

CESTAT RULING (SERVICE TAX)

[2013-TIOL-1068-CESTAT-MUM](#)

Magarpatta Township Development & Construction Co Ltd Vs CCE (Dated: February 28, 2013)

ST - Notional interest on security deposit taken for premises rented out on lease basis - whether to be considered as additional consideration for renting of immovable property for payment of Service Tax - no evidence led by revenue to show that such security deposit has influenced the rent received and it is only a presumption - prima facie appellant has made a case in favour - Pre-deposit waived and stay granted: CESTAT [para 5.1]

[Also see analysis of the Order](#)

[2013-TIOL-1067-CESTAT-MAD](#)

Tamil Nadu Cricket Association Vs CST (Dated: February 21, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Business Support service - Demand of service tax on the amount received from BCCI alleging that the same was received for conducting IPL matches - Appellant contends that the amount had no connection with IPL matches - Entire matter has been decided without taking on record the contract or the MoU between the two parties showing the terms and conditions of payments and the purpose of payment for each item - Neither the SCN nor the reply to SCN has brought this aspect in clear focus - Pre-deposit of Rs 50 lakhs ordered.

[2013-TIOL-1062-CESTAT-AHM](#)

CCE Vs Akzo Noble Nonstick Coatings (Dated: May 17, 2013)

Service Tax - Services received from outside India - Liability to pay service tax under reverse charge on the recipient of the service - The service recipient is liable to pay service tax only from 18.04.2006 - Demand of service tax for the period 2002-03 and 2003-04 rightly set aside by the lower appellate authority - No merit in the appeal by revenue.

[2013-TIOL-1058-CESTAT-MUM](#)

Air Cargo Agents Association Of India Vs Director General Of Service Tax (Dated: June 21, 2013)

ST - DG, ST is not the proper authority for passing any order under Chapter V of FA, 1994 & orders passed by such authority are not appealable before the CESTAT - appeal dismissed as infructuous - in any case, since the Bombay High Court recalled its order passed in WP 3169 of 2004 and vide order dated 25/02/2009 allowed the petitioner to withdraw his petition, no order is pending for consideration before the Tribunal in the impugned case - Appeal dismissed: CESTAT

[2013-TIOL-1054-CESTAT-MUM](#)

M/s Kotak Securities Ltd Vs CST (Dated: April 8, 2013)

ST - Market Research Services - Equities come under the categories of products and are considered as goods under the Sale of Goods Act, 1934 therefore, research on equity is a product research - equity research undertaken by the appellant falls within the scope of this definition and accordingly, the appellant is, prima facie, liable to pay service tax on the said activity - Pre-deposit ordered: CESTAT [paras 5.4, 5.7 & 6]

Demand based on the amount shown in P/L account as being "Fee Income/Research Fees" -

Neither before the appellate authority nor before the Tribunal, the appellant has presented any evidence to show that the amount received pertained to any activity other than "Research Activities" undertaken by the appellant - In the absence of any such evidence produced by the appellant, the only conclusion that can be reached is that the income shown in the P/L account pertained to research activities undertaken by the appellant during the impugned period. [para 5.2]

Service tax is not a tax on income or profits but a tax on provision of service - Whatever amount is charged for such provision, service tax is payable, irrespective of whether any profit is made by the service provider in the said transaction. [para 5.3]

When a service provider charges a consideration, he takes into account all the expenses incurred by him and includes an element of profit. Thus expenses are an integral part of the consideration charged. It may also happen that when the market is down, the service provider may not be able to make any profit but may be rendering the service at a loss. That does not mean that the amount received is not a consideration for the services rendered. [para 5.3]

Limitation - demand of service tax for the period October, 2000 to March, 2003 has been issued in March, 2005 - It is on record that the appellant did not inform the department of the activities undertaken in this regard any time and only in March 2004 and September 2004 they informed the activities undertaken by them to the department subsequent to the department initiating investigation on the activities of the appellant - as held by the apex Court in the Nizam Sugar Factory Ltd. case ([2006-TIOL-56-SC-CX](#)), it is the date of knowledge that is relevant for computing the time limit - In this case, within one year from the date of knowledge, the department has issued the demand notice and therefore, prima facie, the question of time bar does not apply in the facts of the present case. [para 5.5]

Appellant has not pleaded any financial hardship - in absence of a prima facie case in favour of the appellant, the balance of convenience lies in favour of Revenue and, therefore, in view of Andhra Pradesh High Court judgment in SQL Star International Ltd. ([2012-TIOL-146-HC-AP-ST](#)), pre-deposit of the dues adjudged can be ordered. [para 5.7]

[Also see analysis of the Order](#)

[2013-TIOL-1053-CESTAT-DEL](#)

Jubilant Life Sciences Ltd Vs CCE (Dated: May 7, 2013)

Service Tax - Stay/Dispensation of Pre-deposit - Input services received in R&D units and distributed to manufacturing units - Petitioner has a strong prima facie case in view of favourable judgement by High Court of Bombay - Pre-deposit waived.

[2013-TIOL-1052-CESTAT-MUM](#)

Kingfisher Airlines Ltd Vs CST (Dated: June 18, 2013)

Section 73C of the FA, 1994 per se does not empower the CCE to determine the service tax liability or penalties – order of attachment passed u/s 73C during the pendency of proceedings where ST or penalty has to be adjudged is as a measure of protecting the interests of Revenue – order not appealable to the CESTAT – Appeal dismissed: CESTAT [paras 6.1, 6.2 & 7]

[2013-TIOL-1051-CESTAT-MUM](#)

M/s Hiranandani Constructions Pvt Ltd Vs CCE (Dated: May 6, 2013)

ST - Appellant collecting development and maintenance fees from flat buyers to discharge payments towards outward expenses including municipal local taxes, property taxes, water charges, electric charges, revenue assessment and other mandatory charges under s.5 of the Maharashtra Ownership Flats (Regulation) Act, 1963 - prima facie such activity undertaken in the capacity of an executor is not liable to Service Tax under the category of 'Management, maintenance or repair services' - Stay granted: CESTAT [para 5]

Also see analysis of the Order

[2013-TIOL-1050-CESTAT-DEL](#)

CCE Vs M/s Indian Acrylic Ltd (Dated: April 12, 2013)

Service Tax - Liability of Service Tax under Section 66A of the Finance Act, 1994 - Liability to service tax for the period prior to 18.4.2006 - Revenue concedes that in view of the amendment to Section 66A of the Act, appeal is mis-conceived - No merit in appeal filed by Revenue - Appeal dismissed

Service Tax - Imposition of Penalty - Assessee pleads failure to remit service tax subsequent to 18.4.2006 is not wilful but on account of a mis-conception of liability to remit such service tax - Legislative provision clearly and ambiguously enjoins an obligation on the recipient of the service to remit service tax for period after 18.4.2006 - There cannot be a plea based on ignorance of a legislative provision - Appeal dismissed.

[2013-TIOL-1049-CESTAT-DEL](#)

Ajai Kumar Agnihotri Vs CCE (Dated: May 2, 2013)

Service Tax - Rent-a-Cab operator service - Activity of providing vehicles either on monthly charge basis or on call basis - No distinction between renting and hiring as contended by the appellants - Activity is covered under the definition of Rent-a-cab service - Section 65 (91) of the Finance Act, 1994 - Demand of service tax upheld.

Penalty - Mere untenable assumption regarding relevant provisions of an enactment, does not constitute bonafide belief - It is hard to believe that the appellant could have had a premonition of the future judgments of CESTAT and would have arranged his affairs accordingly - Benefit of Section 80 is not admissible - Penalties upheld.

[2013-TIOL-1044-CESTAT-MUM](#)

Arcadia Share & Stock Brokers Pvt Ltd Vs CCE & CC (Dated: June 13, 2013)

Service Tax remitted under the accounting code for Education Cess - no cause for issuance of SCN and demanding the Service Tax again - it cannot be said that the assessee has not paid ST - matter to be sorted with PAO - Appeal allowed: CESTAT [para 5]

[2013-TIOL-1043-CESTAT-MUM](#)

GFA Anlagenbau GMBH Vs CCE (Dated: May 29, 2013)

ST - foreign company providing 'Erection, installation and commissioning services' in the year 1999-2000 - There is no mention of the appellant anywhere in the body of the SCN and only at the beginning the name of the appellant figures - although there is no demand from the appellant towards any service tax liability, yet ST has been confirmed against them - there is no valid SCN against the appellant, therefore, without notice no order can be passed - appellant was not heard and personal hearing was granted only to recipient of service - entire proceedings are vitiated and order is not sustainable in law - even on merits department does not have any case as the said services have been made taxable only from July, 2003 - order set aside and appeal allowed: CESTAT [paras 6 & 7]

[Also see analysis of the Order](#)

[2013-TIOL-1042-CESTAT-DEL](#)

M/s Soccer International Pvt Ltd Vs CCE (Dated: February 27, 2013)

Service Tax – Refund of Service Tax on Technical Inspection & Certification services used for export of the goods - Refund subject to condition that exporter furnishes copy of written agreement entered into with buyers – Admittedly, such a certificate not produced - Denial of refund in respect of Technical Inspection and Certification services not contested by the assessee.

Service Tax – Refund of Service Tax paid on Business Auxiliary Services received from overseas commission agents for procuring export orders – Denial of Refund on account of Limitation:

For goods exported during October, 2008 to December, 2008 - Service tax on commission to overseas commission agent paid in March, 2009 and refund claim filed on 31.08.2009 – As per Notification No.17/09-ST dated 7.7.2009 limitation period is one year from the date of let export order - In terms of Board's circular no.354/256/2009-TRU dated 1.1.10, notification dated 7.7.2009 applicable to exports taken place prior to its issuance also, hence limitation period applicable would be one year from the date of let export order - Since refund claim filed on 31.8.2009 same to be treated as within time in view of Board's Circular dated 1.1.2010 - Appeal partly allowed.

For goods exported during the period August, 2008 to October, 2008 – Limitation period of one year applicable under Notification no.17/09-ST dated 7.07.2009 - Refund claim filed on 11.12.2009 - No justification for delay - Refund claim correctly

rejected as time barred – Appeal dismissed

For goods exported during period April, 2008 to June, 2008 - As per Notification no.41/2007-ST applicable during the relevant period, limitation period is six months from the date of let export order – Refund claim filed on 2.2.2009 - No justification for delay – Refund claim time barred - Appeal dismissed

[2013-TIOL-1041-CESTAT-DEL](#)

CST Vs M/s Lufthansa Technik Services India Pvt Ltd (Dated: March 22, 2013)

Service Tax - Banking and other financial services - Equipment lease - Operating lease Vs Financial lease - The Respondent's agreements with their customers did not contain any clause entitling or giving option to them at the end of the lease period to purchase the asset or transferring effective ownership of the asset and all the risks and rewards incidental to ownership to the customers. There is no evidence to show that the lease agreements cover 75% or more of the estimated economic life of the leased assets - When the lease agreements are not financial lease agreements, the same would not be exigible to service tax under section 65(105) (zm) read with section 65(12) of the Finance Act, 1994 - No infirmity in the order of the lower authority in dropping the demand - Revenue appeal is dismissed.

[2013-TIOL-1032-CESTAT-DEL](#)

M/s Sumitomo Corporation India Pvt Ltd Vs CST (Dated: May 7, 2013)

SERVICE TAX – Stay/Dispensation of pre -deposit - Assessee engaged in business promotion of foreign principal in India - Activities constituting Business Auxiliary Services, taxable service admitted - Claim for immunity to liability to service tax predicated - Already held in similar case that service provided by an agent or subagent in India to intended beneficiaries of an overseas company is service provided to a foreign company and must be treated as export of service- When the person on whose instructions the services in question have been provided by the agents/ sub-agents in India, the destination has to be decided on the basis of the place of consumption of the service and not the place of performance of the service - Assessment and levy of service tax prima facie unsustainable – Pre -deposit waived and stay ordered.

Irregular CENVAT Credit on input services – Pre-deposit of Rs. 7 lakhs ordered.

[2013-TIOL-1031-CESTAT-DEL](#)

M/s Videocon TV Manufacturer (P) Ltd Vs CCE (Dated: May 7, 2013)

SERVICE TAX – Liability of Service Tax under "clearing and forwarding agency service" - Appellant receives certain amount as commission from manufacturer/supplier of picture tubes for settling the rates of picture tubes for supply to manufacturer of TV sets – Appellant never had custody of the picture tubes; does not receive them from manufacturers of tubes; does not warehouse the picture tubes; does not receive despatch orders from manufacturers of picture tubes; does not arrange despatch of goods; nor engages transport; and does not maintain records of the receipt and despatch of picture tubes and the stock available at the warehouse; nor prepares invoices either on behalf of the principal manufacturers or manufacturers of TV sets - Appellant in no manner engages in any of the six enumerated activities which

constitute clearing and forwarding operations as observed by Tribunal in the case of L&T - There is neither the conjunctive service of clearing and forwarding nor either of the services of clearing or forwarding - That assessee was not a consignment agent also not in dispute - Appellant not liable to service tax under the taxable head "clearing and forwarding agency" - "Commission agency" exempted from levy of service tax w.e.f. 01.07.2003 upto 09.09.2004 vide Notification No. 13/2003 dated 20.05.2003 - After 01.07.2003 service as a commission agency was incorporated into the taxable service "Business Auxiliary Service" - Revenue proceeded on the basis that the assessee had provided "clearing and forwarding agency" service for the entire period April 2001 to March 2004, contrary to the distinct classification w.e.f. 01.07.2003 - Appellant was never proceeded on the basis that for the period subsequent to 01.07.2003, the services provided by it constituted Business Auxiliary Service - Appeals allowed.

[2013-TIOL-1029-CESTAT-MUM](#)

D P Jain Co Infrastructure Pvt Ltd Vs CCE(Dated: May 29, 2013)

ST – Roads and runways are not one and the same and, therefore, the benefit of exemption available to maintenance or repair of roads will not ipso facto apply to runways – maintenance or repair activities undertaken on runways of defence airports – issue needs consideration by adjudicating authority – matter remanded: CESTAT [paras 5.2 & 6]

Though maintenance/repair of roads stands excluded under Construction and Management Service, it is included in the management, maintenance or repair service – argument of the appellant that the said services stand excluded from the levy of service tax is not convincing – if maintenance/repair of roads were not liable to service tax because of its specific inclusion u/s 65(25b) of FA, 1994 under 'Commercial or Industrial Construction Service', there was no need for the legislature to exempt the said activity vide notification 27/2009-ST and give retrospective effect to the said exemption by s. 97 of the FA, 2012 – if the activity was not taxable ab initio, there was no need for the legislature to pass a specific legislation for this purpose – no merit in the submissions made by the appellant: CESTAT [para 5.3]

For consideration of the appellant's claim for benefit of exemption under notification 27/2009-ST r/w s. 97 of the FA, 2012 in respect of maintenance/repair of roads, matter remanded as at the time of adjudication, the provision of the law had not come into existence: CESTAT [paras 5.1 & 6]

[Also see analysis of the Order](#)

[2013-TIOL-1028-CESTAT-DEL](#)

M/s Prakash Pulversing Mills Vs CCE (Dated: May 10, 2013)

Service Tax – Business Auxiliary service – Processing of goods – During the material period, the definition of Business Auxiliary service did not include processing of goods – Demand is not legal and is set aside – Section 65(19) of the Finance Act, 1994.

[2013-TIOL-1027-CESTAT-DEL](#)

Madhya Pradesh Consultancy Organization Ltd Vs CCE (Dated: January 21, 2013)

Service Tax – Stay/Dispensation of pre-deposit – While remanding the case in previous round of litigation, the Tribunal had directed Adjudicating Authority to decide the case afresh in the light of Tribunal's order in APITCO Ltd.v . CCE, Hyderabad [2010-TIOL-1564-CESTAT-BANG](#) - When the Tribunal has specifically remanded the matter for re-adjudication in the light of the decision rendered in the case of APITCO Ltd.v . CCE, Hyderabad, it was obligatory on the part of the Revenue to either follow the same or distinguish the same on facts or on law by making clear reference to the factual position - The observations of the adjudicating authority are not bringing out any difference between two matters – Prima facie case made out for waiver of pre-deposit.

[2013-TIOL-1023-CESTAT-MUM](#)

CCE Vs Seva Automotive Pvt Ltd (Dated: June 12, 2013)

ST - Since S. 67 of FA, 1994 provided for exclusion of cost of spare parts sold while rendering repair services of automobiles, the cost of 'handling' such spare parts would also not form part of the taxable value – Revenue appeal dismissed: CESTAT [para 5.1]

[2013-TIOL-1022-CESTAT-DEL](#)

Sakay Overseas Vs CCE (Dated: March 17, 2013)

Service Tax - Export of goods - Refund of service tax under Notification No 41/2007 ST dated 06.10.2007 - Limitation - As per the Notification, refund claim has to be filed within sixty days from the end of the relevant quarter during which the goods have been exported - Contention that the date of payment of service tax is crucial for claiming the refund is not sustainable - No error on the order of lower authorities in rejecting the claim on the ground of time bar.

[2013-TIOL-1015-CESTAT-AHM](#)

CCE & ST Vs M/s Kandla Port Trust (Dated: May 17, 2013)

Service Tax - Demand of Service Tax by applying the rate prevailing on the date of issue of invoice - Assessee paid service tax by applying the rate prevailing at the time of rendering the service - It is settled law that rate of service tax applicable is the rate prevailing at the time of rendering the service - Demand is not sustainable.

[2013-TIOL-1014-CESTAT-AHM](#)

M/s Kanchan International Ltd Vs CCE (Dated: March 20, 2013)

Service Tax - Demand of service tax on services received from outside India - Service Tax paid along with interest - Penalty - Service Tax paid is admissible as CENVAT Credit - Plea of revenue neutrality is a strong ground to set aside penalty - Penalties imposed under Section 76 and 78 set aside - Penalty under Section 77 is upheld.

[2013-TIOL-1012-CESTAT-MUM](#)

CCE Vs Shree Datta SSK Ltd (Dated: May 31, 2013)

Subsidies are negative taxation and there cannot be a positive tax on same under Service Tax - buffer-stock subsidy cannot be considered as a consideration received for the services rendered and, therefore, service tax would not be leviable on such activity - since sugar factories are storing sugar for themselves, therefore, there cannot be any service to self - Revenue appeal dismissed: CESTAT [para 5]

[2013-TIOL-1010-CESTAT-MUM](#)

Clsa India Ltd Vs CST (Dated: May 7, 2013)

ST - By placing shares in the private domain, no advice or technical assistance relating to conceptualizing, devising, development, modification, rectification or up-gradation of any working system of any organization could be said to have been rendered by the appellant - classification done by the department under 'Management Consultancy Service' has no basis - in the SCNs issued no attempt has been made by the Revenue to classify the service first Order set aside and appeal allowed - principles of natural justice have been clearly violated as the primary requirement is not met: CESTAT [para 6.1]

[Also see analysis of the Order](#)

[2013-TIOL-1009-CESTAT-DEL](#)

M/s Mela Ram & Sons Vs CCE & ST (Dated: April 26, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Photography Service - Collection of negatives of photographs from customers, for forwarding the same for processing to different photography agencies and re-collection of such processed material for return to the customers - Prima facie case made out on merits and also on limitation in view of the CBEC Circular dated 27.12.2001 clarifying that the activity is not covered under photography service - Pre-deposit waived.

[2013-TIOL-1008-CESTAT-DEL](#)

M/s Panipat Thermal Power Station Vs CCE (Dated: March 12, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Providing of land, approach roads and permitting use of weighbridge, water etc. to cement companies to install machinery for evacuation of fly ash from thermal power plant and its storage - Service Tax demanded on the ground that such activity falls under "Business Support Service" - For period from 1/3/11 same activity held not a service transaction but sale of fly ash on which central excise duty was being paid - Same activity cannot be termed as sale as well as service - Prima-facie, activity of the appellant cannot be termed as business support service - Prima-facie case in favour of the assessee - Pre-deposit waived.

[2013-TIOL-1000-CESTAT-KOL](#)

CC, CE & ST Vs Shri Prabir Kumar Sarkar (Dated : April 12, 2013)

Service Tax - Security service - Penalty - Service tax along with interest already paid - It is not in dispute that the Respondent had approached the Department seeking registration of the services and accordingly, filed details of their services under the prescribed ST-1 Form. The said ST-1 Form was duly received by the concerned Inspector of Central Excise, Jalpaiguri on 05.04.2005, a fact not disputed by the Department. Whatever amount they had received from rendering the said service, had been duly accounted for in their books of accounts, and also necessary income-tax returns were filed by the Appellant from time to time - No error in the order of Commissioner (Appeals) in setting aside penalty under Section 78.

[2013-TIOL-999-CESTAT-DEL](#)

M/s Shree Fats & Proteins Pvt Ltd Vs CCE (Dated : April 3, 2013)

Service Tax - GTA - Exemption under Notification No.32/2004 dated 3.12.2004 denied on the ground that assessee was only a recipient of the service and not the actual service provider - Rule 2 (r) of Cenvat Credit Rules, 2004 defines 'provider of service' as including a person liable for paying service tax - Cenvat credit could be utilized towards payment of service tax in respect of services received from GTA - Assessee eligible to pay tax on GTA services received from their Cenvat Credit Account - Appeal allowed.

[2013-TIOL-998-CESTAT-AHM](#)

M/s Shri Bileshwar Khand Udyog Sahakari Mandali Ltd Vs CCE (Dated : May 3, 2013)

Service Tax - Service Tax under the category of Manpower Supply Agency services - Appellant a co-operative society manufacturing sugar arranged for labourers for cutting, loading and unloading of sugarcane by farmers and charging lumpsum amount for the same - Similar issue covered in earlier cases - prima facie case in favour of the appellant - Pre-deposit waived and recovery stayed.

[2013-TIOL-997-CESTAT-MUM](#)

Tops Security Limited Vs CCE (Dated: June 4, 2013)

ST - When the Tribunal has waived the requirement of any pre-deposit, the Commissioner(A) could not have dismissed the appeal on grounds of non-compliance with the provisions of s.35F - order perverse and beyond his powers - matter remanded and Commissioner(A) to pass an order on merits within one month: CESTAT [paras 2 & 3]

[2013-TIOL-995-CESTAT -MUM](#)

M/s Shoppers Stop Ltd Vs CCE (Dated: March 21, 2013)

ST - Appellants are in the business of operating and running retail stores where goods of various brands are sold under one roof - they grant concession to various concessionaires for display, demonstration and sale of the products from the retail stores operated by the appellant - consideration received by the appellant is either by way of a minimum guarantee amount or as a percentage of goods sold - there is per se no renting of space and the consideration has no linkage to the area of the space rented out - prima facie activity falls under the category of Business Support Services (BSS) as the appellant seems to provide both infrastructural support services and accounting and processing of transactions - activity prima facie does not come under the category of renting of immovable property which is taxable w.e.f 01/06/2007 - no prima facie case in favour of the appellant - Pre-deposit ordered of Rs.1.70 Crores: CESTAT [paras 5.2, 5.3, 5.4 & 5.6]

Adjudication by Commissioner of Service Tax, Mumbai-II is proper and legal - Chief Commissioner of Central Excise has the power to delegate the adjudication to the Commissioner - Matter already decided in favour of Revenue in the case of Standard Chartered Bank & Ors ([2013-TIOL-558-CESTAT-MUM](#)) : CESTAT [para 5.1]

Argument of appellant that transaction is one of sale and not of service is not borne out from the conduct of the appellant as from 01/06/2007 the appellant has discharged service tax on the said activity under 'Renting of Immovable Property Service' - if that be so, they cannot contend that for the previous period, the activity is one of sale and not of service: CESTAT [para 5.2]

Limitation - time bar issue raised is a question of both, fact and law and can be gone into detail at the time of final hearing - it is not the case of the appellant that they had disclosed the facts relating to their activities to the department on their own and the matter came to light only when the department investigated the activities of the appellant - therefore, it cannot be concluded at this stage that there was no suppression of facts on the part of the appellant: CESTAT [para 5.5]

Appellant has not pleaded any financial hardship - in view of Andhra Pradesh HC decision in SQL Star International Ltd. ([2012-TIOL-146-HC-AP-ST](#)), prima facie, balance of convenience and irreparable loss to Revenue have to be taken into account while grant of interim stay: CESTAT [para 5.6]

Pre -deposit ordered of 50% of the Service Tax demand of Rs.3,44,45,034/- - compliance to be reported within a period of eight weeks: CESTAT [para 6]

[Also see analysis of the Order](#)

[2013-TIOL-994-CESTAT -AHM](#)

M/s Shree R R Construction Vs CCE (Dated: May 20, 2013)

Service Tax - applicant undertaking the activity of de-watering, soil filling, restoring of river-bed etc - Revenue alleges that such activity falls under 'Site formation and Clearance, Excavation & Earth moving & Demolition Service' and the activity of fabrication of concrete coated pipes and site formation on behalf of main contractor falls under BAS - applicant contending that such activity falls under **category of Commercial and Industrial Construction service & that they are paying ST by claiming benefit of notfn. 1/2006-ST** Held: From the agreement, it is clear that the same is not for laying pipes but for manufacture of concrete coated pipes on behalf of the client as well as for open cut river crossing which includes de-watering, dismantling the cofferdam, restoring the river bed etc - No prima facie in favour - Pre-deposit of Rs 10 lakhs ordered.

[2013-TIOL-990-CESTAT -MUM](#)

CCE Vs Maharashtra State Bureau Of Text Books Production And Curriculum Research (Dated: June 4, 2013)

ST - Argument that respondent is a service receiver and hence is not eligible for centralized registration is meaningless and defeats the objective of registration – no infirmity in the order of the lower appellate authority – it is a settled position that if a letter conveys the ground of rejection and also the rejection, the same can be treated as an order eligible for appellate remedies - Revenue appeal dismissed: CESTAT [paras 5.1 & 5.2]

[2013-TIOL-988-CESTAT -DEL](#)

M/s Narottam & Company Vs CCE (Dated: May 9, 2013)

Service Tax – Clearing and Forwarding Agent Service - Providing labour for unloading of the goods at the rail heads, loading into the trucks for transport from rail-head to godown and unloading and stacking of the cement at the godown and arranging the dispatch of the goods as per the instructions of Cement manufacturer and maintaining record of receipt and dispatch – The activities are not taxable under Clearing and Forwarding Agent Service – Demand of Service Tax set aside.

[2013-TIOL-987-CESTAT -AHM](#)

M/s Intellicon Pvt Ltd Vs CCE (Dated: April 4, 2013)

Service Tax - Erection, Commissioning and Installation services - Installation of EPABX system - Demand - Limitation - Stay / Dispensation of pre-deposit - The assessee, while installing the EPABX system, outsources the services of laying of cables. They have not indicated this amount received by them towards cabling work in their returns, though they have accounted it separately. The demand of Service Tax liability with the period of limitation may get fastened upon the assessee. At the same time, a case is made out for the benefit of Notification No.1/2006-ST. Part pre-deposit ordered. (Para 6)

2013-TIOL-983-CESTAT -AHM
M/s Suchi Foams Vs CST (Dated: March 18, 2013)
ST – Refund - on being pointed out by the audit party that ST had been short paid the appellant paid service tax but on subsequent reconciliation found that this amount was not required to be paid – refund claim rejected by lower authority was allowed by the Commissioner(A) but after holding that the appellant had not crossed the hurdle of unjust enrichment credited the amount to the consumer welfare fund – appellant submitting that they had closed down business in the year 2008 and since the amount was deposited in November, 2009 they could not have passed on the incidence of tax to any one – however, appellant submitting that this vital fact was not brought to the notice of lower authorities – Matter remanded – Appeal disposed of: CESTAT [para 7]
2013-TIOL-980-CESTAT -DEL
M/s Bird Travels (P) Ltd Vs CST (Dated: March 12, 2013)
ST - BAS - appellant receives commission as GSA from the foreign airlines whom they represent in India and whose products are being marketed by them - since the same is received in convertible foreign currency and the airlines do not have any office or establishment in India services have to be treated as export of service in terms of Rule 3 of the Export of Service Rules - appellant have a strong prima facie case - pre - deposit waived and stay granted: CESTAT [para 6]
Also see analysis of the Order
2013-TIOL-975-CESTAT -MUM
New Era Handling Agency Vs CCE (Dated: February 25, 2013)
ST - 'Packaging Services' - as per the Fertiliser (Control) Order, 1985 fertilisers cannot be marketed without packaging in the manner specified in the Order and hence packaging is a statutory requirement - there is merit in the contention of the appellant that activity of packaging would form an integral part of the manufacturing activity and cannot be viewed as a service activity as the definition excludes from its scope any activity that amounts to manufacture u/s 2(f) of the CEA, 1944 - strong prima facie case in favour - Pre-deposit waived and stay granted: CESTAT [paras 5.1 & 6]
Also see analysis of the Order

2013-TIOL-974-CESTAT -DEL
M/s Sistema Shyam Teleservices Ltd Vs CCE, CC & ST (Dated: March 12, 2013)
Service Tax - Stay/Dispensation of pre-deposit - Cenvat Credit on inputs and input services - Cenvat credit on components of towers and input services used for erection and installation of towers on which antenna is mounted and their repair and maintenance - No prima facie case in favour of the appellant - Pre-deposit ordered.
2013-TIOL-973-CESTAT -DEL
Shri Neeraj Prasad Vs CCE (Dated: December 19, 2012)
Service Tax - Stay/Dispensation of pre-deposit - Business Auxiliary Service - Appellant are franchisee for a Company engaged in Commercial training and coaching service and are receiving 25% of the fee collected - Demand of service tax under Business Auxiliary Service - Prima facie case made out for waiver of pre-deposit as the transactions are on principal to principal basis and the contract is basically revenue sharing arrangement - There is also no dispute that the service tax is sought to be charged on 25% of the amount of tuition fee being received by CLIL from the students through the appellant and CLIL have already paid service tax on that amount i.e. the full amount of tuition fees received from the students - Pre-deposit waived.
2013-TIOL-971-CESTAT -DEL
R F Properties & Trading Ltd Vs CCE (Dated: April 30, 2013)
Service Tax – Commercial or Industrial Construction Service – Construction of Commercial Complex by taking advances/application money from prospective buyers - Explanation inserted in Section 65(105)(zzq) in 2010 has only prospective effect – Demand of service tax on the transactions during the period 4.7.05 to 30.6.2006, prior to introduction of the Explanation to Section 65(105)(zzq) is not sustainable – The service offered by the assessee in relation to the construction of commercial or industrial complex in respect of WTP cannot be said to be service provided or to be provided to another person, the transaction falls outside the purview of the taxable service.
Also see analysis of the Order

2013-TIOL-970-CESTAT-AHM
M/s State Charge Gog Port of Magdalla Vs CCE & ST (Dated: May 2, 2013)
Service Tax - Stay/Dispensation of Pre-deposit - Service tax on "Intellectual Property Rights" for amounts collected as Water Front Royalty charges - "Intellectual Property Rights" definition is about right available within individual or person - Charges collected by appellant for usage of Water Front as Water Front Royalty Charges prima facie not covered under the definition of Intellectual Property Rights - Pre-deposit waived and recovery stayed.
2013-TIOL-969-CESTAT-AHM
M/s Solvay Specialities India Pvt Ltd Vs CCE & ST (Dated: April 16, 2013)
Service Tax on Commission – Stay/Dispensation of pre-deposit – Commission paid by the appellant for the services rendered by person situated abroad - Amount already deposited by the appellant enough as deposit - Service tax on Commission received by the appellant from the foreign companies - Appellant only promoted/marketed the products manufactured by foreign manufacturers and also received the amount in foreign exchange – Boards circular No.111/5/2009 ST dated 24.02.09 - Prima facie case in favour of the appellant - Pre-deposit waived
2013-TIOL-965-CESTAT-DEL
M/s Times Internet Ltd Vs CCE(Dated: February 27, 2013)
ST - BAS - show cause notice should not be read with hyper technicality - What that is intended by the subject, language and object of the show cause notice shall be understood in such manner that the said notice seeks to achieve - appellant advanced the object of its client service provider giving source of information to the ultimate user through code number - Appellant's role was to connect the user of service with the provider to fulfil the object of each other consuming the service provided - appellant being in triangular shape could bring the provider and user to the tax net and incurred liability assisting the provider to connect the user of the service - appellant was remunerated satisfying the need of the destination based consumption tax - Revenue would be prejudiced if no pre-deposit is called for - Pre-deposit ordered of Rs.1.5 Crores in five equal instalments: CESTAT [paras 7 & 8]
Also see analysis of the Order
2013-TIOL-964-CESTAT-DEL

MCM Services Pvt Ltd Vs CST (Dated: April 22, 2013)

SERVICE TAX - Restoration of stay application - Stay application dismissed for default – Appellant's plea of non-receipt of notice of the listing of the stay application by the petitioner accepted - Stay application restored.

SERVICE TAX – Stay/Dispensation of pre -deposit - Non-remittance of service tax on commercial and industrial construction services - Prima facie, petitioner immune to liability of service tax in relation to construction of a dam - In respect of other services viz. renting of immovable property service and supply of tangible goods service no prima facie case to grant any relief – Pre-deposit of Rs.1.5 lakhs ordered.

[2013-TIOL-963-CESTAT-KOL](#)

M/s Suchak Marketing Pvt Ltd Vs CST (Dated: February 5, 2013)

ST - Appellants were registered with the Service Tax Department for providing taxable services but did not file any returns during the period April 2005 to March 2008 on the ground that they have not provided any service - six ST -3 Returns were, however, filed belatedly on 18.11.2008 - adjudicating authority directed the appellants to pay Rs.12,000/- as late fee u/r 7C of STR, 1994 for each ST -3 Return and also imposed penalty of Rs.2,000/- u/s 77 of FA, 1994 – Commissioner(A) setting aside penalty imposed u/s 77 – as per Circular No.97/8/07-ST dated 23.08.2007, in the event, no service is rendered by the service provider, there is no requirement to file ST-3 Returns – nothing contrary has been produced by Revenue representative – fit case to invoke proviso to rule 7C of STR and waive late fees – Order set aside and appeal allowed: CESTAT [para 5]

[2013-TIOL-956-CESTAT-MUM](#)

Kala Sagar Vs CST (Dated: April 24, 2013)

ST - applicant undertaking interior repair work at 9th floor of State Bank Bhavan - demand of ST confirmed under Commercial or Industrial construction service - as per definition, in respect of repair, alteration, renovation or restoration, it is specifically mentioned that it is in relation to building or civil structure - there is no mention of "part thereof" in sub-clause (d) of the definition - applicant has prima facie strong case in favour - Pre-deposit waived and stay granted - Stay petition allowed: CESTAT [paras 6 & 7]

[Also see analysis of the Order](#)

[2013-TIOL-955-CESTAT-AHM](#)

M/s Kalthia Engineering & Const Ltd Vs CCE & ST (Dated: April 23, 2013)

Service Tax - Construction of roads - Service tax on services provided to NHAI (National Highway Authority of India) etc - Demand confirmed on the ground that assessee had neither submitted nor produced any copy of the work orders or contracts for the services provided by them - Assessee contends that contracts copies seized by the department and hence could not be produced before the adjudicating authority - Assessee to establish that the contracts were with respect to repair and maintenance activity of roads only - Case remanded to adjudicating authority for decision.

[2013-TIOL-954-CESTAT -AHM](#)

M/s Dalma Energy LLC Vs CST (Dated: April 30, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Classification of the services rendered while hiring out of rigs for exploration of oil - Issue arguable one - Entire amount of service tax liability, interest thereof and part of the amount of penalty already deposited - Pre -deposit of balance amounts waived and recovery stayed - Out of turn hearing allowed.

[2013-TIOL-953-CESTAT -MUM](#)

Hanil Era Textiles Ltd Vs CCE (Dated: May 27, 2013)

Without signing Vakalatnama, Counsel has no authority to appear - court-fee stamp not affixed to Vakalatnama - case file also not stitched or bunched properly - since defects not cured, appeal dismissed in terms of rule 11 of the CESTAT (Procedure) Rules, 1982: CESTAT

[2013-TIOL-952-CESTAT -AHM](#)

M/s Alpha Polypropylene Vs CCE (Dated: May 15, 2013)

ST - Since appeal was filed before Commissioner (A) against o-in-o by the appellant, the Commissioner had no power to review the o-in-o u/s 84 of the FA, 1994 - Appeal allowed: CESTAT [paras 5, 6, 7 & 8]

[Also see analysis of the Order](#)

2013-TIOL-951-CESTAT-AHM
M/s Narmada Chematur Petrochemicals Ltd Vs CCE (Dated: May 15, 2013)
<p>ST - appellant receiving Consulting Engineers services from the foreign companies during the period March, 2003 to March, 2005 - recipient of the services in India is liable to Service Tax for the services received from abroad only from 18.04.2006, after enactment of Section 66A of Finance Act, 1994 - Appeal allowed: CESTAT [paras 5 & 6]</p>
2013-TIOL-950-CESTAT-AHM
M/s Nirma Ltd Vs CCE (Dated: December 7, 2012)
<p>Service Tax - Interest on delayed refund - On similar issue of the same assessee the Tribunal had ordered grant of refund. Following the same, the assessee is eligible for the interest after three months of filing of the refund claim with the authorities till the same is sanctioned. (Para 4)</p>
2013-TIOL-945-CESTAT-AHM
M/s Nirma Ltd Vs CCE & ST (Dated: May 7, 2013)
<p>Central Excise - CENVAT credit on Pest Control services & Man-power supply services - Assessee under obligation to maintain 33% of the factory area as garden to mitigate the effects of emissions all around the plant - Services in relation to development and maintenance of garden eligible for availing Cenvat credit - Manpower engaged for maintaining such landscape also eligible as input credit services.</p> <p>CENVAT Credit - Credit on construction services utilized for making the compound wall of the factory - Compound wall essential to demarcate the registered factory premises and also save manufactured goods from pilferage and potential clandestine removal - Construction of compound wall essential element for completion of factory and an activity in relation to manufacture of excisable goods - Services utilized for construction of such compound wall eligible for Cenvat credit as input services.</p>
2013-TIOL-944-CESTAT-DEL
CST Vs M/s L R Sharma & Co (Dated: April 26, 2013)
<p>Service Tax – Review by Committee of Chief Commissioners – Section 86(2) of the Finance Act, 1994 - Mere appending of signature on the departmental note file in a mechanical fashion does not constitute sufficient compliance with the clearly implied</p>

statutory obligation of due application of mind by the Commissioners comprising the committee – Such authorization is unsustainable and the appeal is accordingly dismissed.

Joint sitting of the Committee - A joint meeting of the Commissioners or a simultaneous decision by the Commissioners comprising the committee at such joint meeting is not a requirement of Section 86(2) of the Act. If there is due application of mind, independently by the two Commissioners comprising the committee in respect of the relevant material and the integers of the decision making process, even if the concurrence as regards the decision to prefer an appeal is arrived at by circulation of relevant files and the satisfaction of the Commissioners is recorded on different dates and at different places, the decision would not be void, illegal or violative of the provision.

[2013-TIOL-942-CESTAT -MUM](#)

The Shipping Corporation Of India Ltd Vs CCE & ST (Dated: March 5, 2013)

ST - appellant providing shipping vessels to M/s ONGC on charter hire basis for a consideration - primary object of charter hiring the vessel is for transportation of crude from the place of production i.e. in the High Sea to the refineries in India and not for "storage and warehousing" - such services are classifiable under 'supply of tangible goods' for use, which activity was brought under the service tax net with effect from 16/05/2008 - appellant being a Government of India undertaking, whose solvency is beyond doubt, there is no risk to Revenue - Considering these facts, appellant has made out a strong case in their favour for grant of stay - Pre-deposit waived and stay granted: CESTAT [paras 5.1 & 6]

[Also see analysis of the Order](#)

[2013-TIOL-941-CESTAT -DEL](#)

M/s Gecas Services (I) Pvt Ltd Vs CST (Dated: April 23, 2013)

ST - services were provided by the petitioner to the overseas company M/s. GECAS, Ireland - it is not the case of the Revenue that services were provided by the petitioner/assessee not to GECAS, Ireland but to those prospective customers or manufacturers of products in India, nor is it the case of Revenue that any part of the remuneration is received by manufacturers of Indian products or prospective customers of GECAS, Ireland - Prima facie , services provided to the Irish company, fall within provisions of Export of Service Rules, 2005, and, therefore, are exempt from the charge to service tax – Strong prima facie case in favour – Pre-deposit waived and stay granted: CESTAT [paras 4 & 5]

[2013-TIOL-940-CESTAT -DEL](#)

M/s Gargi Consultants Pvt Ltd Vs CCE (Dated: March 19, 2013)

Service Tax - Commercial Coaching and Training - Computer Training - Demand - Limitation - During the period from 10-09-2004 to 15-06-2005, an assessee providing "computer training" services is required to pay service tax in as much as the subsequent notification effective from 16-06-2005 was only a clarificatory notification and was effective retrospectively. However, during the relevant period all the decisions of the Tribunal were in favour of the assessee, laying down that a "computer training institute" is covered by the expression "vocational training institute" and as such, was exempted from service tax. As such, there was a bonafide belief on the part of the assessee not to pay service tax on the "computer training services" provided by them. Demand hit by limitation. Extended period not invocable. (Para 7)

[2013-TIOL-931-CESTAT-MUM](#)

Kpit Cummins Infosystems Ltd Vs CCE (Dated: April 1, 2013)

ST - Refund - IT enabled services i.e. software consultancy service exported during the impugned period was classifiable as an 'exempted service' under Rule 2(e) of the CCR, 2004 and even if an exempted service is exported the benefit of CENVAT Credit and Rules thereof shall be allowed to the exporter of exempted service as well...para 5.2: CESTAT

Services provided by the appellant and exported is not a taxable output service inasmuch as software development software service and software consultancy service become taxable only in the Budget 2008. Therefore, the cap of 20% prescribed under Rule 6(3)(c) have no application whatsoever. Therefore, there was no bar on the appellant in availing full credit in respect of IT software services during the material period....para 5.4

The object of EXIM Policy of the Government of India is to promote exports of goods and services and not export of taxes. Service tax being a destination based consumption tax, in the case of exports there should not be any tax burden and the tax burden, if any, is to be imposed by the Government of the country where the services are consumed. Otherwise, it would render the exports of software uncompetitive - para 5.6

Keeping in view of above policy objective of the government, it is appropriate to hold that the appellants are eligible for the refund of the amount claimed by them of Rs.2,14,45,060/- during the impugned period on account of export of exempted services subject to the satisfaction of other conditions prescribed in Notification No. 5/2006-CE(NT) dated 14/03/2006 and the Revenue shall verify the same...para 5.6

[Also see analysis of the Order](#)

[2013-TIOL-930-CESTAT-AHM](#)

M/s Katira Construction Ltd Vs CCE (Dated: April 24, 2013)

Service Tax – Stay/Dispensation of pre-deposit - Commercial and Industrial Construction Services - Liability of service tax on services rendered to M/s. Gujarat Electricity Board and other Government Organizations - Case of the appellant that contracts executed by them are works contract services and services rendered to Government Organizations are not commercial in nature - Issue highly debatable – Pre-deposit ordered.

[2013-TIOL-929-CESTAT-AHM](#)

M/s Gujarat Powerfield Pvt Ltd Vs CST Vs CST (Dated: May 3, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Demand of service tax under 'Supply of tangible goods' service - Supply of DG Sets on hire basis - No prima facie case for waiver of pre-deposit - Rs 15 lakhs ordered to be deposited.

[2013-TIOL-923-CESTAT-MUM](#)

Agricultural Produce Market Committee Vs CCE (Dated: January 24, 2013)

ST - Market fee collected from licencees by APMC is classifiable under BAS and the same is exempted under notification 14/2004-ST - however, Service Tax payable on renting of shops in the market area - since appellant has paid ST along with interest within six months of passage of Finance Act, 2012, benefit of s.80 available & no penalty is imposable - Appeal allowed: CESTAT [paras 6.1, 6.2 & 7]

[Also see analysis of the Order](#)

[2013-TIOL-922-CESTAT-AHM](#)

M/s Garden Silk Mills Ltd Vs CCE (Dated: April 18, 2013)

SERVICE TAX - Stay/Dispensation of pre-deposit - Business Support Service - Service Tax on supply of chilled water - Case of appellant that they have discharged VAT on such sale and it cannot be held as service - Prima facie bills raised for consumption of steam and not for sale of chilled water - Issue requires examination in detail - Pre-deposit ordered.

[2013-TIOL-921-CESTAT-DEL](#)

M/s Federation Of Indian Export Organizations Vs CST (Dated: April 1, 2013)

Service Tax - Club or Association Services - Demand - Stay / Dispensation of pre-deposit - The assessee claims that they play the role of an apex chamber for promotion and development of the export trade of India. As such they are engaged in public service and are not a profit making organization and are registered with the Income Tax department as a charitable organization. The issues involved are arguable and contentious and do not call for full dispensation with the condition of pre-deposit. Part pre-deposit ordered. (Para 5)

[2013-TIOL-918-CESTAT-BANG](#)

CCE Vs M/s HSBC Electronic Data Processing (I) Pvt Ltd (Dated: May 30, 2013)

Service Tax - Refund of unutilized CENVAT Credit on input services which were claimed to have been used for providing output services classified as Business Auxiliary Services to service recipients located abroad : This claim of refund was for the period from December 2005 to September 2011. The original authorities rejected the claim on the ground that the output services exported by the assessee were not taxable as BAS, ITSS , OIDARS or BSS. The orders passed by the original authorities on the refund claims for the period from July 2008 to September 2011 were set aside by the Commissioner(Appeals) who remanded the matters to the lower authorities for de novo decision. It was not open to the appellate authority to do so inasmuch as he did not have the power of remand. Matter remanded to Original authority.

Service Tax - Consistency in Classification : The assessee has consistently claimed that their output services were classifiable under BAS in terms of clause (iii) or clause (vi) or clause (vii) of the definition under Section 65(19) of the Finance Act 1994 and has accordingly obtained registration with the Department. However, the stand taken by the Department regarding the nature of the services exported by the assessee has not been consistent. For the period from December 2005 to June 2008, the Department classified the services under ITS which was excluded from BAS till 16/05/2008. For the period from July 2008 to September 2010, the Department was agreeable to consider the assessee's services as "operational or administrative assistance in any manner" which expression was inserted in the definition of BSS from 01/05/2011 only. However, from 01/05/2011, the services were not classified under BSS but held to be not taxable under BAS. The taxman should be consistent in the matter of classifying services under Section 65(105) of the Finance Act 1994. The nature of activities should be correctly deciphered from the terms of the relevant agreements and the same should be classified under the appropriate head under Section 65(105) of the Act. It is not open to the taxman to approbate and reprobate in this exercise . A correct decision on the subject refund claims should depend on the correct classification of the output services provided by the assessee to the foreign entities. Matter remanded to Original Authority.

[Also see analysis of the Order](#)

[2013-TIOL-917-CESTAT-DEL](#)

CST Vs M/s Engineers India Ltd (Dated: April 12, 2013)

Service Tax - ROM - Commissioner (Appeals) allowed the refund on merits and remanded the matter on unjust enrichment - In appeal against the order passed in de novo proceedings, the Commissioner (Appeals) allowed the appeal on the issue of unjust enrichment also - There was no challenge by revenue against the issue of unjust enrichment in appeals before the Tribunal by the department - Error apparent on record as the Tribunal remanded the issue of un-just enrichment also - Error rectified and the matter remanded to examine the claim on merits only.

[2013-TIOL-916-CESTAT-DEL](#)

Chetak Traders Vs CCE (Dated: April 08, 2013)

Service Tax - Condonation of delay in filing appeal before the Commissioner (Appeals) - Commissioner (Appeals) called for a report from the Assistant Commissioner behind the back of the assessee - The process followed by the appellate authority constitutes serious violation of due process and transgresses principles of natural justice. It is axiomatic that a quasi-judicial authority cannot record any conclusion on the basis of material without notice to and behind the back of a party to the lis . The impugned Order in Appeal cannot be sustained and is quashed. The matter is remitted to the appellate authority for de novo determination.

[2013-TIOL-911-CESTAT-DEL](#)

M/s SNC Lavalin Inc Vs CST (Dated: March 4, 2013)

ST - Head office of the appellant company at Canada has deputed some of its officials at the project office in India - department demanding ST under the category of 'Manpower Recruitment or Supply agency' - The term "permanent establishment" referred to in sub-Section (2) of Section 66A would cover branch or agency of a foreign based company, which has been set up in India to carry out its business on long term basis and this term would not cover the project office, which has been temporarily set up in India only for implementation of a particular project - prima facie it is to be treated as service provided to itself - service tax not payable - Stay granted: CESTAT [paras 6 & 7]

[Also see analysis of the Order](#)

[2013-TIOL-910-CESTAT-DEL](#)

M/s Torque Pharmaceuticals Pvt Ltd Vs CCE (Dated: March 20, 2013)

Service Tax - Refund - Duty of Excise paid from Service Tax PLA - Duty subsequently paid from Central Excise Account - Denial of refund on account of Limitation - This is not a case of any clandestine activity. The assessee discharge his excise duty liability from PLA account meant for Service Tax, and subsequently paid duty from the other Cenvat account of excise duty. The assessee is entitled to make corrective accounting entries. With the second time payment of duty, the assessee is entitled to take the credit of the duty earlier paid by them. Denial of refund claim on the ground of limitation is not justified. (Para 4)

[2013-TIOL-909-CESTAT-AHM](#)

M/s Rudra Engineering Vs CCE & ST (Dated: April 29, 2013)

Service Tax – Stay/Dispensation of pre-deposit – Demand of service tax on Hot and Cold Insulation of machineries by denying abatement under Notification No 1/2006 ST - Though the appellant tried to produce various bills as regards materials consumed by them, claimed that they have paid VAT, the accounting pattern of appellant is confusing and is not bringing out details of the materials which have been consumed by appellant – No prima facie case for waiver of pre-deposit – Pre-deposit ordered.

[2013-TIOL-902-CESTAT-DEL](#)

M/s Varsed Detective & Security Pvt Ltd Vs CCE & ST (Dated: January 29, 2013)

Service Tax – Stay/Dispensation of pre-deposit – The appellant had issued parallel set of invoices and there is no explanation for reasons of maintaining parallel set of invoices - Any transaction by way of issue of parallel/duplicate invoice is never reflected in books of accounts – Prima facie, the appellant had provided unaccounted services - No prima facie case for waiver of pre-deposit – Pre-deposit of Rs 50 lakhs ordered.

[2013-TIOL-901-CESTAT-DEL](#)

M/s Hero Cycles Ltd Vs CCE (Dated: May 2, 2013)

ST - GTA - Abatement of 75% of gross amount - appellant paying Service tax on the services of GTA on 25% of gross amount of value without submitting declaration on the body of each consignment note from the provider of the said services as required under Notification No.32/2004-ST dated 03.12.2004 - When the exemption notification does not prescribe any format in which the certificate to this effect is to be provided, the certificates given by the GTAs on their letter heads are sufficient and the Department cannot insist that such declaration should be on each consignment note - Appeal allowed: CESTAT [paras 7 & 8]

[2013-TIOL-899-CESTAT -MUM](#)

Maharashtra State Co-OP Bank Ltd Vs CCE, & ST (Dated: February 18, 2013)

ST - Appellant, a co-operative bank, taking possession of factories in terms of SARFAESI Act and leasing out the same - lease rents received are prima facie liable to Service Tax as the transaction falls within the definition of "Renting of Immovable Property" - as amount already paid, though under protest, same is sufficient for hearing appeals - Stay granted: CESTAT [para 5.1]

[Also see analysis of the Order](#)

[2013-TIOL-898-CESTAT -MUM](#)

M/s Malhotra Distributors Pvt Ltd Vs CCE (Dated: January10, 2013)

ST - appellant entering into an agreement with M/s Vidyut Metallics Ltd. for rendering assistance in the marketing of goods produced by the latter by obtaining orders and also ensuring that the goods are sold at the terms ad discounts as specified by M/s VML - mere procuring of orders on commission basis does not amount to 'Clearing & Forwarding Agency Service' - CBEC Circular dated July, 1997 clearly says that such agent should receive the goods, warehouse the same and arrange for the despatch of the goods as per directions of principal and also maintain record of receipt and despatch and also at times prepare invoices on behalf of the principal - since the appellant did not deal with the goods at all as is expected in the case of a C & F agent, order set aside and appeal allowed with consequential relief: CESTAT [paras 5.2, 5.3, 5.4 & 6]

[2013-TIOL-897-CESTAT -MUM](#)

Municipal Corporation Vs CCE (Dated: March 12, 2013)

ST - Municipal Corporation, Aurangabad rendering various services such as renting of immovable property service, mandap-keeper service, sale of space or time for advertisement service, supply of tangible goods for use, health club and fitness service but failing to discharge Service Tax liability of Rs.1.28 Crores - appellant submitting that they were not aware of their tax liability and that they are now paying ST on all services - appellant is a Municipal Corporation, a statutory body of the Government and were under the bona fide belief that they are not liable to pay ST and hence suppression of facts with intent to evade tax prima facie may not be sustainable in law - offer made by appellant to pay ST of Rs.35 lakhs for normal period acceptable as pre -deposit for grant of stay: CESTAT [para 5]

[2013-TIOL-892-CESTAT-MUM](#)

Pagaria Auto Pvt Ltd Vs CCE, CC & ST (Dated: February 18, 2013)

S.37C of CEA, 1944 as made applicable by s. 83 of FA, 1994 - Service of order - Postal authorities weeding out Speed Post records - benefit of doubt to be extended to appellant - appellant having filed appeal within 3 months after obtaining order in person, appeal not time-barred - matter remanded: CESTAT [paras 4 & 5]

[2013-TIOL-888-CESTAT-DEL](#)

Shri Harjinder Singh Vs CCE (Dated: April 25, 2013)

ST - appellant entering into a contract and putting their buses at the disposal of PRTC, a Punjab State Government Undertaking and receiving an amount on per day basis which was to be paid on fortnightly basis - repair and maintenance of the buses and expense on diesel was to be borne by the appellant and the driver was also to be provided by the appellants on their expense - buses, however, were to be operated by PRTC on various routes as stage coaches and the conductors were of PRTC - activity taxable as Rent a Cab service - since Commr (A) has not considered the appellant's claim with regard to their eligibility for abatement under Notification No. 1/2006-ST and also exemption under Notification No. 6/2005-ST, matter remanded: CESTAT [para 6]

[Also see analysis of the Order](#)

[2013-TIOL-887-CESTAT-AHM](#)

CCE Vs M/s Indian Petrochemicals Corporation Ltd (Dated: May 16, 2013)

ST – Consulting Engineering Services - appellant receiving various services like design, drawing, technical knowledge, technical assistance etc. from the various companies and were making payments to various companies abroad in lieu of the services received by them – Period 13.5.2003 to 08.01.2004 - recipient of the services in India is liable to Service Tax for the services received from abroad only from 18.04.2006, after enactment of Section 66A of Finance Act, 1994 – Appeal allowed: CESTAT [paras 5 & 6]

[2013-TIOL-886-CESTAT-AHM](#)

M/s Metro Automobiles Vs CCE (Dated: March 1, 2013)

Penalty - Appellant discharging ST liability along with interest before issuance of SCN - when the Board itself acknowledges the fact that there were certain doubts as regards liability of ST on activities undertaken by authorized motor vehicle dealers and service stations and finds it necessary to clarify the same, it would not be appropriate to charge the assessee with suppression of facts/ mis-declaration with intent to evade payment of Service Tax – in appellants own case in identical set of facts, penalty set aside – no reason to deviate from such view - Penalties u/s 76, 77 & 78 of FA, 1994 set aside and appeal allowed to that extent : CESTAT [paras 6 & 7]

[2013-TIOL-884-CESTAT-DEL](#)

CCE, Raipur Vs M/s Gayatri Carriers Pvt Ltd (Dated: May 29, 2013)

ST – Cargo Handling Service - Respondent is engaged in loading/unloading/handling of coal into tipper trucks and its transportation from coal face surfaces to coal stock yard within the mines - Department alleging that activity of handling coal prior to 01.06.2007 was covered under cargo handling service and confirming Service Tax demand – Commissioner (A) setting aside the order – Revenue in appeal before CESTAT - Respondent is contesting the levy of service tax under Cargo Handling Services by claiming that Coal, in this case, is not cargo and that these activities are covered under mining service with effect from 01.06.2007.

Held - Goods, which are meant for transportation from one place to another by any mode of transport, are known as cargo - activity undertaken by the respondent falls under category of Cargo Handling Service as held by the Orissa High Court in Coal Carriers Vs. Commissioner of Central Excise Bhubaneswar & Tribunal in case of Gangadhar Bulk Movers Pvt. Ltd. – Order-in-appeal set aside and O-in-O restored – Revenue appeal allowed: CESTAT [paras 6, 7 & 8]

[2013-TIOL-881-CESTAT-AHM](#)

CCE Vs M/s Gujarat Reclaim & Rubber Products Ltd (Dated: February 15, 2013)

CENVAT - Service tax paid on the GTA service for movement of manufactured goods from the factory premises for export to the port of export is an Input Service – Order of Commissioner (A) is correct and legal and does not suffer from any legal infirmity – Revenue appeal rejected: CESTAT [paras 8 & 9]

[2013-TIOL-879-CESTAT-DEL](#)

M/s IILM FILM & Media School Vs CST (Dated: April 17, 2013)

ST - Commercial Training & Coaching Centre - Notf . 9/2003-ST & 24/2004-ST on true and fair construction merely requires that vocational coaching or training imparted must impart skills which enable the trainee to seek employment or undertake self-

employment - It does not require establishment of the fact whether one or some or all of the students of the assessee institute have obtained employment or have pursued self employment after conclusion of the course of instruction - Exemption available - Appeal allowed: CESTAT [paras 4, 5, & 6]

[Also see analysis of the Order](#)

[2013-TIOL-878-CESTAT -MUM](#)

Bay Petroplast Pvt Ltd Vs CST (Dated: February 25, 2013)

ST - Appellant rendered services as 'Del Credere Agent' for M/s Reliance Industries and earned commission @Rs.350/- per MT on the consignment dispatched by principal manufacturer to the buyers - appellant was responsible for collection of sale proceeds and promotion of sale within their territory - department demanding ST under the category of 'Clearing and Forwarding Agency Services'. Held - activity of 'Del Credere Agent' was brought under ST net w.e.f 16/06/2005 under the category of "BAS" - demand for the period is 1999-2000 and 2000-2001 - ST not payable - appeal allowed: CESTAT [para 5.1]

[2013-TIOL-877-CESTAT -MUM](#)

Gammon India Ltd Vs CCE (Dated: March 5, 2013)

ST - Appellant undertaking construction of diaphragm wall and anchor slab with special fill for Sabarmati River Front Corporation Ltd. - department alleging that such activity falls within the scope of "site formation and clearance, excavation and earthmoving and demolition services" and confirming demand of Rs.71.27 lakhs with interest and penalties - from the contract entered and the letter of the Municipal Commissioner, Ahmedabad to the departmental authorities it is clear that the activity undertaken relates to construction services and the object of the project is to develop water bodies and recharge water sources - said activity stands excluded from the scope of the taxable service alleged by department - prima facie appellant has made out a strong case in favour for grant of stay - Unconditional waiver of pre-deposit and stay granted: CESTAT [para 5]

[2013-TIOL-873-CESTAT -DEL](#)

M/s Hero Motocorp Ltd Vs CST (Dated: April 16, 2013)

Service Tax – Sponsoring Delhi Daredevils is sponsoring in relation to a sporting event – not taxable at the relevant time: The appellant Hero Motorcorp in an agreement with GMR Sports Pvt. Ltd agreed to sponsor the GMR team called 'Delhi Daredevils' in the tournament conducted under auspicious of BCCI/IPL. Commissioner held that

sponsoring the IPL cannot be said to be a sponsorship in relation to a sports event. Held by Tribunal: GMR and/ or BCCI -IPL by themselves and unrelated to the T-20 cricket tournament/ event would have any audience/ viewership interest or footfall as to have any commercial utility whatsoever to the appellant. The sponsorship agreement is thus for sponsoring the T-20 sports event and not for sponsoring the owner of the Delhi Daredevils owner or the BCCI - IPL.

The conclusion recorded by the adjudicating authority was based on a fundamental misconception of the purpose of the sponsorship agreement. The conclusion that under the agreement appellant sponsored GMR, by predicating this inference on the singular circumstance that GMR was other party to the agreement, overlooking the terms and conditions of the agreement, constitutes a fatal infirmity of analysis, which invalidates the adjudication order. The agreement in issue (between GMR and the appellant) clearly constitutes sponsorship. That is also the admitted position, since that is the basis for initiation of proceedings leading to the assessment of the appellant's liability to service tax under provisions of Section 65(105) (zzzn). Since the sponsorship agreement, falls within the exclusibnary clause i.e. the clause, which excludes sponsorship services in relation to sports events, the appellant is clearly immune to the charge of service tax.

“In Relation to”: It is a settled principle of statutory construction that the phrase ‘in relation to’ is indicative of expansive intention. As pointed out in Doypack Systems (Pvt) Ltd. vs. Union of India reported in [\(2002-TIOL-389-SC-MISC\)](#), the expression ‘in relation to’ is a very broad expression. These are words of comprehensiveness which might both have a direct significance as well as indirect significance depending on the context. The Supreme Court explained that the said expression connotes ‘concerning that’ and ‘pertaining to’, are expressions of expansion and not contraction.

Interpretation of Statute: Under Article 265 of the Constitution no tax could be levied without legislative authority. A legislative provision is thus the sine qua non for a legitimate levy of tax. The relevant legislative provision must thus receive a strict construction. A true and fair construction of the relevant legislative provision, in accordance with settled and applicable principles of statutory interpretation is therefore the non-derogable obligation of an executor/ interpretator of legislation. It is also settled principle of statutory interpretation that where the verbal formula of a legislative provision on its grammatical construction corresponds to the legal meaning of the expression used, full faith and unreserved fidelity must be accorded to the provision.

[Also see analysis of the Order](#)

[2013-TIOL-872-CESTAT -MUM](#)

Electro Pneumatics & Hydraulics (I) Ltd Vs CCE (Dated: February 20, 2013)

GTA Service - appellant is a recipient of GTA service and was required to discharge Service Tax liability u/s 117 of FA, 2000 which came into operation with retrospective effect -as per the amendment, any action taken during the relevant period can be validated by the retrospective amendment - since SCN issued for recovery of ST in year 2002, the same is not sustainable in law - Appeal allowed with consequential relief: CESTAT [para 3]

[2013-TIOL-871-CESTAT -DEL](#)

M/s Hero Honda Motors Ltd Vs CST (Dated: April 10, 2013)

Service Tax – Sponsorship of IPL Matches – Excluded from the purview of Service Tax during the relevant period : Impugned orders are predicated on a raft of fundamental fallacies: that sponsorship of a sports event, which has a commercial element (the IPL events) is disentitled to the benefits of immunity to service tax, notwithstanding the clear phraseology of section 105(65)(zzzn) of the Act; and since the sponsorship is in relation to league matches conducted under the auspicious of BCCI/ IPL and payments were made to the BCCI/ IPL, the sponsorship is not in relation to sports events, but is sponsorship of BCCI / IPL. Both fundamental premises of the adjudication authority are misconceived and unsustainable. The impugned adjudication orders are therefore quashed.

Comments on the Adjudication Order : We confess our inability to comprehend the contrived reasoning recorded by the adjudicating authority. The adjudication authority's reasoning, that since what is sponsored by assesseees are a series of league matches conducted by the BCCI/ IPL; these do not constitute sports event; and are therefore outside the purview of Section 65 (105)(zzzn), is also in our considered view fallacious. The adjudicating authority cannot engraft its own policy choices and preferences to the legislatively conferred immunity. The above analysis of the adjudication authority, creative as it goes, defies comprehension.

[2013-TIOL-867-CESTAT -MUM](#)

M/s Glaxo Smithkline Pharmaceuticals Ltd Vs CST (Dated: March 4, 2013)

ST - Appellant and M/s BWIL agreed to integrate and jointly carry out day-to-day functions in both the companies in various areas and to share jointly the activity cost for rendering executory services - no evidence that the appellant gave consultancy to M/s BWIL in various fields of management - no cause for demand under 'Management Consultancy Services' - appeal allowed: CESTAT [paras 5.1 & 5.2]

Since against the earlier order of the Tribunal allowing the appeal, the Revenue appeal was dismissed by Bombay High Court, the same has been come final: CESTAT [para 5.2]

[Also see analysis of the Order](#)

[2013-TIOL-866-CESTAT -DEL](#)

M/s Conventry Coil-O-Matic (Hr) Ltd Vs CCE (Dated: February 25, 2013)

CENVAT - CHA services to the extent the same have been used for clearance of imported goods used by the appellant for manufacture, the same without any doubt

would be covered by the definition of 'input service': CESTAT [para 7]

CHA services availed for clearance of the export consignments after their removal of the factory is also an Input service - issue stands decided in the favour of appellant by a series of judgments viz. Modern Petrofils . Vs. Commissioner of Central Excise Vadodara ([2010-TIOL-429-CESTAT-AHM](#)): CESTAT [para 7]

Rent-a-cab service - the same would be eligible for CENVAT credit if rent a cab services had been used by the employees of appellant company for the company's work - although the appellant from very beginning have pleaded that this fact is verifiable from invoices, lower authorities have not given any finding in this regard - matter remanded: CESTAT [para 8]

[2013-TIOL-865-CESTAT-DEL](#)

M/s Air India Ltd Vs CST (Dated: March 05, 2013)

ST - Appellant, engaged in the business of transportation of passengers and goods by Air appointing agents called "General Sales Agents (GSA)" in foreign countries for managing their affairs – Commission paid to these offshore service providers (GSAs) chargeable to Service Tax under the category of "BAS" – demand of Rs.15.53 crores.

Held: - Since this service has been used by the appellant in India in relation to their business located, in India in terms of the provisions of Rule 3(1)(iii) of the Taxation of Services (Provided from outside India and received in India) Rules, 2006, this service has to be treated as having been provided from outside India and received in India by the appellant and, therefore, in terms of the provisions of Rule 66A of the Finance Act, 1994 read with Rule 2(d)(iv) of the Taxation Rules, 1994, the appellant as service recipient would be liable to pay service tax on the same - prima facie the service tax demand of Rs.15.53 crores is on strong footing – taking into account the financial hardship pleaded, pre-deposit ordered of Rs.8 crores: CESTAT [para 7]

ST - Appellant entering into agreement with various foreign parties and sending aircrafts and components to them for repair for which the payment is made in foreign currency by the appellant – Service of 'Repair and Maintenance' – demand of Rs.49.95 crores.

Held - prima facie the service of repair and maintenance has been performed wholly abroad and as such, there is no evidence adduced by the department to show that part of the maintenance and repair service had been performed in India - In view of this, prima facie view is that the appellant cannot be said to have received this service in India in terms of the provisions of Rule 3(1) of Taxation of Service (Provided from outside and received in India) Rules, 2006 and as such the service tax demand of Rs.49.45 crores does not appear to be sustainable – Stay granted: CESTAT [para 6]

[2013-TIOL-858-CESTAT-MAD](#)

Benchmark Consultants Vs CC, CE & ST (Dated: January 19, 2013)

Service Tax – Stay/Dispensation of pre-deposit – Valuation - Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 - Inclusion of certain amounts, such as courier charges, telephone charges, travelling expenses etc. reimbursed in taxable value - Rule 5 (1) of the Service Tax (Determination of Value) Rules, 2006 struck down by the Delhi High Court in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. Vs Union of India - P rima facie case by the applicant for waiver of pre-deposit of tax along with interest and penalty – Pre-deposit waived and Stay Granted.

[2013-TIOL-856-CESTAT-MUM](#)

M/s Tata Consultancy Service Ltd Vs CST (Dated: May 20, 2013)

ST - since more than 20,000 appeals are pending there is no justification for hearing the appeal out-of-turn as the same would affect a number of other appellants who have been waiting since 2003/2004 for their appeals to be heard: CESTAT

[2013-TIOL-852-CESTAT-MUM](#)

Deshmukh Services Vs CCE, ST & CC (Dated: January 21, 2013)

ST – Appellant undertaking job work on materials received under rule 4(5)(a) of the CCR, 2004 – Soaps are covered in the Third Schedule to the CEA, 1944 and find a mention against serial no. 40 – activity of packing/repacking or multi-piece packaging of soaps could be construed as an activity of 'manufacture' under CEA, 1944 – even if it is held that the activity amounts to BAS, notification 8/2005-ST grants exemption from ST – adjudicating authority has not given any findings on these issues – matter remanded: CESTAT [paras 6 & 7]

[Also see analysis of the Order](#)

[2013-TIOL-851-CESTAT-BANG](#)

M/s Parry Sugars Industries Ltd Vs CCE, CC & ST (Dated: January 29, 2013)

Service Tax - Stay/Dispensation of Pre-deposit - Payment of Service Tax on GTA - Goods transported by individual transporters not issuing consignment notes - Stay granted in similar cases relied upon - Pre-deposit waived and recovery stayed.

[2013-TIOL-850-CESTAT-DEL](#)

M/s Nokia India Pvt Ltd Vs CST (Dated: April 08, 2013)

Service Tax – Stay/Dispensation of pre-deposit – Demand of service tax on marketing support services rendered to Nokia Corporation, Finland – Prima facie case made out for waiver of pre-deposit in view of the Tribunal decision that the service has to be treated as export of service.

Service Tax demanded at 12.24% by taking relevant date as date of receipt of payment though the services were rendered when the tax rate was 10.2% - Prima facie case made out for waiver of pre-deposit in view of the decisions that the relevant date is the date of rendering the service.

Denial of abatement for construction service - Material furnished by the appellant to the Revenue was not taken into consideration in the adjudication order which merely recorded that the petitioner appellant have failed to include the value of the goods incorporated into the total value of the service – Prima facie case for waiver of pre-deposit.

[2013-TIOL-848-CESTAT-MUM](#)

M/s Inox Air Products Ltd Vs CST (Dated: April 24, 2013)

CENVAT - In case the installation and commissioning of the plant was done by a different party, then prima facie the assessee who undertakes the operation and maintenance activity cannot take credit in respect of service tax paid on the installation and commissioning activity - Pre-deposit ordered of 25% of the ST demand of Rs.1.62 Crores: CESTAT [para 7]

[Also see analysis of the Order](#)

[2013-TIOL-847-CESTAT-BANG](#)

M/s Robert Bosch Engineering And Business Solutions Ltd Vs CST (Dated: February 21, 2013)

Service Tax - Condonation of delay - No satisfactory explanation of the heavy delay in filing the captioned appeals - Prima-facie COD applications fit to be rejected - Submission that the Appellant-company has a fine record of having promptly filed appeals with the Tribunal and this is first instance of a delay considered - Delay condoned on payment of cost of Rs.10,000/- per appeal - CESTAT

[2013-TIOL-846-CESTAT-MUM](#)

M/s PMA Construction Vs CCE (Dated: January 29, 2013)

ST - Management, Maintenance and repairs of Roads - vide section 97 of the FA, 2012, exemption has been provided with retrospective effect for the period 16.06.2005 to 26.07.2009 - in this view of the matter, demand of Rs.5.72 crores is not sustainable - as issue has been finally settled in favour of appellant, order set aside and appeal allowed: CESTAT [para 5]

[2013-TIOL-840-CESTAT-MUM](#)

Sarth India Ltd Vs CCE (Dated: February 28, 2013)

ST - Appellant has collected ST from customers but not deposited the same to the exchequer – question of showing any leniency would not arise as appellant has played a fraud on the exchequer and any leniency would send wrong signals – pre-deposit ordered of Rs.64.19 lakhs and matter remanded to the adjudicating authority to decide on question of CENVAT eligibility after compliance is reported: CESTAT [para 5.2]

[Also see analysis of the Order](#)

[2013-TIOL-839-CESTAT-AHM](#)

M/s Vishram Valji Chotara Vs CCE (Dated: April 9, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Demand of service tax on sub-contractor - Strong prima facie case for waiver of pre-deposit as the issue pertains to the period prior to the CBEC Circular dated 23.08.2007 - Pre-deposit waived.

[2013-TIOL-838-CESTAT-DEL](#)

Vascon Engineering Pvt Ltd Vs CCE (Dated: April 5, 2013)

Service Tax - Maintenance or Repair of immovable property - Appellant engaged in construction activity, availed benefit of 67% abatement for repair service also - Demand by denying 67% abatement which is admissible only for construction service - Appellant admitted liability and paid the differential tax with interest - Penalty - The appellant was under bona fide belief that maintenance and repair of building was covered under Section 65(25)(b) and service tax was being paid by them - There is reasonable cause for not paying service tax short paid by them and benefit of Section

80 of the Finance Act 1994 is available to the assessee - Penalty set aside.

[2013-TIOL-834-CESTAT -DEL](#)

M/s Cerebral Learning Solutions Pvt Ltd Vs CCE (Dated: April 11, 2013)

Service Tax - Commercial Training or Coaching Service - Exclusion of value of study material under Notification No 12/2003 ST - Benefit denied on the ground that the study material cannot be treated as standard text books and as per CBEC Circular No 59/8/2003-ST dated 20.06.2003, benefit of exclusion is admissible only if standard text books are supplied.

Held: The clarification in the Board Circular dated 20.06.2003 is misconceived, clearly illegal and contrary to the statutory exemption Notification dated 20.06.2003.

Powers of Board to impose restrictions - The statutory provision under Section 93 of the Finance Act, 1994 accommodates no participatory role to the Board - In seeking to engraft restrictions on the generality and plenitude of the exemption granted by the Central Government, the CBEC transgressed into the domain of the Central Government under Section 93 of the Act, a course of action clearly prohibited - That part of the clarification of the CBEC which engrafts a condition that the exemption notification is applicable only where the value of the course material answers the description of standard text books which are priced, is illegal, unauthorised and of no effect - Order of Commissioner (Appeals) quashed.

[Also see analysis of the Order](#)

[2013-TIOL-833-CESTAT -DEL](#)

CCE & ST Vs Sanjeev Kumar Jain (Dated: March 21, 2013)

Service Tax - Laying of cables for BSNL - Not taxable - Demand of service tax by classifying it under repair and maintenance service - On perusal of the work order placed on record, it is clear that the service provided by the Respondent to BSNL in relation of laying of the cables, are not repair and maintenance - Just because in the notice inviting tender, the name of the work is mentioned as "OFC route maintenance in Panna SSA", it cannot be concluded that the tender was for inviting quotations for repair and maintenance of the cables as from a perusal of quotations, it is clear that the activity for which the tender had been invited was for laying of the cables and not repair and maintenance - Revenue appeal has no merit.

[2013-TIOL-832-CESTAT -DEL](#)

M/s Electronic Components & Tuners Vs CCE (Dated: March 26, 2013)

Central Excise - Removal inputs for job-work - Denial of CENVAT Credit on the ground that no permission of jurisdictional Assistant Commissioner was obtained - CENVAT Credit Rules do not stipulate such permission - Credit is admissible if the goods are received back within 180 days - Since on the crucial point of return of the inputs after processing, there is no finding either by the original adjudicating authority or by the CCE (Appeals), the matter is sent back again to the original adjudicating authority.

[2013-TIOL-828-CESTAT-MUM](#)

M/s Bhima SSK Ltd Vs CCE (Dated: January 23, 2013)

ST- Appellant, a sugar factory renting a part of their premises to Bank, BSNL and the Department of Post for setting up a post office – submission that renting of immovable property is not for business and commercial purpose but only as a welfare measure for employees is prima facie not legally tenable - Bank and BSNL are commercial organizations and if the appellant has rented out their premises to them, it amounts to furtherance of business or commerce - as regards Post Office, the appellant might have a case and the arguments will have to be considered after examining the provisions of the Indian Post Act – claim of SSI benefit under notification 8/2005-ST not considered by lower appellate authority – Matter remanded: CESTAT [paras 5.1, 5.2 & 6]

[Also see analysis of the Order](#)

[2013-TIOL-827-CESTAT-DEL](#)

M/s Chunar Cement Factory Vs CCE (Dated: March 5, 2013)

CENVAT – Inputs/Input Service used for generation of power which was sold outside – applying 5% formula to sale value duty demand is of Rs.1,38,34,565/- as per rule 6 of CCR, 2004 – appellant reversing CENVAT credit attributable to the quantum of power sold outside – matter remanded to adjudicating authority to ascertain veracity of the reversals made: CESTAT [para 5]

[2013-TIOL-826-CESTAT-DEL](#)

M/s Everest Industries Ltd Vs CCE (Dated: April 5, 2013)

Central Excise – Refund of un- utilised CENVAT Credit under Rule 5 of CENVAT Credit Rules, 2004 – Goods supplied to SEZ units cannot be treated as physical exports for the purpose of Rule 5– Refund is not admissible – No error in the order of

Commissioner (Appeals).

[2013-TIOL-820-CESTAT -MUM](#)

Super Shuttle Vs CCE (Dated: March 05, 2013)

ST – Appellant undertaking transportation of staff of various 100% EOUs from their residence to the EOU premises and back – demand raised under the category of 'Rent-a-cab services' – CBEC has vide Circular 56/5/2003 dated 25/04/2003 clarified that secondary service which are used by the primary service provider for the export of services would not be liable to service tax – various 100%EOUs/STPI unit have produced a certificate from the Development Commissioner that the primary service providers exported the services – appellant has made out a prima facie case in their favour for grant of stay of the adjudged ST of Rs.89.19 lakhs and penalty and interest – Unconditional waiver from pre-deposit granted and stay ordered: CESTAT [para 5.1]

[2013-TIOL-817-CESTAT -MUM](#)

M/s Prabalgad Majoor Sahakari Sanstha Ltd Vs CCE (Dated: May 6, 2013)

ST – Appeal related papers are in Marathi language – appellant directed to give free English translation of these documents so that Revenue is able to make the contention against the appellant and the appeal to be heard thereafter: CESTAT

[2013-TIOL-816-CESTAT -DEL](#)

M/s Narayan Builders Vs CCE (Dated: April 17, 2013)

Service Tax - Mere handling of coal by unloading of coal wagons and movement to the site - not cargo handling service - mere handling of coal and movement of the said goods from railway wagon to the site of Thermal Power Station with the aid of the wagon tipping system to be fed in the boiler bunkers through motor vehicles or any other means of transportation involved in such handling, would not constitute cargo handling service within the meaning of Section 65(23) of the Act.

Jurisdictional High Court - explained: where a conflict of decisions among High Courts does not relate to interpretation of statutory provisions or a notification (and not vires thereof) the decision of the jurisdictional High Court which has jurisdiction in respect of the authority which adjudicated the matter initially and of the assessee and has taken a particular view of interpretation or proposition of law, must be followed in cases falling within that jurisdiction.

<p>Also see analysis of the Order</p>
<p>2013-TIOL-815-CESTAT -DEL</p>
<p>Directorate Of Marketing And Inspection Vs CCE (Dated: April 17, 2013)</p>
<p>Service Tax - Appeal - Condonation of Delay - Appeal filed after a gap of three and half years. The preamble of the order clearly mentions that appeal is to be filed before CESTAT. Instead of filing the appeal before the Tribunal, the assessee went on knocking at all the wrong doors. The entire sequence of events, narrated in application reflects the casual approach of the assessee and lapses on their part to take the matter seriously and to file the appeal within the limitation period. No justifiable reasons to condone such a huge delay in filing the appeal. Accordingly, the application is rejected. (Para 4 & 5)</p>
<p>2013-TIOL-814-CESTAT -MUM</p>
<p>Toyota Lakozy Auto Pvt Ltd Vs CST (Dated: April 1, 2013)</p>
<p>ST - Applicants are dealers of motor vehicles of M/s Toyota Kirloskar Motors Ltd. and are purchasing cars and thereafter selling the same on payment of VAT - prima facie it cannot be said that the applicant is acting as a commission agent of the car manufacturers - on the same ground, amount received from the car purchaser for registration of cars with state transport authorities cannot mean that they are providing customer service on behalf of the manufacturer - Pre-deposit of adjudged dues of Rs.2.69 crores waived and stay granted: CESTAT [para 10]</p> <p>ST - applicants are negotiating with banks on behalf of the customers regarding car loan and where the banks agreed to give lower rate of interest, the applicants forego part of their commission - prima facie since applicants are receiving commission, they have not made out a case for waiver of pre-deposit of adjudged dues of Rs.22,09,353/- of service tax - pre-deposit ordered of Rs. Ten lakhs: CESTAT [para 11]</p>
<p>2013-TIOL-809-CESTAT -MUM</p>
<p>CCE Vs Ambe International (Dated: April 30, 2013)</p>
<p>ST - Rebate claim involving ST – appeal lies to Jt. Secy. against order of Commr(A) and not CESTAT – Preamble to the O-in-A mentions that appeal lies to the Jt. Secy. to the Govt of India – appeal is dismissed as non-maintainable – Revenue at liberty to approach appropriate forum in accordance with law: CESTAT [paras 4, 5 & 6]</p>

[2013-TIOL-808-CESTAT -MUM](#)

M/s Vidarbha Cricket Association Vs CCE (Dated: March 07, 2013)

ST - Business Support Services - Expression 'infrastructure support service' used in the said section has to be understood and construed by following the principles of ejusdem generis - in other words, services rendered should be similar to the services mentioned therein - Promotion of cricket or giving the cricket stadium for conducting cricket matches, which is the transaction involved in the present case, is not similar to any of the activities specified in the said section - there is no evidence led by the Revenue to show that the services have been rendered in relation to business or commerce - Prima facie appellants have made out a strong case in their favour - unconditional waiver granted from pre-deposit of dues - recovery stayed: CESTAT [paras 5.1 & 5.2]

[Also see analysis of the Order](#)

[2013-TIOL-807-CESTAT -MUM](#)

Lear Automotive (I) Pvt Ltd Vs CCE (Dated: January 11, 2013)

ST - leviability of ST in case of deputation of staff under the category of 'manpower recruitment and supply agency services' - similar issue was considered by Tribunal in a host of cases and after waiver of pre-deposit stay was granted - since issue similar, stay granted: CESTAT [para 3]

[2013-TIOL-806-CESTAT -MUM](#)

M/s IDEAL Construction Vs CCE (Dated: February 4, 2013)

ST - as per CBEC Circular 80/10/2004-ST dated 17.09.2004 it is clear that educational institutions, government buildings etc. do not come under the category of 'Commercial or Industrial Construction Services' - prima facie, services rendered by appellant in respect of educational institutions viz. Ayurvedic medical colleges, engineering colleges etc. would not come within the purview of tax liability and, therefore, the demand of ST without verifying the nature of construction as certified by local authorities cannot sustain in law: CESTAT [para 5.2]

As regards construction of Commercial nature such as factory buildings, residential quarters of factories, classification of the property has to be seen before levy of Service tax - matter remanded to this extent - appellant directed to provide the necessary documentary evidence within one month to adjudicating authority who shall then decide the matter: CESTAT [para 5.3]

[2013-TIOL-800-CESTAT -MUM](#)

M/s Multi Screen Media Pvt Ltd Vs CCE (Dated: March 4, 2013)

ST – Appellant had received income on account of transmission of music clippings in between running of programmes but had not included the same in the taxable value of the 'Broadcasting services' rendered – sale of space or time for broadcasting in electronic media by a broadcasting agency is leviable to ST under the category of 'broadcasting agency services' and not under 'advertising agency services' – Pre-deposit ordered: CESTAT [paras 5.3 & 6]

[Also see analysis of the Order](#)

[2013-TIOL-799-CESTAT -MUM](#)

Central Railway Vs CCE (Dated: April 26, 2013)

ST - Indian Railways though part of Union Govt is liable to pay Service Tax in case activities undertaken by them fall within definition of taxable services – pre-deposit ordered - Central Railway fails to pay the pre-deposit of Rs.25 lakhs and report compliance – Appeal dismissed: CESTAT

[2013-TIOL-798-CESTAT -AHM](#)

M/s Aadishwar Motors (P) Ltd Vs CST (Dated: March 20, 2013)

Service Tax – Refund of service tax deposited during investigations, consequent to favourable order from the Tribunal – Rejection of refund claim on the ground of unjust enrichment is not correct.

[2013-TIOL-796-CESTAT -MUM](#)

CCE Vs M/s Godrej Industries Ltd (Dated: February 19, 2013)

ST - Commissioner(A) reduced the penalty imposed on the appellant from Rs.17,500/- to Rs.3,000/- for delay in filing the returns - Revenue filing appeal – appeal dismissed as small amount of penalty involved in the case: CESTAT [para 3]

[2013-TIOL-795-CESTAT -MUM](#)

M/s Reliance Michigan (JV) Vs CCE (Dated: April 16, 2013)

ST - Mithi is a river and not a storm water drain – from the Tender Notice and work awarded to the appellant, it is clear that the work pertains to Widening and Deepening the depth of Mithi River - Thus, the contract awarding authority as well as the appellant, the contractor, understood the work as pertaining to dredging of river and not as anything else. - Having agreed to and undertaken the work as widening and deepening of the river, the appellant cannot turn around now and say that what he has done is dredging of a nalla and not a river – from the affidavit filed by govt. of Maharashtra it is clear that the Government has established a “Mithi River Development and Protection Authority” with a view to channelize the river, remove and rehabilitate all activities adversely impacting the environmental conditions of Mithi river, beautify and redevelop suitable activities along the river etc. If Mithi River was not a river, there was no need to have undertaken all these activities by creating a special River Development and Protection authority - dredging activity carried out by appellant is liable to Service Tax - From the contract awarded, it is clear that the work allotted is widening, deepening and desilting of Mithi River and, therefore, the activity undertaken by the appellant squarely falls within the definition of taxable service as defined under Section 65(36a) and accordingly, the Service Tax demand confirmed in the impugned order along with interest thereon is sustainable in law: CESTAT [paras 5.1, 5.2, 5.3 & 6]

Penalty - penalty imposed u/s 78 of Rs. 1 Crore is in excess of the Service Tax demand of Rs.91.23 lakhs and the same is not sustainable in law – penalty equivalent to ST demand is also not imposable u/s 78 of FA, 1994 as activities undertaken by the appellant was in the public domain and it is a contract awarded by the Govt. of Maharashtra and, therefore, nobody can suppress the facts from any public authorities - charge against the appellant can at best be described as mis -interpretation of law but mis -interpretation is not a mis -statement or suppression of facts – penalty u/s 78 set aside – penalty u/s 77 of Rs.5000 for not filing of returns is sustained: CESTAT [paras 5.4, 5.5, 5.6 & 6]

CENVAT- claim of CENVAT on inputs/input services to be considered by competent authority: CESTAT [para 5.7]

[Also see analysis of the Order](#)

[2013-TIOL-790-CESTAT -MUM](#)

M/s Diageo India Pvt Ltd Vs CCE (Dated: March 11, 2013)

ST - agreement between the appellant and CBU clearly says that the CBU has no right to use the intellectual property of the appellant and there is no transfer of any IPR to the CBU from the appellant - commercial interest of the bottling unit is to earn the consideration for bottling or manufacturing the alcoholic beverages - brand owner is not required to pay any ST under the category of “Franchise Service” as clarified by the Board in its Circular dated 30/10/2009 - also the management consultancy

received by appellant from law firm in Sri Lanka being in nature of 'Legal Services' is not liable to ST prior to the introduction of the said entry on 01/09/2009 - even otherwise appellants not liable to pay ST under reverse charge mechanism prior to 18/04/2006 - Appeals allowed: CESTAT [paras 9, 10 & 11]

[Also see analysis of the Order](#)

[2013-TIOL-789-CESTAT -MUM](#)

Ane Industries Pvt Ltd Vs CCE (Dated: February 8, 2013)

CENVAT - Rule 14 of CCR, 2004 - Inadmissible CENVAT credit although not utilized but lying in the books of accounts ordered for reversal forthwith - in view of the SC decision in Ind-Swift Laboratories - ([2011-TIOL-21-SC-CX](#)) there is no difference between the expression 'credit taken' and 'credit utilised' - interest liability would accrue - appellant directed to make a pre-deposit of interest of Rs.15 lakhs and report compliance - Application disposed of: CESTAT [paras 6, 7 & 8]

[2013-TIOL-785-CESTAT -AHM](#)

M/s Angiplast Pvt Ltd Vs CST (Dated: March 18, 2013)

Service Tax – Demand of service tax on Goods Transport Agency service – On perusal of the certificates issued by the transport companies, it is seen that these transporters have categorically stated that the service tax liability for the invoices raised on the appellant has been discharged by them and they had also mentioned their service tax registration number and PAN number in their certificates. As against such documentary evidences, the first appellate authority's findings as to no authentic documentary evidence has been produced, seems to be incorrect. Since the certificates clearly indicate the service tax registration number, the least that could have been expected from the Revenue, was to call for the details from the concerned jurisdictional service tax authorities. Having not done, the lower authorities cannot shift the entire blame on the appellants for having not produced any authentic documentary evidence – Demand of service tax set aside.

[2013-TIOL-779-CESTAT -MAD](#)

M/s Cholamandalam Ms General Insurance Co Ltd Vs CCE & ST (Dated: January 1, 2013)

Service Tax - Stay/Dispensation of pre-deposit - CENVAT Credit availed on invoices on which the name of appellant was handwritten by themselves or stamped which appears to be fraudulent - No prima facie case made out for waiver of pre-deposit - Pre-deposit of Rs 50 lakhs ordered.

2013-TIOL-778-CESTAT -MUM
MY Car Pune Pvt Ltd Vs CCE (Dated: March 12, 2013)
ST - Appellant undertook activity of registration of car on behalf of the buyers with RTO authorities - for this purpose they collected amounts from buyers for payment of various statutory dues - on the 'excess' amounts collected demand is made of ST under the category of 'BSS' - when a customer purchases a car from dealer and services are rendered in relation thereto, it cannot be said that services have been rendered in relation to business or commerce - prima facie demand under 'BSS' is not sustainable in law - Stay granted: CESTAT [paras 3 & 3.1]
Also see analysis of the Order
2013-TIOL-777-CESTAT -MAD
M/s Blue Dart Aviation Ltd Vs CST (Dated: January 2, 2013)
Service Tax - Stay/Dispensation of pre-deposit - Supply of Tangible goods service - Hiring of Aircraft from a foreign company - It is not in dispute that the possession of the aircraft was transferred to the appellant - It is also not in dispute that the aircraft was operated for cargo aviation purposes in India by the appellant. It was handled by the crew appointed by the appellant. Its maintenance and repairs were undertaken by the appellant. On these facts, prima facie, it can be held that appellant was exercising effective control of the aircraft - Prima facie case made out against the demand - Pre-deposit waived.
2013-TIOL-775-CESTAT -MUM
M/s Bhima Ssk Ltd Vs CCE & ST (Dated: March 26, 2013)
ST - mere activity of renting of bullock cart without the bullock or the person to ride the cart does not come within the purview of 'Supply of Tangible Goods for use Service' - the right of possession and effective control over the goods should remain with the service provider - when the bullock carts are supplied without the bullocks, the possession and control over the cart does not lie with the service provider - Order set aside and appeal allowed: CESTAT [para 5.1]
2013-TIOL-774-CESTAT -MUM

M/s Volkswagen India (Pvt) Ltd Vs CCE (Dated: March 4, 2013)

ST - Appellant employing personnel belonging to their German company - salary of 75% was paid by the group company in Germany and thereafter debit notes were raised on the appellant - merely because the payment has been made through the German entity, the activity cannot prima facie be held to be taxable as "Manpower Supply or Recruitment Agency Service" - Pre-deposit waived and stay granted: CESTAT [para 5]

[Also see analysis of the Order](#)

[2013-TIOL-773-CESTAT-MAD](#)

M/s Prakash Agencies Vs CST (Dated: January 21, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Clearing and Forwarding Agent service - Non-inclusion of reimbursable charges - In view of the Delhi High Court striking down the relevant Rule, prima facie case made out for waiver of pre-deposit.

[2013-TIOL-767-CESTAT-MUM](#)

State Bank Of India Vs CST (Dated: April 29, 2013)

ST – Applicant entering into agreement with Singapore company for providing Virtual Private Network (VPN) facility – as the data being retrieved or accessed by the applicant is from their own data centre which were maintained by them in India, USA & UK, prima facie it cannot be said that the applicant have received service of 'Online information and database access or retrieval' – applicant has made a case in their favour – Pre-deposit waived and stay granted: CESTAT [paras 6 & 7]

[Also see analysis of the Order](#)

[2013-TIOL-766-CESTAT-MAD](#)

M/s PVGT Freight Forwarders & Logistics Pvt Ltd Vs CST (Dated: January 2, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Non-inclusion of reimbursable charges - In view of the Delhi High Court striking down the relevant Rule, prima facie case made out for waiver of pre-deposit

2013-TIOL-761-CESTAT -DEL
M/s KPMG Vs CCE (Dated: April 8, 2013)
ST – CENVAT Credit on common area management, maintenance or repair service; employee mediclaim insurance; cab services; and car parking – eligible : The appellant/assessee is in the business of providing management consultancy services and had availed credit for various services claimed to be input services. Cenvat credit availed by the appellant for common area management, maintenance or repair service; employee mediclaim insurance; cab services; and car parking are eligible for the claim of Cenvat credit. The conclusion by the adjudicating authority to the contrary in the order under appeal is thus unsustainable and is accordingly quashed.
Also see analysis of the Order
2013-TIOL-758-CESTAT -MAD
M/s Hydro S&S Industries Ltd Vs CCE (Dated: December 14, 2012)
Central Excise – Stay/Dispensation of pre -deposit – CENVAT Credit of service tax paid on outward transportation of finished goods up to buyer's premises – Prima facie case for waiver of pre-deposit.
2013-TIOL-757-CESTAT -MUM
M/s JM Financial Services Pvt Ltd Vs CST (Dated: March 15, 2013)
ST - IPO financing fees, Processing fees and Recovery of common expenses from co - user of premises are not leviable to Service Tax under BAS or BSS category – Appeal allowed: CESTAT [para 9]
Also see analysis of the Order
2013-TIOL-755-CESTAT -AHM
M/s Central Warehousing Corporation Vs CST (Dated: January 28, 2013)
Service Tax – Appeal against penalty under Section 76 – Service Tax short payment pointed out by the audit was paid along with interest – All the conditions of Section 73(3) are satisfied – Penalty under Section 76 set aside.

[2013-TIOL-751-CESTAT-AHM](#)

M/s Avas Engineers Vs CCE (Dated: March 19, 2013)

Service Tax - Penalty under Section 76,77 and 78 - Appeal against penalties under Section 76,77 and 78 imposed by appellate authority - The original authority clearly held that the appellant had voluntarily paid almost 80% of the amount and balance amount before issuance of show cause notice - It is also to be noted that the appellant herein is a proprietary concern and could not have been aware about the intricacy of discharge of Service Tax liability within the time period - It is a fit case for invoking the provisions of Section 80 of Finance Act, 1994 - Penalties set aside.

[2013-TIOL-750-CESTAT-AHM](#)

M/s Raghuvir Exim Ltd Vs CCE (Dated: January 17, 2013)

Service Tax - Refund / drawback - Remand by Commissioner (Appeals) - Non-issuance of Show Cause notice for rejection of Refund Claim - Principles of natural Justice - The assessee should be informed about the reason for rejection of the claims which he could meet with or defend at the time of personal hearing. The adjudicating authority has not issued any show cause notice indicating the reasons on which the refund claims are sought to be rejected. Remanding the matter back to the adjudicating authority, by the first appellate authority for deciding the issue on merits after following the principles of natural justice is correct proposition of the law. The remand order of the first appellate authority is correct and legal. (Para 5)

[2013-TIOL-748-CESTAT-MUM](#)

M/s Fertiplant Engg Co Pvt Ltd Vs CCE (Dated: March 07, 2013)

ST - Appellant placing an advertisement for their machinery in a magazine published in the UK - department alleging that the appellant is liable to discharge ST under the category of 'Sale of space or time for advertisement' - s. 65(105)(zzzm) excludes sale of space for advertisement in "print media" which as per the Explanation means 'newspaper' - definition of 'newspaper' is wide enough to cover any periodical work and includes 'magazine': CESTAT

Magazine is also a newspaper as defined in Press & Registration of Books Act, 1867 - contention of Revenue that the magazine is mainly circulated amongst the people engaged in fertilizer industry and does not have any news value for general public and hence does not qualify as a 'newspaper' is incorrect as public connected with the fertilizer industry would include a large number of public such as fertilizer users, manufacturer of fertilizers, farmers, scientists and all others whoever is interested in that field - they are as much part of the general public as a nybody else: CESTAT

Revenue neutrality - even otherwise the transaction is revenue neutral as appellant could have taken CENVAT credit of ST paid on the transaction as promotion or

marketing of goods comes within the purview of Input Services defined in rule 2(l) of CCR, 2004 - strong *prima facie* in favour - Pre-deposit waived and stay granted: CESTAT [paras 5.1 & 5.2]

[Also see analysis of the Order](#)

[2013-TIOL-747-CESTAT-AHM](#)

M/s Sopariwala Exports Pvt Ltd Vs CCE (Dated: January 11, 2013)

Service Tax - Refund of service tax denied on the ground that the invoices issued by Courier do not show IEC No of service receiver - Since this is a rectifiable defect, matter remanded to provide an opportunity to the appellant.

Whether the appellant is eligible for refund in respect of export made prior to the date on which service was included in the Notification - The refund claim of service tax should be allowed, since on the date of filing claims, the requirement of notification is satisfied.

[2013-TIOL-743-CESTAT-MUM](#)

CCE Vs M/s Dujodwala Products Ltd (Dated: March 22, 2013)

Defects not removed, hence appeals dismissed by CESTAT - Revenue is at liberty to move an application for restoration of appeal as and when the defect is cured: CESTAT

[2013-TIOL-742-CESTAT-MUM](#)

CST Vs M/s ARC Associates (Dated: March 22, 2013)

Defects not removed, hence appeals dismissed by CESTAT - Revenue is at liberty to move an application for restoration of appeal as and when the defect is cured: CESTAT

[2013-TIOL-741-CESTAT-AHM](#)

M/s Shree Ghanshyam Enterprise Vs CCE (Dated: December 10, 2012)

Service Tax - Stay/Dispensation of pre-deposit - Manpower supply service - The appellant has been awarded contract by the Dairy for a specific job which is evident from the contract which is attached to the appeal memorandum - Prima facie case has been made out for waiver of pre-deposit.

[2013-TIOL-739-CESTAT-AHM](#)

Shri Dilip Parikh Vs CST (Dated: January 10, 2013)

Service Tax – Stay/Dispensation of pre-deposit – Renting of Immovable property service – Rent received by different co-owners of the building – Prima facie, co-owner is individually eligible for small scale exemption under Notification No 6/2005 ST and prima facie case made out for waiver of pre-deposit.

[2013-TIOL-734-CESTAT-MUM](#)

M/s Gmmco Ltd Vs CCE (Dated: March 15, 2013)

ST - Appellant is leasing out machinery/equipment and discharging VAT liability on the consideration received - in view of the Budget Speech of the Finance Minister and the Budget instructions issued by the CBEC Circular 29/02/2008 where it is clarified that if VAT is payable on the transaction, then Service Tax levy is not attracted, appellant has a strong prima facie case - transaction involved is "transfer of right to use" which is a deemed sale and not "supply of tangible goods for use service" - Pre-deposit waived and stay granted: CESTAT [paras 5.2, 5.3, 5.4 & 6]

[Also see analysis of the Order](#)

[2013-TIOL-733-CESTAT-AHM](#)

Mrs Vamini Nitin kumar Shah Vs CST (Dated: January 10, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Renting of Immovable property service - Rent received by different co-owners of the building - Prima facie, co-owner is individually eligible for small scale exemption under Notification No 6/2005 ST and prima facie case made out for waiver of pre-deposit.

[2013-TIOL-727-CESTAT-MUM](#)

Tata Consulting Engineers Ltd Vs CST (Dated: January 7, 2013)

ST - Services rendered to SEZ Units - no need to reverse CENVAT credit taken on inputs and input services used in or in relation to rendering of output services to a unit in SEZ or to a developer of SEZ for their authorized operations - Amendment to Rule 6 w.e.f 01/03/2011 given retrospective effect from 10/02/2006 by Finance Act, 2012 - adjudicating authority has completely failed to examine the claim of the appellant, the details of which were provided to him at the time of adjudication - even otherwise as per s. 2(m) of the SEZ Act, 2005, supplying goods, or providing services, from a unit in DTA to an SEZ unit or a SEZ developer is deemed as "export" and vide s. 50 of the Act, the provisions of SEZ Act shall prevail over the provisions of other enactments - viewed from this perspective also, appellants are rightly entitled to CENVAT credit on the inputs and input services - as held by Bombay High Court in Repro India Ltd. the provisions of rule 6(3)(b) of CCR are not attracted in case of exports as rule 6(6)(v) provides an exception in case of clearances of export - Order set aside and appeal allowed with consequential relief: CESTAT [paras 6, 6.1 & 7]

[Also see analysis of the Order](#)

[2013-TIOL-726-CESTAT-MAD](#)

M/s Siemens Ltd Vs CCE (Dated: January 1, 2013)

Service Tax – Stay/Dispensation of pre-deposit – Works contract service – Appellant manufacturing and supplying 'Electronic Security and Safety Systems to their customers - The appellant sold both manufactured goods and bought-out goods to their customers as evidenced by the relevant invoices - If that be so, the entire value will have to be kept out of the taxable value of "Works Contract "service as per Rule 2A of the Service Tax (De termination of Value) Rules 2006 – Appellant has made out a prima facie case for waiver of pre-deposit.

[2013-TIOL-722-CESTAT-MUM](#)

Gol Offshore Ltd Vs CST (Dated: March 25, 2013)

ST - Agreement into by the appellant with ONGC is for charter hiring of drilling units - compensation is paid to the appellant based on the number of days during which the vessel was on charter hire and even when the vessel was not used for drilling - similarly when drilling rigs were moved from one place to another, for the period in transit also hire charges were paid - such an activity merits classification under 'supply of tangible goods for use' service and not under 'mining service' - prima facie appellant liable to pay Service Tax - since issue of time bar is a question of fact as well as law, demand of Rs.5 crores for the normal period directed to be paid as pre-deposit: CESTAT [paras 5.1, 5.2 & 6]

[Also see analysis of the Order](#)

[2013-TIOL-721-CESTAT-MAD](#)

M/s Sima Engineering Constructions Vs CCE & ST (Dated: January 02, 2013)

Service Tax – Stay/Dispensation of pre-deposit – Construction of Residential Complexes for Tamil Nadu Police Housing Corporation – Prima facie case for waiver of pre-deposit – Stay granted.

[2013-TIOL-720-CESTAT-AHM](#)

M/s Gujarat Industrial Development Corporation Vs CCE (Dated: February 11, 2013)

Service Tax – Stay/Dispensation of pre-deposit – Maintenance or repair service – Amount collected for road maintenance, street light, water supply and drainage etc – Prima facie, the contention that the said charges form part of the annual rent or lease rent is not acceptable - The issue involved in this case is contentious one and needs to be gone into detail – Pre-deposit of Rs 15 lakhs ordered.

[2013-TIOL-715-CESTAT-MAD](#)

M/s ISS Integrated Facility Services Pvt Ltd Vs CST (Dated: December 5, 2012)

Service Tax – Stay/Dispensation of pre-deposit – Valuation – Reimbursable expenditure – In view of Delhi High Court striking down Rule 5 of the Service Tax (Determination of Value) Rules, 2006, prima facie, demand does not sustain – Pre-deposit waived.

[2013-TIOL-711-CESTAT-MUM](#)

Larsen And Toubro Grahak Sahakari Sansthan Maryadit Vs CST (Dated: March 26, 2013)

ST - Catering services provided by L & T Grahak Sahakari Sansthan Maryadit in the premises of L&T Ltd. - appellant is providing catering services at the behest of M/s L&T to their employees at the rates specified by L&T and payment for the same is made by L&T on monthly basis on the bills raised and in addition they are also compensated by way of subsidy for any loss incurred while rendering said service - it is clearly established that service is rendered to M/s L&T Ltd. only - appellant does not cease to be an 'outdoor caterer' merely because the services has been provided at the premises provided by the service recipient - merely because on a small portion of the consideration received, the appellant has discharged VAT liability, the transaction does not amount to one of sales - in any case, while computing service tax liability, abatement of 50% has been provided on gross consideration received which more than accounts for the cost of the goods sold while rendering the service - argument that transaction is one of sale of goods is prima facie not sustainable - prima facie the service rendered by the appellant amounts to 'outdoor catering service' and on the consideration received for rendering the service appellant liable to discharge ST liability: CESTAT

Financial difficulty - as for the plea that the appellant is incurring losses, amount declared as loss in the balance sheet is the amount reflecting excess expenditure over income - since this cost is reimbursed/recovered to/by the appellant by M/s L&T Ltd. year after year by way of subsidy, it is not the appellant who is bearing the cost but M/s L&T - plea of financial hardship is without any merits - Pre-deposit of 50% of the Service Tax demand confirmed for obtaining Stay: CESTAT

[Also see analysis of the Order](#)

[2013-TIOL-710-CESTAT-AHM](#)

M/s Zeenat Construction And Maintenance Vs CCE (Dated: December 10, 2012)

Service Tax - Maintenance or Repair Services - Appellant has not agitated the plea of eligibility of abatement of 67% before the Adjudicating Authority - Appellant directed to deposit Rs one lakh and matter remanded to the Adjudicating Authority to consider all the points afresh.

[2013-TIOL-704-CESTAT-MAD](#)

M/s Siemens Building Technologies Pvt Ltd Vs CCE (Dated: December 3, 2012)

Service Tax - Stay/Dispensation of pre-deposit - Demand of service tax under reverse charge on Scientific or Technical Consultancy service - Prima facie, it cannot be said that the applicant received services from Scientific or Technical Institution or Organisation - Also, in the event of applicant paying service tax, they can avail CENVAT Credit - Prima facie case has been made out for waiver of pre -deposit.

[2013-TIOL-703-CESTAT-MUM](#)

Transport Solution Group Vs CC (Dated: March 26, 2013)

ST - Rent-a-Cab service - So long as the person rents a cab either owned by him or cabs procured from elsewhere, the liability to pay service tax would arise - it is the date of knowledge of the activity by the department which is relevant for computing the time-limit - after appellant applied for registration in June, 2002, there are a number of correspondences exchanged between the department and appellant and the information was finally received by the department only in March, 2003 - inasmuch as since SCN was issued on 13 th October, 2003 i.e within a period of one year from date of knowledge, it cannot be alleged that the SCN is time barred - demand upheld and appeal dismissed: CESTAT [paras 5, 5.2, 5.3 & 6]

[Also see analysis of the Order](#)

2013-TIOL-702-CESTAT -KOL
M/s Manpasand Manpower Pvt Ltd Vs CST (Dated: April 5, 2013)
Service Tax - Manpower recruitment and supply agency service - Difference between the value shown in the ST 3 returns and the Profit and Loss Account - Appellant paid the differential service tax - Penalty - The difference is due to bonafide belief that statutory charges like EPF and ESI are not includable in the taxable value - Penalty under Section 78 is set aside - Penalty under Section 77 is upheld.

2013-TIOL-696-CESTAT -MUM
M/s Krishna Developers Vs CCE (Dated: January 10, 2013)
Oral communication of order of pre-deposit is not envisaged in law - no order has been issued as envisaged in s.37C of CEA, 1944 asking appellant to make pre-deposit - in such a scenario, dismissal of appeal for failing to comply with oral directions is not proper in law - matter remanded: CESTAT [paras 3.1 & 4]
Also see analysis of the Order
2013-TIOL-695-CESTAT -MAD
M/s Enmas Engineering Pvt Ltd Vs CCE (Dated: January 16, 2013)
Service Tax - Stay/dispensation of pre -deposit - Transactions with Associated Enterprises - Amendment made on 10.05.2008, by inserting an explanation under Section 67 of the Finance Act, 1994 has only prospective application - Prima facie case made out for waiver of pre-deposit.
2013-TIOL-694-CESTAT -AHM
CCE Vs M/s Inox India Ltd (Dated: January 21, 2013)
Central Excise - CENVAT - Input Service - CHA Services and C & F Agent services - Services of CHA and C & F Agents were received in respect of the goods which were sought to be exported. The services were received for the export of the goods. The assessee is eligible to avail cenvat credit on the service tax paid on CHA and C & F Agent services. (Para 5)

2013-TIOL-691-CESTAT-MUM
CCE & ST Vs M/s Bharat Conductors Pvt Ltd (Dated: January 22, 2013)
S. 35B of CEA, 1944 - Revenue Appeal dismissed by CESTAT because revenue involved is less than Rs.50,000/- : CESTAT [para 2]
2013-TIOL-689-CESTAT-AHM
M/s Euro Ceramics Ltd Vs CCE (Dated: March 18, 2013)
Service Tax – Renting of immovable property service – Penalty under Section 78 – Service Tax paid with interest before issue of Show Cause Notice – No case to impose penalty under Section 78 – Penalty vacated by invoking the provisions of Section 80 of the Finance Act, 1994.
2013-TIOL-688-CESTAT-MAD
Bharti Airtel Ltd Vs CST (Dated: January 16, 2013)
Service Tax - Stay/Dispensation of pre-deposit - Telecommunication Service - CENVAT Credit on towers & shelters, input services like insurance and security, banking, cab, catering services - Prima facie case made out for waiver of pre-deposit in view of the order of High Court of Bombay in similar case directing the Tribunal to hear the appeal without insisting on pre-deposit.
2013-TIOL-687-CESTAT-MAD
M/s Geodis Overseas Pvt Ltd Vs CST (Dated: January 22, 2013)
Service Tax - Stay/Dispensation of pre-deposit - Demand of service tax on ocean freight under Business Auxiliary Service - Prima facie case made out for waiver of pre-deposit - Denial of benefit of exemption to services rendered to SEZs on the ground that the services were not wholly consumed within the SEZ - Pre-deposit of Rs 25 lakhs ordered as the issue requires detailed examination.
2013-TIOL-686-CESTAT-AHM
M/s Kalpena Industries Ltd Vs CST (Dated: March 18, 2013)

Service Tax – Goods Transport Agency Service – Denial of benefit of abatement of 75% on the ground that the consignment notes issued did not have the declaration of non- availment of CENVAT Credit – In view of the certificate issued by the Transporter regarding non- availment of CENVAT Credit, abatement cannot be denied – Notification No 12/2003 ST is applicable only to the service provider and since the appellant is receiver of the service, the same is not applicable.

[2013-TIOL-681-CESTAT -MUM](#)

Neel Sidhi Enterprises Vs CST (Dated: January 24, 2013)

ST - Appellant constructing flats and entering into agreement of sale with prospective buyers - based on the communication from DG, Directorate of Service Tax they collected sums from prospective buyers as 'contingent liability' towards payment of ST but after clarification from Board on 29/01/2009, they returned the amounts to the buyers with interest - Department issuing notice u/s 73A(2) of FA, 1994 for recovery of ST - amount collected as 'contingent liability' cannot be treated as service tax *per se* - provisions of s.73A are not at all attracted to the case - Appeal allowed: CESTAT

ST - s. 73A of FA, 1994 - It was the DGST which issued the Circular dated 16/02/2006 saying that the Service Tax is required to be collected and, therefore, the appellant cannot be blamed for the same - nevertheless the appellant took the precaution of collecting it as 'contingent liability' and also made it clear that in case the outcome of judicial proceedings emerges in their favour, the amount would be refunded along with interest and subsequently when the matter was clarified the appellant returned the amounts along with interest - section 73A envisages two things, (1) the amount is not required to be collected and (2) the amount is collected as representing service tax - provisions of s. 73A are not at all attracted to the case - Appeal allowed - Stay application disposed of: CESTAT [paras 8 & 9]

[Also see analysis of the Order](#)

[2013-TIOL-679-CESTAT -AHM](#)

M/s Matrix Telecom Pvt Ltd Vs CCE (Dated: April 5, 2013)

Service Tax - Penalty - Service Tax under reverse charge mechanism paid after issue of Show Cause Notice - Penalty - Understandably, service tax paid on such services rendered would be available to the appellant themselves as CENVAT credit which can be utilized for discharge of any excise duty on the final goods manufactured and cleared by the appellant - During the period service tax liability under reverse charge mechanism was being disputed at various forums and attained finality, after the judgment of the High Court of Bombay in the case of Indian National Ship Owners Association - [2008-TIOL-633-HC-MUM-ST](#) - Penalty set aside.

[2013-TIOL-676-CESTAT -MUM](#)

Abhijit Travels Vs CCE (Dated: January 14, 2013)

All's well that ends well – CESTAT discharges SCN proposing to initiate contempt proceedings against Dy. Commissioner as direction of the Tribunal contained in order dated 11/10/2012 has been complied by refunding an amount of Rs.19,28,342/- to the appellant and the Dy. Commissioner has apologized for the delay in complying with the direction of the Tribunal – Miscellaneous application disposed of: CESTAT [paras 2 & 3]

[2013-TIOL-675-CESTAT-AHM](#)

M/s Ultratech Cement Ltd Vs CCE (Dated: February 12, 2013)

ST - Refund - Entire exercise of the Revenue is a non-starter inasmuch as it is settled law that the classification of the product or services cannot be done by the authorities at the recipient's end - revenue seeking to reclassify the services provided under a different head and deny refund in terms of notfn. 17/2009-ST is not in consonance with the judicial pronouncements - Appeal allowed: CESTAT [paras 7 & 8]

[Also see analysis of the Order](#)

[2013-TIOL-674-CESTAT-MUM](#)

Vasantrao Naik Shetkari Sahayata Trust Vs CCE & C (Dated: January 24, 2013)

ST - agreement has been entered by the appellant directly with the sugar factory for harvesting and cutting of sugarcane, and transportation and to get the work done they are engaging independent labour contractors - consideration for the services rendered were also received by the appellant – in the case referred of Shri Mouni Maharaj Sevabhavi Vishwasta Sanstha case ([2013-TIOL-190-CESTAT-MUM](#)), the sanstha was only collecting the consideration and crediting them to the accounts of the farmers/transporters – in that situation it was held that the sanstha was not providing any service relating to supply of manpower – facts obtaining in the present case are different and distinguishable – no reason to modify stay order – miscellaneous application dismissed and appellant directed to comply with stay order: CESTAT [paras 3 & 4]

[2013-TIOL-668-CESTAT-MUM](#)

M/s Bharat Petroleum Corporation Ltd Vs CCE (Dated: December 13, 2012)

Input Service - telephones installed at the residences of the officials are integrally connected with the business of the manufacture of final product of the appellant and the same is covered under Rule 2(l) of the CCR, 2004 - appellant entitled to avail CENVAT credit - appeal allowed with consequential relief: CESTAT [paras 5.1, 5.2 & 6]

[2013-TIOL-667-CESTAT-MUM](#)

Walchandnagar Industries Ltd Vs CCE (Dated: February 1, 2013)

ST - Technical services received from abroad - while discharging ST, appellant committed an error of not including the TDS deducted towards income tax in the value of taxable service - upon pointing out by CERA appellant paying the ST on the TDS amount of Rs.85,81,111/- and also interest thereon - SCN issued and equivalent penalty imposed - for imposition of penalty u/s 78 there should be mens rea - what is coming out is appellant made an error in computing the value and there is no intention to evade ST - penalty waived under the provisions of s.80 of the FA, 1994 - appeal allowed: CESTAT [para 6]

[2013-TIOL-663-CESTAT-DEL](#)

M/s Easy Bill Ltd Vs CCE (Dated: March 13, 2013)

Service Tax – Stay/Dispensation of pre-deposit – Demand of service tax under Franchisee service - Agents appointed by the appellant are not doing their own independent business in their own name but are raising invoices in the name of the appellants and are actually working for the appellant and are being paid by the appellant for such working done by the agents – Prima facie demand is not sustainable on merits as well as on limitation – Pre-deposit waived.

[2013-TIOL-661-CESTAT-MUM](#)

Belleza (India) Pvt Ltd Vs CCE (Dated: March 1, 2013)

ST - appellant contending that during the period in dispute the place was being run in the name of M/s Belleza and Shri Linesh Hatwar was the proprietor of the said firm and the duty liability should be on him and that the appellant had taken over the outlets from April, 2007 onwards - there is no dispute that during the period of dispute, the service was being provided under the name and style "Belleza" and even after April, 2007, the service continues in the same name and style - appellant has, therefore, not made a strong prima facie case for waiver - Pre-deposit ordered of 50% of duty/tax: CESTAT [para 3]

[2013-TIOL-659-CESTAT-AHM](#)

CCE Vs M/s Modern Petrofils (Dated: January 21, 2013)

Central Excise - CENVAT - Input Service Distributor - Input Service - Non-issue of invoice for distributing Credit of Service Tax paid - There is 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. (Para 3)

[2013-TIOL-656-CESTAT-AHM](#)

CCE Vs M/s Sopariwala Exports Pvt Ltd (Dated: January 15, 2013)

Service Tax - Refund - Service Tax paid on Goods Transport Agency services for transporting empty containers from ICD to the factory - Eligibility of - Notification No. 41/2007-ST, dated.6.10.2007 - The assessee is entitled for refund of the Service Tax paid on goods transport agency service received by them for bringing the empty containers in the factory premises, used for export of goods. (Para 6)

[2013-TIOL-654-CESTAT-DEL](#)

Bharti Airtel Ltd Vs CST (Dated: April 11, 2013)

Service Tax - Free Telephone service to employees and associates : Varied choice and options granted by Appellant, prima facie, demonstrate that the value of calls provided to employees and relatives were less than the market value and unaccounted. Such service provided was at the cost of Revenue. Had the call charges been valued and as per market value and disclosed in the accounts, Revenue would not have been affected. But that was not done by the appellant. Merely creating a fiction of no consideration received by the appellant in respect of the nature of free service provided by it, the appellant appears to have been immensely benefited by reduction of monetary package of remuneration to its eligible, employees, their relatives and employees of Bharti Group of companies. Such undisclosed benefit of appellant was at the cost of Revenue. The appellant failed in the course of hearing to satisfy that value of service were disclosed perquisite to its employees in its account and disclosed to Income tax Authority.

Keeping in view that Revenue was deprived of realising its legitimate dues and the questionable modus operandi followed by the appellant as well as irreparable injury caused to Revenue, as an interim measure the appellant is directed to deposit Rs . 80.00 (eighty) crores only within a period of four weeks and make compliance on 23.5.2013.

[Also see analysis of the Order](#)

[2013-TIOL-653-CESTAT-DEL](#)

M/s Mesco Airlines Ltd Vs CST (Dated: January 16, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Supply of Helicopters to State Governments for transportation of personnel - Demand of service tax under Supply of tangible goods service - Prima facie, it appears that the agreements are for transportation of personnel by air. This cannot be treated as a case where the helicopters are placed by the owner with crew or without crew, of the disposal of another person for a specified period and that person is free to operate the same, subject to terms & conditions, if any, specified. In these agreements the thrust is on transportation of personnel and keeping the helicopter in readiness for this purpose and the charges are also on the basis of flying hours except for some fixed monthly charges on the basis of minimum flying hours - Prima facie, the service is not taxable

under Supply of tangible goods service - Pre-deposit waived.

Demand of services tax on the service of Technical Inspection and Certification service received from outside India - No prima facie case made out for waiver of pre-deposit - Rs 8 lakhs ordered to be pre-deposited.

[2013-TIOL-646-CESTAT-MUM](#)

The Carpenters Vs CCE (Dated: January 30, 2013)

ST - A building which has already been completed and put to use does not need any completion or finishing services - completion and finishing services necessarily relate to an incomplete or unfinished building or civil structure - activities of paneling, tiling, painting etc. in respect of existing buildings *prima facie* comes under clause (d) and not clause (c) and, therefore, appellant is *prima facie* eligible for benefit of Notfn. 1/2006-ST - Pre-deposit waived of ST of Rs.4.74 crores & penalty/interest and Stay granted: CESTAT [paras 5.1 & 5.2]

[Also see analysis of the Order](#)

[2013-TIOL-645-CESTAT-MAD](#)

M/s Dhanalakshmi Engineering Works Vs CC, CE & ST (Dated: January 17, 2013)

Service Tax - Applicant took the plea that the service would fall under "Management, maintenance or repair service". Adj Authority confirmed the demand under Business Auxiliary Service " Commissioner (A) confirmed "Management, maintenance or repair service". - No Prima facie case for full waiver : The applicant filed this application for waiver of pre-deposit of service tax of Rs.21,66,255/- . The contention of the applicant is that the order of Commissioner (Appeals) is beyond the scope of the show-cause notice. He also contended the demand of tax on merit. The adjudicating authority confirmed the demand of service tax under the category of "Business Auxiliary Service" for the period 01.04.2004 to 31.07.2009. Commissioner (Appeals) after hearing the applicant modified the adjudication order insofar as, it would come within the scope of "Management, maintenance or repair service" and restricted the demand from 16.06.2005. It is found that the applicant took the plea that the entire nature of work is surface grinding of worn out cylinders in order to recondition/repair of worn - out cylinders. In reply to the show-cause notice the applicant stated, that alternatively their service can be classified as "Management, maintenance or repair service." The submission of the learned counsel on applicability of tax on merit would be looked into at the time of hearing. As such, the applicant has not made out a prima facie case for waiver of pre-deposit of the entire amount service tax, penalty and interest. Accordingly, the applicant is directed to pre-deposit a sum of Rs.5 lakhs (Rupees Five Lakhs only) within a period of six weeks.

[2013-TIOL-643-CESTAT-MUM](#)

Zaheerkhan B Khan Vs CST (Dated: February 08, 2013)

ST - Appellant entering into a tripartite agreement with his agents who would negotiate with the corporates on his behalf for promotion of their products by agreeing to model himself for advertisement films, TV commercials, still photography etc. - agents discharging ST liability on the whole amount of consideration received - no further ST to be paid by appellant - Appeal allowed with consequential relief: CESTAT [para 7]

[Also see analysis of the Order](#)

[2013-TIOL-642-CESTAT-MUM](#)

Emerald System Engineering Ltd Vs CCE (Dated: February 27, 2013)

ST - Services of 'Managing Distribution and Logistics' is more appropriately classifiable under 'Business Support Services' and not under 'Business Auxiliary Services' - even as per s. 65A of FA, 1994 definition which is more specific has to be preferred over the description of general nature for the purpose of classification: CESTAT [para 5.2]

[2013-TIOL-636-CESTAT-MUM](#)

TCS e-SERVE LTD Vs CST (Dated: March 01, 2013)

ST - *Citi Bank* group has entrusted the processing of banking transactions electronically to appellant - since computerized data processing is specifically excluded from scope of BAS, question of confirmation of demand under BAS *prima facie* does not arise - more over bulk of data processing is done for the bank's branches situated abroad and which would amount to export of service - strong case in favour - pre-deposit waived and stay granted: CESTAT [para 5.1]

[Also see analysis of the Order](#)

[2013-TIOL-635-CESTAT-MAD](#)

Computer Access (P) Ltd Vs CST (Dated: January 16, 2013)

Service Tax - maintenance of leased circuit for WAN Links - facilitation service or maintenance of the leased line - Predeposit of Rs 50 Lakhs Ordered: The applicant filed the stay application for waiver of predeposit of tax of Rs.2,14,65,932/- along with interest and penalty of equal amount. The issue in this case is as to whether the applicant was rendering the service of maintenance of the leased line and it should be covered under the category of 'Management, Maintenance or Repair service'. Revenue claims that they are engaged in the maintenance of leased line as evident from the work order. *Prima facie*, on a perusal of the work order, it is found that M/s. Wipro Ltd. will pay the charges in respect of "maintenance of leased line of types of 64 KBPS, 2 MBPS, whether it is intracity & intercity". It is also noted that maintenance charges will be paid to the applicant with effect from the month of commissioning the 10th link in that slab. It is further noted from the said work order that the applicant would provide technical-skilled persons for resolving the issues of circuit leased lines.

There is factual dispute on this issue in respect of its coverage under facilitation service or maintenance of the leased line. Hence the applicant failed to make out a prima facie case for waiver of predeposit of entire amount of tax and penalty. Accordingly, the applicant is directed to deposit a sum of Rs.50,00,000/- (Rupees fifty lakhs only) within a period of 6 weeks.

[2013-TIOL-631-CESTAT-DEL](#)

Spark Engg Pvt Ltd Vs CCE (Dated: January 10, 2013)

Service Tax - Refund - Service Tax paid on Goods Transport Agency services and Export Commission - Service Tax paid subsequent to export on demand - Eligibility of refund - Limitation - Notification No. 41/2007-ST, dated.6.10.2007 - In terms of Notification No.41/2007, the refund of service tax used in export of the final product is required to be made by an assessee on quarterly basis within 60 days from the end of the relevant quarter during which the said goods have been exported. The period prescribed by the notification, cannot be extended by courts and the Tribunal acting within the framework of the act/rules/notifications cannot introduce any provision of the same. There is no merit in the assessee's claim to extend the limitation period by artificially considering the date of deposits as the relevant date. Under section 11B, the Relevant date in case of goods exported out of India where refund of excise duty paid is available in respect of goods exported or in respect of materials used in the manufacture of such goods is the date on which the ship or aircraft in which the such goods are loaded leaves India. Refund claim hit by limitation, under this provision also. (Para 6 & 8)

[2013-TIOL-628-CESTAT-MAD](#)

M/s International Seaport Dredging Ltd Vs CST (Dated: January 22, 2013)

Service Tax - Dredging Sethusamudram and Dhamra Port - Pre-deposit of Rs. 2 crores Ordered: This is a case, where the liability to service tax has to be proved by the Revenue. In clarification including circulars and press notes issued at the time of introducing the entry for levy of tax, Government had made it clear that service tax was payable only on dredging done in any river, port, harbor, backwater or estuary. Any order to make pre-deposit on such an issue will disturb the balance of convenience drastically against the applicant. There is also a factual dispute on the issue as to whether any part of the canal can be considered as within the territorial waters or not.

In the case of Dhamra Port, the contract says that the purpose of the contract is site reclamation and not dredging. Therefore, the essential character of the contract as we can see at this stage is of site formation only. Under the category of Site formation service such activities are specifically mentioned and are also exempted. That being the case, it is not justifiable to bring them under a different category and demand tax.

In the case of maintenance and repair service, factual dispute is raised as to whether repair was done in Singapore or in India, which fact cannot be conclusively decided as sufficient evidence was not produced during the time of hearing.

In the matter of supply of manpower by a parent company to a subsidiary company, there are decisions wherein pre-deposit has been waived treating the present

appellant on a different footing is not justifiable.

Having considered the submissions of both sides in a very detailed manner, it is reasonable to call for re-deposit of Rs.2 crores (Rupees Two Crores only) within a period of six weeks.

[2013-TIOL-624-CESTAT-MUM](#)

M/s Venus Wire Industries Pvt Ltd Vs CCE (Dated: December 28, 2012)

Rule 2(l) of CCR, 2004 - Fumigation of export containers is an Input Service – fumigation expenses incurred are in the nature of packing expenses and since packing expenses are permitted for credit of tax under the CCR, 2004, credit is rightly availed – Appeal allowed: CESTAT [para 8]

[2013-TIOL-619-CESTAT-MAD](#)

CCE Vs M/s Faiveley Transport India Ltd (Dated: February 01, 2013)

Central Excise – CENVAT Credit - CENVAT credit on rent-a-cab service used for bringing the employees from residence to factory and back is admissible – Credit is also admissible on Air Travel agent service.

[2013-TIOL-618-CESTAT-MAD](#)

M/s Bharath Traders Vs CCE (Dated: January 07, 2013)

Service Tax – Condonation of delay – Condonation sought on the ground that the appeal papers were misplaced by the counsel – Not sufficient ground to condone the delay – Appeal rejected.

[2013-TIOL-617-CESTAT-MUM](#)

Shri Jarandeshwar Ssk Ltd Vs CST (Dated: March 13, 2013)

ST - Appellant is changing address for the third time and saying that they have not received the notice of hearing - they are misusing the opportunities of hearings and simply delaying the matter - Costs imposed of Rs.5000/-: CESTAT [para 3]

[2013-TIOL-616-CESTAT-MUM](#)

Hotel Amarjit Pvt Ltd Vs CC, CE & ST (Dated: February 18, 2013)

Sections : 65(41)/s.65(10) of FA, 1994 - Services rendered by mandap keepers as caterer would also be liable to service tax under the category of 'Mandap Keeper services' – food charges collected from customers includible in value for discharging ST – Pre-deposit ordered: CESTAT [paras 6.3 & 6.4]

The case laws cited by the appellant of the Karnataka High Court [Sky Gourmet Catering Pvt. Ltd.] is with reference to "Outdoor Catering Services" rendered in an aero plane and the other decision of Tribunal [Daspalla Hotels Ltd.] is in respect of evidence relied upon by the appellant with regard to VAT paid on the value of food and beverages sought to be taxed under 'Convention Services' –in the present case demand is not under any of these services but under 'Mandap Keeper services' and hence in view of the SC decision in Tamil Nadu Kalyana Mandapam Asscn., service tax liability is attracted in case the mandap keeper also performs catering services: CESTAT [para 6.3]

Limitation – Time bar aspect is an issue involving both, a question of fact and law and can be gone into at the time of final hearing of the appeal.

[Also see analysis of the Order](#)

[2013-TIOL-615-CESTAT-MUM](#)

M/s Hind Aluminium Industries Ltd Vs CST (Dated: November 12, 2012)

Notfn. 41/2007-ST - Refund - refund of Port services is admissible when said service is received and used by exporter for export of said goods - since goods in question were exported during July, 2008 to December, 2008 port services availed prior to July, 2008 cannot be treated as to have been used for export of the goods exported during the impugned period - lower authorities have rightly denied refund - appeal rejected: CESTAT [para 6]

[2013-TIOL-608-CESTAT-BANG](#)

M/s GE India Industrial Pvt Ltd Vs CST (Dated: January 23, 2013)

Central Excise - Utilisation of CENVAT Credit on GTA for payment of duty - Assessee entitled to take CENVAT credit on input services and utilise the same for payment of service tax on the GTA service during the relevant period.

[2013-TIOL-604-CESTAT-MUM](#)

Oberoi Mall Ltd Vs CST (Dated: January 14, 2013)

ST – Excise duty paid on Inputs and Service Tax paid on Input services used in the construction of immovable property can be taken and utilized for discharging ST

liability on the renting of such immovable property – prima facie case in favour – Stay granted from recovery of CENVAT Credit of Rs.6.48 Crores & penalty: CESTAT

[Also see analysis of the Order](#)

[2013-TIOL-602-CESTAT -BANG](#)

M/s Esskay Shipping (P) Ltd Vs CCE (Dated: January 29, 2013)

Service Tax paid before issue of SCN - No penalty - Sub-section 3 of Section 73 enables a person liable to pay service tax, to quantify the amount of service tax to be paid by him, and to pay it up under intimation to Central Excise Officer concerned. In such event, sub-section (3) restrains the Central Excise Officer from issuing any notice under sub-section (1) of section 3 to the assessee in respect of the amount of service tax paid by him. Penalty set aside.

[2013-TIOL-600-CESTAT -BANG](#)

M/s The Professional Couriers Vs CC, CE & ST (Dated: January 22, 2013)

Service Tax and interest paid before issue of SCN - No penalty - Sub-sec. (3) of Section 73 of the Finance Act, 1994 categorically states, after the payment of service tax and interest is made and the said information is furnished to the authorities, then the authorities shall not serve any notice under sub-sec. (1) in respect of the amount so paid. Therefore, authorities have no authority to initiate proceedings for recovery of penalty under Section 76 of the Act.

[2013-TIOL-599-CESTAT -MUM](#)

M/s IDAA Infrastructure Pvt Ltd Vs CST (Dated: November 23, 2012)

ST - Appellant were engaged by NHAI for extension and improvement of NH no. 8 on BOT basis – for activity undertaken they were permitted to collect Toll charges and compensation of the cost incurred by them for expansion and improvements – ST demand of Rs.20.23 crores confirmed on ground that activity is BAS – appellant contending that Toll charges were collected for themselves and not on behalf of NHAI – Board has clarified vide Circular no. 152/3/2012-ST dated 22.02.2012 that where Special Purpose Vehicle is formed under BOT arrangement concessionaire cannot be considered as an agent of NHAI – Prima facie such toll collection is not covered under any taxable service – strong case made for grant of stay – Unconditional waiver from pre-deposit granted and recovery Stayed: CESTAT [paras 5.2]

[2013-TIOL-595-CESTAT -BANG](#)

M/s Sap India (P) Ltd Vs CCE (Dated: December 19, 2012)

Stay-Service Tax-classification of service - If a person is simply selling a product manufactured by another or licensing software developed by another, he cannot prima facie be considered as a franchisee.

Payment for licensing of software and for continued support for updates and payments for use of licensed software does not involve any service to consider it as franchisee service - prima facie stage, no reason to ask for any pre-deposit of the dues arising from the impugned order for admission of the appeal. Therefore, waiver of pre-deposit is granted for admission of appeal and collection of dues is stayed during the pendency of the appeal.

[Also see analysis of the Order](#)

[2013-TIOL-594-CESTAT-MAD](#)

S Kadirvel Vs CCE & ST (Dated: December 10, 2012)

Service Tax - Stay/Dispensation of pre-deposit - Construction of residential complex service - Appellant constructed quarters for Tamil Nadu Police Housing Corporation Ltd - Prima facie case made out for waiver of pre-deposit as the houses that were constructed should be considered to be in personal use of the State Government.

[2013-TIOL-593-CESTAT-MAD](#)

M/s SRC Projects Pvt Ltd Vs CCE (Dated: December 3, 2012)

Service Tax - Stay/Dispensation of pre-deposit - Demand of service tax under " Site Formation Service" - Applicant claiming classification under " Commercial or Industrial Construction service and claiming abatement of 67% - Prima facie, excavation of earth and back filling work are taxable under Site Formation service and pre-deposit ordered.

Commercial or Industrial Construction Service - Prima facie, the service provider is not required to include cost of free supplied materials in the taxable value - Pre-deposit waived.

[2013-TIOL-587-CESTAT-MUM](#)

Endurance Technologies Pvt Ltd Vs CCE (Dated: January 16, 2013)

CENVAT - Input Service - Rule 2(1) of CCR, 2004 - Annual day function celebrated by appellant by inviting employees and their families is an integral part of business activity - Mandap keeper service is an Input service - Appeal allowed with consequential relief: CESTAT [paras 7 & 8]

[2013-TIOL-586-CESTAT-MUM](#)

IDAA Infrastructure Pvt Ltd Vs CST (Dated: March 13, 2013)

ST - Construction of Roads on BOT basis and collecting toll - not liable to ST under BAS - in spite of clear instructions issued by the Board vide Circular 152/3/2012-ST dated 22/02/2012, which are binding on the departmental officers, contrary view has been taken by the adjudicating authority for reasons best known only to him - neither in the SCN or the order is there any proposal to classify the service under any of the sub-clauses of BAS definition - non-specification of charge is a gross violation of the principles of natural justice and on that ground alone SCN and impugned orders are liable to be set aside - Appeals allowed with consequential relief: CESTAT [paras 5.4, 5.5, 5.6 & 6]

[Also see analysis of the Order](#)

[2013-TIOL-585-CESTAT-DEL](#)

Institute Of Clinical Research (India) Vs CST (Dated: February 19, 2013)

Service Tax – Commercial Training or Coaching Centre– Matter needs to be remanded to the Adjudicating Authority to re-examine the allegations in the Show Cause Notice with the defence reply and the evidence on record following the guidelines of Apex Court in [\(2010-TIOL-37-SC-IT-LB\)](#)

There is no finding of the Commissioner as to whether this plea of the appellant on suppression is correct and if so, whether in view of this, the Appellant can be said to have suppressed the relevant information from the department so as to invoke extended limitation period under proviso to Section 73(1) of Finance Act, 1994 and also imposition of penalty under Section 78.

[2013-TIOL-580-CESTAT-DEL](#)

M/s Jubilant Life Sciences Ltd Vs CCE (Dated: October 5, 2012)

ST - Services relating to the Foreign Currency Convertible Bond (FCCB) - issue of FCCB and underwriting of the issue was an activity undertaken outside India - J.P. Morgan Securities Ltd., U.K. was acting as the Lead Manager and were also the underwriters to guarantee full subscription for the issue - In the case of "Banking and Financial Services", service tax becomes payable based on the location of the recipient of the service viz. appellant and which is in India - In the case of Underwriting, Service tax becomes payable only if the service is performed in India – there is no merit in the Revenue agreement that the service of Underwriting has to be necessarily provided by merchant bankers – also the argument that providing Underwriting Service is incidental to the services rendered as a Lead Manager to the issue cannot be agreed to - This is basically because the latter involves basically organizing an event viz. issue of the FCCBs and the former involves financial risk to the underwriters and the two matters are totally different in nature – such a contract cannot be

considered as a whole and cannot be classified considering it as a single service and subjected it to tax – moreover the services are distinct in nature and the contract lays down the services as distinct services with separate remuneration fixed for the two services - if at all it is to be considered as one single bundle, Revenue contention that the dominant nature of service is that of Lead Manager's service cannot be agreed since JPMS is earning a higher commission by underwriting the issue taking the risk involved – since the issue was wholly subscribed by JPMS, the Lead Manager service was a minimal part of the contract in this particular case - further "Underwriting Service" is specified in a sub-clause of section 65 (105) which occurs earlier than the sub-clause in which Lead Manager's Service occurs - So going by the criterion laid down in Section 65A (c) of Finance Act, 1994, the service will get classified under "Underwriting Services" – Held - "Underwriting Service" rendered by JPMS to JLSL is distinct from the Lead Manager service provided - Since the underwriter service is to be subjected to tax under Section 66A of Finance Act 1994 taking into consideration the place of performance as per Rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 and since in this case Underwriting was done outside India, there is no reason seen to tax the impugned service – appeal allowed of assessee-appellant and that of Revenue rejected: CESTAT [para 13]

Limitation – appellant also has a very strong case on the issue of time bar because they had placed the entire matter before their jurisdictional officers who audited their record and they had initially opined that the tax is payable only on services relating to Lead Manager Service and the same was paid and such payment was reported in the relevant ST-3 returns. [para 14]

Taxability of services relating to the Foreign Currency Convertible Bond (FCCB) which happened prior to 18/04/2006 needs no further examination – prior to this date no liability arises and this has been settled by High Court and affirmed by the Supreme Court and CBEC has also issued instructions. [para 2]

[Also see analysis of the Order](#)

[2013-TIOL-579-CESTAT-AHM](#)

M/s Gujarat Sidhee Cement Ltd Vs CCE (Dated: November 8, 2012)

Central Excise - CENVAT - Input Service - Invoice does not contain particulars of service received - Services engaged for post clearance activities of excisable goods - The adjudicating authority has denied the service tax only on the ground that there are procedural lapses and the tax invoices do not contain all the particulars. These are all rectifiable errors and if they are rectified, the same can be allowed subject to the condition that the assessee is eligible to avail such cenvat credit. As regards the invoices in the name of ISD, credit should not be denied to the assessee. Hence, matter remanded for reconsideration by the adjudicating authority. As regards the cenvat credit availed on the service tax paid by the CHAs, the same is eligible as input credit. (Para 6)

[2013-TIOL-575-CESTAT-MUM](#)

Central Railway Vs CCE & CC (Dated: February 27, 2013)

ST - Indian Railways though part of the Union Government is liable to pay Service Tax in case the activities undertaken by them fall within the definition of taxable services - appellant M/s Central Railways, are liable to discharge Service Tax liability on the

services rendered by them – ST liability for the normal period of limitation is definitely sustainable – Pre-deposit ordered of Rs.25 lakhs for obtaining Stay: CESTAT [paras 5.1, 5.2 & 5.5]

Contention that Chapter V of the Finance Act, 1994 does not define the 'person' liable to pay Service Tax and same is defined only in Rule 2(d) of the Service Tax Rules, 1994, is also not correct because as per Section 68(1) of the Finance Act, 1994, every person providing taxable service to any person shall pay Service Tax at the rate specified under Section 66 in such manner and within such period as may be prescribed – rule has been approved and has the force of law – submission made by appellant is not sustainable; CESTAT [para 5.3]

[Also see analysis of the Order](#)

[2013-TIOL-569-CESTAT -MUM](#)

M/s Spanco Bpo Service Ltd Vs CST (Dated: March 21, 2013)

Prayer of Appellant to recover the ST in installments turned down by adjudicating authority - since the order has not been passed u/s 73 of FA, 1994, appeal not maintainable: CESTAT [paras 10 & 11]

[2013-TIOL-567-CESTAT -MUM](#)

Crisil Ltd Vs CCE (Dated: November 19, 2012)

ST – appellant has been paying Service Tax w.e.f. 16/08/2002 on the advisory services provided to clients under the category of 'Banking and Other Financial Services' and department has accepted the same – in this circumstance, it is not understood as to how for the previous period the department can demand Service Tax on the very same activity under the category of 'Management Consultancy Services' – from the agreements entered into with their clients it is seen that feasibility study of highway projects or study of excise duty structure of the textile sector or business valuation and revaluation of assets etc. do not come under the category of developing or upgrading any working system in an organization – prima facie appellant has made out a strong case for unconditional waiver of pre-deposit – Stay granted: CESTAT [paras 5 & 6]

[2013-TIOL-566-CESTAT -MUM](#)

M/s Vodafone Essar Cellular Ltd VS CCE (Dated: March 12, 2013)

ST – Your customer's customer is not your customer – When a service is rendered to a third party at the behest of your customer, the service recipient is your customer and not the third party – Appellant agreeing to provide telecom services to customer of foreign service provider while he is in India using appellant's telecom network – service recipient is the foreign telecom service provider and not the subscriber of the foreign telecom service provider who is roaming in India - such a service transaction

constitutes export under the Export of Service Rules, 2005 – Rebate permissible – Appeals allowed with consequential relief: CESTAT [paras 5.1, 5.2, 5.3, 5.4 & 6]

[Also see analysis of the Order](#)

[2013-TIOL-562-CESTAT -MAD](#)

CCE & ST Vs M/s Sri C Govindasamy (Dated: January 11, 2013)

Service Tax – Real Estate Agent Service – Respondent received commission for procuring land for the mines for Madras Cement - After detection by the audit, the respondent deposited the entire tax amount of Rs.8,31,970/- along with interest – No error in the order of Commissioner (Appeals) setting aside the penalty by invoking provisions of Section 80 of the Finance Act, 1994.

[2013-TIOL-558-CESTAT -MUM](#)

M/s Standard Chartered Bank Vs CST (Dated: February 21, 2013)

Commissioner of Service Tax, Mumbai and officers subordinate to him are Central Excise Officers duly empowered to assess and collect service tax within their jurisdiction - s.83A envisages adjudication of not only penalty but also determination of ST liability and interest thereon - Chief Commissioner of CE can assign adjudication of ST cases to any CE officer within his jurisdiction: CESTAT

[Also see analysis of the Order](#)

[2013-TIOL-557-CESTAT -MUM](#)

M/s Mahindra UGINE Steel Co Ltd Vs CCE (Dated: November 15, 2012)

Rule 2(1) of CCR, 2004 - CENVAT credit taken in March 2009 of ST paid on construction of residential quarters/hostels for employees - during the period when credit was taken the Tribunal decision in Manikgarh Cement - ([2008-TIOL-133-CESTAT -MUM](#)) was holding the field inasmuch such service was held to be an Input service - appellant was under the bonafide belief that they were entitled to credit - later Bombay High Court reversed this decision in the year 2010 - ([2010-TIOL-720-HC-MUM-ST](#)) - under the circumstances appellant has made a case on limitation - pre-deposit waived and stay granted: CESTAT [para 5]

[2013-TIOL-547-CESTAT -MUM](#)

M/s Royal Electricals Vs CCE-I (Dated: January 17, 2013)

ST – Lower appellate authority has not passed any Stay order but directed the appellant to make pre-deposit at the time of personal hearing – any order directing the party to pay any amount should be in writing and has to be tendered as per the provisions of s.37C of the CEA, 1944 – Pre-deposit ordered and matter remanded: CESTAT [para 6.1] Appellant has accepted partial tax liability under the category of Erection, Commissioning and Installation Services on account of installation of lights, transformers etc. they have not made out a prima facie case for complete waiver of pre-deposit of adjudged dues – pre-deposit ordered of Rs.5 lakhs – on compliance matter to be heard afresh by lower appellate authority – appeal allowed by way of remand – Stay application disposed of: CESTAT [paras 6.2 & 7] Laying of cables on the roadside as per the works awarded by M/s MIDC is not a taxable activity as per Board Circular 123/05/2010-TRU dated 24.05.2010. [para 3

[Also see analysis of the Order](#)

[2013-TIOL-546-CESTAT-MUM](#)

Welspun Maxsteel Ltd Vs CCE (Dated: September 28, 2012)

Rule 2(1) of CCR, 2004 – Mobile phones given to employees – ST paid on mobile bill is an Input service – issue no longer res integra in view of Bombay HC decision in Ultratech Cement Ltd. - ([2010-TIOL-745-HC-MUM-ST](#)) – any service which has nexus with business activity whether it is manufacturing or rendering service has to be treated as 'input service' – appeal allowed with consequential relief: CESTAT [para 4]

[2013-TIOL-543-CESTAT-MUM](#)

Tech Mahindra Ltd Vs CCE (Dated : March 7, 2013)

Rule 5 of CCR, 2004 - Onsite services rendered abroad - CENVAT credit refund ineligible prior to 27 th February, 2010 as the same does not constitute exports as defined in Rule 3(2) of Export of Services Rules, 2005 – appellant's subsidiaries located outside India are independent entities and they are not their agents as the agreements clearly evidences this fact – it cannot be said that onsite services provided by subsidiary have been rendered from India to the appellant's customers abroad – first condition in rule 3(2) that service should be provided from India to constitute export is not satisfied – from the nature of onsite activities provided by the subsidiaries viz. maintenance, testing, removal of defects etc. of systems, it is obvious that the same has to be done at the site where the systems are located and they cannot be performed in or provided from India – for the period post 27/02/2010, the only condition required to be satisfied to constitute export of service is that payment for such services should be received by the service provider in convertible foreign exchange and there is not dispute on this count – even if the service is rendered from a place outside India, so long as the consideration is received in convertible foreign exchange, the transaction is treated as export – the rule does not differentiate between "onsite services" and "offsite services" – there cannot be any denial of refund claims filed by the appellant for the period after 27/02/2010 – in the matter of CENVAT credit denied on ground of non-mentioning of PAN based registration in input service invoices and premises in respect of which ST paid on 'renting of immovable property' but premises not included initially in centralized registration, jurisdictional AC/DC to cause verification and decide accordingly – alternate plea to treat claim

under s.11B of CEA, 1944 is without any logic as the onsite service is held as not constituting export – Appeal disposed of: CESTAT [para 6]

[Also see analysis of the Order](#)

[2013-TIOL-542-CESTAT -KOL](#)

CST Vs M/s Sawatri Udyog (Dated : February 20, 2013)

Service Tax - Refund - Limitation - Relevant dated - Reasoning advanced by the Commissioner (Appeals) in holding that the refund claim filed on 17.04.2009 for the amount of service tax paid on 24.02.2008, was not time-barred, is in accordance with law. Section 11B of the Central Excise Act, 1944 applicable to service tax refund by virtue of Section 83 of the Finance Act, 1994, stipulates that all refund claims need to be filed within a period of one year from the 'relevant date'. The 'relevant date' has been defined under the said Section 11B of the Central Excise Act, 1944, wherein, inter alia, it is prescribed that the period of one year be reckoned from the date of payment of duty.

GTA service - The fact whether the Respondent had availed the services of truck owners, lorry drivers etc., or from GTA against consignment notes, needs verification - Matter remanded.

[2013-TIOL-535-CESTAT-MUM](#)

K Raheja Real Estate Services Pvt Ltd Vs CCE (Dated : February 20, 2013)

ST - Recruiting staff and supplying them to the group companies to deal with the activities undertaken by the group companies - such an activity does not, *prima facie*, come under the purview of the Business Auxiliary services – Stay granted from pre-deposit of Rs.8.35 Crores: CESTAT [para 5.1]

[Also see analysis of the Order](#)

[2013-TIOL-534-CESTAT-AHM](#)

M/s Vihar Aahar Pvt Ltd Vs CST (Dated: October 31, 2012)

Service Tax – Demand of service tax under “ outdoor catering service” – Commissioner of Ahmedabad -I has no jurisdiction to issue Show Cause Notice in respect of services rendered in other Commissionerates – Demand of service tax in respect of other Commissionerates is set aside.

Demand in respect of Ahmedabad I Commissionera te – Matter remanded as for re-quantification to demand as the appellant's claim of selling the biscuits, namkin etc has been accepted by the adjudicating authority, but he has not given any due

weightage to such submission and for calculation of gross value of tax liability.

[2013-TIOL-529-CESTAT-MUM](#)

Ultratech Cement Ltd Vs CCE (Dated: February 6, 2013)

ST - Work order given by appellant to the transporters clearly indicates that it is for loading and transportation of clinkers and rate for transportation is far higher than that for loading - loading and unloading is incidental and, therefore, the predominant and essential nature of service is transportation and not 'Cargo Handling' - appellant to discharge ST under GTA services - benefit of notification 34/2004-ST applies when the ST liability is discharged by the transporters themselves and the transportation charges for the individual consignments is less than Rs. 750/- - In the present case, the agreement is not for transportation of individual consignments but for transportation of 90,000 tonnes of cargo over a period of time and thus, there is no individual consignment for transportation of which, the amount is paid - In view of this the appellant does not appear to be eligible for the benefit of the said notification: CESTAT [para 4.2]

Limitation - even though the facts were noticed by the Audit in October, 2007 and the appellant was asked to furnish copies of work orders and amounts paid to transporters, same was submitted only in December, 2009 and January, 2010 and the SCN was issued on March, 2010 - In any case, demand for the period October 2008 to December 2009 is within the normal period of time - time bar is a question of fact and law and the same can be considered only at the time of final disposal - Pre-deposit ordered of 50% of ST demand of Rs.13,51,518/- for obtaining Stay: CESTAT [paras 4.1 & 5]

[Also see analysis of the Order](#)

[2013-TIOL-528-CESTAT-KOL](#)

M/s Eldyne Electro Systems Pvt Ltd Vs CST (Dated: August 21, 2012)

Service Tax - Stay/Dispensation of pre-deposit - Demand of service tax on commission received for promoting the sale of products manufactured by a foreign company - Prima facie, no service tax is attracted as it amount to export of service in terms of Export of Service Rules, 2005 - Pre-deposit waived.

[2013-TIOL-525-CESTAT-AHM](#)

CCE Vs M/s Paras Motors Mfg Co (Dated: February 12, 2013)

Central Excise - CENVAT Credit of service tax paid on commission paid to commission agents - Credit is not admissible in view of the High Court judgement in case of Cadila Healthcare Ltd - However, no case to impose equal penalty under Section 11AC in

view of the bonafide belief of the assessee that credit is admissible and in view of some decisions in favour of them – Penalty set aside.

[2013-TIOL-524-CESTAT-AHM](#)

M/s Piramal Glass Ltd Vs CCE (Dated: March 12, 2012)

Central Excise - CENVAT - Input Service - Services used at Windmill located away from factory - Eligibility of input credit - Stay / dispensation of pre-deposit - Credit of input services at the windmills site is not eligible for availment of CENVAT Credit. The question of limitation is a mixed question of facts and law which needs to be considered at the time of final disposal of appeal. Prima facie, no case made out for waiver of pre -deposit. (Para 5)

[2013-TIOL-523-CESTAT-MAD](#)

M/s Rane Engine Valves Ltd Vs CCE (Dated: August 13, 2012)

Central Excise – CENVAT Credit – Rent-a-cab service – Penalty – Assessee is not entitled for CENVAT Credit on the amount recovered from the employees - As the issue involved is interpretation of the provisions, penalty is not warranted - Both adjudicating authority and the appellants shall calculate the amount deniable and thereafter the appellant shall pay the amount deniable alongwith interest.

[2013-TIOL-521-CESTAT-MUM](#)

Saj Test Plant P Ltd Vs CCE (Dated: January 7, 2013)

ST - Training courses for end users conducted by Manufacturer – service is not provided by applicant as a Commercial training and Coaching institute - prima facie not liable to ST under 'Commercial Training & Coaching Service' as training programme is not open to everybody but limited to customers only – pre-deposit waived and stay granted: CESTAT [para 2]

[2013-TIOL-516-CESTAT-AHM](#)

M/s Aakash The Place To Celebrate Vs CST (Dated: January 30, 2013)

ST - Appellant, a Mandap keeper collecting advance from customers inclusive of service tax and depositing ST - party plot sealed by Municipal corporation and appellant returning the booking amount and ST to customers - in such cases, refund is governed not in terms of s.11B of CEA, 1944 but rule 6(3) of STR, 1994 - appellant can avail the credit of such excess Service Tax paid by him for discharge of Service Tax liability which may arise subsequently having re-started his business as Mandap

Keeper services as he has won the case in the High Court and the sealing has been lifted - Order of lower authorities set aside and appeal allowed: CESTAT [paras 8, 9 & 10]

[Also see analysis of the Order](#)

[2013-TIOL-515-CESTAT-AHM](#)

M/s Vishal Engineers Vs CCE (Dated: September 21, 2012)

Service Tax - Man power recruitment/supply agency services - Demand - Penalty - Ambiguity in adjudication order - Adjustment of excess duty paid - There was no need for the Commissioner to mention the amount of excess paid in the order portion if he has not allowed the adjustment of amount paid in excess towards short payment. In the absence of any specific observation not allowing the adjustment, the obvious conclusion is that the excess payment has been adjusted towards short payment. As the facts in the case of the other assessee are same and the orders have been passed on the same day, differential treatment between the two assessees, in similar circumstances, cannot be sustained. (Para 8 & 9)

[2013-TIOL-509-CESTAT-AHM](#)

M/s Gujarat Reclaim & Rubber Products Ltd Vs CCE (Dated: October 12, 2012)

Central Excise - CENVAT - Input Service - Management Consultancy Services - Management consultancy services has been utilised by the assessee to conduct market research and customers credit rating in international market to improve their market abroad. Credit rating of customers is relatable to sales promotion and business of manufacture. The activity is specifically included in the definition of input service and therefore input credit cannot be denied. (Para 4)

[2013-TIOL-508-CESTAT-AHM](#)

CCE Vs M/s Gujarat Flurochemicals Ltd (Dated: January 15, 2013)

Central Excise - CENVAT - Input Service - Insurance to employees - The assessee is eligible to avail CENVAT Credit of Service Tax paid on the services rendered by insurance company on the group insurance taken by them for their employees. (Para 4)

[2013-TIOL-507-CESTAT-DEL](#)

M/s Bellset Entertainment Pvt Ltd Vs CST (Dated: December 27, 2012)

Service Tax - Stay/dispensation of pre -deposit - Exemption under Notification no 16/2002 ST, which exempted the services provided to Unicef denied on the ground that the appellant did not provide the services directly to the Unicef , but provided to M/s Lintas who had further provided the services to Unicef - Prima facie case has been made out for waiver of pre-deposit as the exemption is for the services provided by any person to Unicef.

Demand of service tax on service tax on the appellant who provided services to main service provider who discharged service tax on the entire amount received from the client - Prima facie case has been made out for waiver of pre-deposit.

[2013-TIOL-506-CESTAT -DEL](#)

M/s Amrita Mouldings Pvt Ltd Vs CCE (Dated: December 24, 2012)

Service Tax - Stay/Dispensation of pre-deposit - Goods Transport Agency Service - It is the consignor or consignee who is liable to pay freight is liable to pay service tax under Notification No 35/2004 ST - In the instant case, prima-facie it is the consignor, M/s Reliance Industries Ltd. who are liable to pay the freight as it is they who have engaged the transporter - Rule 2(1)(d)(v) of the Service Tax Rules, 1994 - Prima facie case made out for waiver of pre-deposit.

[2013-TIOL-500-CESTAT -MUM](#)

The Executive Engineer Water Resources Department Vs CCE & CC (Dated: November 19, 2012)

ST – Erection of sluice gates in agricultural dams constructed by various corporations – Chief Engineer, Water Resources Department, Govt. of Maharashtra is not a commissioning and installation agency as they do not undertake these activities for anybody else except themselves – erection, commissioning and installation services should be in relation to plant, machinery, equipment or structures – sluice gates for agricultural dam cannot be considered as plant and machinery etc. as they are in the nature of infrastructural construction catering to the needs of agriculture and are excluded from the purview of ST both under Commercial & Industrial Construction Services and Works Contract Services – Prima facie strong case in favour – Pre-deposit of Rs. 4.65 Crores ST demand waived and stay granted: CESTAT [paras 5 & 6]

[Also see analysis of the Order](#)

[2013-TIOL-499-CESTAT -AHM](#)

M/s Synefra Engineering And Construction Ltd Vs CCE (Dated: January 17, 2013)

Refund – Notfn. No. 9/2009-ST dated 3.3.2009 - clause 2(f) provides for condonation of delay in filing refund claim - a liberal approach was required - action of the Assistant Commissioner without giving an opportunity to the appellant to explain the delay in rejecting the refund claim on the ground of delay cannot be sustained – Matter remanded to consider matter from angle of sufficiency of documentary

evidences: CESTAT [para 9]
2013-TIOL-497-CESTAT-AHM
M/s Endeka Ceramics India Pvt Ltd Vs CCE (Dated: December 20, 2012)
Service Tax - Foreign service provider - Consulting Engineer Service - Demand - Amounts paid before issue of Show Cause Notice - Penalty - The Assistant Commissioner had visited the unit before the commercial operations had started and advised the assessee to pay Service Tax which was readily accepted. Further, the assessee did not have qualified staff and they paid the service tax after the amounts were paid by them for the services received and discharged the liability in full. Having regard to these facts and the fact that assessee is eligible for cenvat credit, provisions of Section 73(3) is applicable and no show cause notice should have been issued. Hence, the penalty imposed cannot be sustained and is set aside. (Para 6)
2013-TIOL-494-CESTAT-DEL
M/s Sercon India Pvt Ltd Vs CST (Dated: February 5, 2013)
Service Tax – Stay/Dispensation of pre-deposit – Valuation – Inclusion of expenditure reimbursed - The expenses incurred were directly allocable to generate the service provided and no way can be held to be avoidable to call the same reimbursable for incremental value addition to the service - It appears that revenue lifted corporate veil to go inside the transactions for ascertaining the truth behind the operation. The facts and circumstances of the case suggest that the appellant has adopted a novel way of splitting the consideration with nomenclature of reimbursement of expenses - Deliberate splitting is not possible to be ruled out when splitting is not intended by law - Once splitting is attributable to a motive, the appellant cannot get any shelter under the purview of law – Pre-deposit ordered.
2013-TIOL-490-CESTAT-AHM
CST Vs M/s Krishna Communication (Dated: February 4, 2013)
Finance Act - 75, 77 - Whether there can be one to one co -relation in availing of the CENVAT Credit of the input service to the provision of output service - Whether proportional credit on the amount of bad debts written off by the assessee is liable to be reversed - Whether there is any provision in the CENVAT Credit rule to deny proportional credit on the inputs, which were used in providing the output service on which recovery is pending - Whether utilization of such CENVAT credit is wrong and warrants imposition of penalty.
2013-TIOL-489-CESTAT-AHM

M/s Karnavati Club Ltd Vs CST (Dated: January 29, 2013)

Central Excise Act, 1944 - Section 12B, 12C - Finance Act, 1994 - Sections 66, 67, 83, 84 - Whether the 'members of the Mandap Keeper' and 'Mandap Keeper' can be considered as separate entity for the purpose of levying service tax - Whether service tax can be imposed, if the facility of 'mandap' is provided to its own members - Whether when the High Court on the application of the assessee has already held that the club and the members are not separate, is it still required for the assessee to produce any other evidence in support of non-passing of Service Tax liability to pass the test of unjust enrichment - Whether the 'Mandap keeper' service provider can be unjustly enriched on claiming the refund from self, although the members are not separate from the club - Whether services rendered to self can be equated with the services rendered to a client or customer.

[2013-TIOL-488-CESTAT-AHM](#)

M/s Projects And Development India Ltd Vs CCE (Dated: December 14, 2012)

Service Tax - Condonation of delay - Lower appellate authority had not condoned the delay of 10 days in filing the appeal - Delay of 10 days should have been condoned by the appellate authority - Such dismissal is not in consonance of the law as has been settled by the apex court in case of Improvement Trust, Ludhiana Vs . Ujagar Singh & Ors - ([2010-TIOL-46-SC-LMT](#)) - Matter remanded to the appellate authority to decide the case afresh.

[2013-TIOL-486-CESTAT-AHM](#)

M/s Kandla Earth Movers Vs CCE (Dated: January 4, 2013)

Service Tax - Availment of CENVAT Credit of Additional duty of Customs leviable under Sec 3(5) of the Customs Tariff Act, 1985 for payment of Service Tax - Appellant admitted liability and paid the same with interest - The audit was conducted in April, 2011; appellant paid cenvat credit taken with interest on 6.9.2011; show-cause notice is dated 2.9.2011; show-cause notice was signed on 4.9.2011. Under these circumstances, claim that payment was made before receipt of show-cause notice can be accepted - Penalty set aside.

[2013-TIOL-485-CESTAT-AHM](#)

CCE Vs M/s Jai Kishan Engineers (Dated: January 15, 2013)

If Service Tax liability is discharged before issuance of show cause notice, the provision of Section 80 can be brought into play and penalty can be waived - no reason to interfere in the well reasoned order by Commissioner(A) - order is correct, legal and does not suffer from any infirmity - Revenue appeal rejected: CESTAT [paras 7 & 8]

[2013-TIOL-480-CESTAT -MUM](#)

Tulip Star Vs CCE (Dated: January 21, 2013)

Since applicant has not complied with the order of pre -deposit within due date, cost imposed of Rs.10,000/- for restoration of appeal : CESTAT [para 4]

[2013-TIOL-477-CESTAT -AHM](#)

CCE Vs M/s Aneri Construction (Dated: June 1, 2012)

CENVAT credit eligibility is to be determined with reference to the taxability of the service on the date of receipt of capital goods - 'Commercial & Industrial Construction Service (Pipeline Service)' notified as Taxable Service under FA, 1994 only on 16/06/2005 - as such, capital goods viz. Air compressor bought on 05/05/2005 and used for providing output service is not entitled for CENVAT credit -Revenue appeal allowed: CESTAT [paras 5, 6 & 7]

[Also see analysis of the Order](#)

[2013-TIOL-476-CESTAT -DEL](#)

M/s Rungta Projects Ltd Vs CCE (Dated: July 5, 2012)

Service Tax - Stay/Dispensation of pre -deposit - Cargo Handling Service vis-à-vis Transportation Service - Prima facie it appears that the activities were related to mining and transportation of goods within a mine or a factory - It appears that for transportation activities service tax is also being discharged by the recipient of the service as per legal provisions in this regard - Prima facie, view of Revenue that whenever there has been transportation and loading into railway wagon or unloading from railway wagon and then transportation the activity involved is primarily in the nature of cargo handling and transportation is incidental is not acceptable - Prima facie case made out for waiver of pre-deposit.

[2013-TIOL-475-CESTAT -BANG](#)

M/s Royal Tours & Travels Vs CST (Dated: September 25, 2012)

Service Tax - Stay / Pre-deposit of Tax - Tour Operator Service - Limitation - Prima facie, there is a point in the submissions made by the Consultant - Where Section 78 penalty was avoided by the Commissioner invoking Section 80 of the Act, it had the effect of weakening the revenue's case built on the proviso to Section 73(1) of the Act - The plea of bona fide belief set up by the Consultant is also worth considering - Waived pre-deposit of tax (Para 2 & 3).

2013-TIOL-470-CESTAT-MUM
M/s Air India Charters Ltd Vs CST (Dated: January 23, 2013)
ST - Service charges paid to the foreign lessor for procuring aircrafts - appellant is liable to pay service tax as a service recipient u/s 66A of the FA, 1994 - merely because appellant have a kept a security deposit towards repair and maintenance of the aircraft with the lessor, it cannot be said that services are rendered abroad so as to be held liable for ST - taking into account the satisfactory offer made and the financial condition, appellant directed to make a further pre-deposit of Rs.1.5 crores for obtaining stay: CESTAT [paras 5.1 & 5.3]
Also see analysis of the Order
2013-TIOL-469-CESTAT-AHM
M/s Akbarali Fodarali Ansari Vs CCE (Dated: January 4, 2012)
Service Tax - Manpower Supply Service - Demand - Penalty under Section 78 & 76 - The service provider has paid duty along with interest and 25% penalty under Section 78. Waiver of penalty under Section 78 cannot be considered as, the matter would not have come to light but for the investigation conducted by the department. Penalty under Section 76 waived under Section 80 as the assessee is an individual and not very educated and also due to the fact that original adjudicating authority has consciously decided not to impose penalty under Section 76 of the Act. (Para 2)
2013-TIOL-468-CESTAT-AHM
M/s BASF India Ltd Vs CCE (Dated: November 30, 2012)
Service Tax - CENVAT credit availed on maintenance of wind mill - Just because the assessee did not want to contest the issue and reversed the credit, penalty cannot be imposed when there are decisions taking a view that such credit is admissible - Penalty set aside.
2013-TIOL-462-CESTAT-AHM
M/s Bonny Auto Vs CCE (Dated: February 15, 2013)
ST - Appellant was providing services as DSA on commission basis to ICICI Bank - since they were misguided by their Consultant that ICICI Bank is liable to pay ST, they failed to pay service tax and file ST -3 returns although they obtained registration - upon being informed by the Department of their liability they paid the same along with interest - this is a fit case for condoning the lapse and not imposing any penalty

u/s 76 & 77 by invoking s.80 of FA, 1994 - Appeal allowed to the said extent: CESTAT [paras 6, 7 & 8]

Ignorance of law is enough to set aside penalty under Section 76, 77 & 78 of the Finance Act, 1994 - appellant has given reasonable cause for non-imposition of penalty under Section 76 & 77: CESTAT [para 7]

[Also see analysis of the Order](#)

[2013-TIOL-461-CESTAT-AHM](#)

M/s Jay Travels Vs CCE (Dated: January 13, 2013)

ST - Appellant has been collecting the service tax liability from his service recipient for the period April, 2008 to March, 2009 but not depositing the same with the government authorities – only after issuance of SCN on 13.03.2009 they paid the amount of ST along with interest – in such a scenario, their claim that they should get the benefit of s. 73(3) of FA, 1994 inasmuch as that no penalty should be imposed does not stand the test of law – no reason for interfering with orders passed by lower authorities – Appeal rejected: CESTAT [paras 6 & 7]

[2013-TIOL-460-CESTAT-AHM](#)

M/s Viraj Travel Agency Vs CST (Dated: February 11, 2013)

ST - Appellant has not discharged the service tax liability and has done so along with interest after being pointed out on the services rendered by him as 'Rent-a-cab Services' – appellant is eligible to cum -tax benefits of the amount received from service recipient –since the demand confirmed of Rs.33,929/- along with penalty & interest is on account of denial of cum -tax benefits, the same is set aside – when there is no demand of ST, question of penalty does not arise – Appeal allowed: CESTAT [paras 7, 8 & 9]

[2013-TIOL-453-CESTAT-AHM](#)

M/s Hem Clearing Agency Vs CST (Dated: December 4, 2012)

Appellant CHA not denying receipt of O-in-A on 17.01.2012 - as soon as the Department started pressurising the appellant for payment of dues confirmed by the o-in-a, the appellant filed an appeal on 18.07.2012 - reasons given for delay of 91 days do not instill confidence of any bonafide belief of the appellant for not filing appeal - COD application and so also Stay petition and appeal dismissed: CESTAT [paras 5 & 6]

[2013-TIOL-452-CESTAT -AHM](#)

M/s Fancy Fittings Ltd Vs CCE (Dated: January 7, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Demand of service tax on assembly of Barbie Dolls and Hot Wheels Kits on the ground that the process does not amount to manufacture - Prima facie, process would fall under the definition of manufacture under Section 2(f) - Pre-deposit waived.

[2013-TIOL-451-CESTAT -MUM](#)

M/s Oil Natural Gas Corporation Ltd Vs CCE (Dated: November 29, 2012)

Rule 6(1) of CCR, 2004 - CENVAT credit of service tax paid on Services used in manufacture of Crude Oil and Natural gas at Mumbai Offshore is not admissible to Uran Plant as these are exempted from Excise duty - contention that since Cess is paid on the Crude oil manufactured at Mumbai offshore, crude oil is duty paid is not acceptable - contention that Mumbai Offshore is an integral part of Uran plant as Crude oil is an intermediate product and transferred to Uran plant for manufacture of value added products is not acceptable as Crude oil manufactured at Mumbai Offshore is a saleable commodity and in fact being sold partly at Mumbai offshore - Since Mumbai Offshore unit is not a job worker under Notification No. 214/86, ONGC Uran unit is not entitled to CENVAT credit of Service Tax paid on input services used in Crude Oil manufactured by Mumbai Offshore - also Mumbai Offshore is exclusively engaged in the manufacture of exempted goods, credit of Service Tax paid on input services cannot be distributed - Commissioner's Order confirmation of demand of Rs. 40,57,15,129/- u/r 14 of CCR, 2004 r/w s. 11A of CEA, 1944 upheld along with interest u/r 14 of CCR, 2004 r/w s.11AB of the CEA, 1944: Appeal disposed of: CESTAT [paras 6.4, 6.5, 6.6, 6.7, 6.8 & 7]

Penalty - as demand pertains to period upto November, 2009 and in that period Rule 15(1) and Rule 15(2) of the CCR, 2004 did not cover wrong availment of input service credit inasmuch as Rule 15 has been amended with effect from 27.02.2010 incorporating input services in Rule 15(1) and 15(2) of CCR, 2004 - Therefore, penalty under Rule 15(1) and Rule 15(2) is not imposable - Similarly, under Rule 15(4) penalty is imposable on output service provider, therefore, penalty is imposable only under Rule 15(3) of CCR, 2004 and maximum penalty under Rule 15(3) is Rs. 2000/- only - Penalty reduced to Rs. 2000/- on the appellants. [para 7.2]

Penalty on ISDs - In SCN penalty was proposed under Rule 25/26 of CER, 2002 but in the Order-in-Original penalty is imposed under Rule 15(4) of CCR, 2004 - Penalty is set aside on this ground alone - moreover, Rule 15(4) as it existed during the relevant period pertains to imposition of penalty on output service provider - penalties imposed on ISDs are set aside. [para 7.3]

[Also see analysis of the Order](#)

[2013-TIOL-448-CESTAT -DEL](#)

M/s Jubilant Chemsys Ltd Vs CCE (Dated: February 4, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Scientific and Technical Consultancy Service - Two units jointly providing the service to the overseas client under a joint agreement - Amount for rendering the service is routed through one unit to another unit - Demand of service tax on the amount received by the appellant unit from another unit by treating them as sub-contractor - Prima facie case has been made out for waiver of pre-deposit as service provided by the appellant has to be treated as export of service - Rule 3(1)(iii) of the Export of Service Rules, 2005.

[Also see analysis of the Order](#)

[2013-TIOL-446-CESTAT -BANG](#)

M/s Mfar Constructions Pvt Ltd Vs CST (Dated: September 17, 2012)

Service Tax - Stay / Pre-deposit of Tax - Industrial or Commercial Construction Services - Both sides agree that the appellants are not eligible to pay service tax under the category of works contract Service w.e.f 01.06.2007 in respect of projects initiated prior to 01.06.2007 - Prima facie, the invocation of extended period of limitation may not be justified - Taking the entire facts and circumstances into account, directed to deposit a sum of Rs. 2.5 Crores (Para 5 & 7).

[2013-TIOL-445-CESTAT -BANG](#)

Network Solutions Private Limited Vs CST (Dated: September 13, 2012)

Service Tax - Stay / Pre-deposit of Tax - Management, Maintenance or Repair Service - The plea of the appellants is that they are not maintaining any hardware or software as such and that they are not involved in any repair of hardware or software - They basically undertake coordination work - Held that - Whether the activities of the appellants will fall under 'management, maintenance or repair service' or under the excluded category of 'business auxiliary service' requires to be gone into in detail at the time of final hearing - The submissions of the appellant that the necessary particulars stand furnished by them in their ST-3 returns and their understanding that the activities would fall under excluded category of 'Business Auxiliary Service' is bona fide and therefore invocation of extended period of limitation is not justified (Para 6 & 7).

[2013-TIOL-444-CESTAT -BANG](#)

M/s Lemon Tree Hotel (Cyber Hills) Vs CCE (Dated: September 10, 2012)

Service Tax - Stay / Pre-deposit of Tax - The appellant is a hotel and provider of Services of "Mandap Keeper", "Rent-a-Cab Operator", "Health Club and Fitness Centre", "Dry Cleaning", "Internet Cafe" - They have taken credit of Rs.1,29,36,946/- of service tax paid under the category of "Works Contract Service" for construction of hotel - The appellant has reversed an amount of Rs.75,13,839/- and the only balance amount stands ordered to be recovered - Prima facie, the appellant may be eligible for credit on some of the services and the amount already reversed should be treated as sufficient for the purpose of hearing the appeal - Pre-deposit waived (Para 6 & 7).

2013-TIOL-440-CESTAT-DEL
CCE Vs M/s Jas Enterprises (Dated: March 13, 2012)
ST - Just because the Respondent has not interpreted the Notification in accordance with the Revenue's interpretation of the notification and the Respondent as per his understanding of the exemption notification was not paying service tax and had not obtained service tax registration, his conduct cannot be treated as deliberate violation of the provisions of the FA, 1994 and of the Rules made there under - although ST is held payable, no penalty is imposable u/s 77 & 78 of FA, 1994: CESTAT by Majority.
Also see analysis of the Order
2013-TIOL-439-CESTAT-MUM
Mana Constructions Vs CCE (Dated: January 9, 2013)
Repair and maintenance of non-commercial government buildings retrospective exemption has been granted - benefit of exemption for non-commercial buildings is not applicable - similarly, appellants have undertaken construction of canteens in campus of VNIT - canteens, by nature, are commercial premises and, therefore, exemption to non-commercial Government buildings may not apply for this commercial and industrial construction service - appellant directed to make pre - deposit: CESTAT [paras 5 & 6]
2013-TIOL-438-CESTAT-AHM
M/s Gautam Freight Pvt Ltd Vs CCE (Dated: December 13, 2012)
Service Tax – Stay/Dispensation of pre-deposit - CENVAT Credit on input services denied on the ground that the appellant had been providing service of export cargo, which is exempted – None of the provisions of CENVAT Credit Rules, 2004 was invoked and demand was confirmed under Section 73 of the Finance Act, 1994 – Further the applicant paid service tax under the category of Port Services – Prima facie case has been made out for waiver of pre-deposit.
2013-TIOL-428-CESTAT-AHM
M/s Gujarat Maritime Board Vs CCE (Dated: January 9, 2013)
Service Tax - Modification of Stay order - Modification sought on the grounds that there is stay in appellant's own case - The claim of the appellant that non consideration of the stay order of March 2010 by the Tribunal has resulted in a wrong order does not emerge from the facts - The situation at the time of passing the order

in March 2010 and subsequently in July 2011 was entirely different and when the earlier stay order itself specifically said that prima facie appellant does not have a case, the observations of the Tribunal that appellant is required to deposit an amount of Rs.25 lakhs cannot be said to be a result of mistake apparent from the records.

[2013-TIOL-427-CESTAT -MAD](#)

M/s Cotton City Developers Pvt Ltd Vs CCE (Dated: August 2, 2012)

Service Tax - Stay/Dispensation of pre-deposit - Construction of complex service - Appellants engaged contractor to build complex who paid service tax - Such activity is only an input service for providing services rendered by the appellants to the individual buyers of undivided share in land, for constructing the flats - So prima facie liability arises in the hands of the appellants - Pre-deposit of Rs 50 lakhs ordered.

[2013-TIOL-422-CESTAT -MUM](#)

M/s United Phosphorus Ltd Vs CST (Dated: December 21, 2012)

ST - Appellant wanting to market agrochemicals in USA - for this purpose they sourced technical data readily available from a company situated in USA - it is not a case where the technical data was generated by testing the products of the appellant - data is available off the shelf to all for a price - access of data cannot prima facie come within the purview of BAS under reverse charge mechanism - pre-deposit waived of Rs.3 crores service tax and stay granted: CESTAT [paras 5.1 & 6]

[Also see analysis of the Order](#)

[2013-TIOL-421-CESTAT -AHM](#)

M/s Adf Foods Ltd Vs CCE (Dated: December 30, 2012)

Service Tax – Refund of Service Tax under Notification No 17/2009 ST denied on the ground that the service received is not port service - Without revising classification of the service at the end of service provider, denial of refund of service tax paid under the category of port service at the receiver's end is not correct - Terminal Handling was not a separate service during the relevant time nor at this time - It falls under the category of port services only -Moreover, it is quite possible that Terminal Handling Charges are collected by CHA/Service Provider of the appellant and paid to persons who actually did the work – Impugned order is set aside and matter remanded to the original authority.

[2013-TIOL-416-CESTAT -AHM](#)

CCE Vs M/s State Bank Of India (Dated: February 5, 2013)

ST - Services provided in relation to operation of accounts of EPFO and ESIC are not taxable under 'Banking & Other Financial Services' - however, since appellant has paid the ST demand and are not claiming any refund, no penalty is imposable u/s 78 of the FA, 1994 - Revenue claim of imposition of penalty u/s 76 is also not sustainable - Assessee's appeal allowed and Revenue appeal rejected: CESTAT [paras 7 & 8]

[Also see analysis of the Order](#)

[2013-TIOL-415-CESTAT-KOL](#)

M/s Hindustan Steel Works Construction Ltd Vs CCE & ST (Dated: August 8, 2012)

Service Tax - Appeal dismissed in 2008 for want of clearance from Committee on Disputes - Restoration of the same consequent to the Supreme Court judgement in case of ECIL, doing away with the requirement of clearance from COD - Since the issue of whether cases dismissed earlier where COD permission was declined earlier, could be reopened and adjudicated by the Tribunal is pending before the Larger Bench, revenue is directed not to initiate any coercive action for recovery of the dues during the pendency of the Reference before the Larger Bench of the Tribunal - ROA to be taken up after the judgement of Larger Bench.

[2013-TIOL-412-CESTAT-AHM](#)

Trio Elevators Co (I) Ltd Vs CST (Dated: November 30, 2012)

Service Tax – Appellant took over the running business of a service provider – As per the understating between the parties, appellant has to collect the outstanding payments in case where service had already been provided by the predecessor – Non-payment of service tax on such amounts received – Appellant paid the tax with interest immediately after the visit of the officers - The appellant was a registered assessee - The appellant had taken registration within a month after commencement of the business as per law - They were having genuine doubt as to who should pay service tax in respect of the past liability – Benefit of Section 80 is extended.

[2013-TIOL-408-CESTAT-MUM](#)

Super Cable Network Vs CCE (Dated: October 1, 2012)

Adjudication order sent by Revenue through Speed Post was received back undelivered on two occasions - there is no evidence on record that the O-in-O was affixed as per the provisions of s.37C of the CEA, 1944 - sending of O-in-O by speed post is not a valid service inasmuch as as per s.37C order is to be sent by registered post with acknowledgement due - Commissioner(A) dismissing appeal as time barred is not sustainable - Matter remanded to Commr(A): CESTAT [para 7]

[2013-TIOL-405-CESTAT-DEL](#)

M/s Shail Shikhar Associates Vs CCE (Dated: January 11, 2013)

ST - Appellant was a licensee of Nagar Palika Parishad, Mussoorie to operate ropeway - According to the deed of licence the appellant was to transport the tourists who choose to use the ropeway for their journey and come on their own volition without any planning, scheduling, organizing or arranging tour by the appellant licensee - Once tourists are not governed by any planning, scheduling, organising or arranging for their journey and not dependent on the licensee appellant for such planning, scheduling, organizing or arranging for their tours but only avails the facility of ropeway provided by appellant licensee during working hours from 6 A.M. to 11 P.M. on payment of fees prescribed by clause 8 of licence deed, they were not beneficiary of any planning, scheduling or arranging of tours since tour to be taxable has to follow its preceding activities enumerated by section 65(115) of the Act - appellant had not acted as "tour operator" within the meaning of Section 65(115) of the Act for which the taxing entry 65(105)(n) thereof is not attracted - consequently, there shall be no liability to service tax: CESTAT by Majority

[Also see analysis of the Order](#)

[2013-TIOL-403-CESTAT-MUM](#)

M/s Kisan Irrigations Ltd Vs CCE (Dated: November 30, 2012)

Security Service and Insurance Service are Input Services in terms of rule 2(1) of the CCR, 2004 as they have nexus with business activity - service tax paid on such services is entitled as CENVAT Credit - issue no longer res integra - appeal allowed with consequential relief: CESTAT [para 2]

[2013-TIOL-400-CESTAT-MUM](#)

M/s HDFC Bank Ltd Vs CCE (Dated: November 8, 2012)

ST - Applicant offered 65,94,504 American Depository Shares in July, 2007 for subscription outside India and for which purpose they entered into an agreement with M/s Merrill Lynch International for underwriting the said shares - Revenue alleging that applicant liable to pay ST under reverse charge mechanism under the category 'Banking & Other Financial Institution Service' - on similar issue in Jubilant Life Science Ltd. vs. CCE Tribunal vide order no.ST/A/631-632/12-Cus dated 05.10.2012 held that the applicants are not liable to pay service tax on the said activity as it is performed outside India - applicant has made out a case for 100% waiver of pre-deposit of adjudged dues of Rs.6.32 crores - Stay granted: CESTAT [para 4]

[2013-TIOL-399-CESTAT -MUM](#)

Emerald System Engineering Ltd Vs CCE (Dated: December 17, 2012)

COD sought of 576 days in filing appeal - appellant failing to intimate change of address to department - they did not participate in adjudication proceedings nor did they receive o-in-o - gross negligence on the part of the appellant in not informing change of address - it will be unfair if appeal is dismissed on that ground - at the same time appellant has to pay for the negligence - cost of Rs.10,000/- imposed on appellant - on compliance thereof stay application and appeal would be admitted & heard: CESTAT [para 4]

[2013-TIOL-392-CESTAT -AHM](#)

M/s Asal Marketing Pvt Ltd Vs CST (Dated: November 16, 2012)

Service Tax - Business Auxiliary Service - Service Tax short-paid - Penalty under Section 76 & 78 - But for the investigation taken up by the Revenue, assessee would not have paid the amount of service tax as has been demanded. Penalty u/s.78 is rightly imposed. In this case, the total amount short-paid is less than Rs.50,000/- and has occurred over a period of three financial years. Moreover, as soon as the omission was pointed out, the assessee paid the service tax with interest. The omission could have occurred due to ignorance/improper accounting. Therefore, reasonable cause exists for non-imposition of penalty u/s.76 of the Finance Act, 1994. (Para 7 & 8)

[2013-TIOL-390-CESTAT -MUM](#)

CCE Vs Detect Electronics System (Dated: January 1, 2013)

Bench is having 18000 appeals pending and is presently hearing appeals filed in the year 2004 - for early hearing of the appeal the parameter fixed is that the duty involvement should be more than Rs.3 crores - in the present case duty involved is only 1.13 crores and the appellant assessee has already made a pre -deposit of Rs.48 lakhs - application by Revenue for early hearing dismissed: CESTAT [para 2]

[2013-TIOL-389-CESTAT -MUM](#)

Provincial Life Style Retail Services Vs CCE (Dated: October 19, 2012)

ST - BAS - Management agreement with Titan Industries Ltd. (TANISHQ) - appellant is not merely acting as a Commission Agent but does something much more than that i.e., designing, managing and operating a showroom, receiving goods on stock on transfer basis, undertaking sales promotion activities and collecting the sale proceeds on behalf of the principal - even receipts/cash memos issued to the buyers are in the principal's name and Sales Tax registration of principal is required to be indicated - such activities do not come within the purview of "Commission agent" as defined in the notification no. 13/2003-ST hence benefit of exemption correctly denied - Order

upheld and appeal dismissed since devoid of merits: CESTAT [paras 5.1 & 6]

Merely because initially an appeal was filed before the Commissioner(A) against the order of the Dy. Commissioner and later the same was withdrawn it cannot be said that the order of the lower authority has become final - there is no restriction in law in doing so and subsequently initiating revisionary proceedings at the hands of the Commissioner u/s 84(2) - there is no allegation that the proceedings were not undertaken within the time limit prescribed in law - such a course of action cannot be faulted: CESTAT [para 5.2]

[Also see analysis of the Order](#)

[2013-TIOL-388-CESTAT-AHM](#)

M/s Reliance Ports & Terminals Ltd Vs CCE (Dated: November 16, 2012)

Service Tax - CENVAT - Credit on Invoices received prior to registration of Service Receiver - Credit cannot be denied on the ground that the assessee was not registered during the relevant time. (Para 3)

[2013-TIOL-387-CESTAT-AHM](#)

M/s VSE Stock Services Ltd Vs CCE (Dated: November 16, 2012)

Service Tax - Short payment - Duty paid along with interest immediately on being pointed out - Penalty - Section 73(3) contemplates non issue of show cause notice in the event of an assessee paying full amount of service tax with interest. A letter should have been written to the assessee to pay service tax short-paid and if they fail to pay, show cause notice should have been issued. No such letter was written by the Revenue. Nevertheless, at least after issue of show cause notice, once the amount was paid, this was a fit case for dropping the further proceedings. Penalty u/s 77 set aside. (Para 4)

[2013-TIOL-378-CESTAT-MUM](#)

M/s Seabird Marine Services P Ltd Vs CCE (Dated: December 14, 2012)

Applicant is a CFS and receives containers and after unloading the containers are sent to the container yard - applicants paying transportation charges on empty containers going to yard - Revenue denying CENVAT credit on the ground that this is a post service - applicant submitting that these charges are included in service charge and on which ST is paid - if ST has been accepted by Department, appellant are entitled for CENVAT as Input service - pre-deposit waived and stay granted: CESTAT [para 5]

[2013-TIOL-377-CESTAT -BANG](#)

Mr T R Rajan Vs CST (Date of Decision: September 26, 2012)

Service Tax - Stay / Pre-deposit of Tax - Commercial and Industrial Construction Service - Denial of Abatement - The appellant did not include the cost of 'free supply materials' in the "gross amount" before claiming abatement under Notification No. 15/2004-ST - Followed the decision of Mahabala Mannur ([2011-TIOL-1712-CESTAT-BANG](#)) wherein the Tribunal held that the cost of 'free supply materials' also would form part of "gross amount charged" with effect from 18/4/2006 - Ordered for Pre - deposit of Rs. 34 Lakhs (Para 2).

[2013-TIOL-376-CESTAT -MUM](#)

Nirlon Ltd Vs CST (Dated: November 27, 2012)

CENVAT - Rule 2(i) of CCR, 2004 - Appellant discharged Service Tax liability on the activity of 'Renting of Immovable Property' and availed CENVAT credit of Service tax paid on the 'commercial or industrial construction service' for construction of the property - Credit denied on the ground that what results from the Input service is only a civil structure - appellant has made a prima facie case for unconditional waiver of pre-deposit in view of the order of Karnataka HC upholding the tribunal decision in Sai Samhita Storages Pvt. Ltd. - ([2010-TIOL-1751-CESTAT-BANG](#)) - Pre -deposit waived of dues of more than Rs.5.39 Crores and stay granted: CESTAT [para 5]

[2013-TIOL-373-CESTAT -MUM](#)

M/s First Flight Couriers Ltd Vs CST (Dated: January 07, 2013)

ST - Appellant appointing Courier Agents outside India to delivery documents/articles -Revenue seeking ST on payment made to courier companies abroad under reverse charge mechanism - services rendered abroad completely - liability to pay ST u/s 66A of FA, 1994 does not arise - situation revenue neutral - Prima facie case in favour - Stay granted: CESTAT [paras 5.1 & 5.2]

[Also see analysis of the Order](#)

[2013-TIOL-372-CESTAT -MUM](#)

Larsen & Toubro Ltd Vs CST (Dated: November 5, 2012)

ST - deputation of employees to associated companies would not amount to supply of manpower so as to be held liable for Service Tax on the professional charges received which is actually recovery of salary on actual basis - in respect of staff deputed abroad and in respect of which payments are received in convertible foreign exchange, same would amount to 'export of services' and there might not be any liability to discharge ST - adjudicating authority to give a categorical finding with respect to claims of appellant - matter remanded: CESTAT [paras 5.1 & 5.2]

[2013-TIOL-371-CESTAT-MUM](#)

M/s Kolhapur Auto Works Vs CCE (Dated: January 8, 2013)

ST - Appellant renting out Immovable Property and Car parking and paying ST on the charges received, however, they are disputing ST levability on renting out of equipments installed in the premises - prima facie renting out of building includes all light fittings and equipments installed in the building - appellant has not made out a prima facie case for complete waiver - cum-tax benefits extendable - pre-deposit ordered of Rs.2 lakhs: CESTAT [para 2]

[2013-TIOL-365-CESTAT-MUM](#)

Amrut Sanjivani Sugarcane Vs CCE & C (Dated: November 19, 2012)

ST – since sugar is a manufactured product it cannot be said that service rendered to sugar factory is in relation to agriculture – so also, as the activity involved is harvesting of sugarcane and transportation of sugarcane from fields to sugar factory, it cannot be said to be in relation to sale or procurement of sugarcane – benefit of notfns 14/2004-ST & 13/2003-ST does not appear to be applicable – since appellant was rendering service to third party, namely the sugar factory and not to the harvesting contractor or the transport contractor, it cannot be said they were acting as a pure agent – appellants have not made out a prima facie case for complete waiver – pre-deposit ordered of 50% of ST dues: CESTAT [paras 5.1 & 6]

[Also see analysis of the Order](#)

[2013-TIOL-364-CESTAT-AHM](#)

CST Vs M/s Landmark Automobiles Pvt Ltd (Dated: January 22, 2013)

Service Tax – Insurance Agent – Liability to pay service tax is on the receiver of the Service in terms of Rule 2(1)(d)(ii) of the Service Tax Rules, 1994 – No error in the order of Commissioner (Appeals) in setting aside the demand – Revenue appeal has no merit.

[2013-TIOL-363-CESTAT -BANG](#)

M/s Mind Q Systems Pvt Ltd Vs CCE (Dated: September 18, 2012)

Service Tax – Stay / Pre-deposit of Tax - Commercial Coaching and Training Services - Considering the nature of dispute and taking into account the amount already paid by the assessee, ordered for pre-deposit of Rs.5,00,000/- apart from the amount paid during the course of investigation (Para 4).

[2013-TIOL-356-CESTAT -BANG](#)

M/s Nelco Ltd Vs CST (Dated: September 24, 2012)

Service Tax – Stay / Pre-deposit of Tax – Consulting Engineer Service - Prima facie, the appellant was importing the modules and manufacturing RTUs out of them in India and supplying them to the project - Their activity was essentially manufacture of excisable goods - It has been claimed that they have paid the duty on RTUs but this claim has not been rebutted - Prima facie, the appellant has made out a case against demand of service tax on the said activity (Para 1 & 2).

[2013-TIOL-352-CESTAT -MUM](#)

Maroshree Enterprises Vs CCE (Dated: December 7, 2012)

ST - Difference between the income entered in the balance sheet and in the amounts entered in the service tax returns filed for the FY 2005-06 to 2008-09 - amounts indicated under the head 'Loans & Advances' in the balance sheet, by no stretch of imagination, can be considered as amount receivables for the services rendered - adjudicating authority has deducted the amount indicated under the head 'sundry debtors' and re-worked out the service tax liability and there is no infirmity in the same - appellant has not made out any prima facie case for complete waiver of the demand - pre-deposit ordered of 50% of the service tax demand confirmed for obtaining stay: CESTAT [para 4]

[2013-TIOL-350-CESTAT -MUM](#)

M/s Bosch Chassis Systems India Ltd Vs CCE (Dated: November 23, 2012)

ST - MD of the appellant company also performed the job of MD of another company by devoting 20% of his time and for which he was compensated - If at all any advisory activity was undertaken by the said person, the demand for Service Tax can be made only on him and not on the appellant company – ST demand set aside and appeal allowed: CESTAT [para 5.1]

[Also see analysis of the Order](#)

[2013-TIOL-349-CESTAT-AHM](#)

M/s Anand Decorators & Hirers Vs CST (Dated: November 23, 2012)

Service Tax - Pandal and Shamiyana Service - Mandap Keeper Service - Mis - declaration of Value - Demand - Extended period - The very fact that amounts were collected by mentioning the same on the reverse side of the invoice and not paid service tax on the same clearly amounts to mis -declaration of value and suppression of facts on the part of the service provider. The contention that show-cause notice was issued after two years of completing the investigation, is not sustainable as the extended period of five years is available to the department. (Para 4)

Penalty under Section 76 & 78 of the Finance Act, 1994 - As regards penalties under Sec. 76 & 78 of the Finance Act, 1994, prior to amendment of Sec. 78, penalty under Sec. 76 & 78 of the Finance Act, 1994 could be imposed and amendment to Sec. 78 carried out in the year 2008 does not have retrospective effect. As 75% of the tax demanded was paid before issue of show-cause notice, penalty under Section 78 of the Finance Act, 1994 is reduced to 100% of the service tax demanded (Para 4 & 7)

Penalty - Benefit of 25% payment - The lower authorities have extended the benefit of payment of reduced penalty in the event of payment of tax and interest within 30 days of the original order. Hence, the plea that 25% of the penalty imposed would be paid now, is not allowed. (Para 6)

[2013-TIOL-348-CESTAT-BANG](#)

M/s Avesthagen Ltd Vs CST (Dated: September 18, 2012)

Service Tax - Stay / Pre-deposit of Tax - Demand - Limitation - The plea of limitation raised by the appellant is supported by certain findings of the adjudicating authority - It is not in dispute that, though Section 78 was invoked in the SCN on apparently valid grounds, no penalty was imposed under that provision on the assessee by the adjudicating authority holding that the assessee cannot be held to have any intention to evade payment of service tax - It is not deniable that the grounds for invoking Section 78 are not different from those for invoking extended period of limitation - If that be so, there is a dichotomy in the impugned order in invoking the extended period of limitation and not invoking Section 78 - prima facie view that the appellant has a fairly strong case on the ground of limitation (Para 5).

Service Tax - Stay / Pre-deposit of Tax - The plea of financial hardships is also worth considering as it is supported by certain documents - Ordered for pre-deposit a further amount of Rs.20,00,000/- (Para 5).

[2013-TIOL-343-CESTAT-MUM](#)

Union Bank of India Vs CCE & ST (Dated: November 8, 2012)

ST - Providing service of payment and receiving money on behalf of the government in respect of various transactions such as public deposit, RBI bond, EPF, senior citizen

saving scheme, compulsory deposit scheme - such activity does not fall under the category of 'Banking and Financial service' - issue has attained finality by the order of Tribunal in case of Canara Bank ([2012-TIOL-790-CESTAT-AHM](#)) - applicant are not liable to pay Service Tax and hence no question of imposition of penalty - demand set aside and appeal allowed: CESTAT [para 3]

[2013-TIOL-340-CESTAT-BANG](#)

M/s Karnataka State Lawn Tennis Association Vs CST (Dated: August 7, 2012)

Service Tax - Stay / Pre-deposit of Tax - Club or Association Service - CENVAT - The appellants have taken credit of service tax paid on services like event management, security service, which were utilized for conducting international tournaments open to the general public with tickets - Prima facie, there is a duplication of demand and the demand sustainable will be only to the tune of Rs.14,00,000/- Ordered for pre-deposit of Rs.4 Lakhs (Para 5).

[2013-TIOL-339-CESTAT-BANG](#)

M/s Tfl Quinn India Pvt Ltd Vs CC & CE (Dated: September 24, 2012)

Service Tax - Stay / Pre-deposit of Tax - Business Auxiliary Service - Export of Services - The appellant was functioning as commission agent for a foreign company and the latter was selling their products in India - According to the adjudicating authority, as the goods were sold in India, there was no export of service - Followed the decisions of ABS India Ltd. - ([2008-TIOL-2102-CESTAT-BANG](#)) and Mapal India Pvt. Ltd. - ([2010-TIOL-1821-CESTAT-BANG](#)) - There was no service rendered in India and they were exporting service in terms of the Export of Service Rules, 2005 (Para 1).

[2013-TIOL-325-CESTAT-MUM](#)

Jayesh Shipping Pvt Ltd Vs CST (Dated: November 6, 2012)

ST - Applicant are engaged in the activity of lifting/discharging of heavy packages/goods of various ships (berthed at mid-sea) and transporting and unloading the same on to various berths - prima facie, this activity falls under the category of "Cargo Handling Service" and is liable to Service Tax - applicant asked to make a pre-deposit of Rs.15 lakhs and report compliance: CESTAT [para 4]

[2013-TIOL-324-CESTAT-MUM](#)

Amdocs Business Services Pvt Ltd Vs CCE (Dated: October 10, 2012)

Refund - Notfn. 5/2006-CE(NT) - refund of CENVAT credit can be allowed irrespective of when the credit was taken in case of service providers exporting 100% of their services - it is evident that appellant was continuously undertaking exports during the said period and there were no domestic clearances - appeal allowed with consequential relief: CESTAT [para 5]

[2013-TIOL-323-CESTAT-MUM](#)

M/s Allcargo Global Logistics Ltd Vs CCE (Dated: September 7, 2012)

Service Tax paid on 'rent-a-cab' service for transportation of staff from Vashi Railway station to Container Freight Station run by the appellant is admissible as CENVAT Credit since the service is an Input service in terms of rule 2(l) of the CCR, 2004 - Appeal allowed with consequential relief: CESTAT [para 5.1]

[2013-TIOL-317-CESTAT-DEL](#)

Bharat Sanchar Nigam Ltd Vs CCE (Dated: August 7, 2012)

Telephone connection given on urgent basis under 'Tatkal Scheme' by collecting some extra deposit from subscriber – when connection was discontinued prematurely part of the amount was retained – Revenue raising demand for the ST short paid on such retained amount – appellant submitting that this money is taken towards capital expenditure incurred: Held – ST has to be paid on gross value received for the service - clause (b) of Explanation under Section 67 mandates that adjustments made by a telegraph authority from any deposit made by subscriber will form part of assessable value – prima facie appellant does not have a case in favour – pre-deposit ordered of 50% of dues for obtaining Stay: CESTAT [paras 4 & 5]

[2013-TIOL-316-CESTAT-DEL](#)

M/s Dharampal Satyapal Sons Pvt Ltd Vs CST (Dated: August 9, 2012)

Service Tax - Intellectual Property Right - Trademark provided to a unit located in SEZ - Business Auxiliary Service - Job-work of cutting betel nuts for client - The adjudicating authority shall look into whether the impugned intellectual property was a right under any law and meets the requirement of the definition of Intellectual Property Rights. Also whether the Trademark was given to a unit located in SEZ, and whether the product was exported by the SEZ, needs to be looked into. Further, the contention that the assessee was providing job-work to the client would not be covered under the definition of Business Auxiliary Service, as during the relevant period, it applied only to job work done 'on behalf of clients' and that the said definition was changed w.e.f. 16.6.05 to include job work done for the clients also, needs to be looked into as the same was not raised initially before the adjudicating authority. Hence, matter remanded to the adjudicating authority. (Para 5)

[2013-TIOL-315-CESTAT -DEL](#)

M/s Jindal Vegetable Products Ltd Vs CCE (Dated: January 4, 2013)

Service Tax – Renting of Immovable Property Service – Penalty under Section 78 and invoking extended period - It is only by retrospective amendment introduced w.e.f. 1.6.07 by Finance Act, 2010, that the renting of immovable property by itself became a taxable service neutralising the judgment of judgment of Delhi High Court – The Appellant cannot be accused of suppressing the relevant information from the department as during the period of dispute there was doubt about the levy of service tax on the renting of immovable property till the dispute was put to an end by retrospective amendment made by Finance Act, 2010 – Entire Service Tax demand is time barred.

[2013-TIOL-308-CESTAT -MUM](#)

SKF India Ltd Vs CCE (Dated: October 1, 2012)

ST - From the copy of the agreement on record, it is apparent that the applicants are undertaking activity of system development and maintenance, computer operations and support etc. - there is prima facie merit in the contention of the applicant that they are not providing any 'Business Auxiliary Service' but providing 'Information Technology Service' which has become taxable w.e.f 16.05.2008 - Pre-deposit of dues waived and stay granted: CESTAT [para 6]

[2013-TIOL-307-CESTAT -MUM](#)

Shivkrupa Suppliers Vs CCE (Dated: December 7, 2012)

ST - Difference between the income entered in the balance sheet and in the amounts entered in the service tax returns filed for the FY 2005-06 to 2008-09 - amounts indicated under the head 'Loans & Advances' in the balance sheet, by no stretch of imagination, can be considered as amount receivables for the services rendered - adjudicating authority has deducted the amount indicated under the head 'sundry debtors' and re-worked out the service tax liability and there is no infirmity in the same - appellant has not made out any prima facie case for complete waiver of the demand - pre-deposit ordered of 50% of the service tax demand confirmed for obtaining stay: CESTAT [para 4]

[2013-TIOL-306-CESTAT -BANG](#)

M/s S R Prudhvi Movers Vs CCE (Dated: September 5, 2012)

Service Tax – Stay / Pre-deposit of Tax – Cargo Handling Service – Excavation of lime stone, Loading and transportation to the crushing unit within mine premises – Registration taken under Mining service after introduction of Service tax on such activity – Followed the decision of Thriveni Earthmovers Private Limited – Transport of

limestone within mining area not treatable as cargo handling – Waived pre -deposit (Para 2).
2013-TIOL-304-CESTAT-MUM
Shri Dnyaneshwar Trust Vs CCE (Dated: October 3, 2012)
ST – BAS - Appellant undertaking activity of harvesting Sugarcane and transporting the same to sugar factory – commission received is exempted in terms of notfn. 13/2003-ST as amended since this service is in relation to agricultural produce – Order confirming Service Tax demand of Rs. 1,43,60,622/- along with interest and penalties set aside and appeal allowed with consequential relief: CESTAT [para 4] Stay order reported as 2012-TIOL-1419-CESTAT-Mum .

2013-TIOL-200-CESTAT-AHM
CCE Vs M/s Schott Glass India Pvt Ltd (Dated: October 22, 2012)
Central Excise - CENVAT - Input Service - Rent-a-cab - The transportation facility provided to the employees is not a welfare measure but to ensure that the manufacture takes place properly. Therefore, the service has a nexus to the business of manufacture and hence credit of service tax paid on rent-a-cab service is allowed. (Para 6)
2013-TIOL-195-CESTAT-MUM
Rocket Engg Corporation Ltd Vs CCE (Dated: September 17, 2012)
Appellants availed CENVAT credit in respect of common inputs used in manufacture of IC Engines which were cleared on payment of duty and IC engines captively used in manufacture of PD pumps cleared under exemption - appellants reversing credit of 8% of price when IC engines used for captive consumption - such payment is sufficient compliance of CCR, 2004 - benefit of notfn. 10/2002-CE not to be denied - Appeals allowed: CESTAT [para 5]
2013-TIOL-194-CESTAT-DEL
CCE Vs M/s Green Line Housing Finvest Ltd (Dated: October 4, 2012)
Service Tax - Waiver of penalty under Section 80 of the Finance Act, 1994 - The service provider has not responded to the summons issued and hence shown scant respect to Law. Indirect taxes permit shifting of incidence but does not immune a tax payer from tax liability in the event of non-recovery from consumers. The service provider, at any time, has not approached the department to ascertain its liability or

have any legal opinion at its end to believe bonafide that they are not liable to tax. Therefore, this is not a fit case to be governed by Section 80 of Finance Act, 1994. As penalty under Section 76 & 78 simultaneously is unwarranted, penalty imposed under Section 76 of Finance Act, 1994 stands waived, while penalty under section 78 of Finance Act, 1994 is confirmed. Service Provider granted liberty to pay 25% penalty under Section 78, if the same is paid within 30 days of receipt of order. (Para 6, 7, 8 & 9)

[2013-TIOL-193-CESTAT -DEL](#)

Krishna Kumar Tiwari Vs CCE & ST (Dated: October 1, 2012)

Service Tax - Outdoor Catering service - Demand - Stay / Dispensation of pre-deposit - The assessee is in the business of cooking and serving food at the staff training facility of banks. As per the agreement the banks provide all equipment required to run the canteen. In an identical case, it has been held that the assessee was not falling under the category of outdoor catering services. Prima facie case made out for grant of stay. Pre-deposit waived.

[2013-TIOL-190-CESTAT -MUM](#)

Shri Mouni Maharaj Sevabhavi Vishwasta Sanstha Vs CCE (Dated: November 19, 2012)

ST - Manpower Recruitment and Supply Services - appellant is a trust consisting of farmers and transporters - when the farmers and the transporters have entered into agreements directly with the sugar factory, by no stretch of imagination the appellant could be considered as a person responsible for supply of manpower to the sugar factory, temporarily or otherwise - appellant only acts as a facilitator and does not get any consideration - Strong prima facie case in favour - Pre-deposit of ST of Rs.2.21 crores waived and Stay granted: CESTAT [para 5]

[Also see analysis of the Order](#)

[2013-TIOL-189-CESTAT -MAD](#)

P Raman Vs CCE (Dated: September 6, 2012)

Service Tax - Commercial or Industrial Construction Service - Construction of Complex for BSNL - Plea against extended period and for extending the benefit of Section 80 - The ground taken by the appellants is that they were not aware of the fact that they are liable to pay service tax under works contract with effect from 1.6.2007 is not sustainable, as ignorance of law is not an excuse - No error in the findings of the lower appellate authority.

[2013-TIOL-188-CESTAT -MAD](#)

M/s RKN & Co (Branch) Vs CCE (Dated: August 24, 2012)

Service Tax - Non-payment of service tax on Goods Transport Agency Service - Penalty - Whatever the service tax paid by the appellant is available as credit - Therefore, in that scenario Section 80 of the Finance Act 1994 is applicable to the facts of the case - Penalty is set aside.

[2013-TIOL-177-CESTAT-MUM](#)

ICC Reality (India) Pvt Ltd Vs CCE (Dated: November 14, 2012)

ST - Applicant are owners of premises and renting the same to tenants - they are under obligation to supply electricity to their tenants from common electricity connection and the same is provided through separate meters - applicants are collecting electricity charges from tenants - however, while discharging ST liability under the head 'Renting of Immovable Property Service', electricity charges are not included in value of taxable service - as electricity is 'goods', said charges may not form part of taxable value in terms of notfn. 12/2003-ST - Prima facie case made for waiver of Pre-deposit of adjudged dues in view of Tribunal decision in Econ Hinjewadi Infrastructure (P) Ltd. ([2012-TIOL-1688-CESTAT-MUM](#)) - Pre-deposit waived and stay granted: CESTAT

[2013-TIOL-176-CESTAT-MUM](#)

Gupta Coalfields & Washeries Ltd Vs CCE (Dated: November 8, 2012)

Applicants are coal washeries and registered with department at Nagpur as service provider - they have intimated the department that they have five units, however, it is a fact that they have two more units which has not been informed to the department - CENVAT credit availed on the capital goods obtained by these two units is prima facie not available - Pre-deposit ordered of 50% of demand of CENVAT credit for obtaining stay: CESTAT [paras 5 & 6]

[2013-TIOL-175-CESTAT-MUM](#)

Group M Media India Pvt Ltd Vs CST (Dated: September 27, 2012)

CENVAT - Applicants took the services of a Real Estate Agent for preparing office premises from where they are providing outward service - Real Estate Agency service is an Input service in terms of rule 2(l) of CCR, 2004: CESTAT [paras 4 & 5]

[2013-TIOL-174-CESTAT-MUM](#)

CCE Vs Hemangi Enterprises (Dated: October 31, 2012)

Bench not working at full strength hence appeals having revenue involvement less than Rs.3 Crores will not be considered for early hearing – Application filed for early hearing by Revenue in respect of revenue involvement of Rs.1.13 crore dismissed: CESTAT [para 3]

[2013-TIOL-173-CESTAT-MAD](#)

M/s William Lea (India) (P) Ltd Vs CST (Dated: July 30, 2012)

Service Tax - Stay/Dispensation of pre-deposit - Appellants paying service tax only on 5% of the consideration received - The appellant have a contract with Reader's Digest for making of advertisement material - The fact that appellant engaged other persons to get some aspects of the work done does not absolve the appellants of his service tax liability - The sub-contractors and the appellant can take CENVAT credit on excise duty paid materials used and the input services - No prima facie case has been made out for waiver of pre-deposit - 50% of the tax ordered to be pre-deposited.

[2013-TIOL-172-CESTAT-MUM](#)

M/s Mahanagar Gas Ltd Vs CCE (Dated: October 29, 2012)

Merely on the ground that there is shortage of Inputs as per the balance sheet, CENVAT credit on Input Service of Transportation cannot be sought to be denied - Prima facie case in favour - pre-deposit waived and stay granted: CESTAT [para 5]

[Also see analysis of the Order](#)

[2013-TIOL-163-CESTAT-MUM](#)

M/s Golden Tobacco Ltd Vs CCE (Dated: October 5, 2012)

Service provided for valuation of property other than factory premises, service in relation to empty plot by security agencies, club house, credit card & diners club card in employees names, repair and maintenance of air conditioners at residences of employees, audit of related companies cannot be considered as Input Service in terms of rule 2(l) of the CCR, 2004 – CENVAT credit correctly denied - since appellant has not reversed the Credit inspite of orders of lower authorities, penalty and interest also payable: CESTAT [para 5]

Rent-a-cab service used by appellant for travelling from factory to warehouse and depot is an Input service and entitled for CENVAT credit: CESTAT [para 5]

[2013-TIOL-162-CESTAT -MAD](#)

M/s Agility Logistics Pvt Ltd Vs CST (Dated: August 28, 2012)

Service Tax – CHA Service - Demand of Service tax on various charges received – The demand is confirmed under section 65 (19) (iv) as it existed prior to 10-09-2004 whereas the proposal in the SCN was for demanding tax under section 65 (19) (iv) as it existed from the said date - Demand is confirmed without hearing the appellant on the issue whether the clause invoked will apply - Some of these items like Terminal Handling Charges, EDI charges, screening charges etc appear to be expenses incurred by the appellant on behalf of the clients which expenses are reimbursed by the clients - The question whether the amounts charged were actuals needs to be examined - The question whether these will form part of the value of services rendered by appellants also needs to be examined - In the case of services of goods transport agency there is difference between proposal in SCN and finding in the adjudication order - There is no clear finding regarding the nature of activity and whether the services could be considered to be exported as contended by the applicant – Matter remanded for fresh adjudication.

[2013-TIOL-161-CESTAT -DEL](#)

CCE Vs M/s D R Polymers (Dated: August 23, 2012)

Service Tax - C&F agent - Demand - The assessee is free to sell the goods to his own customers and is not merely dispatching the goods on the orders of his principal. Further, the invoice is being issued by the assessee himself. As such, the assessee cannot be held to be C&F agent. (Para 6)

[2013-TIOL-160-CESTAT -DEL](#)

M/s Adarsh Cooperative Bank Ltd Vs CCE (Dated: August 24, 2012)

Service Tax - Banking and Financial services - Cooperative Bank - Demand - Bank run by a cooperative society is required to pay service tax under the category of "banking and other financial services". (Para 2)

[2013-TIOL-159-CESTAT -MUM](#)

CC, CE & ST Vs Pratima Furniture & Decorators (Dated: November 14, 2012)

Committee of Commissioners has taken more than three months to decide whether the appeal is to be filed or not - appeal since not filed within three months there is no reason to condone the delay - COD application dismissed & consequently the appeal is also dismissed: CESTAT [paras 2 & 3]

[Also see analysis of the Order](#)

2013-TIOL-156-CESTAT-MAD
M/s Karur Gayathri Finance Ltd Vs CCE (Dated: August 30, 2012)
<p>Service Tax - Refund of Service tax consequential to favourable order - Limitation - Relevant date is the date of the order of the Commissioner (Appeals) deciding the issue in favour of the appellants - Refund claim filed within one year from that date cannot be rejected on limitation.</p> <p>Unjust enrichment - Just because the appellant had paid service tax by treating the consideration as cum-tax, it does not mean they have collected the service tax from customers - Refund is admissible.</p>
2013-TIOL-154-CESTAT-MUM
Kasegaon Education Society Vs CCE (Dated: October 5, 2012)
<p>ST - Issue involved pertains to leviability of service tax on activities undertaken and which entails classification of service, valuation and taxability thereof - in terms of s.35D(3) of CEA, 1944, matter is to be heard by Division Bench - Registry directed to do needful: CESTAT [para 1]</p>
2013-TIOL-150-CESTAT-AHM
M/s Karnavati Aviation Pvt Ltd Vs CST (Dated: October 29, 2012)
<p>Service Tax - Air Transport of Passenger service vis -à-vis Supply of tangible goods services - Hiring of chartered aircraft - Demand - Stay / Dispensation of pre-deposit - The aircraft is chartered to various companies for specific time or for specific journey. The payment is not based on number of passengers. No tickets are issued to the passengers and no charges are collected from the passengers. Therefore, the service provided cannot be considered as transport of passengers, but has to be considered as charter of aircraft. The service provider has not made out a prima facie case for complete waiver. No financial difficulty has been pleaded. Pre-deposit ordered.</p>
2013-TIOL-144-CESTAT-MAD
India Trimmings Pvt Ltd Vs CCE & ST (Dated: August 29, 2012)
<p>Service Tax - Refund of CENVAT Credit under Notification No 5/2006 CE(NT) filed by 100% EOU - Refund claim filed within one year after the dispute on admissibility of CENVAT Credit was settled in favour of the EOU - Limitation shall begin when lis ends - Refund claims not hit by time bar.</p>

2013-TIOL-143-CESTAT-MAD
CCE Vs M/s SRS Cranes and Equipments & Services (Dated: August 24, 2012)
Service Tax - Service tax collected, but not paid due to financial crisis - Liability reflected in the ST 3 returns and later paid with interest - Penalty under Sections 77 and 78 of the Finance Act, 1994 set aside - As per provision of Section 73 (3) of the Finance Act, 1994 when the assessee has paid the service tax along with interest of their own and intimated to the department, Show Cause Notice is not warranted.
2013-TIOL-142-CESTAT-MAD
M/s Pressure Vessels and Equipments Testing Enterprises Vs CCE (Dated: August 28, 2012)
Service Tax - Technical Testing and Certification of LPG Tankers - Such technical inspection and testing under the Indian Explosive Act, 1884 is a statutory obligation, therefore the same is not liable to tax under Technical Testing and Certification Service - Question of penalties under Sections 76 and 78 does not arise - Appeal allowed.
2013-TIOL-137-CESTAT-MUM
CCE Vs Channel 3 World Vision (Dated: September 11, 2012)
Appeal filed in the year 2011 on the basis of authorization granted by the Committee consisting of CCE, Raigad and CCE, Belapur – however, since the matter pertains to Service Tax, proper Committee for grant of authorization is Commr., Service Tax II, Mumbai and CCE, Raigad – revised authorization filed by Revenue with a prayer to take the same in place of the original authorization – since defect in original appeal is a curable defect, Miscellaneous application filed by Revenue for substitution of authorization by the competent authority in place of original authorization is allowed: CESTAT [para 1]
2013-TIOL-136-CESTAT-MUM
Ideal Road Builders Pvt Ltd Vs CST (Dated: December 14, 2012)
ST on Toll charges under BAS - If on the basis of an agreement between the State authority and the concessionaire for construction of roads, the contractor is authorised to collect the toll charges from the users of the roads for the services rendered and the entire activity is done on Build-Own/Operate-Transfer basis, there is no service tax liability - Demand of Rs.30 Crores set aside: CESTAT [paras 5.3, 5.4 & 5.5]
Also see analysis of the Order

2013-TIOL-124-CESTAT-AHM
Smt Bhavna R Shah, Shri N G Shah Vs CST (Dated: August 30, 2012)
Service Tax – Stay/Dispensation of pre-deposit - Renting of immovable property service – Small scale exemption under Notification No 6/2005 ST dated 01.03.2005 – Individuals who are co-owners of the building received separate cheques for rent – Prima facie eligible for small scale exemption – Pre-deposit waived.
2013-TIOL-123-CESTAT-AHM
M/s Avaya Global Connect Ltd Vs CCE (Dated: December 31, 2012)
Service tax demand of Rs.3,52,81,421/- for the period from 01.09.2004 to 29.02.2008 has been confirmed against the appellant on the ground that appellants had availed CENVAT credit in respect of services which are used in respect of services provided in J&K state and SEZ which were exempted during the relevant time and while paying the service tax they were required to utilize only 20% of the credit available for payment of service tax on the input service in accordance with the provisions of Rule 6(3)(c) of CENVAT Credit Rules, 2004 - Penalty equal to the service tax demanded interest on the service tax demanded have been imposed.
Once a service tax paid on input services has not been taken at all, the provisions of Rule 6(3)(c) of CENVAT Credit Rules would not be applicable - Matter earlier remanded for verification of actual position [2010-TIOL-397-CESTAT-AHM], however, the appellant had failed to co-operate and had not given necessary details as per the directions of this Tribunal - appellants have contributed substantially to the impugned order being passed against them: CESTAT [para 4]
Though in the normal course at the stay stage when the matters are remanded pre-deposit is not insisted upon; however, in the present case to ensure that appellant cooperates with the department it is necessary to ask the appellant to pre-deposit an amount of Rs.50 lakhs – if the Commissioner reports the fact of non making of pre-deposit or submission of documents the same would result in rejection of appeal: Matter remanded: CESTAT [para 6]
2013-TIOL-121-CESTAT-AHM
CCE Vs Ameer Castors & Derivatives Ltd (Dated: September 7, 2012)
Service Tax - Refund of service tax under Notification No 41/2007 ST - Refund is admissible on Terminal Handling Charges, Repo charges, Documentation charges etc. - Refund is not admissible in respect of fumigation charges in the absence of any written agreement with the buyer of the goods which is a condition for allowing refund.

[2013-TIOL-118-CESTAT -AHM](#)

Doshion Ltd Vs CCE (Dated: October 16, 2012)

Rule 3 of Service Tax Credit Rules, 2002 - Since the appellants are engaged in manufacture of water treatment plants and installation, erection thereof, the service obtained in relation to parts and equipments can be said to be in relation to output service - services of travel agent, custom house agent, tour operator, telephone, insurance, courier, testing services etc. are Input services – appeal allowed with consequential relief: CESTAT [para 7]

[2013-TIOL-112-CESTAT -KOL](#)

M/s Magma Fincorp Ltd Vs CST (Dated: March 21, 2012)

Service Tax - Banking & Other Financial Services - SCN issued on the ground that the financial agreements of the assessee are taxable under the Banking Financial Services - The adjudicating authority dropped major part of the demand - Both revenue and party filed appeals against the order of original authority - The Department itself is questioning the legality and propriety of the impugned order - Tribunal has been taking a consistent view in such cases where the Department itself is questioning the legality and propriety of the impugned order and the Assesseees are also in appeal - The case is remanded to the Adjudicating Authority for deciding the matter afresh (Para 4).

[2013-TIOL-111-CESTAT -KOL](#)

M/s Caps & Prints (P) Ltd Vs CST (Dated: December 6, 2012)

ST - Appellant had availed the services of owners of vehicles for transporting their goods from the factory and also bringing the raw materials into their factory and made payments to individual truck owners – it cannot be said that appellant had availed the services of goods transport agency (GTA) – no service tax is payable on such services: CESTAT [paras 5 & 6]

[2013-TIOL-109-CESTAT -MUM](#)

CCE & ST Vs Monarch Surveyors & Contractors (Dated: September 5, 2012)

ST - Board had clarified that if the main service provider is discharging Service Tax liability then the sub-contractors to the main service provider need not pay service tax on same activity – this position changed after extension of CENVAT credit to the service tax sector and was clarified by Board Circular dated 23/08/2007 – in such scenario it cannot be said that sub-contractor deliberately evaded service tax – dropping of penalty u/s 80 of FA, 1994 by Commissioner(A) is proper – Revenue appeal dismissed: CESTAT [paras 6 & 7].

[Also see analysis of the Order](#)

[2013-TIOL-108-CESTAT -MAD](#)

M/s PRR Travels Vs CST (Dated: July 24, 2012)

Service Tax - Stay/Dispensation of pre-deposit - Rent-a-Cab service - Following precedent decisions on the issue, Applicant directed to deposit 50% of the tax payable for the normal period.

[2013-TIOL-107-CESTAT -BANG](#)

CCE Vs M/s Geltec Pvt Ltd (Dated: June 28, 2012)

Service Tax – Business Auxiliary Service – Respondents received services from Dubai during the period between 09.7.2004 to 31.1.2006 – Followed the Bombay High Court decision in Indian National Ship Owners' Association ([2008-TIOL-633-HC-MUM-ST](#)) - Valid only from 18.4.2006 – CESTAT.

[2013-TIOL-105-CESTAT -MUM](#)

CCE Vs Cummins Generator Technologies India Ltd (Dated: May 4, 2012)

CENVAT credit on Outdoor Catering service and Manpower Recruitment Service – any service which has been used in the business of manufacturing is an Input Service in terms of rule 2(1) of the CCR, 2004 – Credit admissible – Revenue appeal dismissed: CESTAT [paras 3 & 4]

[2013-TIOL-97-CESTAT -MUM](#)

M/s B H H Securities Pvt Ltd Vs CST (Dated: July 2, 2012)

ST – no clarity as regards liability of Service Tax for the period 1995-96 to 1996-97 on Vyaj badla Transactions – SCN issued on 12.03.2001 - for the period up to 26.12.1997 applicant was a proprietorship concern and w.e.f 26.12.1997, it was converted into a Pvt. Ltd. Company – proprietor passing away 23.05.1999 – after death of proprietorship concern its liability prima facie cannot be transferred to Pvt. Ltd. company u/s 11 of CEA, 1944 – strong case in favour on ground of limitation also – pre-deposit waived and stay granted: CESTAT [para 5]

[2013-TIOL-96-CESTAT-MUM](#)

Veer Jawan Security Services Vs CCE (Dated: June 22, 2012)

Proprietorship concern is known by the proprietor of the firm and no entity can be identified without the proprietor - person providing the service is only Shri S.N.Mahajan whether he is providing the services in the name of Veer jawan Securities or Jai Jawan Securities - demand for the period prior to registration in the name of Veer Jawan Securities Service has rightly been demanded from appellant - however, penalty u/s 78 not imposable as no suppression is alleged: CESTAT [paras 6 & 7]

[Also see analysis of the Order](#)

[2013-TIOL-94-CESTAT-MUM](#)

M/s Thermax Ltd Vs CCE (Dated: October 18, 2012)

ST - Appellant getting trade secret from an ex-employee of the competitor firm - competitor firm filing suit in US Court - appellant settling dispute out of court and paying consideration for use of trade secret and becoming co-owner of technology - department demanding ST on reverse charge mechanism under IPR service - While framing charges adjudicating authority has not specified specifically under which part of the IPR definition the applicant is covered - demand of Rs.18 Crores not sustainable - Prima facie case in favour - pre-deposit waived and stay granted: CESTAT [paras 6 & 7]

[Also see analysis of the Order](#)

[2013-TIOL-93-CESTAT-MUM](#)

Yasmin Aspandiar Irani Vs CCE (Dated: June 29, 2012)

Service Tax on Renting of Immovable Property – Period April, 2009 to March, 2010 – since appellant has discharged the Service Tax liability of Rs.2,34,840/- along with interest and are not disputing the levy, in view of the provisions of s. 80(2) inserted by clause (L) of s. 143 of Finance Act, 2012 in FA, 1994, applicant has made a strong case for grant of waiver of pre-deposit in respect of penalty imposed of Rs.1,22,800/- u/s 76 of FA, 1994 – Stay granted: CESTAT [para 5]

[2013-TIOL-92-CESTAT-MUM](#)

M/s Vansum Industries Vs CCE (Dated: October 10, 2012)

Applicant paying Service Tax on the activity of Renting of Immovable property - they are also providing electricity to tenants and charging for the same - Revenue wants to add these charges in to the gross value of taxable service - since electricity is 'goods' and cannot form part of the taxable value in terms of notfn. 12/2003-ST, prima facie applicant has made out a case for waiver of the service tax demand and penalty imposed - Stay granted: CESTAT [para 4]

[2013-TIOL-83-CESTAT-MUM](#)

ICICI Lombard General Insurance Vs CIT (Dated: September 12, 2012)

CENVAT Credit – applicant availing Credit of duty paid in respect of furniture and fittings by claiming them to capital goods and on canteen services – during the relevant period furniture is classifiable under Chapter 96 of the Tariff and is not covered under the definition of capital goods – also the Canteen services are not free to the employee as admitted by applicant – applicants have not made out a case for total waiver of pre -deposit – pre -deposit ordered of Rs.15 lakhs for obtaining stay: CESTAT [para 10]

[2013-TIOL-82-CESTAT-BANG](#)

M/s Futura Polyester Ltd Vs CCE (Dated: July 30, 2012)

Service Tax – Consulting Engineer service – Demand of service tax on the basis on debit entry made for the services to be provided in future – Contention that the appellants have never provided any services – It is an admitted fact that no service has been provided and no consideration has been received – Demand of service tax not sustainable - Service tax was not payable for the 'service to be provided', as the demand is for the period prior to 16.06.2005 – Supply of technical know-how cannot be taxed under Consulting Engineer service.

[2013-TIOL-78-CESTAT-MUM](#)

Citibank N A Vs CST (Dated: August 28, 2012)

Applicant sponsoring cricket tournament of Indian Premier League – in view of Tribunal decision granting stay in case of Kingfisher Airlines Ltd. - ([2012-TIOL-1534-CESTAT-MUM](#)) holding that since the said activity is undertaken in relation to sponsorship of sports events, they are exempted in terms of section 65(105)(zzzn) of FA, 1994 and is taxable only w.e.f 01.07.2010 when exemption was withdrawn, in the present case too after granting waiver of pre -deposit of dues, Stay granted : CESTAT [para 4]

[2013-TIOL-75-CESTAT-MUM](#)

Central Railway Vs CCE (Dated: November 26, 2012)

ST - Maintenance and Repairs by Central Railway of Railway sidings owned by private parties under agreements - Railways are not collecting any statutory fee but are collecting service charges for the services rendered - Liable to Service Tax - appellant has not made prima facie case in favour for waiver of dues - pre-deposit ordered of Rs.1.62 Crores: CESTAT [paras 5.2 & 6]

[Also see analysis of the Order](#)

[2013-TIOL-74-CESTAT-MUM](#)

Ashoka Buildcon Ltd Vs CCE (Dated: September 12, 2012)

ST – Business Auxiliary Services - Applicant acting as a contractor for collecting fees of Airport Toll plaza on behalf of Central government - In similar case of Ideal Builders Pvt. Ltd. - ([2011-TIOL-1658-CESTAT-MUM](#)), CESTAT had ordered for pre-deposit but the Bombay HC had waived the same and asked the petitioner to execute a bond and an undertaking that the assessee would pay the tax within 8 weeks from date of communication of order of Tribunal – applicant undertakes to furnish similar bond & undertaking – on such compliance pre-deposit waived and stay granted: CESTAT [para 4]

[2013-TIOL-73-CESTAT-MUM](#)

Jaika Motors Ltd Vs CC & CE (Dated: September 12, 2012)

ST - whether incentives received by applicant (authorized dealer) in respect of the quantum of motor vehicles purchased from M/s Tata Motors is chargeable to Service Tax under the head 'Business Auxiliary Services' - in view of Tribunal decision in M/s Uttam Toyota vs CCE, Ghaziabad - ([2011-TIOL-537-CESTAT-DEL](#)), pre-deposit of dues waived and stay granted: CESTAT [para 6]

[2013-TIOL-72-CESTAT-MUM](#)

Sai Tyres Craft Vs CCE (Dated: August 6, 2012)

ST - Maintenance and Repair Service - Applicant undertaking activity of retreading of tyres - they are treating 60% towards cost of raw material and paying VAT thereon and paying ST on the remaining consideration of 40% - where material cost is separately mentioned in the invoice the same is not to be added to the AV for the purpose of ST - amount already deposited sufficient for hearing appeal - pre-deposit of remaining dues waived - Stay petition allowed: CESTAT [para 3]

[2013-TIOL-66-CESTAT-MUM](#)

Sydenham Institute of Management Studies Vs CST (Dated : August 22, 2012)

ST - Applicant, a Management institute charging some amount from students against the placement services - Revenue alleging that applicant is providing taxable service of 'Manpower Recruitment Agency' and liable to pay ST - applicant is not charging any amount from employers who come to their institute for recruitment, hence prima facie are not liable to ST - Pre-deposit waived and stay granted: CESTAT [para 5].

[2013-TIOL-65-CESTAT-KOL](#)

Seven Star Steels Ltd Vs CCE, C & ST (Dated : December 7, 2012)

CENVAT – Appellant engaged in the manufacture of sponge iron is procuring Iron ore and is availing CENVAT credit of Service Tax paid on the GTA – During screening process of Iron Ore, Iron ore fine being in the nature of unavoidable waste is generated and same is sold in the market – Revenue seeking reversal of CENVAT credit attributable to GTA service availed in respect of Iron Ore fine - After the iron ores are subjected to the process of screening, the same could not be called as input as such - Secondly, Rule 3 (5) of the CCR, 2004 is directed for reversal of CENVAT credit on inputs or capital goods and the same is not applicable to the credit availed on the "input services" – Order of Commr(A) set aside and appeal allowed with consequential relief: CESTAT [paras 5 & 6].

[2013-TIOL-64-CESTAT-DEL](#)

Daswani Classes Ltd Vs CCE (Dated : April 11, 2012)

Service Tax – Stay / Pre-deposit of Tax – Commercial Coaching Service – Benefit of Exemption under Notification No.12/2003-S.T for sale of study material to students - Appellant providing coaching classes to prepare students to take entrance examinations for medical and engineering colleges as well selling study material for such examinations - Prima facie, the argument that the scope of the exemption under Notification 12/2003-ST cannot be whittled down by clarification, appears to be legal - The Appellants seems to be having proof enough to contest that the value of services was not transferred to cost of books sold - The amount of Rs.8,98,512/- already deposited in this case is adequate to admit the appeal - Waived pre-deposit of balance dues (Para 11 & 12).

[Also see analysis of the Order](#)

[2013-TIOL-58-CESTAT-KOL](#)

M/s TKM Global Logistics Ltd Vs CST (Dated: November 29, 2012)

ST - Overseas Logistics Service Providers (OLSPs) entered into an Agreement with the Applicant for providing the entire clearing and freight forwarding services including collection of cargo from the customer's place, arranging for storage in the foreign land, Customs clearance, booking space with the airline and shipping lines, handing over the cargo to airlines or shipping lines for shipment and informing the Applicant regarding dispatch of cargo - OLSPs not only provided service of clearing and forwarding on behalf of the Applicant, but they also undertook incidental or auxiliary services like collection of payment, management or supervision job - So, the principal service by the OLSPs was 'Business Auxiliary Service' covered under the Clauses (vi) & (vii) of the Business Auxiliary Service(BAS), whereas the clearing and forwarding services undertaken by them, were the supplies ancillary in nature - ST rightly demanded under BAS - prior to insertion of Section 66A of the Finance Act, 1994 i.e., with effect from 18.04.2006, Service Tax for the amount of Rs.2,11,90,438.00 is not payable - contention that demand is hit by limitation is a mixed question of fact and law which can be dealt with during regular hearing - appellant does not have a prima facie case in favour - balance of convenience also lies in favour of department - appellant pleading financial hardship but not producing any evidence - pre-deposit ordered of 25% of demand of Rs.20.14 crores for obtaining stay: CESTAT.

[2013-TIOL-57-CESTAT-KOL](#)

The Next Vs CST (Dated: December 3, 2012)

ST - Appellant were providing services under the category of Clearing and Forwarding Agent vide an agreement but did not pay Service Tax - upon realizing their mistake they obtained registration in October, 2006 & paid the entire ST for the period August 2005 to March, 2006 along with interest and also filed returns for the entire period in November, 2006 - mistake committed by the appellants is a bonafide one as is evident from the facts that they have duly reflected the entire amount of service charges received in their Audited Balance Sheet - there is no substance in the allegation of suppression of facts levelled by the Department against the appellants except non-payment of service tax and not taking out Registration in time - it is a fit case for invoking Section 80 of the Finance Act, 1994 - penalty imposed u/s 77 & 78 set aside and appeal allowed: CESTAT [para 5].

[2013-TIOL-56-CESTAT-MUM](#)

Mahratta Chamber of Commerce Industries and Agriculture Vs CCE & ST (Dated: September 5, 2012)

ST - Club or Association Service - Applicant charging one-time registration fee and also recovering annual subscriptions from members for providing services of general guidance on business matters and representation of members problems at local/state and Central government level etc. - Since they themselves are paying service tax on the club or association service w.e.f. 1.4.2009 there is no prima facie case in their favour - Demand for the period 16.06.2005 to 31.03.2008 already set aside by the adjudicating authority - duty confirmed only for the period of 01.04.2008 to 31.03.2009 - Pre-deposit ordered of Rs.5 lakhs: CESTAT [paras 5 to 8].

[Also see analysis of the Order](#)

2013-TIOL-45-CESTAT-MUM
M/s Forbes Marshall P Ltd Vs CCE (Dated : September 7, 2012)
Services received from abroad - liability to pay Service Tax on reverse charge basis - argument of appellant that since it is a revenue neutral situation, tax need not be paid is completely unacceptable - such a proposition cannot stand to any common sense or logic and is rejected outright - appellant paying ST on detection by department - tax liability if not discharged in time interest liability is automatic and consequential - penalty issue can be decided at time of final hearing - pre-deposit ordered of interest liability: CESTAT [paras 5.1 & 6]
2013-TIOL-44-CESTAT-DEL
M/s Greater Noida Industrial Development Authority Vs CCE (Dated : November 8, 2012)
ST – Renting of Immovable property - In relation to immovable property the difference between "renting" and "leasing" is blurred - The ordinary meaning of "renting" will not cover long term leasing - Developing a township according to a plan which will be conducive to society at large and maintaining municipal functions in such township has to be prima facie considered as sovereign functions and not a commercial activity of the government - GNIDA allocates and transfers, whether by way of sale or lease, plots of land for industrial, commercial or residential purposes and collects, both, one-time lease charge at the time of initial handing over of land and also annual lease charges - Prima facie not liable for payment of Service Tax – Pre-deposit waived and Stay granted: CESTAT [paras 13, 14, 15 & 16]
Also see analysis of the Order
2013-TIOL-43-CESTAT-DEL
Kala Colour Lab Vs CCE & ST (Dated : October 1, 2012)
Service Tax - Valuation - Photography Services - Inclusion of cost of goods and material - Divergent views - Limitation - When there are divergent views of various High Courts, extended period of 5 years cannot be invoked and mere violation or negligence is not sufficient to invoke extended period. As such, earlier decisions of the Tribunal were in favour of the assessee on the issue of inclusion of cost of goods and material in the assessable value. Hence, no malafide can be held attributable to the assessee so as to invoke the extended period of limitation. Demand is hopelessly barred by limitation. (Para 5)

[2013-TIOL-41-CESTAT-MUM](#)

M/s Axis Bank Ltd Vs CST (Dated : December 11, 2012)

ST - 'Issue Management' related service provided by non-resident merchant bankers whether classifiable under 'Banking and other financial service' - holding that Prima facie applicant is liable to pay ST in view of Tribunal decision in Jubilant Life Sciences Ltd. ([2012-TIOL-199-CESTAT-DEL](#)) pre-deposit ordered of Rs.50 lakhs - Since no compliance was reported, appeal was dismissed - when application for early hearing was heard, appellant informed that they had made the pre-deposit on 26.10.2012 itself - since there is an error in the order dismissing the appeal, appeal restored and appeal fixed for final hearing on 12.03.2013: CESTAT [paras 2 & 3]

[2013-TIOL-37-CESTAT-DEL](#)

M/s Paramount Communication Ltd Vs CCE (Dated : December 19, 2012)

ST - Sharing the services of some of the office personnel with their sister concern - there is no case of supply of manpower by the appellant to the sister company because the employees concerned continued to work for the appellant also - service is by the personnel to the two companies in question and not one company providing service to the other company - there is no taxable activity on the part of the appellant to the other to be taxed under "Manpower Supply" service – Appeal allowed: CESTAT [para 3]

When the entire order which got issued was not relatable to the matter under dispute, notwithstanding the reference numbers in the preamble of the same, it has to be held as if the entire order was a mistake – ROM application allowed, earlier order withdrawn and a fresh order passed: CESTAT

[Also see analysis of the Order](#)

[2013-TIOL-36-CESTAT-AHM](#)

M/s Pestonjee Bhicajee Vs CCE & ST (Dated : September 7, 2012)

Service Tax - Renting of Immovable Property - Demand - Divergent views - Limitation - Stay /Dispensation of pre-deposit - Initially the High Court took a view that there is no liability of service of renting out of immovable property. However, the Larger Bench of the High Court upheld the levy. In view of this, it is submitted that extended period cannot be invoked in this case.

HELD - The persons who challenged the levy in Hon'ble High Court are liable to levy from the date of introduction of levy. The assessee against whom an offence case is registered, cannot be put to in a better position than who have approached the High Court. Prima facie no case made out for waiver of pre-deposit. (Para 3 & 4)

[2013-TIOL-34-CESTAT-BANG](#)

M/s Eldi Tech Vs CCE (Dated : August 7, 2012)

Service Tax - Management, Maintenance or Repair Service - Services provided to Government Building for non commercial purposes - In terms of Section 98(1) of the Finance Act 2012, no service tax shall be levied or collected in respect of management, maintenance, or repair of non-commercial Government buildings during the period from 16/6/2005 till the date on which Section 66B of the said Finance Act comes into force - Stay Granted (Para 1).

[2013-TIOL-32-CESTAT-KOL](#)

M/s Amrapali Barter Pvt Ltd Vs CST (Dated : December 12, 2012)

ST - Appellant although registered with the department had not provided any service during the period April, 2005 to March, 2008 and had not filed any returns – they filed six ST -3 returns together for the period on 18/11/2008 – penalty imposed u/s 77 of FA, 1994 dropped by Commissioner(A) but late fees u/r 7C of STR were upheld – in view of Circular No. 97/8/07 -ST dated 23/8/07 since no service was provided there is no requirement of filing ST -3 return - fit case to invoke the proviso to Rule 7C and waive the late fees relating to the Nil Returns filed – order set aside and appeal allowed: CESTAT [para 4]

[2013-TIOL-29-CESTAT-MAD](#)

M/s Pricol Ltd Vs CCE (Service Tax) (Dated : August 2, 2012)

Service Tax - Stay/Dispensation of pre-deposit - Demand of Service Tax on Business exhibition service availed outside India - Prima facie case made out for waiver of pre-deposit in view of precedent stay order of the Tribunal on the same issue.

[2013-TIOL-22-CESTAT-DEL](#)

M/s National Institute Of Banking Studies & Corporate Management Vs CCE (Dated : October 25, 2012)

Co-operative society promoted by six banks to provide training to employees of member banks to efficiently handle business of the banks – banks pay charges to society – whether liable to ST under the category of "Commercial Coaching or Training" – retrospective explanation added by Finance act 2010 appears to explain that the issue should not be decided with reference to the profit motive of the legal person owning the Institute - prima facie view is that the word "commercial" in definitions at section 65 of FA, 1994 cannot be considered to be superfluous and the explanation added by Finance Act, 2010 may not be a sufficient reason to take a view that the impugned training is "commercial training" – Pre -deposit waived and Stay granted: CESTAT [paras 11, 12, 13, 15 & 16]

<p>Also see analysis of the Order</p>
<p>2013-TIOL-21-CESTAT-MAD</p>
<p>M/s Scope International P Ltd Vs CCE (Dated : July 25, 2012)</p>
<p>Service Tax – Stay/Dispensation of pre-deposit – CENVAT Credit on Rent-a-cab, Outdoor catering – Prima facie case made out for waiver of pre-deposit in view of - (2011-TIOL-866-HC-KAR-ST) .</p> <p>CENVAT Credit on Event Management and Clearing and Forwarding Agent Service – Since the appellatant has already reversed the Credit, balance amounts waived.</p>
<p>2013-TIOL-20-CESTAT-MAD</p>
<p>M/s Jafty Earth Movers And Contractors Ltd Vs CCE (Dated : July 19, 2012)</p>
<p>Service Tax – Stay/Dispensation of pre-deposit – Residential Construction – Construction of houses for Tsunami victims – Prima facie, benefit of ratio in case of Macro Marvel Projects Ltd will be available to the appellatant – Pre-deposit waived.</p>
<p>2013-TIOL-17-CESTAT-BANG</p>
<p>M/s Flytech Media Pvt Ltd Vs CCE (Dated : June 21, 2012)</p>
<p>Service Tax – Stay / Pre-deposit of Tax - Sale of Space and Time for Advertisement - Prima facie, no service has been rendered in pursuance of the agreement dated 14.01.2007 in view of the judgment of the Hon'ble High Court of Andhra Pradesh banning such advertisements and that the amounts paid to the appellatant stand converted into equity shares and the same intimated to the Registrar of Companies - Under these circumstances, the dues as per the impugned order require to be waived (Para 7).</p>
<p>2013-TIOL-16-CESTAT-BANG</p>
<p>M/s Fowier Westrap (India) Pvt Ltd Vs CCE (Dated : July 15, 2012)</p>
<p>Central Excise – Classification – Classification of SILO System - Assessee classified SILO System under CTH No.8437 10 00 attracting 'Nil' rate of duty whereas Revenue sought to classify it under 9406 00 99 – There is no prima facie case for the appellatant on the classification issue - The demand for the normal period works out to over Rs.2.43 crores - The total CENVAT credit claimed to be available to the assessee for</p>

the normal period of demand is approximately Rs.61 lakhs - If this credit is taken into account, the amount of duty for pre-deposit would work out to Rs.1.82 crores – Ordered for pre-deposit of Rs. 1.5 Crores (Para 5).

[2013-TIOL-09-CESTAT-MUM](#)

Professional Couriers Vs CST (Dated : August 21, 2012)

ST – Since the imposition of penalty u/s 77 & 78 was the only issue before the Commissioner(A), there is no bar in initiating revision proceedings in the matter of imposition of penalty u/s 76 of the FA, 1994 – Penalty imposed by revisionary authority u/s 76 upheld, however benefit of cum-tax benefits extended – Appeal disposed of: CESTAT [paras 5.1, 5.2 & 5.4]

[Also see analysis of the Order](#)

[2013-TIOL-08-CESTAT-BANG](#)

M/s GVK Power & Infrastructure Ltd Vs CCE (Dated : August 27, 2012)

Service Tax - Stay / Pre-deposit of Tax - Management, Maintenance or Repair Service - Operating and maintaining a power plant - It appears that the transaction in question was on principal-to-principal basis and the appellant was required to operate and maintain the power plant of its subsidiary by using their own work force - According to the appellant, they were essentially manufacturing electricity and therefore, at best, their activity should have been classified under "Business Auxiliary Service" - Followed the decision of CMS (I) Operations & Maintenance Pvt. Ltd ([2007-TIOL-892-CESTAT-MAD](#)), - prima facie view that the appellant has a case against the impugned demand (Para 3).

[2013-TIOL-03-CESTAT-DEL](#)

Mr Sharwan Kumar Vs CCE (Dated : October 30, 2012)

ST – BAS - Processes of denting and painting are essential for completion of manufacture of bus bodies and therefore these processes are to be considered as manufacturing activities within the meaning of section 2(f) of CEA, 1944 - going by note 6 of section XVII of CETA, 1985, these processes per se also are defined to be process of manufacture because these processes are essential for transforming the semi-finished bus body into a complete and finished article – Demand of ST made under BAS fails - shifting of the goods within the factory premises, when the goods could not be considered to be cargo, could not be considered as "cargo handling" - Benefit of exemption 8/2005-ST stands denied by the Revenue on a very evasive reasoning - approach of selectively looking at the records of JCBL Ltd to book a case of duty evasion against the appellant is not a fair approach – Orders set aside and appeals allowed: CESTAT [paras 11, 12, 13 & 14]

[Also see analysis of the Order](#)

[2013-TIOL-02-CESTAT-AHM](#)

M/s Visat Construction Co Vs CST (Dated : September 06, 2012)

Service Tax - Works Contract - Laying of storm water drainage pipeline - Demand - Stay /Dispensation of pre-deposit - Board's circular dt.15.09.2009 holds that canal system built under Government projects is not a commercial activity and not chargeable to service tax. Prima facie case made out for grant of stay. (Para 5)

[2013-TIOL-01-CESTAT-AHM](#)

M/s Chokhani Constructions Vs CST (Dated : November 29, 2012)

Service Tax - Appeal dismissed by Commissioner (A) on ground of time bar - Filing of appeal in the office situated on the 5th floor instead of the 7th floor is a small procedural infraction and should not come in the way of substantive rights of the appellant for considering the appeal on merits – Commissioner (A) not considering appeal on merits but on technicalities – appeal filed in time but in a wrong forum cannot be a ground to dismiss it - order set aside and matter remanded to Commissioner (A) for disposing appeal after following principles of natural justice: CESTAT [para 6]