

CESTAT RULING

[2011-TIOL-1289-CESTAT-MUM](#)

Indian Oil Corporation Ltd Vs CCE, Mumbai (Dated: June 23, 2011)

Settlement of case - Immunity granted from imposition of penalty u/s 11AC by Settlement Commission – By approaching Commission the allegation of suppression etc. in the show-cause notice remained unproved – mere allegation does not prove charge - Supplementary invoices issued in respect of Excise duty of Rs.14.7 Crores are cenvattable: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1288-CESTAT-BANG](#)

CCE, Hyderabad Vs M/s Grey Gold Cements Ltd (Dated: May 6, 2011)

Central Excise – Cement cleared in bulk to State Housing Corporation whether assessable based on retail sale price – Issue no longer res integra as it was decided in assessee's favour by Tribunal in a case where appellant was one of the respondents = [2010-TIOL-1119-CESTAT-BANG](#) – Departmental Representative has not indicated if Revenue filed any appeal against Tribunal order or if order was stayed by a higher forum – No merit in Revenue appeal

[2011-TIOL-1287-CESTAT-BANG](#)

Analogic Controls India Ltd Vs CC & CE, Hyderabad (Dated: February 7, 2011)

Central Excise – Goods manufactured and supplied by units other than companies like HAL, BEL etc prima facie entitled to benefit of exemption Notification No. 63/95-CE – Conflicting decisions of Tribunal on this issue – Prima facie case for full waiver of pre-deposit

[2011-TIOL-1283-CESTAT-MUM](#)

CCE, Pune Vs M/s Chordiya Food Products Ltd (Dated: June 21, 2011)

Mango Avakai Pickles not intended for retail sale and cleared to Nestle for free distribution are correctly assessed in terms of transaction value u/s 4 of the CEA, 1944 – no cause for assessment u/s 4A of the CEA, 1944 – Revenue appeal dismissed: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1282-CESTAT-MAD](#)

M/s Chokkaiyan Karthikeyan Vs CCE, Salem (Dated: May 11, 2011)

Central Excise – Manufacture of PSCC Poles – Contractors engaged by the Electricity Board for manufacture of PSCC Poles using the steel and cement supplied by the Electricity Boards – It is not the Electricity Board, but the contractor is to be held as

manufacturer of excisable goods – Demand of duty upheld – However, penalty is set aside – The appellant would also be entitled for CENVAT Credit on steel and cement subject to verification by the lower authorities.

[2011-TIOL-1281-CESTAT-BANG](#)

CCE, Mangalore Vs M/s Bansal Woven Sacks (Dated: June 14, 2011)

Central Excise – Supply of HDPE/LDPE granules to job worker for conversion into HDPE/LDPE sacks – Demand of duty on HDPE strips emerging as intermediary products – In second round of litigation, Appellate Commissioner set aside interest and penalty levied while upholding duty demand – Plea of appellant that they were not liable to pay duty since job worker is the manufacturer, though a very strong ground in their support, rejected by Appellate Commissioner on the ground that this plea was taken by assessee for the first time in the second round of litigation before Appellate Authority – Revenue in appeal against Appellate Commissioner's order for setting aside demand of interest and penalty

Penalty and interest – Ground taken by assessee that they were only supplier of raw materials itself sufficient to hold they cannot be held for suppression or mis-declaration to evade duty – If this ground was taken initially, assessee would not have had any duty liability – SCN issued within normal period of limitation but without any specific allegation of suppression of facts or mis-declaration to justify levy of penalty under section 11AC – Though Appellate Commissioner's order did not give detailed reasons to set aside penalty, no infirmity in setting aside penalty in view of the facts and circumstances of the case – Since assessee admitted interest liability, demand of interest confirmed

[2011-TIOL-1280-CESTAT-BANG](#)

M/s Sagar Cement Ltd Vs CCE, Hyderabad (Dated: June 6, 2011)

Central Excise – Eligibility of CENVAT Credit on dumpers as capital goods – Issue not free from doubt as dumpers not covered by definition of capital goods – When lower authorities have encashed bank guarantee amounting to Rs. 1.95 crores, amount sufficient as pre-deposit – Pre-deposit of balance amounts waived and recovery thereof stayed till disposal of appeal – Departmental representative directed to submit verification report on claim of encashment of bank guarantee made by appellant

[2011-TIOL-1278-CESTAT-MUM](#)

The Bombay Dyeing & MFG Co Ltd Vs CCE, Mumbai (Dated: June 21, 2011)

Penalty under rule 26 of CER is imposable on a corporate body as in the eyes of the law it is a juristic person - as there is no quantification of duty, penalty imposable is Rs.10,000/- only - merely because seized goods have been cleared on payment of duty does not mean that redemption fine cannot be imposed: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1277-CESTAT-BANG](#)

M/s RPG Cables Ltd Vs CCE, Mysore (Dated: May 10, 2011)

Central Excise – MODVAT credit availed capital goods viz., 'diesel generating set' sold in November 2004 after continuous use – Credit availed in August 1995 whereas used capital goods sold on payment of duty on its transaction value – No infirmity in payment of duty on transaction value of used capital goods

[2011-TIOL-1276-CESTAT-MAD](#)

M/s Royal Enfield Vs CCE, Chennai (Dated: July 6, 2011)

Central Excise – Valuation – Demo Bikes sold at a price 50% lower than the price fixed for retail customers - The transaction value cannot be accepted and the value has correctly been adopted based on value of normal bikes and differential duty charged thereon – Demand of duty and interest upheld – But penalty set aside.

[2011-TIOL-1275-CESTAT-MAD](#)

Hyundai Motor India Ltd Vs CCE & ST, LTU Chennai (Dated: May 20, 2011)

Central Excise – Excess CENVAT Credit taken and reversed – Interest paid consequent to the judgement of Supreme Court in case of M/s Ind-Swift Laboratories Ltd – No case to impose penalty as the issue was debatable and reached finality only with the apex court's decision.

[2011-TIOL-1267-CESTAT-MAD](#)

CCE, Chennai Vs M/s Wipro Infrastructure Engineering Ltd (Dated: April 1, 2011)

Central Excise – 100% EOU - Education Cess on DTA sale – Once education cess is added to the customs duties to arrive at aggregate of customs duties, the question of charging education cess again does not arise. (Para 2)

[2011-TIOL-1266-CESTAT-MAD](#)

CCE, Pondicherry Vs M/s Whirlpool Of India Ltd (Dated: April 19, 2011)

Central Excise – Supply of dyes & Moulds to Job-work - CENVAT – The appellants are eligible to remove the moulds and dyes without payment of duty to the premises of job worker for the purpose of production of goods on their behalf and according to their specifications. Even though the job-workers source their own raw materials for the machine parts manufactured, they cannot be taken away from the category of job-workers. CENVAT credit available on moulds and dyes. (Para 2)

Appeal to High Court – No stay – Effect of Tribunal Order – In the absence of any stay of the Tribunal order by the High Court, Tribunal order is operative. (Para 2)

[2011-TIOL-1263-CESTAT-MUM](#)

CCE, Nagpur Vs M/s Pankaj Polymers (Dated: June 14, 2011)

Valuation - as per the purchase order the goods have been sold at the factory gate – since the assessee is clearing the goods at their factory gate the transportation cost

<p>shown separately is not includable – department has not made any case that the amount charged is in excess of the freight actually incurred - Revenue appeal dismissed: CESTAT</p>
<p>Also see analysis of the Order</p>
<p>2011-TIOL-1262-CESTAT-BANG</p>
<p>CCE, Hyderabad Vs Dr Reddy's Laboratories (Dated: June 10, 2011)</p>
<p>Central Excise – Liability to pay interest on irregular credit arises from the date of availment of credit and not from date of utilization – Impugned order set aside</p>
<p>2011-TIOL-1261-CESTAT-BANG</p>
<p>M/s Crystal Pharma Pvt Ltd Vs CCE, Belgaum (Dated: June 10, 2011)</p>
<p>Central Excise – Valuation of physician's samples to be based on ratio of Larger Bench decision in Cadila Pharmaceuticals Ltd - 2008-TIOL-1668-CESTAT-AHM-LB – Pre-deposit of Rs. 1.67 lakhs ordered – Pre-deposit of balance amounts waived and recovery stayed till disposal of appeal</p>
<p>2011-TIOL-1257-CESTAT-DEL</p>
<p>Condor Power Products Pvt Ltd Vs CCE, Delhi (Dated: May 3, 2011)</p>
<p>Central Excise – Refund of excess interest paid – Refund application under Section 11 B of the Central Excise Act, 1944 is not required for refund of excess interest paid for the period prior to 11.5.2008 – Suo Moto credit is permissible.</p>
<p>2011-TIOL-1255-CESTAT-BANG</p>
<p>M/s Aptar Beauty & Home India Ltd Vs CCE, Bangalore (Dated: January 6, 2011)</p>
<p>Central Excise – Duty paid on clearances to units in SEZ on directions of audit party, subsequently claimed as refund – Lower authority rejected refund claim and imposed penalty on the ground that goods were cleared to SEZ units under ARE-1 without execution of bond – No dispute that goods were cleared to SEZ units and re-warehousing certificates furnished to authorities – In the absence of contrary findings, amount debited through CENVAT Credit A/c cannot be considered as duty due to Government – If an amount is not payable by assessee, then it is an amount retained by Revenue which is not due to the Government – Impugned order not correct, liable to be set aside</p>
<p>2011-TIOL-1254-CESTAT-BANG</p>
<p>CCE, Bangalore Vs M/s Biocon Ltd (Dated: June 20, 2011)</p>
<p>Central Excise – Eligibility of credit on inputs when goods are supplied to a 100% EOU – Whether clearances to 100% EOU covered by provisions of Rule 6(6) of CENVAT Credit Rules – When electricity is supplied to a 100% EOU, provisions of sub-rules 1,</p>

2, 3 and 4 of Rule 6 of CCR not applicable for period to which the demand relates

Issue regarding usage of inputs in 'factory of production' – Question of whether inputs are used in factory of production not raised in show cause notice but when Appellate Commissioner considers this aspect also and decides the case, the issue has to be considered by Tribunal when assessee has not appealed against order of Appellate Commissioner – When factories are situated in the same compound, the same are to be treated as one as per Tribunal decision in Dhampur Sugar Mills Ltd = [\(2002-TIOL-476-CESTAT-DEL\)](#) – Revenues contention that credit is not admissible because final product was cleared to another factory and therefore, the condition of use of inputs within factory not fulfilled, not sustainable – Inputs have to be construed as used within factory of production

[2011-TIOL-1247-CESTAT-MAD](#)

M/s Chemplast Sanmar Ltd Vs CCE, LTU, Chennai (Dated: June 29, 2011)

Central Excise – CENVAT – Dealers Invoice – Credit indicated in the invoice is on higher sale value resulting in excess credit – The duty amount paid by M/s. CPCL to the exchequer is less than the amount indicated in the invoice issued by M/s. IOCL. Hence, the assessee is not entitled to take the entire amount as credit as the law provides credit to be taken only to the extent of duty paid. However, penalty imposed is waived as the supplier of goods is at default. (Para 5)

[2011-TIOL-1246-CESTAT-MAD](#)

M/s Chemplast Sanmar Ltd Vs CCE, LTU, Chennai (Dated: June 24, 2011)

Central Excise - Jurisdiction – LTU – The territorial Jurisdictional Assistant Commissioner does not have the jurisdiction to deal with the application of the assessee as he is functioning under LTU. The application is to be transferred to the LTU authorities. The Jurisdictional LTU authorities to pass a speaking order on the application of the assessee. Matter remanded. (Para 5)

[2011-TIOL-1238-CESTAT-MUM](#)

M/s Cipla Ltd Vs CC & CE, Pune (Dated: July 7, 2011)

Finalisation of provisional assessment resulted in supplier of inputs being entitled to claim refund – however, refund not claimed – Cenvat credit availed by consignees cannot be varied - A quantum of duty already determined by the jurisdictional officers of the supplier unit cannot be contested or challenged by the officers in charge of recipient unit: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1237-CESTAT-BANG](#)

M/s Natco Pharma Ltd Vs CC & CE, Hyderabad (Dated: May 18, 2011)

Central Excise – CENVAT Credit denied on the ground that no duty was liable to be paid by suppliers on goods received as inputs – When credit is taken on the strength of invoices issued by supplier, it satisfies requirement of Rule 3 of CENVAT Credit Rules, 2004 – Prima facie , credit not deniable – Full waiver of pre -deposit ordered

and stay granted
2011-TIOL-1236-CESTAT-MAD
M/s UCAL Fuel System Ltd Vs CCE, Chennai (Dated: April 12, 2011)
Central Excise – CENVAT – Documents do not mention nature of taxable service– The bills are towards service charges for preparing pre-shipment and post-shipment documents in respect of export items. Such services relate to preparation of export related documents and therefore the service rendered has a nexus with the business of the manufacture of the assessee's final product and is hence in the nature of business auxiliary service. The assessee is therefore entitled to avail CENVAT credit of the service tax paid under the said category of service. (Para 2)
2011-TIOL-1235-CESTAT-MUM
Technocraft Industries (India) Ltd Vs CCE, Thane (Dated: June 24, 2011)
Law does not provide for any exclusion or prohibition to carry forward accumulated Cenvat credit when a DTA unit is converted into a EOU or a EOU unit is converted into a DTA unit either in Rule 10 of the Cenvat Credit Rules or any other provisions of the said Rules – Strong prima facie case against lapsing of Cenvat Credit - Stay granted: CESTAT
Also see analysis of the Order
2011-TIOL-1234-CESTAT-BANG
Sri Shivling M Kori, Executive Director Vs CCE, Belgaum (Dated: March 15, 2011)
Central Excise – Allegation of clandestine removal of CTD bars using unaccounted raw materials – Adjudicating authority recorded findings that Managing Director, Executive Director and Administrative Officer of appellant-company admitted clandestine clearance of goods without payment of duty – Pre-deposit of Rs. 50 lakhs ordered
2011-TIOL-1230-CESTAT-MUM
CCE, Mumbai Vs Kaycee Industries Ltd (Dated: February 22, 2011)
Ownership of goods has no relevance insofar as transit insurance of goods is concerned and the delivery to the carrier at factory gate is delivery to the buyer and element of freight and transit insurance is not includable in the assessable value - Revenue appeal dismissed: CESTAT
Also see analysis of the Order
2011-TIOL-1229-CESTAT-DEL
M/s Formative Engg Pvt Ltd Vs CCE, Chandigarh (Dated: May 31, 2011)
Central Excise – CENVAT Credit – Availment of credit on invoices issued by registered

dealer with no godown or business premises and which was found to be a bogus entity and invoices issued without actual supply of goods – No infirmity in the impugned order demanding CENVAT Credit and imposing penalty.

[2011-TIOL-1228-CESTAT-DEL](#)

CCE, Meerut Vs M/s Dhampur Sugar Mills Ltd (Dated: May 3, 2011)

Central Excise - CENVAT Credit on aluminum bars used as conductors, CRSS coils, shapes & section, channel, angles, plates and SS plate etc. - Part of the Commissioner (Appeals) order, allowing credit on aluminum bars is upheld - With regard to the remaining items, matter is remanded to the Commissioner (Appeals) in the light of Larger Bench decision in case of Vandana Global Ltd.

[2011-TIOL-1227-CESTAT-AHM](#)

M/s Daman Ganga Board Mills Pvt Limited Vs CCE, Daman (Dated: June 24, 2011)

Central Excise - Valuation - Clearances to sister concern - Where a part of the production is being transferred to another plant of the same assessee and balance production sold to independent buyers, the goods transferred to other unit of the same assessee, will not be assessed in terms of Rule 8 of the Valuation Rules i.e. at 115% cost of the manufactured goods. Also, there is no allegation that the value adopted by the assessee for transfer of the goods to their sister unit is less than the value at which the goods were being sold by them to other independent buyers. Appeal allowed. (Para 5)

Revenue Neutrality - Duty paid by the assessee is availed as credit by their sister unit. If the assessee paid higher duty, their sister unit would avail the higher credit, in which case, the entire exercise would be Revenue neutral. (Para 6)

[2011-TIOL-1223-CESTAT-MUM](#)

Hyva (India) Pvt Ltd Vs CCE, Mumbai (Dated: August 1, 2011)

Rule 10A of Valuation Rules, 2000 – fabricating bodies on duty paid chassis – whether applicants are liable to pay duty on the price at which the vehicles are sold by Tata Motors – Pre-deposit ordered of Rs.50 lakhs: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1222-CESTAT-BANG](#)

M/s Hezen Pharmaceuticals Ltd Vs CCE, Hyderabad (Dated: June 4, 2011)

Central Excise – Manufacture of goods bearing brand name of another person by claiming benefit of Notification No. 8/03-CE on the ground that factory located in 'rural area' – Revenue village 'Bollaram' having been notified under HUDA as 'urban area', excluded from the purview of definition of 'rural area' defined in explanation (h) to Notification No. 8/2003-CE – Pre-deposit of entire amount ordered

[2011-TIOL-1221-CESTAT-BANG](#)

M/s K J V Alloys Conductors Pvt Ltd Vs CCE, Hyderabad (Dated: June 24, 2011)

Central Excise – Refund claim of excess duty paid on account of downward revision of price of final products – Lower authority sanctioned refund holding that there was no unjust enrichment, based on verification of bank statement and correspondence between assessee and buyer – Appellate Authority set aside refund order of original authority on the ground that there was no provisional assessment – Whether assessment provisional or not is not at all relevant when a refund claim has been filed within time limit – Even if the assessment is final, one has to examine refund claim – Tribunal decision in Premier Explosives Ltd = ([2008-TIOL-783-CESTAT-BANG](#)) followed – Appellant eligible for refund claim – Impugned order set aside

[2011-TIOL-1220-CESTAT-BANG](#)

Madhavi Edible Oils Pvt Ltd Vs CCE, Visakhapatnam (Dated: January 31, 2011)

Central Excise – Waste viz., fatty acid, wax and gums arising in the course of manufacture of rice bran oil eligible for benefit of Notification No. 89/95-CE – Tribunal order in Shree Siddhi Vinayaka Agro Extractions (P) Ltd = [2010-TIOL-183-CESTAT-BANG](#) followed – Prima facie case for full waiver of pre-deposit

[2011-TIOL-1211-CESTAT-DEL](#)

M/s Hind Spinners Vs CCE, Bhopal (Dated: April 27, 2011)

Central Excise - Export - Refund of Credit of ADE(T&TA) - the entire indirect taxation system is framed with an objective of not exporting the taxes levied in India to outside India. : There is no clear provision in law defining what is the given period to which the claim relates in the facts and circumstances of the case. Considering this position it is ordered that the period starting from one year prior to 1998 till 9.7.2004, the date of abolition of ADE(T&TA) may be taken as the period. This is because the general principle for applying for refund is to submit application within one year from relevant date. The credit in question available in 1998 could have related to exports one year prior to that date. By the same logic, it is reasonable to take the period as one year preceding 9.7.2004, the date of abolition of AED (T &TA)

[2011-TIOL-1210-CESTAT-BANG](#)

M/s Coromandel Fertilizers Ltd Vs CC & CE, Visakhapatnam (Dated: February 3, 2011)

Central Excise – Refund – ‘Sulphur bentonite’ produced along with fertilizers – Duty paid under protest consequent to order of original authority, sought as refund pursuant to order of Tribunal – Lower appellate authority remanded matter to original authority with a direction to set off credit irregularly availed on inputs used in manufacture of impugned goods with interest and allow refund – Once appellant had utilized CENVAT Credit for discharge of duty liability, it amounts to reversal of CENVAT Credit availed – When duty liability was forced upon appellant and they discharge duty liability, they are eligible to avail CENVAT Credit on inputs utilized for manufacture of such products – Interest also not liable to be paid in such instances – Impugned order set aside and matter remanded to original authority for the limited purpose of determining eligibility of refund claim from the point of view of unjust enrichment – Adjudicating authority to follow principles of natural justice

2011-TIOL-1205-CESTAT-MUM
CCE, ThaneVs M/s Vadilal Dairy International Ltd (Dated: June 29, 2011)
Section 4A – MRP based assessment - Different retail prices for different regions on same package – Duty liability to be discharged on the highest of the MRPs – Revenue appeal allowed
Also see analysis of the Order
2011-TIOL-1204-CESTAT-BANG
M/s Action Springs (India) Pvt Ltd Vs CCE, Mangalore (Dated: January 24, 2011)
Central Excise – Eligibility of Notification No. 83/94-CE to job worker manufacturing final products for raw material supplier – Liability to pay duty on raw material supplier – Prima facie case for full waiver of pre -deposit
2011-TIOL-1203-CESTAT-MAD
CCE, Tiruchirapalli Vs Manohara Saraswati Glass Works (Dated: February 21, 2011)
Central Excise – Clandestine clearance - Evidence on record establishes that raw materials were not accounted for, that soda ash, silica had been purchased without bills etc and the same is sufficient to prove clandestine purchase of raw materials and manufacture and removal of final product without payment of duty - None of the statements recorded earlier were retracted and it is only during cross-examination that the witnesses changed their stand and, therefore, their original statements have rightly been relied upon by the adjudicating authority – Commissioner (Appeals) order is set aside.
2011-TIOL-1202-CESTAT-MAD
CCE, Chennai Vs Klemmen Engineering Corporation Ltd (Dated: April 20, 2011)
Central Excise – Interest liability under Section 11 AB if duty is paid within 45 days - It is only in the event of payment of duty within 45 days from the date of issue of an order, instruction or direction by the Board under Section 37B that interest liability will not arise – In the instant case, since the payment was made consequent to the adjudication order, interest liability will arise with effect from 11.5.2011 under Section 11 AB.
2011-TIOL-1199-CESTAT-BANG

M/s Sharavathy Conductors Pvt Ltd Vs CCE, Bangalore (Dated: June 23, 2011)

Central Excise – Demand of interest on differential duty paid for supplementary invoices raised in lieu of price variation clause – SCN issued on 08.12.2008 for demand of interest for the period from June 2004 to May 2007 – Principle of limitation for demanding principal amount also applicable for recovery of interest – In SKF India Ltd ([2009-TIOL-82-SC-CX](#)) Supreme Court did not consider whether interest has to be demanded within period of limitation, hence distinguishable – Impugned order confirming demand of interest beyond normal period of limitation not sustainable, set aside

[Also see analysis of the Order](#)

[2011-TIOL-1198-CESTAT-MAD](#)

M/s Global Polybags Industries (P) Ltd Vs CCE, Madurai (Dated: April 18, 2011)

Central Excise – Stay/Dispensation of pre-deposit - EOU – Demand of third time cess on DTA clearances – Prima facie case has been made out for waiver of pre-deposit.

[2011-TIOL-1197-CESTAT-BANG](#)

M/s Davangere Sugar Company Vs CCE, Bangalore (Dated: December 29, 2010)

Central Excise – Excess power generated in co-generation plant of manufacturer of sugar and molasses supplied to State Electricity Board for a price – Demand of CENVAT Credit on input services used in manufacture of dutiable as well as exempted goods viz., electricity for not maintaining separate accounts under Rule 6 of CENVAT Credit Rules 2004 – Amount availed as CENVAT Credit reversed with interest – Levy of penalties under different provisions of Rule 15 of CENVAT Credit Rules 2004 read with Section 11AC of Central Excise Act, 1944 challenged – For availing ineligible CENVAT Credit only penalty of Rs. 2000/- imposable on a manufacturer under Rule 15(3) ibid as it existed prior to amendment in 2010 – Provisions of Rule 15(4) cannot be invoked in this case as it is undisputed that appellant is a manufacturer and not provider of output service – Provisions of Section 11AC or Rule 15(2) also could not be invoked, as the issue is with regard to eligibility of credit on input services – Impugned order set aside

[2011-TIOL-1196-CESTAT-BANG](#)

M/s Confident Dental Equipment Ltd Vs CCE, Bangalore (Dated: January 10, 2011)

Central Excise – Classification of autoclave and other sterilization equipments – Products manufactured and cleared after filing classification declaration – Invocation of extended period in SCN not sustainable – Amount of Rs. 9.57 lakhs already paid considered as pre-deposit – Balance amounts waived and stay granted

[2011-TIOL-1189-CESTAT-MUM](#)

Themis Laboratories Pvt Ltd Vs CCE, Mumbai (Dated: February 1, 2011)

Physician Samples manufactured and cleared to brand owners/buyers on principal to principal basis for a consideration and which are further distributed/delivered by the buyer free of cost to physicians/doctors – Valuation on transaction value is correct – Appeals allowed: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1188-CESTAT-BANG](#)

M/s VEM Technologies Pvt Ltd Vs CCE, Hyderabad (Dated: May 23, 2011)

Central Excise – Supply of goods to DRDO for the purpose of testing of armaments such as Missiles, Unmanned Aerial Vehicles (UAV) or Precision Guided Munitions (PGM) under Notification No. 10/97-CE – Items were supplied for testing and research purposes against a certificate issued by Programme Director of Ministry of Defence – Prima facie case for full waiver of pre-deposit – Stay granted against recovery till disposal of appeals

[2011-TIOL-1187-CESTAT-BANG](#)

M/s Prime Progression Export & Services (P) Ltd Vs CCE, Bangalore (Dated: May 6, 2011)

Central Excise – Refund – Lower authority allowed refund of unutilized CENVAT Credit in view of substantial clearance for exports whereas Appellate Commissioner held that appellant not entitled for refund and held them liable to pay back amounts refunded – In addition to filing an appeal against refund sanction order, show cause notice required to be issued – Review order alleged that conditions of Notification No. 5/06-CE(NT) were not satisfied whereas original order considered all these aspects – Prima facie case for full waiver of pre-deposit – Stay granted

[2011-TIOL-1186-CESTAT-KOL](#)

M/s Diamond Scaffolding Company Vs CCE, Kolkata (Dated: January 5, 2011)

Central Excise – Demand of duty on Scaffolding, Shuttering manufactured from duty paid Iron and Steel materials such as pipes, rods and angles, channels and plates – Contention that the appellant was under bona fide belief that the process such drilling, cutting sizes welding etc does not amount to manufacture in view of various case laws is acceptable – Extended period cannot be invoked.

Small Scale units – Clubbing of clearances without issuing notice to the other units is not sustainable.

[2011-TIOL-1180-CESTAT-DEL](#)

M/s Kumar Arch Tech Pvt Ltd Vs CCE, Jaipur (Dated: July 29, 2011)

Central Excise – Duties payable by hundred percent EOUs in DTA – Ratio of Performance holding that education cesses are not required to be paid on the total duty computed under Notification 23/2003 CE dated 31.3.2003 differed with – Notification grants exemption from the duty of Excise leviable under Section 3 of CEA, 1944 and provides the manner of calculation to arrive at the duty of Excise leviable . It does not grant exemption from payment of Cess - Matter referred to Larger Bench.

Also see analysis of the Order
2011-TIOL-1179-CESTAT-BANG
M/s Aurobindo Pharma Ltd Vs CCE, Hyderabad (Dated: September 9, 2011)
Central Excise – 100% EOU – Raw materials procured duty free rejected due to non-conformation to specifications – When duty free goods are returned to original supplier, question of demanding duty does not arise – Matter remanded to original authority for verification of receipt of rejected materials at original supplier’s end – Impugned order set aside
2011-TIOL-1178-CESTAT-BANG
CCE, Guntur Vs M/s City Lubricants (P) Ltd Nellore Dist (Dated: January 5, 2011)
Central Excise – Eligibility of CENVAT Credit on HR coil/plates, MS plates/angles/channels/joints etc – Items used for manufacture/fabrication of blending vessel and heating coil pipeline which are essentially used in manufacture of lubricating oils, credit not deniable – No contrary evidence from Revenue to disallow CENVAT benefit – Impugned order does not suffer from any infirmity, upheld
2011-TIOL-1177-CESTAT-BANG
CCE, Hyderabad Vs M/s Hyderabad EPS Products Pvt Ltd (Dated: May 18, 2011)
Central Excise – Availment of CENVAT Credit of duty paid on inputs used in manufacture of final products cleared to SEZ Developers – Revenue has not made out a prima facie case – Contrary views expressed by different benches of Tribunal and matter already referred to Larger Bench – If stay application is allowed, Revenue will not restrict itself to recovering amount of duty in dispute – There will be no prejudice to Revenue if stay application is rejected, in as much as, Revenue can recover entire amount if stay application succeeds – Since issue is debatable, stay application rejected
2011-TIOL-1173-CESTAT-BANG
M/s Sujana Metal Products Ltd Vs CCE, Hyderabad (Dated: September 5, 2011)
Central Excise – Clearance to SEZ Developers from DTA treated as export: For the period upto 9/2/2006, the supplies made to SEZ units are to be treated as export both for extending export benefits and for levy of duty in terms of SEZ provisions contained in Chapter XA of the Customs Act. For the period from 10/2/2006, the definition of the term "export" under the Customs Act is not consistent with the definition of the term "export" under the SEZ Act. However, the definition of the term "export" under the SEZ Act shall prevail over the definition of term "export" under the Customs Act. Therefore, supplies made to SEZ from DTA units shall be treated as export. Since both during the period prior to and w.e.f. 10/2/2006, the supplies made to SEZ are held to be "export", the application of provisions of Cenvat Credit Rules for recovery of amounts on goods supplied to SEZ units in terms of Rule 6 of CCR, 2002 / CCR, 2004

does not arise.

Amendment to CCR 2004 by Notification No. 50/2008 –CENT retrospective: The amendment to Rule 6(1) of the CCR, 2004 by the amending Notification No.50/2008-CE (NT) dt. 31/12/2008 shall be applicable w.e.f. 10/9/2004 when the CCR, 2004 came into existence and, therefore, exception provided under Rule 6(6) of Cenvat Credit Rules, 2004 shall be applicable to supply of exempted goods both to SEZ units and SEZ developers / promoters.

Interpretation of Law – No Penalty : As the issues involved relate to interpretations of SEZ provisions under the Customs Act, SEZ Act and provisions of the Central Excise Rules and the Cenvat Credit Rules, no charge of suppression by the assesseees can be sustained and, therefore, the question of invoking the extended period of limitation and also imposing penalties does not arise.

[Also see analysis of the Order](#)

[2011-TIOL-1171-CESTAT-MUM](#)

MSS India Pvt Ltd Vs CCE & C, Nashik(Dated: June 22, 2011)

Scope of method of duty calculation provided under Notification no. 2/95-CE cannot be enhanced or varied by issuing a Circular without amending the notification and such amendment came into force only on 01.03.2002 – Payment of 50% of aggregate of duties not warranted during the period April 2000 to March 2001 – Appeal allowed: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1169-CESTAT-MAD](#)

CCE, Salem Vs M/s Hindustan Photo Films Mfg Co Ltd (Dated: March 4, 2011)

Central Excise – Refund – Unjust enrichment - The excise gate passes and the invoices issued by the assessee show that they have been indicating the excise duty separately in addition to the government-regulated price and collecting both the amounts from their customers – Refund claim rightly rejected by the lower authority – Since the refund amount rejected was not paid in cash and was paid only from CENVAT Credit account, the amount is not required to be credited to consumer welfare account.

[2011-TIOL-1168-CESTAT-AHM](#)

M/s Cony Engineering Vs CCE, Ahmedabad (Dated: June 17, 2011)

Central Excise - SSI Unit - Branded Goods - Matter of exemption not raised before the original adjudicating authority - Purpose of adjudication - Assessee is manufacturing gear boxes with the castings supplied by the buyer of the goods. The castings are affixed with the brand name of the buyer. Benefit of SSI exemption is denied by the Revenue. The assessee had not raised the plea of eligibility of exemption notification before the original adjudicating authority.

HELD - Claim of exemption notification is a question of law and can be raised at any point of law. The purpose of adjudication is to decide the disputed issue in accordance with the law. Even if the assessee has not raised some particular issue, it is legally

obligatory on the part of the adjudicating / appellate authority to take the same into consideration and to arrive at just and fair finding as long as the facts are not in dispute and it is only the legal issue, which is required to be decided. Matter remanded for examining the matter afresh. (Para 9 & 10)

[2011-TIOL-1166-CESTAT-MUM](#)

M/s Technocrats India Vs CCE, Mumbai V (Dated: August 5, 2011)

Assessee paying Service Tax on machining job whereas department alleging that the activity amounts to manufacture and demanding C.Ex. duty - Claiming of SSI exemption 8/03-CE is a legal right of the assessee, which can be sought even at appeal stage – Matter remanded

[Also see analysis of the Order](#)

[2011-TIOL-1161-CESTAT-MUM](#)

Uttam Galva Steels Ltd Vs CCE, Raigad (Dated : June 30, 2011)

Board in Circular dated 28.10.2009 has clarified that prior to 10 th May 2008 when section 2(d) of the CEA, 1944 was amended Zinc dross and Skimmings cannot be treated as excisable goods even though they find specific entry in the Excise Tariff and even though they may fetch some price in the market – Demands for earlier period set aside: CESTAT

[Also see analysis of the Order](#)

[2011-TIOL-1160-CESTAT-BANG](#)

M/s Bannari Amman Sugars Ltd Vs CCE, Mysore (Dated : March 14, 2011)

Central Excise – Clearance of excisable goods without payment of duty to EPCG License holders – Appellant under bonafide belief that duty not payable on clearances made under EPCG scheme – Details of clearances provided in monthly returns filed in 2005 and duty demanded in 2008 – Prima facie case for full waiver of pre -deposit

[2011-TIOL-1159-CESTAT-BANG](#)

M/s Baka Lifetec (India) Private Ltd Vs CCE, Bangalore (Dated : January 21, 2011)

Central Excise – Clearance of excisable goods without payment of duty to EPCG License holders – Appellant under bonafide belief that duty not payable on clearances made under EPCG scheme – Details of clearances provided in monthly returns filed in 2005 and duty demanded in 2008 – Prima facie case for full waiver of pre -deposit

[2011-TIOL-1150-CESTAT-BANG](#)

M/s Stovekraft Pvt Ltd Vs CCE, Bangalore (Dated : April 1, 2011)

Central Excise – Allegation of clandestine manufacture and clearance of final products and irregular availment of CENVAT credit – Evidence recovered from appellant points to manufacturing activity undertaken by a proprietary firm headed by managing director of appellant – No conclusion can be reached as to whether appellant has manufactured the goods or they were manufactured by proprietary firm as claimed by appellant – Findings recorded by Adjudicating Authority prima facie leads to a conclusion that appellants have not made out a case for complete waiver of pre-deposit – Statement of supplier of raw materials states that they never supplied raw materials without duty paying documents – Allegation of ineligible CENVAT credit, prima facie cannot be sustained in this case unless entire evidences are perused and appreciated at the time of final disposal of appeals – Pre-deposit of Rs. 65 lakhs ordered

[2011-TIOL-1149-CESTAT-BANG](#)

M/s Vijay Electricals Ltd Vs CCE, Hyderabad (Dated : May 20, 2011)

Central Excise – Supplementary invoices raised based on price escalation clauses – Interest liability on payment of differential duty for supplementary invoices – Prima facie , issue relating to payment of interest on differential duty paid by assessee under supplementary invoices stands settled in favour of Revenue – Pre-deposit of entire amount of demand ordered

[2011-TIOL-1148-CESTAT-BANG](#)

M/s Sunvik Steels Limited Vs CCE, Bangalore (Dated : May 18, 2011)

Central Excise – Denial of CENVAT credit on the ground that supplier did not have any manufacturing facility nor the goods were manufactured on job work basis and invoices issued were not genuine – Credit denied based on adjudication proceedings at supplier's end – Nothing on record to show that jurisdictional Commissioner at supplier's end found that supplier did not actually supply any goods to appellant or just issued invoices fraudulently without supply of goods or payment of duty to enable appellant to avail inadmissible CENVAT credit – Show cause notice issued to appellant did not allege that supplier had not paid duty on the goods supplied to the appellant, nor did it allege that invoices issued by the supplier were fake – Order-in-original passed by original authority in the instant case indicates that supplier actually supplied the goods to the appellant and the latter installed the same in their factory – Full waiver of pre-deposit ordered and stay granted

[2011-TIOL-1144-CESTAT-BANG](#)

M/s Bosch Rexroth India Ltd Vs CCE, Bangalore (Dated : June 24, 2011)

Central Excise – Availment of irregular credit resulting in mandatory penal proceedings – Irregular credit availed due to non-availability of regular clerk who went on leave for a few months – No verification nor any records made available by Revenue to show that omissions occurred over a period of one year and not during the period when regular Clerk was on leave – Wrong availment was not challenged and only a bonafide mistake led to irregular availment of credit – Imposition of mandatory penalty not justified, set aside – Demand of interest not challenged, liable

to pay forthwith

[2011-TIOL-1143-CESTAT-BANG](#)

M/s Bharat Petroleum Corporation Limited Vs ACCE, Kochi (Dated : May 23, 2011)

Central Excise – Allegation of undervaluation of goods cleared to holding company viz., BPCL – Assessable value adopted for clearance to holding company same as charged to other OMCs in pursuance of agreement amongst all four OMCs – Rules 9 and 10 of Valuation Rules applicable only when entire sales are made to or through related company – Prima facie case for full waiver of pre-deposit

[2011-TIOL-1142-CESTAT-AHM](#)

M/s Alembic Ltd Vs CCE, Vadodara (Dated : August 1, 2011)

Central Excise – CENVAT Credit on service tax paid to commission agents for procuring orders – While the show cause notice was issued on admissibility of credit on commission agents service, reply was submitted on admissibility of CHA service - The defence arguments that are to be produced are same in respect of both the services except for place of removal, which may be applicable only in respect of CHA service - The legal points to be raised in defence becomes common for the services and therefore, the claim made by the appellant that there was a mistake has to be considered – Matter remanded.

[2011-TIOL-1137-CESTAT-BANG](#)

M/s Maini Precision Products Pvt Ltd Vs CCE, Bangalore (Dated : January 25, 2011)

Central Excise – Eligibility of CENVAT Credit on parts of fork lift truck, automobiles, I.C. engines as 'inputs' – Appellant undertook processes of drilling, burring, grinding, milling, oiling, blackening, buffing, burring, inspection etc for export of goods – Credit denied on the ground that processes undertaken do not result in manufacture of finished goods – Goods fall under section XVI and essential activities undertaken by appellant amounts to manufacture as per Note 6 to section XVI – Activities undertaken involve high precision and advanced technology – Prima facie case for complete waiver of pre-deposit

[2011-TIOL-1136-CESTAT-MUM](#)

M/s Birla Corporation Ltd Vs CCE, Pune (Dated : June 29, 2011)

New argumentative novelty or submissions sparkling with creative ingenuity presented with high pressure advocacy cannot undo or compel reconsideration of the orders, if not challenged – since CESTAT order not challenged by Department, Commissioner(A) could not have sat in judgment over the same – Matter remanded: CESTAT

[Also see analysis of the Order](#)

2011-TIOL-1135-CESTAT-BANG
Cipla Ltd Vs CCE, Bangalore (Dated : January 4, 2011)
Central Excise – CENVAT credit attributable to inputs lying in stock, inputs contained in semi-finished goods and finished goods liable to be reversed while opting for benefit of exemption Notification No. 4/2006-CE dated 01.03.2006 – Issue came to light only after internal audit objection resulting in issue of show cause notice invoking extended period – Plea of bar of limitation not sustainable – Prima facie case not made out by appellant for full waiver of pre-deposit – Pre-deposit of entire amount along with interest ordered – Penalty amount waived
2011-TIOL-1130-CESTAT-MUM
CCE, Nashik Vs M/s VIP Industries Ltd (Dated : June 16, 2011)
From 01.07.2000 no deduction from the transaction value on account of freight, equalized or otherwise is permissible - demand for differential duty on such freight element is sustained - since issue involves interpretation of the statute no penalty is warranted – Revenue appeals partly allowed: CESTAT
Also see analysis of the Order
2011-TIOL-1129-CESTAT-KOL
M/s Diamond Beverages Pvt Ltd Vs CCE, Kolkata (Dated : March 1, 2011)
Central Excise - Valuation - MRP based assessment - Additional consideration received from supplier of raw material - The ass essee has not received any extra consideration from customers over and above the printed sale price on the goods. The inclusion of cost of incentives received from the supplier of raw material to the assessable value is not sustainable particularly when the goods are assessable under Section 4A of the Act. Appeal allowed. (Para 9)
Limitation - Reduction in MRP shown in Monthly returns - Assessee is filing necessary returns regarding payment of duty on the basis of M.R.P. and when the M.R.P. was reduced the same was reflected in the monthly returns. Hence the allegation of suppression with intent to evade payment of duty is not sustainable.. (Para 10)
2011-TIOL-1127-CESTAT-MUM
CCE & C, Aurangabad Vs Jain Spices & Agro Products (Dated : June 22, 2011)
All the five members of the family are joint owners of the brand name 'RAVI MASALE' and each of them could use the brand name in their own manufacturing and trading activities – Benefit of SSI notification cannot be denied: CESTAT
Also see analysis of the Order

[2011-TIOL-1126-CESTAT-AHM](#)

CCE, Rajkot Vs M/s Jaidev Alloys Pvt Limited (Dated : June 16, 2011)

Central Excise - Shortage of raw material - Clandestine clearance - Confessional statement - Evidentiary value - There is no evidence on record to show that the raw materials which was found short was removed clandestinely. Confessional statement cannot take precedence over the documentary evidence. There is no evidence to show that huge quantity of raw material was procured from alternate source . Hence , it is not proved that the assesseees have restored to clandestine clearance. (Para 10, 12, 13)

[2011-TIOL-1123-CESTAT-BANG](#)

CC & CE Hyderabad Vs M/s Gland Pharma Limited (Dated : August 9, 2011)

Central Excise - Dutiable and Exempted Products - Rs. 1.50 CENVAT Credit taken - Demand of over Rs. 30 Lakhs - the cause of action for the appellant would raise the eyebrows of any prudent person. The respondent was engaged in the manufacture of both dutiable and exempted products during the material period (March-November 2001), the exempted product being 'EPOX Pre-filled Syringe' which was chargeable to 'nil' rate of duty under the Central Excise Tariff during the said period. Sodium citrate was a common input used in the manufacture of both the dutiable and exempted products. Under Rule 57 AD (2) of the Central Excise Rules, 1944 and Rule 6(3)(b) of the Central Excise Rules, 2001, the manufacturer was required to maintain separate accounts for the receipts of such common inputs and their use in the manufacture of the dutiable and exempted final products. Insofar as sodium citrate was concerned, only 25 kgs. of the chemical was received by them and credit of Rs.252/- taken thereon. Out of the said quantity of sodium citrate, only 146 grams were used in the manufacture of EPOX Pre-filled Syringe, which involved MODVAT / CENVAT credit of Rs.1.50. The entire credit of Rs.252/- on sodium citrate was also reversed. It is on the ground of availment of credit of Rs.1.50 on common input (sodium citrate) by the respondent during the period of dispute that the original authority, in adjudication of the relevant show-cause notice, directed them to pay 8% of the value of the exempted product cleared from their factory during the said period, amounting to over Rs.30.5 lakhs. Justifiably, this action of the original authority amused the first appellate authority

No Authorisation by Committee of Commissioners - Revenue Appeal Dismissed: After examining the records and hearing both sides, it is found that this appeal was filed without valid authorisation. The objection raised to this effect in the written submissions of the respondent has to be sustained inasmuch as, under sub-section (2) of Section 35B of the Central Excise Act, the power to review an order passed by Commissioner (Appeals) under Section 35A of the Act and to authorize any Central Excise Officer to prefer an appeal against such order to the Appellate Tribunal is vested in the Review Committee (Committee of Commissioners of Central Excise) constituted by the CBEC under sub-section (1B) of Section 35B. Any single Commissioner of Central Excise cannot exercise this power. The present appeal, filed without valid authorisation, is only liable to be dismissed as not maintainable.

[Also see analysis of the Order](#)

[2011-TIOL-1122-CESTAT-BANG](#)

M/s GMR Industries Ltd Vs CCE, Visakhapatnam (Dated : March 28, 2011)

Central Excise – Clandestine removal of 9010 MTs of sugar without accompanying duty paying documents resulting in demand of duty, levy of mandatory penalty under s. 11AC, levy of penalty of Rs. 1 lakh under Rule 25 of Central Excise Rules 2002 and levy of personal penalty of Rs. 1.5 lakhs under Rule 26 ibid on employee – Redemption fine imposed in lieu of confiscation justified and requires no interference – When care was not taken to make entries in production record levy of penalty under Rule 25 ibid justified and requires no interference – Since sugar was cleared under delivery challans and duty liability thereon payable only on 5 th of subsequent month, individual not required to be penalized under Rule 26 ibid – When it is on record that stocks found short in factory premises matches with quantity indicated in delivery challans and no other shortage or excesses were noticed, penalty under s. 11AC not leviable as there is no reason to believe that appellant had intention to evade payment of duty

[2011-TIOL-1121-CESTAT-AHM](#)

CCE, Surat Vs M/s Narmada Fabrics (Dated : June 30, 2011)

Central Excise - Clandestine clearance - Stock taking recorded in panchanama admitted by the assessee - Demand - Penalty - The veracity of the stock taking has been admitted by the assessee. The shortages of the finished product has also been admitted. There has been no retraction. In the circumstances, the process of stock taking cannot be doubted. The shortages stand proved. The seized goods which were handed over to them under a proper panchanama were clandestinely cleared without seeking provisional release of the same. This act of the assessee reflects upon their malafide. Demand of duty justified. Penalty equal to the duty evaded is mandated. However as no option for payment of 25% penalty is given, the assesseees are now given 30