

CESTAT RULING[2011-TIOL-985-CESTAT-MUM](#)**Manoj Arya Vs CCE (Dated : March 11, 2011)**

Ordering absolute confiscation of currency and imposition of penalty without deciding on the main issue whether the goods were produced and cleared clandestinely is premature - Moreover, SCN also mentions that investigations are in progress for quantification of Central Excise duty liability - matter remanded for clubbing the case with the main issue.

[2011-TIOL-984-CESTAT-MUM](#)**CCE, Aurangabad Vs Pratisthan Alloy Casting P Ltd (Dated : March 2, 2011)**

In classification lists, assessee has declared product as 'casting and cast articles of stainless steel and articles' claiming benefit of Notification 223/88-CE - said C.Ls have been duly approved - it was found that the goods were made of non-alloy steel and were not entitled for benefit of the notification - however, there was no correspondence entered with the assessee seeking further details before the approval of the said classification lists -extended period of limitation cannot be invoked.

[2011-TIOL-983-CESTAT-MUM](#)**Sahyadri Starch & Industries Pvt Ltd Vs CCE, Pune (Dated : March 11, 2011)**

Assessee is a manufacturer of liquid glucose - packing material viz. MS / HDPE barrels supplied free-of-cost by the buyers - it is a consideration for determination of the price though given by the buyer indirectly in the form of free supply of packing materials - value thereof includible in A.V in view of provisions of rule 6 of Valuation Rules, 2000 - no prima facie case - Pre-deposit ordered.

[2011-TIOL-981-CESTAT-MUM](#)**CCE, Mumbai Vs Hind Rectifiers Ltd (Dated : March 29, 2011)**

Merely because the assessee has transported the goods and insured the same up to the buyer's premises, it does not mean that the place of removal is the buyer's premises - from documentary evidence it is clear that the terms and conditions of sale were ex-works or ex-factory - SC decision in Escorts JCB Ltd. vs. Commissioner of Central Excise, Delhi ([2002-TIOL-05-SC-CX](#)) relied upon - Revenue appeal rejected.

2011-TIOL-980-CESTAT-MUM
M/s S Narendrakumar Vs CCE, Mumbai (Dated : March 17, 2011)
Product "Kesari Milk Masala" consisting of more than 83 per cent of mixed dry fruits with other items like Cardamom, Mace, Saffron and Nutmeg are classifiable under Heading 2008 1990 of the CETA, 1985 as "Mixture of Dry Fruits" and not as "Food Flavoring Material" under Heading 2106 9060 as claimed by the Revenue- Appeal allowed with consequential relief.
2011-TIOL-979-CESTAT-MUM
SGS India Pvt Ltd Vs CCE, Thane (Dated : March 10, 2011)
Appellant cannot be denied CENVAT credit on the ground that they have not taken the credit immediately on receipt of the goods - if the appellant has not taken the credit immediately, it is affecting the appellant not the Revenue because the appellant may fail to take credit-in-future or at least they are not having credit balance in the CENVAT credit account - Appeal allowed.
2011-TIOL-973-CESTAT-BANG
M/s Tecumseh Products India Private Ltd Vs CC & CE, Hyderabad (Dated : March 24, 2011)
Central Excise – Whether CENVAT Credit lying unutilized in accounts of de-bonded 100% EOU, can be transferred to their DTA unit – 100% EOU entitled to avail credit from September 6, 2004 and if credit remains utilized, they are eligible for refund in terms of Rule 5 of CENVAT Credit Rules – It is not disputed that both 100% EOU and DTA units belong to same assessee and are not separate legal entities – If CENVAT credit is not transferred to DTA unit, Revenue would have to refund the amount to 100% EOU unit in accordance with law – Board's Circular No. 799 dtd. 23/9/2004 applicable – Prima facie case for full waiver of pre-deposit – Stay granted
2011-TIOL-972-CESTAT-MUM
Hindustan Lever Ltd Vs CCE, Nagpur (Dated : March 9, 2011)
Period involved is 1992-1997 - refund due to party on finalization of provisional assessment under rule 9(b) of CER, 1944 should have been granted on suo motu basis without filing of claim - provisions of unjust enrichment did not apply at the material time
2011-TIOL-969-CESTAT-MUM

<p>Kirloskar Pneumatic Co Ltd Vs CCE, Pune (Dated : February 10, 2011)</p>
<p>Amount paid under rule 6(3)(b) of the CCR, 2004 recovered from customers by raising supplementary invoices - since amount has been paid to Government u/r 6 of the CCR, 2004 provisions of section 11D of the CEA, 1944 will not apply.</p>
<p>2011-TIOL-968-CESTAT-MAD</p>
<p>CCE, Chennai Vs M/s Abiq Plastics Pvt Ltd (Dated : April 6, 2011)</p>
<p>Central Excise – Small Scale exemption – Brand name of another person - Use of even part of somebody else's brand name is sufficient to disqualify the benefit of SSI exemptions in the light of the apex court's decision in Commissioner of Central Excise, Trichy Vs Rukmani Pakkwell Traders – Revenue appeal allowed on merits – On limitation, matter remanded to the original authority.</p>
<p>2011-TIOL-967-CESTAT-BANG</p>
<p>M/s Rashtriya Ispat Nigam Ltd Vs CCE & CC, Visakhapatnam (Dated : January 31, 2011)</p>
<p>Central Excise – Eligibility of CENVAT Credit on medium carbon steel strapping, strapping seals, welding electrodes, angles, plate mill plate, concast billet etc as inputs - Impugned order set aside and matter remanded for de novo consideration in lieu of Tribunal order dated 26.10.2010 = 2011-TIOL-379-CESTAT-BANG</p>
<p>2011-TIOL-962-CESTAT-MUM</p>
<p>CCE, Aurangabad Vs M/s South Eastern Coalfields Ltd (Dated : May 25, 2011)</p>
<p>Payment of duty by manufacturer under protest cannot be treated as a protest by the purchaser of goods – Refund claim is time barred – SC decision in National Winder is per incuriam – Revenue appeal allowed</p>
<p>Also see analysis of the Order</p>
<p>2011-TIOL-961-CESTAT-MUM</p>
<p>CCE, Raigad Vs Raptakos Brett & Co Ltd (Dated: April 13, 2011)</p>
<p>Valuation – deduction on account of free replacement of breakage– since in appellants own case the Tribunal has allowed the benefit and the department had not challenged the same, the matter attained finality – SC decision in CCE vs. Surya</p>

Roshni ([2002-TIOL-391-SC-CX](#)) is applicable only from 13.09.2000 – Commissioner(A) granting the benefit till 12.09.2000 is proper in law – Revenue appeal rejected.

[2011-TIOL-960-CESTAT-BANG](#)

M/s United Telecoms Ltd Vs CCE, Bangalore (Dated: March 14, 2011)

Central Excise – Valuation – Manufacture and supply of SMPS Power plants and provision of warranty support under manufacture & supply agreement – Allegation of non-inclusion of charges collected for warranty support in assessable value – Though amounts recovered from customers were described as service charges for warranty initially the same was documented as service charges for engaging manpower for warranty support later on – Warranty cover provided to equipments purchased by customers to be inferred as included in the consideration paid by actual buyers of equipment – Amounts recovered appear to be additional consideration includible in transaction value – Since Rule 6 of Central Excise Valuation Rules does not contemplate inclusion of warranty charges, impugned order not free from infirmity – Whether value on which service tax is paid can forms part of transaction value of excisable goods to be examined at final hearing stage – Pre-deposit of Rs. 20 lakhs ordered

[2011-TIOL-958-CESTAT-MUM](#)

CCE & CC, Nashik Vs Prakash Products (Dated: March 14, 2011)

Abatement under rule 10 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 - rule makes it very clear that if a unit is closed continuously for a period of 15 days or more, the benefit of abatement will be available - Nowhere does the rule stipulate that the closure should take place within a calendar month itself - there is no dispute that the unit was closed continuously for a period of 15 days even though the closure overlapped in October - November and again in November - December - unit will be entitled for the abatement for the period of closure - Revenue appeal rejected

[2011-TIOL-955-CESTAT-BANG](#)

M/s Pearl Insulations Pvt Ltd Vs CCE, Bangalore (Dated: January 17, 2011)

Central Excise – Interest not liable to be paid when credit wrongly availed is reversed before utilization – P & H High Court judgment in Ind-Swift Laboratories Ltd = [2009-TIOL-440-HC-P&H-CX](#) followed

[2011-TIOL-954-CESTAT-MUM](#)

M/s Lupin Ltd Vs CCE & ST, LTU, Mumbai (Dated: May 5, 2011)

Transportation and clearance of waste is an activity connected with manufacturing business - appellants are entitled to avail the CENVAT credit of service tax paid on transportation and clearance of waste generated during the course of manufacture of finished product: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-946-CESTAT-BANG](#)

M/s Rasandik Auto Components (P) Ltd Vs CCE, Mysore (Dated: January 6, 2011)

Central Excise – CENVAT Credit availed on capital goods received by Unit-1 and cleared to Unit-2 on payment of appropriate duty – Pursuant to investigation by authorities, entire amount of credit reversed under protest – Adjudication proceedings confirmed demand with interest and penalty – It is undisputed that credit was availed on duty paid documents in November, 2007 and statutory returns filed with authorities in time – Nothing on record to indicate that Range Officer raised any queries with regard to availment of credit – No allegation of suppression, fraud or collusion in show cause notice issued in February 2009 – Demand hit by limitation – Impugned order illegal, liable to be set aside

[2011-TIOL-945-CESTAT-MAD](#)

M/s Craftsman Automation (P) Ltd Vs CCE, Coimbatore (Dated: April 27, 2011)

Central Excise – CENVAT Credit availed under Rule 16 on finished goods rejected and received back – Since the assessee did not subject the returned goods to any process, they are covered under second limb of rule 16(2) – Impugned order set aside.

[2011-TIOL-944-CESTAT-MUM](#)

Rini Engineers Vs CCE, Pune (Dated: March 8, 2011)

No irregularity or perversity or arbitrariness in dismissal of the appeal for non-compliance with the requirement of pre-deposit as Commissioner (Appeals) had duly considered the point relating to prima facie case and had accordingly directed the appellants to make pre-deposit - Even during the disposal of the application for modification of the said order prima facie case was also duly considered - Appeals dismissed.

[2011-TIOL-940-CESTAT-MUM](#)

M/s ALA Chemicals Vs CCE, Thane (Dated: May 3, 2011)

In CEA, 1944, work -in-progress goods and semi-finished goods are not defined – common parlance meaning to be used - goods which do not attain finality are called as work -in-progress/semi-finished goods/intermediate goods – Benefit of remission available u/r 21 of CER, 2002 – Appeal allowed with consequential relief: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-939-CESTAT-MUM](#)

Castrol India Ltd Vs CCE, Raigad (Dated: March 16, 2011)

As the assessee themselves have paid the duty and come forward to inform the department, the ingredients for imposing mandatory penalty under Section 11AC are absent as there is no fraud, collusion, willful misstatement, suppression of facts or contravention of provisions Act or Rules with an intent to evade payment of duty.

[2011-TIOL-938-CESTAT-BANG](#)

M/s Hindustan Petroleum Corporation Ltd Vs CCE, Visakhapatnam (Dated: March 14, 2011)

Central Excise – Eligibility of CENVAT Credit on HR Steel plates/sheets used in erection of storage tank – Storage tank is covered in the definition of capital goods, credit not deniable on inputs used in fabrication of storage tanks – Full waiver of pre-deposit ordered

[2011-TIOL-935-CESTAT-MUM](#)

M/s Tata Power Company Ltd Vs CCE, Mumbai (Dated: April 7, 2011)

Whether the term “intended for use” can cover the quantity of LSHS/LSWR consumed in the generation of electricity for internal use is subject to different kinds of interpretation – larger period of limitation not invocable – entire demand of Rs.12.88 Crores is time barred – Appeal allowed: CESTAT.

[Also see analysis of the Order](#)

[2011-TIOL-934-CESTAT-MUM](#)

Vinar Ispat Ltd Vs CCE, Nagpur (Dated: April 11, 2011)

Appellant used to receive raw materials viz. billets/blooms/slabs and after conversion of into angles/channels they cleared the same to the various parties on payment of duty and AV was arrived on the basis of landed cost of raw materials plus conversion charges - waste and scrap generated during conversion were retained by the assessee and these were later cleared on payment of appropriate duty - allegation that sale proceeds received on the waste and scrap is an additional consideration for the job work and is required to be included in the value of finished products is prima facie sustainable - Pre-deposit ordered.

Party's plea that they could have alternatively followed the procedure prescribed under Rule 4 (5)(a) of the CCR and could have returned the job work material without payment of duty is not sustainable because the assessee did not opt for the facility provided under the said Rule and neither did they follow the procedure prescribed therein. In the absence of exercising any such option or compliance to the procedure prescribed, the appellant cannot claim the benefit of the said provision.

Argument that the entire exercise is revenue neutral since whatever duty has been discharged by the appellant could have been taken as credit by the supplier of raw material does not have any force in view of LB decision in Jay Yuhshin Ltd., ([2002-TIOL-126-CESTAT-DEL-LB](#)).

[2011-TIOL-933-CESTAT-MUM](#)

Voltas Ltd Vs CCE, Mumbai (Dated: March 16, 2011)

Appellants erecting and commissioning a chiller plant at site out of duty paid components – same cannot be called goods so as to be charged to excise duty in view of SC decision in Triveni Engineering & Industries Ltd. ([2002-TIOL-14-SC-CX](#)) – Appeal allowed.

[2011-TIOL-923-CESTAT-MUM](#)

Hindustan Coca-Cola Beverages Pvt Ltd Vs CCE, Thane (Dated: March 25, 2011)

Prima facie the applicants do not have any liability to pay duty on the samples drawn by them for testing purposes and retained the same in their factory – Pre-deposit waived and stay granted.

[2011-TIOL-922-CESTAT-MUM](#)

Wellbert Pharmaceuticals (Bombay) P Ltd Vs CCE, Mumbai (Dated: March 9, 2011)

Since remission of duty has been granted on finished goods destroyed in fire, no demand of duty can survive.

[2011-TIOL-919-CESTAT-MUM](#)

M/s Western Cans P Ltd Vs CCE, Mumbai (Dated: March 17, 2011)

Appellant clearing goods to EOU which in turn are further physically exported – accumulated CENVAT credit can be allowed as refund under notfn. 5/2006-CE(N.T) – mention that refund claims are to be filed on quarterly basis does not mean that they cannot be filed once in a year – purpose of such legislation is to avoid multiplicity of claims being filed on day to day basis or weekly or invoice-wise – Matter remanded for verification: CESTAT.

[Also see analysis of the Order](#)

[2011-TIOL-918-CESTAT-MUM](#)

Candico (I) Ltd Vs CCE & CC, Nagpur (Dated: March 28, 2011)

Prima facie bubble gum is classifiable under SH 1704.90 of the CETA, 1985 and entitled for benefit of notification 6/2002-CE dated 01.03.2002 – Pre-deposit waived

[2011-TIOL-915-CESTAT-MAD](#)

M/s Perfetti Van Melle (I) Pvt Ltd Vs CCE, Chennai (Dated: January 24, 2011)

Central Excise – Stay/Dispensation of pre -deposit – Confectionery sold in multi-piece packages (jars/pouches) – Prima facie assessable under Section 4A of the Central Excise Act, 1944 – Pre -deposit waived.

[Also see analysis of the Order](#)

[2011-TIOL-909-CESTAT-MAD](#)

M/s Sidha Steels (P) Ltd Vs CCE, Coimbatore (Dated: March 16, 2011)

Central Excise – Valuation - Profit earned on transportation – Profits made on transportation cannot be part of assessable value. (Para 2)

[2011-TIOL-902-CESTAT-MAD](#)

M/s Silicon Valley Progress Work Ltd Vs CCE, Chennai (Dated: February 25, 2011)

Central Excise – Fortnightly payment of duty – Forfeiture of – Utilisation of CENVAT credit - The assessee is entitled to utilize credit for payment of duty upon forfeiture of facility of payment of duty on fortnightly basis prior to 01.06.06, when statutory provisions were amended so as to bar utilization of cenvat credit for payment of duty in such a situation. (Para 1)

Failure to pay duty on consignment basis - Penalty - The penalty for non-compliance with the procedural requirement to pay duty on consignment basis, is justified. However, quantum of penalty reduced. (Para 1)

[2011-TIOL-900-CESTAT -MAD](#)

Areva T&D India Ltd Vs CCE, Chennai (Dated: April 25, 2011)

Central Excise – Interest on payment of duty on supplementary invoices – The issue stands settled by the Supreme Court – Appeal has no merit.

[2011-TIOL-895-CESTAT -MUM](#)

The Supreme Industries Ltd Vs CCE, Pondicherry (Dated: May 11, 2011)

Central Excise - Remission of Duty - Goods lost in fire - Issue is whether fire was avoidable or not avoidable - Denial of remission set aside : the main reason for denial of remission of duty by the adjudicating authority that the fire was avoidable. But going through the case records and independent reports by all the five authorities, who found that the fire occurred due to unavoidable circumstances, therefore, no reason for denial of claim of remission of duty. Accordingly, the order of denial of remission of duty is set aside and the claim of remission of duty is allowed. Consequently, the order of demand of duty on goods lost in fire is also set aside holding that the fire occurred due to unavoidable reasons.

[Also see analysis of the Order](#)

[2011-TIOL-893-CESTAT -MAD](#)

CCE, Tiruchirapalli Vs ECOF Detergents (P) Ltd (Dated: April 5, 2011)

Central Excise – Valuation – Equalized freight – Demand of duty on difference between equalized freight and actual freight is not sustainable in view of the Supreme Court decision in case of Baroda Electrical Meters Ltd.

[2011-TIOL-886-CESTAT -MAD](#)

M/s The India Cements Ltd Vs CCE, Tirunelveli & Trichy (Dated: February 7, 2011)

Central Excise – Stay/Dispensation of pre -deposit – Cement cleared to SEZ Units – Demand of duty on clinker manufactured as an intermediate product in the course of manufacture of cement by denying exemption under Notification No 67/95 CE – Prima facie case made out for waiver of pre -deposit.

[2011-TIOL-879-CESTAT -BANG](#)

M/s The India Cements Ltd Vs CC, CCE & ST, Tirupati (Dated: May 2, 2011)

Central Excise – Liability to reverse CENVAT credit on inputs utilized for manufacture and clearance of goods to SEZ developers – Ratio of CESTAT stay order on similar matter in Sujana Metal Products Ltd case = [2009-TIOL-1096-CESTAT -BANG](#) and similar other orders followed – Prima facie case for full waiver of pre -deposit – Stay granted

[2011-TIOL-878-CESTAT -MAD](#)

CCE, Trichy Vs M/s Trichy Distilleries And Chemicals Ltd (Dated: March 4, 2011)

Central Excise – CENVAT – Input service - Group Medical Insurance Claim Policy – Service relating to 'Group Medical Insurance Claim Policy' taken for the employees can be treated as input service. (Para 6)

[2011-TIOL-874-CESTAT -MUM](#)

Cadbury India Limited Vs CCE, Pune (Dated: May 12, 2011)

Retail packs of “Cadbury Dairy Milk Gold” and “Cadbury 5 Star” sent to job-worker for re-packing into assorted packs called “Celebrations” – such clearance cannot be called bulk sale to an intermediary for further sale or distribution in smaller quantities – duty payable u/s 4A and not section 4 of the CEA, 1944: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-873-CESTAT -MAD](#)

CCE, Salem Vs M/s Sheshasayee Paper Boards Ltd (Dated: February 22, 2011)

Central Excise – Refund – Unjust enrichment – Issue of credit notes for the duty amount already collected will not take the case out of unjust enrichment - If the

contention of the assessee is accepted, it would be lead to a situation that after years also they would claim that they are taking over the burden of duty initially passed on to their customers by issuing of credit notes – Commissioner (Appeals) order allowing the refund claim is set aside.

[2011-TIOL-872-CESTAT -BANG](#)

M/s Varsha International Vs CCE, Mumbai (Dated: February 2, 2011)

Central Excise – Appeals – ROM Application – Appeal shall not lie to Appellate Tribunal, in respect of any order passed by Commissioner (A) under sec. 35A, if such order relates to goods exported out of India (except to Nepal or Bhutan) without payment of duty – Remand order passed earlier by Tribunal recalled and appeal of assessee rejected as not maintainable

[2011-TIOL-865-CESTAT -MAD](#)

M/s Ramani Textile Mills (P) Ltd Vs CCE, Coimbatore (Dated: January 7, 2011)

Central Excise – Clandestine Clearance – Private Records – Production details shown in the private production records were not properly entered in statutory records and that invoices were not raised in respect of sale confirmation particuled any of the details available in the private records. Demand of duty and penalty on ars found in two notebooks. The Managing Director of the company has not denthe company based on private records is sustainable. Penalty imposed on Managing Director is also warranted as he was closely associated with the affairs of the company. (Para 2)

[2011-TIOL-864-CESTAT -MAD](#)

M/s Tamil Nadu Cements Corporation Ltd Vs CCE, Trichy (Dated: February 14, 2011)

Central Excise – Stay/Dispensation of pre -deposit - Cement cleared to Government Companies, construction companies and other institutional consumers is prima facie eligible for exemption under SI No 1 C of Notification No 4/2006 CE – Pre -deposit waived.

[2011-TIOL-859-CESTAT -MAD](#)

CCE, Chennai Vs M/s Tulsyan NEC Limited (Dated: March 16, 2011)

Central Excise – Valuation – Notional Freight – Dispatches to consignment agent – Freight for the period prior to 01-07-2000 from the factory to the consignment agent's premises is required to be included in the assessable value as depot/consignment agent's premises was a place of removal. For the later period notional freight need not

be included in the assessable value. Matter remanded for fresh computation of tax liability. (Para 2)

Penalty – Non-disclosure of facts – The assessee did not disclose the fact that they were collecting freight from their factory to their consignment agent's premises. Assessee liable to penalty. (Para 2)

[2011-TIOL-858-CESTAT -BANG](#)

M/s Vinayak Steels Ltd Vs CCE, Hyderabad (Dated: January 4, 2011)

Central Excise – When Revenue has not filed any appeal against order of original authority dropping demand relating to irregular credit, Appellate Commissioner's order deciding issue related to irregular credit erroneous – Consequently invoking provisions of Rule 14 of CENVAT Credit Rules for demanding interest not justified – Impugned order set aside

[2011-TIOL-853-CESTAT -BANG](#)

M/s Sri Raja Corporation Vs CCE, & CC, Visakhapatnam (Dated: January 4, 2011)

Central Excise – Levy of penalty under sec. 11AC when duty paid before issue of SCN – Penalty under sec. 11AC mandatory once the conditions under proviso to sec. 11A are satisfied – No infirmity in impugned order

[2011-TIOL-852-CESTAT -MAD](#)

CCE, Chennai Vs M/s Chemplast Sanmar Ltd (Dated: February 23, 2011)

Central Excise – CENVAT Credit – Landscaping service cannot be treated as input service – Credit is not admissible – Credit on services connected with the use of JCB used for unloading the press mud and mixing the press mud with spent wash is allowed – No case for penalty.

[2011-TIOL-849-CESTAT -MAD](#)

CCE, Chennai Vs M/s Orchid Chemicals And Pharmaceuticals Ltd (Dated: March 4, 2011)

Central Excise – CENVAT – Input Service – Outdoor Catering Service – In the case of Ultratech Cement Ltd., [[2010-TIOL-745-HC-MUM-ST](#)] it has been held that service tax borne by the ultimate customers, namely, workers, cannot be taken credit by the manufacturer. As this aspect was not raised in the earlier proceedings, matter required to be considered afresh in light of the said decision. Matter remanded. (Para

5)
2011-TIOL-846-CESTAT-MAD
CCE, Salem Vs M/s KKP Textiles Ltd (Dated: February 18, 2011)
Central Excise – Capital goods removed after use – Demand of CENVAT Credit – Limitation – The relevant date, should be reckoned from the date of clearance of the capital goods and as there was no suppression of relevant facts, show cause notice for demand of interest should have been issued within the normal period of limitation, hence the demand is barred by limitation - Respondent though paid the excise duty have not chosen to file any refund claim within the stipulated period. They are also governed by Law of Limitation – Demand of interest is time barred and order of Commissioner (Appeals) setting aside penalties upheld.
2011-TIOL-845-CESTAT-MAD
CCE, Puducherry Vs Pioneer Jellice India Pvt Ltd (Dated: March 10, 2011)
Central Excise – Classification - Di-Calcium Phosphate of animal feed grade – Heading 23.09 covers “products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and by-products of such processing”. There is no dispute that Di-Calcium Phosphate is used in animal feeding. Di-Calcium Phosphate of animal feed grade is to be classified under Chapter Heading 23099090. (Para 4)
2011-TIOL-840-CESTAT-MAD
CCE, Tirunelveli Vs M/s Samudra Biopharma Pvt Ltd (Dated: February 1, 2011)
Central Excise – Penalty under Section 11 AC – Clearance of goods without invoice – No reason to interfere with the order of Commissioner (Appeals) in setting aside penalty under Section 11 AC based on the explanation given by the respondents on the spot, which was to the effect that the invoice was being prepared from the Head Office as per the practice – However, since no valid reason has been given for not maintaining the production and clearance details in the statutory records for the period from 1.2.2004 by the respondents, penalty imposed modified as Rs 75,000/- under Rule 25.
2011-TIOL-839-CESTAT-BANG
M/s Tractors & Farm Equipment Ltd Vs CCE, Bangalore (Dated: January 4, 2011)

Central Excise – Inclusion of value of after sales service in transaction value – In the absence of proper analysis of materials on record regarding valuation of said services, matters remanded to adjudicating authority to re-determine transaction value for the entire period

[2011-TIOL-834-CESTAT-BANG](#)

Electronics Corporation Of India Ltd Vs CCE, CC & ST, Hyderabad (Dated: January 24, 2011)

Central Excise – Availment of credit on common inputs used in the manufacture of dutiable and exempted goods – In terms of retrospective amendment of Rule 6 of CENVAT Credit Rules by Finance Act, 2010, once assessee reversed actual credit with applicable interest, no further liability arises – Matter remanded to adjudicating authority for regularizing payment in terms of Finance Act, 2010

Demand of interest on irregular availment of credit on input services exclusively used in exempted goods – When the amount remained as an entry in CENVAT A/c without being utilized, interest liability does not arise – Matter remanded to original authority for verification of claim of appellant regarding non-utilization of credit

[2011-TIOL-833-CESTAT-AHM](#)

M/s Dhanraj Industries Vs CCE, Vapi (Dated: April 8, 2011)

Central Excise – Small scale exemption – Demand of duty by clubbing of clearances under Notifications 8/99 CE and 10/99 CE – The issue is no longer *res integra* and for computing first clearances which are exempted, there is no need to take clearances under other notifications into consideration.

[2011-TIOL-829-CESTAT-BANG](#)

M/s SPM Instrument India Pvt Ltd Vs CCE, Hyderabad (Dated: January 6, 2011)

Central Excise – Common inputs used in the manufacture of dutiable goods and exempted goods – Appellant reversed CENVAT Credit attributable to inputs used in manufacture of exempted goods cleared to defence services and furnished detailed workings in support thereof – If it is possible to calculate credit reversal based on actual consumption of inputs, then that should be considered as sufficient compliance of Rule 6(3A) as stipulated in CBEC Circular No. 868 dtd 09.05.2008 – Impugned order set aside and matter remanded to original authority

[2011-TIOL-828-CESTAT-BANG](#)

M/s Srivari Chemicals (P) Ltd Vs CCE, Hyderabad (Dated: January 6, 2011)

Central Excise – Default in payment of excise duty – When assessee suo motu pays defaulted duty with interest, penalty not leviable – Penalty of Rs. 1 lakh imposed under Rule 25 of Central Excise Rules, 2002 set aside

[2011-TIOL-827-CESTAT -MUM](#)

Vidyut Metallics Pvt Ltd Vs CCE, Mumbai (Dated: April 8, 2011)

Undervaluation in respect of clearances made from Unit 1 to Unit 2 – single registration applied in 2001 but granted pursuant to CESTAT order in 2008 – duty liability accepted and paid – had single registration been granted initially, clearances would have been exempt u/notfn 67/95-CE – in such a scenario, prima facie case made for grant of stay from recovery of interest: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-826-CESTAT -AHM](#)

M/s Chandan Tobacco Co Vs CCE, Vapi (Dated: April 7, 2011)

Central Excise – Demand of duty on Gutkha basing on the difference in the capacity declared to the department as per the CBEC circular and actual production - There is virtually no other evidence on record to reflect upon the fact of clandestine manufacture and clearance of Gutkha - Charges of clandestine removal being quasi-criminal and serious, charges are required to be proved by production of positive and tangible evidences - The adjudicating authority has himself held that the provisions of Section 11AC of Central Excise Act, 1944 are not attracted against the assessee - If that be so, the allegations of clandestine manufacture and removal cannot be upheld against the appellant.

[2011-TIOL-825-CESTAT -BANG](#)

M/s Hira Enterprises Vs CCE, Belgaum (Dated: May 2, 2011)

Central Excise – Allegation of clandestine manufacture and clearance of gutkha – Abstracts of RRs obtained from railways not adequate evidence to substantiate clandestine clearance of 50,000 kgs of gutkha without payment of duty – Though statements recorded from dealers were retracted after considerable lapse of time, such retracted statements of third parties not reliable to substantiate clandestine clearances of appellant in the absence of any other corroborative evidence – Expenses statement related to a short period retrieved from computer at dealer's premises though genuine, cannot reliably establish procurement of gutkha clandestinely from appellant in the absence of any corroborative evidence to validate the amounts representing as proceeds for clandestine clearance of gutkha by appellant – Confiscation of goods without issuing valid show cause notices not sustainable, set

aside – Demand of duty, imposition of equivalent penalty on appellant set aside – When clandestine manufacture and clearance of gutkha by appellant not established with proper evidence, penalties imposed on individuals who were alleged to have handled excisable goods clandestinely, liable to be set aside

[2011-TIOL-820-CESTAT-AHM](#)

CCE, Ahmedabad Vs M/s Balkrishna Textile Mills (Dated: April 6, 2011)

Central Excise – CENVAT Credit – Transitional provisions under Rule 9A of the CENVAT Credit Rules 2002 for textiles and textile articles - In view of various amendments to the provisions of Rule 9, and the period to file declarations in respect of stock on inputs being extended from time to time, there is no bar on making additional declarations by the manufacturer, who has already made declarations of the goods lying in stock as on 31.03.03 – Revenue's against the Commissioner's order allowing the credit has no merit.

[2011-TIOL-819-CESTAT-AHM](#)

M/s Indo Colchem Ltd Vs CCE, Ahmedabad (Dated: March 11, 2011)

Central Excise – Demand of interest for wrong availment of MODVAT Credit – In remand proceedings pursuant to order of Appellate Commissioner, original authority demanded interest and also imposed penalty – When first adjudicating order did not impose any penalty on assessee and no appeal was filed by Revenue to challenge the same, imposition of penalty in remand proceedings not justified – It is settled principle of law that an assessee cannot be put to a worst position than what he was in at the time of filing the appeal – Demand of interest upheld and levy of penalty set aside

[2011-TIOL-818-CESTAT-MUM](#)

M/s TTK Maersk Medical Ltd Vs CCE, Aurangabad (Dated: May 10, 2011)

Control samples are liable to Central Excise duty – since drawal of such samples not declared in RG-1 register and ER -1/RT-12 returns, plea of bona fide belief for not paying duty not sustainable – Demand not hit by limitation – appeal dismissed: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-816-CESTAT-AHM](#)

M/s Pioneer embroidery Ltd Vs CCE, Vapi (Dated: June 8, 2011)

Central Excise - Classification - when there are different test reports, the one in favour of the assessee has to be adopted: The Supreme Court has held that where in matters of classification dispute, when two opinions are possible, assessee should be given benefit of doubt and the opinion favourable to him should be given effect to. Similarly, it was held that when two views are possible, one in favour of the assessee, would guide the classification. The Tribunal, in the case of CC Trichy Vs. Transmedia (India) Ltd., has held that when there are different test reports, the one in favour of the assessee has to be adopted. It has been held that one expert opinion cannot be rejected by another unless sufficient independent reasons exist to reject the former.

[Also see analysis of the case](#)

[2011-TIOL-815-CESTAT-AHM](#)

M/s Nemlaxmi Books (India) P Ltd Vs CCE, Surat (Dated: April 11, 2011)

Central Excise – Refund of CENVAT credit under Rule 5 of the CENVAT credit rules – Two refund claims for the same quarter are not permissible under Notification No 5/2006 CE(NT) dated 14.03.2006 – Commissioner (Appeals) has rightly rejected the refund.

[2011-TIOL-809-CESTAT-MUM](#)

CCE, Mumbai Vs M/s Khandelwal Laboratories Ltd (Dated: May 11, 2011)

S. 4 of CEA, 1944 – deductions from AV – whether discounts actually passed on to buyer - Respondents have discharged their onus by filing the CA certificate certifying their claim of discount, freight and insurance – since Revenue has no evidence to controvert the same, abatements are to be allowed: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-808-CESTAT-AHM](#)

M/s Amod Stamping Pvt Ltd Vs CCE, Rajkot (Dated: February 23, 2011)

Central Excise – SEZ Unit – Import of different types of scrap under Notification No. 83/90-Cus and sent for re-cycling to other units in DTA after mutilation – Unit availed benefit of Notification No. 2/95-CE – When appellant could not produce proof of use of scrap in electric arc furnace, central excise duty demand under sec. 11A justified – Since goods were cleared under a notification after execution of bond with the knowledge of department and in respect of a considerable portion of goods, appellants furnished end use certificate, lenient view to be taken for penalty – Duty demand upheld and penalty set aside

2011-TIOL-807-CESTAT-AHM
M/s Sun Pharmaceuticals Industries Ltd Vs CCE, Vapi (Dated: March 28, 2011)
Central Ex cise – Manufacture of dutiable and exempted goods – Demand of 8% on value of exempted goods confirmed by lower authority for not maintaining separate accounts – Appeal rejected by Appellate Commissioner for non-compliance of order of pre-deposit – Gujarat High Court in Ashima Dyecot case = 2008-TIOL-659-HC-AHM-CX held that reversal of CENVAT Credit amounts to not taking any credit at all – Prima facie case in favour of assessee – Impugned order set aside and matter remanded to Appellate Commissioner to decide case on merits without insisting on any pre-deposit
2011-TIOL-806-CESTAT-MUM
Tela Equipments Pvt Ltd Vs CCE, Mumbai (Dated: April 19, 2011)
Appellants purchasing old and used industrial valves and subjecting them to processes such as machining, welding, drilling, grinding, gas cutting, assembling, painting etc., and thereafter transferring to their sister-company who affixed brand names of various other companies and disposed of the goods – Process does not amount to manufacture - Appeal allowed: CESTAT
Also see analysis of the case
2011-TIOL-805-CESTAT-MUM
Swastik Appliances Vs CCE, Mumbai (Dated: April 8, 2011)
Temporary assignment of brand name – MOU is valid for five years and after five years both the parties are at liberty to change - whether assessee eligible for SSI benefits – It is not clear from the decisions of the Supreme Court as to whether assignment was temporary or permanent – prima facie temporary assignment as in this case is not covered by the decisions of Supreme Court cited by the appellant - difficult to come to conclusion as to whether the appellant has been able to make a strong prima facie case for full waiver – Pre-deposit ordered and matter remanded: CESTAT
Also see analysis of the case
2011-TIOL-804-CESTAT-MAD
CCE, Chennai Vs M/s Orchid Healthcare (Dated: February 25, 2011)

Central Excise – CENVAT Credit on outdoor catering service – Credit is admissible to the extent of cost borne by the assessee – No credit is allowed on service tax paid on that part of the cost which is recovered from the workers.

[2011-TIOL-798-CESTAT-MUM](#)

Shri Kashinath Das Vs CCE, Mumbai (Dated: May 13, 2011)

Penalty imposed on registered dealer u/r 26 of CER, 2002 - Issue of fictitious invoices also implies taking huge amount of CENVAT credit in fraudulent manner and the same is punishable under rule 13 of the CCR, 2002 - though for imposition of penalty rule 13 has not been invoked, it is a settled law that mere mention of wrong provision of law is not sufficient to invalidate exercise of that power – Prima facie penalty imposable u/r 13 of CCR – Pre-deposit ordered of Rs.50 lakhs: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-797-CESTAT-MAD](#)

CCE, Madurai Vs Ancient Pharma (Dated: February 15, 2011)

Central Excise - Valuation – Provisions of Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 are attracted only when the goods are not sold by the assessee except to or through a person who is related in the manner specified - Duty is to be paid on the price at which the goods are sold to independent third parties as also held by the Supreme Court. (Para 2)

[2011-TIOL-796-CESTAT-MAD](#)

Noble Elasto Inc Vs CCE, Chennai (Dated: February 11, 2011)

Central Excise – Penalty under Section 11 AC – The appellants used invoices of another firm to clear excisable goods to stay in small scale exemption – Penalty equal to the duty imposed by the Commissioner (Appeals) is upheld – The assessee is given option to pay 25% penalty within 30 days from the order of the Tribunal.

[2011-TIOL-794-CESTAT-MUM](#)

CCE, Mumbai Vs M/s Bharat Electronics & Electricals (Dated: April 19, 2011)

Shunt (electrical) is correctly classifiable under CETH 9030 of the CETA, 1985 and not under CETH 8533.00 as resistor - Unit of measurement of shunts is ampere/millivolt while the unit of measurement of resistors is Ohms: CESTAT

Also see analysis of the case
2011-TIOL-793-CESTAT -MUM
CCE, Mumbai Vs M/s Vikram Ispat (Dated: February 9, 2011)
No legal basis for assuming that since the equipment has been leased out by Praxair and they operate and maintain the facility they have to be deemed as 'manufacturers' – transactions are on principal to principal basis - in the absence of any evidence indicating that the transactions were not at arms length and there was additional consideration flowing, valuation cannot be doubted – Revenue appeal rejected: CESTAT
Also see analysis of the case
2011-TIOL-786-CESTAT -MUM
CCE, Aurangabad Vs M/s Garware Marine Industries Ltd (Dated: April 26, 2011)
PVC Fishing float is not a 'Floating Structure' classifiable under heading 89.07 but is correctly classifiable under SH 39.26 of CETA, 1985 – Revenue appeal dismissed: CESTAT.
Also see analysis of the case
2011-TIOL-785-CESTAT -BANG
Ms Aurobindo Pharma Ltd Vs CCE, Visakhapatnam (Dated: December 21, 2010)
Central Excise – CENVAT Credit on inputs exclusively used in manufacture of bulk drugs viz., lamivudine, zidovudine and nevirapine exempted under Notification No. 6/02-CE dtd 01.03.2002 – Explanation III to Rule 6(3) of CENVAT Credit Rules which clarifies that credit shall not be allowed on inputs and input services used exclusively for the manufacture of exempted goods or provision of exempted services, clarificatory in nature and has retrospective effect
Demand for recovery of CENVAT Credit on inputs exclusively used in manufacture of exempted final products – No justification to collect 10% of the sale price of exempted goods manufactured using exclusive inputs as there is no legal sanction for such recovery – Sub-rules (1) to (4) of Rule 6 of CCR not applicable in case of inputs relating to excisable goods removed without payment of duty either to a 100% EOU or cleared for export under bond – Demand of credit involved in balance inputs and inputs contained in finished stock of exempted goods premature as they were not cleared from factory premises and any demand shall be subject to provisions of Rule 6(6) of CENVAT Credit Rules – Impugned order also not sustainable to the extent it

confirms demand of CENVAT credit relating to inputs used in the manufacture of exempted excisable goods which were exported or were cleared to 100% EOU without payment of duty

Interest and Penalty – Demand of interest remanded for fresh consideration by adjudicating authority after verifying facts and applying Rule 6(1) read with Rule 14 of CCR – Penalty not sustainable when dispute involves interpretation of provisions of statute

[2011-TIOL-783-CESTAT-MUM](#)

M/s ECO Valley Farms & Foods Ltd Vs CCE, Pune (Dated: May 31, 2011)

Central Excise – EOU - Fresh Mushrooms cleared to DTA - classifiable under Central Excise Tariff sub-heading 0709.1500 and chargeable to duty of Central Excise under proviso to Section 3(1) of the Central Excise Act: The requirement under Section 2(d) of the Central Excise Act is that the description of the goods should be available under First or Second Schedule of the Tariff and not actual levy of duty; Agricultural products had been subjected to Excise Duty and examples are coffee, tobacco, etc. in the past; just because the goods listed in the schedule attract nil rate of duty, it cannot be said that they become non-excisable. Therefore, the question of proviso going beyond the main section does not arise; a legal fiction was created for charging excise duties on the goods manufactured and cleared in India from EOU as if they were imported from outside India for the limited purpose of calculating an amount equivalent to the duties of Customs on such goods appropriate. Fiction must be given its due play and there has to be no half-way stop; there is absolutely no legal provision anywhere for any deemed de-bonding.

[Also see analysis of the case](#)

[2011-TIOL-781-CESTAT-MUM](#)

M/s Flat Products Equipments India Limited Vs CCE, Belapur (Dated: March 17, 2011)

It is the avowed policy of the government to promote exports by relieving the burden of taxes on the product exported and also on the products consumed in the manufacture of the goods exported – rules, whether they be CENVAT Credit Rules or Central Excise Rules have to be read harmoniously to give effect to this objective – Appellant entitled to take credit on bought out items cleared for export along with machinery: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-780-CESTAT-MAD](#)

CCE, Salem Vs M/s ITC Ltd (Dated: February 22, 2011)

Central Excise – CENVAT Credit – Credit on services like road levelling, JCB and manpower supply for cleaning swimming pool, yard, trench work, draining work, waste yard levelling is admissible as the said services have nexus to manufacture of excisable goods - The department has not adduced any evidence to contradict the factual findings of the Commissioner (Appeals) – Revenue appeal has no merit.

[2011-TIOL-775-CESTAT-BANG](#)

Capital Technologies Ltd Vs CCE & ST, Tirupati (Dated: May 3, 2011)

Central Excise – Classification – edible grade coconut oil repacked in smaller sachets – not dutiable: It is undisputed that the appellants herein is repacking the goods of brand "New Nihar Naturals" declared to be edible grade coconut oil received from HLL into small retail packets. Tribunal that after consideration of the submission, had come to the conclusion that the post amendment to Central Excise Tariff Act i.e. from 28.02.2005, the products which are identical to the products in hand were classifiable under Chapter 15 of the Central Excise Tariff Act. There is clear indication that the goods are of edible grade coconut oil. It is also noted that the assessee has always represented to the market, the product as an edible grade coconut oil and not as a hair care oil. It is also to be noted that Revenue has not produced any contrary evidence that the products are not represented to market as edible grade coconut oil. Revenue did not refute the fact of marketing of the said product as edible grade coconut oil by adducing any contrary evidence.

[Also see analysis of the case](#)

[2011-TIOL-774-CESTAT-MAD](#)

M/s Rosavar Steels Ltd Vs CCE, Coimbatore (Dated: February 4, 2011)

Central Excise – CENVAT Credit on capital goods – Credit on MS Plates, Sheets, Channels and HR Sheets falling under Chapter Heading 7208 and 7216 - The term capital goods has to construed strictly as per the definition and the impugned items falling under Chapter 72 having not been used for fabrication of machinery falling under the main part of the definition of capital goods cannot be treated as capital goods – Denial of credit upheld – However, penalty set aside considering the nature of dispute.

[2011-TIOL-773-CESTAT-MAD](#)

Rajan Tex Vs CCE, Salem (Dated: February 11, 2011)

Central Excise – Clearance of goods without payment of duty under the invoice of fictitious unit – Penalty – Penalty under Section 11 AC is upheld – Assessee given option to pay 25% of the penalty within 30 days of the CESTAT order in view of Delhi High Court order in case of KP Pouches (P) Ltd.

2011-TIOL-770-CESTAT-AHM
M/s Sunshine Overseas (100% EOU) Vs CC & CCE, Rajkot (Dated: March 17, 2011)
Central Excise – 100% EOU – Allegation of complicity in diversion of duty free materials to local market resulting in imposition of penalties under sec. 112(b) of Customs Act, 1962 and Rule 26 of Central Excise Rules, 2002 – When re-warehousing certificates are issued by jurisdictional central excise officials certifying receipt of duty free materials, benefit of doubt to be extended to recipient units viz., appellants – Relying upon statements of alleged principal evader (supplier of goods under ARE3s) to arrive at a finding of non-receipt of goods by appellants, who are co-noticees, without any corroborative evidence, neither justified nor warranted – Levy of penalties set aside
Also see analysis of the case
2011-TIOL-769-CESTAT-MAD
CCE, Chennai Vs M/s Viki Industries (P) Ltd (Dated: February 18, 2011)
Central Excise – CENVAT Credit – Credit availed on GTA service based on TR 6 Challans - When the recipients are required to pay service tax as a deemed service provider, the document used by the service recipient for paying service tax, namely, TR-6 challans should be allowed to be treated as documents covered by Rule 9(1)(e) of the CENVAT Credit Rules, 2004 – Credit is admissible.
2011-TIOL-768-CESTAT-BANG
M/s Kennametal India Ltd Vs CCE, Bangalore (Dated: April 1, 2011)
Central Excise – CENVAT Credit – Wrong availment of entire amount of duty paid by EOU as CENVAT Credit – Demand of interest in accordance with legal position as held by Apex Court in <i>Ind-Swift Laboratories</i> = 2011-TIOL-21-SC-CX – No material evidence to conclude that assessee availed credit with intention to evade excise duty, equal amount of penalty levied not justified – Matter remanded for fresh consideration by Appellate Commissioner
CENVAT Credit – Availment of CENVAT Credit of inadmissible service tax – Demand of interest in accordance with legal position as held by Apex Court in <i>Ind-Swift Laboratories</i> = 2011-TIOL-21-SC-CX – Penalty of Rs. 2000/- imposed under Rule 15(1) justified
2011-TIOL-760-CESTAT-DEL

Sub-Divisional Officer, Coil Fabrication Division Punjab State Electricity Board Vs CCE, Jalandhar (Dated: February 21, 2011)

Central Excise – Valuation of HT/LT coils under proviso to Rule 9 read with Rules 8 and 11 of Valuation Rules – Evidence placed on record regarding marketability of products by lower authority unchallenged by assessee – Pre-deposit of Rs. 18 lakhs ordered

[2011-TIOL-759-CESTAT-MAD](#)

M/s Devi Pesticides Pvt Ltd Vs CCE, Madurai (Dated: March 3, 2011)

Central Excise – Fortnightly payment of duty – Forfeiture of – Utilisation of CENVAT credit - The assessee is entitled to utilize credit for payment of duty upon forfeiture of facility of payment of duty on fortnightly basis prior to 01.06.06, when statutory provisions were amended so as to bar utilization of cenvat credit for payment of duty in such a situation. (Para 2)

[2011-TIOL-757-CESTAT-BANG](#)

M/s Advance Surfactants India Ltd Vs CCE, Mangalore (Dated: March 30, 2011)

Central Excise - Valuation - Jobwork - Jobworked goods consumed by principal manufacturer and not sold - Rules 10A (i) or (ii) or Rule 8 of the Valuation Rules not applicable - cost of raw materials plus processing charges and profit to be assessable value : it is undisputed that LABSA is manufactured by job worker and cleared to HUL for further consumption and the said LABSA is the intermediate product required by HUL which is manufactured or produced by the appellant as a job worker. The key words in Rule 8 that needs to be interpreted are 'consumption by an assessee or on his behalf for applying the said Rule for arriving at valuation or determination of goods. In the case in hand, it is very clear and not disputed that the appellant is not consuming the said LABSA nor is it consumed on his behalf by HUL . The provisions of Rule 8 will not get attracted in this case. By elimination of Rule 2 to 10 as they may not apply in a situation like in this case provisions of Rule 11 will apply and Revenue has to take the recourse to provisions of Rule 11 which talks about using reasonable means consistent with the principles and general provisions of these rules read with sub-section (1) of section 4 of Central Excise Act. 1944. Keeping this in mind, the ratio laid down by the Hon'ble Supreme Court in the case of Ujagar Prints and followed by various other decisions of this Tribunal and accepted by Revenue in their various Circulars will squarely apply i.e. to ascertain the assessable value on the cost of materials plus processing charges. The appellants have been correctly valuating their products by adopting this method.

[Also see analysis of the case](#)

[2011-TIOL-756-CESTAT-MUM](#)

S Narendra Kumar & Co Vs CCE, Mumbai (Dated: March 29, 2011)

Everest Badam Pista Mix merits classification under heading No.2107.91 or 2108.99 of the CETA, 1985, as the case may be, prior to 28/02/2005 and with effect from 28/02/2005 under heading No.2008.1990 - Appeal disposed of.

[2011-TIOL-755-CESTAT-MUM](#)

Rungta Sizing Works & Process Vs CCE, Thane (Dated: April 1, 2011)

Appellants have declared their availment of CENVAT credit in the year 2003 itself but the departmental officers did not take any action and SCN was issued on 22/03/2007 alleging suppression of facts – SCN not sustainable as the appellants have not suppressed any facts from the department – order set aside with consequential relief.

[2011-TIOL-752-CESTAT-MUM](#)

Vishwa Electronics (I) Ltd Vs CCE, Aurangabad (Dated: April 8, 2011)

Appellant not giving any reason for their absence when their case was listed for hearing for the fourth time – principles of natural justice not violated in view of section 35C(1A) of CEA, 1944 – ex-parte order passed proper in law – Application for restoration of appeal dismissed since devoid of merits: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-751-CESTAT-MAD](#)

M/s Appalo Threads Vs CCE, Coimbatore (Dated: January 25, 2011)

Central Excise – SSI Exemption – Clubbing of clearances – Factory premises – Assessee has not shown any evidence to prove that the previous occupant of the factory moved out of the factory along with all the machinery and he moved into a vacant factory premises with his own machinery. Even otherwise, the requirement under the SSI exemption notification is that the value of clearances of the specified goods from any one factory premises are required to be aggregated even if the clearances are made by or on behalf of more than one manufacturer. (Para 5)

[2011-TIOL-750-CESTAT-MAD](#)

M/s Easunreyrolle Ltd Vs CCE, Chennai (Dated: February 23, 2011)

Central Excise – Valuation - Component integral part of machinery – Sub-station monitoring system cannot function independent of control cables - Duty has rightly been paid by the assesseees by including the value of the control cables in the

transaction value and refund of duty paid on control cables is not admissible. (Para 2)

[2011-TIOL-745-CESTAT-MUM](#)

Jabil Circuit India P Ltd Vs CCE, Pune (Dated: February 18, 2011)

Valuation – appellant procures the components for set top boxes from the approved vendor lists and the payments for such procured components are done by the appellant himself – whether valuation to be done under rule 10A of Valuation Rules, 2000 – No prima facie case – Pre-deposit ordered of Rs.1 Crore: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-744-CESTAT-MUM](#)

CCE, Aurangabad Vs Yeshwant Industries (Dated: January 19, 2011)

When the audit party has not taken any objection for non-inclusion of the amortized cost of the moulds and dies in the assessable value by the respondents, allegation of suppression does not survive – Revenue appeal rejected: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-739-CESTAT-MUM](#)

Vandana Dyeing P Ltd Vs CCE, Mumbai (Dated: July 28, 2010)

CESTAT recommends disciplinary action against adjudicating authority – contemptuous approach on the part of the Commissioner – on remand, he had no business to observe that he was in full agreement with the reasoning given by his predecessor – earlier order is not in existence in the eyes of law once it was set aside by the Tribunal – Matter remanded for expeditious disposal: CESTAT.

[Also see analysis of the case](#)

[2011-TIOL-738-CESTAT-MAD](#)

M/s Automotive Ancillary Services (P) Ltd Vs CCE, Chennai (Dated: March 15, 2011)

Central Excise – CENVAT – Debit notes – Prescribed documents – The debit note on which CENVAT credit was taken shows the quantity of goods and the description of goods are reflected in the monthly returns. Matter remanded to the original authority for examination of monthly returns to correlate with the goods on which credit has been taken. (Para 2)

[2011-TIOL-736-CESTAT -MUM](#)

Finolex Cables Ltd Vs CCE, Pune (Dated: March 29, 2011)

Subsequent change in prices effected by the appellant at the depot does not affect the assessable value already determined and on which duty liability has been discharged - If that is allowed, the very object and purpose of Rule 7 of the Central Excise Valuation Rules will be totally defeated – rejection of refund claim proper: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-735-CESTAT -MAD](#)

Sundaram Industries Ltd Vs CCE, Madurai (Dated: February 28, 2011)

Central Excise – CENVAT Credit on inputs used in manufacture of dutiable and exempted goods – The impugned order was passed following the ratio of Bombay High Court order in case of Nicholas Piramal (India) Ltd – However, since the law has been amended retrospectively by Finance Act, 2010, matter remanded for fresh decision.

[2011-TIOL-734-CESTAT -MAD](#)

Thilagarathinam Match Works Vs CCE, Tirunelveli (Dated: February 14, 2011)

Central Excise – Penalty - Clearance of goods on duplicate invoices without payment of duty - Merely because the duty involved stands paid before issue of SCN, provisions of Section 11AC cannot be given a go-by – Penalty under Section 11 AC upheld – Prayer for extending cum -duty benefit is also not acceptable in as much as the appellants in the duplicate invoices have clearly indicated the value of excisable goods and the duty element involved separately.

[2011-TIOL-731-CESTAT -MUM](#)

Automotive Metal Stampings Pvt Ltd Vs CCE, Pune (Dated: April 11, 2011)

Appellant reversing CENVAT credit under protest on instruction by C.Ex officers – SCN not issued even after five years – appellant taking re -credit – Demand confirmed along with equivalent penalty and interest on ground that such suo motu credit is not permissible and correct course is to file a refund claim – Duty demand upheld along with interest – penalty set aside - appellant to reverse credit with interest and file refund claim and department to honour the same within one month: CESTAT

[Also see analysis of the case](#)

[2011 -TIOL-730-CESTAT -MAD](#)

CCE, Madurai Vs M/s Craze (India) Pvt Ltd (Dated: February 22, 2011)

Central Excise – Refund - Power of remand of Commissioner (Appeals) – Subsequent to the amendment to Section 35A(3), the 'power of remand' no longer vests in the Commissioner (Appeals). However, to verify the concentration of sugar content in the product the matter is remitted to the adjudicating authority. (Para 2)

[2011-TIOL-729-CESTAT-MAD](#)

M/s Geethanjaly Mills Ltd Vs CCE, Tirunelveli (Dated: February 18, 2011)

Central Excise – Penalty – Duty and interest paid before issue of show cause notice– Assessee paid duty along with interest before issue of show cause notice. Penalty equal to duty imposed under Section 11AC. Assessee not given an option to pay concessional penalty in terms of proviso to Section 11AC. HELD – Assessee is given option to pay 25% of penalty imposed under Section 11AC within 30 days of receipt of this order. (Para 5)

[2011-TIOL-726-CESTAT-MAD](#)

CCE, Salem Vs ARK Enterprises (Dated: February 24, 2011)

Central Excise – Refund - Power of remand of Commissioner (Appeals) – Commissioner (Appeals) has remanded the matter to the original authority to peruse the documents evidencing proof of dispatch of goods to the exporters and sanction refund accordingly. Notwithstanding the amendment to Section 35A (3) of the Central Excise Act, 1944, wherein the Commissioner (Appeals) had no power of remand, verification of documents by the adjudicating authority is required; hence matter is remitted to the adjudicating authority. (Para 2)

[2011-TIOL-725-CESTAT-MAD](#)

CCE, Pondicherry Vs M/s Aqua Pet Industries (Dated: March 2, 2011)

Central Excise – CENVAT – Inputs received from 100% EOU – Quantum of credit – To determine the quantum of credit available on inputs received from 100% EOU, the method laid down by the Larger Bench in Vikram Ispat case - [\(2002-TIOL-32-CESTAT - DEL-LB\)](#) to be adopted – matter remanded. (Para 2)

[2011-TIOL-721-CESTAT-MUM](#)

M/s Tata Motors Ltd Vs CCE, Pune (Dated: March 17, 2011)

Rule 7(4) of CER, 2002 - In the case of provisional assessment no interest is payable on finalization of the assessment if the differential duty has been paid before the finalization of assessment: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-720-CESTAT-MAD](#)

Roots Multiclean Ltd Vs CCE, Coimbatore (Dated: March 2, 2011)

Central Excise – Valuation – Goods sold through depots and also sold at the factory gate to the independent buyers – Demand of duty on goods cleared to depots by invoking rule 8 of the valuation rules is not correct – Assessable value to be determined under rule 4 based on the value of the goods sold to independent buyers at the factory gate – Matter remanded.

Limitation - Even though all the demands are on similar issue, the amounts are different relating to different consignments and the invoices and sales details of the same were not furnished by the appellants to the department - Mere filing of RT 12 returns showing consolidated figures for the entire month was not adequate to enable the department to ascertain the state of affairs as the invoices have not been submitted along with the RT 12 returns – Invoking extended period upheld.

[2011-TIOL-716-CESTAT-MUM](#)

Rajendra Mechanical Industries Ltd Vs CCE, Thane (Dated: March 31, 2011)

Notfn. 10/97-CE - certificates issued by competent authority do not show under which category the impugned goods fall, whether they are scientific and technical instruments, apparatus, equipments or accessories and spare parts of the goods or consumables - adjudicating authority has rightly denied exemption – however, since end-use certificates have now been produced by appellant matter remanded for examination: CESTAT

Also see analysis of the case
2011-TIOL-713-CESTAT -MUM
The Supreme Industries Ltd Vs CCE, Pondicherry (Dated: April 5, 2011)
Rocker Chairs of plastics used by children is rightly classifiable under heading 94.01 as non-wooden furniture and not as toys under heading 95.03 of the Central Excise Tariff Act: CESTAT
Also see analysis of the case
2011-TIOL-708-CESTAT -MUM
CCE, Mumbai Vs M/s Collins & Co (Dated: April 19, 2011)
Adjudicating authority incorrectly granting the benefit of section 11C notification to intermediate goods viz. gold potassium cyanide arising during manufacture of imitation jewellery – however, after passage of O-in-O another section 11C notification issued covering impugned goods – although order is wrong, it need not be set aside since the error only is in mentioning the wrong notification number and no purpose would be served by remanding the matter for a fresh order: CESTAT
Also see analysis of the case
2011-TIOL-707-CESTAT -MAD
CCE, Salem Vs M/s ITC Ltd (Dated: March 4, 2011)
Central Excise – CENVAT Credit on outdoor catering service– Matter remanded in view of Bombay High Court decision in case of Ultratech Cements Ltd.
2011-TIOL-706-CESTAT -MAD
CCE, Trichy Vs M/s Rane Brake Lining Ltd (Dated: February 2, 2011)
Central Excise – CENVAT Credit on capital goods – Credit is admissible on EPS Panels falling under Chapter sub-heading 94060099 as they are to be treated as components and accessories of cold storage plant falling under Chapter 84 - There is no restriction that “components, spares and accessories” referred to in sub-item (iii) should fall under any particular chapter – Rule 2(a) of CENVAT Credit Rules 2004 – Revenue

appeal has no merit.

[2011-TIOL-704-CESTAT-MUM](#)

Narhari Engineering Works Vs CCE, Thane (Dated: April 1, 2011)

Electrical motors cleared under notification 64/95-CE – allegation is that the said goods cannot be considered as spares/consumables – it is an admitted fact that the electrical motors had been used by Indian Navy on board a naval ship – Prima facie exemption available – Pre -deposit waived and Stay granted: CESTAT

[Also see analysis of the case](#)

[2011-TIOL-703-CESTAT-MAD](#)

CCE, Salem Vs Bannari Amman Sugars Ltd (Dated: March 8, 2011)

Central Excise – Classification – Electric fan (Industrial) – Explanatory Notes to Heading 84.14 clearly states that fans may or may not be fitted with integral motors. Therefore, electric fan with no electric motor attached is to be classified under Chapter 8414.40 and not as parts of electric fans under Chapter 8414.99 as contended by Revenue. (Para 3)

[2011-TIOL-702-CESTAT-MAD](#)

CCE, Salem Vs Bannari Amman Sugars Ltd (Dated: February 24, 2011)

Central Excise – Removal of Capital goods - Payment of duty on depreciated value – Duty is required to be paid on the depreciated value of used capital goods and not the duty paid originally at the time of purchase of the capital goods on their removal after years of use. (Para 2)

[2011-TIOL-697-CESTAT-MUM](#)

CCE, Mumbai Vs Sunbeam Appliances (Dated: March 22, 2011)

'Panel for Air-conditioners' supplied to Research Institutions registered with the Department of Scientific and Industrial Research are entitled for exemption under notification no. 10/97-CE – Revenue appeal rejected: CESTAT

[Also see analysis of the case](#)

2011-TIOL-696-CESTAT-MAD
M/s Reshmi Industries India Pvt Ltd Vs CCE, Coimbatore (Dated: January 4, 2011)
Central Excise – CENVAT – Income Tax depreciation – Reversed Credit voluntarily – Penalty – Assessee has voluntarily reversed the credit availed when it was pointed out that simultaneous benefit of CENVAT credit and income tax depreciation were not permissible under the Central Excise law. No malafide intention to suppress any facts with intent to evade payment of duty. Penalty set aside. (Para 4)
2011-TIOL-695-CESTAT-MAD
M/s Komatsu India (P) Ltd Vs CCE, Chennai (Dated: February 7, 2011)
Central Excise – CENVAT Credit on trolleys – The order Commissioner is silent on the penalty imposed by the original authority - Matter remanded for fresh consideration of admissibility of credit on trolleys, demand invoking extended period and other connected issues like imposition of penalties.
2011-TIOL-689-CESTAT-MUM
CCE, Nagpur Vs M/s Ispat Industries Ltd (Dated: February 28, 2011)
Variation in weight of material shown on invoice and on physical verification - variation within tolerance limits as prescribed under SWAM Act and can be ignored - Unless the invoices are found to be wrong or diversion of inputs received under invoice is proved, there is no provision to deny CENVAT credit – there is also nothing on record to prove that respondent actually recovered any "proportionate amount" by way of deduction from transporter's bill on account of loss of material by theft - Revenue appeal dismissed: CESTAT
Also see analysis of the case
2011-TIOL-688-CESTAT-MUM
M/s Preciforge & Gears Vs CCE, Pune (Dated: March 25, 2011)
It is settled law that Commissioner (Appeals) does not have jurisdiction to condone any delay of appeal filed beyond the condonable period of delay of 30 days - Allowing SLP in case of Raja Mechanical Co. does not mean that the challenge against the High Court's decision succeeded – no stay order produced – appeal dismissed.

2011-TIOL-687-CESTAT-MUM
The National Leather Cloth MFG Co Vs CCE, Mumbai (Dated: April 5, 2011)
Appellant purchased polyester cotton yarn on which AED(T & TA) was paid – leather cloth manufactured out of such manufactured fabrics cleared on payment of AED (GSI) by payment in PLA – appellant seeking recast of RG23A Pt. II - appellants are entitled to adjust unutilised credit of AED (T&TA) towards the AED (GSI) – decision in M/s Vinyl Royal Plasticoates P. Ltd., relying on decision in Gauri Plastics P. Ltd. 2006-TIOL-1121-CESTAT-MUM-LB followed - appeal allowed with consequential relief.
2011-TIOL-684-CESTAT-MUM
Blue Star Ltd Vs CCE, Thane (Dated: March 7, 2011)
In terms of the provisions of law envisaged under section 114 of the Evidence Act, read with section 21 of General Clauses Act, 1897 it is to be presumed that the postal authorities had delivered the letter to the addressee before the hearing date – the law in granting the benefit to the SEZ developers was introduced with effect from 31.12.2008 and not prior to that - no prima facie case on merits also - Application for recall of order dismissed
Also see analysis of the case
2011-TIOL-683-CESTAT-MAD
CCE, Pondicherry Vs M/s Paulsons Ltd (Dated: January 25, 2011)
Central Excise – SSI Exemption - Valuation – Freight & Handling Charges - Assesseees have suppressed the collection of extra amount towards freight and handling charges. In the show-cause notice, abatement granted was towards freight and handling charges for sale of cement at the rate of Rs 500/- PMT and Rs 100/- PMT respectively - It is too late for the Revenue to submit that this should be read as charges per load instead of per MT towards freight and handling charges - Assessee within SSI exemption limit. Demand not sustainable. (Para 2)
2011-TIOL-680-CESTAT-MUM
CCE, Mumbai Vs Electrolux Kelvinator India Ltd (Dated: April 6, 2011)
After sales service charges for four years being optional not includible for valuation while determining MRP under Section 4A of Central Excise Act, 1944: CESTAT

Also see analysis of the case
2011-TIOL-679-CESTAT -MUM
M/s Pyramid Filters Pvt Ltd Vs CCE, Pune (Dated: March 25, 2011)
CENVAT credit on two services viz. 'Photography Service' and 'Outward Transit insurance Service'- any service connected with the business of the assessee would qualify to be 'input service' under Rule 2(1) of the CENVAT Credit Rules 2004 – Pre-deposit waived and stay ordered – HC decisions in Coca Cola India Pvt. Ltd. Vs. Commissioner of C. Ex., Pune-III (2009-TIOL-449-HC-MUM-ST) and Commissioner of C. Ex., Nagpur Vs. Ultratech Cement Ltd. (2010-TIOL-745-HC-MUM-ST) relied upon.
2011-TIOL-675-CESTAT -MAD
M/s Binny Ltd Vs CCE, Chennai (Dated: January 6, 2011)
Central Excise – Exemption notification – Boilers in CKD/SKD condition – 37B order – Board's Order No. 4/92 dated 19.5.92 issued under Section 37B of the Central Excise Act, 1944 allows exemption to boilers cleared in CKD and SKD conditions subject to evidence being produced that the goods cleared form part of the complete device and that the said goods are designed for converting agricultural and municipal waste for producing energy though conventional fuel can be used. Assessee required to produce necessary evidence that both the conditions of the order are met. Matter remanded. (Para 4)
2011-TIOL-674-CESTAT -MAD
CCE, Chennai Vs Premier Mills Ltd (Dated: March 8, 2011)
Central Excise – CENVAT – Input – Job-worker – Partially Oriented Yarn POY purchased by the assessee and sent directly to the job worker who cleared the twisted yarn at 'Nil' rate of duty - The benefit of input credit on POY is admissible to the principal manufacturer who uses the twisted yarn for further manufacture of finished fabrics . (Para 2)
2011-TIOL-673-CESTAT -MUM
Sandoz Pvt Ltd Vs CCE, Belapur (Dated: April 7, 2011)
Conversion from DTA unit to a 100% EOU – reversal of Cenvat Credit – issue no longer res integra – Appellant entitled to carry forward Cenvat credit in view of decision in Sun Pharmaceuticals Industries : CESTAT

[Also see analysis of the case](#)

[2011-TIOL-672-CESTAT -MAD](#)

Sharp Tools Vs CCE, Coimbatore (Dated: February 1, 2011)

Central Excise – SSI Unit – Fortnightly payment of duty – Delayed payment - Interest – As per Rule 173G (1) (a), every manufacturer, other than a manufacturer who is availing exemption under a notification based on value of clearances in a financial year, is liable to pay duty in respect of clearances of excisable goods on fortnightly basis. Assessee being a SSI unit is not liable to pay duty on fortnightly basis. Demand of interest and penalty set aside. (Para 2)

[2011-TIOL-671-CESTAT -MAD](#)

CCE, Madurai Vs M/s GGN Spinning Mills P Ltd (Dated: January 18, 2011)

Central Excise – CENVAT – Capital goods transferred to sister unit – Claim of Depreciation - Revenue neutrality - The assessee removed capital goods on which CENVAT credit was availed to their sister unit. Duty was paid on depreciated value applying depreciation at the rate of 25% as provided under the Income Tax Act. Assessee claims grounds of revenue neutrality. HELD - Depreciation as admissible under the Income Tax law not allowed. Depreciation for customs and excise purposes has to be calculated as per straight line method applying a lower prescribed percentage fixed for subsequent years as per CBEC Circular F. No. 314/19/94-FTT dated 21.4.1998. Plea of revenue neutrality is not valid as the sister concern is only allowed to take credit of 50% of the duty in the first year and not the credit of the entire amount of duty immediately as per CENVAT Credit Rules. Matter remanded to re-calculate duty liability allowing depreciation as admissible. (Para 4 & 5)