

CESTAT RULING (CENTRAL EXCISE)

[2014-TIOL-478-CESTAT -DEL](#)

M/s Ultratech Cement Ltd Vs CCE (Dated: November 18, 2013)

Facts of the case –

The Appellants are manufacturers of cement and cement clinker.

The sales are through depots. The goods are first transported to depots from where the same are sold to customers. While the Department had allowed the CENVAT credit of service tax paid on GTA service availed for transportation from the factory up to the depot, the CENVAT credit of service tax paid for transportation from the depots to the customers' premises was disallowed on the ground that the GTA service availed for transportation up to the 'place of removal' only can be treated as input service and in respect of the goods sold from the depot, it is the depot, which is the 'place of removal'.

[2014-TIOL-476-CESTAT -MUM](#)

Mercedes Benz India Pvt Ltd Vs CCE (Dated: February 20, 2014)

CENVAT – Appellant, a manufacturer of motor vehicles and also undertaking of trading of motor vehicles imported from their principals abroad – common input services used - Explanation inserted in rule 2(e) of CCR, 2004 clarifying that "exempted services" includes trading is prospective in nature from 01/04/2011 and so also is clause (c) in Explanation I appearing after rule 6(3D) of CCR, 2004 – Trading is not Service prior to 01.04.2011 - for the disputed period credit of Service Tax paid on common input services should be apportioned in the same ratio as the turnover of the manufactured and traded cars – term 'business' used in definition of input service is relating to the business of manufacture of final products and not relating to trading activity – extended period has been rightly invoked – appeals disposed of: CESTAT

[Also see analysis of the Order](#)

[2014-TIOL-475-CESTAT -MUM](#)

CCE Vs D Y Patil Ssk Ltd (Dated: December 10, 2013)

CENVAT - Press Mud, bagasse and compost fertilizer cleared without payment of duty by appellant, a sugar manufacturer - Revenue demanding 5%/10% of price of exempted goods in terms of rule 6 of the CCR, 2004 - Tribunal in case of Indian Potash has held that bagasse is nothing but waste and since it emerges at sugarcane crushing stage, there is no possibility of any input viz. chemicals etc. having been used at that stage and, therefore, there is no question of demanding any amount under rule 6 of CCR, 2004 - similar view taken in respect of Press Mud and compost fertilizer in other cases - no infirmity in order of Commissioner(A) setting aside demand - Revenue appeal dismissed: CESTAT [paras 3, 4, 5]

[2014-TIOL-474-CESTAT -MUM](#)

CCE Vs Brown Paper Technologies Ltd (Dated: February 4, 2014)

CE - Penalty for default in payment of duty - Commissioner (A) reducing penalty from

Rs.10 to Rs.7.5 lakhs on the ground that the appellant was registered with BIFR as a sick unit - Revenue in appeal. Held: High Court has observed that respondent assessee initiated proceedings under SICA 1985 on malafide grounds with an intention to defy legitimate recovery of excise duty and accordingly dismissed the application - HC had further observed that company had not approached BIFR for honest purpose but as a cover to stall legitimate recovery of CE dues - in these circumstances, ground taken by lower appellate authority is clearly unsustainable - Order-in-appeal set aside and order passed by adjudicating authority restored - Revenue Appeal allowed: CESTAT [para 5]

[2014-TIOL-469-CESTAT-MUM](#)

Larsen And Toubro Ltd Vs CCE & C (Dated: January 28, 2014)

CE - Applicant undertaking the activity of packing, repacking, labeling, relabeling and affixing of MRP on parts - adjudicating authority confirming duty demand on the ground that such activity on automobile parts amounts to manufacture and also ordering confiscation. Held: whether the parts are of automobile or earthmoving equipment is settled by Tribunal in case of JCB India Ltd. [2014-TIOL-09-CESTAT-MUM](#) wherein Tribunal has held that the earthmoving equipment is automobile and hence duty is payable - applicant has already deposited Rs.27 crores in cash - in the case of JCB India Ltd. the CCE, Pune I had dropped the demand and Tribunal had allowed Revenue appeal by confirming demand for normal period of limitation - in these circumstances, particularly in view of entitlement of credit, pre-deposit of remaining dues is waived and stay is granted: CESTAT

[2014-TIOL-466-CESTAT-KOL](#)

M/s Aditya Birla Chemicals (India) Ltd Vs CCE & ST (Dated: February 18, 2014)

CE - Valuation - whether freight charges incurred by the applicant in transferring the goods from their factory to the premises of buyer during the period from 2004-05 to September, 2008 are includable in the assessable value of the finished goods - in all the excise invoices, they have shown the ex-factory price and the freight charges separately - necessity of delivery of such hazardous chemicals at the buyer's premises is unavoidable as transit of such materials needs specialized vehicles - In view of the judgment of the Tribunal in Haldia Petro Chemical's case & Nav Bharat's case freight charges prima facie are not required to be added in AV - stay granted: CESTAT

[2014-TIOL-462-CESTAT -MUM](#)

M/s Mahanagar Gas Ltd Vs CCE (Dated: February 11, 2014)

CE - Valuation - Trade discount whether an admissible deduction - It is a well settled position that while considering various decisions on a matter, the latest decision should be preferred as that would have taken into account all the previous decisions on the subject - Pre-deposit ordered of 50% of duty amount: CESTAT [para 5.1]

[Also see analysis of the Order](#)

[2014-TIOL-461-CESTAT -KOL](#)

M/s Hindalco Industries Ltd Vs CCE, C & ST (Dated: January 23, 2014)

CENVAT - Due to power failure, pots of smelter failed and the bath and molten metal (work-in progress stage) inside the pots froze resulting into loss of work in process (WIP) goods - as the inputs were issued for manufacture of finished goods and the generation of waste and scrap due to power failure cannot be considered, as non-use of the inputs in or in relation to the manufacture of finished goods in the factory *prima facie* appellant entitled to CENVAT Credit – Stay granted: CESTAT

[2014-TIOL-456-CESTAT-MUM](#)

CCE Vs Crystal Granite & Marble (P) Ltd (Dated: January 3, 2014)

CE - Refund - import of marble slabs - importer manufacturer persuaded to pay CVD @16% and the same was paid under protest - later, in adjudication, benefit of notification 6/2002-CE granted inasmuch as no CVD was payable - refund claim rejected on ground of unjust enrichment but Commissioner (A) allowing the same - Revenue in appeal. Held - since order was not challenged by Revenue it attained finality and, therefore, the ground that the importer was not entitled for benefit of exemption not sustainable - Commissioner(A) has examined the issue of bar of unjust enrichment on basis of evidence - no infirmity in order - Revenue appeal dismissed: CESTAT [paras 6 & 7.2]

[2014-TIOL-455-CESTAT-DEL](#)

CCE Vs M/s Abhishek Industries Ltd (Dated: January 20, 2014)

Central Excise - Cenvat Credit - commission paid to sole selling agents and service tax thereof availed as 'input service' - denied in adjudication on the ground that some paper was exempt from duty, and invoices were raised on Head Office in some cases; demand partially set aside by Commissioner (Appeals) and agitated by Revenue herein.

Held: No dispute that the service stands availed by the respondents and the mere fact that the address of the head office was given in the invoices cannot as a hurdle to avalement of credit - Regarding insurance services, issue no more res integra and settled in favor of respondent - In as much as the issue involved is of legal interpretation, no mala fide can be attributed to the respondents so as to impose 100% penalty upon them - No interference in penalty already imposed.

[2014-TIOL-454-CESTAT-MAD](#)

M/s Pricol Ltd Vs CCE (Dated: August 22, 2013)

Central Excise - Cenvat Credit - Appellant, a manufacturer of instruments, procured partly finished screen printing machines, added parts like motors, gear boxes, bearings, v-belts, chains etc., to make them electrically operated; and cleared them both on payment of duty and under exemption - Revenue viewed that the partly finished screen printing machines were not "inputs" under Rule 57A (4) of Central Excise Rules 1944 and merited denial of the impugned credit; culminating in the instant dispute. Held: goods which are final products in the hands of one person can be an input in the hands of another, for further processing - Section Note 6 of Section XVI clearly lays down that process of the type done by the appellant amounts to manufacture - No merit in the argument of Revenue; orders of the lower authorities are set aside and the appeal is allowed

[2014-TIOL-451-CESTAT-MUM](#)

Vikas Jhawar Vs CCE (Dated: March 3, 2014)

Restoration of appeal - as legible copy of O-in-O was not furnished in spite of several opportunities to cure the defect appeal was dismissed Rule 11 of CESTAT (Procedure) Rules, 1982 - now appellant has cured the defects - restoration allowed subject to the condition that appellant pays cost of Rs.2000/- within 15 days to the account of CCE, Mumbai-I: CESTAT

[2014-TIOL-450-CESTAT-MUM](#)

M/s Bharat Bijlee Ltd Vs CCE (Dated: February 27, 2014)

CE - Whether machinery items supplied have essential characteristic of lift when assembled - Panel of Chartered Engineers appointed, now disassembled - Member(T) recuses himself from case, new Member(T) appointed to preside and matter to be heard finally by Tribunal itself by hearing on two consecutive days: CESTAT

[Also see analysis of the Order](#)

[2014-TIOL-449-CESTAT-MUM](#)

M/s Associates Lumbers Pvt Ltd Vs CCE (Dated: January 31, 2014)

CE - Manufacture - s. 2(f) of CEA, 1944 - Imported plywood subjected to a process of dipping into a boiling hot chemical solution consisting of sodium bicarbonate, boric acid and copper sulphate mixed in water and thereafter kept for drying - such chemical coating process makes the plywood powder free, borer free & termite free and is sold as Marine plywood - only the quality improves and the initial and final products are both plywood - it cannot be said that the process amounts to manufacture - Demands set aside & appeals allowed: CESTAT

[Also see analysis of the Order](#)

[2014-TIOL-447-CESTAT-MUM](#)

CEAT Ltd Vs CCE (Dated: January 24, 2014)

CE - Differential duty paid before finalization of provisional assessment - a harmonious reading of rule 7(4), 8(1) and 8(3) of the CER, 2002 would lead one to conclude that appellants are required to pay interest - fact that they have paid duty before formal finalization order issued by the AC/DC will not make any difference to the said position - judgments of Tribunal in Ispat Industries & Tata Motors Ltd. upheld by Bombay HC are per incuriam as details of various rules as also the judgment of SC, Karnataka HC and other Tribunal decisions not brought to the notice of the Tribunal or the Bombay High Court - Appeals dismissed: CESTAT

[Also see analysis of the Order](#)

[2014-TIOL-440-CESTAT-MUM](#)

M/s Bhushan Steel Ltd Vs CCE (Dated: February 24, 2014)

CX - Recovery - s. 35C of CEA, 1944 - Appeal not disposed within a period of 365 days - Vacation of Stay - recovery can be effected if stay has expired only with respect to duty amount and not in respect of interest & penalty - as the appellant has already paid the duty amount and stay granted was in respect of penalty/interest, department is restrained from proceeding with any coercive measures - Misc. application allowed: CESTAT [paras 2, 3]

[Also see analysis of the Order](#)

[2014-TIOL-439-CESTAT -MUM](#)

Ajri Engineering Industries Pvt Ltd Vs CCE (Dated: January 31, 2014)

CENVAT - Appellant, a manufacturer of sugar manufacturing equipments and parts procured chopper, leveler, transformer etc. from market and same were supplied directly to customers - credit availed on these bought out items and value of the same included in AV of equipments - Revenue objecting to availment of CENVAT on ground that these 'inputs' were not received in factory. Held : Tribunal in the case of Ajinkya Enterprises, which decision has been upheld by High Court, has held that if any inputs on which credit has been taken are cleared "as such" on payment of duty, the duty payment shall amount to reversal of credit taken on these inputs - therefore, issue is no longer res integra - credit correctly availed - Appeal allowed with consequential relief: CESTAT [para 4]

[2014-TIOL-438-CESTAT -MUM](#)

Advanced Enzyme Technologies Ltd Vs CCE (Dated: February 5, 2014)

CENVAT credit taken on Endorsed Bill of entry - there is no dispute that the imported consignments has not suffered CVD or that the said consignment has not been received at the appellant's factory at Thane - Since Bill of Entry is a specified document on the strength of which CENVAT credit can be availed, an endorsed bill of entry is also an equally valid document for availing credit - order set aside and appeal allowed with consequential relief: CESTAT [para 5.1]

[2014-TIOL-436-CESTAT -MUM](#)

Bhandary Metallurgical Corpn Ltd Vs CCE (Dated: February 10, 2014)

CE - appellant receiving duty paid goods for carrying repair, reconditioning, remaking etc. and after undertaking the process of annealing, drawing and pickling, which does not amount to manufacture, appellant clearing goods without payment of duty - Revenue alleging that in terms of rule 16 of CER, after carrying out of repair works, appellant is required to pay appropriate duty or pay duty equivalent to CENVAT credit taken - appellant submitting that they have not taken any credit, hence they are not required to pay any duty or required to reverse CENVAT credit - these facts are on record and not rebutted by Revenue - Mere presumption that goods received for repair have been replaced by another goods without evidence is not acceptable - appeal allowed with consequential relief : CESTAT [para 6]

[2014-TIOL-431-CESTAT -MUM](#)

Ajinkya Enterprises Vs CCE (Dated: November 12, 2013)

CE - A miscellaneous application is not a substitute for an appeal as provided for in the law - Application dismissed: CESTAT by Majority

[Also see analysis of the Order](#)

[2014-TIOL-430-CESTAT -DEL](#)

M/s Bellsonica Auto Component India Pvt Ltd Vs CCE (Dated: November 28,

2013)

Central Excise – Cenvat credit – appellant, manufacturer of sheet metal components for automobiles, availed credit of the service tax paid by the service providers on the rent for the land and on the charges for erection, installation, and commissioning service under Rule 2(I) of the Cenvat Credit Rules 2004, denied in adjudication confirming demand for recovery of credit with interest and penalty; agitated herein.

Held: During material period, definition of input service is very wide and would cover all the services relating not only to erection, installation, commissioning of the plant and machinery, but also the services used in relation to construction of the office premises within the factory – impugned services to be treated as an input services used in or in relation to manufacture of final product (auto components) and would be eligible for credit - rental of immovable property has also been used in or in relation to manufacture of final product as it is on the land rented by the appellant that the factory for manufacture of auto components has been set up, having clear nexus with the manufacture of final product and has to be treated used in or in relation to, whether directly or indirectly in the manufacture of final product and would be covered by the definition of input service – findings in impugned order totally wrong; unsustainable and set aside.

2014-TIOL-429-CESTAT -MUM**M/s Sanjivani Parantekal Ltd Vs CCE (Dated: December 31, 2013)**

CENVAT - When the input credit was taken by the appellant, the final product was dutiable and which became exempted later-on, therefore, the appellant is not required to reverse the credit - sub-rule (3) inserted in rule 11 of the CCR, 2004 by notification 10/2007-CE(NT) dated 01/03/2007 is not applicable retrospectively - issue no longer res integra - appeal allowed with consequential relief: CESTAT [para 5]

2014-TIOL-428-CESTAT -MAD**Unimech Industries Pvt Ltd Vs CCE (Dated: September 29, 2013)**

Central Excise - Stay / dispensation of pre deposit - Cenvat credit - removal of capital goods as such to other unit - demand for reversal of credit under Rule 3(5) of the Cenvat Credit Rules 2004 under dispute herein.

Held: Most of the capital goods were used approximately within a span of 3 to 6 months, hence *prima facie* the decisions relied upon by the appellant inapplicable, stand distinguished on facts and law - applicant to make a pre-deposit of Rs.3,00,000/- (Rupees Three lakhs only) within 6 weeks; and upon compliance, pre-deposit of balance duty along with interest and penalty would be waived and its recovery stayed during pendency of the appeal.

2014-TIOL-423-CESTAT -DEL**M/s Essar Packaging Pvt Ltd Vs CCE & ST (Dated: December 3, 2013)**

Central Excise – Stay/Dispensation of pre-deposit – Printing of laminated / unlaminated poly films – Whether amounts to manufacture – Per Member (J) - whether the process of printing as well as on lamination of printed poly film amounts to manufacture or not has to be considered in the light of different judgements on the issue. *Prima facie* it is to be viewed that even if the printing amounts to manufacture, the final product which emerges would be printing under Printing Industries Act, thus classifiable under Chapter 49 which attract nil rate of duty. Taking into consideration that a part of the demand would be within the limitation period and considering that

the appellant has already deposited an amount of Rs.40 lakhs , the offer to further deposit of amount of Rs.20 lakhs as fair offer.

Contra Per Member (T) - Appellant's contention that the lamination does not amount of manufacture by relying upon the decision of the Supreme Court in the case of (2004-TIOL-77-SC-CX) is not relevant to the facts of case - It has been held in that case that laminating/metalizing duty paid film does not amount of manufacture as the film remains a film and no new and distinct product comes into existence. As per facts of the present case, a new and distinct commodity comes into existence which is printed and laminated plastic film. Therefore, the piecemeal plea of the party that lamination does not amount to manufacture as final product is printed material exempt under chapter 49 is not at all sustainable in the facts and circumstances of the present case - It is clear that balance of convenience is in the favour of revenue - Interest of justice shall be met if appellant are directed to make pre-deposit of Rs. 1.00 (one crore) as a condition for hearing the appeal in addition to Rs. 40 lakh already deposited during investigation.

[Also see analysis of the Order](#)

[2014-TIOL-422-CESTAT -DEL](#)

M/s Real Ispat And Power Ltd Vs CCE & ST (Dated: December 18, 2013)

Central Excise - Stay / dispensation of pre deposit - Cenvat Credit – Based on scrutiny of raw material consumed by the appellant in the induction furnace division, Revenue viewed that appellant recorded abnormal consumption of pig iron, scrap, CPC production apart from low production yield resulting in high utilization of Cenvat credit – demand for recovery of irregular credit with interest and penalty confirmed in adjudication and agitated herein – Difference of opinion recorded in disposal of stay petition.

Held by Mem(J): Following previous decision of CESTAT in Aditi Ispat, partial waiver of pre-deposit of Rs. thirty lakhs is to be ordered.
Held by Mem(T): Based on the analysis and use of carbon required in manufacture of M.S.Ingots, use of extra carbon utilization through extra consumption of pig iron is to be considered infeasible and thus prima facie case in favor of Revenue meriting pre-deposit of Rs.1.25 crores.

[2014-TIOL-421-CESTAT -MAD](#)

M/s Vishay Transducers India Pvt Ltd Vs CCE (Dated: July 11, 2013)

Central Excise – Cenvat Credit – writing off the value of idle raw material as per accounting policy - Revenue was of the view that in respect of such provisions made, the appellants should have reversed Cenvat credit under Rule 3 (5B) of Cenvat Credit Rules, 2004 – demands confirmed with interest and penalty, agitated herein.

Held: Contention that the goods have been used in the manufacture of excisable goods, subsequent to issue of impugned order, noted - force in the argument that during the relevant time rules did not require reversal of credit when value of inputs was only partially written off - In respect of work in progress, merit in the argument that the goods are used in manufacturing activity once it reaches the stage of work-in progress - impugned order set aside and the matter is remanded to the adjudicating authority for verification of claims on facts and deciding afresh on the legal issues raised.

[2014-TIOL-416-CESTAT -MAD](#)

M/s Sterling Biotech Ltd Vs CCE (Dated: September 5, 2013)

Central Excise - Stay / dispensation of pre deposit - CENVAT credit - during the process of manufacture, 'sludge' (waste product) emerges from the effluent treatment plant - demand of CENVAT credit under Rule 6 of Cenvat Credit Rules, 2004 confirmed with interest and penalty on the ground that the applicant used the (credit availed) input in the manufacture of exempted product, sludge; agitated herein.

Held: High Court ruling in the case of Rallis India Ltd., holding that Rule 6 inapplicable for by-products which are exempt - applicant has made out a *prima facie* case for waiver of pre -deposit of entire amount of duty, interest and penalty.

2014-TIOL-415-CESTAT -MAD

Areva T&D India Ltd Vs CCE (Dated: November 06, 2013)

Central Excise - Stay / dispensation of pre deposit - non payment of excise duty on relays used captively in the manufacture of control panels cleared under notification 6/2006-CE (S.No.91) which provides exemption for goods supplied under international competitive bidding to mega power projects in dispute herein - contention that since no obligation is required to be fulfilled it can be concluded that they have discharged obligation under Rule 6 (6) (vii) of CCR 2004 and they would be eligible for notification 67/95-CE, considered in earlier stay petition - view taken in stay order No.50/12 dt. 27.1.2012 in applicant's own case is applicable - waiver of pre -deposit of dues arising out of the impugned order granted for admission of appeal, with stay on collection of such dues during pendency of appeal.

2014-TIOL-412-CESTAT -MAD

M/s Kilburn Chemicals Ltd Vs CCE (Dated: September 20, 2013)

Central Excise - Stay / dispensation of pre deposit - CENVAT credit - credit availed on tax component of service tax paid on the rent of immovable property toward corporate office situated at Kolkata in dispute herein.

Held: *Prima facie*, the observation of Commissioner (Appeals) that the rent paid for corporate office will not form part of cost of production is unacceptable - Tribunal, in the case of National Engineering Industries, held that rent paid for corporate office would come within the purview of Rule 2(I) of CENVAT Credit Rules, 2004 - waiver of predeposit of entire amount of duty along with interest and penalty granted and recovery thereof stayed during the pendency of the appeals.

2014-TIOL-408-CESTAT -MUM

Unique Industrial Handlers Pvt Ltd Vs CCE (Dated: February 3, 2014)

CE - Exemption - Project authority certificate issued by NTPC clearly indicates that the supply of goods is under the procedure of International Competitive Bidding and the contract has been awarded to M/s. WPIL - Since in the Annexure to the certificate, appellant's name figures as a sub-contractor, the condition that the goods should be supplied against ICB procedure is clearly satisfied - moreover, certificate of the Jt. Secy, GOI states that the BARH Super Thermal Power Project has capacity of 1000MW or more - as condition of Notif. 12/2012-Cus is satisfied, appellant is entitled for exemption under notif. 6/2006-CE, 12/2012-CE - Appeal allowed: CESTAT

[Also see analysis of the Order](#)

[2014-TIOL-407-CESTAT -DEL](#)**CCE Vs M/s Vinay Traders (Dated: August 28, 2013)**

Central Excise - Offence and penalty - M/s Surya Cotspin effected clandestine clearances under parallel invoices by suppressing production, evidenced by octroi record, established to have designed the fraud - respondent being one of the beneficiary of clandestinely removed goods by Surya Cotspin, penalty of Rs.10,000/- imposed in adjudication; set aside by Commissioner (Appeals) and agitated by Revenue herein.

[2014-TIOL-405-CESTAT -DEL](#)**M/s K K Sales Vs CCE (Dated: November 19, 2013)**

Central Excise - Section 3A of the Central Excise Act, 1944 and Paan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 - Appellant manufacturing paan masala under brand name 'chutki' - instant dispute(s) relates to percentage of betel nut governing assessment to duty and consequent demands with imposition of penalties.

Held: samples were drawn by the visiting officers from the hopper as also from the final product - Admittedly, it is the percentage of betel nut in the final product, which is the relevant criteria for deciding the disputed issue and the percentage of betel nut in the samples collected from the hopper would not be relevant - samples collected were of 25 grams weight, whereas the samples received by CRCL and tested by them were of 79.100 grams weight - If the samples have actually been sent to Shri Ram Institute for Industrial Research and have actually been registered by them, the test report of the same is required to be made known to the appellants and should be relied upon by the adjudicating authority so as to give a justifiable finding - Under para 8 of Chapter XI of CBEC Manual, which lays down the procedure of drawing of samples and testing and re-testing of the samples, the assessee is within his rights to apply for re-testing of samples within 90 days from the date on which the test result was communicated to him, if he is dissatisfied with the test carried out by the Chemical Examiner - no justifiable reason to deny it - appellants' final product would be available at many places including the factory premises, the godowns, the dealers' premises or in the market; not difficult or impossible to collect the samples from various places and to send the same for testing so as to find out the contents of the betel nuts; not done by the Department for the reasons best known to them - impugned order set aside and remanded to the original authority for re-examining the matter.

[2014-TIOL-404-CESTAT -MUM](#)**Mararjee Brembana Ltd Vs CCE (Dated: November 11, 2013)**

CENVAT - Appellants are manufacturers of cotton fabric - cotton waste arises during the manufacture and which is sold duty free - Revenue of the view that appellant is not entitled for CENVAT credit to the extent of cotton involved in the Cotton waste - Board Circular dated 03/04/2000 clarifies that CENVAT credit would be admissible on the part of the input that is contained in any waste, refuse or by-product - order does not deserve any merit, hence set aside and appeal allowed: CESTAT [paras 5 & 6]

[2014-TIOL-398-CESTAT -MUM](#)

CCE Vs Datta Shetkari Seti Mai Prakriya Sanstha Maryadit (Dated: January 2, 2014)

CE - Mandatory penalty u/s 11AC of the CEA, 1944 is attracted only when allegations of fraud, collusion, willful mis-statement, suppression of facts etc. with intent to evade payment of duty against the respondent are invoked in the SCN - understanding of the AR is not correct - Revenue appeal dismissed: CESTAT [para 4]

[Also see analysis of the Order](#)

[2014-TIOL-397-CESTAT -MUM](#)

Arvind Kumar Vs CCE (Dated: December 27, 2013)

Penalty - Rule 26 of CER, 2002 - main party has already paid duty, interest and 25% of duty as penalty within 30 days of issuance of SCN, therefore, as per proviso to section 11A of CEA, 1944 proceedings in the SCN come to an end - in this view of the matter, imposing penalties on co-noticees is not warranted - order imposing penalties set aside - appeals allowed: CESTAT [para 3]

[2014-TIOL-396-CESTAT -AHM](#)

M/s Vardhman Stampings Pvt Ltd Vs CCE (Dated: December 4, 2013)

Central Excise - CENVAT credit - CRGO Coils on which credit availed, slit at factory premises - credit sought to be denied on the ground that the process of slitting did not amount to manufacture under Sec 2(f) of the Central Excise Act 1944 - demand for recovery of erroneous credit confirmed with interest and penalties under Rules 14 and 15(2) of the Cenvat Credit Rules 2004 and Sections 11A, 11AB and 11AC of the Central Excise Act 1944, agitated herein.

Admissibility of Cenvat credit on slitting of CRGO coils cleared is no more *res integra*; decided by the Mumbai Bench of Tribunal in the case of Ajinkya Enterprises - duty paid by the appellant has been accepted by the department - appellant was not asked by the Revenue at any stage for paying Central Excise duty when process did not amount to manufacture - credit correctly availed.

[2014-TIOL-395-CESTAT -MAD](#)

M/s Archana Spinners Ltd Vs CCE (Dated: July 9, 2013)

Central Excise - Valuation - Clearances of Polyester Yarn and Polyviscose Yarn classifiable under Heading 5509 of the First Schedule of the Central Excise Tariff Act, 1985 under dispute - Revenue viewed that the appellants adopted a lower assessable value than the actual value of clearance in consignment agents' premises at the time of clearance at factory gate - duty demands with penalty confirmed in adjudication, duty demand upheld by Commissioner (Appeals), agitated herein.

Held: Appellant factually supplying the goods to the consignment agent; not contesting the demand of duty short-paid during consignment agent sale - main grievance is that they have also paid duty on higher assessable value and the refund of the excess amount of duty should be adjusted against the demand of duty paid on lower assessable value - jurisdictional Assistant Commissioner ordered for provisional assessment and also directed execution of a bond as required under Rule 9B of the Central Excise Rules, 1944 - appellant had not executed the bond as required under the said Rule and therefore there was no provisional assessment - no infirmity in

finding by Commissioner (Appeals) that the excess amount of duty paid on higher assessable value would be refunded in accordance with Section 11B of the said Act.

[2014-TIOL-391-CESTAT -MUM](#)

M/s Privi Organics Ltd Vs CCE & ST (Dated: January 6, 2014)

Central Excise - Credit of duty paid on inputs which are lying in balance when the unit was converted from DTA to EOU - in Sun Pharmaceuticals Industries [\(2009-TIOL-1613-CESTAT -MAD\)](#) the demand denying the credit has been set aside on the ground that there are no provisions to lapse the balance of credit available with DTA unit - in view of the same, *prima facie* strong case in favour of applicant - Pre -deposit waived and stay granted: CESTAT [para 2]

[2014-TIOL-390-CESTAT -MUM](#)

Truefit Engg Co Ltd Vs CCE (Dated: December 31, 2013)

Penalty - Appellant contravened rule 8(3A) of the CER, 2002 inasmuch as they failed to pay excise duty within 30 days of the due date and for the latter clearances paid duty by utilizing CENVAT credit instead of paying through PLA/account current - intent to evade payment of duty is missing, therefore, provisions of rule 25 read with section 11AC are not attracted so as to impose equivalent penalty - but penalty u/r 27 of CER is imposable - penalty of Rs.5000/- each is imposed on appellants - Appeals disposed of: CESTAT [para 4]

[2014-TIOL-384-CESTAT -MUM](#)

M/s Jay Enterprises Vs CCE (Dated: January 7, 2014)

COD - Each party has to file appeals separately and in time - main appellant filing appeal in time but the present appellant (a co-noticee to the proceedings) under the bona fide belief that the appeal filed by the main appellant is sufficient to challenge the order passed by lower authority filed appeal with a delay of 50 days - no cause for condonation of delay - application and appeal dismissed: CESTAT [para 5]

[2014-TIOL-383-CESTAT -MAD](#)

M/s Dunsandale Tea Factory Vs CCE (Dated: July 22, 2013)

Central Excise - Stay / dispensation of pre deposit - Export of tea under Bond - dispute on leviability of cess under Section 25 of the Tea Act, 1953 raised herein.

Held: Apex Court, in Ahmedabad Mfg and Calico Printing Company case observed that exemption granted in relation to excise duty under Central Excise Act cannot be extendable in different statutes - No such notification placed before the Court nor was it contended that there is any such notification in existence - *Prima facie*, no notification exists in the instant case for exemption of the cess in respect of export under-bond - applicants to deposit a sum of Rs.2 lakhs (Rupees Two Lakhs only) within a period of four weeks - upon compliance, the balance amount of cess along with interest will be waived and recovery thereof stayed till the disposal of the appeal.

2014-TIOL-382-CESTAT-MAD**M/s Bharat Heavy Electricals Ltd Vs CCE (Dated: July 3, 2013)**

Central Excise - Stay / dispensation of pre deposit - applicant's eligibility for the benefit of exemption Notification No.6/2006-CE dated 01.03.2006 (Sl. No.91) for supply against International competition bidding (ICB) to the Chandrapur Project and Bhusawal Project of Maharashtra State Power Generation Co. Ltd (MAHAGENCO) during the period January 2010 to February 2011 in dispute herein - Revenue contends that the exemption is unavailable in respect of goods used for 'expansion' whereas it is available for 'setting up' mega power projects.

Held: Exemption from customs duties under Notification No. 12/2012-Cus. dated 17.03.2012 (Sl. No. 507) is a continuation of the exemption granted earlier under Notification No. 21/2012-Cus. dated 01.03.2002 (Sl.No.400) -exemption from Central Excise Duty under Notification No. 12/2012-CE dated 17.03.2012 (Sl. No. 336 read with Condition No. 41) is a continuation of the exemption granted earlier under Notification No. 6/2006-CE dated 01.03.2006 (Sl. No. 91 read with Condition No. 19) - Therefore, it is clear that the exemption from Central Excise Duty is available to the goods supplied against ICB to the two projects (Chandrapur & Bushaval), under Notification No. 6/2006-CE (Sl. No. 91 read with Condition No. 19) - subsequent amendment by Notification No.49/2012-Cus dated 10.09.2012, incorporated Bhusawal and Chandrapur expansion projects - *prima facie* case for waiver of predeposit of duty and penalty made out, stay also granted in the appellant's own case in respect of Chandrapur Thermal unit - predeposit of duty along with interest and penalty is waived and collection of its dues stayed till the disposal of the appeal.

2014-TIOL-381-CESTAT-MUM**M/s Borax Morarji Ltd Vs CCE (Dated: December 20, 2013)**

CENVAT - Activity of sieving and packing is not notified as a manufacturing activity in respect of goods falling under Chapter 25 of CETA, 1985 - hence it cannot be said that appellant manufactured exempted goods - since appellant has taken credit of 4% SAD on the imported inputs LBU 30, LBU 60, they are required to reverse the same treating these inputs as having been cleared as such - appeal allowed with consequential relief: CESTAT [paras 6 & 7]

[Also see analysis of the Order](#)

2014-TIOL-380-CESTAT -MUM**CCE Vs Jayaswal Neco Ltd (Dated: January 3, 2014)**

CENVAT - Inputs used for undertaking job work activities - Credit denied on the ground that job worked goods had not suffered any duty - Commissioner(A) setting aside order in view of LB decision in Sterlite Industries - Revenue in appeal. Held: since Revenue appeal against LB decision has been dismissed by Bombay High Court, no merit in the present Revenue appeal - Credit permissible - Revenue appeal dismissed: CESTAT [para 6]

2014-TIOL-379-CESTAT-MAD**M/s A R R Enterprises Vs CCE (Dated: July 25, 2013)**

Central Excise – SSI exemption – Applicant, manufacturer of 'Scented Chewing

Tobacco' and claiming exemption under 8/2003-CE, dated 19.08.2010 - Prior to 01-04-2004, they had been using the brand name of A.R.R. Seeval Pvt. Ltd. registered by the family and hence the exemption was denied - subsequently, they were indicating the name of the manufacturer as "A.R.R. Enterprises" on the packages - Revenue viewed that using the name of the manufacturers with the words "A.R.R." amounts to use of brand name belonging to another company and merited denial of SSI exemption after 01.04.2004 as well. Duty demands with interest and penalties confirmed in adjudication and agitated herein.

Held: It has been decided in Tribunal's Final Order Nos.923, 924, 925/10, dated 19.08.2010 that using the name of the manufacturer on the pack is a statutory requirement and the name of the present manufacturer being "A.R.R. Enterprises", the indication of their name cannot be considered to be use of brand name - Revenue had filed appeal against this order of the Tribunal in the apex court, which was dismissed vide order dated 04.04.2011 in Civil Appeal Nos.3103-3105/2011 - matter no longer 'res integra' - impugned order set aside.

[2014-TIOL-378-CESTAT -AHM](#)

M/s Umedica Laboratories Pvt Ltd Vs CCE (Dated: December 3, 2013)

Central Excise - Cenvat Credit - Proper document under Rule 9(1) of the Cenvat Credit Rules 2004 - dispute on admissibility on the basis of Xerox copy of triplicate Bill of Entry - no diversion of inputs is alleged; Ruling in the Mehta Hwa Fuh Plastics case applicable, apart from Para 3 of Facility Notice No. 49/2010 dated 26.4.2010 issued by the Chief Commissioner of Customs, Mumbai Zone-II, vide F. No.S/I-22(02)/2008-CCO M-II - when the receipt of inputs and its final use in the manufacturing activity is not disputed, then the appellant cannot be denied the Cenvat credit.

[2014-TIOL-373-CESTAT -MUM](#)

The Paper Products Ltd Vs CCE (Dated: November 12, 2013)

CE - s. 2(f) of CEA, 1944 - Plastic films, polyester films, BOPP films are subjected to printing using rotogravure cylinders - Later, these printed materials are laminated by binding of two or more layers of same or different substrates with help of bonding agent and the laminates so obtained are then taken for slitting process to get proper size in form of coils - such laminates are cleared to customers as packaging materials - process amounts to manufacture and, therefore, duty has been correctly discharged by availing CENVAT credit - no cause for seeking reversal of CENVAT credit availed on inputs by treating the process as not amounting to manufacture or treating the amount of duty collected from customers as deposit and seeking recovery u/s 11D of CEA, 1944 - Appeal allowed with consequential relief: CESTAT [para 6]

Disallowing the CENVAT credit availed on the inputs on the plea that the final product has not emerged from the process which could be termed as "manufacture" cannot be sustained as it is against the tenets of equity and justice - department having accepted the excise duty on the final product now cannot be permitted to deny CENVAT credit on the inputs on such a technical plea - If such an argument is allowed to sustain it would negate the entire object of the CENVAT credit scheme which has been put in place with a view to protect the assessee from double taxation: CESTAT

[Also see analysis of the Order](#)

[2014-TIOL-372-CESTAT -MAD](#)

M/s Rohini Cables Vs CCE (Dated: August 14, 2013)

Central Excise - Stay / dispensation of pre deposit - Default in duty payment - Rule 8(3A) of Central Excise Rules, 2002 - Revenue viewed that payment of the portion of the duty paid through CENVAT credit merited demand for it to be paid through cash along with interest and penalty; confirmed the same in adjudication and agitated herein.

Held: there are conflicting decisions on this issue - During the defaulting period there is no bar on taking credit; there is bar only on utilization of credit - prohibition exists as per Rule 8(3A) only when the assessee is in default - when default made good by paying the defaulted amounts in cash, they can pay the duty liability using CENVAT credit - usage prior to coming out of default can result in payment of interest on such amount and no demand on such amount again, as held in one set of decisions - other set of decisions on this issue is that since the rule prescribes that the amount has to be paid in PLA it has to be so paid - matter can be decided at the time of final hearing - Gujarat High Court ruling in the case of Precision fashioners distinguished on facts - At any rate, it is obvious that there will be some interest liability since the duty paid through Cenvat credit during defaulting period cannot be taken as proper discharge of duty - interest amount is not seen quantified; and penalty also is payable - applicant to predeposit Rs.50,000/-.

[2014-TIOL-371-CESTAT -MUM](#)

Neogen Chemicals Ltd Vs CCE (Dated: January 6, 2014)

CENVAT credit on MS angle, MS beam, etc. used for foundation/structure of machine/equipment - in the light of the LB decision in Vandana Global ([2010-TIOL-624-CESTAT-DEL-LB](#)), appellant has no case - however, since the issue as to whether the appellant is entitled to take CENVAT credit on the impugned items during the period was in dispute and the same was referred to the LB, extended period is not invokable - order set aside as demand for period 2006-08 issued on 22.05.2009 is hit by limitation: CESTAT [paras 6 & 7]

[2014-TIOL-370-CESTAT -MUM](#)

Neco Ceramics Ltd Vs CCE (Dated: December 10, 2013)

CENVAT - SCN issued to appellant for denial of credit taken of the Service Tax paid by the job worker on the ground that the supplier of service was not required to pay tax and, therefore, credit could not have been availed by appellant - Commissioner(A) directing to make pre -deposit and since appellant failed to do so, a appeal dismissed - appeal before Tribunal. Held : Job worker was directed by Revenue to pay ST under Manpower Recruitment Service and the ST paid was taken as credit by appellant - however in appeal, the Commr(A) held that job worker qualified under BAS and no ST is payable - pursuant thereto demand issued to appellant - however, Revenue challenging that order of Commr(A) and appeal is pending before Tribunal - in such a situation, if Tribunal decides in favour of revenue that job worker is required to pay ST then also appellant is entitled to take credit - in these circumstances, appellant has made out a case for 100% waiver of pre-deposit - since impugned order has not been passed on merits, matter remanded: CESTAT [paras 5 & 6]

[2014-TIOL-365-CESTAT -MUM](#)

M/s A N Impex Vs CCE (Dated: January 10, 2014)

CE - Appellant, a 100% EOU clearing goods to another EOU - as they could not produce the re-warehousing certificate endorsed by the consignee and countersigned

by Superintendent in-charge of consignee, demand of duty confirmed against appellant. Held : - as per rule 20(3) of the CER, 2002, if the consignor failed to produce re-warehousing certificate, duty is cast on consignee and not on consignor - appellant not liable to pay duty as it is not in dispute that goods have not been supplied to another EOU - appeal allowed with consequential relief: CESTAT [para 8]

[2014-TIOL-363-CESTAT-MUM](#)

CCE Vs Sonhira Ssk Ltd (Dated: January 2, 2014)

CENVAT - Items such as Cane carrier, cane unloader, gantry girder assembly, centrifugal machinery, boiler, sugar mill, juice tank, sugar storage bins cannot be termed as supporting structures, therefore, credit cannot be denied: CESTAT [para 8]

CENVAT - Credit taken on structures and part of sugar machinery and equipment - Nowhere it is coming from the facts that these structures are supporting structure for erection of plant and machinery at the site of the respondent - credit admissible in view of CESTAT decision in India Cement Ltd. - no infirmity in order passed by lower authority - Revenue appeal dismissed: CESTAT [paras 8, 9]

[2014-TIOL-358-CESTAT-DEL](#)

M/s Blackstone Polymers Vs CCE (Dated: July 26, 2013)

CE - Valuation - buyer agreed to provide interest free advance to the assessee to help him set up the factory with an undertaking that the assessee would supply at least 90% of their production to the buyer - such 'compensation' is not includible in the AV as SCN did not bring out categorically the allegation that the arrangement was to influence sale price - there is also no attempt made by Revenue to find out whether the buyer was in anyway related to manufacturer to take undue advantage of deflating sale price in the guise of compensation - Demand set aside: CESTAT by Majority.

[Also see analysis of the Order](#)

[2014-TIOL-357-CESTAT-MAD](#)

M/s Sree S V M Textile Mills Vs CCE (Dated: August 14, 2013)

Central Excise - Refund - claims filed under the provisions of Rule 5 of the Cenvat Credit Rules, 2002 of accumulated credit resulting from export clearances effected directly / through merchant exporter / through other manufacturer-exporter - proposals to reject the claims on grounds that appellant failed to furnish evidence of non-availment of drawback; proof of export; inability to use the credit for DTA clearances; and method of computation - claims rejected in adjudication primarily on ground that proof of export not properly correlated; and partially upheld by Commissioner (Appeals); agitated before Tribunal in the first round of litigation wherein appeal was allowed - consequent refund claim partially rejected in adjudication and agitated before Commissioner (Appeals) in the second round of litigation, who rejected the appeal on a fresh ground that the appellant has claimed refund on excise duty paid in the capacity as a dealer and not as a manufacturer - also held that Rule 5 inapplicable and hence the appellant was not eligible for refund; culminating in the instant appeal.

Held: in the first round of litigation, the Commissioner (A) had allowed refund claims for all goods cleared from the factory for export and rejected the refund claims only in

respect of the goods which were cleared from the premises of the merchant exporters or other manufacturers - Tribunal allowed appeal without any qualification, implying that the entire refund which was originally sought merited sanction - a second round of examination of eligibility for refunds was *prima facie* unwarranted; also, the adjudicating authority as well as the first appellate authority have relied on new grounds for rejecting the refund claims without even putting the appellant on notice - on the basis of principles of natural justice, the orders in the second round of litigation are not maintainable.

Even on merits, Central Excise Rules, 2002 and Cenvat Credit Rules, 2002 as amended by the Notification No. 34/03-CE gave an option to the dealer of textile goods to pay excise duty as if he was a manufacturer and to comply with all the rules and regulations - it is to be understood that the option is in respect of all matters related to payment of duty as well as claims of refund consequent to exports - arguments made by the Revenue inconsistent and not in conformity with the policy of the Government to allow export of goods without incidence of taxes - appeal allowed with consequential benefit subject to the condition that the impugned Cenvat credit has not been utilized by the appellant for payment of duty during the period from date of filing of the claims to the date of sanction of the refund.

2014-TIOL-356-CESTAT-MUM

Sun Petrochemicals P Ltd Vs CCE (Dated: January 15, 2014)

Input service - CENVAT on GTA services availed during the period April 2005 to March 2007 - issue no more res integra - issue has been resolved by Karnataka High Court in the case of ABB Ltd. - ([2011-TIOL-395-HC-KAR-ST](#)) holding that up to the period 31.03.2008, assessee is entitled to take Input service credit on GTA service - order set aside and appeal allowed with consequential relief: CESTAT [para 3]

2014-TIOL-352-CESTAT-MUM

Indo Count Industries Ltd Vs CCE (Dated: December 17, 2013)

CENVAT - Export goods rejected by overseas buyer - goods re-imported & Credit availed of CVD paid thereon - credit denied and equivalent penalty imposed - as per rule 16 of CER, 2002, any goods on which duty has been paid at the time of removal when brought back to the factory would be eligible to CENVAT credit - *prima facie* appellant has not made a case for total waiver - pre-deposit ordered of 50% of CENVAT involved: CESTAT [para 4]

Also see analysis of the Order

2014-TIOL-351-CESTAT-MUM

UNI Deritend Ltd Vs CCE (Dated: December 19, 2013)

CENVAT - Rule 2(I) of CCR, 2004 - Appellant contending that transportation of employees is a part of manpower supply service and hence credit rightly availed during the period December 2011 to March 2012 - nowhere in the agreement 'manpower service' is said to be supplied by service provider - in the absence of concrete evidence, credit cannot be allowed - there appears to be no intention by the appellant to avail inadmissible credit, therefore, penalty u/s 11AC is not warranted - extended period is also not invokable - demand confirmed for the normal period of limitation - Appeal disposed of: CESTAT [paras 6 & 7]

2014-TIOL-350-CESTAT -MAD**Packaging India Pvt Ltd Vs CCE (Dated: August 20, 2013)**

Central Excise – Cenvat Credit - appellant availed cenvat credit on capital goods namely MS copper coated rollers and after several reuses cleared the same as scrap on payment of duty on transaction value – Revenue viewed that credit originally availed is to be reversed, confirmed demands with interest and penalty in adjudication, Commissioner (Appeals) dismissed the case for non compliance with stay order, culminating in the instant appeal. Held: Tribunal on this issue granted unconditional stay in appellant's own case - appropriate to set aside the impugned order and remand the matter back to the Commissioner (Appeals) to decide the stay application after considering the case law submitted by the appellant - appeal is allowed by way of remand.

2014-TIOL-349-CESTAT -MAD**Hindustan Coca Cola Beverages Pvt Ltd Vs CCE (ST) (Dated: August 13, 2013)**

Central Excise – Cenvat Credit – credit on the bottles used for marketing soft drinks which get destroyed in the manufacturing process or transport of the goods - demands confirmed in adjudication, Commissioner (Appeals) dismissed appeal for non-compliance with stay order, and agitated herein. Held: Commissioner (Appeals) has asked for pre-deposit on an issue which is already decided in favour of the assessee. - discretion vested upon him under section 35F of the Central Excise Act 1944 should have been exercised more judiciously - there was no justification to call for any pre-deposit for hearing the appeal before Commissioner (Appeals) - matter is remitted to the Commissioner (Appeals) after setting aside the impugned order for deciding the matter on merits after complying with principles of natural justice but without insisting of pre-deposit under section 35F.

2014-TIOL-346-CESTAT -MUM**Pratam Fab Processors Pvt Ltd Vs CCE (Dated: January 16, 2014)**

CENVAT - During the period of dispute, applicant has taken excess credit on 62 occasions - it cannot be said that this is an inadvertent mistake on the part of the excise clerk - no mistake apparent on record which requires rectification - ROM dismissed: CESTAT [paras 3 & 4]