activities like advisory to mergers and acquisition, merchant banking, agency, etc. Revenue raised additional questions before the High Court challenging exclusion of 6 comparables. High Court rejected Revenue's challenge and noted that there was no error in ITAT's reasoning of the companies from final list of comparables.

LD/68/26, [Tax Case No.118 of 2018 (Madras High Court)], India Trimmings Pvt. Ltd. vs. Deputy Commissioner of Income Tax Pvt. Ltd., 10/06/2019

ITAT held that Dispute Resolution Panel (DRP) had no power to either to direct TPO to decide the percentage of risk adjustment to be calculated or to direct him to make further enquiries and decide the matter. Revenue was in appeal against the final assessment order passed under section 144C(13) r.w.s 143(3) and did not question DRP's jurisdiction. DRP reduced the variation proposed in draft assessment order, which translated into a final assessment order. This final order was questioned by the Revenue on merits. High Court held that ITAT was incurred in holding that DRP had exceeded its jurisdiction. As per the High Court, the ITAT ought to have adjudged the final assessment order on merits. Order of ITAT was thus set-aside by the High Court.

Service Tax

LD/68/27, [Service Tax Appeal No. 86619 of 2018 (CESTAT Mumbai)], Popular Caterers vs. Commissioner of CGST, 08.05.2019

Demand on 40% non-taxable component in 'catering service' quashed.

Demand was raised on 40% non-taxable component of 'outdoor catering' service. As per CESTAT, a pure sale, unassociated with delivery of goods and services together, is not to be considered as service and delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of Constitution is not a 'service'. CESTAT stated that definition of service as contained in 65B(44) and exempted service in 66D were to be read conjointly and not in exclusion of each other. As per CESTAT, catering service includes both sale of food and service for consumption of food and therefore the other component of 40% of gross value received from catering services cannot be definitely considered as exempted services to make Rule 6(3) of CENVAT Credit Rules, 2004 applicable and to maintain separate records for availment of CENVAT credit on it including on processed food purchased as raw material. CESTAT also dismissed revenue's plea on maintainability of petition stating that only because the audit party had found some credit availed has inadmissible, suppression of fact is made out.

LD/68/ 28, (2019-TIOL-1976-CESTAT-DEL), M/s Khanna Contructions Vs. Commissioner of Customs, CGST and Central Excise, 23/05/2019

When the taxable service is exempted with retrospective effect, Tribunal held that the service tax paid earlier would be regarded as merely a deposit in excess and is not duty as such and thus, the provisions of section 11B(2) of CEA, 1944 i.e. unjust enrichment are inapplicable to claims filed for refund of such excess deposit.

LD/68/ 29, (2019-TIOL-1768-CESTAT-AHM), CCE&ST Vs. M/s Reliance Industries Ltd, 13/03/2019

As regards common credit pertaining to DTA unit and SEZ unit and distributed by DTA-ISD to SEZ unit, the refund claim filed by the SEZ unit cannot be rejected, if such invoice is filed within one year from the date of ISD invoice issued to SEZ unit by DTA unit.

LD/68/30, (2019-TIOL-1757-CESTAT-ALL), M/s Kush Construction Vs. GST NACIN, 20/02/2019

Tribunal set aside service tax demand raised by the department on difference between amounts reported in Form ST-3 and amounts shown in Form 26AS filed under Income Tax Act, 1961, without further examining the reasons for such differential or applicability of any exemption/ abatement notification.

LD/68/31, (2019-TIOL-1768-CESTAT-MAD), M/s Pricol Ltd. Vs. Commissioner of GST and Central Excise, 29/01/2019

The transfer/return of excess Input Service Distributor (ISD), credit by a unit to the ISD and redistribution of such credit by ISD to other units is not prohibited either under Rule 7 of CCR, 2004 or under any other provisions of service tax law.

LD/68/32, (2019-TIOL-1853-CESTAT-DEL), Ranjeet Sharma Vs. CCE&ST, 26/12/2018

For the purpose of determining threshold limit prescribed under small scale exemption, value of services shall be arrived at after allowing abatement. While computing the threshold limit of small scale exemption, the appellant considered the value of services after abatement, whereas department did not accept the same and raised impugned demand. The short question for consideration in present appeal was whether for determining eligibility to small scale exemption provided under service tax law, the full value of services or abated value of services shall be taken into consideration.

Tribunal noted that the issue is no more *res integra* in the light of decisions in *Shri Ashok Kumar Mishra vs. CCE &ST, Allahabad [Final Order No. 71841/2017-Cu(DB) dt. 01/12/2017], M/s. Aryavrat Housing Construction (P) Ltd. vs. CCE & ST, Bhopal [Final Order No. 50672-50673/2018 dt. 15.01.2018]* and *Alok Pratap Singh & others vs. CCE, Allahabad [Final Order No. 72407-72411/2018 dt. 5.10.2018],* wherein it has been held that the value of the services required to be computed for the purpose of small scale exemption benefit is the value arrived at after allowing the abatement.

Excise

LD/68/33, [Central Excise Appeal No. 81 of 2019 (Bombay High Court), Commissioner of Central Goods and Service Tax & Central Excise vs. Alfa Packaging, 18.06.2019

Though matter was pending before Supreme Court, Revenue must pay interest on refund sanctioned to assessee pursuant to High Court order.

Pursuant to the High Court ruling in the assessee's favour, CESTAT had held that the assessee was entitled to interest under section 11BB of the Central Excise Act, 1944 (Act) from expiry of 3 months from date of receipt of application for refund till the time of receipt of principal amount to the assessee. Revenue had denied this interest on refund on the ground that order of High Court was pending in further appeal before the Supreme Court. CESTAT ruled that a mere pendency of the appeal before the Supreme Court does not justify ignoring the statutory provisions of Section 11BB. High Court upheld this order of CESTAT.