

**CESTAT RULING**[2009-TIOL-1566-CESTAT-DEL](#)**M/s Punjab Ex-Servicemen Coprn Vs CCE, Chandigarh (Dated: May 4, 2009)**

ST - Security agency service - Assessee provides security service - Revenue reclassifies it as manpower supply service and raises demand - Assessee for grant of stay - Commissioner(A) insists on pre-deposit - held, since the initial deposit made has been appropriated by the Revenue, Commissioner(A) needs to decide the issue on merit and pass a speaking order

[2009-TIOL-1565-CESTAT-DEL](#)**M/s Jaypee Rewa Plant Vs CCE, Bhopal (Dated: July 28, 2009)**

ST - Cenvat credit - Assessee is a cement manufacturer - claims credit on various input services - Revenue disallows for lack of evidence - held, credit is allowable on telephone services and mandap keeper service utilised for business purposes - case remanded to the Commissioner to examine evidence relating to air travel agent services, repair and maintenance and rent-a-cab services

[2009-TIOL-1563-CESTAT-DEL](#)**M/s Korea Plant Service & Engineering CO LTD Vs CCE & ST, Jaipur-II (Dated: August 13, 2009)**

ST - Cenvat Credit - Repair & Maintenance Service - Hindustan Zinc Ltd outsources its captive power plant to the assessee for operation and maintenance - Revenue levies tax on the gross payments - assessee claims cenvat credit on various services like mobile, coal unloading, GTA, advertisement, vehicle rent, equipment rent, group insurance and security - Revenue partly disallows credit on the plea that some of the services were availed only for the operation of the plant - held, since the Revenue has classified the entire operation as a composite service of repair and maintenance and levies tax on the gross sum paid to the assessee, it cannot now split up the input services for allowing credit - Assessee's appeal allowed

[2009-TIOL-1561-CESTAT-DEL](#)**CCE, Jalandhar Vs M/s N K Jatwani & Co (Dated: July 23, 2009)**

ST - Penalty - interest for delayed payment of tax - penalty imposed - Commissioner(A) sets aside penalty imposed under Sec 76 - held, since tax is deposited before issue of SCN and no fraud is alleged for evasion of tax, Revenue has no case

<a href="#">2009-TIOL-1556-CESTAT-AHM</a>
<b>M/s Schott Glass India Pvt Ltd Vs CCE, Vadodara (Dated: August 10, 2009)</b>
ST - export of service - assessee procures orders in India on behalf of foreign manufacturer - held, in view of CBEC recent Circular No 111/2009 what is important is the location of the recipient of the service and not the place of performance of service - since this Circular was not available to the Commissioner, case is remanded
<a href="#">2009-TIOL-1552-CESTAT-DEL</a>
<b>M/s Brindco Sales Ltd Vs CST, Delhi (Dated: August 3, 2009)</b>
ST - Assessee is a commission agent - claims since it was not covered under BAS prior to 10.9.04 when amendment in the definition of BAS was made, it is entitled to exemption notification - Revenue denies the benefit - held, no clear-cut findings by lower authorities - waiver from pre-deposit granted
<a href="#">2009-TIOL-1550-CESTAT-AHM</a>
<b>M/s Dineshchandra R Agrawal Infracon Pvt Ltd Vs CCE, Ahmedabad (Dated: August 4, 2009)</b>
ST - assessee supplies labourers to railways - held, since labourers work under direct supervision of the railways, it is prima facie a case, not linked to cargo handling - pre-deposit waiver granted
<a href="#">2009-TIOL-1549-CESTAT-AHM</a>
<b>Shri Prabhudas Keshavlal Patel Vs CST, Ahmedabad (Dated: July 2, 2009)</b>
ST - assessee supplies labourers to railways - held, since labourers work under direct supervision of the railways, it is prima facie a case, not linked to cargo handling - pre-deposit waiver granted
<a href="#">2009-TIOL-1548-CESTAT-DEL</a>
<b>M/s V S Distributors Vs CCE, Jaipur (Dated: July 20, 2009)</b>

**Service Tax - Activity of receipt, storage and sale of goods on commission is not covered by the definition of C&F Agent's service:** the activity of mere sale of goods on behalf of the Principal, would not be covered by the definition of C&F Agent's service. The C&F Agents are involved in movement/distribution of the goods as per their Principal's directions and sale of goods or procuring orders for sale of goods on behalf of their principals is not their main activity, while a Commission Agent, covered by the definition of " Business Auxiliary Service " is involved in causing sale or purchase of goods on behalf of another person for a consideration.

[Also see analysis of the Order](#)

[2009-TIOL-1547-CESTAT-MUM](#)

**Pan Asia Corpn Vs CCE, Mumbai-II (Dated: July 7, 2009)**

Commission service (BAS) is an input service covered under rule 2(1) of CCR, 2004 - Cenvat credit is admissible - Appeal allowed.

[2009-TIOL-1546-CESTAT-MUM](#)

**Kamani Oil Industries Vs CCE, Mumbai (Dated: July 10, 2009)**

Cenvat credit of service tax paid on mobile telephone service denied on basis of Board Circular 59/8/2003-ST dated 20.06.2003 – In the absence of any express prohibition under the new Cenvat Credit Rules, 2004 , following Tribunal decision in Indian Rayon Industries Ltd. [ [2006-TIOL-1152-CESTAT-MUM](#) ] credit allowed - use of mobile phone for business purpose - appeal allowed with consequential relief.

[2009-TIOL-1538-CESTAT-MAD](#)

**M/s G B Engineering Enterprises Pvt Ltd Vs CCE, Trichy (Dated: July 21, 2009)**

Service Tax – Stay / dispensation of pre -deposit - Intellectual property Service – Royalty paid to foreign service provider – service tax is payable though payment was made before the levy of service tax - royalty is a continuing / ongoing service even after 10/9/2004 – pre-deposit ordered.

[2009-TIOL-1537-CESTAT-AHM](#)

**CST, Ahmedabad Vs M/s Intas Pharmaceuticals Ltd (Dated: August 12, 2009)**

ST - Recipient of service - Assessee receives services from non-resident - Assessee refers to Larger Bench decision in the case of Hindustan Zinc resolving the dispute -

Revenue argues appeal has been filed against the order - held, since the Revenue's appeal has been dismissed by the Apex Court, appeal does not survive

[2009-TIOL-1536-CESTAT-AHM](#)

**M/s Inductotherm (India) Pvt Ltd Vs CST, Ahmedabad (Dated: August 3, 2009)**

ST - Consulting Engineering service - SCN is issued for levy of tax on erection and commissioning charges and also royalty charges - Commissioner(A) remands the issue and also observes that there are certain other payments made to non-resident and the same are leviable to tax - held, Commissioner(A) cannot expand the scope of appellate proceedings - issue remanded for fresh examination - assessee's appeal allowed

[2009-TIOL-1533-CESTAT-MAD](#)

**Shri M Ramakrishnan Vs CCE, Salem (Dated: July 17, 2009)**

Service Tax – Commercial or Industrial construction service – the plea that the service was rendered to Government organization was not raised before the adjudicating authority – no prima facie case for waiver of pre-deposit.

[2009-TIOL-1530-CESTAT-DEL](#)

**M/s Rajasthan Textile Mills Vs CCE, Jaipur (Dated: July 20, 2009)**

ST - Assessee is a service recipient provided offshore - Commissioner(A) reduces demand - held, service tax is a value-added tax - service provided prior to 18.4.06 may not call for levy of tax - pre-deposit waive off - stay granted

[2009-TIOL-1527-CESTAT-MAD](#)

**Mukesh & Associates Vs CCE, Salem (Dated: August 5, 2009)**

Service Tax – Stay / dispensation of pre -deposit - relevant date for taxable services - the tax is required to be paid as and when values for such services are received. Prima facie, the valuation of the same and the tax rates applicable have to be determined in accordance with the legal provisions in force at the time the taxable value is received – pre-deposit ordered.

[2009-TIOL-1526-CESTAT-DEL](#)

**M/s Bharat Sanchar Nigam Ltd Vs CCE, Chandigarh (Dated: June 19, 2009)**

Service tax - telecom service - Assessee is a PSU - does not realise payment of its services every month - Revenue allows it to operate under provisional assessment scheme and submit the return in Form ST -3A under rule 6 of Service Tax Rules 1994 - assessee adjusts the excess tax paid in one month in other month - Rule 6(4A) comes into force from 16.6.05 - Revenue raises demand - held, since the assessee has been operating under provisional assessment scheme, case is remanded for fresh examination and retrospective application of rule 6(4A) cannot be disallowed to the assessee - Assessee's appeal allowed

[2009-TIOL-1525-CESTAT-DEL](#)

**CCE, Kanpur Vs M/s Pradeep Enterprises (Dated: June 3, 2009)**

ST - Maintenance and repair service - assessee is a proprietorship firm - On being pointed out about the liability the assessee deposits tax with interest - penalty imposed - Commissioner(A) sets aside penalty - held, going by the fact that the assessee was not properly advised by his corporate client and he paid tax with interest immediately on being pointed about the liability, it is a fit case for invocation of Sec 80 - Revenue's appeal dismissed

[2009-TIOL-1524-CESTAT-AHM](#)

**M/s Aarvee Denims & Exports Ltd Vs CCE, Ahmedabad (Dated: July 21, 2009)**

**Service Tax - Export - Refund - Scope of Show cause notice** - Show cause notice denies refund on the ground that the services availed by the appellants are not listed services in terms of Notification No.41/07-ST, dt.06.10.07. Adjudicating authority denies refund on a different ground that the service provider is not registered for the various services provided by him. The Commissioner (Appeals) rejects the appeal on another ground that it is not on record that the service provider has actually paid the Service Tax to the Department.

**HELD** - As per Circular No. 112/06/2009-ST, dt . 12.03.09 even if the service provider is registered for providing one service, refund cannot be denied on the ground that the taxable services provided are not covered under the registration. The documentary evidences showing the collection of Service Tax from the appellant would meet the requirement of the law and the appellants is not expected to produce evidence to show that the service provider has actually deposited the dues with the Government. Appeals allowed. (Para 4 & 5)

[2009-TIOL-1523-CESTAT-AHM](#)

**CST, Ahmedabad Vs M/s Sirhind Steel Ltd (Dated: August 6, 2009)**

**Service Tax - Goods Transport Agency - Abatement - Conditions of Notification - Compliance** - Assesses have produced declarations from the service provider that the service provider has not availed the credit or benefit of the Notification No. 12/03. Hence, benefit of Notification No. 32/04 allowed as the condition attached thereof considered to be satisfied. Revenue appeal dismissed. (Para 2 & 3)

[2009-TIOL-1520-CESTAT-MUM](#)

**Force Motors Ltd Vs CCE, Pune (Dated: August 5, 2009)**

Cenvat Credit - Service Tax paid by Airport Authority of India is an Input Service – CESTAT

Tribunal's observations -

the definition of the input service given in Rule 2(l) of the Cenvat Credit Rules, 2004 is to be read as a whole.

the aircraft which is stationed at airport is used by the appellant for the business activities and this stand is taken by the appellant before the lower authorities, which was not declined by the lower authorities.

in the absence of any contrary evidence that the aircraft was not used for business activities, any service tax paid on the services rendered by the authority on such aircraft needs to be allowed as credit to the appellant

CESTAT decision in appellant's own case Force Motors Limited [ [2008-TIOL-1199-CESTAT-Mum](#) ] followed.

Appeal allowed with consequential relief, if any.

[Also see analysis of the Order](#)

[2009-TIOL-1519-CESTAT-DEL](#)

**CCE, Allahabad Vs Modern Laminators Ltd (Dated: June 23, 2009)**

Service Tax - CENVAT credit of service tax paid on outward transportation of finished goods from factory gate to customer's premises available – Larger Bench decision in ABB Ltd & Ors [2009-TIOL-830-CESTAT-BANG-LB](#) followed

[2009-TIOL-1518-CESTAT-DEL](#)

**M/s Puneet Telecom Vs CCE, Chandigarh (Dated: July 23, 2009)**

**Service Tax - Business Auxiliary Service - Review - Penalty** - Commissioner exercising the powers of review under Section 84 of the Finance Act, 1994 has imposed penalty under Section 78 for suppressing the value of taxable service from the department. There is no material available to prove that the appellants suppressed value of tax from the department. The Assistant Commissioner has rightly exercised the powers under Section 80. Assistant Commissioner's order is restored. (Para 3)

[2009-TIOL-1517-CESTAT-AHM](#)

**M/s PMC Projects (I) Pvt Ltd Vs Commissioner, Ahmedabad (Dated: August 6, 2009)**

**Service Tax - Demand - Receipt of payment** - The appellants contend that balance sheet is prepared on accrual basis and the service tax was paid as soon as the amount was received. It is submitted that what is received from and paid to their client is shown separately and cannot be treated as book adjustment. As this aspect has not been examined by the adjudicating authority matter remanded. (Para 3)

[2009-TIOL-1512-CESTAT-BANG](#)

**Indian Institute of Chemical Technology Vs CC, CCE & ST, Hyderabad (Dated: May 19, 2009)**

Service tax – In the absence of suppression of facts with an intention to evade payment of service tax, service tax demand invoking extended period not sustainable – As demand is set aside on limitation no finding given on items classified under grant-in-aid category by assessee

[2009-TIOL-1507-CESTAT-DEL](#)

**M/s Clique Vs CCE, Bhopal (Dated: July 14, 2009)**

**Service Tax - Commercial Training & Coaching - Vocational Course - Stay /Dispensation of pre-deposit** - The appellant deserves consideration at this stage in view of nature of activity carried out to prepare candidates for examination by IRDA, under sponsorship of Insurance Companies. Submissions of both sides required to be tested on the touch stone of law. However, considering the precedent case laws, waiver of pre -deposit ordered. (Para 4)

[2009-TIOL-1506-CESTAT-DEL](#)

**M/s Nitin Ahuja Vs CST, Delhi (Dated: August 3, 2009)**

**Service Tax - Works Contract - Composition Scheme - Exercising option - Stay / Dispensation of pre-deposit** - Appellant may be governed by composition scheme after the period 1.6.07 in view of option exercised. There is no embargo in the law that an option cannot be exercised. As an interim measure, to protect interest of Revenue, appellant to make pre -deposit of Rs.5 lakhs . (Para 4)

[2009-TIOL-1505-CESTAT-BANG](#)

**CCE, Hyderabad Vs Hindustan Coca Cola Beverages (P) Ltd (Dated: May 4, 2009)**

**Service Tax - CENVAT - Input Services - Mobile Phones** - As per Cenvat Credit Rules, 2004 service tax paid on mobile phone services falls under the definition of input service and hence credit is available. (Para 4, 5)

[2009-TIOL-1504-CESTAT-AHM](#)

**M/s Mahavir Rolling Mills Ltd Vs CST, Ahmedabad (Dated: June 19, 2009)**

**Service Tax - Goods Transport Agency - Abatement - Conditions of Notification - Stay /Dispensation of pre-deposit** - The Notification grants abatement for the purpose of payment of service tax, subject to fulfillment of the condition therein. Appellant claims it is not possible for them to produce any evidence to show that service provider has not availed the credit or benefit of the Notification No. 12/03. There is no relaxation given in Notification No. 32/04 and the condition attached thereof cannot be relaxed or diluted by the department or by the Tribunal. The benefit of the Notification would become available only and only when the condition are satisfied. Having admitted that such conditions have not been satisfied, no justification to grant unconditional stay. 50% of tax liability to be pre-deposited. (Para 4)

[2009-TIOL-1503-CESTAT-AHM](#)

**M/s Cadmach Machinery Co Pvt Ltd Vs CCE, Ahmedabad (Dated: July 21, 2009)**

**Service Tax - CENVAT - Input services - Outdoor catering services - Tour operator services - Repair and maintenance of vehicles** - In the light of the law declared by the Larger Benches in the case of CCE Vs. GTC Industries - [2008-TIOL-1634-CESTAT-MUM-LB](#) and ABB Ltd. Vs. Commissioner of Service Tax - [2009-TIOL-830-CESTAT-BANG-LB](#) credit on outdoor catering services received in the canteen, services obtained as tour operators and repair and maintenance of the vehicles allowed. (Para 2)

[2009-TIOL-1502-CESTAT-BANG](#)



**MSPL Ltd Vs CCE, Belgaum (Dated: December 23, 2009)**

**Service Tax - Goods Transport Agency - Cargo Handling Services - Mining Activity - Stay / Dispensation of pre-deposit** - Appellants in the course of mining activity hire trucks for transporting the ores from the pitheads for processing. Demand made for receiving the services of goods transport agency. **OBSERVED** - It is seen that the transportation of coal/ores within the mining area is not liable to service tax during the relevant period. Prima facie, the appellants have a strong case on merits. Stay granted. (Para 6)

[2009-TIOL-1501-CESTAT-DEL](#)

**M/s Paul Merchants Ltd Vs CCE, Chandigarh (Dated: July 9, 2009)**

ST - BAS - Assessee is an agent to Western Union which carries on the service of delivering foreign remittances to recipients in India - Assessee claims exemption from service tax under Export of Services Rule - Revenue raises demand - held, since the case prima facie cannot be ruled out as beyond the bar of limitation and the violation of natural justice also alleged, unconditional stay granted

[2009-TIOL-1498-CESTAT-DEL](#)

**M/s Bhilwara Zila Ex-Serviceman Welfare Sahkari Samiti Vs CCE, Jaipur-I I (Dated: July 16, 2009)**

ST - limitation - Assessee alleges delayed OIO for late appeal filing - held, since the Revenue has received back the acknowledgement sent with the Order, no mala fide can be alleged against public authorities for delayed service of order unless the assessee has some materials to prove it - since the assessee has not been vigilant it missed the opportunity to file appeal in time - Assessee's appeal dismissed

[2009-TIOL-1495-CESTAT-KOL](#)

**Advertising Corporation of India Pvt Ltd Vs CST, Kolkata (Dated: July 24, 2009)**

ST - Advertising agency - Assessee procures advertisements and arranges space in media for the Indian Railways - works on commission basis - claims it is not an advertising agency - held, making arrangement for display of advertisement is an advertising agency service, liable to service tax - however, since the assessee has pleaded financial hardship, limited pre-deposit ordered

[2009-TIOL-1492-CESTAT-AHM](#)

**CCE & CC, Vapi Vs M/s Harsiddhi Motors (Dated: July 27, 2009)**

ST - limitation - Assessee alleges limitation - Commissioner(A) finds SCN for period prior to amendment made vide Section 90 of the Finance (No.2) Act, 2004 (23 of 2004) which were made pari materia to the provisions of Section 11A of the Central Excise Act were issued without alleging suppression or fraud and rejects the Revenue's case - Since the Revenue fails to bring on record any evidence justifying invocation of extended period, there is no infirmity in the Commissioner(A) order - Revenue's appeal dismissed

[2009-TIOL-1491-CESTAT-MUM](#)

**M/s Midas Care Pharmaceuticals Pvt Ltd Vs CCE & CC, Aurangabad (Dated: August 11, 2009)**

P&P medicament manufacturer - In-process analysis of semi-finished goods as well as final products so that the goods meet the specifications laid down under the Drugs & Cosmetics Act and Pharmacopoeia – Debit notes raised - whether liable to Service Tax under the category of "Technical Testing and Analysis Service" – CESTAT orders pre-deposit.

[Also see analysis of the order](#)

[2009-TIOL-1490-CESTAT-MAD](#)

**C R Narayana Rao Vs CST, Chennai (Dated: June 23, 2009)**

Service Tax – Stay / dispensation of pre-deposit - Exemption Notification – Payment in convertible foreign currency – There is no dispute that M/s Infosys Technologies, who placed order with the appellant to render service abroad, had received the payment in foreign currency but paid the same to the applicants in Indian currency. In view of the precedent decision in [2009-TIOL-709-CESTAT-BANG](#) stay granted. ( Para 3)

[2009-TIOL-1489-CESTAT-DEL](#)

**M/s Harish Kumar Contractor Vs CCE, Panchkula (Dated: May 22, 2009)**

ST - Manpower supply service - Assessee provides labour force to Municipal Corporation - demand raised - Assessee admits the service provided by them is covered under service tax only from 16.6.05 and a major part of demand prior to this date is not sustainable - Pre-deposit ordered

[2009-TIOL-1480-CESTAT-MAD](#)

**CCE, Chennai Vs M/s R K Swamy Bbdo Advertising (P) Ltd (Dated: June 15, 2009)**

Service Tax – Interest – interest is payable for the period during which the operation of the provisions of the statute was stayed by the interim order of the High Court.

[Also see analysis of the Order](#)

[2009-TIOL-1479-CESTAT-DEL](#)

**M/s Kidstuff Promos And Events Pvt Ltd Vs CST, Delhi (Dated: July 23, 2009)**

ST - Event Management Service - Assessee is registered with the Revenue under various heads - pays tax under different heads at different points of time - Revenue raises demand and insists on inclusion of reimbursed sum into the gross value - held, since the issue is pending with the Larger Bench, ordering pre-deposit would amount to public mischief - no pre-deposit during pendency of appeal

[2009-TIOL-1478-CESTAT-DEL](#)

**M/s Crimpson Electronics Vs CCE, Kanpur (Dated: July 31, 2009)**

ST - Repair & Maintenance service - Revenue alleges in the guise of job work, the assessee is providing repair service - held, since there is no document available on record which indicates any service being provided, assessee's appeal allowed

[2009-TIOL-1477-CESTAT-MUM](#)

**Duphar Interfran Ltd Vs CST, Mumbai (Dated: June 25, 2009)**

ST - Management Consultancy Service - Assessee enters into a service agreement to provide various sorts of services to assist its management - held, the definition of management consultancy service is wide enough to include many types of services - prima facie, it is a management consultancy service - pre-deposit ordered

[2009-TIOL-1473-CESTAT-KOL](#)

**M/s Essel Mining & Industries Ltd Vs CST, Bhubaneswar (Dated: June 16, 2009)**

ST - GTA Service - Assessee paying tax where gross amount charged by the service provider is more than Rs 1500 - dispute over consignments where tax paid is less than Rs 1500 as Revenue denies the benefit of exemption notification - waiver from pre-deposit granted - stay ordered

[2009-TIOL-1472-CESTAT-MAD](#)

**Prasad Corporation Ltd Vs CST, Chennai (Dated: June 2, 2009)**

Service Tax – Stay / Dispensation of pre-deposit – prima facie, the activity of giving special effects etc to the inputs received via internet is covered under Video Tape Production Service – Pre -deposit of Rs 50 Lakhs ordered.

[2009-TIOL-1471-CESTAT-MAD](#)

**CCE, Chennai-III Vs M/s Southern Synthetics Ltd (Dated: June 15, 2009)**

Service Tax – Goods Transport Operation Agency Service for the period from 16.11.97 to 1.6.98 – Show Cause Notice under Section 73 of the Finance Act, 1994 is not maintainable as the respondents were liable to file returns under Section 71 A and Section 73 is applicable only in cases where return is to be filed under Section 70.

[2009-TIOL-1463-CESTAT-AHM](#)

**M/s Ameer Castor & Derivatives Ltd Vs CCE, Ahmedabad (Dated: July 30, 2009)**

ST - Refund - assessee is a manufacturer-exporter - files refund claim for two services of CHA and transportation availed for exports - Since claims filed beyond the period of 60 days as prescribed in the exemption Notification, Revenue rejects it - assessee pleads it may be allowed by invoking provisions of Sec 11B of Central Excise Act - held, since the limitation period has been prescribed in the Notification, a general provision cannot be invoked - even amendment carried out to extend the period of refund claim makes it clear that it is prospective and does not cover the past periods - Assessee's appeal dismissed

[2009-TIOL-1462-CESTAT-KOL](#)

**M/s Agarwal Agency Vs CC, CCE & ST , Patna (Dated: July 27, 2009)**

ST - C&F Service - Penalty imposed for suppression of facts under Sec 78 - Assessee is registered with the Revenue as a service provider - however, when Revenue officers visits its premises they find assessee has been providing services to many other clients not disclosed to the Revenue - held, it is a clear case of suppression and Sec 80 benefits cannot be granted - assessee's appeal dismissed

[2009-TIOL-1461-CESTAT-DEL](#)

**M/s Cherry Hill Interiors Ltd Vs CST, New Delhi (Dated: July 17, 2009)**

ST - renovation of old building - demand - assessee claims 80% deduction towards material cost from total value of contract and pays tax on rest 20% - also pleads financial hardship - held, issue to be examined later - Rs one crore pre-deposit ordered

[2009-TIOL-1460-CESTAT-MAD](#)

**CCE, Chennai Vs M/s Tamilnadu Petroproducts Ltd (Dated: May 29, 2009)**

Service Tax – Clearing and Forwarding Agent service – the activity of mere procurement of purchase order for the principal is not taxable under C&F Service – This activity is taxable under BAS only with effect from 1.7.2003.

[2009-TIOL-1459-CESTAT-DEL](#)

**CCE, Jaipur-I Vs M/s ANS Constructions Ltd (Dated: June 25, 2009)**

**Service Tax - maintenance of green belt - not "maintenance of immovable property"** - The respondents were engaged for activities of growing of grass, plants, trees or fruits, vegetable, regular mowing of lawns, pruning & trimming of shrubs and cleaning of garden, would not come within the ambit of "maintenance of immovable property" .

[Also see analysis of the Order](#)

[2009-TIOL-1458-CESTAT-AHM](#)

**M/s B N Chaudhary Vs CCE, Ahmedabad (Dated: June 9, 2009)**

ST - Construction Service - Assessee enters into a contract for civil works - revenue raises demand and imposes penalty - assessee argues since there was a change in definition of commercial concern in 2005, the assessee being a proprietor, is not liable to service tax for the prior period - held, since the assessee has paid the tax and there was a change in definition for the levy, waiver from pre-deposit granted

[2009-TIOL-1457-CESTAT-AHM](#)

**CST, Ahmedabad Vs M/s Ashima Ltd (Dated: June 12, 2009)**

ST - Consulting Engineer Service - Assessee pays royalty for transfer of technical knowhow - service provider is non-resident, having no office in India - it is not taxable prior to 1.1.2005 as held by the Larger Bench in the Hindustan Zinc case ( [2008-TIOL-1149-CESTAT-DEL-LB](#) )

[2009-TIOL-1452-CESTAT-MAD](#)

**M/s Skylift Cargo Pvt Ltd Vs CST, Chennai (Dated: May 11, 2009)**

Service Tax – Stay / Dispensation of pre-deposit – Business Auxiliary Service – Prima facie, discount allowed by the airlines cannot be treated as commission – pre-deposit waived.

[2009-TIOL-1450-CESTAT-MAD](#)

**Sify Technologies Ltd Vs CST, Chennai (Dated: June 4, 2009)**

**Service Tax – Rs. 1.86 Crore demanded as differential tax – Difference occurred due to errors in the returns - Commissioner had not attempted to verify and ascertain the correct figures.** The reconciliation between the two sets of figures cited would have been possible only if the details like realization from exempted services, realization from export of services, realization from sales, realization towards VAT/Sales Tax etc. were removed from the details furnished on 18-10-2006. The Commissioner came to pass the impugned demand as the above exercise was avoided. The Commissioner found variations between the figures furnished along with the reply to the show-cause notice and those furnished in the ST - 3 returns. However, the demand was raised ignoring one class of variations. –

**Matter remanded:** the ends of justice require that the impugned order be set aside and the matter remanded for fresh adjudication after allowing the appellants adequate opportunity for presenting their case. The appeal is thus allowed by way of remand.

[Also see analysis of the Order](#)

[2009-TIOL-1449-CESTAT-KOL](#)

**M/s Steel India Vs CCE & ST, Ranchi (Dated: August 12, 2009)**

ST - Penalty - Assessee is registered with the Revenue as GTA service provider - demand and penalty confirmed - Commissioner(A) takes the view that the Revenue has no discretion to impose lesser penalty and confirms it - held, if there is any suppression or misrepresentation with intent to evade payment of tax, the ratio of SC decision in Dharmendra Textiles case will apply but since no such findings are given in this case, the issue is remanded

[2009-TIOL-1441-CESTAT-DEL](#)

**Vadhara Builders Pvt Ltd Vs CST, New Delhi (Dated: July 2, 2009)**

Service Tax – Availment of benefit of Notification No. 12/2003-ST for exclusion of value of materials sold without satisfying authorities with cogent evidence – No major case of material supply, and nature of service appears to be finishing service – Pre - deposit of Rs. 10 lakhs ordered

[2009-TIOL-1440-CESTAT-MAD](#)

**Thirumala Enterprises Vs CCE, Salem (Dated: June 16, 2009)**

Service Tax – Business Auxiliary Service vis-à-vis Mining of Mineral, Oil or Gas Services - Stay / Dispensation of pre-deposit - Prima facie, the activities carried out by the applicants are relating to mining of minerals which prima facie has been brought into the ambit of service tax only with effect from 1.6.2007. The period in dispute in the present case is September 2005 to December 2006, that is, prior to 1.6.2007. Strong case made out by the appellants. Stay granted.

[2009-TIOL-1439-CESTAT-MAD](#)

**Karl Kubel Institute of Development Education Vs CCE, Coimbatore (Dated: May 29, 2009)**

Service Tax – Stay /Dispensation of pre -deposit – Mandap Keeper Services – the applicant provided halls for conducting training programmes which are neither official, social or business function and therefore prima facie case made out for waiver of pre - deposit.

[2009-TIOL-1438-CESTAT-DEL](#)

**CCE, Ludhiana Vs M/s Jawand Sons (Dated: July 14, 2009)**

ST - Service recipient - Issue is no longer res integra as it is not taxable prior to 18.4.06 - Revenue's appeal dismissed

[2009-TIOL-1437-CESTAT-BANG](#)

**Toyota Kirloskar Motors Pvt Ltd Vs CCE (LTU), Bangalore (Dated: April 20, 2009)**

Service Tax – Service tax on services received from outside India can be discharged from CENVAT Credit A/c – No exclusion provided in the scope of 'output service'

defined in Rule 2(p) of CENVAT Credit Rules, 2004 other than GTA prior to 01.03.2008 – Pre-deposit of Rs. 3.3 crores waived and stay granted

[Also see analysis of the Order](#)

[2009-TIOL-1436-CESTAT-DEL](#)

**Cellebrum.Com Pvt Ltd Vs CC & CCE, Chandigarh (Dated: July 17, 2009)**

ST - Business Auxiliary Service - Assessee is an intermediary - receives messages from senders and transmits the same to the recipient by hiring cellular services - demand under BAS - assessee pleads for cenvat credit and proper classification of the service - held, the Govt has introduced another service, Business Support Service, which may be relevant in this case from 1.5.2006 - Pre-deposit of Rs 20 lakh ordered

[2009-TIOL-1435-CESTAT-DEL](#)

**M/s Bharat Sanchar Nigam Ltd Vs CCE, Chandigarh (Dated: June 19, 2009)**

ST - telephone service - provisional assessment under rule 6(4A) - assessee has been filing half-yearly return and adjusting the excess tax paid in one month against the tax due in the next month - demand - held, unless provisional assessment is finalised, there is no ground for fresh demand - issue remanded

[2009-TIOL-1434-CESTAT-DEL](#)

**M/s AGV Alfab Ltd Vs CST, New Delhi (Dated: July 17, 2009)**

ST - Works Contract - Assessee claims benefit of Notification No. 12/2003 for deduction of materials used in the contract - Revenue ignores the books of the assessee and raises demand - held, since the Finance Act, 1994 does not intend to tax sale of goods, and lower authorities have failed to consider the case comprehensively, waiver from pre-deposit granted along with stay

[2009-TIOL-1431-CESTAT-AHM](#)

**M/s Shrinandnagar Co-Op Housing Society Ltd Vs CST, Ahmedabad (Dated: July 3, 2009)**

Service Tax – Construction of residential complex by cooperative housing societies for its members not liable to service tax – Tax paid initially available as refund – Matter remanded to original authority to determine unjust enrichment and correctness of claims



<a href="#">Also see analysis of the Order</a>
<a href="#">2009-TIOL-1430-CESTAT-BANG</a>
<b>M/s India Vision Satellite Communications Ltd Vs CCE, Cochin (Dated: April 28, 2009)</b>
Service Tax – Contention of appellants that service tax already paid by supplier of inputs and order traversed beyond SCN to be looked into at final hearing – No reasonable grounds for waiver of pre -deposit except huge accumulated losses – Pre - deposit of Rs 10 lakhs ordered
<a href="#">2009-TIOL-1429-CESTAT-MUM</a>
<b>Jet Speed Audio Pvt Ltd Vs CCE, Mumbai-I (Dated: May 29, 2009)</b>
ST - service recipient - Assessee receives IPR service from a foreign company - Revenue imposes tax on royalty and levies penalty - held, no power was vested in the Revenue to levy tax on service recipient prior to 18.4.2006 when Sec 66A was inserted in the Finance Act, 1994 - since the period is prior to 18.4.2006, no demand is sustainable and penalty is set aside - Assessee's appeal allowed
<a href="#">2009-TIOL-1428-CESTAT-DEL</a>
<b>CCE, Chandigarh Vs M/s Bindra Tent Service (Dated: July 13, 2009)</b>
ST - Pandal & Shamiana Service - Income Tax authorities conduct Survey on assessee's premises - Assessee surrenders certain sums - Service Tax authorities raise demand - Commissioner (A) observes it cannot be presumed that the surrendered sum was earned by providing taxable service - held, it is rightly held by the Commissioner(A) that the onus is on the Revenue to establish that the sum surrendered is related to the taxable service - demand cannot be sustained on the basis of presumption - Revenue's appeal dismissed
<a href="#">2009-TIOL-1421-CESTAT-DEL</a>
<b>M/s Dwarikesh Sugar Industries Ltd Vs CCE, Meerut-II (Dated: May 20, 2009)</b>
Service Tax – Credit availed on strength of TR-6 challans for GTA service not deniable – Impugned order set aside

[2009-TIOL-1420-CESTAT-MUM](#)

**Vikram Ispat Vs CCE, Raigad (Dated: December 31, 2009)**

Service Tax – Break up of usage of mobile phone service and rent-a-cab service for private use and business use not given, security service not availed in the factory but at Rail yard, no correlative data to indicate association service linked to manufacturing activity – Pre-deposit of Rs. 50,000 ordered

[2009-TIOL-1419-CESTAT-AHM](#)

**M/s Daman Polyfab Vs CCE & CC, Vapi (Dated: July 30, 2009)**

ST - Cenvat credit - Onward transportation of the goods from the place of removal is input service as the same is covered by words "activities relating to business" - issue is already decided by the Larger Bench in the ABB Ltd case in favour of the assessee - Assessee's appeal allowed

[2009-TIOL-1418-CESTAT-AHM](#)

**M/s SMP Constructions Pvt Ltd Vs CCE, Vadodara (Dated: August 4, 2009)**

ST - Commercial or industrial construction service - Abatement - Revenue denies abatement on the ground that the assessee availed cenvat credit - Demand confirmed - Assessee pleads it has not taken cenvat credit on contracts where abatement was availed - Pre-deposit waiver granted on the basis of a similar case heard and stayed by the Tribunal

[2009-TIOL-1412-CESTAT-AHM](#)

**CCE & CC, Surat Vs Shri Sarvan Kumar B Sharma (Dated: July 27, 2009)**

ST - Assessee seeks registration under C & F Agent - writes to the Revenue to clarify the head of the taxable service - Delay in payment of tax - later Revenue realises that the assessee is covered under cargo handling service - SCN issued - Commissioner(A) finds no mens rea in SCN and treats it beyond the time of limitation - held, since the assessee had approached the Revenue for clarifying the taxable head and the Revenue did not advise the assessee to pay tax, Commissioner (A) order setting aside the demand is valid - Revenue's appeal dismissed

[2009-TIOL-1411-CESTAT-AHM](#)

**M/s Cosmos Detective & Security Services Vs CST, Ahmedabad (Dated: July 22, 2009)**

ST - Security Services - Assessee's balance sheet scrutinised and Revenue raises demand - assessee pleads in addition to security services they also provide manpower supply service which was not taxable prior to 16.6.2005 - also informs the Tribunal that a separate SCN was issued for the latter period and the same was dropped by the adjudicating authority and the Revenue has not appealed against - held, since the present demand concerns prior period than the one decided by the adjudicating authority, the case is remanded

[2009-TIOL-1410-CESTAT-MUM](#)

**CCE, Nagpur Vs Noble Grains India Pvt Ltd (Dated: June 12, 2009)**

Notfn no. 41/2007-ST grants refund of service tax paid on specified services used for export of goods by the exporter hence prima facie respondent manufacturer cannot claim refund of service tax paid on port services received by another party for export of goods.

Benefit under notification 41/2007-ST cannot be claimed by third parties – Rule of strict interpretation applies to exemption notification.

Impugned order stayed till the final disposal of appeals.

[2009-TIOL-1408-CESTAT-BANG](#)

**M/s United Telecom Limited Vs CC,CCE & ST, Hyderabad (Dated: May 12, 2009)**

Service Tax – Contract on BOOT basis with e-seva for supporting and operating e-seva services for citizens to pay taxes and utility bills – Revenue initially initiated action under Online Information Database Access & Retrieval Service' which was dropped and for same period initiated recovery under Business Auxiliary Service – Services not classifiable under BAS, no justification for invoking extended period – Full waiver of pre-deposit and stay granted till disposal of appeal

[2009-TIOL-1407-CESTAT-KOL](#)

**M/s S D Business Enterprise Pvt Ltd Vs CST, Kolkata (Dated: June 9, 2009)**

ST - C&F Service - Assessee claims deduction of reimbursed sum from the gross amount - held, since the reimbursement is not properly reflected in the monthly returns nor the same is provided for in the agreement, a pre-deposit of 50% of the demand is ordered

[2009-TIOL-1405-CESTAT-KOL](#)

**M/s Premier Security Enterprises Vs CCE & CC, Patna (Dated: April 21, 2009)**

ST - Security Agency Service - Assesee argues that it receives only 15% as service charge and is liable to pay tax only on this sum - held, it is settled law that security agency service providers are liable to pay tax on the gross receipt - penalty reduced

[2009-TIOL-1401-CESTAT-BANG](#)

**M/s Sandur Manganese & Iron Ores Ltd Vs CST, Belgaum (Dated: May 13, 2009)**

Service Tax – Transportation of ore within the mining area not leviable to service tax – Prima facie case in favour of appellants – Full waiver of pre-deposit ordered and stay granted

[2009-TIOL-1397-CESTAT-DEL](#)

**M/s Ujjawal Parivahan Sahakari Samiti Ltd Vs CCE, Jaipur (Dated: June 17, 2009)**

Service Tax – Activities like excavation, transportation from mining area to crushing site, transportation of mining goods and crushed goods to the buyer under a composite contract – Since appellant may fall under tax net for some activities and certain activities like transportation in mining area being held as not taxable, pre-deposit of Rs. 20 lakhs ordered

[2009-TIOL-1396-CESTAT-DEL](#)

**M/s Beekay Engineering Corpn Vs CCE, Raipur (Dated: July 21, 2009)**

ST - Works Contract Service - Cenvat credit availed by the assessee - later reversed and abatement claimed - Revenue raises demand - held, once credit availed on the input is reversed, the case may be equated with on-avaiement and waiver of pre - deposit is gratned

[2009-TIOL-1395-CESTAT-DEL](#)

**CCE, Ludhiana Vs M/s Speedways Tyre Service (Dated: July 9, 2009)**

ST - Reconditioning service - assessee provides tyre retreading service - Revenue for tax under repair and maintenance service - held, the reconditioning activity of the assessee was brought under the tax net only from 16.6.05 - Adjudicating authority

directed to rework the demand

[2009-TIOL-1389-CESTAT-MUM](#)

**Prithvi Couriers Vs CCE, Pune-II (Dated: May 18, 2009)**

**Service Tax – Delayed Payment of Tax – No reason submitted for delay – Penalty rightly imposed - vivid reasoning and great clarity of Appellate Commissioner appreciated:** No reason whatsoever has been stated by the appellant for the delay in filing returns and paying tax, nor even any relief under section 80 of the Act has been prayed for in this appeal. In the impugned order, the Id. Commissioner (Appeals) considered the decisions cited by the assessee and distinguished those cases with **vivid reasoning and great clarity** . There is hardly any reason for this Tribunal to interfere ."

[Also see analysis of the Order](#)

[2009-TIOL-1388-CESTAT-BANG](#)

**M/s Raja Ratnaiah & Co Vs CST, Mysore (Dated: May 27, 2009)**

Service Tax – Activity of meter reading, billing and ledger keeping whether taxable as professional services of CAs or BAS - Full waiver of pre-deposit in view of financial hardship

[2009-TIOL-1387-CESTAT-DEL](#)

**Ghanshyam Lodhwal Vs CCE, Jaipur-I (Dated: June 17, 2009)**

ST - Penalty - Assessee rents out vehicle and the vehicle stays with the hirer - demand raised - held, given that smallness of the demand and the fact that the assessee cooperated with the adjudicating authority, penalty is not called for but this case is not to be cited as precedent

[2009-TIOL-1386-CESTAT-MUM](#)

**Cummins Generator Technologies India Ltd Vs CCE & CC, Aurangabad (Dated: June 23, 2009)**

Credit of service tax paid on outdoor catering service - issue is covered by the Larger Bench decision in GTC Industries Ltd. [2008-TIOL-1634-CESTAT-MUM-LB](#) – Cenvat admissible - Appeal allowed.

<a href="#">2009-TIOL-1377-CESTAT-DEL</a>
<b>M/s R J Interiors Vs CST, New Delhi (Dated: July 7, 2009)</b>
ST - Works Contract - Assessee claims deduction of 60% of gross value of contract towards materials involved in the work - Revenue raises demand on the gross value - held, since the assessee has failed to provide enough evidence towards involvement of materials in execution of the contract, a pre-deposit of Rs 20 lakh ordered
<a href="#">2009-TIOL-1376-CESTAT-DEL</a>
<b>CCE, Raipur Vs M/s Beekay Engg &amp; Castings Ltd (Dated: June 11, 2009)</b>
Service Tax – Input tax credit not deniable on mobile/landline phones, Rent-a-cab service, General Insurance premium on fire, machinery breakdown, group gratuity, group accident policy etc, Courier (inward freight), C & F service etc – Impugned order upheld
<a href="#">2009-TIOL-1375-CESTAT-BANG</a>
<b>M/s Bharat Sanchar Nigam Ltd Vs CCE, Thiruvananthapuram (Dated: May 7, 2009)</b>
Service Tax – Service tax liability on IUC and other services – Issue covered by various decisions of CESTAT – Pre-deposit of Rs. 15 lakhs ordered out of total demand of Rs. 11 crores tax/penalty and stay granted
<a href="#">2009-TIOL-1374-CESTAT-BANG</a>
<b>Mr A Srinivasulu Vs CCE, Visakhapatnam (Dated: May 6, 2009)</b>
Service Tax – Collection of highway toll fee for National Highway Authority of India whether regarded as business auxiliary service – Pre-deposit of Rs. 2 lakhs ordered – Balance amount waived and stay granted
<a href="#">2009-TIOL-1367-CESTAT-DEL</a>
<b>M/s Prakash &amp; Poonam Tours &amp; Travels Vs CCE, Jaipur-II (Dated: June 29, 2009)</b>

<p>ST - Tour Operator - Assessee carries employees of a corporate client from their residence to their work place and back home - Revenue raises demand - held, since the vehicles owned by the assessee are not tourist vehicles nor transport permit is granted for this purpose, the assessee is not covered under the 'Tour Operator' Service - Assessee's appeal allowed</p>
<p><a href="#">2009-TIOL-1366-CESTAT-DEL</a></p>
<p><b>CCE, Jaipur Vs M/s Kalpana Travels Pvt Ltd (Dated: July 9, 2009)</b></p>
<p>ST - Tour Operator Service - Ticket booking agent who books tickets on behalf of the principal is not liable to pay tax prior to 10.9.07 - Revenue's appeal dismissed</p>
<p><a href="#">2009-TIOL-1365-CESTAT-BANG</a></p>
<p><b>M/s Aspinwall &amp; Co Ltd Vs CCE, Mangalore (Dated: May 12, 2009)</b></p>
<p>Service Tax – Services provided by CHA do not come under category of port service – All relevant facts known to department, no justification for invoking longer period – Full waiver of pre-deposit and stay granted</p>
<p><a href="#">2009-TIOL-1364-CESTAT-MUM</a></p>
<p><b>Kamani Oil Industries Vs CCE, MUMBAI -II (Dated: July 10, 2009)</b></p>
<p>Appellant taking credit on Goods Transport Services even in respect of exempted goods but reversing the same subsequently – since credit taken after the clearances of the exempted goods, rule 6 of CCR, 2004 not applicable – Penalty sustainable - CESTAT</p>
<p><a href="#">Also see analysis of the Order</a></p>
<p><a href="#">2009-TIOL-1363-CESTAT-AHM</a></p>
<p><b>CCE, Ahmedabad Vs M/s ADF Foods Ltd (Dated: June 26, 2009)</b></p>
<p>Service Tax – Port is the place of removal in case of exports on FOB basis – Even LB in <i>ABB Ltd &amp; Ors</i> <a href="#">2009-TIOL-830-CESTAT-BANG-LB</a> allowed credit of service tax paid on outward transportation even from factory gate – No merit in revenue appeal – Appellate Commissioner's order allowing refund of service tax upheld</p>

[2009-TIOL-1362-CESTAT-DEL](#)

**Rakesh Kumar Thapur Vs CCE, Chandigarh (Dated: March 2, 2009)**

ST - Assessee provides horizontal drilling service for telephone cables - tax levied on such service with effect from 16.6.2005 - Commissioner(A) asks for pre -deposit of tax with interest and the entire penalty amount - assessee does not comply - appeal rejected - held, pre -deposit of tax with interest is enough for hearing the case - issue remanded

[2009-TIOL-1356-CESTAT-MUM](#)

**M/s Sandvik Asia Ltd Vs CCE, Pune-I (Dated: June 12, 2009)**

Taxable services received from abroad by a person in India - Whether appellant would be liable to pay Service Tax for the period prior to 18.04.2006 in view of the fact that section 66A was incorporated in Finance Act, 1994 w.e.f 18.04.2006 – In view of Bombay High Court decision in Indian National Shipowners Association [2008-TIOL-633-HC-MUM-ST](#), appellant cannot be held liable for payment of Service Tax for the period 01.01.2005 to 17.04.2006 – Appeal allowed.

[2009-TIOL-1351-CESTAT-MUM](#)

**CCE & CC, Aurangabad Vs M/s Dhoot Compack Ltd (Dated: July 2, 2009)**

Cenvat Credit of Service Tax paid on outward transportation of final products from factory to customers' premises – Respondent has sold goods at the buyer's place on FOR basis - Period of dispute February 2005 to March 2006 – Board's Circular 97/8/07 dated 23.8.2007 upheld by P & H High Court in Ambuja Cement ( [2009-TIOL-110-HC-P&H-ST](#) ) and given retrospective effect – SC decision in Suchitra Components ( [2007-TIOL-09-SC-CX](#) ) also relied upon – Commissioner(A)'s order allowing Credit upheld - Revenue appeal dismissed .

[2009-TIOL-1348-CESTAT-DEL](#)

**M/s Tops Detective & Security Services Ltd Vs CCE, Indore (Dated: June 11, 2009)**

ST - Security Agency Service - Assessee follows cash accounting system - Tribunal orders reconciliation of accounts statements - Revenue alleges non-cooperation by the assessee - Pre-deposit of Rs 5 lakh ordered and assessee directed to produce the challan before Revenue

[2009-TIOL-1347-CESTAT-KOL](#)



**M/s Shambhavi Marketing Pvt Ltd Vs CCE & ST, Patna (Dated: April 21, 2009)**

ST - Commercial Coaching Service - held, since vocational training was not taxable prior to amendments, the waiver of pre-deposit granted

[2009-TIOL-1346-CESTAT-KOL](#)

**M/s Narbheram Motors (P) Ltd Vs CCE & ST, Ranchi (Dated: July 10, 2009)**

ST - Penalty - Assessee deposits service tax with interest - argues against penalty and pleads invocation of Sec 80 as it had bona fide reason not to comply with the provisions of law - held, since the Commissioner(A) invoked Sec 11AC of Central Excise Act and not the penalty provisions of the Finance Act 1994, the matter is remanded

[2009-TIOL-1345-CESTAT-KOL](#)

**M/s Anurag Ferro Products Pvt Ltd Vs CCE & CC, BBSR (Dated: July 10, 2009)**

ST - Cenvat credit - Amendment in CCRs w.e.f 1.3.08 - GTA service excluded from the definition of output service - assessee claims earlier to this amendment there was no such restriction - held, assessee has prima facie a strong case - waiver from pre-deposit granted

[2009-TIOL-1341-CESTAT-MUM](#)

**Inox Air Products Ltd Vs CC & CCE, Nagpur (Dated: July 8, 2009)**

ST paid on outward transportation - Liquid Oxygen, Nitrogen and Medicinal gas delivered to buyers in cryogenic tanks maintained at sub-zero temp and mounted on goods transport vehicles - Cenvat Credit allowed – CESTAT

[Also see analysis of the Order](#)

[2009-TIOL-1340-CESTAT-DEL](#)

**M/s Nahar Fibre Vs CCE, Jalandhar (Dated: July 16, 2009)**

ST - Cenvat Credit - Assessee avails credit on inward and outward transportation of goods from factory to its branches - Revenue disallows - held, it is already settled by the Larger Bench in the ABB Ltd case that the credit is available for tax paid on outward transportation of final products from the place of removal as the same is to

<p>be treated as an input service in terms of Rule 2(1)(ii) of the CENVAT Credit Rules, 2004 - Assessee's appeal allowed</p>
<p><a href="#">2009-TIOL-1339-CESTAT-DEL</a></p>
<p><b>M/s Delhi Public School Society Vs CST, Delhi (Dated: July 7, 2009)</b></p>
<p>ST - stay / pre-deposit dispensation - Assessee pleads on limitation - held, although the assessee may have a case on limitation but pre -deposit of Rs 10 lakh ordered</p>
<p><a href="#">2009-TIOL-1338-CESTAT-AHM</a></p>
<p><b>CCE &amp; CC, Vadodara Vs M/s Aurochem (Dated: June 29, 2009)</b></p>
<p>ST - ROM - Tribunal holds that the assessee is not liable to pay tax under C &amp; F Agent service - Revenue argues that the assessee was also saddled with liability for the later period under Business Auxiliary Service and the Commissioner (A) fails to give a finding on that - Mistake admitted and case remanded to the Commissioner (A) for fresh order - Revenue's appeal allowed</p>
<p><a href="#">2009-TIOL-1330-CESTAT-BANG</a></p>
<p><b>M/s RNS Infrastructure Ltd Vs CCE, Belgaum (Dated: May 11, 2009 )</b></p>
<p>Service Tax – Whether construction of raw water reservoir taxable under 'Commercial or Industrial Construction Service and whether benefit of Notification 1/2006-ST available when credit on inputs availed – Major portion of demand already paid and CENVAT credit reversed – Balance amount waived as pre-deposit and stay granted</p>
<p><a href="#">2009-TIOL-1329-CESTAT-AHM</a></p>
<p><b>CCE, Surat Vs M/s Star Crane Service (Dated: July 28, 2009 )</b></p>
<p>ST - Penalty under Sec 78 - Commissioner(A) upholds penalty under Sec 75(A) for non-registration and under Sec 77 for failure to file return but sets aside under Sec 78 as there is no allegation of suppression in the SCN - held, since the Commissioner(A) has given categorical finding that there is no suppression, no penalty under Sec 78 can be imposed - Revenue's appeal dismissed</p>
<p><a href="#">2009-TIOL-1328-CESTAT-AHM</a></p>

**M/s P Gautam & Co Vs CST, Ahmedabad (Dated: July 1, 2009 )**

ST - Advertising Service - Assessee is an advertising agency and pays service tax on it - when they place advertisements in print media they avail discount - Revenue for levying service tax on such discounts under BAS - held, since the issue is debatable, a pre-deposit of Rs 3 lakh is ordered

[2009-TIOL-1327-CESTAT-AHM](#)

**M/s Amirsh Enterprises Vs CCE, Rajkot (Dated: July 22, 2009 )**

ST - Manpower recruitment service - Assessee is a small time recruitment agency - fails to deposit tax as there was no bank authorised to collect the same - tax with interest paid after issue of SCN - seeks waiver of pre-deposit for penalty u/s 76 - held, since the assessee was aware of its liability, non-payment is violation of law and authorities have no discretion to reduce penalty if failure to pay tax continues - waiver from pre-deposit denied

[2009-TIOL-1325-CESTAT-DEL](#)

**M/s Microsoft Corpn (I) Pvt Ltd Vs CST, New Delhi (Dated: July 31, 2009 )**

Service Tax – Stay / Dispensation of pre-deposit - Export of Services – Provision of marketing support services on behalf of client outside India not regarded as export of service if the said services are consumed in India by ultimate clients/consumers located in India – End user of service being located in India and need of such consumers being met by appellant for and on behalf of its foreign principal, services appear to have been provided in India, cannot be regarded as “export of service” – “Export of service” means outcome of service should have been consumed outside India – Service Tax being destination based consumption tax, interpretation given in Board's Circular dated 24.02.2009 contrary to law expounded by Supreme Court in *All India Fedn. Of Tax Practitioners vs. UOI* [2007-TIOL-149-SC-ST](#) – Pre-deposit of Rs 70 Crores ordered

[Also see analysis of the Order](#)

[2009-TIOL-1324-CESTAT-DEL](#)

**M/s Samsung India Electronics Pvt Ltd Vs CCE, Noida (Dated: July 3, 2009 )**

ST - Assessee enters into agreement with foreign manufacturer for providing a host of services - Revenue raises demand for repair and maintenance service - Assessee also undertakes market promotion activity besides repair service during warranty period - since repair and maintenance service was provided by the assessee's service centres which had also discharged tax liability, assessee claims cenvat credit be allowed - held, going by the details of the agreement it cannot be said that repair and maintenance is the predominant character of the agreement and since service centres

<p>have paid taxes on service provided during the warranty period, it is a fit case for waiver of pre-deposit - stay granted - Assessee's appeal allowed</p>
<p><a href="#">2009-TIOL-1323-CESTAT-DEL</a></p>
<p><b>State Bank Of Bikaner &amp; Jaipur Vs CCE, Jaipur-I (Dated: May 25, 2009 )</b></p>
<p>ST - assessee is a bank - deals in foreign exchange - Revenue demands tax on profit earned on forex business - held, tax on profit arising from forex business is not the intention of the legislature - waiver from pre-deposit granted</p>
<p><a href="#">2009-TIOL-1322-CESTAT-AHM</a></p>
<p><b>M/s Saurin Investments Pvt Ltd Vs CST, Ahmedabad (Dated: July 16, 2009 )</b></p>
<p>ST - stock brokering service - deduction of NSDL or CDSL fee collected from customers and paid to depositors - Commissioner (A) denies deduction despite the Board Circular on the ground that only actual fee is to be allowed as deduction - held, even fixed fee is also actual fee and the demand is also barred by limitation - Assessee's appeal allowed</p>
<p><a href="#">2009-TIOL-1317-CESTAT-DEL</a></p>
<p><b>M/s Sayaji Hotels Ltd Vs CCE, Indore (Dated: June 23, 2009 )</b></p>
<p>Service Tax – No provision under CESTAT (Procedure) Rules, 1982 directing the Principal Officer filing appeals to provide/attach the requisite authorization to file appeals before CESTAT – Appeals filed before CESTAT scrutinized by the authorized officers of Registry – Preliminary objection of Revenue to dismiss appeal for lack of proof of authorization in favour of person filing appeal, liable for rejection</p>
<p><a href="#">Also see analysis of the Order</a></p>
<p><a href="#">2009-TIOL-1316-CESTAT-KOL</a></p>
<p><b>M/s Paharpur Cooling Towers Ltd Vs CST, Kolkata (Dated: June 16, 2009 )</b></p>
<p>ST - Consulting Engineer's Service - Assessee pays royalty for use of technical knowhow to non-resident - claims IPR service was notified to be taxable only from 18.04.06 - Revenue raises demand - held, since the foreign service provider has provided services relating to civil design, construction technique and hydraulic process design for cooling tower, the assessee has not prim facie made a strong case for waiver of pre-deposit - A pre-deposit of Rs 6 lakh ordered</p>

<a href="#">2009-TIOL-1315-CESTAT-DEL</a>
<b>M/s Punjab Steels Vs CCE, Chandigarh (Dated: June 25, 2009 )</b>
ST - Cenvat Credit - Assessee is a manufacturer of non-alloy steel ingots - avails credit of raw materials, capital goods and input services to pay central excise duty - later, removes certain raw materials as such and reverses the cenvat credit availed except the credit availed on GTA service availed for transportation of raw materials - Revenue raises demand - held, it is already settled that since there is no provision for reversal of cenvat credit availed on services, the demand is not sustainable - Assessee's appeal allowed
<a href="#">2009-TIOL-1314-CESTAT-AHM</a>
<b>CCE, Rajkot Vs M/s Shree Natraj Ceramics &amp; Chemicals Ind Ltd (Dated: June 5, 2009 )</b>
ST - GTA Service - Assessee is a manufacturer - gets registered under GTA - avails abatement of 75% under exemption notification no 32/2004-ST - Revenue denies exemption on the ground that the assessee has not filed declaration from Goods Transport Agency regarding non-availment of credit - Demand raised and penalty imposed - Commissioner(A) confirms the same - Matter remanded by Tribunal for fresh examination - Assessee produces declaration in some cases - Commissioner (A) confirms demand but invokes Sec 80 to grant waiver from penalty - held, since the tax with interest was paid before issue of SCN and some declarations about non-availment of credit was also filed, there was no mala fide intention to evade tax - valid ground for invocation of Sec 80 - penalty set aside - Revenue's appeal dismissed
<a href="#">2009-TIOL-1307-CESTAT-DEL</a>
<b>M/s Pneumatic Power Tools &amp; Co Vs CCE, Raipur (Dated: May 8, 2009 )</b>
ST - Stay/ dispensation of pre -deposit - Assessee directed by the Tribunal to pre-deposit 50% of demand - assessee goes to HC in writ - withdraw petition but gets some more time for pre-deposit - fails to comply with - pleads the hearing be postponed as it has gone to Supreme Court - held, assessee has been abusing process of law by adopting dilatory tactics - revenue's interest prejudiced - assessee also represented by multiple counsels - Did they all sign Vakalatnama? - Registry directed to submit a report
<a href="#">2009-TIOL-1305-CESTAT-AHM</a>
<b>M/s Vicas Corpn Vs CCE &amp; CC, Rajkot (Dated: July 10, 2009 )</b>

ST - Business Auxiliary Service - Assessee arranges loans for clients from financial institutions - Demand raised and penalty imposed under Sec 78 - held, since there was confusion during the relevant period about the taxability of this service, it is a fit case for invocation of Sec 80 - penalty under Sec 78 set aside

[2009-TIOL-1302-CESTAT-DEL](#)

**M/s Academicians Classes Vs CCE, Jaipur (Dated: July 6, 2009 )**

ST - Coaching Service - Assessee refunds certain amount along with service tax collected - since refund of fees is made, assessee claims exemption as its gross collection falls less than Rs four lakh - held, if the refund of fee is verified and the authorities agree to that, the assessee is eligible for exemption - matter remanded for verification

[2009-TIOL-1301-CESTAT-KOL](#)

**M/s Price Water House Coopers Pvt Ltd Vs CST, Kolkata (Dated: June 17, 2009 )**

ST - Assessee receives management and consulting engineering services from outside India - demand raised - It is settled law now that the tax is leviable only from 18.4.2006 - waiver from pre-deposit of tax and penalty granted with stay

[2009-TIOL-1300-CESTAT-AHM](#)

**M/s Wellbore Engineering CO Vs CST, Ahmedabad (Dated: June 18, 2009 )**

ST - Jobwork service - assessee carries out finishing job on semi-finished machine parts sent to them on jobwork basis - Revenue raises demand under BAS - Assessee pleads their services are liable to tax only from 16.6.2005 when the process of manufacturing goods not liable to excise duty was notified to be taxable - pre-deposit ordered

[2009-TIOL-1299-CESTAT-AHM](#)

**M/s ABS Inc Vs CCE, Ahmedabad (Dated: July 27, 2009 )**

ST - penalty - assessee is a commission agent - its services are covered under the BAS - fails to pay tax due to policy confusion in the Govt - later pays tax with interest - Revenue imposes penalty - held, since there was no mala fide on part of the assessee as it has paid the tax with interest, it is a fit case for invocation of Sec 80 - assessee's appeal allowed

[2009-TIOL-1298-CESTAT-AHM](#)

**M/s SMP Constructions Pvt Ltd Vs CCE, Vadodara-II (Dated: June 15, 2009 )**

ST - Construction of industrial building and civil structure service - Revenue raises demand by disallowing abatement - assessee pleads that it has claimed abatement in only those cases where cenvat credit of excise duty paid on raw materials has not been availed - no credit is taken in case of certain contracts and abatement is available to it - held, assessee's contention is valid as it can claim abatement when no credit is availed - Unconditional stay granted

[2009-TIOL-1295-CESTAT-MUM](#)

**Finolex Industries Ltd Vs CCE, Pune-I (Dated: July 29, 2009)**

**Cenvat Credit – Security Services provided to Director at his residential bungalow, Repair & maintenance of guest house and garden – Prima facie there is nothing to show that there was any connection, directly or indirectly in or in relation to the manufacture or clearance of finished products – CESTAT orders pre-deposit.**

Repair of Guest House and garden - said service has no nexus even remotely to manufacture or clearance of excisable goods – no prima facie case - Kirloskar Oil Engines Ltd. vs CCE, Aurangabad ( [2009-TIOL-790-CESTAT-Mum](#) ) relied upon.

**Security Services**

Purpose of posting security personnel must be discerned from the agreement between the appellant and the security agency - the claim of the appellant that the security personnel was doing something, directly or indirectly, in or in relation to the manufacture or clearance of the final products was not accepted not substantiated by any agreement - appellant has failed to make out prima facie case against the demand pertaining to security services Vikram Ispat ( [2009-TIOL-997-CESTAT-Mum](#) ) relied upon .

**Outdoor Catering Service**

CENVAT credit on 'outdoor catering service' is admissible to the assessee irrespective of who incurred the cost of supply of food in canteen Larger Bench decision in Commissioner vs. GTC Industries Ltd. ( [2008-TIOL-1634-CESTAT-MUM-LB](#) ) relied upon .

**Tribunal's order:**

Out of the demand of Rs.3,61,193/- the benefit of waiver of pre-deposit and stay of recovery will be admissible to the appellant in respect of Rs.1,21,579/- (representing Outdoor Catering Services) and in respect of the balance amount since the appellant had not made out prima facie case appellant directed to deposit such amount under section 35F of the Central Excise Act within a period of 4 weeks and report compliance.

[Also see analysis of the Order](#)

[2009-TIOL-1294-CESTAT-AHM](#)

**Shri Chandraprasad Desai Memorial Foundation Vs CST, Ahmedabad (Dated: June 10, 2009)**

ST - Commercial coaching and training - Assessee is a charitable trust - provides English-speaking course and other courses and makes profits - Revenue raises demand - held, since the assessee is not a commercial concern and the courses were mainly for poor students, demand is not sustainable - Assessee's appeal allowed

[2009-TIOL-1293-CESTAT-DEL](#)

**CCE, Bhopal Vs M/s M P State Dairy Cooperative Federation (Dated: July 13, 2009)**

ST - Management Consultancy Service - Assessee is a Federation of Milk Unions - it issues advisories and instructions to unions on various issues - Revenue raises demand - Commission (A) disagrees - held, since the Federation is not commercially providing any service to its member-Unions and never provided any service to outside parties, it is not a commercial entity - no service tax leviable - Revenue's appeal dismissed

[2009-TIOL-1286-CESTAT-MUM](#)

**Telenet Systems Pvt Ltd Vs CCE, Belapur (Dated: July 29, 2009 )**

Input Service - Mobile phones procured by the company and supplied to functionaries/employees and mobile phone bills were paid by the company under the presumption that the same are to be used in connection with the business of the company - As this presumption is in favour of the assessee, the rebuttal has to come from the Revenue - Credit allowed - CESTAT

Presumption is not available to other services and, therefore, the burden of proof is on the assessee - the appeal fails except in respect of mobile phone service .

Penalty - Rule 15(2) read with Section 11AC of the CEA, 1944 - Irregular availment of CENVAT credit by way of fraud, collusion, suppression/misstatement of facts or contravention of rules with intention to evade payment of duty attracts a penalty under the said provisions - In the present case, none of these ingredients was alleged in any of the show-cause notices and none was found by any of the lower authorities. Therefore, the penalty imposed on the assessee cannot be sustained and the same is set aside.

[Also se analysis of the Order](#)



<a href="#">2009-TIOL-1285-CESTAT-AHM</a>
<b>M/s Orion Appliances Pvt Ltd Vs CST, Ahmedabad (Dated: July 9, 2009 )</b>
ST - Cenvat credit - Assessee is into trading activities and also provides maintenance and repair service - Revenue denies credit - held, since the demand is of minimal sum, deposit of the same may not cause any financial hardship - pre-deposit ordered
<a href="#">2009-TIOL-1284-CESTAT-DEL</a>
<b>Kartic Infotech Vs CCE, Jaipur (Dated: July 10, 2009 )</b>
ST - Commercial coaching and training - Assessee is into computer training - demand raised - held, it is settled law now that computer training provided before 15.06.2005 was not taxable - Assessee's appeal allowed
<a href="#">2009-TIOL-1282-CESTAT-DEL</a>
<b>M/s Jain Steels Vs CCE, Meerut-I (Dated: July 1, 2009 )</b>
ST - Abatement on GTA service - held, when declaration required under the Notification No. 32/04 dated 3.12.2004 is filed in proper format, there is no ground to deny the abatement - Assessee's appeal allowed
<a href="#">2009-TIOL-1274-CESTAT-DEL</a>
<b>Hindustan Aeronautics Ltd Vs CCE, Lucknow (Dated: July 2, 2009)</b>
ST - Maintenance and Repair Service - Demand raised - Assessee writes to the Ministry of Finance to grant it exemption as it is providing maintenance and repair service to the defence sector - Application rejected - Assessee takes registration and deposits major part of tax - held, extended period cannot be invoked as a PSU working under a public policy cannot be alleged of tax evasion - waiver from pre-deposit granted
<a href="#">2009-TIOL-1273-CESTAT-DEL</a>
<b>CCE, Indore Vs M/s Hindustan Motors Ltd (Dated: July 15, 2009)</b>

ST - Service recipient - No demand is sustainable for period prior to 18.4.2006 - Revenue's appeal dismissed

[2009-TIOL-1272-CESTAT-AHM](#)

**M/s N J Devani Builders Pvt Ltd Vs CST, Ahmedabad (Dated: June 22, 2009)**

ST - works contract - assessee provides commercial and industrial construction service - credit availed by claiming benefit of Notification No. 1/2006-ST dated 1.3.2006 - Pre -deposit of Rs two lakh ordered