

CESTAT RULING

[2011-TIOL-184-CESTAT-MAD](#)

Bonfiglioli Transmissions Private Ltd Vs CCE, Chennai (Dated: November 8, 2010)

Central Excise – CENVAT Credit – Manufacture of dutiable and exempted goods – demand of 10% amount – Matter remanded in view of the retrospective amendment to CENVAT Credit Rules vide Finance Act, 2010.

[2011-TIOL-183-CESTAT-MAD](#)

M/s A&S Textiles Ltd Vs CCE, Trichy (Dated: November 9, 2010)

Central Excise – Limitation - Both the lower authorities have given concurrent findings that the appellants had not filed necessary declaration in respect of the marketing pattern under Rule 173C of the Central Excise Rules, 1944 though they were required to declare their pattern of sale/disposal through depot/consignment agents – Invoking extended period and penalty under Section 11 AC is upheld.

[2011-TIOL-177-CESTAT-DEL](#)

M/s HEG Ltd Vs CCE, Raipur (Dated: October 21, 2010)

Central Excise – CENVAT Credit - Group accident insurance, Group medical insurance, Group maintenance service, Telephone service and Repairs and maintenance of street lights within the factory premises are eligible for CENVAT Credit – Rule 2(l) of the CENVAT Credit Rules 2004.

[2011-TIOL-176-CESTAT-MUM](#)

Micropure Parenterals Pvt Ltd Vs CCE, Thane (Dated: December 8, 2010)

Samples drawn of manufactured goods and retained in factory for testing purposes in case complaints are received in future – no cause for payment of Central Excise duty

[Also see analysis of the case](#)

[2011-TIOL-173-CESTAT-MUM](#)

UNI Deritend Ltd Vs CCE, Mumbai (Dated: November 25, 2010)

Appellant receiving the goods from supplier and after carrying tests on the same found it to be in order as per the description shown in the invoice and used the same in manufacture of goods which were cleared on payment of duty - allegation that goods covered under the invoice were diverted not sustainable - Cenvat Credit rightly availed

[Also see analysis of the case](#)

[2011-TIOL-169-CESTAT -MUM](#)

Century Rayon Vs CCE, Thane (Dated: November 26, 2010)

Cenvat credit availed on packing material – goods rejected by customer – old packing material scrapped and disposed of – Credit reversal sought – appellant not able to establish that transactions completed in terms of rule 16 of CER, 2002 – Application dismissed

[Also see analysis of the case](#)

[2011-TIOL-168-CESTAT -MAD](#)

M/s TVS Motor Co Ltd Vs CCE, Chennai (Dated: November 9, 2010)

Central Excise – Stay/Dispensation of pre -deposit – CENVAT Credit on service tax paid on services rendered for financing the sale of two wheelers to ultimate customers is prima facie not a dismissible for credit as the services were rendered at the point of second sale – 50% of the amount ordered to be pre-deposited.

[2011-TIOL-167-CESTAT -BANG](#)

CCE, Visakhapatnam Vs M/s Rashtriya Ispat Nigam Ltd (Dated: September 29, 2010)

Central Excise – Eligibility of CENVAT credit on acetylene gas, coal tar pitch, pig iron, steel scrap etc used in factory and workshop of assessee - Order passed by Appellate Commissioner allowing credits without discussing issues regarding eligibility of credits item wise, not a speaking order, liable to be set aside – Grounds of appeal filed by Revenue also does not reflect issues raised in SCN – Matter remanded to Appellate Commissioner with a direction to pass speaking order

[2011-TIOL-162-CESTAT -MUM](#)



CCE, Mumbai Vs Bajaj Auto Ltd (Dated: December 9, 2010)

Cenvat Credit - LPG which is used to run the Canteen maintained for workers under the Factory Act, 1948 is an input under the CCR, 2004

[Also see analysis of the case](#)

[2011-TIOL-161-CESTAT-BANG](#)

M/s Fitwel Tools & Forgings Pvt Ltd Vs CCE, Bangalore (Dated: September 15, 2010)

Central Excise – Duty paid on inputs used in manufacture of moulds and dies captively used for further manufacture of final products viz., forgings on job work basis, eligible as CENVAT credit

[2011-TIOL-160-CESTAT-MAD](#)

M/s Lakshmi Machine Works Ltd Vs CCE, Coimbatore (Dated: August 18, 2010)

Central Excise – CENVAT Credit – Excess credit taken inadvertently, reversed on their own detection by the appellants – Demand of interest of Rs 10,614/- set aside as the assessee had sufficient balance in CENVAT credit account - CENVAT credit 'taken or utilised' in Rule 14 of the CENVAT Credit Rules 2004 should be read as CENVAT credit "taken and utilised" for the purpose of demand of interest.

[2011-TIOL-154-CESTAT-MUM](#)

Ultra Tech Cement Ltd Vs CCE, Nagpur (Dated: July 28, 2010)

Once the assessee is entitled to take credit in relation to the duty paid on the inputs or capital goods, merely because there is some infirmity observed in the document on which the credit is sought to be availed, that cannot be a justification for denying the credit availed on Supplementary invoices issued by service providers – Prima facie case – Stay granted of Rs.1.96 Crores

[Also see analysis of the case](#)

[2011-TIOL-153-CESTAT-DEL](#)

M/s Harmony Systems Vs CCE, Delhi (Dated: November 3, 2010)

Central Excise – Stay/Dispensation of Pre -deposit – Suppression of value of clearances by small scale unit by using parallel set of invoices – Plea that the goods cleared to EOU are to be excluded is prima facie not acceptable as for availing exemption under Notification No 22/2003 CE, conditions attached to the Notification should be strictly complied with – Pre -deposit of entire duty ordered.

[2011-TIOL-152-CESTAT -DEL](#)

M/s Srinathji Ispat Ltd Vs CCE, Ghaziabad (Dated: July 1, 2010)

Central Excise – CENVAT Credit – Shapes and Sections used for fabricating moulds are not covered under the definition of capital goods – Denial of credit is upheld – Penalty reduced.

[2011-TIOL-149-CESTAT -MAD](#)

M/s GTN Engineering (I) Ltd Vs CCE, Coimbatore (Dated: August 13, 2010)

Central Excise – Refund of unutilized CENVAT Credit under Rule 5 of the CENVAT Credit Rule 2004 - While admitting that the appellants have exported goods during the six quarters, the entire claims for refund of CENVAT credit should not have been denied on the ground that the documents have not been produced.

Limitation under Section 11 B whether applicable to refunds under Rule 5 - The credit accumulated in CENVAT credit account is not duty paid by the exporter - Only when the credit is debited towards duty payable it will amount to payment of duty - Section 11B clearly refers to refund of duty paid – Limitation under Section 11 B is not applicable – Matter remanded.

[2011-TIOL-145-CESTAT -AHM](#)

M/s Lanxess Abs Ltd Vs CCE, Vadodara (Dated: June 24, 2010)

Central Excise – CENVAT Credit in respect of services used at the site of wind turbine distributed to factory – Appellants contest only on limitation - Longer period of limitation can be invoked only when there is positive suppression or mis-statement on the part of the assessee - The credit, in the present case, was availed by the appellant on the basis of statutory documents and with the knowledge of the department – Major part of the demand is hit by limitation – Matter remanded for re-quantification - Penalty cannot be imposed.

[2011-TIOL-144-CESTAT -AHM](#)

M/s Kanoria Chemicals & Industries Ltd Vs CCE, Surat (Dated: June 21, 2010)

Central Excise – Valuation – Inclusion of customs duty component in the assessable value in respect of goods cleared against invalidation of the Advance Release order issued to the buyer – Since there is no appeal by the revenue against the Commissioner (Appeals) findings on time bar, demand has to be set aside. Central Excise – Valuation – Inclusion of customs duty component in the assessable value in respect of goods cleared against invalidation of the Advance Release order issued to the buyer – Since there is no appeal by the revenue against the Commissioner (Appeals) findings on time bar, demand has to be set aside.

[2011-TIOL-143-CESTAT-AHM](#)

M/s Pigeon Latex Pvt Limited Vs CCE, Surat (Dated: October 1, 2010)

Central Excise – Clandestine removal of goods by resorting to issue of parallel invoices - There is no dispute that parallel invoice book has been recovered from the appellant's premises - Authorised signatory admitted removal of goods under these invoices without payment of duty. Transporters admitted transport of goods without invoices and under the delivery challans only - The Central Excise assessee is required to issue invoices as per the provisions of Rules and therefore, the burden to show as to how the parallel set of invoice book was available and parallel invoices falls on the appellants – Demand of duty and penalty upheld – Invocation of extended period is also upheld - Demand based solely on the Lorry Receipts with overwriting / omissions of number / date is set a side.

[2011-TIOL-141-CESTAT-BANG](#)

Mr N P Khalid, Proprietor Vs CCE, Calicut (Dated: July 7, 2010)

Central Excise - Manufacture and clearance of plywood sheets using brand name of another person and allegation of under valuation - Allegation of under valuation based on same evidences gathered to demand duty from sister company which was subsequently dropped by Tribunal - Duty demand not sustainable in the absence of any other corroborative evidences - Demand of duty by denying benefit of Notification No. 01/93-CE alleging usage of brand name of another person entirely on presumption of such usage without any corroborative evidences, not sustainable

[2011-TIOL-138-CESTAT-AHM](#)

CCE, Ahmedabad Vs M/s CTM Textile Mills (Dated: October 15, 2010)

Central Excise – CENVAT Credit – Transfer of deemed credit to CENVAT account after rescinding the deemed credit scheme - There is virtually no difference between deemed MODVAT credit and MODVAT credit except that one is a vailed on the basis of documents showing duty payment on inputs and the other can be availed on the deemed basis that all the inputs are presumed to be duty paid – No infirmity in the order of Commissioner (Appeals).

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| 2011-TIOL-133-CESTAT-DEL |
| J B Mangharam Foods Pvt Ltd Vs CCE, Indore (Dated: July 12, 2010) |
| Central Excise – Manufacture of dutiable and exempted goods – Demand of 10% amount under Rule 6 - The finding of the Commissioner that the only remedy is under Rule 6(3)(i) of the said Rules and thereby to pay the amount equal to 10% of the value of the exempted goods is not correct. Sub-rule (3) of Rule 6 clearly gives option to the manufacturer in this regard and once the said option is given, it will be for the manufacturer to make the choice – Matter remanded. |
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| 2011-TIOL-132-CESTAT-DEL |
| Hindustan Zinc Ltd Vs CCE, Jaipur (Dated: August 11, 2010) |
| Central Excise – CENVAT Credit on landline telephone installed at a place other than factory premises – No effort was made to find out if any of the calls related to the activities enumerated in Rule 2 (I) of the CENVAT Credit Rules, 2004 – No verification was done with Income tax to find out whether the amount was disallowed – Credit cannot be disallowed. |
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| 2011-TIOL-131-CESTAT-DEL |
| CCE, Ludhiana Vs M/s APS Associates Pvt Ltd (Dated: April 27, 2010) |
| Central Excise – Penalty - Compounded levy scheme under Rule 96 ZO (3) – Failure to pay duty by due date would attract penalty equal to the duty - The expression "outstanding amount of duty" refers to whole of the amount falling due and payable for every month - The penalty will have to be considered on the basis of the duty liability which falls due and payable - Merely because part of the duty is paid subsequently it will not amount to full and final discharge of liability as regards the obligation to suffer the penalty for failure to comply with the obligation under the said scheme – Penalty amount as imposed by the original authority is restored. |
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| 2011-TIOL-130-CESTAT-DEL |
| CCE, Ghaziabad Vs M/s Hindon Forge Pvt Ltd (Dated: April 12, 2010) |
| Central Excise – CENVAT credit of Special Excise Duty availed in respect of re-exported goods which is not admissible – Amount paid before issue of Show cause notice – Penalty reduced by the Commissioner (Appeals) by invoking Section 11A(2B) – Since the Commissioner (Appeals) upheld the extended period, there is no discretion to reduce penalty – Matter remanded. |

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| 2011-TIOL-126-CESTAT-DEL |
| M/s Western Coalfields Ltd Vs CCE, Kolkata (Dated: August 3, 2010) |
| <p>Central Excise – Refund of duty paid on capital goods – Doctrine of unjust enrichment is applicable even for capital goods – Merely because the capital goods were used in the manufacture of non-excisable goods, it would not in any manner lead to presumption that the duty paid on the inputs or capital goods were not included in the cost of the final product.</p> <p>Whether unjust enrichment is attracted when the price is fixed by the Government - The price fixation of the coal of different grades nowhere discloses that the Government had either excluded the duty element in relation to the inputs or the capital goods nor it discloses inclusion thereof - It is difficult to accept the contention sought to be canvassed on behalf of the appellants that the price fixation by the Government did not include consideration of the duty element in relation to the capital goods used in the coal mining or coal handling operation.</p> <p>Loss Vs unjust enrichment - There is no presumption that every assessee who suffers loss do not pass on the duty burden to the consumers of that product - Merely because the manufacturer is Government or Government company, there can be no exception to the said rule.</p> <p>No justification to interfere with the order of the lower authority rejecting the refund.</p> |
| Also see analysis of the case |
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| 2011-TIOL-121-CESTAT-BANG |
| M/s Shapoorji Pallonji & Co Ltd Vs CCE, Bangalore (Dated : October 29, 2010) |
| Central Excise – Manufacture of modular workstations/furniture at customer's site undertaken through a job worker – Duty liability if any, to be demanded from job worker only – Impugned order set aside |
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| 2011-TIOL-120-CESTAT-BANG |
| M/s Velere Power India Pvt Ltd Vs CCE, Bangalore (Dated : October 25, 2010) |
| Central Excise – Manufacture – Processes like hi-pot test, programming, load sharing, current sharing, voltage test and burn -in test conducted on imported rectifiers does not amount to manufacture in the absence of any technical literature, duty not liable to be paid on clearances – CENVAT credit availed on imported goods more than duty liability on final products cleared, excess credit liable to be reversed - Interest liable to be paid on the amount utilized for discharging duty on clearances – Penalty equivalent to duty not leviable and extended period not invocable in the absence of suppression |

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| <p>or wilful mis -statement of facts – Penalties imposed under Rules 15(1), 15(2) of CCR 2004 and section 11AC set aside</p> |
| <p>2011-TIOL-119-CESTAT -BANG</p> |
| <p>M/s Zenith Machine Tools Pvt Ltd Vs CCE, Belgaum (Dated : April 9, 2010)</p> |
| <p>Central Excise – CENVAT credit not deniable on capital goods cleared to job worker in lieu of Rule 4(5)(a) of CCR 2004 – Credit of service tax on telephone charges and security services shared by job worker not available as CENVAT credit to principal</p> |
| <p>2011-TIOL-114-CESTAT -MAD</p> |
| <p>CCE, Chennai Vs Sakthi Industrials (Dated : October 6, 2010)</p> |
| <p>Central Excise – Classification – Water filters are not classifiable under Central Excise Tariff sub-heading 7323.10 as tableware and kitchenware as claimed by the respondent assessee – The impugned goods are rightly classifiable under 84.21.</p> |
| <p>2011-TIOL-113-CESTAT -BANG</p> |
| <p>M/s RAD-MRO Manufacturing Pvt Ltd Vs CCE, Bangalore (Dated : April 8, 2010)</p> |
| <p>Central Excise – Valuation – Clearance of PPCBs manufactured and cleared to interconnected undertaking – Evidence regarding renting of factory premises and leasing of plant & machinery to appellant and management of affairs of appellant by an employee of the other company does not suffice to hold the companies as related persons – Merely because price declared for sales to other company was mutually agreed and lower than value arrived by CAS-4 for a certain period, it cannot be concluded that there was an intention to evade duty – In case of revenue neutrality, extended period of limitation not invocable - Demand of duty and levy of penalty set aside</p> |
| <p>2011-TIOL-112-CESTAT -BANG</p> |
| <p>M/s Bhoruka Textiles Ltd Vs CCE, Mangalore (Dated : September 7, 2010)</p> |
| <p>Central Excise – Classification of polyester yarn – Yarn made out of 100% polyester waste, acrylic staple fibre etc classifiable under Chapter 55.05 and eligible for benefit of Notification No. 53/91 -CE – Matter remanded to adjudicating authority to consider this aspect and pass appropriate orders</p> |
| <p>Valuation – Inclusion of cost of packing - Cost of durable and returnable packing</p> |



excludible from assessable value irrespective of whether such packing material is actually returned or not, when terms in this regard are known to customers – Duty demand set aside

Valuation – Cash discount – Collection of extra amount by assessee from customers for clearances made on credit cannot be regarded as 'cash discount' – Includible in assessable value – Duty demand sustained

[2011-TIOL-110-CESTAT-BANG](#)

M/s Lanco Industries Ltd Vs CCE, Tirupathi (Dated : September 29, 2010)

Central Excise – CENVAT Credit availed on MS plates, angles, channels beams etc and reversed voluntarily prior to issue of SCN – Reversal of credit prior to issue of SCN not relevant for dispensing payment of interest, interest liable to be paid from date of utilization till date of reversal – Amount to be quantified by Commissioner after granting opportunity to submit relevant records and according personal hearing

Penalty – When availment of credit on impugned goods are disclosed in ER1 returns, allegation of suppression of facts not sustainable – Duty of range officer to ascertain utilization of impugned materials after scrutiny of returns – Penalty not leviable under Rule 13(2)/15(2) of CCR, 2002/2004 – Penalty levied under Rule 13(2)(15(1) of CCR, 2002/2004 sustained as this penalty is leviable for irregular availment of inadmissible CENVAT Credit

[2011-TIOL-108-CESTAT-MAD](#)

CCE, Madurai Vs M/s Servalakshmi Paper And Boards Pvt Ltd (Dated : September 15, 2010)

Central Excise – Refund – Limitation - The amount in dispute was paid by the assessee pending finalisation of the show-cause notice and the lower appellate authority has rightly held that the payment has to be treated as pre-deposit in respect of which time-limit provided under Section 11B of the Central Excise Act is not attracted.

[2011-TIOL-104-CESTAT-DEL](#)

M/s Xerox India Ltd Vs CCE, Meerut (Dated : November 30, 2010)

Central Excise - Manufacture - the appellants imported various parts/modules/accessories of Digital Multi Functional Printers, Copiers and Photo Copiers -cum Printers depending upon the purchase orders received from customers. The same were imported either in one consignment or in split packings comprising of various parts/modules/accessories and also procured some indigenously manufactured components. The same were stored in the approved warehouse at Rampur, where kitting activities were undertaken and such activities included assembling of all the components with the use of not only the imported parts/modules but also the indigenous components and accessories including pin-top, software, RAM, Stabilizers

etc , as per the requirement and configuration given by the customers. On completion of kitting activities, the goods were dispatched to the customers site, where they were installed. The kitting activity was an essential function to make the machine operational, and the modules and parts were not of the nature which could render the function independently which a complete machine could perform on being assembled with necessary modules and parts. Activity amounts to manufacture.

Central Excise - Jurisdiction : It is settled law that when a cause of action in relation to offendable incident or in relation to series of activities which are offendable or the violation of the provisions of law arises within the jurisdiction of different investigating officers or adjudicating officers, every such officer will have jurisdiction to investigate and or adjudicate upon such offence or violation arising in all such territories.

Abatement of CENVAT credit from Duty Demand : In case of claim of cenvat credit and abatement of duty on that count, nothing prevent the appellants from bringing this aspect to the notice of the concerned authority and justify the same in accordance with provisions of law at the appropriate stage and in appropriate proceedings, including in the proceedings for recovery of amount demanded under the impugned order.

[Also see analysis of the Order](#)

[2011-TIOL-103-CESTAT-MAD](#)

CCE, Madurai Vs M/s Sundaram Industries Ltd (Dated : August 16, 2010)

Central Excise – Refund of excess education cess paid on stocks lying at depots as on 09.07.2004 – Contention of the revenue that the refund claim was time barred by taking the date of filing as the date on which the original TR 6 Challan was submitted to the department is not sustainable – No infirmity in the order of the Commissioner (Appeals) in allowing the appeal of the assessee on time bar aspect – Without going into the controversy on the power to remand by the Commissioner (Appeals), matter remanded to the original authority.

[2011-TIOL-98-CESTAT-MAD](#)

CCE, Salem Vs M/s Hindustan Lever Ltd (Dated : October 12, 2010)

100% EOU – Goods cleared in DTA – Benefit on exemption under Notification 2/95 CE cannot be denied on the ground that the fresh Mushrooms cleared in DTA are different from the Processed Mushrooms exported – Benefit of Notification is admissible as the goods cleared in DTA are similar to the goods exported.

[2011-TIOL-97-CESTAT-MAD](#)

M/s Ooms Polymer Modified Bitumen (P) Ltd Vs CCE, Chennai (Dated : September 20, 2010)



Central Excise – Stay/Dispensation of Pre -deposit – Process of adding Polymers to Bitumen and heating the mixture whether amounts to manufacture – Prima facie, the assessee has made out a strong case for waiver of pre -deposit.

[2011-TIOL-96-CESTAT-MAD](#)

M/s Habasit Lakoka P Ltd Vs CCE, Coimbatore (Dated : October 6, 2010)

Central Excise – Valuation – Amount collected for New Year Diaries supplied to the dealers is not includible in the assessable value for payment of excise duty.

[2011-TIOL-91-CESTAT-MAD](#)

CCE, Madurai Vs Raja College Of Engineering & Technology (Dated : October 13, 2010)

Central Excise – Exemption under Notification No 167/71 CE dated 11.9.1971 to computers assembled in the course of imparting training to the college students – No evidence on record that the computers were not assembled during the course of imparting training – Revenue appeal has no merit.

[2011-TIOL-90-CESTAT-MAD](#)

M/s Tyco Sanmar Vs CCE, Trichy (Dated : August 20, 2010)

Central Excise – CENVAT Credit – Landscaping Service cannot be treated as input service for manufacture of safety valves – Pest Control and Rodent control services are eligible for credit.

[2011-TIOL-88-CESTAT-MUM](#)

Unichem Laboratories Ltd Vs CCE, Mumbai (Dated : November 12, 2010)

Remission of duty - Appellant reversing Cenvat credit and filing application for remission of C.Ex duty - later claiming refund based on CESTAT LB decision in Grasim Industries [[2007-TIOL-135-CESTAT-DEL-LB](#)] and before passage of order by the Commissioner granting remission of duty - such claim cannot be denied on the ground that the order of the Commissioner laying down reversal of Credit has not been challenged - Matter remanded

[Also see analysis of the Order](#)

[2011-TIOL-87-CESTAT-MUM](#)

CCE, Nagpur Vs Rajesh Mohanlal Sharma (Dated : November 25, 2010)

Second show-cause notice dated 04.06.08 issued on identical/similar facts of the first show-cause notice cannot be sustained in the eyes of the law invoking extended period of limitation on account of suppression of facts – SC decision in Nizam Sugar Factory vs. CCE. AP - ([2006-TIOL-56-SC-CX](#)) relied upon – Revenue appeal rejected.

[2011-TIOL-86-CESTAT-MAD](#)

M/s Church's Auxiliary For Social Action (CASA) Vs CCE, Pondicherry (Dated : September 23, 2010)

Central Excise – Exemption under Notification No 32/2005 CE dated 17.8.2005 for steel and cement used in construction of Tsunami affected areas – No infirmity in the order of the lower authority in restricting the refund under Notification to the duty actually paid – Amount of 6% of the cost of construction or Rs 9,000 per house is only the maximum refund admissible, but not the amount of refund under the notification.

[2011-TIOL-78-CESTAT-MUM](#)

M/s Hindustan Coca Cola Beverages Pvt Ltd Vs CCE, Pune (Dated : November 18, 2010)

Original invoice on which duty has been paid was cancelled - since the goods were not moved from their factory, refund claim was filed for the duty already paid – however, original invoice mis-placed - lower appellate authority has rightly rejected the refund claim for non production of original invoice which is a necessary document to sanction the refund claim – Appeal rejected.

[2011-TIOL-77-CESTAT-MUM](#)

CCE & CST, Aurangabad Vs M/s Vaidyanath SSK Ltd (Dated : November 24, 2010)

Fact that stock of sugar was found in excess does not confirm the allegation that the same was meant to be clandestinely removed in the absence of corroborative evidence - When the assessee has explained the reasons for excess stock, the onus lies on the department to contact the respective buyers and enquire whether they have lifted the stock or not – investigation not done by the preventive party in this regard – confiscation rightly set aside by appellate authority – Revenue appeal rejected.

[2011-TIOL-75-CESTAT-MAD](#)

M/s Indian Oil Corporation Ltd Vs CCE, Coimbatore (Dated : September 23, 2010)

Central Excise – Valuation – Delivery charges and road freight subsidy charges are not includable in the assessable value – Matter remanded to examine adoption of higher price at the Company Owned Company Operated retail outlets.

[2011-TIOL-72-CESTAT-BANG](#)

CCE, Bangalore Vs M/s Electronics & Controls Power Systems Pvt Ltd (Dated : September 14, 2010)

Central Excise – Valuation – Cost of batteries which are bought out items from local market and cleared as part of UPSS at branches/sales offices not includable in assessable value – No allegation in SCN that sales/branch offices are an extension of factory and part of manufacturing process were completed in branch/sales offices – Goods to be assessed in the form they are cleared from factory – Tribunal's decisions in other cases of same assessee, wherein battery was an integral part of UPSS in the form it was cleared from the factory, not applicable in instant case – No merits in Revenue appeal

[2011-TIOL-68-CESTAT-MAD](#)

CCE, Chennai Vs M/s Foxconn India Private Ltd (Dated : August 18, 2010)

Central Excise – Refund of CENVAT Credit under Notification No 40/2007 ST relating to services used in goods exported – Time limit under Section 11B is not applicable – No infirmity in the order of the lower appellate authority.

[2011-TIOL-65-CESTAT-DEL](#)

M/s Godrej Hershey Limited Vs CCE, Bhopal (Dated : November 3, 2010)

Central Excise - Short payment of Duty is Default - Penal provisions like consignment wise payment and non-use of CENVAT Credit apply: apparently disclose not only the manner of payment of duty but also prescribes the period by which the same has to be paid, prescribes the circumstances in which the obligation thereunder would stand discharged and also prescribes the consequences which would follow in case of non-compliance of such obligation in the manner prescribed, by no stretch of imagination it can be held to be either optional or could be interpreted in such a manner that would result in altering the consequences contemplated under those provisions.

Default vs Short Payment: It is true that "default" is not found in sub-Rule (1). However, merely because the said word is not found in sub-Rule (1) that cannot be a justification to arrive at a conclusion that the provisions of sub-rule (3A) would not be attracted in spite of non-compliance of sub-Rule (1). It is also pertinent to note that there is no expression "short payment" or "less payment" used in sub-Rule (1) and rightly so because question of considering whether there is short payment or less payment can arise only after there is default in complying with the obligation

prescribed under sub-Rule (1). Apparently, therefore, any omission or failure to comply with the obligation relating to payment of duty in the manner prescribed and within the period specified under Rule 8(1) of the said Rules would amount to default in payment of duty. It may be a short payment of duty or it may be total failure to pay the duty.

Drastic Effect on the Industry : it is to be noted that it is not a job of judicial or quasi-judicial authority on the ground of hardship to the parties that is to be considered while interpreting any provision of law. Hardship can never be a justification for interpretation of a statutory provision. A provision of law has to be understood primarily by the grammatical meaning of the word used in the provision. The occasion to consider the intention of the law makers can arise only in case where the interpretation of any ambiguous statutory provision is called for.

[Also see analysis of the Order](#)

[2011-TIOL-64-CESTAT-DEL](#)

M/s U G Sugar & Industries Ltd Vs CCE, Meerut (Dated : October 25, 2010)

Central Excise – Stay/Dispensation of Pre -deposit – CENVAT Credit – Paints and Red Oxide Primer used for coating of various machines like boilers, evaporators, juice heaters, pans etc – Prima facie credit is admissible in view of the High Court order in case of M/s Ambuja Cements Eastern Ltd.

[2011-TIOL-63-CESTAT-MAD](#)

CCE, Madurai Vs M/s Sree Ayyanar Spinning & Weaving Mills Ltd (Dated : September 27, 2010)

Central Excise – Interest – Element of mens rea is not required to be established for the purpose of levy of interest under Section 11 AB – Commissioner (Appeals) has wrongly set aside the levy of interest on the assesseees – Revenue appeal seeking recovery of interest from the assesseees is allowed.

[2011-TIOL-58-CESTAT-BANG](#)

M/s Precot Mills Ltd Vs CCE, Calicut (Dated : August 25, 2010)

Central Excise – Valuation of goods captively consumed – Duty liable to be paid on basis of 'cost of production' in terms of CAS-4 as mandated in Rule 8 of Valuation Rules and not based on 'cost of production' arrived at in cost audit report under s. 233B of Companies Act, 1956 – Impugned orders liable to be set aside

[2011-TIOL-57-CESTAT-BANG](#)

CCE, Mysore Vs M/s Ganesh Enterprises (Dated : July 14, 2010)

Central Excise – Eligibility of SSI exemption benefit for manufacturer of detergent soaps/cakes also manufacturing branded beedis in another factory – Provisions of section 4 and concept of ‘related person’ relevant to determine valuation and not eligibility of SSI benefit – Benefit of SSI exemption not available when trade name of another person is used for indicating connection in the course of trade between the product and that person – Impugned order of Appellate Commissioner allowing SSI benefit set aside – Matter remanded for re-quantification

[2011-TIOL-54-CESTAT-MAD](#)

M/s ARR Enterprises Vs CCE, Trichy (Dated : August 19, 2010)

Central Excise – Eligibility of small scale exemption for chewing tobacco with brand name – Use of label demonstrating the brandname of another company – The appellants are not eligible for exemption – However, for later period, since only name of the company was depicted, exemption is admissible.

[2011-TIOL-53-CESTAT-BANG](#)

M/s Global Adsorbents (P) Ltd Vs CCE, Hyderabad (Dated : August 9, 2010)

Central Excise – Clearance of charcoal imported in bulk by repacking them into 50 kg bags – When consignments are imported in 20 kg bags and cleared further in 50 kg bags after repacking, it does not amount to manufacture in terms of Chapter Note 9 of Chapter 38 – Prima facie case for full waiver of pre-deposit

[2011-TIOL-52-CESTAT-BANG](#)

M/s Mangalore Refinery And Petrochemicals Limited Vs CCE, Mangalore (Dated : September 20, 2010)

Central Excise – Restoration of Appeal – When application filed for restoration was not numbered or listed before Bench, dismissal for non-prosecution of appeal does not arise

Stay of Proceedings initiated through remand order from Tribunal – Prayer to stay proceedings before lower authority pursuant to an earlier remand order from Tribunal in terms of Rule 41 of CESTAT (Procedure) Rules, 1982 – When substantive issue relating to duty liability yet to be settled, stay of proceedings pursuant to remand order from Tribunal wherein issue only relates to enhancement of penalty, within powers of CESTAT – Proceedings stayed till Tribunal takes a decision on ROA applications filed for restoration of appeals related to substantive issue of duty liability

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| 2011-TIOL-44-CESTAT-MAD |
| M/s EIH Ltd Vs CCE, Chennai (Dated : September 20, 2010) |
| Central Excise – Ready to eat packaged food delivered to the aircrafts for on board consumption – The appellants are entitled for exemption under Notification No 3/2006 CE, entry No 42 – Demand of duty and penalties set aside. |
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| 2011-TIOL-43-CESTAT-MAD |
| CCE, Madurai Vs M/s Eastman Spinning Mills (P) Ltd (Dated : August 16, 2010) |
| Central Excise – CENVAT Credit on capital goods removed after being used for 6 to 9 years – Respondents paid duty on the transaction value of the used capital goods cleared – Without going into the merits of the case, appeal by revenue is dismissed on the ground of time bar. |
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| 2011-TIOL-42-CESTAT-MAD |
| Lakshmi Automatic Loom Works Ltd Vs CCE, Coimbatore (Dated : September 22, 2010) |
| Central Excise – CENVAT Credit – Additional duty paid subsequent to the import of goods under advance licence due to failure to export the finished goods manufactured is allowed as credit - The fact that no provision has been made in the rules to take care of such a situation where additional duty is paid subsequently, cannot deprive the appellants of their substantive right to take credit. |
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| 2011-TIOL-40-CESTAT-MUM |
| CCE, Mumbai Vs Oboi Laboratories (Dated : November 25, 2010) |
| Since the Revenue has already filed an appeal before the High Court against the CESTAT order and which is pending, the ROM application filed against the same order is not maintainable and hence dismissed. |
| Also see analysis of the Order |
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| 2011-TIOL-39-CESTAT-MAD |

M/s Autoprint Machinery Manufacturers (P) Ltd Vs CCE, Coimbatore (Dated : September 7, 2010)

Central Excise – Exemption under Notification No 10/97 CE is admissible to the mini offset printing machine cleared to Regional Engineering College – A very narrow interpretation has been placed on the expression “equipment” by the lower appellate authority.

[2011-TIOL-38-CESTAT-BANG](#)

Bimal Kumar Jain Vs CCE, Hyderabad (Dated : September 13, 2010)

Central Excise – Appeals – Non-appearance of parties for final hearing in spite of specific directions from Tribunal indicating a final date of hearing and a direction that no further adjournments would be allowed, resulting in dismissal of appeals – Final order also highlighted conduct of parties' non-cooperation with Tribunal resulting in several adjournments prior to passing of Final order dismissing appeals – Affidavits filed by advocates representing all parties except one citing flimsy reasons not tenable – No distinction to be made between stay orders with pre -deposit and stay orders completely waiving pre -deposit – Appeals allowable subject to deposit of Rs. 25,000/- each by respective parties to Legal Aid Fund of Karnataka High Court – Appeal of one party citing evidence for non-appearance by advocate restored without any costs

[2011-TIOL-31-CESTAT-MAD](#)

CCE, Chennai Vs SRF Ltd (Dated : September 29, 2010)

Central Excise – CENVAT Credit – Credit cannot be denied on the ground that the inputs were not dutiable and were exempted under a Notification.

[2011-TIOL-30-CESTAT-MAD](#)

CCE, Salem Vs Sri Krishna Smelters (Dated : September 24, 2010)

Central Excise – Demand of duty on higher quantity of goods shown in balance sheet as compared to the monthly ER 1 returns is not sustainable as the department has not established that there was any actual removal of goods without payment of duty.

[2011-TIOL-27-CESTAT-BANG](#)

CCE, Hyderabad Vs M/s Apex Drugs & Intermediates Ltd (Dated : August 13, 2010)

Central Excise – Refund claim of accumulated input credit after export of finished goods – When factory operations were wound up and registration certificate

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| surrendered refund of input credit to be allowed under Rule 5 of CCR, 2004 – No merit in Revenue appeals |
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| 2011-TIOL-26-CESTAT-BANG |
| M/s Andhra Pradesh Paper Mills Ltd Vs CCE & CC, Visakhapatnam (Dated : September 29, 2010) |
| Central Excise – Demand of 10% amount under Rule 6(3) for clearance of exempted product viz., pulp at nil rate of duty – Separate books of accounts not maintained for usage of common inputs and input services in dutiable and exempted final products – Pre-deposit of Rs. 34.2 lakhs ordered |
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| 2011-TIOL-23-CESTAT-MUM |
| CCE, Belapur Vs Ravi Dyeware Co Ltd (Dated : November 23, 2010) |
| Matter remanded by Commissioner(A) to adjudicating authority – since Commr.(A) has no power of remand w.e.f 11.05.2001 matter r emanded by CESTAT for deciding matter afresh – in remand proceedings O-in-O set aside by Commr(A) as being passed in violation of principles of natural justice – Revenue representative fairly agreeing to this fact – Revenue appeal dismissed. |
| Also see analysis of the Order |
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| 2011-TIOL-22-CESTAT-MAD |
| Taj Madras Flight Kitchen Pvt Ltd Vs CCE, Chennai (Dated : August 19, 2010) |
| Central Excise – Ready to eat packaged food delivered to aircrafts of foreign airlines for onboard consumption – Benefit of Nil rate of duty under SI.No 42 of the Notification 3/2006-CE dt.1.3.2006 is admissible – Demand of duty and penalties set aside. |
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| 2011-TIOL-21-CESTAT-MAD |
| CCE, Madurai Vs M/s TCP Ltd (Dated : September 29, 2010) |
| Central Excise – Valuation – Transportation charges from the factory to the premises of the consignment agents are not includable in the assessable value during the period from 1.7.2000 to 1.3.2003. |
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| 2011-TIOL-15-CESTAT-KOL |
| M/s Paper Boards & Speciality Papers Division Vs CCE, Kolkata (Dated : November 9, 2010) |
| Central Excise – Refund – Doctrine of Merger - As both the appeals before the Commissioner (Appeals) by the Revenue as well as the appellants were on two different issues, doctrine of merger is not applicable – Matter remanded to examine the issue of unjust enrichment. |
| 2011-TIOL-14-CESTAT-DEL |
| CCE, Indore Vs M/s Godrej Consumer Products Ltd (Dated : September 7, 2010) |
| Central Excise – CENVAT credit of service tax paid on outward transportation - Matter remanded to examine whether the conditions laid down by Punjab & Haryana High Court in the case of Ambuja Cements (2009-TIOL-110-HC-P&H-ST) have been fulfilled. |
| 2011-TIOL-12-CESTAT-MUM |
| CCE, Mumbai Vs Ajit India Pvt Ltd (Dated : November 9, 2010) |
| Doors and windows that comes into existence as part of building cannot be removed and sold or installed in other places as such and have to be discarded as scrap and waste and, therefore, not chargeable to Central Excise duty - Once the goods are held as not excisable there is no question of going into aspects of valuation – Revenue appeal dismissed |
| Also see analysis of the Order |
| 2011-TIOL-11-CESTAT-MAD |
| CCE, Tirunelveli Vs DCW Ltd (Dated : September 29, 2010) |
| Central Excise – Valuation – Spent Sulphuric Acid is a manufactured product and is liable to Central Excise duty – All the charges incurred within the factory like handling charges etc are includable in the assessable value. |
| 2011-TIOL-10-CESTAT-BANG |
| Apollo Tyres Limited Kalamassery/Perambra Vs CCE, Kochi/Calicut (Dated : September 27, 2010) |

Central Excise – Credit of AED(GSI) accumulated prior to 01.04.2000 repaid in installments in terms of Finance Act, 2005 and also restored in CENVAT A/c and utilized subsequently for payment of AED (GSI) on intermediate product – No infirmity in utilization of AED(GSI) paid on intermediate product for payment of BED on final product – Prima facie case for waiver of pre -deposit

[2011-TIOL-09-CESTAT-MUM](#)

Dipesh Gosalia Vs CCE, Thane (Dated : September 28, 2010)

In his detailed statement, authorized signatory submitted that that the firm was taking credit on the strength of duty paying documents without actually receiving the inputs, at the specific instance of the Director - Directors of the company who are the ultimate beneficiary cannot escape the liability of penal action – penalty upheld

[2011-TIOL-05-CESTAT-MUM](#)

M/s Pam Pac Machineries Pvt Ltd Vs CCE, Pune (Dated : October 7, 2010)

Non-filing of ARE-1 returns within 24 hours of export on 33 occasions but filed on a monthly basis – no duty involved, only a technical lapse – penalty of Rs.1000/- for each offence not proper – a composite penalty of Rs.2000/- would suffice

[Also see analysis of the Order](#)

[2011-TIOL-01-CESTAT-MAD](#)

M/s BSNL Vs CCE, Salem (Dated : September 27, 2010)

Central Excise – Stay/Dispensation of pre -deposit – CENVAT Credit on capital goods installed at Trichy, Coimbatore and Kumbakonam, availed centrally at Salem – Keeping in view that the assessee, BSNL as a whole is a service tax assessee, prima facie case made out on merits for waiver of pre -deposit.