

CESTAT RULING

[2011-TIOL-182-CESTAT-MUM](#)

Ultratech Cement Ltd Vs CCE, Nagpur (Dated: December 21, 2010)

Certification of pollution level in factory premises - It is nobody's case that there is no connection between the manufacture of cement by the appellant and the pollution caused by such activity - Availment of CENVAT credit of Service tax paid by agencies conducting such certification is proper in law – Appeals allowed

It is a settled legal position that departmental authorities having jurisdiction over the service recipient/manufacturer of final products cannot sit in judgement over the taxability of the service or excisability of the inputs, which function belongs to the departmental authorities having jurisdiction over the service provider/input manufacturer.

[Also see analysis of the case](#)

[2011-TIOL-181-CESTAT-MAD](#)

Malar Publications Ltd Vs CST, Chennai (Dated: November 8, 2010)

Service Tax – Stay/Dispensation of pre-deposit – Business Auxiliary Service – Canvassing for advertisements in print media is prima facie not taxable – Pre-deposit waived.

[2011-TIOL-178-CESTAT-MUM](#)

M/s Century Rayon Vs CCE, Mumbai (Dated: November 26, 2010)

Input service credit denied on goods transporter agency service on the ground that the transportation charges have not been shown by the applicants in their invoice – prima facie case in favour in view of Board Circular No.97/8/2007 dated 23.08.2007 – pre-deposit waived and stay granted

[2011-TIOL-175-CESTAT-AHM](#)

M/s Jay Shipping Vs CCE, Rajkot (Dated: October 1, 2010)

Service Tax – Service Tax paid along with interest voluntarily – No case for imposing penalty under Section 76 - As per the provisions of sub-Section 3 of Section 73 of Finance Act, 1994, where there is short levy of service tax, if the person chargeable with tax, pays the amount on the basis of own assessment, before service of notice, with interest, Central Excise officers shall not serve any notice on him and no

proceedings are required to be initiated.
2011-TIOL-172-CESTAT-MAD
CCE, Trichy Vs M/s Grasim Industries (Dated: November 4, 2010)
Service Tax – CENVAT Credit on services like repairs and maintenance services received for the staff colony, gardening service, security service provided in the wind farms and swimming pool maintenance and civil works undertaken at auditorium etc are not eligible for credit – Order-in-Original confirming the duty and interest restored, but penalty is set aside.
2011-TIOL-171-CESTAT-DEL
M/s Orient Craft Limited Vs CCE, Haryana (Dated: November 24, 2010)
Service Tax – Refund – Limitation – Dispute on the date of filing the claim - The practice followed by the Divisional office was to receive the refund claims by putting a date stamp without any signature of the officer receiving the claim as also confirmed by the Commissioner in his report – Just because the acknowledgment produced by the appellant in respect of submission of their refund application does not contain the signature of the receiving persons or that there is no entry in the register or file opening register, it cannot be inferred, that the refund claim was not filed on 31.3.2008 – Rejection of refund on the ground of time bar is not sustainable – Matter remanded.
2011-TIOL-166-CESTAT-MUM
CCE, Pune Vs Eaton Industries P Ltd (Dated: December 15, 2010)
Relevant date for filing of refund of credit in respect of Export services is the date when the payment of service (exported) is received and not date of providing the service
Also see analysis of the case
2011-TIOL-165-CESTAT-BANG
M/s Canon Colour Lab Vs CC, Guntur (Dated: October 20, 2010)
Service Tax – Application for restoration of appeal and stay application – When stay application and appeal were already dismissed by Tribunal earlier for non-prosecution,

CESTAT becomes functus officio and has no power to review its own orders
2011-TIOL-164-CESTAT-BANG
M/s Kerala State Beverages Vs CCE, Trivandrum (Dated: October 1, 2010)
Service Tax – Purchase of liquor from distilleries for further marketing/sale through retail outlets – When there is sale of goods there cannot be any levy of service tax on such value – Prima facie case for full waiver of pre-deposit, stay granted
2011-TIOL-159-CESTAT-MUM
EBZ Online Pvt Ltd Vs CCE, Pune (Dated: December 21, 2010)
Maintenance of application software already licensed and installed in the computer systems of the banks – Department holding that service tax payable under 'Management, maintenance or repair services' - Activity correctly classifiable as 'information technology service' and same is exigible to service tax with effect from 16.05.2008 – Appeal allowed
Also see analysis of the case
2011-TIOL-158-CESTAT-BANG
M/s AAP Detective & Security Services Vs CCE, Hyderabad (Dated: October 18, 2010)
Service Tax – Valuation to be ascertained based on evidence produced by assessee or collected by department in the course of investigation – If the nature of evidence differs, methodology for ascertaining valuation also differs – Prima facie claim of appellants that tax demand computed in three annexures to SCN overlapped and adopted different valuation methodologies, has no merits -- No evidence adduced to prove that department aware of appellants activity other than claiming that SCN was issued two years after recording of panchanama -Pre-deposit of entire tax demand with interest ordered – Pre-deposit of penalty waived
2011-TIOL-151-CESTAT-BANG
M/s Hercules Automobiles International Pvt Ltd Vs CCE, Cochin (Dated: October 20, 2010)
Service Tax – Demand of service tax under BAS in terms of section 65(19)(ii) of Finance Act, 1994 for providing promotion/marketing service, sustainable even prior to 10.09.2004 – No evidence to corroborate payment of service tax on commissions

received from finance/automobile companies – Prima facie no case for waiver of pre - deposit – Pre -deposit of Rs. 5 lakhs ordered in addition to Rs. 3.07 lakhs already deposited – Balance amount including interest and penalty waived till disposal of appeal

[2011-TIOL-150-CESTAT -BANG](#)

M/s Apotex Pharmachem India Pvt Ltd Vs CST, Bangalore (Dated: October 20, 2010)

Service Tax – Refund under Rule 5 of CCR – Quasi judicial authorities to confine their findings and conclusions to allegations made in the show cause notice after considering the defence of assessee – SCN only alleged non-submission of documents supporting refund claim whereas refund rejected on ground of time bar and that invoices were not in accordance with Rule 4A(1) of STR – Matter remanded to lower authority to consider issue afresh with a direction to consider retrospective amendment made to Notification No. 5/2006-CE (NT)

[2011-TIOL-147-CESTAT -BANG](#)

CCE, Belgaum Vs M/s Shri Tubes & Steels Pvt Ltd (Dated: September 8, 2010)

Service Tax - GTA - Payment of Service Tax on GT Abu utilizing the Credit earned on GTA - Permissible prior to 19.04.2006: At the relevant time and prior to 19/04/2006, the definition clause under Rule 2(p) of the Cenvat Credit Rules carried an explanation clause to the effect that " For the removal of doubts, it is hereby clarified that if a person liable for paying service tax does not provide any taxable service or does not manufacture final products, the service for which he is liable to pay the service tax shall be deemed to be the output service ". The said explanation clause stands deleted consequent to the amendment brought in to the said Rules under Notification No.8 /2006-CE(N.T .) dt. 19/4/2006. Clause 2 of the said notification states that explanation clause to Rule 2(p) of the Cenvat Credit Rules, 2004 stood omitted.

As far as the issue in question is concerned to the extent it related to the period prior to 19/04/2006, the consistent view taken by the Tribunal is that in view of the explanation clause the assessee would be entitled to avail the benefit of such service tax in order to claim the Cenvat Credit thereof.

[Also see analysis of the case](#)

[2011-TIOL-146-CESTAT -BANG](#)

M/s Oil Country Tubular Limited Vs CCE & CST, Hyderabad (Dated: October 8, 2010)

Service Tax – Services received from outside India not taxable prior to 18.04.2006 – Since invoices were raised after 18.04.2006 and plea that purchase orders for such services were placed prior to 18.04.2006 and services were received prior to that date not raised before lower authority, matter remanded to original authority to examine

the claims and decide the issue afresh
2011-TIOL-140-CESTAT -BANG
M/s TNT India Limited Vs Commissioenr (LTU), Bangalore (Dated: October 8, 2010)
Service Tax - Utilization of CENVAT credit on common inputs in excess of 20% of credit - Amount of Rs. 11.37 lakhs debited in CENVAT A/c along with interest of Rs. 2.18 lakhs considered as pre-deposit – Pre-deposit of balance amounts waived
2011-TIOL-137-CESTAT -MAD
Geodis Overseas Pvt Ltd Vs CST, Chennai (Dated: September 27, 2010)
Service Tax – Stay/Dispensation of Pre-deposit – Cargo Handling Service – Pure Agent - Charges like Customs MOT, Demurrage, Wharfage which are reimbursed by the clients are not includable in the taxable value – Pre-deposit waived.
2011-TIOL-136-CESTAT -BANG
M/s Karnataka Golf Association Vs CST, Bangalore (Dated: October 4, 2010)
Service Tax – Tax liability on advances received from applicants for membership of Karnataka Golf Association – As per norms, rigorous tests conducted before considering applicant as member, till such time applicants regarded as temporary members or member-elect – Prima facie no case for full waiver of pre-deposit – Pre-deposit of Rs. 30 lakhs ordered
2011-TIOL-135-CESTAT -BANG
M/s N T Automobiles Vs CCE, Mangalore (Dated: October 18, 2010)
Service Tax - Tax demand for services provided by authorized service station – Claim of benefit of Notification No. 6/2005-ST for the first time before Tribunal without any factual support to justify claim - Prima facie no case for waiver of pre-deposit - Pre-deposit of entire amount of service tax i.e. Rs. 24,000 ordered
2011-TIOL-134-CESTAT -AHM

M/s Rockwool Insulation Vs CCE, Rajkot (Dated: September 24, 2010)

Service Tax – Waiver of penalty under Section 80 and Section 73(3) of the Finance Act, 1994 - Small amount of service tax paid after issue of show cause notice - The fact that amount due from the appellant at the time of issue of show cause notice was small, does not really help the appellant – Penalty under Section 76 upheld – Matter remanded for quantification of penalty.

[2011-TIOL-129-CESTAT-BANG](#)

M/s Taher Ali Industries & Projects Pvt Ltd Vs CCE, Hyderabad (Dated: October 22, 2010)

Service Tax – Tax liability for GTA service payable utilizing CENVAT A/c – Issue no longer res integra – Impugned order not sustainable, liable to be set aside

[2011-TIOL-128-CESTAT-BANG](#)

M/s Tata Motors Insurance Services Ltd Vs CST, Bangalore (Dated: October 20, 2010)

Service Tax – Tax liability on commission received by authorized service station from finance / insurance companies for promoting financing of hire purchase / insurance of new vehicles – Adjudicating authority deciding the case without hearing the party violates principles of natural justice – Matter remanded for de novo adjudication

[2011-TIOL-127-CESTAT-BANG](#)

M/s Thomson Corporation (Intl) Pvt Ltd Vs CCE, Bangalore (Dated: October 20, 2010)

Service Tax - Refund under Rule 5 of CCR - Certificate issued by CA shows bifurcation of value of taxable services and non-taxable services - Refund not deniable on the ground that details were not explained adequately, as Notification No. 5/2006-CE (NT) allows refund of input credit based on a formula, which was not considered by lower authorities - Matter remanded to original authority to reconsider issue afresh

[2011-TIOL-124-CESTAT-BANG](#)

M/s Gayatri BCBPPL Vs CC, CE & S, Hyderabad (Dated: August 2, 2010)

Service Tax – Execution of canal system including distribution network under Indira Sagar Project on turnkey basis *prima facie* not liable to service tax – *Prima facie* case for full waiver of pre -deposit

2011-TIOL-123-CESTAT-MAD
Sify Technologies Ltd Vs CCE & ST, Chennai (Dated : November 8, 2010)
Service Tax – Associated Enterprises – Due date for payment of service tax – Amendments to Section 67 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules have no retrospective application – The Legislative intention behind the amendments was explained by the Board as for plugging avoidance of tax on the ground of non-realization of money from associated enterprises and the intention of the Legislature in bringing the amendments is to introduce a new provision and not to remove any doubts in the existing provision - It is not, nor can it be, anybody's case, that Explanation shall always take effect retrospectively - The appellants are entitled for refund of excess interest paid for the service tax pertaining to the period prior to the amendment.
Also see analysis of the Order
2011-TIOL-122-CESTAT-AHM
M/s Gudwin Logistics Vs CCE, Vadodara (Dated : November 16, 2010)
Service Tax – Stay/Dispensation of Pre-deposit – Custom House Agent service / Clearing and forwarding agent service – Inclusion of the Ocean freight/air freight is arguable – Prima facie case has been made out for waiver of pre-deposit.
2011-TIOL-117-CESTAT-MUM
ITD Cementation India Ltd Vs CST, Mumbai (Dated : December 2, 2010)
Re-charging of ground water levels, reduce problems arising out of floods in river, provide recreational facilities for citizens – service falling in exclusion clause under section 65(97a) of Finance Act, 1994 as it is in relation to irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies – Prima facie case for complete waiver of pre-deposit.
Also see analysis of the Order
2011-TIOL-116-CESTAT-AHM
M/s Kalpataru Power Transmission Ltd Vs CST , Ahmedabad (Dated : December 15, 2010)

Service Tax - Transmission Towers - Consulting Engineer or Construction Service - Confusion in the minds of assesseees and Departmental Officers - Tax paid with Interest - No penalty: The very fact that in the month of August 2007, the Board issued a circular clarifying that (tax on) erection of transmission power would be permissible from 10.09.04 and the fact that show cause notice had been issued in 2003 based on audit objection raised by CERA also lead to the conclusion that there was confusion not only in the minds of service tax payers but also in the department and the audit. In any case, this is one case where suppression of fact or misdeclaration could not have been alleged in the facts and circumstances of the case. Even the Commissioner has not recorded a very clear finding of suppression of facts. Therefore penalty under Section 78 of Finance Act, 1994 would not be imposable at all in this case. Once it is held that penalty under Section 78 could not have been imposed, the provisions of Section 73(3) of Finance Act, 1994 which provide that where an assessee pays the service tax with interest before issue of show cause notice, no show cause notice shall be served would come into play. Therefore on this ground also, penalty imposed on appellant under Section 76 is required to be set aside.

[2011-TIOL-115-CESTAT-BANG](#)

M/s Rain C-II Carbon (India) Ltd Vs CCE, Visakhapatnam (Dated : October 22, 2010)

Service Tax – Tax liability on GTA service payable through CENVAT A/c – Issue no longer res integra - Impugned order not sustainable, liable to be set aside

[2011-TIOL-109-CESTAT-DEL](#)

SKY Line Contractors Ltd Vs CST, Delhi (Dated : November 26, 2010)

Service Tax – Stay/Dispensation of Pre-deposit – Inclusion of value of free supply material in the taxable value - In view of the decision of the Tribunal in respect of supply of material by contractee decided in favour of Revenue, no prima facie case has been made out for waiver of pre-deposit.

[2011-TIOL-106-CESTAT-MUM](#)

Jai Corporation Ltd Vs CCE, Aurangabad (Dated : December 13, 2010)

Appellants firm are not the member of the club. In the absence of any nexus of the service availed by the directors and the business activity of the appellants firm, input service credit as per rule 2(l) of the CCR 2004 is not available – Penalty not imposable as issue involved is interpretation of statute

[Also see analysis of the Order](#)

[2011-TIOL-105-CESTAT-DEL](#)

CCE, Chandigarh Vs M/s Winsome Yarns Ltd (Dated : November 9, 2010)

Service Tax – Goods Transport Agency service – No legal bar on utilising CENVAT credit for payment of service tax on Goods Transport Agency Service during the material period as also held by the High Court of P&H in case of Nahar Industrial Enterprises Ltd.

[2011-TIOL-100-CESTAT-MUM](#)

Makjai Laboratories Vs CCE, Kolhapur (Dated : November 29, 2010)

Manufacture of goods containing alcohol – at the material time all activities which amount to manufacture within the meaning given under section 2(f) of the Central Excise Act, 1944 get excluded, whether or not such manufacture results in an excisable product charged to duty under the CEA, 1944 or under any other Act such as the MTPA or such manufactured product is totally exempt – Activity outside the purview of levy of Service Tax under Business Auxiliary Services – Appeal allowed

[Also see analysis of the Order](#)

[2011-TIOL-99-CESTAT-MUM](#)

Finolex Industries Ltd Vs CCE, Pune (Dated : November 23, 2010)

Outdoor Catering Services – Cenvat Credit - canteen facilities are mandatorily required to be provided under the provisions of Factory Act, 1948 – Credit allowed in view of High Court decision in CCE, Nagpur Vs. Ultratech Cement Ltd., [2010-TIOL-745-HC-MUM-ST](#) – matter remanded to the lower adjudicating authority for limited purpose of examining whether the outdoor catering services are forming part of the cost of production – appellant to produce CA certificate before adjudicating authority – appeal disposed of.

[2011-TIOL-95-CESTAT-MUM](#)

L'oreal India Pvt Ltd Vs CCE, Pune (Dated : November 30, 2010)

Jungle cutting service is an input service as the appellant is required to keep surroundings of the factory bacteria free to ensure that finished goods are not contaminated – Picnic Service does not have any nexus with business activity hence credit denied – since issue involved is interpretation of statute penalty not warranted.

Outdoor catering service availed in guest house - appellants are entitled for input service credit on outdoor catering service/house keeping service except for the portion

of their service for which they have recovered some amount from the persons staying in guest house.

Garden maintenance service and House keeping service employed are entitled for input service credit as they are availed by the appellants in the course of their business.

Picnic services - this service does not have any nexus with the business activity of the appellants. Hence, the input service credit on the picnic service is denied.

Jungle cutting service - is required by the appellant to keep the environment without bacteria in the surroundings of their factory which amounts to availment of the said service for their business of manufacturing. Hence, the appellants are entitled for availment of input service credit on these services also.

Penalty - As the issue involved of interpretation of statute no penalties are warranted.

Interest – same is payable on the amounts of Cenvat credit which have been denied.

[Also see analysis of the Order](#)

[2011-TIOL-94-CESTAT-MAD](#)

M/s Indo Lloyd Freight Systems Pvt Ltd Vs CST, Chennai (Dated : September 27, 2010)

ST – Whether getting clients' goods booked by a particular Airline is BAS –No Prima facie has come for total waiver of predeposit – Rs 2.5 lakhs to be pre-deposited.

[2011-TIOL-93-CESTAT-BANG](#)

CCE, Bangalore Vs M/s Fiorano Software Technologies Pvt Ltd (Dated : August 26, 2010)

Service Tax – Refund under Rule 5 of CCR, 2004 – No infirmity in Appellate Commissioner's finding that assessee availed credit of service tax paid on various input services in terms of Board Circular No. 120/1/2010-ST – No interference called for Stay application rejected

[2011-TIOL-85-CESTAT-MUM](#)

Larsen & Toubro Ltd Vs CCE, Aurangabad (Dated : November 23, 2010)

Garden maintenance service is an Input Service - as per the Pollution Control Board assessee is required to maintain 33% of the area of their factory under green grass plantation and this is required in relation to the manufacture of their final products and without which they cannot operate and manufacture their final products – CESTAT

<p>decision in appellants own case relied upon 2010-TIOL-497-CESTAT-MUM – supported also by Bombay HC decision in CCE, Nagpur Vs. Ultratech Cement Ltd., - (2010-TIOL-686-HC-MUM-ST) .</p>
<p>2011-TIOL-84-CESTAT-BANG</p>
<p>M/s The Sirpur Paper Mills Ltd Vs CST, Hyderabad (Dated : September 17, 2010)</p>
<p>Service Tax – When pendency of appeal in Tribunal in which stay is already granted is not attributable to assessee, recovery proceedings initiated by department after expiry of 180 days would be regarded as contempt of Tribunal – Stay extended till disposal of appeal</p>
<p>2011-TIOL-83-CESTAT-MUM</p>
<p>M/s Century Rayon Vs CCE, Thane (Dated : November 26, 2010)</p>
<p>Whether the applicants are entitled to avail input service credit on the service tax paid to the overseas commission agent on the overseas commission or not – in similar matter of Raghun Exports (India) Pvt. Ltd. Vs. Commr. Of C.Ex. Ludhiana (2009-TIOL-1177-CESTAT-DEL) Tribunal has granted stay – Prima facie case in favour – pre-deposit waived and stay granted.</p>
<p>2011-TIOL-82-CESTAT-MUM</p>
<p>Sachins Impex Vs CCE, Belapur (Dated : November 23, 2010)</p>
<p>Air Travel Service and Tour Operator Service are input services entitled to Cenvat Credit.</p>
<p>Also see analysis of the Order</p>
<p>2011-TIOL-81-CESTAT-BANG</p>
<p>M/s Karnataka Personnel Services Vs CCE, Mangalore (Dated : August 26, 2010)</p>
<p>Service Tax – Services of housekeeping and cleaning undertaken at client's premises by deputing personnel pursuant to an agreement prima facie cannot be regarded as 'Manpower recruitment and supply service' – Full waiver of pre-deposit ordered</p>

[2011-TIOL-80-CESTAT-BANG](#)

M/s Cochin Port Trust Vs CCE, Cochin (Dated : May 12, 2010)

Service Tax – Liability to pay tax on royalties collected from developer of container terminal at port, charges collected towards registration of boats and rental charges collected for renting of various jetties within port limits – When terminal operator engaged in rendering of port service paid tax on total consideration, remuneration received by port trust as royalty from operator not liable to tax as letting out premises in port for operation by terminal operator not a port service – Renting of premises for construction and operation of jetties not port service, not liable to tax – Tax admitted and paid on boat registration fees – Other demands and penalties set aside

[2011-TIOL-76-CESTAT-BANG](#)

Shri Ganta Ramanaiah Naidu Vs CCE, Guntur (Dated : August 26, 2010)

Service Tax – Site Formation and Clearance Service – Provision of services like blast-hole drilling, blasting, excavation, loading, transport, spreading, dumping etc of overburden by using machines at open cast mines – Tax paid before issue of SCN – When assessee under a bonafide belief that their client a GOI undertaking had taken up issue of taxability with CBEC, matter covered by provisions of s. 80 – Penalties under sections 76, 77 & 78 set aside – Duty and interest demand upheld

[2011-TIOL-70-CESTAT-BANG](#)

M/s India Sugars And Refineries Ltd Vs CC, CCE & ST, Mangalore (Dated : August 12, 2010)

Service Tax – GTA service availed for outward transportation related to functioning of business – Prima facie case for waiver of pre-deposit – Mumbai High Court judgment in Coca Cola India = [2009-TIOL-449-HC-MUM-ST](#) followed

[2011-TIOL-69-CESTAT-MAD](#)

Lloyd Insulations (India) Ltd Vs CST, Chennai (Dated : September 20, 2010)

Service Tax – Stay/Dispensation of pre-deposit – Construction Service – Services of water proofing work, false ceiling systems and acoustic insulations provided as finishing services – Denial of exemption under Notification 15/2004 ST providing for payment of service tax on 33% of the value – Prima facie case has been out for waiver for waiver of pre-deposit.

[2011-TIOL-67-CESTAT-MUM](#)

CCE, Pune Vs M/s Emcure Pharmaceuticals (Dated : October 7, 2010)

Non-maintenance of separate accounts of input services - Reversal of pro-rata Cenvat Credit availed – issue settled in favour of respondent assessee by retrospective amendment made in rule 6 of the CCR, 2004 by the Finance Act, 2010 – Revenue appeal rejected

[Also see analysis of the Order](#)

[2011-TIOL-66-CESTAT-DEL](#)

M/s GEE City Builders Pvt Ltd Vs CCE, Chandigarh (Dated : December 6, 2010)

Service Tax – Stay/Dispensation of Pre-deposit – Construction of flats on the land owned by the builder – Keeping the controversy in view and also the subject being receiving attention of various forums, pre-deposit of Rs 5 lakhs ordered.

[2011-TIOL-61-CESTAT-DEL](#)

M/s Sew Construction Limited Vs CCE, Raipur (Dated : November 2, 2010)

Service Tax - Sub-contractor liable to pay Service Tax - Cum Duty Benefit and CENVAT Credit if entitled, to be allowed: No provision in the Finance Act, 1994 to grant immunity to the sub-contractor from levy of service tax when undisputedly taxable services were provided by them. No evidence was before it to notice whether the service provided by the sub-contractor to the contractor was ever been taxed.

[Also see analysis of the Order](#)

[2011-TIOL-60-CESTAT-BANG](#)

M/s Eagle Detective Force Vs CCE, Belgaum (Dated : June 11, 2010)

Service Tax - Penalty - No suppression alleged - enhancement by Commissioner in Revision not sustainable: The Assistant Commissioner found it appropriate to impose penalty of Rs . 2800/- under Section 76 and Rs . 2805/- under Section 78 of the Act; He did not find fraud, suppression of facts, wilful mis -statement, etc. with intend to evade payment of the impugned tax on the part of the appellant. In the circumstances, it cannot be held that the penalties imposed by the Assistant Commissioner were not adequate and proportionate to the gravity of the offence committed by the appellants. In the circumstances, enhancing of penalty by the Commissioner in revisionary proceedings is not sustainable.

[2011-TIOL-56-CESTAT-BANG](#)

M/s United Telecoms Ltd Vs CST, Hyderabad (Dated : October 20, 2010)

Service Tax - BAS or BSS - Notice should be sure of Classification: no demand can be confirmed against any person towards service tax liability unless he/it is put on notice as to its exact liability under the statute. In the show-cause notice basic to the proceedings, the impugned activities were proposed to be classified under BAS and BSS. This proposal was confirmed by the Original Authority. This order is not in accordance with the law. The impugned order held that UTL provided services on behalf of the client i.e. Director, e - Seva and sustained the demand. Under BAS, there are seven sub-clauses. Demand under sub-clause (vii) could be on activities relatable to either one of the preceding six sub-clauses. Therefore, if a notice issued proposing demand under BAS, the noticee will not be aware as to the precise ground on which tax is proposed to be demanded from him unless the sub-clause is specified. In the instant case, service tax was proposed to be demanded for an activity under BAS and BSS. Under BSS also several activities are listed as exigible under that head. In the absence of proposal in the show-cause notice as to the liability of the assessee under the precise provision in the Act, the demand is not sustainable.

Commissioner (Appeals) should not have confirmed the order of the lower Authority which he termed as Weird: The Commissioner(Appeals) found the decision of the Original Authority to classify the impugned services under BAS and BSS as 'weird'. We find that that was the proposal in the show-cause notice. The impugned order could not have confirmed the demand under BAS based on a weird and vague proposal. As argued by the appellants, the Commissioner(Appeals) could not have upheld the demand after finding that the demand of the Original Authority followed a "weird conclusion".

[Also see analysis of the Order](#)

[2011-TIOL-55-CESTAT-BANG](#)

Hindustan Petroleum Corporation Ltd Vs CCE, Mangalore (Dated : August 2, 2010)

Service Tax – Activity of degassing and purging LPG tankers by assessee not taxable under Technical Inspection and Certification Agency service– HPCL not a Technical Inspection and Certification Agency as defined under law and inspection certificate issued by them after degassing and purging is in respect of LPG tankers utilized by them for transportation of LPG – Assessee cannot be held to have rendered service to themselves – Prima facie case for waiver of pre -deposit

[2011-TIOL-48-CESTAT-MUM](#)

Charterhouse Detective Services Vs CCE, Aurangabad (Dated : December 2, 2010)

Lower appellate authority branding the services provided by the appellants as security service because of a single word "investigation" appearing in the contract clearly points out non-application of mind – investigation has various shades of meaning and investigation in the context of insurance claims cannot make the service provided by

<p>the appellants into security services – Appellant classifying their service as ‘insurance auxiliary service’ proper - Matter remanded for considering abatement claim</p>
<p>Also see analysis of the Order</p>
<p>2011-TIOL-47-CESTAT-MAD</p>
<p>Plaza Maintenance & Services Ltd Vs CST, Chennai (Dated : September 7, 2010)</p>
<p>Service Tax – Stay/Dispensation of pre-deposit – Management, Maintenance and Repair Service provided to the shop owners – Plea that the surplus money generated is retained in the occupants' account and not chargeable to income tax in the hands of the appellants and hence no service tax is payable is prima facie not acceptable – However, no service tax can be levied on supply of electricity and water which are goods and cannot be treated as services – Pre-deposit of Rs 15 lakhs ordered.</p>
<p>2011-TIOL-46-CESTAT-BANG</p>
<p>M/s Kerala State Beverages (Manufacturing & Marketing) Corporation Ltd Vs CCE, Thiruvananthapuram (Dated : September 24, 2010)</p>
<p>Service Tax – High Court directed to hear and finalize appeal on merits and disposed of stay applications by granting interim stay of recovery till final disposal of the appeals – Though there is no direct reference with regard to waiver of pre-deposit in High Court's judgment, it may be inferred that waiver of pre-deposit was dispensed with to enable the Tribunal to hear appeals for final disposal on merits – Order directing appellant to pre-deposit Rs. 10 crores as a pre-condition for grant of adjournment recalled – As this is a part-heard matter, it will be heard by the same Bench as early as possible – Similar request for other appeals pending before Tribunal not accepted since there are no such directions from High Court</p>
<p>2011-TIOL-45-CESTAT-BANG</p>
<p>M/S BHC Agro (India) Pvt Ltd Vs CCE, Hyderabad (Dated : September 13, 2010)</p>
<p>Service Tax – Agreements entered with State Government for undertaking projects for augmenting agricultural production – Projects which involved not only rendering of scientific assistance but also implementation of whole projects are prima facie indivisible works contracts – Arguments put forward by assessee not adequately rebutted by Revenue – Prima facie case for waiver of pre-deposit</p>
<p>2011-TIOL-41-CESTAT-DEL</p>
<p>CST Vs M/s Hospitality Consultant India (P) Ltd (Dated : October 13, 2010)</p>

Service Tax – Commissioner (Appeals) rightly held that the rate of service tax applicable will be rate prevailing on the date of issue of invoice (5%), but not the rate applicable on the date of realisation (8%) – No merit in revenue's appeal.

[2011-TIOL-37-CESTAT-DEL](#)

M/s Microsoft Corporation (India) Pvt Ltd Vs CST, Delhi (Dated : October 12, 2010)

Service Tax – Recovery of refund of CENVAT Credit granted in respect of services claimed as exports – Since in the earlier case of the same assessee the CESTAT ordered pre-deposit by treating the services as rendered in India, which has also been upheld by the High Court, no prima facie case made out for waiver of pre-deposit – Duty demanded ordered to be pre-deposited.

[2011-TIOL-36-CESTAT-KOL](#)

M/s Indian Metals & Ferro Alloys Ltd Vs CCE & CST, Bhubaneswar (Dated : November 4, 2010)

Notification 41/2007-ST – Refund of Education Cess - in absence of any notification granting refund of Education Cess in respect of specified taxable services used for export of goods, refund rightly denied to this extent – Tribunal decision in Kamakhya Cosmetics & Pharma. Pvt. Ltd. ([2009-TIOL-1905-CESTAT-KOL](#)) relied upon – Appeal dismissed.

[2011-TIOL-33-CESTAT-DEL](#)

CCE, Chandigarh Vs M/s Team S&S (Dated : November 25, 2010)

Service Tax - Expenses reimbursed cannot be excluded from gross value of taxable service: The gross value takes into its fold entire cost of service enabling that to be performable. Therefore, by no stretch of imagination neither the arrangements of the parties nor their mutuality or nomenclature or format of their agreement and mode of discharge of consideration shall prevail on the law relating to service tax. Legislature accordingly intend that the gross value of the service shall be the measure of value for taxation whether paid as consideration directly or by reimbursement of expenses relating to providing of taxable service.

[Also see analysis of the Order](#)

[2011-TIOL-32-CESTAT-BANG](#)

M/s A H Tours & Travels Organizers Vs CC, CCE & ST, Hyderabad (Dated : July 19, 2010)

Service Tax – Cab operator providing cab with a driver and collecting charges on per km basis or lump sum amount is transport service and outside the purview of rent-a-cab service – Prima facie case for waiver of pre-deposit

[2011-TIOL-29-CESTAT-DEL](#)

M/s United Telecom Ltd Vs CCE, Hyderabad (Dated : October 20, 2010)

Service Tax - Providing technology application system for e - seva for payment of utility bills - Department not sure of classification of service - no tax liability can be confirmed against any person unless the same is specifically alleged in the show cause notice : UTL had established e - Seva technology application system on "Built Own, Operate and Transfer" basis providing online transaction access or facility in respect of utility bills/tax payments, issue of certificates etc besides generation of various types of MIS reports. Department issued Show Cause Notice under one service classification and when that failed with the Commissioner (Appeals), again issued Show Cause Notice charging another service. Even Adjudication Order not clear on the service classification. Demand not sustainable.

Show Cause Notice on a different ground after Commissioner (Appeals) quashes Adjudication Order : Commissioner holds such notice can be given as it is not for a subsequent period. Demand hit by limitation.

[Also see analysis of the Order](#)

[2011-TIOL-28-CESTAT-DEL](#)

M/s Hindustan Coca Cola Beverages Pvt Ltd Vs CCE, Meerut (Dated : December 20, 2010)

Service Tax - Credit taken on invoices issued by Input Service Distributor before getting registered - Pre-Deposit Ordered : Delhi office of the appellant company, even prior to the date on which the ISD registration was granted to them, had issued invoices for passing on service tax credit and on the basis of those invoices, the Cenvat credit had been taken by the manufacturing unit at Hapur . It also appeared that initially credit had been taken by the Appellant company's factory at Hapur on the basis of Service tax invoices issued by the service providers to their Delhi office, but subsequently the entries regarding service tax credit availment on the basis of the service provider's invoices were substituted by the invoices, issued by Delhi office as ISD . In view of allegation of back dating of the invoices issued by Head Office as ISD , which appears to have some substance, this is not a case for total waiver - Pre - deposit of Rs . 60 Lakhs ordered.

[2011-TIOL-20-CESTAT-BANG](#)

M/s Resil Chemicals Pvt Ltd Vs CCE, Bangalore (Dated : August 5, 2010)

<p>Service Tax – Service tax paid on input services like house keeping/cleaning service, tours & travels, outdoor catering service, clearing & forwarding agent service and custom house agent service eligible as CENVAT credit in view of consistent decisions of CESTAT – Prima facie case for full waiver of pre -deposit</p>
<p>2011-TIOL-19-CESTAT-BANG</p>
<p>M/s Neodam Rubber Products Pvt Ltd Vs CCE, Hyderabad (Dated : August 16, 2010)</p>
<p>Service Tax – Taxability of activity of re -rubberizing of rollers/spindles for use in printing – Prima facie no case for full waiver of pre -deposit – Pre -deposit of Rs. 1 lakh ordered</p>
<p>2011-TIOL-17-CESTAT-DEL</p>
<p>M/s Jetlite (India) Ltd Vs CST, Delhi (Dated : September 8, 2010)</p>
<p>Service Tax – Stay/Dispensation of Pre-deposit – Amount charged for excess baggage carried by the passengers by air craft – Prima facie taxable under “transport of goods by aircraft by an aircraft operator” – Pre -deposit of 30 lakhs ordered.</p>
<p>2011-TIOL-16-CESTAT-DEL</p>
<p>M/s Quality Welding Works Vs CCE, Ludhiana (Dated : September 30, 2010)</p>
<p>Service Tax – Penalty under Section 76 and Section 78 - The imposition of penalty under Section 76 is for failure to pay the service tax by the person liable to pay the same - Penalty provided under Section 78 is for suppression of the value of the taxable service – No fault in the order of the lower authorities in imposing penalties under both the Sections.</p>
<p>2011-TIOL-08-CESTAT-MAD</p>
<p>M/s Jerry & Co Vs CST, Chennai (Dated : September 27, 2010)</p>
<p>Service Tax – Stay/Dispensation of pre -deposit – Expenses in the nature of sales promotion, liaison, infrastructure facilities etc cannot prima facie be termed as out of pocket expenses and are integral part of the services provided – Pre -deposit ordered.</p>
<p>2011-TIOL-07-CESTAT-BANG</p>

M/s Kerala State Industrial Enterprises Ltd Vs CST, Trivandrum (Dated : September 8, 2010)

Service Tax – Storage and Warehousing Service – State Government undertaking appointed as custodians of import and export cargo at air cargo complex – Storage and warehousing of all goods except agricultural products and goods kept in cold storage liable to service tax and levy applies even if the duration of storage is brief and cargo is in transit prior to its removal for export – Demand restricted to normal period when lower authority held that penalties were not leviable as dispute was of technical nature

Service Tax – Valuation – Inclusion of demurrage charges collected from unaccompanied baggage stored beyond free period, handling charges collected for loading, unloading and stacking of goods in storage area, facilitation charges collected from airlines for using storage area and terminal charges collected for stacking, unloading, repacking and facilitation for x-raying of export cargo – Exclusion of passenger/export cargo from levy of service tax as explained in Circular F. No. B/11/1/02-TRU dated 1.8.2002 applicable only to cargo handling service and not storage and warehousing service, demand on demurrage and handling charges upheld – Terminal charges collected for export cargo includible in taxable value for storage and warehousing service – Facilitation charges collected from airlines for providing air-conditioned space for installation of x-ray machines to undertake x-ray of export cargo liable to tax under the head 'renting of immovable property service'

Penalties – When assessee is not guilty of contumacious conduct and had not acted in defiance of statutory provisions with intention to evade service tax, penalties not leviable – Matter remanded to original authority to adjudicate penal liability after considering provisions of s. 80 of Finance Act, 1994

[2011-TIOL-06-CESTAT-BANG](#)

M/s Syndicate Bank Vs CCE, Bangalore (Dated : September 6, 2010)

Service Tax – Valuation – Commission received in advance cannot be considered as payment for service even prior to actual rendering of service

CENVAT Credit – Tribunal in appellants own case in relation to prior period directed the Commissioner to consider auditor's certificate to decide as to whether there was proof of availment and utilization of CENVAT Credit in accordance with provisions of law – Direction of Tribunal when not reversed by higher authority till date, to be followed by Commissioner in deciding subsequent cases – Prima facie case for full waiver of pre-deposit

[2011-TIOL-04-CESTAT-BANG](#)

M/s Varadhi Advertisers Pvt Ltd Vs CCE, Hyderabad (Dated : September 6, 2010)

Service Tax – Whether trade discount amounts received from newspapers for sale of space to be treated as commission and taxable under the Business Auxiliary Service or not – Pre-deposit of Rs. 5 lakhs ordered

2011-TIOL-02-CESTAT-MAD
Micro Credit Foundation Of India Vs CST, Chennai (Dated : September 6, 2010)
Service Tax – Stay/Dispensation of Pre-deposit – Business Auxiliary Service – Forming, Training, linking and monitoring of Self Help Group and recovery of loan – Plea that the appellant is a non-profit organization - Prima facie case has been made out for waiver of pre -deposit as there are two different views of the Tribunal.