CESTAT RULING (SERVICE TAX)

2015-TIOL-1824-CESTAT-BANG

Dell India Pvt Ltd Vs CCE, C& ST (Dated: May 12, 2015)

Service Tax - Approved operations within SEZ unit - Denial of refund - Absence of nexus - Sustainability - Approval Committee which has the Commissioner of Customs as a Member certified that services received by the assessee are in relation to their authorized operations - Customs officers thereafter cannot take a contradictory decision - Refund claim of service tax paid on approved services consumed for authorized operations within SEZ under Notification 9/2009 - Cannot thus be denied for want of nexus - Further, while there is no necessity to discharge service tax liability qua services wholly consumed within SEZ, assessee is entitled to refund of tax paid inadvertently - Assessee appeals allowed with consequential relief. (Para 6)

Service Tax - Approval Committee authorized services such as transportation of goods, courier service, rent-a-cab service and port services wholly consumed in SEZs are default authorized services for tax exemption - Benefit of exemption cannot be denied on ground of absence of nexus. (Para 2, 6)

2015-TIOL-1819-CESTAT-BANG

Industrial Rubber Products Vs CCE, ST & C (Dated: June 3, 2015)

Service Tax - Waiver of pre-deposit - Rubber products manufactured by appellant used in rotor blades of wind operated electricity generators - Exemption in terms of Sl.No.13 of List 5 of Notification No.6/2006 available - Prima-facie case in favour of assessee - 10% of duty demand already deposited by appellant would be sufficient - Pre-deposit of balance duty, interest and penalty dispensed with - Stay against recoveries ordered. (Para 2)

2015-TIOL-1811-CESTAT-BANG

Ness Technologies (India) Pvt Ltd Vs CC, CE & ST (Dated: May 1, 2015)

Service Tax - Refund - Payment of duty in cash against DTA clearances instead of utilizing accumulated credit on final product cleared for domestic consumption - Per se does not disentitle claim of refund - Rejection of refund for failure to avail Cenvat credit, unjustified - Further, credit cannot also be denied merely because invoices were in the name of different person - Impugned order rejecting refund set aside and matter remanded to original adjudicating authority to decide refund claim afresh and sanction refund in accordance with law. (Para 4, 5, 6)

2015-TIOL-1810-CESTAT-BANG

Vodafone Cellular Ltd Vs CC, CE & ST (Dated: March 30, 2015)

Service Tax - Telecommunication services - Credit attributed to output services written off in books of accounts - If disqualifies Cenvat credit entitlement - Revenue contended that the output services in question are not taxable as such are not eligible to avail Cenvat credit in view of the prohibition contained in Rule 6 of Cenvat Credit Rules, 2004 - Nothing on record to suggest that said services when rendered were taxable or exempted - More over, during the relevant period service tax was payable only when the consideration was received and it is evident that the amount was not received - On facts, good prima-facie case made out by appellant - Pre-deposit is waived. (Para 2)

2015-TIOL-1795-CESTAT-BANG

IJM (India) Infrastructure Ltd Vs CC, CE & ST (Dated: May 28, 2015)

Service Tax - Service provided to Associate enterprise - Absent debit/credit entries in books of account, outstanding amount due from associated enterprise as of 10/5/2008 - Held cannot be treated as amounts paid for the purpose of levy of tax - Amendment to Section 67 of Finance Act, 1994 not retrospective - Following precedent decision, demand held unsustainable - Directed to hear appeal without insisting pre-deposit. (Para 4, 5)

2015-TIOL-1794-CESTAT-BANG

CC Vs M/s Dozco (India) Pvt Ltd (Dated: May 22, 2015)

Customs - Refund claim of Special Additional Duty (SAD) - Limitation applicability - SAD refund claim filed beyond one year relating to the period prior to the date of issue of amending Notification No. 93/2008 dated 1.8.2008 - Following Delhi High Court ruling in Sony India Pvt Ltd , held is not barred by limitation - Revenue appeal has no merit hence was rejected. (Para 5, 6, 7)

2015-TIOL-1788-CESTAT-MAD

Tajmahal Tobacco Company Pvt Ltd Vs CCE (Dated: July 7, 2015)

Service Tax - Rectification of error - incomplete sentence at para-5 in the Final Order No.40056/2015 dt.13.1.2015passed by the Bench - 2015-TIOL-611-CESTAT-MAD - brought to notice for rectification.

Held: Due to typographical mistake, the citation of the Supreme Court's judgement is not typed - Accordingly, the last sentence of para-5 in Final Order No.40056/2015 dated 13.1.2015 is corrected to read as under :-

"He relied upon the Hon'ble Supreme Court judgment in the case of Gujarat Ambuja Cements Ltd. Vs UOI - 2005-TIOL-53-SC-ST " [Para 4]

2015-TIOL-1787-CESTAT-MUM

Goel Nitron Constructions Vs CCE (Dated: July 7, 2015)

ST - Appellants are builders/promoters of housing society, constructing residential

flats and are in appeal against levy of ST on 'one-time maintenance/contribution' collected from purchasers of the flats - such maintenance charges are collected for the interim period till the society is formed as per the Maharashtra Ownership Flats (Regulation of Promotion of Construction, Sale, Management and Transfer) Act, 1963 and thereafter once the building is occupied by the flat owners, they would form a housing society as per CHS Rules - the appellants are collecting corpus for maintenance etc. and balance of funds along with account of utilisation are transferred to the newly formed society in terms of s. 5 & 6 of the Act, 1963. Held: Relying upon the earlier decision in the case of Kumar Beheray Rathi & Others vs. CCE, Pune-III - 2013-TIOL-1806-CESTAT-MUM held that appellants are not liable to pay ST under the category of 'Maintenance and Repair services' on the 'one-time maintenance' charges collected from buyers of the flats - appeals are allowed with consequential relief: CESTAT [para 5]

2015-TIOL-1779-CESTAT-DEL

Patanjali Yogpeeth Trust Vs CCE & ST (Dated: July 13, 2015)

ST - In so far as the demand for Rs.4,59,89,553/- is concerned in view of the doctrine of mutuality between a Club or Association and its members spelt out in several judgments, including Ranchi Club Ltd. 2012-TIOL-1031-HC-JHARKHAND-ST assessee is seen to have made out a strong prima facie case for grant of waiver - Demand of Rs.43,87,283/- is on consideration received by "Vanprashta Ashram Donations" for providing cottage facilities - Prima facie case made out, in respect of its immunity on this demand - Pre-deposit of Rs.22 lakhs ordered in this regard: CESTAT

Intellectual Property Right service - Since the agreement has covenants, expressing confirment of assessee's copyright in Audio Visual Content in favour of MCCS and since copyright is an excluded component of IPR service defined in Section 65 (55a) and (55b) read with Section 65(105)(zzze) - Waiver of pre-deposit granted: CESTAT

2015-TIOL-1778-CESTAT-MUM

M/s Affinity Express India Pvt Ltd Vs CCE (Dated: August 14, 2015)

ST - Refund - Rule 5 of CCR, 2004 - Once credit is not objected at availment stage, it is not permissible for Revenue to challenge the same at the stage of processing refund under Rule 5 of CCR, 2004 - In previous o-in-o, Assistant Commissioner has passed favourable orders where refund in respect of export of Embroidery software has been granted without disputing that Input services were used in Embroidery software development - these orders have been accepted by Revenue - appeals allowed with consequential relief: CESTAT [para 7]

2015-TIOL-1771-CESTAT-MUM

Nagar Taluka Sahakari Kharedi Vikri Sangh Ltd Vs CCE, C & ST (Dated: June 17, 2015)

ST - Renting of Immovable property service - Appellant had given its immovable property on rent and received rent of Rs.51.99 lakhs during the period 01/06/2007 to 30/06/2011 on which ST of Rs.4.87 lakhs was not paid - SCN issued and proposals confirmed vide order dated 09/07/2012 - Commissioner(A) upheld o-in-o - appeal before CESTAT. Held: Appellant paying entire service tax along with interest on 26/11/2012 and seeking waiver of penalties imposed u/ss 76, 77 & 78 of FA, 1994 - under special provisions in the FA, 2012, immunity is granted from imposition of penalties if appellant pays the tax due as on 06/03/2012 within a period of six months from date on which Finance Bill, 2012 was enacted - Bill received assent on

28/05/2012 and, therefore, six months period expired on 28/11/2012 - as appellant has paid liability on 26/11/2012, they have made a clear case for waiver of penalties in terms of s.80(2) of the FA, 1994 - penalties imposed u/ss 76, 77 & 78 waived - appeal allowed to the said extent: CESTAT [para 6]

2015-TIOL-1770-CESTAT-MUM

GKN Sinter Metals Pvt Ltd Vs CCE (Dated: July 13, 2015)

ST - Applicant seeking extension of stay on the ground that their appeal has not come up for disposal for no fault of theirs. Held: In the case of Venketeshwara Filaments Pvt. Ltd. - 2014-TIOL-2388-CESTAT-AHM it is held that consequent upon omission of 1st , 2nd and 3rd proviso to section 35C(2A) of the CEA, 1944 by the FA, 2014 it is to be held that there is no provision for making further application for extension of stay and that the stay order passed by the Tribunal, if it is in force beyond 07.08.2014, it would continue till the disposal of the appeals and there is no need for filing any further applications for extension of orders granting stay either fully or partially - since the stay in the present case was in force beyond 07.08.2014, same would continue till the disposal of the appeal - Application disposed of: CESTAT [para 2, 3]

2015-TIOL-1767-CESTAT-MUM

Y N Warehousing Company Vs CC & CE (Dated: May 05, 2015)

ST - Valuation - s.67 of FA, 1994 - Appellant registered as Clearing and Forwarding Agent and collecting fixed computer stationery charges and godown rent - Revenue alleging that the said charges are to be included in the gross value of services rendered and ST to be discharged accordingly - Period involved is October 2002 to March 2006 - Asst. Commr. dropping the proceedings but Commissioner as reviewing authority confirmed the demand and imposed penalties and interest - appeal to CESTAT. Held: Commissioner in review order relies upon Rule 5 of ST (Determination of Value) Rules, 2006 which were not in statute during the material period - provisions which were not in statute cannot be applied for demand of tax - on this point, order is non est - so also, provisions of rule 5(1) of Rules, 2006 have been struck down by Delhi High Court in case of Intercontinental Consultants & Technocrats Pvt. Ltd. - 2012-TIOL-966-HC-DEL-ST - order is unsustainable and hence set aside - appeal allowed with consequential relief: CESTAT [para 6.3, 6.4, 7]

2015-TIOL-1762-CESTAT-MUM

CST Vs Group M Media India Pvt Ltd (Dated: July 2, 2015)

ST – Revenue in appeal against o-in-o dropping demand raised - Appellant providing 'Advertising services' by placing advertisements on behalf of clients in various print & electronic media - Tribunal has in respondent's own case held that demands under BAS on volume discounts, rate difference and amounts written back cannot be sustained in law as these are either incentives or accounting adjustments and not consideration for any services rendered – no reason to deviate from such view already taken – Revenue appeal rejected: CESTAT [para 4]

2015-TIOL-1752-CESTAT-MUM

M/s Saibaba Telefilms Pvt Ltd Vs CST (Dated: July 28, 2015)

ST - Agreement entered by appellant with Star India very categorically STATES that

appellant was commissioned for producing the programme "Antakshari" - ST liability under the category of "Programme Producers Service" correctly determined - Penalty u/s 76, 77 of FA, 1994 upheld but penalty u/s 78 dropped as appellant had recorded in books of acount the amounts collected and also filed returns - no intention of evading tax: CESTAT [para 6, 6.1, 6.2]
Also see analysis of the order
2015-TIOL-1751-CESTAT-MUM
Matoshree Enterprises Vs CCE (Dated: July 6, 2015)
ST - Applicant seeking extension of stay on the ground that their appeal has not come up for disposal for no fault of theirs. Held: In the case of Venketeshwara Filaments Pvt. Ltd. - 2014-TIOL-2388-CESTAT-AHM it is held that consequent upon omission of 1 st , 2 nd and 3 rd proviso to section 35C(2A) of the CEA, 1944 by the FA, 2014 it is to be held that there is no provision for making further application for extension of stay and that the stay order passed by the Tribunal, if it is in force beyond 07.08.2014, it would continue till the disposal of the appeals and there is no need for filing any further applications for extension of orders granting stay either fully or partially – since the stay in the present case was in force beyond 07.08.2014, same would continue till the disposal of the appeal - Application disposed of: CESTAT [para 2, 3]
2015-TIOL-1750-CESTAT-MUM
CCE Vs C B MOR (Dated: May 15, 2015)
ST - Respondent engaged in the business of marketing and selling of pre-paid and post-paid mobile connections - Commission received from M/s BSNL, whether should be subjected to service tax - Issue is now settled by decisions of the High Court holding that once service tax liability on the full value of the SIM card is discharged by BSNL, there cannot be any demand on the distributor for the second time - Order passed by Commissioner(A) is correct and legal and does not suffer from any infirmity - Revenue appeals rejected: CESTAT [para 3, 4, 6]
2015-TIOL-1749-CESTAT-DEL
CCE Vs M/s Grewal Builders Pvt Ltd (Dated: July 10, 2015)
ST - Revenue is in appeal demanding ST under Real Estate Agent Service - Onus to establish that amount pertained to Real Estate Agent service is on Revenue and that onus admittedly has not been discharged by Revenue - Therefore, Revenue's appeal with regard to ST demand of Rs.92,998/- is not sustainable - Commissioner (A) was justified in granting that option of reduced penalty but was required to put a condition that said reduced penalty will have to be deposited within 30 days of receipt of order in appeal and by not putting that condition the Commissioner (A) has certainly gone beyond the scope under Section 78 and therefore reduction of mandatory penalty to 25% of demand is not sustainable - Imposition of penalty under Section 77 and equal mandatory penalty under Section 78 is upheld: CESTAT
2015-TIOL-1745-CESTAT-DEL
M/s Sbi Capital Markets Ltd Vs CCE & ST (Dated: April 8, 2015)

ST - CENVAT availed is sought to be disallowed of a total amount without indicating the break up of amounts attributable to each service and without giving any reason as to why they cannot be considered as Input service - whole proceedings are vitiated for want for a proper SCN - Appeals allowed: CESTAT [para 2, 3]

Also see analysis of the order

2015-TIOL-1742-CESTAT-MAD

M/s Urc Construction Pvt Ltd Vs CCE (Dated: June 12, 2015)

Service Tax - Stay / dispensation of pre deposit -Appellant registered for Construction services and discharging tax after availing abatement - in some cases, they also undertake site formation whose value is about 5% of total contract value - adjudicating authority demanded service tax on site formation and denied the abatement in the impugned order agitated herein.

Held: Demands have been confirmed under "Site formation and clearance, Excavation and Earthmoving and Demolition Services", which cannot be called as a composite service - decisions relied upon by the appellant relate to construction of telecommunication tower and also in the mining area whereas in the present case it relates to construction of site formation in commercial buildings - *prima facie*, the appellants have not made out a strong case for waiver of predeposit of entire dues; they are accordingly directed to predeposit Rs.1,00,000/- (Rupees one lakh only) within a period of six weeks. [Para 4]

2015-TIOL-1741-CESTAT-MAD

Iss Catering Services (South) Pvt Ltd Vs CCE & ST (Dated: May 29, 2015)

Service Tax - Stay / dispensation of pre deposit - Outdoor Catering Service - value of service rendered to SEZ, income realized from food courts, bad debts, unbilled revenue included for assessment;demand of the differential tax with interest and penalty adjudicated; and agitated herein.

Held: The adjudicating authority confirmed the service tax and denied the exemption to supplies made to SEZ on the ground that contracts have not been renewed for a particular period - Notification No.4/2004 dt. 31.3.2004 and 9/2009 dt. 3.3.2009 clearly exempts from payment of service tax on various services provided to SEZ; agreements, bills, invoices indicate *prima facie* appellants are entitled for exemption under above notification - sale of food in food courts is not covered under catering services but falls under restaurant services - Regarding demand made on unbilled revenue, though it was reflected in balance sheet as per accounting standard, the amount was realised only in the next financial year and during the relevant period the service tax is to be paid only on realisation of amount - in respect of demands on supplies to SEZ, food courts and unbilled revenue, appellant *prima facie* has made out a case for waiver of predeposit - However, as regards the bad debts, the dispute is for the year 2011-12 and considering the amount involved, predeposit of Rs.5,00,000/- (Rupees five lakhs only) is ordered to be paid within 4 weeks. [Para 5]

2015-TIOL-1740-CESTAT-MUM

Chandgad Taluka Sahakari Vahatuk Sangh Ltd Vs CCE (Dated: June 10, 2015)

ST - Taxability of services rendered by appellant of making arrangement for activities of harvesting of sugarcane, loading and unloading and transportation of sugar cane in and for various factories - Revenue raising demand under the category of 'Manpower

Recruitment & Supply Services". Held: Issue involved in this case is now squarely covered in favour of appellant by the decision in Godavari Khore Cane Transport Company Private Ltd. 2013-TIOL-1986-CESTAT-MUM and this order has been affirmed by the Bombay High Court vide its order dated 27.01.2015 - Order set aside and appeal allowed with consequential relief: CESTAT [para 4 , 5]

2015-TIOL-1733-CESTAT-MAD

M/s M M Enterprises Vs CCE (Dated: June 8, 2015)

Service Tax - Stay / dispensation of pre deposit - Demands confirmed under 'C & F Agent' and 'GTA' services and agitated herein.

Held: Tribunal in the case of Prakash Agencies Vs. Commissioner of Service Tax, Chennai granted stay following the decision of the Delhi High Court in the case of Intercontinental Consultants and Technocrats Pvt. - prima facie, the service tax demand on C&F agency is waived and recovery thereof stayed during the pendency of the appeal - As regards GTA service, during the period in dispute the appellants were unregistered partnership firm and the unregistered partnership firms were brought into service tax net with effect from 1.7.2012 - Prima facie , the appellants have made out a case for waiver of predeposit. [Para 6, 7]

2015-TIOL-1724-CESTAT-BANG

M/s Shreya Electricals Vs CCE (Dated: July 24, 2015)

ST - Demand of Service Tax confirmed in respect of 'Maintenance and repair services' and “Erection, Commissioning and Installation services” rendered by appellant to M/s Karnataka Power Transmission Company Ltd. (KPTCL) - Period involved is 2004-05 to 2006-07 - Appellant submitting that in view of s.11C Notification No. 45/2010-S.T. dated 20.07.2010, services rendered prior to 21/6/2010 were exempted from payment of service tax - since the said notification was issued subsequent to passing of order-in-original, matter remanded to adjudicating authority for denovo decision: CESTAT [para 3]

2015-TIOL-1719-CESTAT-DEL

CST Vs Ishida India Pvt Ltd (Dated: July 1, 2015)

ST - Refund - Assessee procure orders from Indian customers for their holding Company in Japan - Products are then supplied to Indian customers as per these purchase orders - Assessee receive commission for procurement of said purchase orders, therefore services of assessee in procuring purchase orders/marketing is definitely utilized/benefited by Company in Japan - No dispute that assessee received commission in convertible foreign exchange - So, merely because the goods supplied were ultimately used in India, cannot be a reason to hold that there was no export of out put service - Effective use and enjoyment of service of procuring purchase order is by the Company in Japan and therefore only conclusion possible is that services were exported - Commissioner (A) has rightly allowed refund claim: CESTAT

2015-TIOL-1718-CESTAT-MUM

M/s Mount Kellett Management (I) Pvt Ltd Vs CST (Dated: June 25, 2015)

ST - Refund - Rule 5 of CCR, 2004 - In view of Notification No. FEMA/14/2000-RB

dated 3.5.2000 under the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000 issued by Reserve Bank of India, Exchange Control Department, under Rule 3 [Manner of Receipt in Foreign Exchange], Table Sr. no. 2, the appellant's Bank at Mumbai have rightly received the money in Indian rupees as RBI permits payment in rupee from the account of a Bank situated in any foreign country other than a member country of Asian Clearing Union -Foreign remittance is in order -Refund not deniable on the ground that consideration for service exported have not been received in convertible foreign exchange: CESTAT

Also see analysis of the order

2015-TIOL-1717-CESTAT-MAD

Sesa Sterlite Ltd Vs CCE (Dated: March 29, 2015)

Service Tax - Stay / dispensation of pre deposit - appellants are manufactures of copper anode / cathode etc., and also rendering various services - service tax demand with interest and penalty confirmed under reverse charge mechanism on the ground that they availed services of underwriters outside India for the purpose of underwriting of the firm as well as optional American Depository Shares (ADS); and that the commission paid to the underwriters is taxable under "underwriters services" - same agitated herein.

Held: The word "underwriter" and "underwriting" has the meaning assigned to it in clause (f) of rule 2 and clause (g) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993 respectively - Section 65 (105) (z) read with clauses 116 & 117 clearly explains that the meaning of "underwriter" and underwriting is as per the meaning assigned in SEBI Rules; it does not stipulate that for Taxability under this service, the underwriter has to be registered with SEBI - appellant's contention that the service rendered by overseas underwriters are not covered in the definition is not acceptable [Para 5]

When law presumes the recipient to be the provider of service of the nature described by Section 66A of the Act, that cannot be given go by for reading the subordinate legislation i.e., Taxation of Services (Provided from Outside India and Received in India), Rules, 2006 - Underwriting Service is performance based and that is covered by Rule 3(ii) of the said Rules; the performance is to be understood in the context of Section 66A of the Act but not in isolation thereof - when a service is related to performance of such service envisaged by section 66A that may be performed in any manner - Section 65(105)(z) of the Finance Act, 1994 states that taxable services provided to any person by an Underwriter in relation to the underwriting in any manner is taxable; therefore, such taxing entry for the purpose of Sec 66A presupposes that the underwriter providing service in any manner either directly or indirectly to the recipient wherever located makes no difference to law in view of the fiction of law enacted in that section - the underwriter located outside India providing Underwriting Service or in relation thereto in any manner is brought to tax by specific provision declaring the recipient of such service to be assessee - it appears prima facie that the service provided having "relation to" underwriting of shares of the Indian Company (appellant) provided "in any manner" brings that service to fold

2015-TIOL-1716-CESTAT-MUM

M/s Mahindra Ugine Steel Co Ltd Vs CCE (Dated: September 23, 2014)

ST - CENVAT - Input Service - Rule 2(l) of CCR, 2004 - Appellants factory is located at Khopoli, a small town with meagre transport facilities and other infrastructure - distance between factory and nearest city is about 80 to 90 kms - appellant have adopted concast technology for manufacture and which requires round the clock attention in factory/plant - Adjudicating authority denying credit of ST taken on

construction services used for construction of hostel/quarters made for the employees. Held: Under the facts and circumstances of the case, construction of hostel/quarters for employees is in relation to the manufacturing business of the appellant - credit admissible - moreover, credit taken in March, 2009 whereas SCN issued on 25.11.2011 after a period of more than two and half years - demand is hit by limitation - since there is no suppression on the part of the appellant as they have disclosed the facts in relevant EA-3 returns about availment of credit, extended period is not invokable - appeal allowed with consequential relief: CESTAT [para 5]

2015-TIOL-1713-CESTAT-DEL-LB

Standard Chartered Bank Vs CST (Dated: August 14, 2015)

Service Tax - Whether Commission / Discount earned by the Acquiring Banks from Merchant Establishments is taxable as "Service in relation to Credit Card services" prior to 01.05.2006 - Larger Bench of Tribunal holds the activities are not taxable under Banking and Other Financial Services prior to 01.05.2006 - Overrules the order of ABN Amro Bank.

Service provided to a customer of Banking Company - Interpretation of definition of Banking and Other Financial Services under Section 65(10)/ 65(12) /65(72)(zm)/ 65(105)(zm) of the Finance Act, 1994 - Whether the Acquiring Banks and the Merchant Establishments (ME) are to be treated as Customers of the Issuing Bank - The interdependent and seamless but distinct transactions that occur between the ME, an acquiring bank and an issuing bank fall to be considered as a customary relationship amongst these parties. - confining the expression "a customer", to an individual or an entity which has a savings or a current account with a bank, is textually inappropriate. It would be appropriate to conclude (in the context of BOFS), that a customer of a bank includes any person or entity having a continuum of relationship or transactional intercourse with a banking company, within the ambit of activities pursued by the later as a part of its authorised business. In the context of credit card services in BOFS, as the taxable service is defined and enumerated, acquiring bank and the ME could be considered to be a customer of the issuing bank and an acquiring bank, respectively. (para 19)

"In relation to" - Meaning and scope - Whether services provided by an acquiring bank to the ME and those provided by an issuing bank to the acquiring bank fall within the ambit of services provided "in relation to credit card" services - On a literal construction of the relevant provisions it appears at first blush that any service provided to a customer by a banking company etc. in relation to credit card services, is a taxable service. Acceptance of this construction would lead to infinite expansion of the taxable event. Not only would credit facilities provided by an issuing bank to its card holder fall within the scope of this service but a host of other services which are interspersed in the sequence of transactions occurring on the use of a credit card, would all be services provided in relation to credit card services. These services are expressly enumerated in sub-clauses (ii), (iii), (vi) and (vii) of Section 65 (33a), w.e.f. 01.05.2006. (para 27)

While services provided by an issuing bank to an acquiring bank and an acquiring bank to the ME are intermediary, ancillary and interdependent integers for effective use of credit cards, it is to be concluded that these services though interdependent are distinct and are not intended to be covered within the purview of credit card services prior to 01.05.2006, notwithstanding the phrase "in relation to" employed in the enumerative provision. This is because a contrary interpretation which accords unrestricted scope, locus and amplitude to credit card services would result in introducing a serious element of textual ambiguity, indeterminacy and inchoateness to the scope of the taxable event in BOFS. The decisions in ***Naveen Chemicals*** and in ***Indian National Shipowners Association*** , posit adoption of an interpretive principle which leads to clear and definite identification of the taxable event, to avoid

doubtful taxation. (para 38)

Prior to 01.05.2006, credit card services cover only such services as provided by issuing bank to a card holder - The Bench is compelled to the conclusion that in the context of BOFS, credit card services cover only such services as are provided by an issuing bank to a card holder. This conclusion is fortified by the clarification issued in Board circular dated 09.07.2001, RBI circular dated 12.12.2003, RBI master circular and the express and specific statutory explication of several services which Parliament has specified to be included in card services, incorporated in the definition of card services, for the subsequent period w.e.f. 01.05.2006, in Section 65 (33a). Credit card services is included in card services and stands deleted from BOFS, w.e.f. 01.05.2006. To interpret the several services specifically enumerated in Section 65(33a) and other services like those provided by credit information companies or telephone or internet network providers, which equally contribute to and are essential for effectuation of credit card transactions as also comprehended within BOFS, would lead to perpetual uncertainty and non-temporal inflation of the scope of credit card services in BOFS. Such interpretation must clearly be avoided, is the mandate of established interpretive principles. (para 40).

ABN AMRO Bank overruled: The conclusion in ***ABN Amro Bank*** that the express statutory grant [in Section 65(10) read with Section 65(72), 65(105)(zzw)] takes within its fold all incidental or ancillary services "in relation to" credit card services, proceeds on a textual analyses and resonance to the amplitudinous expression *in relation to* , in the enumerative provision - The judgment fails to consider the resultant ambiguity, uncertainty and indeterminacy regarding the variety of taxable events that could conceivably fall within "services provided in relation to credit card services", on such interpretation and the effect of such irresoluble ambiguity regarding contours of the taxable event - The Bench is of the considered view that paragraph 2.2 of the Board circular dated 09.07.2001 accurately captures the scope of credit card services under BOFS during the period 16.07.2001 to 30.04.2006 i.e. as meaning a service where the customer is provided credit facility for purchase of goods and services; whereby cash advances are also permitted upto specified limits; where for rendition of the service, the service provider collects joining fee, additional card fee, annual fee etc; and all these charges, including interest charges for the service rendered, form part of the value of the taxable service, in BOFS - The analyses and conclusions in ***ABN Amro Bank*** are incorrect and this ruling is accordingly overruled. (para 41)

Revenue's Preliminary objection on constituting Larger Bench unsustainable - Mere filing or pendency of an appeal against the decision in ***ABN Amro Bank Limited*** , neither eclipses this decision nor operates as a fetter on another Division Bench, which would be free to either follow the ***ABN Amro Bank Limited*** decision or could doubt its correctness and seek interpretation, by a Larger Bench. There is also no purpose served in adjourning the reference to await the decision of the Hon'ble Supreme Court. In case the ***ABN Amro Bank Limited*** decision is confirmed by the Supreme Court that would be the governing law and the reference would not survive. The same would be the position if ***ABN Amro Bank Limited*** decision is reversed in appeal. Till a final pronouncement by the Supreme Court emerges, there exist diametrically contrary views in the Tribunal; one the final order in ***ABN Amro Bank Limited*** and the other which is expressed in the order of reference and in respect of the same subject matter, namely identification of the scope of "credit card services" in BOFS, during the period prior to 01.05.2006 - Resolution of such a conflict at the level of the Tribunal is therefore a salutary course of action, in interests of interpretative stability which would operate until an authoritative decision is received from the judgment of Supreme Court. (para 46)

Conclusions:

(a) On point No. (i) in the order of reference, we hold that introduction of a comprehensive definition of "credit card, debit card, charge card or other payment service" in Section 65(33a) read with Section 65(105) (zzzw), by the Finance Act, 2006 is a substantive legislative exertion which enacts levy on the several

transactions enumerated in sub-clauses (i) to (vii) specified in the definition set out in Section 65(33a); and all these transactions are neither impliedly covered nor inherently subsumed within the purview of credit card services defined in Section 65(10) or (12) as part of the BOFS;

(b) On point No. (ii) we hold that sub-clause (iii) in Section 65(33a) is neither intended nor expressed to have a retroactive reach i.e. w.e.f. 16.07.2001. Services enumerated in these sub-clauses are not implicit in the scope of credit card services;

(c) On point No. (iii) of the reference, we hold that a Merchant/ Merchant Establishment is "a customer" in the context of credit card services enumerated in Section 65(72)(zm), subsequently Section 65(105)(zm) and *a fortiori* an acquiring bank is "a customer" of an issuing bank.

(d) On point No (iv), we hold that ME discount, by whatever name called, representing amounts retained by an acquiring bank from out of amounts recovered by such bank for settlement of payments to the ME does not amount to consideration received "in relation to" credit card services.

Also see analysis of the order

2015-TIOL-1710-CESTAT-MUM

Vidarbha Iron And Steel Co Ltd Vs CCE (Dated: July 08, 2015)

ST - Manpower Recruitment & Supply Agency - Creditors filing petition for winding up company - As per compromise scheme approved by High Court, factory along with machinery was given under leave & licence to FACOR in order to not deprive the employees of their job and livelihood - Salary of employees received from FACOR for payment to staff - ST demand not sustainable as there is nothing on record to show that the appellant functioned as a commercial concern engaged in supply of manpower to FACOR: CESTAT [para 6.2, 6.4, 7]

Also see analysis of the order

2015-TIOL-1709-CESTAT-ALL

CCE Vs New Decent Footwear Industries (Dated: July 07, 2015)

ST - Refund under Notfn 41/2007-ST - Said Notfn authorises refund of ST paid on value of inputs for goods exported subject to ceiling of 2% on FOB value, in respect of BAS - Review Commissioners as well as Revenue's appeal proceeds on premise that assessee had paid ST on 3% of FOB value of export goods (in excess of ceiling limit prescribed in said Notfn) - Nowhere brought out a scintilla of material/evidence/documentary substantiation to support Revenue's assertion that assessee had paid ST on 3% of FOB value of exported goods - Appeal by Revenue is without merits, hence dismissed: CESTAT

2015-TIOL-1708-CESTAT-DEL

Phoenix International Ltd Vs CCE & ST (Dated: July 07, 2015)

ST - Renting of Immovable Property - appellants are discharging their service tax liability on the monthly rental of Rs.5,000/- - however, they have received a huge sum of Rs. 20 crores, interest free, as security deposit at the time of execution of the agreement - It is the case of Revenue that the rent payable per month fixed as per

the agreement is not the sole consideration for the service of leasing/renting of immovable property; that the rent fixed has been influenced by the interest free security deposit taken by the appellant; that, therefore, the notional interest of the security deposit of 20 crores has to be added for proper valuation of the taxable service - SCN issued proposing demand of service tax by fixing monthly rent @ Rs.25,05,000/- per month by loading notional interest @ 15% on the amount of security deposit - ST demand of Rs.1,32,24,464/- confirmed with equal amount of penalty besides imposition of penalty u/s 77 - Appeal to CESTAT.

Held: Monthly rental fixed is nominal in regard to the property that is leased - renewal terms of the agreement are that the agreement can be renewed up to 20 years and if renewed for such extended period, the refund of the security deposit need to be made only after 20 years - as to the rate of rent, it is specifically stated that the rent shall not be revised or enhanced even if the agreement is renewed for extended periods - Further, there is a lock-in-period of 5 years whereby the appellant is assured to retain the deposit for a period of 5 years even in the event of the Lessee terminating the agreement prior to the expiry of 5 years - Considering all these, on the face of it, it has to be said that the security deposit of Rs.20 crores received by the appellant is not in the nature intended for the purpose of securing default in rent, or utility charge or damages but it is something more - facts of the instant case stands on a different footing that the decided cases of K. Raheja Corp. (P) Ltd. 2015-TIOL-100 CESTAT-MUM & Murli Realtors Pvt. & Ors 2014-TIOL-1728-CESTAT-MUM for the reason that the security deposit is very huge and the rent fixed is reduced to a nominal amount in regard to the property leased - appellants have not been able to make out a case for full waiver of pre-deposit - appellants directed to deposit 50% of the demand with proportionate interest within a period of 4 weeks : CESTAT [para 5, 6, 7]

2015-TIOL-1701-CESTAT-BANG

M/s Manav Marketing Pvt Ltd Vs CST (Dated: July 04, 2014)

Service Tax - Stay application against order rejecting refund claim - Not maintainable because granting an order would result in payments claimed as refund - Stay petition, misconceived as such is dismissed.

2015-TIOL-1698-CESTAT-DEL

Mind Edutainment Pvt Ltd Vs CST (Dated: June 26, 2015)

ST - Refund - Assessee engaged in providing educational services and holds ST registration under category of "Commercial Training & Coaching Services" - According to assessee, fees were collected on two basis - First category of cases where tax incidence has been passed on i.e. ST has been charged separately and recovered from schools/parents - Second category of cases where incidence has not been passed on - It is apparent from invoice that it is cum-tax invoice and therefore incidence of tax is passed on to school/customer - No dispute that agreement stipulates value inclusive of taxes - Invoices issued also indicate that amount collected is inclusive of ST - Undeniably presumption under section 12B is raised that incidence of tax is passed on to customer - Assessee has to establish by evidence that ST passed on was returned to customer - In absence of such evidence, presumption stands unrebutted - As the

fees stipulated in agreement were inclusive of taxes and invoices issued indicates that amount includes ST, refund claim is hit by bar of unjust enrichment: CESTAT

2015-TIOL-1697-CESTAT-MUM

Trimurti Octroi Company Vs CCE (Dated: July 7, 2015)

ST - Mere reading of the invoices and the challans by the appellant (octroi agent) for the purpose of filling up the form and obtaining clearance at the check post does not amount to dealing with or handling the documents of title - "dealing with the title" is possible when a person has authority to transfer the title of such documents - demand under BAS not sustainable - Appeal allowed: CESTAT [para 9]

Also see analysis of the order

2015-TIOL-1691-CESTAT-DEL

M/s Ionnor Solutions Pvt Ltd Vs CCE & ST (Dated: March 27, 2015)

ST - Refund under notfn 5/2006-CE(N.T.) - Assessee is a 100% EOU (under STPI scheme) and have no domestic sales - Claim for refund filed for the quarter 4/2011 to 6/2011 - Said refund claim was rejected referring to Para 4 of said notfn - Appellate authority apparently interpreted said para to mean that refund of only those input services can be allowed which were consumed during quarter in which the exports took place and in respect of which refund claim was filed - Assessee were not in a position to utilize credit against goods exporting during quarter to which the claim relates - No doubt that refund claim was not in violation of said para 4 of said Notfn - As per CBEC Circular No.120/01/2010-ST, refund claim for a particular quarter need not be in respect of input services consumed in that quarter - Primary adjudicating authority is directed to grant said refund to assessee: CESTAT

2015-TIOL-1690-CESTAT-DEL

The Bank Of Tokyo-Mitsubishi Ufj Ltd Vs CCE (Dated: June 18, 2015)

ST - Input service credit has been denied to assessee on security guards, telephone connections installed at residence of bank employees and professional charges for professional work - It is alleged that amount of ST on these services is wrongly availed as cenvat credit as per notfn 23/04 as they have not used in or in relation to output services - As assessee had provided all copies of invoices for service provided by consultants are on record, assessee is entitled to take cenvat credit if same is in order as per conditions of notfn 23/04 - Security guard service and telephone connections services has been availed by their back up office where General Manager is also residing and services availed for security guards at residence of General Manager and back up office cannot be segregated, therefore, assessee is entitled to take cenvat credit on these service also - Assessee has availed input service for providing output service - Therefore, assessee is entitled to take cenvat credit:

CESTAT

2015-TIOL-1685-CESTAT-MUM

CCE Vs N R Raut (Dated: June 26, 2015)

ST – "Manpower Supply Recruitment Agency Services" - Appeal by Revenue against o-in-a on the ground that the services rendered by the respondent to service recipient on lumpsum payment is in the form of manpower supply as service recipient has deducted TDS which amounts to contract being entered by the respondent for rendering the services. Held: Issue is now settled in the case of Yogesh Fabricators - 2015-TIOL-1115-CESTAT-MUM where in similar circumstances Tribunal had held that services will not fall under the category of taxable services – Revenue appeal rejected: CESTAT [para 4, 5]

2015-TIOL-1684-CESTAT-MUM

National Aviation Co of India Ltd Vs CST (Dated: July 15, 2015)

ST - Airport service - Advances received for services to be provided after 01/05/2006 from which date service became taxable - as no exemption was provided akin to notification 36/2010-ST, tax liability arises, however, demand is blatantly hit by limitation - Appeal allowed with consequential relief: CESTAT

Also see analysis of the order

2015-TIOL-1682-CESTAT-MUM

S A Enterprises Vs CCE (Dated: March 31, 2015)

ST – Appellant had collected Service tax from customers but failed to remit the same to the exchequer – it is also on record that the appellant failed to file statutory returns – conduct of appellant clearly falls within the mischief of wilful misstatement/suppression of facts and, therefore, appellant does not deserve the benefit of s.80 of the Finance Act, 1994 – further s.78 as it stood at the relevant time did not provide for any reduction in the mandatory penalty equal to the amount of ST not paid/short paid – therefore, benefit of amended provision which came into force w.e.f 08/04/2011 could not have been extended to appellant – Penal provisions are substantive in character and, therefore, the provisions that shall apply are those existing at the time of commission of the offence – no scope for lower authorities to reduce the penalty from the statutory stipulated penalty equal to amount of ST short paid – Appeal filed by Revenue allowed and that by assessee dismissed: CESTAT [para 6.1]

2015-TIOL-1681-CESTAT-MUM
CCE & C Vs Nasik Sarva Sevabhai Trust (Dated: June 04, 2015)
ST - Appellant engaged by sugar factories for harvesting sugarcane, transporting and unloading the same at the sugar factories which according to Revenue would fall under the category of "Manpower Recruitment and Supply Agency" Service. Held: Issue is no longer res integra - in the case of Bhogavati Janseva Trust, the Bench had allowed appeals filed by various appellants engaged in the very same activity - Revenue appeals rejected and that by assessee allowed: CESTAT [para 4]
2015-TIOL-1680-CESTAT-MUM
Hemangi Enterprises Vs CCE (Dated: July 07, 2015)
ST - Applicant seeking extension of stay on the ground that their appeal has not come up for disposal for no fault of theirs. Held: In the case of Venketeshwara Filaments Pvt. Ltd. 2014-TIOL-2388-CESTAT-AHM it is held that consequent upon omission of 1 st , 2 nd and 3 rd proviso to section 35C(2A) of the CEA, 1944 by the FA, 2014 it is to be held that there is no provision for making further application for extension of stay and that the stay order passed by the Tribunal, if it is in force beyond 07.08.2014, it would continue till the disposal of the appeals and there is no need for filing any further applications for extension of orders granting stay either fully or partially – since the stay in the present case was in force beyond 07.08.2014, same would continue till the disposal of the appeal - Application disposed of: CESTAT [para 2, 3]
2015-TIOL-1674-CESTAT-MUM
Jain Irrigation Systems Ltd Vs CCE (Dated: May 26, 2015)
ST - Appellant had availed lending services from service providers based abroad - fees paid by appellant in foreign exchange to the lenders abroad is liable to service tax under the category of 'Banking and Financial services' on reverse charge basis - demand confirmed for period July to December 2007 by invoking extended period of limitation and equivalent penalty imposed - appellant paying tax before passing of adjudication order and claiming that entire exercise is revenue neutral because tax paid is available as credit and, therefore, extended period is not invokable and so also penalty is not imposable. Held: Revenue neutrality comes about in relation to the credit available to the appellant himself and not by way of availability of credit to anyone else - since entire exercise is revenue neutral, mens rea is not established for imposition of penalties - as duty stands paid and credit is admissible, order set aside to the extent of recovery of interest and imposition of penalties: CESTAT [para 6, 6.1]
2015-TIOL-1672-CESTAT-BANG
Sks Microfinance Ltd Vs CCE, C & ST (Dated: April 30, 2015)

Service Tax - Stay - pre-deposit - Microfinance loan assigned to bank with a higher rate of interest - Difference between interest collected from loans given to rural poor women and interest paid by microfinance company to the assigned bank - prima facie amounts to taxable service - Pre-deposit of Rs. 3 crore ordered.

Also see analysis of the order

2015-TIOL-1671-CESTAT-MUM

CCE Vs M/s Biopharmax India Pvt Ltd (Dated: May 19, 2015)

ST - Appellant entered into turnkey contract with client for Erection, commissioning and installation of Insulin Manufacturing plant in the year 2006 - Commissioner confirming ST demand of Rs.57.19 lakhs and dropping demand of Rs.67.01 lakhs which was based on supply and components portion of the contract - Revenue in appeal before CESTAT. Held: Respondent had made an addendum to the original contract by which the payment of direct purchases shall be made by the client to suppliers subject to appellants' authorisation - there is nothing wrong in modifying and amending an agreement to suit both parties - Commissioner has accepted that the respondent had received Rs.4.67 crores from client for the provision of service under the category of 'Erection, commission and installation' service without causing any verification of official records - such verification is not necessary - at the material time, service tax was levied on receipt basis and appellant had paid ST on the amount received from client, therefore, tax has been correctly paid by appellant - on issue of penalties, Revenue of the view that no sustainable reasoning has been given - Commissioner has taken note of the fact that the respondent had paid the full tax liability of Rs.57.19 lakhs voluntarily and along with appropriate interest - also appellant under a genuine misconception that turnkey projects i.e Works Contract projects were not leviable to ST as Works Contract came into fold of service tax on 01/06/2007 - Commr. has quite appropriately exercised his discretion u/s 80 of FA, 1994 on the basis of 'reasonable cause' for waiving penalties - Revenue appeal dismissed: CESTAT [para 4, 4.1, 4.2]

2015-TIOL-1670-CESTAT-DEL

M/s Roshan Motors Pvt Ltd Vs CCE (Dated: June 18, 2015)

ST - SCN was issued on 22.06.2006 and period of demand is 01.07.2003 to 31.03.2005 and thus entire period is beyond normal period of one year - When extended period is not invocable, and entire ST was paid before issuance of SCN, assessee is entitled to benefit of Section 73(3) of Finance Act, 1994 - In terms of which even SCN was not required to be issued in which case question of imposing penalty would simply not arise - Impugned order set aside and appeal allowed: CESTAT

2015-TIOL-1663-CESTAT-MUM

CCE Vs Shri G M Mate (Dated: May 13, 2015)

ST - 'Manpower Recruitment or Supply Agency' service – Department's case that the respondents were supplying labour seems to be incorrect as the first appellate

authority scanned the bill raised by the respondents and which indicates that the charges which are paid to the respondents are in respect of lumpsum job and various activities depending upon the quantum of material and the supplier discharged the CE duty on the job worked goods – Commissioner (A) was correct in setting aside the o-in-o confirming the demand of ST – Revenue appeal rejected: CESTAT

2015-TIOL-1662-CESTAT-DEL

CCE Vs M/s Kehems Engineering Pvt Ltd (Dated: July 07, 2015)

ST - When clause (i) of ECIS definition w.e.f 16.06.2005 covered everything which was covered by definition of ECIS prior to 16.06.2005 it has to be held that what is contained in clause (ii) of the ECIS definition was not covered under the ECIS definition prior to 16.06.2005 - Demand set aside - Assessee Appeal allowed & Revenue appeal dismissed: CESTAT

Also see analysis of the order

2015-TIOL-1661-CESTAT-MAD

Ramalingam Construction Co Pvt Ltd Vs CCE & ST (Dated: May 28, 2015)

Service Tax - Stay / dispensation of pre deposit - Demands adjudicated under Commercial & Industrial Construction Service, Construction of Residential Complex Service, Dredging Service, Management & Maintenance Service and Erection & Commissioning service etc. with equivalent penalty and interest; and agitated herein.

Held: Worksheet submitted indicating the break up of projects undertaken - out of the total projects, majority of the demand relates to non-commercial construction activity carried out to government/Local Bodies, TN Slum Clearance Board, CMDA, TN Police Commissioner's office, TN State PWD - Dredging Service & E&I Service undertaken for Tamil Nadu Govt under JNNURM & Rajiv Awaas Yojana is exempted under Notification No.28/2010-ST dt. 22.6.2010 - If the amount attributable to above projects is excluded then the demand comes to approx. Rs.7 crores on which they are eligible for cum tax benefit and abatement - Considering the Tribunal's stay order dt. 25.11.2013 in appellant's own case, and the value of construction commercial construction activity disputed by the appellant as non-commercial activity, appellant is directed to predeposit a sum of Rs.25,00,000/- (Rupees Twenty five lakhs only) within 8 weeks. [Para 3, 5]

2015-TIOL-1660-CESTAT-ALL

Rkbk Automobiles Pvt Ltd Vs CCE (Dated: July 10, 2015)

ST - Refurbishment services - Evidence/material on record established that invoices were raised by assessee on "RKBK True Value" and these indicated not only the value of repairs and refurbishment provided but also UP Trade Tax and ST components - From invoices, authorities below legitimately drew inference that specified taxable service was provided by assessee to RKBK True Value, another entity for which not only were invoices raised on later, but the invoices clearly and categorically included components of UP Trade Tax and ST - Assessee is at liberty to remit assessed component of ST, interest thereon and 25% of penalty under Section 78 within 30 days towards compliance with its liability confirmed by impugned order - No substantial error in concurrent findings recorded by primary and lower appellate authorities: CESTAT

2015-TIOL-1652-CESTAT-DEL
Vodafone South Ltd Vs CCE & ST (Dated: June 29, 2015)
ST - Assessee is engaged in rendering telephone services - Cenvat credit relating to "Training/guesthouse maintenance" services provided to assessee by M/s J & G Corporate Solution was disallowed on the ground that assessee did not produce the copy of agreement with J & G Corporate Solutions (P) Ltd. - Same services i.e. Training/guesthouse maintenance services provided to assessee by M/s Sunrise Housekeeping and Support Services (P) Ltd. was allowed by adjudicating authority - This can lead to only conclusion that services of Training programme/guesthouse maintenance has been accepted by Department as qualified as input service for availing Cenvat credit - Facility of housekeeping/maintenance of guesthouse is a facility provided for purposes of its employees or guests who were traveling for work purposes - Services of 'Housekeeping / maintenance of guesthouse provided by M/s J & G Corporate Solution Pvt. Ltd. qualifies as input service and assessee are eligible for benefit of Cenvat Credit: CESTAT
2015-TIOL-1651-CESTAT-DEL
Cherry Hill Interiors Ltd Vs CST (Dated: June 12, 2015)
ST - Assessee was providing various interior services such as wooden & metal partition, plastering, painting, civil work, joinery items, floor & wall tiling and other similar services in respect of building or civil structure or part thereof - Item rates in work-orders were inclusive of cost of material - As per Section 65 (25b) (c) of Finance Act, 1994, services rendered by assessee are more appropriately covered under scope of completion and finishing services, therefore, abatement of 67% under notfn 15/2004 or 1/2006 is clearly inadmissible, as completion and finishing services have been expressly excluded from coverage of said notfns - Case remanded to original adjudicating authority with a direction that assessee should be given an opportunity to claim benefit of notification No. 12/2003-ST: CESTAT
2015-TIOL-1650-CESTAT-MUM
CCE Vs Ganesh Enterprises (Dated: June 12, 2015)
ST - Consultant pocketing money meant for payment towards ST liability - FIR proceedings initiated against Consultant by the department, which clearly shows that it is not the appellant who has committed an offence of non-payment of service tax, it is the consultant, who has defrauded them, therefore, there is reasonable cause for waiver of penalty imposed u/ss 77 & 78 of FA, 1994 in terms of s.80 of FA, 1994 – Revenue appeal dismissed: CESTAT [para 5]
Also see analysis of the order
2015-TIOL-1643-CESTAT-MUM
M/s Ganpati Zilha Krishi Audyogik Vs CCE (Dated: December 24, 2014)
ST - CENVAT - Bank taking over possession of factory of borrower for default in payment of loan and leasing out the same to appellant for running the Sugar mill - on lease rent, ST paid in the name of the borrower and appellant taking credit which is denied by CCE - Revenue view is that Bank should have paid ST. Held: Bank is only a

deemed owner - it is not disputed that tax has been paid - prima facie credit appears to be admissible - Stay granted: CESTAT [para 5]

Also see analysis of the order

2015-TIOL-1642-CESTAT-MUM

Centre For Development Of Advance Computing Vs CCE (Dated: June 23, 2015)

ST - Service tax law nowhere states that if two distinct activities are undertaken or provided in a single agreement, they should be taxed under the same service category - Activity of coaching for which course fees is received is not even remotely connected to the franchise granted by the appellant in the form of Authorisation - demand on the ground that appellant have not included their share of the course fees in the taxable value while discharging service tax liability under the category of franchise service is not sustainable in law - Appeal allowed: CESTAT [para 5, 5.1, 5.2, 6]

Also see analysis of the order

2015-TIOL-1641-CESTAT-BANG

Amogh Broadband Services Pvt Ltd Vs CCE (Dated: January 29, 2015)

Service Tax - Natural Justice - Principles of fair adjudication require adjudicating authority to provide the material sought to be relied upon by him to the assessee and to seek his comments - Demand raised based upon alleged deficiency in various cenvatable invoices -Neither the report of the jurisdictional Central Excise officer was supplied to the assessee so as to seek his comments - Nor the details given in the said report and the grounds for holding the documents ineligible disclosed in the impugned order - Right of appellant to defend his case was denied unjustly - Impugned order hence set aside -Appeal allowed by way of remand for fresh proceedings in accordance with due process of law. (Para 2, 3)

2015-TIOL-1640-CESTAT-MAD

M/s GET Engineering Constructions Pvt Ltd Vs CST (Dated: December 19, 2014)

Service Tax - Penalty - appellants are engaged in the providing services of 'Erection, Commissioning and Installation' - An audit intervention detected non discharge of tax for material period - appellant paid tax with interest but penalty imposed under Sec 76 in adjudication and agitated herein.

Held: Appellants are rendering Erection, Commissioning and Installation service to various customers under turnkey projects across India - to arrive at the monthly service tax liability, they need to collect the data from all their sites - delay appears to be genuine and justified - not the case of default payment and the appellants remitted the interest during the audit - It has been held in a number of decisions that benefit of Section 73(3) is to be extended in such circumstances, and no penalty can be imposable - Tribunal in the case of Shriram EPC Ltd. Examined identical dispute and ruled that penalty under Sec 76 not imposable - Ratio applied, penalty in the instant case set aside. [Para 4]

2015-TIOL-1631-CESTAT-DEL

Standard Auto Agencies Vs CCE & ST (Dated: July 10, 2015)

ST - Assessee originally engaged in dealership of Yamaha Two Wheeler Vehicles and having ST registration since 2002 - Later they started Maruti four wheeler dealership in 2004 and took separate premises on rent for Maruti Showroom and Workshop - But initially at start up process, administrative office of Maruti dealership (sales showroom and workshop) was shown as address of assessee - It has to be considered that assessee needs time to set up business/business premises, only then can the assessee apply for ST registration - Assessee cannot be found fault with or denied the benefit otherwise available to assessee, for the reason that, in process of setting up of business assessee used the available office address - Only because the invoices were issued to temporary administration office used by assessee during process of setting up of business, it cannot be said that assessee did not establish that capital goods and input services were not used in Maruti Sales Showroom & Workshop - Appeal allowed: CESTAT

2015-TIOL-1630-CESTAT-DEL

CCE Vs M/s Supreme Warehousing Corporation (Dated: May 14, 2015)

ST - Assessee is providing C&F agent service to M/s Grasim Industries - In terms of agreement between Grasim Industries and assessee, freight was paid by assessee on reimbursible basis - Commissioner (A)'s order holding that transportation charges reimbursed by M/s Grasim Industries are not includible in assessable value for charging ST under C&F agent service provided by assessee is legal and proper - Matter remanded to Commissioner (A) with direction that required verification in terms of paras 9 & 10 of impugned O-I-A shall be conducted at his end and appropriate orders passed: CESTAT

2015-TIOL-1629-CESTAT-DEL

M/s Allspheres Entertainment Pvt Ltd Vs CCE (Dated: July 10, 2015)

ST - Eligibility to avail Cenvat Credit on strength of invoices/bills issued to assessee's Delhi office which is unregistered with Service Tax Department - No allegation that input services were not received/utilized by assessee - No dispute that such input services were not properly accounted - In absence of any such dispute regarding availment of services and their utilization for payment of ST or proper accounting of same, denial of Cenvat Credit of ST paid by Nainital office of assessee on sole ground that invoices issued are in name of assessee's unregistered office at Delhi is unjustified - Defect in invoices are only procedural lapse or rather a curable defect - Impugned order to extent of disallowance of Cenvat Credit is set aside - Penalty of Rs.10,000/- imposed under section 77 of FA, 1994 is also set aside - Late fee imposed under section 70 for late filing of ST-3 returns is reduced to Rs.5,000/-: CESTAT

2015-TIOL-1628-CESTAT-MUM

M/s Tilaknagar Industries Ltd Vs CCE (Dated: October 27, 2014)

ST - During visit of CE officers it was observed that appellant had availed cenvat credit of Rs.7.89 lakhs on some input services during the period 1.8.2005 to 31.3.2006 which were received at the Head Office without obtaining registration for Input Service Distributor (ISD) - amount not utilized and entire amount of ST credit

was debited on 17.7.2006 - SCN issued for appropriation of Rs.7.89 lakhs, demanding interest and for imposing penalty - demand confirmed relying on Board's Circular No.897/17/2009-CX dt. 3.9.2009 - appeal to CESTAT.

Held : In view of amendment in rule 14 of CCR, 2004 w.e.f. 1.4.2012 mere taking credit itself would not compel the assessee to pay interest as well as penalty- in view of Madras High Court in the case of Strategic Engineering (P) Ltd. [2014-TIOL-466-HC-MAD-CX] appeal allowed - appellant will be entitled for refund of the amount of interest deposited during the pendency of appeal with interest: CESTAT [para 5]

2015-TIOL-1621-CESTAT-MAD

M/s Coral Crest Builders Vs CCE (Dated: March 17, 2015)

Service Tax - Demand - Construction services - appellant rendered the taxable service under 'Construction of Residential Complexes' and failed to register under service tax and failed to pay service tax on the amount collected from their clients - demands adjudicated with penalties under Sections 76, 77 & 78 - partial relief in respect of penalties by Commissioner (Appeals) who upheld tax demands with interest and penalty under Sec 78; agitated herein.

Held: The present appeal is limited to only waiver of equivalent penalty imposed under Section 78 - It is not the case of the appellants that they have voluntarily paid the service tax on their own - the appellants have not even registered with the department under service tax and not filing returns in spite of knowing fully well that the they had already collected the total amount from their clients - but for the detection by the Department they could not have discharged service tax - The Tribunal in the case of Kedia Business Centre relied upon Apex Court / High Court orders and upheld the penalty imposed under Section 78 - no justification in the appellant's plea for waiver of penalty imposed under Section 78, considering that the Commissioner (Appeals) has already waived the penalties imposed under Section 76 & 77 of the Act - no infirmity in the impugned order in so far as upholding the penalty under Section 78; same upheld [Para 6]

2015-TIOL-1620-CESTAT-MAD

M/s The India Cements Ltd Vs CCE (Dated: April 08, 2015)

Central Excise - CENVAT credit - Appellant availed input services credit distributed by Head Office as well as Regional offices - Revenue viewed that in terms of Rule 2(m), 'an office' related only to the head office; that credit distributed by regional office was not admissible - demand for recovery of credit with interest and penalty adjudicated and agitated herein.

Held: No reason why the appellant was not given opportunity of defence through show-cause notice to defend on the concept of "an office" dealt in adjudication - This ground alone is enough to strike down the Adjudication order on the ground of violation of natural justice [Para 6]

The term "an office" cannot be limited to a physical boundary but shall be interpreted as different boundaries which are offices and distribute the credit - The requirement is that credit distributing agency should be "an office" only but not a confined boundary - The term "an office" used in Rule 2 (m) of Cenvat Credit Rules, 2004 is to be read in plurality in the context in which that is used and any narrow meaning given to the term "an office" would defeat the spirit of the provisions in section 13 (2) of General Clauses Act - no finding by the Adjudicating authority of any violation of the conditions

of Rule 7 of CCR 2004; hence there cannot be denial of Cenvat credit distributed to the appellant for its consumption. [Para 7, 8]

Also see analysis of the order

2015-TIOL-1619-CESTAT-MAD

M/s City Travels Vs CCE (Dated: November 21, 2014)

Service Tax - 'Tour Operators' service - appellants are engaged in the business of operating transportation of passengers between point to point under contract carriage permit- Tax demands with penalties adjudicated, upheld by Commissioner (Appeals) and agitated herein.

Held: Notification No. 20/2009-ST dated 07.07.2009 has been given a retrospective effect from 01.04.2000, vide Sec 75 of the Finance Act, 2011 enacted on 08.04.2011 - appellants had operated contract carriage for carrying passengers from point to point as is evident from the photocopies of tickets issued by the appellant to the individual passengers; exemption available; impugned order set aside. [Para 4]

2015-TIOL-1618-CESTAT-MAD

Texyard International Vs CCE (Dated: December 31, 2014)

Service Tax - BAS - Assessees are manufacturer-exporter of textile made ups and availed the services of overseas commission agents for procurement of orders for commission - Demands adjudicated under Business Auxiliary Services under reverse charge while dropping penalties proposed under Section 76, 77 & 78 - both assessee and Revenue filed appeals before Commissioner (Appeals), respectively contending that the service tax demand and the waiver of penalty - Commissioner (Appeals) rejected both appeals, agitated herein by assessee and Revenue on similar grounds taken before Commissioner (Appeals).

Held: The main issue in the present appeals is whether assessees are eligible to the benefit of exemption (BAS) under Notification No.14/2004-ST dt. 10.9.2004 and whether assessees are liable for penalty as contended by Revenue - no dispute on the fact that the appellants are manufacturer-exporters and they manufacture textile made ups and export it overseas - Assessee engaged overseas agents and paid commission for procurement of export orders and the commission agency service is covered under the Business Auxiliary Service - same is in respect of service provided by that agent to the appellant to export its goods and thereby sales is promoted - That is an activity incidental or auxiliary to processing of textile goods and covered by Business Auxiliary Service - Clause (d) of the notification covers the case of the appellant bringing the export promotion activity abroad as incidental and auxiliary to the activity of production as is meant by Section 65 (19) of Finance Act, 1994 - Appellants are accordingly entitled to the benefit of exemption Notification No.14/2004 and not liable to the payment of service tax under reverse charge [Para 6.1, 6.3]

Appellants were under bonafide belief that as per the EXIM Policy at para 2.482 of the Policy Period 2009-10 issued by Notification No.1/(RE/2008)/2004-2009 dt. 11.4.2008 all goods and services exported from India, services received/ rendered abroad wherever possible shall be exempted from service tax - Therefore, the demand is also hit by limitation and the extended period cannot be invoked - In the present case, service tax demanded entitles the appellants to the credit thereof and claim refund thereof for which the exercise may become revenue-neutral - demand of service tax

under reverse charge confirmed against the appellants is set aside - since demand of tax itself is set aside, the question of imposing penalty does not arise - Revenue's appeal is rejected and the Assessees' appeals are allowed [Para 7, 8, 9]
2015-TIOL-1606-CESTAT-DEL
M/s Khicha Industries Vs CCE (Dated: May 14, 2015)
ST - Assessee engaged in grinding of rock phosphate - "subject" of contract is "contract for grinding of rock phosphate from which it is evident that contract was not for cargo handling and work other than grinding of rock phosphate was incidental or ancillary to main work of grinding - Payment rates were composite rates not amenable to identification as to what rate/amount was paid to those components of services which were arguably in nature of cargo handling service - When quantification is not possible, the levy fails - From 10.09.2004, assessee has been paying ST on entire consideration received under BAS on account of fact that "production of goods on behalf of the client" was added to definition of BAS from said date - Entire demand pertains to period beyond normal period of one year from date of SCN - Adjudicating Authority himself has recorded that case involved interpretation of law and on that ground extending benefit of Section 80 ibid did not impose any penalties at all - Impugned demand is set aside on merit as well as on ground of time-bar: CESTAT
2015-TIOL-1605-CESTAT-BANG
Akme Projects Ltd Vs CST (Dated: January 09, 2015)
Service Tax - Construction of flats - Service tax collected but not paid to government alleged - Original adjudicating authority dropped the demand and rendered a detailed analysis and concluded on basis of documentary evidence that there was no correlation between the service tax amount shown in the price list given to prospective customers and actual cost of the flat - Further more concluded that the appellant had neither charged service tax nor collected the same but merely obtained indemnity letters from purchasers undertaking to reimburse the service tax - Commissioner (A) without adverting to any discussion mechanically upheld the demand based on price list - Impugned order deserves to be set aside - Appeal allowed with consequential relief. (Para 3, 4)
2015-TIOL-1603-CESTAT-DEL
Shri Amit Sharma Vs CCE (Dated: May 11, 2015)
ST - Assessee contends that they did not receive any SCN or notice of hearing and that they were not providing any cargo handling service under which impugned demands were confirmed and said that they were only providing manpower and many of them have deposited ST under manpower recruitment or supply service - Adjudicating authority did not even devote a single sentence to analyse service rendered by assessee with a view to arriving at a finding that said service fell under category of cargo handling service - Orders-in-original is nonspeaking - Case remanded to primary adjudicating authority for de-novo adjudication: CESTAT
2015-TIOL-1602-CESTAT-MUM
CCE Vs K M Sharma (Dated: April 15, 2015)

ST - Respondent undertaking incidental work to fabrication of Iron & Steel products at M/s Amitasha Enterprises Ltd. - consideration received was fixed and charged on per Metric Ton of output given by them to their client - specimen bill reveals that the charges do not have any nexus with the number/nature/scope of manpower supply but on the contrary bill pertains to various types of activities involved and depends on the quantity of material involved - Revenue has not brought any contrary evidence disputing the factual matrix recorded - Services rendered by the respondent do not fall under the category of 'Manpower Supply and Recruitment Services' - order of lower appellate authority is correct and legal and does not suffer from any infirmity - Revenue appeal rejected: CESTAT [para 5, 6]

2015-TIOL-1601-CESTAT-DEL

CC, CE & ST Vs Parikshit Nirmanak (Dated: April 09, 2015)

ST - Assessee had provided taxable services of CICS or WCS during 2006-2007 to 2010-2011 but failed to obtain registration and remit any ST, till 10.03.2010 - On and from 10.03.2010, assessee remitted ST at its discretion and in trickles - Remittances should be considered in context of fact that assessee obtained registration for rendition of CICS on 26.06.2009 and for WCS on 30.03.2010 - Failure of assessee to remit ST even immediately after obtaining ST registration for CICS therefore leads to clear presumption of conscious knowledge of liability to tax and of failure to remit tax with an intent to evade the same, in violation of provisions of Act - Assessee cannot be to heard to plead that it was ignorant of law and that such ignorance is predicated on fact that it did not go through provisions of Act Ignorancia juris non excusat - As per Ratnamani Metals and Tubes Ltd. - 2013-TIOL-1124-HC-AHM-CX , impugned order is set aside to the extent levy of penalty under Section 78 of FA, 1994 was dropped by Commissioner (A), but subject to remittance of 25% of penalty - Dropping of penalty under Section 77 by Commissioner (A) is without jurisdiction, same is also set aside: CESTAT

2015-TIOL-1595-CESTAT-MUM

Sringeri Consultants Vs Commissioner, Service Tax-I (Dated: June 05, 2015)

ST - Appeal is dismissed only on ground that amount i.e Rs 47,590 is below threshold limit of Rs 50,000 - mentioned in s 35B of CEA, 1944 without going into the merit of case: CESTAT

Also see analysis of the order

2015-TIOL-1593-CESTAT-DEL

M/s Ambedkar Institute Of Hotel Management Vs CCE & ST (Dated: June 15, 2015)

ST - Assessee are preparing meals as per fixed menu which are to be served in various schools of Chandigarh Administration under mid day Meal Scheme of Government - There is neither any allegation nor any evidence to show that assessee had prepared meals at schools where same were to be served or was in any manner involved in serving the meals - Meals prepared by them are simply supplied at pre-determined rates to Education Department - Since the assessee are preparing mid day meals in their Institute and not in schools where the meals are served are not involved in serving of meals in any manner, they are not covered by definition of "outdoor caterer" and hence their activity of preparing and supplying meals for mid day scheme would not be covered by definition of taxable service under Section 65(106(zzt) of FA, 1994: CESTAT

2015-TIOL-1589-CESTAT-DEL

Mr Pritpal Singh Sandhu Vs CCE & ST (Dated: June 9 2015)

ST - Appeal against order wherein demand was confirmed under BAS on commission received from M/s Amway by assessee by virtue of being a distributor of M/s Amway - Assessee contends that it was not promoting any product and commission received pertained to sale of goods - It was also contended that during relevant period there was confusion even in Department and in some cases such demands were dropped, and therefore also, extended period is not invokable - Same issue have been decided by CESTAT in case of Charanjeet Singh 2015-TIOL-1205-CESTAT-DEL - Therefore, case remanded: CESTAT

2015-TIOL-1587-CESTAT-MUM

CCE Vs M/s S P Group Services (Dated: July 13, 2015)

ST - Penalty -Waiver thereof - Consultant pocketing Service Tax and giving forged challans to assessee - upon investigation by the Revenue it was found that the Consultant had committed the fraud and there was no complicity on the part of the assessee - Order passed by Commissioner(A) is correct and upheld - Revenue appeal dismissed: CESTAT [para 2]

2015-TIOL-1586-CESTAT-MUM

CCE Vs M/s Shri Sai Enterprises (Dated: July 13, 2015)

ST - Penalty -Waiver thereof - Consultant pocketing Service Tax and giving forged challans to assessee - upon investigation by the Revenue it was found that the Consultant had committed the fraud and there was no complicity on the part of the assessee - Order passed by Commissioner(A) is correct and upheld - Revenue appeal dismissed: CESTAT [para 2]

2015-TIOL-1584-CESTAT-MUM
M/s Oil and Natural Gas Corporation Ltd Vs CCE, C & ST (Dated: July 10, 2015)
CX - CENVAT credit of Service Tax paid on input services received at offshore platforms in relation to extraction of exempted crude oil is admissible - Provisions of Rule 9 of CCR does not provide any restriction clause that the credit is not allowed in respect of invoices issued by input service distributors in respect of service received by them prior to registration as input service distributor - Cenvat Credit cannot be denied on the ground that input service distributor have received services prior to the obtaining registration as ISD - Tribunal decision in ONGC - 2015-TIOL-1571-CESTAT-MUM followed - Demand of Rs.113.46 crores set aside & appeals allowed: CESTAT [para 3, 3.1]
2015-TIOL-1583-CESTAT-MUM
Essar Steel India Ltd Vs CCE (Dated: March 3, 2015)
CX - By keeping in view the commercial necessity of the appellant and benevolent nature of Rule 16C of the CER, 2002, CCE, Pune-IV to grant permission to the appellant under Rule 16C of the Rules for the FY 2015-2016 - Appeal allowed: CESTAT [para 8, 8.1]
2015-TIOL-1582-CESTAT-BANG
N A Enterprises Vs CCE, C & ST (Dated: December 31, 2014)
Service Tax - Maintenance and repair of transformers - Value of parts replaced during repair activities on which VAT was paid - Service tax cannot be charged - Good prima-facie case in favor of assessee - Stay petition allowed unconditionally. (Para 4)
2015-TIOL-1581-CESTAT-MUM
Central Railway Vs CCE & ST (Dated: May 11, 2015)
ST - Central Railway providing services of renting of immovable property as well as advertisement service and mandap keeper service - Tribunal vide order dated 12.02.2014 [2014-TIOL-2040-CESTAT-MUM], after considering retrospective amendment contained in Section 99 of the FA, 1994 inserted by the FA, 2013 laying down that no ST shall be levied or collected in respect of taxable service provided by Indian Railway during the period prior to 1.10.2012, allowed the appeal - identical issue involved - Appeal allowed: CESTAT [para 3]

2015-TIOL-1580-CESTAT-DEL

CCE Vs M/s Dewas Soya Ltd (Dated: May 7, 2015)

ST - Technical testing and analysis service - Service involved was weighment, sampling and stuffing - Physical testing and analysis would clearly include weighment and sampling also is based on certain physical or chemical characteristics - Stuffing required specific conditions/arrangements like putting of silica gel packs together with craft paper which was technical in nature and thus was a specialised job - Testing involves a critical examination, observation or evaluation and analysis involves examination of a complex, its element and their relation, identification or separation of ingredient of a substance - Service was rendered by technical agencies engaged in providing service in relation to technical testing and analysis thus satisfying definition given in Section 65 (107) of FA, 1994 - Service providers issued proper certificates certifying weighing, packing and stuffing and specification of protein, fat and moisture - Refund was correctly sanctioned as per provisions of Notfn 41/2007-ST - Appeal dismissed: CESTAT

2015-TIOL-1573-CESTAT-HYD

M/s Aruna Constructions Ltd Vs CCE & ST (Dated: February 3, 2015)

Service Tax - Claim of exemption - Burden of proof - Person claiming the benefit of exemption must establish through details the eligibility to such exemption - Exemption of service tax on value of the materials is an exemption and this burden cannot be shifted to the Revenue by merely specifying an amount and saying that the Revenue has to work out the actual abatement from the documents furnished -No detailed statement showing the actual liability, the amount paid, the amount received, claimed as abatement have been presented - No evidence to establish financial difficulty as pleaded - On facts, appellant directed deposit 33% of the demand with proportionate interest - Pre-deposit of balance dues is waived upon compliance. (Para 6, 7, 8, 10, 11)

2015-TIOL-1570-CESTAT-MUM

CST Vs M/s Jaybharat Automobiles Ltd (Dated: July 6, 2015)

ST - Commission for promoting of auto loans - Appellant admitted that in the case of HDFC Bank they had raised debit notes for ST but the bank did not pay them tax - This is no excuse for not paying tax to the Government - extended time period is invokable because the appellant knowingly did not pay the tax: CESTAT [para 6.1, 6.2, 6.3]

Also see analysis of the order

2015-TIOL-1569-CESTAT-ALL

CCE Vs M/s P C Construction (Dated: July 6, 2015)

ST - Assessees are providing services of Erection, Commissioning or Installation Service (ECIS) to BSNL in form of erection of towers for which certain items are supplied free of charge by BSNL and certain other items are used by assessees - It is the case of assessee that they have provided works contract service all through the period involved - Tribunal not agreed with assessee that no ST was attracted on their activities prior to 01/6/2007, as works contract service was carved out of Services of CICS, COCS and ECIS which were subject to ST even prior to 01/6/2007 - Activities of 'works contract' undertaken by assessee is therefore classifiable under 'works contract service' w.e.f. 01/6/2007 - Same service even if provided under a works contract before 01/6/2007, will be classifiable under ECIS - As per Bhayana Builders (P) Ltd. 2013-TIOL-1331-CESTAT-DEL-LB, free supplies made by service recipient to service provider for providing construction service are not includable in gross amount charged as per Section 67 of FA, 1994 - Assessees are using materials like cement, sand and bricks in providing ECIS, therefore, benefit of 67% abatement under Notfn 1/2006-ST will be admissible for demand for normal period of limitation - Benefit of cum-duty has to be allowed to assessees under Section 67 (2) - As assessees had a bonafide belief that no ST was payable by them before 01/6/2007, as 'works contract service', there is a reasonable cause for non-payment of tax and benefit of Section 80 is admissible - No penalites under Section 76, 77 and 78 are imposable: CESTAT

2015-TIOL-1568-CESTAT-DEL

Bhagwati Enterprises Vs CCE (Dated: April 9, 2015)

ST - Demand was confirmed alongwith interest and penalties on the ground that assessee were providing advertising agency service on which they did not pay ST - Assessee contends that they were not providing any advertising agency service and were in fact renting space from Railways which they used to further give on rent - In interest of justice, additional evidence in support of assessee's aforesaid contention should be admitted - Matter remanded to commissioner (A) and the case readjudicated after giving opportunity of hearing to assessee: CESTAT

2015-TIOL-1567-CESTAT-ALL

Gemini Mobiles Pvt Ltd Vs CCE & ST (Dated: July 8, 2015)

ST - Whether activities pursued or services provided by dealers of motor vehicles in such circumstances fall within ambit of BAS - Some decisions ruled that such activities fall within BAS while other decisions ruled to contrary - In light of Larger Bench ruling in Pagariya Auto Center 2014-TIOL-141-CESTAT-DEL-LB clarifying contours of BAS, in respect of transactions involving automobile dealers and banks or financial institutions, there was a bona fide doubt as to whether appellants had provided BAS during relevant period in issue - Therefore non-filing of returns and non-remittance of tax for rendition of BAS could not be characterised as arising with a view to suppression of material facts or failure to remit tax with an intent to evade the same - Period in issue is July 2003 to November 2005 and SCN was issued on 31.1.2006 - Only part of period is therefore within normal period of limitation - Appellants liable to tax, interest and penalties for normal period of limitation specified in Section 73:

CESTAT

2015-TIOL-1560-CESTAT-BANG

Prakruthi Builders Vs CST (Dated: March 3, 2015)

Service Tax - Imposition of penalty by Revision - Scope - Adjudicating authority in its discretion declined to impose penalty under sections 76, 77 and 78 as ingredients constituting fault to impose penalty lacking - Commissioner invoking his revision powers under section 84 to impose penalty under sections 76, 77 and 78 is illegal and beyond his jurisdiction - Impugned order set aside - Appeal allowed with consequential reliefs. (Para 2, 3)

2015-TIOL-1559-CESTAT-MUM

Jindal Drilling & Industries Ltd Vs CST (Dated: May 15, 2015)

ST - Appellant, during July to September 2007, hiring rigs from foreign parties and enlisting the same to ONGC - service tax liability on the appellant for hiring of rigs to ONGC by making payment to foreign entities is effective from 16.5.2008 as Supply of tangible goods service - services would not fall under the category of 'Mining of mineral oil and gas service' - when there can be no service tax liability, the question of interest and penalty does not arise: CESTAT [para 6, 7, 9]

Also see analysis of the order

2015-TIOL-1558-CESTAT-DEL

M/s Nortel Networks (I) Pvt Ltd Vs CST (Dated: June 17, 2015)

ST - Demand for Rs. 66,96,09,360/- stands confirmed on consideration received by assessee in respect of services provided to overseas associated entities, in respect of which assessee's claim for immunity from levy and collection of ST by reliance on provisions of Export of Service Rules, 2005 was negated in impugned order - Since every one of three integers on the basis of which tax stands confirmed apart from interest and penalty is covered in favour of assessee by binding precedents - In respect of services provided by assessee to overseas entities is concerned, this activity falls within ambit of Rule 3 of Export of Service Rules, 2005 as declared in Microsoft Corporation India Pvt. Ltd. 2014-TIOL-1964-CESTAT-DEL : CESTAT

ST - Demand of Rs. 2,52,20,279/- stands confirmed by impugned order in respect of remittances by assessee to overseas entities whose employees were seconded for service with assessee - Secondment of employees from abroad for serving in India does not constitute rendering of Manpower Supply or Recruitment service is declared

in Computer Science India Pvt Ltd. 2014-TIOL-434-CESTAT-DEL : CESTAT ST - Entries were made in books of account by assessee in respect of amounts due from overseas entities, prior to 10.05.2008 - On this count there is no contest - For entries made prior to 10.05.2008 there is no liability to remittance of tax merely on account of amendment to provisions of Section 67 of the Act is a principle concluded by decisions of Tribunal in Sify Technologies 2011-TIOL-123-CESTAT-MAD : CESTAT
2015-TIOL-1557-CESTAT-BANG
V R K & Company Vs CCE, C & ST (Dated: January 6, 2015)
Service Tax - Principal contractor paid entire service tax - Demand against sub-contractor - Unsustainable - Stay petition allowed unconditionally - Pre-deposit is waived. (Para 3)
2015-TIOL-1550-CESTAT-MUM
M/s Mercedes Benz India (P) Limited Vs CCE (Dated: July 16, 2015)
CX - Rule 6 of the CCR is not enacted to extract illegal amount from the assessee - If this is the objective then at the most amount which is to be recovered shall not be in any case more than Cenvat Credit attributed to the input or input services used in the exempted goods - The main objective of the Rule 6 is to ensure that the assessee should not avail the Cenvat Credit in respect of input or input services which are used in or in relation to the manufacture of the exempted goods or for exempted services - legislature has not enacted any provision by which Cenvat credit, which is other than the credit attributed to input services used in exempted goods or services can be recovered from the assessee -Appeal allowed: CESTAT [para 5.1 to 5.5]
Also see analysis of the order
2015-TIOL-1549-CESTAT-MUM
Ideal Road Builders Pvt Ltd Vs CST (Dated: July 1, 2015)
ST - Appellant is collecting toll and depositing the same with NHAI and either retains part of the amount which has been collected as toll or gets paid from NHAI by a fixed amount - collection of toll by the appellant is not to be considered as Business Auxiliary Service provided to NHAI - Appeal allowed: CESTAT [para 11, 12, 14]
Also see analysis of the order
2015-TIOL-1548-CESTAT-BANG
M/s Vibha Agrotech Ltd Vs CC, CE & ST (Dated: February 2, 2015)
Service Tax - Non-payment of Service Tax - Levy of Penalty - Sustainability - Reasonable cause - Appellant, a scientific and research body engaged in the activity of production and marketing of various varieties of seeds for agricultural purposes -

Since the activity is exempted from payment of excise duty and VAT levied by the State Government on sales, appellant was under bonafide belief that service tax under reverse charge basis for GTA services availed is not applicable - Appellant however paid service tax along with interest prior to issuance of show cause notice - In the circumstances, as reasonable cause for non-payment of service tax exists, invoking penal provisions is not warranted - Impugned order levying penalty set aside while upholding demand and interested as not contested. (Para 3, 4)
2015-TIOL-1546-CESTAT-MUM
Bombay Intelligence Security (india) Ltd Vs CST (Dated: June 30, 2015)
ST - No specific head of service category has been proposed in the SCN nor confirmed in the o-in-o - SCN as well as order are vague - It is settled law that classification of taxable service must be specified in the SCN in order to fasten liability of Service Tax - demand of Rs.4.12 crores set aside: CESTAT **-**
Also see analysis of the order
2015-TIOL-1545-CESTAT-MUM
Auto Window Vs CCE (Dated: May 26, 2015)
ST - Job worker paying ST along with interest upon insistence by audit team - pursuant to intimation by job worker in terms of s.73(3) of FA, 1994, SCN waived - Supplementary invoices issued and CENVAT credit taken by appellant - credit denied by citing rule 9(1)(bb) of CCR, 2004 - Merely because department has detected and service provider has paid service tax, that alone is not sufficient to make allegation that there is suppression of fact - Credit rightly availed - Appeal allowed: CESTAT [para 6]
Also see analysis of the order
2015-TIOL-1543-CESTAT-DEL
Chaddha Paper Mills Ltd Vs CCE (Dated: June 19, 2015)
ST - Assessee had entered into a contract with M/s. Singh Traders, to ensure that movements of lorries/tankers is smooth and speedy and it should also arrange/collect information of molasses in respect of quantity of molases lifted from various sugar mills and their stock status on regular basis - As regards the services rendered by assessee to M/s. Punjab Chemical Agency, in absence of contract, there will be no basis to even ascertain as to what was the nature of service rendered in which case - Said contract leaves no doubt that assessee was essentially working as a commission agent and as per Notfn 13/2003-ST, BAS provided by a commission agent was exempted from levy of service tax - Thus, the service rendered to M/s. Punjab Chemical Agency was clearly exempted under said Notfn: CESTAT
2015-TIOL-1542-CESTAT-DEL
Design Consortium Vs CCE (Dated: March 27, 2015)
ST - Assessee filed refund claim electronically on 5.7.2012 - Adjudicating authority has reckoned date of filing refund as 29.11.2012 when they submitted necessary documents in response to a query by department - Trade Notice dated 17.9.2009 and

FAQs issued by Commissioner and DGST respectively clearly mentioned that assessees could filed refund claims online and that is what was done by assessee - Date of filing refund claim electronically, which is 5.7.2012, is to be taken as date of filing refund claim and with reference to that date impugned amount rejected is not barred by time - Even if Superior Courts in some cases having regard to specific facts/circumstances ordered refund to be granted ignoring time limit prescribed under Section 11B of CEA, 1944, creatures of CEA or Customs Act 1962 can not arrogate to themselves similar powers, they remain bound by boundaries of statute which created them while Superior Courts not being creatures of said statutes are not so bound - Primary adjudicating authority is directed to dispose of refund claim of impugned amount treating the date of filing to be 05.7.2012: CESTAT [Para 2, 3, 4]

2015-TIOL-1541-CESTAT-AHM

Nutan Shah Vs CCE & ST (Dated: May 22, 2015)

ST - Assessee paid ST on services of renting of immovable property and sale of space for advertisement provided to M/s. Reliance Industries Limited (service recipient) - Refund claim was filed by assessee which was rejected by Assistant Commissioner under Section 11B and 11D of CEA, 1944 - CA's certificate certifies that service recipient has not paid any ST to assessee on account services of lease of vacant land for merchandising of on-fuel products and lease of vacant land for erection and display of hoarding - Service recipient vide letter dated 06.10.2011 has also confirmed that they had neither paid tax on these services to assessee nor taken any credit of ST paid by assessee - Therefore, assessee has discharged its onus that excess ST paid has not been recovered from customers - No evidence on record of Revenue to show that claim of assessee of not passing on ST is not genuine and that excess ST paid is actually paid by service recipient - Appeal allowed: CESTAT

2015-TIOL-1537-CESTAT-MAD

Vijayadeepa Constructions Pvt Ltd Vs CCE & ST (Dated: May 06, 2015)

Service Tax - Stay / dispensation of pre deposit - Works Contract - Appellant registered under Construction services; demand was confirmed under the category of Works Contract Service (WCS) for the material period and agitated herein.

Held: Appellants are registered for construction of residential complex and not under WCS, taxable with effect from 1.6.2007 - The period involved in the instant case is Oct'07 to March'12 - Appellant claimed the benefit of Notification 1/06 and also claimed that educational institutions are not taxable - Appellants paid Rs.61,95,312/- as recorded in OIO and the confirmation of payment is yet to be received - considering overall facts and circumstances of the case, appellants have not made out a prima facie case for total waiver; accordingly they are directed to predeposit a sum of Rs.1,00,00,000/- (Rupees One crore only) within 8 weeks, after adjusting the amount already paid and pending verification. [Para 4]

2015-TIOL-1535-CESTAT-MUM

Cma Cgm Global (India) Pvt Ltd Vs CCE (Dated: June 30, 2015)

ST - Charges of documentation arise at the request of customer such as re-issue of Bill of Entry etc. and are paid outside of the Agency Agreement by the customer to the appellant only - appellant did not remit these charges to the Principal - these activities constitute service provided directly to the customer and do not constitute services provided on behalf of the Principal, hence services would not fall under the category of

BAS during the period of dispute upto 15.06.2005 - from 16.06.2005 appellant paying ST under the amended definition of BAS and which is not contested - Appeal partly allowed: CESTAT

Also see ananlysis of the order

2015-TIOL-1534-CESTAT-DEL

Steel Strips Wheels Ltd Vs CCE (Dated: June 17, 2015)

ST - Assessee raised capital by private placement of Shares, for purpose of implementing a new project, the Automotive Wheel Line Project in their factory - Contention of revenue that such financial services rendered to assessee for purpose of raising capital is not related to manufacture directly or indirectly cannot be accepted - Definition of "input service" is not restricted being limited to services which are directly linked to manufacturing activity, but the definition has a wide ambit and covers services which are relating to business activities of manufacture - As per Aditya Birla Nuvo Ltd 2009-TIOL-322-CESTAT-AHM, service of private placement of shares for raising capital is an input service and credit on service is to be allowed: CESTAT

2015-TIOL-1533-CESTAT-DEL

Sharda Udyog Vs CCE (Dated: March 12, 2015)

ST - Assessee is engaged in activity of reconditioning of old and used sugar mill rollers - Reconditioning and restoration was not available in definition of Management, Maintenance or Repair Services prior to 16.05.2005 and same was specifically introduced w.e.f. 16.05.2005 - SCN has been issued by invoking extended period of limitation when it is in dispute whether activity of reconditioning was liable to ST prior to 16.05.2005, therefore, extended period for limitation is not invokable - Activity of reconditioning by assessee was not covered in definition of Management, Maintenance or Repair Services for period prior to 16.05.2005 - Impugned order set aside and appeal allowed: CESTAT [Para 5, 6, 7] **- Appeal allowed : DELHI CESTAT**

2015-TIOL-1528-CESTAT-MUM

Jitendra Wheels (N) Pvt Ltd Vs CCE (Dated: March 3, 2015)

ST - Taxability of amount received by appellant by way of commission from various financial institutions for rendering services of collecting, bringing and forwarding the loaners to the banks and also verifying their forms etc. - Adjudicating authority dropped the demand whereas Commissioner exercising powers u/s 84 of FA, 1994 has passed an order-in-revision reversing the views taken by adjudicating authority - Assessee appeal before Tribunal. Held: Commissioner has correctly come to the conclusion that appellant is not entitled for the benefit of notfn. 13/2003-ST as they are not a commission agent - as regards benefit of notfn. 24/2004-ST, claim of the appellant that they are providing services on behalf of clients seems to be incorrect as they are directly providing services to their clients i.e financial institutions - since in the appellants' own case the Bench has held against them, there is no merit in the appeal - Appeal rejected: CESTAT [para 7]

2015-TIOL-1527-CESTAT-MAD

M/s Srinivasa Real Estate Vs CST (Dated: March 17, 2015)

Service Tax - Penalty - appellant rendering the service under 'Industrial or Commercial Construction Service' - A show cause notice dated 19.04.2007 was issued to the appellant for demanding service tax for the period 16.06.05 to 31.03.06 collected but not remitted under construction of residential complex - Demands adjudicated with penalties; partial relief granted by Commissioner (Appeals), who upheld tax, interest and penalty under Sec 78; same is agitated herein.

Held:It is clearly brought out in the show cause notice as well as in the adjudication order, that the appellants have collected service tax amount on the taxable service rendered by them and failed to remit the same and also suppressed the facts in their half yearly return filed for the material period - It is established that the appellants rendered the service of construction of residential complexes and received the payment from the clients - Only on registration of an offence case by the department, the appellants have paid the service tax partially before the issue of show cause notice and the balance amount before adjudication - appellants have already registered with the department and filing returns regularly and during the material period they have filed a 'nil' return, in spite of knowing the fact that they already collected the amount from their clients on the above projects - Therefore, the appellants cannot plead for innocence for invoking Section 80 - A catena of rulings including the Tribunal ruling in the case of Kedia Business Centre upheld the penalty imposed under Section 78-the ratio is squarely applicable to the facts of present case - Commissioner (Appeals) has already waived the penalties imposed under Section 76 & 77; no merit on the appellant's plea for waiver of penalty imposed under Section 78 - no infirmity in the impugned order which is upheld. [Para 6]

2015-TIOL-1523-CESTAT-MUM

CCE Vs M/s Bhagwati Steel Cast Ltd (Dated: September 29, 2014)

ST - s.85 of FA, 1994 - Commissioner(A) has the power to remand the proceedings back to the adjudicating authority in matters pertaining to service tax and there is no limitation on his powers to do so - apex court ruling in MIL India Ltd. is not applicable to ST matters as sub-section (5) of s.85 of FA, 1994 starts with the words 'subject to the provisions of this chapter' - Revenue appeal dismissed: CESTAT [para 5, 6]

2015-TIOL-1521-CESTAT-MUM

Mistair Health & Hygiene Pvt Ltd Vs CCE (Dated: June 30, 2015)

ST - Manufacture on Jobwork basis pharmaceutical product containing alcohol - Interpretation of the Revenue that there is no manufacture involved as defined u/s 2(f) of CEA, 1944 and, therefore, ST is payable under BAS is totally incorrect inasmuch as medicines are "manufactured" by the appellants as per the provisions of Drugs and Cosmetics Act and the Rules made thereunder - products manufactured by the appellant are chargeable to Excise duty which can be levied by the state as per list to the 7th schedule under article 246 of the constitution of India; entry is listed is at serial number 50 of list 2 - issue settled by authoritative judicial pronouncements - Appeal allowed: CESTAT [para 8, 9]

Also see analysis of the order

2015-TIOL-1515-CESTAT-DEL

M/s Bhilai Steel Plant Vs CCE (Dated: June 08, 2015)

ST - Appellant had executed a long term lease deed in respect of its land in favour of M/s Bhilai Jaypee Cement Ltd. and in terms of the said lease M/s BJCL was to pay one time non-refundable land premium @ Rs. 40 per square feet apart from annual ground rent @ 1% of one-time land premium and annual service charge @ 2% of the one time land premium – Department demanding ST of Rs.84,16,343/- for the period 2007-2008 to 2011-2012 on the said amount under Renting of Immovable Property Service – appeal to CESTAT - Appellant submitting that they had already paid service tax amounting to Rs.3,26,080/- with effect from 1.7.2010 and that lease of vacant land was not liable to service tax prior thereto because sub-clause (v) to Explanation 1 in Section 65(105)(zzzz) of FA, 1994 was added only w.e.f 1.7.2010.

Held: Tribunal in the cases of 2014-TIOL-67-CESTAT-DEL and 2014-TIOL-1741-CESTAT-DEL held that renting of vacant land by way of lease or licence for construction of a building or a temporary structure for use at a later stage in furtherance of business or commerce would be taxable service only with effect from 1.7.2010 and not during the period prior to 1.7.2010 – Appellant has a prima facie case in their favour – Pre-deposit waived and stay granted: CESTAT [para 4]

2015-TIOL-1514-CESTAT-DEL

M/s Chopra Fertilizer And Pesticide Trading Co Vs CCE (Dated: May 08, 2015)

Service Tax - Power to extend stay after omitting proviso to Section 35C(2A) of the Central Excise Act, 1944 vide Finance Act, 2014.

Held: Power to grant stay is an inherent power - Perusal of Section 35C(2A) clearly reveals that the said sub-section did not grant any power to grant stay; it only sought to put fetters on the power of the Tribunal to grant stay beyond a certain period - Consequently its abolition can only have an effect that fetters which the said sub-section sought to place on the Tribunal with regard to the duration beyond which CESTAT could not grant stay no longer exist - With the abolition of Section 35C(2A) ibid with effect from 06.08.2014, the power of the Tribunal with regard to grant of stay in no way got attenuated - Revenue's contention rejected and stay extended (para 3).

2015-TIOL-1513-CESTAT-DEL

M/s Hi-Tech Seal Engineers Vs CCE (Dated: May 14, 2015)

ST - Assessee has been paying ST w.e.f. 16.6.2005 - Prior to 16.6.2005, they were not liable to pay ST as service rendered was only repair service and contract was actually a repair contract and not a maintenance contract - Assessee was required to repair various leaks whenever they happened and there was no provision in contract which required them to undertake maintenance work - Service recipients also certified that contracts were for repair and not for maintenance - SCN was issued on 6.12.2006 - Matter thus being interpretational and given conduct of assessee, there is hardly any scope for sustaining the allegation of suppression on the part of assessee in the light of Supreme Court judgements in Champhar Drgus Liniments - 2002-TIOL-266-SC-CX and Gopal Zarda Vdyog - 2005-TIOL-123-SC-CX-LB in which case the demand would also be hit by time bar as extended period would not be invokable - Appeal allowed: CESTAT

2015-TIOL-1512-CESTAT-MUM

Mr Avinash Vasant Shirsath Vs CCE (Dated: May 05, 2015)

ST - As the late appellant is substituted by his legal heir - his wife, para 2 of final order that the proceedings stand abated is recalled - appellant prays that penalty u/s 76 & 78 be deleted as there is no case of concealment etc. and that the tax and interest were paid at enquiry stage before issuance of SCN - SCN proposes to appropriate tax and interest already paid and there is no contumacious conduct made out in SCN - penalty u/ss 76 & 78 set aside - appeal allowed: CESTAT [para 1]

2015-TIOL-1511-CESTAT-BANG

Albany Molecular Research Hyderabad Research Centre Pvt Ltd Vs CC, CE & ST (Dated: December 31, 2014)

Service Tax - Export of service - Development of chemical compound and analogs in India and analysis report with chemical sent to outside India - Prima-facie an export service - Pre-deposit waived. (Para 3)

2015-TIOL-1509-CESTAT-BANG

Avanti Feeds Ltd Vs CC, CE & ST (Dated: March 5, 2015)

Service Tax - Services received from abroad - Non-payment of service tax on royalty - Simultaneous imposition of penalty both under sections 76 and 78 - Sustainability - Appellant paid the entire amount of tax with interest before issue of show-cause notice - No proof of suppression or intention to evade tax - Even prior to the amendment providing for no imposition of penalty under Section 76 of Finance Act when penalty has been imposed under Section 78, penalty under both the Sections is not warranted - Hence, penalty under section 76 set aside - Since appellant was liable to pay service tax as a receiver of service from abroad, imposition of penalty under section 78 equal to twice the service tax amount payable held is very harsh - Penalty is thus reduced to an amount equal to the service tax payable - Appeal accordingly decided. (Para 6)

2015-TIOL-1504-CESTAT-DEL

M/s Tarachand Chaudhary Vs CCE (Dated: June 11, 2015)

ST - Assessee, a contractor, entered into contracts with Jaipur Development Authority (JDA) and Jaipur Nagar Nigam (JNN) for management and maintenance of parks and road side plantation and maintenance - Adjudicating authority held that demand for period up to 30.4.2006 was not sustainable but demand for period with effect from 1.5.2006 onwards was upheld on ground that service rendered fell under scope of management, maintenance or repair service under Section 65(64)/65(105)(zzg) of FA, 1994 - It is noted that w.e.f. 1.5.2006, change in definition of "management, maintenance or repair" brought "maintenance or repair of properties whether immovable or not" within scope of 'management, maintenance or repair service' - Assessee did not take ST registration and did not file ST-3 returns pertaining to impugned service - Thus, assessee is clearly guilty of suppression of facts - Perusal of typical work orders which apart from requiring maintenance or repair, involve supply of goods too, like supply of different trees, for which specific rates have been mentioned - Case remanded with direction that impugned ST liability may be recomputed after extending benefit of Notfn 12/2003-ST: CESTAT

2015-TIOL-1503-CESTAT-DEL

M/s Mahaveer Transport Vs CCE (Dated: May 25, 2015)

ST - Assessee has challenged adjudication order before Commissioner (A) - Instead of deciding said issue Commissioner (A) held that assessee has not followed procedure laid down under Rule 5 of Central Excise Appeal Rules 2001 and is not entitled to raise new grounds before him for deciding appeal - Grounds raised by assessee in appeal filed before Commissioner (A) are legal in nature and same can be raised at any point of time - Therefore, Commissioner (A) is required to answer the issue raised by assessee on merits which Commissioner has failed to do so - Matter remanded: CESTAT

2015-TIOL-1502-CESTAT-MAD

M/s Anabond Ltd Vs CCE (Dated: April 24, 2015)

Service Tax - Exemption - benefit of Notification No.4/2004-ST dated 31.3.2004 in respect of services provided to a unit in SEZ denied in adjudication and by Commissioner (Appeals); same agitated herein.

Held : Appellate order sent by speedpost, but no acknowledgement on record - appellant acted immediately when recovery proceedings initiated; delay condoned - The appellate order demonstrates piecemeal reading of the notification, which not only grants exemption to the service provider providing service to a developer of SEZ but also service provided to a unit of SEZ for consumption thereof within the said location - the authorities erroneously constructed the purview of the notification - There is no finding that the appellant is not a management consultancy service provider to a unit in SEZ - Appellate authority did not doubt status of the appellant;

therefore, denial of the benefit of the notification to the appellant shall result in mockery when the appellant satisfies condition of the notification [Para 2, 7]
2015-TIOL-1501-CESTAT-AHM
M/s Sarnar Buildtech Pvt Ltd Vs CCE & ST (Dated: May 1, 2015)
ST - It is the case of Revenue that amounts paid by assessee are not shown as assets or amounts receivable in balance sheet but have been shown as expenditure - Assessee views that ST paid has not been recovered from customers even if amount so paid has not been kept receivables in books of account - No evidence brought on record that ST paid has been shown on invoices as collected from service recipients - In view of settled preposition of law, appeal filed by appellant is required to be allowed: CESTAT [Para 4, 4.2, 5]

2015-TIOL-1496-CESTAT-DEL
Bhartiya Enterprises Vs CST (Dated: December 11, 2014)
Service Tax - CENVAT credit - Appellant availed input credit on dealer invoices declaring the goods as CBFS whereas investigation showed that diesel oil was used in their furnaces - Also, restriction on utilization of credit beyond 20% under CCR 2004 violated - demands adjudicated, upheld by Commissioner (Appeals), and agitated herein. Held: Commissioner (Appeals) recorded in detail the fraudulent intent manifested where fraudulent credit of input on CBFS and other inputs have been availed; he has examined the issue in detail and concluded the issue in favour of revenue - no force in appellant's contention as fraud has clearly manifested and has also been admitted; extended period has rightly been involved - Penalty is also imposable as intent to defraud the revenue is very clear - Since both dutiable and exempted products were being manufactured, credit availment was to be restricted to 20%; which was violated - Appellant has also raised the issue of refund of excess amount - no such issue discussed in Commissioner (Appeals)'s Order nor specific calculation pointed out fortifying their claim for refund in grounds of appeal - no indications on record whether these calculations were provided and specifically elaborated; no evidence is coming on record whether refund claim was specifically pleaded with Commissioner (Appeals) - Accordingly no order is warranted on this issue [Para 10, 11, 12]
2015-TIOL-1494-CESTAT-DEL
CCE Vs Duli Chand Narender Kumar Exports Pvt Ltd (Dated: January 21, 2015)

ST - Revenue filed appeal against Order of Commissioner (A) remanding the respective cases back to adjudicating authority - Revenue relied on provision of CE law in which power of remand by Commissioner (A) was taken away by the amendment in section 35A(3) - While under section 85(4) of FA, 1994, language is used in wider context - It does not restrict the type of order which Commissioner (A) may pass, rather it states that Commissioner (A) may pass such order as he thinks fit - Thus, scope of remand is included in provision of law laidd down in section 85(4) - Therefore, appellate authority has power to remand a matter to lower authority - Appeals dismissed: CESTAT [Para 3, 4]

2015-TIOL-1492-CESTAT-DEL

M/s Suresh Jaiswal Vs CCE (Dated: June 11, 2015)

ST - Assessee, a contractor, entered into contracts with Jaipur Development Authority (JDA) and Jaipur Nagar Nigam (JNN) for management and maintenance of parks and road side plantation and maintenance - Adjudicating authority held that demand for period up to 30.4.2006 was not sustainable but demand for period with effect from 1.5.2006 onwards was upheld on ground that service rendered fell under scope of management, maintenance or repair service under Section 65(64)/65(105)(zzg) of FA, 1994 - It is noted that w.e.f. 1.5.2006, change in definition of "management, maintenance or repair" brought "maintenance or repair of properties whether immovable or not" within scope of 'management, maintenance or repair service' - Assessee did not take ST registration and did not file ST-3 returns pertaining to impugned service - Thus, assessee is clearly guilty of suppression of facts - Perusal of typical work orders which apart from requiring maintenance or repair, involve supply of goods too, like supply of different trees, for which specific rates have been mentioned - Case remanded with direction that impugned ST liability may be recomputed after extending benefit of Notfn 12/2003-ST: CESTAT

2015-TIOL-1491-CESTAT-MUM

BNY Mellon International Operations (I) Pvt Ltd Vs CCE(Dated: May 5, 2015)

ST - Refund - CENVAT credit availed before Service Tax registration granted to appellant - lower authorities have allowed refund of an amount of ST paid by the service providers after the appellant were granted registration - there is no dispute as to the eligibility to avail credit and refund thereof as it is undisputed that the appellant is exporter of services - Issue is no more res integra - in the case of J.P.Morgan Services Bench has considered the very same issue and held in favour of appellant - Order set aside and appeal allowed with consequential relief: CESTAT [para 4, 5]

2015-TIOL-1485-CESTAT-DEL

M/s U P Rajkiya Nirman Nigam Ltd Vs CCE (Dated: May 7, 2015)

ST - Assessee signed a contract with UPCL to undertake assignment work of rural electrification within state of Uttranchal under Rajeev Gandhi Grameen Vidyutikaran Yojna on turnkey basis - Revenue views that service rendered was covered under ECIS - It is evident from contract that service rendered by assessee is squarely relating to transmission and distribution of electricity and therefore in light of Notfn 45/2010-ST, no service tax is recoverable in respect thereof - Impugned demand is

not sustainable, same is accordingly quashed and appeal allowed: CESTAT
2015-TIOL-1484-CESTAT-MUM
Rughani Brothers Vs CST (Dated: March 31, 2015)
ST - Rule 7C of STR, 1994 - Delayed filing of returns - During the period April 2008 to March 2011, for delayed submision of a return, the maximum penalty that could be imposed u/s 70 was Rs.2,000/- - Since one return has been filed in time, penalty is liable only on five returns and which works to only Rs.10,000/- - imposition of penalty of Rs.1,01,500/- is not sustainable in law - Penalty of Rs.10,000/- imposed u/s 77 of FA, 1994 upheld: CESTAT [para 7.1, 8]
Also see analysis of the order
2015-TIOL-1482-CESTAT-MUM
M/s Cararo Technologies India Pvt Ltd Vs CCE (Dated: December 8, 2014)
ST - Refund - Rule 5 of CCR, 2004, Notf. 5/2006-CE(NT) - Credit in respect of services of audit received denied on the ground that the address on the invoices is of MIDC, Ranjangaon, Pune whereas the registered office and business premises of the appellant is situated at Vimannagar, Pune - refund also restricted by holding that the same cannot exceed the amount of CENVAT credit as per ST-3 return. Held: Appellant has produced copy of amended certificate - Centralised Registration wherein both addresses of the appellant's premises have been recognized by department, therefore, credit admissible and consequently refund - further, refund cannot be restricted to the amount of credit availed because it is a case of continuous business activity and appellant is entitled to avail refund under the spirit of Rule 5 of CCR r/w notfn 5/2006-CE(NT) - adjudicating authority to issue balance refund within a period of 45 days along with interest - Appeal allowed: CESTAT [para 3]
2015-TIOL-1481-CESTAT-DEL
M/s Continental Airlines Inc Vs CST (Dated: July 2, 2015)
ST - Assessee is inter-alia providing service of transport of passengers by air embarking in India on international journey in any class other than economy class - No amount was paid by assessee to CRS/GDS service providers and they were paid by its parent company in USA - As per British Airways - 2014-TIOL-979-CESTAT-DEL, no ST is payable by assessee under reverse mechanism: CESTAT ST - As regards to airport taxes, same were collected by airlines on behalf of airports and were paid to them and therefore are not includible in assessable value for purpose of levy of ST: CESTAT ST - As regards to preponement and postponement charges, it is nature of charge and not its nomenclature which has to be considered - Merely, because an airline calls such charges penalties does not alter the nature of such charges - It is an interpretational issue, therefore extended period is not invokable particularly when nothing concrete has been brought out in SCN to show wilful misstatement/ suppression on part of assessee - As per Gopal Zarda Udyog - 2005-TIOL-123-SC-CX-LB, extended period as well as mandatory penalty under Section 78 of FA, 1994 are not invokable - Demand only for normal period (of one year) is sustainable and penalty under section 76 is clearly attracted: CESTAT

2015-TIOL-1474-CESTAT-MUM

Elixir Training Services Pvt Ltd Vs CCE (Dated: April 6, 2015)

ST - Whether appellant's activity of training, coaching in spoken English language would fall into the category of Vocational training or not? Held - This Bench has in the case of Prof. Ulhas Vasant Bapat 2013-TIOL-1510-CESTAT-MUM taken a view, which is against the assessee - therefore, at this juncture, appellant has no case on merits - appellant submits that facts are different - this can be considered only at the time of final disposal of the appeal - appellant could not produce any evidence like balance sheet to buttress their plea of financial hardship hence appellant's plea cannot be entertained - since identical issue has been raised in earlier case of the same appellant, demands raised by invoking extended period prima facie do not have any basis - appellant needs to be put to condition for hearing and disposal of appeal - Pre-deposit ordered of Rs.47 lakhs : CESTAT [para 6, 7, 8]

2015-TIOL-1471-CESTAT-MUM

Gateway Terminals India Pvt Ltd Vs CCE (Dated: March 18 , 2015)

ST - CENVAT - Canteen (outdoor catering) services is essential to run business of appellant; Garden maintenance service is essential as directed by Maharashtra State Pollution Control Board; Event management service is also essential being incurred at opening ceremony or cermonial occasions; Brokerage service for finding residential accommodation for employees is essential for ensuring availability of staff to carry on business - all services are essential inputs for business of appellant and are Input services - Credit admissible of tax paid on these services - Appeals allowed with consequential relief: CESTAT [para 6, 7]

2015-TIOL-1470-CESTAT-MUM

Vasudha Agencies Vs CST (Dated: September 10, 2015)

ST - Appellants are in the business of procuring inputs/goods for the foreign based principal and for rendering these services they received commission in freely convertible foreign exchange - under the bonafide belief that the said services were classifiable under BAS but doubting as to whether the same would amount to Export of service, appellant paid ST - later in view of Board Circular 111/05/2009-ST clarifying that such services amount to "exports" appellant filed refund claim but the same was rejected on the ground that it was filed beyond the period of one year - Appeal to CESTAT. Held: As no tax was payable, the amount paid is in the nature of deposit - in view of the High Court decision in KVR Constructions , mere payment of amount could not authorise department to regularise/validate and retain it - so also refund could not be rejected on ground of limitation u/s 11B of CEA, 1944 - appeal allowed - adjudicating authority directed to disburse refund within 30 days: CESTAT [para 5]

2015-TIOL-1469-CESTAT-DEL

Samvardhana Motherson International Ltd Vs CC, CE & ST (Dated: June 19, 2015)

ST - Assessee engaged in providing output service and engaged M/s Pricewaterhouse Coopers (PWC) to assist them with due diligence procedures - For the services provided by M/s. PWC to assessee for due diligence, PWC raised invoice and charged ST thereon - Assessee took the credit of same as input service under CCR, 2004 - Refund claim of assessee is denied on ground that accumulated input service credit did not pertain to period during which output services were exported for which refund

claim is made - As per Boards Circular 120/01/2010 and Amdocs Business Services Pvt. Ltd. - **2013-TIOL- 324-CESTAT-MUM** refund can be allowed of credit accumulated in past period and claimed in a subsequent quarter - Impugned order set aside and appeal allowed: CESTAT
2015-TIOL-1463-CESTAT-DEL
Neelkanth Associated Vs CCE (Dated: July 3, 2015)
ST - As per agreement entered between assessee and SZDUSSL, it provides for only 5% of commission to assessee and reimbursement of ST thereon - Gross amount charged for service was inclusive of amount of payment made to labourers and therefore ST is leviable on such gross amount and not merely on amount of commission to which assessee was entitled - No wilful suppression or mis-statement of facts on part of assessee with intention to evade ST - Entire demand pertains to period beyond normal period of one year and hence is hit by time bar - Appeal allowed: CESTAT
2015-TIOL-1458-CESTAT-AHM
Iwi Crogenic Vaporization Systems India Vs CCE, C & ST (Dated: June 29, 2015)
ST - Penalty u/s 78 of FA, 1994 - Recovering Tax from service recipients and not paying the same to the Dept. has to be considered as evasion of ST with intention to evade when no periodical returns were filed - It is not the case where the appellant was not registered with Central Excise Dept. and could claim ignorance of law - payment of ST along with interest after case was booked does not mean that no penalty is imposable - Appeal rejected: CESTAT [para 3]
Also See analysis of the order
2015-TIOL-1457-CESTAT-BANG
Island Aviation Services Ltd Vs CCE, C & ST (Dated: January 5, 2015)
Service Tax - Stay petition - Round trip tickets from Maldives-Trivandrum-Maldives issued by National Air carrier of Republic of Maldives - Earlier decided in appellant's same case as not taxable since Air journey originated from Maldives and not from India - Since Revenue dropped proceedings in a subsequent case as well, deposit waived - Stay petition allowed unconditionally. (Para 3)
2015-TIOL-1455-CESTAT-BANG
India Vision Satelite Communications Ltd Vs CCE, C & ST (Dated: December 23, 2014)

Service Tax - Denial of Cenvat credit to service recipient for failure to examine the correctness of service tax paid by the service provider - Is grossly illegal and unjustified - No duty cast on service recipient to determine the correctness of the tax paid - Impugned order denying credit on said ground hence is set aside - Appeal is allowed with consequential relief. (Para 3, 4, 5)

2015-TIOL-1453-CESTAT-MUM

Larsen & Toubro Ltd Vs CST (Dated: June 12, 2015)

Service Tax - A works contract can be vivisected prior to 01/06/2007 and subjected to levy of service tax under "erection, installation and commissioning service" - Issue stands covered in favour of the Revenue and against the assessee by the majority decision (five Members Bench) of the Tribunal in the case of L&T Ltd. vs. Commissioner of Service Tax, Delhi 2015-TIOL-527-CESTAT-DEL-LB - demand is not time barred under the facts and circumstances except in relation to works contract with Chennai Petroleum Corporation Ltd. – CESTAT by Majority

Also see analysis of the order

2015-TIOL-1450-CESTAT-BANG

The Csita's Karnataka Inter Diocesan Vs CST (Dated: December 1, 2014)

Service Tax - Instrumentality of Church managing and raising funds for religious and charitable purposes - Income from rental property - Tax liability -On identical facts, High Court has stalled the proceedings against the Unit - Prima-facie case made out - Pre-deposit is waived. (Para 2)

2015-TIOL-1449-CESTAT-DEL

The Universal Construction And Supply Agency Vs CCE & ST (Dated: March 3, 2015)

ST - Assessees provided repair and maintenance services - Assessees mentioned at Sr. Nos. 1, 5 and 6 involving total amount of ST in range more than Rs. 10 lakhs each have paid more than 85% of amount of ST demanded in respective SCN - In remaining cases, amount of ST involved is relatively small and there too substantial amounts vis-a-vis amounts demanded in SCNs have been paid - Shri A.N. Singh, has not paid any tax because they claimed the benefit of SSI exemption on ground that value of service rendered was less than exemption limit if the value of goods supplied was deducted - In light of foregoing in totality of circumstances including assessee's plea that service was rendered to a public sector unit and there was no question of any suppression/mis-statement on their part, stay granted: CESTAT [Para 4, 5]

2015-TIOL-1448-CESTAT-MUM

Sandeep Enterprises Vs CCE & ST (Dated: April 6, 2015)

ST - s.35F, s.35C(2A) of CEA, 1944 - Any stay order passed by the Tribunal, if it is in force beyond 07.08.2014, it would continue till the disposal of the appeal and there is no need for filing any further applications for extension - Tribunal decision in Venketeshwara Filaments - 2014-TIOL-2388-CESTAT-AHM followed - Application allowed: CESTAT [para 2, 3]

2015-TIOL-1447-CESTAT-MUM

M/s S Z Dhanwate Engg Works Vs CCE & CC (Dated: April 15, 2015)

ST - Appellant rendering services of 'Manpower Recruitment & Supply Agency' to MSEDCL - ST is exempted retrospectively by notification 45/2010-ST - Demand set aside to the said extent: CESTAT [para 4, 5]

ST - Tax liability on Cleaning services needs to be requantified as there is no separate quantification - Matter remanded to the said extent: CESTAT [para 5]

2015-TIOL-1441-CESTAT-BANG

CCE & ST Vs Smt Parimala Dharmigari (Dated: March 04, 2015)

Service Tax - Penalty - Intention to evade tax - Order of Commissioner (A) setting aside of - Appeal against - Amway products distributor selling products to customers at MRP - Not a commission agent - Discharged tax liability along with interest prior to issuing show cause notice - Neither the notice nor the impugned order has brought out any specific allegations of malafide activity of the appellant or intention to evade tax - No infirmity in the order of Commissioner (A) in dropping the penalty in his discretion - Revenue appeal has no merit. (Para 3, 4)

2015-TIOL-1439-CESTAT-DEL

M/s NGK Infrastructure Ltd Vs CCE & ST (Dated: June 30, 2015)

ST - Site Formation, Clearance, Excavation, earth moving and demolition service - Mere non-mention of the particular clause of the definition in the SCN when the definition is so graphically clear could in no way jeopardise the appellant's ability to defend itself - Bona fide belief is not a hallucinatory opinion of an uninformed person - Suppression clearly proved - It is highly disingenuous on the part of the appellant to claim that it never received the work order when the fact is that bill has been issued and payment of Rs.6.08 crores has been received - Demand upheld & Appeal dismissed: CESTAT [para 5 to 9]

Also see analysis of the order

2015-TIOL-1438-CESTAT-DEL

M/s GE Capital Transporation Financial Services Ltd Vs CCE & ST (Dated: May 14, 2015)

CX/CUS/ST - Sub-section 35C (2A) of CEA , 1944 did not give any power to grant stay; it only sought to put fetters on the power of the Tribunal to grant stay beyond a certain period-with the abolition of Section 35C (2A) w.e.f 06.08.2014, the power of the Tribunal with regard to grant of stay in no way got attenuated - Stay extended: CESTAT [para 3]

2015-TIOL-1437-CESTAT-DEL

M/s Aarti Infrastructure And Buildcon Ltd Vs CCE & ST (Dated: June 15, 2015)

ST - Assessee developing its own property but for sale to prospective purchasers - Explanation to Section 65(105)(zzzh) of FA, 1994 is prospective and development/construction on one's own property for raising a residential complex even where advances are collected from third party purchasers would not amount to taxable service of construction of residential complex nor would such advances be liable to tax, under this category - Development or construction on one's own property would not constitute a taxable service prior to 01.07.2010, the date on which Explanation was introduced in Section 65(105)(zzzh) - Stay granted: CESTAT

2015-TIOL-1436-CESTAT-MAD

T T Krishnamachari And Co Vs CST (Dated: May 11, 2015)

Service Tax - Stay/dispensation of pre deposit - demand has been raised on the royalty amount on the copy right of their house mark "TTK"; appeal earlier dismissed vide Final Order No.724/2011 dt. 27.6.2011; subsequently restored vide Misc Order No.40374/2015 dt. 24.2.2015 - stay petition considered herein.

Held: Considering the fact that applicant has complied with amended provisions of Section 35F, waiver of predeposit and stay of recovery in respect of balance demand is allowed. [Para 3]

2015-TIOL-1435-CESTAT-MAD

Ramco Cements Ltd Vs CCE (Dated: May 12, 2015)

Service Tax - Stay/dispensation of pre deposit - GTA - demand with penalty adjudicated in respect of transportation of lime stones from mining area to the crushing area by the truck operators engaged by appellant, treating the service as GTA Service in terms of Section 65 (105) (zzp) of Finance Act read with Section 65 (50b) - agitated herein.

Held: Appellants have been regularly discharging service tax on GTA; instant demand is on GTA for transportation of lime stones from mines to the crushing area where they have engaged individual contractor/truck operators - Though there is no consignment note issued, the contractors raised fortnightly bill - taking into account the appellant's submission that in certain number of cases for each trip where the freight amount exceeds Rs.750 per ton, as per their own worksheet total freight amount paid by them works out to Rs.6,52,881 - Appellants have not made out a prima facie case for waiver of predeposit; they are directed to predeposit a sum of Rs.1,00,000/- (Rupees one lakh only) within 4 weeks. [Para 4]

2015-TIOL-1427-CESTAT-DEL

M/s Chotelal Virendra Kumar Vs CCE (Dated: June 11, 2015)

ST - Management and Maintenance of parks and roadside plantation - Taxable w.e.f. 01.05.2006 - appellant guilty of suppression - Benefit of notfn. 12/2003-ST available - Matter remanded: CESTAT

Also see analysis of the order

2015-TIOL-1424-CESTAT-MUM

Indus Engineering & Construction Co Vs CCE (Dated: December 8, 2014)

ST - Appellant providing construction works for Military Engineering Services, Ministry of Finance, Govt. of India - Appellant constructed residential quarters, flooring for shell forge shop at Ordnancefactory, Chandrapur - Revenue demanding ST under the category of 'Construction of Residential complex service' - appellant offering to pay tax in respect of flooring work in Ordnance factories under 'Commercial or Industrial Construction service' and paying the same along with interest - Total Demand confirmed - Commissioner(A) relying on Circular 332/16/2010-TRU dt. 24.05.2010 wherein it is clarified that construction of new residential complex etc. for use of the government or its officers is not liable to service tax and dropping demand - however, since tax in respect of 'flooring work' paid and allegedly not contested, same was confirmed by Commissioner(A) - Appeal to CESTAT.

Held: Repair work of shop floor in Ordnance factory owned and controlled by the GOI, Ministry of Defence, does not qualify under the category of 'Commercial or Industrial construction service', therefore, no tax is payable - demand confirmed set aside and penalties are deleted - appellant is entitled to the refund of tax and interest already paid with interest: CESTAT [para 5]

2015-TIOL-1423-CESTAT-AHM

M/s Enjoy Chemistry With Yash Vs CCE & ST (Dated: December 26, 2014)

ST - Entire service tax along with interest was paid before the issue of SCN and 25% of Section 78 penalty imposed was also deposited by the appellant within one month from the date of adjudication order - appellant submitting that in view of the above facts, no other penalty is imposable.

Held - Issue is Whether Section 76 penalty is required to be imposed upon the appellant when Section 78 penalty to the extent of 25% is paid within one month from the date of order-in-original - law as laid down by the jurisdictional High Court in the case of Manan Motors Pvt. Limited is that penalty levied against the assessee in excess of 25% under Sections 76 and 78 of the Finance Act, 1994 is not imposable - appeal filed is allowed to the extent that penalty in excess of 25% of s.78 is not imposable: CESTAT [para 4, 5]

2015-TIOL-1422-CESTAT-MAD

M/s K B And Co Vs CCE & ST (Dated: May 5, 2015)

Service Tax - Stay/dispensation of pre deposit - Construction of Residential Complex Service - Appellant obtained order from Government of Tamil Nadu for construction of houses for tsunami victims - tax with interest and penalty adjudicated and agitated herein.

Held: On identical issue Tribunal in the case of Jafty Earth Movers and contractors Ltd. granted waiver of pre-deposit by relying the Tribunal's decision in the case of Macro Marvel Projects Ltd. - houses constructed for Tsunami victims are individual houses and not a housing complex - No reference made to the decision of Macro Marvel Projects in the case of PSK Engineering Constructions & Co. Ltd. - considering that two decisions are in favour of the assessee and taking into account the judgment of the Supreme Court in the case of Macro Marvel Projects Ltd., appellant has made out a prima facie case in their favour for waiver of pre-deposit [Para 4, 5]

2015-TIOL-1421-CESTAT-HYD

M/s Lumbini Constructions Ltd Vs CC, CE & ST (Dated: February 3, 2015)

Service Tax - Construction service - Waiver of deposit - Construction of a mall was clearly covered by the service even prior to 1.7.2010 being commercial/Industrial construction service and the appellant did not pay service tax even for that period - Individual flats sold on the basis of construction agreement are covered under the levy of service tax from that day - Land cost and construction cost estimated by Commissioner to arrive at land owner' share of built up space found to be reasonable - On facts, no prima-facie case made out by assessee - However, in view of the financial difficulty pleaded appears to be correct, and correctness of calculation of tax liability vis-à-vis CBEC circular and period prior to 1.7.2010 etc require detailed examination, appellant directed to deposit Rs.40 Lakhs to hear appeal - Pre-deposit of balance due is waived. (Para 8-10)

2015-TIOL-1418-CESTAT-BANG
CST Vs Khoday Breweries Ltd (Dated: March 10, 2015)
Service Tax - Refund - Amount of tax demanded was paid under protest - Demand proceedings thereafter dropped - The amount deposited has to be considered as pre-deposit or a deposit - Refund claim is not hit by bar of limitation - No infirmity in the order of Commissioner (A). (Para 3)
2015-TIOL-1416-CESTAT-MAD
M/s Inox Air Products Ltd Vs CCE & ST (Dated: May 18, 2015)
Service Tax - Stay/Dispensation of pre-deposit - Supply of Tangible goods Service - Demand of Service Tax on Fixed Facility Charges collected for installing and maintaining Vacuum Insulated Transport Tanks at buyers' premises in relation to supply of Industrial gases - Prima facie case made out for waiver of pre-deposit as the appellant has discharged Central Excise duty on the Fixed Facility Charges - Stay granted.
Also see analysis of the order
2015-TIOL-1415-CESTAT-MUM
Vs CCE & ST Vs The Shipping Corporation of India Ltd (Dated: June 5, 2015)
ST - Refund - Revenue appeal against the order of Commissioner (Appeals) who set aside the order of the adjudicating authority rejecting the refund claim of Rs.16,40,79,318/- filed by the respondent. Held: Whether the composite contract of 'Ship Management service' can be vivisected for the period prior to 01.05.2006, when 'Ship Management service' was not taxable, and the taxable component like 'Repair and Maintenance' be charged to tax separately - Difference in opinion - Matter referred to third Member: CESTAT
Also see analysis of the order
2015-TIOL-1414-CESTAT-BANG
Mehta & Modi Homes Vs CCE, C & ST (Dated: June 26, 2015)

Service Tax - Construction of individual residential houses - Is not covered by the service of Construction of Residential Complex - Post 01.06.2007 it cannot be covered under Works Contract Service as well - Definition of service remained same till 01.07.2010 and prior to that there was no levy of service tax on individual residential construction - Only when a residential complex was constructed as a service, levy was applicable - On facts, amount deposited by the appellant held sufficient to hear the appeal - Pre-deposit is waived. (Para 2)

2015-TIOL-1413-CESTAT-MUM

Saptashrungi Shram And Kadwa Parisar Vikas Trust Vs CCE (Dated: April 9, 2015)

ST - Taxability of amount paid by appellants to one Sanstha which is engaged in providing labour for harvesting and transportation of sugarcane to the appellants sugar factory - whether activity will fall under 'Manpower Recruitment and Supply Agency' - Issue is no more res integra - issue decided in favour of appellant - Orders unsustainable and, therefore, set aside - Appeals allowed with consequential relief: CESTAT [para 4, 5]

2015-TIOL-1412-CESTAT-DEL

Y K Information Systems Pvt Ltd Vs CCE (Dated: May 22, 2015)

ST - Assessee was appointed as franchisee of Aptech to impart training in information technology, imparting content and programmes for providing training in computer based information technology comprising software modules developed by Aptech under brand name "Arena Multimedia" - Assessee received 80% of course fee and 20% by Aptech Ltd., as its royalty under franchisee agreement - Assessee remitted ST due after filing returns in time and without delay on 80% of course fee - As per Kunal IT Services Pvt. Ltd. 2015-TIOL-723-CESTAT-Mum , confirmation of demand of Rs.76,125/- by primary and lower appellate authority towards ST liability cannot be sustained and is accordingly quashed - Both the authorities rejected claim for refund of Rs.2000/- on the ground that input service was received prior to registration of assessee as a service provider - Registration is not mandatory for availment of credit - Denial by authorities below of credit of Rs.2000/- is set aside: CESTAT

2015-TIOL-1404-CESTAT-MAD

Rasi Travels And Cargo Pvt Ltd Vs CCE & ST (Dated: May 15, 2015)

Service Tax - Restoration of appeal - Initially, appeal was dismissed for failure to comply with pre deposit vide Final Order No.1313/2009 dt. 14.9.2009 - Appellant filed ROA on 23.2.2015, praying that apart from Rs.2 lakhs paid as noted in the stay order, they have deposited another Rs.5 lakhs on 21.5.2009 & 13.7.2009 by way of TR.6 challans and sought for time to deposit balance amount; that being a small unit, they could not arrange funds to predeposit the amount in time.

Held: There has admittedly been delay of more than 5 years in complying with the predeposit order - However, on perusal of payment details, the appellant took

initiative to pay the amounts in various instalments starting from 2009 to Dec 2013 which clearly indicates appellant's genuine interest in pursuing the appeal - Considering conduct of appellant and their financial constraints as well as the case law relied upon, the delay is condoned; ROA is allowed; and appeal is restored to its original number. [Para 3]

2015-TIOL-1400-CESTAT-DEL

Nagar Palika Parishad Vs CC & CE (Dated: January 20, 2015)

ST - Assessee, Nagar Palika Parishad have leased out shops - Levy of ST came into effect with effect from 1.6.2007 on renting of immovable property - SCN dated 3.7.12 was issued to assessee as they were not paying ST on Lease Rent received by them - As per Saswad Mali Sugar Factory Ltd. 2013-TIOL-898-HC-MUM-ST, extended period of limitation is not invokable, therefore, demands confirmed by invoking extended period are set aside - Appeal partly allowed: CESTAT

2015-TIOL-1399-CESTAT-MAD

Century Apparels Pvt Ltd Vs CCE (Dated: May 19, 2015)

Service Tax - Stay / dispensation of pre deposit - Demands confirmed under 'BAS' and 'GTA' categories, upheld by Commissioner (Appeals) and agitated; appeal dismissed for non prosecution vide FO No.40888/2014 dated 03.12.2014 - petition for ROA, COD and stay taken up for consideration herein.

Held: Considering reasons to be genuine, ROA and COD applications allowed - Tax in respect of GTA stands discharged considering 75% abatement - As per clause 3 & 4 of the agreement it is evident that service provider at UK agrees to packing or repacking as required by the buyer of the First Part for which consideration has been paid not exceeding 5% of the invoice - amount paid to the overseas person is for the packaging of garments at Ireland, U.K. though it is mentioned as "packaging commission" - taking into consideration the fact that the service rendered by the overseas person is only packaging of garments and not for procurement of orders, the appellant has made out prima facie case for waiver of predeposit [Para 4, 5, 10, 11]

2015-TIOL-1398-CESTAT-MAD

Srinivasan Associates Pvt Ltd Vs CCE (Dated: February 25, 2015)

Service Tax - Works contract - Valuation - Appellant contends that gross value of the contract receipt is to be reduced by the value of the goods used in the contract - Demands adjudicated on the ground that no evidence of use of the materials were submitted.

Held: Law relating to taxation of service by Finance Act, 1994 is not commodity

taxation law, it would be proper to give an opportunity to the appellant to adduce necessary evidence supporting its claim on the value of the goods used in execution of the works contract - If the authority is satisfied as to the value of use of the goods in the work to be substantiated by evidence, the gross value of the contract shall get reduced by the proved value of the goods and the residue shall only be liable to service tax at the appropriate rate prevailing during the relevant period - Appellant is directed to make an application to the adjudicating authority within 60 days of receipt of this order along with evidence to be relied upon praying for fixation of date of hearing - expressly clarified that the scope of remand does not cover classification and composition scheme. [Para 3, 4, 5]

2015-TIOL-1393-CESTAT-BANG

Obulapuram Mining Company Pvt Ltd Vs CCE, C & ST (Dated: March 2, 2015)

Service Tax - Claim of service tax paid on debit note - Can be allowed when the debit note contains all the details required as per the Cenvat Credit Rules - Matter remanded to examine if the disputed debit note contained all the necessary particulars to extend the benefit. (Para 2)

Service Tax - Survey fee - If covered by Technical Testing and Analysis - Matter remanded to examine if the service provider has classified services in question under any one of the services specified in the Notification or not. (Para 4)

2015-TIOL-1392-CESTAT-BANG

R Rami Reddy & Co Vs CCE, C & ST (Dated: January 6, 2015)

Service Tax - Construction of hostels in TTD run medical college and site formation service of agricultural lands - Commercial or non-commercial activity - show-cause notice was issued in this case on 31.05.2012, whereas the demand for reworking of agricultural land relates to the year 2008-09 - Whether appellants have sufficient grounds to consider it as agricultural work or not need to be examined in detail - On facts, pre-deposit is waived. (Para 3)

2015-TIOL-1390-CESTAT-BANG

M/s Global Franchise Architects India Pvt Ltd Vs CST (Dated: January 5, 2015)

Service Tax - Franchise Services - Sale of proprietary items suffered sales tax - Not liable to service tax - Pre-deposit is waived. (Para 2)

2015-TIOL-1387-CESTAT-MUM
CST Vs Mail Order Solutions (I) Ltd (Dated: June 24, 2015)
ST - s.35EE of CEA, 1944 - Rebate of Service Tax - Appeal lies before Joint Secretary (R), Department of Revenue, Ministry of Finance, Government of India - s.86 of FA, 1994 as amended by FA, 2015 - Retrospective effect from 28.05.2012 - Registry to transfer all these cases to Government of India: CESTAT [para 4, 5]
Also see analysis of the order
2015-TIOL-1386-CESTAT-MUM
Shivraj Cable Network Vs CCE (Dated: Janaury 30, 2015)
ST - CENVAT - Invoices not in the name of appellant - appellant claimed that name was wrongly mentioned by service provider whereas the invoices were meant for appellant only - although the name in invoice is mentioned as Hemraj Cable Network but the same stands corrected on the basis of letter by distributor of M/s Zee Turner Ltd. who certified that this mistake is due to feeding error in computer - on scrutiny of invoices, account ledger, bank statement etc. it is clearly found that for all these six invoices, payment was made by appellant to service provider - case of appellant is also covered by the provisions of rule 9(2) of CCR, 2004 - appellant is legally entitled for CENVAT credit on all six invoices - order denying credit set aside and appeal allowed: CESTAT [para 6, 7, 8]
2015-TIOL-1385-CESTAT-AHM
M/s Radhe Residency Vs CCE & ST (Dated: June 18, 2015)
ST - Assessee engaged in providing taxable services falling under category of Construction of Residential Complex services, under Section 65 of FA, 1994 - Differential ST amount was paid by assessee before date of visit of audit officers - Only interest amount was not paid, which also was paid by assessee before issue of SCN - No intention to evade payment of ST can be attributed on part of assessee and penalty under Section 78 of the Act is not imposable - It was the case for non issue of SCN under Section 73(3) of the Act, 1994: CESTAT
2015-TIOL-1384-CESTAT-BANG
M/s Informatics India Ltd Vs CST (Dated: December 12, 2014)

Service Tax - Commissioner (A) dismissing appeal for non-compliance of stay order - Order is appealable before the Tribunal - Delay being sufficiently explained, condoned.

Service Tax - Trading activity - Listed as an exempted service with effect from 1.4.2011, long after the period in dispute - Therefore during the relevant period, the appellant was required to reverse the proportionate credit - However, as pleaded, portion of the demand being time barred, appellant is directed to deposit an amount of Rs.2 lakhs within the time prescribed - Commissioner to decide the matter afresh after giving reasonable opportunity. (Para 4)

2015-TIOL-1383-CESTAT-BANG

Gurpreet Galvanising Pvt Ltd Vs CC, CE & ST (Dated: March 3, 2015)

Service Tax - Rejection of refund claim - GTA service - Inward and outward transportation of goods - Claim rejected on ground that appellant failed to claim refund of excess service tax paid on inward transportation - Held, assessee's act of not claiming refund in respect of inward transportation is irrelevant to determine the eligibility for refund of tax paid on outward transportation - Impugned order set aside - Appeal allowed with consequential relief. (Para 4)

2015-TIOL-1380-CESTAT-DEL

M/s Parsons Brinckerhoff International INC Vs CCE & ST (Dated: May 12, 2015)

ST - Consulting Engineer Service received from associate enterprises located abroad - demand raised on the amount outstanding as on 10.05.2008 - demand of Rs.1,59,95,229/- confirmed along with interest and penalties on the ground that the appellant had received the amount from the associate enterprises located abroad, but had not paid service tax under reverse charge mechanism - appeal to CESTAT.

Held: Amendment to explanation (c) in section 67 of FA, 1994 by FA, 2008 - in the case of Gecas Services India Pvt Ltd. *2014-TIOL-1079-CESTAT-DEL*, CESTAT has held that the amendment to the said Explanation is prospective in nature - It is also evident that the demand has been raised on the outstanding amount in respect of service from associate enterprises received before 10.05.2005 - It is nowhere brought out in the impugned order or in the SCN that the outstanding amount as on 10.05.2008 has ever been paid by the appellant - Pre-deposit waived and stay granted: CESTAT [para 4]

2015-TIOL-1376-CESTAT-AHM

M/s Newton Engineering And Chemicals Ltd Vs CCE & C (Dated: June 10, 2015)

ST - By Order dt.16.01.2014, appeal was dismissed for non-compliance of stay order wherein assessee was directed to pre-deposit - Assessee approached before Gujarat High Court, and went up to Supreme Court which extended the period of compliance till 31.08.2014 to make deposit - Assessee deposited the amount on 16.01.2015 and have filed application before Supreme Court for delay in making pre-deposit - By Order dt.27.04.2015 Supreme Court directed that delay stands condoned - Tribunal Order dt.16.01.2014 is recalled and appeal is restored to its original number: CESTAT

2015-TIOL-1370-CESTAT-DEL

CC & CE Vs Clique (Dated: June 12, 2015)

ST - Commercial Training and Coaching Institute - assessee is providing pre-licensing training and coaching to the prospective insurance agents sponsored by Insurance companies and also for personality development and human resources - assessee was under the impression that they are not required to pay service tax as they were covered under the heading of vocational training but after receipt of clarification from department, paid ST on personality development training and educational training. Held - issue in hand is squarely covered by the decision of Tribunal in the case of NIS Sparta Ltd. 2015-TIOL-209-CESTAT-DEL where it is held that the assessee is not required to pay service tax under the category of commercial coaching and training service – therefore, assessee appeals are allowed and Revenue appeal is dismissed: CESTAT [para 8, 9]

2015-TIOL-1369-CESTAT-BANG

Indian School Of Business Vs CC, CE & ST (Dated: January 08, 2015)

Service Tax - Taxable service - Charges collected toward utilization of library/learning research centre facilities - Not liable to tax as club or association service. (Para 2)

Service Tax - Manpower supply - Expense incurred on staff deputed - Issue is debatable and contentious and requires examination of the nature of activity undertaken, the agreement and the nature of expenses incurred - Pre-deposit waived. (Para 2)

2015-TIOL-1368-CESTAT-AHM

M/s Fortune Network Pvt Ltd Vs CCE, C & ST (Dated: April 10, 2015)

ST – Penalty - Once the correct duty amount is shown in the returns there cannot be any intention to evade payment of service tax which is also paid by the appellant before the issue of SCN alongwith interest - there was reasonable cause for the appellant for not paying the entire service tax which was truly reflected in the periodical returns filed - Under the FA, 1994, there are provisions for late payment of service tax alongwith interest which was done by the appellant before the issue of SCN - the case is covered by Section 73(3) of the FA, 1994 and there was no need to issue SCN - Appellant is also eligible for the benefit of Section 80 of the Finance Act 1994 – penalties imposed u/ss 76, 78 set aside & appeal allowed: CESTAT [para 5, 6]

2015-TIOL-1362-CESTAT-DEL

M/s Banswara Syntex Ltd Vs CCE (Dated: May 7, 2015)

ST - Assessee engaged services of overseas commission agents to procure export orders for export of its manufactured products and paid commission - Assessee paid entire amount of ST from their Cenvat credit account - Subsequently, when SCN was issued inter alia on the ground that such ST could not be paid out of Cenvat credit and had to be paid in cash, it paid entire amount in cash which was before the issue of adjudication order - No suppression of facts with intent to evade ST and assessee itself informed the department about liability - Thus, bonafides of assessee are abundantly demonstrated - Section 80 ibid is clearly invokable for purpose of setting aside penalty under Section 76 ibid and levy of interest would also be misplaced - Appeal allowed: CESTAT

2015-TIOL-1361-CESTAT-DEL

Elegant Developers Vs CC (Dated: March 31, 2015)

ST - Assessee had entered into an agreement with M/s Sahara India Commercial Corporation Ltd. for acquisition, development and management of its real estate project for which they received payment from M/s Sahara India but did not pay ST - Adjudicating authority has considered the point that value of land is not includible in assessable value for charging ST and noted that assessee failed to give the cost of land and that average cost of land mentioned by assessee was inclusive of profit of assessee which was includible in assessable value - As regards the contention that there was no wilful mis-statement or suppression of fact, this requires a detailed discussion which can be taken up only at time of final hearing - Pre-deposit of 25% of impugned ST liability with proportionate interest would meet the requirement of Section 35F of CEA, 1944 read with Section 83 of FA, 1994: CESTAT [Para 3]

2015-TIOL-1360-CESTAT-BANG

CCE, C & ST Vs Bellary Iron Pvt Ltd (Dated: March 3, 2015)

Service Tax - Refund of unutilized Cenvat credit - Denial - Sustainability - Show-cause notice did not take the ground that service provider was not liable to pay the tax but service tax was paid by appellant treating the service provided as taxable service - Revenue is precluded from raising a totally new ground before the Tribunal to deny the refund claim - No infirmity in the Order of Commissioner (A) in allowing refund claim - Revenue appeal deserves to be rejected having no merits. (Para 4)

2015-TIOL-1359-CESTAT-BANG

Bothra Shipping Services Vs CCE, C & ST (Dated: January 1, 2015)

Service Tax - Waiver of Pre-deposit - Appellant engaged in Transportation of iron ore service - Hired vehicles used for transportation of iron ore against consignment note issued by transporter - Appellant raised bill for the transportation charges on pre-decided rates and not on basis of consignment notes - On facts held that appellant cannot be considered as a consignor or consignee - Consequently Notification No. 32/2004 that requires the receiver of service to pay the tax in respect of GTA service is not applicable - Pre-deposit waived. (Para 3)

2015-TIOL-1358-CESTAT-MAD

Hyundai Motors India Ltd Vs CCE (Dated: April 7, 2015)

ST - CENVAT credit - short issue in this appeal is whether the service tax liability incurred by appellant against the service received from foreign service provider is adjustable against the cenvat credit earned domestically on the input services.

Held: The elementary principal of cenvat credit is to avoid cascading effect - So also there is no one to one relationship required to be established to avail cenvat credit - in the absence of any specific provision in law requiring specific input service credit to be utilized against specific output service, appellant succeeds - Revenue having no dispute on the eligibility of earning of cenvatable credit, discharge of the liability of excise duty from such credit is undeniable [Para 2, 3]

2015-TIOL-1355-CESTAT-DEL

Mahanagar Telephone Nigam Ltd Vs CST (Dated: June 8, 2015)

ST - Pre-deposit - Whether pre-deposit of 7.5% of the impugned service tax liability in terms of Section 35F (as amended w.e.f. 6.8.2014) of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 is required to be made while filing appeal against order-in-original dated 29.8.2014 when the Show Cause notice in respect thereof was issued before 6.8.2014?

Held: Second proviso to amended Section 35F does not leave any scope for interpretational ambiguity with regard to the appeals filed prior to 6.8.2014 - Thus the requirement of mandatory pre-deposit is squarely applicable to all appeals filed on or after 6.8.2014 and the amended Section 35F makes no distinction whether the show cause notices in respect of such appeals were issued prior to, on or after 6.8.2014 - CESTAT is a creature of the very Act of which the said Section 35F is part and, therefore, it cannot go beyond the provisions of the Act which has created it - Pre-deposit is mandatory in respect of all appeals filed after 06.08.2014 - Fact that SCN was issued before 06.08.2014 is of no relevance: CESTAT [para 4, 5, 6]

Also see analysis of the order

2015-TIOL-1354-CESTAT-BANG

Gautam Rolling Mills Pvt Ltd Vs CCE, C & ST (Dated: December 24, 2014)

Service Tax - Non-payment of tax - Penalty - Absent dishonest intention to evade tax, penalty imposed when tax paid along with interest prior to issuance of show cause notice is unsustainable - Original adjudicating authority considered the issue in detail and declined to impose penalty on existence of justifiable grounds - Commissioner (A) reversing the order and imposing penalty is unwarranted - Impugned order set aside - Appeal allowed. (Para 5)

2015-TIOL-1346-CESTAT-AHM

Professional Coaching Classes Centre Vs CST (Dated: May 8, 2015)

ST - Issue involved is imposition of late fees penalty upon assessee under Section 77 of FA, 1994 - Delay in filing of ST-3 returns for period October, 2011 to March, 2012 and April, 2012 to June, 2012 - ST for period October, 2011 to March, 2012 was already paid by assessee - For the period April, 2012 to June, 2012 as no services were provided, therefore, for latter period tax liability was NIL - As per Amrapali

Barter Pvt. Ltd 2013-TIOL-32-CESTAT-KOL late fee for a late filing of ST-3 returns, for period April, 2012 to June, 2012 when service tax payment was NIL, is required to be set aside - Assessee was required to pay late fees under Section 17 of FA, 1994 - However, late fee imposed upon assessee is required to be reduced to Rs. 500/- as amount of penalty has to be appropriate to ST liability which was also paid by assessee in time: CESTAT

2015-TIOL-1345-CESTAT-DEL

T C Terrytex Ltd Vs CCE (Dated: May 8, 2015)

ST - Refund - Notification 17/2009-ST - Commissioner(A) while concurring with the adjudicating authority recorded the finding that in the absence of evidence of nexus between the appellant and the provider of services which were claimed to have been utilized for export, no refund could be granted; that Appellant failed to submit proof to establish any nexus between the inputs and the fact of the goods exported and that essential conditions for availment of refund under the Notification were not fulfilled - in the light of the concurrent findings, there is no merit in the appeal, hence rejected: CESTAT [para 4, 5]

2015-TIOL-1344-CESTAT-AHM

M/s Transpek Silox Industries Ltd Vs CCE & ST (Dated: June 15, 2015)

ST - Commissioner (A) proceeded on basis that assessee had not produced agreement stipulating specific terms and conditions for transfer of intellectual property - Customer had certified that payment was made for purpose of technical know-how - Revenue has not disputed authenticity of certificate at any point of time - No enquiry was conducted by Revenue in respect of this certificate - Hence, no reason to dis-believe certificate - As per Indo Nippon Chemicals Co. Ltd 2009-TIOL-974-CESTAT-AHM , demand based on assumptions and presumptions under category of Consulting Engineer service cannot be sustained - No material available that assessee rendered Consulting Engineer Service - Appeal allowed: CESTAT

2015-TIOL-1343-CESTAT-HYD

M/s Zenotech Laboratories Ltd Vs CC, CE & ST (Dated: February 4, 2015)

Service Tax - Taxability of service - Offshore client conducting tests and sharing test results with the appellant, cannot prima facie be covered by the definition of service provider - Further more, the activity undertaken also cannot be considered as consultancy or advice - Therefore demand of service tax on services received from outside India is unsustainable. (Para 2.3, 2.4)

Service Tax - Taxable service - Approved Drug products development - Appellant engaged in clinical testing of formulations and validation - Activity prima-facie fall within the ambit of Technical Testing Analysis as rightly contented by the Revenue - Since the issue involved is complicated and requires detailed consideration, appellant is directed to deposit Rs.40 Lakhs as against entire amount of demand - Pre-deposit of balance dues is waived. (Para 3, 4, 5)

2015-TIOL-1342-CESTAT-BANG

CST Vs Applied Materials India Pvt Ltd (Dated: March 23, 2015)

Service Tax - Refund claim - Power of Commissioner to remand - Sanction of refund

and its payment ultimately has to be made by the Original adjudicating authority - Duty cast on such Original authority to verify the documents other details vis-à-vis claim to determine sanction correctly - Several developments with regard to admissibility of refund available - More so, in appellant's own case, refund claim has been allowed by the Tribunal - On facts, Order of Commissioner set aside and matter remanded to Original authority to consider refund claim afresh considering all precedents and submissions - Appeal allowed by way of remand.

2015-TIOL-1341-CESTAT-AHM

Cosmos Impex India Pvt Ltd Vs CCE, C & ST (Dated: June 8, 2015)

ST - Assessee submitted that Commissioner (A) in his order directing pre deposit had not gone into merits of issue concerned and without doing so, directed the pre deposit of 100% of duty and penalty - Imposing 100% duty and penalty as pre deposit is too harsh a measure, especially when merits of issue are not considered - Rejecting appeal on the ground that assessee have not complied with said pre deposit order would amount to denial of Justice - Assessee have already paid 10% duty while filing this appeal before Tribunal which would be sufficient to hear their appeal on merits by Commissioner (A): CESTAT

2015-TIOL-1339-CESTAT-DEL

Shubham Electricals Vs CST (Dated: June 16, 2015)

Service Tax - Show Cause Notice and Adjudication order should specify the alleged service for which tax is payable: *There cannot be a best judgment assessment regarding the specific taxable service provided. There can be no best judgment, for instance as to whether the tax liability is for income tax, sales tax, excise duty, customs duty, service tax or professional tax.* ***A conclusion as to the taxable event and the liability to tax under the appropriate fiscal legislation authorizing the levy and collection of such tax is a matter for determination with precision and clarity and not by a process of guess-work or speculation.***

Neither the show cause notice dated 21/10/11 nor the impugned adjudication order dated 18/1/13 record any assertion/ conclusion whatsoever as to which particular or specific taxable service the appellant had provided. ***In the absence of an allegation of having provided a specific taxable service in the show cause notice and in view of the failure in the adjudication order as well, neither the show cause notice nor the consequent adjudication order could be sustained.***

In any event officers are not handicapped and ***the Act provides ample powers including of search under Section 82 of the Act to obtain information necessary to pass a proper, disciplined and legally sustainable adjudication order.*** *The disinclination to employ the ample investigatorial powers conferred by the Act is illustrative of gross Departmental failure and cannot afford justification for passing an incoherent and vague adjudication order. The failure to gather relevant facts for issuing a proper show cause notice cannot provide justification for a vague and incoherent show cause notice which has resulted in a serious transgression of the due process of law.*

Also see analysis of the order

2015-TIOL-1338-CESTAT-MUM

Israni Networking Vs CCE (Dated: June 03, 2015)

ST - Supply of models for advertising of products or acting in TV serials/films is not covered under the taxable service of "Manpower Recruitment Agency" during the period 2001-02 & 2002-03 and became taxable only from 16.06.2005 - Appeal allowed: CESTAT [para 7]

Also see analysis of the order

2015-TIOL-1334-CESTAT-BANG

Hindustan Aeronautics Ltd Vs CST (Dated: January 8, 2015)

Service Tax - Intellectual property rights service - Identical issue was the subject matter of earlier stay petition of the same appellant - Pre-deposit waived - Issue being recurring and unconditional stay granted, appeal itself is listed for final disposal along with earlier appeal. (Para 3)

2015-TIOL-1333-CESTAT-DEL

Jaipur Municipal Corporation Deen Dayal Vs CCE & ST (Dated: May 5, 2015)

ST - 'Renting of Immovable Property' - As per Rule 2(10) of Rules, "sale or disposal of land means transfer of lease-hold rights only" - Thus, amount received by assessee was only for transfer of lease-hold rights only and thus was only towards lease rent - Outright sale of land is actually abandoned and it allows only lease-hold rights - Such lease rent is clearly liable to ST under 'Renting of Immovable Property' service as definition of renting of immovable property given in Section 65 (90a) of FA, 1994 includes leasing of immovable property for use in course or furtherance of business or commerce - Good case to grant stay in respect of impugned demand pertaining to period beyond normal period of one year - Pre-deposit of Rs.23,13,742/- with proportionate interest is ordered: CESTAT [Para 2, 3]

2015-TIOL-1332-CESTAT-AHM

M/s Larsen And Toubro Ltd Vs CST (Dated: April 16, 2015)

ST - Penalty - Assessee received an amount by way of advance against bank guarantee of equal amount from M/s GSPL - Assessees were under a *bonafide* belief that they received amount prior to insertion of Explanation 3 to Section 67 of the Act and therefore, no tax is leviable - When assessee challenged the levy of tax for period prior to insertion of Explanation 3 to Section 67 of FA, 1994 before High Court and obtained injunction, it would be sufficient to establish that there is a *prima facie* case in favour of assessee - In such situation, there is no scope to doubt bonafide of assessee - Hence, it is a fit case to invoke Section 80 of the Act and no penal provision should be invoked - Impugned order modified in so far as penalties are set aside - Appeal allowed: CESTAT

2015-TIOL-1331-CESTAT-AHM

Dishman Pharmaceuticals And Chemicals Ltd Vs CCE & ST (Dated: June 5, 2015)

ST - Refund - Notification 41/2007-ST - appellants are manufacturer exporters and had filed three refund claims in respect of the service tax paid by them on the services such as C&F Charges, CHA and Sales Commission - adjudicating authority sanctioning all refund claims but Commissioner(A), in Revenue appeal, upheld the order except that pertaining to C&F charges and Sales commission (foreign) on the ground that the

Respondent had not filed any service tax invoices for the refund falling under the categories of C&F charges and Sales Commission (Foreign) - Revenue has not filed any appeal against this order but the appellant has filed an appeal before CESTAT against the rejection on the ground that the invoices were submitted before original authority and that no PH was granted by Commissioner (A).

Held: Matter remanded to the first appellate authority for getting the documents verified and for issuance of an appropriate order after following the principles of natural justice: CESTAT [para 2, 5]

2015-TIOL-1326-CESTAT-BANG

Ichibaan Automobiles Pvt Ltd Vs CCE (Dated: February 20, 2015)

Service Tax - Mode of service of Order, summons etc - Mere proof of dispatch is not sufficient - Proof of delivery to the assessee is essential - Order-in-Appeal allegedly sent via speed post - No proof of delivery of Order produced - Presumption that order was not delivered has to be drawn - Appeal filed within one month from the date of receipt has to be considered to have been filed in time - Thus delay of 901 days in filing appeal, that was not occasioned due to negligence of appellant, is condoned. (Para 3)

Service Tax - Denial of Cenvat Credit - Cab rental services - Credit denied on ground that cars were purchased from an unregistered dealer though dealer subsequently obtained registration - More over, none of the documents have been verified as to the correctness and eligibility of credit - On facts, matter was remanded to the original authority to adjudicate afresh - Appeal allowed by way of remand. (Para 4, 5)

2015-TIOL-1324-CESTAT-DEL

CCE Vs M/s Distributors India (Dated: April 30, 2015)

ST - Valuation - s.67 of FA, 1994 - Warehousing charges and other reimbursables is not includible in the value of C&F agent service - Supreme Court has dismissed the Civil Appeal No. 171/2009 filed by CCE against CESTAT Final Order No. dated 23.6.2008 - 2008-TIOL-1106-CESTAT-AHM in the case of Reliance Industries Ltd. which allowed assessee's appeal and held that "expenses incurred on account of reimbursable expenses shall not be includible in the taxable value" - no merit in Revenue appeal, hence dismissed: CESTAT [para 2, 3]

2015-TIOL-1322-CESTAT-MUM

CCE Vs Elaars Pools Pte Ltd (Dated: January 30, 2015)

ST - Commissioner(A) upholding confirmation of ST demand of Rs.12,68,768/- and interest but setting aside penalty - Revenue in appeal before CESTAT. Held: Commissioner(A) has very consciously considered the facts of the case, interpreted the terms 'reasonable cause' and come to the conclusion that there is a reasonable cause for the respondent in non-payment of service tax at the relevant time and, therefore, exercising the power vested in him u/s 80 of FA, 1994 set aside the penalties - Reliance of the Revenue on the apex court decision in Dharmendra Textile Processors 2008-TIOL-192-SC-LB is relevant to imposition of penalties u/s 11AC of CEA, 1944 - in the present case penalties are u/ss 70 & 78 of FA, 1994 and in this regard there is a clear provision u/s 80 of FA, 1994 for waiver of penalty on satisfaction of 'reasonable cause' for non-payment of service tax - case law relied

upon by Revenue is, therefore, of no help - no infirmity in order of Commissioner(A) hence Revenue appeal dismissed: CESTAT [para 6, 7]

2015-TIOL-1321-CESTAT-BANG

Hoysala Developers Vs CST (Dated: March 2, 2015)

Service Tax - Penalty - Revision/Review power under section 84 - Cannot be exercised to review the discretion used by Original authority for waiving penalty - Original authority in his discretion dropped penalty vis-à-vis construction of residential complex in view of the fact that appellant paid tax with interest - Commissioner reviewing the decision and imposing penalties, is illegal - Appeal allowed with consequential relief. (Para 2)

2015-TIOL-1319-CESTAT-BANG

CCE, C & ST Vs Hyderabad Detective & Security Services (Dated: March 3, 2015)

Service Tax - Option to levy penalty under section 78 - Revision power of Commissioner in extending option - Commissioner has power to modify the portion related to the option as well - Assessee deposited only part amount prior to issue of show cause notice but without making separate payment of interest and 25% of penalty - Commissioner thereafter modified order-in-original by not only enhancing the penalty, but giving an option to assessee to pay the reduced penalty of 25% if the confirmed amount along with interest and reduced penalty are paid within 30 days from the date of his orders - Commissioner has modified the order passed by the original authority not in an appeal - Proceedings before him has to be considered as in continuation of original proceedings - Consequently the order-in-original passed by the adjudicating authority gets merged with the revision order passed by the Commissioner - No infirmity in order passed by the Commissioner - Revenue appeal lacks merit hence rejected. (Para 8)

2015-TIOL-1310-CESTAT-MUM

M/s Sheth & Surya Engineering Pvt Ltd Vs CCE (Dated: May 19, 2015)

ST - Appellant rendering service to MAHAGENCO and discharging service tax for the period January 2006 to May 2006 under the category of 'Erection, Commissioning or Installation' - Refund claim filed on 08/06/2007 on the ground that theirs is a Works Contract on Turnkey basis taxable only from 01/06/2007 and not taxable during the period under consideration - refund rejected on the ground that the activity undertaken is correctly covered under the category of 'Erection, Commissioning or Installation' - appeal to CESTAT.

Held: LB in case of Larsen & Toubro - 2015-TIOL-527-CESTAT-DEL-LB has held that for the period prior to introduction of Works Contract service, a contract can be vivisected and if the service involved is covered under 'Erection, Commissioning or Installation', such contract would be liable to service tax - in view of the stated legal position, appeal rejected: CESTAT [para 4]

2015-TIOL-1309-CESTAT-DEL

M/s Hindustan Steel Works Constructions Ltd Vs CCE (Dated: April 13, 2015)

ST - Power to grant stay although not expressly provided in Statute (either before

06.08.2014 or with effect therefrom) it was and continues to be an inherent power of Tribunal - Section 35C(2A) of CEA, 1944 did not grant any power to grant stay; it only sought to put fetters on power of Tribunal to grant stay beyond a certain period - With abolition of Section 35C(2A) ibid with effect from 06.08.2014, power of Tribunal with regard to grant of stay in no way got attenuated - Extension of stay granted: CESTAT

2015-TIOL-1308-CESTAT-BANG

Essar Projects (India) Ltd Vs CCE, C & ST (Dated: January 7, 2015)

Service Tax - Stay - Difference between value reflected in ST3 returns and as shown in income ledger satisfactorily clarified - No evidence of clandestine providing or undervaluing of services - Prima facie good case in favor of assessee - Demand confirmed is dispensed with - Further, amount with regards to construction of road activity is exempted - On facts, stay petition allowed unconditionally - Appeals involved in the earlier stay orders get clubbed with the present appeal for the purpose of final disposal. (Para 4, 5, 6)

2015-TIOL-1307-CESTAT-MUM

Kaytee Corporation Pvt Ltd Vs CST (Dated: April 17, 2015)

ST - Refund - Appellant contending that ST paid by them on commission amount paid to the commission agent situated abroad under the reverse charge mechanism for export of goods is tax paid under a mistake of law - original authority sanctioning claim of Rs.7.96 lakhs and rejecting balance sum of Rs.8.34 lakhs - Commissioner(A) upholding order of lower authority - appeal before CESTAT.

Held: From Rule 3(iii)(c) of the Taxation of Services (Provided from Outside India an received in India) Rules, 2006 it is clear that the services of overseas agent received by appellant has been provided from outside India and received by the appellant who is a recipient located in India and the service is used in relation to business or commerce - therefore, section 66A of FA, 1994 is clearly applicable and appellant is legally liable to pay tax w.e.f 19.04.2006 - lower authorities have correctly held that tax was payable from 19.04.2006 and rightly rejected the refund claim in r/o ST paid on or after 19.04.2006 - order upheld and appeal rejected: CESTAT [para 5, 6, 7]

2015-TIOL-1306-CESTAT-MUM

Raymond Woolen Outerwear Ltd Vs CCE (Dated: May 19, 2015)

ST - Refund - Claim for rebate of ST paid on input services used in the export of free samples.

Held: As appellant has not received any sale proceeds of the free samples sent through courier they are not entitled to refund as condition of notification 41/2007-ST of realizing sale proceeds not fulfilled - Appeal rejected: CESTAT [para 2]

2015-TIOL-1302-CESTAT-BANG

ADA Cell Works Wireless Engineering Ltd Vs CCE, C & ST (Dated: March 6, 2015)

Service Tax - Cenvat Credit paid on premium of group Mediclaim and accident policies of employees - Admissible. (Para 2)

2015-TIOL-1301-CESTAT-MUM

Shaper India Pvt Ltd Vs CCE (Dated: May 29, 2015)

ST - Appellant discharging the entire ST liability along with interest by informing the department by a lettter dated 21.08.2008 and seeking liberty for non-issuance of SCN and non-imposition of penalties - despite such letter, Revenue authorities issued SCN on 25.02.2009 and imposed penalty which has been upheld by Commissioner(A) - appeal to CESTAT. Held: As there is no dispute that the appellant has discharged ST and interest before issuance of SCN it should have been considered as enough compliance and provisions of s.73(3) of FA, 1994 should have been invoked and SCN need not have been issued - appellant had given justifiable reason for non-discharge of ST liability - demand based on figures worked out from balance sheet which indicates that appellant had not suppressed any information - fit case for invoking the provisions of s.80 of FA, 1994 - order set aside to the extent it upholds penalty imposed u/s 78 of FA, 1994 - appeal disposed of: CESTAT [para 5, 6, 7]

2015-TIOL-1300-CESTAT-MUM

United Phosphorus Ltd Vs CC & ST (Dated: May 25, 2015)

ST - s.35F, s.35C(2A) of CEA, 1944 - Any stay order passed by the Tribunal, if it is in force beyond 07.08.2014, it would continue till the disposal of the appeal and there is no need for filing any further applications for extension - Tribunal decision in Venketeshwara Filaments - 2014-TIOL-2388-CESTAT-AHM followed - Application allowed: CESTAT [para 2, 3]

2015-TIOL-1299-CESTAT-MUM

CCE Vs Balaji Fabricators (Dated: May 13, 2015)

ST - Respondents were charged with non-discharge of ST liability under the category of 'Manpower Recruitment or Supply Agency' service for the work undertaken by them for S.S.Fabricators who had issued work orders in favour of respondent for fabrication of boiler column, tower assembly, inlet nozzle, outlet nozzle etc. on job work basis and paid them amounts on the basis of work completed - activity not covered under the category of 'Manpower Supply & Recruitment' as held by Tribunal in the cases of Ritesh Enterprises - 2010-TIOL-539-CESTAT-BANG & Yogesh Fabricators - 2015-TIOL-1115-CESTAT-MUM - order passed by lower authority by relying upon these decisions is correct - Revenue appeals rejected: CESTAT [para 4, 5]

2015-TIOL-1298-CESTAT-BANG

CC, CE & ST Vs Hyundai Motor India Engineering Pvt Ltd (Dated: February 20, 2015)

Service Tax - Unutilized credit - Quantum of Refund - Original authority computing it to days available in the particular month and restricting it to the difference between the date of invoice and the last date of the month was rightly held by Commissioner (A) as erroneous - Revenue appeal hence is rejected. (Para 2.1)

Service Tax - Cross objections filed 6 years after appellant received notice of hearing

in respect of department's appeal - Not maintainable. (Para 3) Service Tax - Determination of appeal - Tribunal can pass orders only on issues involved in the appeal and issue as to how the original authority has to calculate the turnover is not within its jurisdiction - Apprehension raised about possibility of application of wrong formula by original authority, does not merit consideration. (Para 3.1)
2015-TIOL-1297-CESTAT-BANG
FAB Engineering Vs CCE & ST (Dated: March 6, 2015)
Service Tax - Firm - Non-payment of service tax - Penalty - Sustainability - Appellant had paid the entire amount of service tax, interest and some extra amount even before the issue of show-cause notice despite the fact that partner who was looking after central excise work had left the partnership - On facts, provisions of section 80 invoked to waive the penalty imposed - Impugned order set aside. (Para 4)
2015-TIOL-1291-CESTAT-MAD
M/s Arkkay Construction Vs CCE (Dated: February 20, 2015)
Service Tax - Penalty - appeal relates to waiver of penalty imposed under Section 78 of the Finance Act imposed in adjudication and upheld by Commissioner (Appeals), where the appellant had paid the service tax before issue of show cause notice. Held: Suppression of facts with intention to evade payment of duty established beyond doubt, the adjudicating authority has rightly invoked extended period and imposed equal penalty under Section 78 - appellant has paid the interest and also 25% of the penalty imposed under Section 78 of the Act within 30 days of receipt of the adjudication order; no merit in the appellant's contention for waiver of penalty; no infirmity in the impugned order, same upheld [Para 3, 4]
2015-TIOL-1289-CESTAT-MUM
Western Coal Fields Ltd Vs CCE (Dated: May 13, 2015)
ST - Appellants are engaged in extraction of coal - extracted coal is shifted from mines to warehouse and from warehouse to coal handling plant, railway siding etc. from where the coal is transported out - for transportation of coal to railway siding the appellant engages the services of various transporters and pays them amounts as per contract - Revenue allegation that appellant should pay ST under the category of Goods Transport Service for the period 01.01.2005 to 31.07.2007. Held: Issue is no more res integra - truck authorisation slips were issued by appellant and not transporter - since admittedly no consignment notes were issued by the transporters the Goods Transport agency service cannot be held to have been rendered and that being the position appellant is not liable to tax - Orders set aside and appeal allowed with consequential relief: CESTAT [para 7, 8]
2015-TIOL-1288-CESTAT-MUM
Warburg Pincus India Pvt Ltd Vs CCE (Dated: May 13, 2015)
ST - Refund - It is undisputed that appellant is eligible to avail CENVAT credit of the input services which have been used by him for providing output services, which are exported - Identical issue in respect of notification 4/2006-was before the bench in

the case of WNS Global Services (P) Ltd. - 2008-TIOL-228-CESTAT-MUM wherein the bench took the view that the notification is retrospective in nature - Service providers are eligible for refund of un-utilised credit under Rule 5 of CCR even for the exports made prior to 14.3.2006, if the refund claims were filed after 14.3.2006 - quantum of refund not decided by lower authorities as appellant had not produced documentary evidence - appellant willing to produce all documents - matter remanded for the limited purpose of quantification: CESTAT [para 10 to 13]
2015-TIOL-1287-CESTAT-MUM
Tata Tele Services Ltd Vs CST (Dated: May 14, 2015)
ST - Whether the appellant is required to discharge the service tax liability on the amount which they have received from the distributors and dealers or on the MRP on which the subscribers purchase Recharge Vouchers and SIM cards from the distributors or dealers - Matter has been held in favour of appellant in their own case reported as - 2015-TIOL-775-CESTAT-MUM - as such impugned order rejecting the claim of the appellant is premature and is required to be set aside - lower authorities are directed to process the refund claim accordingly: CESTAT [para 4, 6]
2015-TIOL-1282-CESTAT-BANG
IVY Comptechpvt Ltd Vs CCE, C & ST (Dated: May 6, 2015)
Service Tax - Rebate - Whether the question of eligibility of CENVAT Credit can be raised while deciding a claim for Rebate?:The Assistant Commissioner rejected the rebate claim on the ground that the assessee was not eligible for credit on certain input services. The proper course to adopt was to hold up the rebate claim, issue a show-cause notice proposing to deny the CENVAT credit and that has to be a separate proceedings since the total amount proposed to be denied was in excess of the adjudication powers of the concerned authority. If it was within the power of concerned authority, one could take a view that the Assistant Commissioner did not exceed his powers in compiling the show-cause notice denying the CENVAT credit while considering the rebate claim. Therefore the action by the Assistant Commissioner cannot be sustained. Service Tax - input services: hotel bills related to the training of the employees which is definitely an input service covered in the definition. As regards air travel, there are several decisions taking a stand that service tax credit in respect of air travel of the employees for the business purpose is admissible as credit. As regards employees insurance, High Court of Karnataka in the case of CCE Vs. StanzenToyotetsu Ltd. - **2011-TIOL-866-HC-KAR-ST** has held that credit is admissible. Repair of vehicles also cannot be said to be unrelated to the output service.
2015-TIOL-1281-CESTAT-BANG
M/s 24/7 Customer Pvt Ltd Vs CST (Dated: February 9, 2015)
Service Tax - Refund claim of Cenvat credit on exports - Rejection on ground of bar of limitation and absent nexus between input and output services - CESTAT Bangalore in M/s. Apotex Research has clarified all the issues involved pertaining to refund of credit assessee exporting goods is entitled to - Following the decision, matter remanded to the original authority for fresh consideration in accordance with due process of law. (Para 3, 4)

2015-TIOL-1278-CESTAT-MUM
M/s Archivista Engineering Projects Pvt Ltd Vs CCE (Dated: April 9, 2015)
ST - Construction Service - Appellant availing benefit of abatement from gross value in terms of notification 15/2004-ST & not taking credit of duty paid on inputs and capital goods - After notfn. 15/2004-ST was rescinded and Notification 1/2006-ST was issued on 01.03.2006 extending similar abatement the condition added was that appellant could not take credit of tax paid on input services also - in respect of services received prior to 01.03.2006, appellant taking credit on 01.04.2006 - Revenue denying the credit on the ground that once the notification 15/2004-ST is rescinded, there can be no legality and legitimacy in availing the benefits allowed by the same - appeal to CESTAT. Held: There is no specific bar in the notification 1/2006-ST to disallow the CENVAT credit of tax paid on Input services for the previous period - Tax paid on Input services received prior to 01.03.2006 and credit taken on 01.04.2006 is legal and proper - Appeal allowed with consequential benefits: CESTAT [para 7, 8]
Also see analysis of the order
2015-TIOL-1277-CESTAT-MUM
Reliance Industries Ltd Vs CCE & ST (Dated: May 29, 2015)
ST - Utilisation of CENVAT credit for discharge of ST liability on goods transport agency service during the period May 2007 to September 2008 - Issue is now finally settled by LB decision in Panchmahal Steel Ltd. - 2014-TIOL-510-CESTAT-AHM-LB and which decision has been upheld by Gujarat High Court - 2015-TIOL-25-HC-AHM-ST by dismissing revenue appeal - no infirmity in utilisation - orders set aside and appeals allowed with consequential relief: CESTAT [para 5, 7]
2015-TIOL-1276-CESTAT-MUM
Aditya Birla Money Mart Ltd Vs CST (Dated: May 26, 2015)
ST - Tax savings bonds issued by the RBI and sold by the appellant bank is a Government Security - Issue of Taxability of amount received by appellant as commission in respect of sale of securities in the form of RBI bonds and receiving brokerage for the service as per GoI notification is settled by judgments of Tribunal in the case of HDFC Bank Ltd. - 2014-TIOL-27-CESTAT-MUM & Enam Securities P Ltd. - 2014-TIOL-2205-CESTAT-MUM holding that ST demand under Banking & Financial Services not sustainable - orders set aside and appeals allowed: CESTAT [para 5]
2015-TIOL-1270-CESTAT-BANG
Agi Glaspca Vs CC, CE & ST (Dated: March 6, 2015)
Service Tax - Goods sold on "FOR" destination basis - Cenvat Credit of service tax paid on outward transportation of finished goods from the place of removal - Is admissible as an input service till 01.04.2008 covering the period in dispute - Rejection of credit unsustainable more so when nothing on record to indicate that appellants have taken credit in respect of transportation from a point "beyond the place of removal" - Impugned order set aside - Appeal is allowed with consequential relief. (Para 4)
2015-TIOL-1268-CESTAT-DEL

Prakash Industries Ltd Vs CCE (Dated: May 14, 2015)

CENVAT - As per Rule 2(r) of CCR, 2004, "provider of taxable service includes person liable for paying service tax" - As the appellant was liable to pay service tax on GTA service it became provider of the said GTA service - In terms of Rule 2(p) of the said Rules "output service means any service provided by provider of taxable service - So GTA service became the appellant's output service and, therefore, payment of service tax thereon by utilising Cenvat credit was clearly in accordance with provisions of Rule 3(4) of CCR, 2004 which *inter alia* provides that Cenvat credit may be utilised for payment of service tax on any output service " service tax under reverse charge mechanism can be paid by utilising Cenvat credit has been held vide several judicial pronouncements: CESTAT [para 6]

CENVAT - observation of the adjudicating authority that the appellant "intentionally prepared the bills in terms of Rule 4A of the STR, 1994 and debited the amount from the Cenvat credit account in spite of the admitted fact that they were not the provider of any output service and that they prepared the said bills just for the purpose of creating papers to show the payment of service tax and to take the credit of such tax which was otherwise not admissible to them" is devoid of any legal basis - the demand of Rs.1,17,75,703/- is not sustainable: CESTAT [para 6]

ST "Demand of Rs.6,75,96,097/- under GTA service on the ground that the appellant had wrongly availed the benefit of Notification No. 32/2004-ST and thereby paid service tax on 25% of the amount paid for GTA service even when there were no declarations from the transport agencies to the effect that they (i.e. the transport agencies) had not availed of the credit of duty paid on inputs and capital goods and had also not availed of the benefit under Notification No. 12/2003-ST. **Held:** Notification nowhere lays down the requirement that the invoices of GTA service provider should contain declaration to that effect; the requirement for such a declaration was stipulated only by executive instructions of CBEC - It is not the Revenue's case that the GTA service providers had availed of the Cenvat credit or the benefit of Notification No. 12/2003-ST - Further, the stipulated declaration was stamped by the appellant on the invoices and all the goods transport agencies have given in writing that they had permitted the appellant to do so - They have also affirmed that they had not taken any Cenvat credit or the benefit of Notification No. 12/2003-ST " in view of the same there is no legal basis to deny the benefit - demand is clearly not sustainable " Appeal allowed: CESTAT [para 7]

2015-TIOL-1267-CESTAT-DEL

Dorling Kindersley India Pvt Ltd Vs CCE & ST (Dated: April 29, 2015)

ST "Refund" Input services used for providing output service of BSS to clients situated abroad - application filed for the quarter ending September, 2012 was partly denied to the appellant on the ground that the cenvat credit from the period 01.07.2012 to 31st August, 2012 was taken prior to obtaining Service Tax registration by the appellant as a service provider.

Held: No stipulation or embargo has been created in Rule 5 of CCR that refund of cenvat credit can be denied in absence of Registration Certificate - It is for some other purpose the requirement of registration has been provided in Rule 4 of the STR as well as in the Notification 27/2012-CE(NT) dated 18.06.2012 and not for the purpose of Rule 5 - In the present case, since the eligibility of the appellant to the cenvat credit on the input services has not been disputed by the Department, the only ground taken for disallowance viz. of non-registration of the service provider is not a valid one - there is no specific prohibition provided that refund has to be filed after registration of the service provider - Notification dated 18.06.2012 will not override the provisions of Rule 5 of the rules for claim of refund of service tax by the service provider - registration of premises is not necessary for claiming the cenvat credit - appellant is

entitled for refund of service tax: CESTAT [para 5, 6, 7]

CENVAT "Input Service" Rule 2(l) of CCR, 2004 - Denial of credit on the domestic courier service on the ground that the said service has no nexus with the service exported by the appellant, without discussing the nature of utilisation of such service by the service provider cannot be a defensible ground to deny the benefit of refund, especially in view of the fact that the output service has been exported by the appellant: CESTAT [para 8]

2015-TIOL-1260-CESTAT-MUM

Aarti Advertising Vs CCE & C (Dated: May 12, 2015)

ST - Commission received from Print media - Appellant paid ST under the category of 'Advertising services' for the period July 2004 to March 2006 under protest - SCN issued sought to reclassify the services under BAS and adjudicating authority upheld the allegations leveled and amount paid was appropriated - Appellant now filing refund claim on the ground that tax liability has been wrongly assessed on the amount received as commission. Held: Since the appellant has not contested the classification made by the lower authorities, appeal is devoid of merits - Appeal rejected: CESTAT [para 3]

2015-TIOL-1259-CESTAT-DEL

Travel Inn India Pvt Ltd Vs CST (Dated: May 28, 2015)

ST - Notification 1/2006-ST - Reversal of CENVAT credit along with interest at a later date also amounts to non-availment of credit - Benefit of exemption available - demand set aside: CESTAT [para 8]

CENVAT - Apex Court in the case of Chandrapur Magnet Wires has not put any bar that if the credit has not been reversed before removal of goods, in that case the assessee is required to pay the amount of 5%/10% (u/r 6 of CCR) of the value of the exempted goods - Therefore the observation made by the court is only obiter dicta and the Apex Court has also quoted that the said reversal is permissible and assessee is entitled for exemption - the facts of the said case are not applicable in this case as those observations were made in the case of manufacture of goods and central excise duties payable thereon whereas the present case pertains to the providing of output service, i.e., tour operator: CESTAT [para 7]

ST - Appellant has paid the service tax through cheque on due dates and the same stand realised on a later date - Therefore, the date of deposit of the cheque into the treasury is the date of payment of service tax as per Rule 6(2A) of the ST Rules, 1994 - demand of interest not sustainable: CESTAT [para 9]

Also see analysis of the order

2015-TIOL-1258-CESTAT-DEL

M/s 3 Generations Vs CST (Dated: March 24, 2015)

ST - Penalty - Admittedly the situation was clear w.e.f. 18.04.2006 that the services receiver located in India who has received the services from the service provider located outside India is required to pay service tax under Reverse Charge Mechanism

- Therefore, the contention of bonafide belief is not sustainable – as apellant has paid the entire amount of service tax, in fact, excess amount within a period of one month of the issuance of SCN, penalty is required to be reduced to 25% of the tax demand confirmed – Penalty reduced to 25% of ST u/s 78 of the FA, 1994 – penalty u/s 77 is upheld – Appeal disposed of: CESTAT [para 7, 8]
2015-TIOL-1257-CESTAT-BANG
Print Top Rubber Industries Vs CCE & ST (Dated: January 1, 2015)
Service Tax - Activity of Re-rubberizing of print rollers following Tribunal's decision in Zenith Rollers , held covered under Business Auxiliary service - Prima-facie case in favor of assessee - Stay petition allowed unconditionally. (Para 3)
2015-TIOL-1254-CESTAT-MUM
Goa Industrial Development Corporation Vs CCE & C (Dated: May 11, 2015)
ST - Appellant, Goa Industrial Development Corporation, has leased out vacant land to industrial units for setting up factories in Goa – It is the case of the Revenue that the amount collected as leased rent is chargeable to service tax under the category of Renting of Immovable property. Held: Tribunal in case of Maharashtra Industrial Development Corporation - 2015-TIOL-139-CESTAT-MUM has waived the requirement of pre-deposit and restrained the Revenue from recovery of adjudged dues – since issue involved is identical, application for waiver of pre-deposit allowed and recovery stayed – appellant has already deposited an amount of Rs.9,32,237/- - Registry directed to link appeal with that of MIDC & list for final disposal: CESTAT [para 3, 4]
2015-TIOL-1251-CESTAT-MAD
Tirupur Container Terminals Pvt Ltd Vs CCE (Dated: May 14, 2015)
Service Tax - Stay/Dispensation of pre-deposit - Transportation of export cargo from CFS to Port of shipment - Demand of Service Tax under Business Support Service - Prima facie case made out for waiver of pre-deposit as Section 65(23) excludes handling of export cargo and amount collected towards transportation of export cargo cannot be classifiable under Business Support Service - Pre-deposit waived.
Also see analysis of the order
2015-TIOL-1250-CESTAT-DEL
M/s Kusum Healthcare Pvt Ltd Vs CCE & ST (Dated: June 1, 2015)
ST - Demand confirmed under BAS on the ground that service was imported from abroad - Assessee contends that amount remitted by them abroad was in respect of expenses of their representative office and as the representative office does not have a separate legal existence it was service to self - As per explanation to Section 66A(2) of FA, 1994, a person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country - No ST is leviable on remittances made to branch office abroad - Assessee has made out a good case for full waiver of pre-deposit of demand relating to BAS - Assessee's plea that demand confirmed under advertising agency service is not sustainable because said

amount was paid directly to newspapers for advertisement and not to any advertising agency and no such agency was engaged for providing any service and therefore it did not fall within scope of section 65(3) read with 65(105J(e) is prima facie persuasive - Stay granted: CESTAT

2015-TIOL-1249-CESTAT-BANG

M/s Sindhu Cargo Services Ltd Vs CST (Dated: January 5, 2015)

Service Tax - Sale of cargo space to Airliners - Concessional rate against regular tariff rate on advance booking - Difference in tariff - Classification under Business Auxiliary Service or Cargo Handling Service - Legal issues are arguable - On facts held, invocation of longer period of limitation was not justified - Further more, since an amount of Rs. 25 Lakhs falls within the period of limitation, appellant is directed to deposit an amount of Rs. 7.5 Lakhs - Pre-deposit of balance due is waived. (Para 5)

2015-TIOL-1247-CESTAT-BANG

CST Vs Ingersoll Rand International India Ltd (Dated: March 3, 2015)

Service Tax - Input service - Renting of immovable property for office premises providing export of services - Is an input service integrally connected with business activity - Commissioner (A) allowing refund claim, requires no interference in as much as in appellant's own case Tribunal allowed - Revenue appeal is hence rejected as having no merits. (Para 2)

2015-TIOL-1241-CESTAT-MAD

M/s Srinivasa Real Estate Vs CST (Dated: April 17, 2015)

Service Tax - Penalty - appellant registered under 'Industrial or Commercial Construction Service'; tax collected from downstream but not remitted to exchequer - tax demand with interest and penalties under Sections 76, 77 and 78 adjudicated - Commissioner (Appeals) granted partial relief by setting aside penalties under Sec 76 and 77 - impugned order agitated on penalty under Sec 78.

Held: it is clearly brought out in the show cause notice as well as in the adjudication order, the appellants have collected service tax amount on the taxable service rendered by them and failed to remit the same and also suppressed the facts in their half yearly return - appellant's only contention is that they have paid the entire duty and the interest before adjudication - It is not the case of the appellants that they have voluntarily paid the service tax; only on registration of an offence case by the department, the appellants have paid the service tax partially before the issue of show cause notice and the balance amount before adjudication - the appellants obtained registration and filed ST3 regularly; during the material period they have filed a 'nil' return, in spite of knowing the fact that they already collected the amount from their clients on the above projects - Therefore, the appellants cannot plead for innocence for invoking Section 80 - Mandatory penalty upheld in a catena of rulings where there is a deliberate suppression of the facts proved with an intention to evade service tax - Tribunal in the case of Kedia Business Centre, by relying the Apex Court and High Court's orders upheld the penalty imposed under Section 78, squarely applicable to the instant case - appellant's plea for waiver of penalty imposed under Section 78 devoid of merit; no infirmity in the impugned order; same upheld. [Para 6]

2015-TIOL-1232-CESTAT-DEL

M/s HCL Comnet Systems And Services Ltd Vs CC, CE & ST (Dated: April 8, 2015)

ST - Refund - Debit notes by M/s HCL Technologies Limited, copies of which are filed in appeal evidencing that assessee had been a lessee of premises during the period for which debit note was recorded - As a corollary thereof, payment of rent including ST component thereon by assessee to M/s HCL Technologies Limited evidenced by debit note constitutes proof of assessee having incurred in service tax liability in respect of lease of immovable property from M/s HCL Technologies Limited as a sub-lessee - A mere suspicion, has been as recorded by primary and appellate authority, that appellant had paid rent two to three years after period of which premises was taken on lease is an unusual occurrence, is not sufficient to displace veracity of debit note - In absence of any finding that renting of immovable property was not a service having any nexus whatsoever with output service provided by assessee, on basis of any factual analysis, then is no justification for rejecting refund - Premises in issue was premises from which assessee was operating is established by debit note, by lease deed of M/s HCL Technologies Limited and sub-lease deed of assessee, preponderance of probabilities legitimises the conclusion that renting of immovable property was input service utilised for exported output service provided by assessee - Appeal allowed: CESTAT [Para 8, 9, 10, 11, 12]

2015-TIOL-1231-CESTAT-KOL

M/s Pebco Motors Ltd Vs CCE & ST (Dated: March 4, 2015)

ST - Refund - SCN issued demanding ST of Rs.6,86,182/- - Adjudicating authority observing that Service Tax is not payable on vehicle registration charges collected by the appellant from customers and accordingly dropping demand of Rs.97,416/- for the period July, 2003 to August, 2004 by order dated 26/12/2007 - present refund relates to the period thereafter i.e. from September, 2004 to August, 2007 on the amount of ST paid on vehicle Registration charges for which no demand notice was pending nor it was in dispute - Appellant had paid Service Tax voluntarily during the said period and, therefore, the present refund claim is a separate proceedings and cannot be construed as a refund arising out of the o-in-o - there is not an iota of doubt that the present refund claim arises out of applicability of provisions of FA, 1994 to the services rendered by the appellant and ought to be in accordance with s.11B of CEA, 1944 - Refund claim filed on 24/12/2008 for the period September 2004 to August 2007 is clearly time barred - Order passed by Commissioner(A) is upheld and appeal is dismissed: CESTAT [para 6, 7]

2015-TIOL-1230-CESTAT-BANG

Nvidia Graphics Pvt Ltd Vs CST (Dated: January 30, 2015)

Service Tax - Export of taxable services - Refund claim - Can be made within one year from the date of payment of tax - Claim filed by appellant was within one year from the date of payment of service tax - Claim was rejected on ground that the relevant date is the date of export and not the date of payment of service tax, is erroneous - Date of payment of service tax and not the date of export is relevant - Normal rules applicable to invoices have no relevance to export services - Impugned orders set aside - Appeal allowed by way of remand. (Para 2)

2015-TIOL-1229-CESTAT-BANG

M/s Mahindra Reva Electric Vehicles Pvt Ltd Vs CCE & ST (Dated: January 12, 2015)

Service Tax - Cenvat Credit of service tax paid on Air Travel agency service - Admissible. (Para 3)

Service Tax - Cenvat credit of service tax paid on Legal services - Legal services provided by foreign legal firm to dealers appointed outside India for sale of vehicles - Appellant company paid service consideration and discharged the service tax liability on reverse charge basis - Held clear nexus exists with appellant's activity - Credit is admissible - Impugned order set aside - Appeal allowed with consequential relief. (Para 4, 5)

2015-TIOL-1228-CESTAT-BANG

CST Vs S R Nova Pvt Ltd (Dated: March 3, 2015)

Service Tax - Cenvat Credit Rules 2004 - Sanction of refund under Rule 5 - Computation of time limit - Tribunal discussed in detail in the interim order passed in the case of Apotex Research Ltd - Since the Commissioner (A) has not discussed the issue relating to limitation, matter is remanded to original authority for fresh adjudication with reference to limitation only - Remaining appeals are rejected in view of the National Litigation Policy. (Para 6, 7)

2015-TIOL-1223-CESTAT-MUM

Interjewel Pvt Ltd Vs CST (Dated: May 29, 2015)

ST - If the department was aware of Writ petition filed by the appellants and have filed an affidavit in September 2006, nothing prevented them from issuing protective demand notices in order to safeguard Revenue - invocation of extended period in SCNs issued in year 2011 seems to be not in consonance with the law: CESTAT [para 8, 9, 10]

Also see analysis of the order

2015-TIOL-1225-CESTAT-BANG

CC, CE & ST Vs Kusalava Finance Ltd (Dated: January 30, 2015)

Service Tax - Refund service not taxable - limitation starts from the Tribunal's order: proceedings were initiated by the Revenue on the ground that appellant was not paying service tax on the full value and were not including certain charges levied by them. The adjudicating authority confirmed the demand of service tax amounting to Rs.30,95,926/- out of which he appropriated the amount of Rs.18,36,558/- already paid by the assessee. From the proceedings initiated resulting in the OIO, it is seen that the Department had reopened the assessment for the entire period from 2001 onwards.

Ultimately, the service itself was held not liable to tax at all.

Having reopened the assessment in its entirety, demanding the entire amount of tax payable and appropriating whatever already has been paid, the net result is that the Departmental officers have reopened the entire assessment and therefore the refund

claim filed by the assessee after the Final Order was passed by this Tribunal holding that no tax was liable to be paid, has to be considered as one arising as a result of the Tribunalorder and therefore the time limit cannot be accounted from the date of payment of tax.

Under the circumstances, it has to be held that claim of limitation by the Revenue cannot be accepted.

Accordingly the appeal filed by the Revenue is rejected.

2015-TIOL-1222-CESTAT-MAD

CCE & ST Vs M/s Dalmia Cements (P) Ltd (Dated: May 13, 2015)

Service Tax - GTA - Demands raised for the period Mar 1998 - May 1998 adjudicated wherein it was confirmed on the ground that the respondent is liable under reverse charge mechanism; set aside by Commissioner (Appeals) on the basis of the LH Sugar Factories ruling, and agitated by Revenue herein.

Held: Revenue's main ground is that on similar appeals the Supreme Court has admitted the revenue appeals on identical issue in Civil appeal No. 1618/2005 filed by the Commissioner of Central Excise, Vadodara in the case of Gujarat Carbon & Industries Ltd., and Civil Appeal No. 7144/2005 filed by the Commissioner of Central Excise in the case of Sundaram Fastners - Supreme Court had dismissed both the appeals in the case of Civil appeal No.1144/2005 order dated 18.08.08, in the case of Gujarat Carbon & Industries Ltd - Revenue's reliance on the High Court of Madras order dated 31.10.2013, in the case of CCE, Pondicherry Vs. CESTAT, Chennai and M/s. Pondicherry Paper Ltd., is not applicable - no infirmity in the impugned order which is upheld [Para 5]

2015-TIOL-1221-CESTAT-DEL

M/s HCL Comnet Systems And Service Ltd Vs CCE (Dated: February 12, 2015)

ST - Part of refund claim was rejected on ground that "the services relating to this amount were provided at premises of M/s. HCL Comnet Systems and Service, USA, which is not registered premises in India and therefore refund of CENVAT credit involved in such invoices amounting to Rs.2,35,981/-was not admissible" - Invoice of M/s. Ernst & Young Pvt. Ltd. for rendering service was actually raised on assessee and not on US establishment - Permanent establishment in US is not a legal entity and is merely an office of assessee - Onus to fulfil legal requirement relating to that office clearly rests on assessee and it was in discharge of that onus that they engaged M/s. Ernst & Young Pvt. Ltd. on the service - Service rendered by M/s. Ernst & Young Pvt. Ltd. were to fulfil legal requirements relating to assessee's office in US - Thus, impugned ST amount is clearly in respect of input service availed by them - Cenvat credit is admissible: CESTAT [Para 3, 4]

2015-TIOL-1220-CESTAT-DEL

M/s ST Microelectronics Pvt Ltd Vs CCE & ST (Dated: February 12, 2015)

Service Tax - Refund - Claim filed under Notification No. 5/2006 for refund of input service credit lying unutilized in the Cenvat account - denied on the grounds that the impugned services [outdoor catering, maintenance and repair service, manpower

recruitment services, ambulance service, non-mentioning of a address of service received by M/s. Reliance Communication Ltd.] are not input service as per Rule 2(l) of Cenvat Credit Rules, 2004 - same agitated herein.

2015-TIOL-1219-CESTAT-DEL

Globe Ground India Pvt Ltd Vs CCE & ST (Dated: February 3, 2015)

Service Tax - CENVAT credit - appellant is providing air port services, availing input services credit and also procured input/ capital goods for providing output services - Investigation revealed that they provided service to German Air Force Aircrafts/ flights at IGI Airport and did not pay the service tax thereon - It was presumed that these were exempt from tax; that the appellant failed to discharge obligation under Rule 6 (3) (c) of the Cenvat credit Rules, 2004; that service availed individually by MD was ineligible for credit; that motor vehicles are not capital goods or inputs and water carts and toilet carts which were converted on vehicles chassis are not entitled for Cenvat credit - demand for recovery with interest and penalty adjudicated, and agitated herein.

Held : In the absence of any contrary evidence produced by the Revenue, the provisions of Rule 6(3)(c) of Cenvat Credit Rules, 2004 are not applicable to the facts of this case - services availed at the residence of Managing Director have no nexus with the output services provided by the appellant as held by this Tribunal in the case of Manikgarh Cement - appellant disentitled to the impugned credit - carts were not registered under Motor Vehicle Act, therefore the contention of revenue that these motor vehicle are not capital goods is unacceptable; appellant has correctly taken the Cenvat credit - Considering the fact that except for the issue of denial of Cenvat credit on input services credit on security service, appellant's plea succeeded; No penalty leviable. [Para 6, 7]

2015-TIOL-1213-CESTAT-MUM

CCE Vs M/s Sinhagad Technical Education Society (Dated: May 28, 2015)

ST - Commercial Training or Coaching Service - Mark sheet and provisional passing certificate issued by Tilak Maharashtra Vidyapeeth & University of Pune - courses conducted by the assessee are recognized by law for the time being in force - Revenue has not adduced any contrary evidence - No ST payable: CESTAT

Also see analysis of the order

2015-TIOL-1211-CESTAT-DEL

Bestech (india) Pvt Ltd Vs CST (Dated: May 08, 2015)

ST - Demand was confirmed on ground that assessee paid ST under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 but it was not eligible for Composition Scheme - Prima facie ST liability after 67% abatement would be in range of amount of ST (approximately Rs.1.86 crores) paid by assessee - Assessee's contention that SCN was dated 23.10.2008 while it had filed ST-3 Return on 23.10.2007 and therefore part of demand is time barred prima facie has traction - As per Hello Mineral Water (P) Ltd. 2004-TIOL-57-HC-ALL-CX, assessee's contention that having reversed Cenvat credit later (along with interest) would make it eligible for Notfn 1/2006-ST or not Notfn 12/2003-ST prima facie is valid - Stay granted: CESTAT [Para 4]

2015-TIOL-1208-CESTAT-BANG

M/s Emulex Communications Pvt Ltd Vs CST (Dated: March 9, 2015)

Service Tax - 100% EOU - Claim of service tax paid on input services as rebate of exporting services - Rejected for delay in filing declaration - Held, Tribunal in Convergys India case held that filing of declaration is merely procedural in nature and non-compliance per se cannot be a ground to deny substantial benefit under the relevant Notification - Since the decision was not available for consideration before the original adjudicating authority, matter is remanded to original adjudicating authority to consider the rebate claim afresh in the light of precedent decision and submissions - Impugned order is set aside - Appeal is allowed by way of remand. (Para 2)

2015-TIOL-1207-CESTAT-MAD

Doosan Infracore (India) Pvt Ltd Vs CST (Dated: May 1, 2015)

Service Tax - CENVAT credit - appellant is engaged in the management, maintenance & repair services of heavy engineering and availed credit of input service tax paid on 'network services' and 'GTA' - Revenue sought to disallow the same, agitated herein.

Held: The network services availed by the appellant to make its own mail/server functional having its integral connection to generate the output service is a tool for such output service - In view of the factual and legal position, Revenues appeals on this count are dismissed - Amounts related to GTA credit covered by SCN stood reversed by assessee as abundant caution, Revenue's contentions dismissed [Para 2, 3, 5]

With regard to Revenue's grievance that the appellant availed credit of GTA paid by transporters, Commissioner (Appeals) verified that transport service provider was registered and has discharged tax liability of the said amount verifiable from the invoices and held that there cannot be double taxation for which assessee should get the relief - In absence of any contrary evidence as to the deposit of that amount of service tax by the GTA service provider, Commissioner (Appeals) has reached to a proper conclusion for which the Revenue's appeal on this count is dismissed [Para 4.1, 4.2]

2015-TIOL-1205-CESTAT-DEL

Charanjeet Singh Khanuja Vs CST (Dated: June 09, 2015)

Service Tax - Amway - for direct sales - no Service Tax - **Second Level Distributors liable to Service Tax:**

Direct Sale, no service: The Tribunal observed, The activity which is covered under Section 19(i) is in relation to the promotion or marketing or sale of the goods produced by the client or provided by the client or belonging to the client. This expression, would not cover the sale of the goods by a person, which belong to him, as the activity of the promotion or marketing or sale of the goods by a person belonging to him would not constitute service. The assessees in these cases are distributors, who purchase the goods from Amway at the Distributors Acquisition Price (DAP)) and sell the same in retail at price not exceeding MRP fixed by the Amway. This activity of the Distributors, cannot be treated as promotion, marketing or sale of

the goods produced or provided by or belonging to the client (Amway), as the sale of the goods purchased by the Distributors from Amway is not the sale of the goods belonging to their client Amway.

Second Level Distributors liable to Service Tax : The activity of a Distributor of identifying other persons, who can be roped in for sale of the Amway products/marketing of the Amway products and who on being sponsored by that Distributor are appointed by Amway as second level of distributors is the activity of marketing or sale of the goods belonging to Amway and the commission received by the Distributor from Amway, which is linked to the performance of his sales group (group of the second level of distributors appointed on being sponsored by the Distributor) would have to be treated as consideration for Business Auxiliary Service of sales promotion provided to Amway. Therefore, service tax would be chargeable on the commission received by a Distributor from Amway on the products purchased by his sales group.

Small Scale Exemption - marketing or sales promotion of a branded product does not come under the exclusion category : Department s plea is that this exemption is not applicable when the taxable service is provided by a person under a brand name/trade name, whether registered or not, of another person and in this group of cases, the Distributors have promoted the sale/marketing of branded products. This plea of the Department is not correct, as in these cases the distributors are engaged in promoting sales/marketing of the products of Amway and they are not marketing or promoting any taxable service which is branded and the brand name belongs to another person. Marketing or sale promotion of branded products by a person/ commission agent does not amount to providing branded service by him and hence, marketing or sales promotion of a branded product does not come under the exclusion category as mentioned in the proviso to notification no.6/05-ST.

Limitation: merely because the assesses did not apply for Service Tax Registration or did not file ST-3 Returns or did not declare their activities to the jurisdictional central excise authorities, it cannot be inferred that this was a wilful act with intent to evade payment of service tax. The Commissioner (Appeals) after analyzing the activities of the assesses had taken the view that the same is not covered by the definition of Business Auxiliary Service under Section 65(105) (zzb) read with Section 65(19) of the Finance Act, 1994. When on the issue involved in this group of cases, there were two views in the Department itself, it cannot be said that on the question as to whether the activity of the assessees was taxable under Section 65(105)(zzb) read with Section 65(19) of the Finance Act, 1994, there was no scope for doubt. As held by the Apex Court in the case of Continental Foundation Joint Venture Vs. CCE, Chandigarh reported in **2007-TIOL-152-SC-CX** when there is scope for doubt in the mind of an assessee on a particular issue, the longer limitation period, under proviso to Section 11 A(1)cannot be invoked and the ratio of this judgement of the Apex Court is applicable to the facts of these cases. Therefore, the longer limitation period of 5 years under proviso to Section 73(1) of the Finance Act, 1994 would not be invokable and duty can be demanded only for normal limitation period of one year from the relevant date.

The impugned orders passed by the Commissioner (Appeals) are set aside and the matters are remanded to the Original Adjudicating Authority for de novo adjudication. -

Also see analysis of the order

2015-TIOL-1202-CESTAT-MUM

Tata Steel Ltd Vs CST (Dated: June 05, 2015)

ST - Appellant borrowing by way of 'syndicated loans' for their international

acquisition and capital expansion, from various overseas banks - Arrangement fee & Agent Bank fees paid by appellant to various banks/institutions abroad viz. Mandated Lead Managers - whether taxable under reverse charge under the head 'Banking and Financial services' - Difference of Opinion - Matter referred to Third Member: CESTAT
2015-TIOL-1201-CESTAT-BANG
Ramky Pharma City India Ltd Vs CCE (Dated: January 06, 2015)
Service Tax - Taxable service - Explanation to the definition - Construction and development of commercial complex within the Pharma City, facilitating Pharma industries to set up individual units - Is covered by "preferential location" of Explanation to the definition of taxable service - Activity is taxable service - Argument that buyer has no specific choice reference to kind of infrastructure needed, held irrelevant - No prima facie case made out by assessee - No financial difficulty pleaded - In view of the profits earned shown, appellant directed to deposit Rs.2.5 crores - Pre-deposit of balance due is waived. (Para 4.1, 5) Service Tax - Selling of developed plots to customers in Pharma city - Service tax demand under "club or association service", unsustainable. (Para 4.2)

2015-TIOL-1200-CESTAT-MUM
Sadhana Educational & People Development Services Pvt Ltd Vs CCE (Dated: June 05, 2015)
ST - No doubt the two years course will help candidates in understanding various facets of management and get employment but it is a professional management course and cannot be considered as Vocational Course - service provided by the appellants are not eligible for the benefit of Notification No. 24/04-ST - extended period not invokable, penalties set aside: CESTAT [para 7, 11]
Also see analysis of the order
2015-TIOL-1199-CESTAT-DEL
Shridhar Castings Pvt Ltd Vs CCE & C (Dated: March 19, 2015)
ST - Short payment of ST on GTA services - as soon as the same was pointed out, appellant willingly and voluntarily discharged service tax liability along with interest on 23/11/2009, therefore, matter should have been closed there itself in view of s.73(3) of FA, 1994 - in spite of specific provisions, department has proceeded to keep the matter alive by issuing SCN without any rhyme or reason - in any case, the authorities should have waived penalties by exercising discretion u/s 80 of FA, 1994 - Appeal allowed by setting aside penalty: CESTAT [para 5, 6]
2015-TIOL-1198-CESTAT-DEL
Tricity Autos Vs CCE & ST (Dated: March 23, 2015)
ST - Authorized service station has provided service to buyer of vehicle to whom vehicle was sold by assessee and as per sale policy, assessee is required to provide

three free services to buyer of vehicle - When buyer of vehicle has availed service of authorized service statio n without any charges, in that case authorized service station is providing service on behalf of assessee and assessee is required to pay cost of service along with ST to authorized service station who has provided service on behalf of assessee to owner of vehicle - Service provided by authorized service station has become input service for assessee and assessee is entitled to take cenvat credit - Appeal allowed: CESTAT [Para 6, 7]

2015-TIOL-1197-CESTAT-KOL

M/s Bonai Industrial Co Ltd Vs CCE, C & ST (Dated: March 20, 2015)

ST - Refund - Notification 41/2007-ST - Refund claim relates to GTA service used by the appellant in relation to export of goods - Keeping in view the broad principle that service tax should not be exported along with services, service tax refund is being allowed to the exporter on the amount of service tax paid on services used in or in relation to the export of goods - In the present case, there is no dispute on fact of export of the goods by the appellant nor there is any dispute that GTA services had been used in the export of the said goods - only dispute centres around the fact that the relevant invoice numbers were not mentioned in the lorry receipts and also in the corresponding shipping bills - present case is remitted to the original authority for verification of the of the claim of the Appellant on the use of GTA service in the export of goods by establishing a link between the lorry receipt and the export invoices and also the export invoices and shipping bills - Matter remanded: CESTAT [para 6, 7]

2015-TIOL-1192-CESTAT-MUM

CC & CE Vs M/s Vrindavan Engineers & Contractors (I) Pvt Ltd (Dated: April 30, 2015)

ST - Respondent executing a work order awarded to them by Goa State Urban Development Agency (GSUDA) for Construction of Market-cum community hall and park - activities undertaken by the respondent indicate a comprehensive works contract - if such works are held to be taxable under 'Site formation service', then every such project would involve this activity - Revenue could have at the most taxed only that part of the contract which involves site formation and related earthwork, but that has not been done - Revenue Appeal dismissed: CESTAT [para 4, 5]

Also see analysis of the Order

2015-TIOL-1191-CESTAT-MUM

Tata Technologies Ltd Vs CCE (Dated: April 27, 2015)

ST - s.35F, s.35C(2A) of CEA, 1944 - Any stay order passed by the Tribunal, if it is in force beyond 07.08.2014, it would continue till the disposal of the appeal and there is no need for filing any further applications for extension - Tribunal decision in Venketeshwara Filaments - 2014-TIOL-2388-CESTAT-AHM followed - Application allowed: CESTAT [para 2, 3]

2015-TIOL-1187-CESTAT-DEL

M/s Technopak Advisors (P) Ltd Vs CCE (Dated: April 27, 2015)

Service Tax - Stay/Dispensation of pre-deposit - Demand of Service Tax on Market Research Agency service provided for clients located outside India - Contention that

as per Rule 3(1)(ii) of the Export of Service Rules, 2005 it amounts to export of service is prima facie valid - Pre-deposit waived - Rs 10 lakhs ordered as pre-deposit in respect of other services. (para 4)

2015-TIOL-1185-CESTAT-MUM

M/s Infosys Technologies Ltd Vs CCE (Dated: June 5, 2015)

ST - Refund - Whether services of software maintenance which includes corrective maintenance, adoptive maintenance and perfective maintenance, or enhancement and preventive maintenance or re-engineering can be categorized under maintenance and repair service of 'goods' - Difference of opinion - Matter referred to 3 rd Member for Majority decision: CESTAT

Also see analysis of the Order

2015-TIOL-1184-CESTAT-MUM

Alfa Laval (India) Ltd Vs CCE (Dated: May 28, 2015)

ST - Appellant, a co-operative society running a canteen in the factory premises - appellant is a separate entity in the eyes of law and engages various persons for preparation of food, though, in the premises of their client and also engages different personnel for serving the food - appellant cannot claim that they are not a provider of catering service - Appeal rejected: CESTAT [para 6.3, 6.5]

Also see analysis of the Order

2015-TIOL-1183-CESTAT-MUM

M/s Stock Holding Corporation Of India Ltd Vs CST (Dated: August 27, 2014)

ST - Appellant renders custodial and depository services under the category of 'Banking & Financial Services' and discharges ST - CENVAT Credit availed of tax paid on Insurance services, Club Membership services, Residential telephone connections, outdoor catering services, cable operator services - Commissioner allowing credit of Rs.1.27 crores and denying credit of Rs.18.37 lakhs - appeal before CESTAT - Appellant submitting that Rs.18.14 lakhs credit pertains to ST paid on Special Contingency Policy (which pertained to insurance against the infidelity and forgery of securities etc.) and balance consists of residential telephone bills of senior employees/cable operator services for cable television installed at various branches. Held: Insurance service availed for insuring business risk is an allowable input service; Telephone connection at residence of senior officials is essential input as appellant corporation have huge business risk and have to be vigilant at all times; cable operator's service is also an allowable input service as same is utilized in various offices of appellant for being updated with the stock and money market - Order set aside and appeal allowed with consequential benefits, if any: CESTAT [para 5.1, 5.2, 5.4]

2015-TIOL-1182-CESTAT-MUM

State Bank of India Vs CCE (Dated: April 7, 2015)

ST - s.67 of FA, 1994 - Rule 5 of ST (Determination of Value) Rules, 2006 - Revenue alleges that amounts collected by appellant from customers towards postage charges, courier charges in the course of rendering services of 'Banking & financial services' is includible in the taxable amount while discharging ST. Held: Issue is no more res integra - identical issue of discharge of ST liability on the reimbursement of actual expenses was considered by the Delhi High Court in the case of Intercontinental Consultants - 2012-TIOL-966-HC-DEL-ST wherein rule 5(1) of the Valuation Rules was

struck down holding that these provisions are ultra vires of section 67 of FA, 1994 - Order set aside and appeal allowed with consequential relief: CESTAT [para 4, 5]
2015-TIOL-1175-CESTAT-BANG
Sri Chaitanya Educational Committee (SCEC) Vs CC, CE & ST (Dated: June 1, 2015)
Service Tax - Commercial training or coaching services - coaching provided for IIT and other entrance examinations along with Intermediate (+2) Course is taxable under "Commercial training or coaching services". Service Tax - Demand Limitation: delay in furnishing information sought for by Revenue from the appellant, cannot be a ground for invocation of extended period. All the powers of a Court with regard to attendance of witness, discovery of information/documents, etc. are vested in the adjudicating authority. Only for failure on the part of the adjudicating authority to exercise jurisdiction vested in him, extended period is not invokable. Demand limited to normal period and penalties set aside.
Also see analysis of the Order
2015-TIOL-1174-CESTAT-MUM
Dai Ichi Karkaria Ltd Vs CCE (Dated: June 05, 2015)
CENVAT credit availed on Input Services used in relation to manufacturing activity at Pune has no nexus with rendering of output service at Mumbai - Credit cannot be utilized for paying service tax liability on the renting of immovable property service provided in Mumbai : CESTAT [para 7, 8, 9]
Also see analysis of the Order
2015-TIOL-1173-CESTAT-MUM
M/s Vodafone Essar Ltd Vs CST (Dated: May 28, 2015)
ST - Telecommunication Service - During April 2003 to September 2006, distribution of prepaid recharge vouchers, free of charge to the dealers as commission for the sale effected by them does not attract service tax liability - Appeal allowed: CESTAT [para 6.3, 6.4, 6.5, 6.6]
Also see analysis of the Order
2015-TIOL-1170-CESTAT-DEL
M/s Madhya Pradesh Audyogik Kendra Vs CCE & ST (Dated: April 27, 2015)
ST - Management, Maintenance and Repair Service - Annual Maintenance Charges (AMC) collected by assessee from allottees (lessees) of plots - Assessee contends that AMC is a sort of lease rent and is untenable in-as-much-as in terms of agreement with lessees, AMCs are to be recovered in addition to lease rent - As per Section 65 (64) of FA, 1994, service rendered by assessee is clearly covered under MMR service-There is no constitutional basis to hold that services rendered as a statutory function are ipso facto immune from liability to ST - It had added maintenance charges in lease

rent while computing taxable amount and paid ST thereon and if that is taken into account, short payment would come in range of Rs.5 lakhs - Pre-deposit of Rs.5 lakhs along with proportionate interest is ordered: CESTAT [Para 2, 3]

2015-TIOL-1164-CESTAT-MUM

M/s Tetra Pak India Private Limited Vs CCE (Dated: May 12, 2015)

ST - Valuation - Tax liability on amounts which were reimbursed as Travelling expenses, lodging and boarding expeneses incurred by appellant's employees while undertaking offical tour - lower authorities have invoked the provisions of rule 5(1) of the ST (Determination of Value) Rules, 2006 while confirming the demand. Held: Rule 5(1) has been struck down by the High Court of Delhi in the case of Intercontinental Consultants - 2012-TIOL-966-HC-DEL-ST - order set aside and appeal allowed with consequential relief: CESTAT [para 4]

2015-TIOL-1159-CESTAT-MUM

Midas Events Vs CST (Dated: May 19, 2015)

ST - Appellant was very well aware of their responsibility and liability having taken ST registration in February 2003 - not complying with the requirement of filing ST3 returns for a long period of six years exhibits callous attitude - Considering that appellant had not acknowledged SCN, did not file reply, did not appear for personal hearings can only lead to the conclusion that their intentions were not bonafide - No "reasonable cause" shown to deserve the benefit of Section 80 of FA, 1994 - Penalties upheld - Appeal rejected: CESTAT [para 6.1]

ST - Cum tax - Appellant not disputing tax liability but seeking benefit of cum-tax - Held : Appellant at no stage made available any documents such as invoices and contracts with their clients which would indicate that value received by them is cum duty value; that one of the clients is a well-known company i.e. Hindustan Unilever; that there was no reason why any documents could not have been obtained from their client to show that the value received by them is actually cum duty value and that the Appellant had got enough opportunity to produce documents from their client even if their own documents were washed away in floods - claim rejected: CESTAT [para 6]

Also see analysis of the Order

2015-TIOL-1158-CESTAT-MUM

M/s Exfo Electro-Optical Engineering India P Ltd Vs CCE (Dated: April 13, 2015)

ST - Refund of ST paid on input services - Appellant has provided IT services which are exported - lower authorities have held that services of which CENVAT credit was availed by appellant were received at the premises which are not registered with the department - appeal to CESTAT. Held: It is seen from records that the appellant has specifically pleaded that the output services which are provided by them is from their registered premises and that has got centralized accounting system; that subsequently appellant has registered or added the addresses from wherein the services were received for providing export services in the registration certificate - order of lower authorities denying refund is unsustainable - Appeal allowed with consequential relief: CESTAT [para 6, 8]

2015-TIOL-1157-CESTAT-BANG

M/s S V Engineering Constructions Vs CCE & ST (Dated: January 5, 2015)
Service Tax - Execution of civil works - Principal contractor discharged the tax liability on the entire consideration including value of the services provided by appellant sub-contractor - Service Tax demand from appellant, unsustainable in view of precedent decisions on record - Pre-deposit is waived. (Para 4)
2015-TIOL-1156-CESTAT-BANG
Adecco Flexione Workforce Solutions Ltd Vs CCE, C & ST (Dated: February 20, 2015)
Service Tax - Tax liability and interest discharged - Delay in payment of service tax sufficiently explained and nothing to indicate of suppression of facts or fraud - Show cause notice ought not to have been issued - Appellant made out his case both under sections 73(3) and 80 for waiver of penalty - Appeal allowed with consequential relief. (Para 3)
2015-TIOL-1148-CESTAT-BANG
Modi Ventures Vs CCE, C & ST (Dated: June 26, 2014)
Service Tax - Waiver of Pre-deposit - Construction of complex service - Construction and sale of individual residential flat with undivided share of land at a time or under separate agreements for equitable share of land or for construction of flat - Not covered by Construction of Residential Complex service prior to 01.07.2010 - Substantial amount already paid by appellant before issue of show cause notice - Good prima-facie case in favor of assessee - Pre-deposit waived. (Para 2)
2015-TIOL-1145-CESTAT-MUM
M/s Anand Construction Company Vs CCE (Dated: April 15, 2015)
ST - Tribunal has vide order dated 26.09.2012 held that in respect of Construction of Boys and Girls hostel for students of a medical institute since there is no allegation that the building is being used for any other purpose, there was no cause for payment of ST under the category of 'Works Contract Services' - As Bench has already held in favour of appellant and allowed the appeal with consequential relief, amount of service tax incorrectly paid is to be refunded to appellant - appeal allowed: CESTAT [para 3, 4]
2015-TIOL-1143-CESTAT-MUM
CCE Vs Jawaharlal Nehru Port Trust Pvt Ltd (Dated: May 13, 2015)
ST - Irrespective of the fact whether the activity is classified as "port service" or as a "Cargo handling" service, the stated policy of the government is to exempt exports from levy of any tax: CESTAT [para 4, 4.1, 4.2, 4.3, 5]
Also see analysis of the Order
2015-TIOL-1142-CESTAT-MUM
Mega Enterprises Vs CCE & C (Dated: May 12, 2015)

ST - Appellant, a successful bidder collecting octroi and transit fees and paying an amount to the Municipal Corporations as per contract entered - amount in excess of contract amount retained by appellant and in respect of transit fees, appellant receives 3% of the amount as consideration - Appellant is not a financial institution so as to be held liable to tax under the category of Banking & Other financial services - Assessee appeal allowed and Revenue appeals rejected: CESTAT [para 10, 11, 14]
Also see analysis of the Order
2015-TIOL-1141-CESTAT-BANG
M/s Lcllogisticx (India) Pvt Ltd Vs CCE & ST (Dated: January 28, 2015)
Service Tax - Taxable service - Classification conflicts - Appellant providing logistic services and authorized to function under jurisdictions of several Commissionerates - Appellants allegedly not paid service tax on "Ocean Freight surplus" - Three show cause notices have been issued from three Commissioners classifying the same services rendered by the assessee under three different services -Since there is a need to take a single view, matter is remanded to the original authority for fresh consideration in accordance with law - Appeal allowed by way of remand. (Para 3)
2015-TIOL-1140-CESTAT-BANG
Sobha Developers Ltd Vs CST (Dated: January 6, 2015)
Service Tax - Services provided by a club to its members not liable to service tax - Service tax demand is unsustainable - Appeal allowed with consequential relief. (Para 2)
2015-TIOL-1133-CESTAT-BANG
CST Vs IDEA Cellular Ltd (Dated: May 13, 2015)
ST - When the respondent's appeal was decided by setting aside the extended period of limitation and penalties imposed holding that this could be an issue of interpretation, the question of confiscation of CENVAtted capital goods does not arise - Revenue appeal rejected: CESTAT [para 5, 6]
2015-TIOL-1132-CESTAT-MUM
Essar Telecom Infrastructure Pvt Ltd Vs CST (Dated: April 30, 2015)
ST - Appellants are telecom infrastructure providers and discharge ST under BSS - Towers are leased to various telecom companies - credit of duty/tax paid in respect of capital goods and input services for constructing/erecting Towers is admissible as CENVAT credit - Appeals allowed: CESTAT [para 10, 11, 12]
Also see analysis of the Order
2015-TIOL-1131-CESTAT-MUM
Yashwantrao M K SSK Ltd Vs CCE (Dated: May 11, 2015)
ST - Factual errors rectified in ROM application proceedings - in the entire final order

where the assessee has been referred as "appellant", the same be now referred as "respondent" : CESTAT [para 5]

Also see analysis of the Order

2015-TIOL-1128-CESTAT-KOL

M/s Magma Fincorp Ltd Vs CST (Dated: May 11, 2015)

Service Tax - Banking & other Financial services: All issues remanded to Adjudicating Authority to examine agreements/documents and to determine taxability and quantification.

Also see analysis of the Order

2015-TIOL-1127-CESTAT-MUM

Shivprasad Construction Vs CCE (Dated: March 13, 2015)

ST - Commercial and Industrial construction services specifically excludes from service tax construction activity which are not commerical or industrial in nature - construction activity undertaken by appellant for educational institution is not liable to service tax in view of decisions in Anand Construction - 2013-TIOL-238-CESTAT-MUM and Singhania Enterprises - 2014-TIOL-2018-CESTAT-DEL - Revenue appeal is devoid of merit, hence rejected: CESTAT [para 7, 8]

ST - Construction activity undertaken of sugar factories will fall under service net under the category of Commerical or Industrial Construction Service - Since the appellant has already paid the service tax liability along with interest and could have entertained a bonafide belief that such activity undertaken by him may not have any service tax implication, it is a fit case for invoking the provisions of Section 80 and setting aside the penalties - Penalty set aside: CESTAT [para 9, 10]

2015-TIOL-1126-CESTAT-MUM

Mineral Exploration Corporation Ltd Vs CCE (Dated: March 03, 2015)

ST - ST - s.35F, s.35C(2A) of CEA, 1944 - Any stay order passed by the Tribunal, if it is in force beyond 07.08.2014, it would continue till the disposal of the appeal and there is no need for filing any further applications for extension - Tribunal decision in Venketeshwara Filaments 2014-TIOL-2388-CESTAT-AHM followed - Application allowed: CESTAT [para 2, 3]

2015-TIOL-1118-CESTAT-KOL

M/s Hindustan Aeronautics Ltd Vs CCE & ST (Dated: March 12, 2015)

ST - Benefit of Notfn 12/2003-ST had been denied to assessee while computing ST liability for rendering services under category of "management, maintenance or repair service" - Assessee claimed that supply of materials along with services involved 'deemed sale', hence benefit of said Notfn was admissible to them - Said claim was not accepted by Revenue in absence of actual sale of goods supplied - On aspect of liability of sales tax/ VAT on goods supplied by assessee, matter went up to Supreme Court and after intervention of Supreme Court, disputed parties, namely assessee and respective state governments had settled issue - Assessee placed copy of settlement order passed by Commissioner of Commercial Taxes, Odisha and submitted that pursuant to said settlement, they had paid sales tax/VAT on supplied material - It is

prudent to remit case to adjudicating authority for deciding issue of abatement of value of materials supplied and applicability of said Notfn afresh: CESTAT

2015-TIOL-1117-CESTAT-MUM

SAR Parivahan P Ltd Vs CCE (Dated: April 27, 2015)

ST - As appellant has already deposited almost the entire tax liability, condition of pre-deposit of balance amount involved waived - before the adjudicating authority, appellant had claimed that they had not received a copy of the SCN - although adjudicating authority recorded that SCN was sent by Registered post AD and there was an acknowledgment card, it would have been in the interest of justice that the adjudicating authority could have served SCN and directed the appellant to file a reply - adjudicating authority to do the needful and pass an order - appellant directed not to seek refund of the amount deposited during the investigation proceedings - Appeal disposed of: CESTAT [para 2]

2015-TIOL-1115-CESTAT-MUM

CCE Vs M/s Yogesh Fabricators (Dated: April 23, 2015)

ST - Amitasha Enterprises Pvt Ltd. supplied galvanised material to respondent who pick up the material from the production line and render certain jobs such as cutting, punching, drilling, bending, notching etc. - once this activity is over Amitasha Enterprises enter the production in its daily stock register and clear the goods on payment of appropriate rate of duty - Respondent received consideration for this job & which was paid on the basis of lumpsum amount - Commissioner (A) holding that these services are not taxable under the head Manpower Supply Recruitment Services - Revenue in appeal. Held: Grounds of appeal basically relies upon the licence issued to the respondent by the office of the licensing officer, Government of Maharashtra holding that Amitasha Enterprises Pvt. Ltd. is a principal employer - this may not change complexion of the services in any way as the entire records clearly indicate that the respondent-assessee was given a lumpsum contract of carrying out the job in the factory premises of Amitasha Enterprises - activity not covered under the category of 'Manpower Supply & Recruitment' - Revenue appeal is devoid of merits, hence rejected: CESTAT [para 5, 6]

2015-TIOL-1109-CESTAT-MUM

CST Vs Reliance Communication Ltd (Dated: May 26, 2015)

ST - s.84 of FA, 1994 - Erroneous refund - Revisionary proceedings - no contradiction between clause (1) and clause (5) - SCN should have been issued u/s 73(1) within one year from the date on which the refund order was passed by the sanctioning authority - Revenue appeal dismissed: CESTAT [para 6.3, 6.4, 6.5, 6.6, 7]

Also see analysis of the Order

2015-TIOL-1108-CESTAT-MUM

M/s Sunnycom Training Institute Vs CCE (Dated: April 23, 2015)

ST - Commercial Coaching or Training Service - Appellant, a franchisee of Aptech Ltd. & imparting training under the brand name 'Arena Multimedia' - Course fee paid by students by cheques in the name of Aptech Ltd. and appellant receiving 80% of the fees on which they discharged Service Tax – Revenue authorities entertained the notion that appellant is required to discharge service tax liability on the full amount of the fees received – Demand confirmed – Appeal to CESTAT. Held: Issue no more res integra - identical issue decided in case of Kunal IT Services Pvt. Ltd. holding that there is no cause for demanding ST on 20% amount which is retained by Aptech Ltd. – order set aside & Appeal allowed: CESTAT [para 6, 7]

2015-TIOL-1107-CESTAT-BANG

Sew Infrastructure Ltd Vs CCE, C & ST (Dated: March 5, 2015)

Service Tax - Refund - Liability of Revenue to pay interest - Commences from the date of expiry of three months from the date of receipt of application for and not on the expiry of the said period from the date on which order of refund is made - Appellant had filed the refund claim on 25.03.2008 were rejected by original authority as not entitled to refund - Commissioner (A) in appeal set aside the orders and allowed appeal with consequential reliefs in 2009 - In the circumstances, refund claim has to be reckoned as filed in 2008 and interest has to be computed on the basis of same date and not from 2009 - Appeal allowed with consequential relief. (Para 3, 4)

2015-TIOL-1106-CESTAT-DEL

M/s Technocrate Transformers Vs CCE (Dated: March 27, 2015)

ST - Assessee engaged in repair work of old and damaged transformers - Invoices raised by assessee clearly indicates value of goods separately - Contract itself while giving rate of repair package clearly stated the value of labour charges and value of HV/ LV leg oil, transformer oil and supply items - Adjudicating authority has also conceded that assessee has paid VAT on items supplied - Observation of adjudicating authority to the effect that "in the absence of any specific clause in the contract specifying the quality, make, specification of the items, it would be difficult to concede these a 'sale' even though service provider has paid VAT on the same" does not found legally valid and sustainable - Assessee was entitled for deduction of value of goods supplied during repair of transformer - Impugned order set aside and appeal allowed: CESTAT [Para 5, 6]

2015-TIOL-1103-CESTAT-DEL

M/s Beekay Engineering Corporation Ltd Vs CCE & ST (Dated: May 14, 2015)

ST - Extension of stay - Revenue views that w.e.f. 06.08.2014 Section 35C(2A) of CEA, 1944 has been abolished and therefore Tribunal does not have any power to grant extension of stay - Said sub-section did not grant any power to grant stay; it only sought to put fetters on power of Tribunal to grant stay beyond a certain period - With abolition of Section 35C(2A) ibid w.e.f. 06.08.2014, power of Tribunal with regard to grant of stay in no way got attenuated - Even during existence of said sub-section (i.e. prior to 06.08.2014), Tribunal in Halidram India Pvt. Ltd. 2014-TIOL-1965-CESTAT-DEL-LB held that Tribunal had power to extend stay beyond period of 365 days in cases where appellant was ready and willing to pursue the appeal, but Tribunal owing to older pendency was unable to take up the appeal - Stay extended: CESTAT [Para 3]

2015-TIOL-1098-CESTAT-DEL

Cellebrum Technologies Ltd Vs CCE (Dated: April 30, 2015)

Service Tax - Short Message Peer to Peer (SMPP) service – covered under Business Auxiliary Service: The appellants were providing Short Message Peer to Peer (SMPP) service to various clients but were not paying service tax thereon. The SMPP service inter alia involves sending SMS to customers of their clients on a bulk basis. The said service was provided to a large number of clients and described in their invoices as "charges for short messaging enabling software on per SMS basis and peer to peer and person to person basis". The terms of the agreement make it clear that the SMS which is being sent to the client's subscriber is only on behalf of the client and the appellants cannot send any material on their own. Thus it is amply clear that the service has been rendered by the appellants on behalf of the clients and is therefore clearly covered under the scope of BAS as the appellants have rendered service in relation to provision of service on behalf of the clients.

Cum tax : Indeed, Section 67(2) of Finance Act, 1994 allows cum-tax benefit only if the gross amount charged for the service is inclusive of service tax payable. In the light of the admitted fact that the price charged by the appellants did not include any service tax, the cum tax benefit cannot be extended to them.

Suppression : The Show Cause Notice does not give any clue as to on what basis Revenue expected the appellants to give description of exempted services in the ST-3 Returns when there is no such legal requirement mentioned either in the Show Cause Notice or in the impugned order. Something positive other than mere inaction or failure on the assessee's part or conscious withholding of information when assessee knew otherwise is required for invoking extended period. Further, with regard to the demand pertaining to July, 2004 to March, 2006 for which the Show Cause Notice was issued on 04.04.2009, when there had been other Show Causes Notices issued for subsequent period on 24.10.2007 and 18.09.2008 the allegation of suppression becomes even more untenable. The Supreme Court in the case Nizam Sugar Factory Vs. CCE, held that while issuing second and third Show Cause Notices involving same/similar facts, suppression/wilful mis-statement could not be alleged.

Also see analysis of the Order

2015-TIOL-1095-CESTAT-MUM

M/s Intervalve (I) Ltd Vs CCE (Dated: April 22, 2015)

ST - Appellant providing BAS to their associate enterprises and paying ST on receipt of the commission amount for providing the service - Period involved is 10.05.2008 to 31.03.2011 - issue is what is the relevant date prescribed for payment of ST when service is provided to an associate enterprise - Commissioner(A) upholding the order of adjudicating authority wherein it is held that the date of payment of ST is the date on which the amount is entered in the Books of account of the person liable to pay ST, in the case of associate enterprises, and accordingly confirming the demand of interest for the delay in payment and imposing penalty of Rs.10,000/- - Appeal to CESTAT. Held: Implication of amendment to Section 67(4) of FA, 1994 and the inclusion of explanation u/r 6(1) of STR, 1994 has been misread by the lower authorities - the explanation regarding transaction of taxable service with an associate enterprise only refers to value of taxable service which shall include any amount credited or debited in the books of account - but the date on which payment of service tax is due to be made is the 5 th /6 th of the month following the calendar month in which payments are received towards value of taxable service in terms of rule 6(1) as it stood before 01.04.2011 - if Revenue's view is taken as correct, the provision of law which states that Service Tax payment is linked to the receipt of payment of service would render Rule 6(1) meaningless - view of lower authorities does not stand to

reason and must be rejected - Order set aside and appeal allowed: CESTAT [para 6, 7]

2015-TIOL-1088-CESTAT-MUM

M/s Fazlani Exports Pvt Ltd Vs CST (Dated: March 5, 2015)

ST - Refund - Notification 41/2007-ST - Certain services were not notified on the date of export but were duly notified on the date of claiming refund - Issue is no longer res integra - in the case of East India Minerals Ltd. it is held that since on the date of claim the service was duly notified, irrespective of the period of export, refund admissible: CESTAT [para 6]

ST - Refund eligibility is to be examined vis-à-vis date of claiming and not date of export: CESTAT [para 6.1]

ST - Terminal Handling Charges (THC) - Refund denied on the ground that inovice was raised by shipping line instead of port operator and the service provider being registered under a different service category or no proof regarding authorisation from port authorities - issues stand concluded in favour of appellant by Board Circular 112/06/2009-ST dated 12.03.2009 - appellant entitled to refund claim: CESTAT [para 6.2]

ST - Refund - GTA services - on one hand order allows refund on inward transport of empty container from port/ICD to factory to be further used for stuffing and exporting cargo and at the same time rejects refund on the ground that export invoice details are not mentioned on the face of LR - in appellant's own case for a different unit the CESTAT vide order 2013-TIOL-656-CESTAT-AHM have upheld similar refund claim as allowable - refund admissible: CESTAT [para 6.5]

ST - Refund - Procedural infractions in respect of export documents are required to be ignored while granting refund - once it is not in dispute that services stand qualified for refund purpose, on the date of claim, and service tax was actually paid on specified service pertaining to export activity, in terms of the broad scheme of refund, refund must be allowed - Board Circular 112/6/2009-ST refers: CESTAT [para 6.6]

2015-TIOL-1087-CESTAT-MUM

Ketan Motors Ltd Vs CCE (Dated: April 22, 2015)

ST - CENVAT - Credit availed on documents pertaining to unregistered premises of appellant at Chandrapur and Amravati - appellant in their letter dated 16/12/2004 have stated that they may be given permission to have only one registered place in terms of rule 3(a) of STR, 1994 - such request can be considered as an application for centralized registration - not applying in the proper format is not a reason to deny substantial benefit which should follow from centralised registration - in any case centralised registration was granted subsequently on 26/03/2013 - department has not disputed that the input services were received at the branch office and further that they were utilized for providing output services - no reason for disallowing CENVAT credit on documents pertaining to branch offices: CESTAT [para 7]

CENVAT - Credit on services of telephone - bills addressed in the Director's name but the office mentioned is the office premises of appellant - there is no ground to deny

credit: CESTAT [para 8]

2015-TIOL-1086-CESTAT-MUM

R P Shah Vs CCE (Dated: April 16, 2015)

ST – Appellant undertaking desilting of Mithi River – whether taxable under 'dredging services' – appellant submitting that Mithi river was nothing but a water body and that also not perennial and runs only during monsoon. Held: Issue on merits is squarely covered by the decision in Reliance Michigan (JV) 2013-TIOL-795-CESTAT-MUM holding that Mithi is a River and not a drain and the dredging activity is liable to service tax – as regards penalty of Rs.1000/- imposed u/s 77, same is upheld, however, the elements of suppression of facts or mis-statement with intent to evade ST is absent as the contract of so-called "desilting" was awarded by the Govt. of Maharashtra and the entire issue was in public domain – penalties u/s 76 & 78 of FA, 1994 are set aside by invoking s.80 of FA, 1994 as non-payment would be due to misinterpretation of provisions – Appeal disposed of: CESTAT [para 7.1, 7.2, 7.3]

2015-TIOL-1085-CESTAT-MUM

CST Vs Syntel Sterling Bestshores Solutions Pvt Ltd (Dated: March 5, 2015)

ST - Respondent, registered under the category of BAS rendered services to clients based abroad, claimed CENVAT credit of ST paid on input services and thereafter claimed refund - lower appellate authority allowing refund and, therefore, Revenue in appeal. Revenue submission is that the refund claim is in respect of ST paid on 'Rent-a-cab', 'telephone' and 'rent' and these services have no nexus with the services exported by respondent. Held: Board has in Circular 120/01/2010-ST clarified that the phrase 'used in' in the CCR and Notification 5/2006-CE(NT) should be interpreted in a harmonious manner - input services without which the quality and efficiency of output service cannot be achieved should be allowed as eligible input services for refund - input services which were disallowed by adjudicating authority are used by applicant in providing 'export' output services and are very essential to provide quality output services - these findings of the Commissioner(A) have nowhere been controverted by the Revenue in their grounds of appeal and as pleaded by AR - order is correct and upheld - Revenue appeal rejected: CESTAT [para 7, 8]

2015-TIOL-1082-CESTAT-MUM

CST Vs Georg Fischer Piping Systems P Ltd (Dated: April 21, 2015)

ST - Appellant provided service to the entity abroad by way of procuring orders from customers in India and on the basis of which the foreign entity was selling pipes to customers to India - Respondent filed a rebate claim of tax paid on input services on the ground that the services rendered amounted to export of service - Commissioner(A) allowing respondent appeal and, therefore, revenue before CESTAT. Held: Service provided by the respondent is limited to procurement of orders which are sent to the principal entity abroad - Thereafter the role of the respondent ends inasmuch as he is nowhere connected with the actual sale of the goods by the entity abroad to the customers in India - Rule 3(1)(iii)of the Export of Services Rules, 2005 comes into picture as the service concerned is Business Auxiliary Service and the export is deemed to have taken place if the beneficiary is abroad and the payment is received in foreign exchange in India - since these two conditions are satisfied,

services are to be held as export of service - issue of limitation has not been raised either in o-in-o or o-in-a and, therefore, cannot be raised at this stage - Revenue appeal dismissed: CESTAT [para 7, 8]

2015-TIOL-1081-CESTAT-MUM

Osho International Foundation Vs CCE (Dated: May 27, 2015)

ST - Health & Fitness Services - By undergoing meditation course, an individual will definitely be physically well as he is at peace with his inner soul and this fact that cannot be disputed by any one - meditation helps an individual in attaining mental peace and physical well-being of an individual would also encompass mental peace - Service is Taxable but department initially informing appellant that the service is not taxable but later changing its view and asking appellant to pay tax upon receiving directions from Board - A change in view by the highest body of the indirect taxes can be applied only from the date when the change of view took place - revenue authorities, therefore, cannot demand service tax from the appellants for the period prior to 18 March 2009 when they informed the appellant that the services are taxable - Appeals allowed: CESTAT

Also see analysis of the Order

2015-TIOL-1074-CESTAT-MUM

CCE & C Vs M/s B M Constructions (Dated: May 16, 2015)

ST - Issue of inclusion of free material value provided to the service provider by the customer and computation of value thereof for the purpose of payment of service tax by service provider - matter is decided by the Larger Bench of the Tribunal in the case of Bhayana Builders (P) Ltd. 2013-TIOL-1331-CESTAT-Del-LB in favour of assessee - judicial discipline mandates that the said decision be followed - in view of the same Revenue appeal for confirmation of ST demand & imposition of penalties u/s 78 is rejected: CESTAT [para 4.1]

ST - on other issues, respondent has paid the amounts along with interest and not contested the same - since the amounts were deposited before issue of SCN, penalty is not imposable because SCN was not required to be issued in view of s.73(3) of FA, 1994 - penalties already paid to be refunded - so also interest paid in respect of demand which was set aside is also to be refunded to respondent: CESTAT [para 6.1, 6.2]

2015-TIOL-1073-CESTAT-MUM

M/s Faurecia Interior Systems (I) P Ltd Vs CCE (Dated: April 13, 2015)

ST - Refund - Lower authorities have rejected refund claim in r/o ST credit availed on premium paid towards group mediclaim insurance for employees and families/dependants; on ST paid for car parking place rented and consultancy charges incurred for review of performance of employees - appeal to CESTAT. Held: Issue is no longer res integra - in view of decision in PCS Software (I) P. Ltd., issue is squarely settled in favour of appellant - Principal Bench has also held in favour of assessee in case of KPMG 2013-TIOL-761-CESTAT-DEL - in view of authoritative judicial pronouncements, order set aside and appeal allowed with consequential relief: CESTAT [para 5, 6, 7, 8]

2015-TIOL-1072-CESTAT-MUM
M/s Global Advertisement Services Pvt Ltd Vs CCE & ST (Dated: April 17, 2015)
ST - Whether the appellant, who is SEZ unit are eligible for refund of accumulated CENVAT Credit in respect of inputs used in the output service which were exported in terms of Rule 5 of CCR, 2004. Held – In appellant's own case reported as 2012-TIOL-1478-CESTAT-MUM it is conclusively held that refund is admissible – matter was remanded only to examine the claim of the appellant with respect to the time limit involvement and to sanction the same accordingly – although the said order was produced by appellant, Commissioner(A) has gravely misunderstood the order and has again gone into merits and rejected the claim – order is set aside and appeals allowed with consequential relief: CESTAT [para 5]
2015-TIOL-1071-CESTAT-MUM
M/s Shree Parvati Construction Vs CCE (Dated: December 12, 2014)
ST - Commercial & Industrial Construction service, WCS, GTA Service - All transactions recorded in the books of account maintained by appellant - upon being pointed out by Revenue, appellant depositing the admitted tax liablity along with interest - other than the admitted liability, amount proposed to be demanded and confirmed from appellant have been dropped by Commissioner(A) - there is no finding of contumacious conduct on the part of the appellant - thus the appellant is entitled to benefit u/s 73(3) of FA, 1994 inasmuch as no SCN was required to be issued - penalty reduced by appellate authority is dropped and set aside - appeal allowed with consequential relief: CESTAT [para 5, 6]
2015-TIOL-1070-CESTAT-MUM
M/s Altaf Ahmad Vs CCE (Dated: April 27, 2015)
ST - Appellant has been charged with non-payment of ST under the category of 'Management, Maintenance or Repair of roads' in relation to the landscape on various roads, dividers of the Nagpur Municipal Corporation - issue is covered by the retrospective amendment which was issued vide notification 24/2009-ST granting exemption to repair of roads for the period 16.06.2005 to 26.07.2009 - period involved in present case is from November 2007 to January 2009 - order set aside & appeal allowed: CESTAT [para 6, 7]
2015-TIOL-1068-CESTAT-MUM
Reliance Gas Transportation Infrastructure Ltd Vs CST (Dated: May 12, 2015)
ST - Transportation of Gas through Pipeline - Services of CICS, ECIS, WCS rendered by pipeline laying contractors is prima facie an Input Service and CENVAT credit is admissible - Pre-deposit of Rs.262.13 crores waived and stay granted: CESTAT by Majority
Also see analysis of the Order
2015-TIOL-1065-CESTAT-MUM
Mahindra & Mahindra Ltd Vs CCE (Dated: February 13, 2015)

CENVAT - Rule 2(l) of CCR, 2004 - Security services provided at residential colony/club room, repair of mixer used in canteen, civil work at colony, furniture/wooden partition done for VIP rooms and telephone lines installed at residence of the officers/club rooms - Whether credit of ST admissible? Held: What is permitted as CENVAT credit is the tax paid on input services which are integrally connected with the manufacturing of the final product - Residential colony for the employees and the clubs are welfare activity for the staff undertaken by the appellant while carrying the business but has no nexus with the business of manufacturing the final product - Credit not admissible - appeals filed by appellant is devoid of merits - since during the impugned period different authorities were taking different interpretation it is not a fit case for imposition of penalty u/s 11AC of CEA, 1944 r/w rule 15(2) of CCR, 2004 - appeals dismissed except for modification of penalty: CESTAT [para 7, 8]

2015-TIOL-1064-CESTAT-MUM

M/s Mahanagar Gas Limited Vs CCE (Dated: February 25, 2015)

CENVAT - All the particulars as required under Rule 9(2) of CCR, 2004 are undisputedly appearing on the debit note - Therefore the debit note is at par with the documents prescribed under Rule 9(1) of CCR, 2004 - There is no dispute raised by the department that the services were received and same was accounted for in the books of account of the appellant – Debit note is a valid document for availing CENVAT credit – Credit admissible – Order set aside and appeal allowed: CESTAT [para 5]

2015-TIOL-1063-CESTAT-MUM

CCE Vs Chopade Electrical Enterprises Respondent (Dated: May 1, 2015)

ST - Revenue filing appeals aggrieved for the reason that the Commissioner (A) had remanded the matters back to the adjudicating authority. Held: Submissions made by AR and grounds of appeal seem to be incorrect as the impugned appeals were filed by respondent under the provisions of s.85 of FA, 1994 - power of remand continues with Commissioner(A) in dealing with appeal filed under the provisions of FA, 1994 - Appeals dismissed: CESTAT [para 4, 5]

2015-TIOL-1062-CESTAT-MUM

Alkyl Amines Chemical Ltd Vs CCE (Dated: March 12, 2015)

ST - Appellant registered with CE department for manufacture of goods falling under Chapter 29 of CETA, 1985 - appellant had carried out job work on goods supplied by client and returned the same after processing without payment of duty - Revenue contention is that the processing charges received is taxable under the category of BAS - demand confirmed and, therefore, appeal filed before CESTAT. Held: Appellant is undertaking job work of converting Para Nitro Cumene into Para Cumidine and the process involved is a chemical process - this activity is definitely an activity of 'manufacture' inasmuch as the finished goods coming into existence are different from the inputs which are put into use - on perusing the chemical formula and the properties of the inputs and of the final goods it is found that there is a difference between the two which would mean that the finished goods 'Para Cumidine" is arising out of a manufacturing process - activity undertaken by appellant would amount to manufacture even if it is under a job-work procedure - order demanding ST under BAS is unsustainable, hence set aside - appeal allowed: CESTAT [para 9, 10, 11]

2015-TIOL-1054-CESTAT-BANG

CST Vs M/S Schneider Electric India (Pvt) Ltd (Dated: March 9, 2015)

Service Tax - Non-speaking order - Order of Commissioner (A) allowing appeal neither discussed the services received nor nexus between input/output service - Further no discussion as to the applicability of Board circular to the facts/circumstances of the case - Impugned order hence set aside - Matter remanded to decide afresh and pass a reasoned order. (Para 2)

2015-TIOL-1052-CESTAT-MUM

Klaus Multiparking Systems Pvt Ltd Vs CCE (Dated: April 09, 2015)

ST - Erection of Car Parking Systems - Erection of structures was introduced in the definition of "Erection, commissioning or installation" for the first time in May 2006 - whether the whole parking system can be termed as a structure or it should be considered as having two components namely a civil structure and the hydraulic/lift system - factual details to be examined by adjudicating authority along with definition which underwent amendments from 2003 to 2006 - Matter remanded: CESTAT [para 6, 7]

Also see analysis of the Order

2015-TIOL-1044-CESTAT-DEL

Serco Global Services Pvt Ltd Vs CCE (Dated: March 05, 2015)

ST - Refund - Even if the CENVAT credit was considered to have been taken wrongly, disallowing the same requires quasi-judicial process involving issuance of SCN followed by a speaking order: CESTAT

Also see analysis of the Order

2015-TIOL-1042-CESTAT-MUM

Mrs Manda Jagannath Mhatre Vs CCE (Dated: December 1, 2014)

ST - Assessee doing various odd jobs for Ispat Industries Ltd. like, lining, coating, loading and unloading with aid other workers - It is evident from bill of job done that same is definitely not classifiable under Manpower recruitment and supply agency service - Payment of ST shows that assessee has got no concept or knowledge of ST and have deposited the same out of fear with interest much prior to issue of SCN, i.e almost a year - Assessee makes concession by stating that they will not be claiming any refund of amount (tax) and interest already deposited - Impugned order set aside and appeal stands allowed - Matter remanded for the limited purpose of re-calculation of tax - All penalties are set aside - Pursuant to re-determination of tax liability and interest, if any, amount is found to be refundable to assessee, same shall be refunded forthwith without appellant being required to file for same separately: CESTAT [Para 5, 6]

2015-TIOL-1041-CESTAT-BANG

Bellary City Cable Vs CCE, C & ST (Dated: March 2, 2015)

Service Tax - Penalty - Waiver - Legislative intent of section 80 precisely is to ensure that assessees who did not pay the tax can make the payment with interest taking a lenient view based on assessee's lack of knowledge and reasonable cause for failure to discharge tax liability - Entire amount of demand along with interest was paid before

issuance of show cause notice - Reasonable cause shown - Penalty waived - Demand and interest upheld as not contested. (Para 4)
2015-TIOL-1036-CESTAT-MUM
Synise Technologies Ltd Vs CCE (Dated: May 8, 2015)
ST - Trading services - Method of computation of value u/r 6(3A) of CCR, 2004 in respect of input services used for trading cannot be applied for period prior to 01/04/2011 - Credit disallowed in proportion of trading turnover to the total turnover is correct - Assessee appeal dismissed and Revenue appeal allowed: CESTAT [para 6. 6.1, 6.2, 7, 10, 11]
Also see analysis of the Order
2015-TIOL-1035-CESTAT-MUM
Bain Capital Advisors India Pvt Ltd Vs CST (Dated: January 20, 2015)
ST - Banking and Financial Services - Refund Claim - Rule 5 of CCR, 2004 - Notfn. 5/2006-ST - Invoice raised by the appellant on 30/06/2012 clearly indicates that the same is for the services rendered by them to an entity situated in Mauritius - appellant had debited the CENVAT credit register on 29/06/2012 indicating that credit is utilized for payment of ST on services exported to Bain Capital, Mauritius - when the facts are very clear and when there is export of services and the amounts have been debited in CENVAT register, there is no reason for the lower authorities to reject such a valid rebate claim - rebate claims allowed - Appeal allowed with consequential relief: CESTAT [para 7, 8
2015-TIOL-1034-CESTAT-BANG
M/s Archi-Technics Vs CCE & ST (Dated: January 12, 2015)
Service Tax - Non-payment of service tax - Penalty - Plea of ill-health of mother of appellant raised as ground for non-payment of tax-On the contrary, business allegedly continued during relevant period in question notwithstanding ill-health of mother of appellant - Appellant is aware of his liability to pay tax - Penalty rightly imposed - No justifiable reason exist to set aside penalty/
2015-TIOL-1033-CESTAT-BANG
GMR Hyderabad International Airport Ltd Vs CC, CE & ST (Dated: January 15, 2015)
Service Tax - Taxable service - Commission earned and not collection of electricity and water charges from tenants paid to respective departments form part of the value of the services. (Para 4) Service Tax - Denial of Cenvat credit - Credit of tax paid on account of membership of the club services and outdoor catering services - Change of definition of input service is with effect from April 2011 - Disputed period falls between April 2008 and March 2012 - Appellant accordingly not entitled to benefit credit post April 2011 - Amounts determined directed to be deposited - Balance due is waived including interest and penalty. (Para 5, 6)

2015-TIOL-1026-CESTAT-BANG

G R Cables Ltd Vs CCE, C & ST (Dated: January 30, 2015)

Service Tax -Benefit of Section 80 to waive penalty - Is applicable only where non-payment of service tax is on account of bonafide belief being entertained by assessee that the same is not payable - Appellant a registered service provider having full knowledge of payment of his tax liability, neither filed the returns nor discharged tax liability for several years -Conduct reflects malafides - Not entitled to the benefit of section 80 - Assistant Commissioner extending benefit simpliciter without assigning any reasons is wholly unwarranted - Plea of financial difficulty inconsequential - Because there was suppression or misstatement of nonpayment of the tax, longer period of limitation legitimately invoked - Penal provisions also would get attracted - Since appellants have already deposited service tax along with interest before the issue of show-cause notice, penalty imposed is scaled down to 25% of the tax amount - Impugned order of Commissioner (A) upheld.(Para 6, 7, 8)

2015-TIOL-1023-CESTAT-MUM

Vidarbha Grinders (P) Ltd Vs CCE (Dated: May 5, 2015)

ST - Activity of conversion of black bars into bright bars on own account and clearance of the same on payment of CE duty by treating as manufactured product cannot become a non-manufactured product when the appellant undertakes jobworking for some other clients so as to be held as liable to ST under BAS: CESTAT [para 5, 5.1, 6]

Also see analysis of the Order

2015-TIOL-1022-CESTAT-BANG

Dix Engineering Project Services Pvt Ltd Vs CCE & ST (Dated: January 2, 2015)

Service Tax - Pre-deposit of penalty - Service tax collected but not deposited with the government - Appellant is liable to penalty and is directed to deposit 50% of the penalty - Pre-deposit of balance due is waived. (Para 3)

2015-TIOL-1021-CESTAT-HYD

M/s Chaitanya Constructions Vs CCE & ST (Dated: February 2, 2015)

Service Tax - Laying pipelines to provide municipal/government drinking water to citizens and/or to SEZ - Is not works contract in relation to commercial or industrial purpose - Prima-facie case in favor of assessee - Pre-deposit is waived. (Para 2)

Service Tax - Laying pipelines providing water to Industrial Growth Centre held, cannot be considered as service which is not provided primarily in relation to commerce or industry - No prima-facie case in favor of assessee - Directed to make pre-deposit of determined amount - Balance due is waived. (Para 3)

2015-TIOL-1020-CESTAT-BANG

Cargotec India Pvt Ltd Vs CST (Dated: February 20, 2015)

Service Tax - Denial and recovery of Cenvat - Irregular availment of Cenvat credit by one of the units and transferring it under improper invoices - Merger of units and

Centralized Registration obtained before action could be taken on the audit objection - Whether credit availed gets regularized -Held, immediate consequence of merger is that all the credit has come into one book of account only and the transferred cre dit also has come back to the original unit - While procedure followed by the appellant for transferring the stock of inputs by mere reversal without raising a proper invoice to their Unit though not in accordance with the law, upon merger no action can be initiated against unit transferring stocks under improper invoices since it ceased to exist after merger -Since the denial of credit cannot be sustained, the demand for CENVAT credit availed with interest and penalty also cannot be sustained - Penalty of Rs 10,000/- imposed under Section 77 is upheld. (Para 3)
2015-TIOL-1013-CESTAT-MUM
Photolibrary India Pvt Ltd Vs CST (Dated: May 1, 2015)
ST - Client can download images from the website of the appellant for the purpose of placing in an advertisement - issue of copyright on the said images is merely incidental - main activity is making information available for retrieval - service rendered falls under the category of Online information & Database access or retrieval service - Appeal rejected: CESTAT [para 5 to 8, 11, 12]
Also see analysis of the Order
2015-TIOL-1012-CESTAT-BANG
Kernex Microsystems (India) Ltd Vs CC, CE & ST (Dated: March 2, 2015)
Service Tax - Denial of Cenvat Credit - Input service -Services received for mobilization of finance by IPO and for conducting study of the business plan and study done in relation to anti-collusion devices proposed to be manufactured by the appellants - Activities are clearly covered by the inclusive part of the definition of Input service as defined in Rule 2(1)(2), CCR 2004 -Impugned order denying credit set aside - Appeal allowed with consequential relief.
2015-TIOL-1011-CESTAT-BANG
K V Narayana Vs CCE, C & ST (Dated: March 6, 2015)
Service Tax - Wrong classification of service - Waiver of penalty - Substantial portion of the amount is not liable to tax - Amount paid by the appellant covers the entire demand, interest and a portion of the penalty and is considered as due payment towards tax and interest - Penalties imposed are set aside - Further held that since no calculations have been made about the correctness of the amount paid, the issue is considered as settled by treating the amounts paid to be appropriated for all the dues and the appellant is neither be eligible for refund nor will be liable to pay any tax or interest or penalty. (Para 4)
2015-TIOL-1010-CESTAT-BANG
M/s ABB Ltd Vs CCE & ST (Dated: March 4, 2015)
Service Tax - Cenvat Credit taken is reversed before utilization - Interest and penalty imposed not sustainable. (Para 5, 7)
2015-TIOL-1003-CESTAT-DEL

CCE Vs M/s J D Sales Corporation (Dated: January 21, 2015)

ST - Assessee was providing business auxiliary service by way of procuring orders for supply on their behalf - Issue is of simultaneous imposition of penalty under section 76, 77 and 78 of Finance Act, 1994, which has already been decided in various judgements of High Courts as well as Supreme Court - In view of recent judgement of apex court in BCCI 2015-TIOL-04-SC-ST , matter is to be remanded for fresh consideration by Commissioner(A) based on actual facts and judgement on the issue: CESTAT [Para 5, 6, 7]

2015-TIOL-1001-CESTAT-MUM

AMP Capital Advisors India Pvt Ltd Vs CST (Dated: April 16, 2015)

ST - Rule 5 of CCR, 2004 - Appellant providing Advisory services to AMP Capital, Australia and the service-recipient using advise received for further advising their customers in making investments in India - Service qualifies as "export of service" - Refund of CENVAT Credit in r/o input services admissible - Appeals allowed: CESTAT [para 6, 6.2]

Also see analysis of the Order

2015-TIOL-1000-CESTAT-MAD

M/s Ramnath & Co Pvt Ltd Vs CST (Dated: April 6, 2015)

Service Tax – Classification – appellant engaged in providing delcredere agency service – Revenue viewed that they were providing C&F service, defined under Sec 65(25) of the Finance Act 1994.

Held: Definition of the term 'clearing and forwarding agent' makes clear that activity should be confined either directly or indirectly in connection with the clearing and forwarding operation - Any other operation, not connected to such activity shall not fall under the scope of clearing and forwarding - The appellant is found to be a delcredere agent who in the commercial world guarantees recovery of the debt - scope of the activities carried out by appellant as depicted in the appellate order does not appeal to common sense that the appellant carried out clearing and forwarding service when Department has not brought out which are the consignments he cleared and origin and destination of the goods for forwarding [Para 2, 3]

2015-TIOL-999-CESTAT-DEL

Innovative Incentive And Events Pvt Ltd Vs CCE & ST (Dated: March 10, 2015)

ST - Assessee engaged in activity of providing accommodation on basis of holiday voucher issued by their corporate clients by arranging of accommodation on direction of their clients to customers who win the vouchers - All these activities has been provided by assessee after sale is effected by their clients - When sale has been effected by their client, therefore, question of promoting their business does not arise - Activity undertaken by assessee does not qualify under category of Business Auxiliary Service - Stay granted: CESTAT [Para 6]

2015-TIOL-989-CESTAT-MAD

CST Vs Isg Novasoft Technologies Ltd (Dated: March 06, 2015)

Service Tax - Refund - Relief granted by Commissioner (Appeals) in respect of refund of unutilized cenvat credit agitated by Revenue herein.

Held: Commissioner (Appeals) stated cogent reasons for granting the relief - When appellant was an exporter and the Cenvat credit it had earned was not possible to be utilized by it, there was no bar to grant the refund thereof to the appellant, which was found to be genuine claim in the absence of any evidence suggesting that the appellant has erroneously earned the credit - no scope to presume that the Cenvat credit is inadmissible - Review Committee did not assign any cogent reason to assail the impugned order - Review decision and appeal of the Revenue is in mechanical fashion. [Para 2, 3, 4]

2015-TIOL-988-CESTAT-DEL

CCE Vs B K Cement Pipe Manufacturing Co (Dated: February 26, 2015)

ST - Assessee supplied goods in their own truck as well as in truck which they had taken on rent on per day basis and the expenses on fuel were borne by them - It is evident that they were transporting their own goods and were not engaging any goods transport agency - Assessee did not "receive" the goods from any person as goods transported were their own goods - It can be nobodys case that even providing service to oneself is taxable - No merit in Revenue's appeal, same is therefore dismissed: CESTAT [Para 4, 5]

2015-TIOL-983-CESTAT-MAD

M/s P A P Exports Vs CCE (Dated: March 18, 2015)

Service Tax - Refund - Tax paid prior to 18.04.2006 under reverse charge mechanism under 'BAS' category rejected in adjudication on the ground of limitation; rejection upheld by Commissioner (Appeals), and agitated herein.

Held: As seen from the chronology of events, the impugned refund arises on account of the adjudication order passed by the Jt. Commissioner of Central Excise vide O-in-O dated 22.12.2010 holding that no service tax is payable prior to 18.04.2006 while vacating the protest under which amount stood paid - When the demand was dropped for the part period, they are eligible for the consequential refund and they have rightly filed the refund claim on 05.12.2011, which is well within the time limit of one year from the date of order - appellants are rightly entitled for the refund as the service tax was paid under protest and no time limit applies [Para 4]

Lower appellate authority traversed beyond the scope of the notice and the impugned order in holding that relevant date as the date of re-submission of the refund claim - impugned order set aside. [Para 5, 6]

2015-TIOL-980-CESTAT-DEL

Amway India Enterprises Pvt Ltd Vs CST (Dated: May 14, 2015)

ST - Assessee is a wholly owned subsidiary of Amway Corporation USA which is a large direct selling company - It is alleged that assessee had not paid ST on expenditure incurred in foreign exchange on taxable service namely Intellectual Property Right service received from its associate enterprises based abroad and also under Franchisee service on income received by it in form of subscription from various distributors - As regard to demand under intellectual property service is required to be set aside and matter remanded to primary adjudicating authority with a direction to pass a speaking order after adverting to submissions of assessee - It will be pointless

to indulge in any analysis with regard to meaning of word franchise in other countries - As per Amway Business Starter Guide and Distributor Application and Terms and Conditions, ABO/distributor is not merely granted right to sell Amway products but he has representational rights to sell such products - Impugned order upheld to extent it relates to demand under franchise service: CESTAT

2015-TIOL-974-CESTAT-MAD

CCE Vs Tuticorin Port Trust (Dated: March 17, 2015)

Service Tax - Penalty - the adjudicating authority demanded only the interest under Section 75 of Finance Act, 1994 for the delayed payment of service tax and imposed equal penalty for non-payment of interest - appellate authority in the impugned order upheld the interest demanded and directed the lower authority to re-quantify the interest based on the actual date of receipt of service tax amount and number of days delay, but set aside the penalty; agitated by Revenue herein.

Held: The jurisdictional authority has worked out the number of days of delay and the total interest amount payable - no infirmity in the order of the appellate authority directing the lower authority to re-quantify the interest - the amount re-quantified by the department is the correct interest amount payable for the delayed payment of service tax; no valid ground put forth by the Revenue against dropping of penalty by the Commissioner (Appeals) - The lower appellate authority has waived the penalty taking into consideration of the fact that the respondent has already paid the service tax - Considering the interest amount itself is reduced no infirmity in the impugned order in so far as setting aside the penalty - revised interest amount computed by the department as per the direction of the Commissioner (Appeals), and waiver of penalty is upheld [Para 3]

2015-TIOL-973-CESTAT-MAD

CST Vs M/s Ajuba Solutions (India) Pvt Ltd (Dated: March 4, 2015)

Service Tax - CENVAT credit - input credit of the service tax paid in respect of air travel, travel insurance, vehicle insurance, vehicle maintenance, mediclaim for employees and CHA services denied in adjudication; allowed by Commissioner (Appeals); and agitated by Revenue on the ground that the services are not relevant to manufacture or provision of any taxable service provided by respondent.

Held: Record does not reveal connection of air travel to the service provided nor the travel insurance; vehicle insurance does not exhibit whether that is in any way relate to output service provided - Revenue succeeds on all these three counts - But mediclaim for employees is integrally connected to secure their services to render provision of output service; credit admissible - computers imported warranted availing of services of CHA; computer so imported being used for provision of output service, there should not be denial of Cenvat credit of service tax paid thereon and credit of service tax paid is allowed [Para 3, 4]

2015-TIOL-965-CESTAT-MUM

CCE Vs Act Careers Pvt Ltd (Dated: May 01, 2015)

ST - Commercial Training & Coaching service - curriculum put forth by the respondent imparts skills to the students in the field of practical accounting, auditing, etc which enables them to get direct employment - Factual matrix recorded by Commissioner(A) not contested by Revenue hence are to be held as correct - Benefit of notification 24/2004-ST available - Revenue appeal rejected: CESTAT [para 8 to 14]

Also see analysis of the Order

2015-TIOL-964-CESTAT-KOL

CCE & ST Vs M/s The Mahalaxmi Udyog (Dated: February 20, 2015)

ST - Penalty - Assessee rendered taxable services under category of 'Erection, Commissioning or Installation Services' to M/s. BHEL - Assessee, though received and realized value of taxable services from M/s. BHEL, by rendering said services, but failed to discharge ST on amount so received - Commissioner (A) had not discussed facts in detail, while setting aside penalty imposed on assessee while Adjudicating Authority deliberated in detail and analyzed facts of case, while imposing penalties under Sections 76, 77 and 78 of FA, 1994 - Penalties under Sections 77 and 78 would suffice the purpose, therefore, penalty imposed under Section 76 was not warranted - Matter remanded to Adjudicating Authority to afford an opportunity to assessee to pay 25% of penalty imposed under Section 78 of FA, 1994, on fulfillment of conditions laid down therein: CESTAT [Para 2, 8]

2015-TIOL-963-CESTAT-DEL

Pradeep Kumar Singhal Vs CST (Dated: December 5, 2014)

ST - Appellant providing services under BAS - As per CBEC Circular 80/10/2004-ST, it is plausible that assessee had a reasonable basis to presume that they being an individual would not be covered for the purpose of levy of ST - Board's circulars do not have any legal enforceability and are mere administrative interpretations of law but when policy making body [CBEC] itself considered individuals to be outside the purview of taxability under business auxiliary service, it cannot be sustainably alleged that an individual was guilty of suppression/mis-statement if he thought alike - Prima facie , entire demand is hit by time bar: CESTAT [Para 3]

2015-TIOL-956-CESTAT-MUM

Sun-Area Real Estate Pvt Ltd Vs CST (Dated: April 16, 2015)

ST - Refund - Foreign Inward Remittance Certificate (FIRC) - Even though the appellant received the payment in Indian rupees but in view of the FEMA notifications issued by RBI the same is deemed to be convertible foreign exchange and accordingly the condition as provided under Rule 3(ii) of Export of Services Rules, 2005 stands complied - Appeal allowed: CESTAT [para 5 to 10]

Also see analysis of the Order

2015-TIOL-951-CESTAT-DEL

Shri Neeraj Sharma Vs CCE (Dated: March 26, 2015)

ST - Appellants had provided vaastu advice, blue print and project report typing and binding services - Revenue wants to classify the same under Consulting Engineer Service - It is nowhere brought out in O-I-A or in O-I-O that Shri Neeraj Sharma is a professionally qualified engineer - It is also not brought out as to in which discipline(s) of engineering, service has been rendered - Making blue print, typing, project report done by appellants will have to be shown to be relating to one or more disciplines of engineering - Revenue has not been able to discharge its obligation/onus to show that appellant was professionally qualified engineer and also rendered any advice in relation to any particular branch of engineering - Appeal allowed: CESTAT [Para 4]

2015-TIOL-950-CESTAT-MUM
Ingle & Sons Vs CCE (Dated: April 6, 2015)
ST - Condonation of delay - delay of 111 days in filing appeal before Tribunal - Applicant explaining that delay is on account of Advocate not preparing the appeal and who also failed to inform them about the same; that subsequently they collected the documents from the Advocate and handed over the same to a new Advocate - affidavit filed. Held: An assessee should not be made to suffer due to the lackadaisical attitude of the Counsel engaged and who represented them before the first appellate authority - arguments to the said extent accepted, however, it is seen that the appellant was not serious in pursuing the case inasmuch as they did not file reply nor appeared before the adjudicating authority and filed appeal belatedly before first appellate authority and which shows casual approach of the appellant - however, delay condoned and since appeal filed belatedly, appellant directed to pay cost of Rs.10,000/- and report compliance - application allowed: CESTAT [para 5]
2015-TIOL-949-CESTAT-DEL
M/s Bechtel India Pvt Ltd Vs CCE (Dated: March 9, 2015)
ST - Assessee is providing consulting engineering services to their foreign recipient who is having projects to be executed in India - For the project of Debhol Restart, they have discharged ST liability - For project namely, JERP, unit is located in SEZ and for project KG-D 6, unit is located outside territory of India - It is the case of export of service outside India as they have provided services to service recipient located outside India - Amount already deposited by assessee is sufficient for compliance with provisions of Section 35 F of CEA, 1944 read with Section 83 of FA, 1994: CESTAT [Para 6]
2015-TIOL-945-CESTAT-MUM
GTL Infrastructure Ltd Vs CST (Dated: March 23, 2015)
ST - Order passed by the Tribunal is for re-credit of the amount to the appellant and only for the limited purpose of quantification the matter was remanded - since adjudicating authority has already quantified the amount, appellant can take credit of Rs.79.92 crores in their CENVAT records - Application disposed of: CESTAT [para 3]
Also see analysis of the Order
2015-TIOL-944-CESTAT-MUM
CCE & C Vs Kgn Painting Contractor (Dated: March 30, 2015)
ST - Commissioner (A) holding that appellant would be liable to pay penalty u/s 78 of FA, 1994, @25% of the ST amount of Rs.3,28,545/- provided the reduced amount of penalty is also paid within 30 days of receipt of the order - Revenue in appeal contending that lower appellate authority does not have powers to grant reduction of penalty once the same has been confirmed by adjudicating authority and 30 days period commences from date of receipt of o-in-o and not o-in-a. Held: Appeal has been filed only on 01/04/2013 whereas the order of appellate authority is dated 21/12/2012 - 30 days' time limit granted by Commissioner(A) would have certainly expired before appeal was filed - Revenue has not verified whether the appellant has paid the lower amount of penalty or not and if they had done so, there would not have been any need to file the appeal itself - Be that as it may, in view of Bombay High

Court decision in Castrol India Ltd. - 2012-TIOL-464-HC-MUM-CX lower appellate authority could not have extended the time-limit for appellant to pay mandatory penalty u/s 78 of FA, 1994 - order-in-appeal since incorrect in law set aside and Revenue appeal allowed: CESTAT [para 5]

2015-TIOL-943-CESTAT-DEL

Premier Pest Control Pvt Ltd Vs CST (Dated: November 27, 2014)

Service Tax - Demand - appellants are providing pre-construction anti-termite treatment - Revenue viewed that as the service was being provided to the contractors engaged in providing commercial or industrial construction service (C1CS) or the construction of complex service (CCS) and the appellants being subcontractors were liable to pay tax under the same classification in terms of CBEC Master Circular - demands adjudicated, upheld by Commissioner (Appeals) and agitated herein.

Held: Reference to Board Circulars for deciding classification has no legal sanction - well settled that the classification of a service is to be determined with respect to the nature thereof vis-a-vis the definitions of various services given in Section 65 read with section 65 A of the Finance Act 1994 - appellant herein was required to provide pre-construction anti-termite treatment; which activity can by no stretch of imagination be covered under the definition of CICS or CCS - impugned order unsustainable and set aside. [Para 7, 10]

2015-TIOL-937-CESTAT-AHM

Shri Naresh M Patel Vs CCE & ST (Dated: March 12, 2014)

ST - Rent-a-Cab Services - No ST registration was obtained by assessee during relevant period of demand - It is observed from case records that providers of Rent-a-Cab/ Tour Operator services providers were under the impression that services provided to M/s. ONGC are not leviable to ST - Fit case for extending benefit of Section 80 of FA, 1994 even if extended period is found applicable - Appeals filed by assessee required to be allowed with respect to non-imposition of penalties under Section 76, 77 and 78 of the Act: CESTAT [Para 5, 6]

2015-TIOL-930-CESTAT-MUM

Oracle Financial Services Software Ltd Vs CST (Dated: December 31, 2014)

ST - Maintenance or repair of Computer Software - Service Tax is not payable for the period 9.7.2004 to 6.11.2005 under the category of 'Maintenance or Repair' service: CESTAT [para 6, 6.1]

Also see analysis of the Order

2015-TIOL-926-CESTAT-DEL

Luxmi Enterprises Vs CCE & ST (Dated: December 4, 2014)

ST - Assessee prepared food in their premises and supplied food in tiffin boxes to the students residing in hostel of SRMCEM - Assessee prima facie falls under the scope of outdoor caterers as they provided service of supplying food at a place other than their own - They have duly been given the benefit of abatement while arriving at impugned ST liability - Assessee have not been able to make out a prima facie case in their

favour, therefore pre-deposit of entire adjudicated ST liability along with proportionate interest is ordered: CESTAT [Para 3, 4]
2015-TIOL-924-CESTAT-DEL
Anand Automotive Ltd Vs CCE & ST (Dated: January 6, 2015)
ST - Providing transit guest house to employees of sister unit - demand under BSS - reimbursement of amount received by the appellant from their sister unit, where their employees have been posted - demand under "Manpower Recruitment or Supply Agency" - since appellant has made provision in their books of account on account of "Management Consultancy Service" provided by them to their sister unit demand of ST raised under the said category - CENVAT denied on the ground that the appellant could not provide invoices on the strength of which they availed credit - matter needs examination at the end of the adjudicating authority - order set aside and case remanded: CESTAT [para 8]
2015-TIOL-923-CESTAT-MUM
M/s Echjay Forgings Pvt Ltd Vs CCE (Dated: December 22, 2014)
ST - Appellant have discharged ST liability under GTA Services as recipient on reverse charge basis by debiting in CENVAT credit account - Revenue taking a view that the tax should have been paid in cash and/or by debiting PLA account - demand confirmed along with equal amount of penalty and interest - Commissioner (A) dropped penalty but confirmed demand - appellant before Tribunal. Held: Issue is no longer res integra - it is now settled by the decisions of various Courts and Larger Bench of Tribunal that ST on GTA services paid by debiting CENVAT credit is proper and legal - Order set aside and appeal allowed: CESTAT [para 5]
2015-TIOL-922-CESTAT-DEL
CCE Vs M/s Hemkunt Petroleum Ltd (Dated: March 26, 2015)
ST - Appeal filed by revenue on the ground that Commissioner (A) has set aside the penalty under Section 76 while upholding penalties under Sections 77 and 78 of FA, 1994 - Fact that penalties under Sections 76 and 78 became mutually exclusively only w.e.f. 16.05.2008 - As per *Pannu Property Dealers* ***2010-TIOL-874-HC-P&H-ST***, even if reasoning given by appellate authority that if penalty under section 78 was imposed, penalty under section 76 could never be imposed may not be correct, the appellate authority was within its jurisdiction not to levy penalty under section 76 having regard to the fact that penalty equal to ST had already been imposed under section 78 of the Act - This thinking was also in consonance with amendment now incorporated though said amendment may not have been applicable at relevant time - Impugned order does not suffer from such a grave illegality/impropriety as to warrant our interference - Appeal dismissed: CESTAT [Para 2, 3]
2015-TIOL-921-CESTAT-BANG
Visakhapatnam Stevedores Association Vs CCE, C & ST (Dated: March 25, 2015)
Service Tax - providing of "gear boys" and "deck foremen" by association of stevedores to its members - *Prima facie* covered by High Court decisions - Stay petition allowed unconditionally. The appellant is an association of stevedores registered under the Societies Registration Act as a non-profitable association with an

aim to solve the day-to-day problems of its members as regards providing of "gear boys" and "deck foremen". Revenue by entertaining a view that such activity of the appellant amounts to pro viding services falling under the category of 'Manpower Recruitment and Supply', raised the demand for the period April 2005 to March 2010, by invoking the longer period of limitation. The said demand stands confirmed to the tune of Rs.2,13,99,842/- para 1

The issue is *prima facie* covered by the Gujarat High Court and Jharkhand High Court decisions as also by the Tribunal decision in the case of *Federation of Indian Chambers of Commerce and Industry*. Apart from that *prima facie* found favour in the appellant's contention that demand is barred by limitation. On this ground appellant has a good *prima facie* case in its favour so as to allow the stay petition unconditionally. Ordered accordingly. - para 3

Also see analysis of the Order

2015-TIOL-917-CESTAT-DEL

M/s Spectranet Ltd Vs CST (Dated: March 10, 2015)

ST - Leased Circuit Service/Telecommunication Service" - taxability under reverse charge mechanism - Demand of Rs.3.51 crores - Appellants contended that telecommunication service is taxable only if it is provided to a subscriber by a telegraph authority in relation to a leased circuit - Telegraph authority is defined under Section 65(111) as "telegraph authority" has the meaning assigned to it in clause (six) of section 3 of the Indian Telegraphic Act, 1885 and includes a person who has been granted a licence under the first proviso to sub - section (1) of section 4 of that Act - It is prima facie evident that the service provider abroad would not be covered under this definition of telegraphic authority and hence service would not be taxable: CESTAT [para 1]

ST - Demand of Rs.19 ,08,698 /-under "Telecommunication Service" in respect of lease rent recovery for wireless radio - appellants have claimed that such radios were given to the customers and it was a deemed sale on which VAT has been paid - Prima facie , this component is also on weak wicket deserving waiver of pre-deposit thereof: CESTAT [para 2]

ST - Lease of fibre cable - demand of Rs.21.64 lakhs - appellant claiming that same are Interconnect Usage Charges (IUC) and are not chargeable to service tax in view of Tribunal decision in Fascel Ltd. - appellants may have an arguable case in respect of this component of demand - Pre-deposit waived: CESTAT [para 3]

ST - Computer Network Service/Online Information and Database Access or Retrieval Service - Demand of Rs.13.71 lakhs - Appellant submitting that on correct computation of value, the demand works out to Rs.5 ,65,191 /- - Pre-deposit ordered of Rs.5 lakhs: CESTAT [para 4, 5]

2015-TIOL-916-CESTAT-DEL

M/s Shree Venkatesh Medical Agencies Vs CCE & ST (Dated: March 2, 2015)

ST - Limitatuion - Commissioner (A) founds that conditions/criteria for imposing mandatory penalty under Section 78 of FA, 1994 are not satisfied and dropped penalty against which no appeal filed by Revenue - Period involved is October, 2002 to December, 2006 while SCN was issued on 23.02.2008 - Entire demand is beyond normal period of one year (except for a period of mere three months i.e. October, 2006 to December, 2006) and therefore is hit by time bar - When entire demand covering period October, 2002 to December, 2006 is a meagre Rs.19,576/- demand

for a mere 3 months will be pittance or less making it ridiculous to remand the case for computation in view of paper and effort involved as a consequence of so doing particularly when it does not involve any question of law or interpretation thereof - Appeal allowed: CESTAT [Para 1, 2]

2015-TIOL-915-CESTAT-MUM

CST Vs M/s Pulcra Chemicals (India) Pvt Ltd(Dated: January 21, 2015)

ST - Respondent provides marketing support services to their principal who is situated abroad and said overseas principal exports their goods to independent customers in India - for these services, respondent gets commission from principal who is abroad - respondent filed refund claim of service tax paid by them pursuant to audit objection treating the above services as taxable - original authority rejecting claim on the ground that the services of marketing support is provided in India and consumed in India, therefore, the services are used in India and hence the condition of export of services are not fulfilled - Commissioner(A) allowing appeal of respondent, hence Revenue before CESTAT. Held: Commissioner(A) has correctly appreciated the settled legal position by basing his view on Board Circular 111/5/2009-ST dated 24/02/2009 - though the respondent has provided market support services in India but recipient of the services is not Indian customer of the foreign supplier but it is the foreign principal - therefore, the condition for treating services as export services has been undisputedly fulfilled - service provided by respondent qualifies as export service and consequently ST paid on such service is refundable - in case of export, refund of service tax does not attract provisions of unjust enrichment - no error in order passed by Commissioner(A) - Revenue appeal dismissed: CESTAT [para 5]

2015-TIOL-911-CESTAT-DEL

M/s Shriram General Insurance Co Ltd Vs CCE & ST (Dated: March 9, 2015)

ST - CENVAT - applicant is entitled to avail Cenvat credit on the reinsurance service received by them as per Rule 2(l) of the CCR, 2004 - Tribunal decision in PNB Metlife India Insurance Co. Ltd. 2014-TIOL-1314-CESTAT-BANG referred: CESTAT [para 7]

ST - CENVAT - Third party MV insurance - As per Rule 9 of CCR, 2004, whatever service tax has been paid by the applicant he is entitled to take the credit - Question whether the applicant has availed input service credit without receiving the service shall be dealt with at the time of final hearing of the appeal - Prima facie case in favour - Pre-deposit waived & Stay granted: CESTAT [para 8]

Also see analysis of the Order

2015-TIOL-904-CESTAT-DEL

M/s Canvasm Technologies Ltd Vs CCE & ST (Dated: March 26, 2015)

ST - BAS - CAI, USA were providing services to the customers of the appellants and the payment for the same was made by the appellants to CAI -As CAI was engaged in providing services in relation to provision of service on behalf of client which in this case is the appellants, *prima facie,* the services received by the appellants are classifiable under BAS -Pre-deposit ordered: CESTAT [para 3, 4, 5]

Also see analysis of the Order

2015-TIOL-903-CESTAT-MUM

Reach Network India Pvt Ltd Vs CST (Dated: February 2, 2015)

ST - Appellant is an internet provider and also rendering facilities to other ISPs for internet connection and gets consideration from such ISPs – Adjudicating authoirty deciding taxability under category of "Online Information and Database Access and/or Retrieval Services" on the ground the amounts which are received by them are charged on *"Per Mb basis"* consumed by the Customer of ISP - Appeal to CESTAT. Held: Appellant contends that said activity could be inter-connectivity services provided by one ISP to another ISP – As per Board's Circular No. B/II/I/2000-TRU, inter-connection charges paid by one ISP to another ISP are not liable to ST - Appellant took registration certificate under category of "BSS" and discharged ST liability on such amount received from ISP and in 2008 took registration under category of "Internet Telecommunication Services" - *Prima facie* the appellant has made out a case for waiver of pre-deposit of the amount involved as the adjudicating authority could not have argued against the Board's Circular – Pre-deposit waived & Stay granted: CESTAT [Para 3, 3.1, 3.2]

2015-TIOL-902-CESTAT-MUM

Hafeez Contractor Vs CST (Dated: February 6, 2015)

ST - Appellant providing Architectural services and receiving professional charges from their clients - such services are notified as taxable services w.e.f 16/10/1998 - appellants had shown only the taxable value on which they had paid service tax as per their convenience - investigation revealed that the appellant had not declared total value of Rs.7,51,63,916/- received by them during the period 16/10/1998 to 31/03/2002 on which total ST of Rs.37,58,196/- was recoverable - amount of tax of Rs.24,43,782/- paid by appellant in March 2001 before issuance of SCN in February 2003 - challenge of ST on services provided prior to 16/10/1998 and wrong calculation of ST liability of Rs.91,444/- Held: As challenge was made by some petitioners to the vires of imposition of ST on Architectural services the ratio of the jurisdictional Bombay High Court was on legality and is to be followed - as appellant had discharged ST liability and interest before due date of 31 May 2001 as granted by High Court to other petitioners they are entitled to relief as granted by the High Court i.e no penalty is imposable on appellant - as appellant discharged ST along with interest, revenue should not have issued SCN in the first place - justifiable case is made out by appellant for setting aside penalties imposed u/s 76 & 78 of FA, 1994 by invoking s.80 of FA, 1994 - as regards ST liability on bills raised prior to 16/10/1998 and payments received subsequently since the bills do not have bill numbers and do reflect that services were rendered before 16/10/1998, appellant has not made out any case in favour in r/o demand of Rs.7,83,241/- - as appellant have pre-deposited Rs.10 lakhs towards penalties the demand amount may be adjusted - interest liability to be worked out by adjudicating authority - since appellant could have entertained a bonafide belief that the services rendered by him being prior to 16/10/1998, the payments received for such services after the said date are not liable to ST, invoking provisions of s.80, penalties set aside in this regard - calculation error of Rs.91,444/- pointed out is correct, demand set aside to the said extent - Appeals partly allowed: CESTAT [para 7.1, 7.2, 7.3, 7.4]

2015-TIOL-896-CESTAT-MUM

Hotel Minerva Jalgaon Vs CCE & C (Dated: March 16, 2015)

ST - Appellant has discharged ST liablity along with interest well before the issue of

SCN and, therefore, there was no need to initiate any proceedings for imposition of penalty u/s 73 (4A) of FA, 1994 - in SCN also there is no proposal to impose any penalty u/s 77 of FA, 1994 - imposition of penalty is clearly not sustainable - order set aside and appeal allowed: CESTAT [para 5]

2015-TIOL-895-CESTAT-MUM

CCE Vs Hindustan Aeronautics Ltd (Dated: April 9, 2015)

ST - "Rosonbornexport" is not a science or technology institution or organisation which gives any advise, consultancy or technical assistance in one or more discipline of science or technology – Services received by HAL is not taxable under the category of 'Scientific and Technical Consultancy Service': CESTAT [para 7.1 to 7.9]

Also see analysis of the Order

2015-TIOL-890-CESTAT-DEL

Bharti Airtel Ltd Vs CCE (Dated: January 22, 2015)

ST - Refund - Appellant filed refund claim in respect of ST paid by them on services of providing international roaming facility to foreign network operator - Adjudicating authority and Commissioner (A) concludes that appellant could not satisfy lower authority that the amount of ST paid by them is correlated with invoices raised on foreign mobile operator for inbound international roaming charges - Appellant claimed that information has been provided and even CA's certificate has been submitted to the effect that ST has been paid in connection with inbound international roaming service and that ST was not shown in invoices nor collected from customers - Principle of unjust enrichment would not be apply in this case - Export of service being exempted under Notfn 36/2007-ST, only issue that remained for verification of quantum of refund to be sanctioned, therefore case remanded to adjudicating authority for verification of same: CESTAT [Para 7, 8, 9]

2015-TIOL-887-CESTAT-MUM

CCE Vs Emerson Innovation Center (Dated: March 18, 2015)

ST - Refund - Nowhere in Rule 5 of CCR, 2004 is there any condition of establishing a nexus between the input service credit taken and the output service exported - notification No. 5/2006-CE (NT) also does not stipulate any such condition - so long as the credit is admissible and has been taken and is lying accumulated and the exporter is unable to utilize the credit, he is eligible for refund of the accumulated credit - this is the whole purpose and aim of rule 5 of CCR, 2004 - Order by Commissioner(A) cannot be faulted at all - no merit in Revenue appeal, hence rejected: CESTAT [para 5.1]

2015-TIOL-886-CESTAT-DEL

Shree Mohangarh Construction Co Vs CCE & ST (Dated: December 23, 2014)

ST - Assessee provided the work of draining/replacement of damaged fencing and providing cement concrete pavement - Work order was obtained from PWD, Bikaner and work was along the state highways - As per Himalaya Plantations 2014-TIOL-782-CESTAT-MUM , it appears that the services in relation to maintenance of road divider is covered under section 97 of Finance Act, 1994 - Stay granted: CESTAT [Para 3]

2015-TIOL-885-CESTAT-MAD

CST Vs Ford Business Services Centre Pvt Ltd (Dated: January 22, 2015)

Service Tax - CENVAT credit - respondents availed input service credit on 'Rent-a-Cab Service', 'Outdoor Catering', 'Business Auxiliary Service', 'Insurance service', 'Pandal & Shamiana', 'Testing and Analysis', 'Health & Fitness Service' etc. - credit disallowed in adjudication; relief granted by Commissioner (Appeals); and agitated by Revenue herein.

Held: Revenue's main contention is that the impugned input services have no nexus with the output services provided by the respondents - material period involved in this case relates to 2006-07 and 2007-08 - In view of the Board's clarification dated 29.04.2011, the respondents are eligible for credit on Rent-a-Cab service - Out-door catering, Insurance service, Pandal and Shamiyana services, and testing and analysis used for carrying out business activities and business meetings which are related to promotion of their business; credit admissible in terms of the Bombay HC ruling in Ultratech Cement case - Sodexo Coupons are issued to the employees which can be used only by them; it has no nexus in relation to any business activities of the respondents; credit availed on sodexo coupons inadmissible - OIO modified accordingly. [Para 4, 5, 6]

2015-TIOL-883-CESTAT-DEL

M/s Gail India Ltd Vs CCE & ST (Date: February 23, 2015)

ST - Service tax demand of Rs.54,45,99,527/- apart from penalty and interest confirmed on the ground that the appellant had provided "transport of goods, other than water, through Pipelines or other Conduit Services" - Adjudicating authority confirms the liability on the premise that marketing margin is an amount received by the appellant from the buyer for providing "some service" to such buyer - There is an inbuilt fallacy, prima-facie in this premise of the adjudicating authority - Since the appellant is transporting its own gas and the sale of the gas to its customers occurs at the customer's inlet point in customer's premises, on principle and authority the activity of the appellant in transporting the gas is a service to self and therefore falls outside the ambit of the taxable service - Pre-deposit waived and stay granted: CESTAT [para 4, 5, 6]

2015-TIOL-882-CESTAT-DEL

M/s Craftex India Vs CCE (Dated: March 26, 2015)

ST - Refund - Notfn 40/2007-ST and 41/2007-ST - Original adjudicating authority as well as appellate authority have clearly noted that assessee have not submitted evidence of payment of ST on specified services for which refunds were sought - What they had submitted were nothing more than mere tables containing list of payment cheque numbers and dates, bills/invoice numbers and, bill date, name of service provider, nature of service, pre-tax bill amount, service tax, TDS deducted, net bill export amount and date and Shipping Bill numbers - Assessee have not been able to produce minimum documentary evidence as required under said notfns to show that service in respect of which refunds were sought had actually been received by them and same were duly ST paid services covered under list of (eligible) services contained in said Notfns - Appeals dismissed: CESTAT

2015-TIOL-881-CESTAT-BANG

Shirdi Sai Electricals Ltd Vs CCE, C & ST (Dated: January 06, 2015)

ST - Appellant providing services of Management, Maintenance or Repair Service and Erection, Commissioning and Installation Service to Andhra Pradesh Southern Power Distribution company - ST discharged on the service portion of the contract and same reflected in ST-3 returns - Demands raised for period 2007-08 to 2012-13 (till 30.11.2012) alleging that appellant should pay ST on entire contracted value, inclusive of value of materials - Appellant citing s.11C notification 45/2010-ST for non imposition of ST but Commissioner holding that since appellant collected the amount from customers demand is confirmed - Benefit of Notification No. 12/2003-ST dated 1.3.2003 also not extended on ground that same was not claimed in ST-3 returns - Appeal to CESTAT.

Held: The rates collected in the contract were inclusive of all taxes and there is nothing in the said contract to suggest that service tax was separately charged by the appellant from their customers - The expression inclusive of taxes only means that there would be no further rise in the value of the contracts in case any demands stands raised against the service provider by any Revenue department - In the absence of any indication that service tax stands collected by the appellant from their customers, the observation of the adjudicating authority cannot be appreciated. [para 3]

At the time of filing the ST-3 Returns, the appellant was admittedly paying duty only on the value of the services, which fact itself is indicative that value of materials was not being taken into consideration - Otherwise also, mere non-mention of the Notification in the ST-3 Returns, does not give a reason to the adjudicating authority to deny the benefit of the same, without otherwise examining the applicability of the Notification - since admittedly the Notification is applicable, appellant has a good prima facie case. [para 5]

Stay application allowed unconditionally.

2015-TIOL-879-CESTAT-MUM

S K Electro Engineers Vs CCE (Dated: March 31, 2015)

ST - Records of appellant were audited by Audit party in 2009 and as soon as the short payment was pointed out the appellant paid the same along with interest during March to December 2009 - SCN issued only on 27/06/2011 - amounts paid towards tax and interest appropriated and penalties imposed u/s 76, 77 & 78 of FA, 1994 - appeal before CESTAT. Held: As appellant had discharged ST liability along with interest much before issuance of SCN, the provisions of s. 73(3) of FA, 1994 should have been given effect to and the matter should have been closed - in view of specific provisions incorporated in s. 73(3) of FA, 1994 imposition of penalties is clearly not warranted - penalties imposed u/s 76, 77 & 78 of FA, 1994 set aside - as there is no provision for waiver of late fee required to be paid u/r 7C of the STR, 1994, appellant is liable to discharge the same: CESTAT [para 4]

2015-TIOL-873-CESTAT-DEL

M/s Quadrant Televentrures Ltd Vs CCE & ST (Dated: March 24, 2015)

ST - S.74 of FA, 1994 - Rectification of mistake in adjudication order - Calculation shown in the calculation sheet for imposition of penalty - for the month of July 2006 the due date is 05.08.2006 whereas service tax was paid by the appellant on 28.09.2006 - the number of days for which there is a delay is 54 days whereas it is shown as 115 days, therefore, there is a mistake apparent on record - period of limitation for filing appeal to Commissioner(A) is to be reckoned from the date on which the order has been passed on the rectification application - appeal could not have been rejected by Commissioner(A) on the ground of time bar - Order set aside

and appeal allowed: CESTAT [para 9, 10, 11]

2015-TIOL-872-CESTAT-DEL

Uttam Toyota Vs CCE & ST (Dated: March 10, 2015)

ST - Authorised service station - Whether the applicant is liable to pay service tax on spares or not was dealt by the Tribunal in applicant's own case for earlier period wherein Tribunal vide stay order dated 19.1.2015 prima facie found that the value of spares is not includible in value of taxable service & granted unconditional waiver of pre-deposit - stay granted: CESTAT [para 3, 5]

ST - Free service provided by the applicant on behalf of M/s TKML to the customers of M/s TKML - TKML is reimbursing whole of the expenses incurred by the applicant i.e. service charges plus cost of spares during the period of warranty - applicant is paying service tax on the service part of the transaction and not paying service tax on the value of spares replaced during the period of warranty which amount is reimbursed by M/s TKML - In this situation also value of spares replaced during the period of warranty is not includible in the taxable service - pre-deposit waived and stay granted: CESTAT [para 4, 5]

2015-TIOL-871-CESTAT-DEL

Dexterous Designer And Assoicates Vs CC, CE & ST (Dated: March 13, 2015)

ST - Interest on the amount of refund - Assessee filed application dated 16.11.2011 seeking refund of excess ST paid and this application has been referred to in Order-in-Original dated 11.12.2013 as the refund claim - W hen refund of any pre-deposited amount accrues, then interest liability will also start from three months after the date of remand order - Impugned order set aside and case remanded to original adjudicated authority to pay interest to the assessee: CESTAT [Para 5, 6]

2015-TIOL-869-CESTAT-DEL

M/s K D Builders Vs CCE & ST (Dated: March 30, 2015)

ST - Construction of Residential Complex service - ST demand confirmed of Rs.59.59 lakhs along with penalties and interest - applicant submitting that they are not constructing residential complex but individual residential units and, therefore, are not liable to pay ST - applicant producing certificate issued by the Rajasthan Housing Board indicating that the construction was of individual residential housing unit - in view of precedent Tribunal decisions in *A.S . Sikarwar* ***2012-TIOL-2017-CESTAT-DEL*** which is considered in the case of *Karni Construction,* pre-deposit waived and stay granted: CESTAT [para 8]

2015-TIOL-867-CESTAT-MUM

Janata Sahakari Bank Ltd Vs CCE (Dated: April 16, 2015)

ST - An amount received as a consideration for disbursement of salaries to the Govt. teachers on direction of Zilla Parishad can never be an activity covered under the definition of Business Auxiliary Service and more so it cannot be termed as an amount received by the appellant as commission agent - Demand set aside and appeal allowed: CESTAT [para 6, 7]

Also see analysis of the Order

2015-TIOL-866-CESTAT-MUM

IOT Design & Engineering Ltd Vs CST (Dated: April 6, 2015)

ST - CENVAT credit availed of ST paid by service providers for rendering services at various branches of the appellant viz. Delhi, Kolkata, Chennai and Mumbai - Revenue denying the credit on the ground that these branch offices are not registered with ST department hence in r/o any services provided to these branch offices' credit cannot be availed at HO as there is no centralised registration. Held : It is an undisputed fact that for the services rendered by the appellant from various branches, the appellant discharges Service Tax liability in Mumbai - Prima facie view is that appellant cannot be denied CENVAT credit of the ST paid by the providers while rendering services to various branches - Pre-deposit waived and stay granted: CESTAT [para 5, 6]

2015-TIOL-865-CESTAT-MUM

First Flight Couriers Ltd Vs CST (Dated: January 7, 2015)

ST - Short payment of Service Tax of Rs.1.97 crores for the period April 2004 to August 2004 in respect of appellant's twenty four branches - Appellant discharged ST liability and interest on or before 20/11/2004 - SCN issued for appropriation of the amount paid and imposition of penalties - adjudicating authority upholding the charges levelled and imposing penalties and interest - appellant filing appeal and placing reliance on s.73(3) of FA,1994 and submitting that the said section envisages non-issuance of SCN when ST liability is paid in full with interest; that SCN issued only to ten branches. Held: Perusal of the Annexure to SCN indicates that appellant has been alleged to have short paid ST and which may be due to some calculation error - there is no allegation that during the material period, 24 branches had not discharged ST liability and on the contrary SCN indicates that there was short payment of duty - provisions of s.73(3) of FA, 1994 would apply in the facts of the case - fit case for invoking the provisions of s.80 of FA, 1993 for setting aside penalties - Penalties set aside and appeal allowed: CESTAT [para 10, 11, 13]

2015-TIOL-864-CESTAT-MUM

Atlas Copco (I) Ltd Vs CCE (Dated: February 12, 2015)

ST - Services rendered by appellant to their parent organisation Atlas Copco Airpower, Belgium NV - Adjudicating authority confirming ST demand of Rs.9,12,11,220/- for the period 2008-09 to 2009-10 by classifying services under "BAS" - appeal before CESTAT. Held: There is no dispute that the service recipient is situated abroad and the payment for the services rendered was received in convertible foreign exchange and the service has been delivered to a person situated abroad and such services were provided from India and used outside India - all conditions of export have been satisfied and, therefore, the activity involved is one of exports which is not taxable - even as per the Place of Provision of Services Rules, 2012, it is the place of service recipient which determines where the service has been rendered - since in the present case the service recipient is located outside India the service is to be considered as rendered outside India i.e it is an export transaction - order set aside and appeal allowed: CESTAT [para 6.1, 7]

2015-TIOL-852-CESTAT-MUM

Singh Warehousing Vs CST (Dated: January 13, 2015)

ST - Pendency of appeals is not due to any omission or commission on the part of appellant - following LB decision in *Haldiram India Pvt. Ltd.* - 2014-TIOL-1965-CESTAT-DEL, stay extended till the disposal of appeals: CESTAT [Para 3]

2015-TIOL-851-CESTAT-MUM

Lear Automotive (I) Pvt Ltd Vs CCE (Dated: February 12, 2015)

ST - Appellant paid M/s Lear Corporation, USA, their foreign associate company, towards expenses incurred by them on behalf of appellant - part of such reimbursement was towards salary of some employees of the said associated company working for the appellant in India - Revenue view is that the services would fall under the category of "manpower recruitment or supply agency services" and by reverse charge mechanism appellant is liable to discharge ST liability - appeal before Tribunal. Held: The agreement entered by appellant with Lear Corporation, USA indicates that the personnel who are deputed to India are taken on rolls as employees of appellant and if that be so the question of rendering any services to the appellant by Lear Corporation, USA does not arise by any extent of imagination - similar issue came up before the Bench in the case of Computer Science Corporation India Pvt. Ltd. vs. CST - 2014-TIOL-434-CESTAT-DEL and the Bench had held that the arrangements of deputing employees for employment in any other facility would not fall under the category of "Manpower Recruitment & Supply Agency Services" - said decision affirmed by Allahabad High Court - 2014-TIOL-1896-HC-ALL-ST - Order unsustainable hence set aside and appeal allowed with consequential relief: CESTAT [para 5.4, 5.5, 5.6]

2015-TIOL-850-CESTAT-KOL

M/s Shree Subham Syndicate Vs CCE & ST (Dated: January 19, 2015)

ST - On more or less similar activities, Appellant had challenged earlier Work Order dated 11.02.2004 before Gauhati High Court, which was quashed on ground of limitation - Earlier ST demand was issued under category of "Cargo Handling Services", but *prima-facie*, activities, which the Appellant rendered under both these Work Orders, are more or less similar in nature - Applicant could able to make out a prima-facie case for requirement of predeposit of all dues adjudged is waived and its recovery is stayed: CESTAT [Para 5]

2015-TIOL-845-CESTAT-MUM

Trizetto India Pvt Ltd Vs CCE (Dated: March 16, 2015)

ST - Notification 17/2011-ST - Appellant is a SEZ - Refund claim rejected in r/o service tax paid on input services which were used in export of output services on the ground that the approval Committee of the SEZ concerned issued the certificate only on 09/12/2011 and, therefore, the said approval is only prospective - appellant submitting that they commenced operation as SEZ in August, 2011 and immediately thereafter had applied to the Committee for approval of input services required for rendering of output service but Committee had finally approved the list of input services vide letter dated 09/12/2011; that since approval has been granted in r/o application made much before the export took place, subsequent approval or administrative delay cannot affect the vested right that accrued to the appellant. Held: There is no dispute that the input services on which refund has been claimed has been used in the export of services - There is also no dispute that the appellant applied for approval to the competent authority well before they undertook the transaction of the export - Merely because there was a delay in grant of approval, that cannot take away the right accrued to the appellant for exemption from service tax in

respect of the input services - appellant is rightly entitled for benefit of refund under notification 17/2011-ST - appeal allowed with consequential relief: CESTAT [para 5, 6]

2015-TIOL-844-CESTAT-DEL

Dabur Research Foundation Vs CCE & ST (Dated: March 10, 2015)

ST - IPR Services - As per agreements, the applicant has transferred their ownership right and knowhow and received consideration from their clients - Clients have become absolutely owner of these rights - In these circumstances, for the applicant it is a transaction of sale of goods i.e tangible goods and, therefore applicant is not liable to be taxed under Intellectual Property Right Services - *prima facie* strong case in favour - pre-deposit waived and stay granted: CESTAT [para 6, 7]

2015-TIOL-843-CESTAT-DEL

M/s National Building Construction Corporation Ltd Vs CST (Dated: April 6, 2015)

ST - Assessee is a Government of India entity working under the Ministry of Urban Development executing works for re-development of part of Netaji Nagar and East Moti Bagh , New Delhi, by construction of multi-storied flats for residential accommodation of Ministers and Government officers - Appellant remitted ST along with interest on the assumption that it had provided taxable services – appellant represented to the Government for a clarification and the Ministry of Finance vide letter dated 24.05.2010 clarified that the activity of construction of residential complexes by the assessee, being intended for personal use of employees / Ministers of the Government of India, was not a taxable service – pursuant thereto, refund claim filed but part of the same was rejected as being presented beyond the period of limitation specified in Section 11B of the Central Excise Act, 1944; and balance amount of Rs . 12,74,147/- was rejected as well, on several grounds including irrelevant grounds such as that the assessee was a public sector undertaking managed by the highly qualified officials who are presumed to know the legal position and on the further ground that the assessee failed to submit proof of not having passed on the burden of service tax to others and thus the claim was barred by the principle of unjust enrichment – appeal to CESTAT .

Held: Despite a series of correspondence between the assessee and Revenue officers, there is no material which has come on record to infer that the burden of service tax was not passed on by the appellant and the doctrine of unjust enrichment is therefore excluded - appellant to furnish before the primary Authority, within thirty days from the date of receipt of this order, all such evidence/ material / documents which may include a certificate by a Chartered Accountant, bills, invoices, balance sheets or profit and loss account or any other document /instrument having a probative value, to persuade the primary authority to a conclusion that the assessee has not passed on the burden of service tax and is therefore entitled to the refund of service tax and the interest component totalling Rs . 30,06,796/-: CESTAT [para 2, 9, 10]

2015-TIOL-835-CESTAT-DEL

M/s Inlingua International School of Languages Vs CST (Dated: January 27, 2015)

ST- Appellants are engaged in providing foreign language training- whether can be covered under the category of Vocational Training Institute and be eligible for exemption notification 9/2003-ST, 24/2004-ST- From the facts narrated above, it is

evident that the appellants have been keeping the Department informed about their activities and therefore it is prima facie difficult to sustain the charge of willful statement/suppression of facts- Further the Jt. Commr had informed the appellants that they are qualified for the exemption- Board Circular 59/08/03-ST allowed benefit- However, Board Circular 107/01/2009-ST may not represent the correct legal view inasmuch as training imparted by appellant actually enables the trainees to seek employment directly as interpreters after such training- CESTAT in similar cases has fully waived the requirement of pre-deposit- Appellants have a good case for complete waiver of pre-deposit- Stay granted: CESTAT [para 5]
2015-TIOL-834-CESTAT-DEL
Jai Ram Yadav Vs CCE (Dated: January 21, 2015)
ST - Appellant was working as contractor for M/s. Shreyans Industries Ltd. and provided labour to the same, who are engaged in manufacture of papers - Revenue views that activity amounted to providing of "Cargo Handling Service" on which ST is payable - Service of appellant may not be equated with activities covered under definition of "Cargo Handling Service" - Revenue has not established beyond doubt that a contract was entered into between appellant and M/s. Shreyans Industries Ltd. for Cargo Handling - Activities undertaken are akin to labour jobs - labour is not employed by appellant but only hired and used in factory of Shreyans - As per Boards circular No.B-II/I/2002-TRU, activity undertaken by appellant is not covered under category of "Cargo Handling Service" - Appeal allowed: CESTAT [Para 6, 9, 10]
2015-TIOL-830-CESTAT-MUM
IDEA Cellular Ltd Vs CST (Dated: March 31, 2015)
ST - CENVAT Credit - Rule 2(l) of CCR, 2004 - Outdoor Catering Service - Credit taken of ST paid on outdoor catering service during the period 2004-05 to 2008-09 - CCE, Mumbai denying credit on the ground that the Bombay High Court in the case of Ultratech Cement Ltd. - 2010-TIOL-745-HC-MUM-ST was concerned with a factory employing more than 250 workers whereas in the present case the appellant is an output service provider; that facts are distinguishable and hence ratio not applicable - appeal to CESTAT. Held: Reasoning adopted by adjudicating authority is quite illogical and perverse - Input service has been defined u/r 2(l) of CCR, 2004 and the same as it stood at the relevant time included within its scope any service which was used in or in relation to the rendering of output service - appellant was rightly entitled for CENVAT credit of ST paid on catering service - appeal allowed with consequential relief: CESTAT [para 4.1]
2015-TIOL-829-CESTAT-MUM
John Deere Equipments Pvt Ltd Deere and Co Vs CCE (Dated: February 11, 2015)
ST - Appellant is an entity situated at Illinois in USA and has no office or any permanent establishment in India - provisions of Finance Act, 1994 do not apply to an entity who is not situated within India - ST demand is set aside and appeal allowed: CESTAT [para 8]
Also see analysis of the Order
2015-TIOL-828-CESTAT-MUM
Shri Santosh P Deshmukh Vs CCE (Dated: December 16, 2014)

ST - Appellant had entered into a contract/agreement with M/s Hindustan Unilever Ltd. to provide specified services of loading/unloading on tonnage/piece basis - They also arranged for local trucks on daily basis as per their instructions for transportation of products and for such work and services they receive payment - Said service does not fall under category of 'Manpower Recruitment or Supply Agency' - Stay granted: CESTAT [Para 3, 5]

2015-TIOL-827-CESTAT-DEL

M/s Vimal Constructions Vs CST (Dated: March 17, 2015)

ST - Renting of Immovable Property - Appellants did not own piece of land on which commercial building was constructed in-as-much-as it was only leased to them for 30 years by Municipal Corporation and therefore commercial building could not have been sold by them because they cannot sell what they do not own - Income derived from leasing of property is clearly covered under definition of "Renting of Immovable Property" - As regards appellants' plea that advances received had been subsequently adjusted in rental/lease income shown on which ST has been demanded and that they should be extended cum-tax benefit, pre-deposit of Rs.75 lakhs is ordered: CESTAT

2015-TIOL-826-CESTAT-DEL

M/s Ind Swift Lands Ltd Vs CCE & ST (Dated: January 27, 2015)

ST - Construction service - Refund - Limitation - Appellants have clearly mentioned in their letter to the AC, CEX that appellant is depositing Service Tax under the pressure of department - As there is no prescribed form to raise protest for payment of service tax under the provisions of Finance Act, 1994, the letter written to Asstt . Commissioner clearly shows that service tax paid by the appellant is under protest. - For deposits made under protest, the provision of section 11B of the CEA , 1944 are not applicable: CESTAT [para 6]

ST - Refund - Unjust enrichment - Appellant has written letters to the intended buyers of the flat that the dispute is going on between the appellant and CBEC about whether service tax is payable or not and in these letters it is clearly mentioned that the price agreed by the buyers is not inclusive of service tax and appellant is paying service tax from their own pocket if later on liability of service tax arises, the same will be paid by the intended buyers of the flat along with the agreed price of the flat - this fact has been certified from the Certificate issued by the Chartered Accountant and amount recoverable as service tax as reflected in their balance sheet - appellant has discharged their burden of unjust enrichment - appellant entitled to refund claim - appeal allowed with consequential relief: CESTAT [para 7]

2015-TIOL-817-CESTAT-MUM

C P Club Ltd Vs CCE (Dated: March 11, 2015)

ST - Club or Association Service - Appellant is providing to its members and others various facilities and services for consideration of monetary amounts - ST liability discharged by appellant on entrance fees received - Revenue contending that appellant needs to also discharge ST on subscription from members, miscellaneous charges, locker charges, donation etc. - appeal to CESTAT. Held: Without going into the merits, it is found that the issue involved is directly covered by the Gujarat High Court decision in Sports Club - 2013-TIOL-528-HC-AHM-ST wherein their Lordships have struck down the provisions of s. 65(25A), s. 65(105)(zzze) of FA, 1994 in respect of leviability of ST by the club on its members - in view of authoritative judicial pronouncements on similar issue, order is unsustainable and liable to be set aside - appeal allowed with consequential relief, if any: CESTAT [para 6, 7, 8]

2015-TIOL-816-CESTAT-MUM

SBI Capital Markets Ltd Vs CCE & ST (Dated: February 5, 2015)

ST - Appellant paid ST under the head 'Banking and Other Financial Services' in respect of services provided to Essar Steel Ltd. (Hazira) - customer refused to pay ST stating that being located in SEZ they are not liable to pay ST in view of notification 4/2004-ST and forwarded an exemption certificate issued by Asstt. Dev. Commissioner, SEZ, Surat - appellant, thereafter, filed refund claim but same was rejected by lower authorities on the ground of unjust enrichment inasmuch as the appellant had not convincingly proved that service tax has not been passed to recipient and same is not recovered from recipient - appeal to CESTAT. Held: Extract of Ledger account indicates that the ST amount is payable by their client and subsequently on being informed by client they reversed the entries indicating that the ST paid by them is receivable from Government department - CA certificate produced indicates that the amount for which refund is sought is paid out-of-pocket by appellant - client has submitted an affidavit wherein they have categorically stated that the appellant had not charged any ST nor was paid by them - both authorities have not appreciated the evidences in the correct perspective - as appellant has shown the entire amount of ST liabilty as receivable, they are eligible for refund - Appeal allowed: CESTAT [para 6]

2015-TIOL-815-CESTAT-MAD

CST Vs Ruchika Global Interlinks (Dated: February 19, 2015)

Service Tax - CENVAT credit - Respondents were registered as commission agents and also engaged in trading of M.S. Scraps, M.S. Angles and CTD Bars - They availed credit on certain allegedly ineligible input services as well as utilised excess credit on common input services used for both trading as well as taxable service - respondents paid the entire amount along with interest and subsequently filed refund claim; rejected in adjudication, allowed by Commissioner (Appeals), and agitated by Revenue herein.

Held: In terms of the Cadila Healthcare ruling, Testing and Analysis, C&F services, repair and maintenance services etc. eligible for credit; no infirmity in the impugned order - respondents holding centralised registration and not maintained separate accounts of input services for the trading activity as well as for the taxable service - entire credit on trading activity is not eligible and only proportionate credit with reference to turnover is eligible in terms of the Mercedes Benz ruling. [Para 9, 10]

Respondents are not eligible for the entire credit availed on the common input services - they paid the excess amount and are neither eligible to take re-credit in cenvat account nor eligible for refund - adjudication order rejecting the refund of Rs.6,78,459/- and the interest amount is upheld - revenue appeal is partly allowed; the impugned order to the extent of allowing credit of excess credit on common input services is set aside and original adjudication order is restored.

2015-TIOL-814-CESTAT-AHM

Motif India Infotech Pvt Ltd Vs CST (Dated: March 20, 2015)

ST - Assessee was not providing any services in India and was getting refund of ST under Rule, 5 of CCR for services availed by them for export of services - ST payable under Section 66A of FA, 1994 was also admissible to assessee as Cenvat Credit - As assessee is only an exporter of services and availing Cenvat Credit, same would have been admissible as refund - It is Revenue neutral situation, therefore, demands are

not sustainable on merits in view of settled proposition of law - Assessee had also argued that demand is time bar as period is from the financial year 2006-2007 and 2007-2008 whereas SCN is issued on 09.06.2009 - Assessee was eligible for full refund under Rule 5, as appellant was also availing refund of such credit from July 2006 - Extended period is not invokable and demands are also required to be dropped on time bar - Appeal filed by assessee is allowed on merits and time bar: CESTAT [Para 6, 7, 8, 9]

2015-TIOL-803-CESTAT-DEL

M/s BCC Developers & Promoters Pvt Ltd Vs CCE & ST (Dated: March 17, 2015)

ST - Apart from taking up construction directly, assessee were also working as sub-contractors - Prior to 23.08.2007, assessee certainly had a ground not to pay ST as sub-contractors in view of then prevailing clarification of Board, therefore extended period is prima facie not invokable making that component of demand time barred as SCN was issued on 18.10.2010 - They failed to discharge due ST on directly construction - Contention of non-invokability of extended period can be considered at the time of final hearing - Demand relating to their liability as sub-contractor is clearly hit by time bar - Pre-deposit of Rs.9 lakhs is ordered: CESTAT [Para 3]

2015-TIOL-802-CESTAT-DEL

M/s Rosa Sugar Works Vs CCE & ST (Dated: January 21, 2015)

ST - Appellant is manufacturing sugar and molasses - For manufacturing their final product, the input is sugarcane and to procure better quality of sugarcane, appellant supplied cane seeds and bio manure to cane growers and for transportation of cane seeds and bio manure they paid transportation charges - Cenvat Credit availed on transportation services availed by them - Revenue views that for transportation of bio manure and cane seeds upto the place of farmers have no nexus with the activity of manufacturing of sugarcane by appellant - Following the decision of Tribunal in VST Industries Ltd. 2012-TIOL-67-CESTAT-BANG , services availed by appellant is having a nexus indirectly to manufacturing of their final product - Appellant are entitled to take Cenvat Credit on GTA services availed by them - Order set aside and appeal allowed: CESTAT[Para 2, 11, 12]

2015-TIOL-801-CESTAT-BANG

Karnataka Udyog Mitra Vs CST (Dated: September 24, 2014)

Service Tax – Government undertaking providing assistance to investors/entrepreneurs in setting up industries and collecting processing fee – Period in dispute was between October 2006 and March 2012, i.e. prior to introduction of negative list i.e. 01.07.2012 – Is liable to tax under Business Consultancy Service – However in view of conflicting views of classification of said service, extended limitation period disallowed – Impugned order upheld only as regards liability to pay service tax for the normal period with interest – Penalties imposed set aside. (Para 2, 4, 5)

2015-TIOL-795-CESTAT-MUM

FIL Capital Advisors (India) Pvt Ltd Vs CST (Dated: March 18, 2015)

ST – Refund – Commissioner(A) setting aside order of adjudicating authority and allowing refund on the ground that transaction amounts to export and, therefore, respondent assessee is entitled for the refund of ST paid on the input service utilized in rendering of output service – Revenue in appeal and urges that respondent are rendering advisory services and the said services have been utilized by a foreign entity who is related to respondent for making investment in India and, therefore, service cannot be treated as export prior to 28/02/2010.

Held : In terms of Export of Services Rules, 2005, in respect of financial services, if the service recipient is situated outside India and the consideration has been received in convertible foreign exchange, it would satisfy the definition of export and, therefore, in the absence of any dispute relating to the situs of the service recipient and the receipt of consideration in convertible foreign exchange, the contention of respondent that the transaction is one of exports has to be upheld - there is also no dispute that the refund is time barred – no infirmity in order of Commissioner(A), hence Revenue appeal is rejected: CESTAT [para 5.1]

2015-TIOL-794-CESTAT-MUM

Lykes Line Ltd Vs CST (Dated: February 24, 2015)

ST - s.35F, s.35C(2A) of CEA, 1944 - Any stay order passed by the Tribunal, if it is in force beyond 07.08.2014, it would continue till the disposal of the appeal and there is no need for filing any further applications for extension - Application allowed: CESTAT [para 2, 3]

2015-TIOL-793-CESTAT-MUM

CCE Vs Ranjit Builders (Dated: March 12, 2015)

ST - Respondent has discharged the entire service tax liability and interest as soon as it was pointed out by the departmental officers during scrutiny of records - such case would fall within the provisions of s. 73(3) of FA, 1994 which envisages non-issuance of SCN and resultantly no penalty is imposable - Revenue appeal rejected: CESTAT [para 5, 7]

ST - Appellate authority has used discretionary power granted by the statute u/s 80 of the FA, 1994 to set aside the penalties imposed - it is a settled law that discretionary powers exercised need not be questioned unless such powers are used perversely - since the Commissioner(A) has used these powers granted u/s 80 very judicially and correctly, no merits in Revenue appeal, hence rejected: CESTAT [para 6, 7]

2015-TIOL-792-CESTAT-AHM

M/s Newton Engineering And Chemical Limited Vs CCE & ST (Dated: January 15, 2015)

ST - Restoration of appeal-CESTAT dismissing appeal for non-compliance of stay order directing appellant to make pre-deposit of Rs.2.25 crores-Appellant filing appeal to High Court and then to Supreme Court when time extended time till 31.8.2014 to make the pre-deposit-however, appellant not depositing the amount but only paying Rs.51 lakhs and filing application before CESTAT for restoration of appeal-case laws cited.

Held: There is no need to discuss the case laws as in the present case the Supreme Court had given specific direction for compliance of the pre-deposit by 31.08.2014 and which was not complied-Stay order passed by Tribunal since challenged before the

High Court and Supreme Court, the same merged with the order of the Supreme court-no reason for restoring the appeal-application dismissed: CESTAT [para 4]

2015-TIOL-788-CESTAT-MAD

CCE Vs R Kuppuswamy (Dated: January 22, 2015)

Service Tax - C&F Agent service - appellants engaged in rendering C&F Agent service to M/s SAIL - tax was not discharged for the period April'99 to March'04; demands adjudicated with interest and penalties under Sec 76 and 77; payments appropriated and demands agitated by Party on cum-tax benefit and by Revenue for short levy of penalty under Sec 78.

Held: though assessee have not claimed cum tax benefit before adjudicating authority, they have rightly claimed before the appellate authority - appellant eligible for the benefit in terms of the Advantage Media Consultant ruling [Para 9]

Payment of service tax by service provider came into from 1.9.99 and appellants were fully aware that they cannot take shelter on the count that there was dispute between service providers and service recipients for the earlier period; no justifiable ground for plea for total waiver of penalty - lower appellate authority has no power to reduce the penalty under Section 76; having held that penalty is imposable under Section 76 cannot reduce it - imposition of penalty under Section 76 is purely for delay in payment of service tax for which no mens rea is required - In summary, cum-tax benefit extendable, original authority directed to re-quantify liability; penalty imposed under Sec 76 in OIO restored [Para 10, 11, 12]

2015-TIOL-782-CESTAT-DEL

J P Kenny Ltd Vs CCE & ST (Dated: January 15, 2015)

ST - CENVAT - Credit taken on invoices received prior to their Service Tax registration is admissible as issue is squarely covered by the decision of the Karnataka High Court in the case of MPortal India Wireless Solutions Pvt. Ltd - 2011-TIOL-928-HC-KAR-ST : CESTAT [para 6, 7]

Input Service - Housekeeping and hotel services are not Input Services - Credit not admissible of ST paid thereon - as the fact of availment of CENVAT Credit came to the knowledge of the department during the course of the audit and appellant has not taken any positive steps to pay inadmissible CENVAT credit within time, extended period is rightly invocable - penalty not imposable on that part of credit taken on housekeeping services as it is a new service, however, penalty imposable for availing credit on hotel services - Appeal partly allowed: CESTAT [para 8]

2015-TIOL-781-CESTAT-AHM

Gujarat State Fertilizers And Chemicals Ltd Vs CCE, C & ST (Dated: February 04, 2015)

ST - Storage and Warehousing Services - Assessee is engaged in manufacture of ACH (Acetone Cyanohydrins), MMA, MAA (Mythacrylic Acid) and received HCN (Hydro Cynic Acid) from M/s Reliance Industries. Ltd (formerly IPCL) through pipe line and partially utilised in their factory for manufacturing of their final product - Balance quantity of 40% were supplied to M/s Gujarat Alkali and Chemicals Ltd (GACL) adjacent to their factory - Assessee received consideration for supply of HCN from M/s GACL known as "incineration charges" - It is found from the letter of Manager of assessee company addressed to Deputy Commissioner, Service Tax, that on account of situational

problem and commercial experience the assessee company are sharing common expenses incurred for usage of storage tank to store HCN received 'from M/s RIL and other expenses - ST is leviable on Storage and Warehousing Service for goods including liquids and gases - Demand of tax for extended period of limitation cannot be sustained - Similarly, imposition of penalty under Section 78 is not warranted: CESTAT [Para 6, 7, 8, 9]

2015-TIOL-777-CESTAT-MUM

Rama Marketing Vs CCE (Dated: March 12, 2015)

ST - Appellant working as sole selling agent for country liquor manufactured by M/s RBPSSKL and paying ST under BAS - Demand of service tax raised on Cost of packing materials by treating the same as consideration for the services rendered by appellant to their clients to whom they are providing BAS - Commissioner(A) remanding matter for re-computation of tax liability by treating consideration as cum-tax - appeal to CESTAT. Held: Charge against appellant is that the profit generated from sale of packaging and raw materials was the earning of the service provider - this charge is quite absurd - s.66 r/w s.67 provided for charge of ST on the gross amount charged for the services rendered in respect of a taxable service - it does not provide for charging ST on gross profit involved in a sale and purchase transaction - profit earned in respect of trading transaction has nothing to do with the activity of sole selling agent-these two transactions could have been performed by two separate entities - merely because one entity has performed both transactions, the distinct and different nature of transaction does not get obliterated - demands are clearly unsustainable in law - appeal allowed with consequential relief: CESTAT [para 5, 6]

Also see analysis of the Order

2015-TIOL-776-CESTAT-MUM

M/s GTL Infrastructure Ltd Vs CST (Dated: March 17, 2015)

ST - Application for initiating contempt proceedings against CST, Mumbai-II for disregarding Tribunal order - Applicant contending that the Commissioner instead of allowing re-credit of CENVAT as ordered by CESTAT only undertook quantification and informed appellant and Assistant Registrar, CESTAT, Mumbai - applicant has also filed a Misc. Application seeking clarification for taking re-credit of amount quantified by adjudicating authority. Held: It seems that the order as understood by the Commissioner was limited to the quantification of the CENVAT amount - Commissioner has only taken a plausible view in the light of the language used by the Tribunal in its referred order - as Misc. application filed by appellant is yet to come up before Bench, no case in made for initiating contempt - Application dismissed: CESTAT [para 3, 4]

2015-TIOL-775-CESTAT-MUM

CST Vs Tata Tele Services Ltd (Dated: March 11, 2015)

ST - Whether the respondent is required to discharge the service tax liability on the amount which they have received from the distributors and dealers or on the MRP on which the subscribers purchase Recharge Vouchers and SIM cards from the distributors or dealers - Held : Fact is that respondents have discharged the ST liability on the basis of MRP on the Recharge Vouchers and SIM cards as and when sold directly to subscribers and on the actual amount received from the distributors and dealers when sold by them - lower authority is correct in following the law laid down by the Tribunal in case of BPL Mobile Cellular - 2007-TIOL-1108-CESTAT-MAD , Revenue appeal against which decision has been dismissed by apex court on ground of delay - in view of authoritative judicial pronouncement, order of lower authority is

correct and legal and does not suffer from any infirmity - Revenue appeals rejected as being devoid of merits: CESTAT [para 6, 7]

2015-TIOL-774-CESTAT-MAD

LTU Vs M/s Brakes India Ltd (Dated: January 23, 2015)

Service Tax - Refund - respondents are engaged in the export of machined and unmachined castings; claimed refund of service tax under Notification No.41/2007 which was partially sanctioned - amount in respect of service tax paid on terminal handling charges and Bill of Lading fees denied in adjudication; set aside by Commissioner (Appeals), and agitated by Revenue herein.

Held: In terms of the Adani Enterprises ruling and Board Circular dated 12.03.2009, no infirmity in the impugned order granting relief; same upheld [Para 5, 6]

2015-TIOL-770-CESTAT-BANG

Av Joy Joy Alukkas Vs CCE, C & ST (Dated: January 5, 2015)

Service Tax - Stay/Dispensation of pre-deposit - Real Estate Agent's service - Appellant contends that he was only selling his land and not acting as an agent - In identical circumstances, Tribunal ordered part of the demand as pre-deposit in another case - No Prima facie case has been made out on limitation - Pre-deposit of Rs 20 lakhs ordered.

2015-TIOL-768-CESTAT-BANG-LB

M/s Lanco Infratech Ltd Vs CC, CE & ST (Dated: April 28, 2015)

Service Tax - Taxability of contracts executed for water supply projects/ pipelines / irrigation /canals for Government for non-commercial purposes - Five key issues decided by the Larger Bench.

Issues referred:

A) Whether laying of pipelines for lift irrigation systems, transmission and distribution of drinking water or sewerage, undertaken for Government/ Government undertakings should be classified under ECIS as ***erection, commission or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise; or installation of plumbing, drain laying or other installations for transport of fluids***, enumerated in Section 65(105)(zzd) and defined Section 65(39a), during 16.06.2005 to 31.05.2007; or must be classified under CICS, as amounting to ***construction of pipeline or conduit***; and if classifiable under the later provision, whether the activity is not taxable since it is not used or to be used, engaged or to be engaged primarily for industry or commerce;

B) Whether construction of canals for irrigation purposes and laying of pipelines including as part of lift irrigation systems, undertaken for the Government/ Government undertakings is liable to service tax under WCS as ***turnkey projects, including engineering, procurement and construction or commissioning projects*** under clause (e) of Explanation (ii) in the definition of WCS or is excluded from the ambit of WCS since it is in respect of a "Dam" and thus stands excluded from WCS, as defined; **C)** Whether, ***turnkey projects, including engineering, procurement and construction or commissioning (EPC) projects*** specified in clause (e) is merely an enumeration of the mode of execution of taxable services

specified in clauses (a) to (d) or is a wholly distinct taxable service and is exigible to service tax as an independent species of works contract service; **D)** Whether, even if clause (e) in Explanation (ii) of WCS is considered a distinct and independent service, where construction of canals for irrigation purposes and laying of pipelines either as part of lift irrigation systems or for transport and distribution of water is undertaken for Government/ Government undertakings, the same is more appropriately covered under clause (b) of WCS i.e. ***construction of a new building or a civil structure or a part thereof***, or of ***a pipeline or conduit***, by applying principles of classification set out in Section 65A(2)(a) & (b) and thus fall outside the ambit of levy, since the activity is not primarily for the purpose of commerce or industry; or whether a contrary view that clause (e) being an independent entry, activities falling thereunder would be taxable even if the rendition of service thereby or thereunder, was not primarily for non commercial or non industrial purposes; and **E**) Where execution of the whole or a part of the work is sub-contracted on back to back basis by the main contractor (which is a joint venture) to sub contractors, in the absence of any transfer of property in goods involved in the execution of such works, from the main contractor to the Government/ Government undertakings, whether levy of service tax in the hands of appellant (main contractor) is valid under WCS, in the light of the judgment in ***State of A.P. vs. L & T Ltd***. **Ruling:**(a) **Issue (A**): Laying of pipelines/ conduits for lift irrigation systems for transmission of water or for sewerage disposal, undertaken for Government/ Government undertakings and involving associated activities like trenching, soil preparation and filling, supporting masonry work, jointing of pipes, electro-mechanical works or pumping stations and like activity, is classifiable only under Commercial or Industrial Construction Service (CICS) for the period upto 01.06.2007 and not under Erection, Commissioning or Installation Service (ECIS);(b) **Issues (B); (C) and (D)**:

(i) Construction of canals for irrigation or water supply; construction or laying of pipelines/ conduits for lift irrigation conceived and integrated into a dam project, must be classified as works contract "in respect of dam" and is thus excluded from the scope of "Works Contract Service" defined in Section 65(105)(zzzza) of the Act, in view of the exclusionary clause in the provision;

(ii) Turnkey/ EPC project contracts, enumerated in clause (e), Explanation (ii) in Section 65(105)(zzzza) of the Act is a descriptive and *ex abundant cautela* drafting methodology. In the light of the decision in ***Alstom Projects India Ltd***., fortified by the Special Bench decision (dated 19.03.2015) in ***Larsen & Toubro Ltd.*** reference, a turnkey/ EPC contract is taxable prior to 01.06.2007 as well. On and since 01.06.2007, turnkey/ EPC contracts must be classified on the basis of the essential character of the service provided thereby, with the aid of classification guidelines set out in Section 65A(2) of the Act. Consequently, a turnkey/ EPC contract must be classified under any of the clauses (a) to (d), Explanation (ii), Section 65(105)(zzzza). The bundled bouquet of services provided as turnkey/ EPC contract, classifiable as Commercial or Industrial Construction Service (CICS) prior to 01.06.2007, would be classifiable under clause (b), Explanation (ii), Section 65(105)(zzzza) on and from 01.06.2007 and would not be exigible to service tax if the rendition of service thereby is primarily for non-commercial, non industrial purpose, in view of the exclusionary clause in clause (b) of the definition of WCS. This is the only possible and harmonious interpretation possible of the several clauses under Explanation (ii) of Section 65 (105)(zzzza), a distinct taxable service defined with constituent elements thereof substantially drawn from elements of pre-existing taxable services like ECIS, CICS or COCS; and other services when bundled to amount to turnkey/ EPC;(ii) Construction of canals/ pipelines/ conduits to support irrigation, water supply or for sewerage disposal, when provided to Government/ Government undertakings would be for non-commercial, non-industrial purposes, even when executed under turnkey/ EPC contractual mode and would fall within the ambit of clause (b), Explanation (ii) of Section 65(105)(zzzza); and would consequently not be exigible to service tax, in view of the exclusion enacted in clause (b); and

(c) **Issue (E)**: Where under an agreement, whether termed as works contract, turnkey or EPC, the principal contractor, in terms of the agreement with the employer/ contractee, assigns the works to a sub-contractor and the transfer of property in goods involved in the execution of such works passes on accretion to or

incorporation into the works on the property belonging to the employer/ contractee, the principal contractor cannot be considered to have provided the taxable (works contract) service enumerated and defined in Section 65(105)(zzzza) of the Act.
Also see analysis of the Order
2015-TIOL-762-CESTAT-MUM
Welspun Maxsteel Ltd Vs CCE (Dated: March 2, 2015)
ST - s.35F, s.35C(2A) of CEA, 1944 - Any stay order passed by the Tribunal, if it is in force beyond 07.08.2014, it would continue till the disposal of the appeal and there is no need for filing any further applications for extension - Application allowed: CESTAT [para 1]
2015-TIOL-761-CESTAT-MUM
Kinetic Advertising (I) Pvt Ltd Vs CCE (Dated: March 2, 2015)
ST - CENVAT credit availed of Input services at head office whereas services were rendered by the applicant at their branch office - department denying the same - appellant submitting that they have discharged the ST liability for the services rendered from their branch office which were nothing but marketing wing - it is not in dispute that the services on which CENVAT credit was availed is in respect of branch office but accounted for at head office - a similar issue in Manipal Advertising Services Pvt. Ltd. - 2011-TIOL-273-CESTAT-BANG bench held in favour of assessee - prima facie applicant has a strong case on merit - Pre-deposit waived and stay granted: CESTAT [para 3]
2015-TIOL-760-CESTAT-MAD
CCE Vs M/s Cbay Systems (India) Pvt Ltd (Dated: February 18, 2015)
Service Tax - Refund jurisdiction - adjudicating authority viewed that because the foreign exchange was received in Mumbai, the respondent should have sought refund of the service exported, in Mumbai jurisdiction whereas it was actually claimed in Coimbatore; claim agitated by Revenue on jurisdiction. Held: Wherever foreign exchange is realized makes no difference to law since that has come to India and that establishes the export of service from India - no question of treating the Mumbai unit of the respondent as well as Coimbatore unit to be distinct - Respondent provided service in Coimbatore and taxable event occurred thereat; authority of Coimbatore has jurisdiction over the issue of refund for which he should rightly entertain the refund application [Para 3]
2015-TIOL-752-CESTAT-MUM
M/s Pravara Oos Tod Va Vahatook Major Sanstha Pvt Ltd Vs CCE, C & ST (Dated: December 19, 2014)
ST - Manpower Recruitment or Supply Agency Service - appellant is a body consisting of uneducated, temporary seasonal workers engaged in cutting, harvesting sugarcane and transportation of the same from the farmers fields to sugar factory - work contract entered between workers and appellant - Revenue alleging that appellant is a service provider and liable to ST - appellant taking registration and paying ST of

Rs.1.32 crores before issue of SCN - Demand confirmed along with equivalent penalty - appeal to CESTAT. Held: Issue is no longer res integra - Division Bench of Tribunal in a series of decisions, viz. Amrit Sanjivni Sugarcane, Transprot Co. Pvt. Ltd. - 2013-TIOL-1097-CESTAT-MUM ; Samarth Sevabhavi Trust - 2013-TIOL-1129-CESTAT-MUM have held that the services of sugarcane harvesting and transportation are not classifiable under "Manpower Recruitment or Supply Agency's Services" - Inasmuch as the issue has been decided against the Revenue and in the favour of the assessee, following the same demand not sustainable in law - appeals allowed with consequential relief - department to refund amount of tax deposited along with interest: CESTAT [para 6, 7]

2015-TIOL-751-CESTAT-DEL

M/s H M Pipes Pvt Ltd Vs CCE (Dated: March 3, 2015)

ST - Assessee are paying VAT on value of material involved which is almost 95% of total value - They contended that even if service is held to be taxable and not eligible for benefit of Notfn 41/2009-ST, though under Notfn 41/2009-ST, their works contract service being in respect of canals, is exempted and they are also entitled for benefit of Notfn 12/2003-ST, Works Contract Composition Scheme as well as Rule 2A of Service Tax [Determination of Value) Rules, 2006 - Reasoning of Commissioner denying benefit of Notfn 12/2003-ST suffers from infirmity inasmuch as, apart from provisions of Notfn 12/2003-ST, even in terms of Section 67 of FA, assessable value of service rendered does not include value of deemed sale of goods involved in composite contract - Therefore and specially having regard to claim that if value of goods is abated in terms of Notfn 12/2003-ST, then as per details in Annexure 5 and Annexure 6 of their appeal, their ST liability would be in range of the amount already paid - Stay granted: CESTAT

2015-TIOL-750-CESTAT-DEL

Fortis Clinical Research Ltd Vs CST (Dated: March 2, 2015)

ST- Consideration received under the "facility purchase agreement" - Prima facie whole facility has been sold and so the consideration received on account of sale proceeds cannot be said to be for providing 'support service of business or commerce' - adjudicating authority has not even indicated as to on what basis the facility purchase agreement has been held to be bogus or non-genuine - appellants have made out a good case for granting waiver of pre-deposit of this component of impugned demand of Rs.3.17 crores : CESTAT [para 2]

ST - Appellants got interest free advance which was repayable - there is also evidence of re-payment in the form of letters showing repayment of two instalments - In any case, unless it is established that the interest free loan was camouflaging the consideration received for providing service, the amount of loan cannot be taken to be the payment for providing taxable service and thus prima facie the confirmation of this component of demand of Rs.65.36 lakhs seems to lack sustainable basis warranting waiver of its pre-deposit: CESTAT [para 3]

ST-Clinical Trials - In respect of clinical trials of medicines involving physical, chemical and biological testing on human beings and animals for new products to be introduced in the market - Explanation to Section 65(106) of the FA, 1994 introduced on 1.5.2006 is to be considered prospective and hence the services covered there-under were not liable to service tax prior to 1.5.2006-Prima facie case covered by decision in Synchron Research Services P Ltd.-sufficient ground to waive pre-deposit of adjudged ST of Rs.50.28 lakhs: CESTAT [para 4]

ST - Difference between the amount on which service tax has been paid and the figures shown in the annual accounts-reconciliation statement and CA certificate

submitted by appellant not taken cognizance by adjudicating authority - adjudicating authority seems to have lost sight of the fact that the onus is primarily on the Revenue to establish short payment - sufficient ground exists to waive pre - deposit of this component of demand: CESTAT [para 5]

CENVAT - Adjudicating authority has not identified as to what exempted services were provided by appellant - In the face of the appellants' claim that they were not providing any exempted service, prima facie the very basis of this component of demand vanishes and, therefore, the appellants deserve waiver of pre -deposit of this component: CESTAT [para 6]

ST - Management or Business consultant - amount paid to the inspection agency based in a foreign country for inspecting their facilities on the orders of their client abroad-inspecting agency only inspected the facility without rendering any advice - prima facie demand on this count is on a weak wicket-Pre-deposit waived: CESTAT [para 7]

2015-TIOL-747-CESTAT-MUM

CST Vs Upanagar Shikshan Mandal (Dated: March 02, 2015)

ST - Appeals filed by CST, Mumbai-II against Orders-in-appeal passed by Commissioner (A) - Registry issuing notices for removal of defects - Although defect notices were issued, same were not removed till date, therefore, appeals are disposed of as non-maintainable: CESTAT [para 1]

2015-TIOL-743-CESTAT-DEL

T T Ltd Vs CST (Dated: February 11, 2015)

ST- Adjudicating authority has taken a new ground to adjudicate the refund at the time of verification of certain documents which is not permissible in law-adjudicating authority has no right to re-examine the refund claim but only can verify the documents as directed by the Commissioner (Appeals)-In Notification No. 41/2007, there is no condition that if the services are availed prior to the date of notification, the appellant are not entitled to refund claim – appeal allowed – adjudicating authority to grant refund within 90 days: CESTAT [para 9, 10]

2015-TIOL-742-CESTAT-AHM

M/s Kalupur Commercial Co Op Bank Ltd Vs CE & ST (Dated: December 12, 2014)

ST - Short payment of Tax - Same was paid by appellant within a reasonable period of time after detection and before issuance of SCN - Once it is categorically held by Commissioner (A) that appellant was under a bonafide belief that ST as demanded was not payable, then a view cannot be entertained that the facts will justify imposition of penalty under Section 78 of FA, 1994 - Duty demanded in SCN was Rs. 11,10,965/- but was confirmed only to the extent of Rs. 7,14,996/- in Adjudication proceedings - Differential tax was only a reconciliation of accounts maintained by appellant - Appeal allowed: CESTAT [Para 4, 5]

2015-TIOL-741-CESTAT-MUM

M/s Urschel India Trading Pvt Ltd Vs CCE (Dated: February 27, 2015)

ST - Refund - Appellant is providing BAS to their parent company situated in Singapore and paid ST on such services - They have submitted export invoices, FIRCs and C.A. Certificate which clearly shows that refund claim is in respect of ST paid on said services - Remittance of service charges was made by foreign entity in convertible foreign currency to appellant - Services clearly falls under "export service" in terms of Export of Services Rules, 2005 - even though adjudicating authority contended that services are covered under exemption notfn 13/2003-ST, it cannot take away entitlement of refund under Export of service - Sanction of refund is liable to be maintained and cannot be interfered, therefore, impugned order-in-appeal is set aside and appeal is allowed: CESTAT [Para 2, 5]

2015-TIOL-739-CESTAT-KOL

M/s West Bengal State Electricity Transmission Company Ltd Vs CST (Dated: January 19, 2015)

ST - Taxable services relating to transmission of electricity are exempted by s.11C notification 45/2010-ST - Board has clarified that notification would apply to all pending cases - Demand set aside and appeal allowed - Revenue appeal dismissed: CESTAT [para 7]

Also see analysis of the Order

2015-TIOL-738-CESTAT-AHM

Pidilite Industries Ltd Vs CCE & C (Adjudication) (Dated: March 20, 2015)

ST - Refund - Claim for refund was denied on the ground that duty paying documents were not furnished by appellant - Appellant while making rebate claims furnished a calculation sheet showing the documents under which duty payment has been made to service providers and also the cheques through which such payments were made - Calculation sheet issued by IIT, Bombay and corresponding copy of invoice/bill furnished by appellant indicates ST registration No. of service provider and also the amounts of ST paid by service provider are available - Such documents indicating payment of ST and constitute sufficient evidence on the part of appellant to claim benefit of Notfn 9/2009-ST as amended - Appellant has not furnished all such duty paying documents in appeal memorandum or during the course of hearing - Matter remanded: CESTAT [Para 4, 5]

2015-TIOL-728-CESTAT-MUM

Classic Citi Investments Pvt Ltd Vs CCE & ST (Dated: February 9, 2015)

ST - Appellant while discharging tax liability under 'Mandap Keeper Service' has availed benefit of Notfn 1/2006-ST - Revenue views that appellant could not have availed benefit of Notfn as he is availing benefit of credit on common input services - Entire amount of credit on common inputs as well as interest thereon was reversed by appellant - As per Hindustan Construction Co. Ltd - 2014-TIOL-1820-CESTAT-MUM , once the assessee has reversed CENVAT credit taken, benefit of Notfn cannot be denied - Impugned order set aside and appeal allowed: CESTAT [Para 4, 5, 6]

2015-TIOL-727-CESTAT-MUM

First Flight Couriers Ltd Vs CCE(Dated: February 23, 2015)

ST - Appellants seek extension of stay on the ground that their appeals have not come up for disposal for no fault of theirs - As per Venkateshwara Filaments Pvt. Ltd.

& Ors. 2014-TIOL-2388-CESTAT-AHM , stay orders passed by Tribunal if it is in force beyond 07.08.2014, it would continue till the disposal of the appeals and there is no need for filing any further applications for extension of orders granting stay either fully or partially - Applications for extension of stay disposed of: CESTAT [Para 3, 4]
2015-TIOL-726-CESTAT-MUM
Indian Oxalate Ltd Vs CCE (Dated: January 16, 2015)
ST - 'Banking and other Financial Services' - funds raised under External Commercial Borrowings (ECB) and amount paid by them to the foreign bank - ST under reverse charge - Entire ST liability and interest thereof was discharged by assessee before issuance of SCN - Penalty imposed u/s 78 but dropped u/s 76 of FA, 1994 - Assessee & Revenue in appeal against imposition/dropping of penalty. Held : If the assessee discharges the service tax and interest liability on his own ascertainment or on being pointed out by the CE Officers, no show-cause notice is required to be issued as per provisions of Section 73(3) of the Finance Act, 1994 - Appellant could have entertained a bona fide belief that their activities may not be covered under tax net - Invoking provisions of Section 80 of FA, 1994 penalty imposed u/s 78 set aside - Revenue's appeal seeking imposition of penalty u/s 76, therefore, does not merit any consideration - Assessee appeal allowed/Revenue Appeal rejected: CESTAT [Para 6, 7]
2015-TIOL-725-CESTAT-MUM
CCE Vs Murli Industries (Dated: February 25, 2015)
ST - 'Banking and other Financial Services' - funds raised under External Commercial Borrowings (ECB) and amount paid by them to the foreign bank - ST under reverse charge - Entire ST liability and interest thereof was discharged by assessee before issuance of SCN - Penalty imposed u/s 78 but dropped u/s 76 of FA, 1994 - Assessee & Revenue in appeal against imposition/dropping of penalty. Held : If the assessee discharges the service tax and interest liability on his own ascertainment or on being pointed out by the CE Officers, no show-cause notice is required to be issued as per provisions of Section 73(3) of the Finance Act, 1994 - Appellant could have entertained a bona fide belief that their activities may not be covered under tax net - Invoking provisions of Section 80 of FA, 1994 penalty imposed u/s 78 set aside - Revenue's appeal seeking imposition of penalty u/s 76, therefore, does not merit any consideration - Assessee appeal allowed/Revenue Appeal rejected: CESTAT [Para 6, 7]
2015-TIOL-723-CESTAT-MUM
Kunal It Services Pvt Ltd Vs CCE (Dated: March 12, 2015)
ST - Commercial Coaching or Training Service - Appellant, a franchisee of Aptech Ltd. & imparting training under the brand name 'Arena Multimedia' - Course fee paid by students by cheques in the name of Aptech Ltd. and appellant receiving 80% of the fees on which they discharged Service Tax - no cause for demanding ST on 20% amount which is retained by Aptech Ltd. - Appeal allowed: CESTAT [para 7, 8, 9]
Also see analysis of the Order
2015-TIOL-722-CESTAT-DEL
M/s Piramal Healthcare Ltd Vs CCE & ST (Dated: February 3, 2015)
ST - Assessee engaged in activity of manufacturing bulk drugs and obtaining registration under category of goods transport agency service - Assessee was required

to pay ST under reverse charge mechanism - After that they have paid the ST in time, same was available to them as Cenvat credit - By not paying ST tax in time, assessee has already suffered interest and have not taken credit of ST paid - It is a situation of revenue neutrality - Penalty under section 76 is dropped - Imposition of penalty under section 77 shows the non application of mind by authorities below, as under section 77, penalty cannot be imposed for non-filing of ST 3 return - Therefore, penalty under section 77 is also, set aside: CESTAT [Para 6, 7]

2015-TIOL-710-CESTAT-MAD

M/s Sesa Sterlite Ltd Vs CCE (Dated: February 3, 2015)

Service Tax - CENVAT credit - Stay/dispensation of pre deposit - credit denied in adjudication on the ground that the impugned input services were not evidenced by invoices in the name of the appellant; demands adjudicated and agitated herein.

Held: Force in Revenue's contention that that regulatory measure of registration is one of the essential condition for input service distribution to prevent wrongful claim of Cenvat credit by a third party in respect of the invoices issued by the service provider in the name of another Unit of the appellant - No substantial evidence was led to demonstrate integral connection between the services provided and job working; invoices which were used as a basis for claiming Cenvat credit remained in doubt as to multiple claim thereon - when the genuinety of the claim became doubtful, it would not be possible to extend any benefit to the appellant, at this stage, but to direct pre-deposit to protect interest of Revenue - Material fact of invoices without name of the appellant does not rule out abuse of law since Appellant was claiming to be beneficiary of service tax paid by a concern other than the appellant - appellant directed to deposit Rs.4 crores (Rupees Four Crores only) in three instalments.

2015-TIOL-709-CESTAT-MAD

M/s Sreevatsa Real Estates Pvt Ltd Vs CCE (Dated: February 9, 2015)

Service Tax - Stay / dispensation of pre deposit - common issue in dispute is whether the appellant who made applications under Works Contract (Composition Scheme for payment of service tax Service Tax) Rules, 2007, is deniable to the coverage by that scheme on the ground that no option was exercised before the due date of payment of service tax - also a dispute related to CENVAT credit, denied by Revenue on the ground that it is inadmissible for composition scheme.

Held: *Prima facie*, so far as the levy of service tax denying Composition Scheme is concerned, there appears an anomaly. Appellants therefore deserves consideration on such count at this stage - On CENVAT Credit, legislature has thoughtfully considered that no allowance is permissible to the contractors opting for composition scheme since they belong to a class by themselves and the contractor under normal rule belong to a distinct class and discharge the tax burden under different set of provisions - Therefore, this appellant cannot claim input credit of service tax if any when law does not permit in that regard - under the circumstances, there shall be waiver of pre-deposit in appeal No. ST/41497/2013 and pre-deposit ordered in other two applications.

2015-TIOL-708-CESTAT-KOL

M/s Leading Construction Vs CCE & ST (Dated: December 3, 2014)

ST - Notfn 12/2003-ST - Benefit of said notfn not allowed by adjudicating authority on

the ground that assessee had failed to provide documentary proof in respect of goods sold in execution of contract covered under SCN - At the time of adjudication, assessed VAT returns were not in their possession - While rejecting VAT Returns, Commissioner has not given them an opportunity to explain entries reflected in said VAT returns - In the interest of justice, impugned order set aside and case remanded to adjudicating authority for deciding the issues afresh after considering all evidences on record: CESTAT [Para 5]

2015-TIOL-703-CESTAT-DEL

M/s Agilent Technologies International Pvt Ltd Vs CST (Dated: January 21, 2015)

ST - CENVAT - Rule 2(l) of CCR, 2004 - Landscaping services, services of erection of IT cables for setting up of modernization and renovation of premises, aluminum and glass framework and windows for giving better atmosphere are to be considered as Input services as these services are having nexus to the output services provided by appellant - Appellants are entitled for refund claim of unutilized credit lying in their account due to export of services in view of CBEC Circular No. 120/01/2010-S.T. dated 19.01.2010 in terms of rule 5 of CCR, 2004 - Appeal allowed with consequential relief: CESTAT [para 7, 8]

2015-TIOL-702-CESTAT-DEL

M/s Exl Service Sez Bpo Solutions Pvt Ltd Vs CCE & ST (Dated: February 12, 2015)

ST - Services provided to a SEZ or unit in the SEZ is deemed as export as per the provisions of Section 2 (m) (ii) of the SEZ Act, 2005 and as per Rule 31 of the SEZ Rules, 2006, the appellants are entitled for exemption from payment of service tax on the services which are used or provided to a unit in the SEZ - It is the avowed policy objective of the Government of India that exports should not bear the burden of taxes - even if the appellant was not eligible for refund under Notification No. 09/2009-ST dated 3.3.2009, the appellants were certainly eligible for refund under Section 11B of the CEA, 1944 – for subsequent period, for the services of scientific and engineering, the adjudicating authority has allowed their refund claim - appellant is entitled to refund claim on both the issues relying on the decision in Tata Consultancy Service Ltd. 2012-TIOL-1034-CESTAT-MUM - order set aside and appeal allowed with consequential relief: CESTAT [para 6, 7]

2015-TIOL-701-CESTAT-DEL

M/s Kashyap Publications Pvt Ltd Vs CCE & ST (Dated: January 27, 2015)

ST - Assessee is a manufacturer of excisable goods and availing GTA services - Period of dispute is 2007 to 2012 - Assessee took registration on 3.1.2012 and paid ST alongwith interest on reverse charge mechanism not for the period in question but for 2006 also - Assessee were under bona fide belief that they are not liable to pay ST under reverse charge mechanism as GTA service does not exceed Rs.10 lakhs - SCN was not required to be issued under section 73(3) of Finance Act, 1994 - Penalties imposed on appellant under section 70 and 77 are set aside: CESTAT [Para 2, 6]

2015-TIOL-700-CESTAT-MUM

Butibori Cetp Pvt Ltd Vs CCE (Dated: February 24, 2015)
ST - Business Support Services - Notfn. 42/2011-ST - Appellant is engaged in running a plant for treatment of effluent generated in the industrial area of Butibori at Nagpur - Appellant has been funded by the Central Government as well as the State Government through MPCB for setting up the Butibori CETP Plant - retrospective exemption granted by s.145 of FA, 2012 - Demand not sustainable in law - Appeal allowed: CESTAT [Para 6, 7]
Also see analysis of the Order
2015-TIOL-697-CESTAT-MUM
CCE & C Vs M/s Bansod Classes (Dated: February 20, 2015)
ST - s.77 of FA, 1994 - Penalty - Failure to appear before CE officer when summons issued - Penalty of Rs.200 per day is not in the nature of mandatory - it is the discretion of the officer to reduce the penalty depending upon the nature of the case - Revenue appeal dismissed: CESTAT [Para 5]
Also see analysis of the Order
2015-TIOL-696-CESTAT-MUM
CST Vs Atlanta Premises Co-Op Society Ltd (Dated: January 20, 2015)
ST - Club or Association Service - Assessee, a Co-operative Society registered with Maharashtra Co-operative Societies Act, 1960 collecting amounts from their members towards maintenance charges on monthly basis which is utilised to maintain and administer buildings - Findings recorded by lower appellate authority that there is no mutuality of interest and, therefore, no ST is payable under Club or Association Service/Renting of Immovable property service is correct as assessee is a Co-operative society and provisions of Maharashtra Co-Operative Act will apply - Amount collected by assessee from their members is undisputedly utilised for maintenance and upkeep of society - Assessee is eligible for refund of amounts paid by them "under protest": CESTAT [Para 6, 7]
2015-TIOL-693-CESTAT-MUM
Manoj Construction Co Vs CCE (Dated: January 12, 2015)
ST - Commercial and Industrial Construction service - Appellant contends that tax liability under category of commercial and industrial construction service came into statute from 10/09/2004 while bulk of work under contracts were executed before 10/09/2004 - Appellant has also claimed abatement of 67% of value of contract under notfn 01/2006-ST, on the ground that they had used all the materials for execution of such contracts - In absence of any reasoning for not accepting pleas raised by appellant, matter remanded: CESTAT [Para 7, 8, 9]
2015-TIOL-689-CESTAT-MUM
M/s Rathi Daga Vs CCE (Dated: January 14, 2015)
ST - 'Practicing Chartered Accountant' service - Appellant utilised CENVAT credit on input services such as telephone services, insurance, repairs & maintenance of motor car - No separate account maintained for services used in providing taxable and

exempted services - appellant had not paid an amount equal to 8% of the value of the exempted services or paid an amount by following procedure of Rule 6(3A) - SCN issued demanding Rs.26,487/- being the amount equal to 8% /6% of the value of exempted services - Demand confirmed along with interest and equivalent penalty and upheld by Commissioner(A) - Appeal to CESTAT.

Held: Amount of Rs.927/- attributable to the amount of CENVAT credit on input services used towards exempted services was paid by the appellant before the issue of show-cause notice - That this would be the amount required to be paid, under Rule 6(3A) is not disputed by Revenue - conditions for following procedure under Rule 6(3A) prescribe submission of details such as exercising option to avail the facility, name, address and registration No. etc. mostly these are factual details which are available from the records - it would be too harsh to enforce payment of 8%/6% only because of non payment of the due amount of Rs.927/- on time as per procedure prescribed in Rule 6(3A) - No assessee would intentionally evade payment of Rs.927/- - Further, Rule 6(3) only restricted availment of credit upto 20%, it did not make the credit lapse - Said restriction was removed from 01.04.2008, therefore, demand of Rs.26,487/- is set aside: CESTAT [para 6]

Penalty - Mens rea with definite intent to evade duty is not established, so, imposition of penalty under Rule 15(3) of CCR, 2004 does not sustain: CESTAT [para 6]

CENVAT - Insurance and Maintenance of motor vehicles service - Mere fact that motor vehicles are registered in name of partner and not in the name of firm, credit cannot be denied, as expenditure has been incurred from firms budget - Allegation in SCN is not definitive nor substantiated in any manner - CENVAT credit is admissible - consequently, penalty of Rs.5,000/- imposed u/s 77 is also set aside: CESTAT [Para 7]

2015-TIOL-688-CESTAT-HYD

M/s LancoInfratech Ltd Vs CC, CE & ST (Dated: February 3, 2015)

Service Tax - Commercial Construction - vivisection to claim exemption to dams and roads - Stay and waiver of pre-deposit: Appellant has undertaken civil works relating to construction of Hydro Power Projects in Himachal Pradesh, Sikkim and Uttarakhand and entered into contracts for execution of certain civil works. Scope of work includes various activities like preliminary site activities, bus bush clearance, Topographical survey, construction of approach roads, temporary buildings, tunnels, coffer dams, underground power house tunnels, transformer tunnels etc. Though the value of contract is fixed at a lump sum amount, appellant paid service tax only on Erection, Commissioning, Transportation of equipment and did not pay service tax on the value relating to construction of Tunnels, Roads, Dams etc.

Department contended that appellant cannot vivisect a single contract into different components and claim exemption on that part of the amount received towards construction of Tunnels, Roads, Dams etc., and confirmed demand for service tax for the period July 2009 to March 2010.

Appellant relied on CBEC Circular dated 27.07.2005, in which CBEC had clarified that even if the contract is a single composite contract, segregation or demarcation between the portion relating to Construction of Roads and other constructions is allowed.

Tribunal's Analysis : The appellants have submitted that they have segregated the work undertaken relating to Roads, Bridges, Tunnels and Dams which are clearly excluded from the definition itself for the purpose of levy of service tax and there is nothing wrong in what they have done. Whether a composite contract can be vivisected is a question of fact and has to be based on detailed consideration of

provisions of contract and the understanding between the parties and applicable provisions. At this stage what emerged after hearing both the sides is the fact that the work undertaken by the Appellants related to Hydro Power Project consisting of various activities. The definition of 'Commercial or Industrial Construction Service' excluded services provided in respect of Dams, Roads, Tunnels. In such a situation, the provisions of section 65A of Finance Act, 1994 requires identification of the services which gives the essential character when different services are provided. What comes out is the fact that all items of work are related to a Dam and a Power Project, Roads, Tunnel etc. and the Dam constitutes the main activity and the Power Project can be entirely different or may not be different. It is difficult to imagine a hydro power project without a dam. Once again, this is also arguable and prima facie view is in favour of appellant since appellant is not treating the contract as a composite contract.

Also see analysis of the Order

2015-TIOL-687-CESTAT-MUM

M/s M B Chitale Constructions Vs CCE (Dated: January 30, 2015)

ST - Value of the goods received free of cost from the service recipient - Benefit of Notfn 15/04-ST and 1/06-ST – As per Bhayana Builders P. Ltd. & Ors. - 2013-TIOL-1331-CESTAT-DEL-LB , benefit of said notfns would be available even if value of the goods and materials supplied by service recipient are not included for the purpose of computation of abatement provided under these notfns: CESTAT [Para 4.1]

2015-TIOL-686-CESTAT-DEL

M/s Kehems Consultants Pvt Ltd Vs CCE (Dated: February 27, 2015)

ST - Franchise Service - Assessee stated that Kehems Engineering was 'merely using their know-how and transaction was not that of franchise service as Kehems Engineering while using and selling the products was not representing itself as appellants - Neither in SCN nor in Primary Order or impugned order, it has been brought out as to whether there was any grant of representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol as the case may be - Nothing on record to show that last limb of definition is satisfied - Appeal allowed: CESTAT [Para 2, 3]

2015-TIOL-685-CESTAT-MUM

Gurlein Manchanda Vs CST (Dated: January 22, 2015)

ST - Penalty - No SCN is required to be issued if assessee had discharged ST and interest liability on his own ascertainment or on being pointed out by CE Officers - Assessee had entertained bona fide belief that they were not covered under 'Event Management Services' as they are rendering services in respect of marriages - 'Extra Ordinary tax Payers Friendly Scheme' is applicable in this case - By invoking the provisions of Section 80 of Finance Act, 1994, penalties set aside: CESTAT [Para 5, 6]

2015-TIOL-677-CESTAT-MAD

M/s India Switch Company Pvt Ltd Vs CST (Dated: November 14, 2014)

Service Tax - Demand - appellants are engaged in the business of providing ATM facilities and other allied activities to various nationalized / other banks - Revenue

viewed the same taxable under the category of "Banking and other Financial services"(BOF); adjudicated demands agitated before the Tribunal who ordered pre deposit - Stay order agitated before the High Court whereupon the matter was remanded to the Tribunal for disposal of plea on pre deposit; same waived and taken up for final disposal herein.

2015-TIOL-675-CESTAT-MUM

CST Vs M/s Bulk Cement Ltd (Dated: March 27, 2015)

ST - 'Freight rebate' and 'Primary freight rebate' received by the Respondent is due to their investment in 125 wagons and is clearly arising out of their arrangement with Indian Railways - Merely because the amount is routed or received through ACC Ltd. or its customers, it cannot be linked with clearing and forwarding agent's service - Manner of routing the consideration cannot decide taxability of the transaction - Tax is not to be levied as C&F service for making available any facility: CESTAT [para 10, 11]

Also see analysis of the Order

2015-TIOL-673-CESTAT-MAD

Osa Shipping Pvt Ltd Vs CCE (Dated: February 3, 2015)

Service Tax - Condonation of delay - Submission by appellant that impugned order passed by Commissioner (Appeals) could not be received owing to change of address; that a certified copy was obtained and appeal filed thereupon.

Held: While the principle laid down by Apex court in MST Katiji and in N.Balakrishnan Vs M. Krishnamurthy is appreciated and reasons stated in the dates and events chart filed by appellant, it does not appeal to the common sense how a litigant could be silent after participation in a proceeding without being vigilant of outcome of the proceeding to act expeditiously for redressal of any wrong done to him - In the absence of vigilant attitude of the appellant, it is not possible to allow the application for condonation of delay for which that is dismissed; Consequently, stay application and appeal stand dismissed. [Para 6].

2015-TIOL-672-CESTAT-MAD

M/s Tube Investments Of India Ltd Vs CCE (Dated: January 22, 2015)

Service Tax - Stay / dispensation of pre deposit - CENVAT credit - applicant is engaged in the manufacture of 'steel strips' and 'steel tubes' and availed Cenvat credit of duty paid on inputs/capital goods and service tax paid on various input services - denial of Cenvat credit on the CHA services related to the export of finished goods is under dispute herein.

Held: Considering the rulings relied upon by appellant, a prima facie case for waiver of pre-deposit of payment of Cenvat credit, interest and penalty made out; same waived and recovery stayed till disposal of the appeal. [Para 4]

2015-TIOL-664-CESTAT-MUM

M/s M R Mahana Vs CCE (Dated: January 09, 2015)

ST - Appellant engaged in providing taxable service in relation to Commercial or Industrial Construction - Entire ST alongwith interest were paid prior to issuance of SCN and even 25% penalty was also paid within stipulated time of one month from receipt of adjudication order - Appellant submitted that they already been penalized for not obtaining registration for Rs.10,000/- which was admittedly paid and not disputed - quantum of penalty i.e. Rs.20,000/- is not a fixed amount of penalty provided for not filing the return - amount of the said penalty is not mandatory - in the circumstances of the case, penalty of Rs.1,60,000/- imposed u/s 70 of FA, 1994 is reduced to Rs.50,000/-: CESTAT [Para 2, 5]

2015-TIOL-663-CESTAT-MUM

CST Vs M/s Multi Screen Media Pvt Ltd (Dated: December 10, 2014)

ST - Broadcasting service - Revenue alleging in appeal that there is an error in calculating the arrears of demand for interest u/s 75 of FA, 1994 on arrears of ST paid - that the adjudicating authority have erred in accepting the evidence produced by the assessee being Chartered Accountant Certificate, to the effect that the gross amount collected is cum duty and accordingly it appears that there is no indication whatsoever as to the designation of the person making the endorsement as "Seen & Checked", and thus the documents should not have been accepted in token of verification of the fact that taxable value was inclusive of Service Tax.

Held: The case of the appellant is that, pursuant to the amended definition with retrospective effect, the Finance Bill received assent on 11.5.2002 and accordingly they paid the taxes within 30 days, as provided by the Finance Act – issue squarely covered by apex court decision in Star India Pvt.Ltd. 2005-TIOL-163-SC-ST-LB where it is held that liability to pay interest would only arise on default and is really in the nature of a quasi-punishment - that such liability although created retrospectively could not entail the punishment of payment of interest with retrospective effect: CESTAT

Adjudicating authority has gone into details and has allowed the claim of cum-duty benefit not only on the basis of Chartered Accountant's Certificate but also got the claim verified by Jurisdictional Superintendent – unambiguous finding in adjudication order - No contrary evidence brought on record by Revenue that claim of cum-duty is wrong or contrary to facts on records – Revenue Appeal dismissed: CESTAT [Para 4, 5, 6]

2015-TIOL-662-CESTAT-KOL

M/s Shree Ganesh Trading Company Vs CCE & ST (Dated: February 04, 2015)

ST - Assessee provided various services to its clients like Transportation, Bundling and Feeding of Bamboo, Unloading of Bamboo from Railway wagons and shifting from Railway Siding to Bamboo Yard, and Coal Ash Transportation, unloading/shifting of SSP/Ind.Salt from Railway wagons to godown - While demanding ST under BAS, SCN does not mention relevant clause of Section 65 (19) of FA, 1994 - Commissioner concluded that assessee was involved in rendering services which are incidental and auxiliary to the service of "procurement of goods from services, which are inputs for client" falling under Clause (iv) and hence would fall under clause (vii) of Section 65 (19) of FA, 1994, as amended - In spite of several reminders, assessee did not submit particulars of such services during relevant period, so as to enable the Department to compute ST liability - Assessee contends that they have started paying ST under category of BAS since September, 2010 and hence, issue was known to Deptt, but SCN was issued to them on 22.10.2013, which is time bar - Bill amount included various other statutory dues which are to be excluded from the value - Assessee is directed to deposit 10% of duty confirmed: CESTAT

2015-TIOL-655-CESTAT-MUM
M/s Metro And Metro Vs CCE & ST (Dated: February 16, 2015)
ST - Assessee engaged in export of shoes - Assessee have at least substantially satisfied the conditions for exemption under Notfn 18/2009-ST - Even if tax had been paid on such commission paid to commission agents based abroad, prima facie same would have been available to assessee as credit - No ST is chargeable under Business Exhibition Service when such exhibitions were held abroad and that no ST is chargeable under Technical Inspection and Certification service when no inspection or certification took place - Not agreed with revenue that ST under GTA service is correctly confirmed because assessee did not provide them the evidence that transport was undertaken in truck owned by individuals and no consignment notes were issued because onus lies on Revenue to prove the liability to ST under GTA service - Stay granted: CESTAT [Para 4, 5]
2015-TIOL-653-CESTAT-KOL
M/s Vodafone South Ltd Vs CST (Dated: January 22, 2015)
ST - Entire issue relates to some errors in ST-3 Returns vis-a-vis private records maintained by assessee - Assessee did not attend the hearing in spite of sufficient number of opportunities were allowed to them to appear before Commissioner - This defiance and negligent attitude on part of assessee even though is deplorable, however, in interest of justice, assessee be given another chance to appear before Commissioner and explain with evidences relating to their claim of incorrect entries made in ST-3 Returns for the period April, 2009 to September, 2009 - Matter remanded: CESTAT [Para 2, 5]
2015-TIOL-651-CESTAT-MUM
CST Vs Valia Consultancy (Dated: January 22, 2015)
ST - Appellant received some payment for rendering services to clients - Period involved in dispute is 2001 to 2004 - First appellate authority recorded that the service of Design and Development of Computer Software rendered by appellant are covered under Information & Technology Services and fall under Section 65(105)(zzze) and came into tax net in 2008 - Services rendered by appellant during period in question will fall under Consulting Engineers Services with exemption from payment of ST liability - Appellant's appeal allowed: CESTAT [Para 3, 4, 5]
2015-TIOL-650-CESTAT-DEL
M/s Twin Brothers Vs CCE & ST (Dated: February 10, 2015)
ST - Assessee is engaged in activity of ECIS of DG sets on behalf of CPWD - Jurisdictional commissioner, who passed the impugned order is having jurisdiction only for the office registered in Delhi and not for other locations - Therefore, demands pertain to those jurisdiction are not sustainable - Demand pertains to Delhi jurisdiction is worked out to Rs.5,62,18,873/- and assessee is entitled for 67% abatement on the amount - Assessee is directed to pay ST of 33% of Rs.5,62,18,873/- as applicable rates: CESTAT
2015-TIOL-646-CESTAT-MAD

Arkema Peroxides India Pvt Ltd Vs CCE (Dated: January 9, 2015)

Service Tax – Stay / dispensation of pre deposit – CENVAT credit – input service credit of "GTA" service tax paid on outward transportation denied in adjudication and by Commissioner (Appeals) on the ground that it had no nexus with manufacture; agitated herein.

Held: Considering the fact that the issue relates to GTA outward transportation service and there are different decisions from both Tribunal and High Courts cited by both sides and also considering the Tribunal's order in the case of Hydro S & S Industries Ltd., appellants have made out prima facie case for waiver of entire amount of service tax, interest and penalty; predeposit of dues arising out of the impugned order is waived. [Para 4]

2015-TIOL-645-CESTAT-MUM-LB

CC, CE & ST Vs M/s Ratio Pharma India Pvt Ltd (Dated: March 17, 2015)

ST - Rule 5 of CCR, 2004 - Refund of CENVAT credit - What is the Relevant date for deciding the limiting period of one year under Clause 6 of Appendix to Notf 5/2006-CE(NT) - Matter referred to LB. Held: It is a settled law that reference to the LB is made only in a situation when there is a contrary view expressed by two different Benches on a given issue - in the absence of any contrary view expressed by any other Division Bench no reference lies to the Larger Bench - Matter to be placed before Regular Bench - Reference returned: CESTAT LB [para 4, 5]

Also see analysis of the Order

2015-TIOL-644-CESTAT-AHM

M/s Zydus Technologies Ltd Vs CST (Dated: February 5, 2015)

ST - Refund claim - Notification 15/2009-ST - appellants are engaged in the manufacture of Pharmaceutical products in Special Economic Zone - The appellants, during the period of setting up of the plant, received various services and paid the service tax - refund denied on the ground that services were received before the commercial production - issue is covered in favour by the appellant's own case - 2013-TIOL-207-CESTAT-AHM which was upheld by Gujarat High Court - denial of refund on this ground cannot be sustained - appellant is also entitled to get the refund for the services wholly consumed within the SEZ in the authorized operation in the light of the decision of Tata Consultancy Services Ltd - 2012-TIOL-1034-CESTAT-MUM and Intas Pharma Ltd - 2013-TIOL-1091-CESTAT-AHM - it is difficult for the Bench to decide the other issues on which refund was denied as both sides are unable to demonstrate and clarify the same - adjudicating authority to decide on the same within 3 months as appeals are of refund claim of SEZ unit: CESTAT [para 5, 6, 7, 9]

2015-TIOL-642-CESTAT-DEL

Leotronics Scales Pvt Ltd Vs CCE (Dated: January 23, 2015)

ST - Maintenance and Repair service - Assessee had executed annual maintenance contract with parties to whom they sold weigh bridges - Maintenance and Repair service was introduced in FA, 1994 with effect from 1.7.2003 - Contracts were signed before 1.7.2003 and bills were raised prior to 1.7.2003 - No delineation of services rendered before 1.7.2003 and after 1.7.2003 has been made - As the issue relates to interpretation of provision of law, imposition of penalty and extended period of limitation are not warranted - Thus, demand alongwith interest and penalties are set

aside on limitation: CESTAT

ST - Revenue alleges that exemption provided in notfn 15/2004-ST was not applicable, as the appellants had availed credit on inputs, capital goods and input services - By following the ratio of *Chandrapur Magnet Wires pvt. ltd.* 2002-TIOL-41-SC-CX, demand of Rs.3,26,378/- set aside along with penalties - Assessee is directed to pay interest on amount of credit availed from date of availment upto the date of reversal of credit: CESTAT

2015-TIOL-641-CESTAT-MUM

CCE Vs Usl Shinrai Automobiles Ltd (Dated: February 5, 2015)

ST - Assessee is a dealer of motor vehicles and was facilitating customers to avail loan for purchase of vehicles from reputed banks/financial institutions and was getting an amount as commission/incentive - Assessee having not contested the issue on merits before adjudicating authority, cannot do so before Tribunal - Impugned order upholding tax liability is correct and needs no interference, consequently, interest liability also arises on assessee - lower authorities are directed to rework out ST liability and interest thereof holding the amounts received by appellant as cum-tax amount - Circular No. 87/05/2006-ST dt. 6/11/2006 has clarified that amounts received as commission from financial institutions/banks would be taxable under BAS but there were certain doubts in mind of field formation and hence, reference was made - Period involved is prior to 06/11/2006 – Invoking Provisions of Section 80 of FA, 1994 penalties imposed on assessee are set aside: CESTAT [Para 6, 7, 8]

2015-TIOL-635-CESTAT-MAD

Karur Vysya Bank Ltd Vs CCE (Dated: January 28, 2015)

ST- Finance Act, 1994 is not the law of Income Tax to tax interest income - consideration relating to services provided shall only be subject matter of taxation by FA, 1994 - Interest being a consideration for the liquidity forgone by the Bank due to lending of the fund, that is not brought within the purview of the Finance Act, 1994 for taxation in absence of any consolidated service charges included in such interest receipt and discernible - Appeal allowed: CESTAT [para 5, 8]

Also see analysis of the Order

2015-TIOL-634-CESTAT-MAD

M/s URC Constructions Pvt Ltd Vs CCE (Dated: November 25, 2014)

Service Tax - Stay / dispensation of pre deposit - Works contract - appellant provided service of construction of educational institutions - demands related to buildings i.e., IIT, IIM, University of Pondicherry etc., dropped while demand against construction of private institutions confirmed, and agitated herein.

Held: Explanation (ii)(b) under Section 65(105)(zzzza) of the Finance Act 1994 refers to commercial / industrial objective - dispute relates as to whether the construction of the various educatio nal institutions would be treated as "commerce or industry" - Tribunal in the case of Chettinadu Constructions granted stay - pre deposit of entire dues waived till disposal of appeal. [Para 4, 5, 6]

2015-TIOL-633-CESTAT-BANG

Venkataswamy Reddy BP Vs CST (Dated: September 26, 2014)
Service Tax - Penalty - Sustainability - Entire service tax with interest deposited within six months from the date the Finance Bill received assent of the President - Payment is in accordance with the law - Revenue argument that during relevant period appellant had collected tax and did not pay to government and therefore the benefit cannot be extended held is without merit - Section 80 (2) does not differentiate between assessees who have collected service tax but not paid vis-à-vis assessees who did not collect the tax - Benefit of section 80(2) is applicable. (Para 4, 5)
2015-TIOL-629-CESTAT-MUM
Deposit Insurance & Credit Guarantee Corporation Vs CCE & ST (Dated: March 11, 2015)
ST - Activity undertaken by Deposit Insurance & Credit Guarantee Corporation (DICGC) is 'General Insurance Business' - Benefit of notfn. 22/2006-ST not available - When the apex indirect tax enforcement authority (CBEC) itself was not clear or entertained doubts about the taxability, it cannot be alleged that the appellant suppressed or mis-represented the facts: CESTAT [para 5.1 to 5.8, 6]
Also see analysis of the Order
2015-TIOL-628-CESTAT-MUM
Tata Teleservices Ltd Vs CST (Dated: March 16, 2015)
ST - Appellants providing Telecommunication Service - CENVAT not admissible on towers and pre-fabricated buildings - As returns were filed periodically and audit was also conducted by the department, demands hit by limitation - Demand for normal period upheld along with interest - Penalties set aside as appellants entertained a bonafide belief: CESTAT [para 21, 23, 25, 27, 28, 29, 31, 32, 33, 34, 35]
Also see analysis of the Order
2015-TIOL-627-CESTAT-DEL
Rose IT Solutions Pvt Ltd Vs CST (Dated: March 13, 2015)
ST - Refund - Appellants were not providing "output service" as prior to 16.5.2008, service exported by them was not a "taxable service" and hence what was exported did not qualify to be "output service" and therefore their case is not covered under provisions of Notfn 5/2006-CE(NT) - Input or input services as per Rule 2 (k) and 2 (l) ibid are those used for providing "output service" - Thus it is obvious that there can not be any "input" or "input service" for taking Cenvat credit when there is no output service provided - Question of admissibility of any Cenvat credit itself simply does not arise - Cenvat credit is governed only and only by CCR and therefore observation of CESTAT that this benefit is apparently not limited by provisions of CCR is devoid of any basis at all - In any case, as CESTAT itself observed that this plea was not taken by appellant and having regard to the fact that CESTAT also gave this finding rather tentatively, as is evident form word "apparently" appearing in that sentence, it can not be inferred that CESTAT laid down any ratio to be followed as a precedent - Impugned order does not suffer from any legal infirmity, therefore, same is sustained and appeal is dismissed: CESTAT [Para 2, 3]
2015-TIOL-626-CESTAT-MUM

M/s Reliance Industries Ltd Vs CCE & ST (Dated: December 31, 2014)

ST - Service Tax paid on GTA service by debiting CENVAT credit - issue no longer res integra and the same stands settled in view of the Larger Bench ruling in the case of Panchmahal Steel 2014-TIOL-510-CESTAT-AHM-LB , 2015-TIOL-25-HC-AHM-ST - appellants were well within their right to utilize credit for the purpose of payment of ST - Impugned order set aside and appeal allowed: CESTAT [Para 3, 3.1, 5]

2015-TIOL-622-CESTAT-DEL

Siemens Products Lifecycle Management Vs CST (Dated: February 16, 2015)

ST -Demand of Rs.75.05 lakhs pertaining to outstanding balance regarding Debtors/ Creditors for services provided/received -Adjudicating authority has not indicated anywhere as to what are the services on which the service tax has not been paid in respect of the amounts shown as debtors and creditors -Prima facie thus it can hardly be anybody's case that all the outstanding amounts regarding Debtors/ Creditors would be liable to service tax when it is not even indicated as to what are the taxable services they relate to -There is no legal basis for presumption to treat such outstanding balances to be relating to taxable services -Further the amendment to Section 67 ibid relating to associated enterprises was effective prospectively from 10.5.2008 -In these circumstances appellant have made out a case for waiver of the pre-deposit of this component of the impugned demand: CESTAT [para 3]

ST -Franchisee service -having regard to fact that the appellants started paying service tax on this transaction under reverse charge mechanism under Information Technology Software Service w.e.f . 16.5.2008, we are of the view that the appellants have been able to make out a case for waiver of pre-deposit of this component of demand: CESTAT [para 4]

ST -Management, Maintenance or repair services -Appellants were providing upgradation / enhancements of the softwares sold to its customers; receiving upgradation / enhancements of the softwares purchased from Siemens, USA and its Associated Enterprises -Appellant started paying service tax under 'Management, Maintenance or Repair Service' w.e.f . 01.10.2005 -software on medium being 'goods', as held in the case of Tata Consultancy Services V. State of Appellant, 2004-TIOL-87-SC-CT-LB appellants are liable to pay service tax on the payments received/ made but upgradation /enhancement of the softwares is held to be covered under 'Information Technology Software Service' and not under 'Management, Maintenance or Repair Service' -request for waiver of pre-deposit of this component of demand is not unacceptable: CESTAT [para 5]

ST -Commercial coaching or training service -appellants are engaged in selling the software and as part of the same they provide advice, consultancy and guidance to its customers/ distributors for operation of the software -They are also receiving the said assistance from their overseas affiliated companies -appellants are not recovering/paying any amount separately for such assistance provided/received and were apportioning a portion of the sale proceeds under this head merely for accounting purposes & VAT is being paid on entire value of the software -Prime facie, there is force in the contention of the appellants that no ST is payable specially when viewed in the context that the VAT has been paid on the entire value of the soft ware as seen from the purchase orders -Pre-deposit waived and stay granted: CESTAT [para 6]

ST -Banking and other financial services -appellants and their group companies utilized the common global infrastructure like base server, SAP licensing and electronic infrastructure from its associated companies situated in USA or Hong Kong - It is seen that the common cost incurred in this regard is allocated to all the Group Companies world wide and are reimbursed by the respective companies -appellants contend that utilization of infrastructure does not amount to sharing of infrastructure

and, therefore, they would not get hit by sub-clause (Vii) to Section 65(12) of Finance Act 1994 -Point needs a detailed examination which can only be taken up at the time of final hearing but it can hardly be denied that the appellants have an arguable case that this is not covered under Banking & Financial Services -it is only fair that they are not required to make a pre-deposit pending appeal: CESTAT [para 7] ST -Pre-deposit -Overall the appellants have made out a case for waiver of pre-deposit -Pre-deposit waived and stay granted: CESTAT [para 8]
2015-TIOL-619-CESTAT-MUM
C B Mor Cellular Vs CCE (Dated: January 16, 2015)
ST - Penalty - Appellant is engaged in sale and purchase of BSNL SIM cards and recharge vouchers under franchise agreement with BSNL - Commission received from BSNL at fixed rates on the sale of SIM cards - Service in question itself is held as non-taxable - Therefore, bona fide of appellant stands proved - By invoking Section 80, appellant is not liable for penalties under Sections 76, 77 and 78 of Finance Act, 1994 - Appeal allowed: CESTAT [Para 2, 6, 7]
2015-TIOL-618-CESTAT-BANG
M/s Bhavya Constructions Pvt Ltd Vs CCE & ST (Dated: November 18, 2014)
Service Tax - Condonation of delay - Non-receipt of adjudication order - Adjudication order sent by Registered Post per se is not sufficient proof of delivery - Proof of delivery of said order on the assessee is necessary - Appellant became aware of passing of Order in question in connection with related matter - Thereafter pursued with the department in obtaining the Order and filed appeal - Appeal filed in the circumstances has to be treated as one filed within the prescribed period of limitation - Matter remanded. (Para 4)
2015-TIOL-613-CESTAT-DEL
M/s Coca Cola (I) Pvt Ltd Vs CST (Dated: March 18, 2015)
ST - Calling the finding as "analysis" is an embarrassment to that word itself - a cavalier and careless attitude on full display - Such orders adversely and severely impinge upon the public's trust in the public authorities and for that reason a public authority displaying such egregiously irresponsible conduct and that too while performing quasi-judicial functions deserves to the put to costs – Cost of Rs.25K to be deposited by the CST, Delhi to the PM Relief Fund – Demand set aside and appeal allowed: CESTAT
Also see analysis of the Order
2015-TIOL-612-CESTAT-MUM
CCE Vs Paramhari Engineers (Dated: February 6, 2015)
ST - BAS - Assessee engaged in job of conversion of black bars into bright bars for which they received processing charges - Revenue alleged that services rendered by assessee falls under category of "BAS" - Appellate authority has clearly recorded "besides, appellants are also converting black bars into bright bars by availing Cenvat Credit on inputs and clearing finished goods on payment of CE duty - When said process is accepted as a process of manufacture, it is not correct or logical to conclude

that same process when carried on job work basis does not amount to manufacturing - findings recorded by the first appellate authority are correct and the Revenue's appeal has no merits - Appeal rejected: CESTAT [Para 6, 7]

2015-TIOL-611-CESTAT-MAD

M/s Tajmahal Tobacco Company Pvt Ltd Vs CCE (Dated: January 13, 2015)

Service Tax - GTA - Tax demand adjudicated on the appellant, a manufacturer of chewing tobacco, on the outward freight under service charge mechanism, along with interest and penalty; upheld by Commissioner (Appeals) and agitated herein.

Held: Appellant was investigated by DGCEI for the same material period for clandestine clearances and moved settlement commission - SCN for the instant case issued on the premise that the appellants not paid the service tax on the alleged quantity of removal of the finished goods already covered by the settlement commission's order - appellant cleared the goods at their factory gate to M/s. Ace Marketing and as the freight was not incurred by them, no question of transport charges arise - For subsequent period, appellants had discharged GTA on the declared quantity which was cleared under the documents; therefore the question of paying separate freight and consequently GTA outward does not arise - ST demand devoid of merits - Furthermore, the offence case of clandestine removal of excess quantity registered by DGCEI reached finality by the Settlement Commission's Final Order - Well settled law that once any show cause notice issued for any clandestine removal and demanding excise duty, the notice and allegations should comprehensively cover all allegations and contraventions; no show cause notice can be issued for the same goods, for the same period on different ground - impugned order set aside on merits [Para 6, 7, 8].

2015-TIOL-610-CESTAT-MUM

CCE Vs M/s Jain Kalar Samaj (Dated: December 31, 2014)

ST - Appellant, a Mandap Keeper temporarily leased out their premises i.e. Hall and Lawn for the conduct of ceremonial function like marriage - They also received amounts reflected as donation of decoration tender during period 2004-05 to 2006-07 - purpose of donation is to give a certain contractor a monopoly right in their premises to undertake the work of catering and decoration for clients to whom the the appellant rented out their premises for holding functions - Charge of revenue is that appellant is acting as a Commission Agent - Commissioner (A) has not established that appellant while acting as a Commission Agent was actually acting on behalf of decorator for providing or receiving service - Appellant himself is providing services of Mandap Keeper independently to his clients and the decorator provides service of decoration to some clients, so two services are independent of each other - Therefore, activity of appellant is not that of Commission Agent falling under definition of BAS - Appeal dismissed: CESTAT [Para 2, 6.2, 7]

2015-TIOL-609-CESTAT-MUM

M/s S S Patil & Sons Vs CCE (Dated: December 16, 2014)

ST - Appellant is engaged in providing various services like Construction of Roads, Site preparation, Earth Moving and Demolition Service, Cargo Handling Service, Rent a Cab Operator Service and Supply of Tangible Goods Services - Revenue alleged that for the period 16.06.2005 to March, 2010, appellant had not paid or short paid ST for services rendered like 'Site Formation and Clearance' & 'Cargo Handling Service', had not paid the tax for services 'Rent a Cab Operator Service' and 'Cargo Handling

Service' - According to appellant, under head Site Formation, tax have been calculated as per Chartered Accountant certificate - Materials sold being murum, pipes, rubble & metal, etc. were deducted from gross receipts and ST was estimated at Rs. 7.60 lacs and was paid under head 'Cargo Handling Services' - Appellant is a sub-contractor and main contractor had paid ST of Rs. 44,20,738/- for the period 2008-2009 and 2009-2010 - As regards demand under SOTG service, it is submitted that the same is actually GTA service wherein payment of each trip is less than Rs. 750/- and accordingly not taxable - regarding supply of tangible goods services appellant states that, from perusal of contract, quarry for extraction of murum shall not be made available by CIDCO - As regards rent-a-cab service, it is stated that demand relates to period prior to 31.03.2008, when 'Bus' was not included in definition for 'Motor cab' under M.V. Act.

Held: prima facie case in favour of appellant, as natural component in 'site formation' or 'works contract' cannot be taxed, further ST being destination based, there is no scope of double collection from main contractor & sub-contractor - Appellant is directed to further deposit Rs. 10,00,000/- (ten lacs only): CESTAT [Para 2, 4, 7]

2015-TIOL-607-CESTAT-MUM

Nukay Vs CCE (Dated: March 4, 2015)

ST - Once the amount of tax is paid u/s 73(3) of the FA, 1994 and no SCN is issued u/s 73(1) of the FA, 1994, the issue is considered as closed and no refund arises - Appeals rejected: CESTAT [para 8, 9]

Also see analysis of the Order

2015-TIOL-602-CESTAT-MUM

Reliance Infratel Ltd Vs CST (Dated: March 4, 2015)

ST - S. 67 of FA, 1994 - Amount of Rs 1493 Cr given by M/s RCOM to appellant is a loan by way of Inter Corporate deposits – amount repaid by appellant in same FY - Only payment made towards services provided can be brought under the ambit of consideration received and not any other amount – Appeal allowed: CESTAT [para 11, 13.1, 13.2]

Also see analysis of the Order

2015-TIOL-596-CESTAT-BANG

P Prasad Vs CCE, C & ST (Dated: November 25, 2014)

Service Tax - Valuation - Photography service - Denial of benefit of abatement under Notification No. 12/2003 - Abatement claimed on material consumed during the course of taxable service that already suffered VAT- Following precedents, held appellant made out a prima-facie case for complete waiver - Pre-deposit waived.

2015-TIOL-595-CESTAT-MUM

Shreehari Associates (P) Ltd Vs CCE (Dated: March 3, 2015)
ST - Appellant vide a letter 29.09.2008 addressed to the CCE had sought specific direction as to whether the activities undertaken by them would attract ST liability and whether they are eligible for any exemption - SCN dt. 18.10.2013 demanding ST on the said activities is blatantly time-barred - Appeal allowed: CESTAT [para 8, 9, 10, 11]
Also see analysis of the Order
2015-TIOL-594-CESTAT-BANG
M/s United Pizza Restaurant Pvt Ltd Vs CST (Dated: November 27, 2014)
Service Tax –Reviewing reduction or dropping of penalty by revisional authority – Powers – Scope – Order-in-Original categorically concluded that there was no suppression and intention to evade payment of tax and penalty proceedings dropped – Appellate authority imposed penalty under sections 76 and 78 in appeal – Order of Commissioner (A) restored penalty under section 78 on ground that no discretion exist to reduce mandatory penalty and appellant had not paid tax voluntarily –This is not sufficient for restoring penalty under section 78 – Since appellant had discharged entire tax liability, impugned order imposing penalty is set aside – However, demand for service tax and interest is confirmed as not contested. (Para 3)
2015-TIOL-593-CESTAT-BANG
Mann And Hummel Filter Pvt Ltd Vs CST (Dated: November 18, 2014)
Service Tax - Deputation of manpower by foreign company to its Indian entity - Amount paid by appellant to employees and towards their benefit to their principal abroad - Cannot be considered as payments made towards supply of manpower by the overseas company - Precedents in favor of appellant - Pre-deposit waived. (Para 3)
2015-TIOL-583-CESTAT-BANG
M/s SRK Transport Vs CCE & ST (Dated: November 19, 2014)
Service Tax - Waiver of penalty - Financial difficulties - Closure of business due to fatal accident occurred in the premises and consequential payment of huge amounts as compensation to families of deceased workers - Appellant admitted tax liability and failure to submit returns - In similar circumstances, Tribunal by its final order waived penalty - Following precedent, demand and interest upheld while penalty was set aside. (Para 3)
2015-TIOL-581-CESTAT-AHM
M/s Metro Motors Vs CCE (Dated: January 2, 2015)
ST-Refund-Amount paid in excess during investigation-Merely because the adjudicating authority had appropriated the amount paid towards tax demand, refund cannot be denied when the Commr (A) reduced the tax liability by holding that the excess amount is not a deposit & in view of s.11B of CEA , 1944 the claim is hit by bar of limitation: CESTAT [para 6, 7]
Also see analysis of the Order

2015-TIOL-580-CESTAT-MUM

M/s U B Engineering Ltd Vs CCE (Dated: January 30, 2015)

ST – s.78 of FA, 1994 - Penalty - Appellant contends that short levy or non-levy of ST is on account of liquidity crisis which got worse because of various Court petitions filed by their lenders and creditors - Reason given by appellant is justifiable for setting aside the penalty imposed on them – By invoking provisions of Section 80 of Finance Act, 1994, penalty imposed u/s 78 is set aside – appeal allowed: CESTAT [Para 4]

2015-TIOL-579-CESTAT-BANG

M/s AXA Technologies Shared Services Pvt Ltd VsCCE & ST (Dated: November 19, 2014)

Service Tax - Business Support Service or Telecom Service - Overseas company providing dedicated leased lines - Classification controversy involving interpretation of law - Appellant for the material period April 2009 to March 2010 discharged tax liability in respect of Telecom service - While the dispute is about 'business support service', both in the order and in the documents 'telecom service' has been considered as 'business support service' - Thus the payment can be related to the adjudication order and can be adjusted toward dues - Amount already paid by appellant for the normal period is sufficient - Appellant directed to deposit one lakh toward wrongly availed Cenvat credit - Pre-deposit waived. (Para 4, 5)

2015-TIOL-578-CESTAT-BANG

M/s IJM (India) Infrastructure Ltd Vs CCE & ST (Dated: November 19, 2014)

Payments made to sub-contractor omitted initially by appellant on wrong advise - Subsequently filed revised returns showing reversal of entire Cenvat credit taken as well as including payment made to sub-contractor for the purpose of service tax - Amount of service tax paid by appellant after abatement towards liability fulfilled the requirement for payment of service tax. (Para 3)

Service Tax - Abatement for TCS - Construction activity took place in SEZ and appellant availed exemption only after introduction of the same and discharged tax up to December 2006 - Demand raised on the ground that contract cannot be split for the purpose of exemption - Tribunal not convinced with the correctness of the view. (Para 3)

Service Tax - GTA service - Payments made towards denied as not supported by consignment notes alleged -No reason was given in the show-cause notice as to why this demand has been made - As the appellant was not put on notice properly, prima facie, appellant has made out a case - Pre-deposit waived - Amount paid by appellant is sufficient to hear the appeal.(Para 3)

2015-TIOL-577-CESTAT-MUM

CCE Vs Shriram S A O T V S Ltd (Dated: March 13, 2015)

ST - Work undertaken is harvesting of sugar cane and transporting the same to the sugar factory for which labour is employed - Service brought under the tax net under 'Manpower Recruitment or Supply Agency Service' envisages supply of labour per se - issue no more res integra - ST demand not sustainable - Revenue appeal rejected:

CESTAT [para 4, 5]

Also see analysis of the Order

2015-TIOL-570-CESTAT-KOL

M/s Graphite India Ltd Vs CCE & ST (Dated: December 5, 2014)

ST - Appreciation of evidences on claims advanced by assessee - It is fairly accepted by assessee that all the evidences now produced before Tribunal, were not placed before Adjudicating Authority as they were not directed to do so - It is the cardinal principle of settled law that an assesse who claims the benefit of an exemption from payment of duty/tax is required to establish through evidences their entitlement/eligibility to exemption - Assessee is directed to deposit the offered amount of Rs.35.00 lakh (Rupees thirty five lakh): CESTAT [Para 2, 5]

2015-TIOL-563-CESTAT-MAD

CCE & ST Vs Axles India Ltd (Dated: January 19, 2015)

Service Tax - CENVAT credit - Respondent, a 100% EOU, manufactured and exported Rear Axle Housings [MV Parts] which are exported to USA; engaged the services of overseas service provider for qual ity control and cleaning operations; paid service tax under Business Auxiliary Service under reverse charge and availed credit of the same - Revenue viewed the same inadmissible on the ground that the said activities have no nexus to the manufacture of final products and the service activity was rendered outside the place of removal of excisable goods - demand for recovery of irregula r credit with interest adjudicated; set aside by Commissioner (Appeals) and agitated by Revenue herein.

Held : As seen from the SCN, and the adjudication order the only ground on which the service tax credit was denied is that services were rendered outside the place of removal of goods from the factory premises which is in the nature of post-removal activities - respondent has to manufacture and supply the Motor Vehicle parts as per the ISO standard - activities carried out by M/s. Product Action International, USA at the DANA Commercial Vehicle, USA warehouse related to meeting the specification and quality control of the axle housings and qualify to be considered under quality control and in relation to business [Para 7, 8]

Rule 2(l) of CCR 2004 provides inclusive definition with illustration of various activities - The department interpreted the definition by dividing into four categories of what is directly relating to manufacture of goods and the activities relating to clearance of goods etc. - inclusive part of definition has to be read in totality not in isolation - Tribunal in the case of Nilkamal Crates & Bins dismissed the Revenue's appeal by relying on the Bombay High Court in the case of Coca Cola India - services availed by the respondents from the overseas service provider are rightly covered in the inclusive definition of "input services", the respondents are eligible for the impugned credit; impugned order upheld. [Para 10, 11]

2015-TIOL-553-CESTAT-MUM

IDEA Cellular Ltd Vs CCE (Dated: January 27, 2015)

ST - CENVAT credit taken of ST paid on rent-a-cab service and mediclaim service of employees is allowed in law - Club Membership fee is not an Input service - For ST paid on mediclaim of dependent of employee, the issue is arguable as the nexus needs to be established - Appellant is directed to deposit an amount of Rs 65 lakhs in

the matter of the aforementioned services: CESTAT [Para 4, 5]
2015-TIOL-552-CESTAT-KOL
M/s PCM Cement Concrete Pvt Ltd Vs CCE & ST (Dated: December 2, 2014)
ST - Notfn 25/2012-ST - Benefit of said Notfn denied on observing that the services rendered by assessee are not in the nature of 'original works' - Services rendered by assessee relates to laying down the new railway lines and altering existing railway lines from meter-gage to broad-gage, prima facie , appear to be covered under scope of 'original works' - Assessee referring to Board's Circular issued from time to time claimed that remuneration paid to the whole time directors is not taxable - Issue is debatable - Stay granted: CESTAT [Para 4]
2015-TIOL-549-CESTAT-MUM
Venkatesh Cylinders Pvt Ltd Vs CCE (Dated: March 3, 2015)
ST - Commissioner(A) has been frugal in words while recording the reasoning for upholding order passed by original authority - he is required to give detailed reasoning - also he has mis-directed and classified the services under 'Consultancy Service' whereas the adjudication order indicates the services rendered as 'Management, maintenance or repair service' - Matter remanded: CESTAT [para 3]
Also see analysis of the Order
2015-TIOL-548-CESTAT-MAD
Thanjai Study Centre Vs CCE & ST (Dated: November 26, 2014)
Service Tax - Stay / dispensation of pre deposit - Demand - applicants are providing coaching and training service to University students - demands adjudicated and agitated herein.
2015-TIOL-540-CESTAT-MUM
Rajlaxmi Chits Pvt Ltd Vs CCE (Dated: February 4, 2015)
ST - Appellant conducting activity under provisions of Chit Fund Act, 1982 - Revenue views that same falls under provisions of Section 65(12) under category of 'Banking and Financial Services' as an entity doing the cash management – Held: Issue no more res integra - As per A.P. Federation of Chit Funds - 2014-TIOL-97-SC-ST , chit fund are not covered under the purview of section 65 (105) (zm) of Finance Act, 1994 – Order set aside and appeal allowed: CESTAT [Para 4, 5]
2015-TIOL-538-CESTAT-MUM
Kirloskar Pneumatic Co Ltd Vs CCE (Dated: January 13, 2015)
ST - Employees of appellant had incurred travel expenses while providing output service which were recovered from service-recipient but appellant failed to pay ST on said expenses - Sample invoice indicates separately the inspection and service charges as also the to-and-fro actual charges for travelling - Appellant discharged appropriate ST liability on service charges billed by them for rendering services to client - The amount collected by appellant seems to be travelling expenses incurred by

appellant's engineers to visit the site of client - As per Reliance Industries Ltd, - 2008-TIOL-1106-CESTAT-AHM , reimbursable expenses are not includable for ST liability: CESTAT [Para 6, 7]
2015-TIOL-535-CESTAT-MUM
Raje Vijaysingh Dafale Ssk Ltd Vs CCE (Dated: February 11, 2015)
ST – Bank being a secured creditor had taken over the factory of the borrower appellant u/s 13(2) of the SARFAESI Act, 2002 to recover its dues and leased out the factory of the borrower to the lessee – lessee undertook to continue the services of the persons who were on the muster rolls of the borrower as permanent employees and paid salaries/wages to the employees directly - it cannot be said that the appellant has provided any service by way of manpower supply to the lessee – appellant has not received any consideration – question of demanding ST does not arise – Appeal allowed: CESTAT [para 5]
Also see analysis of the Order
2015-TIOL-534-CESTAT-MUM
Wns Global Services Pvt Ltd Vs CCE (Dated: January 19, 2015)
ST - COD - From the documents which were produced, it is found that there is nothing on record which indicates that impugned orders have been served on appellant earlier - Appeals filed by appellant based upon duplicate/Photostat copy of impugned orders received by them seems to be in time and there is no need to file applications for Condonation of Delay in preferring appeals - Registry is directed to take on record the appeals and list of hearing in its due course: CESTAT [Para 3]
2015-TIOL-533-CESTAT-BANG
Veriton Software Solution Pvt Ltd Vs CCE, C & ST (Dated: June 20, 2014)
Service Tax - Entire service tax liability attributable to the taxable services provided by the appellant has been paid along with interest before issuance of show-cause notice - No iota of evidence has been brought on record to prove that the appellant had the intention to evade payment of service tax or defraud government - Thus adjudication proceedings initiated for imposition of penalty are not in conformity with the provisions of Section 73(3) of the Finance Act, 1994 - Appellant made out a good case for waiving the penalty amount - Impugned order set aside - Stay petition and appeal accordingly disposed of. (Para 5, 6)
2015-TIOL-528-CESTAT-DEL
Atotech India Ltd Vs CST (Dated: December 29, 2014)
Service Tax - Delayed filing of appeal - On receipt of OIO, appeal was filed inadvertently before the Assistant Commissioner; subsequently resubmitted before Commissioner (Appeals) who dismissed it as having been filed beyond condonable limit provided in statute; now agitated herein. Held: Simple issue for consideration is whether on the basis of appeals claimed to be filed within time in another office due to oversight, could be a cause for getting their appeal hit by limitation - In various pronouncements, Tribunal has taken the view that merely because an appeal has been filed in a wrong forum due to oversight, the

substantive right of appeal could not be affected and this aspect should be considered for calculating the limitation; liberally viewed such delays keeping in view the interest of natural justice and has regularized such appeals - if the document produced are found correct on verification and dates are same as indicated by him, then it is a case when appeal's document filed in the office of Assistant Commissioner situated in the same building due to oversight are to be considered as have been filed in the office of Commissioner (appeal) and appeal will be dealt accordingly - matter is remanded back to the Commissioner (appeal) for de novo consideration within 3 months after providing fair opportunity of hearing and production of documents to both the sides. [Para 5, 6, 7, 8]

2015-TIOL-527-CESTAT-DEL-LB

M/s Larsen And Toubro Ltd Vs CST (Dated: March 19, 2015)

Service Tax - Whether Works Contracts are liable to Service Tax prior to 01.06.2007 under Commercial or Industrial Construction Service, Construction of Complex Service, or Erection, Commissioning or Installation Service - Yes Rules CESTAT Larger Bench by majority of 3:2

Also see analysis of the Order

2015-TIOL-525-CESTAT-MAD

M/s Sify Technologies Ltd Vs CCE & ST (Dated: December 23, 2014)

Service Tax - Valuation - Question here is whether or not the Explanation (c) appearing under sub-section (4) of Section 67 of the Finance Act, 1994 brings the nature of debit or credit of any amount relating to transaction with associated enterprises to the fold of taxation retrospectively i.e., prior to 10.05.2008.

Held: Well settled that amendment to law can be made retrospectively even bringing an amendment to an Explanation appearing in the statute - However, the nature and character of the amendment decides whether such amendment is declaratory or clarificatory and accordingly whether retrospective or not - A declaratory law is always prospective while clarificatory law is retrospective in nature - also well settled law that statute making amendment to the effect of declaration of liability is not normally retrospective unless otherwise such intention expressed by legislature - addition to the Explanation (C) to sub-section (4) of Section 67 with the proposition "and" throws light on the nature and character of both the clauses thereof; categorically bringing out that recording of transactions in two different pattern was enacted from two different dates - Therefore, the said addition is prospective in nature, applicable from the day that was enacted in the statute book - Accordingly, there shall be no liability to levy of interest on the gross value of taxable service relating to the period prior to that date. [Para 3, 4]

2015-TIOL-523-CESTAT-MUM

Shri Faiz Fazal Vs CCE (Dated: December 23, 2014)

ST - Appellant, a Cricket player engaged by M/s. Jaipur Indian Premier League Cricket Pvt. Ltd. (JIPL for short) Franchisee owner of "Rajasthan Royals" of IPL matches - He was paid retainer fee for the purpose of playing for "Rajasthan Royals" and making himself available as and when required - Revenue views that appellant is providing Business Support Services to JIPL - Issue is debatable and matter requires consideration - As tax was already paid, waiver of balance amount of interest and penalties granted: CESTAT [Para 2, 3, 5]

2015-TIOL-520-CESTAT-MUM

Maharashtra Indl Development Corpn Vs CCE (Dated: February 4, 2015)

ST - 'Maintenance and Repair Services' for the roads, street lights, drainage etc. - in appellant's own case reported as 2014-TIOL-2022-CESTAT-MUM it is held that MIDC is a statutory body constituted by the Govt. of Maharashtra under MID Act and is discharging their statutory function and, therefore, it cannot be said that they are providing a taxable service - AR not able to categorically indicate whether earlier Tribunal order has been appealed against - decision dt. 4.9.2014 squarely covers the case - Impugned order set aside and appeal allowed: CESTAT [Para 3, 5]

2015-TIOL-517-CESTAT-MAD

M/s ABT Ltd Vs CCE (Dated: December 17, 2014)

Service Tax - "Tours Operator service" - Exemption - precise question in this appeal is whether the ticket issued by the appellant showing "Conducted Tour" shall ipso facto disentitle appellant to the exemption granted by Notification No. 20/2009-ST dated 7.7.2009 read with the Corrigendum issued by MF (DR) F. No. 334/8/2009/TRU dated 31.8.2009 - refund claimed on the basis of the exemption rejected and agitated herein.

Held: Except interpreting the provisions of the Motor Vehicles Act, there is no material on record to show that appellant possessing the tourist vehicle permit had conducted tours issuing the ticket aforesaid - This does not disentitle benefit of the exemption granted by the notification and the statute - conducted tour shall not get exemption under the notification but a point to point operation of the vehicle, even by the tourist vehicle is entitled to the exemption as envisaged by aforesaid notification - In absence of any contrary evidence on record as to conduct of tour by the appellant in terms of the tickets aforesaid, the appeal succeeds - However, sub-section (3) of section 75 of Finance Act, 2011 read with the Explanation thereunder requires the eligible refund to meet the test of unjust enrichment - matter has to go back to the learned adjudicating authority on this limited point to examine whether the appellant has crossed the bar of unjust enrichment. [Para 7, 8]

2015-TIOL-516-CESTAT-MUM

M/s Reliance Infratel Ltd Vs CST (Dated: November 26, 2014)

ST - Appellant received inputs such as structural steel - Merely because the tower parts etc. are assembled together, it would be totally unreasonable to suggest that CENVAT Credit is not admissible despite Rule 2(k)(ii) of CCR, 2004 - Without use of these duty paid towers/parts as inputs, the BSS in the form of Passive Telecom Infrastructure could not have been provided - Appeals allowed: CESTAT [para 7.3, 8, 8.1, 8.2, 8.3, 11]

Also see analysis of the Order

2015-TIOL-515-CESTAT-MUM

M/s Inox Air Products Ltd Vs CCE (Dated: February 4, 2015)

ST - Maintenance Service - Appellant is operating a plant which produces oxygen as

per an agreement entered with service recipient - It is alleged that appellant has not included the value of free electricity consumed for generation of oxygen while discharging ST liability - By following the order in appellant's own case in 2014-TIOL-803-CESTAT-MUM , impugned order set aside - earlier order accepted by department - appeal allowed: CESTAT [Para 5, 6, 8]
2015-TIOL-514-CESTAT-MAD
Pepsico India Holdings Pvt Ltd Vs CCE (Dated: January 28, 2015)
Service Tax - Banking and Financial Services (BFS) - crates and bottlers which carry the soft drinks are subjected to charge of rent by the appellant without being a financial company - Revenue viewed the rent taxable under Sections 65(11) and 65(105)(zm) of the Finance Act 1994, adjudicated demands, agitated herein.
2015-TIOL-508-CESTAT-BANG
Karavali Credit Co Operative Society Ltd Vs CCE & ST (Dated: September 11, 2014))
Service Tax – Nature of assessee – Registered Credit Cooperative Society providing services to its members following precedent in Ex-Services Security , held is not a commercial concern – Question pertaining to comparison between Co-operative society vis-à-vis a club/association, to be decided at final hearing – Appellants directed to comply with the demand of service tax – Pre-deposit of balance due is waived. (Para 4, 5, 6)
2015-TIOL-507-CESTAT-MUM
Raymond Woolen Outerwear Ltd Vs CCE & C (Dated: February 24, 2015)
ST - Refund of Service Tax - Amendment by notification 33/2008-ST to notification 41/2007-ST enhancing the refund quantum to ten per cent of the FOB value of export goods is not retrospective - Appeal dismissed: CESTAT [para 5, 6, 8]
Also see analysis of the Order
2015-TIOL-506-CESTAT-MUM
Sandvik Asia Ltd Vs CCE (Dated: January 22, 2015)
ST – Revenue demanded ST on the ground that appellant made payments to commission agent who was residing abroad during period of dispute i.e. 01.01.2005 to 31.3.2008 – As per Indian National Ship Owners Association 2008-TIOL-633-HC-MUM-ST , no ST is payable by recipient of service, if said services are rendered prior to 18.04.2006, when provisions to Section 66A of Finance Act, 1994 were introduced in statute - For the period 01.01.2005 to 17.04.2006, ST liability, interest and penalties imposed are unsustainable and are set aside - Before issuance of SCN, ST has been paid by appellant for the period 18.04.2006 to 31.3.2008 – By invoking provisions of Section 80, penalty is set aside: CESTAT [Para 4, 5, 6, 7]
2015-TIOL-505-CESTAT-MUM
CCE Vs Reliance Money Express Ltd (Dated: January 22, 2015)

ST - Refund - Assessee provided money transfer services - Revenue views that decision of Tribunal in Paul Merchants Ltd. 2012-TIOL-1877-CESTAT-DEL is challenged and hence, reliance placed by first appellate authority on said judgment is incorrect. Held - Judgment of Tribunal in said case has been followed in various other decisions and decided in favour of assessee - Impugned order is correct, legal and does not suffer from any infirmity, so upheld: CESTAT [Para 4, 6, 7]

2015-TIOL-499-CESTAT-BANG

Markapur Municipality Vs CC, CE & ST (Dated: November 25, 2014)

Service Tax - Belated appeal by Municipality - Condonation of delay - There is no estoppel against statute - Preamble does not override statutory prescription - Appeal filed beyond the period prescribed by the Statute rightly rejected - Both stay application and appeal are rejected.

2015-TIOL-497-CESTAT-BANG

Vikram Hospital Pvt Ltd Vs CCE, C & ST (Dated: December 24, 2014)

Service Tax - Rejection of stay application - Sustainability - No provision in the statute prescribing time limit for filing stay application - Even if a stay application has not been filed, before rejecting the appeal, appellant must be given an opportunity to file such an application and consider the same rather than rejecting the appeal straight away - Appellant filed application for waiver of pre-deposit before the appeal, was considered and personal hearing granted - Commissioner's decision to reject appeal as not maintainable, unsustainable - Impugned order is set aside and matter remanded to the Commissioner to consider application for waiver of pre-deposit. (Para 3)

2015-TIOL-496-CESTAT-MUM

Balaji Society Vs CCE (Dated: February 20, 2015)

ST - What has been recorded in the order is the contention submitted by the DR during the arguments and is not a finding or conclusion drawn by the Tribunal - so long as the same is not disputed by DR, the same cannot be deleted - ROM filed by applicant on the ground that the contents of the paragraph would damage their reputation is dismissed: CESTAT [para 3.1, 3.2, 4]

Also see analysis of the Order

2015-TIOL-494-CESTAT-MAD

The Council for Leather Exports Vs CCE (Dated: October 21, 2014)

Service Tax - Stay / dispensation of pre deposit - 'Club or Association' service - applicant is an association for leather exports, rendering services such as certification, membership and various export activities to leather manufacturers - Revenue viewed the same taxable under 'Club/Assn' services and adjudicated demands, agitated herein on merits and limitation.

Held: Demand was raised under various heads, such as membership subscription, certification fees, trade contribution for code activities with grant and without grant and other receipts - FICCI, being a body constituted by or under any other law, held by Tribunal as falling outside the purview of the definition of "Club or Association" - MoA of the applicant firm in the instant case similar to the memorandum of Association in the case of M/s. FICCI; Applicant's Association is for promotion of export of leather industry including the members thereof - prima facie the Tribunal ruling in the case of M/s. FICCI applicable and demand is barred by limitation - applicant has made out a strong prima facie case for waiver of entire amount of tax along with interest and penalty. [Para 4, 6, 7]

2015-TIOL-488-CESTAT-MAD

M/s Sar Ispat Pvt Ltd Vs CCE (Dated: January 16, 2015)

Central Excise – CENVAT credit - denial of input services credit availed on security services for the factory and sales commission paid against Business Auxiliary Service; is under dispute herein.

Held: Nexus between the expenditure on security services used for the factory and manufacture facility there at being not possible to be isolated, Rule 2(l) of the Cenvat Credit Rules, 2004 allows Cenvat credit on service tax paid to avail such service and sales promotion expenses being attributable to the service availed, input credit of service tax paid cannot be denied on the commission paid - service tax paid on the security service availed for protection of factory is admissible for existence of inextricable link between the services and the manufacturing facility for which that was used. [Para 2]

2015-TIOL-487-CESTAT-MAD

Thanu Prabha Constructions Vs CCE & ST (Dated: November 27, 2014)

Service Tax - Stay / dispensation of pre deposit - "Manpower Recruitment and Supply Service" - Application engaged in fabrication work for main contractors, billed as labour charges - Revenue viewed the same taxable; demands confirmed under MRA and agitated herein.

Held: Applicant was engaged for supply of labourers; hence prima facie demand under man power supply is justifiable - Merit in Revenue's contention that there is no correlation of payments made by the contractor with the present demand, which may be considered at the time of appeal hearing - Dispute on limitation would be ascertained after perusal of the case in detail - applicant failed to make out a strong prima facie case for waiver of entire dues; and is directed to make a predeposit of Rs.9,00,000/- (Rupees nine lakhs only) within a period of 8 weeks. [Para 4]

2015-TIOL-486-CESTAT-MUM

Top Security Ltd Vs CST (Dated: January 12, 2015)

ST - ROM - As per Section 35C(2) of CEA, 1944, application is barred by limitation of time as the same has been made after six months from date of order - ROM application seeks to review earlier stay order after dismissal of appeal, which cannot be permitted under the law: CESTAT [Para 2, 3]

2015-TIOL-481-CESTAT-MUM

Phoenix Engineering Vs CCE (Dated: February 6, 2015)
ST – s.97 of FA, 2012 - Appellant rendered services to MSRDC and IDSM - Activity undertaken by appellant pertains to widening/construction/maintenance of roads, construction of toll plaza and sheds including high mast poles and construction of bridges - Enough material available before adjudicating authority to verify the exact nature of work undertaken and to see whether same was taxable or not - All these activities have been retrospectively exempted either by way of Notfn or by means of a specific provision in Finance Act itself - Therefore, said activities is either exempted or falls outside the purview of taxable services – Order set aside and appeal allowed: CESTAT [Para 3, 5.1]
2015-TIOL-478-CESTAT-MUM
M/s Bharat Forge Ltd Vs CCE (Dated: December 31, 2014)
ST - Appellant is a manufacturer of crank shaft/forging and clears products both into DTA and for export - Service of Overseas Commission Agent were availed who procured sale orders for appellant - Appellant is not liable to be taxed on reverse charge basis prior to period 18.4.2006 - Only liable to pay the demand of ST subsequent to 18.4.2006 along with interest - By granting benefit of Section 80 of FA, 1994, all penalties set aside including under Section 78: CESTAT [para 5]
2015-TIOL-476-CESTAT-MUM
M/s Bhogawati Ssk Ltd Vs CCE (Dated: December 22, 2014)
ST - Appellant is engaged in manufacture of Sugar and Molasses and is also registered under ST provisions for GTA services - There is only clerical error in tax paid short, as the payment for commission transport was made next year - Transaction founds to be properly recorded in books of account, therefore, appellant is not guilty of any act or omission with intent to evade payment of duty - Tax found, short paid with interest was deposited prior to issuance of SCN - Penalty is set aside under Section 78: CESTAT [Para 2, 5]
2015-TIOL-475-CESTAT-BANG
Skelta Software Pvt Ltd Vs CST (Dated: February 10, 2015)
ST - Management, Maintenance or repair services-On the ground that the appellant should have paid ST under the category of MMR service on the full value and the payment of 25% of gross value is not correct, differential service tax demanded along with equivalent penalty - Appeal to CESTAT Held: In the case of Wipro GE Medical Systems 2008-TIOL-2476-CESTAT-BANG, Tribunal view that when Sales Tax has been paid on materials representing 70% of value, ST is not leviable on such portion, has been upheld by Supreme Court - Prima facie issue covered by said decision - Pre-deposit waived and stay granted: CESTAT [para 2, 3]
2015-TIOL-470-CESTAT-DEL
M/s Nortel Networks India Pvt Ltd Vs CCE (Dated: October 17, 2014)
ST - Two parts of ST demand - Demand of Rs.3,18,73,116/- is in respect of services

received from appellant's Holding Company (Associate Company) - The ground on which this demand has been made is totally wrong - When taxing event for ST is the provision of service and not the receipt of payment, no ST would be chargeable on the service received by appellant company from the holding company located abroad during the period prior to 18.04.2006 and accordingly, this ST demand is not sustainable: CESTAT [Para 7]

ST - As regards the ST demand of Rs.87,20,909/-, this demand is in respect of service received by appellant company form other offshore service providers during the period from 18.04.2006 to 31.03.2007 - Said demand has to be set aside and matter is remanded back for re-quantification after considering the appellant's plea that they had started paying service tax w.e.f. 1.1.2005 in respect of the taxable services received by them from the offshore service providers: CESTAT [Para 8]

2015-TIOL-469-CESTAT-BANG

Harita TVS Technologies Ltd Vs CST (Dated: January 07, 2015)

Service Tax - Consulting Engineer Services or Manpower supply services - Classification - Appellant argues that they simply supplied the manpower including technically qualified engineers on temporary basis as per the requirement of master agreement while assessment of work, supervision of work and monitoring of the supplied manpower were done by the customers - Prima facie the claim of the appellant that the services rendered was covered by manpower supply service has some validity - Said aspect has not been examined in detail by going through the concerned orders, schedules to the orders and the relevant invoices - Further more the claim that subsequent to period in dispute, appellant has paid tax under consulting engineers service was not made before the original adjudicating authority - In the circumstances, matter remanded to original authority to verify the claims vis-à-vis documentary evidence and adjudicate according to due process of law - Stay petition and appeal disposed of accordingly. (Para 4, 5, 6)

2015-TIOL-468-CESTAT-KOL

M/s Electrosteel Steels Ltd Vs CST (Dated: December 11, 2014)

Service Tax - Stay / dispensation of pre deposit - Consulting Engineer services under Sec.66A of the Finance Act,1994 - applicant on receipt of transfer of Technology from the Foreign supplier under the taxable category of consulting Engineers service had remitted the payments to the Foreign Service providers for transfer of technology, and later paid the R&D Cess under Sec.3 of the Research and Development Cess Act,1986(32 of 1986) - benefit of exemption Notification No.18/2002-ST dated 16.12.2002 was denied on the ground that the R& D Cess was paid after making the payment to the overseas service provider; agitated herein.

Held: A major portion of the demand relates denial of the benefit of exemption Notification No. 18/2002/ST dt.16.12.2002. relating to the R& D Cess paid to Govt. of India under Section 3 of Research and Development Cess Act, 1986 on the amount paid to the overseas service provider; confirmed on the ground that the R& D cess was paid subsequent to the payment made to the overseas service provider - issue covered by the Tribunal in the case of Jindal Praxair Oxygen Co.; demand on other issues rests on appreciation of evidence and debatable; Applicant made out a prima facie case for waiver of predeposit of dues adjudged. [Para 5, 6]

2015-TIOL-465-CESTAT-BANG

M/s Golf Links Software Park Pvt Ltd Vs CST (Dated: December 24, 2014)

Service Tax – Cenvat Credit – Availed twice and on invalid documents – Penalty – Sustainability – Credit availed twice due to inadvertent clerical mistake – Proof of deposit of credit with interest submitted – Prima facie appellant made out a case for waiver in respect of this amount – Appellant further pleaded that denial of credit on ground of availment on basis of photocopies was incorrect as credit was taken on basis of original documents but were misplaced during movement of documents and sought further opportunity to produce the same – On facts, impugned order set aside directing appellant to produce all documents to substantiate his case including proof of late fee payment particulars – Matter remanded to original authority to hear the matter afresh. (Para 3.1 to 4)

2015-TIOL-464-CESTAT-BANG

Karnataka State Cricket Association Vs CST (Dated: November 24, 2014)

Service Tax - Event Management Service - BCCI conducting cricket matches through Karnataka State Cricket Association (KSCA), its affiliated associate - Whether taxable as "event management service" - Whether or not KSCA actually conducts the cricket matches and not managing the event and does not provide any assistance to BCCI in conducting the events or merely conducts cricket matches for and on behalf of BCCI - Whether or not entire income received under the heads viz. receipt for cricketing activities, TV subvention money, sponsorship subsidy and other receipts, match fees and other receipts, hire charges and rental covered by "event management service" - Glaring contradictions in the facts, conclusions and the proposal in the show-cause notice with regards to the nature and classification of the activity vis-a-vis demand - Debatable issues as such postponed to determine during final hearing - Prima-facie case made out by appellant - Pre-deposit waived. (Para 9 to 13)

2015-TIOL-461-CESTAT-MAD

CST Vs Enmas Andritz Private Ltd (Dated: August 18, 2014)

Service tax – Rectification of mistake - Appellant received services of testing, evaluation and consulting engineering services from service provider located outside India during the material period and paid service tax of Rs.22,79,812/- under reverse charge mechanism – Consequent to Apex Court vide order dated 14.2.2009 in the National Ship owners' association case, refund was claimed, rejected in adjudication on limitation; relief granted by Commissioner (Appeals) agitated by Revenue before the Tribunal, who set aside Commissioner (Appeals)'s order and upheld original order rejecting the refund – appellant filed ROM application, praying that although Tribunal correctly held that levy and collection of tax as without authority of law but wrongly held that levy and collection of tax so made is not unconstitutional; that the Tribunal's observation on collection of service tax without authority of law is different from unconstitutional levy and pleaded for rectification based on the Supreme Court ruling in the case of Mafatlal Industries.

Held: Tribunal Order dated 18.10.2013 shows no error apparent on the face of record - The appellants are contending the findings of the Tribunal and not an any omission or error apparent on record; this amounts to review of its own order which is not permissible under Section 35C - Tribunal has discussed the issue elaborately and has given the clear findings by relying on the Apex court judgment in the case of Mafatlal Industries and there is no mistake apparent in the said order - appellant is only trying to seek modification of the finding of the Tribunal through this ROM application – Higher judiciary have consistently held that Tribunal cannot go beyond the scope of the statute; that the error must be obvious and patent and the mistake/error should not be established by long drawn process of reasoning and points - no valid grounds made by the appellants in the instant case. [Para 6]

2015-TIOL-459-CESTAT-BANG

M/s Elmech Enterprises Ltd Vs CCE, C & ST (Dated: December 23, 2014)

Service Tax – Lift Irrigation Scheme – Construction of Electrical substations – Denial of benefit of Notification No.45/2010- ST – Period involved is between 2005-06 and 2009-10 – Notification provided exemption to all taxable services relating to transmission and distribution of electricity by a person to another andis not restricted to taxable service of transmission by the transmission company during period in question –Prima facie case in favor of assessee – Impugned order set aside – Matter remanded to Commissioner (A) directing to hear the appeal without insisting on any pre-deposit. (Para 5)

2015-TIOL-457-CESTAT-KOL

M/s Mackintosh Burn Ltd Vs CC,CE & ST (Dated: February 13, 2015)

Service Tax - Fencing on the Indo Bangladesh Border - No erection, Commissioning - No Tax: Appellants were engaged in the activity of construction of border-fencing with road along Indo-Bangladesh Border. Even though erection is a civil work, but in a composite contract for Erection, Commissioning or Installation Service, an erection charge would be taxed as part of the commissioning or installation Service. Thus, the legislators are fully aware of the situation that the activity of erection, though fall under the category of Construction Service, but in a composite contract, the charge collected on this account would also be taxed under the category of Erection, Commissioning or Installation Service. To add further, it could safely be inferred that it was not the intention of the legislature to tax the activity/service of erection separately in relation to the objects of levy viz. plant, machinery or equipment, but it is a necessity to be taxed being carried out along with commissioning or installation service, and when the charges thereof are composite. Therefore, it would be incorrect to interpret that after addition of the expression, structure-pre-fabricated or otherwise to the existing list of objects of levy of plant, machinery or equipment, it brought significant change in the said entry so as to result an interpretation that activity of erection of structure standing alone, would be leviable to service tax. On the contrary, the purpose for which the word erection was inserted continued to be the same as was applicable to plant, machinery or equipment even after addition of the expression structure-pre-fabricated or otherwise. - (para 39)

Is Border Fence a structure? the structure pre-fabricated or otherwise would refer to both civil as well as mechanical structures. It cannot be denied that Commissioning or Installation Service was earlier in relation to plant, machinery, equipment etc., and to avoid confusion, in a composite contract involving civil work, the word, erection, has been added and to bring more clarity, the word, structure pre-fabricated or otherwise, has been added subsequently. If it is read in the context of plant, machinery, equipment, the expression Structure pre-fabricated or otherwise, in most of the cases, would refer to mechanical structure whether fabricated at site, or brought in pre-fabricated condition for erection, commissioning or installation, but it would also include civil structures necessary for erection, commissioning or Installation of plant, machinery, or equipment. Thus, fence, even though a structure, cannot be read in isolation but has to be read along with erection, commissioning or installation and also with the objects of service tax levy i.e. Plant, machinery or equipment. - (para 48)

Board Circulars binding?: The Special Counsel for Revenue argued that the Circulars issued by Board should not be read as statutes and are merely clarificatory in nature. Tribunal did not agree and held that the circulars issued by the Board explaining/clarifying the meaning of Erection, Commissioning or Installation Service, cannot be ignored, while interpreting the same and applying it to the facts and circumstances of the present case. - para 44

Also see analysis of the Order

2015-TIOL-456-CESTAT-DEL
M/s VLCC Healthcare Ltd Vs CCE (Dated: January 01, 2015)
ST - Appellant is a output service provider as well as engaged in activity of trading - If audit objection is considered, Cenvat credit attributable to trading activity works out to Rs.17,718/- and after considering the annexure to SCN, Cenvat credit on input service availed by appellant is Rs.4,10,320/- - If calculation is done to said annexure, the amount works to Rs.17,718/- - Therefore, appellant is not entitled to take Cenvat credit to the tune of Rs.17,718/- attributable to trading activity - Penalty imposed on appellant is set aside: CESTAT
2015-TIOL-455-CESTAT-MAD
Wipro Ltd Vs CCE (Dated: October 30, 2014)
Service Tax – Information Technology service - appellants are providing services defined under Section 65 (105) (zzzze) of the Finance Act, 1994 – Tax demands in respect of importation of service which was later returned as defective to the foreign service provider; is under dispute and agitated herein. Held: Verification report filed by jurisdictional officer admitting that the purchase cancellation entries were made within the time limit for making payment; that the assessee was not liable to make payment against the defective software; and that the claim of the assessee in this regard is acceptable – demands unsustainable and set aside. [Para 5, 6]
2015-TIOL-448-CESTAT-DEL
M/s Transcend MT Services Pvt Ltd Vs CST (Dated: January 28, 2015)
ST - Refund - Rule 5 of CCR , 2004, s.11B of CEA , 1944 - Appellant filing refund claim for the CENVAT credit remaining unutilized in their credit - claim filed through electronic filing on ACES web portal as per Circular 919 - since hard copy of refund claim not filed along with supporting documents, claim held as time barred - appeal to Tribunal. Held: Date of filing of refund claim electronically should be considered as date of filing of refund claim - since claim not considered on merits, matter remanded to adjudicating authority: CESTAT [para 6]
2015-TIOL-447-CESTAT-MUM
CST Vs M/s Reliance Capital Asset Management Ltd (Dated: December 8, 2014)
ST - CENVAT - Rule 2(l) of CCR, 2004 - Even the employees of a smaller organization having less than 250 workers will be hungry and be required to be provided with canteen facility - Outdoor catering service is an Input service - Revenue appeal dismissed: CESTAT [para 6]
Also see analysis of the Order
2015-TIOL-446-CESTAT-BANG
Mind Tree Ltd Vs CCE, C & ST (Dated: October 31, 2014)

Service Tax – Cenvat Credit taken on input services used for providing non-taxable services – Admissibility – Rent-a-cab service used for development of software services – Is integrally connected with the output service – In view of settled legal position, held credit is admissible – Pre-deposit waived. (Para 2)

2015-TIOL-445-CESTAT-MAD

M/s S B Billimoria & Co Vs CST (Dated: November 27, 2014)

Service Tax - "Management Consultancy, Man-power Recruitment Agency Service" – Appellants are practicing chartered accountant firms, exempted from payment of service tax by Notification No.59/98-S.T., dated 16.10.1998 – They were also rendering taxable service under "Management Consultancy, Man-power Recruitment Agency" service included under the category of "Practicing Chartered Accountants" service by inserting Explanation in Notification No.15/2002-ST, dated 01.08.2002 – Present demand relates to period prior to 01.08.2002 under the category of Management Consultancy Service.

Held: Government exempted taxable services provided by a Practicing Chartered Accountant in his professional capacity to a client, other than the taxable service as mentioned in clause (i) to (xi) of Notification No.59/98-ST - Management Consultancy Service is not covered in the said notification; hence the appellant is eligible to the benefit of the said notification prior to 01.08.2002 – Tribunal ruling in the case of Deloitte Haskins to the effect that the Explanation introduced under Notification No.15/2002-S.T., dated 01.08.2002, takes effect prospectively, followed – impugned orders set aside. [Para 3]

2015-TIOL-436-CESTAT-BANG

The Mysore Sugar Company Ltd Vs CCE, C & ST (Dated: January 7, 2015)

Service Tax – Renting of Immovable Property – Order passed by Commissioner (A) held that premises let out to State government offices are used for office purpose and not in furtherance of any business as such not liable to tax – Revenue has not been able to show that this order of Commissioner (A) was appealed against or the same was accepted – In the circumstances, impugned order set aside and matter remanded original authority for fresh decision after considering the definition of 'renting of immovable property' in the light of observations made by the Commissioner(A) – Appellant's claim of applicability of the Finance Act, 2012 in respect of penalty need also to be examined – Stay application and appeal accordingly gets disposed of. (Para 3, 4)

2015-TIOL-434-CESTAT-BANG

Sirius Overseas Pvt Ltd Vs CCE, ST & C (Date of Decision: 24.12.2014)

Service Tax - Rejection of refund claim - Service tax paid in respect of services provided to an exporter for the export of goods - Notification No. 41/2007 Clause 2 (c) (d) (e) - Benefit of exemption by way of refund under the Notification - Available to a registered assessee - Show cause notice shows that appellant is neither a registered central excise manufacturer requiring him to file a declaration with the concerned jurisdictional Assistant Commissioner nor obtained service tax code to the exporter - Nor the refund claim filed within the prescribed period - Mere bald plea of lack of knowledge is of no consequence - Omission of conditions pertaining to sanction of refund is not mere procedural irregularity but are of substantive nature - Appeal hence rightly rejected. (Para 3, 4, 5)

2015-TIOL-432-CESTAT-BANG
Popular Vehicles And Services Ltd Vs CCE, C & ST (Dated: September 11, 2014)
Service Tax – Classification of Service – Re-sale of used cars after necessary repairs at a premium with certificate of registration being transferred from original owner to purchaser – Whether or not appellant a commission agent providing Business Auxiliary Service – In view of the fact that in a similar case Tribunal vide its final order allowed appeal, Pre-deposit is waived. (Para 2)
2015-TIOL-426-CESTAT-DEL
M/s Saulja Radio Stores Vs CCE & ST (Dated: December 16, 2014)
ST – Commissioning, installation and erection services – services provided to railways - Appellant submitting that ST has been demanded on entire amount of services provided without deducting the cost of the material supplied – pre-deposit ordered of the ST liability admitted by appellants – Stay granted: CESTAT [para 3]
2015-TIOL-425-CESTAT-BANG
M/s Practice Strategic Communication India Pvt Ltd Vs CST (Dated: December 2, 2014)
Service Tax – Reimbursement of expenses – Held not includible for levy of service tax – Matter remanded to decide appeal on merits without insisting for pre-deposit.
2015-TIOL-420-CESTAT-MUM
Shriram Oos Tod Majoor Seva Sangh Vs CCE, C & ST (Dated : January 1, 2015)
ST - Service under'Manpower Recruitment or Supply Agency Service' envisages supply of labour per se - Work undertaken is harvesting of sugarcane and transporting the same to the sugar factory for which labour is employed - sugarcane belongs to the sugar factory, therefore, the activity undertaken is one of procuring or processing of the goods belonging to the client viz.'Business Auxiliary Service' and not'Manpower Recruitment of Supply Agency Service' – Demand set aside and appeal allowed with consequential relief: CESTAT
Also see analysis of the Order
2015-TIOL-419-CESTAT-BANG
M/s Siri Sampada Constructions Pvt Ltd Vs CCE, C & ST (Dated : December 8, 2014)
Service Tax - Non-speaking order - Rejection of appeal for non-compliance with requirement of pre-deposit without discussing merits and applicability of precedents - Matter remanded to Commissioner (A) for passing a reasonable and speaking order without insisting on any pre-deposit. (Para 3)

2015-TIOL-418-CESTAT-MAD

M/s Mckinnon India Pvt Ltd Vs CCE & ST (Dated : November 26, 2014)

Service Tax - Stay / dispensation of pre deposit - Non payment of tax under reverse charge mechanism detected on investigation, demands adjudicated and agitated herein, primarily on limitation.

Held: No dispute on the tax liability per se - limitation to be examined during hearing of main appeal - Tribunal in the appellant's own case, directed to deposit the entire amount of tax by Stay Order No. 40850/2014 dated 21.05.2014, which has been complied with - Appellant directed to make a pre-deposit of Rs. 2,00,000/- (Rupees Two lakhs only) within a period of eight weeks. [Para 4, 5]

2015-TIOL-412-CESTAT-MUM

My Car Pune Pvt Ltd Vs CCE-I (Dated : February 4, 2015)

ST - Appellant has sought to adjust excess payment with the short payments and this is not permissible - Excess payments have to be claimed by way of refund as principles of unjust enrichment might be involved in any refund claim and short payments have to be made good by the appellant along with interest - Matter remanded: CESTAT [para 5.1, 5.2, 5.3]

Also see analysis of the Order

2015-TIOL-406-CESTAT-DEL

M/s Kafila Hospitality And Travels Ltd Vs CST (Dated: October 14, 2014)

Service Tax – Valuation - Air Travel Agent Service - appellant was receiving commission on the airfare including the fuel surcharges – Revenue viewed that the airfare including the fuel surcharge was to be adopted as the basic fare for the purpose of Rule 6(7) of the Service Tax Rules, 1994; while the appellant had opted to discharge the tax liability only on the fare excluding fuel surcharge – small amount of cenvat credit availed in respect of office not covered by the ST registration also disputed – demands adjudicated and agitated herein.

Held: Appellant as IATA Agent has two options to discharge service tax liability; the first being assessment on the gross amount of commission received - Rule 6(7) provides another option to them to pay service tax @ 0.6% of the basic fare in respect of domestic bookings and @ 1.2% of the basic fare in respect of the international booking; "basic fare" is defined in the sub-rule as the part of the airfare on which the commission is normally paid to the Air Travel Agent by the Airlines and explanation to Rule 6(7) defining the term "basic fare" clearly indicates that the basic fare for the purpose of this sub-rule is not the gross fare but is the part of the gross airfare charged from the passengers on which the Airlines normally pay commission to the Air Travel Agent - the term "basic fare", in terms of its definition in Rule 6(7), is not the gross fare including fuel surcharge, but is that part of the gross airfare on which the concerned Airlines normally pay the commission to the Air Travel Agent - what is relevant for the purpose of Rule 6(7) is as to on which part of the airfare, the commission was being normally paid by the Airlines to the Air Travel Agent's - impugned order set aside and the matter remanded to the Commissioner for de novo decision after considering the documents in support of their plea that they have paid service tax on that part of the airfare on which the commission is normally paid by the Airlines. [Para 7].

2015-TIOL-405-CESTAT-AHM
Central Warehousing Corporation Vs CST (Dated: December 26, 2014)
ST - Limitation - It is the case of the appellant that correct service tax liability was indicated in the ST-3 returns filed with the Department. Held - Short payment of service tax, if, any was apparent from the figures shown in the ST-3 returns and that once correct calculations have been shown by the appellant then, there cannot be any intention to evade payment of service tax, therefore, extended period cannot be invoked and that show cause notice was time barred - Appeal allowed: CESTAT [para 4]
2015-TIOL-404-CESTAT-HYD
CCE & ST Vs M/s Ramboll IMI Soft Pvt Ltd (Dated: September 29, 2014)
Service Tax - Cenvat - Assessee found to be entitled to credit of service tax paid - Question of suppression of facts or misdeclaration does not arise - Invocation of extended limitation period not warranted - Further more, order of Commissioner (A) though entitled assessee to claim refund of tax with interest already paid for the normal period, did not claim refund but only proposed to uphold waiver of penalty - Intention to avoid tax or subvert law cannot be attributed - In the circumstances, provisions of Section 80 rightly invoked - Demand of service tax and interest confirmed as not contested and penalty set aside. (Para 3)
2015-TIOL-402-CESTAT-AHM
Oil And Natural Gas Corporation Ltd Vs CCE & ST (Dated: December 12, 2014)
ST - Interest - s.75 of FA, 1994 - Even in case of clandestine removals CENVAT credit of inputs/input services admissible, during the period of offence, is allowed to be abated from the total duty demanded and interest payable is computed only on the duty finally determined - interest not payable since sufficient balance in CENVAT account - Appeal allowed: CESTAT
Also see analysis of the Order
2015-TIOL-401-CESTAT-MAD
M/s Core Minerals Vs CST (Dated: November 25, 2014)
Service Tax - Stay / dispensation of pre deposit - applicant engaged in the shipping business; they owned ships, which were given on hire to two group companies on time charter / voyage charter basis - demand of Tax along with interest and penalty confirmed under the category of 'Supply of Tangible Goods Service' and 'Renting of Immovable Property Service' and agitated herein. *Held:* activities of charter is under dispute; part amount is already deposited and appropriated - deposit made by the applicant is sufficient for waiver of pre-deposit of balance amount of tax along with interest and penalty.

2015-TIOL-400-CESTAT-MUM

M/s Kpit Cummins Global Business Solutions Ltd Vs CCE (Dated: January 9, 2015)

ST - Rule 5 of CCR, 2004 - Export of Services - Refund of unutilized CENVAT Credit - Unit not registered under centralized registration but were registered under STPI scheme – Identical issue in respect of their sister concern KPIT Cummins Infosystems Ltd - 2013-TIOL-931-CESTAT-MUM was decided in favour of assessee - object of EXIM Policy of the Government of India is to promote exports of goods and services and not export of taxes. Service Tax being a destination based consumption tax, in the case of exports there should not be any tax burden and the tax burden, if any, is to be imposed by the Government of the country where the services are consumed - Impugned order set aside and appeal allowed: CESTAT [Para 3, 6.1, 7]

2015-TIOL-399-CESTAT-DEL

M/s Vardhman Special Steels Vs CCE (Dated: January 19, 2015)

ST - Rule 2(l) of CCR , 2004-GTA Service - Appellant paying ST on GTA service during February 2005 to December 2005 and taking CENVAT credit-service used for clearance of final products from the place of removal is covered-matter stands decided by Karnataka High Court in the case of CCE , Bangalore vs. ABB Ltd- *2011-TIOL-395-HC-KAR-ST* - appellants are eligible for CENVAT credit - Appeal allowed: CESTAT [para 6]

2015-TIOL-393-CESTAT-DEL

M/s Samsung India Electronics Pvt Ltd Vs CCE & ST (Dated: December 6, 2014)

ST – Appellant is a subsidiary of Samsung Electronics Corporation, Korea and had entered into a contract with SEC, Korea under which SEC Korea provided expatriates to the appellants for which appellants paid certain amount to SEC, Korea – Adjudicating authority holding that appellant is required to pay ST under the category of 'Manpower Recruitment or Supply Agency service' under reverse charge – Demand confirmed of Rs . 5,60,13,345/- for the period October 2010 to March 2012 with interest and penalties – Appeal to CESTAT.

Held: Issue has been subject matter of several judgments – issue is no longer res integra – in view of Gujarat HC decision in CST Vs. Arvind Mills Ltd. 2014-TIOL-441-HC-AHM-ST & Tribunal decision in Paramount Communication Ltd. Vs CCE , Jaipur 2013-TIOL-37-CESTAT-DEL , matter covered in favour of appellant – secondment of the staff from the parent company to the appellants would not come under the manpower recruitment or supply agency service - DR also agrees - Appeal allowed: CESTAT [para 4, 5]

2015-TIOL-390-CESTAT-MUM

Automotive Manufacturers Private Ltd Vs CCE & C (Dated: January 16, 2015)

ST – Authorised service station - Section 67 of the FA, 1994 mandates levy of Service Tax on a value or consideration received for rendering the services - any consideration received for supply of goods is not covered within its scope – Handling charges incurred in connection with the procurement of the parts for repairing or servicing of vehicles are not includible for payment of ST as sales tax/VAT liability is discharged on

the value inclusive of handling charges – Appeal allowed: CESTAT
Also see analysis of the Order
2015-TIOL-389-CESTAT-BANG
Webex Communications India Pvt Ltd Vs CST (Dated: September 15, 2014)
Service Tax – Telecommunication service – Board Circular F.No.137/21/2011-ST dated 19.12.2011 – Web Conferencing services procured from overseas vendor and providing to clients in India – Is covered by Telecommunication service and not taxable under Business Support Services – Merely such Foreign Service provider has not obtained license under Indian Telegraph Act, held is irrelevant – Pre-deposit waived. (Para 4, 6)
2015-TIOL-388-CESTAT-DEL
M/s R B Chy Ruchi Ram Khattar And Sons Vs CST (Dated: September 29, 2014)
Service Tax – Works Contract – appellant provided service as sub contractor for construction of staff quarter for police – demands confirmed under the category of "Work Contract Service", upheld by Commissioner (Appeals), and agitated herein.
2015-TIOL-383-CESTAT-MUM
CST Vs M/s Vodafone (I) Ltd (Dated: December 31, 2014)
ST - Refund - Vodafone case – Revenue pays interest of Rs.4,37,95,262/- against the refund claim of Rs.5,45,77,651/- - since compliance is reported by the Revenue, the miscellaneous application is disposed of: CESTAT Interest – Assessee informing that interest had been allowed from the date when C.A certificate (certifying utilization of CENVAT Credit) was filed and this is against the rules. Held - assessee/appellant may seek/resort to remedy, against the Order-in-Original dated 30.12.2014, in accordance with law: CESTAT
Also see analysis of the Order
2015-TIOL-381-CESTAT-MAD
S Ravi Chandran Vs CCE (Dated: January 9, 2014)
Service Tax - Erection, Commissioning or Installation Service - appellant provided services, which includes earth excavation, stub setting, concreting tower erection, stringing power conductors and earth wire and also construction of revetment, construction of control room retaining walls etc. for TNEB, Madurai, viewed as taxable under CAI; demands adjudicated and agitated herein. Held: Appellant claims that by Notification No.45/2010-ST, dated 20.07.2010 issued in exercise of power conferred under Section 11C of the Central Excise Act read with Section 83 of the Finance Act, 1994, said activity was exempt during material period - same merits examination by lower authority; impugned order set aside and matter remanded for de novo consideration. [Para 3, 4, 5]

2015-TIOL-380-CESTAT-MUM
Global Vectra Helicorp Ltd Vs CST (Dated: January 22, 2015)
ST - Operating Helicopter on charter basis for transport of passengers would merit classification under "Supply of Tangible Goods for use" - ST demand upheld - Penalty is imposable u/s 76 & 77 of FA, 1994: Tribunal by Majority
Also see analysis of the Order
2015-TIOL-379-CESTAT-DEL
Canon India Pvt Ltd Vs CST (Dated: November 28, 2014)
Service Tax - Stay / dispensation of pre deposit - assessee is a subsidiary of M/s. Canon Singapore (P) Ltd., Singapore, the holding company, which provides computer systems support to several subsidiary companies across the world including in India - Revenue viewed that the assessee received certain amounts towards subsidy / reimbursement of expenses incurred by it for advertisement, marketing, sale and promotion etc. of the holding company's products imported from Canon Singapore and this consideration is taxable under BAS defined under section 65 (19) read with section 65 (105) (zzb) of the Finance Act, 1994; and that lease transactions fell within the ambit of section 65 (12) read with Section 65 (105) (zm) - Demands adjudicated and agitated herein. Held: BAS provided by the assessee prima-facie falls within the ambit of export of service in view of the Larger Bench decision in Paul Merchant case - in view of the analysis by the Larger bench of Apex Court in the case of the Association of Leasing and Financial Services Companies and the Tribunal ruling in the Lufthansa Technik Services case, the equipment leasing transactions between the assessee and its customers falls outside the ambit of financial leasing as defined in section 65 (12) read with Section 65 (105) (zm) of the Act - strong prima-facie case in favour of the petitioner/ appellant; waiver of pre-deposit in full. [Para 5, 6]
2015-TIOL-375-CESTAT-MUM
CCE Vs Media World Enterprises (Dated: January 27, 2015)
ST - s.65(105)(zzzm) of FA, 1994 - Kaldarshika is an Almanac - it cannot be termed as a business directory, yellow pages or a trade catalogue - it is a 'book' and is covered under Explanation 2(ii) of the definition - since sale of space for advertisement in 'print media' meaning 'book' is excluded from the purview of this taxable service, ST demand correctly set aside by Commissioner(A) - Revenue appeal dismissed: CESTAT [para 5, 6, 7]
Also see analysis of the Order
2015-TIOL-373-CESTAT-MUM
Universal Pharmacy Vs CCE (Dated: January 23, 2015)
ST – Scientific or Technical Consultancy service – Consideration for sale of transfer of business as well as amounts to be paid as royalty - appellants being manufacturers are not rendering any advice or consultancy – no liability to tax – Appeals allowed:

CESTAT [para 6, 9]

Also see analysis of the Order

2015-TIOL-372-CESTAT-DEL

M/s Indswift Laboratories Ltd Vs CCE & ST (Dated: January 9, 2015)

Service Tax – CENVAT credit - input service credit in respect of technical know-how (research and development) and travel agent service disallowed in adjudication and by Commissioner (Appeals), agitated herein.

Held: Commissioner (Appeals) has clearly conceded that technical know-how has actually been acquired by the appellants for producing the products namely Candisartan and Irbesartan - manufacture of pharmaceutical products is a complex process and can take long; Commissioner (Appeals) has also not doubted the purpose for which the technical knowhow has been obtained in as much he has practically allowed the appellant to take such credit when they start utilising the technical knowhow to manufacture the final product - technical knowhow once obtained begins to be utilised for the purpose of manufacture of products for which it was obtained as such technical knowhow is relevant/required right from the point of setting up the necessary wherewithals required for manufacturing the product - Under Rule 4(7) of Cenvat Credit Rules, 2004, CENVAT credit in respect of input services becomes available on or after the date on which payment is made for the value of the input service - Cenvat Rules do not provide that the credit of input services can be taken only when the final products get manufactured - Ratio of the CESTAT judgement in the case of Cadila Healthcare Ltd. clearly supportive of the appellants' claim; no reasons for denial of the impugned credits; same allowed and the impugned order is set aside. [Para 3, 4]

2015-TIOL-369-CESTAT-BANG

ITW India Ltd Vs CC, CE & ST (Dated: September 22, 2014)

Service Tax – Trading activity – Reversal of Cenvat credit – Appeal against order directing appellant to reverse Cenvat credit of input services related to trading activity availed during from October 2006 to March 2008 and April 2009 to March 2011 – On facts, held that the appellant is directed to deposit the interest amount on the CENVAT credit irregularly availed during the period up to March 2008 and balance of proportionate credit and interest for the period from April 2008 to March 2011 – Pre-deposit of balance is waived. (Para 2, 3)

2015-TIOL-368-CESTAT-BANG

M/s Pratham Envirotech Engineers Pvt Ltd Vs CC, CE & ST (Dated: December 4, 2014)

Service Tax – Appeal against duty, interest and penalty imposed – Ignorance of law pleaded and established – In view of peculiar circumstances, benefit given in favor of assessee allowing him another chance to defend his case – Impugned order is set aside and the matter is remanded to the original authority to pass order on merits. (Para 2)

2015-TIOL-366-CESTAT-MUM

M/s Deloitte Haskins And Sells Vs CCE (Dated: January 27, 2015)
ST - Under Service Tax law, the assessee is not prohibited from paying tax on services exempted under a notification – there is no provision akin to Section 5A(1A) of the CEA, 1944 – it cannot be said that the appellant provided taxable and exempted services so as to be in terms of Rule 6(2) of the CCR, 2004 and, therefore, the restriction of availment of CENVAT Credit up to 20% of the value of taxable services provided would not apply – Appeals allowed: CESTAT [para 7 to 11] CENVAT - credit cannot be denied for the procedural infraction that the addressee in the invoices was another office of the appellant: CESTAT
Also see analysis of the Order
2015-TIOL-360-CESTAT-MUM
M/s ABL Infrastructure Pvt Ltd Vs CCE (Dated: January 7, 2015)
ST - Since the contract for construction of City Centre Mall was terminated on 31.05.2007 and a new contract was entered into on 05.06.2007, therefore, there is no infirmity in the appellant having paid ST under the Works Contract (Composition Scheme) - fact of paying ST at the composition rate in the returns filed is enough indication to show that they have opted for payment - Appeal allowed: CESTAT [para 6.2, 6.3]
Also see analysis of the Order
2015-TIOL-359-CESTAT-DEL
Unibild Engineering And Construction Co Pvt Ltd Vs CST (Dated: June 5, 2014)
Service Tax - Commercial or Industrial Construction service - Valuation - Revenue viewed that the appellant underremitted service tax during the said period by failing to disclose the value of material supplied free of cost by service recipients for incorporation into the works executed for their benefit - demands adjudged with penalty and agitated herein.
2015-TIOL-355-CESTAT-MAD
Carborundum Universal Ltd Vs CCE & ST (Dated: December 08, 2014)
Central Excise - Stay / dispensation of pre deposit - CENVAT credit - Appellants are LTU having two units, one a DTA unit and another situated in Special Economic Zone - they paid commission relating to the sales effected by Overseas agent in respect of both the units and paid service tax under the Business Auxiliary Service under reverse charge - availed credit in respect of service tax paid on behalf of SEZ unit, viewed as irregular by Revenue - demand for recovery of the same adjudicated and agitated herein. Held: no dispute that the overseas commission agent rendered service to both Units; however, appellants are liable to pay service tax under reverse charge only in respect of value of service of DTA unit - no legal provision to pay service tax on value of services pertaining to SEZ unit as they are covered under exemption - appellants are not entitled to take service tax credit pertaining to the value of services rendered by

the overseas commission agent to the SEZ unit - appellants have not made out a prima facie case for waiver of predeposit of entire dues; ordered to predeposit Rs.1,53,000/- (Rupees One lakh fifty three thousand only) within a period of 4 weeks. [Para 4]
Also see analysis of the Order
2015-TIOL-354-CESTAT-MUM
Morarjee Textiles Ltd Vs CCE (Dated: January 2, 2015)
ST - BAS - Rule 2(p), 2(r), 2(q) of CCR, 2004, Rule 2 of STR, 1994 - Appellant paid ST under category of "BAS" against commission paid to foreign commission agent by utilizing CENVAT Credit - The person liable for paying ST has the meaning assigned to it as defined in Rule 2(1)(d) of Service Tax Rules, 1994 - A harmonious reading of the above provisions of law indicate that person liable to pay tax is recipient - Recipient of service is a provider and, therefore, plea of Revenue that appellant is not an output service provider is not correct - Appeal allowed: CESTAT [Para 2, 6]
2015-TIOL-352-CESTAT-MAD
G Banumathe Vs CCE (Dated: December 5, 2014)
Service Tax - Stay / dispensation of pre deposit - "Manpower Recruitment or Supply Agency Service"- tax demand with interest and penalty was raised on the salary paid to the workers which is contested herein. Held: present case is covered by the Tribunal ruling in the case of Neelav Jaiswal & Brothers after considering the Delhi High Court decision in the Intercontinental Consultants and Technocrats case - applicant failed to make out a strong prima facie case for waiver of predeposit of the entire dues; accordingly, is directed to predeposit an amount of Rs.35,00,000/- (Rupees thirty five lakhs only) within a period of eight weeks. [Para 6]
2015-TIOL-348-CESTAT-MUM
Jaipur IPL Cricket Pvt Ltd Vs CST (Dated: January 20, 2015)
ST -Sponsorship of sporting events were excluded from the levy of service tax - however, since appellant had wrongly collected ST from sponsors, they were required to pay the same in cash in terms of s.73A(2) of FA, 1994 - CCR, 2004 does not provide for utilisation of CENVAT credit for payment of the amount specified in section 73A (2): CESTAT [para 4.1 to 4.8]
Also see analysis of the Order
2015-TIOL-347-CESTAT-MUM
Choudhary Yatra Co Pvt Ltd Vs CCE & C (Dated: October 10, 2014)
ST - ROM application - It is a settled position that in any ROM application, the mistake should be apparent on the face of the record - What appellant is seeking is review of

order by re-appreciation of arguments which is not permissible - no merit in ROM application, so dismissed: CESTAT [Para 7, 8]

2015-TIOL-346-CESTAT-MAD

M/s Vodafone Cellular Ltd Vs CC, CE & ST (Dated: November 20, 2014)

Service tax - Stay / dispensation of pre deposit - issue involved herein is whether the International in-bound Roaming Service Provided by the applicant to the foreign telecom operator or to the subscriber of the foreign telecom operator (in-bound Roam) would come under the service tax levy under the category of "Telecommunication Service".

Held: Adjudicating authority proceeded on the basis that in-bound roamer may be a tourist, student, charitable worker, diplomat, sportsman, artiste or any other person to whom the applicant rendered the service - applicant claimed the benefit of Rule 3(1) (iii) of the Export of Service Rules, 2005 - The words "roaming services provided by the telecom authority to an international e-bound roaming subscriber" in Notification No.36/2007-ST, dated 15.06.2007 indicate the actual subscriber, namely, tourists, students, charitable workers etc., as observed by the learned Adjudicating authority and is supported by the Board's Circular dated 30.01.2007 - However, the Tribunal allowed the appeal in the Vodafone Essar case - Pre deposit of entire amount of tax along with interest and penalty waived and case posted for early hearing. [Para 5, 6]

2015-TIOL-345-CESTAT-BANG

M/s Wifi Networks Pvt Ltd Vs CST (Dated: September 10, 2014)

Service Tax - Modification of Miscellaneous order - Appellant absent due to non-publication of his appeal in the Cause list - Stay application was included by issuing supplementary list which was not made aware to him in advance - In the circumstances, miscellaneous order passed has to be considered as null and void in terms of paragraph 6 of CESTAT's Circular F. No. 01(04)/Circular/CESTAT/2014, dated 13.3.2014 - Miscellaneous application is allowed and stay application seeking waiver of pre-deposit is posited for hearing.

2015-TIOL-343-CESTAT-MAD

M/s Souvenir India Pvt Ltd Vs CCE (Dated: November 19, 2014)

ST - Commissioner (A) by Stay Order dated 23.1.2014 directed the appellant to predeposit an amount - Personal hearing was fixed on 22.1.2014 but none appeared for the appellant - Appellant requested for adjournment, which was received at office of Commissioner (A) on 16.1.2014 but not placed before said Commissioner during stay petition hearing - Appellant subsequently by letter dated 31.1.2014 requested the Commissioner (A) to modify stay order which was not considered - Matter remanded to decide the stay application after giving proper opportunity of hearing: CESTAT

2015-TIOL-342-CESTAT-HYD

CR-18G-BSCPL-JV Vs CCE & ST (Dated: February 2, 2015)

Service Tax – Works Contract – Back to back agreement with the sub-contractor – No works contract service provided by the main contractor as the deemed transfer of property in goods is between the sub-contractor and the contractee: The Supreme Court in 2008-TIOL-158-SC-VAT clarified that in a construction works contract, the property used in the construction of a building/project passes from the builder to the owner of the land on which the building is constructed when the goods or materials used are incorporated in the building and that is so, even if there is no privity of contract between the contractee and the sub-contractor, since the deemed transfer of property in goods is based on the principle of accretion of property in goods.

Pre-deposit waived and full stay granted in demand of Rs. 17.46 crores.

Also see analysis of the Order

2015-TIOL-339-CESTAT-MUM

Kunjal Enterprises Vs CST (Dated: January 13, 2015)

ST – Repairs & Maintenance Service - Appellant is providing services of repairs and maintenance of xerox machines on behalf of M/s. Modi Xerox who are his client – such service is liable to tax under 'Business auxiliary service' w.e.f. 10.09.2004 and not earlier – Demand set aside and appeal allowed: CESTAT [para 6, 7, 8]

Also see analysis of the Order

2015-TIOL-338-CESTAT-MAD

M/s Vodafone Cellular Ltd Vs CCE (Dated: November 25, 2014)

Service Tax - Stay / dispensation of pre deposit - Demand - applicants are providing "Telecommunication Service" to their subscribers; and rendered service to their customers abroad for which they have paid consideration to the foreign telecom operators - Revenue viewed the same taxable under reverse charge mechanism as "Business Auxiliary Service" under Section 66A of the Finance Act, 1994 - Demands adjudged and agitated herein.

2015-TIOL-337-CESTAT-DEL

M/s Jaipur Ex-Servicemen Welfare Cooperative Society Ltd Vs CCE (Dated: May 8, 2014)

Service Tax - Demand - appellant are a cooperative society registered under Rajasthan Cooperative Societies Act, 1965 for the welfare of ex-servicemen - They employ ex-servicemen and provide (a) security service to any person who seeks their services by providing security guards/gunman; (b) intelligence/investigation/detective services and also undertake departmental inquiries of all type of commercial concerns, providing security service for commercial or industrial establishments and Government/ semi-Government Institutions; and (c) security consultancy services and other expertise to commercial/industrial establishments and another organizations - Department viewed the same taxable from 16/10/98 under Section 65 (105) (w) readwith Section 65 (94) of Finance Act, 1994 and Manpower Recruitment or Supply Agency taxable from 07/07/97 under Section 65 (105) (k) readwith Section 65 (68) of the Finance Act, 1994 - demands adjudicated with interest and penalties and agitated

herein.

2015-TIOL-336-CESTAT-MUM

CCE Vs M/s Yashwantrao Mohite Krishna Ssk Ltd (Dated: November 27, 2014)

ST - Assessee have allowed M/s Talreja Trade to use its brand name "Pahili Dhar" for marketing 'country liquor' - minimum guarantee of profit per month given or assured by the agent to the assessee have been misunderstood as 'Royalty' which is not the fact - no Intellectual Property Service given - ground of limitation is also upheld in favour of Respondent - respondent-assessee will be entitled to consequential relief: CESTAT [para 9, 10]

Also see analysis of the Order

2015-TIOL-333-CESTAT-MAD

Nextggen Animation Vs CC & CE (Dated: November 19, 2014)

Service Tax - Stay / dispensation of pre deposit - Demand - applicant offers computer education and training programmes in Graphic Animation and Cinematics, viewed as taxable under the category of Commercial Training or Coaching Services - demands adjudicated and agitated herein.

Held: The applicant contended before the adjudicating authority that the entire service tax liability of their Coimbatore Branch had been discharged by M/s. Maya - Adjudicating authority observed that service tax liability has to be discharged by the applicant, service provider and therefore the payment of tax by M/s. Maya was unacceptable - the tax was paid by M/s. Maya which should have been paid by the applicant, according to Revenue - applicant has prima facie a strong case for waiver of entire amount of tax along with interest and penalty. [Para 4]

2015-TIOL-328-CESTAT-MUM

M/s Kirloskar Ebara Pumps Ltd Vs CCE (Dated: December 30, 2014)

ST – Refund – Export of Service - findings of the Commissioner (Appeals) that the appellant would be unjustly enriched is not clear – when no ST is required to be paid on exports, the amount debited in CENVAT account is required to be restored and the amount paid in cash is to be refunded - it is a settled matter that the unjust enrichment does not arise in the case of export of services – Appeal allowed: CESTAT

Also see analysis of the Order

2015-TIOL-327-CESTAT-MUM

M/s Eon Kharadi Infrastructure Pvt Ltd Vs CCE (Dated: January 7, 2015)

ST - Appellants, a SEZ unit received services from a service provider outside the SEZ unit – Refund was availed by appellant under Notfn 9/2009-ST - Section 26(i) (e) of SEZ Act 2005, provides that all services imported into SEZ to carry on authorized

operations in SEZ shall be exempted - Section 51 of said Act gives overriding effect over other Acts - Condition of Notfn 15/2009 that refund is only admissible to services which are not wholly consumed within SEZ cannot nullify overriding provisions of Section 51 - Once refund is provided under Notfn 9/2009-ST, provisions of statute under Section 11(B) of CEA, as made applicable to Finance Act, 1994 comes into play - Refund cannot be denied under the Act for procedural infraction of having paid ST which ought not to have been paid by service provider – Appeal allowed: CESTAT [Para 2, 4.1, 4.2]

2015-TIOL-326-CESTAT-MUM

M/s Bajaj Allianz Life Insurance Co Ltd Vs CCE (Dated: December 31, 2014)

ST – s.68(2) of FA, 1994 - Appellant received input service from its Insurance Agent(s) and also provides certain incentives to its agent(s) - Period of dispute is prior to 1.1.2005 – in view of notfn 36/2004-ST published in Gazette of Central Government on 31.12.2004 and made effective from 1.1.2005, no tax can be demanded from appellant on reverse charge basis prior to 1.1.2005 – also, such payment made by appellant as receiver of service to its agent like gift, foreign trip as well as cash prizes, which are in nature of incentive, shall not form part of gross value of taxable service - Appeal allowed: CESTAT [Para 2, 5]

2015-TIOL-314-CESTAT-MUM

M/s Larsen & Toubro Ltd Vs CCE (Dated: December 19, 2014)

ST - Garden maintenance service is an Input service - Credit has been allowed to appellant in their own case in - 2011-TIOL-85-CESTAT-MUM - No hesitation in allowing credit - Impugned order set aside and appeal allowed: CESTAT [Para 3, 4]

2015-TIOL-313-CESTAT-MUM

M/s Lamour Advertising Agency Vs CCE (Dated: December 30, 2014)

ST - Discrepancy between turnover reflected in balance sheet and turnover in ST-3 returns - Appellant claimed that discrepancy is only because of accounting system - While balance sheet was prepared on mercantile basis, payment of ST reflected in ST-3 returns is on receipt basis - So called short payment is only about 4% of total ST paid during four years - SCN should not have been issued especially when ST was already paid with interest on pointing out – no case for imposition of penalty - Order set aside & appeal allowed: CESTAT [Para 6, 7]

2015-TIOL-312-CESTAT-MUM

M/s South Konkan Distillers Vs CCE (Dated: December 12, 2014)

ST - Appellant received services of goods Transport Operators and paid gross amount as freight charges - demand raised under SCN dated 09.11.2004 was confirmed along with interest along with penalties under Ss. 76 & 77 of FA, 1994 - till the point of time Sec. 73 of the Finance Act, 1994 came to be substituted w.e.f. 10.09.2004, provisions of the said section could not be made applicable despite retrospective amendment in Ss. 68 and 71A of the Finance Act, 1994 - demand raised vide SCN dated 09.11.2004

is not maintainable, therefore, question of imposition of penalties does not arise - demand notice issued on 15.11.2002 has already been dropped by adjudicating authority and no appeal filed against vacation of demand under SCN dated 15.11.2002, so, plea of maintainability cannot be taken by AR at this stage - Appeal allowed: CESTAT [Para 6, 6.1, 6.2]
2015-TIOL-306-CESTAT-MUM
Atlas Tours & Travels Pvt Ltd Vs CST (Dated: January 15, 2015)
ST – Tour Operator Services - Appellant had conducted 'Outbound Tours' of Haj-Umrah to Makkah and Madina – issue squarely covered in favour of appellant by various judicial pronouncements - Activity not taxable – Order set aside and appeals allowed: CESTAT [para 5]
Also see analysis of the Order
2015-TIOL-305-CESTAT-MUM
Credit Suisse Services India Pvt Ltd Vs CCE (Dated: January 2, 2015)
ST - Refund - Claim for refund of ST paid on input services received by appellant, a SEZ unit - Where services were not wholly consumed within SEZ, Notfn 9/2009-ST read with Notfn 15/2009-ST provided that service receiver in SEZ is eligible for refund of tax paid on input service - Even where services are wholly consumed within SEZ, Unit will be eligible for refund when tax has already been paid by service provider - Appeal allowed except for amount of Rs.3,431 which was rejected on the ground that invoices were not submitted along with refund claim: CESTAT [Para 4, 4.1]
2015-TIOL-304-CESTAT-MUM
Autobahn Enterprises Pvt Ltd Vs CST (Dated: January 12, 2015)
ST - BAS - Amount shown by appellant in his balance sheet as income is the difference between discount extended by automobile manufacturers and discount given by appellant to customers - Amount deposited by appellant regarding ST liability for rendering said services is enough to hear and dispose of appeal on merits: CESTAT [Para 2, 3]

2015-TIOL-299-CESTAT-MUM
The Indian Hotels Co Ltd Vs CST (Dated: December 24, 2014)
ST - Applicants have taken over activities of managing Hotel - If they themselves are managing affairs of organization, it does not fall under 'Management Consultancy Service' - Appeal allowed: CESTAT by Majority.
Also see analysis of the Order

2015-TIOL-298-CESTAT-MUM
The Indian Hotels Co Ltd Vs CST (Dated: August 5, 2014)
ST - Applicants have taken over activities of managing Hotel& are sharing profits - whether service is Management Consultancy Service? - Difference of Opinion - Matter referred to Third Member.
2015-TIOL-295-CESTAT-MUM
Tech Mahindra Ltd Vs CCE (Dated: January 8, 2015)
ST - Sales promotion and marketing activities fall within the definition of BAS – ST liability is attracted when taxable services are received from a foreign service provider and the service recipient is situated in India – ST on the consideration paid for the services received for the period on or after 18/04/2006 is beyond challenge: CESTAT
Also see analysis of the Order
2015-TIOL-294-CESTAT-AHM
Shri Venu Gopal Narayan Nair Vs CCE & ST (Dated: January 15, 2015)
ST - Appeal was not taken up for hearing by Tribunal as there is huge pendency of appeal - no negligence and/or inaction on the part of the appellant for hearing of appeal-Larger Bench of the Tribunal in the case of M/s Haldiram India Pvt. Limited & others Vs Commissioner, Central Excise & Service Tax - 2014-TIOL-1965-CESTAT-DEL-LB , held that the Stay Order passed by the Tribunal may be extended after considering the necessary facts as it would authorize the exercise of discretion by the Tribunal for grant of such extension-Extension of stay granted-Miscellaneous application disposed of: CESTAT [para 2, 5, 6]
2015-TIOL-293-CESTAT-KOL
M/s SMS Enterprises Vs CST (Dated: January 1, 2015)
ST - Callousness on the part of the Revenue in not responding to the direction of the Tribunal - CST to initiate prompt action and respond to the queries/direction of Tribunal at the earliest - Dy. Registrar to send a copy of the order to Chief Commissioner for his knowledge and appropriate action - Matter adjourned: CESTAT [para 3]
2015-TIOL-287-CESTAT-MUM
Parag Parikh Financial Advisory Services Ltd Vs CST (Dated: January 15, 2015)
ST – Banking & Financial Service - If the conclusion of the lower authorities, that merely because the appellant is registered as a stockbroker they are to be considered as a financial institution, is sustained then all stockbrokers dealing in share/securities would be financial institutions and which is a totally wrong interpretation: CESTAT [para 4.1, 5]

Also see analysis of the Order
2015-TIOL-286-CESTAT-MUM
M/s Shivang Automobiles Vs CCE (Dated: September 17, 2014)
ST - Appellant is an authorised dealer for sales and services of Hero Honda Motor Cycles – Service tax paid on GTA service availed for transport of vehicles from factory to show room available as credit for authorized service station attached to show room - Appeal allowed: CESTAT [Para 2, 3]
2015-TIOL-285-CESTAT-MAD
M/s K N Ramanathan Vs CCE (Service Tax) (Dated: August 21, 2014)
Service tax - "Erection, Commissioning or Installation Service" (ERS) - applicant is a contractor engaged by TNEB for various services which includes, earth work excavation, stub setting, concreting tower erection, stringing power conductor and earth wire and also the construction of revetment, construction of control room retaining walls etc. – Revenue viewed the same taxable under ERS and adjudicated demands; Commissioner (Appeals) dismissed the first stage appeal for non compliance with stay order; now contested herein.
2015-TIOL-277-CESTAT-MAD
R Rajendran Vs CCE & ST (Dated: September 17, 2014)
Service Tax – Stay / dispensation of pre deposit – construction of residential complex service - applicant was engaged in construction of residential complex for the Tamil Nadu Police Housing Corporation Ltd. under the Govt of Tamil Nadu, on which tax demands were adjudicated and agitated herein. Held: Tribunal on this issue consistently granted stay – PSK ruling relied upon by Revenue distinguished on facts – pre deposit of entire dues waived. [Para 3]
2015-TIOL-272-CESTAT-MAD
Sri Renga Apparels (India) Pvt Ltd Vs CCE & ST (Dated: October 28, 2014)
Service Tax - Stay / dispensation of pre deposit - BAS - applicants, engaged in the manufacture and export of cotton garments and fabrics, paid commission to the foreign agent for procuring the orders - Revenue viewed the same taxable under BAS at appellants' hands under reverse charge; demands adjudicated and agitated herein. Held: In terms of the observations recorded at Para 6 of the High Court ruling in the Loomtex Exports case, appellant directed to pre deposit a sum of Rs.5,00,000/- (Rupees five lakhs only) within a period of 8 weeks. [Para 3]
2015-TIOL-271-CESTAT-DEL

M/s L D Sharma And Co Vs CCE & ST (Dated: October 9, 2014)

ST - whether there was suppression in declaring the receipt of taxable service and consequent short payment of ST and consequently imposition of penalty under section 76 and 78 of FA was justified or not - It is evident that suppression of taxable receipt was detected by revenue and the appellant accepted short levy of ST and deposited the same - It was only on investigation that suppression could be detected - No benefit of exemption from penalty could be made available to the appellant - Appeal rejected: CESTAT [Para 6, 7]

2015-TIOL-270-CESTAT-DEL

M/s Ahluwalia Contracts (India) Ltd Vs CST (Dated: November 2 7, 2014)

Service Tax - "Commercial or Industrial Construction Service" (CICS) and "Construction of Complex Service" [CCS]: Value of free supply materials : As regards disallowance of abatement of 67% under Notification Nos.15/2004-ST, 18/2005-ST and 1/2006-ST on the ground that the value of free supplies was not included in the gross amount charged, the Larger Bench of the Tribunal in the case of *Bhayana Builders* - ***2013-TIOL-1331-CESTAT-DEL-LB***, , has held that the value of free supplies by the service recipient to service provider is not required to be included in the gross amount charged for the purpose of availing the benefit of the aforesaid Notifications.

Composition Scheme for on-going projects : While the composition scheme notified under Notification No.32/2007 is not available to the appellants in respect of on-going projects which commenced prior to 01.06.2007 and on which service tax was paid prior to that date in the wake of the decision in the case of Nagarjuna Constructions Co. Ltd., supra, the appellants should be allowed to make a claim for the benefit of Rule 2A of the Service Tax (Determination of Value] Rules, 2006 or any other exemption Notification and if such a claim is made, the benefit claimed should be extended if the appellants are found to be eligible therefor.

Buildings for DDA, BSNL etc.,: As regards the contentions of the appellants that the flats made for Delhi Development Authority (DDA) were to be treated as meant for DDA's personal use, this contention is totally untenable because these flats were allotted to individuals and not meant for DDA or for its employees. Therefore, the service rendered with regard to construction of flats for DDA is taxable under CCS. The buildings constructed for BSNL, Reliance or Municipal Corporation clearly satisfy the definition of "Commercial or Industrial Construction Service" (CICS). BSNL is a commercial organisation as is Reliance. Even the Municipal Corporation buildings are not outside the purview of commercial or industrial construction; indeed, many of its buildings are rented to various organisations. A claim has been made that the buildings made for the said hospitals is outside the purview of CICS on the ground that they were made for the charitable organisations. In this regard, there is no ambiguity that charitable organisation is not prevented from carrying out commercial activity; the only condition is that the profit so generated has to flow back into the organisation towards fulfilment of its charitable purposes. Thus, merely because the hospitals were constructed for the charitable organisations do not make the hospitals per se non-commercial. Indeed these hospitals are not non-commercial and charge the patients for the medical services.

Also see analysis of the Order

2015-TIOL-258-CESTAT-MUM

M/s Tata Aig Life Insurance Co Ltd Vs CCE (Dated: November 19, 2014)

ST - CENVAT - Insurance Auxiliary Service falls under sub-clause (zy), which is specified in sub-rule (5) of Rule 6 - Cap of 20% fixed under Rule 6(3)(c) of CCR, 2004 would not apply to Insurance Auxiliary Service at all and entire ST Credit can be utilized for discharge of ST - in view of decision in appellant's own case 2014-TIOL-487-CESTAT-MUM , Appeal of assessee is allowed and appeal of Revenue is dismissed: CESTAT [Para 2, 5, 6]

2015-TIOL-257-CESTAT-MUM

M/s Shree Saibaba Sugar Ltd Vs CCE (Dated: November 28, 2014)

ST – Penalty - Appellant is a sugar factory and availed services of GTA and liable to pay ST under reverse charge mechanism - levy was introduced from 1.1.2005 - tax was paid along with interest before issue of adjudication order – In Ruhit Shukla & Associates - 2007-TIOL-610-CESTAT-KOL , lenient view was taken - Since credit of tax paid would be available to them, their mala fide intention is not established - penalty under Section 78 is waived - However, penalty under Section 77 of FA, 1994 is payable: CESTAT [Para 2, 6]

2015-TIOL-256-CESTAT-BANG

M/s Rosemount Shipping India Pvt Ltd Vs CCE, C & ST (Dated: December 4, 2014)

Service Tax – Taxability of service – Activities of cargo handling in relation to export cargo provided to steamer line – Brokerage income received in the course of providing service to the shipping lines – Demand under the category of "business auxiliary service" as a commission agent, sustainable or not – Contentious and debatable issues involved – Amount deposited is sufficient to hear the appeal – Pre-deposit of balance due is waived. (Para 4)

2015-TIOL-253-CESTAT-MUM

M/s Interjewel Pvt Ltd Vs CCE (Dated: November 24, 2014)

ST – Appellant is a sight-holder of M/s Diamond Trading Company (DTC) and imported rough diamonds from them which is part of M/s De Beers Ltd., U.K. – Diamonds are purchased through broker and paid commission on each consignment of their purchase - Matter was in knowledge of Revenue, as dispute was pending before Bombay High Court since 8.9.2006 and copy was served on Standing Counsel for Revenue/Central Government - 7.5% of demand of tax was already deposited by way of pre-deposit - Whole demand relates to extended period - Fit and proper to allow stay of balance demand of tax, interest and penalty: CESTAT [Para 2, 4, 6]

2015-TIOL-252-CESTAT-MUM

ATE Enterprises Pvt Ltd Vs CST (Dated: January 7, 2015)

ST – BAS - Appellant is procuring orders from the Indian Companies and passing on to various overseas manufacturers with whom they have an agreement for receiving

commission on materialization of the orders - activity though culminates in supplies to Indian Company, cannot be considered as services provided in India – Appeal allowed: CESTAT [para 8 to 12]
Also see analysis of the Order
2015-TIOL-243-CESTAT-MUM
M/s Mula Parisar Sarva Seva Sangh Vs CCE (Dated: October 16, 2014)
ST - Appellants engaged in activity of harvesting sugarcane and thereafter transporting from field to sugar factory - Revenue views that said activity falls under category of Manpower Recruitment or Supply Agency Services - As per Amrit Sanjivni Sugarcane Transport Co. Pvt. Ltd - 2013-TIOL-1097-CESTAT-MUM , issue is no more res integra - appellants not liable to pay ST under category of Manpower Recruitment or Supply Agency Services - Order set aside and appeal allowed: CESTAT [Para 4, 6, 7]
2015-TIOL-242-CESTAT-MUM
CST Vs Global Markets Centre Pvt Ltd (Dated: November 13, 2014)
ST - Refund under Notfn 5/2006 CE(NT) - Assessee provided services namely, BAS and Business Support Service to their principals abroad and their entities - A major portion of services are exported and only a small portion of services are provided domestically - Due to export of services, Cenvat Credit on input services accumulates - All these input services do have a nexus with business of providing output services by assessee - Formula provided under said notfn does not allow for such deduction and by its very nature, formula has already factored this amount in the manner it has been formulated - Certain records namely Balance Sheet and Profit and Loss Account had not been submitted to adjudicating authority - Matter remanded: CESTAT [Para 6, 7, 8, 9]
2015-TIOL-235-CESTAT-DEL
Ganapati Associates Vs CCE & ST (Dated: December 11, 2014)
ST -Telecom Towers - Management & Maintenance or repair service -Cost of diesel filled in generators is prima facie not includible in the gross value as diesel is not required for providing such service but diesel consumption is required for generating electricity -Pre-deposit waived & stay granted: CESTAT [para 4, 5, 6]
Also see analysis of the Order
2015-TIOL-234-CESTAT-MAD
Neem Engineering Pvt Ltd Vs CST (Dated: January 7, 2015)
Service Tax – Stay / dispensation of pre deposit – CENVAT credit – Revenue viewed that raw material sent to job worker for making goods further used in commercial construction services are inadmissible for credit – demands adjudicated and agitated herein. Held: Findings recorded in the impugned order indicate prima facie that waiver of pre deposit would be prejudicial to Revenue - appellant is directed to deposit

Rs.20,00,000/- (Rupees Twenty lakhs only) within 8 weeks. [Para 4]
2015-TIOL-226-CESTAT-MUM
CST Vs J P Morgan Services India Pvt Ltd (Dated: November 25, 2014)
ST - Refund - Claim of refund filed under Notfn. 5/2006 for input ST credit which gets accumulated and cannot be utilized - Respondent had applied for centralized registration on 5.10.2006 but finally granted on 26.12.2008 - Revenue views that 21 services were not used in providing output service and hence not classifiable as input service - any service which is an input for another input service is covered under definition of input service on which credit is sought - Services utilized are input services and refund of credit is admissible under said notfn - No restriction in availing credit before registration is granted - Impugned order passed by Commr(A) upheld except that refund on supply of food and beverages service shall not be sanctioned as payment for food and beverages is made by employee of respondent - Refund should be sanctioned to respondent within a period of two months: CESTAT [Para 6.1, 7, 8, 9]
2015-TIOL-225-CESTAT-AHM
M/s Gammon India Ltd Vs CCE & ST (Dated: December 19, 2014)
CENVAT - Credit cannot be taken on any date as per appellant's choice by modifying the records at will: CESTAT [para 4]
Also see analysis of the Order
2015-TIOL-219-CESTAT-BANG
Raasi Refractories Ltd Vs CCE, C & ST (Dated: December 8, 2014)
Service Tax - Denial of refund claim - Claim of refund of amount deposited during pendency of appeal though demand originally confirmed by adjudicator, allowed under favorable appellate order - Amount paid subsequent to the date of adjudication order cannot be hit by the doctrine of unjust enrichment - Denial of refund by revision authority on ground that service tax incidence has been passed on to any other person is wholly unjust. (Para 6)
2015-TIOL-218-CESTAT-BANG
M/s Sushee Electrical Works Vs CCE, C & ST (Dated: December 4, 2014)
Service Tax - Maintenance/repair services to transformers of Transmission and Distribution companies - Benefit of exemption Notification No.45/2010 applicable - Appellant directed to deposit amount determined as payable after extending cum tax benefit - Pre-deposit of balance due is waived. (Para 3)
2015-TIOL-217-CESTAT-DEL

Varinder Singh Bal Vs CCE & ST (Dated: November 20, 2014)

ST - Appellant is a Company-owned Company-operated (COCO) IOC outlet operator to manage the outlet for which he received commission - Responsibilities included sales promotion, and storage, protection, delivery of the IOC's products – such services fell under Business Auxiliary Service and they were liable to pay service tax – demand confirmed and penalties imposed – appeal before CESTAT.

2015-TIOL-209-CESTAT-DEL

Nis Sparta Ltd Vs CST (Dated: December 18, 2014)

Service Tax - 'Commercial Training and Coaching' - Mandatory Training of Insurance Agents - not liable to pay Service Tax : The appellant is providing training to candidates who intent to become Insurance Agent. The candidates are sponsored by the insurance company, who pays the appellant instead of candidates themselves paying the appellants. To become the insurance agent, it is mandatory in the law for him to undergo a training programme which is imparted by the appellant and thereafter to clear an exam conducted by Insurance Regulatory and Development Authority (IRDA).

Following the decisions in *Indian Institute of Aircraft Engineering Vs. Union of India* - *2013-TIOL-430-HC-DEL-ST* ... and *Pasha Educational Training Institute Vs. CCE, Hyderabad* - 2009-TIOL-288-CESTAT-BANG , Held: the training imparted by the appellants does not fall under the ambit of Section 65(27) of the Finance Act, 1994 as the training imparted by the appellant is having the recognition of law and covered under exclusion clause of Section 65(27) of the Finance Act, 1994, therefore the appellant is not liable to pay service tax at all.

Also see analysis of the Order

2015-TIOL-208-CESTAT-MUM

Chanakya Mandal Pariwar Vs CCE (Dated: September 23, 2014)

ST - Appellant is running courses recognised by university and issuing degree - For the period prior to May 2011 prima facie the appellant is not covered under definition of "Commercial Coaching and Training Centre" - Post 2010, appellant collected ST on the fees recovered by them from the students to whom they are providing professional courses which are not recognised by the University, same is required to be paid to the department –Appellant is directed to make a pre-deposit of Rs. 16,98,532/- : CESTAT [Para 2, 6, 7, 8]

2015-TIOL-207-CESTAT-AHM

M/s Nana Udyog Vs CCE & ST (Dated: December 12, 2014)

Service Tax – CENVAT Credit of Service Tax paid on courier service used for sending various sale related documents and samples for approval to the customers – Credit is admissible in view of the Gujarat High Court decision in case of M/s Ambalal Sarabhai Enterprises Limited – Appeal allowed.

2015-TIOL-199-CESTAT-MUM
CCE & ST Vs M/s Hotel Amarjit Pvt Ltd (Dated: December 30, 2014)
ST - ROM- Revenue cannot take a new ground and seek rectification of mistake in the final order - fact that ST-3 return was filed on 28/03/2007 for the period 04/05 to 10/2005 and, therefore, SCN issued on 15/11/2010 is within time has not been brought out in the SCN or the O-in-O - since this fact has not been recorded anywhere, Revenue cannot allege that the Tribunal has committed an error apparent on record -ROM application dismissed: CESTAT [para 1.1, 2]
Also see analysis of the Order
2015-TIOL-198-CESTAT-AHM
M/s Enjoy Chemistry With Yash Vs CCE & ST (Dated: December 30, 2014)
Service Tax - Penalty - Whether penalty under Section 76 survives when 25% of the penalty imposed under Section 78 is paid
2015-TIOL-197-CESTAT-MAD
Intimate Fashions Pvt Ltd Vs CCE (Dated: January 7, 2015)
Service tax - Stay / dispensation of pre deposit - Classification of service - Appellant claims that they were availing Information Technology Service and not Computer Network service - demand pertains to period prior to 16.05.2008, agitated herein.
2015-TIOL-196-CESTAT-DEL
Punjab National Bank Vs CCE & ST (Dated: October 13, 2014)
Service Tax – Input Service Distributor - Zonal Office had applied for ISD in the ST-1 application but department wrongly issued ST-2 in which service was mentioned as Banking & Financial Service instead of Input Service Distributor – facility of redistribution of credit denied, demands confirmed with penalty and contested herein.
2015-TIOL-193-CESTAT-MUM
Kala Mines And Minerals Vs CC, CE & ST, Goa (Dated: January 19, 2015)
ST - Once the appeal filed by paying the pre-deposit amount of 7.5% of the tax demand in terms of s.35F of CEA, 1944 is pending before the Tribunal, there was no need for freezing the bank accounts - DGCEI directed to defreeze the bank accounts forthwith: CESTAT [para 3]
Also see analysis of the Order

2015-TIOL-188-CESTAT-MAD
Naga Ltd Vs CCE (Dated: October 31, 2014)
Service Tax – Business Auxiliary Services - appellants are engaged in grinding of wheat into wheat products such as Maida, Atta, Suji and Bran – Revenue viewed the same taxable under the category of "BAS", and adjudicated demands, agitated herein.
2015-TIOL-187-CESTAT-MUM
M/s GTL Infrastructure Ltd Vs CST (Dated: January 5, 2015)
ST - Refund - Appellant GTL paying ST on behalf of company with which it sought to merge - as Madras High Court had not sanctioned the scheme of merger, CNIL paid ST under VCES, 2013 - Adjudicating authority to allow re-credit of Rs.79.92 crores in CENVAT account of appellant - refund not hit by limitation as claim arose only after the issuance of discharge certificate by the competent authority on 22.11.2013 - Appeal disposed of: CESTAT [para 7.1 to 7.6]
Also see analysis of the Order
2015-TIOL-185-CESTAT-MAD
M/s Didar Motors Vs CST (Dated: January 7, 2015)
Service Tax – Condonation of delay – Appellant sought adjournment thrice and the same was granted – Fresh prayer for adjournment filed on the ground that the person required to file affidavit was not available.
2015-TIOL-184-CESTAT-MAD
M/s Pricol Ltd Vs CCE (Dated: January 5, 2015)
Service Tax - CENVAT credit - Dispute relates to denial of credit (a) availed on ISD document under Rule 2(m) and 7 of the CCR 2004; (b) availed on the basis of Xerox copies; and (c) availed on CHA service. Held: No finding on the genuinity of credit availed and distributed by ISD - substantial law in Rule 2(m) shows appellant eligible for credit on facts, disputed only on procedural law - procedure is not tyrant of the law but is servant thereof and justice cannot be denied for reasons attributable to the procedural law, as ruled by the Apex Court in the Sambhaji Vs. Gangabai case - credit availed on basis of ISD allocation allowed. [Para 7, 8, 9] Appeal on the CENVAT claimed on the basis of xerox copies of invoice is dismissed; however, corresponding penalty imposed under Rule 15(4) has not been quantified with reasons, hence set aside. [Para 9] So far as the credit on CHA service is concerned, there is no material fact and evidence on record to rule out the availment of such a service - in absence of disintegration between the service availed for use in the activity carried out by

appellant, impugned credit held admissible. [Para 10]
2015-TIOL-181-CESTAT-MUM
Reliance Industries Ltd Vs CCE & ST (LTU) (Dated: January 21, 2015)
CENVAT - ST paid in respect of Insurance Premium for retired employees is also an Input Service since the premium paid has formed part of cost of the excisable goods on which CE duty has been paid on removal - appeal allowed with consequential relief: CESTAT [para 3]
Also see analysis of the Order
2015-TIOL-179-CESTAT-MAD
M/s Kochar Properties Pvt Ltd Vs CST (Dated: September 24, 2014)
Service tax - Stay / dispensation of pre deposit - "Renting of Immovable Property Service" - applicant leased out property under lease deed for consideration and collected interest free refundable security deposit - Revenue viewed that the applicant is liable to pay tax on the notional rate of interest on the deposit under Sec 65(105)(zzzz) of the Finance Act 1994 - demands adjudicated and agitated herein.
2015-TIOL-178-CESTAT-MUM
Shri Mahesh Vaktawarmal Rathod Vs CCE (Dated: December 29, 2014)
ST - Renting of Immovable property - Tax paid with interest after due date mentioned in s.80(2) of FA, 1994 - while clarifying VCES, 2013, Government has left a window open for taking a lenient view in some circumstances in the matter of imposition of penalty - as issue was in dispute and has still not attained finality, penalty u/76 waived - Appeal allowed with consequential relief: CESTAT [para 6.1, 7]
Also see analysis of the Order
2015-TIOL-172-CESTAT-MAD
Prime Developers Vs CCE (Dated: January 7, 2015)
Service Tax – Stay / dispensation of pre deposit – Valuation – Dispute relates to whether advances received, attributable to future period is includible in gross value for assessment to tax.
2015-TIOL-171-CESTAT-MAD
M/s Taneja Aerospace And Aviation Ltd Vs CCE (Dated: October 13, 2014)
Service Tax – Stay / dispensation of pre deposit - "Supply of tangible goods" – appellant entered into a lease agreement with a foreign company to acquire CESSNA

make Aircraft on lease for 10 years on a monthly lease rent basis – same viewed as taxable at appellant's hands by Revenue; demands adjudicated and agitated herein.
2015-TIOL-167-CESTAT-MUM
M R Narkhede Memorial Turst Vs CST (Dated: November 17, 2014)
ST – Commercial Training/Coaching - appellant have field a copy of communication dt. 10.9.2014, issued by the Under Secretary, University Grants Commission, New Delhi to the Chairman & Trustee of the appellant, wherein the name of the concerned two deemed universities at serial No. 18 & 23 of the list, stating that a deemed university have been established – Tilak Maharashtra Vidyapeeth w.e.f. 28.4.1987 and Institute of Advanced Studies in Education w.e.f. 25.6.2002 - Thus the deemed university is in legal existence as communicated by UGC and accordingly the degrees/certificates awarded by them for the education through the appellant is recognized by law – prima facie case in favour of appellant – stay granted: CESTAT [para 5]
2015-TIOL-166-CESTAT-AHM
M/s Ajmnani Jaspal Singh Vs CCE & ST (Dated: November 28, 2014)
ST - Appellant's submission that since penalty u/s 78 has been waived u/s 80 of FA, 1994, extended period is not invokable u/s 73 for confirmation of demand is not sustainable - both sections viz. s.73 & s.80 are to be independently examined - there is no evidence that appellant had any confusion that ST was not payable - Appellant preferred to sit quiet with his eyes closed - In the present case the entire demand is not time barred and appellant has not shown his bonafides by paying the service tax along with interest for the period within limitation - appeal dismissed: CESTAT [para 4.1, 5.2]
Also see analysis of the Order
2015-TIOL-165-CESTAT-MUM
M/s Magarpata Township Development and Construction Co Ltd Vs CCE (Dated: September 12, 2014)
ST - Refund - Appellant is SEZ developer availing certain services and paid ST thereon - As the services were used for authorized operations in SEZ, therefore, refund claim was filed – Claim for refund was denied by citing Notfn 15/2009-ST and Notfn 9/2009-ST - Aggrieved, hence appeal – Held: intention of legislation was that if ST has been paid by unit which was not required to pay ST it does not mean appellant is not entitled for refund - Intention of legislature is that the person providing services is not required to pay ST - Therefore, Revenue has misinterpreted the notfn 15/2009 ibid to deny refund – As per Tata Consultancy Services Ltd 2012-TIOL-1034-CESTAT-MUM , appellants entitled for refund claim - It is not in dispute that appellant has filed refund within time limit prescribed under Section 11B of CEA, 1944 - As both issues have been decided in favour of appellant, impugned order set aside and appeal allowed: CESTAT [Para 2, 6, 7]
2015-TIOL-160-CESTAT-DEL
Japan Airlines International Co Ltd Vs CST (Dated: September 9, 2014)

ST - Penalty - delay in payment of ST by due date - delay involving 41 days, 10 days, 61 days and 31 days - Delays have continued over many months and cannot, therefore, be said to be bonafide - such delays cannot be ignored - Penal action was rightly confirmed by adjudicating authority and approved by Commissioner(A) - no question of waiving of penalties u/s 80 of FA, 1994 - Appeal rejected: CESTAT [para 9, 10]

2015-TIOL-159-CESTAT-MAD

M/s Rajaram Flour Mill (P) Ltd Vs CCE (Dated: September 26, 2014)

Service Tax - Business Auxiliary Service - appellants are engaged in the processing, grinding and milling of wheat into wheat products such as, maida, atta, sooji, etc., viewed as taxable under BAS - demands adjudicated and agitated herein.

Held: Tribunal in the case of M/s. Jaykrishna Flour Mills (P) Ltd. set aside the demand following the Board's Circular - in view of the same, impugned order set aside with consequential relief. [Para 2, 3]

2015-TIOL-154-CESTAT-MAD

M/s Dalmia Cement (Bharat) Ltd Vs CCE & ST (Dated: October 30, 2014)

Service tax – Stay / dispensation of pre deposit - "Transportation of Goods by Road Service" - demand was raised on the basis of the Trial Balance produced by appellant at the time of audit and agitated herein.

2015-TIOL-153-CESTAT-MAD

CCE & ST LTU Vs Axles India Ltd (Dated: January 9, 2015)

Service Tax – CENVAT credit - respondents, a 100% EOU, are manufacturers of Rear Axles Housing (MV parts) which are exported to various countries - In respect of goods exported to USA, prior to delivery, the goods are subjected to quality control and cleaning operations at the warehouse of buyer for which an overseas provider was engaged; tax discharged under reverse charge under 'BAS' and credit of the same availed – Revenue viewed the same inadmissible on the ground that the service had no nexus with manufacturing; adjudicated recovery of the credit with interest; same set aside by Commissioner (Appeals), and agitated by Revenue herein.

2015-TIOL-150-CESTAT-BANG

M/s Tops Security Ltd Vs CCE (Dated: November 11, 2014)

Service Tax - Payment details related to tax liability - Certified statement of CA found to be incorrect on facts - So also the verification report of Superintendent lacks details of balance amount to be paid and adjustable as arrears - Questionable approach and lack of seriousness of the parties in not verifying and placing on record facts correctly, deprecated - Appellant directed to submit another CA report - Assistant Commissioner directed to get another report based on payments made, self verification and certify the correct amount payable - Matter adjourned with both sides to exchange their

respective statements.
2015-TIOL-148-CESTAT-DEL
Airport Authority of India Vs CST (Dated: January 2, 2015)
Service Tax – Airport Services – Any service provided does not mean any taxable service provided: the words "any service provided" would cover any service other than those covered by other clauses of section 65(105)(zzm), which have been provided in an Airport or a Civil Enclave by AAI or a person authorised by it.
Also see analysis of the Order
2015-TIOL-147-CESTAT-MUM
M/s Crest Premedia Solutions Pvt Ltd Vs CCE (Dated: November 14, 2014)
ST - Rebate claim - rebate on inputs and inputs services under Notfn 12/2005-ST used in providing taxable services which are exported - Appellant complied with conditions prescribed in Notfn - However procedure was not followed to the extent that declaration was filed after export of services - Records such as invoice on which input tax credit is availed and records indicating export of services will not reveal any information which is not verifiable later - contravention of not following procedure of filing declaration is indeed a procedural formality, for contravention of which substantial justice cannot be denied relying on case of Convergys India Pvt. Ltd - rebate sanctioned: CESTAT [Para 2, 6.1]
2015-TIOL-139-CESTAT-MUM
Maharashtra Industrial Development Corporation Vs CST (Dated: November 17, 2014)
ST - Stay order passed by this Tribunal directing appellant to make a pre-deposit of Rs.185 crore regarding premium collected in a transaction where land is leased for purpose of subsequent commercial construction – in view of decision in Greater Noida Industrial Development Authority - 2014-TIOL-1741-CESTAT-DEL , order dated 25/08/2014 modified by waiving requirement of pre-deposit and directing registry to list the appeal for final hearing without insisting on any pre-deposit: CESTAT [Para 2, 4]
2015-TIOL-136-CESTAT-MAD
M/s Shanmuga Construction Services Vs CST (Dated: September 8, 2014)
Service Tax - Stay / dispensation of pre deposit - appellant obtained registration under 'Commercial or Industrial Construction Service'; and engaged sub-contractor for the construction - Revenue viewed the same taxable under 'Works contract', adjudicated demands which are agitated herein. Held: Notification No.32/2007 (ST) dated 22.5.2007 stipulates that no CENVAT credit be availed on the inputs and if the credit is availed, then it should be restricted at 40% subject to service tax at the rate of 4.12% being paid on the total invoice value of the service after availment of said CENVAT credit - contested on the ground that

the option came by Notification No.1/2011-ST - force in the submission on the ground of limitation - Prima facie, there is a dispute regarding the eligibility of the benefit of Notification No.32/2007-ST - Appellant already paid a sum of Rs.38,23,115/- out of which Rs.33,39,585/- has been appropriated by the adjudicating authority; same is held sufficient for the purpose of waiver of predeposit of balance dues. [Para 4]

2015-TIOL-134-CESTAT-MUM

M/s Vivekanand Jha & Co Vs CCE (Dated: October 21, 2014)

ST - Appellant is engaged in activity of job-work on their factory on behalf of their principals - It is alleged that appellant is providing 'Manpower Recruitment or Supply Agency Service' - As issue has been raised during course of audit, appellant has collected ST from their principals which has been paid to department along with interest - SCN was not required to be issued as per Section 73(3) of FA, 1994 - appellant is entitled for benefit of Section 80 of Act - order of imposition of penalty is set aside - appeal allowed: CESTAT [Para 2, 7]

2015-TIOL-131-CESTAT-DEL

Roma Henny Security Service Pvt Ltd Vs CST (Dated: December 16, 2014)

Service Tax - Stay/Dispensation of pre-deposit - Demand of service tax on sale of tickets for Airport visitors - Prima facie , as per the decision of the Tribunal in the case of P.C. Paulose, the activity of sale of tickets for visitors is not leviable to service tax. Therefore as there are contrary views in that case, allegation and suppression cannot be alleged against the applicants. In these circumstances, extended period of limitation is not invokable. Therefore, prima facie , the applicant has made out a good case for complete waiver of pre-deposit - Pre-deposit waived.

2015-TIOL-130-CESTAT-DEL

Sharma Builders Vs CCE(Dated: December 05, 2014)

Service Tax - Condonation of delay of 31 days - Considering reasonable cause, delay is condoned - Commissioner (Appeals) dismissed the application for modification of stay order without hearing - **Held:** The Commissioner (Appeals) had not disposed of the application for modification in accordance with the principles of natural justice - Impugned order is set aside and matter remanded to the Commissioner (Appeals).

2015-TIOL-129-CESTAT-MAD

Wti Advanced Technology Ltd Vs CST (Dated: October 13, 2014)

Service Tax – Stay / dispensation of pre deposit – appellant engaged in providing services in Information Technology viz., Geospatial IT Services, Data Capture/Conversion Services etc. – demands confirmed under the category of 'Manpower supply service' and 'Business support service' and 'Information Technology

service'; and agitated herein.

Held: adjudicating authority has partially dropped the demand in respect of services provided to TCS and also allowed the cum-duty benefit and appropriated service tax paid under IT services - applicant's main contention is demand made under the category of (a) Manpower supply services (over Sep 2005-Jan 2010); and (b) Business Support Services (over Jun 2006-Jul 2008) - applicants are contesting on the limitation issue in respect of demand under BSS - Even after excluding the demand under extended period, Rs. 36,36,969/- under BSS falls under normal period - applicant has not made out a strong prima facie case for waiver of pre-deposit of entire amount of tax along with interest and penalty; and is directed to pre-deposit a sum of Rs.20,00,000/-(Rupees Twenty lakhs) within a period of eight weeks. [Para 5]

2015-TIOL-120-CESTAT-MUM

M/s Rochem Separation Systems (India) Pvt Ltd Vs CST (Dated: December 12, 2014)

ST - If the reason for waiving penalty u/s 78 in terms of the provisions of Section 80 are that there was confusion about the scope of leviability on service receivers under reverse charge mechanism, then, it is the same confusion because of which the appellants had not declared the fact of receiving service by way of import - Demand time barred - Order set aside & appeal allowed: CESTAT [para 12, 13]

Also see analysis of the Order

2015-TIOL-119-CESTAT-MUM

M/s Bain Capital Advisors India Pvt Ltd Vs CST (Dated: October 16, 2014)

ST - Refund - Appellants providing investment advisory service to Bain Capital Mauritius located outside India and same were used outside India - Refund claim of unutilized CENVAT Credit was filed - Credit during period April 2010 to March 2011 has been denied for want of invoices which have been verified and found to be proper, therefore, appellants entitled for said Credit - Adjudicating authority has not considered issue that input service on which Credit availed by appellant do qualify as input service as per Rule 2(l) of CCR, 2004 - Matter remanded to adjudicating authority: CESTAT [Para 6, 7]

2015-TIOL-118-CESTAT-BANG

Al-Hussam India Hajj & Umrah Service Management Vs CCE, C & ST (Dated: December 2, 2014)

Service Tax – Modification of order – Tribunal has no inherent power of review except on ground of error apparent on face of record – Appellant sought several adjournments but failed to comply with directions to pay duty – No error apparent on record established – Miscellaneous applications seeking modification of order hence rejected. (Para 3)

2015-TIOL-109-CESTAT-AHM
M/s Intas Pharmaceuticals Ltd Vs CCE & ST (Dated: December 12, 2014)
ST - Admissibility of refund claims of service tax paid under notification 41/2007-ST dated 06.10.2007 is subject to production of certain documents and fulfilling prescribed conditions – Commissioner (A) has given clear findings that appellant has not fulfilled the specified conditions by adducing required documentary evidences – No reason to interfere in the order as nothing new has been brought on record by the appellant that documents required and conditions prescribed are fulfilled - Appeal is rejected on merits as well as for non-prosecution: CESTAT [para 4, 5]
2015-TIOL-108-CESTAT-MUM
Matunga Gymkhana Vs CST (Dated: December 18, 2014)
ST – Services to members of club/co-operative housing society is not a service by one to another and, therefore, is not chargeable to service tax – appeals allowed: CESTAT [para 8]
Also see analysis of the Order
2015-TIOL-107-CESTAT-AHM
M/s Paul Mason Consulting India Pvt Ltd Vs CCE & ST (Dated: November 21, 2014)
ST – Refund - rejection of refund claim of the appellant as time barred - First appellate authority has dismissed the appeals on the grounds of time bar only - Appellant has now referred CBEC D.O F. No. 334/13/2009-TRU dated 06.7.2009 to argue that one year period will start from the quarter ending as per exemption notification - as these aspects were not raised before the first appellate authority, matter remanded: CESTAT [para 4]
2015-TIOL-106-CESTAT-AHM
M/s Piramal Pharmaceuticals Development Services Pvt Ltd Vs CST (Dated: November 21, 2014)
ST- service of order - no acknowledgment from the appellant has been produced by the department to indicate that OIO dated 12.01.2011 was received - Under similar facts, bench is taking a view that an appealable order cannot be considered to have been delivered - Order passed by the first appellate authority is set-aside and the matter is remanded for passing order on merits after giving an opportunity of personal

hearing to the appellant to argue his case: CESTAT [para 4]

2015-TIOL-100-CESTAT-MUM
K Raheja Corp Pvt Ltd Vs CCE (Dated: October 14, 2014)
ST – Renting of Immovable property - Notional interest accrued on security deposit cannot be added to rent agreed upon between the parties for the purpose of levy of service tax under the category of Renting of immovable property - order set aside and appeal allowed: CESTAT [Para 5, 6]
2015-TIOL-99-CESTAT-BANG
M/s Dhanalaxmi Constructions Vs CCE (Dated: November 18, 2014)
Service Tax - Delay of one day in filing appeal rejected - Sufficiency of cause - Application to condone delay was moved during personal hearing stage - Assessee's reason that delay occasioned due to confusion prevailed in filing appeal due to shifting of Commissioner's office and documents sent via speed post -Held, Commissioner ought to have condoned the delay - Delay condoned by setting aside the impugned order - Matter remanded for fresh consideration.
2015-TIOL-98-CESTAT-MUM
M/s C K P Mandal Vs CST (Dated: November 21, 2014)
ST – Donations received from caterers not liable to Service Tax - Time bar u/s 11B of CEA, 1944 will apply only if demand has been made/paid as duty under the law – since no such demand was made and the tax was not payable in law but appellants were persuaded to pay the amount, refund not time barred – appellant entitled to refund along with interest: CESTAT [para 6, 6.1]
Also see analysis of the Order
2015-TIOL-97-CESTAT-BANG
M/s Prathamenvirotech Engineers Pvt Ltd Vs CC, CE & ST (Dated: December 4, 2014)
Service Tax – Execution of EPC contract for implementation of power projects – Appellant contends that during the material period in question as the projects apparently shelved and amounts received by him returned to the promoters as such

no service was rendered and no liability arose–Held in view of peculiar circumstances and ignorance of law pleaded, impugned order set aside and matter remanded giving appellant opportunity to defend and substantiate his case. (Para 2)
2015-TIOL-96-CESTAT-BANG
Nidhi Mining Pvt Ltd Vs CCE, CC & ST (Dated: December 1, 2014)
Service Tax – Iron ore Mining and export – Demand pertaining to shifting of material inside mining area and GTA service for transportation to the port – Denial of benefit of abatement on alleged ground that appellant failed to produce evidence that no CENVAT credit had been availed by the service provider – Appellant fairly concedes that despite several opportunities he could not participate in adjudication proceedings due to circumstances beyond his control – On facts, matter is remanded to original authority for fresh consideration on merits – Appellant directed to deposit Rs.10 lakhs. (Para 2)
2015-TIOL-89-CESTAT-MAD
M/s Hansa Vision Pvt Ltd Vs CST (Dated: September 23, 2014)
Service tax - Stay / dispensation of pre deposit - applicant is engaged in producing television programmes and supervision of the production activities - dispute relates to demand of service tax along with interest and penalty under the category of 'Programme Producer Service'.
2015-TIOL-87-CESTAT-AHM
CCE & ST Vs M/s Madhvi Procon Pvt Ltd (Dated: November 14, 2014)
ST - Refund - Service tax was paid on the amount of advances received by the Respondent but ultimately no service could be provided as the said works contract got terminated - if no service is rendered then no service tax is payable - amounts paid have to be considered as "deposit" and to which provisions of s.11B of CEA, 1944 are not applicable - refund claim filed on 25.10.2012 in respect of "service tax" deposited on 23.8.2010, 06.9.2010 and 06.10.2010 cannot be said to be time barred - Order of Commissioner(A) allowing refund is legal and proper - Revenue appeal rejected: CESTAT [para 4, 5]
Also see analysis of the Order
2015-TIOL-83-CESTAT-DEL

Honda Motor India Pvt Ltd Vs CC, CE & ST (Dated: December 2, 2014)
ST – Refund - Service tax was not required to be paid on the invoice as it was cancelled but the party paid service tax amounting to Rs.4,00,670/- - no Cenvat Credit has been availed by the alleged service receiver - incidence of Service Tax against invoice has not been passed on and revenue was not able to show that there was un-due enrichment – ground taken by Commissioner(A) to deny the benefit is not based on consideration of totality of facts – company contributing ST of Rs.4 crores and CE duty of Rs.70 crores – no mens rea can be imputed – for a technical error substantial right could not be disallowed – refund admissible - appeal is allowed: CESTAT [para 6, 7]
2015-TIOL-82-CESTAT-MUM
M/s Barclays Technology Centre India Pvt Ltd Vs CCE (Dated: December 23, 2014)
ST - Notfn. 15/2009-ST - Condition in notification cannot nullify the overriding provisions of Section 51 of the SEZ Act - Refund cannot be denied for procedural infraction of having paid the Service Tax which ought not to have been paid by the service provider: CESTAT [para 6, 7]
Also see analysis of the Order
2015-TIOL-81-CESTAT-MUM
Lafarge India Pvt Ltd Vs CST (Dated: October 13, 2014)
ST - Appellant availed External Commercial Borrowings (ECB) from Non-Resident - Such services amounted to taxable service classifiable under category of 'Banking and other Financial Services' as 'merchant banking services' – ST along with interest was paid on being pointed out by Revenue - Whatever ST was paid, same is entitled as CENVAT Credit - Intent to evade duty stands not proved – Appellant is entitled for benefit of Section 73(3) of FA, 1994, therefore, SCN was not required to be issued - Penalties confirmed in impugned order is set aside and appeal allowed: CESTAT [Para 2, 7, 8]
2015-TIOL-80-CESTAT-BANG
S K Kareemun Vs CCE, C & ST (Dated: December 5, 2014)
Service Tax – Rent-a-cab service – Hiring of buses with Andhra Pradesh Road Transport Corporation – Tax demand pertaining to all the 200 operators relate to the period subsequent to 2007 amendment of the definition of “rent-a-cab” service effected to include motor vehicles capable of transporting more than 12 passengers – Rent-a-cab scheme as envisaged in Motor Vehicles Act was applicable only to motor cab or maxi cab and not for the purpose of levy of service tax – Consequent to change

of law, post 2007 hiring of buses by private entrepreneurs to Road Transport Corporation under hire scheme on identified intra and inter-state routes, held prima-facie is taxable as "rent-a-cab service". (Para 5.6.6, 5.6.7, 5.7.2, 5.7.5, 5.7.),

Motor Vehicle – Contract carriage and Stage carriage – No specific condition in the agreement barring stage carriage permit holder to provide his vehicle on hire with RTC – Such hiring does not amount to transfer of permit requiring permission of the transport authority – Provisions of Motor Vehicle Act not violated – Distinguishing between contract carriage and stage carriage not necessary. (Para 5.2.2, 5.2.4, 5.5.1)

Service Tax – Hiring of buses with APSRTC – Penalty – Sustainability – Because appellants had shown reasonable cause for not paying the service tax during the relevant period, though invocation of extended limitation period allowed, penalties set aside – Matter remanded to consider only eligibility for abatement, extent of abatement and re-quantification of the tax payable treating the amount received as cum tax amount – Appeals accordingly decided. (Para 5.1.2 to 6)

2015-TIOL-79-CESTAT-MUM

Safeway Motors Vs CCE (Dated: October 16, 2014)

ST – appellant, an authorized service station of M/s. Tata Motors authorized to do repairs and services of vehicles manufactured by them - They have undertaken service and repairs of vehicle of other manufacturer also – In invoices produced by appellant, sale of parts have been shown separately on which VAT has been discharged at applicable rates and service portion of service provided has also shown separately and ST paid thereon – case of appellant is squarely covered by CBEC Circular 96/7/2007 - when VAT has been paid on material supplied, they are not required to pay ST - As per Dynamic Motors - 2011-TIOL-1876-CESTAT-DEL value of parts supplied is not includible in value of taxable service - impugned order set aside and appeal allowed: CESTAT [Para 2, 6, 7]

2015-TIOL-78-CESTAT-DEL

M/s Paharpur Cooling Towers Limited Vs CC & CE (Dated: August 28, 2014)

ST - It was only on 18.05.2012 that Section 67A was introduced which provided that the rate of service tax, value of taxable service and the rate of exchange, if any shall be the rate of service tax or value of taxable service or rate of exchange in force as applicable at the time when the taxable service has been provided or agreed to be provided – section 67A of FA, 1994 would only have prospective applicability – advance received by appellant has been adjusted in due course as and when the service was provided – before service was provided the appellants would not have been in a position to know as to what rate of service tax is to be paid – in this view of the matter, it is not possible to sustain the order relating to recovery of interest – appeal allowed: CESTAT [para 3, 4]

ST – Demand of Rs.89.74 lakhs confirmed on the ground that appellants had paid ST by availing 67% abatement under notfn . 15/2004-ST, 1/2006-ST without including the cost of raw materials supplied free – issue settled in favour of appellant by LB decision in Bhayana Builders 2013-TIOL-1331-CESTAT-DEL-LB where it is held that value of goods and materials supplied free of cost by a service recipient to provider of

taxable construction service, would be outside taxable value or gross amount charged – demand not sustainable: CESTAT [para 2]
2015-TIOL-74-CESTAT-MUM
M/s Hydroair Tectonics (PCD) Ltd Vs CCE (Dated: November 25, 2014)
ST – Department has to first fix the classification of a particular activity and only then proceed to work out the demand of service tax which is due - classification under which charge of non-payment is made in the show cause has not been specified – adjudicating authority has not applied the relevant law for determining at what stage service tax payment is due - In the present case, it was due on receipt of payment for the services whereas the adjudicating authority has ignored this issue altogether - Matter remanded: CESTAT [para 5.1]
Also see analysis of the Order
2015-TIOL-73-CESTAT-MAD
M/s St John Cfs Park Pvt Ltd Vs CCE (Dated: October 13, 2014)
Service Tax – Non compliance with stay order - By Stay Order dated 14.06.2013, the applicant was directed to make a predeposit of Rs.20,00,000/- within a period of six weeks; extension of time granted vide Miscellaneous order dated 26.09.2013 and further six weeks therefrom – Appellant claimed the amount was paid by M/s St.John Freight System Limited, contested by Revenue on the ground that the pre deposit was not made by appellant.
2015-TIOL-72-CESTAT-MUM
Seabird Marine Services Pvt Ltd Vs CCE (Dated: October 20, 2014)
ST - Appellant is a CFS and in course of providing service, after the container is emptied at CFS, same is sent to yard - input service credit has been denied by lower authority holding that said service is not an input service as per Rule 2(l) of CCR, 2004 – Aggrieved, hence appeal.
2015-TIOL-63-CESTAT-MUM
M/s Konkan Synthetic Fibres Vs CCE (Dated: November 27, 2014)

ST - Very nomenclature of the service "management consultancy" indicates that it has nothing to do with provisions of facilities such as water, effluent treatment, etc. the expenditure of which is reimbursed to the appellant - appellant is not rendering any advice or consultancy - Demand set aside and appeal allowed: CESTAT [para 6]
Also see analysis of the Order
2015-TIOL-62-CESTAT-MUM
Ind Synergy Ltd Vs CC, CE & ST (Dated: September 16, 2014)
ST - appellant has undertaken activity of business promotion for principal situated abroad and receiving a commission - since service recipient is situated abroad, delivery of service has taken place outside India - Inasmuch as consideration is received in convertible foreign exchange, twin conditions of export, namely service should be rendered from India and delivered outside India and payment should be received in convertible foreign exchange are satisfied - Therefore, activity undertaken by appellant prima facie, covered by provisions of ESR, 2005 - appellant has made out a strong prima facie case - Stay granted: CESTAT [Para 5.1, 6]
2015-TIOL-61-CESTAT-BANG
Bhoorathnom Construction Co Pvt Ltd Vs CCE, C & ST (Dated: September 11, 2014)
Service Tax - Execution of pipeline works for irrigation purposes for the State Government - Terms used in a contract must not be interpreted in isolation but must be examined in a holistic manner - Appellant engaged in construction of only part of the pipeline - Work cannot conclusively be categorized as Turnkey / EPC project - Activity in question is thus excluded from the tax liability - Appellant however directed to deposit Rs.5 lakhs to hear the appeal as the amount deposited as regards GTA service in question being insufficient to hear the appeal - Pre-deposit of balance waived. (Para 4 and 5)
2015-TIOL-56-CESTAT-MUM
M/s Beico Industries Pvt Ltd Vs CCE (Dated: September 15, 2014)
ST - Appellant received Consulting Engineer's Services from service provider located outside India - They declared expenses of service incurred specifically in its books of account and final account, subjected to audit by Revenue twice - no case of suppression or any intention to evade duty is attributable to the appellant - ST along with interest was paid soon after pointed out by Revenue and in less than 7 days on grant of registration - No SCN was required to be issued and adjudicated in terms of clear mandate under Section 73(3) of FA, 1994 – SCN is bad in terms of Section 73 of the FA, 1994 - Order set aside and appeal allowed: CESTAT [Para 2, 3, 5]

2015-TIOL-54-CESTAT-MUM
M/s Mineral Exploration Corporation Ltd Vs CCE (Dated: November 19, 2014)
ST - For any service, there has to be a service provider, a service receiver and consideration - as the records show that no consideration has been paid by the Government to the appellant for undertaking the work of Survey and Exploration & what is received is only the reimbursement of the actual expenses involved it cannot be said that service has been provided to the Ministry of Mines - Orders set aside and appeals allowed: CESTAT [para 6.1, 6.2, 6.3]
Also see analysis of the Order
2015-TIOL-53-CESTAT-MAD
Deloitte Haskins And Sells Vs CST (Dated: August 4, 2014)
Service Tax - Chartered Accountants Service – demands relating to non-maintenance of separate accounts for inputs services used towards taxable and non-taxable services and also non-payment of service tax claimed as export of service etc. adjudicated with interest and penalties, agitated herein.
2015-TIOL-52-CESTAT-BANG
M/s G K Vale and Company Vs CST (Dated: November 19, 2014)
Service Tax - Developing film and printing of photograph service - Non-inclusion in taxable value of cost of sensitized paper, chemicals etc consumed in providing service - Conflicting precedents decided both in favor of and against assessee including for the period in question - No purpose will be served in keeping the issue pending since on limitation itself the demand is not sustainable - Appeal allowed with consequential relief. (Para 3)
2015-TIOL-41-CESTAT-BANG
Delco Projects Pvt Ltd Vs CCE, C & ST (Dated: December 4, 2014)
Service Tax – Extension of time to comply with stay order – Applicant projects a case of inability to pay even if extension granted – In the circumstances, miscellaneous application seeking extension dismissed.

2015-TIOL-40-CESTAT-BANG
Andhra Pradesh State Financial Corporation Vs CCE, ST & CC (Dated: Septermber 22, 2014)
Service Tax - Banking and Financial service - Penal charges collected on premature closure of loan - Not liable to tax - On facts, decision rendered in HUDCO distinguished and held not applicable - Pre-deposit waived. (Para 3)
2015-TIOL-39-CESTAT-AHM
M/s Adani Port And Sez Ltd Vs CST (Dated: December 10, 2014)
Service Tax - Stay - CENVAT Credit on certain capital goods, inputs and input services availed by the appellant has been denied under the CENVAT Credit Rules : out of total demand of Rs.185 crore, an amount of Rs.35 crore only pertains to Cement & Steel. This amount of Rs.35 crore also includes an amount of Rs.8.24 crore for the period April 2004 to March 2006 on Steel & Cement where an amount of Rs.2 Crore deposited through Challan, Rs.3.74 crore through Bank Guarantee and Rs.2.5 Crore was Kept as CENVAT Credit earmarked as per Gujarat High Court's order. Remaining amounts pertain to input services and inputs, for which CENVAT Credit was either allowed by this bench, or the issue was remanded to the adjudicating authority. The admissibility of CENVAT Credit taken on various input services, inputs and capital goods needs to be examined in detail especially in the light of favourable judicial pronouncements brought to the notice of the bench. CENVAT Credit with respect to inputs (other than cement and steel) input services and capital goods is approx. Rs.150 crore out of total demand of Rs185 crore, which prima facie appears to be either permissible or admissibility is arguable. The A.R. fairly submitted that in the absence of documentary evidences furnished by the appellant it was not possible for the adjudicating authority to bifurcate between admissible and in-admissible CENVAT Credit on inputs, capital goods and services availed by the appellant. As the issues raised by both the sides are highly contentious ones, the stay applications filed by the appellants allowed and appeals fixed for final disposal on 03.02.2015 as huge revenue is involved in those appeals.
2015-TIOL-31-CESTAT-BANG
Prerana Enterprises Vs CCE, C & ST (Dated: November 10, 2014)
Service Tax – 30 days delay in filing appeal due to counsel mother's death, condoned – Impugned order dismissing appeal is set aside and matter is remanded to the Commissioner (A) to decide the appeal on merits. (Para 2)
2015-TIOL-30-CESTAT-BANG

Society For Promotion Of Nature Tourism And Sports (Sports) Vs Customs (Dated: December 3, 2014)

Service Tax - Condonation of delay - Delay of 505 days - Delay alleged to have occurred due to misplace of file, lack of knowledge of the Order in question, transfer of staff and renovation of office - Affidavits signed by the same individual and filed on different dates justifying delay contained grounds totally different and conflicting with each other - No explanation forthcoming for the material lapses and discrepancies in the grounds - Affidavits not filed with care and truthfulness - No justifiable grounds/reasons exist to condone delay - Application for condonation of delay hence rejected. (Para 6 to 9)

2015-TIOL-29-CESTAT-BANG

Tanuku Municipality Vs CC, CE & ST (Dated: December 1, 2014)

Service Tax - Municipal Corporations - Prayer for waiver of penalty only - Revenue attempt to levy penalty on Municipal Corporation in view of earlier decisions, waived. (Para 2)

2015-TIOL-26-CESTAT-BANG

Sobha Developers Ltd Vs CCE, C & ST (Dated: September 16, 2014)

Service Tax – Construction of Complex service – Amounts collected toward water supply, electricity connection, advocate fee for registration of sale deed etc, not on actual basis but during the course of implementation of agreement of construction in different stages – Held, form part of construction cost – Prima-facie liable to tax – Whether or not extended period can be invoked being debatable issue with possibility of different interpretations, declined against invocation – Appellant directed to deposit the entire amount of tax demanded with interest for hearing the appeal. (Para 5, 6)

2015-TIOL-25-CESTAT-MUM

M/s Maharashtra Industrial Development Corporation Vs CCE (Dated: November 3, 2014)

ST - Management, Maintenance and Repair services - Appellant carrying out maintenance and repair of street, street lights, water supply, drainage etc. within the industrial development area developed by the appellant, wherein plots for setting up of industry are allotted to various persons - In appellant's own case in - 2014-TIOL-2022-CESTAT-MUM , this Tribunal held that ST is not leviable in similar facts and circumstances – Stay granted: CESTAT [Para 3, 5]

2015-TIOL-22-CESTAT-BANG

SKS Travels Vs CCE, C & ST (Dated: December 2, 2014)
Service Tax - Rent-a-cab service to SEZ units with service being utilized within SEZ - Exemption from payment of service tax is available only by way of refund - Appellant directed to deposit amount payable for the normal period - Pre-deposit of balance due is waived. (Para 2)
2015-TIOL-14-CESTAT-MUM
Atlas Copco (India) Ltd Vs CCE (Dated: October 13, 2014)
ST - Appellant engaged in procurement of sale orders in India for overseas group companies and receiving commission in convertible foreign exchange – said services falls under BAS - As per Rule 3 (1) (iii) of Export of Services Rules, 2005, appellant is procuring order for their associates located outside India, therefore user of service is located outside India - Stay granted: CESTAT [Para 2, 4, 5]
2015-TIOL-13-CESTAT-MAD
M/s BSNL Vs CCE & ST (Dated: October 1, 2014)
Service Tax – Stay / dispensation of pre deposit – Interest - Telecommunication Service – Appellant paid tax and subsequently obtained correct receipt data from field; debited cenvat and filed revised ST3 –differential tax demands adjudicated with interest and penalty, agitated herein.
2015-TIOL-12-CESTAT-BANG
GDC Creative Advertising Pvt Ltd Vs CC, CE & ST (Dated: December 4, 2014)
Service Tax – Failure to pay tax within time due to delay in dispatch of Order – Dispensing with pre-deposit – As decided in appellant's own case for the earlier period granting unconditional waiver of pre deposit and stay, impugned order set aside and matter is remanded to Commissioner (A) to hear appeal without insisting for pre deposit. (Para 3)
2015-TIOL-11-CESTAT-BANG
M/s Vodafone Essar South Ltd Vs CST (Dated: September 8, 2014)
Service Tax – Interest on short payment – International Roaming Service –Tribunal vide its final order in assessee's own case held that said service is not liable to service

tax – Order-in-Original impugned was passed when the decision of the Tribunal was not available – Matter remanded directing original adjudicating authority to consider the decision and apply to the facts of the case and pass appropriate order. (Para 3) Service Tax – Cenvat Credit – Interest on Cenvat credit on capital goods availed but not utilized – Sustainability – Held, relied on ratio in Strategic Engineering (P) Ltd no interest is payable on Cenvat credit wrongly availed but not utilized – No evidence was adduced by appellant to show whether he had credit of more than the amount taken on capital goods during the relevant period – Matter remanded to make factual verification and consideration.(Para 4, 5)
2015-TIOL-09-CESTAT-DEL
Replika Press Pvt Ltd Vs CCE & ST (Dated: October 7, 2014)
Service Tax – Refund – Dispute relates to refund claims filed, in respect of the service of CHA and inland haulage charges used for the export of goods, rejected in adjudication; OIO upheld by Commissioner (Appeals), agitated herein.
2015-TIOL-08-CESTAT-MUM
M/s Inox Air Products Ltd Vs CCE (Dated: November 21, 2014)
CENVAT - Only basis for denying credit has been that invoices are either in the name of another unit of the appellant or in the name of their Head Office - quite natural that the service provided by CHA would be in the name of the HO where clearance of goods through Customs will be centralized - doubt has never been raised regarding the actual receipt of the services, so credit admissible - Appeal allowed: CESTAT [para 6]
Also see analysis of the Order
2015-TIOL-07-CESTAT-MAD
M/s Karaikal Port Pvt Ltd Vs CCE (Dated: July 22, 2014)
Service Tax – Application seeking intervention in appeal filed by another party on the ground that the demand of tax in the case would affect their right and business liability.
2015-TIOL-06-CESTAT-MAD

IIT Vs CST (Dated: September 30, 2014)
Service Tax - Stay/Dispensation of pre deposit - Demand of service tax under Scientific and Technical Consultancy - On perusal of the agreement, it is seen that there is no prima facie case for waiver on merits as well as on limitation - Pre deposit of Rs 20 lakhs ordered.
2015-TIOL-05-CESTAT-MAD
CCE & ST Vs MCV And Co (Dated: August 25, 2014)
Service Tax – Demand of service tax on various services rendered by the appellants to Neyveli Lignite Corporation – Onus of classifying the services rendered - The demand of service tax was raised on the basis of statements of the NLC - There is no dispute that the Assessees rendered various services at the premises of NLC and received the amount as per the statement of NLC. The dispute relates to the issue that the Revenue had not specifically mentioned the portion of the amount received by the Assessees from M/s.NLC for rendering particular service.