellery, prima facie no case made out for waiver of pre-deposit

Liability to pay service tax on laying of cables – Activity of laying of cables not subject to levy of service tax as clarified by Board vide Circular dated 24.05.2010 – Prima facie case for waiver of pre-deposit

After considering facts and circumstances, pre-deposit of Rs. 31 lakhs ordered – Pre-deposit of remaining dues waived

[2012-TIOL-189-CESTAT -MUM](#)

**CCE, Nagpur Vs C B Mor (Dated : December 19, 2011)**

Whether the appellants who are actually selling SIM Cards of BSNL to the customers are liable to service tax or not - on similar issues unconditional stay has been granted by CESTAT - no case for granting stay in favour of Revenue - stay applications rejected: CESTAT

[2012-TIOL-188-CESTAT -DEL](#)

**M/s National Aviation Company Of India Vs CCE, New Delhi (Dated : November 29, 2011)**

Service Tax - Stay/Dispensation of pre-deposit - Tour Operator service - Package tour conducted by Indian Airlines (National Aviation Company Of India) with providing of air transport, transportation from airport to hotel and back to airport, room accommodation in hotel, provision for food and beverages and sight-seeing for a lumpsum price - In view of the fact that service tax on Domestic Air Travel came into force only with effect from 01-07-2010, that too only to the extent of Rs.100 per journey or 10% of the ticket whichever is lower, prima facie there is something incongruous in demanding service tax at full rate on the gross amount - Considering the financial hardship faced by the Company, full waiver of pre-deposit granted.

[2012-TIOL-186-CESTAT -BANG](#)

**CST, Bangalore Vs M/s Gowri Computers (P) Ltd (Dated : September 28, 2011)**

Service Tax – Levy of penalties under sections 76 & 78 of Finance Act, 1994 for default in payment of service tax and filing of periodical returns – When SCN does not allege any of the ingredients of section 78, mere mention of section 78 or proposal to levy penalty under section 78 would not suffice – Levy of penalty under section 78 not sustainable – When default in payment of service tax is an admitted fact, invocation of section 76 and levy of penalty @ Rs. 100/- per day by original authority sustained – Order of Commissioner (A) set aside

Correctness of Board's Circular No. 137/2007-ST under law – Circular clarifying section 73(3) incorrect in as much as this provision only prohibits issue/service of SCN under sub-section (1) in r/o payment made by the party – As per section 73(3), there shall be no SCN under 73(1) in r/o service tax already paid by the party – There is no bar to issue SCN for imposing a penalty – Board's clarification does not disclose the correct legal position, not applicable to facts of instant case

[Also see analysis of the Order](#)

[2012-TIOL-185-CESTAT -BANG](#)

**Information Kerala Mission Vs CCE & CC, Thiruvananthapuram (Dated : October 10, 2011)**

Service Tax – Stay/Application for waiver of pre-deposit – Liability to pay service tax on services rendered to local self government bodies – Service tax amounting to Rs. 44 lakhs already collected from service recipients and 50% of the same deposited with exchequer prior to issue of SCN – Prima facie no case in favour of appellant – Balance amount of service tax amounting to Rs. 22 lakhs to be pre-deposited – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[2012-TIOL-184-CESTAT-BANG](#)

**M/s Bangalore Club Vs CST, Bangalore (Dated : September 21, 2011)**

Service Tax – Stay/Application for waiver of pre-deposit – Club or Association Service – Liability to pay service tax on 'entry fee' collected from members of club – Prima facie no case made out for full waiver of pre-deposit – Pre-deposit of Rs. 50 lakhs ordered – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[2012-TIOL-180-CESTAT-MUM](#)

**Indian Oil Corporation Ltd Vs CCE, Goa (Dated : January 6, 2012)**

Since Facilitation charges and additional handling charges are included in the assessable value, they are not liable for Service Tax – Prima facie case in favour – Pre-deposit waived and Stay granted: CESTAT [ para 6, 7]

[Also see analysis of the Order](#)

[2012-TIOL-179-CESTAT-AHM](#)

**M/s Dabur India Ltd Vs CCE, Vapi (Dated : December 19, 2011)**

Service Tax – No liability to pay tax on legal services received from outside India prior to 07.09.2009 – As regards liability on advertisement services, issue arguable – Pre-deposit of Rs. 2 lakhs ordered

[2012-TIOL-178-CESTAT-BANG](#)

**Shri K C Naik Vs CST, Mangalore (Dated : October 10, 2011)**

Service Tax – Stay/Application for waiver of pre-deposit – Demand of service tax on 'tour operator service' for the period from December 2002 to May 2005 – Contention that appellant came into ambit of 'tour operator service' only after definition of 'tour operator' widened w.e.f. 16.05.2008 – Stay granted in similar cases – Prima facie case for waiver of pre-deposit – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide Section 83 of Finance Act, 1994

[2012-TIOL-174-CESTAT-AHM](#)

**M/s Gulf Oil Corpn Ltd Vs CCE, Vapi (Dated : December 1, 2011)**

Service Tax - CENVAT - Input Service - Trading Activity - The assessee procured goods in the same truck part of which was used for manufacture and part meant for trading purpose. The Service Tax credit in respect of input service attributable to trading activities is not available as credit. (Para 4)

[2012-TIOL-172-CESTAT-DEL](#)

**M/s Smart Chip Ltd Vs CCE, Bhopal (Dated : November 15, 2011)**

Service Tax - Business Auxiliary Service - The appellant had obligation to establish a central server in different offices of the transport department - Object of the contract is to build a system - Revenue also fails to get help in piecemeal reading of the law without proving that the services provided by the appellant was auxiliary in nature to serve the purpose of business of client - By no stretch of imagination, building a system can be conceived to be "Business Auxiliary Service" - Demand set aside.

[2012-TIOL-168-CESTAT-MUM](#)

**M/s India Tube Mills & Metals Industries Ltd Vs CCE, Mumbai (Dated : July 22, 2011)**

Mobile phones in the name of Director of Company Cenvat Credit of Service Tax cannot be denied Prima facie case Stay granted: CESTAT

[Also see analysis of the Order](#)

[2012-TIOL-167-CESTAT-DEL](#)

**M/s Ascent Marketing And Services Vs CCE, Bhopal (Dated : December 16, 2011)**

Service Tax - Cleaning Services - Adjustment of excess service tax paid - Stay / Dispensation of pre-deposit - The assessee has paid service tax, which was not required to be paid in the first instance and hence adjusted the same towards future

liability. Demand was confirmed for the amount so adjusted as the same amounted to suo moto refund of service tax paid. Prima facie no case made out for stay. Pre-deposit ordered. (Para 6 & 7)

[2012-TIOL-162-CESTAT-DEL](#)

**M/s Six Sigma Certification (P) Ltd Vs CCE, Noida (Dated : October 12, 2011)**

Service Tax – Stay/Application for waiver of pre-deposit – CENVAT Credit – Denial of credit on invoices issued by five star hotels for renting out conference rooms on the ground that invoices did not contain details as per Rule 4A of Service Tax Rules, 1994 read with Rule 9 of CENVAT Credit Rules, 2004 – Invoices issued by five star hotels for providing conference rooms with amenities to appellant for conducting training programs – No denial of fact that appellant availed services of five star hotels for hiring conference rooms for providing commercial training or coaching service and provision of services corroborated by hotels providing letters in this regard – Service of providing conference rooms comes within the purview of Mandap Keeper service and aggregate value of such services is the amount received by the Mandap keeper for such service – If the amount indicates the value of food separately, the service provider is eligible for claiming rebate and if they have not claimed such rebate, Revenue cannot force such a service provider to claim abatement – Invoice for an amount of Rs. 8722 issued in the name of director doubtful, pre-deposit of Rs. 8722 ordered – Pre-deposit of balance amounts waived and stay granted during pendency of appeal – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

Denial of credit on invoices issued by telecom service providers – Objections relating to missing details furnished subsequently – Pre-deposit waived and stay granted during pendency of appeal – Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[Also see analysis of the Order](#)

[2012-TIOL-157-CESTAT-AHM](#)

**CCE, Daman Vs M/s Asian Plastowares Pvt Ltd (Dated : November 11, 2011)**

Service Tax - Filing of Appeal - In respect of each order, a separate appeal is required to be filed. (Para 4)

Filing of Appeal - Proper Proforma - The filing of Service Tax Appeal in a wrong proforma is a technical and rectifiable mistake and an appeal cannot be dismissed on this ground. (Para 4)

Appeal - Grounds - Refund - Once the sanctioning authority has allowed refund, the only conclusion would be that he has verified whatever is required to be verified and if any contrary claim is made, it is for the person who makes such contradictory claim to prove that the original adjudicating authority had failed in his duty. If Revenue wanted to appeal on this ground, proper course was to verify whether the Service Tax is paid by the service provider and the receiver and then file the appeal. (Para 4)

Non-mentioning of Registration Number in invoice by service provider - Refund -

When the service recipient pays the tax, it is quite possible that the service provider may not be registered. Obviously, he cannot provide registration number. Once it is clear that the Service Tax is paid by the recipient, he was eligible for refund and on technical ground without showing that payment was not made, refund cannot be rejected. (Para 4)

[2012-TIOL-155-CESTAT -MUM](#)

**Balmer Lawrie & Co Ltd Vs CCE, Raigad (Dated : November 4, 2011)**

Service Tax - Storage and warehousing Services - Demand - Stay / Dispensation of pre-deposit - Demand of service tax for storage of uncleared cargo sold under auction under the category of storage and warehousing service rendered. In an identical issue stay granted. Following the same, stay is granted during the pendency of appeal. (Para 5)

[2012-TIOL-153-CESTAT -AHM](#)

**M/s Suryakant Earthmoving Equipments Co Vs CCE, Vadodara (Dated : December 21, 2011)**

Laying pipeline for transport of gas - whether liable to Service Tax under the category 'Commercial Construction Service' or does it stand excluded in view of the definition of 'Erection, Commissioning and Installation Service' - issue arguable - Prima facie case in favour on limitation - Pre-deposit waived and Stay granted: CESTAT [para 7,8]

[Also see analysis of the Order](#)

[2012-TIOL-152-CESTAT -MUM](#)

**Bafna Motor Transport Co (Poona) Vs CCE, Pune (Dated : December 13, 2011)**

Applicant hiring trucks from the truck owners and providing it for transport of goods to their customers and their customers are paying service tax on these services - as the service tax has been paid on the whole activity by the service recipient, no service tax is required to be paid by the applicant - Requirement of pre-deposit waived - Stay granted: CESTAT. [para 2]

[2012-TIOL-145-CESTAT -MUM](#)

**CCE, Nagpur Vs M/s Uni-Derinted Ltd (Dated : August 17, 2011)**

Service Tax - CENVAT - Credit of Workmen Compensation Insurance Policy services - Service Tax paid on Group Insurance Health Policy also fall in the category of input

services. Credit available. (Para 2 & 3)

[2012-TIOL-143-CESTAT -DEL](#)

**M/s Bharti Airtel Ltd Vs CST, Delhi (Dated : December 8, 2011)**

Service Tax - Telecom Services - Valuation - Amount actually realised - SCN issued based on audit report - Burden of proof - Based on audit report, demand confirmed on excess realisation of service consideration. However no evidence produced to substantiate the claim. The figures reflected in Balance Sheet and Profit and Loss account not properly appreciated by the adjudication authority. Matter remanded to the original authority with directions to provide copy of the audit report to the service provider and re-adjudicate the matter based on documentary evidence. (Para 5)

[2012-TIOL-142-CESTAT -DEL](#)

**Mrs Jaspreet Kaur & Mr Gagandeep Singh Vs CCE, Delhi (Dated : December 7, 2011)**

Service Tax - Business Auxiliary Service - Distributor - Demand - SSI Exemption - Brand Name - Service Provider claims benefit of SSI Exemption in terms of Notification No. 6/2005, which is denied on the ground that they are providing the services under a brand name . Providing of service to a brand name owner does not disentitle the service provider the benefit of SSI Exemption. Matter remanded to the original adjudicating authority for deciding the issue of applicability of small scale notification. (Para 3 & 4)

[2012-TIOL-138-CESTAT -DEL](#)

**M/s Bain & Company India Pvt Ltd Vs CST, Delhi (Dated : October 5, 2011)**

Service Tax – Stay/Dispensation of pre-deposit – Manpower Supply service - Employees of holding company in USA sent to Indian subsidiary – Whether amounts to receiving Manpower supply service – Indian subsidiary paying salaries to the employees and other than P.F. no other amount is paid to the foreign company – In terms of Board's Circular, the persons supplied are the employees of the supply agency who receive their salaries/wages and other allowances from such agency are only covered under Manpower supply service – Prima facie case made out for waiver of pre-deposit.

[2012-TIOL-137-CESTAT -DEL](#)

**M/s GMK Concrete Mixing Pvt Ltd Vs CST, Delhi (Dated : November 4, 2011)**

Service Tax – Supply of ready mix concrete - Record does not reveal involvement of any taxable service aspect in the entire supply of RMC -The contract appears to be a sale contract instead of a service contract - In absence of cogent evidence to the effect of providing taxable service, primary and dominant object of the contract throws light that contract between the parties was to supply ready mix concrete (RMC) but not to provide any taxable service - Finance Act 1994 not being a law relating to commodity taxation but services are declared to be taxable under this law, the adjudication made under mistake of fact and law fails.

[2012-TIOL-135-CESTAT -MUM](#)

**Inox Air Products Ltd Vs CCE, Nagpur (Dated : November 16, 2011)**

Appellant collecting consideration for plant operation and maintenance and discharging Service tax liability – clients supplying electricity free of cost for the said service – such cost will have to be included in the value of the taxable services rendered – s. 67 of the FA, 1994 and Rule 3 of the Service Tax (Determination of Value) Rules, 2006 is clear in this regard – No prima facie case – Pre-deposit ordered of Rs. 1 crore: CESTAT [para 7]

Miscellaneous application seeking to reclassify the service rendered under the category “Maintenance and Repair Service” - Appellant has never disputed the classification of service and they have been discharging the service tax liability under the category of “Consulting Engineers” right from the beginning - they have also not raised this contention before the adjudicating authority or in the appeal memorandum - therefore the issue of classification of service was never a point for decision before the adjudicating authority and the only point for decision was the valuation of the services rendered - Any change in classification can only be prospective and the issue has to be raised before the appropriate authority for consideration and decision – Miscellaneous application not maintainable. [para 5.1]

[Also see analysis of the Order](#)

[2012-TIOL-134-CESTAT -MUM](#)

**M/s M Power (Arena Multimedia) Vs CCE, Pune (Dated : October 17, 2011)**

Service Tax - Valuation - Commercial Training and Coaching - Demand - Penalty - The service provider, out of the total receipt of service remuneration, paid 20% as franchise commission to their principal and discharged service tax only on 80% of the service remuneration. The franchise paid service tax on the 20% amount received from the service provider.

HELD - The service provider is liable to pay Service Tax on the whole amount of the services rendered. If they have paid a certain amount as a franchise commission to their principal, they have to pay Service Tax on that and are entitled to take input service credit of the same. As the service provider was in bona fide belief that the amount of services rendered by them, which has been shared by the principal, they are not liable to pay the Service Tax, the service provider is entitled to get the benefit of the provisions of Section 80 of the Finance Act, 1994. Therefore, penalty is dropped. (Para 6 & 7)



<a href="#">2012-TIOL-127-CESTAT-DEL</a>
<b>CCE, Meerut Vs M/s Shakumbari Automobiles Pvt Ltd (Dated : October 21, 2011)</b>
Service Tax - Authorised service station - Free after sales services are provided to boost the sale of the vehicles and the amounts are not being reimbursed by the manufacturers, not liable for service tax .
<a href="#">2012-TIOL-124-CESTAT-MUM</a>
<b>DSP Merrill Lynch Ltd Vs CST, Mumbai (Dated : December 20, 2011)</b>
Very purpose of issue of s. 37B Circular is to ensure that there is uniformity in the classification of excisable goods, in this case service tax - if there were divergent views necessitating the need for an issue of 37B Circular, prima facie , the appellant have made out a case to show that they were under bona fide belief that the services rendered by them were not taxable – stay granted: CESTAT [ para 5, 6 ]
<a href="#">Also see analysis of the Order</a>
<a href="#">2012-TIOL-119-CESTAT-AHM</a>
<b>M/s Doshion Ltd Vs CCE, Ahmedabad (Dated : December 16, 2011)</b>
Service Tax – Stay/Dispensation of pre-deposit – CENVAT Credit on services like Travel Agent, Custom House Agent, Tour Operator, Telephone, Insurance and Courier etc – Since the issue involved is a question of interpretation, the appellant has made out prima facie case on limitation – Pre-deposit waived.
<a href="#">2012-TIOL-117-CESTAT-DEL</a>
<b>M/s M P Police Housing Corporation Ltd Vs CCE, Bhopal (Dated : December 8, 2011)</b>
Appellant body consists of various working officers of the Police department who are managing the affairs of the Corporation - since neither the corporation nor individuals are professionally qualified engineers or an engineering firm, prima facie they would not be covered by the definition of consulting engineers - Pre-deposit waived: CESTAT [para 5]
<a href="#">Also see analysis of the Order</a>

<a href="#">2012-TIOL-116-CESTAT-AHM</a>
<b>CST, Ahmedabad Vs M/s Nova Petrochemicals Ltd (Dated : December 8, 2011)</b>
Service Tax - Goods Transport Agency Service - Service Tax liability can be discharged through CENVAT credit - Issue is no longer res- interga in view of the Karnataka High Court decision in case of Aravind Fashions Ltd - Revenue appeal has no merit.
<a href="#">2012-TIOL-110-CESTAT-DEL</a>
<b>M/s Turkish Airlines Vs CST, Delhi (Dated : November 16, 2011)</b>
Since the amounts of Passenger Service Fees and Airport Taxes collected by the airlines were not for the services provided by them, it is prima facie doubtful whether these can be considered as value of service rendered - Pre-deposit waived & stay granted: CESTAT [para 5]
<a href="#">Also see analysis of the Order</a>
<a href="#">2012-TIOL-109-CESTAT-DEL</a>
<b>M/s C M Goenka &amp; Co Vs CCE, Jaipur (Dated : September 21, 2011)</b>
Service Tax - Stock Broker service - Demand of service tax on the sub-broker on the commission received from the main broker under " Business Auxiliary Service" - The appellant, being a sub-broker are covered by the definition of stock broker and even as sub-broker, their activity in connection with sale or purchase of securities listed on stock exchange for their clients has to be treated as service provided by stock broker in connection with sale or purchase of securities covered by Section 65 (105) (a) of the Finance Act, 1994 - The activity of sub-broker cannot be said to be Business Auxiliary Service provided to the main broker - Matter remanded to the Commissioner (Appeals) in view of the Larger Bench decision in case of Vijay Sharma & Co. vs. CCE, Chandigarh.
<a href="#">2012-TIOL-106-CESTAT-DEL</a>
<b>M/s BSNL Vs CCE, Allahabad (Dated : November 1, 2011)</b>
Service Tax – Demand of service tax by the jurisdictional officers of " Banda" office of the appellants – Appellants contend that the service tax has been paid at their "Lucknow" office where they are registered centrally - The basis for the argument that the service tax should have been paid at Banda is not clear - It is also not clear whether the department has verified the claim of the Appellants that the service tax

on the impugned service has been paid by the Lucknow office of the Appellants - It is not clear how a demand for second time can be sustained if service tax is already paid on such service – Impugned order cannot be sustained and the same is set aside – Matter remanded to verify the payment of service tax by the officers of both Lucknow Commissionerate and Allahabad Commissionerate - Revenue is advised not to convert this matter into a tug of war between the two Commissionerates for accounting the revenue.

[2012-TIOL-105-CESTAT-DEL](#)

**M/s Elkay Telelinks Vs CCE, Faridabad (Dated : November 11, 2011)**

Service Tax – CENVAT Credit – Eligibility of credit of service tax paid on outward transportation of goods upto the place of buyers during 2005 to 1.04.2008 – Matter stands settled by Karnataka High Court in CCE vs. ABB Ltd - [2011-TIOL-395-HC-KAR-ST](#) – Credit allowed – Impugned order set aside – Rule 2(l) of CENVAT Credit Rules, 2004

[2012-TIOL-102-CESTAT-DEL](#)

**CCE, Noida Vs M/s Wood Motherson Elastomer Ltd (Dated : November 9, 2011)**

Service Tax - CENVAT Credit - Eligibility of CENVAT Credit on input services like Management Consultancy service, CHA service, Outdoor catering service, Rent-a-cab service etc - Issue no longer res integra - Credit allowable in view of numerous decisions of Tribunal/High Courts - No reason to interfere with order of lower appellate authority allowing credit - Rule 2(l) of CENVAT Credit Rules, 2004

[2012-TIOL-98-CESTAT-DEL](#)

**M/s Bharat Aluminium Co Ltd Vs CCE (Dated : November 15, 2011)**

Service Tax – Levy of service tax on charges paid to foreign consultant for expertise provided in setting up of manufacturing plant – Tax not leviable prior to 18.04.2006 – As regards levy of tax on a certain activity, no clear findings given by adjudicating authority in spite of all relevant documents presented before him – Since law related to taxability of Consulting Engineer's service underwent evolution over a period of time, adjudicating authority should be specific with regard to findings on nature of activity and whether the activity was leviable to tax – Matter remanded to the limited extent

[2012-TIOL-93-CESTAT-DEL](#)

**Vashushilpi Projects & Consultants (P) Ltd Vs CCE, Bhopal (Dated : December 7, 2011)**

Service Tax – Demand of service tax under “ Consulting Engineer” service – Composite works of technical and non-technical nature rendered by the appellants – Demand confirmed on the total amount received by relying on Daelim case law – In view of the Larger Bench decision in BSBK case, non-technical services would not be taxable under “ Consulting Engineer” service.

Limitation –Extended period upheld by the Commissioner (Appeals) on the ground that the information was submitted in response to the queries raised by Revenue and the has not come automatically from the appellants - Whether the information stands given by the assessee , in response to the query by the Department or suo motu the fact remains that the information becomes available to the Department - The show cause notice having been issued on 3.10.2006 for the period 1.10.98 to 31.03.05 is beyond the normal period of limitation and is barred by limitation.

[2012-TIOL-92-CESTAT-MUM](#)

**M/s Jai Somnath Transport Vs CCE, Thane-I (Dated : October 20, 2011)**

Applicants engaged in the business of travels and providing its buses on hire on contractual basis to various customers for an agreed commercial consideration - in the case of Sharma Transports vs. Commissioner of Service Tax, Bangalore ([2011-TIOL-344-CESTAT-BANG](#)) Tribunal has granted stay on the ground that the issue of service tax on transport of passengers on point to point basis is kept in abeyance till such time the matter is examined and suitable clarification issued by the Board - there is no definite finding on the issue, hence fit case for grant of unconditional waiver of pre-deposit and stay: Tribunal.

[2012-TIOL-90-CESTAT-DEL](#)

**M/s RKBK Ltd Vs CCE, Allahabad (Dated : December 20, 2011)**

Service Tax - Review by Commissioner - the date of the passing the order would be the date on which the order or decision is made public or notified in some form or when it can be said to have left the adjudicator's hand - Order passed after two years, not valid: Unlike the Tribunals or the courts, where the orders are pronounced in the open court, the orders passed by a Commissioner of Customs/Central Excise as adjudicating Authority or as reviewing authority under Section 84 of Finance Act, 1994 are not pronounced in the open court. Therefore, in such cases, the date of passing the order would be the date on which the order was dispatched to the assessee, not the date on which the decisions was recorded in the review file as on this date it can be said that the adjudicating authority has ceased to have authority to tear it off and draft a different order. The order passed after the expiry of 2 years from the date of the passing of the Assistant Commissioner's order, is not sustainable. Section 84 of Finance Act, 1994

[Also see analysis of the Order](#)

[2012-TIOL-84-CESTAT-DEL](#)

**CCE, Indore (MP) Vs M/s Shri Mukesh Jain (Dated : November 16, 2011)**

Service Tax - Penalty under Sections 76 and 78 - Service tax was not paid due to financial difficulties and later discharged the liability along with interest - Revenue appeal against setting aside penalties by the lower authorities - The case is covered by the provisions of Section 73(3) and hence, penalty under Section 76 and 78 was not called for - No infirmity in the order of Commissioner (Appeals).

[2012-TIOL-83-CESTAT-DEL](#)

**M/s IDEA Mobile Communications Ltd Vs CCE, Meerut (Dated : November 23, 2011)**

Service Tax - CENVAT Credit for the period prior to 10.09.2004 - Credit entitled even for input services not falling under the same category as output services - Matter Remanded: Thus in terms of the provisions of Rule 3 (1) of Service Tax Credit Rules, 2002 as the same existed during the period w.e.f . 14/5/03, in the case where the input and output service did not fall in the same category, the service tax credit was permissible on input services for which the invoice or bill or challan had been issued on or after 14/5/03. Since, the Commissioner in the impugned order has not considered the amendment to Service Tax Credit Rules, 2002 by Notification No. 5/2003-ST dated 14/5/03 and has proceeded on the assumption that during the period prior to 10/9/04 service tax credit was available only in respect of those input services which fall in the same category of taxable service as that of output service, the impugned order is not sustainable. The matter, however, has to be remanded for ascertaining as to whether the input service invoices of period prior to 10/9/04, when the input service and output service was not of same category, had been issued on or after 14/5/03.

[2012-TIOL-81-CESTAT-AHM](#)

**M/s Gudwin Logistics Vs CCE, Vadodara (Dated : December 15, 2011)**

Service Tax - C&F Agent - clearing & forwarding services can be considered as being rendered, if both the activities are connected and simultaneously done: the expressions "directly or indirectly" and "in any manner" occurring in the definition of "clearing and forwarding agent" cannot be isolated from the activity of clearing and forwarding operations. A person may undertake to provide service of procurement of orders as agent of the principal without agreeing to provide services of clearing and forwarding of the goods. Clearing and forwarding has a very specific connotation in the context of movement of goods from the supplier to their destination and agents undertaking clearing and forwarding operations may never have been concerned with procurement of orders for the goods which are cleared and forwarded. A person entrusted with the work of commission agent for procuring orders for the principal cannot insist on also providing services as clearing and forwarding agent in respect of those goods and it would be open for the principal to engage some other person for the purpose of forwarding such goods. In cases where the buyer is under an obligation to take delivery of the goods from the vendor's premises, there would not be even any need on the part of the vendor to engage any forwarding agent, nor can a person engaged for the purpose of clearing and forwarding operations, insist on procuring orders for the principal in the absence of any stipulation to that effect.

[Also see analysis of the Order](#)

[2012-TIOL-80-CESTAT-AHM](#)

**CCE, Ahmedabad Vs M/s K V Arochem Industries (Dated : November 9, 2011)**

Service Tax - Goods Transport Service - Benefit of Notification - Declaration on consignment note - 75% abatement of freight charges - Service receiver availed 75% abatement on freight charges without a declaration on the consignment note that the transporter has not availed cenvat credit on inputs or capital goods as provided in the Circular issued by CBEC. Instructions issued in the Circular by the Board cannot be a mandatory condition when the notification does not have such conditions and such Circular cannot used to deny substantive rights which arise from the notification. Benefit of notification is allowed even if the service provider did not make declaration in the consignment note itself, but had made a separate declaration and the same is available with the service receiver. (Para 5)

[2012-TIOL-78-CESTAT-DEL](#)

**CCE, Allahabad Vs M/s BSNL (Dated : November 4, 2011)**

Service Tax - Service Tax paid by way of book transfer even after such manner of payment being dispensed with after BSNL becoming a company - The fact that they paid service tax through a mode which was permissible earlier but was not permissible from 1.11.2000, cannot be a very serious matter considering that it is a procedural matter and not a substantive matter - Order of the adjudicating authority holding that amount already paid is no payment at all and therefore, such payment has to be made for a second time, is not a reasonable order - No error in the order of the Commissioner (Appeals) remanding the issue for re-examination.

[2012-TIOL-73-CESTAT-MUM](#)

**UTI Technology Services Ltd Vs CST, Mumbai (Dated : November 21, 2011)**

Appellant undertaking the service of issue of PAN card to applicants and collecting charges for the same – levy and collection of Income Tax is a sovereign function and issue of PAN cards is in relation to such function – not leviable to ST under the category of BAS – services of up-gradation of information technology systems and operations of EPFO and DCA is not “Management Consultant Services” but “Information Technology Service” and chargeable to ST from 16.05.2008 – Demand of Rs.3.69 Crores unsustainable – Appeal allowed with consequential relief : CESTAT [ para 6, 6.3 ]

[Also see analysis of the Order](#)

[2012-TIOL-72-CESTAT-AHM](#)

**M/s Darshan Tours Vs CCE, Ahmedabad (Dated : November 11, 2011)**

Service Tax - Rent-a-cab Service - Demand - Stay / Dispensation of pre-deposit - The service provider claims that service tax is not payable as the vehicles provided were of capacity of more than 12 passengers; vehicles were provided on kilometer basis; and services were provided on behalf of another travel agent who paid the service tax. However, no evidence produced to substantiate the claim. Service provider directed to make pre-deposit of service tax. (Para 6)

[2012-TIOL-67-CESTAT-BANG](#)

**M/s VST Industries Ltd Vs CC, CCE & ST , Hyderabad (Dated : August 30, 2011)**

Service Tax – Eligibility of CENVAT Credit of service tax paid on farmer advisory services for better tobacco cultivation – Services utilized to advise farmers for production of good quality tobacco to be used in manufacture of quality cigarettes – For production of good quality tobacco, tobacco seeds supplied to farmers free of cost and necessary supervisory and advisory services availed for farmers in relation to cultivation of tobacco – Cost of rendering services to farmers included in value of final products manufactured and not recovered from farmers – Nexus exists between services utilized for production of good quality tobacco which is consumed for manufacture of good quality cigarettes – Services used directly or indirectly in the manufacture of cigarettes to qualify as ‘input services’ under Rule 2(1) of CENVAT Credit Rules, 2004 – Impugned order set aside – Rule 2(1) of CENVAT Credit Rules, 2004

[Also see analysis of the Order](#)

[2012-TIOL-66-CESTAT-MUM](#)

**Vikram Sponge Iron Ltd Vs CCE, Raigad (Dated : September 30, 2011)**

Cenvat Credit of service tax - Appellant engaged in the business of manufacture of hot briquetted iron and sponge iron - Service availed by the appellants are maintenance, repairs, technical inspection, survey, manpower recruitment, cleaning etc of their tugs and barges, vessels, service tax paid on ship fees paid to the port authorities, mobile phones, insurance companies, rent a cab services - by earlier order dated 20.1.2010, issue stands settled as Bench has not allowed Cenvat credit in respect of the aforesaid services by holding that these are not services connected to the manufacture of the goods – said order challenged before High Court but no stay granted – Credit not available: CESTAT. [para 13]

Appellants not entitled to Cenvat Credit in respect of the canteen services when they have already recovered the charges for the services from their workers - CCE, Nagpur vs Ultratech Cement Ltd ([2010-TIOL-745-HC-MUM-ST](#)) relied upon. [para 14]

[2012-TIOL-57-CESTAT-AHM](#)

**M/s Punjab Automobiles Vs CST, Ahmedabad (Dated : November 4, 2011)**

Service Tax - Authorised Service Station - Business Auxiliary Service - Incentives from Insurance Companies - Service Tax along with interest paid before issue of SCN - Penalty under Section 76 - If an assessee pays the service tax as soon as advised to do so, it would show his bonafide belief and therefore provisions of Section 73(3) can be invoked and no penalty is imposable under Section 76 and Section 78 of Finance Act, 1994. Further, the circular issued by the Board on 03.10.07 also provides that where an assessee pays the service tax with interest, no further action need to be taken. In this case, the service provider has paid even the penalty and is not even challenging the same. Under these circumstances, it is a fit case for waiver of penalty imposed under Section 76 of Finance Act, 1994 by invoking the provisions of Section 80 of Finance Act, 1994. (Para 4)

[2012-TIOL-56-CESTAT-BANG](#)

**M/s Heera Overseas (P) Ltd Vs CCE, Bangalore (Dated : August 19, 2011)**

Service Tax – Tax paid on C & F Agent's service availed for clearance of final product from factory to port for export eligible as CENVAT Credit – As appeal succeeds on merits, time bar issue not examined – Impugned order set aside – Rule 3 of CENVAT Credit Rules, 2004

[2012-TIOL-51-CESTAT-DEL](#)

**M/s KPH Dream Cricket (P) Ltd Vs CCE, Chandigarh (Dated : December 7, 2011)**

Service Tax – Stay/Dispensation of pre -deposit – Demand of service tax on amount received from BCCI by the appellant who is a franchisee of IPL - As the payments received are towards share of central receipts for Media Rights and other income and neither party is providing service to the other, prima facie case has been made out for waiver of pre -deposit.

Demand of service tax under Section 66A on the amounts paid to foreign players and on brokerage paid to commission agent in Sri Lanka – No prima facie case made out for waiver of pre-deposit.

Demand of CENVAT credit on account of exempted service of selling tickets for each match and organizing the matches – No prima facie case made out for waiver of pre-deposit – Rule 6(1) of the CENVAT Credit Rules, 2004 – Rs 28 lakhs ordered to be deposited.

[Also see analysis of the Order](#)



[2012-TIOL-50-CESTAT-AHM](#)

**CCE, Vapi Vs M/s ITW India Ltd (Dated : November 15, 2011)**

Service Tax - CENVAT - GTA - Outward Transportation - In the definition of 'input service' the term 'upto the place of removal' is substituted by 'from the place of removal' w.e.f 01.04.2008. In view of the amendment, notwithstanding the decision of the Tribunal in the case of M/s. ABB Ltd. Vs. CCE Bangalore ( [2009-TIOL-830-CESTAT-BANG-LB.](#) ), the issue needs to be re-looked afresh. Matter remanded to the original authority for denovo adjudication. (Para 2 & 3)

[2012-TIOL-49-CESTAT-AHM](#)

**M/s Halcyon Labs Pvt Ltd Vs CST, Ahmedabad (Dated : November 28, 2011)**

Service Tax - Refund of service tax of terminal handling charges - Review of Refund Order - Demand of interest under Review Order citing wrong Section - Show Cause Notice was issued in exercise of powers under Section 84 of Finance Act, 1994 stating that the sanction of refund was erroneous and why the same should not be demanded and recovered under the provisions of Section 73 of Finance Act, 1994. Further, the interest was demanded under Section 75 of Finance Act, 1994.

HELD - Section 75 provides for recovery of interest when the payment of Service Tax is delayed. Explanation I to Section 73(3) of Finance Act, 1994 provides for recovery of interest of erroneous refund. From the Show Cause Notice and the order, it appears that Section 75 has been wrongly applied. But, the noticee has been asked to show cause as to why the amount refunded wrongly cannot be recovered along with interest. Once the interest is payable according to the Statute, it cannot be said that any prejudice has been caused to the noticee to defend their case. Just by quoting of wrong Section of law, it cannot be said that substantive right of the Revenue or public interest can be ignored and unless the noticee is able to show that prejudice has been caused to him by relying upon the non-applicable Section, such demand cannot be set aside . (Para 5)

[2012-TIOL-42-CESTAT-BANG](#)

**M/s Sirpur Paper Mills Ltd Vs CC, CE & ST, Hyderabad (Dated : August 8, 2011)**

Service Tax – Stay/waiver of pre-deposit – Refund of pre-deposit amount of Rs. 25 lakhs sanctioned pursuant to final order of Tribunal – Adjustment of interest amount of Rs. 18.17 lakhs against refund amount set aside by Tribunal – Assessee took suo moto credit of Rs. 25 lakhs in PLA resulting in demand towards short payment of duty with interest and imposition of penalty – When department had not challenged Tribunal's order setting aside adjustment of Rs. 18.17 lakhs from refund amount, notwithstanding assessee having taken suo moto credit of refund amount, pre-deposit waived and stay granted – Section 35F of Central Excise Act, 1944 as made to applicable to Service Tax by section 83 of Finance Act, 1994

[2012-TIOL-41-CESTAT-AHM](#)

**M/s Chansama Taluka Sarvoday Mazoor Kamdar Sahakari Mandli Ltd Vs CCE, Ahmedabad (Dated : July 1, 2011)**

Service Tax - Manpower Recruitment and Supply Agency Service - Cleaning Service - Demand - Limitation - Extended period - The issue involved is precisely on interpretation of definition of 'Cleaning Activities/services'. The audit officers themselves were confused whether the activities undertaken by the appellant was covered under cleaning services or under the 'Manpower Recruitment and Supply Agency services', as seen from the audit report. Since the issue involves interpretation of relevant clauses of Finance Act, the service provider cannot be held responsible for interpreting the same in such that it could be beneficial to them. Therefore, no penalty under Section 78 of the Finance Act, 1994 is imposable as also extended period of limitation for the purpose of confirming demand is also not invocable . Appeal allowed on ground of limitation. (Para 9)

Penalty - Section 76 & 78 - Even though there was a specific amendment in the law on 10.5.2008, which provides that penalty under Section 76 and 78 of the Finance Act, 1994 can not be imposed simultaneously, the same shall also be applicable in those cases where the period of dispute is prior to the said date i.e. 10.05.2008 . (Para 6)

[2012-TIOL-40-CESTAT-AHM](#)

**Bank Of India Vs CST, Ahmedabad Corporation (Dated : November 29, 2011)**

Service Tax - Valuation - Banking and Financial Service - Inclusion of Postal Charges in value prior to 17.04.2006 - Demand - Limitation - Extended period - The service provider prior to 17.04.2006 (the date when Valuation Rules were notified) did not include the value of postal charges incurred by them for providing various service but included the same after the valuation rules were notified. The differential duty has arisen because of the interpretation of the provisions relating to valuation of the services and inclusion of various charges. It is the question of interpretation of law and when two views are possible, unless documentary evidence or evidence in any other form is available to show that there was suppression of facts or mis-declaration with intention to evade duty, extended period cannot be invoked. Appeal allowed on ground of limitation. (Para 3)

[2012-TIOL-37-CESTAT-AHM](#)

**Kishan M Mehta & Co Vs CST, Ahmedabad Bangalore (Dated : November 29, 2011)**

Service Tax - Chartered Accountant - Frequent defaults in timely payment of Service Tax and Filing of returns - Penalty - The service provider has paid Service Tax and interest and also filed returns before any reminder was issued by Revenue. Proceedings have been initiated for delayed payment and non-filing returns in time under Section 68 and 70 of the Act. As there is no suppression, this case is not covered by Section 73(4) of Finance Act, 1994, which provides that the provisions of Section 73(3) would not be applicable where there is a suppression of facts or mis-declaration etc. However, the circular issued by the Board clearly provides that there can be no proceedings under Finance Act, 1994 at all when the assessee is eligible for benefit of provisions of Section 73(3) of Finance Act, 1994. Since the issue is covered

by precedent Tribunal's decisions and Board's circular and also since the issue is covered by provisions of Section 73(3) of Finance Act, 1994, no Show Cause Notice can be issued and no proceedings should be initiated. (Para 3)

[2012-TIOL-34-CESTAT-AHM](#)

**M/s Matrix Telecom Pvt Ltd Vs CCE, Vadodara (Dated : November 16, 2011)**

**Service Tax - Services received from abroad - Demand - Extended period - Limitation - Penalty - Stay / Dispensation of pre-deposit** - The service receiver having received services from abroad was liable to pay service tax. There cannot be suppression of facts or mis-declaration etc with intention to evade duty in this case, since by not paying the Service Tax, the service provider has, in fact, lost the benefit of immediate credit and interest element and no benefit could have been derived by avoiding Service Tax in this case. The lower authorities have not indicated the nature of suppression or mis-declaration or given justification for imposition of penalty under Section 78, even though this was a point raised. Prima facie case made out for grant of stay. (Para 4)

[2012-TIOL-29-CESTAT-BANG](#)

**M/s M L Agro Products Ltd Vs CC, CE & ST, Guntur (Dated : September 5, 2011)**

Service Tax – Stay/waiver of pre-deposit – BAS – Eligibility of benefit under Notification No. 14/2004-ST in r/o processing of tobacco – Exemption benefit available in r/o processing of tobacco in terms of Board Circular No. 143 dated 26.05.2011

GTA Service – Liability of service tax on payments made to truck owners – Truck owners are not goods transport agents

Pre-deposit waived and stay granted – Section 35F of Central Excise Act, 1944 as made applicable to Service Tax vide section 83 of Finance Act, 1994

[2012-TIOL-28-CESTAT-BANG](#)

**M/s Karnataka Commercial And Industrial Corporation Pvt Ltd Vs CCE, Bangalore (Dated : September 13, 2011)**

Service Tax – Stay/waiver of pre-deposit – Airport services – Appellant already paid an amount of Rs. 3.61 crores out of a total demand of Rs. 4.00 crores – As sizeable amount of tax dues are deposited, pre-deposit of balance amounts waived and recovery stayed – Section 35F of Central Excise Act, 1944 as made applicable to Service Tax vide section 83 of Finance Act, 1994

[2012-TIOL-27-CESTAT-BANG](#)

**M/s Schneider Electric India Pvt Ltd Vs CST, Bangalore (Dated : September 9, 2011)**

Service Tax – Refund – Stay/waiver of pre-deposit – Export of ITSS and claim of refund of input tax credits under Rule 5 of CCR, 2004 – Denial of refund of credit availed prior to the date of registration – It is not in dispute that service tax on output service provided by appellant was effective from 16.05.2008 and Rules permitted registration within 30 days from the date of introduction of levy – Once service tax is leviable from 16.05.2008, prima facie it is incorrect to deny benefit of credit on input services utilized from that date – Pre-deposit waived and recovery stayed – Rule 5 of CENVAT Credit Rules, 2004 read with Rule 4(1) of Service Tax Rules, 1994 – Section 35F of Central Excise Act, 1994 as made applicable to Service Tax vide section 83 of Finance Act, 1994

[2012-TIOL-26-CESTAT-MUM](#)

**M/s Texport Industries Pvt Ltd Vs CST, Mumbai (Dated : August 4, 2011)**

Letter of credit is opened by the bank only on the instructions of the customers – merely because there is no written agreement entered into by the exporter with the buyer of the goods, benefit of refund under notification 41/2007-ST cannot be denied - liberal view has to be taken while interpreting the notification so as to reduce the cost of goods exported – settled principle that taxes cannot be exported: CESTAT

[Also see analysis of the Order](#)

[2012-TIOL-25-CESTAT-BANG](#)

**M/s Aspinwal & Co Ltd Vs CCE, Mangalore (Dated : June 30, 2011)**

Service Tax - Valuation - Inclusion of certain amounts in gross value of taxable services - Submission of evidences by appellant before Appellate Commissioner not considered and no findings recorded - Matter remanded for consideration of issues afresh - Impugned order set aside without expressing any opinion on merits - Section 67 of Finance Act, 1994

[2012-TIOL-22-CESTAT-AHM](#)

**CCE, Vapi Vs M/s Guardian Plasticote Ltd (Dated : August 23, 2011)**

Service Tax – GTA – Outward Transport – Credit allowed prior to 1.4.2008: High Court of Karnataka in the case of ABB Limited -- [2011-TIOL-395-HC-KAR-ST](#), while deciding the tax appeal has held that cenvat credit of service tax paid on Goods Transport Agency service prior to 01.4.2008 is admissible and restriction of credit up to the place of removal would be admissible only after 01.4.2008. Further, the High Court of Gujarat has also taken a similar view in the decision rendered in the case of Parth Poly Woven Pvt. Limited dated 06.04.2011 . [ para 2]

[2012-TIOL-19-CESTAT-BANG](#)

**Wadpack Pvt Ltd Vs CCE, Bangalore (Dated : September 23, 2011)**

Appeals – Relevant provisions for filing of appeal before CESTAT – CENVAT Credit is available to assessee, who may be a manufacturer or a service provider or both, as common kitty from CVD on import of inputs/capital goods, service tax paid on input services and excise duty paid on inputs/capital goods – In case where assessee pays only excise duty, a dispute relating to CENVAT credit should be treated as dispute under excise matters and appeals should be registered as excise appeal – If an assessee is only a service provider utilizing common CENVAT credit for payment of service tax alone, appeal relating to dispute of CENVAT credit may be treated as service tax appeal – In a case where assessee pays excise duty as well as service tax, for administrative convenience, appeal relating to dispute involving CENVAT credit should be treated as appeal under Central Excise – Registry directed to do the needful – Section 35B of Central Excise Act, 1944 and Section 86 of Finance Act, 1994

[2012-TIOL-14-CESTAT-BANG](#)

**CCE, Mysore Vs M/s Bhoruka Aluminium Ltd (Dated : September 2, 2011)**

Service Tax – Eligibility of CENVAT Credit of service tax paid on outdoor catering service - Provision of food to employees through canteen facility by outdoor caterers – Assessee to show that they had a statutory obligation under Factories Act to provide canteen facility to their employees – If this obligation is fulfilled, assessee can claim outdoor catering service as 'input service' – Original authority did not have occasion to verify the strength of employees in assessee's factory as it proceeded on the premise that outdoor catering service was not covered by definition of 'input service' – High Court judgment in Stanzen Toyetetsu India (P) Ltd [2011-TIOL-866-HC-KAR-ST](#) followed – Orders of lower authority set aside, matter remanded to original authority with direction to decide substantive issue and limitation issue following principles of natural justice – Rule 2(l) of CENVAT Credit Rules, 2004

[2012-TIOL-13-CESTAT-BANG](#)

**Hindustan Coca Cola Beverages Pvt Ltd Vs CC, CE & ST, Hyderabad (Dated : August 12, 2011)**

Service Tax – Eligibility of CENVAT Credit in r/o Group Insurance service no longer res integra , dispute resolved in assessee's own case [2010-TIOL-160-CESTAT-BANG](#) which was not appealed against by Revenue – Dispute does not survive – Rule 2(l) of CENVAT Credit Rules, 2004

Eligibility of CENVAT Credit in r/o GTA service – Issue no longer res integra , settled in favour of assessee by High Court judgment in ABB Ltd [2011-TIOL-395-HC-KAR-ST](#) – Rule 2(l) of CENVAT Credit Rules, 2004

[2012-TIOL-12-CESTAT-BANG](#)

**M/s J K Tyre & Industries Ltd Vs CCE, Mangalore (Dated : September 9, 2011)**

Service Tax - Eligibility of CENVAT Credit of service tax paid on GTA service availed for outward transportation of final products – Issue no longer res integra - CENVAT Credit available on outward transportation from the place of removal for the period prior to 01.04.2008 - Order of lower authority denying credit unsustainable, set aside - Rule 2(l) of CENVAT Credit Rules, 2004

[2012-TIOL-09-CESTAT-BANG](#)

**M/s Mysore Polymers & Rubber Products Pvt Ltd Vs CCE, Mangalore (Dated : August 9, 2011)**

Service Tax – Eligibility of service tax paid on GTA service availed for outward transportation – CENVAT Credit of service tax paid on GTA service available for outward transportation from place of removal prior to 01.04.2008

C & F Agent's service – Eligibility of CENVAT Credit of service tax paid on C & F Agent's service – Lower appellate authority's subsequent O-I-A in favour of assessee relying on Tribunal decision in Metro Shoes ([2008-TIOL-417-CESTAT-MUM](#)) accepted by Revenue – Earlier O-I-A of lower appellate authority which gave contrary decision to assessee set aside

[2012-TIOL-08-CESTAT-BANG](#)

**M/s Kar Mobiles Ltd Vs CCE, Bangalore (Dated : September 2, 2011)**

Service Tax – Eligibility of CENVAT Credit of service tax paid on imported technical know how – Technical knowhow imported under license agreement for use in manufacture of automobile parts – Service tax paid on royalty paid for technical knowhow by reverse charge mechanism and availment of CENVAT Credit thereof – Denial of CENVAT Credit on the ground that importation of technical knowhow not covered by definition of input service and levy of mandatory penalty invoking section 11AC – When assessee seeks to establish importation of technical knowhow constituted input service viz., IPR service, it is incumbent on them to produce copy of license agreement – Nexus between manufacture of automobile parts and import of technical knowhow to be examined by original authority with reference to terms and conditions of agreement – Matter remanded to original authority – Rule 2(l) of CENVAT Credit Rules, 2004, Rule 15 of CENVAT Credit Rules, 2004 read with Section 11A and 11AC of Central Excise Act, 1944

[2012-TIOL-07-CESTAT-MAD](#)

**Jayadasa Engineering & Exports P Ltd Vs CST, Chennai (Dated : August 26, 2011)**

Service Tax – Demand based on the difference between the figures shown in the Balance Sheet and the ST 3 returns – The explanation offered by the assessee that the Balance Sheet is prepared on accrual basis is required to be considered by the adjudicating authority – Matter remanded.

Penalty - The adjudicating authority has extended the shelter under Section 80 of the Finance Act, 1994 and dropped the proceedings for penalty under Section 76 - Having held that there was reasonable cause, he could not have imposed penalty under Section 78 – Penalty under Section 78 is set aside.

[2012-TIOL-03-CESTAT-BANG](#)

**CST, Bangalore Vs M/s Goetze TP (India) Ltd (Dated : August 12, 2011)**

Service Tax – Levy of service tax for receipt of clearing and forwarding charges for the period from 16.07.1997 to 31.08.1999 – For issuance of show cause notice for violation of s. 71A, provisions of s. 73 were amended from 10.09.2004 only – When provisions of s. 71A are not incorporated in s. 73, no demand can be raised for the violation of the same – In the instant case, SCN issued on 22.04.2004, i.e. prior to amendment of s. 73, not sustainable – Revenue appeal devoid of merits

[2012-TIOL-02-CESTAT-MUM](#)

**M/s Vidyut Metallies Pvt Ltd Vs CCE, Mumbai (Dated : September 30, 2011)**

Service charges to the Customs House Agents for clearing and forwarding services provided by them for export of goods to the foreign countries is an Input Service