

CESTAT RULING (SERVICE TAX)

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[2014-TIOL-160-CESTAT-MUM](#)

Sunil Hi- Tech Engineers Ltd Vs CCE (Dated: November 12, 2013)

ST - Whether appellant, being a sub-contractor, is not liable to pay service tax prior to 23/08/2007 in view of the clarification issued by the Revenue vide Master Circular No. 96/7/2007 dated 23/08/2007 - Difference of Opinion - Matter referred to Third Member: CESTAT .

[Also see analysis of the Order](#)

[2014-TIOL-159-CESTAT-DEL](#)

CCE & ST Vs M/s Swati Industries (Dated: November 5, 2013)

Cenvat Credit - input services credit of service tax paid on "Overseas commission (BAS), Customs House Agents and Terminal Handling Services" availed, denied in adjudication on the ground that the said services did not satisfy definition under Rule 2(l) of the Cenvat credit Rules, 2004 - demands confirmed in adjudication for recovery of irregularly availed input services credit along with interest and penalty set aside by Commissioner (Appeals) and agitated by Revenue herein.

Held: Said issues no more res-integra and stand settled by various decisions of the Tribunal as also of the Hon'ble High Court, rightly relied upon by Commissioner (Appeals) - no infirmity in the impugned order.

[2014-TIOL-158-CESTAT-AHM](#)

M/s Central Industrial Security Force Vs CCE & ST (Dated: November 28, 2013)

ST - as per Ad-hoc exemption order no. 01/01/2011 dated 01.07.2011 service provided to any person by CISF was exempted for the period from 16.10.1998 to 31.03.2009 - however, the appellant CISF had paid certain amounts before 01.04.2009 towards ST and the same was adjusted for the liability arising post 01.04.2009 - such a suo motu adjustment is not permissible as per the existing ST law - appellant should have sought refund claim for the amount already paid - order passed by Commr (A) upheld: CESTAT [para 4]

CENVAT - as regards the argument that any service tax paid will be admissible as credit to M/s IOC who availed security services, the same is independent of the appeal made and can be separately claimed by the assessee concerned as per the CCR provisions after the ST is paid by appellant along with interest: CESTAT [para 4]

[2014-TIOL-152-CESTAT-KOL](#)

Otis Elevator Company (India) Ltd Vs CCE & ST (Dated: October 17, 2013)

ST - demand has been confirmed on the ground that the Appellant had rendered taxable services to NTPC, at Bhagalpur, Bihar, but failed to discharge service tax on the said services - Appellant has fairly accepted that issue of centralized registration and payments from Mumbai were agitated but other issues viz. defects in computing the demand in show cause notice were not raised before the lower authorities and

such pleas are raised for the first time before the Tribunal - Besides, the C.A.'s certificate indicating that receipt of taxable value from various locations are invariably included in the gross receipt and appropriate service tax are paid on the same at Mumbai was not before the lower authorities - appellant directed to make a deposit of Rs.1 lakhs - Appeal allowed by way of remand: CESTAT [para 5]

[2014-TIOL-151-CESTAT-AHM](#)

M/s Swayam Shipping Services Pvt Ltd Vs CCE & ST (Dated: November 13, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Loading, transportation and unloading of timber logs - Appellant paying service tax of transportation under GTA service - Demand under cargo handling service - Prima facie, there is an evidence which indicate that appellant had charged separately for the loading of timber logs within the port area on to the Tractor or specially designed vehicles and discharged the service tax liability and also discharged the service tax liability on transportation by road on the amount received from the importers - Appellant is indicating the amount separately as transportation charges, on which after receiving payment, appellant discharged the service tax liability under reverse charge mechanism - The appellant has also made out a case for waiver of pre-deposit on the ground of limitation, as the show cause notice dated 02.11.2010 was issued by the department indicating the same services for the same period under GTA services hence, invoking extended period again the show cause notice dated 15.11.2012 is unacceptable - Pre-deposit waived.

[2014-TIOL-147-CESTAT-MUM](#)

M/s Heeralaxmi Amusement Pvt Ltd Vs CCE (Dated: July 15, 2013)

ST - Appellant providing premises, infrastructure, electricity, water and manpower supply to conduct business - consideration received not chargeable to ST under BAS - Prima facie the activity undertaken by the appellant is one of renting of immovable property - matter remanded: CESTAT

[Also see analysis of the Order](#)

[2014-TIOL-146-CESTAT-MUM](#)

CST Vs M/s Indecor Slides (Dated: October 24, 2013)

ST - Interior Decorator Service - Drawing and designs are supplied to the respondent for execution of civil work like plastering, painting, electrical works, flooring, partitioning, false ceiling and furnishing - there is no evidence on record to show that the respondents are advising by way of consultancy or by way of technical assistance in respect of planning or designing of space - respondent cannot be said to have provided Interior decorator service - no infirmity in order of adjudicating authority - Revenue appeal dismissed: CESTAT [para 7]

[2014-TIOL-145-CESTAT-MUM](#)

Fibre Bond Industries Vs CST (Dated: December 3, 2013)

ST Refund - Notfn. 41/2007-ST - appellant are exporters - requirement of sanctioning refund claim is whether service tax has been paid or not, whether service has been used or not and whether service falls within the notification or not - once these are

satisfied, assessee is entitled for refund claim - appeal allowed with consequential relief: CESTAT [paras 6 & 7]

[2014-TIOL-141-CESTAT-DEL-LB](#)

M/s Pagariya Auto Center Vs CCE (Dated: September 12, 2013)

ST - Table Space provided by Automobile Dealers for accommodating representatives of Financial institutions in their premises and consideration is received for that singular activity, such consideration may perhaps constitute a rent - such restricted relationship/transaction may not amount to BAS - If on the other hand, the transactional documents and other evidence on record indicates a substantial activity falling within the contours of any of the integers of the definition of BAS, spelt out in Section 65 (19), then it would be legitimate to conclude that BAS is provided: CESTAT Larger Bench [para 21]

Jurisdiction - the core issue involved is a classification dispute and, therefore, in the light of the provisions of section 86(7) of the FA, 1994, read with section 35D of the CEA, 1944, the dispute ought to have been resolved by a Division Bench - neither the assessee nor Revenue had sensitized the single Member to this legal position - however, since the single Member did not adjudicate upon the merits of the appeal, no issue as to an exercise in excess of jurisdiction arises - the order has merely referred a conflict of opinion between judgments of this Tribunal for reference to a larger Bench and, therefore, the order of reference is not per se invalid, in the circumstances: CESTAT [para 7]

[Also see analysis of the Order](#)

[2014-TIOL-140-CESTAT-MUM](#)

CCE Vs Rudra Galaxy Channel Ltd (Dated: December 11, 2013)

ST - in the absence of documentary evidence available on record to show that the amount received by the appellant was cum -tax, it is difficult to accept the submission of the appellant that consideration should be treated as cum -tax - benefit cannot be granted Appeal rejected: CESTAT [para 7.1]

Penalty - Law as it stood at the relevant time prescribed a minimum penalty equal to the ST demand confirmed and a maximum penalty which was twice the amount of ST confirmed - discretion was available to the appellate authority only within the minimum value and the maximum value and there was no discretion to the authority under the law for reducing the penalty - appellant liable to pay penalty equal to ST confirmed - Revenue appeal allowed: CESTAT

[2014-TIOL-139-CESTAT-MUM](#)

Endurance Systems India Pvt Ltd Vs CCE & C (Dated: October 24, 2013)

ST - Appellant are receiving motor vehicle parts from principal manufacturer and undertaking the activity of powder coating and which are cleared to the principal manufacturer who used the same in the manufacture of excisable goods which are cleared on payment of duty - process undertaken by appellant amounts to manufacture as the same is a part of the manufacturing process - appellant not liable to pay Service Tax under the category of Business Auxiliary Service (BAS) - order set aside and appeal allowed with consequential relief: CESTAT [para 6]

[2014-TIOL-134-CESTAT-BANG](#)

M/s Megha Engineering & Infrastructure Ltd Vs CC,CE&ST (Dated: December 31, 2013)

Service Tax – Stay/Dispensation of pre-deposit – Laying of pipelines including associated earth work, excavation, supply, laying, joining, testing and commissioning of water pipelines of various diameters; civil works involving construction of pumping stations for Government – Prior to 01.06.2007, prima facie, the demand under Erection, Commissioning Installation is covered by the Tribunal decision in case of Indian Hume Pipe Co Ltd .

For the period subsequent to 01.06.2007, prima facie case made out against demand under sub-clause (e) of definition of works contract under Section 65(105)(zzzza) - P
 prima facie, the services not being commercial or industrial purposes are excluded from exigibility to service tax under sub-clause (b) of Section 65(105)(zzzza) of the Finance Act, 1994 – Waiver of pre-deposit granted and all further proceedings stayed.

[Also see analysis of the Order](#)

[2014-TIOL-133-CESTAT-MUM](#)

Confreight Shipping Agency (India) Pvt Ltd Vs CST (Dated: December 10, 2013)

ST – Service Tax demand on difference in ocean freight collected by appellant from service recipient and the amount paid to shipping lines – as appellant has undertaken booking/canvassing of cargo, therefore, the activity undertaken is squarely falls within the definition of steamer agent service - in the case of Greenwich Meridian Logistic (I) Pvt. Ltd. [2013-TIOL-1206-CESTAT-MUM](#) Tribunal took the prima facie view that booking of cargo space would be liable to service tax and accordingly ordered pre-deposit pertaining to normal period of limitation – the Bombay High Court has reduced the pre-deposit to 50% of the service tax demanded for normal period – following the ratio of these decisions, appellant directed to make pre-deposit of Rs.25lakhs and report compliance: CESTAT [paras 5.1, 5.2 & 6]

[2014-TIOL-132-CESTAT-MUM](#)

City Centre Mall Nashik Pvt Ltd Vs CCE & ST (Dated: October 28, 2013)

ST - CENVAT – Renting of Immovable property service - applicant constructed a shopping mall and availed credit in respect of service tax paid on capital goods, inputs as well as input services used in or in relation to the construction – Revenue denying credit on the ground that the shopping mall is an immovable property and is not liable to CE duty or ST as output service – another ground is that ST on the construction activity has been paid by the contractor by availing the benefit of notfn. on the claim that credit on inputs and capital goods has not been availed – applicant has already reversed the credit on inputs of Rs.1.38 crores used in construction of mall – applicant also pleading financial hardship as commercial shops are not fully rented out and they are facing losses – considering financial hardship and following the decision of Tribunal in Galaxy Mercantiles, applicant are liable to pay 35% of the credit availed on capital goods, which comes to Rs.79 lakhs in addition to that already deposited – pre-deposit ordered: CESTAT [paras 6 & 7]

[2014-TIOL-128-CESTAT-KOL](#)

M/s KND Engineering Technologies Ltd Vs CST (Dated: November 12, 2013)

ST - Construction Services – appellant initially submitted that since the principal contractor M/s. L & T had discharged Service Tax for the services rendered by the Applicant, as sub-contractor, therefore, there would not be any liability of Service Tax on the Applicant for second time on the same set of services rendered by them, on behalf of the principal contractor M/s. L & T - Applicant was allowed sufficient time to place the proof of payment of Service Tax by the principal contractor M/s. L & T which they failed to do - Prima facie , Service Tax payable by applicant – Pre-deposit ordered: CESTAT [para 4]

Limitation - Applicant was registered with the Service Tax department for the disputed period and discharged Service Tax when services were rendered by them as a contractor, but failed to pay Service Tax when they rendered service as a sub-contractor without disclosing these facts to the department - Hence, prima facie it cannot be said that the entire demand is barred by limitation - Applicant has not made out a prima facie case for total waiver of pre-deposit of dues adjudged – Pre-deposit ordered of Rs.50 lakhs: CESTAT [para 4]

[2014-TIOL-126-CESTAT-MUM](#)

Umasons Auto Compo Pvt Ltd Vs CCE & C (Dated: November 28, 2013)

ST - appellant, recipient of GTA service paid service tax to the provider of GTA service and the provider has paid to the Revenue and the appellant availed credit of the same - Revenue demanding ST from appellant on the ground that as per the provisions of FA, 1994 recipient of GTA service (appellant) is liable to pay ST and if the same has been paid by the service provider, he can seek refund of the amount. Held : Once the amount of ST is accepted by the Revenue from the provider of the GTA service, it cannot be again demanded from the recipient - Order set aside and appeal allowed: CESTAT [para 5]

[2014-TIOL-123-CESTAT-MUM](#)

Rohit Enterprises Vs CCE (Dated: August 23, 2013)

ST - Applicant cannot become illiterate to pay ST after collecting it from customers - in any case, this cannot be the criterion for not paying the ST - applicant has collected amount from his customers and raised the bills - after collecting the amount, there is no reason why the collected amount is not deposited with the Government - ST paid along with interest, partly before issue of SCN and partly later - applicant has not made out a case for total waiver of pre-deposit of penalties - Pre -deposit ordered: CESTAT [para 4]

[2014-TIOL-119-CESTAT-DEL](#)

Glaztech Alupenal Pvt Ltd Vs CC, CE & ST (Dated: December 9, 2013)

Service Tax - Demand - Business Auxiliary Services (BAS) - ACP cladding and coil cutting services provided by petitioner viewed by Revenue to be taxable under BAS defined in Section 65(19) read with Section 65 (105)(zzb) - contended by petitioner that it fell within commercial or industrial construction service under clause (c) of Section 65(25b), and exempted since it was in connection with roads.

Held: there is no specific assertion, either in the show cause notice or in adjudication order as to exact nature of the service provided by the appellant towards ACP cladding - Where a facially taxable service is classifiable under more than one head enumerated under Sec 65 and Revenue assumes that the service provided falls into one taxable service, (namely BAS in the present case), while the assessee asserts

that the service falls generically within another taxable service (CICS), it becomes the non-derogable obligation of the adjudicating authority to deal with the dispute as to classification and he must record a finding with reasons for such conclusion, as per the guidance mandated by Section 65A of the Act - order of the adjudicating authority clearly fails to deliver upon this obligation of resolution of the classification dispute - the notice dated 16.11.2010 does not specify the particulars of the service allegedly provided by the appellant, in relation to ACP cladding work executed in favour of the recipient and thus fails to provide adequate notice to the appellant - adjudication order as confirmed by the Commissioner (Appeals) is unsustainable, set aside and the appeal is allowed.

[2014-TIOL-118-CESTAT-DEL](#)

M/s Indian Farmer Fertiliser Cooperative Ltd Vs CCE (Dated: December 5, 2013)

Service Tax - Refund - Section 11B of the Central Excise Act, 1944 read with Section 83 of Finance Act 1994 - Transmission of Natural Gas through pipeline, taxable service under Section 65(105)(zzz) of Finance Act 1994 - Transaction value notified by statutory authority, effecting downward revision retrospectively - The difference was credited by service receiver to appellant, who was advised to claim refund of differential tax which was granted by lower authority, but reversed by Commissioner (Appeals) in favor of the department on the singular ground that the refund claim was filed by the recipient of the service and not the provider, culminating in the instant appeal.

Held: Order of the Commissioner (Appeals), in brushing aside the contention of the petitioner to support its claim for refund by reference to the law declared by the Constitution Bench in Mafatlal Industries, is perverse and in total non-application of mind - he distinguished the clearly applicable law declared in Mafatlal Industries, as to the scope of Section 11B of the 1944 Act, without any analysis whatsoever of either the facts, the circumstances or the ratio of the judgment of the Constitution Bench - Mafatlal Industries ruling at paragraph 90 and the summary of its conclusions in paragraph 99 (xii) clearly spelt out the scope of Section 11B, holding that Section 11B does provide for a purchaser presenting a claim for refund, provided he is able to establish that he has not passed on the burden to another person - strong disapproval of irrelevant and inappropriate conduct of statutory authorities is recorded, particularly when exercising quasi-judicial jurisdiction, in disregarding the clearly declared law, which is a binding precedent, in particular in the context of Article 141 of the Constitution - As a consequence of such vagrant analysis by the Commissioner (Appeals), the appellant herein has been put to avoidable litigation trauma in preferring this appeal to this Tribunal and an unwarranted appellate burden as well - Costs (Rs.1,000) imposed, payable to appellant.

[2014-TIOL-117-CESTAT-AHM](#)

M/s Vipra Enterprises Vs CST (Dated: November 29, 2013)

Service Tax - Demand of service tax under Business Auxiliary Service - Limitation - There was a bonafide view, as per CBEC circular and various judicial pronouncements that the word 'commercial concern' did not include the services provided by the individuals or proprietary concern - The word 'commercial concern' under Section 65(105)(zzb) of Finance Act, 1994 was substituted with the word 'Any person' with effect from 01.05.2006 - Appellant started paying Service Tax after availing the admissible value based exemption - No suppression or mis-statement with intention to evade payment of Service Tax can be attributed on the part of the appellant - Extended period cannot be invoked - Demand barred by limitation.

[2014-TIOL-112-CESTAT-MUM](#)

CST Vs Trinity Computer Processing (India) Pvt Ltd (Dated: November 22, 2013)

ST - Respondent is receiving information from M/s. TPSL, United Kingdom which was recorded and processed and the processed information in that form of data was transmitted back to United Kingdom digitally via the international data leased circuits commissioned through international service providers - said activity is correctly covered under Information Technology Service and is excluded from the scope of BAS - no infirmity in order - Revenue appeal dismissed: CESTAT [paras 7 & 8]

[2014-TIOL-111-CESTAT-MAD](#)

Carris Pipes & Tubes Pvt Ltd Vs CCE (Dated: July 26, 2013)

Service Tax - Stay / Dispensation of pre deposit - ST under 'GTA' category mandated under Rule 2(1)(d)(v) of Service Tax Rules, 1994 not discharged - demands confirmed with interest and penalty in adjudication - Held: legal position is that a person becomes "Goods Transport Agency" only if he issues the consignment note - In the normal course, the requirement in the Act should come first, i.e., the person concerned has to be a 'goods transport agency' within the usual meaning of the expression independent of Rule 4A - expressly clarified in Budget speech 2004 that there was no intention to tax individual truck owners - no consignment note is issued in any manner in the instant case - waiver of pre-deposit of dues arising from the impugned order granted - there shall be stay on collection of such dues during pendency of the appeal.

[2014-TIOL-110-CESTAT-DEL](#)

Telecom District Manager BSNL Vs CCE (Dated: September 17, 2013)

Service Tax - Stay / Dispensation of pre deposit - short payment of service tax and non filing of periodical ST3 - Notice alleging violations of Section 68 of the Finance Act 1994 read with Rule 6 of the Service Tax Rules 1994 adjudicated in the impugned order, confirming tax demand with interest and imposition of penalties - Held: Impugned order records that the demand is based on assessee's reported figures of revenue collected including service tax deposited - no inference with any degree or certitude that amounts not received were also included in taxable value - even if there be some error in the adjudication order with regard to determination of the quantum of the liability, considerable responsibility for such possible error is attributable to the assessee - waiver of pre-deposit (of balance dues) and stay on recovery of the adjudicated liability, on condition that the petitioner remits Rs. 1,14,77,883/- plus the corresponding interest on this amount under Section 75 of the Act, within 8 weeks.

[2014-TIOL-105-CESTAT-MAD](#)

M/s Future Focus Infotech Pvt Ltd Vs CCE (Dated: August 5, 2013)

Service Tax - Stay / Dispensation of pre deposit - contracts claimed to be for software development (taxable wef 16.05.2008) by applicant, contested by Revenue that scope is of manpower supply (taxable wef 16.06.2005) - demands confirmed with interest and penalties in adjudication and agitated herein - Revenue's case that Tribunal had scrutinized the terms of the agreement and work orders and came to the conclusion

that the applicant was only supplying manpower to do software development under supervision of Infosys or TCS; that they were not responsible for the development of software; that the agreements and task orders do not show activities as per the standard software development cycle; that the invoices raised also were for man month of personnel deployed and not for any software developed; and that the facts clearly show the contracts to be cases of manpower supply. Held: prima facie strong merit in Revenue's argument - As on date on almost the very same facts, the issue stands decided against the applicant by the Tribunal - applicant to deposit an amount of Rs.65 lakhs within a period of 8 weeks and report compliance - Subject to such deposit, pre-deposit of balance dues are waived for admission of appeal and its collection is stayed during the pendency of the appeal.

[2014-TIOL-104-CESTAT-MUM](#)

Naiknavare Chemicals Ltd Vs CCE (Dated: September 26, 2013)

ST - Appellant entered into an agreement with M/s Naiknavare Associates wherein the management of M/s Naiknavare Associates has resolved to take over the business of the appellant on irrevocable leave and licence basis - Revenue alleging that appellant had provided Management Consultancy Services to M/s Naiknavare Associates by giving technical assistance and providing services of employees for a consideration. Held : what is envisaged from a Consultant is advisory service and not the actual performance of the management function - in view of the same appellant is not providing any Business Management Service - Order set aside and appeal allowed: CESTAT [paras 4 & 5]

[2014-TIOL-103-CESTAT-MAD](#)

Sundaram Finance Ltd Vs CST (Dated: July 12, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Demand of service tax on charges collected for pre-closure/foreclosure of loan amount - No prima facie case for waiver of pre-deposit in view of the Tribunal decision in earlier case - Pre-deposit of Rs 2 crores ordered.

[2014-TIOL-101-CESTAT-MUM](#)

Metal Development Co Vs CCE & ST (Dated: August 14, 2013)

ST - Appellant, an *IITian* rendered consultancy services in respect of metal development and received professional fees - such service cannot be termed as Market Research Agency Service - order set aside and appeal allowed: CESTAT [para 7]

[Also see analysis of the Order](#)

[2014-TIOL-100-CESTAT-DEL](#)

CCE Vs M/s VTC Transport Ltd (Dated: October 3, 2013)

Service Tax - Penalties under Sec 76 and 78 of the Finance Act 1994 - Respondents having facility of Land, Godown, Trucks, Trailors and Cranes and entered into an agreement with M/s CITCO for providing Clearing & Forwarding Agency Service to the (SAIL) and (RINL) wherein infrastructure was provided by them in return of percentage share - CITCO discharged ST on the value of service rendered to SAIL & RINL - Demand of tax under 'Business Support services' confirmed in adjudication along with penalties under Sections 76 and 78 of the Finance Act 1994 - Commissioner(Appeals) dropped penalty under Sec 76 on the ground that respondent paid 25% of penalty under Sec 78 within 30 days of service of demand - now agitated by Revenue on the ground that the material period is prior to 10.05.2008, when separate penalties were imposable under the two sections.

Held: In terms of Delhi HC ruling in Bajaj Travels case, penalty was imposable under both Section 76 and 78 separately even if offence were committed in the course of same act - penalty under Section 76 is imposable on the respondents - Revenue's appeal allowed.

[2014-TIOL-99-CESTAT-MUM](#)

Ganga Iron & Steel Trading Co Vs CCE (Dated: November 6, 2013)

ST - Penalty - Upon being pointed by Audit appellant, immediately paid ST on BAS & Cargo Handling Service along with interest - as per provisions of s. 73(3) of FA, 1994, where tax has been paid along with interest, no notice shall be served - moreover, SCN issued does not allege suppression, therefore, imposition of penalties u/s 76, 77 & 78 set aside - appeal allowed: CESTAT [para 7]

[2014-TIOL-92-CESTAT-MUM](#)

M/s Eleganz Interiors Pvt Ltd Vs CST (Dated: October 1, 2013)

ST - Applicants are undertaking renovation and alteration of the existing building such as banks and call centres - there is no evidence on record that the applicants have undertaken any a ctivity of completion or finishing as provided under clause (c) of scope of Commercial Construction Service - activity undertaken comes under clause (d) of the specified service hence prima facie applicants are entitled for the benefit of notification 1/2006-ST - strong case in favour - Pre-deposit waived of adjudged dues and stay granted: CESTAT [paras 5 & 6]

[2014-TIOL-91-CESTAT-MUM](#)

CC & CE Vs Chate Coaching Classes Pvt Ltd (Dated: September 26, 2013)

ST - Commercial Coaching and Training Institutes - contention of assessee that since service tax was imposed w.e.f 01.07.2003, advance collected from students prior to 01.07.2003 is not taxable is not sustainable - ST liability arises when taxable service is provided and not on the date of receipt of the consideration - assessee appeal dismissed: CESTAT [para 6]

Interest - Supreme Court in Kanhai Ram Thekedar ([2005-TIOL-76-SC-CT](#)) has held that statutory interest is to be paid in case the tax is paid after due dates - order of Commissioner(A) setting aside interest is not sustainable - Revenue appeal succeeds: CESTAT [paras 8 & 10]

Penalty - ST demand is for initial period and the assessee had not paid the tax on the belief that consideration amounts were received prior to 01.07.2003 - this is a fit case for not imposition of any penalty in terms of s. 80 of FA, 1994 - order of lower authority setting aside penalty is proper - Revenue appeal dismissed: CESTAT [para 9]

[2014-TIOL-90-CESTAT-MUM](#)

Baliram Gopal Mahajan Vs CCE (Dated: October 24, 2013)

ST - Demand confirmed against appellant by taking into consideration the cost of cement and steel supplied free by the service recipient - appellant only challenging imposition of penalty imposed u/s 77 & 78 of FA, 1994 on the ground that LB of Tribunal in Bhayana Builders (P) Ltd. [2013-TIOL-1331-CESTAT-DEL-LB](#) has held that value of goods and material supplied free of cost by a service recipient is not to be taken into consideration for the purpose of arriving at the taxable value - in view of LB decision imposition of penalties not sustainable, hence set aside: CESTAT [para 5]

[2014-TIOL-88-CESTAT-MAD](#)

B Boomi Nathan Vs CST (Dated: July 24, 2013)

Service Tax – Stay / Dispensation of pre deposit – Tax demand with interest under (a) Management, Maintenance and Repair of roads on the ground that exemption under Sec 97 of Finance Act 1994 applies only for public roads and not for service rendered to private individuals; (b) site formation and clearance; and imposition of penalty confirmed in adjudication and agitated herein.

Held: On plain reading of Section 97(1) of Finance Act, 2012, it is clear that no service tax is leviable in respect of repair of roads for the period 16.6.2006 to 26.6.2009 - well settled that the language of the exemption notification should not be strained in order to impose tax and if the legislation intended, it would be covered by appropriate words; there is no room for intentment - prima facie case for waiver of predeposit of demand of tax under the category of 'Management, Maintenance and Repair Service of roads - However, applicant is liable to predeposit Rs.6,73,598/- demanded under the category of "Site Formation and Maintenance" and directed to do so within a period of six weeks – on compliance, predeposit of the balance dues stands waived and recovery thereof stayed during the pendency of the appeal.

[2014-TIOL-86-CESTAT-MUM](#)

Raymond Ltd Vs CCE (Dated: November 01, 2013)

ST - Refund - Textile products exported during the quarter October to December 2008 and claim filed on 30/07/2009 in respect of service tax paid on services used for export goods - same was rejected on the ground of being time barred - Notfn. 41/2007-ST superseded by notfn. 17/2009-ST dated 07/07/2009 allowing refund claim to be filed within a period of One year from the date of export of goods - inasmuch as refund claims were filed within one year, appellant is eligible for the benefit of refund subject to satisfaction of other conditions of the notification - matter remanded: CESTAT [paras 5, 5.1 & 6]

[2014-TIOL-82-CESTAT-MAD](#)

M/s BSNL Vs CCE (ST) (Dated: August 6, 2013)

Service Tax – Stay / Dispensation of pre deposit – CENVAT credit – denied in adjudication on grounds that Service provider did not issue the invoices within 14 days of providing the service; that there is no proof of payment in some cases; that the credit was taken on the basis of improper documents, viz. inter office memos issued by the Executive Engineer, BSNL, Salem instead of actual invoices of the supplier; and that the equipments were used for cell phone services for which service tax was not being paid by Salem office – Held: The equipments were received by BSNL and used by BSNL; whether the credit is taken at wrong office can be examined during appeal hearing - in the matter of construction services the case appears to be one of delay in issuing invoice rather than non-payment of tax - matters appear to be procedural in nature - waiver of pre -deposit of dues arising from the impugned order for admission of appeal granted - there shall be stay on collection of such dues during the pendency of the appeal.

[2014-TIOL-81-CESTAT-MAD](#)

M/s The Orient Processors Vs CCE & ST (Dated: July 29, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Demand of service tax on services received from outside India under Section 66A of the Finance Act, 1994 - Erection, Commissioning or Installation services provided by foreign supplier through agent in India - As per the explanation (1) of Section 66A (2) of the Act and the Board's clarification, it is clear that 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, which would include India - The foreign company in this case rendered the service of erection, commissioning and installation through their agency in India and the identity of such agency had already been mentioned in the impugned order - Prima facie, the foreign company had undertaken the erection job through their agency in India and therefore demand of tax under Section 66A is not sustainable - Prima facie case for waiver of pre-deposit.

2014-TIOL-80-CESTAT-MAD
M/s Tamil Nadu State Transport Corporation Ltd Vs CCE (ST) (Dated: August 7, 2013)
Service Tax - Stay/Dispensation of pre-deposit - Commercial Coaching and Training - Applicant, A Govt undertaking providing road transport service and collecting charges for imparting training to drivers and conductors after recruitment - The issue is a contentious one inasmuch as whether the transport corporation is an institute or an establishment providing commercial training to their employees which will be looked into at the time of appeal hearing at length - The applicant is a State Government undertaking and prima facie, there is no rational to invoke extended period of limitation - Pre-deposit waived.
2014-TIOL-77-CESTAT-MUM
CST Vs M/s Kotak Mahindra Capital Co Ltd (Dated: September 18, 2013)
ST - Underwriter Services - Respondents are dealing with Government securities - Commr(A) has held that RBI is not a body corporate and, therefore, the respondent cannot be said to have subscribed to the securities of body corporate so as to fall within the meaning of 'Underwriting' - Revenue in appeal. Held: Board has issued clarification vide Circular no. 126/8/2010-ST that government securities are not the securities of body corporate - in view of the same no infirmity in order of Commr(A) - Revenue appeal dismissed: CESTAT [para 4]
2014-TIOL-76-CESTAT-MAD
M/s South India Shelters (P) Ltd Vs CCE (ST) (Dated: August 6, 2013)
Service Tax – Stay/Dispensation of pre-deposit - Construction of complex service – Construction activity undertaken after registering the undivided land share with the buyers – Prima facie, there is a service involved which is confirmed by the fact that there is no sale of constructed flats – Pre-deposit of Rs 45 lakhs ordered.
2014-TIOL-68-CESTAT-BANG
M/S Plr Projects Pvt Ltd Vs CCE, C & ST (Dated: December 9, 2013)
Service Tax - Stay/waiver of pre-deposit; site formation/mining service to be decided at the time of final hearing.
Service Tax - Proprietary firm taken over by Private Ltd Company - Articles of

Association of the applicant-company would indicate that the applicant-company had taken over the entire assets and liability which cover the present duty liability.

Pre -deposit of Rs . 2 Lakhs ordered against a demand of Rs . 8.31 Lakhs.

[2014-TIOL-67-CESTAT-DEL](#)

New Okhla Industrial Development Authority Vs CCE & ST (Dated: December 11, 2013)

ST - 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 is a taxable service only from 1.7.2010 and not earlier to this date - Matter remanded to ascertain which of the leases were not in furtherance of business or commerce: CESTAT [paras 11, 12, 13 & 16]

Strictures - appellant is an assessee and cannot delude itself by an assumption that it is immune to the process of law or adopt a condescending attitude towards the formal processes of law - irrespective of its status as a public authority, the appellant is an assessee - it is hoped that the appellant would conduct itself in future with greater fidelity to the mandate of law, including assessment proceedings: CESTAT [para 19]

[Also see analysis of the Order](#)

[2014-TIOL-66-CESTAT-BANG](#)

Abb Ltd Vs CCE (Dated: December 12, 2013)

Service Tax - Stay and waiver of pre-deposit - Works Contract Service prior to 1.6.2007 - the demand under the category of erection, commissioning or installation service prior to 1.6.2007 is pending before the 5 Member Bench of the Tribunal in the case of L&T Ltd. Vs. CST - (2013- TIOL -1458- CESTAT -DEL) . In the applicant's own case as reported in (2011- TIOL -748- CESTAT -BANG) , the Tribunal held that demand under the erection, commissioning or installation service is not sustainable and the demand under the works contract service prior to 01/06/2007 is also not sustainable. - pre deposit of entire amount of tax along with interest and penalty is waived and the stay of recovery is granted.

[2014-TIOL-65-CESTAT-BANG](#)

M/s KST Teleservices Pvt Ltd Vs CE, C & ST (Dated: November 29, 2013)

Service Tax - Show Cause Notice and Adjudication Order not clear as to the basis on which penalty is imposed - the exact amount which was not paid during the period from April 2007 to March 2010 is not at all available in the show-cause notice. In paragraph 3, what has been mentioned is that the appellant has not paid the amount of more than Rs.1 crore and education cess leviable thereon and these amounts were

paid along with applicable interest of Rs.95,096 /-. This does not give the exact amount in default and on what basis the penalty under Section 76 has been computed. It is extremely difficult to come to the right conclusion since the facts are not clear, the legal position is not clear. Therefore the impugned order is set aside and the matter is remanded to the original authority with a direction to clearly analyze the facts on record, and based on the show-cause notice already issued and the instructions on the subject issued by the Board from time to time and also based on various decisions which have been rendered from time to time on the subject.

[2014-TIOL-61-CESTAT-MUM](#)

Ashadevi Agarwal Vs CCE (Dated: December 10, 2013)

ST - Renting of Immovable property service - vires of levy decided by Delhi HC in 2009 for the first time - How could a decision rendered in the year 2009 lead to confusion in the year 2007 - such a plea is clearly an afterthought - in the absence of prima facie case on merits and no financial hardship pleaded, appellant directed to make pre-deposit of balance of ST dues: CESTAT

[Also see analysis of the Order](#)

[2014-TIOL-60-CESTAT-MAD](#)

M/s Sify Technologies Ltd Vs CCE & ST (Dated: July 31, 2013)

Service Tax – Stay/Dispensation of pre-deposit – CENVAT Credit availed in respect of taxable and exempted output services – Appellant reversed credit on common input services in terms of Rule 6(3A) of the CENVAT Credit Rules, 2004 – Revenue contends formula should be applied for all the input services - Rule 6 deals with only common input services used in providing taxable services and exempted services and there is no reason to apply this rule in respect of input service going entirely into providing taxable output service – Prima facie case made out for waiver of pre -deposit.

[2014-TIOL-57-CESTAT-MUM](#)

M/s 3I Infotech Ltd Vs CST (Dated: October 7, 2013)

ST - from the teaming agreement it is clear that the agreement is made between the applicant and the foreign service provider - therefore, it cannot be said that the foreign service provider has provided service to Dubai office and not to the present applicant in India - in view of provisions of s.66A of FA, 1994, applicants are liable to pay ST in r/o services received from foreign service provider on reverse charge mechanism -ratio of decision in Paul Merchants is not applicable as in that case both, service provider and recipient are located outside India - duplication of SCN prima facie evident - in the totality of facts, pre-deposit ordered of Rs. 1 Crore: CESTAT [paras 6.1, 6.2 & 6.3]

2014-TIOL-56-CESTAT-MUM
CCE & C Vs Mall Enterprises (Dated: September 18, 2013)
ST - Respondents providing "Industrial Construction Service" and claiming the benefit of Notfn. 15/2004-ST and not taking into consideration value of free supply material by principal - Demand set aside by Commissioner(A) - Revenue in appeal. Held: Issue is now settled by the LB decision of Tribunal in Bhayana Builders (P) Ltd. (2013-TIOL-1331-CESTAT-DEL-LB) holding that value of free supplies by service recipient does not comprise the gross amount charged under notfn. 15/2004-ST including the Explanation thereto as introduced by notf. 4/2005-ST - no infirmity in order - Revenue appeal dismissed: CESTAT [para 5]
2014-TIOL-53-CESTAT-MUM
Meher Containers Terminals Pvt Ltd Vs CST (Dated: November 22, 2013)
ST - Appellant taking registration in 2003 but not paying Service tax and not filing returns - in December 2005 they started paying ST for the period 2002 onwards on suo motu basis with interest - later from August 2006, ST paid on due dates - imposition of penalties u/s 76 & 77 justified - penalty u/s 78 imposable to the extent there has been a default in paying the ST - Appeal disposed of: CESTAT [paras 9 & 10]
Also see analysis of the Order
2014-TIOL-52-CESTAT-MUM
CCE Vs Hi-Tech Induction Pvt Ltd (Dated: October 18, 2013)
ST - respondents are undertaking work of Heat Treatment on crank shafts supplied by various customers - after heat treatment the crank shafts were returned back to the principal manufacturers who cleared the same ultimately on payment of appropriate CE duty - certificates issued to the said effect by principal manufacturers - activity undertaken by respondent amounts to manufacture and does not fall under the category of "Business Auxiliary Service" - no infirmity in order of lower authority - Revenue appeal dismissed: CESTAT [paras 4 & 5]
2014-TIOL-51-CESTAT-MUM
M/s R S Earth Movers Pvt Ltd Vs CCE (Dated: October 3, 2013)

ST - appellant entered into contract with Western Coalfields Ltd. for providing service of removal of all types of material using equipment and machinery - from the copy of the contract it is evident that the same is for overburden removal and there is no activity of mining or related to mining of minerals - no infirmity in order - demand of ST under the category of "Site Formation and Clearance etc." proper, hence upheld along with interest: CESTAT [para 7]

Penalty - as the appellant is a limited company formed by Ex-servicemen, disabled Ex-servicemen and war widows and allowed to work into area specified by government and the fact that they were corresponding with Western Coalfields Ltd. in the matter of payment of Service Tax, provisions of section 80 are attracted - imposition of penalties u/ss 76, 77 & 78 not sustainable - penalties set aside: CESTAT [para 8]

[2014-TIOL-46-CESTAT-MUM](#)

Axis Bank Ltd Vs CST (Dated: December 10, 2013)

ST - CENVAT - Rule 2(l) of CCR, 2004 - By no stretch of imagination can events conducted by Event Management Company and buying & supplying movie tickets to woo customers be considered as promotion of business activities of a bank - prima facie not an Input Service: CESTAT [para 5]

CENVAT - Rule 2(l) of CCR, 2004 - Insurance Auxiliary Service - Group insurance policy is a part and parcel of the salary and perks given to employees and, therefore, would qualify as an eligible Input Service: CESTAT [para 5]

CENVAT - Rule 2(l) of CCR, 2004 - Real Estate Agency Service - even though appellant claims that it is towards part of the employees perks, there can be a dispute whether it is a service activity or a welfare activity: CESTAT [para 5]

As the CENVAT credit involved in respect of Real Estate Agent Service & Event Management Service is Rs. 1.25 crores and the appellant has already reversed an amount of Rs. 1.62 crores, same is sufficient for hearing of the appeal - pre-deposit of the balance amount of dues adjudged is waived and stay granted: CESTAT [paras 5 & 6]

[Also see analysis of the Order](#)

[2014-TIOL-45-CESTAT-MUM](#)

CST Vs M/s J K Investors (Bombay) Ltd (Dated: September 18, 2013)

ST - respondents having "Selling Agency Agreement" with M/s Raymond Ltd. and as a selling agent respondent has a number of dealers for sale of goods of M/s Raymond Ltd. - they are responsible for recovery of sums against the goods despatched from the factory to the dealers and also catering for the marketing of goods - Revenue demanding ST on the ground that the activity is covered under the service of "C&F Agent" - demand dropped by adjudicating authority and Revenue preferring appeal. Held : since the respondent had not undertaken the activity of warehousing the goods

or receiving the goods from the factories of M/s Raymond Ltd. they cannot be termed as "C&F Agent" - no infirmity in order of adjudicating authority - Revenue appeal dismissed: CESTAT [para 5]

[2014-TIOL-44-CESTAT-DEL](#)

CC, CE & ST Vs M/s HCL Technologies Ltd (Dated: December 2, 2013)

ST - Rule 5 of CCR, 2004 - Refund of credit lying unutilized - even if appellant was not eligible for refund under Notification No. 9/2009 dated 3.3.2009, the appellants were certainly eligible for refund under Section 11B of the Act - issue has attained finality in view of decision in Tata Consultancy Services Ltd. ([2012-TIOL-1034-CESTAT-MUM](#)) - no infirmity in order-in-appeal - Revenue appeal rejected: CESTAT [para 8]

[2014-TIOL-37-CESTAT-MAD](#)

M/s SPIC Ltd Vs CST (Dated: August 1, 2013)

Service Tax - Stay/Dispensation of pre-deposit - CENVAT Credit availed on service tax paid in relation to sale of equity shares - Whether the input services namely, sale of equity shares would be applicable for the output service of the consulting engineering service, erection, commissioning and installation service, maintenance and repair service etc - The final product of the applicant namely fertilizer is exempted from the central excise duty - Prima facie, sale of equity shares has no nexus with the output service - Pre-deposit of Rs 50 lakhs ordered.

[2014-TIOL-36-CESTAT-MUM](#)

M/s Vamona Developers Pvt Ltd Vs CC, CE & ST (Dated: October 15, 2013)

ST - Appellant registered as provider of taxable service of 'Renting of Immovable Property' - in construction of the mall, the appellant received services from various service providers in respect of construction including industrial or commercial construction activity - tax paid by such service providers was availed as CENVAT credit - Revenue denying credit on the ground that Mall is an immovable property and further that the credit availed is in respect of Service Tax paid at Mumbai - in the case of Navaratna S.G.Highway Prop. Pvt. Ltd. Tribunal has held that credit is available - adjudicating authority denying credit on the ground that appeal against the Tribunal decision is pending before the High Court - as there is no order passed by the High Court staying or setting aside the Tribunal decision, prima facie applicant has made out a case for total waiver of dues - Stay granted: CESTAT [para 5]

[2014-TIOL-35-CESTAT-MUM](#)

Datamatics Softworld P Ltd Vs CST (Dated: December 04, 2013)

ST - Refund - When service is not provided, question of payment of service tax does not arise - question of unjust enrichment too does not arise - adjudicating authority directed to refund amount within 30 days - Appeal allowed with consequential relief: CESTAT [paras 6 & 7]

[2014-TIOL-34-CESTAT-DEL](#)

M/s EXL Service. Com (I) Pvt Ltd Vs CCE & ST (Dated: December 03, 2013)

CENVAT - Rule 2(l) of CCR, 2004 - Security services provided at the Guest House of the appellant located at places other than the registered premises is not an Input Service: CESTAT [para 5]

Rule 2(l) of CCR, 2004 - CENVAT credit is taken on invoices under "Facilities Management" services issued by M/s. C.B. Richards Ellis - service agreement nowhere mentions the "Real Estate Agents" service whereas the invoices in question referred to "Real Estate Agents" service - These invoices cannot be connected to the service agreement - credit rightly denied: CESTAT [para 6]

Rule 2(l) of CCR, 2004 - Services of "movers and packers" in relation to Guest House and moving of guard hut - in the absence of any evidence to the fact that shifting of goods from the guest house or guard hut from one premises to another was in any way related to rendering of the output services, credit rightly denied: CESTAT [para 7]

[2014-TIOL-33-CESTAT-MUM](#)

M/s Atuleena Chemicals (India) Ltd Vs CCE (Dated: October 11, 2013)

ST - abatement sought by appellant in respect of expenses made on purchase of petrol/kerosene, telephone bills, electricity bills, transportation charges and miscellaneous expenses such as photocopy, octroi etc. - whether reimbursements are to be taken into consideration while arriving at the assessable value for the purpose of service tax - issue is now settled by Larger Bench in case of Sri Bhagavathy Traders ([2011-TIOL-478-CESTAT-BANG](#)) wherein it is held that the tax has to be paid on the gross amount received - order of lower authority demanding tax on reimbursements upheld along with interest: CESTAT [para 4]

Penalty - since prior to LB decision, there were different views on the issue, penalty imposed is set aside - Order of Commr(A) modified to the said extent: CESTAT [para 6]

[2014-TIOL-32-CESTAT-MUM](#)

National Insurance Academy Vs CCE (Dated: October 21, 2013)

ST - Commercial Training or Coaching - applicant conducting Management Courses - the MBA course programme is not recognized by any University whereas the applicant was misrepresenting otherwise - clear case of suppression - Pre-deposit ordered of 50% of confirmed demand: CESTAT [paras 8, 9 & 11]

[Also see analysis of the Order](#)

[2014-TIOL-27-CESTAT-MUM](#)

HDFC Bank Ltd Vs CST (Dated: December 4, 2013)

ST - Tax savings bonds have been issued as part of the borrowing programme of the Government from the public - there is no doubt that the tax savings bonds issued by the RBI and sold by the appellant bank is a Government Security - Logic contained in Board Circular dated 10/08/2010 clarifying that there is no ST liability on underwriting fee/commission received by dealers for dealing in Govt. securities would apply in respect of brokerage received for sale of tax savings bonds - ST demand under Banking & Financial Services not sustainable - appeal allowed: CESTAT [paras 4.1 & 4.2]

[Also see analysis of the Order](#)

[2014-TIOL-26-CESTAT-MUM](#)

CCE Vs V B Patil (Dated: October 18, 2013)

ST - Value of goods and materials supplied by the service recipient to the provider of the taxable construction service are not to be taken into consideration for the purpose of arriving at gross value for payment of service tax - issue settled by LB decision in Bhayana Builders (P) Ltd. vs. CST, Delhi - [\(2013-TIOL-1331-CESTAT-DEL-LB\)](#) - no infirmity in order of Commissioner(A) - Revenue appeal dismissed: CESTAT [para 3]

[2014-TIOL-25-CESTAT-MUM](#)

Total Oil India Ltd Vs CST (Dated: September 30, 2013)

ST - Goods manufactured were sent outside India for conducting the test - test report was received by their parent company in France - department seeking Service Tax under reverse charge mechanism - in view of the fact that products were tested outside and the report was received by HO in France, appellant prima facie has a strong case in favour - Pre-deposit waived of adjudged dues - Stay granted: CESTAT [para 4]

[2014-TIOL-24-CESTAT-DEL](#)

Badrika Motors (P) Ltd Vs CC, CE & ST (Dated: November 27, 2013)

CENVAT – lower authority disallowed the CENVAT credit on the ground that the taxable "Authorised Service Station" and "Business Auxiliary Service" provided by the appellant have no nexus with the remittances made for the goods transport agency service provided to the appellant for transport of new two wheelers from Hero Honda Motors Limited factory to the show room; that there was no possibility of verifying whether all the new vehicles sold by the appellant would invariably come to the appellant's authorized service station for servicing; and that some of the vehicles services by the appellant would also comprise those sold by some other dealers. Held - In terms of the agreement between the appellant and Hero Honda Motors Limited, the appellant is required not only to engage itself in the sales of products and spares but to service the two wheelers as well - It is axiomatic that no precise or mathematical correlation is required between the input and output services - It cannot be disputed that the appellant does service two wheelers manufactured by the Company and that the tax on GTA service was remitted for the transport of two wheelers and spares from the manufacturer to the appellant's show room – sufficient and proximate nexus established to qualify as input service - Credit available - Appeal allowed: CESTAT [paras 3 & 4]

[2014-TIOL-21-CESTAT-MUM](#)

Maharashtra State Electricity Distribution Co Ltd Vs CCE (Dated: January 25, 2013)

ST - Penalty - appellant, a State Government organization, submitting that they were under a bonafide belief that as per the provisions of the Indian Electricity Act, 2003, they are performing statutory duties in respect of generation and supply of electricity and hence not liable to service tax - activity correctly covered under "Consulting Engineering Service" and taxable payable, however, in view of provisions of section 80 of FA, 1994, penalties imposed are set aside: CESTAT [para 7]

[2014-TIOL-18-CESTAT-MUM](#)

Sai Labour Contractor Vs CCE (Dated: October 10, 2013)

ST - Valuation - in respect of TDS, the appellants are entitled for refund or adjustment of that amount at the time of payment of income tax, therefore, it cannot be said that it is not part of the gross amount received by the appellants: CESTAT [para 10]

ST - Valuation - Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 which provides for inclusion of expenditure or cost incurred by the service provider in the course of providing taxable service in the value for the purpose of charging service tax is ultra vires to that extent only - Section 67 of the Finance Act provides that the assessee is liable to pay service tax on the gross amount received in respect of the service provided - in the present case, the service is supply of manpower and not that of Consulting Engineer and there are no such expenses like travel cost, hotel stay,

transportation etc. as incurred in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. - appellant is liable to pay ST on the gross amount: CESTAT [para 9]

Limitation - appellants were well aware of the fact that they are liable to discharge the liability of service tax on the gross amount and the appellants in some cases were also doing so - therefore there is a clear suppression on the part of the appellants with intent to evade tax: CESTAT [para 9]

[Also see analysis of the Order](#)

[2014-TIOL-17-CESTAT-MUM](#)

CCE Vs International School Of Business & Media (Dated: September 4, 2013)

ST - Commercial Training and Coaching - respondents got themselves registered suo motu and paid the service tax along with interest before issuance of SCN - respondents under the bonafide belief and genuine doubt that courses run by them could be treated as vocational courses - in view of the above, there is no infirmity in the order of the CCE, Pune-III, whereby invoking the provisions of s.80 of FA, 1994, he did not impose any penalty u/ss 76, 77 & 78 of FA, 1994 - Revenue appeal dismissed: CESTAT [para 6]

[2014-TIOL-16-CESTAT-MUM](#)

CCE Vs APR Industries Ltd (Dated: October 4, 2013)

ST - Goods Transport Operator Service - respondents were recipient of GTO service and paid ST voluntarily and thereafter filed a refund claim - Commissioner (A) allowing claim in view of Tribunal decision in L.H.Sugar Factories Ltd. - Revenue in appeal before CESTAT submitting that in view of retrospective amendments made by FA, 2000, overturning the SC decision in Laghu Udyog Bharti respondents are liable to pay Service Tax. Held: In view of retrospective amendment, order of Commissioner(A) set aside and Revenue appeal allowed: CESTAT [para 6]

[2014-TIOL-11-CESTAT-MUM](#)

CCE Vs Reliance Industries Ltd (Dated: October 10, 2013)

ST - Consulting Engineer - provider of service has not provided any advice on consultancy or technical assistance - rather as per the work order, the provider of service has undertaken the activity of cleaning of para xylene plant and the activity undertaken by the service provider involves radiation and convection using equipment like spraying ejector, steam ejector, nozzles with hoses and air compressors - appellant has not received any Consulting Engineer service - no infirmity in order of Commr(A) - Revenue appeal dismissed: CESTAT [para 4]

[2014-TIOL-10-CESTAT-DEL](#)

CST Vs Pearl Mineral P Ltd (Dated: November 28, 2013)

ST - Refund - adjudicating authority rejecting refund claim on the ground that neither was the claim for refund presented in Form A -1, as required by Notification No.17/2009-ST nor the relevant documents, in particular, as mandated by the Notification were furnished - before appellate authority appellant submitting that notice of personal hearing was not received and that all the documents were furnished but the adjudicating authority failed to record any substantive objections - appellate authority setting aside the order and remitting the matter to consider sanction of refund claim - Revenue filing appeal before CESTAT. *Held* : If, as was contended by the assessee before the appellate authority and reiterated before Tribunal, the assessee did not receive any notice of personal hearing at the adjudication stage, the appellate authority was required to set aside the adjudication order on that singular ground and remand the matter for de novo adjudication - matter, therefore, remanded to appellate authority - Commissioner(A) has to ascertain whether notices of personal hearing were served on the assessee - if it is true, he has to decide the refund claim himself - if notice of PH was not served, the Commr (A) to set aside the adjudication order and remit the matter for a fresh order to be passed by primary authority after issuing notice for PH - Matter remanded: CESTAT [para 5]

[2014-TIOL-06-CESTAT-MAD](#)

G Ramamoorthi Constructions (I) Pvt Ltd Vs CST (Dated: August 27, 2013)

Service Tax – Stay / Dispensation of pre deposit - construction of commercial and residential complexes with free supply of cement and steel from customer – abatement under notification 15/04 -ST and 1/06-ST denied on the ground that such abatement is available only if value of the entire materials used is included in the gross amount – tax demand with interest and penalties confirmed in adjudication and Commissioner(Appeals) - agitated herein.

Held: matter has been considered by the Tribunal in two cases and viewed that when abatement is claimed, it should be from value inclusive of all the materials used for providing the service - applicant is directed to make a pre -deposit of Rs.1,50,000/- (Rupees One lakh fifty thousand only) within 6 weeks for admission of appeal and to report compliance - Subject to compliance, pre -deposit of balance dues arising from the impugned order is waived and there shall be stay on collection of such dues during pendency of appeal.

[Also see analysis of the Order](#)

[2014-TIOL-05-CESTAT-DEL](#)

M/s Birla Corporation Ltd Vs CCE(Dated: November 29, 2013)



Service Tax – CENVAT Credit on input services – Credit on insurance auxiliary service (motor vehicle insurance) and authorised service station service (motor vehicle repair) – As per the statutory definition of input service, the conclusion is irresistible that the vehicles owned and used by the appellant for efficient execution of its business of manufacture of cement and allied products and the expenditure incurred in the legitimate use of such vehicles i.e. by obtaining statutory insurance for the vehicles and expenditure incurred for their maintenance i.e. for periodical service of the vehicles, would be inputs and wherever the service providers, of insurance of the vehicles or for maintenance of such vehicles are compensated in respect of the service tax payable by those entities for having provided the taxable services, those amounts could lawfully be treated as input services on which CENVAT credit could be availed – Credit is admissible – Impugned order is quashed.