

## CESTAT RULING

<a href="#">2009-TIOL-1265-CESTAT-AHM</a>
M/s Indo-Japan Pen Manufacturing Co Pvt Ltd Vs CCE, Vapi (Dated: July 9, 2009)
ST - assessee pays tax on royalty - claims refund based on a Tribunal's decision - Commissioner(A) remands the issue for examining the unjust enrichment aspect of the case - held, Commissioner(A) order asking for examination of unjust enrichment is valid but there is no merit in observation that the Tribunal's orders are orders in personem and not orders in rem
<a href="#">2009-TIOL-1264-CESTAT-AHM</a>
M/s Kabisco Food Industries Vs CCE, Ahmedabad-II (Dated: June 18, 2009)
Service Tax – Credit on outward transportation available in view of LB decision in ABB Ltd & Ors <a href="#">2009-TIOL-830-CESTAT-BANG-(LB)</a> – Matter remanded to Commissioner (Appeals) for a fresh decision in light of LB decision
<a href="#">2009-TIOL-1263-CESTAT-AHM</a>
CCE, Surat Vs M/s Mahadev Cable Net (Dated: June 4, 2009)
ST - Cable service - Assessee pays tax with interest before issue of SCN - penalty - Commissioner(A) reduces the same - held, as noted by the Commissioner(A) that the assessee had not collected tax from customers but paid the tax with interest and 25% of penalty, it is a fit case for invocation of Sec 80 - Revenue's appeal dismissed
<a href="#">2009-TIOL-1262-CESTAT-KOL</a>
M/s Sainik Mining & Allied Service Ltd Vs CCE, CC & CST, BBSR II (Dated: May 12, 2009)
ST - Cargo Handling Service - assessee enters into contracts with coalfields authorities for extraction and transfer of coal, mechanical transfer and transportation of coal for further processing and hiring of pay loaders - held, the first demand was rightly dropped by the Commissioner(A) as it was mining service and the second demand was ruled in favour of the assessee but the third demand as per the Tribunal's decision in another case goes in favour of the Revenue - A pre-deposit of Rs 11 lakh ordered

[2009-TIOL-1258-CESTAT-DEL](#)

M/s Korea Plant Service & Engineering Co Ltd Vs CCE, Jaipur I (Dated: July 9, 2009)

ST - Cenvat Credit - Assessee enters into contract for operation and maintenance of captive power plant - pays service on the entire contract amount - avails credit for paying tax on car hiring charges, insurance expenses, security services and coal unloading charges - Commissioner(A) disallows the credit - held, in view of the Tribunal's decision in a similar case, granting unconditional stay, waiver from pre-deposit granted

[2009-TIOL-1255-CESTAT-DEL](#)

M/s Swaraj Mazda Ltd Vs CCE, Jalandhar (Dated: June 11, 2009 )

ST - Condonation of Delay - Commissioner(A) rejects the appeal for lack of COD application - also relies on Department of Post's Citizen's Charters which states that the delivery through Speed Post takes 1-3 days, depending on destination - held, Commissioner(A) passed the order without going into the merit of the case - case remanded

[2009-TIOL-1253-CESTAT-AHM](#)

M/s Sayaji Iron & Engg Co Ltd Vs CCE, Vadodara (Dated: May 20, 2009 )

ST - Cenvat credit - assessee pays tax on erection, commissioning and installation of wind mills away from factory premises - such service cannot be treated as input service as per Rule 2(1) of CCRs, 2004 - Credit not admissible

[2009-TIOL-1252-CESTAT-KOL](#)

M/s Sainik Mining & Allied Service Ltd Vs CCE, CC ST, BBSR II (Dated: May 12, 2009 )

ST - Cargo Handling Service - assessee enters into contracts with coalfields authorities for extraction and transfer of coal, mechanical transfer and transportation of coal for further processing and hiring of pay loaders - held, the first demand was rightly dropped by the Commissioner(A) as it was mining service and the second demand was ruled in favour of the assessee but the third demand as per the Tribunal's decision in another case goes in favour of the Revenue - A pre-deposit of Rs 11 lakh ordered

[2009-TIOL-1247-CESTAT-KOL](#)

M/s Agarwal Agency Vs CC, CCE & ST, Patna (Dated: March 25, 2009 )

ST - penalty - assessee pays tax before issue of SCN but contests penalty on the ground of financial hardship, proprietary nature of concern and poor health of proprietor - held, since it is established that the assessee was providing the taxable service and did not pay the tax, it is prima facie liable to penalty - Pre-deposit ordered

[2009-TIOL-1242-CESTAT-DEL](#)

M/s Dimensional Stone Vs CCE, Jaipur (Dated: May 25, 2009 )

ST - Service recipient - no liability can be fastened before the amendment inserting Sec 66A w.e.f 18.4.2006

[2009-TIOL-1241-CESTAT-AHM](#)

M/s Endeavour Instrument Pvt Ltd Vs CCE, Ahmedabad (Dated: June 1, 2009 )

ST - Installation & Commissioning Services - Assessee manufactures weigh-bridges - also provides installation services to its clients - Revenue raises demand from 1.7.2003 - Assessee discharges tax liability from 10.9.2004 and also pays 25% penalty - waiver of pre-deposit granted

[2009-TIOL-1240-CESTAT-DEL](#)

CCE, Meerut Vs M/s Ashoka Trading Co (Dated: May 21, 2009 )

ST - Are expenses reimbursable includible in gross value of service taxable? - since matter is pending with the Larger Bench, status quo ordered

[2009-TIOL-1239-CESTAT-MUM](#)

Commissioner of Central Excise & Customs Vs M/s Ballarpur Industries Ltd. (Dated: July 9, 2009 )

Cenvat Credit of service tax - Even if the appellate authority while waiving penalty cited section 80 of the Finance Act, 1994 which does not apply to the facts of the case, in the absence of mens rea , penalty cannot be imposed u/s 11AC of the CEA, 1944 - CESTAT

[Also see analysis of the Order](#)

<a href="#">2009-TIOL-1238-CESTAT-DEL</a>
M/s Delta Consultants Vs CST, Delhi (Dated: June 16, 2009 )
ST - 'Finishing' service - Assessee is into commercial and industrial construction service - demand raised - demand requantified in view of law being amended and finishing service being made liable to service tax w.e.f. 16/06/05 - held, in view of the amendment in law and the finishing service being brought under the tax net and valuation also being an issue of dispute, a pre-deposit of Rs 15 ordered
<a href="#">2009-TIOL-1237-CESTAT-DEL</a>
CCE, Chandigarh Vs M/s Hira Automobiles Ltd (Dated: June 4, 2009 )
ST - Business Support Service - Assessee provides vehicular loan for customers from banks - fails to pay tax - Revenue raises demand under BAS and imposes penalty - Commissioner(A) sets aside the penalty on the basis of evidence furnished - held, it has been held by the Tribunal that arranging loan on commission basis is covered under Business Support Service w.e.f 1.5.2006 and not under BAS - since there was doubt about the levy of tax on the said activity, the Commissioner(A) rightly invoked Sec 80 - Revenue's appeal dismissed
<a href="#">2009-TIOL-1231-CESTAT-AHM</a>
M/s Mandev Tubes Vs CCE, Vapi (Dated: May 20, 2009 )
ST - GTA Service - Assessee is a manufacturer of copper tubes - avails GTA services - Revenue raises demand - Original Adjudicating Authority finds the tax was paid by the transporters - held, since it is established that the tax was paid by the transporters, the Revenue need not mechanically raise demand, insisting on payment to be made by the assessee - Assessee's appeal allowed
<a href="#">2009-TIOL-1230-CESTAT-DEL</a>
CCE, Kanpur Vs M/s Kanpur Development Authority (Dated: April 15, 2009 )
ST - Sec 80 - Assessee is a State Govt organisation - penalty imposed under Sections 76 & 77 - Commissioner (A) does not find any corroborative evidence indicating intention to evade tax and sets aside penalty - held, since the assessee has explained reasonable cause for failure to pay tax and the same was paid once pointed out, the condition precedent for invoking Sec 80 is fulfilled - Revenue's appeal dismissed

[2009-TIOL-1229-CESTAT-DEL](#)

IFB Industries Ltd Vs CCE, Chandigarh (Dated: June 9, 2009 )

ST - Cenvat credit - assessee is engaged in sale of home appliances - also provides after-sale maintenance and repair service during warranty period - there is scope of use of inputs for providing such services - assessee pleads even if some inputs are used for providing tax-free warranty services, the cenvat credit is available to it - held, since there is no speaking order in the case, it is not clear what is the value of taxable services and also non-taxable services - waiver from pre-deposit granted

[2009-TIOL-1222-CESTAT-KOL](#)

M/s BSNL Vs CCE, Ranchi (Dated: June 16, 2009 )

ST - stay / dispensation of pre -deposit - Assessee is a public sector telecom company - seeks waiver of pre -deposit of interest on late payment of service tax - held, since the tax and interest for late payment are not in dispute, there is no question of granting waiver of pre -deposit for interest liability - Assessee's MA dismissed

[2009-TIOL-1219-CESTAT-MAD](#)

M/s Buildcraft Interior Pvt Ltd Vs CST, Chennai (Dated: April 29, 2009)

Service Tax – Stay / dispensation of pre -deposit - Commercial or Industrial construction service – plea that the service falls under works contract service which is taxable only with effect from 01.06.2007 – prima facie case for complete waiver of pre -deposit.

[2009-TIOL-1217-CESTAT-DEL](#)

M/s Martial Security & Detective Services Vs CCE, Meerut (Dated: June 2, 2009)

ST - Assessee provides conductors to UP State Road Transport Corpn - demand for supply of manpower recruitment service raised - held, in view of the Tribunal's decision in Punjab Ex-Servicemen Corpn, Revenue's interest will be prejudiced if a pre -deposit of Rs 15 lakh is not ordered - Assessee's appeal dismissed

[2009-TIOL-1216-CESTAT-AHM](#)

CC & CCE, Vapi Vs M/s DNH Spinners (Dated: July 10, 2009)

ST - Cenvat Credit - Assessee has invoices issued in the name of head office - held, substantive benefit cannot be denied on the procedural ground - since there is no dispute about the input services received by the assessee, credit is allowable even if the invoice is raised in the name of HO in place of the factory - Revenue's appeal dismissed

[2009-TIOL-1212-CESTAT-MUM](#)

Parason Machinery (I) Ltd Vs CCE, Aurangabad (Dated: July 6, 2009)

Xerox machine Maintenance is an Input service but Photography Services, Air Travel Agent & Tourist Taxi Services are not Input Services – Unconventional trade practices cannot bolster Cenvat credit claim – CESTAT.

[Also see analysis of the Order](#)

[2009-TIOL-1209-CESTAT-BANG](#)

M/s Lanco Industries Ltd Vs CCE, Tirupathi (Dated: July 2, 2009)

Service Tax – BAS - commission paid to sales agents – input service – entitled for credit – demand and penalty set aside: any input service used by the manufacturer, whether directly or indirectly in or in relation to the manufacture of final product and clearance of final product from the place of removal, stands eligible for availing as credit.

[Also see analysis of the Order](#)

[2009-TIOL-1208-CESTAT-AHM](#)

M/s GHCL Ltd Vs CCE, Bhavnagar (Dated: July 15, 2009)

ST - Cenvat Credit - Assessee avails credit on tax paid for security services - Revenue denies it on the ground that security services were availed for residential colony, located in the vicinity of the factory and the same is directly or indirectly not in relation to the manufacture of final products - held, it is already a settled issue that security service is covered among the input services as defined in Rule 2(1) of the CCRs - Assessee's appeal allowed

[2009-TIOL-1207-CESTAT-KOL](#)

M/s Hindustan Steel Works Construction Ltd Vs CCE, & ST, BBSR-I (Dated: June 15, 2009)

ST - Industrial Construction Service - Assessee pleads that half of its contracts is not related to industrial construction - they are about supply of labour, cleaning etc - argues against extended period on the ground that it is registered with the Revenue since 2004 - held, on examination of its contracts it is revealed that most of its activities are related to industrial construction service. And although it is registered with the Revenue, it has not filed any return and that is why Revenue is not aware of what services it has provided so far - a pre-deposit of Rs 30 lakh, in addition to the sum already deposited, ordered

[2009-TIOL-1206-CESTAT-DEL](#)

**Surender Singh Chhatwal & CO Vs CCE, Raipur (Dated: July 13, 2009)**

Service Tax – Cargo Handling Service and Commercial Construction service – whether the activities undertaken by the appellants resulted in construction of a Dam or Ash Dyke – Matter remanded.

[2009-TIOL-1199-CESTAT-BANG](#)

**M/s ITC Ltd Vs CCE, Hyderabad (Dated: May 13, 2009)**

Central Excise/Service Tax – Cenvat Credit - services undertaken like lawn mowing, garbage cleaning, maintenance of swimming pool, collection of household garbage, harvest cutting, weeding, etc. - When the appellant is under an obligation to maintain a colony, all the services received in maintaining such a colony would also be covered as input services : The scope of the definition of input service is very wide. It encompasses a variety of services which relate to not only manufacture of final products but also several activities relating to business. The use of the expression “as such” indicates that list of activities given therein are only illustrative and not exhaustive .

[Also see analysis of the Order](#)

[2009-TIOL-1192-CESTAT-AHM](#)

**M/s U B Engineering Ltd Vs CCE, Rajkot (Dated: July 22, 2009)**

ST - Sec 73 and Sec 76 - Assessee fails to pay tax and also files return with delays - Revenue imposes penalty u/s 76 - Assessee pleads that it has paid tax with interest even before the adjudication order was issued and invocation of penalty was not called for - held, since the tax with interest was paid by the assessee on his own, the assessee meets the requirement of Sec 73 and the Central Excise officer was not fair to issue show cause notice under such circumstances - If the issue of SCN itself is not proper, the imposition of penalty u/s 76 cannot be sustainable - Assessee's appeal allowed

[2009-TIOL-1191-CESTAT-BANG](#)

<p><b>Hills &amp; Blues Vs Deputy Commissioner Of ST, Bangalore-II (Dated: November 11, 2009)</b></p>
<p>Service Tax – Wrong availment of abatement of 90% for Rent-a-Cab service – Duty paid before the issue of SCN immediately after lapse was brought to notice – Penalty under s. 78 set aside but penalty under s. 77 upheld</p>
<p><a href="#">2009-TIOL-1190-CESTAT-AHM</a></p>
<p><b>M/s Deep Chemical Vs CST, Ahmedabad (Dated: June 12, 2009)</b></p>
<p>ST - C &amp; F Service - Assessee is C&amp;F cum re-packing agent for a chemical company, manufacturing common salt and soda ash - recovering, besides the charges for C &amp; F Agency service, charges for storage and warehousing, cargo handling and packing charges - Revenue raises demand - Assessee argues that it provides only C &amp; F Agency service and other services are only incidental to it - held, as long as the assessee separately charging the client for all these services, it is prima facie liable to tax on them - 20% of demand ordered as pre-deposit</p>
<p><a href="#">2009-TIOL-1189-CESTAT-AHM</a></p>
<p><b>CCE, Vapi Vs M/s TPL Plastech Ltd (Dated: May 29, 2009)</b></p>
<p>ST - Cenvat credit on mobile phones - Revenue disallows - held, until the Revenue proves that the mobile phones were not used in relation to the manufacture, credit cannot be denied</p>
<p><a href="#">2009-TIOL-1188-CESTAT-BANG</a></p>
<p><b>M/s Sobha Developers Ltd Vs CST, Bangalore (Dated: March 12, 2009)</b></p>
<p>Service tax – Levy of service tax on construction of residential complex service – Service tax paid on 30% of contract value only as balance representing value of goods and materials subject to VAT – Pre-deposit of balance amount of Rs. 49 crores, along with interest and penalty waived till disposal of appeal</p>
<p><a href="#">2009-TIOL-1187-CESTAT-BANG</a></p>
<p><b>Sri K Manmohan Mally Prop Vs CCE, Mangalore (Dated: February 26, 2009)</b></p>
<p>Service tax – Cost of land and stamp duty excluded from value of taxable service – Prima facie strong case in favour of appellants – Full waiver of pre-deposit and stay granted</p>



<a href="#">2009-TIOL-1177-CESTAT-DEL</a>
<b>M/s Raghu Exports (India) Pvt Ltd Vs CCE, Ludhiana (Dated: June 23, 2009)</b>
ST - Cenvat credit - Revenue denies credit on service tax paid on overseas commission for procuring exports orders - held, since the assessee received the services of overseas commission agent for exports of its manufactured goods, it prima facies makes a good case for waiver of pre-deposit - Stay granted
<a href="#">2009-TIOL-1176-CESTAT-DEL</a>
<b>M/s Ramco International Vs CCE, Ludhiana (Dated: June 23, 2009)</b>
ST - Service recipient - Assessee receives services from overseas service providers - Revenue raises demand - assessee argues no tax was payable for services received prior to 18.4.06 - Case remanded for fresh examination by Commissioner (A) without any pre-deposit
<a href="#">2009-TIOL-1175-CESTAT-DEL</a>
<b>M/s Vodafone Essar Vs CST, Meerut -I (Dated: June 18, 2009)</b>
ST - Stay / Dispensation of pre-deposit - assessee is a telecom company - claims tower and tower materials classified under Chapter 73 are components of goods under Chapter 85 - Revenue argues that if one does not belong to a family cannot be a specie of that family - tower materials of Chapter 73 cannot be treated as component under the definition of capital goods under Rule 2(a)(iii) of Cenvat Credit Rules, 2004 - Pre-deposit of Rs 20 lakh ordered
<a href="#">2009-TIOL-1172-CESTAT-AHM</a>
<b>M/s Pratik Enterprises Vs CCE &amp; C, Vapi (Dated: July 1, 2009)</b>
ST - C & F Service - Assessee is a proprietary firm - Search conducted - demand raised and penalty imposed - held, since the assessee is an individual and cooperated with the investigation and deposited tax with interest, a lenient view on penalty is called for - a fit case for invocation of Sec 80 - penalties set aside - Assessee's appeal allowed
<a href="#">2009-TIOL-1171-CESTAT-BANG</a>

**CCE, Belgaum Vs M/s Godavari Sugar Mills Ltd (Dated: February 17, 2009)**

Service Tax – When service tax itself is not payable, interest demand not sustainable – No merit in revenue appeal

[2009-TIOL-1168-CESTAT-MUM](#)

**Swapnashilp Travels Vs CCE, Nagpur (Dated: June 16, 2009)**

Nagpur University entering into a contract with appellant for transportation of written answer books from district centres to Nagpur – whether appellant a 'Rent-a-Cab' operator - Prima facie case in favour – CESTAT grants stay.

[Also see analysis of the Order](#)

[2009-TIOL-1167-CESTAT-BANG](#)

**M/s South India Corporation (Agencies) Limited Vs CCE, Visakhapatnam-I (Dated: May 1, 2009)**

Service Tax – Stevedoring service provided in port under licence issued by the Port Trust cannot be treated as authorisation by the port – not taxable under port service - Section 42 (3A) and in Section 123 of the Major Port Trust Act, 1963 – though the issue is pending before the Larger Bench, the High Court order in Konkan Marine case upholding the CESTAT order prevails.

[2009-TIOL-1166-CESTAT-BANG](#)

**CCE, Belgaum Vs Karnataka Ex-Servicemen Security Agency Hubli (Dated: March 11, 2009)**

Service Tax – Service tax discharged before issue of show cause notice – no infirmity in the order of the Commissioner (Appeals) in setting aside the penalty under Section 76 as there is no allegation or ingredients for invoking extended period.

[2009-TIOL-1165-CESTAT-MAD](#)

**General Precured Treads Pvt Ltd Vs CC & CCE, Trichy (Dated: May 15, 2009)**

Service Tax – Supply of heated fluid to adjacent companies through pipelines against receipt of heating charges is not taxable under Business Auxiliary Service.

<a href="#">2009-TIOL-1156-CESTAT-BANG</a>
<b>M/s Nagarjuna Constructions Vs CCE, Hyderabad (Dated: March 25, 2009)</b>
Service Tax – Laying of pipelines for drinking water supply projects, prima facie not leviable to tax under Commercial or Industrial Construction Service – Full waiver of pre-deposit and stay granted
<a href="#">Also see analysis of the Order</a>
<a href="#">2009-TIOL-1155-CESTAT-AHM</a>
<b>M/s Time Packaging Ltd Vs CCE, Vapi (Dated: June 24, 2009)</b>
Service Tax – Availability of credit of service tax on transportation charges/insurance charges – Matter remanded in view of LB decision in ABB Ltd & Ors <a href="#">2009-TIOL-830-CESTAT-BANG-LB</a>
<a href="#">2009-TIOL-1153-CESTAT-MAD</a>
<b>M/s Intertouch Metal Buildings Pvt Ltd Vs CST, Chennai (Dated: June 4, 2009)</b>
Service Tax – Commercial or Industrial construction service – Denial of exemption under notification No.15/04 ST dt 10.9.04 on finishing services – Alternate plea for exemption under 12/03 ST dt.20.6.03 – matter remanded for fresh decision after examining the documentary evidence.
<a href="#">2009-TIOL-1152-CESTAT-BANG</a>
<b>M/s Elegant Packaging Industries Vs CCE, Hyderabad-II (Dated: February 5, 2009)</b>
Service Tax – Delay of 49 days in filing appeal before Commissioner (Appeals) condonable in view of the circumstances of the case - Matter remitted to Appellate Commissioner for decision on merits
<a href="#">2009-TIOL-1145-CESTAT-BANG</a>
<b>M/s Hindustan Coca Cola Beverages Pvt Ltd Vs CCE, Hyderabad (Dated: May 1, 2009)</b>
Service Tax – CENVAT Credit – credit on Goods Transport Agency service - the appellants sold the goods to their buyer on F.O.R. basis – the appellant's case is

covered by the Board's circular. Even though the Circular is of year 2007 and period involved is prior to that, the Circular appears to be implemented with retrospective effect – the appellants are eligible for credit.

[2009-TIOL-1144-CESTAT-BANG](#)

**M/s Adecco Flexione Workforce Solutions Ltd Vs CCE, Bangalore (Dated: April 29, 2009)**

Service Tax – Delay in filing of appeals – Affidavit filed by CEO explains the reasons for delay in filing appeals – No assessee would gain by not filing an appeal or filing an appeal belatedly – Delays condoned

[2009-TIOL-1137-CESTAT-MUM](#)

**CCE, Pune II Vs M/s Gadre Marine Exports (Dated: June 16, 2009)**

Cenvat Credit of service tax paid on GTA service used for outward transportation of excisable goods from factory is available to an assessee in view of LB decision in ABB Ltd. vs. CCE [ [2009-TIOL-830-CESTAT-BANG-LB](#) ] – Revenue appeal dismissed.

[2009-TIOL-1136-CESTAT-AHM](#)

**M/s Sayaji Iron & Engg Co Ltd Vs CCE, Vadodara (Dated: May 20, 2009)**

ST - Cenvat credit - assessee pays tax on erection, commissioning and installation of wind mills away from factory premises - such service cannot be treated as input service as per Rule 2(1) of CCRs, 2004 - Credit not admissible

[2009-TIOL-1135-CESTAT-BANG](#)

**M/s West Coast Paper Mills, Dandeli Vs CCE, Mangalore (Dated: January 16, 2009)**

Service Tax – Nominal amounts collected from employees for providing cable service as welfare measure and service tax discharged thereon – Gross amount collected by service provider is the basis for levy of tax – Revenue plea to recover tax on amounts charged by cable operator not justified – Full waiver of pre-deposit and stay granted

[2009-TIOL-1134-CESTAT-BANG](#)

**M/s Lanco Industries Limited Vs CCE, Tirupathi (Dated: February 18, 2009)**

Service Tax – Input credit – Business Auxiliary Service – Stay /dispensation of pre-deposit - Sales promotion has specifically been included in the definition of 'input service'. Prima facie case has been made out that credit of the Service Tax paid on the "Business Auxiliary Services" is available as input credit. Stay granted even beyond the period of 180 days. (Para 6)

[2009-TIOL-1130-CESTAT-MAD](#)

**M/s Citibank N A Vs CST, Chennai (Dated: April 30, 2009)**

Service Tax – Stay / dispensation of pre -deposit – Banking and other Financial Services – the 3% mark up collected for using the credit cards / debit cards abroad is prima facie taxable under Banking and Other Financial Services – pre-deposit of Rs 1.5 crores ordered. – Section Section 65(12) (a) of the Finance Act, 1994.

[2009-TIOL-1129-CESTAT-BANG](#)

**M/s Cochin Shipyard Ltd Vs CCE, Cochin (Dated: January 23, 2009)**

Service Tax – Maintenance & Repair of ships not liable to service tax without an agreement/contract with customers prior to 16.06.2005 – Impugned order set aside

[2009-TIOL-1128-CESTAT-BANG](#)

**M/s Roughten International Pvt Ltd Vs CCE, Mangalore (Dated: March 19, 2009)**

Service Tax – Services of consulting engineers rendered to state for construction of national highways, covered under Consulting Engineer Services – Pre-deposit of Rs. 5 lakhs ordered

[2009-TIOL-1127-CESTAT-BANG](#)

**Syndicate Bank, Manipal Vs CCE, Mangalore (Dated: February 10, 2009)**

Service Tax – Reversal of stale DDs, credit on account of air tickets, reversal of old debit entries cannot be considered as value of taxable service – Cash management service taxable only w.e.f 01.06.2007 – Export of services exempt from service tax – Prima facie case in favour of appellants – Balance amount of pre-deposited waived and stay granted

<a href="#">2009-TIOL-1125-CESTAT-BANG</a>
<b>M/s LSG Sky Chefs (India) Pvt Ltd Vs CST, Bangalore (Dated: January 16, 2009)</b>
Service Tax – Outdoor Catering Services – Valuation - When there is contract for provision of service and if, in that contract, there is also supply of goods and if sales tax has been paid on the goods, service tax cannot be levied on the same. (Para 6)
<a href="#">2009-TIOL-1124-CESTAT-MUM</a>
<b>M/s S V Agencies Vs CST, Mumbai (Dated: June 12, 2009)</b>
Dates of hearing are fixed as per the decision of the Tribunal and not at the sweet will of the parties or their representatives
<a href="#">Also see analysis of the Order</a>
<a href="#">2009-TIOL-1123-CESTAT-BANG</a>
<b>CCE &amp; CC, Guntur Vs M/s/ Kanaka Durga Agro Oil Products Pvt Ltd (Dated: March 12, 2009)</b>
Service Tax – Goods Transport Agency Service – no liability to pay service tax on the receipt of the service in cases of transportation undertaken by the individuals and not by Goods Transport Agencies – revenue appeal dismissed.
<a href="#">2009-TIOL-1122-CESTAT-BANG</a>
<b>M/s MNC Corporation Vs CCE, Mangalore (Dated: February 6, 2009)</b>
Service Tax – Services provided to exporters and overseas buyers for export of cashew nuts – Commission received thereof exempt from BAS in terms of Notfn 13/2003-ST dtd 20.06.2003 – Notification covers all agricultural produce including nuts and vegetables – Prima facie strong case on merits – Full waiver of pre-deposit and stay granted
<a href="#">2009-TIOL-1118-CESTAT-BANG</a>
<b>M/s M Ramakrishna Reddy, Civil Contractors Andhra Pradesh Vs CCE &amp; CC, Tirupathi (Dated: March 31, 2009)</b>

Service Tax – Tax demand under the category of site formation and clearance, excavation, earth moving and demolition service– Issue covered by appellant's own case in [2008-TIOL-2337-CESTAT-BANGALORE](#)– Complete waiver of pre -deposit ordered and stay granted

[2009-TIOL-1116-CESTAT-BANG](#)

**M/s Premier Enterprises Vs CCE, Hyderabad (Dated: March 3, 2009)**

Service Tax – Commission received for causing sale of beer as del credere agent – Eligible for exemption under notification 13/2003-ST and not liable to service tax under BAS – Impugned orders

[2009-TIOL-1115-CESTAT-MUM](#)

**Golden Horn Container Services Pvt Ltd Vs CCE, Raigad (Dated: June 5, 2009)**

Tribunal cannot give a go-bye to a patent error found in the orders of the lower authorities – composite penalty could not have been imposed under sections 76 and 78 of the Finance Act, 1994 as both operate in different scenarios – CESTAT remands matter to original authority.

[Also see analysis of the Order](#)

[2009-TIOL-1114-CESTAT-BANG](#)

**Karnataka Land Army Corpn Ltd Vs CST, Bangalore (Dated: April 1, 2009)**

Service Tax – Services provided by State Government Undertaking for construction of roads, side-walks and other civil works to civic bodies – Prima facie, revenue has no case to demand service tax on such activities under 'maintenance and repair service' – Full waiver of pre -deposit and stay granted

[2009-TIOL-1106-CESTAT-BANG](#)

**M/s Classic Promoters And Developers Vs CCE, Mangalore (Dated: March 16, 2009)**

Service Tax – Commercial or Industrial Construction service and Construction of Complex service provided by appellants – Part of tax demand deposited with interest – Pre-deposit of balance amount of tax and penalties waived in view of Board's Circular dated January 29, 2009

<a href="#">2009-TIOL-1105-CESTAT-BANG</a>
<b>M/s Chandra Shipping &amp; Training Services Vs CCE &amp; CC, Visakhapatnam (Dated: February 18, 2009)</b>
Service Tax – Typographical errors apparent on record – ROM allowed
<a href="#">2009-TIOL-1104-CESTAT-BANG</a>
<b>M/s Worldspace India Private Limited Vs CST, Bangalore (Dated: March 20, 2009)</b>
Service Tax – When service recipient is located outside India then services would be regarded as exports – Amount paid towards dispute on Broadcasting service accepted and balance amount of pre-deposit waived and stay granted.
<a href="#">2009-TIOL-1103-CESTAT-MAD</a>
<b>M/s Prince Foundations (P) Ltd Vs CST, Chennai (Dated: May 14, 2009)</b>
<b>Service Tax – Construction service – Service to self not taxable</b> – appellants employed its own labour for execution of the various projects and are not a contractor doing construction work for another person. In respect of constructed property sold by the appellants to various buyers it cannot be held that PFL rendered 'commercial or industrial construction service' and 'construction of complex service' to the buyers. Appellants rendered such services to itself .
<b>No tax on 'works contract' prior to 1.6.2007</b> – Appellants carried out the construction activity, finishing work etc., in respect of which demands have been raised, in execution of works contracts. 'Works contract service' was brought under tax net on 1.6.2007, after the impugned activities were undertaken by PFL . As rightly argued by the appellants, the Tribunal had held in <i>Diebold Systems</i> case that activity such as erection/commissioning forming part of a works contract could not be taxed under erection/commissioning service prior to 1.6.2007. The contracts basic to the construction of commercial premises/residential premises were indivisible and involved a service element. In view of the ratio of the decision of the Tribunal, prima facie, the impugned demand is not sustainable.
<b>Matter remanded</b> - However, these two legal arguments were not taken before the Commissioner during the adjudication proceedings. In the circumstances, the matter has to go back to the adjudicating authority to examine the issue in the light of these important arguments raised before Tribunal for the first time.
<a href="#">Also see analysis of the Order</a>



<a href="#">2009-TIOL-1102-CESTAT-BANG</a>
<b>M/s Kerala State Electricity Board Vs CCE, Thiruvananthapuram (Dated: April 27, 2009)</b>
Service Tax – Taxability of charges received for usage of grid in transmission of power/electricity – Prima facie assessee has not made out a strong case on merits – Pre-deposit of Rs. 1 crore ordered
<a href="#">2009-TIOL-1101-CESTAT-BANG</a>
<b>M/s Coromandel Shipping Agencies Pvt Ltd Vs CCE &amp; CC, Visakhapatnam (Dated: April 22, 2009)</b>
Service Tax – Engaging personnel on behalf of clients for activities like stevedoring etc do not come under Port service – Full waiver of pre-deposit and stay granted
<a href="#">2009-TIOL-1093-CESTAT-BANG</a>
<b>M/s Silver Lake Information Systems Pvt Ltd Vs CST, Bangalore (Dated: March 17, 2009)</b>
Service Tax – Training on software related to AS/400 mainframes rendered to clients – Service tax amount demanded already discharged, balance amount waived and stay granted
<a href="#">2009-TIOL-1092-CESTAT-DEL</a>
<b>M/s Auto World Vs CCE, Allahabad (Dated: April 17, 2009)</b>
Service tax - Business Auxiliary Service - Assessee is an authorised auto dealer - arranges auto loans for customers from financial institutions and earns commission - fails to pay tax on commission income due to confusion - after Board clarifies assessee voluntarily deposits tax partly - Revenue raises demand and imposes penalty - held, since there was initially confusion about the levy of service tax on commission income, no mala fide can be alleged and since the balance tax was also deposited before the adjudication order, it is a fit case for invocation of Sec 80 - Assessee's appeal allowed
<a href="#">2009-TIOL-1091-CESTAT-KOL</a>
<b>M/s Arti &amp; Sons Vs CST, Kolkata (Dated: March 16, 2009)</b>
ST - Business Auxiliary Service - Assessee is into promotion and marketing of lottery tickets - Demand and penalty - extended period also invoked - Assessee argues it is

covered under service tax net only after Explanation to Sec 65(19) w.e.f 16.5.2008 was inserted - held, since the Explanation is only clarificatory in nature, it is not a fit case for waiver of pre -deposit - 25% pre -deposit ordered

[2009-TIOL-1089-CESTAT-BANG](#)

**M/s Super Spinning Mills Limited 'A' And 'B' Units Vs CC, CCE & ST, Tirupati (Dated: March 16, 2009)**

Service Tax – Services received from abroad liable to tax only from 18.04.2006 – Prima facie case in favour of assessee in view of High Court decision in Indian National Shipowners Association case [2008-TIOL-633-HC-MUM-ST](#)

[2009-TIOL-1088-CESTAT-DEL](#)

**CCE, Ludhiana Vs M/s Asian Cranes & Engg Services (Dated: May 21, 2009)**

ST - Maintenance and Repair Service - Assessee provides service to a corporate client on its premises - demand raised with penalty - CIT(A) upholds demand on maintenance and repair service and also penalty u/s 78 but not under Ss 76 and 77 - held, demand with penalty is set aside on the ground of limitation - Assessee's appeal allowed

[2009-TIOL-1087-CESTAT-DEL](#)

**CCE, Indore Vs M/s American Color Lab (Dated: June 25, 2009)**

ST - Photography service - Revenue for inclusion of photography materials in the value of taxable service - held, issue is no longer res integra as it is settled law that sale and service cannot be put in the same box and sale element in a works contract like photographic service is to be excluded from the gross value of taxable service - Revenue's appeal dismissed

[2009-TIOL-1086-CESTAT-BANG](#)

**M/s Soma Enterprise Ltd Vs CC, CE & ST, Hyderabad (Dated: February 4, 2009)**

Service Tax – Service tax not leviable on construction of 'raw water reservoir' prior to 01.06.2007 when said activity is understood and acted upon as works contract in terms of agreement between service provider and client and sales tax paid accordingly – Impugned order set aside

[2009-TIOL-1082-CESTAT-KOL](#)

**M/s IMRB International Vs CST, Kolkata (Dated: May 6, 2009)**

ST - Assessee claims deduction for out of pocket expenses - Revenue disallows - held, since the reimbursement of out of pocket expenses are towards the services rendered, and the payments received from foreign clients is taxable, it is not a fit case for total waiver of pre -deposit - 25% of demand ordered for granting stay

[2009-TIOL-1081-CESTAT-BANG](#)

**M/s Sharma Transports Vs CC, CCE & ST, Cochin (Dated: March 3, 2009)**

Service Tax – Sale of air tickets and receipt of commission does not come under BAS – SCN issued for recovery of tax under BAS not sustainable– Impugned order set aside

[2009-TIOL-1078-CESTAT-MUM](#)

**Sidel India Pvt Ltd Vs CCE & CC, Pune-I (Dated: June 16, 2009)**

For the benefit of CENVAT credit on mobile phone service, it is necessary that the assessee should establish that the mobile phones were used exclusively for the purposes connected with their business activities or, directly or indirectly, in or in relation to the manufacture/clearance of excisable goods – CESTAT orders pre - deposit.

Tribunal's observations –

+ I have not found prima facie case strong enough to warrant full waiver of pre-deposit.

+ Apparently, the finding of the lower authorities that the mobile phones were used for both personal and business purposes was arrived at upon verification of the mobile phone bills produced by the assessee.

+ For the benefit of CENVAT credit on mobile phone service, it is necessary that the assessee should establish that the mobile phones were used exclusively for the purposes connected with their business activities or, directly or indirectly, in or in relation to the manufacture/clearance of excisable goods .

+ The lower authorities have also relied on the Board's circular dated 23.8.07. Significantly, the assessee also has chosen to claim under the said circular. In the circumstances, the relevant para of the Circular has to be examined in this case. But I have not found any copy of the Circular.

+ According to the appellant, the crucial finding recorded by the original authority is not supported by evidence.

+ According to the respondent, that finding was recorded after verification of the

mobile phone bills produced by the assessee.

+ In this scenario, the evidentiary value of the mobile phone bills has also got to be examined.

+ Unfortunately, not even a specimen copy is available on record. In the circumstances, I am constrained to observe that the appellants have failed to establish prima facie case.

+ They have not pleaded financial hardships either.

[Also see analysis of the Order](#)

[2009-TIOL-1077-CESTAT-BANG](#)

**Cochin International Airport Ltd Vs CCE, CC & ST, Cochin (Dated: February 26, 2009 )**

Service Tax – Applicability of service tax on royalty charges collected for ground handling, exchange facilities and sale of duty free gold in Airport – Pre -deposit of Rs. 20 Lakhs ordered

[2009-TIOL-1076-CESTAT-MAD](#)

**M/s Sharadha Terry Products Ltd Vs CCE, Salem (Dated: April 22, 2009)**

Service Tax – No Service Tax on Services received from outside India prior to 18.04.2006 - Indian National Shipowners Association Vs Union of India & Ors . [2008-TIOL-633-HC-MUM-ST](#) , followed - Rajasthan High Court ruling in Union of India Vs Aditya Cement [2008-TIOL-483-HC-RAJ-ST](#) is not applicable

[2009-TIOL-1075-CESTAT-BANG](#)

**M/s Sulabh International Social Service Organization Vs CC, CCE & ST, Hyderabad (Dated: March 2, 2009)**

Service tax – Construction of pay and use toilets for public use not liable to service tax – Issue clarified by Board's Circular dated 23.10.2006 – Full waiver of pre-deposit and stay granted

[2009-TIOL-1067-CESTAT-BANG](#)

**M/s Phoenix It Solutions Ltd Vs CCE, CC & ST, Visakhapatnam (Dated: February 18, 2009 )**

<p>Service Tax – Services provided by call centres eligible for benefit of exemption notification 8/2003-ST – 25% of tax paid along with interest – Pre-deposit of balance amount waived and stay granted</p>
<p><a href="#">2009-TIOL-1066-CESTAT-DEL</a></p>
<p><b>M/s Nahar Fibres Vs CCE, Chandigarh (Dated: April 27, 2009)</b></p>
<p>Service tax – Credit of service tax paid on outward transportation from factory gate to port - Pre-deposit waived and recovery stayed</p>
<p><a href="#">2009-TIOL-1065-CESTAT-BANG</a></p>
<p><b>M/s GVK Power &amp; Infrastructure Ltd Vs CCE &amp; CC, Visakhapatnam (Dated: March 23, 2009)</b></p>
<p>Service Tax – 'Operation &amp; maintenance' of power plant under agreement does not come under maintenance &amp; repair service or management, maintenance &amp; repair service, as it amounts to service to self – CESTAT decision in Rolls Royce Industrial <a href="#">2004-TIOL-529-CESTAT-DEL</a> followed – When department has knowledge of the said activity, extended period not invocable – Prima facie case in favour of appellants – Full waiver of pre-deposit allowed and stay granted</p>
<p><a href="#">2009-TIOL-1063-CESTAT-DEL</a></p>
<p><b>M/s Bajaj Travels Ltd Vs CCE, New Delhi (Dated: June 19, 2009)</b></p>
<p><b>Service Tax – Air Travel Agent – Tax collected on the Basic Fare, but paid to the Government</b> – What has happened in this case is that throughout during the period of dispute, the appellant was actually paying the service tax at the prevailing rate under Section 66 on the net commission instead of on the gross commission and that has resulted in short payment of tax. While doing so, in the ST-3 returns, instead of showing the gross and net commission and calculation of service tax on that basis, the tax payment shown was as if it was on the 'basic fare' basis at the rate appearing under Rule 6 (7) of the Rules.</p> <p><b>Separate Penalty under Section 76 and Section 78 imposable</b> – in view of Kerala High Court's judgment in case of Asstt . Commissioner, Central Excise vs. Krishna Poduval reported in <a href="#">2006-TIOL-77-HC-KERALA-ST</a> . It was held in that case that incidents of imposition of penalty under Section 76 and 78 are distinct and separate under two provisions and even if the offences are committed in the course of the same transaction or arise out of the same act, penalty would be imposable both under Section 76 as well as Section 78.</p> <p><b>Tax paid before Adjudication –penalty should be 25% - Therefore</b> , in accordance with the ratio laid down by the Hon'ble Delhi High Court in case of K.P. Pouches P. Ltd. vs. Union of India ( <a href="#">2008-TIOL-240-HC-DEL-CX</a> ), the benefit of first proviso to Section 78 should be extended to the appellant. Accordingly penalty is required to be confined to 25% of the service tax and not equal to the service tax.</p>

Appellant also pleaded that the benefit of this provision has not been allowed by the Commissioners.

[2009-TIOL-1062-CESTAT-KOL](#)

**M/s Hindusthan Steel Works Construction Ltd Vs CCE, CC & ST, BBSR-I (Dated: April 20, 2009)**

ST - Industrial Construction - assessee constructs chimney for a power plant - pleads it is a works contract which was brought under service tax w.e.f. 01.06.2007 - held, the chimney was constructed during the period 10.09.2004 to 31.07.2006 and during this period the industrial construction service includes construction of new building or a civil structure - prima facie Applicants had not made out a case for total waiver of pre-deposit of Service Tax - in view of financial hardship pleaded, a pre-deposit of Rs 20 lakh ordered

[2009-TIOL-1061-CESTAT-DEL](#)

**M/s Shiv-Vani Oil & Gas Exploration Services Ltd Vs CST, Delhi (Dated: May 22, 2009)**

ST - defective appeal memo - Appella memorandum signed by Jt MD - Revenue objects and pleads Registry needs to verify the person whose letter accompanies the appeal memo is duly authorised - held, as per Rule 8(3) of Cestat Procedure Rule 1982, the word 'duly' presupposes that the person signing the document must have been given authority by a document - it is a mandatory condition and Registry needs to scrutinise the appeal memo before it is heard

[2009-TIOL-1054-CESTAT-DEL](#)

**M/s Gwalior Distilleries Ltd Vs CCE, Indore (Dated: May 14, 2009)**

ST - Packaging and bottling service - held, since the MP High Court has held that packaging and bottling of liquor comes within the meaning of clause (f) of Sec 2 of Central Excise Act and is not liable to service tax, the Revenue has no case - Revenue's appeal dismissed

[2009-TIOL-1053-CESTAT-MAD](#)

**CCE, Chennai Vs Unity Forge Ltd (Dated: April 28, 2009)**

Service tax – Service Tax on Goods Transport Operator service from 16.11.1997 to 01.6.1998 – show cause notices issued under Section 73 of the Finance Act are not maintainable as the assessee came under the provisions of Section 71A, who were not brought under the net of Section 73.

<a href="#">2009-TIOL-1049-CESTAT-DEL</a>
<b>M/s Raj Furnitures Vs CST, Delhi (Dated: May 22, 2009 )</b>
Service Tax - <b>completion and finishing Service – Whether cost of material supplied to be excluded or 67% abatement granted – Rs. 2 Crores pre-deposit ordered:</b> although the nature of the activity of completion and finishing was claimed by the assessee as entitled to abatement, the assessee did not bring evidence to the satisfaction of law. Appellant directed to deposit Rs. 2 Crores (Rupees Two Crores) as an interim measure to protect interest of Revenue within six weeks from today. Once it is noticed that the Adjudicating Authority found wilful suppression, that calls for such interim order
<a href="#">2009-TIOL-1044-CESTAT-DEL</a>
<b>M S Associates Vs CST, Delhi (Dated: May 1, 2009)</b>
ST - Business Auxiliary Service - Assessee conducts lottery draw and sells lottery ticket for a State Govt under the terms of an agreement - disputes the demand - Revenue pleads for retrospective nature of Explanation inserted to sub-clause (ii) of section 65 (19) of the Finance Act 1994 - held, if it was to be given retrospective effect, the legislative intent would have been more explicit - issue needs detailed examination - waiver of pre-deposit granted
<a href="#">2009-TIOL-1042-CESTAT-DEL</a>
<b>M/s PML Industries Ltd Vs CCE, Chandigarh (Dated: May 4, 2009)</b>
ST - Slaughter House - Assessee had 100% EoU status - Tribunal had held that the activity undertaken by the assessee was manufacturing of meat - Revenue now treats the same activity as a service - held, the incidental activity of slaughter cannot be disintegrated from manufacturing activity which is predominant activity of the assessee - Slaughtering serves the main purpose of manufacture of meat - assessee is beyond the scope and ambit of tax under the Finance Act, 1994, as the act of slaughtering is providing no such service alone - assessee's appeal allowed
<a href="#">2009-TIOL-1040-CESTAT-MUM</a>
<b>GKN Sinter Metals Ltd Vs CCE, Aurangabad (Dated: June 11, 2009)</b>
When the legal position was very plain like daylight, there was no reason for assessee to avail undue benefit of Cenvat Credit on Garden Maintenance Services – Exoneration

cannot be claimed from penal liability – CESTAT.

Tribunal decision in Kirloskar Oil Engines Ltd. vs. CCE, Aurangabad [ [2009-TIOL-790-CESTAT-Mum](#) ] relied upon.

Outdoor Catering Services is an Input Service – Cenvat Credit allowed - LB decision in GTC Industries Ltd. [ [2008-TIOL-1634-CESTAT-Mum-LB](#) ] followed.

Stay order reported as [2008-TIOL-1518-CESTAT-Mum](#)

[Also see analysis of the Order](#)

[2009-TIOL-1039-CESTAT-MAD](#)

**Grasim Industries Ltd Vs CCE, Chennai (Dated: May 1, 2009)**

Service Tax – Technical inspection and certification service – the charges collected by the BIS towards marking fee is taxable under Technical Inspection and certification service.

[2009-TIOL-1038-CESTAT-BANG](#)

**M/s Birdy Exports Pvt Ltd Vs CST, Bangalore (Dated: February 19, 2009 )**

Service Tax – Employee did not bring the order served on the company to management's notice – Copy of order procured by company from the department at a later date and appeal filed immediately thereafter – Sufficient cause to condone delay of 214 days in filing appeal

[2009-TIOL-1031-CESTAT-DEL](#)

**CCE, Ludhiana Vs M/s Safal Construcion (Dated: May 26, 2009)**

ST - Commercial or Industrial Construction - Demand and penalties - Commissioner(A) upholds the demand and penalties under Ss 76 and 77 but not under Sec 78 - held, since demand for extended period of limitation has been confirmed, dropping penalty u/s 78 for alleged suppression of facts is contradictory - since the assessee did not reply to SCN and appear for personal hearing, the issue is remanded

[2009-TIOL-1030-CESTAT-DEL](#)



**CCE, Ludhiana Vs M/s J R Industries (Dated: May 11, 2009)**

ST - Commissioning & Installation service - Commissioner(A) finds the contract composite and finds it not taxable - assessee pleads the Revenue wants to tax advance payment - held, since no service has been provided, the taxable event has not taken place - advance payment cannot be taxed

[2009-TIOL-1029-CESTAT-MUM](#)

**M/s Y M Krishna SSK Ltd Vs CCE, Pune-II (Dated: June 19, 2009)**

Applicant, a country liquor manufacturer, enters into selling agency agreement with a HUF allowing them to use their brand name 'Pahili Dhar' – whether Service Tax payable under 'Intellectual Property Services' – CESTAT grants complete waiver of pre-deposit.

[Also see analysis of the Order](#)

[2009-TIOL-1028-CESTAT-KOL](#)

**M/s Avian Overseas Pvt Ltd Vs CCE, CC & ST, BBSR II (Dated: March 6, 2009)**

ST - BAS and Cargo Handling Service - Assessee is registered and pays tax on site formation services and mining services - for prior period Revenue raises demand under BAS and Cargo handling service - held, BAS does not apply to manufacture of excisable goods and since coal is an excisable good it is not applicable - transportation within the mining area is also outside the service tax net but loading and unloading of goods and transportation outside the mining area are covered under cargo handling service - cum-tax value to be taken into consideration but no penalty as clarificatory circular came later - Assessee's appeal allowed

[2009-TIOL-1027-CESTAT-DEL](#)

**M/s Samsung Corning Co Ltd Vs CST, Jaipur (Dated: May 14, 2009)**

ST - Consulting Engineer Service - Assessee pleads that it provided IPR service and received royalty for the same - held, no record produced by Revenue to controvert the assessee's claim - waiver from pre-deposit granted

[2009-TIOL-1022-CESTAT-DEL](#)

**Nokia India (P) Ltd Vs CST, New Delhi (Dated: May 25, 2009)**

ST - Repair and maintenance service - Assessee pleads limitation and argues demand is time-barred as the SCN is based on materials gathered during search way back in 2001 - held, going by the reasoned and speaking order of the Commissioner (A) who has also considered the time-bar aspect, a pre-deposit of Rs 50 lakh is justifiable - Assessee's appeal disallowed

[2009-TIOL-1021-CESTAT-KOL](#)

**M/s NTPC Sail Power Company Pvt Ltd Vs CCE, Bolpur (Dated: May 7, 2009)**

ST - Business Auxiliary Service - Assessee argues since electricity is an excisable product, service tax cannot be levied on it by treating it as service - Revenue pleads that clause (ii) of Sec 2(f) is not satisfied by the assessee, therefore it cannot be considered as a manufactured product - held, it is a settled law that electricity is a manufactured product, and the definition of manufacture under Section 2(f) of the Central Excise Act, 1944 is an inclusive definition and therefore, it is very clear that it is not necessary that all the inclusive definitions should be satisfied together in any particular case - Thus, it is not covered under the BAS - Assessee's appeal allowed

[2009-TIOL-1018-CESTAT-AHM](#)

**M/s Anagram Capital Ltd Vs CST, Ahmedabad (Dated: June 22, 2009)**

ST - Stock broking - Revenue demands tax on NSE transaction charges - held, since the assessee had declared so and also intimated the Revenue that such charges not to form gross assessable value for levy of service tax, the SCN is beyond the period of limitation - Stay granted with waiver of pre -deposit

[2009-TIOL-1016-CESTAT-AHM](#)

**Banner Pharmacaps Pvt Ltd Vs CCE & Cus, Vapi (Dated: June 3, 2009)**

ST - Cenvat credit - Assessee avails 75% abatement and pays tax on GTA services - since consignment notes do not declare about non-availment of credit on inputs, the Revenue denies abatement - held, in view of Tribunal's decision in the case of Sunhill Ceramics where it was held that the service receiver can avail abatement even in the absence of declaration, stay granted

[2009-TIOL-1015-CESTAT-MUM](#)

**CCE, Mumbai Vs Riya Travels & Tours (I) Pvt Ltd (Dated: April 17, 2009)**

Service Tax - Penalty - If Section 80 is invoked, no penalty would be liable on the assessee. If, on the other hand, Section 78 is invoked, the quantum of penalty can

not go below less than the amount of service tax not levied or paid - Imposition of penalty under Section 78 upheld.

[Also see analysis of the Order](#)

[2009-TIOL-1014-CESTAT-DEL](#)

**CCE, Kanpur Vs M/s J R Singh (Dated: March 19, 2009)**

ST - Manpower Recruitment Service - Assessee is a proprietorship firm - supplies labour - fails to pay tax - show caused - tax deposited - penalty - Commissioner(A) invokes Sec 80 - held, since the assessee was not aware of the tax provisions and had also not collected tax from service recipient but maintained all the records of services provided, it is a fit case for invoking Sec 80 - Revenue appeal dismissed

[2009-TIOL-1009-CESTAT-DEL](#)

**M/s Laxmi Electricals Vs CCE, Jaipur (Dated: May 4, 2009)**

ST - Joint Commissioner drops proceedings as he finds assessee is an electrical contractor - Commissioner reviews and raises demand for providing pandal and shamiyanan contract services - held, since these contrary facts are clear from the order of adjudicating authority and no additional evidence brought on record by the Commissioner, waiver from pre-deposit granted

[2009-TIOL-1005-CESTAT-KOL](#)

**M/s Paradeep Port Trust Vs CCE, BBSR-I (Dated: March 31, 2009)**

ST - Port Service - assessee enters into contract with Railways for interconnection - receives payment for terminal service - Revenue for levy of tax on terminal service as part of port service - held, since the Board has accepted the CCE, Chennai order terming it as Business Auxiliary Service, stay granted and Revenue directed not to take coercive action

[2009-TIOL-1004-CESTAT-DEL](#)

**M/s Rakesh Ahuja & Others Vs CCE, Meerut-II (Dated: May 1, 2009)**

ST - pre-deposit - assessee alleges lack of speaking and reasoned order - Adjudicating authority also allegedly fails to examine each agreement before calculating tax element - held, examination of records is prima facie satisfactory - pre-deposit ordered

[2009-TIOL-1003-CESTAT-DEL](#)

**M/s Hans Colour Lab & Studio Vs CCE, Jaipur-I (Dated: May 27, 2009)**

ST - condonation of delay - Assessee pleads an employee of the assessee who received the order misplaced the same and did not inform the management out of fear - held, since the reasons are bona fide the delay is condoned and pre-deposit is waived off as tax is deposited

[2009-TIOL-1000-CESTAT-AHM](#)

**CST, Ahmedabad Vs M/s Amola Holdings Pvt Ltd (Dated: June 1, 2009)**

ST - construction of complex service - abatement of 67% - Assessee first avails credit on input services and also capital goods - then reverses the same to avail abatement - Revenue denies it on the ground that the assessee first availed credit and then abatement after reversal of credit which is not permissible - Commissioner (A) disagrees with the Revenue - held, it is consistent view of the judiciary that once credit is reversed, the assessee can avail other benefits - no substance in Revenue's appeal

[2009-TIOL-999-CESTAT-KOL](#)

**M/s Global Minitech Ltd Vs CCE, BBSR-II (Dated: June 2, 2009)**

ST - Cargo handling service - assessee enters into contract for extraction and transfer of coal - held, since loading is incidental to the main contract and the Tribunal has, in a similar case, held that the assessee is not providing cargo handling service, it is a fit case for waiver of pre-deposit

[2009-TIOL-997-CESTAT-MUM](#)

**Vikram Ispat Vs CCE, Aurangabad (Dated: June 1, 2009)**

Cenvat Credit not available on Security services, Rent-a-cab services, Mobile Telephony services as appellants have not adduced evidence to establish the nexus, if any, between the "services" and the manufacture/clearance of the final products - CESTAT.

Sections 11A and 11AB will be applicable where the CENVAT credit in question has been utilized for payment of duty of excise on final products whereas sections 73 and 75 of the Finance Act are applicable where the credit has been utilized for payment of

service tax on output services.

[Also see analysis of the Order](#)

[2009-TIOL-995-CESTAT-KOL](#)

**M/s Avian Overseas Pvt Ltd Vs CCE, CC & ST , BBSR II (Dated: March 6, 2009)**

ST - BAS and Cargo Handling Service - Assessee is registered and pays tax on site formation services and mining services - for prior period Revenue raises demand under BAS and Cargo handling service - held, BAS does not apply to manufacture of excisable goods and since coal is an excisable good it is not applicable - transportation within the mining area is also outside the service tax net but loading and unloading of goods and transportation outside the mining area are covered under cargo handling service - cum-tax value to be taken into consideration but no penalty as clarificatory circular came later

[2009-TIOL-994-CESTAT-KOL](#)

**M/s Arti & Sons Vs CST, Kolkata (Dated: March 16, 2009)**

ST - Business Auxiliary Service - Assessee is into promotion and marketing of lottery tickets - Demand and penalty - extended period also invoked - Assessee argues it is covered under service tax net only after Explanation to Sec 65(19) w.e.f 16.5.2008 was inserted - held, since the Explanation is only clarificatory in nature, it is not a fit case for waiver of pre-deposit - 25% pre-deposit ordered

[2009-TIOL-991-CESTAT-DEL](#)

**M/s Krishna Builders Vs CCE, Raipur (Dated: March 31, 2009)**

ST - Refund - assessee is into construction of residential flats - pays tax under protest - files refund claim on the basis of Board's letter that no tax is leviable on such activities - Revenue alleges unjust enrichment - held, since the assessee's activities are to be examined in view of the Board's letter and unjust enrichment issue also requires to be looked into, matter is remanded for fresh examination

[2009-TIOL-990-CESTAT-DEL](#)

**M/s Khicha Industries Vs CCE, Jaipur-II (Dated: May 25, 2009)**

ST - Cargo Handling Service - assessee is into transporting, loading and unloading of rock phosphate chips from mines to grinding units - gets registered under BAS and contends it is not covered under the cargo handling service - Revenue pleads since the activities of the assessee are not confined to the mines area they are covered under the cargo handling service - held, the assessee does not have prima facie a strong case but since the entire issue was known to the Revenue and limitation is another issue, waiver from pre -deposit is granted

[2009-TIOL-989-CESTAT -MUM](#)

**M/s Ahmednagar Merchants Co-Operative Bank Ltd Vs CCE, Aurangabad (Dated: May 4 2009)**

Section 80 of Finance Act, 1994 is a unique provision not found in other statutes - If the discretion is there not to impose penalty under section 80 ibid, the discretion is as well there to impose lesser penalty – CESTAT

Once it is found that the Cenvat Credit was irregularly availed by the appellants, by implication, to that extent the Service Tax on the Output service was short paid, and it had to be recovered under Rule 14 of the Cenvat Credit Rules, 2004 - the show cause notice for invoking the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with section 11A of the Central Excise Act, 1944 and section 73 of the Finance Act, 1994 and read with section 11AB of the Central Excise Act, 1944 and section 75 of the Finance Act, 1994 for recovery of irregularly availed Cenvat credit and demanding interest respectively is perfectly in order and is within the framework of law.

Crucial information and the material particulars required for availing credit of service tax are not available in the document viz. daily summary sheet, hence credit rightly denied because of non-fulfillment of the requirements of the provisions of Rule 4A of the Service Tax Rules, 1994 read with Rule 9 of the CCR, 2004.

Revenue appeal dismissed. Assessee's appeal rejected. Commissioner(Appeals) order upheld.

[Also see analysis of the Order](#)

[2009-TIOL-988-CESTAT -MUM](#)

**Security And Escorts Services Pvt Ltd Vs CST, Mumbai (Dated: May 13 2009)**

Commissioner (Appeals) has no power to condone the delay in filing appeal beyond the further period of three months as provided in section 85(3) of the Finance Act, 1994 – Delay of 386 days is beyond the power of the Commr(A) to condone – Order of Commr(A) is legal and proper – Appeal dismissed.

[2009-TIOL-981-CESTAT -MUM](#)

**Taradevi Bafna Vs CCE (Dated: May 12, 2009)**

Service tax in respect of renting of immovable property paid with interest prior to issuance of show cause notice – Delhi High Court in Home Retail Solution India Ltd. [ [2009-TIOL-196-HC-Del-ST](#) ] has held that renting of immovable property for use in furtherance of business or commerce, by itself, did not entail any value additional and hence could not be regarded as service – Waiver of pre-deposit and stay of recovery in respect of penalty amount granted.

[2009-TIOL-979-CESTAT-AHM](#)

**CST, Ahmedabad Vs M/s Ingersoll- Rand (India) Ltd (Dated: June 10, 2009)**

ST - Service recipient - assessee receives certain services from abroad - demand is raised - held, in view of the Tribunal's Larger Bench decision in the case of Hindustan Zinc and the Revenue appeal being dismissed by the Apex Court, the Revenue has no merit in the case - Revenue's appeal dismissed

[2009-TIOL-978-CESTAT-DEL](#)

**M/s Bharti Telenet Ltd Vs CCE, Chandigarh (Dated: June 2, 2009)**

ST - telecom service - Assessee argues as such sale of SIM cards is not taxable - only activation service is taxable - since tax is already paid, no need for pre-deposit

[2009-TIOL-975-CESTAT-DEL](#)

**Municipal Corpn Of Delhi Vs CST, Delhi (Dated: April 28, 2009)**

ST - assessee is a government agency and lets out facilities for marriages and social activities - demand - held, assessee is liable to pay service tax but since it has not charged service tax separately from their customers, the tax is to be calculated on the basis of cum-tax value - matter remanded for re-calculation - Assessee's appeal dismissed

[2009-TIOL-974-CESTAT-AHM](#)

**M/s Indo Nippon Chemicals Co Ltd Vs CCE, Vadodara (Dated: April 21, 2009)**

ST - Consulting Engineer Service - Revenue raised demand for transfer of technical knowhow - assessee pleads it is not an engineering firm and nor in the business of consulting engineering service and then transfer of knowhow is the transfer of property which cannot be subjected to service tax - Revenue alleges the assessee

concealed the agreement copy and gave a statement before the Commissioner(A) that it was rental income - held, if the assessee has concealed the evidence the law vests sufficient powers in the Revenue to conduct proper investigation and produce documents but since Revenue fails to prove that the assessee was providing consulting engineering service, the demand is not sustainable

[2009-TIOL-973-CESTAT -AHM](#)

**M/s Gujarat Petroleum Corpn Ltd Vs CCE, Ahmedabad-III (Dated: June 10, 2009)**

ST - Service recipient - assessee is into oil exploration and extraction - receives certain services from a non-resident service provider - demand raised and penalty imposed - assessee pleads it is not liable to pay tax for period prior to 18.04.06 as settled by the Bombay HC and it has deposited certain sum under protest which may be treated as sufficient for pre-deposit - held, since the assessee is a State Govt undertaking and its tax liability is likely to be the sum already paid under protest, waiver from more pre-deposit granted

[2009-TIOL-968-CESTAT -DEL](#)

**Modi-Mundipharma Pvt Ltd Vs CCE, Meerut (Dated: April 1, 2009)**

ST - IPR Service - Assessee is a pharma company - gets into agreement with a non-resident company for transfer of technical knowhow in 1990 - payment to be made on annual sales basis till the patent right lasts - Revenue raises demand - held, since the agreement was signed in 1990 and the payments being made on deferred payment basis and no regular update or supplementary service being provided by the non-resident company, it is a one time affair, the royalty paid under such agreement does not attract service tax introduced much later - Assessee's appeal allowed

[2009-TIOL-967-CESTAT -AHM](#)

**M/s Apollo Tyres Ltd Vs CCE, Vadodara (Dated: June 8, 2009)**

ST - Cenvat Credit - Assessee avails credit for tax paid on outward transport - Revenue denies on the basis that the delivery was made at the factory gate - assessee claims it is entitled to take credit as the goods were sold to customers on FOR destination basis - held, in view of the P&H HC decision and Board's circular the assessee has prima facie a strong case - waiver from pre-deposit granted

[2009-TIOL-966-CESTAT -AHM](#)

**M/s Aditya Builders Vs CCE, Ahmedabad III (Dated: June 9, 2009)**



ST - Construction service - Assessee carries out certain civil works for ONGC - Demand raised and penalty imposed - Assessee pays the entire tax but disputes the part of liability for period prior 16.6.05 when the definition of construction service was amended - held, since the tax in full is paid and the assessee being an individual in the beginning it is a fit case for waiver of pre-deposit

[2009-TIOL-962-CESTAT -MUM](#)

**M/s Rubicon Formulations Pvt Ltd Vs CCE, Aurangabad (Dated: June 5, 2009)**

Producing products containing alcohol – whether Service Tax liability under Business Auxiliary Service – CESTAT orders pre -deposit of the entire amount of Service Tax demand and interest.

CESTAT's observations -

In the matter in hand, it is not in dispute that the applicants do not manufacture the product under any contract of bottling arrangement in the sense that the activity of manufacturing of the product by the applicants is for and behalf of his clients and in the manner described under the contract between the applicants and his clients.

In other words, it is the service rendered by the applicants to their clients in terms of the contract with the clients.

The Circular 249/1/2006-CX.4 dated 27th October 2008 explains the exclusion of activity from 'Business Auxiliary Service' when the activity amounts to manufacture of a product as described in the said Circular, more particularly, in para 3 thereof.

The learned Consultant has not been able to point out the activity of the applicants to be in consonance with the description of the activity in para 3 of the Circular so as to claim exemption from being classified as 'Business Auxiliary Service' within the meaning of the said expression under the said Act.

Prima facie, therefore, we do not find any case having been made out for grant of stay of the impugned order demanding the Service Tax.

Subsequent to the Circular the lower authorities had taken a different view in the case of the applicant's activity, hence there is a, prima facie case made out for the grant of waiver in relation to the demand pertaining to the penalty amount .

Pre -deposit of the entire Service Tax demand and the interest thereon ordered to be made within twelve weeks.

Applications for Stay partly succeed.

[Also see analysis of the Order](#)

[2009-TIOL-961-CESTAT -BANG](#)

<p><b>CCE &amp; ST, LTU Vs M/s Dell International Services India Pvt Ltd (Dated: January 13, 2009)</b></p>
<p>Service Tax – Review of order of Committee of Commissioners - Once the Review Committee has taken a decision not to file an appeal before CESTAT, then the said Committee becomes functus officio. There is no legal provision for sitting in judgments over the decision of the Review Committee. (Para 4)</p>
<p><a href="#">2009-TIOL-960-CESTAT -AHM</a></p>
<p><b>M/s Banco Product (India) Ltd Vs CCE, Vadodara (Dated: June 11, 2009)</b></p>
<p>ST - Service recipient - Assessee pays commission to foreign agents for procuring exports orders - demand raised - assessee partly pays tax and interest but pleads that as per settled law it is not liable to pay tax for period prior to 18.4.06 - held, since 40% of tax is already paid, it is a fit case for waiver of pre -deposit</p>
<p><a href="#">2009-TIOL-955-CESTAT -DEL</a></p>
<p><b>M/s Amitdeep Motors Vs CCE, Allahabad (Dated: May 21, 2009)</b></p>
<p>ST - C&amp;F Service - assessee procures order from a bulk buyer for Maruti Udyog vehicles - Revenue holds the assessee as C&amp;F Service provider - held, since the CST was paid on the transaction, a sale transaction cannot be brought under the C &amp; F Service - Assessee's appeal allowed</p>
<p><a href="#">2009-TIOL-954-CESTAT -DEL</a></p>
<p><b>M/s EEE &amp; CEE Pressings Pvt Ltd Vs CCE, Panchkula (Dated: May 20, 2009)</b></p>
<p>ST - Processing of goods service - Assessee is a job worker - was registered with central excise but after the new service of processing of goods was notified as taxable from 16.6.2005, it switches over to new service - Demand raised - held, recovery of demand stayed</p>
<p><a href="#">2009-TIOL-953-CESTAT -DEL</a></p>
<p><b>M/s Eicher Motors Ltd Vs CCE, Indore (Dated: May 5, 2009)</b></p>
<p>ST - banking and financial services - assessee is into hire purchase business - claims its service is not covered under banking or financial service - held, sub-section to sec 65(12) brings banking or financial institutions under the taxable service but the assessee may not fall in this category as defined by the RBI - pre -deposit waiver granted</p>

<a href="#">2009-TIOL-949-CESTAT-DEL</a>
<b>CCE, Raipur Vs M/s BSBK Pvt Limited (Dated: March 20, 2009)</b>
ST - Cenvat credit - assessee is into industrial installation - avails credit for service tax paid on mobile phone bills - Revenue denies the same on the ground that since the bills were raised in the name of employees of the company, the assessee company cannot avail credit for the same - held, the Revenue is right that mere payments of bills by the assessee does not mean that the assessee also utilised the services. However, since the mobile phones were used by the whole time Directors of the company for business purposes and the same is not refuted by the Revenue, credit cannot be denied - Revenue's appeal dismissed
<a href="#">2009-TIOL-948-CESTAT-DEL</a>
<b>British Airways Vs CST, New Delhi (Dated: May 4, 2009)</b>
ST - pre-deposit - since assessee itself has deposited 80% of Rs 133.23 Crore demand, status quo ante to be maintained and early hearing granted for possible recurring effect of the case
<a href="#">2009-TIOL-944-CESTAT-MUM</a>
<b>Cosmo Films Ltd Vs CCE &amp; C &amp; ST, Aurangabad (Dated: April 15, 2009)</b>
Cenvat Credit whether available on Garden Maintenance services, Authorized Service Station, Security services and Insurance Services – Commissioner(A) has not considered the submissions and the case laws cited by the assessee but passed a cryptic order denying the benefit – Matter remanded to original adjudicating authority to pass orders within six months.
<a href="#">2009-TIOL-941-CESTAT-BANG</a>
<b>M/s Meka Industries Vs CC &amp; CCE, Belgaum (Dated: February 24, 2009)</b>
Service Tax – When appellant availed credit of service tax paid excessively under bonafide belief, penalties not leviable
<a href="#">2009-TIOL-940-CESTAT-DEL</a>

**M/s Wild Expedition Tours & Travels Vs CCE, Bhopal (Dated: April 8, 2009)**

ST - Rent-a-Cab-Operator - Assessee provides vehicles to PSUs and some of the Govt offices - claims it is not covered under the notified service - Matter remanded for passing a speaking order

[2009-TIOL-936-CESTAT-MUM](#)

**Global Telecom Vs CST, Mumbai (Dated: April 1, 2009)**

Neither ignorance of law nor confusion is a reasonable cause for extending the benefit of Section 80 of the Finance Act, 1994.

Non-recovery of tax from clients is also not a valid excuse for non-payment of tax, nor can the plea of ignorance of law be accepted as a defense vis -a-vis the demand of service tax.

Fact that assessee had no intent to evade payment of service tax is not relevant to sections 76 and 77 of the Finance Act, 1994

Once the assessee has registered himself with the department, there cannot be any confusion in their mind regarding payment of service tax.

Plea that service tax has been paid along with interest before issuance of show cause notice and hence no penalty is imposable is not supported by any case law.

[2009-TIOL-935-CESTAT-BANG](#)

**M/s Sree Rama Electricals And Electronics Ltd Vs CCE, Hyderabad (Dated: January 16, 2009)**

Service tax – Liability of service tax on repair of transformers – Matter remanded to original authority to consider the issue afresh in the light of Board's Circular 27.07.2005

[2009-TIOL-928-CESTAT-MAD](#)

**Ishvarya Ads Vs CCE & ST, Chennai (Dated: April 8, 2009)**

Service Tax – Advertising Agency Service – Appeal to Commissioner (Appeals) – Power to condone delay – Under Section 85 (3) of the Finance Act, 1994, the statutory period of limitation for filing an appeal is 90 days and the period which the authority is empowered to condone is further 3 months after the expiry of 90 days period. The Commissioner (Appeals) has wrongly applied provisions of sub-section (1) of Section 35 of the Central Excise Act, 1944. Matter remanded for fresh orders. (Para 1)

<a href="#">2009-TIOL-927-CESTAT-MAD</a>
<b>CCE (ST), Chennai Vs M/s EID Parrry (Dated: April 6, 2009)</b>
Service Tax – Business Auxiliary Service – Services received from abroad – Liability of Service receiver - Rule 2(1)(d)(iv) of the Service Tax Rules, 1994, made recipient of service from abroad liable to pay service tax with effect from 16.6.2005. Section 66A of the Finance Act, 1994, which was introduced on 18.04.2006, provides that taxable services received from abroad by a person belonging to India are taxed in the hands of the Indian residents. Hence, liability for payment of service tax on the service receiver in India is applicable only from 18.04.2006 and not from 16.06.2005. (Para 4)
<a href="#">2009-TIOL-926-CESTAT-MUM</a>
<b>Mineral Exploration Corporation Ltd Vs CCE &amp; C, Nagpur (Dated:May 5, 2009)</b>
Exploration work carried out by PSU for the Ministry of Mines, Government of India for which only Grant-in-Aid is received – whether chargeable to Service Tax – appellant, a Public Sector Undertaking and totally owned by the Government of India, Ministry of Mines has a good prima facie case in their favour and also balance of convenience was lying in their favour – Waiver of pre -deposit of tax, penalties and interest granted and stay ordered by CESTAT
<a href="#">Also see analysisof the Order</a>
<a href="#">2009-TIOL-925-CESTAT-BANG</a>
<b>CST, Bangalore VsM/s Pinnacle India Bangalore (Dated: February 9, 2009)</b>
Service tax – Services provided to financial institution engaged in providing commercial vehicle finance whether liable to tax w.e.f 01.07.2003 – Matter remanded to Appellate Commissioner for de novo consideration as the order passed lacks clarity
<a href="#">2009-TIOL-924-CESTAT-DEL</a>
<b>M/s TIL Ltd Vs CCE, Jaipur-II (Dated: May 6, 2009)</b>
ST - penalty - assessee is accused of manipulating reapiir and maintenance contract into supply contract - demand - substantial deposit made - held, since there is serious allegation of converting a taxable contract into a non-taxable contract, pre-deposit is ordered but waiver of interest and penalty waive off

[2009-TIOL-916-CESTAT -BANG](#)

**M/s GEO Foundations And Structures (P) Ltd Vs CCE & CC , Cochin (Dated: February 2, 2009)**

Service Tax – When registration is obtained for both services of residential and commercial construction service, appellant duty bound to pay service tax – Piling work for commercial buildings liable to tax from 10.09.2004 – Matter remanded for re-quantification of tax liability after allowing deductions – Assessee also liable to pay interest on such re-quantified amount – Soil testing and survey work liable to tax under Site formation and clearance service and Survey and map making service w.e.f 16.06.2005 and not under Consulting Engineer service

[2009-TIOL-915-CESTAT -BANG](#)

**M/s SKY Gourmet Pvt Ltd Vs CST, Bangalore (Dated: January 30, 2009)**

Service tax – Cost of food supplied to airlines eligible for exclusion for computation of service tax levy under 'Outdoor catering service' under Notification 12/2003-ST – VAT invoices indicating cost of food and VAT paid thereon sufficient evidence to claim benefit under Notification 12/2003-ST – When two beneficial notifications are available, assessee has an option to choose a notification more beneficial to them – Commissioner's finding that appellant has to avail benefit of abatement under Notifications 20/2004-ST and 1/2006-ST and they are not eligible to claim benefit of Notification 12/2003-ST arbitrary – Impugned order set aside

[2009-TIOL-913-CESTAT -MUM](#)

**M/s Pandurang Travels Vs CCE, Pune (Dated: April 16, 2009)**

Taking the department and the client for a bus ride by collecting but not depositing Service Tax in to the treasury – Penalty imposed pursuant to revision order is proper and legal – Tribunal.

Appellant surrendering their 'Tour operator' registration of Service Tax by contending that they are within exemption limits – investigation revealed that the appellant continued to charge and recover service tax from their client but did not deposit in treasury – appellants are having the knowledge of their liability to pay service tax and their customer is taking the CENVAT credit of the service tax - SCN issued and the amount paid by appellant – lenient view taken and penalty not imposed by original authority - Commissioner imposing penalty in revisionary proceedings is proper in law as intention to evade duty is apparent.

Order in revision upheld and appeal dismissed.

[Also see analysis of the Order](#)

<a href="#">2009-TIOL-912-CESTAT -BANG</a>
<b>M/s T T Enterprises Ltd Vs CCE, Bangalore (Dated: February 27, 2009)</b>
Service Tax – Liability of service tax on Visa services provided to sovereign countries – Pre-deposit of Rs. 25 lakhs ordered
<a href="#">2009-TIOL-911-CESTAT -BANG</a>
<b>Lenovo (India) Pvt Ltd Vs CCE &amp; ST, Bangalore (Dated: February 10, 2009)</b>
Service Tax – Promoting sale of products of foreign client in India being Business Auxiliary Service fulfils the conditions under Export of Service Rules, 2005 and qualifies as export of service– Rebate of tax paid on commissions received thereof allowed following Tribunal decision in ABS Ltd vs. CCE, Bangalore <a href="#">2008-TIOL-1500-CESTAT -BANG</a> – Impugned order liable to be set aside
<a href="#">2009-TIOL-905-CESTAT -BANG</a>
<b>M/s Pasha Educational Training Institute Vs CCE, Hyderabad (Dated: February 13, 2009)</b>
Service Tax – Training provided to candidates in various fields covered by Commercial Training or Coaching service, but exempt vide Notification 9/03-ST as vocational training – Issue covered vide Tribunal order in appellants own case <a href="#">2009-TIOL-288-CESTAT -BANG</a>
<a href="#">2009-TIOL-902-CESTAT -DEL</a>
<b>M/s Korea Plant Service &amp; Engg Co Ltd Vs CCE, Jaipur-II (Dated: April 17, 2009)</b>
ST - Maintenance & Repair Service - Assessee pays tax on entire contract amount - takes cenvat credit - Revenue disallows credit on tax paid on activities other than maintenance - held, prima facie, assessee paid tax on the entire contractual amount and the denial of credit on the ground that part of input services was not used in maintenance service is not justified - waiver of pre-deposit granted
<a href="#">2009-TIOL-900-CESTAT -DEL</a>
<b>M/s Padam Chand Mutha &amp; Co Vs CCE, Jaipur-II (Dated: May 15, 2009)</b>

Service Tax – C&F Agent – selling of tea for the principal – No return filed due to a *bona fide* belief – Demand barred by limitation – issue not decided on merits: In the present case, it is contended by the Revenue that the appellants failed to submit the Return and to observe the procedure. Tribunal held that procedural failure on the part of the appellants was a result of *bona fide* belief. As such, demand of tax is barred by limitation and the impugned order is liable to be set aside. The impugned order set aside on limitation without going into the merits of the case. Appeal is allowed with consequential relief.

[Also see analysis of the Order](#)

[2009-TIOL-899-CESTAT -DEL](#)

**M/s Bharti Airtel Vs CCE, Chandigarh (Dated: April 30, 2009)**

ST - Cenvat credit - Assesseees are telecom service providers - avail credit on duty paid towers treated as capital goods - Revenue disallows and argues that duty paid capital goods do not fall under any headings of Chapter 85 and also as per Board's instruction, tower not to be allowed as input for availing credit - held, without going into classifiability of goods as capital goods at this stage, pre -deposit of Rs 20 lakh ordered

[2009-TIOL-894-CESTAT -MUM](#)

**M/s Kopran Ltd Vs CCE, Raigad (Dated: April 20, 2009)**

Service Tax - Transfer of know-how of the formulations and for bulk drugs – whether chargeable to Service Tax under the category 'Scientific or Technical Consultancy introduction of a new service by carving out from an earlier service will not mean that the new service was not taxable under any other category earlier. Thus, even though the service regarding transfer of intellectual property was introduced w.e.f. 10.9.2004, it does not mean that the service would not be covered under any other category earlier even if it was covered under the definition of a new service.

Limitation is five years: it is well settled that once suppression or mis -declaration is established, the time limit available to the Department for raising the demand is 5 years from the relevant date and the issue of an earlier SCN will not wipe out or obliterate the suppression/mis -declaration.

pre - deposit of Rs 2 Crores ordered: Appellants have not made a strong prima-facie case for total waiver of pre-deposit of the amounts demanded from them. In view the facts and circumstances of the case including the plea of financial hardship raised pre - deposit ordered of a sum of Rs. two crores

[Also see analysis of the Order](#)

[2009-TIOL-893-CESTAT -DEL](#)



**M/s Wild Expedition Tours & Travels Vs CCE, Bhopal (Dated: April 8, 2009)**

ST - Rent-a-Cab-Operator - Assessee provides vehicles to PSUs and some of the Govt offices - claims it is not covered under the notified service - Matter remanded for passing a speaking order

[2009-TIOL-888-CESTAT-DEL](#)

**CST, Delhi Vs M/s Convergys India Pvt Ltd (Dated: May 18, 2009)**

**Export of services – Rebate/Refund - Without questioning the credit taken, the eligibility to rebate cannot be questioned** :. The eligibility to the credit of the duty paid on inputs and the credit of tax paid on input services are not contingent on whether the services are exported or not. It is incidental that the respondent is exporting the entire services as of now. They could as well be rendering, or may render in future, the same services to domestic customers. They could be partly providing the said services to domestic customers and could be partly exporting services. In all the situations, the criteria for the eligibility of the credit will be the same. It is clear that there cannot be two different yardsticks, one for permitting credit and the other for eligibility for granting rebate. Whatever credit has been permitted to be taken, the same are permitted to be utilized and when the same is not possible there is provision for grant of refund or as rebate.

**input services used in connection with procurement of other input services has to be treated necessarily as input services**; The show cause notice alleged that the respondent had used imported input services and in connection with procurement of such services, they had also used certain other input services by using telephone, telex, fax, e-mail etc. and such services used for procuring such input services cannot be treated as input services. This appears to be erroneous. Using telephone, telex, fax, e-mail etc cannot be treated as output services provided by the respondent.

**Filing of declaration only procedural – substantial benefit cannot be denied** - The document based verification can be at a latter point of time. The non-observance of a procedural condition in this case is of a technical nature and cannot be used to deny the substantive concession. Further, in respect of export, a liberal view requires to be taken. The non-fulfilment of the procedure cannot lead to denial of the benefit under the beneficial legislation providing for export benefits.

[Also see analysis of the Order](#)

[2009-TIOL-887-CESTAT-DEL](#)

**M/s TIL Ltd Vs CCE, Jaipur-II (Dated: May 6, 2009)**

ST - penalty - assessee is accused of manipulating repair and maintenance contract into supply contract - demand - substantial deposit made - held, since there is serious allegation of converting a taxable contract into a non-taxable contract, pre-deposit is ordered but waiver of interest and penalty waive off

<a href="#">2009-TIOL-882-CESTAT-DEL-LB</a>
<b>Vandana Global Ltd Vs CCE, Raipur (Dated: May 27, 2009)</b>
CESTAT Larger Bench – Referral of matters to Larger Bench – Preliminary objection by Revenue that matters shall be referred to the Larger Bench only when a final view is arrived at by a division bench, referral at stay stage being illegal and invalid, rejected – When a coordinate bench holds a contrary view on a decision rendered on a given matter by another coordinate bench, such matters can be referred to the Larger Bench at any stage of the proceedings – Once decision is taken by referral bench which is in conflict with the precedent decision, whether the wording used in the order of the referral bench is "prima facie view" or "final view" is immaterial as long as inconsistency in the earlier judgment has been brought out – Member (T) in Leading judgment
<a href="#">Also see analysis of the Order</a>
<a href="#">2009-TIOL-878-CESTAT-DEL</a>
<b>CCE, Raipur Vs M/s Saket Oxygen Pvt Ltd (Dated: April 24, 2009)</b>
ST - Cenvat Credit - Assessee avails credit of tax paid on input services to pay service tax on GTA service - held, it is a settled issue and credit can be availed - Revenue's appeal dismissed
<a href="#">2009-TIOL-877-CESTAT-DEL</a>
<b>M/s K M Movement Vs CCE, Jaipur (Dated: May 11, 2009)</b>
ST - Cargo Handling Service - Assessee does not participate in hearing despite notice - held, a perusal of the contract indicates that the transportation is not a dominant component and the assessee has undertaken loading and unloading - since the assessee is not cooperating nor is registered, it cannot be granted waiver of pre-deposit - Assessee's appeal dismissed
<a href="#">2009-TIOL-872-CESTAT-BANG</a>
<b>Price Waterhouse Vs CCE, Hyderabad (Dated: January 15, 2009)</b>
ST - Management Consultant Service - Assessee provides CA service - Amendment in relevant notification brings some of the services provided by CAs under tax net - Revenue gives the amendment retrospective effect and raises demand - Commissioner (A) asks for pre-deposit of entire demand and dismisses appeal - held,

since the Chennai Bench has held that the amendment is only prospective, the assessee has prime facie a strong case - Case remanded and pre-deposit of small amount ordered

[2009-TIOL-871-CESTAT-DEL](#)

**M/s Merwara Estates Vs CCE, Jaipur (Dated: April 29, 2009)**

ST - assessee has gardens attached to hotel - sometimes rents out hotel rooms clubbed with gardens - pays tax on charges collected for renting out gardens - Revenue raises demand for levy of service tax on hotel rooms as well - held, the prima facie view taken at the stay stage that renting of hotel rooms is not taxable is confirmed - assessee's appeal allowed

[2009-TIOL-869-CESTAT-DEL](#)

**CCE, Chandigarh Vs M/s Kamla Dials & Devices Ltd (Dated: April 29, 2009)**

ST - assessee is recipient of service - demand - assessee pleads it is not liable to tax for period prior to 1.1.2005 and for the later period the issue be remanded - held, matter remanded

[2009-TIOL-868-CESTAT-DEL](#)

**M/s Industrial Security Agency Vs CCE, Allahabad (Dated: April 24, 2009)**

ST - Penalty - Assessee pays tax and part of penalty demanded - held, levy of penalty twice the duty demand is not fair as law prescribes the maximum penalty only equal to the amount of demand - penalty reduced - assessee's appeal allowed

[2009-TIOL-865-CESTAT-DEL](#)

**M/s BSNL Vs CCE, Meerut-II (Dated: April 6, 2009)**

ST - telecom service - Revenue alleges assessee failed to provide break-up of telecom and cellular services and short-paid the tax - assessee says it provided the break-up to the Commissioner(A) - held, the matter is remanded for fresh examination of facts

[2009-TIOL-864-CESTAT-DEL](#)



**Rajeev Kumar Gupta Vs CCE, Jaipur (Dated: March 26, 2009)**

ST - Outdoor catering service - assessee runs a canteen within a factory - entire infrastructure with electricity is provided by the company - Revenue raises demand by treating the assessee as outdoor caterer - held, since the entire facilities are provided by the company itself, the assessee only cooks food and serves it to company's employees - no demand is sustainable - assessee's appeal allowed