

**CESTAT RULING**[2012-TIOL-391-CESTAT -BANG](#)**M/s Kasturi Organic Chemicals Vs CCE, Mangalore (Dated : November 11, 2011)**

Central Excise – Removal of credit availed inputs as such – Credit not reversed at the time of removal but reversed subsequently after investigations by department – Reversal of credit cannot be regarded as voluntary payment under s. 11A (2B) of CEA, 1994 in as much as it was reversed pursuant to investigations by department – Demand of interest and levy of penalty under s. 11AC sustained - Circumstances envisaged under first proviso to s. 11 AC do not exist in this case to avail benefit of reduced penalty – Mandatory penalty confirmed in view of Apex Court judgment in Dharamendra Textile Processors case - [2008-TIOL-192-SC-CX-LB](#)

[2012-TIOL-390-CESTAT -DEL](#)**Shri Dhanwantri Ayurvedic Pharmacy Vs CCE, Jalandhar (Dated : January 12, 2012)**

Central Excise - SSI Exemption – Manufacture of both Dutiable and Exempted Ayurvedic Medicines by the assessee – SSI Exemption is available only when the aggregate value of clearances of all excisable goods during the previous financial year is less than Rs.300 Lakhs in terms of Para 2 (vii) of the Notification No.8/2003-CE – The value of clearances of both dutiable and exempted goods are required to be clubbed for the purpose of allowing SSI exemption for subsequent year – Since the value of clearance of both dutiable and exempted goods crossed Rs.300 Lakhs no SSI benefit is available for 2003-2004 - Duty and interest paid immediately - Based on the facts of the case no intention to evade payment of duty by the Appellants – Confirmed duty and Interest - Penalty under Section 11 AC set aside (Para 8).

[2012-TIOL-388-CESTAT -DEL](#)**CCE, Raipur Vs M/s Baldev Alloys (P) Ltd (Dated : November 7, 2011)**

Central Excise - Limitation - Extended Period - Issue under dispute - No reference to extended period in show cause notice - The show cause notice does not make any allegation of misstatement or deliberate contravention of the provisions of the Central Excise Act, 1944 or of the Rules made thereunder with intent to payment of duty and, as such, the proviso to Section 11A (1) has not been invoked. Further, when there is bonafide doubt about excisability of the goods due to divergent views of the High Courts, extended period of five years cannot be invoked. Hence, demand not maintainable on account of limitation. (Para 4)

[2012-TIOL-382-CESTAT -DEL](#)

**CCE, Jaipur Vs Vansthali Textile Industries Ltd (Dated : November 22, 2011)**

Central Excise - 100% EOU - Exemption Notification - Whether furnace oil is 'consumable' - Contention of Revenue is that furnace oil is not a "consumable" as given in the Import Export Policy and that furnace oil is not consumed in the manufacture of terry towels.

HELD - Steam is required for manufacture of terry towels and furnace oil obtained was used for producing steam and steam was consumed in manufacture of terry towels. Hence, furnace oil is to be considered as "consumable" and benefit of exemption notification is allowed. Appeal dismissed. (Para 8)

[2012-TIOL-376-CESTAT-MUM](#)

**India Tube Mills & Metal Industries Vs CCE, Mumbai (Dated : December 27, 2011)**

Appellant clears parts of Drums and C.S columns on payment of C.Ex duty for erection at site- Revenue seeking valuation on contract price- Since assessee also discharges Service Tax on the activity of erection and commissioning of the same goods, prima facie strong case in favour - Pre-deposit waived and stay granted: CESTAT [ para 5 ]

[Also see analysis of the Order](#)

[2012-TIOL-375-CESTAT-DEL](#)

**M/s Nitin Spinners Ltd Vs CCE, Jaipur (Dated : February 23, 2012)**

Central Excise - 100% EOU - Migration to EPCG Scheme - Rate of excise duty payable on indigenously procured capital goods on de-bonding - Stay / Dispensation of pre-deposit - While the rate of customs duty chargeable on the capital goods imported under EPCG scheme has been prescribed under Notification No. 64/2008-CUS issued under Section 25 (1) of Customs Act, 1962 and the same alongwith the education cess is 3.09%, on Central Excise side there is no such parallel notification issued under Section 5A of Central Excise Act, 1944, prescribing a similar concessional rate of duty in respect of capital goods supply under EPCG scheme. In the absence of such an Excise Exemption Notification, the EPCG rate prescribed under Customs Notification No. 64/2008-CUS dated 09/05/2008 cannot be treated as concessional rate of excise duty chargeable on indigenously manufactured goods at the time of their debonding by a 100% EOU migrating to EPCG Scheme. In view of this, pre-deposit ordered. (Para 4)

[2012-TIOL-372-CESTAT-DEL](#)

**Larsen & Toubro Ltd Vs CCE, Indore (Dated : March 2, 2012)**

Central Excise - Exemption Notification - Supplies made to World Bank funded Project - Clearances made prior to funding by World Bank - Demand - There is nothing in the notification No.108/95-CE for denying the exemption to goods supplied to the project prior to the date from which finance was provided by the World Bank. Exemption under Notification No.108/95-CE cannot be denied for the reason that part of the project was met by the beneficiary of the loan from the World Bank. (Para 11)

[2012-TIOL-371-CESTAT-MUM](#)

**M/s Electronica Leasing & Finance Ltd Vs CCE, Aurangabad (Dated : December 2, 2011)**

Cenvatted capital goods taken re-possession by finance company as assessee defaulted in re-payment of loan - confiscation of the machines was proposed u/s 9 of the CEA, 1944 whereas original authority confiscated the same u/r 173Q of CER, 1944, u/r 25 of CER and imposed redemption fine which quantum was reduced by Commr(A) - under Rule 25, the manufacturer, purchaser and registered dealer are covered and the appellants are neither a purchaser, manufacturer or registered dealer - proceedings initiated are not covered under the Central Excise Rules - appeal allowed : CESTAT

[Also see analysis of the Order](#)

[2012-TIOL-370-CESTAT-BANG](#)

**M/s Sujana Metal Products Ltd Vs CCE, Hyderabad (Dated : October 5, 2011)**

Central Excise - Demand of 10% amount under Rule 6 of CCR, 2004 for supplies from DTA to SEZ - Exception provided under Rule 6(6) of CENVAT Credit Rules, 2004 applies to supply of exempted goods to SEZ developers and promoters - Issue no longer res integra - Impugned orders of Commissioner holding contrary view set aside - No reason to interfere with orders of Appellate Commissioner passed in favour of assessee - Rules 6 of CENVAT Credit Rules, 2004

[2012-TIOL-361-CESTAT-DEL](#)

**M/s Rajasthan Explosives & Chemicals Ltd Vs CCE, Jaipur (Dated : January 24, 2012)**

Central Excise - Demand - Pre-deposit ordered - Modification of pre-deposit order - The Tribunal's stay order having been affirmed by the High Court and the Hon'ble Supreme Court, the modification of the same by the Tribunal cannot be done. Since, there is non-compliance on the part of the assessee to make pre-deposit, appeals stand dismissed. (Para 10 & 11)

[2012-TIOL-359-CESTAT-BANG](#)

**M/s Karnataka Metal Company Vs CC, CE & ST, Hyderabad (Dated : September 14, 2011)**

Central Excise – Appeals dismissed by Commissioner (A) for non-compliance of orders passed for pre-deposit of penalties – No prima facie case made out for waiver of pre-deposit – In the facts and circumstances of the case, pre-deposit of Rs. 3 lakhs ordered in case of one appellant against an amount of Rs. 16 lakhs ordered by lower appellate authority – Lower Appellate Authority directed to dispose all three appeals on merits subject to pre-deposit of this amount – Section 35F of Central Excise Act, 1944

[2012-TIOL-354-CESTAT-MAD](#)

**CCE, Trichy Vs Anjaneya Steel Rolling Mills (Dated : February 2, 2012)**

Central Excise – Limitation – Review under Section 35 E of the Central Excise Act, 1944 – Assessee contends review was not done within the stipulated period of one year – Revenue fails to produce the file to find out the date of review order - Merely explaining the practice followed by Board in decision making, Revenue is not absolved of its obligation to adhere to the limitation prescribed by law. Public authorities are expected to protect interest of State being vigilant - While on one hand review record could not be produced by Revenue to appreciate its contentions, on the other, belated communication of the unsigned review order on 17.3.03 proves that no review was done on 31.12.2002 – Revenue appeal is not maintainable.

[Also see analysis of the Order](#)

[2012-TIOL-353-CESTAT-BANG](#)

**CCE & CC, Visakhapatnam Vs M/s Kendriya Chemicals & Fertilizers (Dated : September 23, 2011)**

Central Excise – Goods manufactured on job work basis and cleared to principal manufacturer – Duty collected from principal not remitted to government resulting in demand of duty under section 11D – Plea of allowing CENVAT credit benefit on inputs used in job work raised before lower appellate authority for the first time who remanded the matter to original authority for consideration, resulting in Revenue appeal – Appellate Commissioner has no power to remand in terms of section 35A(3), hence remand order not sustainable – Issue raised before lower appellate authority as regards allowing CENVAT Credit on inputs used could not have been considered without verification of documents, hence reason for remand order justifiable though Appellate Commissioner has no powers to remand – Eligibility of CENVAT Credit for job worker to be verified by original authority from records and if found eligible claim for CENVAT credit to be settled on that basis – Matter remanded with direction to lower authority to pass a speaking order

[2012-TIOL-349-CESTAT-MUM](#)

**Srihari Greenhouse P Ltd Vs CCE, Pune-I (Dated : December 15, 2011)**

Pre-fabricated buildings means buildings which are finished in the factory or put up as elements cleared together to be assembled on site - By merely supplying materials for the greenhouse, there is no evidence on record to show that what has been supplied is a 'greenhouse' - Prima facie case in favour - Pre-deposit waived and stay granted: CESTAT [para 6]

[Also see analysis of the Order](#)

[2012-TIOL-340-CESTAT-AHM](#)

**M/s Metrochem Industries Ltd Vs CCE, Vadodara (Dated : December 1, 2011)**

Central Excise - CENVAT - MS Plates, Angles, Channels used in Scrubber Tank, Chimney, Ducting etc - Denial of credit - Stay / Dispensation of pre-deposit - The availability of cenvat credit on MS Plates, Angles, Channels etc. used for assembly of Scrubber tank, Ducting, Chimney etc. is prima facie in favour of the assessee as per precedent decisions on the matter. Stay granted. (Para 2)

[2012-TIOL-339-CESTAT-AHM](#)

**M/s Century Dyeing & Printing Mills Vs CCE, Surat (Dated : January 3, 2012)**

Central Excise - CENVAT - Invoice not as per Rule 11 of CER, 2002 - Reversal of credit - Grey Fabrics - Except the name of consignee all other details are available in the invoice. The original adjudicating authority failed to take note of the fact that name of the consignee is not one of the essential requirements specified in the proviso to Rule 9(2) of Cenvat Credit Rules 2004 and therefore, it was necessary to examine whether other conditions required to be fulfilled for allowing the cenvat credit have been fulfilled or not. Matter remanded for fresh determination. (Para 4)

[2012-TIOL-338-CESTAT-MUM](#)

**Parle Bottling Ltd (Agro Unit) Vs CCE, Raigad (Dated : January 24, 2012)**

Eligibility for Cenvat credit has to be determined at the time the capital goods are received and if the goods become dutiable subsequently the same will not revive the question of admissibility of modvat credit on capital goods - no prima facie case - Pre-deposit ordered of Rs.11.50 lakhs: CESTAT [para 7, 8]

[Also see analysis of the Order](#)

[2012-TIOL-337-CESTAT-DEL](#)

**M/s Punjab Communications Ltd Vs CCE, Chandigarh (Dated : January 12, 2012)**

Central Excise - CENVAT - Goods issued for R & D - Eligibility of credit - Inputs used in Research and Development / Trial production are eligible for Cenvat credit. The expression "used in relation to" does not mean that the inputs should find a place in the final products cleared on payment of duty. Revenue has not made out any case that the inputs were cleared without payment of duty or they were destroyed in the process of so called R&D. Credit available. (Para 11)

[2012-TIOL-336-CESTAT-MUM](#)

**CCE, Nagpur Vs M/s Sushil Packaging (Dated : November 11, 2011)**

As the assessee had not yet registered its Unit under the Rules, the assessee was not entitled to utilize Cenvat credit in the year of acquiring the same - Once the credit is not utilized in the same year, then Rule 4(2)(b) of CCR, 2004 provides that it can be utilized in any year and to the full extent - It is only after registration, in the subsequent year, that assessee they have utilized the entire Cenvat credit which was standing to their credit - no infirmity in such an availment and utilization - Issue settled in Progressive Systems [\(2010-TIOL-195-CESTAT-BANG\)](#) in favour of the assessee in view of dismissal of Revenue appeal by Karnataka High Court [\(2011-TIOL-277-HC-KAR-CX\)](#). - Appeal allowed: CESTAT [para 3, 4, 5]

[2012-TIOL-331-CESTAT-AHM](#)

**M/s Macleods Pharmaceuticals Ltd Vs CCE, Vapi (Dated : November 22, 2011)**

Central Excise - Limitation - Extended Period - Quantitative discounts disclosed in monthly returns - The monthly returns has a column which indicates "removal from the factory without payment of duty" wherein the assessee has clearly indicated the quantity of P or P medicaments cleared without payment of duty under quantitative discount. Extended period cannot be invoked. Hence, demand not maintainable on account of limitation. (Para 4)

[2012-TIOL-330-CESTAT-MUM](#)

**Videocon Industries Ltd Vs CCE, Aurangabad (Dated : December 16, 2011)**

Merely because the inclusive part of the definition describes certain elements to be included in the retail sale price, it does not mean that whatever is not specifically stated therein cannot be included in the retail sale price - there is no provision whatsoever under the law to exclude warranty charges from the retail sale price - Pre-deposit ordered of nearly Rs.2 crores: CESTAT [para 8, 12]

Merely, because certain elements in the price is liable to service tax, that is no reason for exclusion of the same while computing duty liability on the goods when the provisions specifically includes such charges also in the retail sale price: CESTAT [para

8]
<a href="#">Also see analysis of the Order</a>
<a href="#">2012-TIOL-329-CESTAT -BANG</a>
<b>M/s Matrix Laboratories Ltd Vs CCE, Hyderabad (Dated : September 26, 2011)</b>
Central Excise – Stay/Application for waiver of pre -deposit – Allegation of irregular availment of CENVAT Credit on furnace oil and capital goods used in job work activity undertaken for sister unit under Notification No. 214/86-CE – Prima facie no case in favour of appellant – Pre-deposit of 50% of dues ordered – Balance dues and penalties waived subject to pre-deposit – Section 35F of Central Excise Act, 1944 – Notification No. 214/86-CE dated 25.03.1986 read with CENVAT Credit Rules, 2004
<a href="#">2012-TIOL-322-CESTAT -MUM</a>
<b>M/s Paramount Minerals &amp; Chemicals Ltd Vs CCE, Thane (Dated : February 7, 2012)</b>
There is no time limit under rule 16 of CER, 2002 for availing Cenvat Credit on goods returned to the factory – Credit correctly taken - appeal allowed with consequential relief: CESTAT [ para 7 ]
<a href="#">Also see analysis of the Order</a>
<a href="#">2012-TIOL-321-CESTAT -MUM</a>
<b>M/s Paramount Minerals &amp; Chemicals Ltd Vs CCE, Thane (Dated : December 19, 2011)</b>
Rule 21 of CER, 2002 - Remission of duty in respect of goods destroyed in floods – application cannot be decided without following the principles of natural justice – Matter remanded: CESTAT [para 4]
<a href="#">2012-TIOL-319-CESTAT -MUM</a>
<b>Shri Pinkesh Jain Vs CCE, Mumbai (Dated : January 5, 2012)</b>
Fraudulent availment of Cenvat Credit of more than Rs. 2 Crores - it is admitted that the employees of the assessee were preparing excise documents in the Excise Consultant's office and with his help had availed credit fraudulently – Prima facie no case for waiver of penalty – Consultant directed to make pre -deposit of Rs. One lakh:

CESTAT [para 7]

[Also see analysis of the Order](#)

[2012-TIOL-318-CESTAT -DEL](#)

**M/s Liberty Shoes Ltd Vs CCE, Panchkula (Dated : December 19, 2011)**

Central Excise - Refund - Duty paid under protest - Unjust enrichment - The bills raised by the assessee show that the incidence of duty has not been passed on to the customer. Hence, refund allowed. (Para 6 & 7)

[2012-TIOL-314-CESTAT -MUM](#)

**Benison Footwear Pvt Ltd Vs CCE, Thane I (Dated : January 5, 2012)**

[Notfn. 5/2006-CE](#) – MRP has to be indelibly marked or embossed on the footwear itself - since the appellant is only affixing a sticker of MRP on the shoes, benefit deniable - no prima facie case in favour - Pre-deposit ordered of Rs.2 lakhs: CESTAT [para 7]

[Also see analysis of the Order](#)

[2012-TIOL-308-CESTAT -MUM](#)

**M/s Technofour Combines Pvt Ltd Vs CCE, Belapur (Dated : January 5, 2012)**

Manufacture of electric switch gears on job work basis for Siemens Ltd. - Bombay HC has in case of L & T has held that goods are pre-packaged commodity and liable for duty u/s 4A of CEA, 1944 - payment of duty by valuation u/s 4 of CEA, 1944 was accepted by Revenue - offer of pre-deposit of Rs.30 lakhs accepted for granting stay: CESTAT [para 4, 6]

[2012-TIOL-300-CESTAT -MAD](#)



**Areva T & D India Ltd Vs CCE, Chennai (Dated : December 9, 2011)**

Central Excise – Supplementary Invoice - Price Revision of Goods with Retrospective Effect – Payment of differential Duty for clearance of goods through Supplementary Invoice – Interest is payable under Section 11AB of the Central Excise Act, 1944 – Issue no longer res integra in view of Supreme Court Decision in Commissioner Vs. SKF India Ltd.

[Also see analysis of the Order](#)

[2012-TIOL-298-CESTAT -MUM](#)

**M/s Simplex Infrastructures Ltd Vs CCE, Belapur (Dated : November 1, 2011)**

Merely because the Ready Mix Concrete has been transported by using dumpers from the Batching Plant installed at the site to various places in the site, it does not mean that the goods are not produced at the construction site - Notfn. 4/97-CE does not prescribe any spatial dimensions/restrictions for the site - prima facie benefit of notification available - Pre-deposit waived and recovery stayed: CESTAT [para 5]

[Also see analysis of the Order](#)

[2012-TIOL-297-CESTAT -DEL](#)

**Shree Sharma Steel Re-Rolling Mills Pvt Ltd Vs CCE, Jaipur (Dated : December 8, 2011)**

Central Excise - Clandestine Clearances - Private Records - Confessional Statement - Electricity consumption record - Admissibility of evidence - Financial Hardship - Stay / Dispensation of pre-deposit - Assessee claims that the clearances recorded in private records are traded goods. No such claim made in the statements given or evidence produced to show purchase of traded goods. Further, demands based on electricity consumption is as per the record maintained by the assessee and is supported by other documents too. Prima facie no case made out for complete waiver of pre-deposit. Keeping in view the financial hardships and the interest of Revenue as provided under Section 35F of the Central Excise Act, 1944, pre-deposit of Rs. 6 crore is ordered. (Para 16, 17 & 21)

Conditions for grant of stay - While granting stay the two aspects to be considered are 'un-due hardship' and 'interests of revenue'. Undue-hardship means a burden hard to observe or perform in the circumstances of the case – In the present case, interest of revenue is to be safe-guarded and necessary conditions must be laid out before granting stay. (Para 20)

[2012-TIOL-289-CESTAT -BANG](#)

**M/s Micro Labs Ltd Vs CCE, Bangalore (Dated : September 29, 2011)**

Central Excise - Stay/Application for waiver of pre-deposit - Denial of CENVAT Credit on inputs procured from 100% EOU - Credit available as per formula prescribed in terms of Rule 3(7)(a) of CENVAT Credit Rules, 2004 - Whether credit is restricted to BCD 'leviable' or 'actually paid' - Issue debatable in as much as no case law exists on the said issue - No prima facie case made out for full waiver of pre-deposit - Pre-deposit of 50% of dues ordered - Section 35F of Central Excise Act, 1944

[2012-TIOL-288-CESTAT -BANG](#)

**M/s Nishant Mouldings (P) Ltd Vs CCE, Bangalore (Dated : September 23, 2011)**

Central Excise - Stay/Application for waiver of pre-deposit - Default in payment of duty for the months of October to December 2009 resulting in direction to pay consignment wise in PLA under Rule 8(3A) and barring of utilization of CENVAT Credit - Penalty levied under Rule 25 of Central Excise Rules, 2002 - Expression "subject to the provisions of Section 11AC of the Act" in the opening part of Rule 25 does not mean that prerequisites of section 11AC should be established by department to impose penalty under the Rule - In the instant case, no penalty was even proposed under Section 11AC and Rule 25 would get attracted unaffected by section 11AC inasmuch as appellant admittedly committed default in payment of duty and also chose to utilize CENVAT credit for payment of duty on their final product in contravention of Rule 8(3A) - Appellant directed to pre-deposit Rs. 2,000/- - Section 35F of Central Excise Act, 1944 - Rule 25 of Central Excise Rules, 2002 read with Section 11AC of Central Excise Act, 1944

[2012-TIOL-285-CESTAT -MUM](#)

**Bombay Dyeing & Mfg Co Ltd Vs CCE, Raigad (Dated : November 16, 2011)**

Rebate received paid back along with interest and Cenvat Credit taken subsequently – refund claim filed under rule 5 of CCR, 2004 regarding accumulated Cenvat Credit – prima facie case in favour – unconditional waiver of pre-deposit granted: CESTAT [para 7]

[Also see analysis of the Order](#)

[2012-TIOL-284-CESTAT -BANG](#)

**CCE, Hyderabad Vs M/s Samrakshana Electricals Ltd (Dated : September 23, 2011)**

Central Excise – Duty paid capital goods received in January 2006 returned to supplier in April 2006 after payment of duty equivalent to CENVAT Credit availed – Assessee raised invoices once again in February 2007 in r/o said capital goods and paid duty – Assessee later took suo motu credit of an amount equivalent to such duty paid but reversed credit on two invoices subsequently – Demand raised for recovery of credit

taken suo motu by invoking extended period of limitation, set aside by Appellate Commissioner – As assessee informed department of availing credit suo motu in May 2009, SCN issued in October 2009 within limitation, Appellate Commissioner's finding to this effect liable to be set aside – No clear finding by original authority as to whether capital goods were returned to supplier by respondent-assessee on payment of duty, whether by way of debit in CENVAT A/c or otherwise – If clearances were made on payment of duty, then the cash payment made under the invoices in February 2007 amounts to double payment, in which case, the normal remedy is refund under Section 11B – Matter remanded to original authority to verify facts and decide case afresh on merits

[2012-TIOL-277-CESTAT-DEL](#)

**M/s Natraj Plast Industries Ltd Vs CCE, Delhi-I (Dated : July 4, 2011)**

Central Excise - Clandestine Clearances - Evidentiary value of statement - Demand - Penalty - Evidence in form of statements of the persons concerned have not been retracted and are inculpatory in nature. Statements recorded by gazetted officers of Central Excise under Section 14 of the Central Excise Act, 1944, have to be treated as substantive evidence. Statements of Director admitting illicit diversion of major quantity of CP1725G resin to various dealers are corroborated by statements of recipients, transporters etc. Clandestine clearances stand proved. The quantity of clandestine clearance on which department has strong footing needs to be accepted. Penalty under Rule 26 stands reduced. (Para 4 & 5.1)

[2012-TIOL-268-CESTAT-MUM](#)

**U V laboratories Vs CCE, Thane-II (Dated : October 7, 2011)**

Central Excise - SSI Exemption - Clubbing of clearances of goods manufactured on own account and on loan-license basis - Availing of duty free exemption limit for own goods and Modvat facility for goods manufactured on loan-license basis - The value of the clearances made by the assessee on behalf of loan licensee are to be clubbed for the purpose of paying duty under Notification Nos.1/93-CE and No. 7/97-CE. The assessee has the option to pay duty/avail Modvat facility or avail the duty free clearances in respect of the Notifications and they cannot avail both the facilities simultaneously. (Para 15)

[2012-TIOL-264-CESTAT-DEL](#)

**CCE, Delhi-I Vs Prakash Brassware Industries (Dated : July 14, 2011)**

Central Excise - Classification of Shower, Bottle Trap, Soap Dish, Shower Arm, Spouts, Toilet Paper Holder, Traps, Towel Rings, Towel Racks, Brush & Paste Holder, Robe Hooks, Tumbler Holders and Grab Bar of Brass - Classification of brass towel rings, towel racks and robe hooks under sub-heading 83.02 and of brass tumbler holder under 7418.10 of the Tariff is upheld - Grab bar is more like base metal falling under heading 83.02. Bottle trap & waste part is accessory of wash basin, which is a sanitary

ware and, hence, would be correctly classifiable as part of brass sanitary ware under sub-heading 7418.90. (Para 7, 8 & 9)

[2012-TIOL-263-CESTAT -DEL](#)

**CCE, Chandigarh Vs Punjab Lighting Aids Pvt Ltd (Dated : June 7, 2011)**

Central Excise - CENVAT – Drawing of wire - Denial of credit - Wires had been received by the assessee during the period from August, 2003 to 08.07.04, i.e., during the period for which the 1st and 2nd provisos had been added to sub-rule (3) to Rule 16, under which, the amount paid by the manufacturer suppliers of wire on the clearance of wire has to be treated as duty and assesseees who had received the wire would be eligible for its CENVAT credit. If the wire manufacturers had obtained refund of the duty paid by them on the wire, the assessee would not be eligible for CENVAT credit. Hence, the matter is remanded to the original adjudication authority. (Para 6 & 7)

[2012-TIOL-259-CESTAT -BANG](#)

**M/s Cheekatla Polymers (P) Ltd Vs CCE, Hyderabad (Dated : September 29, 2011)**

Central Excise – Stay/Application for waiver of pre -deposit – Goods cleared without payment of duty by availing benefit of Notification No. 6/06-CE - Non-availability of notification benefit conceded by appellant but demand contested on grounds of limitation - ER-1 returns filed without notification details but RO entered particulars of notification in the returns – Annexure-45 against which goods were cleared furnished to jurisdictional RO – RO's letter directing appellant to pay 10% amount in terms of Rule 6(3) available on record and which was honoured by appellant and the said amount having been adjusted against the demand – Prima facie no case for invoking extended period of limitation – Pre -deposit waived and stay granted – Section 35F of Central Excise Act, 1944 – Notification No. 6/06-CE dated 01.03.2006

[2012-TIOL-255-CESTAT -MAD](#)

**Ellen Ferrous Castings Pvt Ltd Vs CCE, Coimbatore (Dated : October 21, 2011)**

Central Excise - Stay/Dispensation of pre-deposit - CENVAT Credit - Reasonable steps before availing credit - Prima facie, the assesseees cannot be said not to have taken all possible precautions to ensure that the goods described in the invoices tallied with the goods received by them – Appellants cannot be faulted if there is any fraud on the part of the suppliers – Prima facie case has been made out for waiver of pre -deposit.

[2012-TIOL-252-CESTAT -MAD](#)

**CCE, Tirunelveli Vs M/S Sundaravel Fireworks Industries Ltd (Dated : September 29, 2011)**

Central Excise – Appeal – Monetary Limit for filing Appeal – The amount involved in the matter being less than 5 lakhs prescribed by the Board for filing appeal, appeal dismissed as not maintainable. (Para 2)

[2012-TIOL-246-CESTAT-MAD](#)

**CCE, Chennai Vs Triogene Labs Pvt Ltd (Dated : October 12, 2011)**

Central Excise – SSI Exemption – Brand name – Rural Area – The jurisdictional Tahsildar has certified that Okkiyam Thuraipakkam is a rural village in which the factory is located. Hence, benefit of SSI exemption is allowed. (Para 2)

[2012-TIOL-237-CESTAT-AHM](#)

**M/s Diamond Tools Pvt Ltd Vs CCE, Rajkot (Dated : November 23, 2011)**

Central Excise - CENVAT - Inputs received from 100% EOU - Extent of CENVAT credit available - Applicability of Section 11A (2B) - Reduced Penalty under Section 11AC - The assessee in excess of the cenvat credit of Central Excise duty portion availed the cenvat credit of customs duty portion for inputs received from 100% EOU. The assessee paid the wrongly availed credit along with interest. Assessee seeks applicability of Section 11A (2B).

HELD - Persons availing credit have to ensure that at least credit is not taken over and above what is shown in the invoices. Assessee not being new to Central Excise, Section 11A (2B) not applicable. However, as no option given in the order-in-original to pay 25% penalty if duty along with interest within 30 days of passing the order, the same is now extended. (Para 3 & 4)

[2012-TIOL-236-CESTAT-MAD](#)

**M/s Ashok Leyland Ltd Vs CCE, Chennai (Dated : October 14, 2011)**

Central Excise - Penalty under Section 11 AC - Authorities below have not given the option of paying 25% of the penalty as provided under Section 11 AC – Request of the appellant to allow 10 days time to pay the 25% of the penalty is allowed in view of the Delhi High Court order in case of K.P.Pouches Pvt Ltd.

[2012-TIOL-231-CESTAT-MAD](#)

**CCE, Salem Vs M/s Shanmugarajan Spinning Mills Pvt Ltd (Dated : September 23, 2011)**

Central Excise - Principles of natural justice - Cross examination as directed by the remand order of the Tribunal was not allowed by the Adjudicating Authority on the ground that the whereabouts of the witness were not known - Commissioner (Appeals) is correct in finding that non-implementation of the remand order has resulted in violation of the principles of natural justice.

[2012-TIOL-228-CESTAT-MAD](#)

**M/s ABI Turnamatics Vs CCE, Chennai (Dated : October 7, 2011)**

Central Excise – Stay/Dispensation of pre-deposit – 100% EOU – DTA sale – The appellants exported “Turbine Wheels” and cleared “Bearing Housing Assembly” in DTA – Prima facie, goods cleared in DTA are not similar to the goods exported - Similar goods are goods which although not alike in all respects have like characteristics and like component material which enable them to perform the same function and make them commercially interchangeable - Similar goods are also expected to have similar quality, reputation and trademark - Prima facie, Bearing Housing Assembly and Turbine Wheels have different characteristics; different functions and they are not commercially interchangeable – 50% of the duty amount ordered to be deposited.

[2012-TIOL-224-CESTAT-MAD](#)

**CCE, Salem Vs M/s JSW Steels Ltd (Dated : September 23, 2011)**

Central Excise – CENVAT Credit – Whether lancing pipes are inputs or capital goods – In view of the decision of the Larger Bench of the Tribunal, lancing pipes are to be regarded as input used in relation to manufacture and 50% restriction is not applicable for taking credit.

[2012-TIOL-217-CESTAT-DEL](#)

**M/S ECE Industries Limited Vs CCE, Rohtak (Dated : July 8, 2011)**

Central Excise - Refund - Reduction in invoice value after clearance of goods on account of price-variation clause - Whether the assesseees are entitled for refund of the duty due to reduction in price on account of price variation clause after the clearance of goods.

HELD - As per Section 4, valuation is directly related to the time of removal and place of removal. The duty element is to be determined on the basis of time of removal of the goods, which is issuance of invoices. There is no provision under the Act where it is provided that in spite of payment of duty in terms of the price disclosed in the invoices at the time of clearance of the goods if subsequently lesser amount is received by the manufacturer in relation to such goods then the manufacturer would

be entitled for reduction in the duty liability in relation to such goods and on that count for refund of the difference in the amount of duty. (Para 13 & 14)

[2012-TIOL-216-CESTAT-DEL](#)

**M/s Ghatampur Sugar Co Ltd Vs CCE, Kanpur (Dated : April 28, 2011)**

Central Excise - Refund - Adjustment of arrears of revenue - Whether letter of Superintendent can be considered as a demand notice - Letters issued by the Superintendent of Central Excise cannot be treated as demands confirmed against the assessee. In the absence of evidence showing that there were confirmed demands pending against the assessee, adjustment out of refund sanctioned is not legal and proper. The amount so adjusted should be released. (Para 5.3 & 6)

[2012-TIOL-211-CESTAT-MAD](#)

**M/s BHEL Vs CCE, Trichy (Dated : September 8, 2011)**

Central Excise - Stay/Dispensation of pre-deposit - Demand of duty by denying exemption under Notification No 67/95 CE on the ground that the finished goods are supplied without payment of duty under International Competitive Bidding Project - Prima facie case has been made out for waiver of pre-deposit as the case of the appellant is covered under clause (vii) of Rule 6 (6) of the CENVAT Credit Rules, 2004.

[2012-TIOL-210-CESTAT-MAD](#)

**M/s Spel Semiconductors Ltd Vs CCE, Chennai (Dated : September 28, 2011)**

Central Excise – EOU – Refund of service tax paid on Technical Testing and Analysis used in the manufacture of final products exported – Refund claims filed under Rule 5 of the CENVAT Credit Rules cannot be rejected on the ground that in respect of Technical Testing and Analysis, refund claim cannot be claimed except under Notification No 41/2007 ST dated 6.10.2007 – There is no restriction under Rule 5 of the CENVAT Credit Rules to claim refund on such services and the appellant cannot be prevented from claiming refund of unutilized CENVAT credit in respect of any input or input services, if such refund is otherwise due – Matter remanded to the original authority to consider the original claim of the appellants. ice, both these items would stay outside the ambit of the definition of "input" also.

[2012-TIOL-204-CESTAT-BANG](#)

**Paragon Polymer Products Pvt Ltd Vs CCE, Hyderabad (Dated : September 20, 2011)**

Central Excise – Application for modification of CESTAT Final order – Final order passed by the Bench neither indicates that penalty related issue was debated nor was it open for debate – However, to make it more clear, operative part of final order of Tribunal modified accordingly

[2012-TIOL-203-CESTAT -BANG](#)

**CCE, Hyderabad Vs M/s Ocean Pharmaccoat Pvt Ltd (Dated : September 30, 2011)**

Central Excise – Stay application of Revenue – Eligibility of CENVAT Credit of SAD paid on imported goods through DEPB credit – Board Circular No. 27/06-Cus clarifies that customs duty paid through cash or debit in certificate issued under DFCE/Target Plus scheme could be availed as CENVAT credit or duty drawback – Though this Circular does not refer to DEPB, one of the conditions of Notification No. 32/05-Cus clearly entitles importers to avail CENVAT Credit of additional duty paid under section 3 of Customs Tariff Act, 1975 – No dispute that notification was not amended to exclude SAD from its purview when new levy was introduced vide Notification No. 19/06-Cus – Prima facie no case made out by Revenue for grant of stay – Rule 3 of CENVAT Credit Rules, 2004 – Section 129E of Customs Act, 1962

[2012-TIOL-197-CESTAT -BANG](#)

**M/s GTN Industries Ltd Vs CCE, Hyderabad (Dated : October 14, 2011)**

Central Excise - Stay/Application for waiver of pre-deposit - Eligibility of credit on capital goods used in manufacture of dutiable and exempted final products - Appellant manufactured and cleared a part of their production for export on payment of duty and under claim for drawback and a part of clearance to DTA claiming benefit of exemption under Notifications 29/04-CE and 58/2008-CE - Prima facie, capital goods used for manufacture of both dutiable and exempted products not covered by Rule 6(4) of CENVAT Credit Rules, 2004, appellant eligible to claim CENVAT credit - Pre-deposit waived and stay granted - Rule 6(4) of CENVAT Credit Rules, 2004 - Section 35F of Central Excise Act, 1944 as made applicable to service tax vide section 83 of Finance Act, 1994

[2012-TIOL-196-CESTAT -MUM](#)

**S C Enviro Agro India Pvt Ltd Vs CCE, Thane (Dated : December 2, 2011)**

Arranging of celebrities for promotion and publicity is not an advertisement agency service prior to 01.07.2003 - Strong prima facie case - Pre-deposit waived and Stay ordered: CESTAT [para 4]

[Also see analysis of the Order](#)



<a href="#">2012-TIOL-192-CESTAT -BANG</a>
<b>M/s Hindustan Petroleum Corporation Ltd Vs CCE, Visakhapatnam(Dated : October 19, 2011)</b>
Central Excise – Stay/Application for waiver of pre-deposit – Demand of excise duty under section 11D for the period from August 1998 to October 1999 – Permission for storage of both imported and indigenous petroleum products as mixed bonded stock in bonded storage tanks – Appellant collecting duty on administered price of products cleared from the bonded tanks, representing Central Excise duty on all clearances irrespective of the origin of goods, whether indigenous or imported – Excess duty collected from customers deposited with oil pool account of Central Government – Matter related to liability for payment of excise duty on customs duty paid goods pending with Larger Bench due to conflicting decisions from Coordinate Benches of Tribunal– Prima facie case for full waiver of pre-deposit – Sections 11D and 35F of Central Excise Act, 1944
<a href="#">2012-TIOL-187-CESTAT -BANG</a>
<b>M/s Ashirvad Pipes Pvt Ltd Vs CCE, Bangalore (Dated : September 30, 2011)</b>
Central Excise - Supplies made to SEZs are exports, provisions of Rule 6 of CENVAT Credit Rules, 2004 not applicable - Demand of duty with interest and levy of penalty set aside - Rule 6 of CENVAT Credit Rules, 2004
<a href="#">2012-TIOL-181-CESTAT -BANG</a>
<b>M/s S P Fabricators Pvt Ltd Vs CCE, Bangalore (Dated : October 14, 2011)</b>
Central Excise – Stay/Application for waiver of pre-deposit – Recovery of CENVAT Credit on inputs used in goods cleared to SEZ Developer – Clearances to SEZ under export documents to be treated as exports – Prima facie case for full waiver of pre-deposit – Rules 3(5), 6 and 9 of CENVAT Credit Rules, 2004 – Section 35F of Central Excise Act, 1944
<a href="#">2012-TIOL-175-CESTAT -BANG</a>
<b>CCE, Tirupathi Vs M/s The India Cements Ltd (Dated : September 30, 2011)</b>
Central Excise – Goods cleared to SEZs are deemed exports, not to be regarded as exempted goods – Rule 6 (3) of CENVAT Credit Rules, 2004 not applicable – Rule 6 (3) of CENVAT Credit Rules, 2004 – Impugned order sustained

[2012-TIOL-173-CESTAT -BANG](#)

**M/s Surana Steels Ltd Vs CCE, Hyderabad (Dated : September 26, 2011)**

Central Excise – Duty liability settled vide previous order of Tribunal with a direction to lower authority to re-quantify liability – Plea of limitation not raised earlier, but raised for the first time in the current appeal, not accepted – No specific challenge against order of penalty imposed by Appellate Commissioner under Rule 173Q, penalty upheld – Impugned order sustained – Rule 173Q of Central Excise Rules, 1944 read with Section 11A of Central Excise Act, 1944

[2012-TIOL-169-CESTAT -DEL](#)

**CCE, Lucknow Vs M/s Alvi Packaging Industries Ltd (Dated : December 16, 2011)**

Central Excise - Allegation of clandestine removal of tapes - Documentary evidences in the form of duplicate invoices, cancelled invoices etc available to prove clandestine removal - Clandestine removals proved on the basis of pre-ponderance of probability - Impugned order of Appellate Commissioner set aside and order of lower authority demanding duty restored - Assessee provided with opportunity to pay 25% of penalty in terms of proviso to s. 11AC

[2012-TIOL-164-CESTAT -BANG](#)

**Yash International Vs CC & CCE, Hyderabad (Dated : September 15, 2011)**

Central Excise – Appeals dismissed by Appellate Commissioner for non-compliance of order of pre-deposit – When assessee paid entire amount of duty, education cess and interest along with 25% of duty and cess towards penalty within 30 days of receipt of SCN, no further pre-deposit required by assessee or managing partner – Appellate Commissioner to hear appeal on merits – Impugned order set aside – Section 35F of Central Excise Act, 1944

[2012-TIOL-163-CESTAT -MAD](#)

**M/s Madura Coats Private Ltd Vs CCE, Madurai (Dated : September 16, 2011)**

Central Excise - Interest on delayed refund -Application for refund was filed on 26.03.2002 and refund was finally granted on 29.10.2010 after a favourable order from the Tribunal - Three month period for grant of re fund is to be calculated from the date of making an application for refund, i.e., 26.03.2002 and not from the date of sanction subsequently - Appellants are entitled for interest after expiry of three months from 26.03.2002.

[2012-TIOL-159-CESTAT -MAD](#)

**M/s Diab Core Materials Pvt Ltd Vs CCE, Chennai (Dated :September 28, 2011)**

Central Excise – CENVAT Credit taken wrongly – Liability to pay interest – Contention that the appellant had sufficient credit balance is not acceptable in view of the Supreme Court's decision in case of Ind Swift Laboratories – Appellants are liable to pay interest.

Penalty – Appellants have wrongly taken credit of Rs 1.08 crores – Penalty imposed is less than 1% - Penalty is reasonable and do not require any reduction.

[2012-TIOL-158-CESTAT -MUM](#)

**Mercury Pneumatics Pvt Ltd Vs CCE, Thane (Dated : December 1, 2011)**

Sales associates/agents performing certain post clearance services to and on behalf of the appellant manufacturer are being given a higher discount of 20% as against the normal trade discount of 5% to 15% which are given to customers of the appellants - prima facie such discounts given to the sales agents cannot be completely abated while determining the transaction value under new section 4 of the CEA, 1944 – Pre-deposit ordered of 50% demand: CESTAT [para 6]

[2012-TIOL-154-CESTAT -MAD](#)

**ITC Ltd Vs CCE, Salem (Dated : October 12, 2011)**

Central Excise - Stay/Dispensation of pre -deposit - Valuation - Related person - Goods sold not only to the related persons, but also to independent buyers - Prima facie strong case has been made out for unconditional waiver of pre-deposit - Rule 8 of Central Excise valuation Rules, 2000.

[2012-TIOL-149-CESTAT -MUM](#)

**Rotomatic Containers Pvt Ltd Vs CCE, Nashik (Dated : October 31, 2011)**

Plastic tanks used in agricultural/horticulture appliances for spraying purpose – whether classifiable under chapter 8424 as parts for agriculture purpose or under chapter 39 as contended by department – issue is debatable – as activity of applicant was well within the knowledge of the department since 2005 itself, on limitation itself applicants have a case – Pre-deposit waived and stay granted. [para 6, 7]

[2012-TIOL-148-CESTAT-MUM](#)

**M/s Time Pharma Vs CCE, Thane (Dated : December 19, 2011)**

Dental Care Products/Tooth Paste - whether classifiable as P&P medicaments under 3003.10 or under 3306.10 of the CETA, 1985 as Cosmetics or Toilet preparations - no evidence adduced to prove that the product is a drug which needs prescription from a Doctor - applicant has failed to make a prima facie case - Pre-deposit ordered of 50% of adjudged dues for getting stay: CESTAT [para 7.3, 8]

[2012-TIOL-144-CESTAT-MUM](#)

**Crompton Greaves Ltd Vs CCE, Mumbai (Dated : December 20, 2011)**

Taking of suo moto credit - As appeal against LB decision in BDH Industries Ltd. has been admitted by the Bombay High Court balance of convenience lies in applicant's favour - Stay granted and pre-deposit waived: CESTAT [para 4]

[Also see analysis of the Order](#)

[2012-TIOL-140-CESTAT-MUM-LB](#)

**Bharat Petroleum Corporation Ltd Vs CCE, Mumbai (Dated : January 16, 2012)**

Availment of balance 50% credit on capital goods - If the capital goods are lying in the factory for installation and the process of erection was being carried out then it has to be considered as satisfying the meaning of the term 'capital goods are in possession and use of the manufacturer' - CESTAT Larger Bench [ para 10 ]

[Also see analysis of the Order](#)

[2012-TIOL-139-CESTAT-AHM](#)

**M/s Agro Pack Vs CCE, Surat (Dated : November 3, 2011)**

Central Excise - Appellant purchased and supplied corrugated boxes to pet bottle manufacturer for packing pet bottles after availing CENVAT Credit - Corrugated boxes cleared directly from supplier to pet bottle manufacturer - Pet bottle manufacturer included value of corrugated boxes supplied free of cost while discharging duty liability on pet bottles - Appellant availed credit of duty paid on pet bottles used in their manufacturing process - Allegation of availment of CENVAT credit on packing materials viz., corrugated boxes twice - Value of corrugated boxes shown separately in invoices of pet bottle manufacturer to make it clear that value of goods supplied free of cost by buyer-appellant was added to value of pet bottles, is in accordance with law - No finding that credit of duty taken by appellant was not paid by them to

the suppliers or suppliers have not paid the duty shown in their invoice - If credit has been taken twice, first time on the corrugated boxes themselves and second time as part of pet bottles (being used as their packing materials), it cannot be said that appellants have taken credit twice - Allegation of suppression of facts, fraud etc also not sustainable - CENVAT Credit Rules, 2004

[2012-TIOL-133-CESTAT -MUM](#)

**M/s Automotive Stampings And Assemblies Ltd Vs CCE, Pune (Dated : February 21, 2011)**

Assessee availing the benefit of pre -payment of the amount of deferred sales taxes as per the provisions of Maharashtra Sales Tax Act, 1959 - Once the entire amount of deferred payment of sales tax has been pre-maturely paid, such payments, in the public interest, are considered as in discharge of deferred balance Sales Tax – definition of transaction value as under s.4 of the CEA, 1944 gets attracted – Prima facie case – Waiver of pre-deposit - Stay granted: CESTAT

[Also see analysis of the Order](#)

[2012-TIOL-132-CESTAT -AHM](#)

**M/s Modern Petrofils Vs CCE, Vadodara (Dated : June 10, 2011)**

Central Excise - National Calamity Contingent Duty - Demand of NCCD in respect of clearance of Partially Oriented Yarn (POY) to 100% EOUs and for captive consumption - NCCD is not leviable in respect of goods cleared to 100% EOU availing the benefit of Notification No. 108/95-CE dated 28.8.95. NCCD also not leviable in respect of clearance for captive consumption. (Para 5)

[2012-TIOL-128-CESTAT -DEL](#)

**M/s Gopal Sponge & Power Pvt Ltd Vs CCE, Raipur (Dated : December 2, 2011)**

**Central Excise - CENVAT - Goods used in manufacture of capital goods** - In view of the decision of the Apex Court in Commr. Of C. Ex., Jaipur vs. Rajasthan Spinning & Weaving Mills Ltd. - [2010-TIOL-51-SC-CX](#) matter remanded to the original authority to examine the matter afresh. (Para 5)

[2012-TIOL-125-CESTAT -KOL](#)

**CCE, Kolkata Vs M/s Electro Steel Castings Ltd (Dated : July 27, 2011)**

Central Excise – Demand of differential duty on additional income shown in balance sheet of assessee arising out of transportation/freight charges – No conclusive evidence shown by Revenue to suggest that transportation charges collected had any connection to depressed price of goods supplied under DGS & D contracts – No infirmity in order of Appellate Commissioner – Rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 read with Section 4 of Central Excise Act, 1944

[2012-TIOL-123-CESTAT -AHM](#)

**CCE, Vadodara Vs M/s Gujarat Flouro Chemicals Ltd (Dated : November 25, 2011)**

Central Excise – CENVAT Credit of service tax paid on outward transport – Credit is admissible in view of the Karnataka High Court judgment in case of M/s ABB limited.

Liability to pay service tax on commission paid to overseas commission agents – No liability arises before insertion of Section 66A in the Finance Act, 1994 with effect from 18.4.2006.

[2012-TIOL-122-CESTAT -MUM](#)

**Hino Motors Sales India Private Limited Vs CCE, Thane (Dated : November 21, 2011)**

Applicant importing motor vehicle chassis and after undertaking certain process on the chassis which are essential as per the Motor Vehicle Rules sending the chassis to a job worker for body building and return thereof - Taking credit of CVD paid on chassis and paying duty on the vehicle by treating the same as 'manufacturing activity' objected to by Dept – no cause for denial of Cenvat Credit – Stay granted: CESTAT [para 10, 11]

[Also see analysis of the Order](#)

[2012-TIOL-121-CESTAT -KOL](#)

**M/s Ganges Manufacturing Co Ltd Vs CCE, Kolkata-IV (Dated : July 27, 2011)**

Central Excise – Valuation – Allegation of clearance of jute products through consignment agents based on factory gate price adopted for independent buyers and that consignment agents sold the goods at higher prices – With regard to clearances upto September 28, 1996, normal price charged to independent buyers becomes the value on which duty is payable – Consignment agent premises not being a 'place of removal' price charged by consignment agent cannot be regarded as normal price for discharge of duty – With regard to clearances post September 28, 1996, price charged by consignment agent to be regarded as value for discharge of duty as consignment agent premises is considered as 'place of removal' – Matter remanded to original authority to correctly quantify the duty liability and impose penalty – Appellants at liberty to produce evidences for calculation of correct duty liability – Amount to be

paid after re-quantification to be adjusted by lower authority against any excess duty already paid by appellant – Erstwhile Section 4 of Central Excise Act, 1944

[2012-TIOL-113-CESTAT-AHM](#)

**CCE, Surat Vs M/s Classic Industries Ltd (Dated : November 29, 2011)**

Central Excise – Valuation – Allegation of undervaluation of goods cleared to trading firms during the period from December 1996 to March 1997 and trading firms having cleared the same at higher value – Evidences adduced by respondent-assessee indicate that goods were cleared to trading firms as well as independent buyers at more or less the same price by discharging duty liability – Revenue did not dispute the said findings of first appellate authority, which would mean that there was no undervaluation – Impugned order does not suffer from any infirmity, held as legal and proper

[2012-TIOL-112-CESTAT-AHM](#)

**CCE, Surat Vs M/s Shree Khedut Sahakari Khand Udyog Mandli Ltd (Dated : November 21, 2011)**

Central Excise - CENVAT Credit - Valid document - Credit availed on the strength of insurance policy which contains the details of service tax paid - Credit cannot be denied on the ground that it is not a valid document - What is required to be seen is whether the document on the basis of which credit has been taken, shows all the necessary details or not and where the document does not contain all the details, whether it is covered by provisions which empowers proper officer to allow the credit even when there are deficiencies - Revenue appeal has no merit- Rule 9 of the CENVAT Credit Rules, 2004.

[2012-TIOL-111-CESTAT-AHM](#)

**M/s Unitech International Ltd Vs CCE, Vapi (Dated : December 11, 2011)**

EOUs - Manufacture - LOP given by the Development Commissioner, SEEPZ, Mumbai for segregation of ferrous and non-ferrous scrap or Computer and Electric scrap - The said activity was considered as an activity of manufacture by the authorities - A unit engaged in segregation activity, which was set up prior to 1.4.02 would be continued to be treated as manufacturing concern, as for the entire period original LOP, for the purpose of fulfillment of export obligation - Demand of customs duty on DTA clearances by treating the process as not amounting to manufacture is not sustainable.

Rate of duty applicable on DTA clearances - Benefit of Notification No 21/2002 Cus is admissible to the EOU - Benefit cannot be denied on the ground that the end use certificates have been produced at a later date - Such narrow view taken by the lower authorities is incorrect.

[2012-TIOL-108-CESTAT-MUM](#)

**M/s Harinagar Sugar Mills Ltd Vs CCE, Mumbai (Dated : November 30, 2011)**

It is evident from the excise records that the amount sought to be claimed as refund by the appellants was paid as union excise duty - provisions of unjust enrichment under Sec.11B of the Central Excise Act are squarely applicable and since the appellants are not able to prove that the burden of the amount claimed by them as refund has not been passed on to their consumers, the refund has rightly been rejected: CESTAT [ para 9 ]

[Also see analysis of the Order](#)

[2012-TIOL-107-CESTAT-AHM](#)

**M/s ESS ELL Cables Company Vs CCE, Vapi (Dated : November 24, 2011)**

Central Excise – Eligibility of CENVAT Credit of CVD paid on imported ‘super enamelled copper wire’ used in manufacture of ‘super enamelled copper wire’ and ‘submersible Winding wire’ – Credit denied on the ground that appellant was not engaged in any ‘manufacturing activity’ – Statement recorded from Power of Attorney holder of appellant-company clearly spelt out a detailed manufacturing process undertaken by them, which can be construed as an ancillary or incidental process for manufacturing final product viz., ‘super enamelled copper wire’ or ‘submersible winding wire’ – Adjudicating authority did not consider this important piece of evidence while deciding the case – Detailed manufacturing process outlined in the statement of Power of Attorney holder in consonance with CENVAT Credit Rules, 2004 i.e. manufacturer using inputs ‘in’ or ‘in relation’ to manufacture of final products – Appellant eligible for CENVAT credit of CVD paid on imported copper wire – Impugned order set aside – Rule 3 of CENVAT Credit Rules, 2004 read with section 2(f) of Central Excise Act, 1944

[2012-TIOL-104-CESTAT-AHM](#)

**M/s Repute Polymers Pvt Ltd Vs CCE, Rajkot (Dated : November 21, 2011)**

Central Excise - Penalty - Clandestine clearance of goods under delivery challans admitted - Lower authority confirmed duty liability with mandatory penalty and interest - Lower appellate authority accepted appellant's plea for considering value as cum-duty price and directed re-quantification of duty but denied benefit of paying 25% penalty under provisions of section 11AC - When appellant deposited entire amount of re-quantified duty with interest, benefit of restricting mandatory penalty to 25% of duty allowable in terms of Gujarat High Court decision in Akash Fashion Prints (P) Ltd [2009-TIOL-125-HC-AHM-CX](#) - As appellant already paid duty liability with interest including mandatory penalty equivalent to 25% of duty liability, lower authority directed to consider all the payments made by appellant till date and refund excess of payments, if any - Section 11AC of Central Excise Act, 1944



[2012-TIOL-99-CESTAT-BANG](#)

**M/s Chandana Plastics Vs CCE, Visakhapatnam (Dated : August 11, 2011)**

Central Excise - Refund - Claim of refund of unutilized MODVAT credit - Refund claim filed for credit which remained unutilized and eventually lapsed on 01.04.1999 after switching over to SSI exemption scheme - No justification by appellant to substantiate refund claim of balance of credit which lapsed on 01.04.1999 - Rule 57H of Central Excise Rules, 1944

[2012-TIOL-91-CESTAT-MUM](#)

**Reshma Organics Pvt Ltd Vs CCE, Belapur (Dated :October 5, 2011)**

Purification of hexane to various grades – whether amounts to manufacture– in view of Tribunal decision in Bharat Dye-Chem Industries in a similar situation where treatment of petroleum products by sulphuric acid and sodium carbonate solution and water fractional distillation are undertaken, the Bench had granted the waiver of pre-deposit, same followed and stay petition allowed.

[2012-TIOL-89-CESTAT-BANG](#)

**M/s Ring Forgings (P) Ltd Vs CCE, Bangalore (Dated : August 26, 2011)**

Central Excise – Demand notice issued for recovery of CENVAT Credit availed on defective finished goods returned for re-processing into defect free goods cleared on payment of excise duty – SCN issued on the ground that assessee could not prove that fresh products cleared on payment of duty were manufactured out of defective goods returned earlier – Proceedings dropped by original authority were set aside by Appellate Commissioner on appeal from Revenue – Findings of original authority which were based on verification of records maintained by assessee not cogently challenged before Appellate Commissioner – Appellate Commissioner's finding that Rule 16 not applicable to a case where duty paid defective goods returned by buyer was recycled, travels beyond the scope of show cause notice – It is not the case of Revenue that Rule 16 not applicable to a case where defective goods returned by buyer are subjected to a process of remaking defect free product – Impugned order set aside – Rule 16 of Central Excise Rules, 2002

[2012-TIOL-88-CESTAT-BANG](#)

**CCE, Mangalore Vs M/s Parbhudas Kishoredas Tobacco Products Pvt Ltd (Dated : August 16, 2011)**

Central Excise – Classification of Biris – Manufacture of tendu leave rolled biris – Process of cutting and printing of packing material for biris undertaken by job workers

with aid of machines – Rolling and other processes involved in the manufacture of biris per se are not carried out with the aid of machines – Even if labels/wrappers are manufactured with the aid of machines by job workers, biris to be classified under Chapter 2403 10 31 as biris manufactured without aid of machines – Board Circular No. 840/17/2006-CX., dated 6-12-2006 followed – No valid reason to interfere with impugned order of Commissioner

[2012-TIOL-82-CESTAT-MUM](#)

**Cipla Ltd Vs CCE, Mumbai (Dated : October 25, 2011)**

If capital goods are cleared after use then it cannot be considered as cleared 'as such' – seeking reversal of credit initially availed is not proper – Applicants have strong prima facie case – Pre-deposit of duty, interest and penalty waived and stay granted: CESTAT [para 3,4]

[Also see analysis of the Order](#)

[2012-TIOL-77-CESTAT-MUM](#)

**CCE, Thane Vs Classic Stripes Pvt Ltd (Dated : October 5, 2011)**

Self-adhesive stickers are not products of the printing industry (chapter 49) – classifiable under heading 3919 of the CETA, 1985 and respondent assessee fairly agrees – however, since goods cleared after filing of classification list, no cause for imposition of penalty – Revenue appeal allowed. [para 4]

[2012-TIOL-74-CESTAT-DEL](#)

**M/s Simbhaoli Sugars Ltd Vs CCE, Meerut (Dated : May 6, 2011)**

Central Excise - CENVAT - M.S. Angles, Shapes and Sections, M.S. Plates used for erection of supporting structures - Eligibility - Invocation of extended period - Stay / Dispensation of pre-deposit - The availment of CENVAT on M.S. Angles, Shapes and Sections, M.S. Plates is declared in the ER-1 return. Prima facie case made out against invocation of extended period. Stay granted. (Para 7)

[2012-TIOL-71-CESTAT-BANG](#)

**M/s M M Cylinders (P) Ltd Vs CCE, Tirupathi (Dated : September 6, 2011)**

Central Excise – Valuation – Inclusion of freight charges in the assessable value of new LPG cylinders – With change in mode of pricing of cylinders by PSU oil marketing

companies, MD and Director of appellant-companies along with relatives formed a partnership firm to set up a transport company to exclusively transport all finished goods by deliberately manipulating freight charges – Trucks owned by managing director and director leased out to the said transport company – Deductions towards freight charges abnormal and incremental over a period of time when compared with prices adopted by other cylinder manufacturers supplying to OMCs with corresponding decrease in assessable value of final products – Even when other transporters were engaged, the said transport company was used to route all the transactions and payments to such third party transporters varied upto 250% of billings of impugned transport company – Inclusion of freight charges justified, duty demands thereon upheld – Rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 read with section 4(1)(a) of Central Excise Act, 1944

Limitation – Invocation of extended period of limitation in subsequent show cause notices – After issue of first set of show cause notices, when subsequent detailed investigations revealed fresh set of evidences suppressing assessable values and increase in deduction towards freight charges, invocation of extended period of limitation in subsequent show cause notices justified – Facts of instant case distinguishable from the facts of the case laws (Nizam Sugar Factory et al) where the facts and evidences remained the same for subsequent notices – Extended period of limitation invoked justified – Proviso to Section 11A of Central Excise Act, 1944

Penalty – When appellant-companies, transport company, managing director and director deliberately engaged in incremental deduction of freight charges and decrease in assessable values resulting in evasion of excise duties, penalties under section 11AC and Rule 26 of CER, 2002 justified – However, in view of the overall facts and circumstances of the case, penalties on transport company, managing director and director reduced partially – Penalties on other individuals like general manager, dispatch-in-charge, chartered accountant etc set aside – Section 11AC of Central Excise Act, 1944 read with Rule 26 of Central Excise Rules, 2002

[Also see analysis of the Order](#)

[2012-TIOL-70-CESTAT-MUM](#)

**Todi Industries Ltd Vs CCE, Mumbai (Dated : September 27, 2011)**

Assessee classifying 'Rubber Solution' under heading 4006.90 and in SCN department proposing classification under 40.05 – adjudicating authority holding that goods correctly classifiable under heading 35.06 and this order upheld by appellate authority – lower authorities have traversed beyond the SCN and, therefore, order is bad in law – appellant has made a prima facie case in favour for grant of stay and waiver of pre-deposit: CESTAT [para 8]

[2012-TIOL-65-CESTAT-MUM](#)

**Shrijee Lifestyle Pvt Ltd Vs CCE, Thane-I (Dated : August 5, 2011)**

Cotton fabrics exported under claim for rebate of duty - Notfn 29/2004-CE prescribed a 'nil' rate and notfn 59/2008-CE levied '@4% adv.' duty - When two different Notifications prescribed two rates of duty, the assessee is at liberty to opt for whichever is beneficial to him – Cenvat credit available in respect of inputs used in

manufacture of final products being exported irrespective of the fact that the final products are otherwise exempt - Rule 6(3) of CCR, 2004 not applicable - Prima facie strong case in favour – Pre-deposit waived & stay granted: CESTAT

[Also see analysis of the Order](#)

[2012-TIOL-64-CESTAT-MUM](#)

**Zinta Foods And Beverages Vs CCE, Mumbai (Dated : October 5, 2011)**

Appellant manufacturing goods and clearing the same without payment of duty by availing SSI exemption notification - notification 8/2003-CE does not debar availment of Cenvat credit on input services - issue settled in case of Vallabh Vidyanagar Concrete Factory vs. CCE, Vadodara [2010-TIOL-200-CESTAT-AHM](#) - strong prima facie case - pre-deposit waived and stay granted - Petition allowed: CESTAT [para 3]

[2012-TIOL-63-CESTAT-MUM](#)

**S M Auto Engineering Pvt Ltd Vs CCE, Pune-I (Dated : October 21, 2011)**

Price indicated by the supplementary invoices is directly relatable to the value of the goods on the date of clearance - When differential duty is paid after the clearance it indicates short-payment/short-levy on the date of removal, hence interest becomes leviable – Appeal dismissed [para 5]

[2012-TIOL-60-CESTAT-MUM](#)

**M/s Raymond Ltd Vs CCE, Mumbai (Dated : October 19, 2011)**

As the pre -budgetary stock of finished fabrics/WIP stock/input stock as on 9.7.04 was exempted from duty under Notification No.30/04-CE, the benefit of captive consumption notification 67/95-CE claimed in respect of tops, yarn and grey fabrics manufactured and used/contained in the finished fabrics stock/WIP is not available – Demand of Rs.2.15 crores upheld and appeal rejected: CESTAT [para 13]

Since the assessee has not submitted the information sought by the Range Superintendent and in fact informed that their inability to compute and furnish the information, the jurisdictional authorities themselves derived the information on pro-rata basis from the returns submitted – in such a scenario, extended period u/s 11A of the CEA, 1944 has been rightly invoked – penalty u/s 11AC and interest u/s 11AB also upheld. [para 14]

[Also see analysis of the Order](#)

[2012-TIOL-59-CESTAT-MUM](#)

**Signum Fire Protection (India) Pvt Ltd Vs CCE, Nagpur (Dated : October 5, 2011)**

Goods cleared to developer of SEZ without payment of duty – demand made of 8%/10% invoking rule 6 of the CCR, 2004 – notification 50/2008-CE(NT) dated 31.12.2008 whether applicable retrospectively – in view of decision in Sujana Metal Products Ltd. vs. CCE, Hyderabad [2011-TIOL-1173-CESTAT-BANG](#) holding that even prior to 31.12.2008, the goods supplied to the SEZ developer are to be treated as export, pre-deposit of dues waived and recovery stayed – Stay petition allowed.

[2012-TIOL-58-CESTAT-MUM](#)

**CCE, Mumbai Vs M/s R K Control Instruments Pvt Ltd (Dated : August 24, 2011)**

Notification 10/97-CE – Control Valve and accessories - certificates have been issued by the Deputy Secretary, Department of Atomic Energy in respect of goods supplied to BARC and Indira Gandhi Centre for Atomic Research and by the Registrar, I.I.T. Delhi in respect of goods supplied to I.I.T. Delhi clearly stating that the goods are required for research purpose only – benefit of exemption cannot be denied goods on the ground that impugned goods are used for regulating the flow of gases/liquids which cannot be taken as Scientific and Technical instrument, apparatus and equipment – Revenue appeal dismissed.

[2012-TIOL-48-CESTAT-BANG](#)

**M/s Indian Rayon & Industries Ltd Vs CCE, Bangalore (Dated : September 6, 2011)**

Central Excise – Manufacture – Stay/waiver of pre-deposit – Import of readymade garments and cleared to jobworker's end for repacking and labeling with details of brand name, size, style, MRP, bar code etc – Prima facie activities undertaken on imported ready made garments involved repacking from bulk pack to retail pack and labeling on boxes to render the products marketable – On merits, the duty demand prima facie , sustainable – No justification for invoking extended period of limitation as the matter related to interpretation of chapter note to determine the activity as 'manufacture' – Pre-deposit of Rs. 25 lakhs ordered and balance amounts waived till disposal of appeals – Section 35F of Central Excise Act, 1944 read with Note 4 of Chapter 62 of Central Excise Tariff Act, 1985

[2012-TIOL-47-CESTAT-BANG](#)

**Nishant Fragrances Ltd Vs CC & CE, Tirupathi (Dated : August 12, 2011)**

Central Excise - Remission of duty – Loss of non-duty paid goods by theft was neither an 'accident' nor 'unavoidable' and was also not a 'loss by natural cause' - No remission of duty warranted - Rule 21 of Central Excise Rules, 2002 read with Rule 49 of Central Excise Rules, 1944

<a href="#">2012-TIOL-46-CESTAT-BANG</a>
<b>M/s Sunrik Steels Ltd Vs CCE, Bangalore (Dated : August 5, 2011)</b>
Central Excise – Denial of CENVAT Credit on capital goods on the ground that supplier did not have necessary infrastructure to manufacture and supply goods – Equivalent penalty imposed invoking section 11AC of Central Excise Act, 1944 – When supplier was a registered unit and paid duty from PLA as well as CENVAT A/c during the period and credit availed by appellant reflects the duty paid on the goods by supplier and no evidence adduced by department to the contrary, credit not deniable – Demand of credit and imposition of penalty not sustainable, set aside on merits as well as limitation – Section 11A read with Section 11AC of Central Excise Act, 1944
<a href="#">2012-TIOL-44-CESTAT-MUM</a>
<b>Siyaramji Gupta Vs CCE &amp; ST, Aurangabad (Dated : October 28, 2011)</b>
For imposition of penalty under rule 26 of the CER, 2002 goods should be held liable for confiscation - as there is no proposal in show-cause notice for confiscation, penalty not imposable - prima facie strong case in favour - Pre-deposit waived: CESTAT [para 7]
<a href="#">Also see analysis of the Order</a>
<a href="#">2012-TIOL-43-CESTAT-BANG</a>
<b>CC, Bangalore Vs M/s Chrysallis Silks Pvt Ltd (Dated : August 12, 2011)</b>
Central Excise – Refund under Rule 5 of CENVAT Credit Rules, 2004 – Refund claim rejected by original authority on the ground that credit was not taken within a reasonable period, set aside by lower appellate authority holding that there was no time limit for availing credit – As there is no time limit to avail credit, no reason to interfere with order of lower appellate authority – Rule 5 of CENVAT Credit Rules, 2004
Appeal – Remand – Commissioner's powers to remand under section 35A – With regard to rejection of refund for non-submission of valid documents, appellate authority remanded matter to original authority with direction to verify documents – Commissioner (A) merely gave another opportunity to assessee to produce documents before original authority for fresh consideration as matter required factual verification by original authority – Though Commissioner (A) has no power of remand, grounds on which matter was remitted to original authority appears genuine – Original authority directed to verify claim of assessee with reference to documents and consider refund claim afresh – Section 35A of Central Excise Act, 1944

[2012-TIOL-38-CESTAT-MUM](#)

**CCE, Mumbai Vs Adlab Films Ltd (Dated : September 27, 2011)**

ROM application filed by Revenue alleges grievous error – applicant has misconceived the facts inasmuch as in para 2 submissions made by appellant are recorded and findings of the Bench have been recorded in para 4 which have not been gone through – ROM dismissed. [para 3]

[2012-TIOL-36-CESTAT-BANG](#)

**Water (India) Pvt Ltd Vs CCE, Bangalore (Dated : August 8, 2011)**

Central Excise - Appeals - Application filed to reconstruct the appeals - Appeals filed in 1992 before SZB, Chennai and eventually transferred to Bangalore - Original memoranda neither available with assessee nor the registry - Registry directed to send a request to Chennai Registry to forward a copy of the original records, if already not sent - Department at liberty to verify their records and place the relevant original files before the Bench - Rule 41 of CESTAT (Procedure) Rules, 1982.

[2012-TIOL-35-CESTAT-BANG](#)

**CCE, Hyderabad Vs M/s TFL Quinn India Pvt Ltd (Dated : August 19, 2011)**

Central Excise – Refund – Goods cleared on payment of duty on transaction value to dealers – ‘Timely payment discount’ of 3% extended to dealers who made payments on time by issuance of credit notes/cheques – Refund claim filed for duty paid in lieu of ‘timely payment discount’ allowed by original authority and lower appellate authority resulting in Revenue appeal – In the instant case, when there is no exchange of credit notes and debit notes between seller and buyer i.e. credit notes/cheques issued by assessee to dealers not reciprocated with debit notes, it cannot be held that incidence of duty was actually passed onto dealers – Burden lies upon assessee to establish that burden of duty claimed as refund was passed onto buyers – Nothing on record to indicate that this burden was discharged beyond the pale of doubt by assessee – Mere issuance of credit notes by a refund claimant (assessee) subsequent to clearance of goods would not obliterate the bar of unjust enrichment – Larger Bench judgment in S. Kumar’s Ltd [2003-TIOL-01-CESTAT-DEL-LB](#) followed – Section 11B read with Section 12B of Central Excise Act, 1944

[2012-TIOL-33-CESTAT-MUM](#)

**M/s Colgate Palmolive (India) Limited Vs CCE, Mumbai (Dated : October 17, 2011)**

Manufacture of base cream of toothpaste - Since on the quantity of base cream used for R&D the applicant pays duty, the remaining quantity not used is also to be considered as marketable and not a waste - Pre -deposit ordered: CESTAT [para 6]

[Also see analysis of the Order](#)

[2012-TIOL-32-CESTAT-BANG](#)

**M/s Volvo India Pvt Ltd Vs CCE, Bangalore (Dated : September 7, 2011)**

Central Excise – Stay/waiver of pre-deposit – Eligibility of exemption Notification No. 108/95-CE – Manufacture and clearance of dumpers to a construction company for execution of World Bank funded project adhering to conditions prescribed in the said notification – Based on amendment vide Notification No. 13/2008-CE, duty demanded as the dumpers were withdrawn by the construction company upon completion of project, for use elsewhere – At the time of clearance of goods, appellant eligible for exemption under said notification – Only allegation in SCN was that the assessee should have taken necessary steps to ensure that the dumpers were not diverted/withdrawn from the project site upon completion of the project – This allegation would not constitute any of the ingredients embodied in the proviso to section 11A(1) of Central Excise Act for invocation of extended period of limitation – Prima facie, demand of duty time barred – Pre-deposit waived and stay granted

[2012-TIOL-24-CESTAT-MUM](#)

**CCE, Thane Vs M/s Chander Dye Chem Industries (Dated : September 13, 2011)**

Assessee engaged in activity of re-packing chemicals since 1980 and chapter note notifying this activity as manufacture inserted only in 1997-98 – it cannot be said that they had suppressed this fact with intent to evade duty – Allegation of suppression cannot be sustained – Revenue appeal dismissed: CESTAT [ para 7 ]

[Also see analysis of the Order](#)

[2012-TIOL-23-CESTAT-AHM](#)

**M/s Rolastar Pvt Ltd Vs CCE, Daman (Dated : September 29, 2011)**

Central Excise - Valuation - Duty paid by Job-worker - Goods captively consumed by Principal - Application of Rule 10(a) and Rule 8 of Valuation Rules - The value of job-worked goods will be the cost of raw materials supplied by customers and job charges including profit of the job worker. When the job-worked goods are cleared back to the principal and the goods are captively consumed by the principal there is no applicability of Rule 8 or Rule 10A of Valuation Rules. (Para 7 & 8)

[2012-TIOL-21-CESTAT-AHM](#)



**M/s Gail (India) Ltd Vs CCE, Vadodara (Dated : November 14, 2011)**

Central Excise – CENVAT Credit on input services used for both dutiable and exempted goods – Appellant reversed credit on services which are not covered under Rule 6(5) of the CENVAT Credit Rules, 2004 – The appellant is liable to pay interest in view of Ind Swift Laboratories Ltd. - Penalty - Availment of wrong credit has happened because of accounting error and is a mistake - It is appropriate that the provisions of Section 80 are invocable in this case and penalty set aside.

[2012-TIOL-17-CESTAT-DEL](#)

**KEC International Vs CCE, Bhopal (Dated : August 8, 2011)**

Central Excise - Supplementary Invoice - Price Escalation - Demand of Interest - Limitation - Interest is payable on supplementary invoices raised for differential duty as it falls under the provision of sub-section (2B) of Section 11A of the Act. There is no limitation for demand of interest. (Para 4)

[Also see analysis of the Order](#)

[2012-TIOL-16-CESTAT-AHM](#)

**CCE, Hyderabad Vs M/s Virchow Laboratories Limited (Dated : October 25, 2011)**

Central Excise – Refund of service tax paid on services like transport of goods by road, transport of goods by rail, agency charges and port charges rejected – Revenue cannot reject the refund by re-classifying the services at the receiver's end - Since the original adjudicating authority has not verified the documents and has also taken a view that documents were not submitted, the matter is remanded to original adjudicating authority.

[2012-TIOL-15-CESTAT-BANG](#)

**CCE, Hyderabad Vs M/s Virchow Laboratories Limited (Dated : June 28, 2011)**

Central Excise – Allegation that spent methanol emerging as by product during manufacture of bulk drugs cleared as industrial waste by resorting to under valuation – Though statements recorded from purchasers stated that they received spent methanol of purity 90 to 98%, department could not produce any evidence whether it had conducted tests to check purity – Commissioner's finding that no evidence was put forth by department that methanol was removed in the guise of industrial waste by undervaluation sustained – Appeal filed by Revenue devoid of merits

[2012-TIOL-11-CESTAT-BANG](#)

**M/s Shine Star Oxides & Paints Pvt Ltd Vs CCE & CC, Cochin (Dated : August 10, 2011)**

Central Excise - Manufacture/Eligibility of SSI benefit under Notification No. 1/93-CE - Activity of repacking of various colour oxides into small packings - Demand of duty for manufacture and clearance of final products cleared during 1995-96 and 1996-97 without following central excise procedures

Classification - Chemical examination conducted on samples drawn by department of certain products viz., microfine red oxide and microfine jet black oxide sold from one branch resulted in classification of said products under Tariff Heading No. 3206.90 - Test results of Chemical Examiner on microfine red oxide and re-test at request of assessee found Fe<sub>2</sub>O<sub>3</sub> content at 52.5%, classification under Tariff Heading No. 3206.90 as determined by Commissioner upheld - When chemical examination report in r/o only two products were against assessee and rest of the products in favour of assessee and in the absence of any investigation at other branches, no presumption can be made that products cleared from such branches are also to be classified under Tariff Heading No. 3206.90 - Burden to prove classification clearly rests with the department

Benefit of Exemption Notification No. 1/93-CE - When department has not proved that products cleared from other branches fall under Tariff heading No. 3206.90, question of shifting the burden onto appellants to deny benefit of exemption Notification 1/93-CE not sustainable - When clearances of assessee during FY 1995-96 and 1996-97 are within threshold limit for availing benefit of exemption Notification 1/93-CE order of Commissioner denying benefit of SSI exemption set aside - Demand of duty, confiscation and penalty set aside - SSI Exemption Notification No. 1/93-CE

[2012-TIOL-10-CESTAT-BANG](#)

**M/s Sharavathy Conductors Pvt Ltd Vs CCE, Bangalore (Dated : August 19, 2011)**

Central Excise - Manufacturer having two Units viz., Unit I and Unit II - Credit of service tax paid on input services received by both manufacturing units availed by Unit-I only - Such credit pointed out as irregular by departmental audit reversed thereafter - SCN issued after one and half years for recovery of interest under section 11AB and imposition of penalty under Rule 15 of CENVAT Credit Rules read with section 11AC - Credit reversed by Unit-I undisputedly available to Unit II since both the Units are owned by appellant company only - It cannot be presumed that Unit I had any intention to evade payment of duty

Appeal - Scope of appeal and order passed by lower appellate authority - Appeal filed by Revenue before Commissioner (Appeals) only challenged dropping of demand of interest on CENVAT Credit in question - No issue other than the one pertaining to interest on CENVAT credit reversed was to be examined by lower appellate authority - Impugned order imposing penalty equal to CENVAT credit under Rule 15 (4) of CENVAT Credit Rules 2004 read with Section 11AC of the Central Excise Act beyond the scope of Revenues appeal before lower appellate authority - Lower appellate authority exceeded the brief by examining extraneous issues which did not arise in the Revenue's appeal filed before it - Impugned order set aside - Rule 15(4) of CENVAT Credit Rules, 2004 read with Sections 11AB and 11AC of Central Excise Act, 1944

[2012-TIOL-06-CESTAT-MUM](#)

**Thermax Ltd Vs CCE & CC, Raigad (Dated : November 16, 2011)**

Central Excise - copolymer beads cleared to sister unit for further processing, marketable: A.R has been able to prove on record that these copolymer beads have been imported by M/s. Doshion Veolia Water Solutions Pvt. Ltd. in 2010 and placed on records the Bills of Entry. Therefore, relied on the decision of Nestle India , wherein this Tribunal has held " it was not necessary that identical product should be marketable. Even if similar product is proved to be marketable, the test of marketability is satisfied. " In all the cases relied by the appellant, the law is laid down that onus is on the revenue to prove the test of marketability which has brought on record the evidence of marketability of impugned copolymer beads. Held that the copolymer beads are marketable.

No extended period : Tribunal considered the decision in the case of Ion Exchange which was passed by the apex court on 02.08.1999 wherein the issue of marketability was still pending and in that case the apex court has held that as there was Difference of Opinion amongst the Tribunal Members on the question of marketability of the intermediate product but all the three members unanimously held that only normal time limit will be applied to the demands. Admittedly, the A.R. is able to produce an evidence of marketability of the impugned product by way of Bills of Entry only in 2010. Therefore, the issue of marketability of impugned product was not decided at that time and in that event, relying on the decision of the Ion Exchange and Nestle India Tribunal found that the extended period of limitation is not invocable in the facts and circumstances of this case.

Rule 57E Certificate valid: It is only with effect from 01.03.97, Rule 57(E)(3) was introduced to deny the Modvat Credit if the differential duty payable by the manufacturer was due to fraud, suppression, mis-statement etc. Hence, only in respect of goods cleared after 01.03.97 and subsequently, if it is found that differential duty was payable due to suppression of fact, fraud, mis-statement etc. on such inputs Modvat credit to the purchaser is not allowed. The said rule does not have retrospective operation. Hence, for goods cleared prior to March, 1997, the said rule 57(E)(3) cannot be applied.

[Also see analysis of the Order](#)

[2012-TIOL-05-CESTAT-DEL](#)

**Neel Metal Products Ltd Vs CCE, Delhi (Dated : July 28, 2011)**

Central Excise – When capital goods are cleared on sale, whether entire credit at the time of receipt of goods to be reversed or duty to be paid on depreciated value – The expression 'as such' used in Rule 3(5) cannot be understood in the same way as is understood in Rule 4(5) of CCR – When goods received in 2001 are cleared in 2006 after being put to use, actual credit availed need not be reversed – Tribunal decision in Greenply Industries Ltd [2010-TIOL-1179-CESTAT-DEL](#) followed

[2012-TIOL-01-CESTAT-BANG](#)

**M/s Dukes Consumer Care Ltd Vs CCE, Hyderabad (Dated : September 8, 2011)**

Central Excise – Classification – Wafers coated with cocoa paste whether classifiable under Chapter SH No. 1905 32 19 as claimed by assessee or Chapter SH No. 1905 32 11 as claimed by Revenue

Stay/Waiver of pre-deposit – Issue no longer res integra , stands settled in favour of Revenue – Pre-deposit of Rs. 2 lakhs ordered – Section 35F of Central Excise Act, 1944

Stay application filed by Revenue – Revenues plea for stay of adverse portion of Appellate Commissioner's order dropping penalty has no valid reason – Liable for dismissal