

CESTAT RULING

[2011-TIOL-664-CESTAT-MAD](#)

M/s Eastern Condiments (P) Ltd Vs CCE, Madurai (Dated: January 10, 2011)

Central Excise – Stay / Dispensation of pre -deposit – Classification of meat masala, sambar powder, biryani masala, pickle powder etc – Demand of duty by classifying under CET 2103 9040 – Prima facie case made out for waiver of pre -deposit.

[2011-TIOL-662-CESTAT-MAD](#)

Kali Aerated Water Works Vs CCE, Madurai (Dated: February 1, 2011)

Central Excise – Exemption Notification - Sl.No.15 of the Table to Notification No.6/2002-CE dt.1.3.2002 covers “aerated waters prepared and dispensed by vending machines”. The goods supplied to the vending machines is nothing but soft drink concentrate. Benefit of exemption notification not available. (Para 2)

Marketability – Goods supplied in canisters to the vending machines is in semi-finished form and is not capable of being marketed cannot be accepted as the assesseees are paying sales tax thereon and the suppliers of semi-finished drinks for use in vending machines are paying excise duty by classification under CET sub-heading 2108.16. (Para 2) .

[2011-TIOL-656-CESTAT-DEL-LB](#)

M/s Steel Strips Vs CCE , Ludhiana (Dated: May 13, 2011)

Central Excise - refund of unutilized credit is only permissible in case of export of goods and for no other reason whatsoever – equity, justice and good conscience are the guiding factors for Civil Courts, no fiscal Courts are governed by these concepts: Considerations of hardship, injustice or anomalies do not play any useful role in construing taxing statutes unless there be some real ambiguity . It has also been said that if taxing provision is "so wanting in clarity that no meaning is reasonably clear, the court will be unable to regard it as of any effect. It has also been held that in interpreting taxing statute, equitable considerations are entirely out of place nor can taxing statutes be interpreted on any presumptions or assumptions.

[Also see analysis of the case](#)

[2011-TIOL-655-CESTAT-MUM](#)

Monginis Foods Pvt Ltd Vs CCE, Mumbai (Dated: January 28, 2011)

Reversal of 8% or 10% as per Rule 6(3) of CENVAT Credit Rules, 2004 on clearance of exempted goods when separate registers not maintained - case remanded to original adjudicating authority to re-quantify the demand and give benefit of retrospective amendment made by Finance Act, 2010 allowing pro-rata reversal - Stay application disposed of.

[2011-TIOL-654-CESTAT-MUM](#)

CCE, Mumbai Vs Raptakos Bress & Co Ltd (Dated: January 27, 2011)

Whether 'new maltodex' is to be classified under Heading 1702 as preparation of other sugars or under heading 19.01 as food preparation of starch as claimed by assessee – in the case of products where chemical composition is an important and relevant factor in determining the classification, it is very important to ascertain the opinion of experts and then decide – expert opinion of the Chemical Examiner favours classification under heading 19.01 – order of Commr(A) upheld and Revenue appeal rejected.

[2011-TIOL-652-CESTAT-MUM](#)

Reliance Industrial Products Vs CCE, Thane (Dated: March 31, 2011)

Valuation - Merely because some of the partners in the partnership firm and some of the Directors of the public limited company are relatives, it cannot be alleged that the partnership firm and the public limited company are related u/s 4(3)(b) of the CEA, 1944, because relationship as defined in the Companies Act read with Central Excise Act applies to natural persons and not to impersonal bodies like corporations – Demand set aside - There is no law that prohibits or proscribes a firm or company from changing its business practice: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-651-CESTAT-MAD](#)

CCE, Salem Vs M/s The Madras Aluminium Company (Dated: January 7, 2011)

Central Excise – CENVAT – CENVAT Credit on Oxygen gas & Acetylene gas & MS/HR plates, MS Angles/Channels, HR sheets, Aluminium sheets, MS flats, MS Beams/Joists and MS Steel rounds is allowed. (Para 2)

[2011-TIOL-650-CESTAT-MAD](#)

CCE, Madurai Vs Sree Kaderi Ambal Steels Ltd (Dated: January 6, 2011)

Central Excise – Compound Levy Scheme – Limitation for demand of interest – Since Rule 96ZO (3) of the erstwhile Central Excise Rules, 1944 is couched in mandatory language, the assessee cannot escape the liability to pay interest at the prescribed rate, in the event of default/delay in payment. No show-cause notice is required to be issued for recovery of interest and hence the question of notice being time-barred does not arise . (Para 2)

[2011-TIOL-643-CESTAT-MUM](#)

Albright & Wilson Chemical India Ltd Vs CCE, Thane (Dated: April 8, 2011)

No remission of duty can be granted in respect of goods in the state of work in progress as rule 21 of CER, 2002 does not provide for the same: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-640-CESTAT-MUM](#)

M/s Ampson Engineering Pvt Ltd Vs CCE, Mumbai (Dated: February 14, 2011)

There is nothing in the SCN to indicate that the cost of final product does not include the cost of mould – presumption of Revenue that cost of such moulds needs to be amortised is misplaced – Pre-deposit waived and stay granted.

[2011-TIOL-639-CESTAT-MAD](#)

CCE, Pondicherry Vs M/s ACCEL ICIM Systems & Services Ltd (Dated: January 11, 2011)

Central Excise – SSI Exemption – Brand name - Monogram – Definition of brand name/trade name appearing in the small scale exemption Notification clearly includes a monogram. There is a connection between the trade mark/brand name in the form of a monogram and the various manufacturers using it. The assessee is not eligible for the small scale exemption since they were using the brand name of another manufacturer. (Para 4)

[2011-TIOL-634-CESTAT-MAD](#)

M/s Roots Multiclean Ltd Vs CCE, Coimbatore (Dated: January 11, 2011)

Central Excise – Classification – Hydraulic Hose Assembly – The assessee is not a manufacturer of Hose, but 'Hydraulic Hose Assembly' consisting of hose pipe and fittings fixed on both ends and are hence classifiable as parts of machinery under Heading 84.79 under which the main machinery is classified. (Para 3)

[2011-TIOL-633-CESTAT-MAD](#)

CRI Pumps Pvt Ltd Vs CCE, Coimbatore (Dated: January 7, 2011)

Central Excise – CENVAT – Samples – Capital goods - Electric motors and pumps etc. received into factory are dismantled to find out the technology used. There is no dispute that the goods fall under Chapter 84 & 85 and were used in the factory of the assessee who manufactures the final products. CENVAT credit is admissible on research and development equipment even though it was not used for manufacturing or processing of goods in relation to the final product . (Para 2)

[2011-TIOL-631-CESTAT-DEL](#)

M/s Nestle India Limited Vs CCE, Chandigarh (Dated: April 8, 2011)

Central Excise -Manufacture - vitamin mix or intermixture of vitamin emerges out of the process of mixing of vitamins and it results in manufacture: The product vitamin mix or intermixture of vitamin emerges out of the process of mixing of vitamins and it results in manufacture of commercially recognized product different from the ingredients used in the process of mixing having independent characteristics, identity and use. Taking into consideration the facts and circumstances of the case, the activity undertaken by the assessee has to be held as amounting to manufacture conceptually and by applying first principle as well by application of twin test of manufacturing and marketability. The activity undertaken by the appellants is covered by the provisions of Section 2(f) of the Central Excise Act, 1944 read with Chapter Note No.11 of Chapter 29 of the Central Excise Tariff Act, 1985. Once the goods are considered as marketable merely because they are actually not marketed and are captively consumed by the manufacturer that itself will not be sufficient to hold goods to be non-excisable goods. The word "consumer" in the said Note 11 of Chapter 29 of the Central Excise Tariff Act, 1985 means any consumer including an industrial consumer and the said word is not related exclusively to retail consumer. The expression "any other treatment" is not confined to treatment in the nature adopting the attributes of the marketability to a product having absolutely no marketability prior to such treatment. The said expression includes any treatment including the treatment adopted to acquire of those attributes of marketability which the product did not possess prior to such treatment even though the product might have possessed other attributes of marketability. It is immaterial whether the product which are to be treated for rendering them marketable were having any attribute of marketability or not prior to adoption of any such treatment. The expression retail pack which does not relate to retail consumer. It refers to the circumstances in which the retail pack is made available to a consumer who may procure such goods even in bulk.

[Also see analysis of the case](#)

[2011-TIOL-630-CESTAT -MAD](#)

M/s Wipro Ltd Vs CC, Chennai (Dated: January 31, 2011)

Central Excise – Advance Licence – Fulfilment of export obligation – Importers claim that the period for fulfilling export obligation had been extended by the Policy Relaxation Committee and that they had fulfilled the export obligation within the extended period. Matter remanded for verification of claim made. (Para 3)

[2011-TIOL-629-CESTAT -MAD](#)

CCE, Chennai Vs M/s Castrol (I) Ltd (Dated: January 25, 2011)

Central Excise – Valuation – Depot sales – Interest on receivables - Claim for deduction of interest on receivables is not admissible in law.

Discount to non-distributors - Extension of distributors discount to non-distributors - such discount is not admissible to non-distributors for the reason that with the amendment of Section 4 from 28.9.1996 providing for each sale price to be the normal price for the purposes of assessment and for the reason that the discount was not disclosed to the Department during the material time. (Para 4)

[2011-TIOL-618-CESTAT -MUM](#)

CCE, Mumbai Vs M/s Goodlas Nerolac Paints Ltd (Dated: February 1, 2011)

Appeal filed by an officer other than the adjudicating authority not maintainable – appeal filed by an Assistant Commissioner challenging the order of Deputy Commissioner not maintainable - Revenue appeal rejected.

[2011-TIOL-617-CESTAT -MUM](#)

CCE, Mumbai Vs Parle Bisleri Pvt Ltd (Dated: February 22, 2011)

When the goods are not marketable, the question of comparable prices does not arise since the comparison of prices can take place only when the goods are marketable – Revenue appeal rejected

[Also see analysis of the case](#)

[2011-TIOL-613-CESTAT -AHM](#)

M/s Dishman Pharmaceuticals & Chemicals Ltd Vs CCE, Ahmedabad (Dated: March 16, 2011)

Central Excise - DTA unit converted to 100% EOU - CENVAT - Goods on which credit was availed was sent to job-worker while being a DTA unit. The goods were received back from job-worker after processing, after the DTA unit was converted into 100% EOU. Revenue denied the credit availed. Commissioner (Appeals) held that the goods cleared by 100% EOU cannot be treated to be either exempted or chargeable to nil rate of duty and allowed credit availed. However, taking recourse to Rule 17 of Cenvat Credit Rules, 2002 which requires the duty should be paid by a 100% EOU only through account current, and as assessee will not be in a position to utilise the cenvat credit at all, confirmed the demand.

HELD - Commissioner (Appeals) having held that the assessee is eligible for CENVAT credit cannot travel beyond the allegations made in show cause notice. (Para 9 & 10)

[2011-TIOL-612-CESTAT-MUM](#)

CCE, Raigad Vs M/s Silvo Liacal Chemicals Ltd (Dated: February 1, 2011)

Hydrogenated Castor Oil in flake form [heading 15.04] melted and spray dried and converted into powder form does not constitute manufacture of a new product – process carried out without any chemical or material being added – no change in form and no change in the chemical composition – nothing new emerged – appeal of revenue seeking classification of impugned goods under heading 38.12 as stabilizer rejected.

[2011-TIOL-611-CESTAT-MUM](#)

CCE, Raigad Vs Santogen Exports Ltd (Dated: February 2, 2011)

Furnace oil used by 100% EOU in their boiler is a consumable and is eligible for exemption under Notification No.1/95-CE - Revenue Appeal rejected.

[2011-TIOL-603-CESTAT-MAD](#)

Pioneer Spinners Vs CCE, Madurai (Dated: February 1, 2011)

Central Excise – Fortnightly payment of duty – Forfeiture of – Utilisation of CENVAT – During the period of forfeiture of fortnightly payment of duty there is no bar on utilisation of CENVAT credit for payment of duty prior to 31.05.2005. (Para 1)

[2011-TIOL-602-CESTAT-MUM](#)

M/s Shri Khemisati Vs CCE, Thane (Dated: January 25, 2011)

Appellants had filed price lists based on declarations given by the trader/merchant manufacturer – said declarations accepted by the authorities and not challenged – authorities also did not direct appellants to produce further evidence to ascertain correctness of values declared – merchant manufacturers have also mentioned in their statements that they had undervalued the grey fabrics and take full responsibility – no finding that the job worker knew or deliberately failed to declare the correct cost of grey fabrics - allegation of suppression unsustainable - order set aside and appeal allowed with consequential relief .

[2011-TIOL-601-CESTAT -MUM](#)

Pepsico India Holdings Ltd Vs CCE, Mumbai (Dated: January 31, 2011)

Undervaluation - PHIL manufactures and sells syrup at different rates to independent distributors and their marketing subsidiary Pepsi Cola India Marketing Company who further sells it to retailers - sales to independent distributors only 3% - adjudicating authority holding that the same is valid transaction value and applicable to sales made to marketing subsidiary - issue already decided in appellants favour in Pepsico India Holdings (P) Ltd., ([2009-TIOL-20-SC-CX](#)) – Commissioner's order confirming demand for subsequent period unsustainable in law - Unconditional stay granted.

[2011-TIOL-600-CESTAT -MUM](#)

M/s Sterlite Industries (India) Ltd Vs CCE, Pune (Dated: March 24, 2011)

Notification 108/95-CE – since JBIC is not an International Organization exemption not available – larger period of limitation cannot be invoked, however, since stay was granted by High Court the period of stay is to be excluded and demand re-computed – Interest payable for delayed payment of duty: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-599-CESTAT -MAD](#)

Elgi Equipments Ltd Vs CCE, Coimbatore (Dated: February 1, 2011)

Central Excise – Classification – Bus body building - After the introduction of Note 4 to Chapter 87, the activity of body building or fabrication or mounting or structures or equipment on the chassis shall amount to “manufacture” of motor vehicles and is classified under Tariff Heading 87.02 .

[2011-TIOL-596-CESTAT -MUM](#)

CCE, Nagpur Vs Malu Paper Mills Ltd (Dated: January 25, 2011)

Two units of same company having separate Central Excise Registrations and separate registrations as per the Factories Act, 1948 and engaged in same activity cannot be treated as one manufacturing unit - respondents are eligible for exemption under Notification No.6/2000-CE – SC decision in Rollainers ([2004-TIOL-67-SC-CX](#)) and Amaravathi S V Paper Mills Ltd. [[2010-TIOL-60-SC-CX](#)] relied upon - Revenue appeal rejected.

[2011-TIOL-595-CESTAT -MUM](#)

M/s Karvir Nivasini Mahalaxmi Ispat Pvt Ltd Vs CCE, Pune(Dated: February 14, 2011)

Revenue view is that goods cleared to SEZ developer are exempt from duty and hence 8%/10% payment is to be made by assessee in terms of rule 6(3) of CCR, 2004 – in view of Tribunal decision in Sujana Metal Products [[2009-TIOL-1096-CESTAT-Bangl](#)] amendment to rule 6 by notification 50/2008-CE(N.T) dated 31.12.2008 is to be considered as retrospective - Assessee eligible to avail CENVAT credit of duty paid on inputs – Stay granted.

[2011-TIOL-589-CESTAT -MAD](#)

M/s MRF Ltd Vs CCE, Chennai (Dated: January 27, 2011)

Central Excise – Valuation – CAS-4 - Cost of production of captively consumed goods is to be determined strictly in accordance with CAS-4 even for the period prior to 2003.

[2011-TIOL-588-CESTAT -MAD](#)

CCE, Chennai Vs Hindustan Lever Ltd (Dated: February 1, 2011)

Central Excise – Classification – “Vaseline Intensive Care Prickly Heat Lotion” – Classifiable under CET sub-heading 3003.10 as a Patent or Proprietary Medicament .

[2011-TIOL-587-CESTAT -MUM](#)

Globale Wool Alliance Pvt Ltd Vs CCE, Thane (Dated: January 24, 2011)

Appellant is an importer of greasy wool and their final product is wool tops and fabrics – during course of manufacture 'greasy wool' is put in hot water to separate grease from wool – 'grease' so obtained as a by-product is cleared without payment of duty – such clearances cannot be construed as exempted clearances so as to be brought within the ambit of rule 6 of CCR, 2004 while seeking 8/10 % amount reversal – moreover no credit taken on imported 'greasy wool' – Prima facie case in favour – Pre-deposit waived and Stay granted.

[2011-TIOL-585-CESTAT -MUM](#)

CCE, Mumbai Vs M/s Gupta Soaps (Dated: February 3, 2011)

Since relationship between job worker and raw material supplier is on principal to principal basis and not of principal and agent, goods manufactured by job worker should not be assessed on the resale price of the raw material supplier and value has to be determined on costing basis – Commissioner(A) order upheld and Revenue appeal rejected.

[2011-TIOL-584-CESTAT -MUM](#)

Caprihans India Ltd Vs CCE, Thane(Dated: February 3, 2011)

When duty cannot be demanded under section 11A, the question of demanding interest under section 11AA also does not arise - provisional assessments have to be finalized and the final duty amount has to be determined under the provisions of Rule 9B of CER, 1944: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-583-CESTAT -MUM](#)

CCE, Aurangabad Vs M/s Crompton Greaves Ltd (Dated: January 17, 2011)

When the unit was de-bonded and a no dues certificate was issued to respondent by the proper officer, allegation of suppression that duty not correctly discharged cannot be alleged – order of Commissioner(A) proper in law – demand hit by limitation – Revenue appeal rejected.

[2011-TIOL-582-CESTAT -MUM](#)

Supreme Rubber Industries Vs CCE, Mumbai (Dated: February 14, 2011)

In the interest of justice, Tribunal has discretionary power to restore an Appeal even when the pre-deposit amount is deposited belatedly – Appeals dismissed for non-compliance restored.

[2011-TIOL-578-CESTAT-MUM](#)

Vista Packaging Pvt Ltd Vs CCE, Thane II (Dated: February 21, 2011)

Cenvat credit availed on plastic film in roll form and after subjecting to printing, lamination, cutting etc. are cleared in roll form on payment of duty – Revenue seeking reversal of Cenvat credit alleging that activity does not amount to manufacture in view of SC decision in Metlex [2004-TIOL-77-SC-CX](#) – as duty paid is Rs.160 lakhs and reversal sought is Rs.110 lakhs - prima facie case in favour – Pre-deposit waived and stay granted.

[2011-TIOL-577-CESTAT-MUM](#)

M/s Indus Papers Boards P Ltd Vs CCE & Customs, Nagapur (Dated: February 4, 2011)

Appellant clearing goods on payment of concessional rate of duty in terms of sl. No. 90 of notification 4/2006-CE – due to budgetary changes w.e.f 1.3.2008, sl. No. 90 prescribed nil rate of duty, however appellant cleared goods at concessional rate by claiming sl. No. 91 of notification – department objecting to such switch over and raising demand for reversal of credit held on the day treating the same as lapsed and for imposition of interest and penalty – in view of Tribunal decision in Karanja Industries [2010-TIOL-CESTAT-100-Bang](#) unconditional waiver of pre-deposit and Stay granted.

[2011-TIOL-576-CESTAT-MUM](#)

CCE, Mumbai V Vs M/s Dodsai Corporation Pvt Ltd (Dated: February 1, 2011)

Classification – Non-vegetable pizza and chicken wings being placed in a paper carton bearing brand name 'Pizza Hut' is classifiable under heading 19.05 and exempt from duty - not classifiable under heading 1601.10 as alleged by department – decision in own case [2010-TIOL-1653-CESTAT-BANG](#) followed - Revenue appeal rejected

[2011-TIOL-571-CESTAT-MAD](#)

G Plast (P) Ltd Vs CCE, Coimbatore (Dated: January 11, 2011)

Central Excise – Valuation – Cost of packing material supplied free by the buyer is not includable in the assessable value.

2011-TIOL-570-CESTAT-MAD
Lakshmi Card Clothing MFG Co Pvt Ltd Vs CCE, Coimbatore (Dated: January 12, 2011)
Central Excise – Manufacture of dutiable and exempted goods – 8% amount paid under CENVAT Credit Rules 2004, recovered from the buyers – The amount of 8% cannot be treated as additional consideration and the issue stands settled by the Larger Bench in case of Unison Metals Ltd and Others.
2011-TIOL-566-CESTAT-MAD
M/s Sitalakshmi Mills Ltd Vs CCE, Madurai (Dated: January 20, 2011)
Central Excise – Collection of additional amounts by raising debit notes almost concurrently along with invoices – Differential duty paid during verification by audit - Fit case for imposing penalty under Section 11 AC and invoking extended period – Penalty imposed by the original authority restored.
2011-TIOL-565-CESTAT-BANG
M/s Rain Commodities Limited Vs CCE, Tirupathi (Dated: January 4, 2011)
Central Excise – Eligibility of concessional rate of duty on Cement under Sl. No. 1A of Notification No. 4/2006-CE dated 01.03.2006 – When clearance of cement not on retail basis and there is no requirement of printing of MRP on packages, benefit under S. No. 1A not available, duty liable to be paid @ Rs. 400/- per tonne – No infirmity in impugned orders
2011-TIOL-564-CESTAT-DEL
Shiva Texfab Ltd Vs CCE, Chandigarh (Dated: January 12, 2011)
Once Department is aware that the order is under challenge before the High Court, they should have rather prayed to the High Court for expeditious disposal of writ application, without resorting to the seizure operation which appears to be unreasonable and without any cogent reason – seizure without cogent reasons and without proper authority shall never get approval of the higher Court - Goods to be released on execution of paper bond so that revenue may not be prejudiced.
2011-TIOL-560-CESTAT-MUM
CCE, Mumbai Vs Colgate Palmolive (I) Ltd (Dated: February 24, 2011)

Revenue representative has put his best foot forward while arguing for the revenue but at the same time lack of evidences cannot carry the case of revenue any further – buy back of the final products from the contract manufacturer in itself would not indicate that the prices of the aromatic compounds are influenced - Appeal rejected

[Also see analysis of the case](#)

[2011-TIOL-559-CESTAT -MAD](#)

M/s Tamilnadu Newsprint & Papers Ltd Vs CCE, Trichy (Dated: December 20, 2010)

Central Excise – CENVAT Credit – Credit on various steel items used by the appellant in their Mill Development Plan – Credit denied by the lower authority by relying on the decision of Larger Bench in case of Vandana Global Ltd - Larger Bench decision is not an authority for denial of credit in respect of steel items used for fabricating parts and machinery, but an authority for denial of credit on steel items and cement used for laying foundation and for building supporting structures – Matter remanded for fresh decision.

[2011-TIOL-558-CESTAT -MAD](#)

Sundaram Fasteners Ltd Vs CCE, Pondicherry (Dated: January 6, 2011)

Central Excise – Valuation – Provisions of Rule 9 are attracted only when the goods are not sold by the assessee except to or through a person who is related in the manner specified - Duty is to be paid on the price at which the goods are sold to independent third parties as also held by the Supreme Court.

[2011-TIOL-557-CESTAT -AHM](#)

M/s York Prints Pvt Ltd Vs CCE, Ahmedabad (Dated: March 15, 2011)

Central Excise - Exempted and Dutiable final products - separate accounts - the appellant either paid duty after availing the cenvat credit or cleared the processed fabrics without payment of duty without availing cenvat credit on the grey fabrics - No one can be asked to make a non-existent entry.- Matter Remanded: once the input credit itself is not taken in the case of grey fabrics where finished fabrics are proposed to be cleared without payment of duty, the question of maintenance of separate accounts for cenvat credit, does not arise. No one can be asked to make a non-existent entry. In the case of dealers, who opt to get the goods under notification exempting the goods from payment of duty, naturally no credit would be taken in respect of goods supplied and therefore, such grey fabrics cannot be reflected in the cenvat account. Therefore, the submissions made by the appellants before the original adjudicating authority that by verifying the purchase and sales invoices with the lot register, it is possible to know whether appellant had availed cenvat credit in respect of the goods which were cleared without payment of duty, should have been considered.

Also see analysis of the case
2011-TIOL-555-CESTAT -MUM
Hindustan Petroleum Corporation Ltd Vs CCE, Pune (Dated: February 24, 2011)
Appellants clearing naptha based upon CT -2 certificate issued by Range Superintendent of Consignee - if any duty liability arises due to the shortage or wrong consumption or wrong availment of the benefit of notification, the consignee is liable to discharge the duty liability – Adjudicating authority cannot traverse beyond SCN while confirming duty demand – Order set aside and appeal allowed
Also see analysis of the case
2011-TIOL-550-CESTAT -BANG
CCE, Visakhapatnam Vs M/s Hindustan Zinc Limited (Dated: January 4, 2011)
Central Excise – Eligibility of CENVAT Credit on M S Plates, Beams, Angles and Channels used for repair works, maintenance of pipes and furnace shells, as capital goods – Lower authorities passed orders without analyzing facts of the case and without considering applicability of relevant provisions – Matter remanded to Joint Commissioner for reconsideration
2011-TIOL-549-CESTAT -MAD
Arunachala Gounder Textile Mills (P) Ltd Vs CCE, Salem (Dated: December 14, 2010)
Central Excise – Classification – Lycra spandex yarn which is sheathed by cotton fibres - Item in dispute is single yarn classifiable under CET sub-heading 5205.11, but not under 5606.00 as gimped yarn - For the goods to be gimped yarn both the core yarn and the covered material should be yarns where as in the instant case the subject goods consist of lycra spandex yarn which is sheathed by cotton fibres and finally what comes out from spinning frame is a single yarn. Hence the Lycra spandex yarn manufactured by the appellants does not merit classification under the chapter heading 5606.00 as gimped yarn.
2011-TIOL-546-CESTAT -MAD
M/s Roots Multiclean Ltd Vs CCE, Coimbatore (Dated: January 11, 2011)

<p>Central Excise – Small Scale exemption – Clubbing of clearances – The value of goods manufactured with brand name of another person on which duty has been paid and the value of other exempted goods are required to be taken out of reckoning while calculating the eligibility under the small scale exemption notification in terms of paragraph 4 (a) and (b) of Notification No. 8/98-CE dated 2.6.1998 – Impugned order holding otherwise cannot be sustained.</p>
<p>2011-TIOL-545-CESTAT-MAD</p>
<p>M/s Sni Granites Vs CCE, Salem (Dated: December 29, 2010)</p>
<p>Central Excise – Refund of unutilized credit under Notification No 5/2006-CE – Limitation – Claimant resubmitted the claim on 01.04.2009 after rectification of defects pointed out – Refund claim returned again on other minor defects – Claim finally rejected as barred by limitation – Refund claim has to be treated as having been filed on 01.04.2009 and within the time - Matter remanded for fresh decision.</p>
<p>2011-TIOL-544-CESTAT-MAD</p>
<p>M/s Eid Parry Ltd Vs CCE, Chennai (Dated: January 10, 2011)</p>
<p>Central Excise – CENVAT Credit on MS Sheets, MS Angles, MS Plates etc denied on the ground that the same were used in supporting structures of capital goods – Appellants contend that these items were actually used in fabricating parts and components of the machinery – Matter remanded to the original authority to decide the issue afresh in the light of Larger Bench decision in case of Vandana Global Ltd.</p>
<p>2011-TIOL-541-CESTAT-AHM</p>
<p>M/s Micro Inks Ltd Vs CCE, Vapi (Dated: April 7, 2011)</p>
<p>Clearances by 100% EOU to sister units – appellants submission that the clearances affected to their own sister concerns were not sales but were stock transfer and since no sales tax was required to be paid on such clearances the demand of duty of 4% additional duty of customs, which is in lieu of sales tax, was not called for is untenable in view of LB decision in Moser Baer India Limited vs. CCE, Nodia (2009-TIOL-1058-CESTAT-DEL-LB).</p> <p>Limitation - The appellant at no point of time addressed to the Revenue that they would be paying 4% additional duty in respect of other DTA clearances and they would not be paying such duty in respect of clearances made to their sister units – extended period invocable.</p> <p>Revenue neutrality - it can not be claimed as a matter of right without establishing that sister concerns were in a position to avail the modvat credit and utilize the same for payment of duty from their end – no final view can be taken at interim stage – appellant not able to make a prima facie case in their favour – pre-deposit ordered of Rs.11 crores being approximately 1/3rd of the confirmed duty as no financial hardship</p>

pleaded: CESTAT

[2011-TIOL-540-CESTAT-AHM](#)

M/s Harsha Engineers Limited Vs CCE, Ahmedabad (Dated: September 9, 2010)

Appellant engaged in manufacture of Bearing Cages - Cenvat credit taken on paints cannot be denied on the ground that the same has not been used on final products but used for painting the machinery and workshop floor - paint is used on the floor of production hall to make it dust free and fire retardant - it is a commercial necessity to paint floor so as to enhance the effective manufacturing activity - nexus exists with manufacture of final product - definition of input includes all goods used as paint used in the manufacture of final product or within the factory of production for any other purpose - Credit admissible: CESTAT

[2011-TIOL-539-CESTAT-AHM](#)

M/s Royal Castor Products Ltd Vs CCE, Ahmedabad (Dated: April 5, 2010)

Rule 57CC/Rule 6(3)(b) of Cenvat Credit Rules - non maintenance of separate accounts of inputs used in the manufacture of dutiable as well as exempted final product - payment of amount of 8%/10% of the value of their final exempted product - appellant reversing modvat credit and making substantial payments of duty and penalty and interest - sufficient for purpose of granting stay unconditionally: CESTAT

[2011-TIOL-536-CESTAT-DEL-LB](#)

M/s Excel Rubber Ltd Vs CCE, Hyderabad (Dated: March 30, 2011)

Central Excise - Finalisation of Provisional assessment - adjust of excess duty paid against short payment - only subject to unjust enrichment: once the authority on finalization of assessment finds any amount of money having been paid in excess of the duty liability ascertained in the final assessment, the excess amount so ascertained would become refundable to the assessee . Such excess amount can certainly be adjusted towards any other duty liability of such assessee under the Excise Act, 1944 and Rules made thereunder, however, such adjustments are subject to the applicability of the principle of unjust enrichment. Therefore, before grant of adjustment, the authority will have to ascertain whether such excess amount is to be actually refunded to the assessee or is liable either wholly or partly to be credited to the account of consumer benefit fund and only thereafter make an order of adjustment to the extent the amount is found to be actually refundable and not liable to be credited to the account of consumer benefit fund. Needless to say, that the burden of proof in this regard would lie upon the assessee .

[Also see analysis of the case](#)

2011-TIOL-535-CESTAT-MAD
M/s Madhav Marbles & Granites Mills Ltd Vs CCE, Salem (Dated: February 1, 2011)
Central Excise – Refund – Unjust enrichment – Uniformity in price does not lead to inevitable conclusion that the bar of unjust enrichment is not attracted – Matter remanded to give another opportunity to prove that the appellants have not passed on the incidence of duty as prayed for.
2011-TIOL-534-CESTAT-AHM
M/s V K Engineers Vs CCE, Ahmedabad (Dated: January 6, 2011)
Duty liability stands accepted by appellant - penalty under Section 11AC imposed by Commissioner (Appeals) for the first time upon revenue appeal – appellant to be given option to deposit duty within 30 days of the receipt of the order, in which case the penalty shall stand reduced to the extent of 25% of the duty amount – proviso to section 11AC of CEA, 1944 – appeal disposed of.
2011-TIOL-529-CESTAT-BANG
M/s Kirloskar Batteries Pvt Limited Vs CCE, Bangalore (Dated: November 22, 2010)
Central Excise – Application for condonation of delay – Assessee's bonafide belief that advocate would also have received a copy of impugned order and he would have taken steps to file an appeal not a ground to condone delay of 79 days
2011-TIOL-528-CESTAT-MUM
CCE, Aurangabad Vs Bajaj Auto Ltd (Dated: March 9, 2011)
When undervaluation is alleged by the department, it is their responsibility to prove the case – allegations remain un-substantiated – department could have examined on their own whether the goods cleared by the assessee to their sister unit at Akurdi and also the goods cleared to dealers were identical or comparable or not - Revenue appeal rejected
Also see analysis of the case

[2011-TIOL-527-CESTAT -MUM](#)

M/s Graphite India Ltd Vs CCE, Nasik (Dated: January 28, 2011)

Goods cleared from factory to site where it was erected into a pipeline – whether transportation charges from factory gate to site are to be included – Prima facie case in favour in view of decision in Blue Star [[2006-TIOL-345-CESTAT -Mum](#)] as upheld by SC – Pre-deposit waived and Stay granted.

[Also see analysis of the case](#)

[2011-TIOL-525-CESTAT -MUM](#)

Priya Textiles Vs CCE, Thane (Dated: February 14, 2011)

Modification application filed after the period prescribed by the Bench for making pre-deposit – Application does not disclose any change of circumstance since the Stay order was passed – submissions made are the ones already made in the stay application which have been considered by the Bench – No prima facie case – Application dismissed along with appeal

[Also see analysis of the case](#)

[2011-TIOL-524-CESTAT -MAD](#)

Global Pharmatech Pvt Ltd Vs CCE, Chennai (Dated: January 13, 2011)

Central Excise – CENVAT Credit - Manufacture of dutiable and exempted goods – Non-maintenance of separate accounts in respect of input services used for manufacture of dutiable and exempted goods – For the period prior to 1.4.2008, since the appellants had reversed the credit attributable to the input services used in exempted goods along with interest, they are covered by the amendment made in Finance Act, 2010 – For the period after 1.4.2008 also the appellants reversed the credit as per Rule 6(3A) of the CENVAT Credit Rules, demand of 10% amount on the value of exempted goods is set aside.

[2011-TIOL-520-CESTAT -BANG](#)

M/s Karnataka Soaps & Detergents Ltd Vs CCE, Bangalore (Dated: November 11, 2010)

Central Excise – Excisability of odoriferous compounds commonly known as agarbathi perfumery compounds manufactured and cleared on stock transfer to sister unit – Duty not liable to be paid on agarbathi perfumery compounds where Revenue has not produced any evidence of such products being bought and sold, in terms of Board Circular No. 495 dated 22.11.1999 – Board Circular applicable to agarbathi perfumery

compounds both in dough form and liquid form – Lower authorities bound by contents of Board Circular – Duty demand confirmed only to the extent of 'venkateswara brand' where evidence was adduced for sale of such product from appellant's sister unit – Equivalent penalty and interest payable to the extent of demand confirmed

[Also see analysis of the case](#)

[2011-TIOL-519-CESTAT -DEL](#)

M/s Tata Construction & Projects Ltd Vs CCE, Jaipur (Dated: February 15, 2011)

Central Excise - Commissioner chooses to ignore directions of the Tribunal in de novo proceedings - Tribunal totally unhappy - matter remanded again: It s really surprising that in spite of specific directions in this regard on two earlier occasions in the same matter, the Commissioner has chosen to ignore the same and to proceed to decide the matter contrary to those directions. The Tribunal said, - We are totally unhappy about the approach of the Commissioner in the above matter.

[Also see analysis of the case](#)

[2011-TIOL-518-CESTAT -DEL](#)

CCE, Kanpur Vs M/s A K Chemicals (P) Ltd (Dated: August 12, 2010)

SSI notification 9/99-CE – assessee clearing at concessional rate of duty as well as at full rate - nowhere it is mentioned that if a manufacturer pays full rate of duty on some consignments it would tantamount to withdrawal of option to avail of concessional rate of duty – contention of the department is that the assessee would be benefiting the consignee of a higher amount of credit - No assessee can be saddled with duty and penalty merely on fanciful observations and findings – The interpretation of a notification should be to make the notification effective rather than meaningless - mere possibility of passing of the credit cannot by itself be a ground to deny the benefit of the notification nor it can lead to conclusion that the party has opted out of the scheme - it cannot be said to amount to violation any of the terms in condition of the notification in the question nor mere payment of higher amount of duty can be said to defeat the very purpose of the notification – Revenue appeal dismissed.

[2011-TIOL-515-CESTAT -MUM](#)

CCE, Mumbai Vs Interscape (Dated: January 21, 2011)

ROM application - CESTAT order directing Commissioner to return pre -deposit amount along with interest @12% from October, 2005 to date of actual refund modified – Interest to be NOW paid at @6%: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-510-CESTAT-MAD](#)

CCE, Pondicherry Vs S V Sivalinga Nadar & Sons (Dated: December 21, 2010)

Central Excise – Transit loss of 0.19% of total quantity of crude sunflower oil imported – The loss percentage is only minuscule one – Demand of duty has correctly been set aside by the Commissioner (Appeals) – No reason to interfere with the order in view of the Larger Bench decision in case of M/s Bhuwalka Steel Industries Ltd.

[2011-TIOL-509-CESTAT-BANG](#)

M/s Saritha Sugars Ltd Vs CCE, Guntur (Dated: December 9, 2010)

Central Excise – CENVAT Credit – Capital goods brought into factory by assessee but not installed due to business exigencies – Receipt of duty paid capital goods in factory for erection of captive cogeneration power plant and verification by Range Officer not in dispute – No infirmity in availment of credit or reversal of credit after clearing the same as such – When reversal of credit shown in monthly returns informed details of capital goods cleared as such, no objections were raised by department, invoking extended period of limitation not sustainable – Impugned order not sustainable, liable to be set aside

[2011-TIOL-508-CESTAT-BANG](#)

Vijayaa Steels Ltd Vs CCE, Bangalore (Dated: December 10, 2010)

Central Excise – Allegation of an amount of Rs. 5.2 lakhs mentioned in TR-6 Challans not actually credited to Government A/c – Duty subsequently paid along with interest but before issue of SCN – TR-6 Challans also acknowledged by Bank and no allegation by Revenue that challans were forged and fake – Ingredients for invoking section 11AC absent, penalty imposed under section 11AC liable to be set aside – Penalty of Rs. 5000/- imposed under Rule 27 of Central Excise Rules, 2002 – Penalties imposed on Director and Financial Controller set aside as they were under bonafide belief that cheques deposited with TR-6 challans were debited from their Bank A/c – Impugned order modified to this extent

[2011-TIOL-504-CESTAT-AHM](#)

M/s Neptune Equipments Pvt Ltd Vs CCE, Ahmedabad (Dated: September 8, 2010)

Central Excise - Valuation - Sale of paint booth - the value of the hot air generator and filter blower supplied separately not required to be included in the assessable: As such, the generators and filters supplied separately cannot be considered to be a part of the painting booth, which is nothing but an enclosure for the purpose of providing a separate place for painting. The fact that such generators and filters are never brought to the factory and are never supplied along with paint booth also advances the appellants case that the same are not part and parcel of the goods being manufactured by them. The value of the hot air generator and filter blower supplied by the appellant at the insistence of their customers, for quick drying of paint of articles painted in paint booth, is not required to be added in the assessable value of paint booth.

[Also see analysis of the case](#)

[2011-TIOL-503-CESTAT-MUM](#)

M/s Cravina Fabrics Pvt Ltd Vs CCE, Belapur (Dated: January 28, 2011)

Requirement of section 37C of the Central Excise Act, 1944 is to be taken as complied with by sending the order-in-appeal by speed post at the address given by the assessee to the department: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-502-CESTAT-MAD](#)

M/s Astra Tel Vs CCE, Chennai (Dated: December 3, 2010)

Central Excise – Stay/Dispensation of pre -deposit – CENVAT Credit is prima facie admissible on service tax paid on sales promotion and market research as these services are prima facie in relation to manufacture of final products.

[2011-TIOL-497-CESTAT-DEL](#)

CCE, Delhi Vs M/s Shivam Corporation Ltd (Dated: December 2, 2010)

Central Excise – CENVAT Credit – Invoice showing buyer of the goods and consignee separately – The consignee is to be treated as second stage dealer and the appellant who purchased the goods from such consignee who is a second stage dealer cannot pass on the credit – Order of the original authority denying the credit and imposing penalty restored.

[2011-TIOL-496-CESTAT -BANG](#)

M/s Southern Lubrication (P) Ltd Vs CCE, Bangalore (Dated: December 1, 2010)

Central Excise – Inputs viz., tubes cleared to job worker for manufacture of oil cooler and heat exchangers which are returned back to principal for further usage in manufacture of final products – CENVAT Credit not deniable on inputs sent for job worker in terms of Rule 4(5)(a) of CENVAT Credit Rules, 2004 – Prima facie case for full waiver of pre -deposit

[2011-TIOL-495-CESTAT -MUM](#)

Vidyut Metallics P Ltd Vs CCE, Mumbai (Dated: February 18, 2011)

Application made in October, 2001 for getting single registration – Matter getting settled in assessee's favour and single registration granted in March, 2008 – registration is deemed to have been issued in 2001 – undervaluation alleged in stock transfers of goods from one plant to another - revenue neutral exercise – Prima facie case in favour – Stay granted: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-493-CESTAT -MUM](#)

Schneider Electrical India P Ltd Vs CCE, Nashik (Dated: February 18, 2011)

Section 4A of CEA, 1944 - Excisable goods removed for sale by dealers without declaring retail sale price – price list indicating the price to dealer considered as price of products while confirming duty demand of Rs.1.01 Crores – Matter debatable – No prima facie case – Pre-deposit ordered

[Also see analysis of the case](#)

[2011-TIOL-490-CESTAT -MUM](#)

Hindustan Lever Ltd Vs CCE, Chennai (Dated: February 1, 2011)

Departmental Representative should not have two standards of arguments – it is his duty to assist the Court, not to merely support an order which is not in accordance with law - When it is apparent from the record that the impugned order is not a speaking order, the DR should be fair enough to accept it – without discussing the facts the Commr(A) could not have arrived at a conclusion that the issue is no longer res integra – Matter remanded

Also see analysis of the case
2011-TIOL-485-CESTAT -MAD
M/s Kripa Fabs Pvt Ltd Vs CCE, Chennai (Dated: December 6, 2010)
Central Excise – Limitation – Though the appellants on their own have informed the department about crossing the small scale exemption limit, it amounts to suppression of facts – It is a clear case of suppression regarding production in excess of small scale exemption limit and clearance on such excess production without payment of duty - Such suppression cannot be wished away by the belated information given by the appellants to the excise department – Invoking extended period and penalty under Section 11AC is upheld.
2011-TIOL-481-CESTAT -MUM
Inox Air Products Vs CCE, Mumbai (Dated: March 9, 2011)
Rental charges collected in respect of cylinders for supply of gases cannot form part of the assessable value of gases - CESTAT
Also see analysis of the case
2011-TIOL-480-CESTAT -BANG
M/s The India Cements Limited Vs CCE, Hyderabad (Dated: October 22, 2010)
Central Excise – Duty paid on capital goods used in erection of fly ash extraction plant at Thermal Power Station not eligible as CENVAT Credit – Neither the extraction of fly ash takes place in the captive plant nor the fly ash generated is exclusively used in the factory of appellant – No infirmity in impugned order
2011-TIOL-476-CESTAT -MAD
M/s Chemplast Sanmar Ltd Vs CCE, LTU, Chennai (Dated: December 3, 2010)
Central Excise – Stay/Dispensation of pre -deposit - CENVAT Credit – Credit denied on the ground that the input service was used for manufacture of Bio-compost fertilizer – Service of digging of pits for dumping the waste generated in the course of manufacture of final product, "Denatured Ethyl Alcohol", which decomposed into Bio gas which is used in the manufacture of Bio -compost fertilizer – Prima facie case has been made out for waiver of pre-deposit.

2011-TIOL-475-CESTAT-MAD
Chamundi Foods (P) Ltd Vs CCE, Salem (Dated: December 28, 2010)
Central Excise – CENVAT Credit – Capital goods removed after use – Credit is required to be reversed only on the depreciated value of the goods.
2011-TIOL-471-CESTAT-MAD
Lal Industries Vs CCE, Madurai (Dated: December 12, 2010)
Central Excise – Small scale exemption – Brand name of another person - The department having made out a clear case of clearance of branded goods, the benefit of the SSI notification is not available to the assesseees.
2011-TIOL-470-CESTAT-MUM
M/s Tristar Equipment Pvt Ltd Vs CCE & CC, Nashik (Dated: February 21, 2011)
Goods cleared under exemption by following the procedure laid down in Central Excise (Removal of Goods at Concessional Rate of duty for manufacture of excisable goods) Rules, 2001 – clearances cannot be termed as being under Nil rate of duty – Cenvat credit not deniable - Prima facie case – Stay granted
Also see analysis of the case
2011-TIOL-462-CESTAT-BANG
M/s Calypso Foods (P) Ltd Vs CCE, Mangalore (Dated: December 6, 2010)
Central Excise – 100% EOU – Procurement of insecticides without payment of duty and clearing them to farmers for usage on agricultural produce viz., gherkins – When appellant fulfills condition in paragraph 5(a) of Notification No. 22/2003-CE, eligible to clear insecticides procured duty free to fields and farms of contract farmers – Prima facie case for full waiver of pre-deposit – Stay granted
2011-TIOL-460-CESTAT-AHM

M/s Kemrock Industries & Exports Limited Vs CCE, Vadodara (Dated: February 15, 2011)

Central Excise – Education Cess on goods cleared in DTA by 100% EOUs – No education cess need to be paid again on the amount of duty worked out by calculating the customs duties payable in view of the Tribunal's order in case of Sarla Performance Pvt Ltd.

[2011-TIOL-457-CESTAT-MUM](#)

Baif Laboratories Ltd Vs CCE, Pune (Dated: February 14, 2011)

Direction issued was well within the right of the Bench to do complete justice in the case and does not touch any substantive issue – applicant cannot have any grievance whatsoever - ROM application dismissed: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-456-CESTAT-MAD](#)

CCE, Chennai Vs M/s Reckitt & Benckiser (I) Ltd (Dated: December 8, 2010)

Central Excise – Valuation – Mortein Aerosol Multi insect killer is to be assessed under Section 4A of the Central Excise Act, 1944 – Contention of revenue that the same is to be assessed under Section 4 as the goods are not exclusively mosquito repellent has no merit.

[2011-TIOL-455-CESTAT-MAD](#)

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

Central Excise – CENVAT Credit – Input service distribution – There is no restriction in CENVAT Credit Rules 2004 that the distribution of service tax credit in respect of various units of the same assessee should be only proportionately – Departmental authorities cannot put such restriction.

[2011-TIOL-451-CESTAT-DEL](#)

M/s Max India Ltd Vs CCE, Chandigarh (Dated: February 7, 2011)

Central Excise – Stay/Dispensation of pre -deposit – CENVAT Credit on service tax paid on car insurance – Prima facie credit is admissible as the same is covered under activities relating to business – Recovery stayed.

2011-TIOL-450-CESTAT-MAD
CCE, Trichy Vs M/s Godrej Sara Lee Ltd (Dated: December 14, 2010)
Central Excise – CENVAT Credit on security services used at job-worker’s premises is not admissible to the principal manufacturer.
2011-TIOL-449-CESTAT-MAD
Elgi Equipments Ltd Vs CCE, Coimbatore (Dated: December 21, 2010)
Central Excise – Exemption under Notification No 10/97 CE dated 1.3.2007 to diesel engines supplied to educational organizations is admissible.
2011-TIOL-446-CESTAT-MAD
CCE, Tirunelveli Vs Indian Tropical Agro Products (P) Ltd (Dated: December 15, 2010)
Central Excise – Power to remand by the Commissioner (Appeals) – The Commissioner (Appeals) instead of straightaway allowing the appeal against the revenue, remanded the matter which is beneficial to the department – The Committee of Commissioners cannot be aggrieved against such order which is beneficial to the department – Appeal rejected.
2011-TIOL-445-CESTAT-DEL
CCE, Lucknow Vs M/s BMW Steels Ltd (Dated: October 20, 2010)
Central Excise - Non-entry of stocks in the records - No confiscation without proof of mala fides : The allegation against the assessee is that they have not accounted 90 pieces of sleeve in their daily stock account register but there is no allegation against the assessee that these goods were not entered in the daily stock with intention to clear them without payment of duty. The confiscation and penalty is not warranted under Rule 25 of Central Excise Rules 2002. Hence the impugned order for confiscation and imposition of penalty under Rule 25 is set aside.
Also see analysis of the case
2011-TIOL-440-CESTAT-DEL

M/s K M Gases Pvt Ltd Vs CCE, Allahabad (Dated: December 22, 2010)

Central Excise – Acetoning charges collected for manufacture and supply of dissolved acetylene gas are includable in the value - No infirmity in the finding of the Commissioner (Appeals) that the process to keep the gases in dissolved condition is nothing but manufacturing process and its cost is includable in the assessable value of the goods – Demand of duty and penalties upheld – Personal penalties under Rule 209 A set aside, but penalties under Rule 210 upheld.

[2011-TIOL-439-CESTAT -DEL](#)

M/s Steel Authority Of India Ltd Vs CCE, Raipur (Dated: December 15, 2010)

Central Excise – Eligibility of MODVAT Credit under Rule 57Q on Sheets, Tubes, Non ST Billets/Blooms, Chain assembly, Unmachined castings etc used in factory workshops – Claim of assessee regarding usage of impugned items in factory workshops for manufacture of various capital goods ambiguous – Matter remanded to Commissioner to decide matter afresh after verifying claims of assessee for entitlement of credit

MODVAT Credit on extra copies of invoices – Credit eligible only on duplicate copy of invoices or alternatively on original copy of invoice after satisfying the Asst Commissioner about loss of duplicate in transit – Matter remanded to original authority to decide the matter afresh after providing another opportunity to assessee

[2011-TIOL-437-CESTAT -MUM](#)

CC, Nhava Sheva Vs Madura Industrial Textiles (Dated: February 14, 2011)

Notf. 5/06-CE - Commissioner(Appeals) interpreting the term “in the multiples of” as qualifying the filament yarn rather than as a term relatable to denierage of the yarn - interpretation is per se erroneous - expression is relatable to arithmetic multiplication of 210 for denierage of filament yarn – Stay application of Revenue allowed

[Also see analysis of the case](#)

[2011-TIOL-436-CESTAT -MAD](#)

CCE, Chennai Vs Indrad Auto Ltd (Dated: December 7, 2010)

Central Excise – Penalty under Section 11 AC of the Central Excise Act, 1944 – Penalty under section 11 AC set aside by the lower authority as duty was paid before issue of the show cause notice – Penalty under Section 11 AC is attracted in view of Supreme Court’s order in Dharamendra Textile Processors – However, penalty reduced to 25% of the duty amount since duty and interest was paid before issue of show cause notice.

2011-TIOL-435-CESTAT-MAD
CCE, Tirunelveli Vs M/s DCW Ltd (Dated: December 22, 2010)
Central Excise – Excisability – Spent sulphuric acid is an excisable commodity as held by the Supreme Court in Nirma Chemical Works Ltd case – Revenue appeal allowed.
2011-TIOL-427-CESTAT-MUM
CCE, Mumbai Vs Aqua Bisleri (India) Ltd (Dated: January 20, 2011)
Addition of cost of re -usable containers in the assessable value of 'Bisleri' water assessed under section 4A of the CEA, 1944 - remand order passed by this Bench was not to be understood as a green signal for blindly accepting the Chartered Accountant's certificates – it was incumbent upon the Commissioner to have an audit of accounts under section 14A of the Central Excise Act, 1944 - Matter remanded
Also see analysis of the case
2011-TIOL-426-CESTAT-AHM
M/s Apar Industries Ltd Vs CCE, Vapi (Dated: February 28, 2011)
Central Excise – Stay/Dispensation of pre -deposit - Interest on differential duty paid on account of price escalation after clearance of the goods – Issue is no more res-integra in view of the Supreme Court's decision in case of SKF (I) Ltd – Pre-deposit ordered.
2011-TIOL-425-CESTAT-DEL
M/s Ambuja Cement Ltd Vs CCE, Jaipur (Dated: February 7, 2011)
Central Excise – Stay/Dispensation of pre -deposit - CENVAT Credit on the services received at one factory availed at another factory of the same manufacturer – No prima facie case has been made out for waiver of pre -deposit.
2011-TIOL-421-CESTAT-BANG

M/s Elegant Chemicals Enterprises Pvt Ltd Vs CCE, Hyderabad (Dated: November 15, 2010)

Central Excise – Manufacture of goods on job work basis – Non-inclusion of royalty paid by principal manufacturer to foreign principals – Show cause notices issued to appellant for overlapping period demanding duty on different grounds – Allegation of suppression of facts not sustainable when it is on record that appellant not aware of agreement between principal manufacturer and the foreign principal with regard to payment of royalty – Prima facie case for full waiver of pre-deposit

[2011-TIOL-420-CESTAT-BANG](#)

M/s Bellary Steels & Alloys Ltd Vs CCE & CC, Belgaum (Dated: November 22, 2010)

Central Excise – Eligibility of credit available in books of one unit by another unit of same manufacturer being a single legal entity without following procedures for transfer of credit – Legal question to be looked into at the time of final disposal of appeal – Pre-deposit of Rs. 25 lakhs ordered

[2011-TIOL-418-CESTAT-MUM](#)

Colgate Palmolive (India) Ltd Vs CCE, Mumbai (Dated: February 3, 2011)

Central Excise - Input Services used for exempted goods and trading - Proportionate reversal of CENVAT Credit Ordered: In this case undoubtedly the appellants have not maintained separate account of input service credit (in dispute) separately for dutiable as well as non-dutiable exempted goods. The only option left with the appellants either to reverse proportionate input service credit or to reverse 10% of the value of the exempted final product at the time of clearance.

Penalty : As issue involved in this case is a matter of interpretation of the admissibility of input service credit, no penalties are warranted in these appeals. Hence the penalties are dropped.

[Also see analysis of the case](#)

[2011-TIOL-417-CESTAT-BANG](#)

M/s Sunfab Vs CCE, Bangalore (Dated: December 10, 2010)

Central Excise – Manufacture and clearance of garment finishing equipments under a brand name and claim of SSI exemption benefit under Notfn 8/2001-CE – When partners admitted in their statements on record that appellants used brand belonging to another and the statements were not retracted, SSI benefit not admissible – Application for registration of trademark by other party to be regarded as cut off date for denial of exemption benefit – Claim of appellants regarding non-usage of brand name for clearances subsequent to date of visit of officers, to be verified by

adjudicating authority on remand – Matter remanded for quantification of duty liability and penalties

[2011-TIOL-416-CESTAT-BANG](#)

Reva Electric Car Company Pvt Ltd Vs CCE, Bangalore (Dated: December 6, 2010)

Central Excise – Non-reversal of CENVAT credit on stock of inputs, inputs contained in semi-finished goods and finished goods when finished goods viz., electrically operated cars were exempted from excise duty – Claim of non-applicability of Rule 11 of CCR, 2004 for discharging payment of duty of excise viz., ECess, SHE Cess, Automobile Cess, NCCD to be examined at final disposal of appeal – Pre-deposit of Rs. 1 crore ordered, liberty to debit the same in CENVAT A/c – Stay granted

[2011-TIOL-411-CESTAT-MAD](#)

M/s Orchid Designs (P) Ltd Vs CCE, Chennai (Dated: December 6, 2010)

Central Excise – Excisability of wardrobes, wooden shelves and kitchen cupboards fixed in civil constructions - Entire demand raised in the show-cause notice has been confirmed by treating all items in dispute as parts of furniture - The Commissioner has not considered the assessee's submission that most of the items cannot be considered as excisable goods and not liable to excise duty - The Commissioner has also not established as to how the goods cleared from the factory are marketable – Matter remanded for fresh decision.

[2011-TIOL-404-CESTAT-MUM](#)

The National Leather Cloth Mfg Co Vs CCE, Mumbai (Dated: March 8, 2011)

I have no work and have to sit idle – This has not happened for the first time, it has happened earlier also – Single Member Bench is not being taken seriously - It is the collective duty of the DRs, Advocates and the Bench to dispose the cases as early as possible, particularly in this Tribunal, where the Government's revenue is at stake, laments CESTAT

[Also see analysis of the case](#)

[2011-TIOL-403-CESTAT-DEL](#)

M/s Man Structural Pvt Ltd Vs CCE, Jaipur (Dated: February 18, 2011)

Central Excise – Stay/Dispensation of pre -deposit - CENVAT Credit availed on steel used for erection of supporting structures for cranes – No prima facie case has been made out on merits or on limitation – Pre -deposit of duty demanded ordered.

[2011-TIOL-400-CESTAT -MUM](#)

CCE & CC, Nasik Vs M/s Mahindra & Mahindra Ltd (Dated: February 3, 2011)

Valuation of goods - provisions of CAS-4 will apply not only prospectively but also for the period prior to issue of Board Circular dated 13.02.2003 since it only lays down the principle of computing the cost of production in the case of captive consumption

[Also see analysis of the case](#)

[2011-TIOL-399-CESTAT -MAD](#)

M/s Sundaram Auto Components Limited Vs CCE, Chennai (Dated: December 1, 2010)

Central Excise – CENVAT Credit – Plastic components cleared on payment of duty to the job worker for painting and after return of the painted components by the job worker the appellants availed credit of duty paid by the job worker – No case of double benefit as alleged by the revenue.

[2011-TIOL-398-CESTAT -MAD](#)

CCE, Chennai Vs M/s Yazaki Wiring Technologies Pvt Ltd (Dated: December 1, 2010)

Central Excise – CENVAT Credit – Credit on outdoor catering, Labour, Banking and Travel Agent services – Material on record is not sufficient to establish that the services were undertaken in relation to the business of manufacture – Matter remanded to the adjudicating authority for fresh decision.

[2011-TIOL-396-CESTAT -MAD](#)

CCE, Salem Vs M/s Sterling Biotech Ltd (Dated: December 01, 2010)

Central Excise – CENVAT Credit –Outdoor catering service –Credit of service tax would not be available to a manufacturer in cases where cost of food is borne by the workers - Service tax demand requires to be re- quantified by working out the cost of goods borne by the workers–Penalty not warranted - Matter remanded.

[2011-TIOL-395-CESTAT-MUM](#)

Annapurna Metal And Plastics Works Vs CCE, Mumbai (Dated: December 07, 2010)

When all the facts were in the knowledge of the lower authorities, it cannot be held that the appellants have suppressed the material facts of description of their product in the classification list – Penalty not imposable u/s 11AC of the CEA, 1944

[2011-TIOL-391-CESTAT-MUM](#)

CCE, Mumbai Vs Techno Electricals (Dated: February 2, 2011)

Notf. 10/97-CE - Scientific and Technical instruments are very wide terms and can also include electrical instruments - no dispute about the usage of equipment as certified by the competent authority - Once the goods become eligible for exemption, a liberal interpretation has to be given in allowing the exemption – Revenue appeal dismissed

[Also see analysis of the case](#)

[2011-TIOL-390-CESTAT-MAD](#)

M/s Salem Cylinders (P) Ltd Vs CCE, Salem (Dated: December 9, 2010)

Central Excise – Refund – Whether the assessments in cases where there is a price variation are to be treated as deemed provisional – The issue stands settled against the assessee by the Apex Court – Assessee is not entitled to refund.

[2011-TIOL-389-CESTAT-BANG](#)

M/s Sponge Iron India Ltd Vs CCE, Hyderabad (Dated: November 12, 2010)

Central Excise – CENVAT credit availed on MS Plates, Beams, MS Channels, MS Angles etc – Pre-deposit of Rs. 3 lakhs ordered

[2011-TIOL-386-CESTAT-MUM](#)

CCE, Thane Vs M/s Geeta Engg Works Pvt Ltd (Dated: January 18, 2011)

When a product has not been manufactured by an assessee, duty liability does not arise as per section 3 of the Central Excise Act, 1944 - issue of classification of the

impugned spare parts does not arise at all – Revenue appeal rejected

[Also see analysis of the case](#)

[2011-TIOL-385-CESTAT -MAD](#)

CCE & ST, Tiruchirappalli Vs M/s Thiru Arooran Sugars Ltd (Dated: December 02, 2010)

Central Excise – CENVAT Credit – Credit is not admissible on joists, MS Channels, MS Plates etc., used as supporting structures in the construction work in view of the Larger Bench ruling in case of M/s Vandana Global Ltd – However, no case for penalty as conflicting decisions existed.

[2011-TIOL-380-CESTAT -BANG](#)

M/s RCC (Sales) Pvt Ltd Vs CCE, Hyderabad (Dated: October 25, 2010)

Central Excise – MRP based assessment not applicable to manufacture and clearance of unwrapped razor blades - Impugned order set aside

[2011-TIOL-379-CESTAT -BANG](#)

M/s Rashtriya Ispat Nigam Limited Vs CCE & CC, Visakhapatnam (Dated: October 26, 2010)

Central Excise – Eligibility of CENVAT Credit on gasses, plates, sheets, rounds, angles, electrodes, welding flux etc as capital goods – Adjudicating authority neither gave due consideration to detailed submissions justifying eligibility of credit by appellant nor the ratio of various case laws cited – Impugned order set aside and matter remanded for de novo consideration

[2011-TIOL-376-CESTAT -MAD](#)

CCE, Madurai Vs M/s Eastman Spinning Mills (P) Ltd (Dated: November 22, 2010)

Central Excise – CENVAT Credit on capital goods used in the manufacture of cotton yarn exempted under Notification No 30/2004 CE dated 09.07.2004 – The notification bars availment of credit on inputs only – Further the capital goods cannot be said to used exclusively in the manufacture of exempted goods as the paid duty subsequently on cotton yarn in terms of Notification No 29/2004 CE. - Availment of credit is in order.

2011-TIOL-372-CESTAT-MUM
M/s Furnace Fabrica (India) Ltd Vs CCE, Mumbai (Dated: July 27, 2010)
Goods manufactured on job work basis for suppliers of raw materials who are not related – Revenue alleging that valuation should be by adopting the principle contained in rule 8 of Valuation Rules, 2000 and not on cost construction basis - Board Circular dated 19.02.2002 refers to rule 6 and not rule 8 - Matter remanded
Also see analysis of the case
2011-TIOL-371-CESTAT-BANG
M/s Matrix Laboratories Ltd Vs CCE, Visakhapatnam (Dated: October 25, 2010)
Central Excise – 100% EOU not required to pay ECess and SHE Cess again for DTA sales in terms of section 3(1) of CEA, 1944 – Prima facie case for full waiver of pre-deposit – Stay granted
2011-TIOL-364-CESTAT-BANG
M/s Rani Plastic Pipes Industries Vs CCE, Tirupati (Dated: December 1, 2010)
Central Excise – CENVAT Credit reversed earlier cannot be taken as re-credit without prior sanction of department – Impugned orders sustained
2011-TIOL-363-CESTAT-BANG
M/s Taher Ali Industries & Projects (P) Ltd Vs CC & CCE, Visakhapatnam (Dated: December 6, 2010)
Central Excise – Supply of PSC pipes for lift irrigation scheme availing benefit of Notification No. 3/2004-CE – Absence of desalination, demineralization plant or plant for purification of water will not render pipes supplied ineligible for benefit of exemption – Explanation to Notification an inclusive definition and enlarges definition of water supply plant to include desalination, demineralization or purification of water plant and does not restrict it to only desalination, demineralization or water purification plant – Prima facie case for full waiver of pre-deposit – Stay granted
2011-TIOL-358-CESTAT-BANG
M/s L&T Komatsu Ltd Vs CCE, Bangalore (Dated: September 8, 2010)

Central Excise – Eligibility of exemption notification 108/95-CE – Clearance of goods pursuant to certificates issued by Project Implementing Authority and countersigned by officials as indicated in Notification not disputed – Findings of original authority indicates that goods were used in execution of projects and transferred to other sites/projects subsequently – Explanation inserted on 01.03.2008 applicable prospectively as clause regarding non-withdrawal of goods from project site was absent prior to 01.03.2008 and goods cleared prior to this date could not be governed by explanation inserted from that date – Prima facie case for full waiver of pre-deposit

[2011-TIOL-357-CESTAT -MAD](#)

CCE, Chennai Vs M/s Lap Ross Engineering Ltd (Dated: November 19, 2010)

Central Excise – CENVAT Credit on Air Ticket Booking Service is admissible.

[2011-TIOL-356-CESTAT -MUM](#)

M/s Minma Electronics Pvt Ltd Vs CCE & CC, Belapur (Dated: March 15, 2011)

Central Excise - Service of Communication on the Department by appellant - Section 37C applicable: it is clear that the provision is for service of decisions, orders, summons, etc. which means that this section deals with the mode of communication. Tribunal not in agreement with the DR that there are two parameters for communication under the same Act one for the appellant and another for the department. In the eyes of law the litigants are on equal footing and there cannot be two parameters for rival sides. As the section itself says that service of decisions, orders, summons etc. The letter sent to the appellant is covered under this Act under " etc ". The appellants have compiled the provisions of Section 37(C) ibid by showing postal receipt of letter dated 3.5.2007. Therefore, held that the appellant has been able to prove that they have communicated to the department of their Advocate's address and their address in USA for communication. The department has failed to serve the impugned order on these addresses to the appellants. Therefore, the service effected by the department of the impugned order is defective within the provisions of Section 37(C) of the Central Excise Act, 1944.

[2011-TIOL-355-CESTAT -MAD](#)

CCE, Chennai Vs M/s UCAL Fuel Systems Ltd (Dated: November 30, 2010)

Central Excise – CENVAT Credit – Credit on rent-a-cab and Air Ticketing services – Matter remanded to examine the claim that the services were used in connection with the business of manufacture of final products.

[2011-TIOL-354-CESTAT -BANG](#)

M/s MTR Foods Ltd Vs CCE, Bangalore (Dated: October 13, 2010)

Central Excise – Eligibility of CENVAT credit on 'pre -fabricated building (cold room) consisting of wall, roof, door, flashing window by manufacturer engaged in manufacture of ice creams – When audit team headed by Commissioner himself accepts eligibility of credit and returns filed by assessee were not questioned by lower authorities, invocation of extended period for demand of duty alleging suppression of facts not sustainable – Impugned order liable to be set aside

[2011-TIOL-347-CESTAT -MAD](#)

M/s Maya Appliances And Control Equipment Vs CCE, Chennai (Dated: November 12, 2010)

Central Excise – Small Scale exemption – Brand name – The good manufactured by the appellants are affixed with the words "A TTK Product" – The logo of TTK products, which is in the nature of brand name, connotes a connection in the course of trade between TTK group and the goods in dispute – Exemption is not admissible – However, benefit of cum-duty and the Modvat credit on duty paid inputs is extended to the appellants.

[2011-TIOL-346-CESTAT -BANG](#)

M/s Sunrise Industrials Vs CCE, Bangalore (Dated: November 16, 2010)

Central Excise – Reversal of CENVAT Credit on inputs lying in stock/in process after opting out of CENVAT scheme for availing SSI exemption benefit – Since amounts were paid only after verification and investigation by department, SCN issued for appropriation of duty and proposing levy of penalty under Section 11AC not hit by provisions of Section 11A (2B) – As duty was paid with interest, appellant eligible for payment of 25% of penalty if paid within thirty days from date of receipt of Tribunal's order

[2011-TIOL-345-CESTAT -DEL](#)

M/s Ambaji Foods (India) Pvt Ltd Vs CCE, Kanpur (Dated: August 23, 2010)

Central Excise - Excisability - marketability of the product has to be established by the Department - Complete failure on the part of lower authorities to consider this issue - matter remanded: Plain reading of the orders passed by both the lower authorities apparently, therefore, discloses failure on the part of the authorities to consider the issue of marketability in the manner it was required to be decided. The authorities will have to analyse the materials on record and thereafter ascertain whether the same reveal the marketability of the product or not and accordingly decide about the duty liability. Since the authorities below have failed to carry out this exercise before confirming the demand, the orders passed by the lower authority are required to be set aside and the matters need to be remanded to the Adjudicating Authority to decide the same afresh and bearing in mind the law laid down by the Apex Court and various other decisions relied upon on behalf of the appellants and quoted

hereinabove. In the result, therefore, the appeals succeed and impugned orders are set aside and the matters are remanded.

[Also see analysis of the case](#)

[2011 -TIOL-340-CESTAT -DEL](#)

M/s SPBL Ltd Vs CCE, Jaipur (Dated: August 4, 2010)

Central Excise - Refunds - Bar of unjust enrichment is applicable to units working under the Compounded Levy Scheme: In the case of Shivagrigo Implements Ltd. vs. CCE , Jaipur , Larger Bench while answering the question as to whether bar of unjust enrichment will apply to the cases relating to refund claim arising out of clearances of goods from a unit working under Compounded Levy Scheme based on capacity of production, held that the Supreme Court has held that bar of unjust enrichment is applicable in case of refund whether this is provided under the statute or not and in view thereof the point was answered in favour of the Revenue.

[Also see analysis of the case](#)

[2011 -TIOL-339-CESTAT -MAD](#)

M/s JSW Steel Ltd Vs CCE, Salem (Dated: December 20, 2010)

Central Excise - CENVAT Credit - lancing pipes used for feeding of oxygen into the blast furnace are to be treated as inputs only and there is no restriction of credit in a financial year.

[2011 -TIOL-338-CESTAT -MAD](#)

CCE, Pondicherry Vs M/s Sudhir Controls Gears And Lighting Equipments (P) Ltd (Dated: December 8, 2010)

Central Excise – Classification - Flame-proof switching and distribution apparatus fall for classification under Chapter Heading 85.43 – Commissioner (Appeals) order vacating the demand is set aside and Order-in-Original is restored.

[2011 -TIOL-332-CESTAT -MUM](#)

CCE, Aurangabad Vs GKN Sinter Metals Ltd (Dated: December 21, 2010)

SCN merely proposed to deny the credit to the party on the ground that Catering service did not qualify to be input service under Rule 2 (1) of the CENVAT credit

Rules, 2004 – issue settled by Bombay HC in case of CCE Nagpur Vs. Ultratech Cement Ltd., ([2010-TIOL-745-HC-MUM-ST](#)) . holding that the use of outdoor catering service was integrally connected with the business of manufacturing the final products and therefore credit is admissible – Revenue appeal dismissed.

Argument of Revenue that the benefit of the decision will be available only if the assessee has supplied food free of cost to the workers is not tenable as SCN did not allege that the goods was supplied to their workers at subsidized price or that the entire cost of the goods was recovered from the workers – Cenvat credit allowable on Outdoor Catering Services .

[2011-TIOL-331-CESTAT -MAD](#)

M/s Automotive Coaches & Components Vs CCE, Chennai (Dated: December 10, 2010)

Central Excise – Classification – Appellants are receiving duty paid chassis fitted with engines and are manufacturing chassis fitted with cab - C hassis fitted with cab manufactured by the appellants are classifiable only under Heading 87.06 as held by the Commissioner – However, penalty is set aside as the dispute involves only classification.

[2011-TIOL-325-CESTAT -MUM](#)

CCE, Aurangabad Vs Videocon International Ltd (Dated: November 4, 2010)

Central Excise - refund - Unjust Enrichment : Admittedly, in the present case, the amount of duty was not separately indicated in the invoices issued by the assessee from their depot. In the circumstances, the burden was all the more for the assessee to establish that the burden of duty had not been passed on to the buyers. The assessee had dismally failed to discharge this burden.

[2011-TIOL-324-CESTAT -MAD](#)

M/s Rajalakshmi Paper Mills Ltd Vs CCE, Madurai (Dated: December 14, 2010)

Central Excise – CENVAT Credit on goods consigned to Unit I, availed in Unit II – Since there is no allegation of non-receipt or non-utilisation of inputs, credit is allowed – However, penalty of Rs 10,000/- for tampering with the duty paying documents is upheld.

[2011-TIOL-321-CESTAT -DEL](#)

M/s Hero Cycles Ltd Vs CCE, Ludhiana (Dated: January 21, 2011)

Central Excise - CENVAT Credit - Not Entitled on Original Copy of Invoice; The Larger Bench of the Tribunal in the case of Avis Electronics Pvt. Ltd, ([2002-TIOL-394-CESTAT-DEL-LB](#)) has held that the Tribunal is not to supplement or add words to the Rules and when a particular thing is directed to be performed in a manner prescribed by Rules, it should be performed in that manner itself and not otherwise and accordingly, has held that Cenvat credit cannot be taken on the basis of original copies of the invoices unless the loss of duplicate copy is reported to the jurisdictional Asstt. Commissioner and the necessary permission has been taken for taking Cenvat credit on the basis of the original copies of the invoices.

Invoice from Manufacturer is a proper document even though the goods were cleared through depot: When there is no dispute about the fact that the goods, in question, had been dispatched by Hazira factory of ESL under their invoices to the appellant and the invoices were in the name of the appellant and due to some reasons, goods were first unloaded at ESL's Ludhiana Depot and were redespached to the factory of the appellant, Cenvat credit to the appellants on the basis of the invoices issued by the Hazira factory of the ESL can not be denied. Non-issue of invoices by the Ludhiana depot of Essar under Rule 57GG is only a minor technicality for which the Cenvat credit cannot be denied when neither authenticity of the invoices issued by the Hazira factory of the ESL to the appellants is disputed nor the receipt of the goods covered under those invoices by the appellants is disputed.

[Also see analysis of the case](#)

[2011-TIOL-320-CESTAT-MUM](#)

CCE, Mumbai Vs Hindustan Spinning & Weaving Mills Ltd (Dated: January 4, 2011)

Selling and distribution expenses are not required to be included in the assessable value of the goods captively consumed by the assessee for further production – SC decision in CCE, Pune Vs. Cadbury India Ltd., ([2006-TIOL-88-SC-CX](#)) relied upon – Revenue appeal dismissed

[2011-TIOL-315-CESTAT-MUM](#)

CCE, Mumbai Vs USV Ltd (Dated: December 21, 2010)

Doctrine of cause of action is ordinarily applicable to civil disputes - there is no room for extending this doctrine to the field of claims for refund of Central Excise duties as Section 11B of the CEA, 1944 provides a complete machinery for claiming refund

[Also see analysis of the case](#)

[2011-TIOL-314-CESTAT-MUM](#)

M/s Khator Fibre & Fabrics Ltd Vs CCE, Thane (Dated: December 9, 2010)

Pre -deposit made as per Tribunal order – subsequently appeal allowed in 2005 – Appellate filed refund claim and later surrendered registration certificate as amount not refunded – after Revenue was appeal dismissed by Apex Court in 2007 refund allowed, however appellant seeking refund in cash on ground that they are unable to utilize the same – issue no more res integra in view of HC decision in CCE vs. Ashok ([2005-TIOL-208-HC-RANCHI-CX](#)) wherein it is held that when the assessee is not in a position to utilise the credit available to them, refund claim is to be issued 'in cash' – Revenue directed to issue refund claim in cash within two weeks: CESTAT.

[2011-TIOL-310-CESTAT-MUM](#)

Manikgarh Cement Vs CCE, Nagpur (Dated: December 2, 2010)

Whether the impugned service is taxable or not is to be decided at the end of service provider and not at the end of service receiver - In that event, if any service availed by the appellant against service tax paid invoices, the appellant is entitled to take input service credit - CESTAT decision in CCE Chennai vs. Caborandum Universal Ltd. ([2008-TIOL-636-CESTAT-MAD](#)) relied upon.

[2011-TIOL-309-CESTAT-MAD](#)

M/s KLM Pack Vs CCE, Pondicherry (Dated: December 8, 2010)

Central Excise – Valuation – Mysore Sandal talcum powder in 20 gms plastic containers sold to Karnataka Soaps and Detergents Ltd for free supply along with Mysore Sandal Soaps - Provisions of Section 4A are not attracted as the goods are not intended for retail sale - The impugned goods clearly fall under the category of goods to which the SWM Rules, 1977 do not apply in view of the provisions contained under Rule 3 and Rule 34(1)(b) of the said rules – Valuation of the goods under Section 4 upheld.

[2011-TIOL-305-CESTAT-BANG](#)

CCE, Calicut Vs Ms Vijaya Packers (Dated: October 29, 2010)

Central Excise – Eligibility of MODVAT credit based on CA certification – Revenue neither challenged CA certificate in earlier round of litigation nor raised this issue in grounds of appeal before Tribunal – No contrary evidence produced to show inputs/raw materials were non-duty paid – No infirmity in impugned order – Revenue appeal devoid of merits

[2011-TIOL-304-CESTAT-MAD](#)

CCE, Chennai Vs M/s Seshmal (Dated: December 8, 2010)

Central Excise – Penalty under Rule 25 is the maximum penalty that can be imposed and it cannot be treated as mandatory penalty – No reason to interfere with the order of Commissioner (Appeals) reducing the penalty imposed under Rule 25 of the Central Excise Rules, 2001.

[2011-TIOL-302-CESTAT-MAD](#)

M M Forgings Ltd Vs CCE, Tiruchirappalli (Dated: December 7, 2010)

Central Excise – Refund of unutilized credit due to export of final products – Appeal – Delay in filing the appeal before the Commissioner (Appeals) – No merit in the contention of the appellant to condone the delay in view of the direct decision of the apex court that Commissioner (Appeals) has no power under the statute to condone a delay beyond the period of 30 days after the expiry of the statutory period of limitation.

[2011-TIOL-301-CESTAT-MAD](#)

M/s Seaglad Pharmaceuticals Ltd Vs CCE, Chennai (Dated: November 19, 2010)

Central Excise – Appeal – Proof of filing – Acknowledgement from postal authorities that the assessee had sent the appeal under Certificate of posting is not sufficient to hold that the appeal was filed in the Office of the Commissioner (Appeals) – Appeal is not maintainable as there is no order passed by the Commissioner (Appeals).

[2011-TIOL-296-CESTAT-BANG](#)

CCE, Bangalore Vs M/s Wintac Ltd (Dated: September 14, 2010)

Central Excise – Demand of differential duty on technical know how received free of cost for nine products manufactured on loan license basis – Technical know how for 76 products sold to customer earlier under a separate agreement – In the absence of a proper mechanism to quantify the value of technical know-how relatable to goods manufactured, duty demand not sustainable – Impugned order sustained

[2011-TIOL-295-CESTAT-MAD](#)

M/s Thaj Paper Products Vs CCE, Trichirappalli (Dated: November 24, 2010)

Central Excise – CENVAT Credit wrongly taken reversed before utilizing – No liability to pay interest.

2011-TIOL-294-CESTAT-MAD
Thirumalai Chemicals Ltd Vs CCE, Chennai (Dated: October 27, 2010)
Central Excise – CENVAT Credit – Denial of credit on the ground that the total quantity of inputs were not received in the assessee's factory – Matter remanded in view of the Larger Bench decision in case of M/s Bhuwalka Steel Industries Ltd.
2011-TIOL-293-CESTAT-MAD
Sujana Metal Products Ltd Vs CCE, Chennai (Dated: November 8, 2010)
Central Excise – Stay/Dispensation of pre -deposit – CENVAT Credit circulated on documents without actual movement of goods in a circular transaction – Penalty under Rule 15(1) – Language of the rule does not warrant the interpretation that imposition of penalty should be preceded by confiscation – No prima facie case made out for waiver of pre -deposit – 25% of the penalties imposed ordered to be pre -deposited.
2011-TIOL-289-CESTAT-BANG
CCE, Belgaum Vs M/s Indo Woosung Vaccum Co Ltd (Dated: May 25, 2010)
Central Excise – Manufacture of vacuum pumps using brand name of Korean company and availment of benefit of Notification No. 9/03-CE – When reply to SCN clearly discloses admission of using brand name on basis of agreement with foreign collaborator, finding of Appellate Commissioner that there is no positive evidence on record for usage of brand name, not sustainable – It is elementary rule of evidence that when a fact in dispute is admitted, question of requiring the party to produce further evidence in support of such fact does not arise – Impugned order allowing benefit of exemption notification not sustainable, liable to be set aside
2011-TIOL-288-CESTAT-MUM
Kalika Steel Alloys Pvt Ltd Vs CCE, Aurangabad (Dated: February 28, 2011)
Central Excise - Clandestine manufacture - quantification based on consumption of electricity - when a person indulges in clandestine manufacture and removal of goods, he will not keep any records - Pre-deposit Ordered: When the department discharged their initial burden of proof by showing excess consumption of electricity (a major input) by the appellants, the latter did not have any valid explanation to offer. Hence the Revenue cannot be faulted for demanding duty on the steel ingots which could have been manufactured by consuming the excess quantity of electricity. Suppression of relevant facts is inbuilt in clandestine production of excisable goods and its removal

without payment of duty, and the same, prima facie, stands established in these cases. When a person indulges in clandestine manufacture and removal of goods, he will not keep any records thereof. In the instant cases, MSEB's G-7 Forms and electricity bills (in some cases, the assessee's Balance Sheets or other private records also) disclosed the actual consumption of electricity and the Revenue has been able to show that the appellants suppressed production of M.S. ingots.

[Also see analysis of the case](#)

[2011-TIOL-287-CESTAT -AHM](#)

CCE, Ahmedabad Vs M/s Gujarat Ambuja Exports Ltd (Dated: December 16, 2010)

Central Excise - Export of exempted goods - CENVAT Credit and consequent refund entitled: the stand taken by the Revenue that if the finished goods are exempted, credit itself cannot be taken initially and therefore no refund claim is admissible, cannot be sustained. Similarly, the stand of the Revenue that refund cannot be sanctioned when the goods are not exported under bond also cannot be sustained.

[Also see analysis of the case](#)

[2011-TIOL-283-CESTAT -MUM](#)

Mega Enterprises Vs CCE & CC, Nashik (Dated: December 31, 2010)

Appellant collecting octroi on behalf of Municipal Corporation – whether taxable to service tax under 'Banking and Other Financial Services' - Exclusion clause 'but does not include cash management' in definition omitted w.e.f 01.06.2007 - absence of exclusion cannot be reckoned as inclusion – Prima facie case in favour - Pre-deposit waived

[Also see analysis of the case](#)

[2011-TIOL-282-CESTAT -MAD](#)

CCE, Madurai Vs M/s Sundaram Industries Ltd (Dated: October 28, 2010)

Central Excise – Power to remand – With effect from 11.5.2001, Commissioner (Appeals) has no power to remand – Impugned order is set aside and matter remanded to the original authority.

[2011-TIOL-276-CESTAT -BANG](#)

CCE, Cochin Vs M/s Kochi Refineries Ltd (Dated: June 16, 2010)

Central Excise – Valuation of petroleum products cleared from refinery pursuant to agreement with oil marketing companies – Clearances to OMCs based on import parity price to be regarded as assessable value – Tribunal decision in HPCL vs. CCE Visakhapatnam - [2005-TIOL-405-CESTAT-BANG](#) affirmed by Apex Court followed – No infirmity in impugned order

[2011-TIOL-275-CESTAT-BANG](#)

CCE, Belgaum Vs M/s Indo Woosung Vaccum Co Ltd (Dated: September 6, 2010)

Central Excise – Restoration application filed for recall of final order passed ex-parte by Tribunal – Sole ground for filing restoration application is absence of advocate on date of final hearing – Contentions and objections raised by appellant's advocate for allowing restoration application contrary to facts on record

Limitation – Plea of not discussing issue of limitation in final order not justified as the same was considered by Tribunal in final order – Issue of limitation being a mixed question of law and facts, it is essentially for the Court of facts (Tribunal) to analyse the facts in relation to any issue of fact or mixed question of law and fact – When issue regarding limitation is raised before Tribunal, it is not necessary for Tribunal to remand the matter to Commissioner (Appeals) or to adjudicating authority as Tribunal itself is fully empowered to decide such issue – Miscellaneous application liable for dismissal

[2011-TIOL-271-CESTAT-MAD](#)

CCE, Chennai Vs Sterling Lab (Dated: October 27, 2010)

Central Excise – Manufacture of dutiable and exempted goods – Amount paid under Rule 57 CC collected from buyers – Since the respondents did not retain the amount collected from the customers, the provisions of Section 11 D are not attracted.

[2011-TIOL-268-CESTAT-MAD](#)

CCE, Salem Vs Hindustan Lever Ltd (Dated: October 27, 2010)

100% EOU – Clearance of goods in DTA – Benefit of concessional rate of duty under Notification 2/95 CE cannot be denied on the ground that the goods cleared in DTA, i.e., fresh mushrooms and processed mushrooms exported fall under two separate chapter headings – Benefit is admissible as the expression used in the Notification is “similar” – Fresh mushrooms and processed mushrooms belong to the same class of goods.

[2011-TIOL-265-CESTAT-BANG](#)

M/s Nucon Industries Pvt Ltd Vs CCE, Hyderabad (Dated: September 7, 2010)

Central Excise – Manufacture and clearance of pneumatic cylinders to customers availing benefit of SSI exemption Notification No 8/03-CE – When expression used in the logo affixed on products sufficient to indicate connection between the product and customer, SSI benefit not available – Demand of duty and imposition of penalty sustained in r/o two appeals – Demand in r/o two assessee wherein information was available with department in 2003 but SCN issued in 2006, hit by limitation

[2011-TIOL-263-CESTAT-BANG](#)

M/s Paragon Polymer Products Pvt Ltd Vs CCE, Hyderabad (Dated: October 20, 2010)

Central Excise – Manufacture and clearance of Hawaii chappals bearing brand name 'paragon', solid rubber tyres which are unconditionally exempt under Notification No 3/05-CE and rubber waste generated cleared without payment of duty – Determination of aggregate value of clearances for availment of SSI benefit under Notification No. 8/03-CE – Brand name or trade name affixed by appellant being not covered under Para 4 of Notification No. 8/03-CE, value of such clearances to be considered for determination of aggregate value of clearances of all excisable goods for home consumption during previous year – Value to be re-quantified considering the clearances as cum-duty and allow CENVAT benefit – No infirmity in impugned order

[2011-TIOL-259-CESTAT-BANG](#)

M/s Tilrode Chem Pvt Ltd Vs CCE, Bangalore (Dated: June 16, 2010)

Central Excise – Clandestine manufacture and removal of P or P medicines by job worker – Plea that non-payment of duty on certain clearances to be set off against excess payments in other clearances sustained – Duty demand and penalty under s. 11AC set aside – Penalty for violation of various Central Excise Rules reduced to Rs. 2 lakhs – Demand of excess duty collected in terms of s. 11D not sustainable when there is no such proposal in show cause notice, liable to be set aside

[2011-TIOL-258-CESTAT-MAD](#)

CCE, Chennai Vs Shri Krishna Ultramarine & Chemicals Ltd (Dated: October 22, 2010)

Central Excise – Clubbing of clearances of two units and denial of small scale exemption benefit – Plea that the other unit was not put to notice - When both the units i.e. the main unit and the repacking unit, belong to one and the same legal entity, i.e., the respondents to whom the Show Cause Notice was issued, the lower appellate authority was not justified in applying the case laws relevant to different fact situations and allowing the appeal without going into the merits of the case on the

ground of non-issuance of separate show cause notices.

[2011-TIOL-253-CESTAT-MAD](#)

M/s Thermo Electric Furnaces Vs CCE, Chennai (Dated: November 12, 2010)

Central Excise – Small Scale exemption under Notification under Notification 1/93 CE availed for Electric Furnaces – Value of heating elements not included for computation of aggregate value on the ground that the same are only cut wires traded - There is a specific entry under the Excise Tariff 85.16 which covers heating elements under Electric Heating Resistors and there is also evidence that the appellants have undertaken processing of the purchased wires, and were not merely cutting the same, to manufacturing heating elements – No reason to interfere with the orders of the lower authorities.

[2011-TIOL-252-CESTAT-BANG](#)

CCE, Visakhapatnam Vs M/s Hindustan Zinc Ltd (Dated: September 6, 2010)

Central Excise – CENVAT Credit not available on welding electrodes used for repair and maintenance – Since the issue was always disputed penalty not leviable – Appellate Commissioner's order allowing credit set aside

[2011-TIOL-248-CESTAT-DEL](#)

CCE, Chandigarh Vs M/s Dharampal Prem Chand Ltd (Dated: December 16, 2010)

Central Excise - Captive Consumption - NCCD payable when there was no specific exemption - Revenue neutrality is not a ground for not paying duty: During the relevant period NCCD was not specifically exempted for captive consumption; There is no such provision in the Central Excise Act that in respect of goods cleared for captive consumption when the Cenvat credit of duty paid on such goods is available, no duty is required to be paid in such cases;

[Also see analysis of the case](#)

[2011-TIOL-247-CESTAT-AHM](#)

M/s Doshion Limited Vs CCE, Ahmedabad (Dated: September 7, 2010)

Central Excise - Clandestine Removal - Demand based on only a statement that too not supporting the Revenue's case - Not sustainable: there is no other evidence relied

upon by the lower authorities for upholding the charges of clandestine removal. Even the statements also do not support the Revenue's case. On the other hand there is explanation from the appellants for use of second invoice book. The evidence produced by the appellants for reflecting clearances of the goods only once, in the shape of the letters from their customers and their ledger accounts do not stand rebutted by the Revenue. In these circumstances, the findings of clandestine removal resulting in confirmation of demand of duty and imposition of penalty upon the appellants cannot be upheld. The impugned order is accordingly, set-aside with consequential relief to the appellants.

[2011-TIOL-246-CESTAT-AHM](#)

M/s Sameer Industries Vs CC, Kandla (Dated: August 26, 2010)

Central Excise - Clearance of excisable goods to DTA from SEZ - Jurisdiction of Customs Commissioner - Matter remanded: the impugned order, inter alia, stand agitated by the appellant on the point of jurisdiction, as also on the issue that the segregation of imported mixed waste does not amount to manufacture, as also on the point of limitation. The advocate fairly agrees that the above issues were not raised before original adjudicating authority. Without expressing any opinion on the merits of the case, the impugned order set aside and remanded for de-novo adjudication. Needless to say that the appellants shall be at liberty to raise the above grounds before Commissioner, who shall pass fresh order after considering the same.

[2011-TIOL-241-CESTAT-AHM](#)

M/s Ultratech Cement Ltd Vs CCE, Bhavnagar (Dated: September 9, 2010)

Central Excise - Section 11D - Applicable even on the amount collected as representing duty by the depot though the depot is not liable to pay any excise duty: sub-section (I) of Section 11D is to the effect that person who is liable to pay the duty under this Act has collected any amount in excess of duty paid, such excess collection represented as duty of Excise, is required to be paid to the Revenue. Simple and plain interpretation of the above provision implies that the Section provides for payment of such excess amount collected as duty of Excise, without going into the economics of the contract price or the fact as to whether such excess amount was profit element of the price or not. The language of said Section is un-ambiguous and no legislative intent is required to be read into.

One depot shows excise duty component in the invoice, while two other depots do not show it: Section 11D cannot be made applicable to the other two depots : the provisions of Section 11D are applicable only to that amount which stands collected by the assessee from their customers by representing the same as duty of Excise. Inasmuch, in respect of invoices raised by the said two plants at Navi Mumbai and Manglore , do not represent any amount collected as duty of Excise, the provisions of Section 11D are not applicable.

[Also see analysis of the case](#)

[2011-TIOL-240-CESTAT-MUM](#)

Graphite India Ltd Vs CCE, Nashik (Dated: January 3, 2011)

Bench Not sure of Jurisdiction – Seeks Clarification from Principal Bench: it is not clear that whether this bench can hear the matters involving duty up to Rs.50 lakhs or penalty up to Rs.50 lakhs or both. In that event, the Assistant Registrar is directed to seek clarification from the Principal Bench

[2011-TIOL-239-CESTAT-BANG](#)

M/s AB Stampings Pvt Ltd Vs CCE, Belgaum (Dated: June 11, 2010)

Central Excise – Eligibility of CENVAT credit on AC motors/Generators procured by manufacturer of electric stampings and cleared on payment of excise duty – Impugned goods neither inputs nor capital goods – Liable to pay differential amount of the credit taken and excise duty actually paid – Matter remanded to lower authority for quantification of duty liability with interest and penalty

[2011-TIOL-237-CESTAT-BANG](#)

M/s Jeans Knit P Ltd Vs CC, Bangalore (Dated: November 29, 2010)

Central Excise – Export – Refund of unutilized Credit – services used 'in relation' to manufacture are entitled for credit: it is a common sense that bank charges, courier and clearing charges and other professional service charges, computer maintenance, clearing charges, insurance charges are incurred by an assessee in or in relation to the manufacturing of the final products; On any input service, which is used in relation to the manufacture of final products, the appellant is eligible to avail the Cenvat credit and if such cenvat credit cannot be utilized by him for discharge of Central Excise duty or output service, he becomes eligible to claim the refund from the authorities.

'In relation to': the specific words "in relation to" were always a bone of contention between the assessee and the Revenue. The said bone of contention was set at rest by the Hon'ble Supreme Court in various cases Doypack Systems (Pvt.) Ltd. Vs. UOI - ([2002-TIOL-389-SC-MISC](#)); CCE Vs. Solaris Chemtech Ltd. - ([2007-TIOL-135-SC-CX](#)) . The law settled by the Supreme Court in these cases is to the expression 'in relation to' and the Supreme Court has settled law, that the expression 'in relation to' is a particular expression which pre-supposes another subject matter and has to be considered in a proper perspective.

[Also see analysis of the case](#)

[2011-TIOL-233-CESTAT-MAD](#)

CCE, Trichy Vs M/s AKR plastics (Dated: November 12, 2010)

Central Excise – Plastic sheets captively consumed in manufacture of cups, bowls and plates which are exempted under Notification No 4/97 CE dated 1.3.97 – Exemption under Notification No 16/97 CE is admissible to the respondents as the total value of clearances of plastic sheets is less than the specified limit – No infirmity in the order of lower appellate authority.

[2011-TIOL-229-CESTAT-DEL](#)

CCE, Chandigarh Vs M/s Baba Asia Ltd (Dated: November 23, 2010)

Central Excise – Manufacture - Tobacco Essences manufactured and consumed captively in manufacture of chewing tobacco are excisable.

Exemption from payment of NCCD to Tobacco Essence captively consumed during the period from 1.4.2002 to 16.10.2002 – Exemption from NCCD duty for goods consumed captively is admissible only with effect from 17.10.2002 under Notification No 52/2002 – Benefit of the Notification is not available for the period prior to 17.10.2002 – Findings of the Commissioner (Appeals) that the exemption is admissible cannot be sustained.

Revenue neutrality - Departmental Representative is justified in contending that each and every situation cannot be termed as revenue neutral situation. It would depend upon the facts and circumstances of each case.

[2011-TIOL-225-CESTAT-MAD](#)

CCE, Chennai Vs M/s Govel Plastics Pvt Ltd (Dated: October 26, 2010)

Central Excise – Non-inclusion of value of material supplied under Rule 57 F(4) – Duty paid prior to issue of Show Cause Notice – Penalty under Section 11 AC is not attracted in view of the finding by the lower authority that the assessee did not have intention to evade payment of duty – Penalty under Rule 173 Q upheld.

[2011-TIOL-224-CESTAT-MAD](#)

CCE, Pondicherry Vs M/s Hindustan Lever Ltd (Dated: October 22, 2010)

Central Excise – Valuation under Section 4A – Multi-piece pack of four pieces with caption Buy 3 get 1 free – No substance in the department's appeal seeking assessment on the basis of price of individual soaps.

[2011-TIOL-221-CESTAT -MAD](#)

M/s Jackson Generators Pvt Ltd Vs CCE, Pondicherry (Dated: November 10, 2010)

Central Excise – Exemption under Notification 10/97 CE dated 01.03.97 to Scientific and technical instruments, apparatus, equipment - DG sets supplied to educational and research institutions – DG sets are covered under "equipment"- Exemption allowed.

[2011-TIOL-220-CESTAT -MUM](#)

CCE, Mumbai Vs Ashida Electronics Pvt Ltd (Dated: December 9, 2010)

Goods should be assessed in the stage in which they are removed – all through out, the stand of the department is to include the Erection & Commissioning charges and value of bought out items – it is not the case that the product cleared in CKD/SKD condition is a SCADA system classifiable under SH 8537 and that the accessories are integral part of the product – Revenue appeal dismissed.

[Also see analysis of the case](#)

[2011-TIOL-219-CESTAT -MAD](#)

M/s ECOF Industries Private Limited Vs CCE, Pondicherry (Dated: October 22, 2010)

Central Excise – Capital goods removed after use – The appellant is required to reverse the credit in respect of capital goods removed after use as held by the Larger Bench in case of Modernova Plastyles Pvt Ltd – However, penalty set aside.

[2011-TIOL-212-CESTAT -MAD](#)

CCE, Chennai Vs M/s Blue Bay Mineral Water Co (Dated: October 27, 2010)

Central Excise – Exemption under Notification 8/2000 CE dated 01.03.2000 to the unit located in rural area - The jurisdictional Tahsildar has clarified that the impugned Athur village is situated in rural area. In view of such a specific clarification obtained from the jurisdictional revenue authority, no substance in department's appeal to deny exemption on the ground of inclusion of the village in Maser Plan of Chennai Metropolitan area.

[2011-TIOL-209-CESTAT -MAD](#)

CCE, Tirunelveli Vs M/s Tamilnadu Jai Bharath Mills Ltd (Dated: September 15, 2010)

100% EOU – Duty payable on goods cleared in DTA if the finished goods are wholly exempted from duty of excise – The assessee is liable to pay 30% of the duties of customs in terms of Notification NO 13/98 CE dated 02.06.98 – Cum-duty benefit is extended - However, penalty is set aside as the issue is a question of interpretation of statutory provisions.

[2011-TIOL-206-CESTAT-DEL](#)

CCE, Lucknow Vs M/s L D Goyal Steels (P) Ltd (Dated: November 9, 2010)

Central Excise – Clandestine removal of goods – Penalty enhanced to 100% of the duty under Section 11 AC – However, option provided for reduced penalty of 25% if the amount is paid within 30 days of the Tribunal's order – No reason to interfere with the order of the Commissioner (Appeals) reducing the penalty on the Managing Director.

[2011-TIOL-203-CESTAT-MAD](#)

Bimetal Bearings Ltd Vs CCE, Chennai (Dated: November 11, 2010)

Central Excise – Refund – Whether the appellants are entitled to suo motu take back credit which they had reversed – The issue stands settled against the appellants by the Larger Bench of the Tribunal.

[2011-TIOL-202-CESTAT-MAD](#)

Areva T & D India Ltd Vs CCE & ST, Chennai (Dated: November 8, 2010)

Central Excise - Stay/Dispensation of pre-deposit – Exemption under Notification No 6/2006 CE dated 1.3.2006 for goods supplied against international competitive bidding is prima facie admissible to the sub-contractor – Prima facie case for waiver of pre-deposit.

[2011-TIOL-201-CESTAT-MAD](#)

M/s A R Metallurgicals P Ltd Vs CCE, Chennai (Dated: October 21, 2010)

Central Excise – Default in duty payment under Rule 8 of the Central Excise Rules 2002 - A defaulting assessee is liable to pay excise duty for each consignment at the time of removal, without utilizing CENVAT credit, until the date for payment of the outstanding amount including interest thereon. Since the assessee continued to utilize

CENVAT credit instead of paying duty through PLA, the demand requires to be sustained – However, penalty under Section 11 AC is set aside while penalty under rule 25 is upheld.

[2011-TIOL-198-CESTAT-MAD](#)

M/s Coromandel Steel Products Vs CCE, Chennai (Dated: October 26, 2010)

Central Excise – Determination of Annual Capacity of Production – Dispute on type of the Furnace – The Committee of technical experts constituted by the Commissioner gave unanimous opinion that the furnace was of Pusher type - The opinion is a detailed one and the committee has given reasons as to why the furnace cannot be considered as a batch type furnace and why it can be considered only as a pusher type furnace - No reason to depart from the expert opinion on the type of furnace installed in the assessee's mill and impugned order is upheld.

[2011-TIOL-197-CESTAT-MAD](#)

M/s Harita-Nti Ltd Vs CCE, Chennai (Dated: November 8, 2010)

Central Excise – Stay/Dispensation of pre -deposit – Imported goods diluted with lab ethanol and mineral spirit in various proportions – As per Note to Chapter 38, the process prima facie amounts to manufacture – Pre -deposit of 25% of the duty amount ordered.

[2011-TIOL-193-CESTAT-MAD](#)

M/s Seshasayee Paper & Boards Ltd Vs CCE, Salem (Dated: September 15, 2010)

Central Excise – Remand – The Tribunal remanded the matter on limited issue and the lower authorities addressed the same to the satisfaction of the appellants - The authorities below could not have gone into other grounds on which there is no direction by the Tribunal - The appellants have neither appealed against the order of the Tribunal nor they have filed any application seeking Rectification of Mistake. The Tribunal's order has become final in the absence of any appeal against the same or any ROM application and since the directions contained in that order has been fully implemented, there is nothing further required to be done by the Tribunal.

[2011-TIOL-192-CESTAT-MAD](#)

M/s S P Fabricators (P) Ltd Vs CCE, Chennai (Dated: October 18, 2010)

Central Excise – CENVAT Credit – Inputs used in dutiable as well as exempted goods - Demand of 10% amount under Rule 6 for goods cleared to SEZ developers – Since the matter has been referred to the Larger Bench, pre-deposit waived.

[2011-TIOL-191-CESTAT-MAD](#)

M/s PSG & Sons'charities Metallurgy & Foundry Division Vs CCE, Coimbatore (Dated: October 20, 2010)

Central Excise – Exemption to goods cleared to BEML who further cleared the goods to Ministry of Defence – The appellants are entitled for exemption under Notification No 63/95 CE – Demand of duty set aside.

[2011-TIOL-187-CESTAT-AHM](#)

M/s Aarti Industries Ltd Vs CCE, Vapi (Dated: October 4, 2010)

Central Excise – Stay/Dispensation of pre -deposit - CENVAT Credit on services provided by non-resident commission agents – Prima facie eligible for CENVAT Credit – Pre -deposit waived.

[2011-TIOL-186-CESTAT-AHM](#)

CC & CCE, Rajkot Vs Rudraksh Detergent & Chemicals Pvt Ltd (Dated: July 15, 2010)

Central Excise – Notification 39/2001 CE – Refund denied on the ground that the respondents increased the capacity after 31.12.2005 – No fault in the finding of the Commissioner (Appeals) that the installation of the equipment has not led to any enhancement of the production capacity - Revenue could not produce any document or any evidence which shows enhancement of production capacity – Revenue's appeal is dismissed.

Restricting the refund under Notification No 16/2008 dated 27.03.2008 to value addition - Refund claim for the month of April 2008 would be governed by Notification No. 39/2001 as it stood at the time of setting up of the unit - It was impermissible for the Central Government to change the quantum of exemption in any manner to the detriment of the respondent.

[2011-TIOL-185-CESTAT-MAD](#)

The India Cements Ltd Vs CCE, Salem (Dated: October 25, 2010)

Central Excise – CENVAT Credit on angles, channels, steel bars used for construction of the foundation and supporting structures is not admissible in view of the Larger

Bench ruling in case of M/s Vandana Global Ltd – Demand of duty and interest upheld
– However, penalty is set aside.