

CESTAT RULING

[2010-TIOL-1294-CESTAT-BANG](#)

M/s Bajrang Infotech Systems Pvt Ltd Vs CCE, Hyderabad (Dated: May 17, 2010)

Service Tax – Business Auxiliary service – Preparation of bus pass identity cards for APSRTC and renewal of existing passes are *prima facie* not covered under business auxiliary service – Lower authorities have not justified in detail under which of the clauses under definition of BAS the said activity would get covered – An earlier proposal to classify this under photography service by original authority was set aside by CESTAT – Pre-deposit waived and stay granted

[2010-TIOL-1291-CESTAT-AHM](#)

M/s M S Shah & Co Vs CST, Ahmedabad (Dated: August 26, 2010)

Service Tax - Practising Chartered Accountant – Appellant surrendering registration certificate by claiming that their gross total income was below exemption limit under notf. 06/2005-ST – investigations revealed that total income exceeded Rs. 4 lakhs - value of services rendered by the appellant was in the specific knowledge of the appellant himself and he was duty bound to reflect correct taxable value – bonafides not proved - no cause for invoking s. 80 of Finance Act, 1944 – as contraventions attracts penalty under s. 76 and s. 78, imposition of separate penalty under Section 77 not warranted.

[2010-TIOL-1290-CESTAT-AHM](#)

M/s Angiplast Pvt Ltd Vs CCE, Ahmedabad (Dated: July 1, 2010)

Service Tax – Service Tax – Refund claim under Notification No. 41/07-ST rejected by lower authorities for being time barred – Date of filing claim is the date when claim is filed initially, not the date when claim is filed subsequently in prescribed form with supporting documents – Decision of Delhi High Court in M/s Arya Exports and Industries = [2005-TIOL-41-HC-DEL-CX](#) followed – Impugned order set aside and matter remanded

[2010-TIOL-1289-CESTAT-AHM](#)

M/s Gujarat State Petronet Ltd Vs CST, Ahmedabad (Dated: August 18, 2010)

Service Tax - Transport of the Goods through pipeline – not taxable prior to 16.06.2005 - Tax cannot be confirmed on the basis of "ifs and buts": Tribunal, in number of matters, has held that when a new service is introduced, for the purpose of

levy of service tax from a specified date, it has to be held that the said service was not liable to tax prior to the date of introduction.

[Also see analysis of the Order](#)

[2010-TIOL-1288-CESTAT-DEL](#)

M/s R K Singhvi Vs CCE, Jaipur (Dated: July 28, 2010)

Service Tax - Essential character of contract is Excavation and loading/removal of over burden and minerals from the mining site to dumping site and unloading thereof – whether lifting of the goods from one place to the other, irrespective of the place of lifting and place of dumping is Cargo Handling Service or Mining of mineral oil or gas service – Adjudicating authority confirming demand by holding that appellant has provided Cargo Handling service – confusion in order – order lacks evaluation of evidence – contracts not examined threadbare - reasoned and speaking order has not been passed to meet judicial scrutiny – Matter remanded to adjudicating authority.

[2010-TIOL-1284-CESTAT-DEL](#)

M/s Sumangalam Suitings Pvt Ltd Vs CCE, Jaipur (Dated: June 24, 2010)

Service Tax – GTA – Who should pay the tax – consignor or consignee? Depends on who engaged the transporter and who is liable to pay freight: for determining as to which person is liable to pay service tax on GTA services in accordance with the provisions of Notification No.35/04-ST issued under Section 68(2) of the Finance Act, 1994 read with Rule 2 (1) (d) (v), the question which has to be answered is as to who had engaged the transporter and who was liable to pay freight to the transporter.

Single member's Jurisdiction: the jurisdiction of single Member Bench is over those cases, other than the cases involving an issue relating to rate of duty or the valuation, where differential duty involved or redemption fine or the penalty involved does not exceed Rs.10 lakh.

[Also see analysis of the Order](#)

[2010-TIOL-1283-CESTAT-AHM](#)

M/s Doshion Ltd Vs CST, Ahmedabad (Dated: August 2, 2010)

ST - As per agreement entered by appellant with M/s. Tamilnadu Water Supply and Drainage Board (TWAD), appellants were handed over the desalination plant requiring them to maintain the same for a period of seven years and they were required to ensure specific quantum of water supply from the plant and the payment is made on the basis of water supply - whether such agreement is a maintenance and repair contract – issue arguable – as financial difficulty not pleaded pre -deposit ordered of

Rs.50 lakhs
<u>2010-TIOL-1275-CESTAT-BANG</u>
CCE, Guntur Vs M/s CCL Products, Visakhapatnam (Dated: July 2, 2010)
CE – CENVAT CREDIT – ST ON MOBILE PHONES USED OUTSIDE THE FACTORY – ELIGIBLE FOR CREDIT: The issue involved in this case is whether the cenvat credit of service tax availed on mobile phones provided by the assessee to their staff which are used outside the factory premises, for which bills were paid by the assessee are eligible for the cenvat credit or not. Learned counsel submits the Hon'ble High Court of Gujarat in the case of CCE Vs Excel Crop Care [<u>2008-TIOL-568-HC-AHM-CX</u>] has decided the issue in favour of the assessee. The reliance placed by the revenue on the decision of the Tribunal in the case of Vikram Ispat Vs CCE Aurangabad [<u>2009-TIOL-997-CESTAT-MUM</u>] will not carry their case any further as the judgement of the Hon'ble High Court of Gujarat is in favour of the assessee.
<u>2010-TIOL-1271-CESTAT-KOL</u>
M/s Bharat Sanchar Nigam Ltd Vs CCE & ST, Ranchi (Dated: July 26, 2010)
ST - Applicant collected amount of Service Tax from customers but failed to deposit with department and the said fact came to the notice on comparison of the Sub-Ledger Register and Trial balance maintained by them – demand confirmed of Rs.4.02 Crores – claim that lesser amount of Tax viz. Rs.1.29 Crores is payable raised before the CESTAT for the first time – before adjudicating authority applicant admitted a liability of Rs.3.05 Crores – Pre-deposit ordered of Rs.3 Crores
<u>2010-TIOL-1267-CESTAT-MAD</u>
M/s K M B Granites (P) Ltd Vs CCE, Trichy (Dated: May 7, 2010)
Service Tax – Goods Transport Agency Service – Plea that the appellants received services only from individual truck / lorry owners needs to be substantiated with reference necessary documents – Matter remanded.
<u>2010-TIOL-1265-CESTAT-BANG</u>
M/s India Gate Way Terminal Pvt Ltd Vs CCE, Cochin (Dated: June 9, 2010)
Service Tax – Port Service – Conducting of auction of cargo not cleared by importers in port area and charges collected for creation of infrastructure facility meant for examination of cargo by Customs in port area are not port services, not liable to

service tax – Demand of tax & interest and levy of penalty set aside

[2010-TIOL-1263-CESTAT-BANG](#)

M/s Dr Reddy's Laboratories Ltd Vs CCE, Hyderabad (Dated: May 13, 2010)

Service Tax – Import of services – Receipt of services from foreign companies during FYs 2003-04, 2004-05 and 2005-06 – Entire period of demand being prior to 18.04.2006, demand for levy of service tax on recipients not sustainable in view of Apex Court decision in Indian National Shipowners Association case = [2009-TIOL-129-SC-ST](#)

[2010-TIOL-1262-CESTAT-BANG](#)

M/s Bharat Sanchar Nigam Ltd Vs CCE, Thiruvananthapuram (Dated: May 17, 2010)

Service Tax – Input credit availed in excess of 20% of total tax paid on output service – Restriction under Rule 6(3) being not applicable to credit on capital goods, demand *prima facie* not sustainable – Full waiver of pre-deposit allowed and stay granted

[2010-TIOL-1258-CESTAT-KOL](#)

M/s Bharat Sanchar Nigam Ltd Vs CCE, Shillong (Dated: April 19, 2010)

Prima facie , there is merit in the submission of the appellant that during the period when the services were rendered, the Service Tax rate was 5% and the demand has been raised adopting the rate prevailing when the amounts have been received, i.e.8% - Amount already paid to be considered and demand reconciled – Pre-deposit ordered.

[2010-TIOL-1257-CESTAT-BANG](#)

M/s Korath Gulf Links Builders Pvt Ltd Vs CCE, Cochin (Dated: June 22, 2010)

Service Tax – Construction of residential/commercial complexes undertaken by contractors on land owned by builder – Agreements to sell entered into by builders not being final, services provided till the execution of proper sale deeds would be regarded as self service in terms of Board's Circular No. 108 dated 29.01.2009, not liable to service tax – *Prima facie* case for full waiver of pre-deposit – Stay granted

<u>2010-TIOL-1254-CESTAT-MAD</u>

M/s Nithya Property Developers Vs CCE, Coimbatore (Dated: April 16, 2010)

Service Tax – Refund of excess tax paid on Construction of residential complex service – Rejection of refund on the ground that the assessee had not produced documents such as invoices – The assessee's contention that in case of purchase of residential flats, there can be no invoice as invoices are issued for goods and not for sale of apartments / flats is valid – Matter remanded to examine the claim based on the ST-3 returns and worksheets showing the tax payable and paid.

<u>2010-TIOL-1253-CESTAT-BANG</u>

M/s Ramky Infrastructure Ltd Vs CC & CCE, Hyderabad (Dated: May 18, 2010)

Service Tax – Works Contract service – Execution of project viz., low level canal pumping station of AMRP on EPC basis for lifting of water from fore shore of Nagarjuna Sagar reservoir – Construction of a canal and a pumping station intended for irrigation held as classifiable under 'Works Contract service' and not 'Site formation and Clearance service' as claimed by assessee – Construction of irrigation infrastructure for Government in EPC mode meant for welfare of citizens excluded from levy of service tax in view of Board Circular dated 15.09.2009 – Pre-deposit waived and stay granted

<u>2010-TIOL-1248-CESTAT-AHM</u>

M/s Guardwell Security Services Pvt Ltd Vs CCE, Surat-I (Dated: June 21, 2010)

Service Tax – Security services – Appellants should be given an opportunity for providing evidence regarding eligibility of CENVAT credit and also for treating the amount received as cum tax value – matter remanded.

<u>2010-TIOL-1247-CESTAT-AHM</u>

M/s Bajrang Security Services Vs CST, Ahmedabad (Dated: June 23, 2010)

Service Tax – Non-payment of entire service tax dues in time in spite of collecting taxable income and making part payment of tax, resulting in imposition of penalties under Sections 76, 77 and 78 of Finance Act, 1994 – Plea of assessee being not aware of intricacies of service tax not sustainable when they are registered with tax authorities from 1998 – No infirmity in orders of lower authorities

<u>2010-TIOL-1246-CESTAT-MUM</u>

M/s Hindustan Colas Ltd Vs CCE, Belapur (Dated: June 8, 2010)

Incidence of levy is on occurrence of event i.e provision of service and the event has already occurred before commencement of the commercial production on 1.3.1996 - no evidence on record to show that Consulting Engineering Service was provided after 1.3.1996 and also continued after 7.7.97 - Service Tax demand set aside with consequential relief

[Also see analysis of the Order](#)

[2010-TIOL-1245-CESTAT-MAD](#)

M/s Celitone Vs CCE, Salem (Dated: April 20, 2010)

Service Tax – Penalty – When Service Tax and interest are paid prior to issue of show cause notice, no penalty can be imposed under the provisions of Section 76 and 78 of the Finance Act, 1994.

[2010-TIOL-1241-CESTAT-MAD](#)

M/s AR AS PV PV Motors Erode (P) Ltd Vs CCE, Salem (Dated: April 9, 2010)

Service tax – Penalty – Penalty under Section 76 and 78 – Since the provisions of Section 76 and 78 are mutually exclusive, penalty under Section 76 is set aside and penalty under 78 reduced to 25% of the service tax determined.

[2010-TIOL-1237-CESTAT-MAD](#)

N K Fasteners Vs CCE, Salem (Dated: June 24, 2010)

Service Tax – Business Auxiliary Service – Definition of Business Auxiliary Service did not include processing of goods at any time before 16.6.2005 – Demand is required to be re-quantified for the period post 16.6.2005 – No penalty is retained since the order of the Commissioner (Appeals) extending the benefit under Section 80 has not been challenged by the revenue.

[2010-TIOL-1236-CESTAT-AHM](#)

M/s Amiras Enterprises Vs CCE, Rajkot (Dated: July 23, 2010)

Service Tax – Manpower Recruitment Service – Penal proceedings initiated for delayed payment of service tax with interest – SCN issued after one year of payment of

service tax with interest – Case clearly covered by provisions of Sections 73(3) read with 80 of Finance Act, 1994 – Impugned order imposing penalty under Section 76 set aside

[2010-TIOL-1230-CESTAT-AHM](#)

CCE, Rajkot Vs M/s Bharat Travels (Dated: July 13, 2010)

Service Tax – Tour Operator Service – For a person to be regarded as tour operator, he should possess requisite permit and vehicles operated as tourist vehicles – RTA certified that assessee's vehicles are not tourist vehicles – No evidence adduced by Revenue to challenge veracity of certificate – Order of Appellate Commissioner setting aside tax demand upheld – Revenue appeal devoid of merits

[2010-TIOL-1229-CESTAT-DEL](#)

Shri R K Chhabra Vs CCE, Chandigarh (Dated: June 15, 2010)

Service Tax – Discrepancies observed by Central Excise auditors in figures furnished in Income Tax and Service Tax returns – Service tax dues paid with interest before issue of show cause notice – Orders passed by lower authority without ascertaining reasons for variation in facts and figures and without appreciating the object of the two statutes, not reasoned, liable to be set aside – Matter remanded with direction to consider appellant's contention with regard to levy of simultaneous penalties under Sections 76 & 78 – Lower authority directed to examine grant of concessions under Sections 78 & 80

[2010-TIOL-1227-CESTAT-MUM](#)

CCE, Nagpur Vs Ultratech Cement Ltd (Dated: September 8, 2010)

In the definition of the 'Input Service' in rule 2(l) of the CCR, 2004, nowhere it is mentioned that input service credit is not available for the service utilized outside the factory premises – Repair and maintenance service used for running a Water pump situated at the bank of the Wardha river is an Input Service – when there is a final decision on the issue, the same is to be respected rather than a *prima facie* view taken while deciding Stay application

[Also see analysis of the Order](#)

[2010-TIOL-1224-CESTAT-DEL](#)

CCE, Chandigarh Vs M/s Singla Finance Services (Dated: June 17, 2010)

Service Tax – Penalty under Section 76, 77 and 78 of the Finance Act, 1994 - The respondents is very small service provider and not taking service tax registration and non payment of service tax took place during initial period when the service tax was introduced – No infirmity in the order of the Commissioner (Appeals) setting aside penalty under Section 76 especially when 25% penalty under Section 78 and penalty under Section 77 has been confirmed.

[2010-TIOL-1223-CESTAT-MAD](#)

CCE, Salem Vs SRC Projects Ltd (Dated: June 24, 2010)

Service Tax – Adjustment of service tax paid suo motu – Even if the revenue is correct in their contention that a strict interpretation of the rule would disentitle the assessees to make any adjustment suo motu, the Tribunal has consistently held that liberal view of the rule or liberal interpretation of the rule has to be taken – Impugned order upheld.

[2010-TIOL-1219-CESTAT-MUM](#)

Symbiosis Society Vs CCE, Pune (Dated: August 6, 2010)

'Commercial Training or Coaching Service': Explanation added by Finance Act, 2010 with retrospective effect from 01.07.2003 in the definition clarifies that the term 'commercial' appearing in the relevant definition only means that such training or coaching is being provided for a consideration whether or not such training or coaching is conducted with a profit motive – No *prima facie* case on merits or on limitation – Pre-deposit ordered of Two Crores

[Also see analysis of the Order](#)

[2010-TIOL-1218-CESTAT-DEL](#)

M/s Ferro Scrap Nigam Ltd Vs CCE, Raipur (Dated: July 27, 2010)

Service Tax – Cargo handling service - The order in appeal is a cryptic order and the appellant was deprived of justice – Matter remanded to pass a speaking and reasoned order.

[2010-TIOL-1217-CESTAT-MAD](#)

CCE, Salem Vs M/s Bathiaj International (Dated: June 25, 2010)

Service Tax – Commission paid to agents outside India – Service Tax is payable only with the introduction of Section 66A on 18.4.2006 as held by the Bombay High Court in case of Indian National Ship Owners Association.

[2010-TIOL-1215-CESTAT-DEL-LB](#)

M/s Vijay Sharma Vs CCE, Chandigarh (Dated: April 29, 2010)

Service Tax – Stock Brokers – If main broker has paid service tax – sub brokers need not pay: It is true that there is no provision under Finance Act, 1994 for double taxation. The scheme of service tax law suggest that it is a single point tax law without being a multiple taxation legislation. In absence of any statutory provision to the contrary, providing of service being event of levy, self same service provided shall not be doubly taxable. If service tax is paid by a sub-broker in respect of same taxable service provided by the stock -broker, the stock broker is entitled to the credit of the tax so paid on such service if entire chain of identity of sub-broker and stock broker is established and transactions are provided to be one and the same. The matter is remanded to the original authority, to verify as to whether the stock brokers have paid service tax on behalf of the sub-brokers and if so, reduce the demand on sub-brokers to that extent and pass fresh orders.

[Also see analysis of the Order](#)

[2010-TIOL-1214-CESTAT-MAD](#)

V Mohan Vs CCE (Service Tax), Trichy (Dated: June 18, 2010)

Service Tax – Limitation – Plea of limitation is a legal plea which can be raised at subsequent stage – Revenue has not discharged the burden of establishing that the assessees were guilty of suppression - Plea of the assessee that they did not suppress anything to warrant invoking extended period of limitation is accepted.

[2010-TIOL-1209-CESTAT-DEL](#)

CCE, Ludhiana Vs M/s ERA Construction (I) Ltd (Dated: May 26, 2010)

Service Tax – Penalty under Section 78 and 76 – Availment of Service Tax credit as well as the benefit of exemption under notification No. 1/2006 - The facts had been declared in the ST 3 returns and only on scrutiny of this ST 3 return that the department had issued Show cause notice – Provisions of Section 78 are not attracted – With regard to penalty under Section 76, there was a reasonable cause for short payment of service tax and the assessee is entitled for the benefit of Section 80 of the Finance Act, 1994 – Penalty under Section 76 waived.

[2010-TIOL-1208-CESTAT-AHM](#)**CCE, Vapi Vs M/s Mutual Industries Ltd (Dated: July 30, 2010)**

Service Tax – Goods Transport Service received during 1997-98 – Show cause notice alleging suppression of facts consequent to the retrospective amendment does not sustain and the demand of duty and penalties under various sections of Finance Act, 1994 cannot be sustained – Revenue appeal has no merit.

[2010-TIOL-1206-CESTAT-AHM](#)**Poggen Amp Nagarsheth Powertronics Ltd Vs CST, Ahmedabad (Dated: July 16, 2010)**

Service Tax – Dismissal of appeal by the Commissioner (Appeals) for non compliance of condition of stay with the provisions of Section 35F of Central Excise Act, 1944 – Matter remanded to the Commissioner (Appeals) for decision on merits without insisting on pre -deposit as the appellants have a strong *prima facie* case.

[2010-TIOL-1204-CESTAT-AHM](#)**M/s Modern Petrofils Vs CCE, Vadodara (Dated: July 30, 2010)**

CENVAT Credit – Credit taken on the invoices issued in the name of Head Office - There was no dispute raised in the show cause notice as to the admissibility of input service credit to the factory on the ground that the input service was not relatable to the factory, the omission becomes a total curable defect and is a condonable one – Conclusion reached by the Commissioner (Appeals) to drop the demand cannot be faulted with – Penalty imposed set aside.

[2010-TIOL-1200-CESTAT-MUM](#)**M/s EM Jay Engineers Vs CCE, Mumbai (Dated: May 26, 2010)**

Service Tax – BAS – Commission Agent - Services rendered abroad is Export of services - The rendering of the service was complete only when the purchase orders canvassed by the appellant in India were received by the foreign companies. These purchase orders were, admittedly, received abroad. They were also, admittedly, acted upon by the foreign companies abroad. In other words, the benefit of the service provided by the appellant accrued to the foreign companies outside India.

[2010-TIOL-1199-CESTAT-BANG](#)

M/s Sudhakar Plastic Ltd Vs CC & CCE, Hyderabad (Dated: May 20, 2010)

Service Tax – Clearing & Forwarding Agency Service – Non-payment of service tax – Demand for payment of service tax invoking extended period of limitation not justifiable without any proper allegation of suppression of facts in the show cause notice – Impugned order not sustainable, liable to be set aside

2010-TIOL-1197-CESTAT-MUM**M/s Provincial Life Style Retail Services Vs CCE, Nagpur (Dated: August 16, 2010)**

Service Tax – adjudicating authority dropped the demand against which department filed appeal before Commissioner (A) – realizing their folly, the appeal was withdrawn and revisionary proceedings were resorted whereby the Commissioner confirmed the demand – Prima facie case for grant of stay

[Also see analysis of the Order](#)

2010-TIOL-1196-CESTAT-DEL**M/s Vidyut Consultants Vs CCE, Indore (Dated: June 17, 2010)**

Service Tax – Refund of service tax paid – When nothing was realised by the appellant from customers, anything paid over and above the tax computed on the basis of cum-duty principle shall not be attributable to tax element and is refundable – Appellants are entitled for refund.

2010-TIOL-1188-CESTAT-MUM**Cbay Systems (India) Pvt Ltd Vs CCE, Mumbai (Dated: August 12, 2010)**

Notification 41/2007-ST - While granting refund to exporters on taxable services that he receives and uses for export it is not necessary to conduct verification of registration certificate

[Also see analysis of the Order](#)

2010-TIOL-1187-CESTAT-AHM**M/s Canny Detective & Security Services Vs CST, Ahmedabad (Dated: July 16, 2010)**

Allegation that appellant has provided Security Agency service to SGS India Pvt. Ltd. is on the ground that they got registered with the PF department – investigation made with SGS India Pvt. Ltd. revealed that appellant were only providing man power and house keeping services – Prima facie case in favour – Stay allowed unconditionally

[2010-TIOL-1185-CESTAT-DEL-LB](#)

M/s Agauta Sugar & Chemicals Vs CCE, Noida (Dated: September 1, 2010)

Service Tax – Goods Transport Agency Service – Show Cause Notice demanding service tax for the period 16.11.1997 to 1.6.1998 issued in 2004 after the amendment to Section 73 of the Finance Act, 1994 is valid – Reference to the Larger Bench in view of conflicting decisions answered in favour of revenue.

[Also see analysis of the Order](#)

[2010-TIOL-1184-CESTAT-MUM](#)

CCE, Nagpur Vs M/s Indorama Synthetics (I) Ltd (Dated: August 10, 2010)

Finished products were removed by the manufacturer after the broker had pointed out the buyers – since the assessee had availed the services of the broker before clearance of goods from the factory, service tax paid on brokerage is entitled for Cenvat credit

[Also see analysis of the Order](#)

[2010-TIOL-1178-CESTAT-AHM](#)

M/s Ascent Communication Vs CST, Ahmedabad (Dated: July 23, 2010)

Appellant, a proprietor ship concern, acting as a distributor and covered under Business Auxiliary Service registered on 03.09.2004 paid service tax and interest due for the period from July, 2003 in October, 2004 after department started investigation – being a new service a lenient view as contemplated under Section 80 of Finance Act, 1994 is called for since appellant has been able to show reasonable cause for failure to obtain the registration and pay service tax – penalty u/s 76 & 78 set aside but penalty u/s 77 sustained

[2010-TIOL-1177-CESTAT-MAD](#)

Maveric Systems Ltd Vs CST, Chennai (Dated: May 6, 2010)

Service Tax – Technical Testing and Analysis Service / Manpower supply service – Testing of functionality and performance of software developed by the clients – Matter remanded to examine the issue in the light of subsequent decisions of the Tribunal.

[2010-TIOL-1174-CESTAT-AHM](#)

M/s Usha International Ltd Vs CST, Ahmedabad (Dated: June 18, 2010)

Service Tax – Refund – Unjust enrichment - Distress sale per se would not mean that incidence of duty has not been passed on - Appeal is remanded to the Original Adjudicating Authority and the appellants are directed to provide a proper Chartered Accountant certificate which would specifically say how the Chartered Accountant has come to the conclusion that duty liability has not been passed on and on what basis.

[2010-TIOL-1173-CESTAT-AHM](#)

M/s P Jani & Co Vs CST, Ahmedabad (Dated: July 23, 2010)

Service was introduced for the first time in September 2004 and appellant being a partnership firm may not be aware of the changes in the law - fact that as soon as the department advised they took the registration and paid the service tax with interest shows their bona fide - penalty under Section 78 could not have been imposed – section 73(3) also comes into play and, therefore, show cause notice should not have been issued to the appellants – lenient view available u/s 80 of Finance Act, 1994 can be extended – Amount received from clients to be considered as inclusive of tax – SC decision in Amrit Agro Industries Ltd, Vs. CCE Ghaziabad ([2007-TIOL-244-SC-CX](#)) and Tribunal decision in Advantage Media Consultant ([2008-TIOL-548-CESTAT-KOL](#)) relied upon – Penalties u/s 76 & 78 set aside and matter remanded for limited purpose of calculation of correct amount of service tax – CESTAT.

[2010-TIOL-1171-CESTAT-DEL](#)

M/s Bank Of Rajasthan Ltd Vs CCE, Jaipur (Dated: May 24, 2010)

Bank of Rajasthan is not a public sector entity and hence no COD clearance is required – whether excess service tax paid for a period can be adjusted against service tax payable for subsequent periods – revenue having disagreed, demands arose and were confirmed - Rules are subordinate to law and sub-serve interest of justice, without being tyrant – dispensing pre -deposit matters disposed by sending back the case to the Adjudicating Authority to re-examine the issue of adjustment whether permissible under law if there is any excess amount paid during a return period against the demand arising against different such period – Tribunal decision in Bharat Cellular Ltd. vs. CCE, New Delhi ([2005-TIOL-784-CESTAT-DEL](#)) referred - CESTAT

When the rules are subordinate to the legislation that should not act as master to deprive the deserved, who may be considered for grant of appropriate adjustment of the excess tax paid - Adjudicating authority to workout the modality as permissible under law to settle the dispute at its level - appeals remanded.

[Also see analysis of the Order](#)

[2010-TIOL-1170-CESTAT-AHM](#)

M/s H Nyalchand Financial Services Ltd Vs CST, Ahmedabad (Dated: July 29, 2010)

Stock broker services - If the appellants had a scheme which provided for refund of brokerage with service tax on the basis of turnover, the proper course was to seek provisional assessment which they failed to do as observed rightly by the lower authorities – refund claim filed time barred and without any supporting documents or documentary evidence to establish that the incidence of tax was not passed on by them – appellant not represented during any hearings – Appeal rejected

[2010-TIOL-1165-CESTAT-MAD](#)

M/s The Lakshmi Vilas Bank Ltd Vs CCE, Trichy (Dated: April 9, 2010)

Service Tax – CENVAT Credit of service tax paid for construction of "Executive Staff Quarters" for the Bank – Credit is admissible as the input service includes "services used in the premises of a provider of output service".

[2010-TIOL-1160-CESTAT-MUM](#)

CCE, Pune Vs M/s Bhima SSK Ltd (Dated: August 3, 2010)

Respondents have entered into a tripartite agreement with the Bank and the farmers under a statutory obligation on them and the amount which they have received is only handling charges or administrative expenses – Activity not covered under the category of 'Business Auxiliary Services' – Revenue appeal dismissed

[Also see analysis of the Order](#)

[2010-TIOL-1159-CESTAT-BANG](#)

CST, Bangalore Vs M/s Mahavir Coconut Industries (Dated: February 24, 2010)

Service Tax – GTA Service – Claim of refund of service tax paid on GTA service provided by individual truck owners – Orders passed by Appellate Commissioner allowing refunds on the ground that service tax not liable to be paid for GTA services rendered by individual truck owners, not challenged by Revenue – Revenue challenged second set of orders passed by Appellate Commissioner which set aside orders of original authority rejecting refunds claimed pursuant to first set of orders –

Principle of unjust enrichment not applicable to refund claims sanctioned but pending payment when orders sanctioning refund attained finality – Revenue appeals devoid of merits – Revenue appeals devoid of merits

[2010-TIOL-1158-CESTAT-MAD](#)

Spic Ltd Vs CST, Chennai (Dated: May 3, 2010)

Service Tax – Service Tax amount utilized by the assessee reversed prior to issue of the Show Cause Notice – Assessee is not liable to any penal action as the provisions of Section 73(3) are attracted.