

## CESTAT RULING

[2011-TIOL-988-CESTAT-MUM](#)

**M/s Garware Polyester Ltd Vs CCE, Aurangabad (Dated : June 28, 2011)**

Notification 41/2007-ST - Expression "in relation to transport of export goods" is wide enough to cover even transport of empty containers from the yard to the factory for stuffing of export goods - Refund of service tax paid on transport of empty containers from the yard to the factory is admissible: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-987-CESTAT-BANG](#)

**M/s TFL Quinn India Private Ltd Vs CC & CCE, Hyderabad (Dated : January 17, 2011)**

Service Tax – Liability to pay service tax on maintenance and repair service received from outside India for SAP systems installed in factory of manufacture – Activity of maintenance or repair of software taxable only w.e.f 16.05.2008 – Tribunal order in M/s. SAP India Pvt. Ltd. case = ([2010-TIOL-1569-CESTAT-BANG](#)) followed – Prima facie case for full waiver of pre -deposit – Stay granted

[2011-TIOL-986-CESTAT-BANG](#)

**M/s Tops Security Ltd Vs CCE, Hyderabad (Dated : February 7, 2011)**

Service Tax – Interest liability under s. 75 contested after discharging entire service tax liability – Legal points raised contesting demand of interest to be gone in detail at the time of final hearing – Pre-deposit of interest amount ordered and balance amounts towards penalty waived till disposal of appeals

[2011-TIOL-978-CESTAT-BANG](#)

**M/s Koya & Company Construction Pvt Ltd Vs CCE, Hyderabad (Dated : March 18, 2011)**

Service Tax – Execution of drinking water and irrigation projects under EPC contracts with State Governments – Board Circular dt. 15/9/2009 clarifies that infrastructure activities which are concerned with welfare of citizens of this country excluded from service tax liability – Prima facie case for waiver of pre -deposit – Stay granted

<a href="#">2011-TIOL-977-CESTAT -BANG</a>
<b>M/s Ecil Rapiscan Ltd Vs CCE, Hyderabad (Dated : March 28, 2011)</b>
Service Tax – Eligibility of service tax credit availed on commission received for sale and utilization of said credit for services rendered for supply of XBIS systems to various establishments in the country – Prima facie case for full waiver of pre-deposit – Stay granted
<a href="#">2011-TIOL-976-CESTAT -BANG</a>
<b>CCE, Hyderabad Vs M/s Lamtuff Plastics Ltd (Dated : January 6, 2011)</b>
Service Tax – Eligibility of CENVAT Credit of service tax paid on outward transportation of goods – When assessee undertakes responsibility of goods sold till the port of shipment, port to be considered as place of removal – Credit of service tax paid on outward transportation not deniable – Impugned order allowing credit does not suffer from any infirmity, upheld
<a href="#">2011-TIOL-975-CESTAT -BANG</a>
<b>M/s Pepsico India Holdings Pvt Ltd Vs CCE, Bangalore (Dated : March 18, 2011)</b>
Service Tax – Eligibility of service tax credit on architect service utilized for construction of rain water harvesting system in factory premises – Rainwater harvesting system set up to raise ground water level as water is essential for assessee to manufacture final products – Full wavier of pre-deposit ordered and stay granted
<a href="#">2011-TIOL-974-CESTAT -BANG</a>
<b>M/s Filmnagar Cultural Center Vs CCE, Hyderabad (Dated : March 28, 2011)</b>
Service Tax – Liability to pay service tax on 'building contribution fund', 'guest fee', 'guest rooms rent', 'sale of sports goods and other goods' etc under 'Club or Association service' – Sale of sports goods and other goods cannot be considered as service – Amount of Rs. 31 lakhs already deposited sufficient to hear appeals – Pre-deposit of balance amounts waived subject to verification of deposited amounts
<a href="#">2011-TIOL-971-CESTAT -DEL -LB</a>
<b>M/s Sepco Electric Power Construction Corporation Vs CESTAT (Dated : July 8, 2011)</b>

Service Tax - Vivisection of Turnkey Contracts - ROM against Larger Bench decision in [2010-TIOL-646-CESTAT-DEL-LB](#) - ROM Applications misconceived and devoid of merit - Dismissed: An error cannot be said to be apparent on the face of the record if one has to travel beyond the record to see whether the judgment is correct or not. An error apparent on the face of the record means an error, which strikes on mere looking and does not need long-drawn-out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matter to show its incorrectness. Arguments on behalf of interveners shows that detailed exercise is essential to appreciate the facts and circumstances of the case. Such exercise is permissible only if an appeal is decided or power of review is exercisable which is not conferred on the Tribunal.

[Also see analysis of the Order](#)

[2011-TIOL-970-CESTAT-MAD](#)

**M/s Cholamandalam Ms Risk Services Ltd Vs CST, Chennai (Dated : April 1, 2011)**

Service Tax – Stay/Dispensation of pre-deposit – CENVAT Credit on Rent a cab and outdoor catering service – Prima facie case has been made out for waiver of pre-deposit.

[2011-TIOL-965-CESTAT-MUM](#)

**M/s Semco Electric Pvt Ltd (Unit-II) Vs CCE, Pune (Dated : June 1, 2011)**

Cenvat Credit available on Banking & Financial Services, Courier services, Maintenance of Garden/Photocopying Services, Management Consultancy Services, Telephone Services and Business Auxiliary Services but not on Catering Services and Insurance Services

[Also see analysis of the Order](#)

[2011-TIOL-964-CESTAT-BANG](#)

**M/s Pes Engineers Pvt Ltd Vs CC, CCE & ST, Hyderabad (Dated : March 17, 2011)**

Service Tax – Liability to pay service tax for construction of tunnels or conduits called as 'penstocks' for transportation of water to turbines in major power projects – Services whether classifiable as 'erection, commissioning and installation service' or 'commercial or industrial construction service' – 'Construction of pipeline or conduit' specifically mentioned in definition of 'commercial or industrial construction service' – Prima facie case for full waiver of pre-deposit

[2011-TIOL-963-CESTAT -BANG](#)

**M/s Hi-Cons Building Products Vs CCE, CC & ST, Cochin (Dated : January 17, 2011)**

Service Tax – Demand – While SCN classifies services provided by assessee under a particular category, adjudication order concluded that assessee provided two different category of services – Since adjudication order is silent on nature of services rendered by assessee, impugned order liable to be set aside – Matter remanded to adjudicating authority for reconsidering issues afresh by following principles of natural justice

[2011-TIOL-957-CESTAT -BANG](#)

**M/s Givaudan India Pvt Ltd Vs JC, Bangalore (Dated: March 29, 2011)**

Service Tax – Agreement with foreign parent company for access to their data warehouse, manufacturing, supply chain and finance systems, quality and lab information system, business support system by Indian subsidiary company for manufacture of flavours and fragrances – Since emphasis in the agreement is on data access, prima facie there is merit in department's view that services received are classifiable as 'online database access/retrieval' service – Pre-deposit of Rs. 30 lakhs ordered

[2011-TIOL-956-CESTAT -BANG](#)

**CST, Bangalore Vs M/s Vijaya Bank (Dated: January 24, 2011)**

Service Tax – Appeal – Appellate Commissioner upheld demand of service tax on SWIFT charges for the period 18.04.2006 to 30.04.2008 while setting aside demand for prior period – Since Revenue's application seeking approval from COD for filing appeal against part of Appellate Commissioner order which went against it was rejected, miscellaneous application filed by Revenue for withdrawing appeal allowed

Appeal – Cross objection – Cross objection filed by assessee under s. 86(4) to challenge levy of penalties by lower authorities – Assessee received clearance from COD to pursue cross objections – When assessee paid service tax with interest before issue of SCN, matter covered by provisions of s. 73(3) – Provisions of s. 80 invoked to set aside penalties – Cross objections considered as an appeal and allowed – Assessee's separate appeal against portion of Appellate Commissioner order which went against them, dismissed as withdrawn

[Also see analysis of the Order](#)

[2011-TIOL-953-CESTAT -BANG](#)

**CST, Bangalore Vs M/s Qualcomm India Private Limited (Dated: January 7, 2011)**

Service Tax – Refund – Lower authority rejected refund claim on the ground that it pertained to input services not utilized to provide output service viz., consulting engineer service – Appellate Commissioner allowed refund claim in terms of Board Circular No. 120 dated January 19, 2010 subject to production of CA certificate – Appellate Commissioner did not deal with finding of lower authority on relationship between impugned services and output service – It is settled law that quasi-judicial/judicial authorities have to decide any dispute referred to it after perusing entire materials placed before them – Appellate Commissioner’s order granting refund subject to production of CA certificate contrary to settled principles of law, liable to be set aside – Matter remanded for fresh consideration

[2011-TIOL-952-CESTAT-BANG](#)

**M/s Raman Colour Lab Pvt Ltd Vs CCE, CC & ST, Mysore (Dated: March 14, 2011)**

Service Tax – Allegation of not depositing service tax collected from customer with Government and wrong availment of CENVAT credit – Appellant having already deposited Rs. 5.45 lakhs, balance amounts including irregularly availed credits confirmed by lower authorities, directed to be deposited along with interest – Pre-deposit of penalties waived

[2011-TIOL-951-CESTAT-BANG](#)

**M/s Swastik Crane Services Vs CCE, Mysore (Dated: January 17, 2011)**

Service Tax – Demand raised for short payment of service tax – Claim of appellant that tax was paid utilizing CENVAT Credit availed on input services – Matter remanded to adjudicating authority to reconsider issue afresh as invoices on which credit availed was not produced before lower authority – Impugned order set aside

[2011-TIOL-949-CESTAT-DEL](#)

**M/s Gillette India Ltd Vs CCE, Jaipur (Dated: May 18, 2011)**

Service Tax - Market Research for foreign parent company - Not covered under Management Consultancy Service before 2007: by the Finance Act, 2007, the definition of "Management or business consultant" was substituted. In the substituted definition of "Management or business consultant", the services rendered in respect of marketing was specifically brought into definition. Both sides could not produce anything to indicate that this definition was with retrospective effect. In the absence of any evidence, the substituted definition could be only perspective.

Payment Received in foreign exchange - Dividend is not repatriation : It is a common knowledge that dividend is paid to the shareholders only if there is disposable profit. It is common knowledge that profit of the company is arrived only after the entire income and expenditure is accounted for and when there is income over the expenditure. It cannot be, by any stretch of imagination, held that the amounts which have been received by the appellant in convertible foreign exchange for the market

<p>research conducted for the parent company and indicated in the balance sheet as income are repatriated in form of dividend.</p>
<p><a href="#">Also see analysis of the Order</a></p>
<p><a href="#">2011-TIOL-948-CESTAT -DEL</a></p>
<p><b>M/s Hero Honda Motors Ltd Vs CST, Delhi (Dated: May 12, 2011)</b></p>
<p>Service Tax – Goods Transport Agency Service – Service Tax on Goods Transport Agency Service can be paid from CENVAT Credit – The issue is no more res integra in view of the Punjab and Haryana HC order.</p>
<p><a href="#">2011-TIOL-947-CESTAT -BANG</a></p>
<p><b>M/s MTR Foods Ltd Vs CCE, Bangalore (Dated: January 5, 2011)</b></p>
<p>Service Tax – Eligibility of service tax paid on CHA services engaged by assessee for export of goods – Issue no longer res integra , credit not deniable – Appellate Commissioner's observation that assessee exported exempted goods and hence not eligible for CENVAT credit beyond scope of show cause notice – Impugned order not sustainable, set aside</p>
<p><a href="#">2011-TIOL-942-CESTAT -MUM</a></p>
<p><b>M/s BASP Industries Vs CCE, Mumbai (Dated: June 7, 2011)</b></p>
<p>Service Tax paid on telephone installed at the partner's residence is also Cenvatable - department have not undertaken any investigation to prove that the telephone service was used for other than business purpose - they have also not refuted the contention of the appellant that Income Tax department has accepted such expenditure as business expenditure: CESTAT</p>
<p><a href="#">Also see analysis of the Order</a></p>
<p><a href="#">2011-TIOL-941-CESTAT -BANG</a></p>
<p><b>M/s UAE Exchange And Financial Services Ltd Vs CCE &amp; CC, Cochin (Dated: January 24, 2011)</b></p>
<p>Service Tax – Taxability of commissions received for money transfers – SCN alleges that assessee received commission in Indian rupees whereas assessee claims receipts in foreign exchange – Since evidence of amounts received in foreign exchange not</p>

produced before original authority, matter remanded for reconsideration of issue afresh following principles of natural justice – Impugned order set aside without expressing any opinion on merits

[2011-TIOL-932-CESTAT-MAD](#)

**M/s Paradigm International Vs CCE, Trichy (Dated: March 1, 2011)**

Service Tax – Services received from overseas agents - Duty along with interest paid before issue of SCN - Penalty – Assessee has utilized the services of overseas agents for the purpose of procuring orders for export of goods and for ensuring repatriation of sale proceeds of exported goods. Service Tax on commission paid was not paid by the assessee. On being pointed out by the department, assessee paid tax along with interest. In para 2.48.3 in Annual Supplement for the year 2006-07 to Foreign Trade Policy 2004-09 it is mentioned as - For all goods and services exported from India, services received/rendered abroad, where ever possible, shall be exempted from service tax. In view of this provision in FTP, assessee under the bonafide belief that they were not liable to pay service tax. Penalty imposed set aside. (Para 2)

[2011-TIOL-931-CESTAT-MAD](#)

**CCE, Madurai Vs M/s L S Mills Ltd (Dated: February 17, 2011)**

Service Tax – Penalty under Section 78 – Service tax paid under Section 66A along with interest – The entire tax amount paid was available as CENVAT Credit to the respondents - The belief entertained by the respondent cannot be held other than bonafide especially in the context of Revenue neutrality – No reason to interfere with the order of Commissioner (Appeals) setting aside the penalty under Section 78.

[2011-TIOL-929-CESTAT-DEL](#)

**M/s Indfos Industries Ltd Vs CCE, Noida (Dated: May 25, 2011)**

Service Tax – Limitation - Amount Billed shown in ST 3 return cannot be considered as relevant for the purpose of time limit under Section 73 – Time limit of one year to be computed from the ST 3 return showing the amount realized – Demand not time barred.

Service Tax demand on sub-contractor - If evidence is produced to that effect that the main contractor has paid the service tax, demand on the sub-contractor is not maintainable – Matter remanded to the original authority.

[Also see analysis of the Order](#)

<a href="#">2011-TIOL-928-CESTAT -MAD</a>
<b>CCE, Trichy Vs M/s Sri Rama Vilas Service Ltd (Dated: April 26, 2011)</b>
Central Excise – CENVAT Credit – Credit on service of gardening – The assessee has not established as to how gardening has a nexus with the activity of the business of the assessee – Credit is not admissible.
<a href="#">2011-TIOL-927-CESTAT -MAD</a>
<b>CCE, Salem Vs M/s Cabot Sanmar Ltd (Dated: February 23, 2011)</b>
Service Tax – Foreign based Service Provider – Liability on service receiver – Recipient of service from foreign based service provider is not liable to pay Service Tax for the period prior to 18.4.2006, on which dated Section 66A was inserted to the Finance Act, 1994. (Para 5)
<a href="#">2011-TIOL-920-CESTAT -MAD</a>
<b>CCE, Trichy Vs Sri Ramajayam Transport (Dated: February 10, 2011)</b>
Service Tax – Demand of short payment of service tax – Rate of service tax applicable is the rate prevailing on the date of rendering the service – The impugned order is silent on the claim of the respondents that they have paid excess service tax – Matter remanded.
<a href="#">2011-TIOL-917-CESTAT -BANG</a>
<b>M/s Swamsar Facility Services Vs CC, Hyderabad (Dated: April 8, 2011)</b>
Service Tax – Demand of entire service tax under the head 'Manpower recruitment or supply agency' when appellants are providing various other services like cleaning services, cargo handling, housekeeping, security services etc – When adjudicating authority recorded detailed findings indicating that appellant provided only services of manpower recruitment or supply agency, appellant's claim of providing various other services arguable, to be considered based on evidences on record at the time of final disposal of appeal – Pre-deposit of Rs. 60 lakhs ordered
<a href="#">2011-TIOL-912-CESTAT -DEL</a>
<b>M/s Maheshwari Traders Vs CCE, Lucknow (Dated: May 13, 2011)</b>



Service Tax - Sec 84 - condonation of delay - Commissioner (A) dismisses the appeal as time-barred without going into the merit of the case - Appellant directed to appear after filing condonation of delay application - Commissioner(A) directed to hear the appeal on merit

[2011-TIOL-911-CESTAT-DEL](#)

**M/s Batra Sons Vs CCE, Jalandhar (Dated: May 4, 2011)**

Service Tax - Sections 75A, 76, 77, 78, 80, 84 - Failure to file return - Revisional orders passed imposing penalty - although Sec 75A is no more on the statute book but it was in force at the relevant time - Penalty under Sec 75A upheld - No penalty as it is not proved that there was any deliberate attempt not to pay tax - lack of reason in the Revenue's order - Penalty under Ss 76 and 78 set aside

[2011-TIOL-908-CESTAT-MAD](#)

**CCE (ST), Madurai Vs State Bank Of India, Dindigul (Dated: March 4, 2011)**

Service Tax – Valuation – Banking and Financial Services – Limitation – Extended Period – Penalty – Waiver of penalty under Section 80 – Assessee has not disclosed the entire taxable value in the statutory ST – 3 Return, and they have omitted to include part of the value coupled with non-payment of requisite amount of tax in respect of such amounts, it definitely amounts to suppression and wilful mis-statement and hence the extended period of limitation is applicable. Considering the fact that the assessee is a public sector-bank and also other attendant circumstances of the case, the penalties imposed are waived invoking the provisions of Section 80 of the Finance Act, 1994 . (Para 2)

[2011-TIOL-907-CESTAT-MAD](#)

**CCE, Madurai Vs M/s Sundaram Industries Ltd (Dated: February 24, 2011)**

Service Tax – Self adjustment of Excess payment under Rule 6(3) of the Service Tax Rule 1994 - Services received from foreign agents prior to 18.04.06 – Assessee paid 12% instead of 10%. Excess payment self adjusted subsequently. Now it is canvassed that the excess paid service tax relates to payment on services received from foreign agents prior to 18.04.06, in which case no service tax was payable. Orders of the lower authorities are set aside and matter remanded to the original authority to factually verify the contention and decide the matter afresh. (Para 6)

[2011-TIOL-906-CESTAT-MAD](#)

**M/s Technova Engineering Industries Vs CST, Chennai (Dated: January 31, 2011)**

Service Tax – Service Tax along with interest paid on issue of Show Cause notice - Assessee failed to realize that they are eligible for exemption for the year 2005-06 under Notification No. 6/2005-ST dated 1.3.2005 and paid service tax along with interest on receipt of show cause notice. The conduct of the assessee in paying excess Service Tax and interest shows lack of knowledge of service Tax law. Full benefit of Section 80 extended. Penalty imposed set aside. Mater remanded to original authority to look into the claim of excess payment of Service Tax and interest. (Para 6)

[2011-TIOL-905-CESTAT-AHM](#)

**M/s Ashima Dyecot Ltd Vs CCE, Ahmedabad (Dated: May 20, 2011)**

Service Tax - Refund of service tax paid on services utilized for export of final products rejected by lower authorities for minor procedural infractions - Legislative intent is to export only goods and not taxes - Denial of refunds for technical reasons defeats legislative intent - If appellants can substantiate their claims with sufficient evidence, refund claims not deniable - Matter remanded with direction to original authority to allow appellant to rectify defects wherever possible

[2011-TIOL-904-CESTAT-AHM](#)

**M/s Locksmiths Industries Pvt Ltd Vs CCE, Daman (Dated: April 5, 2011)**

Service Tax – Manufacture of combination locks using technical designs and drawings received from outside India – Liability to pay service tax as a recipient of technical designs and drawings under IPR services – No liability to pay service tax prior to 18.04.2006 – Full waiver of pre-deposit ordered and stay granted

[2011-TIOL-903-CESTAT-AHM](#)

**M/s Rahul Trade Links Vs CCE, Rajkot (Dated: April 15, 2011)**

Service Tax – Liability to pay service tax on activities like promotion and marketing of products, enrolment of customers and canvassing of business for telecom service provider – Adjudicating authority demanded service tax with interest and levied penalties under Ss. 77 and 78 – Entire amount of service tax with interest and penalty amounting to Rs. 14,000/- under s. 77 deposited by appellant – Penalty imposed by adjudicating authority under s. 78 also deposited – Appellate Commissioner enhanced penalty under s. 78 to amount equal to service tax not paid and imposed penalty @ 2% per month under s. 76 – Plea for waiver of pre-deposit of penalties levied by Appellate Commissioner under s. 76 and s. 78 considered – Full waiver of pre-deposit of additional penalties allowed during pendency of appeal

[2011-TIOL-899-CESTAT-MUM](#)

**Maharashtra State Electricity Distribution Co Ltd Vs CCE, Aurangabad (Dated: April 15, 2011)**

Adjudicating authority could not have conducted de novo proceedings as Commissioner (Appeals) has lost the power of remand from 11.05.2001 – remand order passed by CESTAT nullifies the subordinate proceedings that had arisen out of the O-in-A – Matter to be decided expeditiously by Commissioner (A): CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-898-CESTAT-MAD](#)

**Jayavarma Knitters Vs CCE, Coimbatore (Dated: February 28, 2011)**

Service Tax – Goods Transport Agency – Exemption Notification – Benefit of exemption contained in Notification No.32/2004 dt. 2.12.2004 denied on the ground that there was no endorsement relating to non-availment of credit on inputs/capital goods by the goods transport agency under Notification No.12/03 and there was no declaration regarding non-availment of benefit of CENVAT credit of duty by the goods transport agency. Assessee is given another chance to produce the said endorsement. Matter remanded for fresh orders. (Para 3)

[2011-TIOL-894-CESTAT-MAD](#)

**Eveready Industries India Ltd Vs CCE, Chennai (Dated: April 29, 2011)**

Central Excise – Stay/Dispensation of pre-deposit - CENVAT Credit – Credit on services like outdoor catering, security service for withdrawal of cash from bank, rent a cab service are covered under input service – Credit on services in relation to gardening, cleaning of kitchen, canteen, dining, toilet etc is prima facie not admissible – Pre-deposit ordered.

[2011-TIOL-892-CESTAT-BANG](#)

**CCE, Visakhapatnam Vs M/s Andhra Pradesh Paper Mills Ltd (Dated: January 6, 2011)**

Service Tax – Service tax paid on mobile phone services registered in the name of employees, manufacturer entitled to CENVAT Credit – Tribunal's decision in Keltech Energies = [\(2008-TIOL-419-CESTAT-BANG\)](#) followed – Demand also hit by limitation when details of credit availed were furnished through statutory returns and not deciphered by authorities – Impugned order set aside

[2011-TIOL-891-CESTAT-MAD](#)

<p><b>M/s Chemplast Sanmar Ltd Vs CCE, LTU, Chennai (Dated: April 28, 2011)</b></p>
<p>Central Excise – CENVAT Credit - Service of digging of pits for storage of press mud with spent wash is eligible for credit as input service.</p>
<p><a href="#">2011-TIOL-889-CESTAT -MAD</a></p>
<p><b>Karur Vysya Bank Ltd Vs CCE, Trichy (Dated: February 28, 2011)</b></p>
<p>Service Tax – Stay/Dispensation of pre-deposit – Demand of service tax under support services of business or commerce – Applicants contend that the service is insurance auxiliary service– No prima facie case has been made out for waiver of pre-deposit.</p>
<p><a href="#">2011-TIOL-885-CESTAT -MAD</a></p>
<p><b>Inox Air Products Ltd Vs CCE, Chennai (Dated: February 25, 2011)</b></p>
<p>Service Tax – Suo Motu adjustment of excess service tax paid before insertion of Rule 6(4A) with effect from 1.3.2007 – Prima facie case made out for waiver of pre-deposit.</p>
<p><a href="#">2011-TIOL-884-CESTAT -MAD</a></p>
<p><b>M/s BSNL Vs CCE, Trichy (Dated: February 23, 2011)</b></p>
<p>Service Tax - CENVAT - Capital Goods - Transfer of credit before obtaining service tax registration - Authorised document for availing credit - The office that procured the capital goods and the office that received the goods are under the same circle of BSNL. The transaction between these two cannot be treated as transaction between two dealers. When there is no dispute about duty-paid nature of the capital goods and receipt and use of the capital goods for the authorized purpose, there is no justification for denial of CENVAT credit on the capital goods. (Para 6)</p>
<p><a href="#">2011-TIOL-883-CESTAT -DEL</a></p>
<p><b>Ideal Security Vs CCE, Allahabad (Dated: March 3, 2011)</b></p>
<p>Service Tax - Security Service - No provision in Law to exclude statutory liabilities like PF and ESI - Penalty reduced : When there is no prescription of law in respect of the statutory liabilities of the service provider, we are handicapped to provide any sort of relief to the appellant in the matter of EPF and ESI contribution received and forming part of the gross value of the service provided.: In view of the statutory provisions as</p>

well as judicial pronouncements, it would be proper for the appellant to get an opportunity to exercise the option to comply with the law, making payment of the demand that shall arise in consequence of this order within the statutory period so that the appellant may get concession of limiting the penalty to 25% of the tax. Section 78 expressly provides that once penalty under section 78 is imposed no penalty shall be leviable under section 76. So penalty under section 76 is waived.

[Also see analysis of the case](#)

[2011-TIOL-882-CESTAT -DEL](#)

**CCE, Lucknow Vs M/s Shree Bhawani Paper Mills (Dated: May 31, 2011)**

Service Tax – Consignment Agent vis -à-vis Clearing and Forwarding Agent service – Since the lower authorities have followed the decision of Tribunal in case of Mahaveer Generics which has been overruled by the Karnataka High Court, matter remanded to the original authority to decide the case afresh in the light of High Court order.

[2011-TIOL-881-CESTAT-MAD](#)

**M/s Stanadyne Amalgamations Pvt Ltd Vs CCE, Chennai (Dated: February 2, 2011)**

Service Tax – CENVAT Credit – Credit is not admissible on services used for garden maintenance – Every expenditure relating to business cannot be allowed as credit - If the intention was to include such services, the definition of input services could have been made much simpler to include all services, which were paid for by the assessee – No reason to interfere with the order disallowing the credit.

[2011-TIOL-877-CESTAT -DEL](#)

**CCE, Chandigarh Vs M/s Krishna Automobiles (Dated: April 7, 2011)**

Service Tax - Payment received for sales made directly by the principal - Assessee not a commission agent - not eligible for exemption Notification No. 13/2003: the Respondents are not causing the impugned sales. The impugned sales are caused by JCBI . Respondents are just given a compensation for his opportunity loss when JCBI directly sells to customers in the territory assigned to Respondents. The impugned sales are not made by the Respondents on behalf of JCBI . JCBI is directly selling the goods to customers. There is a consideration paid. This is for the efforts the Respondents make for popularising the products in the territory assigned to them and for the opportunity loss of not being able to get dealers margin if sales were made through the Respondents. This Commission is also for his efforts to procure the orders and in realization of sale proceeds. So the Commission cannot be called a sales commission and the service provided cannot be considered as services provided by a commission agent.

Assessee giving his own interpretation without informing the Department - Extended

period applicable : The Respondent has raised the argument that the demand is time barred. It is seen that these impugned Commissions were not reported in ST3 returns filed. An assessee on his own giving an interpretation of law and not bringing the relevant matters to the notice of the department will be a fit case for invoking extended period of time.

No penalty under both Section 76 and 78 : It is noticed that the order-in-original imposes penalty both under section 76 and 78 of Finance Act 1994. Since 10.5.2008, it is expressly provided in section 78 that penalties under section 76 and 78 cannot be imposed at the same time. Since these penalties are substantially for the same offence there is no reason to impose both the penalties even prior to that period. Therefore penalty under section 76 is waived. Penalty under section 78 will be equivalent to the tax liability

[Also see analysis of the case](#)

[2011-TIOL-876-CESTAT-AHM](#)

**M/s Eagle Corporation Pvt Ltd Vs CCE & CC, Rajkot (Dated: June 6, 2011)**

Service Tax – Tour Operator service – Denial of benefit of the abatement under Notification No 39/1997 ST on the ground that the assessee had availed CENVAT credit of Central Excise duty – Matter remanded in view of the retrospective amendment to the exemption Notification 20/2009 ST vide Finance Act, 2011.

[2011-TIOL-875-CESTAT-AHM](#)

**M/s Gujarat Engineering Research Institute Vs CCE, Ahmedabad (Dated: May 16, 2011)**

Service Tax – Liability to pay service tax on 'technical testing and analysis service' provided by State Government Research Institute – Being a State Government organization, malafide intention to evade service tax cannot be attributed – Prima facie strong case for waiver of pre -deposit – Stay granted

[2011-TIOL-868-CESTAT-DEL](#)

**M/s Sahara India Vs CCE, Lucknow (Dated: June 7, 2011)**

Service Tax - Mobilising deposits: the applicants are providing the services of mobilising deposits for their principal and the said depositor is having an option either to withdraw the maturity value after specified period of time or the depositor can purchase immovable property or can purchase goods or avail the services provided by the SICCL or by the other group companies. It is also contended by the applicants that in 90% of the cases, the deposit amounts mobilised by the applicants have not been utilised towards the purchase of immovable property. In fact 90% of the depositors have either redeemed in cash or utilised for the amount for purchase of either products or services provided by SICCL or other group companies. The

applicants have received a commission on the total deposits mobilised by them irrespective of the fact whether at the time of maturity the depositors purchased immovable property or utilised their deposits otherwise. The whole demand has been confirmed on the basis of an agreement between the applicants and the SICCL .

[Also see analysis of the case](#)

[2011-TIOL-867-CESTAT-AHM](#)

**M/s SAI Consultant Engineers Pvt Ltd Vs CST, Ahmedabad (Dated: May 12, 2011)**

Service Tax – Non-inclusion of expenses in r/o remuneration for local staff, transportation, office rent, office furniture and equipments etc in taxable value on the ground that they are reimbursable – Non-payment of service tax on the ground that main consultant discharged service tax on a part of contract – Since production of detailed certificates by main consultant regarding payment of service tax and allowing deductions of reimbursable expenses are factually verifiable, matter remanded to original authority – Impugned order set aside

[2011-TIOL-866-CESTAT-BANG](#)

**M/s Kunnel Engineers & Contractors Pvt Ltd Vs CCE, Cochin (Dated: January 18, 2011)**

Service Tax – Inclusion of value of cement and steel supplied by clients free of cost in gross amount charged and eligibility of Notifications 15/04-ST and 18/05-ST – If appellant has discharged VAT/Sales Tax on the contracts under which services were rendered, then the question of classifying these contracts under the category of 'commercial or industrial construction service' and 'construction of complex service' does not arise – Since appellant raised the plea of re-classification of services rendered as 'works contract service' before CESTAT for the first time on the ground that VAT/Sales Tax was discharged on materials consumed, matter remanded to adjudicating authority for de novo consideration keeping all issues open – Impugned order set aside

[2011-TIOL-862-CESTAT-DEL](#)

**M/s Agro Dutch Industries Ltd Vs CCE, Chandigarh (Dated: March 21, 2011)**

Service Tax – Goods Transport Agency Service - Exemption under Notification No 33/2004 ST dated 3.12.2004 for processed mushrooms – Processed mushrooms cannot be treated as fresh vegetables and denial of exemption by the lower authorities is upheld – "Vegetables" must be construed neither in a technical sense nor from the botanical point of view; it should be understood as in common parlance - A word which is not defined in the Finance Act, 1994 but which is word of everyday use must be construed in its popular sense. In common parlance fresh mushrooms are understood to be difference from canned mushrooms.

<a href="#">Also see analysis of the case</a>
<a href="#">2011-TIOL-860-CESTAT-AHM</a>
<b>M/s Anagram Stock Broking Ltd Vs CST, Ahmedabad (Dated: May 9, 2011)</b>
Service Tax – Liability to pay service tax by stock brokers on BSE transaction charges – Amounts collected towards transaction charges cannot be equated to brokerage or commission for purchase of securities – Prima facie strong case made out by appellant – Full waiver of pre -deposit ordered and stay granted
<a href="#">2011-TIOL-856-CESTAT-DEL</a>
<b>M/s Research Design &amp; Standards Organization Vs CCE, Ludhiana (Dated: May 25, 2011)</b>
ST - services rendered by Research Designs and Standards Organization - just because organization giving such service is constituted under statute activity does not become statutory function - Providing railway service cannot be considered as 'Sovereign Function' – Pre-deposit ordered: CESTAT
<a href="#">Also see analysis of the case</a>
<a href="#">2011-TIOL-855-CESTAT-BANG</a>
<b>M/s UNI Ads Ltd Vs CC, CCE &amp; ST, Hyderabad (Dated: April 18, 2011)</b>
Service Tax – Eligibility of CENVAT Credit on MS angles, shapes, sections, channels, bars, beams, sheets, tubes, plates etc used for construction of unipoles meant for provision of advertisement services – Whether said goods fall under the category of 'tubes and fittings' under 'capital goods' an arguable issue, pre-deposit of Rs. 15 lakhs ordered
<a href="#">2011-TIOL-854-CESTAT-MAD</a>
<b>M/s Vasavi Financial Consultants Vs CCE, Salem (Dated: February 21, 2011)</b>
Service tax – Stock Broker service – Plea that the main-broker has paid the service tax – Matter remanded to the original authority to verify the claim with the jurisdictional authority of the main-broker.



<a href="#">2011-TIOL-850-CESTAT-MAD</a>
<b>CCE, Salem Vs National Insurance Co Ltd (Dated: March 18, 2011)</b>
Service Tax – Power to remand by Commissioner [Appeals] – In service Tax matters, Commissioner [Appeals] has the power to remand. (Para 2)
<a href="#">2011-TIOL-848-CESTAT-DEL</a>
<b>M/s Harveen &amp; Co Vs CCE, Chandigarh (Dated: May 25, 2011)</b>
Service Tax - C&F Agents - Expenses on Clerks and telephone charges - Even if these expenses are separately billed to the client, they will form part of the value of taxable service : The Appellant could not have provided the service of C&F agents without employing clerks or having a telephone in his office. Even if these expenses are separately billed to the client, the expenses will form part of the value of taxable service.
<a href="#">Also see analysis of the case</a>
<a href="#">2011-TIOL-847-CESTAT-MAD</a>
<b>CST, Chennai Vs M/s State Bank Of India, Kilpauk (Dated: March 11, 2011)</b>
Service Tax – CENVAT - Taxable and Exempted Services – Restriction of Credit – Suppression – Extended period of Limitation – Assessee failed to maintain separate accounts for both taxable and exempted service, but utilised cenvat credit exceeding 20% of the amount payable on output service. Ingredients required for the purpose of invoking longer period of limitation are available in this case such as mis-statement, suppression as well as contravention of the provision with intent to evade payment of correct amount of tax coupled with wrong utilization of credit leading to short payment of tax. Longer period of limitation is invocable in this case. Matter remanded to Appellate authority to decide the matter on merits. (Para 5, 6)
<a href="#">2011-TIOL-843-CESTAT-BANG</a>
<b>M/s Enso Secutrack Ltd Vs CCE, Hyderabad (Dated: April 19, 2011)</b>
Service Tax – Liability to pay tax on commission paid to service provider situated outside India – Services received for raising money in international capital market by issuing FCCBs which were further invested in Mauritius – When services were rendered by service provider outside India and consumed outside India, prima facie case for full waiver of pre-deposit – Stay granted

[2011-TIOL-842-CESTAT-AHM](#)

**M/s Gujarat Engineering Research Institute Vs CCE, Surat (Dated: May 9, 2011)**

Service Tax – Appeal – Delay of 90 days in filing appeal – Delay attributed to getting of approval from legal department and appointment of lawyer – Delay mainly attributable to procedure to be followed by a Government organization, condoned

Liability to pay service tax on 'Technical testing and analysis service' by State Government Research institute – Claim of appellant that they being a government organization, could collect and pay service tax only based on budget allocations, accepted – Amount of Rs. 28.36 lakhs already paid considered as pre-deposit, balance amounts waived

[2011-TIOL-841-CESTAT-DEL](#)

**CCE, Ghaziabad Vs M/s BPL Display Devices Ltd (Dated: March 31, 2011)**

Cenvat Credit availed on GTA cannot be used for payment of GTA - Revenue appeal allowed: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-837-CESTAT-MAD](#)

**CCE, Salem Vs M/s Victory Spinning Mills Ltd (Dated: February 18, 2011)**

Service Tax – Goods Transport Agency Service – CENVAT Credit can be utilized for payment of service tax on Goods Transport Agency Service – Revenue appeal has no merit.

[2011-TIOL-836-CESTAT-MAD](#)

**CCE, Tirunelveli Vs M/s Vijay Auto Agency (Dated: February 10, 2011)**

Service Tax – Authorised Service Station service – CENVAT Credit of service tax paid on GTA service utilized for transport of vehicles from the factory to the premises of the appellant is eligible for credit.

[2011-TIOL-832-CESTAT-DEL](#)

**M/s Life Long India Ltd Vs CCE, Delhi (Dated: March 30, 2011)**

Service Tax - CENVAT Credit on "professional fees towards providing advisory services for acquisition of company" - entitled : The definition given under Rule 2(l) for input services includes activities like setting up of a factory which precedes manufacturing activity. It is also to be noted that once the assessee is eligible to take credit, there is no restriction in the Rules that the credit should be used on the product manufactured using the input service. Once credit is taken, it can be utilized on any of the output services or final products of the company. It is not necessary that credit is to be used for paying the duty on the final product that is coming out of new plant proposed to be set up. Therefore, there is no merit in the argument that the cenvat credit taken relates to services of future business of the company.

Credit on Invoices issued in the name of the Registered Office : this is a matter which has been decided in many cases by the Tribunal and credit cannot be denied for that reason. The provision relating to input service distributor is not applicable here because credit is not getting distributed to many locations. If at all applicable, it is only a procedural requirement and credit cannot be denied so long as there is no case of misuse of credit.

[Also see analysis of the case](#)

[2011-TIOL-831-CESTAT -BANG](#)

**M/s M P R Mercantile Syndicate Vs CCE, Cochin (Dated: January 31, 2011)**

Service Tax-C&F agents service – Inclusion of transportation charges, re-imbursalment of expenses like rent, telephone charges in taxable value – Matter remanded to adjudicating authority to decide afresh that expenses not included in the gross amount by appellants were actual expenses reimbursed – Impugned order set aside without expressing any opinion on merits

[2011-TIOL-830-CESTAT -BANG](#)

**M/s SAP Labs India Pvt Ltd Vs CCE, Bangalore (Dated: January 5, 2011)**

Service Tax – Refund claim of service tax paid as a recipient on the ground that services were entirely performed outside India – No evidence produced by appellants to prove that they have not passed on the element of service tax to their customers – Rejection of refund claim on the ground of unjust enrichment upheld – No infirmity in impugned order

[2011-TIOL-824-CESTAT -DEL](#)

**M/s Brindco Sales Ltd Vs CCE, Jaipur (Dated: May 23, 2011)**

Service Tax - Business Auxiliary Service - stay / pre-deposit - assessee is commission agent for selling goods of clients and no service provided - Revenue denies exemption on the ground that assessee was involved in marketing of goods - In view of the findings of the appellate authority that assessee received reimbursement from clients which were linked to the main activity of the assessee, revenue's interest to be protected if pre-deposit of Rs 20 lakh is deposited

[2011-TIOL-823-CESTAT -BANG](#)

**M/s Marikar Motors Ltd Vs CCE, Thiruvananthapuram (Dated: April 18, 2011)**

Service Tax – Taxability of commission received from vehicle manufacturers for promoting sales/undertaking customer care and commission received from banks/financial/insurance companies for promoting vehicle loans/sale of insurance – Taxability of renting of immovable property service – When financial records were subjected to scrutiny by audit wing of the department in 2005 and 2007, prima facie case for full waiver of pre-deposit on grounds of limitation

[2011-TIOL-822-CESTAT -BANG](#)

**CST, Bangalore Vs M/s Yokogawa Ia Technologies India Pvt Ltd (Dated: February 4, 2011)**

Service Tax – Refund of accumulated CENVAT Credit on input services under Rule 5 of CENVAT Credit Rules for export of services – Original authority allowed partial refund of credit and disallowed credit relatable to certain input services – Appellate Commissioner allowed refund of entire credit under Rule 5 in terms of Board's Circular No. 120 dated 19.01.2010 and remanded matter to original authority – Appeal filed by Revenue on the ground that Appellate Commissioner does not have powers of remand – When original authority already allowed refund of entire amount pursuant to remand order, Revenue appeal against Appellate Commissioner's order infructuous

[2011-TIOL-821-CESTAT -BANG](#)

**M/s ESPI Industries And Chemicals Pvt Ltd Vs CC, CCE & ST, Hyderabad (Dated: April 25, 2011)**

Service Tax – Activity of conducting stability test and validation analysis of samples of goods manufactured on job work basis by assessee to ensure that they conform to prescribed parameters – Stability analysis charges and validation charges recovered separately from principal exigible to service tax under 'Technical Testing and Analysis service' – Inclusion of charges for testing and analysis in the assessable value of medicaments for fixing MRP on which excise duty is paid will not make a difference to its exigibility to service tax under Finance Act – Pre-deposit of Rs. 4.55 lakhs ordered

[Also see analysis of the case](#)

[2011-TIOL-817-CESTAT -BANG](#)

**M/s L M Wind Power Blades (India) Pvt Ltd Vs CST, Bangalore (Dated: April 25, 2011)**

Service Tax – Receipt of services from a person not situated in India – Recipient of service not liable to pay tax by reverse charge mechanism prior to 18.04.2006 – Prima facie case made out for full waiver of pre-deposit – Stay granted

[2011-TIOL-814-CESTAT -MAD](#)

**M/s Fumakilla India Private Limited Vs CCE, Coimbatore (Dated: February 18, 2011)**

Service Tax – Goods Transport Agency service - Evidence produced by the appellant do not indicate that service tax paid by the transporters includes service tax relating to transportation involving the present appellants – Demand of service tax upheld – However, penalties set aside by extending the benefit of Section 80.

[2011-TIOL-813-CESTAT -BANG](#)

**M/s V Govinda Raju & Associates Vs CCE, Visakhapatnam (Dated: April 28, 2011)**

Service Tax – Activity of recording readings of electricity meters of customers of APEPDCL and raise bills – Classifiable under BSS and not BAS and taxable only w.e.f May 2006 – Prima facie case for full waiver of pre-deposit – Stay granted

[2011-TIOL-811-CESTAT -BANG](#)

**M/s Bovis Lend Lease India Pvt Ltd Vs CST, Bangalore (Dated: April 19, 2011)**

Service Tax – Tax liability on recipient of taxable service effective only from 18.04.2006 with enactment of sec. 66A – Demand of tax with interest and imposition of penalties set aside

CENVAT Credit – Denial of credit on the ground that common input services were used in providing taxable and exempted services and denial of credit on the ground that input service providers have not discharged their tax liabilities – Certificate issued by input service providers that they have discharged their tax liabilities produced – No findings given by adjudicating authority on these two issues – Matter remanded to adjudicating authority to re-consider issues after appreciating evidences produced by assessee – Impugned order confirming demands and imposing penalties set aside

[2011-TIOL-810-CESTAT -MAD](#)

**M/s Amman Steel Corporation Vs CCE, Trichy (Dated: February 1, 2011)**

Service Tax – Non-payment of service tax on Goods Transport Agency service – Penalty - The appellant have proved their bona fide by paying the service tax along with interest on being pointed out by the department – Benefit of Section 80 can be extended to the appellant – Penalties under Section 77 and 78 are set aside.

[2011-TIOL-803-CESTAT-DEL](#)

**M/s Madhyachal Vidyut Vitran Nigam Ltd Vs CCE, Lucknow (Dated: April 18, 2011)**

Service Tax – Erection, Commissioning or Installation service - The appellant company is a power supply company and to realize power consumption charges, they install meters at the place of consumption. As a measure of safety, the meters undergo testing and retesting - Testing fees is realized while primary object of supply of power was fulfilled – It cannot be said that the appellant is an agency engaged in providing taxable service of erection, installation or commissioning or testing service as a testing agency – Revenue appeal has no merit.

[2011-TIOL-802-CESTAT-DEL](#)

**CCE, Jaipur Vs M/s Global Enterprises (Dated: April 25, 2011)**

Service Tax – Clearing and Forwarding Agent Service – The lower appellate authority has taken into consideration the various terms and condition of the MOU and has clearly come to a finding that the appellants are only appointed as Del Credere and not as C&F agents – No infirmity in the view adopted by the Commissioner (Appeals).

[2011-TIOL-800-CESTAT-MUM](#)

**Ultratech Cement Ltd Vs CCE & CC, Nagpur (Dated: April 25, 2011)**

Corporate office issuing Input Service Distributor Challans using SAP system which results in factories getting immediate credit without physical receipt of challan – No prima facie cause for denying CENVAT credit – at best, interest can be demanded – Pre-deposit waived: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-799-CESTAT-DEL](#)

**M/s Mitul Engineering Services Vs CCE, Jaipur (Dated: May 16, 2011)**

Service Tax – Maintenance or Repair service – Considering the fact that the appellant could have entertained a bonafide belief, that the contract entered by them is a rate contract and the payment being based on the work done by them during the existence of agreement, there is no mala fide intention in not discharging service tax liability from 01.07.03 – Demand beyond normal period is set aside and within normal period is confirmed – Appellant entitled for cum-tax benefit - Penalties set aside.

[2011-TIOL-790-CESTAT-MAD](#)

**CCE, Madurai Vs M/s Vivekram Bajaj (Dated: February 23, 2011)**

Service Tax – Authorised Service Station – Penalty - Circular dated 6.11.2006 of the Board clearly recognizes doubt prevalent in their field regarding taxability of impugned activity - Respondent's entertaining the doubt that their activities were not liable to Service Tax cannot be taken otherwise than as *bona fide* - Order of the Commissioner (Appeals) in setting aside the penalties imposed under Sections 77 & 78 is justified and calls for no interference.

[2011-TIOL-789-CESTAT-MAD](#)

**M/s Trichy Institute Of Management Studies (P) Ltd Vs CCE, Trichy (Dated: February 7, 2011)**

Service Tax – Commercial Training or Coaching Service - Conducting classes for students enrolled in Distance Education Programme of Alagappa University - Levy of service tax in respect of the training and coaching provided by the appellants which form an essential part of a course or curriculum of a university, leading to issuance of certificate or diploma or degree to the students recognized by law is not justified.

[2011-TIOL-788-CESTAT-DEL](#)

**M/s Ultra Tech Cement Ltd Vs CCE, Raipur (Dated: April 21, 2011)**

Taxable services received from offshore service providers - specific provision making the service recipient in India liable to pay service tax was introduced only with effect from 18.4.2006 by inserting Section 66A in the Finance Act, 1994 and during the period prior 18.4.2006, Rule 2(1)(d) without backing of statutory provisions in the Finance Act, 1994 was not valid: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-787-CESTAT-DEL](#)

**M/s Lintas India Pvt Ltd Vs CST, New Delhi (Dated: May 11, 2011)**

<p>Service Tax – Arranging advertisements in various print and electronic media – Appellant paid service tax on the commission received from the clients – Further demand on the discount of 15% on the bills raised by the media is not sustainable.</p>
<p><a href="#">2011-TIOL-782-CESTAT-MAD</a></p>
<p><b>CCE, Salem Vs M/s Krishna Smelters Ltd (Dated: January 31, 2011)</b></p>
<p>Service Tax – CENVAT – Input Service – Proper document – TR6 challan - As recipient of the services, the assessee has taken credit of the amount paid by them under TR-6 challans. The payment of Service Tax on the input service and its utilization is not in dispute. Although TR6 challan is not a prescribed document under Rule 9 of Cenvat Credit Rules at the relevant time, credit admissible. (Para 6)</p>
<p><a href="#">2011-TIOL-778-CESTAT-DEL</a></p>
<p><b>M/s Sangam Spinners Vs CCE, Jaipur (Dated: May 19, 2011)</b></p>
<p>Service Tax – Goods Transport Agency Service – Availment of CENVAT Credit for payment of service tax on Goods Transport Agency service – Dispute is settled in favour of the appellants in case of Nahar Industrial Enterprises Ltd. and Ors. (<a href="#">2010-TIOL-547-HC-P&amp;H-ST</a>) impugned order set aside.</p>
<p><a href="#">2011-TIOL-777-CESTAT-BANG</a></p>
<p><b>M/s KJV Alloys Conductors Pvt Ltd Vs CCE, Hyderabad (Dated: April 28, 2011)</b></p>
<p>Service Tax – Non-payment of service tax on GTA service availed as recipient resulting in imposition of penalties under sections 76 and 78 – Neither of the lower authorities indicated option available to the assessee to pay 25% of penalty under proviso to section 78 (1) within 30 days of the receipt of their respective orders – Penalties could be imposed for same offence under both sections 76 and 78 of the Act if the ingredients required for imposing such penalties existed, penalty imposed under sec. 76 upheld in view of Appellate Commissioner's findings – Since assessee discharged tax liability with interest before passing of O-I-O and also paid 25% penalty no further penal liability under sec. 78 exists – Delhi High Court judgment in K P Pouches = <a href="#">2008-TIOL-240-HC-DEL-CX</a> followed</p>
<p><a href="#">2011-TIOL-772-CESTAT-DEL</a></p>
<p><b>M/s Raj Trans Stampings (P) Ltd Vs CCE, Jaipur (Dated: April 19, 2011)</b></p>
<p>Service Tax – Maintenance or repair service – Repair service rendered prior to 16.6.2005 under rate contract is not taxable as also clarified by the CBEC.</p>



<a href="#">2011-TIOL-771-CESTAT-DEL</a>
<b>M/s Macawber Beekay Pvt Ltd Vs CCE, Ludhiana (Dated: May 18, 2011)</b>
Service Tax – Transportation of goods through pipeline – Demand of service tax on transportation of Flyash - The primary object of the contract was repair and maintenance of Flyash Handling System - Since the appellant did not own or possess the means for transportation, it cannot be said that the appellants were engaged in the service of transportation – Appeal allowed.
<a href="#">2011-TIOL-767-CESTAT-MAD</a>
<b>Iswari Spinning Mills Vs CCE, Madurai (Dated: February 4, 2011)</b>
Service Tax – Payment of Service Tax on Goods Transport service from CENVAT account – Till 18.4.2006, CENVAT credit can be availed for payment of service tax on GTA. From 19.4.2006, in view of the amendment to Rule 2(p) of the CENVAT Credit Rules, 2004, payment cannot be made from CENVAT account.
<a href="#">Also see analysis of the case</a>
<a href="#">2011-TIOL-766-CESTAT-BANG</a>
<b>Manaltheeram Ayurveda Hospital Vs CCE, Thiruvananthapuram (Dated: April 18, 2011)</b>
Service Tax – Health Club and Fitness Centre Services – Contention that qualified ayurvedic doctors prescribe and supervise the therapy for curing diseases or disorders and the evidences in the form of medical case sheets need to be reconsidered by the adjudicating authority – Matter remanded.
<a href="#">2011-TIOL-763-CESTAT-BANG</a>
<b>M/s United Spirits Ltd Vs CST, Bangalore (Dated: May 2, 2011)</b>
Service Tax – Assessee entered into licence agreements with CBUs for manufacturing IMFL/package drinking water and temporarily lent brand name/logo/trade mark for usage on IMFL manufactured by CBUs – Denial of CENVAT Credit on inputs/input services on the ground that they do not have any nexus with output service viz., IPR service and restriction of credit utilization to 20% under Rule 6(3)(c) of CCR – Alcoholic beverages not being excisable goods do not fall under exempted goods as defined under Rule 2(d) of CCR – Assessee can utilize CENVAT Credit A/c without limitation of 20% ceiling to discharge tax liability for providing IPR service since provisions of Rule 6(3)(c) of CCR are not attracted – Full waiver of pre-deposit

ordered and stay granted
<a href="#">2011-TIOL-762-CESTAT -BANG</a>
<b>CCE, Guntur Vs M/s Hindustan Coca-Cola Beverages Pvt Ltd (Dated: April 1, 2011)</b>
Service Tax – Eligibility of credit on cleaning service, security service, repair and maintenance, manpower recruitment, BAS and event management service – Appellate Commissioner's finding that input services are related to assessee's business and admissible input services consistent with legal provisions – Assessee's counsel conceded that event management not an input service
<a href="#">2011-TIOL-754-CESTAT -BANG</a>
<b>M/s National Trades And Agencies Vs CCE,CC &amp; ST, Cochin (Dated: May 2, 2011)</b>
Service Tax - Pure Agent - Issue requires detailed analysis - Pre-Deposit Ordered: the appellant has been taking a stand before the Adjudicating Authority and Tribunal, that they are acting as pure agent and the amount collected as reimbursable should not be included in the valuation. The issue involved in this case needs detailed analysis of the provisions of the Service Tax (Deduction of Value) Rules, 2008, which can be done only at the time of final disposal of the appeal. Noting that the appellant has already deposited an amount of Rs.25,72,676 /- and as the issue is an arguable one, the appellant directed to further deposit an amount of Rs.15,00,000 /-(Rupees Fifteen Lakhs Only)
<a href="#">2011-TIOL-753-CESTAT -BANG</a>
<b>M/s Nageswara Rao Software Testing Tools Pvt Ltd Vs CCE &amp; ST, Hyderabad (Dated: April 8, 2011)</b>
Service Tax - Date of Receipt of Order In Original - Fact to be verified - matter remanded: Commissioner (Appeals) has considered that they are in receipt of the OIO on 01.04.2010. Factually, the date of the receipt of OIO is 28.05.2010 as seen from a letter dated 17.06.2010 issued from the Office of the Commissioner of Service Tax, Hyderabad indicating that the OIO was received by the appellant on 28.05.2010. If the appellants had received the order on 28.05.2010 and if the appeal is filed on 05.07.2010, the appeal is in time, as indicated in the letter dated 17.06.2010 arising from the Office of the Commissioner of Service Tax. The factual matrix needs to be verified at the lower end. Hence, the impugned order set aside restoring the appeal to its original number in the records of the Commissioner (Appeals) and direct him to verify the claim of the assessee as regards the actual date of receipt of the OIO and to proceed in the matter on merits, if found as claimed.
<a href="#">2011-TIOL-749-CESTAT -AHM</a>

**CST, Ahmedabad Vs M/s Bosch Rexroth (India) Ltd (Dated: April 6, 2011)**

Section 66A inserted in the Finance Act, 1994 with effect from 18.4.2006 laying down that recipient of services in India from outside India shall be liable to pay tax cannot be made applicable retrospectively – Revenue appeal rejected: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-748-CESTAT -BANG](#)

**M/s ABB Ltd Vs CST, Bangalore (Dated: December 29, 2010)**

Service Tax – Levy of service tax on activities involving design, manufacture, supply, installation, testing and commissioning of electrical, hydraulic & fire systems for DMRC Project through indivisible contracts – Deduction of Works Contract Tax by way of TDS under DVAT Act by DMRCL on running account bills provided by assessee indicates that impugned contracts are works contracts, liable to service tax only with effect from 01.06.2007 – Judgment of Karnataka High Court in Turbotech Engineering = [2010-TIOL-498-HC-KAR-ST](#) relied upon and Larger Bench decision in BSBK Ltd = [2010-TIOL-646-CESTAT-DEL-LB](#) distinguished – Impugned order demanding service tax with interest and levy of penalties set aside

[2011-TIOL-747-CESTAT -BANG](#)

**CCE, Mangalore Vs M/s Corporation Bank (Dated: March 29, 2011)**

Service Tax – Business Auxiliary Service – Collection of electricity bills and telephone bills on behalf of electricity boards and telecom companies is not taxable under Business Auxiliary Service – No merit in revenue's appeal.

[2011-TIOL-746-CESTAT -MAD](#)

**CCE, Trichy Vs SBI, Kumbakonam (Dated: April 8, 2011)**

Service Tax – Penalty under Section 78 – Benefit of reduced penalty of 25% under the fourth proviso is not admissible if the tax amount is reduced by the Commissioner (Appeals) – The benefit is applicable only in cases where the tax amount is increased by the Commissioner (Appeals).

[Also see analysis of the case](#)

[2011-TIOL-743-CESTAT -AHM](#)

**M/s Harsha Engineers Ltd Vs CCE, Ahmedabad (Dated: March 15, 2011)**

Service Tax - CENVAT - Input service - Insurance covering the export goods in Foreign Countries - Whether availment of credit of service tax paid on the insurance service to cover the damage or loss to the exported goods in the foreign countries except India is eligible as input service? Commissioner (Appeals) has not considered the decisions of Tribunal relied upon by the assessee. Matter remanded for fresh consideration. (Para 5)

[2011-TIOL-742-CESTAT-AHM](#)

**M/s Surat Tennis Club & Other Vs CCE, Surat (Dated: March 14, 2011)**

Tennis club providing services such as health club, organizing tennis matches by renting the ground, renting the place for party purpose, organizing tournaments etc. – merely because they are a registered as a Charitable Trust cannot absolve them of Service Tax liability – No prima facie case in favour – Pre-deposit ordered: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-741-CESTAT-BANG](#)

**M/s Mysore Sales International Ltd Vs Assistant Commissioner Of Central Excise Service Tax , Bangalore (Dated: December 21, 2010)**

Service Tax – Storage and warehousing service – Liability to pay service tax by custodian appointed under sec. 45 of Customs Act – Inclusion/exclusion in taxable value, of various charges collected from importers/exporters including passengers for keeping cargo in transit safely pending export or customs clearance for home consumption – Exceptions provided under cargo handling service with regard to passenger baggage and export cargo cannot be claimed under storage and warehousing service

Service Tax – Valuation – Demurrage and wharfage charges – Charges collected in relation to clearance of import/export cargo beyond five days and 24 hours respectively for continued storage of cargo, part of taxable value of storage and warehousing

Destination charges – When assessee merely collects and hands over documents to consignees, destination charges will not form part of taxable value of storage and warehousing

OT Charges/Penalties – Lower authorities did not give any findings as to nature and purpose of charges collected by assessee – Matter to be decided afresh

Limitation – No reliable finding by lower authorities that MSIL, a State PSU, resorted to suppression of facts to evade service tax, cannot validly invoke extended period of limitation and impose penalties – Penal liabilities require reconsideration in terms of sec. 80

MSIL whether 'statutory authority' or 'public authority' – Lower authorities had no occasion to examine the plea of MSIL, a State PSU, appointed as custodian under sec. 45 of Customs Act, to be considered as 'statutory authority' or 'public authority' in terms of CBEC Circular No. 89 dated 18.12.2006, since plea was raised for the first time before Tribunal – Circular defines statutory authorities discharging sovereign functions as those that deposit 'fees' collected with the Government – No evidence on record to indicate that charges collected by MSIL are deposited with Government – Tribunal not in a position to give a clear finding on this issue

Impugned orders set aside and matters remanded for de novo consideration

[2011-TIOL-740-CESTAT-MAD](#)

**CST, Chennai Vs M/s Sundaram Fasteners Ltd (Dated: February 7, 2011)**

Service Tax – Review of order passed by the Commissioner(Appeals) – Condonation of delay – The Committee of Commissioners initially accepted the order-in-appeal, but later decided to file appeal in view of the CBEC clarification dated 30.6.2010 – Once the Committee accepted the Order-in-appeal, the question of reviewing the Order-in-Appeal does not arise – COD application dismissed.

[2011-TIOL-733-CESTAT-DEL](#)

**M/s R C Engg Works Pvt Ltd Vs CCE, Ghaziabad (Dated: May 4, 2011)**

Service Tax – Stay/Dispensation of Pre-deposit – Maintenance or Repair service – Whether de-shelling and re-shelling of old and worn out sugar mill rollers is liable for service tax under Maintenance or Repair service – No prima facie case has been made out for waiver of pre-deposit.

[2011-TIOL-732-CESTAT-DEL](#)

**M/s AVN Buildtech (P) Ltd Vs CST, Delhi (Dated: April 4, 2011)**

Service Tax – Stay/Dispensation of pre-deposit – Construction of complex service – The applicant has no layout plan to examine the contentions that the activity carried out by them does not come under the purview of residential complex – Pre-deposit ordered.

[2011-TIOL-728-CESTAT-MAD](#)

**CCE, Tirunelveli Vs G V Associates (Dated: February 14, 2011)**

Service Tax – Business Auxiliary Service – Penalty – Section 80 – Demand of Service Tax upheld invoking extended period. Penalties set aside under Section 80. HELD – No evidence adduced that the assessee deliberately failed to pay service tax. Setting aside penalty under Section 80 justified. (Para 5.3)

[2011-TIOL-727-CESTAT-BANG](#)

**M/s BSNL Vs CCE, Thiruvananthapuram (Dated: March 28, 2011)**

Service Tax – CENVAT Credit – 20% restriction under Rule 6(3) of the CENVAT Credit Rules 2004 is not applicable to the credit availed on capital goods - The Commissioner wrongly found that the restriction contained in Rule 6(3) of CCR applied to credit of capital goods also – Entire case remanded to the Commissioner for fresh decision.

[2011-TIOL-724-CESTAT-DEL](#)

**M/s Rajasthan State Warehousing Corp Vs CCE, Jaipur (Dated: March 17, 2011)**

Appellant, registered as 'Storage and Warehousing' provider also collects Handling & transportation charges and also supervision charges – such charges are liable for Service Tax under the category of 'Cargo Handling Service' – earlier departmental audits did not point out this liability – demand liable to be paid for normal period and so also interest and penalty u/s 76 – penalty u/s 78 not maintainable: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-723-CESTAT-MAD](#)

**CCE, Pondicherry Vs M/s Ammaa Traders (Dated: February 18, 2011)**

Service Tax – Penalty – Section 78 – Assessee deposited duty along with interest before issue of show cause notice. The original authority has not given the option to pay the reduced penalty i.e. 25%. Assessee eligible to pay concessional penalty as provided under proviso to Section 78 of the Finance Act, 1994. Once penalty is imposed under Section 78 there is no justification for imposition of penalty under Section 76. (Para 5.1 & 5.2)

[2011-TIOL-719-CESTAT-MUM](#)

**Imagination Technologies India Pvt Ltd Vs CCE, Pune (Dated: April 7, 2011)**

Appellant providing software development and support services – Vending of coffee is in the nature of a catering service and is very essential especially for the employees

<p>working round the clock in IT companies - repair of the coffee vending machine is an input service: CESTAT</p>
<p><a href="#">Also see analysis of the case</a></p>
<p><a href="#">2011-TIOL-718-CESTAT -MAD</a></p>
<p><b>CCE, Trichy Vs M/s IOC Ltd (Dated: March 1, 2011)</b></p>
<p>Service Tax – Refund – Effect of Amalgamation of Units – Effective date – Ministry of Petroleum ordered merger of two Companies on 30.04.07, effective from 01.04.2004. The transactions between the two Companies after the effective date of merger cannot be treated as between a service provider and service recipient. Hence, refund of service tax paid between the amalgamated companies after the effective date of merger is proper. (Para 6 &amp; 7)</p>
<p><a href="#">2011-TIOL-715-CESTAT -MAD</a></p>
<p><b>CCE, Trichy Vs M/s Grasim Industries Ltd (Dated: February 18, 2011)</b></p>
<p>Service Tax – CENVAT – Input Service – Maintenance and Repair of staff colony - Service Tax paid in respect of services received in relation to 'Repair and Maintenance' of the staff colony not eligible for CENVAT credit. However, penalty set aside. (Para 3)</p>
<p><a href="#">2011-TIOL-712-CESTAT -MAD</a></p>
<p><b>CCE, Tirunelveli Vs M/s Pearl Shipping Agencies(Dated: February 8, 2011)</b></p>
<p>Service Tax – Power to remand by Commissioner (Appeals) - It is settled legal position that consequent to amendment of Section 35A (3) w.e.f. 11.05.01, Commissioner (A) has no powers of remand - Order of the Commissioner (A) is set aside and the matter is remanded to the original authority for fresh consideration.</p>
<p><a href="#">2011-TIOL-711-CESTAT -BANG</a></p>
<p><b>M/s Telco Construction Equipment Company Ltd Vs CCE &amp; CC, Belgaum (Dated: January 5, 2011)</b></p>
<p>Service Tax – Eligibility of CENVAT Credit on input services – Whether appellant is required to establish integral connection between the service received and manufacture of final products for availment of CENVAT Credit or appellant is required only to show that services relate to their business to avail CENVAT Credit – Difference of opinion between Member (Judicial) and Member (Technical) on interpretation and application of ratio of Bombay High Court judgment in Coca Cola India case = <a href="#">2009-</a></p>

[TIOL-449-HC-MUM-ST](#) and Ultratech Cement Ltd case = [2010-TIOL-745-HC-MUM-ST](#)  
– Matter goes to Third Member

[Also see analysis of the case](#)

[2011-TIOL-710-CESTAT-AHM](#)

**M/s Tradex Polymers Pvt Ltd Vs CCE, Ahmedabad (Dated: April 1, 2011)**

Service Tax – CENVAT Credit – Mandap Keeper service – The appellant is a registered service provider and is a Del credere consignment agent and during the course of advertising and publicizing the product the assessee availed the services of a mandap keeper which is an input service - This confirms to the definition of input service as defined under CENVAT Credit Rules, 2004 – Eligible for credit.

[2011-TIOL-709-CESTAT-MAD](#)

**M/s ITC Ltd Vs CCE, Salem (Dated: February 24, 2011)**

Service Tax – Export of Service – Refund – Limitation - Refund of service tax paid on the export services rejected as part of the claim was not substantiated with relevant documents and part of the claim has been filed after the period six months prescribed. Time limit for preferring refund claim prescribed under Notification No.41/07 dated 06.10.07, has since been enlarged by Notification No. 17/09 dated 7.7.09. Matter remanded to the original authority to look into the entire matter afresh. (Para 5)

[2011-TIOL-700-CESTAT-MAD](#)

**CCE, Coimbatore Vs M/s Lakshmi Technology And Engineering Industries Ltd (Dated: February 10, 2011)**

Service Tax – CENVAT Credit – There is no requirement that a manufacturer who is also service provider should maintain separate CENVAT accounts for the purpose of paying central excise duty and service tax - A manufacturer of excisable goods is entitled to use the credit from a common pool and a provider of taxable service is also entitled to take credit of specified excise duty, additional duty of customs and service tax in respect of input services and utilize the credit from all these sources for the purpose of paying service tax – Rule 3(1) of the CENVAT Credit Rules 2004.

[Also see analysis of the case](#)

[2011-TIOL-699-CESTAT-MAD](#)



**M/s Kilburn Chemicals Ltd Vs CCE, Tirunelveli (Dated: March 21, 2011)**

Service Tax – CENVAT – Input Service – Security service at Guest House - Provision of security at the guest house has no nexus or relation with the business of manufacture of the assessee. Hence, cannot be considered as an input service so as to allow credit of tax paid on such services. (Para 2)

[2011-TIOL-694-CESTAT-MAD](#)

**CCE, Madurai Vs Chillies Export House Ltd (Dated: February 15, 2011)**

Service Tax – Penalty under Section 76 of the Finance Act, 1994 - It is not in dispute that if the respondent had paid the service tax during the disputed period, they would have been eligible for the refund - This is a case of revenue-neutrality, involving no intention to evade tax - Exercise of discretion under Section 80 of the Finance Act by the Commissioner (Appeals) was justified – No merit in revenue's appeal seeking enhancement of penalty.

[2011-TIOL-693-CESTAT-BANG](#)

**CST, Bangalore Vs M/s Akamai Technologies India Pvt Ltd (Dated: April 25, 2011)**

Service Tax - Department files Stay Application against order of Commissioner (Appeals) on the ground that he had remanded the matter when actually the Commissioner has not done so. Stay application rejected - it is obvious that the Commissioner (Appeals) finally decided the dispute in favour of the assessee and did not remand any issue to be decided by the original authority. The impugned order does not call for any interference at this stage.

[2011-TIOL-692-CESTAT-AHM](#)

**Gujarat University Vs CST, Ahmedabad (Dated: March 29, 2011)**

There is no scope for filing appeal or stay petition before Tribunal against the order of Assistant Commissioner which has been passed in de-novo proceedings and for limited purpose of quantification in terms of remand order of Commissioner (Appeals) – Direction in the Preamble to the order is clear in this regard – Petition rejected: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-691-CESTAT-MAD](#)

**CCE, Tirunelveli Vs M/s PSA Sical Terminal Ltd (Dated: February 7, 2011)**

Service Tax – CENVAT Credit – Remand by Commissioner (Appeals) - It is settled legal position that consequent to amendment of Section 35A (3) w.e.f. 11.05.01, Commissioner (A) has no powers of remand – Matter remanded to original authority.

[2011-TIOL-690-CESTAT -BANG](#)

**M/s Karvy Consultants Ltd Vs CCE, Hyderabad (Dated: April 25, 2011)**

Service Tax - Courier Service - Audit Drops Objection, but demand confirmed - Strong Prima Facie case - Pre-Deposit waived: On the Commissionerate explaining that service tax was not chargeable on the said amount, the audit department had dropped the objection raised. Appellant submits that in view of the correct legal stand taken by the Commissioner in respect of sister concern, the demand on same charges confirmed for the same activity by the appellant is not sustainable. Strong Prima facie case:

[2011-TIOL-682-CESTAT -MUM](#)

**CCE, Nagpur Vs Indoworth (I) Ltd (Dated: April 5, 2011)**

Cenvat credit on Outdoor Catering service – there is no allegation that the respondent assessee is recovering any amount from the employees in this regard – in view of Bombay HC decision in CCE vs. Ultratech Cement Ltd. ([2010-TIOL-745-HC-MUM-ST](#)) credit available – Revenue appeal rejected.

[2011-TIOL-681-CESTAT -MAD](#)

**CCE, Tirunelveli Vs M/s The India Cements Ltd (Dated: February 4, 2011)**

Central Excise – CENVAT Credit on insurance service - Insuring plant and machinery to safeguard against interruption/destruction/break-down and to cover loss of profit due to stoppage of work due to perils like fire, riot, terrorist attack, damages etc. is necessarily a precautionary measure to safeguard against any unwarranted situation of the business – The services is covered under “activities relating to business” – Rule 2(1) of the CENVAT Credit rules 2004 – No infirmity in the order of the Commissioner (Appeals) in allowing the credit.

[2011-TIOL-678-CESTAT -DEL](#)

**M/s Indian Oil Corporation Vs CST, Delhi (Dated: April 11, 2011)**

Service Tax – Stay/Dispensation of pre-deposit – Transfer of Technical Knowhow is *prima facie* covered under Intellectual Property Service with effect from 10.9.2004 - Not taxable under Consulting Engineer service prior to 10.9.2004 – The appellants have made out a strong *prima facie* case for waiver of pre-deposit.

[2011-TIOL-677-CESTAT -MAD](#)

**CRP (India) Private Ltd Vs CCE, Chennai (Dated: March 11, 2011)**

Service Tax – CENVAT – Catering Service - Credit of service tax would be allowed except where the cost of food has been recovered from the employee/worker. Case remitted for fresh decision. (Para 2)

[2011-TIOL-670-CESTAT -MUM](#)

**Reliance Michigan (JV) Vs CCE, Thane (Dated: April 8, 2011)**

Service Tax – Whether 'Mithi River' is a river or not is a pure question of fact – appellant claims that dredging activity undertaken by them is in a 'drain' and not in a river and hence not taxable - even the agreement between the appellant and MMRDA describes the stream as 'Mithi River' - it cannot be called otherwise merely by reason of the fact that rainwater or domestic sewage from the surrounding areas are also flowing into it or that industrial effluents are discharged into it – Prima facie appellant liable to pay Service Tax – Pre -deposit ordered: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-669-CESTAT -MAD](#)

**M/s Intimate Fashions India Pvt Ltd Vs CCE, Chennai (Dated: January 13, 2011)**

Service Tax – CENVAT – Commission paid to foreign agents - Credit of tax paid for foreign commission agents' services being for sales promotion is allowed. (Para 4)

[2011-TIOL-668-CESTAT -MAD](#)

**M/s Areva T & D India Ltd Vs CCE, Chennai (Dated: March 3, 2011)**

Service Tax – GTA – Consignment note – Abatement - Abatement of 75% from the gross freight value under Notification No. 32/2004-ST dated 03.12.2004 as amended is not available in the absence of declaration from the Goods Transport Agents that they had either availed the credit on inputs or capital goods used for providing the taxable service or availed exemption on the cost of goods and materials sold to the

recipient of service / consignment note containing transaction particulars. (Para 3)