

CESTAT RULING
2010-TIOL-1154-CESTAT-DEL-LB
M/s Amit Sales Vs CCE, Jaipur (Dated: July 1, 2010)
<p>CESTAT – Reference to Larger Bench - merely because the referral Bench found prima facie that the decisions taken by the earlier Bench could not be relied upon, that itself cannot be a ground for referring the matter to the Larger Bench: Once the referral Bench had arrived at the finding that none of the decisions which were sought to be relied upon discloses the reasons for arriving at the conclusion, arrived at in those decisions, it was open to the Division Bench to decide the matter by considering the merits of the case and the law applicable to the facts of the case. In the absence of any law having been laid down in any of those decisions, the referral Bench was free to take the correct view in the matter in accordance with the provisions of law.</p> <p>We have elaborately dealt with the issue in the decision delivered yesterday i.e. 30.06.2010 in Excise Appeal No. 217 of 2007 in the matter of <i>Steel Authority of India Ltd. vs CCE, Raipur</i> - 2010-TIOL-1155-CESTAT-DEL-LB</p>
2010-TIOL-1146-CESTAT-MAD
M/s Rane Trw Steering Systems Pvt Ltd Vs CCE, Trichy (Dated: April 26, 2010)
<p>Service tax paid on house keeping and garden maintenance service are input service - definition of 'input service' is wide enough to take in the services in question as they can certainly put the activities relating to the business - Tribunal decision in ISMT Ltd. Vs. CCE, Aurangabad 2010-TIOL-27-CESTAT-MUM following decision in Millipore India Ltd. Vs. CCE, Bangalore 2009-TIOL-490-CESTAT-BANG , relied upon – Order set aside and appeal allowed.</p>
2010-TIOL-1145-CESTAT-DEL
Lajpat Rai Jindal Vs CST, Delhi (Dated: July 14, 2010)
<p>Factual scenario suggests that the appellant is a small tax payer, who came forward to discharge its tax liability with interest, as soon as that was pointed out and also conceived by the assessee – case does not appear to be one of malafide - no show cause notice should have been issued, in terms of section 73(3) of the Finance Act, 1994 – case does not fall u/s 78 of FA, 1994 for imposition of penalty – Penalty set aside and appeal allowed.</p>
2010-TIOL-1142-CESTAT-MAD
M/s Virgo Properties Pvt Limited Vs CST, Chennai (Dated: May 3 2010)

Service Tax – Construction of residential flats – The ownership of the property remained with the appellants till the construction – Matter remanded for fresh decision in view of the CBEC Circular No 108/2/2009-ST dated 29.01.2009.

[2010-TIOL-1140-CESTAT-MAD](#)

M/s TVS Interconnect System Ltd Vs CCE & ST, Madurai (Dated: April 12, 2010)

Service Tax – Dismissal of the appeal by the Commissioner (Appeals) for non-compliance with the pre-deposit – Commissioner (Appeals) ought to have considered the prayer of the assessee for modification of the stay order and proceed to decide the appeal – appeal allowed by way of remand.

[2010-TIOL-1138-CESTAT-BANG](#)

M/s Foods, Fats And Fertilisers Limited Vs CC, CCE & ST, Guntur (Dated: June 11, 2010)

Service Tax – Payment made in pursuance of an audit objection cannot be held as payment of service tax – An erroneous payment made in excess of requisite due should be refunded and such refund claim not subject to any time limitation prescribed in law – Impugned orders rejecting refund claim set aside

[2010-TIOL-1136-CESTAT-AHM](#)

M/s Preeti Courier Vs CST, Ahmedabad (Dated: July 22, 2010)

Service Tax – Courier Service – Allegation of receipt of money from courier company for provision of services – When assessee has opted for amnesty scheme, *prima facie* no case to contest levy of service tax – Since no financial difficulty pleaded, pre-deposit of Rs. 10,000/- ordered

[2010-TIOL-1134-CESTAT-AHM](#)

M/s B A Research India Ltd Vs CST, Ahmedabad (Dated: May 17, 2010)

Service Tax – Export of Technical and Testing Analysis Service – Export benefit denied on the ground that testing and analysis were conducted entirely in India and no part of service was performed outside India – When reports of testing and analysis are delivered to clients outside India, it amounts to part performance of service outside India satisfying condition of Rule 3(1)(ii) of Export of Service Rules, 2005 – Impugned order set aside

[2010-TIOL-1132-CESTAT-AHM](#)

CST, Ahmedabad Vs Shilpa Constructions Pvt Ltd (Dated: June 24, 2010)

Service Tax – Construction of Driveway in Petrol Pump – The value of construction of road is to be included in the value of the service only when there is no segregation between the construction of commercial complex and construction of the road - If the contract recognizes the two activities as separate activities, even though the construction of the road is in connection with the commercial complex, the benefit has to be allowed.

[Also see analysis of the Order](#)

[2010-TIOL-1131-CESTAT-BANG](#)

M/s IFB Industries Ltd Vs CCE, Bangalore (Dated: May 26, 2010)

Service Tax – Service tax paid on catering services used in canteen eligible as CENVAT Credit – Impugned order denying credit incorrect, liable to be set aside

[2010-TIOL-1130-CESTAT-MAD](#)

CCE, Pondicherry Vs M/s Atlanta (Dated: May 7, 2010)

Service Tax – Valuation – Consulting Engineer's Service – No reason to interfere with the order of the lower authority confirming the tax liability on amount collected towards soil testing services and excluding the cost of construction of building – No merit in revenue's appeal.

[2010-TIOL-1124-CESTAT-AHM](#)

M/s LDP Charitable Trust Vs CST, Ahmedabad (Dated: July 22, 2010)

Service Tax – Mandap Keeper Service – Service tax demand on payment received by charitable trust from a contractor engaged in providing space in trust's premises for marriage, social, religious functions – Trust also engaged in providing rooms on rent to different persons – *Prima facie* case for full waiver of pre-deposit

[2010-TIOL-1123-CESTAT-BANG](#)

M/s Bonanza Speed Couriers Pvt Ltd Vs CC & CCE, Cochin (Dated: November 24, 2009)

Service Tax – Courier Service/Franchise Service – Assessee providing courier service appointed franchises but not paid service tax on franchise service – Revenue has not rebutted claim of assessee that conditions of franchise agreements regarding payment of franchise fees amongst others were not enforced – Assessee cannot be held as franchiser, not liable to pay service tax under Franchise service – Impugned order liable to be set aside

[2010-TIOL-1122-CESTAT-MUM](#)

M/s Ador Fontech Limited Vs CCE, Napur (Dated: June 14, 2010)

Prime condition for benefit of Notification 12/2003-ST is that the value of such goods/materials used in the course of job-work to the service recipient should be separately disclosed in the relevant invoice - work-sheets showing the value of goods/materials, which were claimed to have been attached to the invoices not furnished before Bench - condition apparently not fulfilled by the appellant and, therefore, the benefit of the notification is prima facie inadmissible – Demand hit by limitation as Audit conducted - Pre-deposit ordered: CESTAT

[Also see analysis of the Order](#)

[2010-TIOL-1116-CESTAT-BANG](#)

Director, Centre For Development Of Imaging Technology Vs CCE, Thiruvananthapuram (Dated: April 12, 2010)

Service Tax – Manufacture and supply of hologram labels – Whether activities undertaken by assessee without using laser device would amount to rendering of photography service and whether excise duty and service tax could be levied on same activity or a portion of the activity not considered by lower authority – Matter remanded for *de novo* consideration

[2010-TIOL-1113-CESTAT-AHM](#)

M/s Vijay Travels Vs CST, Ahmedabad (Dated: June 3, 2010)

Service Tax – Rent-A-Cab Operator service – The appellants did not give the vehicle itself to the client to operate under their ownership and management - The client is not making payments to the appellant for any stipulated number of vehicles but the payments were being made for operating trips to various places – The said activity is not taxable under Rent-A-Cab operator service.

Limitation – Subsequent show cause notice invoking larger period of limitation - There is no positive suppression or mis-statement in the part of the assessee so as to invoke the longer period of limitation – demand barred by limitation.

[2010-TIOL-1108-CESTAT-DEL](#)

M/s Sudarshan Security Services Vs CCE, Jaipur (Dated: June 17, 2010)

Service Tax – Penalty under both Sections 76 and 78 – Considering the constitution of the appellants and the extent of business turnover, penalty under Section 76 set aside.

[2010-TIOL-1107-CESTAT-BANG](#)

CCE, Guntur Vs M/s CCL Products (I) Ltd (Dated: July 2, 2010)

CENVAT Credit on ST paid on cargo handling services, maintenance of Xerox machines, container inspection services – Department's Appeal Dismissed: The Tribunal vide Final Orders No.216 -220/2009 dated 20th March 2009 as reported at [[2009-TIOL-656-CESTAT-BANG](#)] has rejected the department's appeals. Since the appeal filed by the revenue against the earlier order has been rejected and that also in the assessee's own case, no merits in the appeal filed by the revenue. Hence, the appeal is rejected.

[2010-TIOL-1105-CESTAT-MUM](#)

Pudumjee Industries Ltd Vs CCE, Pune (Dated: July 12, 2010)

Cenvat Credit on Outdoor Catering service – in view of contrary decisions in GTC Industries Ltd. ([2008-TIOL-1634-CESTAT-MUM-LB](#)) and Sundaram Brake Linings Ltd. ([2010-TIOL-863-CESTAT-MAD](#)) , fit case to grant waiver of pre -deposit.

[2010-TIOL-1104-CESTAT-BANG](#)

CCE, Hyderabad Vs M/s Cygnus Microsystems Pvt Ltd (Dated: March 9, 2010)

Service Tax – Eligibility of CENVAT Credit on input services and demand thereof with interest – When Revenue had not challenged the order of Appellate Commissioner which set aside the impugned demand on limitation, appeal devoid of merits liable to be set aside

[2010-TIOL-1103-CESTAT-AHM](#)

Shri Sunil L Parmar Vs CST, Ahmedabad (Dated: June 18, 2010)

Service Tax – Rent-A-Cab Service – The appellants were collecting charges on per Kilometer basis - Wherever the services are provided based upon the length of

journey and payments are made on per kilometer basis, the same can not be held to be covered under the definition of rent-a-cab service.

[2010-TIOL-1096-CESTAT-BANG](#)

M/s Mspl Ltd-Eou Unit II Vs CCE, Belgaum (Dated: April 8, 2010)

Service Tax – Appeal not filed within time before lower appellate authority to be condoned only against sufficient cause as per Section 85(3) of Finance Act, 1994 – No infirmity in order passed by lower authority in rejecting appeal

[2010-TIOL-1095-CESTAT-BANG](#)

M/s The Director Department Of Mines & Geology Vs CCE, Bangalore (Dated: April 29, 2010)

Service Tax – Appeal not filed within time before lower appellate authority to be condoned only against sufficient cause as per Section 85(3) of Finance Act, 1994 – No infirmity in order passed by lower authority in rejecting appeal

[2010-TIOL-1090-CESTAT-BANG](#)

CCE, Mysore Vs M/s Powercell Battery India Ltd (Dated: March 10, 2010)

Service Tax – GTA Service – Excess payment of Service Tax and ECess by a service recipient allowed to be adjusted in subsequent months in terms of Rule 6(3) of Service Tax Rules, 1994 – No infirmity in Appellate Commissioner's order

[2010-TIOL-1089-CESTAT-DEL](#)

CCE , Allahabad Vs M/s Ankur Udyog Ltd (Dated: May 11, 2010)

Central Excise – CENVAT Credit – Payment of service tax on GTA service as recipient of service through CENVAT account – The dispute stands settled in favour of the respondents – no merit in appeal by the revenue.

[2010-TIOL-1087-CESTAT-BANG](#)

M/s Surabhi Colour Lab, Chalakkudy (Kerala) Vs CCE, Calicut (Dated: December 30, 2009)

Service Tax – Eligibility of benefit Notification no. 12/2003-ST for appellant rendering photography service – Basing on Apex Court’s remand directions to verify whether assessee had maintained record of inputs used in photography, verification was caused and it was found that appellants maintained records of inputs – Benefit of exemption Notification 12/2003-ST not deniable – Imposition of penalty set aside

[2010-TIOL-1085-CESTAT-BANG](#)

M/s United Telecom Ltd Vs CCE, Bangalore (Dated: May 13, 2010)

Service Tax – Eligibility of service tax paid by share broker/sub-broker as CENVAT credit – Appellate Commissioner decided the issue going beyond the scope of allegations made in show cause notice – Matter remanded for de novo consideration

[2010-TIOL-1081-CESTAT-BANG](#)

M/s Sri Sarvaraya Sugars Ltd Vs CCE, Visakhapatnam (Dated: May 25, 2010)

Service Tax – Eligibility of credit of service tax paid on telephone services no longer res integra , credit allowed – Appellate Commissioner having taken diagonally opposite views on eligibility of credit on maintenance & repair of coolers/refrigerators, matter remanded for de novo consideration of this limited issue

[2010-TIOL-1080-CESTAT-BANG](#)

M/s Syndicate Bank Vs CCE, Mangalore (Dated: May 6, 2010)

Service Tax – Management Consultant’s Service/Business Auxiliary Service – Levy of service tax on Cash management service under BAS not sustainable – Managing day to day foreign exchange business for clients located outside India by appointing personnel not liable to service tax under Management Consultants service – Demand of service tax with interest and imposition of penalty set aside

Banking & Other Financial Services – Re-conciliation statements produced before Tribunal to justify that miscellaneous income did not accrue due to provision of BOFS services – Since statements were not produced before lower authorities, matter remanded for de novo consideration

[2010-TIOL-1077-CESTAT-BANG](#)

M/s Besi Infra-Projects Ltd Vs CCE, Cochin (Dated: April 12, 2010)

Service Tax – Appellants claim of service tax having discharged by main contractor to be verified on remand – No opinion on merits of case

2010-TIOL-1076-CESTAT-BANG
M/s Karnataka State Warehousing Corporation Vs CST, Bangalore (Dated: March 29, 2010)
Service Tax – Storage and warehousing services/cargo handling services – Storing and distribution of fertilizers by KSWC and charging consideration for such activity not being a statutory duty, service tax liable to be paid – Board Circular dated 18.12.2006 not applicable – Arranging loading and unloading of fertilizers through contractors and charging a mark up of 15% from clients over and above the price charged by contractors, service tax liable to be paid under cargo handling service – Appellant being registered with department and departmental officers having visited premises at different times, service tax demand invoking extended period of limitation not sustainable – Matter remanded to original authority to examine eligibility of input credit and determine tax liability afresh
2010-TIOL-1073-CESTAT-MAD
BSNL Vs CCE, Coimbatore (Dated: May 10, 2010)
Service Tax – Stay/Dispensation of pre-deposit – Telephones run by village panchayat cannot be prima facie considered as departmentally run public telephones – No prima facie case has been made out for waiver of pre-deposit.
2010-TIOL-1072-CESTAT-MAD
M/s Morvi Exports Vs CCE, Trichy (Dated: May 21, 2010)
Service Tax – Penalty – Burden to prove that the assessee was guilty of suppression lies on the revenue – As burden has not been discharged, penalty under Section 76 & 78 set aside.
2010-TIOL-1069-CESTAT-MAD
LTU, Chennai Vs M/s Chemplast Sanmar Ltd (Dated: January 28, 2010)
Service Tax – CENVAT Credit on rent-a-cab service is admissible.
2010-TIOL-1068-CESTAT-MAD

M/s Polyspin Ltd Vs CCE, Tirunelveli (Dated: May 28, 2010)

Service Tax – CENVAT Credit of Service Tax paid Under Section 66A – Credit denied on the ground not mentioned in the SCN – order travelled beyond the scope of SCN – not sustainable.

[2010-TIOL-1065-CESTAT-MAD](#)

M/s Kumaravel Packers And Movers Vs CCE, Madurai (Dated: January 28, 2010)

Service Tax – Cargo handling service - proprietary firm cannot be said to be an individual undertaking the activity of loading and unloading of cargo in individual capacity and hence covered under cargo handling service – demand upheld only for normal period as the show cause notice did not invoke proviso to Section 73(1)(a).

[2010-TIOL-1061-CESTAT-MAD](#)

M/s Subramanyasiva Cooperative Sugar Mills Ltd Vs CCE, Salem (Dated: May 14, 2010)

Service Tax – GTA Service – Service provided by individual Truck owners – Matter covered by CESTAT order in Kanaka Durga Agro Oil Products case – Matter remanded to verify if the transporters were only individuals.

[2010-TIOL-1057-CESTAT-MAD](#)

M/s I P Rings Limited Vs CCE, Chennai (Dated: January 4, 2010)

Service Tax – Import of services – Service tax is leviable only with effect from 18.4.2006 with insertion of Section 66A in view of Supreme Court upholding the decision of High Court in case of Indian National Ship Owners Association in [2009-TIOL-129-SC](#).

[2010-TIOL-1051-CESTAT-MAD](#)

CCE, Pondicherry Vs M/s Bharat Sanchar Nigam Ltd (Dated: May 12, 2010)

Service Tax – Adjustment of excess service tax paid in one month against short payment in another month – Since the respondents file half yearly returns and are required to be assessed at the end of six month period, no infirmity in the order of lower appellate authority allowing such adjustment.

[2010-TIOL-1050-CESTAT-AHM](#)

M/s C Raja & Co Vs CCE, Surat (Dated: May 17, 2010)

Activity of handling, loading, unloading and labour arrangements etc. does not fall under category of port services – Prima facie case – unconditional stay granted – SC decision in Velji P. & Sons (Agencies) P. Ltd. [[2008-TIOL-68-SC-ST](#)] relied upon.

[2010-TIOL-1045-CESTAT-BANG](#)

M/s ABC Engineering Works Vs CCE, Guntur (Dated: May 10, 2010)

Service Tax – Eligibility of credit on excavators used in open cast coal mines – Excavators purchased prior to 16.06.2005 when services not exigible, credit not available – CENVAT Credit eligibility is to be determined with reference to exigibility of services on the date of receipt of capital goods – Since issue involves interpretation of Rules, penalties set aside

[2010-TIOL-1044-CESTAT-MAD](#)

Shri A Suthanther Assumtha Vs CST, Chennai (Dated: March 8, 2010)

Service Tax – Stay/Dispensation of Pre-deposit – Tour Operator service - prima facie case for waiver has been made out liability to service tax arises only if the contract carriage fulfils the requirement of tourist vehicle under Motor Vehicles Rules – Pre-deposit waived.

[2010-TIOL-1043-CESTAT-BANG](#)

M/s Cochin International Airport Ltd Vs CST, Cochin (Dated: April 1, 2010)

Service Tax – Airport Service – Royalty charges for space, advertising, garbage disposal, income from entry charges, not liable to service tax:

Royalty Charges from Air India for ground handling: - Air India has been given exclusive contract to perform ground handling services including passengers handling, ramp handling and cargo flight handling including loading of cargo etc. Air India has paid service tax - royalty charges collected by appellants from M/s Air India can be construed as an amount for lease or rental charges for functioning in the appellant's area.

Licence fee charged by the appellant on advertising, cargo agency, car parking, space, shops, restaurant/snack bar, telephone operator, vending machines, catering services facilitation counter cannot be considered as the charges which have been collected by the appellant from other service providers for services rendered definitely

with the airport services.

Garbage disposal : the said garbage disposal is collection of garbage like waste material, discarded items scrap from the Air Port premises. Though there is no agreement provided for this, the explanation given by the appellant in the grounds of appeal indicate that these are nothing but sale of garbage from the Air Port premises. Even this activity would not be liable to service tax.

Income from entry ticket charges and income from issue of commercial passes; these charges are charged by the appellant for restricting the entry to public in to the Air Port. The said income is not in respect of any services rendered by the appellant as an Air Port Authority. This amount collected and shown as income could not be construed as services rendered and liable to service tax.

Service Tax liability on the income from guest room , courtesy coach parking and surcharge on prepaid taxi - these activities would definitely be covered as services which are being rendered by the appellant.

[Also see analysis of the Order](#)

[2010-TIOL-1042-CESTAT-MAD](#)

M/s I tema Spinning India Ltd Vs CCE, Coimbatore (Dated: February 16, 2010)

Service Tax – Penalty – Show cause notice ought not to have been issued as the Service Tax amounts have been paid together with interest by the assessee prior to the issue of Show Cause Notice – penalties set aside - Section 73 (3)/Section 73(2A) of the Finance Act, 1994.

[2010-TIOL-1038-CESTAT-AHM](#)

CCE, Vapi Vs Guardian Plasticote Ltd (Dated: May 7, 2010)

Service Tax – Revenue files appeal in ST7 against a manufacturer taking CENVAT Credit – Appeal should have been filed under Central Excise Act – Non Existent Commissioner in the Committee of Commissioners – Appeal not maintainable: In view of the fact that appeal has been filed in form meant for service tax appeal and in respect of a manufacturer who had availed Cenvat credit and it should have been filed under Central Excise Act and during the relevant time there was no Commissionerate at Valsad at all, the appeal becomes not maintainable under the law and accordingly the same is rejected.

[Also see analysis of the Order](#)

[2010-TIOL-1037-CESTAT-AHM](#)

CCE, Rajkot Vs Shelpan Exports (Dated: May 14, 2010)

Service Tax – BAS – Export of Service – Receipt in foreign Currency – No requirement prior to 16.6.2005; payment received from Indian exporter who has received in foreign exchange – sufficient compliance: the condition of receipt in convertible foreign currency is not applicable for the period prior to 16-6-05: payment received by them through Indian exporting manufacturer who had in turn received consideration for goods exported in foreign currency has to be treated as receipt in foreign currency only.

[2010-TIOL-1034-CESTAT-MUM](#)

Shubhyan Motors Pvt Ltd Vs CCE, Pune (Dated: June 10, 2010)

Automobile dealer providing table space in his premises to lending institutions/banks to set up financial assistance counters cannot be called promoting and marketing the business of the bank/lending institution so as to be charged to Service Tax under BAS – Demand set aside with consequential relief

[Also see analysis of the Order](#)

[2010-TIOL-1033-CESTAT-BANG](#)

M/s IBM India Pvt Ltd Vs CCE, Bangalore (Dated: May 19, 2010)

Service Tax – IT Infrastructure – Whether IT Service or Management Consultancy - contentious and an arguable – Pre-deposit of Rs. 10 Crores: services may fall under anyone category i.e. Information Technology Services or Management Consultancy Services. The issue is highly contentious. At the same time, reading the definition of Management Consultancy Services, mere implementation of the information technology services would not get covered under the category of management consultancy services, as has been held in the appellant's own case wherein issue regarding the implementation of ERP programme was argued. It is also seen from the records that the officers of the appellant had given a statement indicating that the services provided by the appellant in terms of contracts covered may also cover the element of consultancy. All in all, the entire issue is a contentious and an arguable one. Considering the fact that in appellant's own case regarding implementation of ERP programme, this bench has taken a view that those services would fall under Information Technology Services and also reading the definitions of Management Consultancy Services, and all the evidences need to be appreciated in depth, which can be done only at the time of final hearing, the appellant has not made out a prima facie case for the complete waiver of the amount of service tax adjudged and confirmed by the adjudicating authority. In view of this finding, appellant directed to pre-deposit an amount of Rs 10,00,00,000/-

[2010-TIOL-1029-CESTAT-BANG](#)

M/s Hindustan Coca Cola Beverages Pvt Ltd Vs CCE, Hyderabad (Dated: April 7, 2010)

Service Tax – Service tax paid on vehicles maintenance, transportation, installation and maintenance of coolers, marketing and publicity services etc available as CENVAT Credit – Services availed with regard to 'shifting of household employees' not an input service, credit not available – Impugned order upheld

[2010-TIOL-1027-CESTAT-AHM](#)

M/s Maheshwari Bajaj Vs CCE, Rajkot (Dated: June 30, 2010)

Service Tax – Limitation – When Board itself admitted there was doubt – no extended period of limitation

[2010-TIOL-1021-CESTAT-BANG](#)

CCE, Visakhapatnam Vs M/s Gold Star Alloys (India) Ltd (Dated: May 14, 2010)

Service Tax – Service tax paid on health insurance coverage for employees eligible as CENVAT Credit – No merit in Revenue appeal

[2010-TIOL-1020-CESTAT-KOL](#)

M/s Balasore Alloys Ltd Vs CCE, & CST, BBSR-I (Dated: May 24, 2010)

In view of the fact that demand is confirmed under Central Excise Act & CENVAT Credit Rules there is no merit in the contention of Appellant that the provisions of s. 85 of the Finance Act, 1994 come into play and the delay upto 3 months in filing appeal can be condoned by Commissioner(A) - Appeal filed in ST-4 form of no consequence - Stay petition and appeal dismissed

[Also see analysis of the Order](#)

[2010-TIOL-1019-CESTAT-DEL](#)

M/s Excel Consultancy Vs CCE, Bhopal (Dated: May 10, 2010)

Merely because bills have been received by the appellant and the said bills have been reflected in the books of accounts, the service tax is not payable unless the amount is realized – Penalty to be reduced proportionately – Appeal disposed of.

2010-TIOL-1015-CESTAT-MUM
CCE, Raigad Vs Indian Oiltanking Ltd (Dated: January 14, 2010)
Service tax can be levied on the service portion involved in the execution of a works contract only after 1/6/2007 and not prior to 1/6/2007 – Apex Court's dismissal of departmental SLP in Daelim case is upon appreciation of the merits of the Tribunal's decision and hence is a binding precedent – Revenue appeal rejected: CESTAT by a majority.
Also see analysis of the Order
2010-TIOL-1014-CESTAT-BANG
M/s Durferrit Asea Pvt Ltd Vs CCE, Guntur (Dated: April 23, 2010)
Service Tax – Claim of refund of service tax credits accumulated on bills raised in the name of head office not registered as input service distributor – When assessee does not have more than one manufacturing unit, no compulsion under Rule 7 of CENVAT Credit Rules to get registered as input service distributor – Impugned order denying refund set aside
2010-TIOL-1007-CESTAT-MAD
M/s Suganthi Travels Vs CCE, Trichy (Dated: May 21, 2010)
Service Tax - Penalty – Rent – a - cab – operator service – Non-payment of Service Tax in respect of services rendered to NHAI – Oral instructions of NHAI cannot be a ground to hold that the appellants were under bonafide belief and cannot be held guilty of intention to evade payment – Penalty under Section 78 upheld – Tax liability to be recomputed by extending the benefit Under Notification 9/2004 Service Tax.
2010-TIOL-1006-CESTAT-MAD
Tidel Park Ltd Vs CST, Chennai (Dated: February 15, 2010)
Service tax – CENVAT Credit - Taxable and Exempted Services – Not exclusively for exempted services – full credit allowed: entitled to the whole of the credit of the service tax paid on taxable service is specified in 17 specified categories covered by Rule 6(5) as such service is not used exclusively in or in relation to the providing of exempted services. Rule 6(5) is a non-obstante clause and therefore completely widens the restriction contained in Rule 6(3)(c).

[2010-TIOL-1003-CESTAT-MUM](#)

Bharti Tele-Ventures Ltd Vs CCE, Pune (Dated: July 26, 2010)

Service Tax – Towers and pre-fabricated buildings – prima facie not capital goods or inputs – pre-deposit ordered: The principles laid down by the Larger Bench in Vandana Global Ltd . case is that Cenvat Credit on the capital goods is necessarily intended to be provided in respect of movable goods. Prima facie, neither the tower nor the pre-fabricated building have the characteristic of movability to grant Cenvat Credit.

Stay orders are not precedence – They can be varied or vacated. Every bench hearing a matter on the facts and circumstances of each case should have right to grant the interim order on such terms as it considers fit and proper and if it had granted interim order at one stage, it should have right to vary or alter such interim orders following the ratio down by Apex Court in para 53 of the judgement in Empire Industries Ltd.

[Also see analysis of the Order](#)

[2010-TIOL-1002-CESTAT-DEL](#)

CCE, Panchkula Vs M/s Lekh Raj Narinder Kumar (Dated: May 10, 2010)

Respondent submitting that he had acted on wrong advice of Consultant – veracity of such statement ought to have been examined by Commissioner(A) before granting them the benefit of section 80 of Finance Act, 1994 and waiving penalties - Section 80 of the Finance Act, 1994 has two elements to be satisfied before grant of relief - there should be cause to invoke that section and the cause should be reasonable one – Commr(A) passing a cryptic order – Matter remanded.

[2010-TIOL-999-CESTAT-AHM](#)

Shri M S Pannu Vs CCE, Ahmedabad (Dated: May 24, 2010)

Appellant is a registered service tax provider under the category of Security Agency and Housekeeping-cleaning services - keeping in view the fact that appellant is providing services to the International Organizations, which fact is accepted by the lower authorities and was entitled to the exemption 16/2002-ST, which stand denied in some cases only on the ground that certificates showing providing of services to the International Organization have not been produced – penalty set aside.

[2010-TIOL-995-CESTAT -BANG](#)

Elgi Rubber Products Ltd Vs Commissioner of Customs, Central Excise & Service Tax, Cochin (Dated: February 26, 2010)

Service Tax – Scientific and Technical Consultancy Service – Receipt of technical know-how from non-resident company not having any office in India for manufacture of final products during April 2002 to September 2004 – Activity appropriately classifiable under Intellectual Property Service w.e.f. 10.09.2004 and tax not payable on such services by recipient prior to 01.01.2005 (prior to 18.04.2006 as per judgment in INSA = [2008-TIOL-633-HC-MUM-ST](#) case) – Demand and penalties classifying service received as Scientific and Technical Consultancy Service not sustainable in law

[2010-TIOL-991-CESTAT-MUM](#)

Pune District Security Guards Board Vs CCE, Pune I (Dated: June 21, 2010)

Pune District Security Guards Board constituted under the Maharashtra Private Security Guards (Regulation of Employment & Welfare) Act, 1981 is prima facie not coming within the definition of 'security agency' inasmuch as it does not appear to be a commercial concern – Stay granted

[Also see analysis of the Order](#)

[2010-TIOL-990-CESTAT -BANG](#)

M/s Syndicate Bank Vs CCE, Mangalore (Dated: May 6, 2010)

Service Tax – Management Consultant's Service/Business Auxiliary Service – Levy of service tax on Cash management service under BAS not sustainable – Managing day to day foreign exchange business for clients located outside India by appointing personnel not liable to service tax under Management Consultants service – Demand of service tax with interest and imposition of penalty set aside

Banking & Other Financial Services – Re-conciliation statements produced before Tribunal to justify that miscellaneous income did not accrue due to provision of BOFS services – Since statements were not produced before lower authorities, matter remanded for de novo consideration

[2010-TIOL-988-CESTAT-MUM](#)

CC, CCE & ST Vs M/s Sunflag Iron & Steel Co Ltd (Dated: May 26, 2010)

Refund of Service Tax – Notfn. 41/2007-ST – bill raised by service provider indicated that service tax was paid by another service provider – when the fact remains that the assessee had borne the service tax, refund cannot be denied

[Also see analysis of the Order](#)

[2010-TIOL-987-CESTAT -BANG](#)

M/s Besi Infra-Projects Ltd Vs CCE, Cochin (Dated: April 12, 2010)

Service Tax – Appellants claim of service tax having discharged by main contractor to be verified on remand – No opinion on merits of case

[2010-TIOL-983-CESTAT -MUM](#)

M/s Kirloskar Oil Engines Ltd Vs CCE, Aurangabad (Dated: June 17, 2010)

Cenvat Credit on 'Garden Maintenance Service' is available under CCR, 2004 – Revenue's request for constituting a Larger Bench is totally irrelevant and unacceptable as the contrary judgments referred to are the ones pertaining to the same appeals of the assessee and which orders have been remanded by the High Court: CESTAT

[Also see analysis of the Order](#)

[2010-TIOL-982-CESTAT -BANG](#)

M/s Chakiat Agencies Pvt Ltd Vs CCE, Cochin (Dated: March 10, 2010)

Service Tax – Steamer Agents Service – Commission received by shipping agents from their principals located abroad, for sale of space in cargo vessels to shippers, liable to service tax – Entire amount of Rs. 6.23 lakhs service tax ordered as pre-deposit – As there is no malafide in the conduct of appellant, waiver of penalty under s. 78 warranted

[2010-TIOL-979-CESTAT -MAD](#)

M/s MGM International Exports Ltd Vs CCE (ST), Chennai (Dated: February 16, 2010)

Service Tax – Refund claim rejected on the ground of limitation – The CESTAT is governed by the statutory provisions under the Central Excise Act, 1944 and the reliance placed by the appellant on the order of High Court in exercising jurisdiction under Article 226 is misplaced.

[2010-TIOL-973-CESTAT -MAD](#)

Ford India Private Ltd Vs CCE, Chennai (Dated: March 8, 2010)

Service Tax – Export of Service Rules – Plea that the foreign recipient did not have any commercial or industrial establishment or office in India needs to be examined by the adjudicating authority with reference to the documents – matter remanded.

[2010-TIOL-972-CESTAT -BANG](#)

M/s Glass Fibres Vs CCE, Cochin (Dated: February 26, 2010)

Service Tax – Storage and Warehousing service vis -à-vis Cargo handling service – Activities of receipt and stacking operation, loading onto trucks, rail wagons, containers, shifting news print reels, etc undertaken for client – Refund claim filed for amount paid towards service tax under the head 'cargo handling service', when client refused to reimburse service tax paid for activities classifiable under 'storage and warehousing service' – Appellate Commissioner's order classifying activities under services not proposed in SCN, not sustainable in law

[2010-TIOL-971-CESTAT -MAD](#)

M/s Sri Vijaya Coaters Vs CCE, Trichy (Dated: March 8, 2010)

Service Tax – Stay/Dispensation of Pre-deposit – Production of goods for clients and not on behalf of the clients during the period prior to 16.6.2005 – prima facie case made out for waiver of pre-deposit.

[2010-TIOL-969-CESTAT -MAD](#)

M/s Titan Industries Ltd Vs CST, Chennai (Dated: March 1, 2010)

Service Tax – Stay/Dispensation of pre-deposit – CENVAT Credit on input services – the assessee has not been able to satisfy that any of the services were received and consumed in or in relation to rendering of maintenance and repair service at their service centres – No prima facie case has been made out for waiver of pre-deposit.

[2010-TIOL-968-CESTAT -BANG](#)

IBM India Pvt Ltd Vs CCE & ST, Bangalore (Dated: February 22, 2010)

Service Tax – Maintenance & Repair Service – Liability to pay service tax on maintenance of computer software during 09.07.2004 to 06.10.2005 – As issue involves interpretation of relevant statutes, prima facie case for complete waiver of pre-deposit

[2010-TIOL-967-CESTAT -BANG](#)

M/s Asianet Satellite Communications Ltd Vs CCE, CC & ST, Thiruvananthapuram (Dated: April 1, 2010)

Service Tax – Cable Operators Service – Amounts due from debtors as on 16.08.2002 and amounts collected from debtors after 16.08.2002 for services rendered prior to this date not liable to service tax – Appellants claim regarding duplication of advance amounts for the purpose of computing tax liability needs to be verified in detail – No prima facie case for full waiver of pre-deposit – Pre-deposit of Rs. 20 lakhs ordered

[2010-TIOL-960-CESTAT -MUM](#)

UTI Technology Services Ltd Vs CCE, Mumbai (Dated: June 21, 2010)

New clause w.e.f 10.09.2004 defining 'Business Auxiliary Service' is couched in entirely different language within which the appellant squarely fell and hence started paying service tax – Prior to the amendment, Revenue has no case - Applicant as prima facie case – Pre-deposit waived and Stay granted.

[Also see analysis of the Order](#)

[2010-TIOL-959-CESTAT -MAD](#)

M/s ETA Engineering Pvt Ltd Vs CST, Chennai (Dated: March 8, 2010)

Service Tax – Stay/Dispensation of pre-deposit – Works contract service – Plea that works contract is taxable only with effect from 1.6.2007– Prima facie case made out for waiver of pre-deposit.

[2010-TIOL-955-CESTAT -MAD](#)

Trans International Freight Forwarders Pvt Ltd Vs CCE, Tirunelveli (Dated: March 24, 2010)

Service Tax – Stay/Dispensation of pre-deposit - Port Service – Whether Stevedoring Service would fall within the category of port service – Since the matter is pending before the Larger Bench, pre-deposit waived.

2010-TIOL-947-CESTAT -BANG
CCE, Guntur Vs M/s CCL Products (India) Ltd (Dated: March 19, 2010)
Service Tax – Service tax paid on insurance services, cargo handling services, AMC charges for computers etc eligible as CENVAT Credit – Appellate Commissioner decided case based on Tribunal order in assessee's own case = 2009-TIOL-656-CESTAT -BANG – Stay not granted by AP High Court for Revenue appeal against earlier CESTAT order – No infirmity in impugned order of Appellate Commissioner
2010-TIOL-946-CESTAT -MAD
M/s Nippon Enterprises South Vs CST, Chennai (Dated: March 3, 2010)
Service Tax – Stay/Dispensation of pre-deposit – Photography Service – The appellants collected service tax on the gross amount charged, but paid service tax by availing exemption under Notification 12/2003 ST dated 20.6.2003 – prima facie, provisions of Section 11 D are attracted – limitation under Section 11 A is also not attracted to the demands under Sections 11 D – Pre-deposit of entire demand of service tax ordered.
2010-TIOL-936-CESTAT -KOL
M/s LGW Ltd Vs CST, Kolkata (Dated: May 17, 2010)
Service Tax – Refund claim filed under Notification No. 41/2007-ST beyond stipulated period of sixty days for quarter ending December 2007 – Amending Notification No. 32/2008-ST providing for a period of six months to file refund claim not clarificatory and hence not retrospective – Claim filed prior to Amending Notification No. 32/08-ST to fulfil conditions as prevailing in notification at the time of filing the claim – Impugned refund claim hit by limitation, liable for rejection – No infirmity in impugned order rejecting claim
2010-TIOL-935-CESTAT -DEL
M/s Bhilai Auxiliary Industries Vs CCE, Raipur (Dated: January 6, 2010)
Service Tax – Eligibility of CENVAT Credit of service tax paid on GTA service – Matter remanded to Appellate Commissioner to decide the issue based on terms of contract between manufacturer and buyer by following ratio of P & H High Court decision in <i>Ambuja Cements</i> case 2009-TIOL-110-HC-P&H-ST – Impugned order set aside

[2010-TIOL-930-CESTAT -AHM](#)

M/s Maruti Toning Systems Vs CST, Ahmedabad (Dated: June 10, 2010)

Repeatedly late filing of returns and late deposit of tax without any plausible reason can not be held to be a bonafide act - similarly, subsequent deposits along with interest cannot be made a ground so as to set aside the entire amount of penalty imposed upon them, inasmuch as late filing of returns and late deposit of service tax itself invites payment of interest and penal action – Pre-deposit ordered of penalty.

[2010-TIOL-929-CESTAT -AHM](#)

M/s Bacha Motors (P) Ltd Vs CST, Ahmedabad (Dated: May 14, 2010)

Service Tax – Commissioner (Appeals) has powers to remand – Gujarat High Court decision in *Medico Labs* case = [2004-TIOL-39-HC-GUJ-CX](#) binding in the State of Gujarat – SC decision in *MIL India* case [2007-TIOL-30-SC-CX](#) distinguished – No reason to interfere with Appellate Commissioner's order

[2010-TIOL-924-CESTAT -DEL](#)

CST, New Delhi Vs M/s HMA Udyog Pvt Ltd (Dated: April 20, 2010)

Service Tax – Refund – Tax paid on activity which is not an advertising service, subsequently claimed as refund – Revised claim filed after correcting defects and deficiencies to be treated as filed on the date when original claim was filed – Only part of claim hit by limitation – Appellate Commissioner's order to the extent of allowing claim beyond limitation period set aside

[2010-TIOL-923-CESTAT -AHM](#)

M/s Rajvi Stock Broking Limited Vs CST, Ahmedabad (Dated: June 7, 2010)

NSE transaction charges were made to be liable to service tax with effect from May 2008 and the same cannot be held to be liable before 2008 - M/s. Anagram Capital Limited vs. Commissioner of Service Tax, Ahmedabad , [2009-TIOL-1018-CESTAT -AHM](#) relied upon – Pre -deposit dispensed with - stay petition allowed – since Commissioner(A) has dismissed appeal for non compliance of stay order without deciding case on merits, matter remanded and to be heard without insisting on pre-deposit.

[2010-TIOL-920-CESTAT -DEL](#)

M/s Shiva Builders Vs CCE, Chandigarh (Dated: May 21, 2010)

Service Tax - Passing of revision order by the jurisdictional Commissioner after passage of Order-in-Appeal by Commissioner (Appeals) – embarrassing to declare exercise of jurisdiction by one Commissioner as good and another bad – Revisionary order bad in law.

[Also see analysis of the Order](#)

[2010-TIOL-919-CESTAT-AHM](#)

M/s Aia Engineering Ltd Vs CST, Ahmedabad (Dated: May 31, 2010)

Service Tax – Charging of lesser value by sister concern in commercial invoices for goods manufactured and cleared to appellants customers – Proposal to demand service tax from appellants on differential value treating it as commission – When excise duty is discharged by sister concern on the value at which goods were sold by appellant to customer, profit made by appellant not chargeable to service tax – Pre-deposit waived and stay granted

[2010-TIOL-915-CESTAT-DEL](#)

Spice Communication Vs CCE, Chandigarh (Dated: May 21, 2010)

Cenvat Credit on capital goods – in view of LB decision in Vandana Global [[2010-TIOL-624-CESTAT-Del-LB](#)] - goods like cement and steel items used for laying 'foundation' and for building 'supporting structures' cannot be treated either as inputs for capital goods or as inputs in relation to the final products - analogous hearing of all similar cases to be conducted at the earliest – Pre-deposit ordered.

[2010-TIOL-914-CESTAT-AHM](#)

M/s Nischint Engineering Consultants Pvt Ltd Vs CCE, Ahmedabad (Dated: May 21, 2010)

Section 73 of Finance Act, 1994 provides that when an assessee pays service tax and interest due before issue of show cause notice, show cause notice shall not be issued - in view of the Board's circular F.No.137/167/2006-CX-4, dated 03.10.07 penalties cannot be sustained

[2010-TIOL-909-CESTAT-AHM](#)

M/s Docsuns Services Pvt Ltd Vs CST, Ahmedabad (Dated: June 4, 2010)

Appellant registered as a security service provider – under a bonafide belief that services rendered to government organizations like Municipal Corporation of Rajkot and GIDC etc. is not liable to service tax, no tax charged and collected – as soon as department directed them to pay tax, they immediately paid the same with interest – no profit can be said to have been made by not paying Service Tax when the fact remains that they were discharging their tax liability in respect of private individuals – penalty set aside but demand and interest upheld.

[2010-TIOL-905-CESTAT -DEL](#)

M/s Sturdy Inds Ltd Vs CCE, Chandigarh (Dated: May 24, 2010)

Service Tax – GTA Service – Mere payment of service tax by service recipient on GTA service by reverse charge mechanism does not characterise this as output service for such service recipient – *Prima facie* no case for waiver of pre-deposit irrespective of matter having been referred to Larger Bench in *Panchmahal Steel Ltd 2008-TIOL-1606-CESTAT-AHM* case – Pre-deposit of Rs. 60,000/- ordered

[2010-TIOL-904-CESTAT -BANG](#)

CCE, Visakhapatnam Vs M/s Andhra Pradesh Paper Mills Ltd (Dated: February 26, 2010)

Service Tax – Telephone service, Rent-a-cab service and Chartered Accountants service are input services – Service tax paid thereon eligible as CENVAT credit – No infirmity in impugned order of Appellate Commissioner

[2010-TIOL-900-CESTAT -MUM](#)

Vikram Ispat Vs CCE, Raigad (Dated: January 20, 2010)

Service Tax – Eligibility of CENVAT credit of service tax paid on repair & maintenance services, insurance services, surveys, technical inspection & certification services etc. availed for vessels (tugs and barges) owned by manufacturer – Definition of input service to be construed in accordance with Apex Court judgment in *Maruti Suzuki Ltd* case [2009-TIOL-94-SC-CX](#) – Nexus to be established between input services and manufacture/clearance of excisable goods by the assessee for claiming benefit of CENVAT Credit – In absence of nexus, services not to be regarded as 'input service', CENVAT credit not available – Demand upheld and penalty set aside

[2010-TIOL-899-CESTAT -AHM](#)

M/s Plus Tech Engineering Pvt Ltd Vs CCE, Surat-I (Dated: June 3, 2010)

Service Tax – Fabrication of structures at site for clients amounts to manufacture in terms of section 2(f) of Central Excise Act, service tax levy and demand not justifiable – Impugned order liable to be set aside

[2010-TIOL-894-CESTAT-AHM](#)

M/s Vinayak Auto Lines Vs CCE, Rajkot (Dated: May 20, 2010)

Service Tax – Non-payment of service tax on receipt of incentive/commission for provision of service to financial institutions like ICICI, HDFC etc – Confusion regarding leviability of service tax resolved only with issue of Board Circular dated 06.11.2006 – Appropriate case for waiver of penalty in terms of section 80 of Finance Act, 1994 – Penalty imposed under Section 78 set aside

[2010-TIOL-893-CESTAT-DEL](#)

CCE, Ludhiana Vs M/s Ramesh Studio & Color Lab (Dated: April 30, 2010)

Service Tax – Photography Service – Inclusion of an amount disclosed/surrendered to IT department into taxable value for levy of service tax – No corroborative evidence or document on record to show that amount disclosed to IT department was earned by providing taxable service, service tax demand not justified – No infirmity in impugned order