



**Report of the
Comptroller and Auditor General of India
for the year ended March 2017**



**Union Government
Department of Revenue
(Indirect Taxes – Service Tax)
Report No. 43 of 2017**

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Preface

This Report for the year ended March 2017 has been prepared for submission to the President of India under Article 151 of the Constitution of India.

The Report contains significant results of the compliance audit of the Central Board of Excise and Customs (CBEC) under the Department of Revenue – Indirect Taxes (Service Tax) of the Union Government.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2016-17, as well as those which came to notice in earlier years but could not be reported in the previous Audit Reports.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

Executive Summary

Section 16 of CAG's (DPC) Act, 1971 mandates CAG to audit receipts payable into consolidated fund of India and to satisfy that the rules and procedures are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed. We examined functions of Service Tax Department relating to scrutiny, internal audit etc. and verified records of assessees, which form the basis for tax calculation, to examine the extent of effectiveness of the systems in place in ensuring that assessees comply with extant rules and procedures in this era of self-assessment. Besides regular audit of departmental functions and compliance by the assessees, this year we conducted a subject specific compliance audit (SSCA) on Commercial Training or Coaching Service.

This Report has 196 audit observations on Service Tax, having financial implication of ₹ 352.86 crore. The Ministry/Department had, till September 2017, accepted 176 audit observations involving revenue of ₹ 205.26 crore and reported recovery of ₹ 100.70 crore in 116 cases. Some significant observations and findings are as follows: -

Chapter I: Service Tax Administration

- Service Tax revenue collection was ₹ 2,54,499 crore during financial year 2016-17 (FY17) and accounted for 29.52 per cent of Indirect Tax revenue in FY17.

(Paragraph 1.6)

- Arrear cases involving revenue implication of ₹ 1,17,935 crore were pending for recovery as on 31 March 2017.

(Paragraph 1.10)

- Cases involving revenue of ₹ 1,22,008 crore were pending in appeals in FY17 registering a 26 per cent increase over the amount pending at the end of FY16. Early disposal by the various authorities is important to bring in possible revenue of ₹ 1,22,008 crore to the Government coffers.

(Paragraph 1.15)

- The department had shifted from revenue based selection of units due for audit to risk based selection by factoring in the manpower available in the Audit Commissionerates. Despite the change of methodology in selection of assessees for audit, the shortfall in audit is still more than 50 per cent in the large and medium units.

(Paragraph 1.17)

Chapter II: Service Tax on Commercial Training or Coaching Service

The Service Tax revenue generated from Commercial Training or Coaching service has increased from ₹ 880.09 crore in FY13 to ₹ 1,950.08 crore in FY16 proving that the business of coaching centres is expanding day by day. The average annual growth rate of Service Tax from this service over last three years was not commensurate with the growth rate projected for this sector. We conducted a SSCA on this sector in 18 selected Commissionerates out of 117 Commissionerates dealing with Service Tax. Significant observations are:

- Efforts by the department to widen the tax net were inadequate as compared to the pace of growth of this sector and this had implication of revenue loss as evidenced by independent verification conducted by Audit.
 - The special cells, mandated with the task of identifying potential assesseees were non-existent/non-functional in all the selected Commissionerates.
(Paragraph 2.5.2)
 - Audit detected 1,005 number of unregistered assesseees out of which in 250 cases, we were able to quantify Service Tax liability of ₹ 6.11 crore.
(Paragraph 2.4)
- The department's performance in respect of scrutiny of returns was also found to be deficient.
 - In 10 selected Commissionerates, 46.25 per cent returns out of total returns due were not filed by the assesseees relating to this sector but action was initiated on non-filers only in five Commissionerates.
(Paragraph 2.6.1)
 - The department failed to carry out Review and Correction (R&C) in 98 per cent of the returns marked for R&C during the period FY14 to FY16.
(Paragraph 2.6.3)
- A sample verification of records of the assesseees by the Audit revealed 179 cases of non/short payment of Service Tax, irregular availing of CENVAT credit, non/short payment of interest etc. by registered assesseees involving revenue of ₹ 88.26 crore.
(Paragraph 2.4)

Chapter III: Non-compliance with Rules and Regulations

- Audit observed instances of non-payment/short-payment of Service Tax, incorrect availing/utilisation of CENVAT credit and non-payment of interest on delayed payments having financial implication of ₹ 92.61 crore.

(Paragraph 3.1)

Chapter IV: Effectiveness of Internal Control

- Audit observed deficiencies in scrutiny and internal audit carried out by departmental officers, delayed issue of show cause notice etc., having financial implication of ₹ 165.88 crore.

(Paragraph 4.2)

Chapter I

Service Tax Administration

1.1 Resources of the Union Government

The resources of Government of India include all revenues received by the Union Government, all loans raised by issue of treasury bills, internal and external loans and all moneys received by the Government in repayment of loans. Tax revenue resources of the Union Government consist of revenue receipts from Direct and Indirect Taxes. Table 1.1 below shows the summary of resources for the financial year 2016-17 (FY17) and FY16.

Table 1.1: Resources of the Union Government

	(₹ in crore)	
	FY17	FY16
A. Total Revenue Receipts	22,23,988	19,42,353
i. Direct Tax Receipts	8,49,801	7,42,012
ii. Indirect Tax Receipts including other taxes	8,66,167	7,13,879
iii. Non-Tax Receipts	5,06,721	4,84,581
iv. Grants-in-aid & contributions	1,299	1,881
B. Miscellaneous Capital Receipts ¹	47,743	42,132
C. Recovery of Loans and Advances ²	40,971	41,878
D. Public Debt Receipts ³	61,34,137	43,16,950
Receipts of Government of India (A+B+C+D)	84,46,839	63,43,313
Source: Union Finance Accounts of respective years. Figures of FY17 are provisional. Note: Direct Tax receipts and Indirect Tax receipts including other taxes have been worked out from the Union Finance Accounts. Total Revenue Receipts include ₹ 6,08,000 crore in FY17 and ₹ 5,06,193 crore in FY16, share of net proceeds of Direct and Indirect Taxes directly assigned to states.		

The total receipts of the Union Government increased to ₹ 84,46,839 crore in FY17 from ₹ 63,43,313 crore in FY16. In FY17, its own receipts were ₹ 22,23,988 crore an increase of ₹ 2,81,635 crore, which is an increase of 14.50 per cent over the previous year. This included Gross Tax receipts of ₹ 17,15,968 crore of which Indirect Tax receipts including other taxes accounted for ₹ 8,66,167 crore.

1.2 Nature of Indirect Taxes

The Audit Report is based on the audit conducted up to the FY17 and covers transactions involving levy and collection of Service Tax up to FY16. The major Indirect taxes in vogue as on that date are discussed below:

- a) **Service Tax:** Service Tax is levied on services provided within the taxable territory (Entry 97 of List 1 of the Seventh Schedule of the

¹ This comprises of value of bonus share, disinvestment of public sector and other undertakings and other receipts;

² Recovery of loans and advances made by the Union Government;

³ Borrowing by the Government of India internally as well as externally.

Constitution). Service Tax is a tax on services rendered by one person to another. Section 66B of the Finance Act, 1994 envisaged that there shall be a tax levied at the rate of 14 per cent on the value of all services, other than those specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.⁴ 'Service' has been defined in section 65B (44) of the Finance Act, 1994 to mean any activity for consideration (other than the items excluded therein) carried out by a person for another and to include a declared service.⁵

- b) Central Excise duty:** Central Excise duty is levied on manufacture or production of goods in India. Parliament has powers to levy excise duties on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics but including medicinal and toilet preparations containing alcohol, opium etc (Entry 84 of List 1 of the Seventh Schedule of the Constitution).
- c) Customs duty:** Customs duty is levied on import of goods into India and on export of certain goods out of India (Entry 83 of List 1 of the Seventh Schedule of the Constitution).

It may be noted that from 1 July 2017, Central Excise (except petroleum and some tobacco products), Service Tax and most of the state indirect taxes besides Countervailing Duty (CVD) and Special Additional Duty (SAD) components of Customs have been subsumed into Goods and Services Tax (GST).

This chapter discusses trends, composition and systemic issues in Service Tax using data from finance accounts, departmental accounts and relevant data available in public domain.

1.3 Organisational structure

The Department of Revenue (DoR) of Ministry of Finance (Ministry) functions under the overall direction and control of the Secretary (Revenue) and coordinates matters relating to all the Direct and Indirect Union Taxes through two statutory Boards namely, the Central Board of Excise and Customs (CBEC) and the Central Board of Direct Taxes (CBDT) constituted under the Central Board of Revenue Act, 1963. Matters relating to the levy and collection of Service Tax are looked after by the CBEC.

⁴ Section 66B was inserted by the Finance Act, 2012 with effect from 1 July 2012; section 66D lists the items the negative list comprises of.

⁵ Section 66E of the Finance Act, 1994 lists the declared services.

Indirect Tax laws are administered by the CBEC through its field offices, called the commissionerates. For this purpose, prior to restructuring in view of implementation of GST, the country was divided into 27 zones of Central Excise and Service Tax headed by the Chief Commissioner. Under these 27 zones, there were 83 composite executive commissionerates that deal with Central Excise and Service Tax, 36 exclusive Central Excise executive Commissionerates and 22 exclusive Service Tax executive Commissionerates headed by the Commissioner. Divisions and ranges are the subsequent formations, headed by Deputy/Assistant Commissioner and Superintendents respectively. Apart from these executive commissionerates, there were eight Large Tax Payer Units (LTU) commissionerates, 60 Appeal commissionerates, 45 Audit commissionerates and 20 Directorates dealing with specific functions such as intelligence, inspection, legal affairs etc.

The overall sanctioned staff strength of the CBEC was 84,875 as on 1 January 2017. The organisational structure of CBEC is shown in **Appendix I**.

1.4 Growth of Indirect Taxes - trends and composition

Table 1.2 depicts the relative growth of Indirect Taxes during FY13 to FY17.

Table 1.2: Growth of Indirect Taxes

Year	Indirect Taxes	GDP	Indirect Taxes as % of GDP	Gross Tax revenue	(₹ in crore)
					Indirect Taxes as % of Gross Tax revenue
FY13	4,74,728	99,88,540	4.75	10,36,460	45.80
FY14	4,97,349	1,13,45,056	4.38	11,38,996	43.67
FY15	5,46,214	1,25,41,208	4.36	12,45,135	43.87
FY16	7,10,101	1,35,76,086	5.23	14,55,891	48.77
FY17	8,62,151	1,51,83,709	5.68	17,15,968	50.24

Source: Tax revenue - Union Finance Accounts (FY17 Provisional), GDP – Press note of CSO⁶

It is observed that Indirect tax collection as a per cent of GDP registered a slight increase in FY17 vis-à-vis FY16 and its share in Gross Tax revenue also raised by 1.47 per cent in FY17 as compared to FY16.

1.5 Indirect Taxes – relative contribution

Table 1.3 depicts the trajectory of the various Indirect Tax components in GDP terms for the period FY13 to FY17.

⁶ Press note on GDP released on 31 May 2017 by Central Statistical Office (CSO), Ministry of Statistics and Programme Implementation. This indicates that the figures for GDP for FY14 and FY15 are based on New Series Estimates; and figure for FY17 are based on provisional estimates at current prices. The figures of GDP for FY13 are based on current market price with base year 2004-05. Figures are being continually revised by CSO and this data is meant for an indicative comparison of fiscal performance with macro economic performance

Table 1.3: Indirect Taxes – percentage of GDP

(₹ in crore)							
Year	GDP	ST revenue	ST revenue as % of GDP	CE revenue	CE revenue as % of GDP	Custom revenue	Custom revenue as % of GDP
FY13	99,88,540	1,32,601	1.33	1,75,845	1.76	1,65,346	1.66
FY14	1,13,45,056	1,54,780	1.36	1,69,455	1.49	1,72,085	1.52
FY15	1,25,41,208	1,67,969	1.34	1,89,038	1.51	1,88,016	1.50
FY16	1,35,76,086	2,11,415	1.56	2,87,149	2.12	2,10,338	1.55
FY17	1,51,83,709	2,54,499	1.68	3,80,495	2.51	2,25,370	1.48

Source: Figures of tax receipts are as per Union Finance Accounts of respective years. Figures of FY17 are provisional.

Among the indirect taxes, the Service Tax and Central Excise revenue as a percentage of GDP continued their increasing trend during last three years, while Customs revenue as a percentage of GDP decreased during FY17, though in monetary terms all the three taxes have shown positive growth.

1.6 Growth of Service Tax - trends and composition

Table 1.4 depicts the growth trends of Service Tax in absolute and GDP terms during FY13 to FY17.

Table 1.4: Growth of Service Tax

(₹ in crore)							
Year	GDP	Gross Tax revenue	Indirect Taxes	ST revenue	ST revenue as % of GDP	ST revenue as % of Gross Tax revenue	ST revenue as % of Indirect Taxes
FY13	99,88,540	10,36,460	4,74,728	1,32,601	1.33	12.79	27.93
FY14	1,13,45,056	11,38,996	4,97,349	1,54,780	1.36	13.59	31.12
FY15	1,25,41,208	12,45,135	5,46,214	1,67,969	1.34	13.49	30.75
FY16	1,35,76,086	14,55,891	7,10,101	2,11,415	1.56	14.52	29.77
FY17	1,51,83,709	17,15,968	8,62,151	2,54,499	1.68	14.83	29.52

Source: Figures of tax receipts are as per Union Finance Accounts of respective years. Figures of FY17 are provisional.

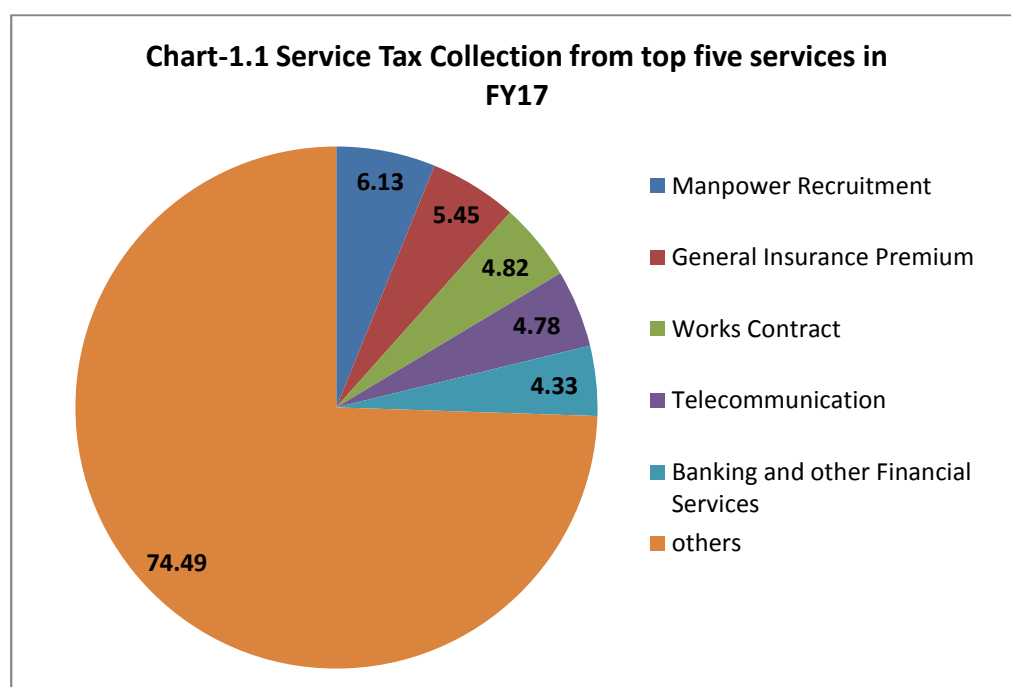
Service Tax accounted for 14.83 per cent of Gross Tax revenue during FY17. Share of Service Tax in gross tax revenue has been steadily increasing whereas its share in total indirect taxes declined in two successive financial years i.e. FY16 and FY17. As per the provisional estimates (PE) of real gross value added (GVA) released by the Central Statistics Office (CSO) for FY17⁷, services sector growth (i.e. GVA at constant (FY12) basic prices), decelerated to 7.7 per cent from 9.7 per cent in the previous two years mainly due to deceleration in growth in two services categories (i) trade, hotels, transport, communication & services related to broadcasting, and (ii) financial, real estate & professional services.

⁷ Para No. 9.9 of Economic Survey 2016-17 (Volume II)

1.7 Service Tax from major service categories

As per Finance Act, 1994, the Service Tax was leviable on 119 services upto 30 June 2012. With the introduction of negative list with effect from 1 July 2012, all services were taxable other than those entries specified under Section 66D like services by the Reserve Bank of India (RBI), services by a foreign diplomatic mission located in India, trading of goods, services by way of access to a road or a bridge on payment of toll charges, services by way of pre-school education and education up to higher secondary school or equivalent etc.

The top five categories of services contributed 26 per cent of the total Service Tax collection during FY17 which is depicted in pie chart 1.1, while the remaining categories of services contributed 74 per cent.



The Service Tax collections from these top five category of services during FY13 to FY17 are shown in Table 1.5.

Table 1.5: Service Tax from top five service categories

Year	(₹ in crore)				
	FY13	FY14	FY15	FY16	FY17
Manpower Recruitment	4,432	7,335	9,045	13,129	15,597
General Insurance Premium	6,321	8,834	9,263	11,436	13,866
Works Contract	4,455	7,434	8,139	11,434	12,277
Telecommunication	7,538	12,643	13,531	12,690	12,171
Banking and other Financial Services	4,964	7,185	8,099	11,005	11,032

Source: Union Finance Accounts of respective years. Figures of FY17 are provisional.

Payment of Service Tax under reverse charge⁸ was introduced for manpower recruitment and works contract service besides other services vide notification dated 30 June 2012. After this, Service Tax from manpower recruitment service had consistently increased from ₹ 4,432 crore in FY13 to ₹ 15,597 crore in FY17, becoming top revenue paying service in FY16 and FY17. Similarly, in works contract service, which was the third highest revenue contributing service in FY17, the revenue had increased from ₹ 4,455 crore in FY13 to ₹ 12,277 crore in FY17. General Insurance Premium moved to second position with Telecommunication slipping to fourth position from second top contributor in FY16. Banking and other financial services had been the fifth among the top Service Tax contributors during last three years.

1.8 Tax base

"Assessee" means any person who is liable to pay Service Tax and includes his agent as per definition in Section 65(7) of the Finance Act, 1994 (as amended). Table 1.6 depicts the data of the number of persons registered with the Service Tax department under Section 69 of the Finance Act, 1994.

Table 1.6: Tax base in Service Tax

Year	No. of ST registrations	% growth over previous year	No. of Registrants who filed returns	% of Registrants who filed returns
FY13	19,97,422	13.00 ⁹	8,67,182	43.42
FY14	22,73,722	13.83	10,08,137	44.34
FY15	25,26,932	11.14	11,12,120	44.01
FY16	28,28,361	11.93	12,18,594	43.08
FY17	31,60,281	11.74	13,06,280	41.33

Source: Figures furnished by the Ministry.

It is observed that number of registered persons as also the number of assesses filing returns is increasing steadily. However the per cent of the registered assessee's filing returns has declined by 2 per cent in FY17. The department needs to examine reasons for non-filing of returns and take appropriate action to ensure filing of due returns.

The data furnished by the Ministry this year on returns filed pertaining to FY13 to FY16 did not tally with the corresponding data furnished last year which was reported in CAG's Report No. 41 of 2016.

⁸ Normally, the service provider pays the Service Tax but in certain cases, the recipient is made liable to pay the tax, which is termed Reverse Charge.

⁹ ST registrations during FY12 were 17,67,604

1.9 Budget Estimates Vs. Actual Receipts

Table 1.7 depicts a comparison of the Budget Estimates (BE), Revised Estimates (RE) and the corresponding actuals for Service Tax receipts.

Table 1.7: BE, RE and Actual receipts

Year	BE	RE	Actual receipts	Diff. between Actuals and BE	(₹ in crore)	
					%age variation between Actuals and BE	%age variation between Actuals and RE
FY13	1,24,000	1,32,697	1,32,601	8,601	6.94	(-)0.07
FY14	1,80,141	1,64,927	1,54,780	(-)25,361	(-)14.08	(-)6.15
FY15	2,15,973	1,68,132	1,67,969	(-)48,004	(-)22.23	(-)0.10
FY16	2,09,774	2,10,000	2,11,415	1,641	0.78	0.67
FY17	2,31,000	2,47,500	2,54,499	23,499	10.17	2.83

Source: Union Finance Accounts and receipt budget documents of respective years. Figures of actual receipts of FY17 are provisional.

It is observed that actual collection of Service Tax was 10 per cent above the BE and about three per cent above the RE during FY17, reversing the negative trend of earlier years.

1.10 Arrears of Service Tax

The law provides for various methods of recovery of revenues raised but not realised. These include adjusting against amounts, if any, payable to the person from whom revenue is recoverable, recovery by attachment and sale of excisable goods and recovery through the district revenue authority.

Table 1.8 depicts the performance of the department in respect of recovery of revenue arrears.

Table 1.8: Arrears realisation – Service Tax

	(₹ in crore)	
	FY17	
	Gross Arrears ¹⁰	Recoverable Arrears ¹¹
Opening Balance	90,170.04	2,658.31
Addition during the year	68,663.89	6,176.31
Total Arrear	1,58,833.93	8,834.62
Disposal of Demands ¹²	39,006.39	4,285.29
Arrear Realised	1,892.89	783.33
Arrear Realised as % of Total Arrears	1.19	8.87
Closing Balance	1,17,934.65	3,766.00

Source: Figures furnished by the Ministry.

¹⁰ Gross arrears include stayed, restrained (BIFR cases, pending stay applications etc.) and recoverable arrears.

¹¹ Arrears relating to cases in which demand is confirmed but no appeal is filed within prescribed time, units closed/defaulters not traceable, cases decided by Settlement Commission, etc.

¹² Disposal of demands includes confirmation of demand in favour of the department/against the department, order for denovo adjudication, etc.

It can be seen that only 8.87 per cent of recoverable arrears could be recovered by the department during FY17. Given the significant amounts of arrears to be recovered, it is essential that the tax department specifically focuses on legacy issues even after the transition to GST.

1.11 Additional revenue realised because of Anti-evasion measures

Directorate General of Central Excise Intelligence (DGCEI) as well as the Central Excise and Service Tax Commissionerates have well-defined roles in the task of detection of evasion of Service Tax. While the Commissionerates, with their extensive database about units in their jurisdiction and presence in the field are the first line of defence against duty evasion, DGCEI specialises in collecting specific intelligence about evasion of substantial revenue. The intelligence so collected is shared with the Commissionerates. Investigations are also undertaken by DGCEI in cases having all India ramifications. Table 1.9 depicts the performance of DGCEI during last three years.

Table 1.9: Anti-evasion performance of DGCEI during last three years

Year	Detections		Voluntary Payments during Investigation
	No. of cases	Amount	
FY15	6,719	10,544	4,448
FY16	7,534	18,971	4,658
FY17	8,085	17,846	5,313

Source: Figures furnished by the Ministry.

It is observed that the number of Service Tax cases detected by DGCEI had increased during FY17 as compared to in FY16 while the amount detected had decreased slightly.

Tax administration in Service Tax

1.12 Scrutiny of returns

CBEC introduced the concept of self-assessment in respect of Service Tax in 2001. With the introduction of self-assessment, the department also envisaged the provision of a strong compliance verification mechanism, inter alia, through scrutiny of returns.

The department had not furnished information on scrutiny of returns for FY17 despite our repeated reminders. The department had stated that due to reorganization of the department for GST, it was not feasible to collect the data from various new field formations. This increases the concern that legacy issues may be ignored. The department should, in fact, focus on assigning legacy records to new offices systematically and keep track of movement of legacy records from previous offices to new offices.

1.13 Adjudication

Adjudication is the process through which departmental officers determine issues relating to tax liability of the assessee. Such process may involve consideration of aspects relating to, inter alia, CENVAT credit, valuation, refund claims, provisional assessment etc. A decision of the adjudicatory authority may be challenged in an appellate forum as per the prescribed procedures.

Table 1.10 depicts age-wise analysis of Service Tax cases pending for adjudication.

Table 1.10: Cases pending for adjudication with departmental authorities

(₹ in crore)

Year	Cases pending as on 31 March		No. of Cases Pending for more than 1 year
	No.	Amount	
FY15	33,122	77,463	12,668
FY16	30,453	76,124	8,587
FY17	19,053	68,941	6,919

Source: Figures furnished by the Ministry.

The total cases pending for adjudication decreased by 37.43 per cent in FY17 as compared to FY16 with cases pending for more than one year also decreasing by 19.42 per cent. However, the amount involved in these cases decreased only by 9.44 per cent.

1.14 Disposal of refund claims

The Central Excise Act Provisions regarding refund claims apply to Service Tax also. Section 11B of the Central Excise Act, 1944 provides the legal authority for claim and grant of refund. Further, section 11BB of the Act stipulates that interest is to be paid on refund amount if it is not refunded within three months of the date of application of refund. The Central Excise Manual prescribed that the department should accept refund claims only when accompanied with all supporting documents as refund claims without requisite documents may lead to delay in sanction of refunds.

Table 1.11 depicts the status of disposal of refund claims by the department. The delay depicted is in terms of time taken from the date of receipt of refund application till the final processing of the claims.

Table 1.11: Disposal of refund claims in Service Tax

(₹ in crore)

Year	Opening Balance		Receipt (during the year)		Disposal (during the year)				Cases where interest has been paid		No. of Cases Disposed within 3 Months
					Sanctioned		Rejected				
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Interest paid	
FY16	20,740	12,370	26,230	10,633	23,860	6,598	7,973	6,302	0	0	1,131
FY17	12,243	8,319	33,343	14,792	28,154	9,953	7,165	5,954	4	6	1,632

Source: Figures furnished by the Ministry.

It is observed that both number of refund cases disposed of as well as amount sanctioned had increased substantially in FY17 as compared to FY16. Out of a total of 28,154 cases disposed in FY17, **only 1,632 cases (5.80 per cent) were processed within the stipulated three months period.** This is a steep decline as compared to disposal of 82 per cent cases¹³ within three months in FY14. Further, the department had paid interest only in four cases for delay in sanctioning the refund. Thus there was a delay in around 94 per cent of disposals and also non-payment of interest in almost all the cases of delayed refunds, both of which were in violation of provisions of the Act.

Table 1.12 depicts an age-wise analysis of pendency of refund claims during last three years.

Table 1.12: Age-wise pendency of Service Tax refund cases as on 31 March

(₹ in crore)

Year	OB plus claims received in the year	Total number of refund claims pending as on 31 March ¹⁴		Refund claims pending for			
				Less than one year		Over 1 year	
		Number	Amount	Number	Amount	Number	Amount
FY15	*	13,913	8,390	10,848	5,642	3,065	2,747
FY16	46,970	12,243	8,319	9,403	5,146	2,840	3,173
FY17	45,586	10,089	6,994	9,063	6,035	1,026	959

Source: Figures furnished by the Ministry.

*The Ministry did not provide the complete data for FY15

It is observed that the number of refund claims pending, including those pending for over one year, as well as amount involved has decreased substantially in FY17 as compared to FY16.

1.15 Appeal cases

Besides the adjudicating authorities, there are several other authorities including departmental appellate authorities, courts of law etc., where issues of law, interpretations etc., are considered. Huge amounts of revenue remain unrealised for substantial periods of time due to pendency of appeals. Based

¹³ As reported in Table 1.11 of Report No. 41 of 2016

¹⁴ Closing balance figures provided by the Ministry do not tally with closing balance worked out from details provided for Table 1.11.

on data furnished by CBEC, we have tabulated the pendency of cases at various forums in Table 1.13.

The Ministry has provided the data regarding pendency of appeal for Service Tax for FY15 to FY17. The data is tabulated below:

Table 1.13: Pendency of Appeal (ST)

(₹ in crore)

Year	Forum	Appeals pending at the end of the year					
		Details of assessee's appeals		Details of departmental appeals		Total	
		No. of Appeals	Amount Involved	No. of Appeals	Amount Involved	No. of Appeals	Amount Involved
FY15	Supreme Court	179	450	359	1,762	538	2,211
	High Court	1,837	4,663	877	1,717	2,714	6,380
	CESTAT	16,245	54,654	5,585	6,762	21,830	61,416
	Settlement Commission	73	214	0	0	73	214
	Commissioner (Appeals)	15,112	3,373	1,925	357	17,037	3,730
	Total	33,446	63,354	8,746	10,597	42,192	73,951
FY16	Supreme Court	196	959	423	3,077	619	4,036
	High Court	2,115	6,300	859	2,218	2,974	8,518
	CESTAT	18,628	63,654	5,546	15,824	24,174	79,478
	Settlement Commission	52	94	0	0	52	94
	Commissioner (Appeals)	14,986	4,320	2,619	377	17,605	4,697
	Total	35,977	75,327	9,447	21,496	45,424	96,823
FY17	Supreme Court	220	2,031	508	6,116	728	8,147
	High Court	2,549	9,383	917	3,067	3,466	12,450
	CESTAT	21,737	78,821	5,610	15,506	27,347	94,327
	Settlement Commission	75	189	0	0	75	189
	Commissioner (Appeals)	16,720	6,398	2,513	497	19,233	6,895
	Total	41,301	96,822	9,548	25,186	50,849	1,22,008

Source: Figures furnished by the Ministry

The Table indicates that cases involving revenue of ₹ 1,22,008 crore were pending in appeals at the end of FY17 registering a 26 per cent increase over the amount pending at the end of FY16. As no action can be initiated for recovery of revenue till the appeal is pending, early disposal by the various authorities to bring in possible revenue of ₹ 1,22,008 crore to the Government coffers, is important.

The Ministry has provided the details of disposal of appeal cases of Service Tax for FY16 to FY17. The data is tabulated below:

Table No. 1.14: Breakup of cases decided during the year (ST)

Year	Forum	Department's Appeal				Assessee's Appeal			
		Decided In Favour of Deptt.	Decided Against the Deptt.	Remanded	% of Successful appeal	Decided in favour of assessee	Decided against assessee	Remanded	% of Successful appeal
FY16	Supreme Court	7	81	6	7.45	11	3	3	64.71
	High Court	51	211	25	17.77	118	361	172	18.13
	CESTAT	114	589	72	14.71	1,020	544	582	47.53
	Comm. (Appeals)	275	294	26	46.22	2,897	2,673	1,341	41.92
	Total	447	1,175	129	25.53	4,046	3,581	2,098	41.60
FY17	Supreme Court	9	14	4	33.33	2	6	9	11.76
	High Court	29	204	10	11.93	139	346	79	24.65
	CESTAT	198	1,508	135	10.76	1,560	644	635	54.95
	Settlement Comm.	0	0	0	0	17	53	4	22.97
	Comm. (Appeals)	485	781	122	34.94	4,026	3,803	2,098	40.56
	Total	721	2,507	271	20.61	5,744	4,852	2,825	42.80

Source: Figures furnished by the Ministry

The table indicates that success ratio of the department's appeal against adjudication order has decreased from 25.53 per cent in FY16 to 20.61 per cent in FY17. The success ratio ranges between 10 per cent to 12 per cent when the department went in appeal in CESTAT and High Court.

1.16 Cost of collection

Table 1.15 depicts the cost of collection vis-a-vis the revenue collection.

Table 1.15: Central Excise and Service Tax receipts and cost of collection

Year	Receipts from Service Tax	Receipts from Central Excise	Total Receipts	Cost of collection	(₹ in crore)
					Cost of collection as % of total Receipts
FY13	1,32,601	1,75,845	3,08,446	2,439	0.79
FY14	1,54,780	1,69,455	3,24,235	2,635	0.81
FY15	1,67,969	1,89,038	3,57,007	2,950	0.83
FY16	2,11,415	2,87,149	4,98,564	3,162	0.63
FY17	2,54,499	3,80,495	6,34,994	4,056	0.64

Source: Union Finance Accounts of respective years. Figures of FY17 are provisional.

The cost of collection increased in monetary terms in FY17 in comparison to previous years but as a per cent of total receipts of Central Excise and Service Tax, it increased marginally in comparison with a 20 per cent increase in the total Service Tax receipts.

1.17 Internal Audit

The department has been categorizing assessee units into A, B, C and D categories based on annual revenue for the purpose of conducting Internal Audit, with all 'A' category units considered as annual units for audit purpose while 'B' category represented biennial units. Audit cell located within each Commissionerate was responsible for internal audit. After the restructuring of the department in October 2014, new Audit Commissionerates came into existence, following which the department has reorganized the auditable units into three categories i.e. Large, Medium and Small Units based on centralized risk assessment carried out by DG (Audit). The manpower available with the Audit Commissionerate is allocated in 40:25:15 among large, medium and small units and remaining 20 per cent manpower is to be utilised for planning, coordination and follow up.

Table 1.16 depicts details of Service Tax units due for audit by audit parties of the Commissionerates during FY17 vis-à-vis units audited.

Table 1.16: Audits of assessees conducted during FY16 & FY 17

Year	Category	Number of units due	Number of units audited	Shortfall in Audit (No.)	Shortfall in audit (%)
FY17	Large Units	7,442	3,254	4,188	56.28
	Medium Units	10,450	4,789	5,661	54.17
	Small Units	20,640	12,096	8,544	41.40

Source: Figures furnished by the Ministry

The department had shifted from revenue based selection of units due for audit to risk based selection by factoring in the manpower available in the Audit Commissionerates. Despite the change of methodology in selection of assessees for audit, the shortfall in audit is still more than 50 per cent in the large and medium units. Thus the shortfall in number of units audited, which was around 50 per cent in pre-restructuring era (as commented in Audit Report No. 4 of 2015), continued despite formation of separate audit commissionerates and revised method of selection.

The result of the audit conducted by the department is tabulated in table 1.17.

Table 1.17: Amount objected and recovered during the year by Internal Audit

(₹ in crore)

Year	Category	Amount of short levy detected	Amount of total recovery
FY17	Large Units	4,276	823
	Medium Units	1,204	379
	Small Units	852	332
	Total	6,332	1,534

Source: Figures furnished by the Ministry.

It is observed that amount of short levy detected and recovered in Large units is significantly higher than other units indicating the need to allocate more resources for carrying out internal audit of Large units.

1.18 Revenue collection due to departmental efforts

There are various methods by which the department collects the revenue due but not paid by the taxpayers. These methods include Scrutiny of Returns, Internal Audit, Anti-evasion, Adjudication etc.

The result of the department efforts is tabulated in Table 1.18.

Table 1.18 : Revenue recovered by Departmental Efforts

(₹ in crore)			
Sl. No.	Departmental Action	Recovery during FY16	Recovery during FY17
1	Anti-evasion	3,017.85	2,979.64
2	Recovery from Defaulters	1,044.26	1,312.31
3	Pre Deposit	753.37	781.68
4	Demands confirmed in Adjudication	1,015.36	666.53
5	Internal audit	688.76	628.41
6	Scrutiny of Returns	263.23	300.90
7	Income Tax Return/Tax Deducted at Source ¹⁵	235.68	184.19
8	Voluntary Compliance Encouragement Scheme	163.89	38.02
9	Others	579.85	475.63
Total		7,762.25	7,367.31

Source: Figures furnished by the Ministry

Total Service Tax collection during FY17 is ₹ 2,54,499 crore, out of which only ₹ 7,367.31 crore, representing 2.89 per cent, is collected due to departmental efforts. Further, it is noticed that revenue collection shown under Internal Audit and Anti-evasion in Table 1.18 does not tally with the amount relating to same category shown in Table 1.17 and 1.9 respectively. In fact, the recoveries reflected in table 1.18 (₹ 2,980 crore) are far less than voluntary payments made during investigation of Anti-evasion reported in Table 1.9 (₹ 5,313 crore). Even though similar data discrepancy regarding data provided by the Ministry during FY15 and FY16 was brought to the notice of the Ministry through Audit Report on Service Tax last year (Report No. 1 of 2016 and Report No.41 of 2016), the Ministry sent similar data without proper verification again in 2017.

The data furnished by the Ministry this year relating to revenue recovered by departmental efforts for FY16 does not tally with the data furnished last year by the Ministry and reported in CAG's Report No. 41 of 2016.

1.19 Audit effort and Audit Products - Compliance Audit Report

Compliance audit was conducted by nine field offices headed by Director Generals (DGs)/Principal Directors (PDs) of Audit, who audited 1,055 units (Central Excise and Service Tax) in FY17 as per Regulations on Audit and Accounts, 2007 (as amended) and in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

¹⁵ On the basis of information shared by the Income Tax department

Data from the Union Finance Account, along with examination of basic Records/documents in DoR, CBEC, and their field formations, Management Information System (MIS) and Monthly Technical Report (MTRs) of CBEC along with other stake holder reports were used.

1.20 Report overview

The current report has 196 paragraphs having financial implication of ₹ 352.86 crore. There were generally three kinds of observations: non-payment of Service Tax, short payment of Service Tax, irregular availing and utilisation of CENVAT credit etc. The department/Ministry has already taken rectificatory action involving money value of ₹ 205.26 crore in case of 176 paragraphs in the form of issue of show cause notices (SCN), adjudication of SCNs and reported recovery of ₹ 100.70 crore.

1.21 Response to CAG's Audit, revenue impact/follow-up of Audit Reports

In the last five audit reports (including current year's report) we had included 854 audit paragraphs (Table 1.19) having financial implication of ₹ 2,034.07 crore.

Table 1.19: Follow up of Audit Reports

(₹ in crore)

Year			FY13	FY14	FY15	FY16	FY17	Total
Paragraphs included	Number		151	178	167	162	196	854
	Amount		265.75	772.08	386.50	256.88	352.86	2,034.07
Paragraphs accepted	Pre printing	Number	147	171	163	158	176	815
		Amount	262.29	477.22	372.80	252.65	205.26	1,570.22
	Post printing	Number	4	--	1	--	--	5
		Amount	1.81	--	0.32	--	--	2.13
	Total	Number	151	171	164	158	176	820
		Amount	264.10	477.22	373.12	252.65	205.26	1,572.35
Recoveries effected	Pre printing	Number	95	92	104	122	116	529
		Amount	65.28	130.29	53.02	78.47	100.70	427.76
	Post printing	Number	9	11	3	--	--	23
		Amount	2.07	33.93	1.10	--	--	37.10
	Total	Number	104	103	107	122	116	552
		Amount	67.35	164.22	54.12	78.47	100.70	464.86

Source: CAG Audit Reports

It is observed that the Ministry had accepted audit observations in 820 audit paragraphs having financial implication of ₹ 1,572.35 crore and had recovered ₹ 464.86 crore.

Chapter II

Service Tax on Commercial Training or Coaching Service

2.1 Introduction

Coaching centres exist almost in every small and big/metro city and every year this number is increasing. The Service Tax revenue generated from this service has increased from ₹ 880.09 crore in FY13 to ₹ 1,950.08 crore in FY16 proving that the business of coaching centres is expanding day by day. The average annual growth rate of Service Tax of this service over last three years is only around 21 per cent while the business of private coaching centres was expected to grow at 35 per cent during the same period.¹⁶ Since, this activity is cash-based business, there is always a possibility of leakage of Government's Service Tax revenue.

2.1.1 *Service Tax provisions relating to Commercial Training or Coaching Service*

Section 65(26) of the Finance Act, 1994, as amended from time to time, defines "**Commercial Training or Coaching (CTC)**" as any training or coaching provided by a CTC centre. Further, as per section 65(27) of this Act, "**CTC Centre**" means any institute or establishment providing CTC for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes.

Section 65(105)(zzc) of the Act further provides that taxable service means any service provided or to be provided to any person, by a CTC centre in relation to CTC which inter-alia includes any centre or institute, by whatever name called, where training or coaching is imparted for consideration.

With effect from 1 July 2012, all services were brought into Service Tax net barring those which are in the negative list (Section 66D of the Finance Act, 1994) or have been exempted by way of exemption notifications. Section 66B of Finance Act, 1994, states that Service Tax shall be charged at the rate notified by the Government from time to time on value of all taxable services i.e. other than those specified in the negative list or exempted services, which are provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed. Under negative list, a list of services relating to education sector were inserted with effect from 1 July 2012 which comprises of services by way of – (i) pre-school education and education up to higher secondary school or equivalent; (ii)

¹⁶ <http://assocham.org./newsdetail.php?id=4050>

education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force and (iii) education as a part of an approved vocational education course.

Thus the services relating to education, not included in negative list, as illustrated below attract Service Tax:

- i. Private tuitions
- ii. Education as a part of prescribed curriculum for obtaining qualification recognized by law of a foreign country
- iii. Placement services
- iv. Other services provided by educational Institutes like Campus recruitments by prospective employers like corporate houses/MNCs for which a fee is charged by the educational institutes.

Vide notification No. 25/2012-ST dated 20 June 2012 applicable with effect from 1 July 2012; the following taxable services are exempt from the whole of the Service Tax leviable under section 66B of the Finance Act, 1994 amended from time to time:

- (i) Services by way of training or coaching in recreational activities relating to arts, culture or sports.
- (ii) Services provided to or by an educational institution in respect of education exempted from Service Tax, by way of, - (a) auxiliary educational services; or (b) renting of immovable property.

Auxiliary Educational Services – means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge-enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution.

With effect from 11 July 2014 vide notification No. 6/2014-ST dated 11 July 2014, the following services were exempted from levy of Service Tax

- i. Services provided by an educational institution to its students, faculty and staff and
- ii. Services provided to an educational institution, by way of
 - a. transportation of students, faculty and staff;

- b. catering, including any mid-day meals scheme sponsored by the Government;
- c. security or cleaning or house-keeping services performed in such educational institution;
- d. services relating to admission to, or conduct of examination by such institution.

2.2 Audit objectives

The objective of this audit was to derive assurance on whether:

- (i) instructions issued by the department to broaden the tax base and detect tax evasion have been complied with.
- (ii) procedures and the compliance verification mechanisms in place in the department are adequate to ensure the payment of Service Tax on taxable services and availment of input credit.

2.3 Scope and sample of Audit

There were 83 composite executive Commissionerates that deal with both Central Excise and Service Tax and 22 exclusive Service Tax executive Commissionerates in the Country. For the purpose of this Audit, we selected 18 Commissionerates and 18 Divisions and 40 Ranges falling under the selected Commissionerates. In addition, we have also included findings on this subject noticed during our regular compliance audit as per annual audit plan 2016-17 and pilot study to report all observation on this subject at one place.

We sought information/records based on which role of departmental officers with reference to dissemination of Board's instructions on broadening of tax base, functioning of special cell, efforts taken for identifying unregistered service providers, scrutiny of returns etc. could be examined by Audit. But some of the information was not furnished by all the selected Commissionerates, which curtailed the scope of audit examination to that extent.

During audit, we requisitioned records of 789 assesseees for detailed scrutiny/detailed examination but received records in respect of 549 assesseees only. Thus, records pertaining to 30 per cent of assesseees could not be examined by Audit.

2.4 Audit findings

In the course of audit, we noticed shortcomings in functioning of department with reference to tax base broadening and scrutiny of returns. We also detected 1,005 number of unregistered assesseees out of which in 250 cases, where we were able to quantify the income of the assesseees, the Service Tax liability worked out to ₹ 6.11 crore. Further, we detected 179 cases of non/short payment of Service Tax, irregular availing of CENVAT credit, non/short payment of interest etc. by registered assesseees involving revenue of ₹ 88.26 crore.

In 1,056 cases out of 1,184 cases¹⁷ pointed out by us, the Ministry stated that efforts were being made to locate the jurisdiction of the assesseees in view of restructuring due to implementation of GST. The Ministry should formulate a time-bound action plan to locate the jurisdiction and examine these cases so as to ensure safeguarding of revenue before the demands relating to these cases become time-barred.

The detailed audit findings are discussed under the following three broad categories:

- Broadening of Service Tax base
- Scrutiny of Returns by department
- Detailed examination of records of selected assesseees by CAG audit

2.5 Broadening of Service Tax base

There had been explosive growth of service providers in CTC sector without corresponding growth in Service Tax from this sector as already pointed out in para 2.1. Hence, we looked specifically into the compliance to directions issued (November 2011) by Board for broadening the tax base such as creation of special cell and using information from other sources like Income Tax, Ministry of Corporate Affairs (MCA) etc. to identify unregistered assesseees. The detailed instructions of Board in this regard and the results of audit examination of the same had been discussed below:

2.5.1 Dissemination of Board's instructions to field formations of the department

We sought (November 2016 to December 2017) the records relating to the instructions/directions received from the Board relating to Broadening of Service Tax base and action thereon taken by the lower formations. We did not find evidence of dissemination of Board's instructions which showed that

¹⁷ 1005 (unregistered assesseees) + 179 (non-payment/short payment etc.)

the instructions of Board relating to broadening of Service Tax base did not percolate to the field formations as detailed below:

- Eight Commissionerates¹⁸ informed that neither any instructions/directions were received from Chief Commissioner/Board nor forwarded to the lower formations regarding broadening of Service Tax base relating to CTC Service providers.
- While Chandigarh-II Commissionerate replied that various instructions/directions were issued by the Commissioner and Chief Commissioner towards broadening of assessee base from time to time, selected Divisions and Ranges intimated that no such instructions were received by them.
- Chief Commissioners, Delhi, Kolkata and Chennai and ST Commissionerates of Cochin, Hyderabad-IV and Hyderabad did not provide any records relating to instructions/directions issued for broadening of tax base. Chief Commissioner Delhi attributed it to formation of Service Tax Delhi Zone in October 2014.

The Ministry in its response (October 2017) forwarded the replies of Bengaluru West (erstwhile Bangalore ST-I), Udaipur and Delhi East (erstwhile Delhi ST-III) Commissionerates. The Delhi East Commissionerate informed that neither any instructions/directions were received from Chief Commissioner/Board nor forwarded to the lower formations. The replies given by Bengaluru West and Udaipur Commissionerate did not pertain to audit observation on dissemination of instructions received from Board. The reply of the Ministry was silent on other Commissionerates.

2.5.2 Functioning of special cell

As per the Board's instructions, a Special Cell should be created in each Commissionerate mandated with the task of identifying potential assessees. This cell should collect list of service providers from the various service provider's associations, yellow pages, local publications, advertisements in the newspapers, regional registration authorities, websites, regulatory bodies, State Government departments, Income Tax departments, RBI etc. and identify unregistered service providers and get them registered. Also surveys in the local markets, malls may be carried out if deemed necessary. Every Commissionerate is given target of revenue generation in every financial year.

¹⁸ Ahmedabad ST, Delhi ST-II, Chandigarh I, Lucknow, Mumbai ST-VII, Pune ST, Bangalore ST-II and Noida ST

We enquired (between November 2016 and February 2017) in the selected Commissionerates whether Special Cell was created in compliance with the instructions of the Board. Bangalore ST-I and Delhi ST-III Commissionerates did not furnish their reply. All other Commissionerates stated (January to February 2017) that special cell was not created in the Commissionerate. However, most of them added that Anti-evasion unit was looking after this aspect, without giving any supporting records. Broadening of tax base is an important method to increase the revenue collection and meet the targets. Hence, we tried to examine targets set for selected commissionerates. However, none of the Commissionerates furnished any information regarding targets for tax base broadening fixed by the higher authorities.

The Ministry in its reply (October 2017) forwarded the replies of Bengaluru West (erstwhile Bangalore ST-I) and Delhi East (erstwhile Delhi ST-III) Commissionerates. Bengaluru West Commissionerate informed that, in place of Special Cell, a Data Management Cell was constituted, which looked into third party data received from CBDT. Delhi East Commissionerate informed that Special Cell was not created due to shortage of staff. The Ministry's reply was silent on non-furnishing of information on targets fixed.

Thus the special cells, as envisaged by the Board, were non-existent or non-functional.

2.5.3 Using Income Tax data for tax base broadening

CBEC entrusted to Director General of Service Tax (DGST) (now DG GST) the responsibility of calling for the information from Income Tax Authorities on persons providing one or other type of services and having income of above ₹ 10 lakh in a year and to check whether they were registered with the department or filing their returns or declaring true value in their returns. All the defaulting cases were to be forwarded to jurisdictional Service Tax authorities for further action in the matter.

We sought from the selected Commissionerates, the details of defaulting cases received from DGST based on information of the Income Tax Department. In response, six Commissionerates¹⁹ replied that no such information/data was received from DGST during the period of audit. Eight Commissionerates²⁰ informed (January to February 2017) that the data received from Income Tax Department was forwarded to lower formations for taking necessary action and that no assessee relating to CTC had been noticed.

¹⁹ Ahmedabad ST, Cochin, Delhi ST-II, Lucknow, Chandigarh II and Noida ST

²⁰ Chandigarh I, Udaipur, Mumbai ST-VII, Chennai ST-II, Hyderabad IV, Hyderabad ST, Bangalore ST II and Pune ST

The Ministry in its reply (October 2017) forwarded the replies of Bengaluru West (erstwhile Bangalore ST-I), Delhi East (erstwhile Delhi ST-III) and Kolkata ST-I and II Commissionerates. Bengaluru West Commissionerate reported that the assistance of Income Tax department would be taken to obtain the data for broadening the tax base. Kolkata ST-I and II Commissionerate stated suitable instructions were issued to use Income Tax data for broadening tax base. Delhi East Commissionerate reported that no information/data of Income Tax assessee having service related income above ₹ 10 lakh in a year was received from DGST.

The Ministry simply forwarded different responses of field formations without giving their own response to this critical issue reported by CAG audit.

2.5.4 Identification of unregistered service providers by Internal Audit cell/Commissionerate

As per para no. 6.11.12 of Central Excise and Service Tax Audit Manual 2015, the internal audit party (IAP), during course of audit of the assessee selected for internal audit, had to collect the records of all the service providers who had provided taxable service of more than ₹ 10 lakh to the selected assessee but did not charge Service Tax and furnish the same to the Internal Audit Cell/Audit Commissionerate which in turn forward it to the concerned Commissionerate.

We enquired from the selected Commissionerates whether Internal Audit Wing of the erstwhile Commissionerate or Audit Commissionerates had ever forwarded information relating to the unregistered service providers identified by them during the course of audit of the registered assessee. In response, 13 Commissionerates²¹ replied that no information relating to CTC service providers was forwarded to the executive Commissionerates. Further, Chandigarh-II Commissionerate stated that it received a list of four assessee from Internal Audit Cell, who were made to take registration. However, Audit did not find these four assessee in the Service Tax assessee data base provided to Audit by the department. Four Commissionerates²² did not furnish their reply.

The Ministry in its reply (October 2017) forwarded replies of Kolkata ST-I and ST-II, Bengaluru ST-I (erstwhile Bangalore ST-I) and Delhi East (erstwhile Delhi ST-III) Commissionerates. Delhi East and Bengaluru West Commissionerates stated that no information relating to CTC service providers was forwarded to

²¹ Ahmedabad ST, Bangalore ST-II, Chandigarh-I, Chennai ST-II, Cochin, Delhi ST-II, Hyderabad-IV, Hyderabad ST, Lucknow, Mumbai ST-VII, Noida ST, Pune ST and Udaipur

²² Bangalore ST-I, Delhi ST-III and Kolkata ST-I & II

the executive Commissionerates. Kolkata ST-I and II Commissionerates stated that this matter pertained to Audit Commissionerate.

Thus the Ministry simply forwarded replies received from the Commissionerates without taking a view on the systemic lapse pointed out by Audit.

2.5.5 Independent verification by CAG Audit

In view of nil/negligible efforts made by the department to identify the unregistered assesseees of CTC sector using Income Tax data/records of assesseees verified in Internal Audit, we tried to independently verify unregistered service providers from various databases as discussed below:

2.5.5.1 Data of Ministry of Corporate Affairs (MCA)

We downloaded the data of companies/Limited Liabilities Partnership (LLP) available on website of MCA and the Permanent Account Numbers (PAN) from Income Tax site. Using these PAN numbers, we verified from data base of the department as to whether the concerned company/LLP had obtained Service Tax registration or not. During this exercise, we noticed that **613** service providers involved in CTC services though registered with MCA did not register themselves as assesseees with Service Tax Department.

We sought data in respect of CTC centres from Income Tax Department to assess how many of these unregistered companies had income above threshold limit of ₹ 10 lakh per annum, but the same was not provided. Hence we could not assess the Service Tax liability in all these cases.

Out of these 613 unregistered service providers, in case of 23 service providers, we collected data from the Registrar of Companies (RoC), Ahmedabad and Jaipur for the period FY14 to FY16, who had shown revenue of ₹ 154.59 crore in their financial statement during FY14 to FY16, suggesting possibility of Service Tax liability (**Appendix II**). But in the absence of detailed information, we could not compute their Service Tax liability.

When we pointed this out (between November 2016 and March 2017) in 570 cases including 12 cases in which data of RoC, Ahmedabad was provided, the Ministry (October 2017) asked for information like current address of the service provider. Further, in 42 cases²³ the Ministry stated that the matter was under examination or the assessee was not traceable and in one case stated that the assessee had taken registration.

Instead of gathering further information from MCA to enable verification of whether these units were liable to register with the department or not, the

²³ including seven cases in which data was obtained from RoC, Jaipur by CAG Audit

Ministry was seeking further details from us. It was evident that the efforts of widening tax net through using MCA and Income Tax Department databases under the same Ministry were not effectively exploited. This non/delayed action on part of the department might result in revenue loss due to demands becoming time barred.

2.5.5.2 Other third party sources

As per the Board's instructions, the department had to collect list of service providers from the various service provider's associations, from yellow pages, local publications, advertisements appearing in the newspapers, regional registration authorities, websites, regulatory bodies, State Government departments, Income Tax departments, RBI etc. and identify unregistered service providers and get them registered. Also surveys in the local markets, malls may be carried out if deemed necessary.

We obtained information relating to CTC centers from other sources viz. advertisements (print media), internet, websites, UGC, AICTE and RBI etc. We cross checked the same with the Pan-India database of registered assessee provided by the Service Tax Department and found that 120 service providers²⁴ engaged in CTC services had not got themselves registered with Service Tax Department.

In absence of Special Cells and consequent non-availability of records relating to efforts taken by the department to explore these sources for identifying unregistered assessee, Audit could not comment if such sources were examined by the department as part of their tax base broadening efforts.

When we pointed this out (November 2016 to March 2017) the Ministry did not give a final reply in 115 cases stating (October 2017) that due to restructuring of the Commissionerates post GST, the jurisdiction of assessee had changed and that field formations were trying to locate the correct jurisdiction and in five cases, stated that issue was under examination.

The Ministry's further response was awaited (October 2017).

2.5.5.3 From the records of assessee examined

During the scrutiny of Service Tax records of selected assessee, we noticed that 23 assessee under five Commissionerates²⁵, received services from 272 service providers who did not get themselves registered with Service Tax Department even after crossing the threshold limit of rupees nine lakh in a financial year. Out of these, in 250 cases where income identified from the records of audited assessee crossed threshold limit for payment of Service

²⁴ Ahmedabad ST, Chandigarh-I, Chennai ST II, Delhi-III

²⁵ Bangalore ST-I & II, Delhi ST-II & III, Mumbai ST-VII

Tax i.e. ₹ ten lakh, the Service Tax evaded worked out to ₹ 6.11 crore. In case of remaining 22 service providers whose income from transactions with the audited assessee alone crossed ₹ nine lakh but is less than ₹ ten lakh (threshold for payment of Service Tax), the possibility of Service Tax liability on their overall income could not be ruled out, which the department was required to examine.

Further all these cases were pointed out by Audit in the five Commissionerates which either which stated that no inputs were forwarded by Internal Audit pertained to CCT or did not respond to audit's query on receipt of inputs regarding unregistered assessees from Internal Audit (Para 2.5.4 refers).

This clearly established non-adherence to the existing instructions of identifying service providers from the records of assessees scrutinised by Internal Audit and the consequent risk of revenue loss.

When we pointed this out (November 2016 to February 2017) Delhi ST-II and III Commissionerates informed (March 2017) that 17 service providers (out of 112 pointed out by Audit) had taken Service Tax registration and deposited Government dues of ₹ 43 lakh.

The Ministry (October 2017) asked for further information in all the cases for locating the current jurisdiction of the service providers. Instead of expecting us to carry out executive functions, the Ministry was expected to instruct its field formations to gather further information from those assessees to verify whether the service providers were liable to register with the department or not, besides ensuring that field formations adhere to its directions relating to identification of service providers from assessee records. Further, Delhi ST II and III commissionerates reported recovery based on inputs given by us.

2.6 Analysis of the department's performance in respect of scrutiny of returns

After introduction of Automation of Central Excise and Service Tax (ACES), preliminary scrutiny of returns was being done by the system itself. The purpose of the preliminary scrutiny was to ensure completeness of information, timely submission of returns, timely payment of duty, arithmetical accuracy of the amount computed as duty, closing and opening balance of CENVAT credit etc. The Range superintendent was required to verify the returns marked by the system for Review and Correction (R&C) and rectify the errors, if any, in the returns in consultation with the assessee concerned.

2.6.1 Non-initiation of action against non/stop filers

We sought (October 2016 to February 2017) the details of non/stop filers and action taken against the defaulters from the selected ranges of 18 Commissionerates. No response was received from eight commissionerates²⁶ and 10 Commissionerates²⁷ replied that 5,821 (46.30 per cent) returns out of 12,571 returns due were not filed by the assesseees relating to this sector during FY13 to FY16. Out of these, only five Commissionerates (Cochin, Delhi ST-II, Kolkata ST-I & II and Udaipur) initiated action on the defaulting assesseees. Further, in Pune ST Commissionerate, we checked from ACES data that 14,163 (57.37 per cent) out of 24,688 returns due were not filed by the assesseees for all the services but no action was initiated on these non-filers.

The Ministry in its reply (October 2017) forwarded the response of five Commissionerates. The Pr. Commissioner, Cochin stated that Range Officers had been directed to initiate action against non/stop filers. Bangalore ST-I and II Commissionerate stated that issue was under examination. Delhi East (erstwhile Delhi ST-III Commissionerate) stated that action had been initiated against defaulting assesseees. Mumbai ST-VII stated that due to restructuring of the Commissionerates post GST, the jurisdiction of assesseees changed and attempt was being made to locate the correct jurisdiction. The reply of the Ministry was silent on other Commissionerates.

2.6.2 Non-levy of late fee on delayed filing of returns

Rule 7C of Service Tax Rules, 1994 prescribes that in case a return is filed after the due date, the person liable to furnish the said return shall pay late fee, to the credit of the Central Government, subject to a maximum limit specified in section 70 of the Act, which had been fixed at ₹ 20,000/-.

We requested (October 2016) the selected ranges of 18 Commissionerates to provide the details of those assesseees who filed their returns after due date and action taken against late filing. In response, 12 Commissionerates²⁸ replied (March 2017) that of the 37,079 ST-3 returns which were due during FY13 to FY16, 1,138 returns were filed after due date. Out of these, only six Commissionerates²⁹ initiated action to levy late fee on the defaulting assesseees. No response was received from six Commissionerates.³⁰

²⁶ Cochin, Delhi ST-III, Mumbai ST-VII, Pune ST, Noida ST, Ahmedabad ST and Bangalore ST-I & II.

²⁷ Chandigarh -I & II, Chennai ST-II, Delhi ST-II, Hyderabad-IV, Hyderabad ST, Kolkata ST-I & II, Lucknow and Udaipur

²⁸ Ahmedabad ST, Chandigarh -I, Chennai ST-II, Delhi ST-II, Hyderabad-IV, Hyderabad ST, Kolkata ST-I & II, Lucknow, Mumbai ST-VII, Pune ST and Udaipur

²⁹ Ahmedabad ST, Delhi ST-II, Kolkata ST-I & II, Pune ST and Udaipur

³⁰ Chandigarh II, Delhi ST-III, Noida ST, Cochin, Bangalore ST-I & II

The Ministry in its reply (October 2017) forwarded the replies of five Commissionerates (Bangalore ST-I & II, Chandigarh-II, Cochin and Delhi ST-III) which stated that action was being taken against late filers based on CAG's information. The Ministry's reply was silent on other Commissionerates.

Thus only in one-third of the test checked Commissionerates, suo moto action was taken to levy late fee on defaulting assesseees.

2.6.3 Non-initiation of action on the returns marked for Review and Correction (R&C)

In ACES, once the returns are uploaded, software checks them for correctness of information such as registration number³¹, classification, notification, rate of duty, challans used for duty payment etc. Any discrepancy that has not been resolved by the system is sent to Reviewing Officer's screen for R&C. The returns pass through risk parameters, based on instructions issued by the Board from time to time and marked as risky or not. The AC/DC may decide on further course of action like subjecting the unit to audit or anti-evasion process, etc.

We asked (between October 2016 and February 2017) the 18 selected commissionerates to provide the details of returns marked for R&C by ACES and action taken by the Ranges on these returns. Four Commissionerates³² informed that 3,908 returns were marked for R&C, of which, the department took action only on 84 returns. Thus 3,824 returns representing 98 per cent of those marked were pending. Remaining Commissionerates did not furnish the required information.

The Ministry in its reply (October 2017) forwarded response of Chennai ST-II, Delhi ST-II, Lucknow and Pune ST Commissionerates. Chennai ST-II and Delhi ST-II Commissionerate had stated that due to implementation of GST, the new jurisdiction was still being worked out and that suitable action would be taken. Pune ST Commissionerate, admitting the facts, attributed the pendency to poor infrastructure of ACES. Lucknow Commissionerate sought specific details in respect of ST-3 returns for FY14 to FY16 from the CAG audit team. The reply of the Ministry was silent on other Commissionerates.

Thus the Ministry did not take a view on the failure of the critical R&C mechanism and simply forwarded responses received from a few commissionerates.

³¹ only for the returns which are filed through off-line utility

³² Chennai ST-II, Delhi ST-II, Pune ST and Lucknow

2.6.4 Detailed scrutiny of returns

The Board vide its circular no. 185/4/2015 – Service Tax, dated 30 June 2015 issued guidelines relating to selection of units for detailed scrutiny, procedure for conducting detailed scrutiny and reporting the results thereof etc.

Out of 18 Commissionerates selected for audit, 11 Commissionerates³³ did not furnish information on detailed scrutiny of returns for the period FY13 to FY16. We noticed in seven Commissionerates³⁴ that provided required information on detailed scrutiny, out of a total 1,409 returns selected for detailed scrutiny during audit period, the detailed scrutiny was conducted by the department in respect of only 473 assesseees (34 per cent). We further noticed that of 43 returns of CTC Services marked for detailed scrutiny, the scrutiny was carried out in 17 cases (40 per cent) only.

When we pointed this out (between November 2016 and February 2017) Udaipur Commissionerate stated that there was no such mechanism to conduct detailed scrutiny up to September 2015 and the selected ranges of Delhi ST-II Commissionerate replied that the detailed scrutiny was not undertaken due to shortage of staff.

The Ministry in its reply (October 2017) forwarded replies of eight Commissionerates reporting that action was initiated/would be initiated in five commissionerates³⁵ and attributing non-conduct of detailed scrutiny to staff shortage or non-allotment of units in three commissionerates³⁶. Reply was awaited in respect of the remaining Commissionerates.

2.7 Detailed examination of records of selected assesseees by CAG Audit

The findings noticed during examination of records of assesseees as enumerated in the succeeding paragraphs indicate the impact of non-conduct of detailed scrutiny of assesseees in this sector by the department:

2.7.1 Non-payment of Service Tax by service providers

During detailed examination of the records of the assesseees, we noticed 52 instances of non/short payment of Service Tax due to irregular availing of exemption, undervaluation of taxable service etc. involving revenue of ₹ 24.96 crore which was required to be recovered with applicable interest. The Ministry accepted the audit objection in 11 cases, and stated that the

³³ Ahmedabad ST, Bangalore ST-I & II, Chandigarh-II, Cochin, Delhi ST-II & III, Lucknow, Mumbai ST-VII, Noida ST and Pune ST

³⁴ Chandigarh-I, Chennai ST-II, Hyderabad-IV, Hyderabad ST, Kolkata ST-I & II and Udaipur

³⁵ Chandigarh I & II, Cochin, Bangalore ST-I & II

³⁶ Delhi ST-II & III and Pune ST

matter was under examination in 41 cases. A recovery of ₹ 21.49 lakh had also been reported so far.

A few cases are narrated below:

2.7.1.1 Non-payment of Service Tax on grants, directly affecting value of service

As per Rule 6(2)(vii) of the Service Tax (Determination of Value) Rules, 2006, the value of taxable service does not include the amount of subsidies and grant disbursed by the Government, not *directly affecting* the value of service.

M/s M.T. Educare Ltd., in Mumbai ST-VII Commissionerate, received grants from different States Governments, Municipal Corporations as well as different departments/organisations of Central government for providing training for Entrance Tests/special coaching to students of tribal communities, minorities appearing for different examinations like engineering, medical, UPSC, KPSC, computer courses etc. As grants were released by Government/Government agencies on reaching milestones like registration of students, part completion or full completion of course or as a reimbursement of fee per student, the grants had a direct bearing on value of training/coaching service provided and hence attracted Service Tax. Total grants received for providing training or coaching services during FY14 to FY16 was ₹ 40.46 crore. Reconciliation of ST-3 returns with financial records revealed that the assessee did not pay Service Tax amounting to ₹ 7.40 crore, including interest, on the grants received.

When we pointed this out (March 2017) the Ministry stated (October 2017) that due to restructuring in view of GST, the jurisdiction of the assessee had been changed and efforts were being made to locate the correct jurisdiction.

2.7.1.2 Non-consideration of all services provided to arrive at Service Tax liability

As per Rule 3(a) of Service Tax (Determination of Value) Rules, 2006, valuation shall be on the basis of gross amount charged by service provider for similar services. Rule 3(b) of the Service Tax (Determination of Value) Rules, 2006, prescribes that if value cannot be determined on the basis of Rule 3(a), valuation shall be on the basis of equivalent money value of such consideration, which shall not be less than cost of provision of such services.

During detailed scrutiny of M/s Innovative Technological Learning Service Pvt. Ltd., (ITLS) in Mumbai ST-VII Commissionerate, it was observed that M/s Università Commerciale “Luigi Bocconi”, a company of Italy made an arrangement to provide foreign degree courses in India and for this a trust

namely 'Knowledge Revival and Expansion Trust' (KRT) was formed in Mumbai. Further, to provide services to KRT, a company namely 'Innovative Technological Learning Service Pvt. Ltd., (ITLS) was established in the same premises. ITLS entered (October 2012) into an agreement with KRT for providing services like teaching services, preparation of teaching videos/e-learning tools, marketing and communication, recruitment and guidance, admission etc. The agreement further provided that ITLS would invoice KRT on monthly basis for services provided to KRT and that in case ST is payable, the same should be charged to KRT separately. However, it was noticed in audit that ITLS charged KRT only for faculty fee and offered Service Tax on the same. ITLS was not charging any amount from KRT for providing other services like brand promotion, marketing, advertisement, business support services, business auxiliary services, security services, housekeeping services, legal and professional services, chartered accountant service etc. ITLS was formed to provide services to the Trust only and the company was actually doing the same as seen from annual accounts. Thus, the entire expenses booked in the company during the years FY14 to FY16 was to be considered as value of services provided to the Trust and not only the faculty fees. Omission to consider the entire cost as consideration has resulted in short levy of Service Tax of ₹ 4.94 crore including interest.

When we pointed this out (March 2017) the Ministry stated (October 2017) that due to restructuring in view of GST, the jurisdiction of the assessee had been changed and efforts were being made to locate the correct jurisdiction.

2.7.1.3 Non-adoption of gross value for payment of Service Tax

As per section 67(1) of the Finance Act, 1994, the value of taxable service shall be the gross amount charged by the service provider.

During the examination of records of M/s. Motion Education Pvt. Ltd., in Udaipur Commissionerate, it was noticed that the assessee was paying Service Tax on the net amount of fee collected from the students, after adjusting scholarship/discount/fee concession instead of gross amount of fee. This resulted in short payment of Service Tax amounting to ₹ 72.45 lakh on ₹ 5.17 crore adjusted towards scholarship/discount/fee concession during FY16. The short payment of Service Tax for FY14 and FY15 could not be quantified as the details were not made available to us. The short paid Service Tax is recoverable with interest.

When we pointed this out (January 2017) the Ministry intimated (October 2017) that the SCN would be issued shortly.

2.7.2 Non-payment of Service Tax under reverse charge/partial reverse charge

During detailed examination of the records of the assessees, we noticed 21 instances of non-payment of Service Tax under reverse charge/partial reverse charge mechanism involving revenue of ₹ 3.69 crore which was recoverable with applicable interest. The Ministry accepted audit objections in six cases, did not accept audit objection in two cases and stated that the issue was under examination in the remaining 13 cases. A recovery of ₹ 61.23 lakh had been reported so far.

A few cases on such non-payment on import of services are narrated below:

Section 66B of the Finance Act, 1994 read with Rule 2(1)(d)(G) of Service Tax Rules, 1994 and Notification No.30/2012-ST dated 20 June 2012 stipulates that the recipient of services shall be liable to pay Service Tax on any taxable services received by a person in taxable territory from a person located in non-taxable territory.

2.7.2.1 M/s Seed Infotech Pvt. Ltd., in Pune ST Commissionerate, had not paid Service Tax on a portion of import of services like professional service, membership and subscription, exam fee, website service etc., resulting in short payment of Service Tax of ₹ 86.46 lakh which was recoverable with applicable interest.

When we pointed this out (February 2017) the Commissionerate stated (April 2017) that in pursuance of CAG audit objection, the assessee had paid ₹ 24.50 lakh (March 2017) towards the outstanding Service Tax and remaining dues would be paid shortly.

The Ministry replied (October 2017) that the Commissionerate had not accepted the audit objection, which was not the case as the Commissionerate not only accepted the audit objection, but initiated action for recovery as well.

2.7.2.2 M/s Mercuri Goldmann (India) Pvt. Ltd., in Bangalore ST-II Commissionerate, providing CTC Services, also availed services of their collaborators/associate enterprises/Group Companies in the form of assistance in development of course material, consultancy for furtherance of business, usage of IPR, Usage of Licence etc. It was noticed that the assessee incurred expenditure in foreign currency towards travel, payment of licence fee, sales commission, getting course material developed/customised for the courses provided by the assessee. Since the services received by the assessee are of taxable nature and received in taxable territory provided from non-taxable territory, the same is chargeable to Service Tax in the hand of the

assessee under reverse charge. The total Service Tax liability worked out to ₹ 13.40 lakh.

When we pointed this out (December 2016) the Ministry stated (October 2017) that issue was under examination.

2.7.2.3 While examining the Annual Accounts and other relevant records of five assesseees in Delhi ST-II Commissionerate, we observed that these assesseees incurred expenditure in foreign currency in lieu of services received from the service providers located outside India. As these assesseees were located in India, these assessee were required to pay Service Tax on the expenditure incurred on the services received from outside India (Import of services), however, the Service Tax of ₹ 1.24 crore was not paid by these assesseees.

When we pointed this out (between November 2016 and February 2017) three assesseees accepted the audit observation and deposited Service Tax of ₹ 21.40 lakh including interest. The Ministry accepted the audit objection (October 2017) in one case and stated that matter was under examination in four cases.

2.7.2.4 M/s Wilhelmsen Ship Management Pvt. Ltd., in Mumbai ST-V Commissionerate, had made payment of ₹ 1.51 crore in foreign currency for import of services like Course Administration cost, Connectivity and Communication Charges, Training expenses and Membership and Subscription Charges. However, as seen from ST-3 returns, the assessee had not paid any Service Tax under reverse charge mechanism for these import of services. Omission to do so has resulted in short levy/non-payment of Service Tax of ₹ 16.75 lakh including interest.

When we pointed this out (April 2017³⁷) the Ministry did not accept the audit objection and stated (October 2017) that these services were received outside India and hence were not liable to Service Tax.

The reply of the Ministry was acceptable for all services except 'Connectivity and Communication charges' towards which assessee spent ₹ 1.14 crore. This amount represented the portion charged to the assessee out of the total cost paid by Wilhelmsen Group as subscription fee for procurement related software used for maritime operations. Thus the amount paid by the assessee represented cost of services consumed by it. Hence these services were received by the assessee in India only and attracted Service Tax.

³⁷ Audit extended to April 2017 due to delay in production of records

2.7.3 Irregular availing/utilisation of CENVAT credit

As per Rule 6(3) of CENVAT Credit Rules, 2004, service provider, having both taxable and exempted services has to maintain separate accounts for receipt and use of inputs/services. A service provider opting not to maintain separate accounts, has an option to take full CENVAT credit on all inputs/input services, irrespective of whether they pertain to taxable or exempted output service and then proportionately reverse CENVAT credit pertaining to exempted output services. Assessee should intimate his intension to exercise such option to the jurisdiction Superintendent. Rule 6(3A) (b) contemplates provisional reversal of CENVAT credit availed in respect of exempt goods and services on monthly basis and final reversal on annual basis. The provisional reversal is to be done on the basis of preceding financial year's figure.

During detailed examination of the records of the assessee, we noticed 47 instances of incorrect availing of CENVAT credit, non-payment of amount under rule 6(3) of CENVAT Credit Rules, 2004 etc., involving revenue of ₹ 10.55 crore which was recoverable with applicable interest. The Ministry had accepted the audit objections in 10 cases and stated that the issue was under examination in 37 cases. A recovery of ₹ 1.30 crore was reported so far.

A few cases are narrated below:

2.7.3.1 Scrutiny of ST-3 Returns of M/s Tata Projects Ltd., in Hyderabad ST Commissionerate, revealed that for the period from FY15 to FY16, the assessee had opted for paying an amount equivalent to CENVAT Credit attributable to inputs and input services used in or in relation to provision of exempted services. Accordingly, the amount liable for reversal was furnished in ST-3 returns, but the amount was not debited from CENVAT Register. This resulted into non/short payment of amount of ₹ 3.90 crore.

When we pointed this out (March 2017) the Ministry stated (October 2017) that due to restructuring in view of GST, the jurisdiction of the assessee had been changed and efforts were being made to locate the correct jurisdiction.

2.7.3.2 M/s Whistling woods International Ltd., in Mumbai ST-VI Commissionerate, was registered for providing commercial training in the field of entertainment sector, which were taxable, besides providing training to students on behalf of recognized universities viz. TISS (Tata Institute of Social Science), an exempted service. The assessee availed CENVAT credit on common services viz. professional fee, security services etc. and utilised the credit so availed in discharging the Service Tax liability. Since the assessee was providing both taxable and exempted services and no separate accounts

were maintained, proportionate CENVAT credit amounting to ₹ 91.26 lakh including interest for the years FY14 to FY 16 was required to be reversed.

When we pointed this out (February 2017) the assessee had paid a sum of ₹ 12.82 lakh in cash and balance amount of ₹ 78.44 lakh was yet to be reversed/recovered. The Ministry stated (October 2017) that due to restructuring in view of GST, the jurisdiction of the assessee had been changed and efforts were being made to locate the correct jurisdiction.

2.7.3.3 As per exclusion clause (C) of Rule 2(I) of the CENVAT Credit Rules, 2004, outdoor catering, if consumed primarily by a person or an employee is not an input service.

We noticed in Ahmedabad ST Commissionerate that, M/s. Indian Institute of Management, Ahmedabad availed CENVAT credit of ₹ 74.89 lakh during FY16 on outdoor catering which were consumed by its students, employees and other guests. This wrongly availed CENVAT credit was required to be recovered along with interest.

When we pointed this out (February 2017) the Ministry stated (October 2017) that SCN would be issued shortly.

2.7.4 Non/Short payment of Service Tax on other services by CTC assesseees

During detailed examination of the records of the assesseees engaged in commercial coaching and training centres, we noticed 45 instances of non-payment of Service Tax under different taxable services (other than CTC) involving revenue of ₹ 48.24 crore which was recoverable with applicable interest. The Ministry accepted the audit objection in two cases, did not accept audit objection in nine cases and stated that the issue was under examination in remaining 34 cases. A recovery of ₹ 6.56 lakh was reported so far.

A few cases are narrated below:

2.7.4.1 Non-payment of Service Tax on grants received for IT projects

As per Rule 6(2)(vii) of the Service Tax (Determination of Value) Rules, 2006, the value of taxable service does not include the amount subsidies and grant disbursed by the Government, not directly affecting the value of service. Thus, it can be concluded that if the subsidies and grant received from the Government directly affects the value of service then, it will be subject to Service Tax.

M/s Centre for Development of Advance Computing (C-DAC) in Pune ST Commissionerate, had entered into an agreement with Department of

Information Technology (DeitY) for execution of different projects/works like development of software programmes, awareness programmes on Information Technology and intellectual property etc. for which grants were released by DeitY. Since the grants given were directly linked to services provided by C-DAC, they attract Service Tax as per rule quoted above. But Audit noticed that against the grants of ₹ 241.42 crore received by the assessee during FY14 to FY16, the Service Tax amounting to ₹ 45.65 crore including interest was not levied.

When we pointed this out (February 2017) the Ministry did not accept the audit objection and stated (October 2017) that grants from the Government for implementation of welfare scheme for various section of society was not taxable service and hence not liable to Service Tax.

The reply of the Ministry was not tenable as the rule did not provide for making any distinction based on the purpose of service.

2.7.4.2 Non-payment of Service Tax on declared service

Agreeing to an obligation to refrain from an act, or to tolerate an act or a situation, or to do an act has been specifically listed as a declared service under section 66E of the Finance Act, 1994 as amended.

We noticed in Ahmedabad ST Commissionerate that the assessee M/s. Ahmedabad University (AU) promoted by Ahmedabad Education Society (AES), established as State private university,³⁸ awards degrees, diplomas and certificates recognised by law.

AU and AES entered into a Memorandum of Understanding (MOU) with M/s. Unichem Laboratories Ltd., (ULL) as per which ULL would pay ₹ 15 crore in phases subject to AU and AES conferring rights to ULL such as appointment of additional members and involving ULL representative in selection of Dean. The agreement also placed an obligation on AU to name the School of Management as suggested by donor, publish his name in all programs/activities/statutory publicity materials etc. During FY14 to FY16, assessee received sum of ₹ seven crore from ULL. As this transaction involved obligation to do certain acts as explained above, this would be covered under the ambit of declared services, on which Service Tax of ₹ 90.80 lakh was recoverable with applicable interest.

Further, AU and Centre for Design Research (CDR) at Stanford University agreed to set up a centre called Venture Studio for innovative business design at Ahmedabad. To meet the annual recurring cost of Venture Studio, AU

³⁸ registered under Section 8 of the Gujarat Private University Act, 2009

entered into MOU with four Mumbai based donors³⁹ by which these parties collectively expressed their intent to donate ₹ 10.60 crore divided equally among them over a period of five years from the commencement of the Venture Studio. In consideration to above donation, the MOU obligated AU/Venture Studio to (a) appropriately recognise the names of donors in annual reports and publications of the Venture Studio, (b) Provide 33.33 per cent Capital Share of Equity Capital of the Venture on Commercial launch of products or services to the donors in equal proportions as sweat equity (i.e. without making any fresh monetary payment) and (c) Give donors the right to nominate two members in the advisory Board and Management Committee. Audit noticed that during FY14 to FY16, assessee received sum of ₹ 5.62 crore from donors, a declared service under section 66E, on which Service Tax of ₹ 73.04 lakh was recoverable with applicable interest.

When we pointed this out (January 2017) the Ministry stated (October 2017) that SCN would be issued shortly.

2.7.4.3 Non-payment of Service Tax on commission received for provision of intermediary services

According to Rule 9(c), of “Place of Provision of Services Rules, 2012”, the place of provision of service for Intermediary services shall be the location of the service provider. Further, as per Rule 2(f) of said Rules, “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (the main service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account. Moreover, as per Rule 14 of said Rules, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.

M/s. Career Mosaic Pvt. Ltd., in Ahmedabad ST Commissionerate, was registered as ‘official counselling person’ with foreign universities. The assessee received commission from respective University as per their agreement, if any student got enrolled for the admission and studied in the University for minimum one term. It was noticed that the assessee availed the export benefits on such commission received from foreign universities considering it as ‘Export of Service’. This service was actually ‘Intermediary Service’ for which the place of provision of services was the location of the service provider i.e. assessee as prescribed under Rule 9(c) above and was

³⁹ M/s. J.M. Financial Group, M/s. ENAM Group, M/s. AsitKoticka Foundation & M/s. Daman Estate and Finance Pvt. Ltd.

taxable. Therefore, this service was Intermediary services on which assessee was liable to pay Service Tax of ₹ 89.32 lakh on income of ₹ 7.45 crore earned as Commission from foreign universities during FY14 to FY16.

When we pointed this out (January 2017) the Ministry stated (October 2017) that SCN would be issued shortly.

2.7.4.4 Non-payment of Service Tax on consultancy services

As per Section 65(92) of the Finance Act 1994, 'scientific or technical consultancy' means any advice, consultancy or scientific or technical assistance rendered in any manner, either directly or indirectly, by a scientist or a technocrat or any science or technology institution or organization, to any person, in one or more disciplines of science or technology.

M/s Indian Institute of Technology, Madras (IIT-M), in Chennai ST-III Commissionerate, was providing consultancy services, placement services, guest house services besides educational services. IIT-M received grants both from Government Departments and private industries for undertaking various projects during the period from FY14 to FY16. The Institute grouped these projects under two categories viz. (i) consultancy projects and (ii) sponsored projects. The IIT-M was paying Service Tax on income relating to the projects grouped under 'consultancy projects', which were funded by private industries and corporates. However, they did not pay Service Tax on the projects funded by Government Departments and Government agencies, which were called as 'sponsored projects'.

We test checked the projects categorized as 'sponsored projects', on which no tax was paid by the IIT-M, to ascertain taxability or otherwise of these projects. On examination of the records viz. agreements, letters of acceptance, etc., relating to 12 sponsored projects, it was observed that by executing these projects, IIT-M provided services either to the funding agency or to third parties. As per terms and conditions, the above funding programmes entailed consideration and transfer of rights over the result of the projects or technical knowhow either to the sponsors or third parties. Thus, these funding programmes qualified as 'service'. Hence, these 12 projects were liable to Service Tax.

The Institute was in receipt of service income amounting to ₹ 23.86 crore towards these projects during the period from FY14 to FY16, which involved Service Tax liability (inclusive of cess, etc.) of ₹ 2.87 crore which is recoverable with applicable interest.

When we pointed this out (January 2017) the Ministry stated (October 2017) that due to restructuring in view of GST, the jurisdiction of the assessee changed and efforts were being made to locate the correct jurisdiction.

2.7.4.5 Non levy/payment of Service Tax on reimbursement of expenditure

The Board clarified through Finance Act, 2015, by substituting explanation for clause (a) of section 67 in the Finance Act, 1994, that 'consideration' includes any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed. The substitution of explanation under section 67 of the Finance Act, 1994 is nothing, but a clarification of the provision already existing in the Act.

M/s Wilhelmsen Ship Management Pvt. Ltd., in Mumbai ST-V Commissionerate, had received reimbursement of expenses amounting to ₹ 18.56 crore in FY14 to FY16 from its related parties for providing HSEQ (Health, Safety, Environment and Quality), global support, training, crew mining and other services. Since, reimbursement of expenses was nothing but reimbursement of cost incurred for rendering the services, Service Tax was to be levied. However, the same was not levied. Omission to levy and pay Service Tax on above reimbursement of expenses has resulted in short payment of Service Tax of ₹ 3.61 crore including interest (approximately). Exact tax effect could not be worked out in absence of details of reimbursement.

When we pointed this out (April 2017⁴⁰) the Ministry did not accept the audit objection and stated (October 2017) that the amount pertained to services provided outside India and hence not liable to Service Tax.

The reply of the Ministry was acceptable in respect of all services except 'Crew Mining Service' towards which the assessee received ₹ 15.15 crore. These services include assistance provided in selection and recruitment/hiring of crew including conducting pre-job interviews and reference checks, ensuring medical examination has been passed, maintenance of records of crew etc., which clearly fall under the ambit of manpower recruitment service/business support service and provided in India only.

2.7.4.6 Non-adherence to Place of Provision of Services Rules

As per Rule 9 (b) of "Place of provision of Services Rules, 2012", the place of provision of service in case of 'Online information and database access or retrieval services' shall be the location of the service provider. As per section 67(2) of the Finance Act, 1994, where the gross amount charged by a service

⁴⁰ Audit extended to April 2017 due to delay in production of records

provider, for the service provided or to be provided is inclusive of Service Tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged. Further, a service provider had to fulfil a set of eight conditions prescribed in Rule 5(2) of Service Tax (Determination of Value) Rules, 2006 to be considered as pure agent and to exclude expenditure incurred as pure agent from the taxable value.

M/s Seed Infotech Pvt. Ltd., in Pune ST Commissionerate, had entered into an agreement with Prometric Inc., Maryland based in Australia to use their Testing System Software, used to conduct exams, for the sole purpose of operating an approved Authorised Prometric Testing Centre. The assessee would collect the fee from students/candidates for the services. The assessee had two type of clients i.e., corporate clients and individual students. Assessee levied Service Tax on bill raised to corporate clients only whereas raised invoices to the students without levying Service Tax treating itself as pure agent. Assessee had taken two different views on the same issue i.e., one for corporate clients and other for regular individual students. As Service Tax was not charged separately in bill to this category of individual students, it could be concluded that the receipts of ₹ 6.32 crore for FY14 to FY16 were including Service Tax and assessee was liable for payment of Service Tax of ₹ 1.19 crore including interest.

When we pointed this out (February 2017) the Ministry did not accept the audit objection and stated (October 2017) that the assessee provided services to its corporate clients as pure agents for promoting their services in India as they conducted examination for and on behalf of Prometric and collected fee on behalf of Prometric and remitted it to Prometric. Hence they were not liable to pay Service Tax on fee received from Indian students as well as corporate clients but they inadvertently paid Service Tax on bills raised on corporate clients.

The assessee was not fulfilling all the conditions prescribed in the Rule 5 (2), quoted *ibid* as there was no payment made to third parties on behalf of the service recipient and on the contrary the service provider is collecting payments from third parties i.e. fee from students on behalf of the service recipient. No services had been received from third parties on behalf of the service recipient. No separate indication had been made in the invoices issued for the payments made to third parties nor was the assessee recovering any actual cost incurred from the service recipient for availing services from the third parties. Hence, the service provider was not acting as pure agent of the service recipient. Thus, the Ministry's contention that the assessee acted as pure agent could not be accepted. Further, the Ministry's

reply regarding payment of Service Tax inadvertently on corporate clients was not acceptable as the assessee had been paying Service Tax on these receipts.

2.7.5 Non/short payment of interest

Section 75 of the Finance Act, 1994 (as amended) states that every person, liable to pay the tax in accordance with the provisions of Section 68 of the said Act, or rules made there under, who fails to credit the tax or any part thereof to the account of Central Government within the period prescribed, shall pay simple interest at prescribed rate (at the rate of 18 per cent up to six months, at the rate of 24 per cent from six months and up to one year, and at the rate of 30 per cent for more than one year) for the period by which such credit of the tax or any part thereof is delayed.

During detailed examination of the records of the assessee, we noticed 14 instances of Non/short payment of interest on delayed payment of Service Tax having money value of ₹ 82 lakh. Three assessee paid ₹ 8.18 lakh based on audit objection. The Ministry had stated (October 2017) that issue was under examination.

A case is narrated below:

We noticed in Ahmedabad ST Commissionerate that, M/s. Endeavor Careers Pvt. Ltd., had short paid interest by ₹ 42.85 lakh on delayed payment of Service Tax.

When we pointed this out (December 2016) the Ministry stated (October 2017) that due to restructuring in view of GST, the jurisdiction of the assessee had been changed and efforts were being made to locate the correct jurisdiction.

2.8 Conclusion

The CTC sector had been expanding rapidly but as seen during audit, the department's efforts in respect of broadening the tax base were inadequate. This had implications of revenue loss as evidenced by independent verification conducted by Audit. The department's performance in respect of scrutiny of return was also found to be deficient. There was no clear demarcation between taxable and exempted services, leaving scope for wrongful claim of exemptions, irregular utilisation of CENVAT credit and escapement of Service Tax on taxable services as seen during examination of the records of the assessee. Non-payment of Service Tax under reverse charge mechanism was also noticed in case of import of services.

Chapter III

Non-compliance with Rules and Regulations

3.1 Introduction

Section 16 of CAG's (DPC) Act, 1971 deals with CAG's duty in relation to Audit of Receipts and requires CAG to audit receipts payable into consolidated fund of India and to satisfy that the rules and procedures are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed. To carry out our mandate as per the provisions of CAG's DPC Act, as part of our audit of field formations of CBEC, we verify records of assessees, which form the basis for tax calculation, to examine the extent of effectiveness of the systems in place in ensuring that assessees comply with extant rules and procedures in this era of self-assessment. The observations on specific failure of the department in carrying out their scrutiny, internal audit, tax base broadening etc are reported in a separate chapter on "Effectiveness of Internal Controls" and the observations on non-compliance by assessees in cases not scrutinized or audited by the department are reported separately under the title "Non-compliance with Rules and Regulations".

We have been pointing out irregularities relating to (i) Payment of Service Tax (ii) Availment of CENVAT credit and (iii) payment of interest every year and it has been noticed that these irregularities are persistent as similar nature of observations are reported by audit every year as detailed below:

Table: 3.1

(₹ in crore)

Nature of Observation	2013-2014		2014-2015		2015-2016	
	No.	Amount	No.	Amount	No.	Amount
Non-payment of Service Tax	37	12.56	47	186.50	76	82.36
Short payment of Service Tax	12	46.05	19	6.39	16	19.68
CENVAT credit	23	43.35	20	9.99	15	14.25
Interest	8	17.32	11	4.70	4	1.94
Total	80	119.28	97	207.58	111	118.23

The Ministry takes rectificatory action only in individual cases pointed out by audit by recovering the amount from that individual assessee or by issuing demand notice for the same. But no action is taken to strengthen systems in place to improve the level of compliance by assessees. This is evident from the fact that we are again reporting 92 cases of non/short payment of Service Tax/interest and irregular availing and utilization of CENVAT credit having a

total revenue implication of ₹ 92.61 crore in current report. *The Ministry needs to ensure that through use of technology and integration of data bases, they put in place such a tax levy and collection system which would make it difficult for assesseees to be non-compliant.*

Out of the 92 cases included in the current report, 80 cases which have been accepted by the department and recoveries made/recovery proceedings initiated are mentioned in **Appendix-III** and 12 cases are discussed in this chapter under the following two major headings:

- Non-Payment of Service Tax
- Incorrect Availing/Utilisation of CENVAT Credit

3.2 Non-payment of Service Tax

3.2.1 Incorrect availing of exemption

3.2.1.1 Wrong exemption on welding and ultrasonic testing services

As per para 14 of mega exemption notification dated 20 June 2012, services by way of construction, erection, commissioning, or installation of original works pertaining to railways is exempted from Service Tax. Further, as per para 7.11.11 of “Taxation of Service: An Education Guide” issued by the Board, if any person is providing services, in respect of projects involving construction of roads, airports, railways, etc., which are used by the contractor in relation to such construction, the benefit of the specified entries in the mega exemption would not be available to such persons unless the activities carried out by the sub-contractor independently and by itself fall in the ambit of the exemption. It has to be appreciated that the wordings used in the exemption are ‘services by way of construction of roads etc.’ and not ‘services in relation to construction of roads etc’.

M/s Speedcrafts Ltd., in Patna Commissionerate, received ₹ 3.78 crore from M/s Phooltas Harsco Rails Solution Pvt. Ltd., for providing (January 2014 to March 2014) welding and ultrasonic testing services. The assessee did not pay Service Tax and Education Cess of ₹ 46.74 lakh thereon on the ground that scope of work falls under the head of “Services by way of construction, erection, commissioning or installation or original work pertaining to railway” as per notification, *ibid* and thus exempted from the payment of the Service Tax. However, the services of welding and ultrasonic testing are in relation to the main service and not by way of construction, erection, installation or commissioning of railways, and hence not exempted as per para 7.11.11 of Education Guide.

Further, Audit noticed that the assessee charged Service Tax and Education Cess from Indian Railways for the same welding and ultrasonic testing

services when bills were raised directly to Railways authorities but when the bills were raised to M/s Phooltas Harsco Rails Solution Pvt. Ltd., (a joint venture company of M/s Speedcrafts Ltd.,) for the same services, it was treated as exempted.

When we pointed this out (May 2015) the Ministry accepted the audit objection and stated (August 2017) that a SCN amounting to ₹ 2.81 crore was being issued to the assessee. Further progress was awaited (October 2017).

3.2.1.2 Incorrect exemption on cleaning services

Cleaning Service is a taxable service⁴¹ except services provided to agriculture/horticulture/dairy/educational institute and a local authority or a governmental authority by way of “water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation”.

M/s Punj Security Housekeeping Services Pvt. Ltd., in Chandigarh-I Commissionerate, had provided the cleaning services to M/s Bharat Heavy Electricals Ltd (BHEL) during the period from July 2014 to March 2015 and received an amount of ₹ 2.49 crore. As the assessee had provided the cleaning services to a commercial and Industrial concern, which was not exempted, he was liable to pay Service Tax on the above amount. But neither the said amount was shown in ST-3 returns nor any Service Tax was paid by the assessee. This has resulted in non-payment of Service Tax of ₹ 30.78 lakh and interest amounting to ₹ 8.71 lakh (upto February 2016).

When we pointed this out (February 2016) the Commissionerate stated (February 2016) that the reply would be submitted after verifying the facts from the assessee. The Ministry’s reply and further action taken by the Commissionerate were awaited (October 2017).

3.2.2 Non-payment of Service Tax on declared service

As per Section 66E(e) of the Finance Act, 1994, agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act is a declared service.

Further, as per Rule 6(2)(vi) of Service Tax (Determination of Value) Rules, 2006, if any accidental damage occurs due to unforeseen actions, then such amount would not be included in the taxable value of service. Liquidated damage arises due to breach of condition of agreement, contract or MOUs. If such damages are not due to unforeseen actions, then, it will be considered as consideration and Service Tax would be applicable.

⁴¹ As per negative list of services and mega exemption notification No. 25/2012 dated 20th June 2012

M/s Electronics Corporation of India Ltd., (M/s ECIL), in Hyderabad III Commissionerate, had recovered an amount of ₹ 10.34 crore during FY15 to FY16, from suppliers towards liquidated damages/late delivery charges. On examination of the agreement entered into with the supplier, it was noticed that the supplier is liable to pay liquidated damages at the rate of 1 per cent minimum and maximum of at the rate of 10 per cent for undelivered quantity per week. The liquidated damages/late delivery charges are paid by the supplier for delayed supply of the materials and such delay is tolerated by the assessee on payment of an amount by the supplier as agreed upon by a written agreement, therefore such act is a declared service in terms of Section 66(E)(e) of Finance Act 1994. The un-discharged Service Tax on liquidated damages amounting to ₹ 1.39 crore along with interest needs to be recovered from the assessee.

When we pointed this out (August 2016) the Commissionerate accepted (January 2017) the objection and stated that a SCN would be issued to recover the amount involved in the objection.

The reply of the Ministry and further progress were awaited (October 2017).

3.2.3 Undervaluation of taxable service

Section 67 of the Finance Act 1994, prescribes that where Service Tax is chargeable on any taxable service with reference to its value, then such value shall be the gross amount charged by the service provider for such services provided in a case where the provision of service is for a consideration in money.

3.2.3.1 M/s. Asianic Engineering Corporation, Ernakulam, in Cochin Commissionerate, received contract income of ₹ 8.63 crore and ₹ 2.88 crore during FY12 and FY13 respectively as per trial balance. The taxable value as per ST-3 returns, however, was only ₹ 6.83 crore and ₹ 1.78 crore for FY12 and FY13 respectively. This led to undervaluation of taxable service with the resultant short payment of Service Tax of ₹ 34.73 lakh on a differential taxable value of ₹ 2.90 crore.

When we pointed this out (December 2013) the Commissionerate replied (December 2016) that SCN demanding Service Tax amounting to ₹ 1.19 crore along with interest and penalty for the period FY12 to FY15 was issued (November 2016) to the assessee.

The reply of the Ministry was awaited (October 2017).

3.2.3.2 M/s Flytech Aviation Ltd., in Hyderabad-ST Commissionerate, engaged in providing business auxiliary service and management, maintenance or repair service, had collected an amount of ₹ 93.01 lakh from

students towards hostel charges in relation to coaching services offered to hostellers during the period from FY13 to FY15. However, the assessee did not include this amount in its value of taxable service. This has resulted in short payment of Service Tax of ₹ 11.50 lakh besides interest.

When we pointed this out (March 2016) the Commissionerate accepted (February 2017) the objection and stated that a SCN would be issued to recover the amount involved in the objection.

The reply of the Ministry and further progress were awaited (October 2017).

3.2.4 Non-discharge of Service Tax under various taxable services

As per section 68 of Finance Act, 1994, every person providing taxable services to any person shall pay Service Tax at the rate specified in section 66B in such manner and within such period as may be prescribed. Further, as per rule 6 of Service Tax Rules, 1994, the Service Tax shall be paid to the credit of the Central Government by the 6th day of the month, if the duty is deposited electronically through internet banking and by the 5th of the month, in any other case.

M/s PTC Engineering India Pvt. Ltd., in Noida-II Commissionerate, was required to pay (November 2015 to March 2016) Service Tax to the extent of ₹ 24.75 lakh for Manpower Recruitment Agency, Goods Transport Agency and Renting of Immovable Property services but did not pay the same. Hence, Service Tax amounting to ₹ 24.75 lakh was recoverable from the assessee along with interest and penalty, as applicable.

When we pointed this out (May 2016) the Ministry accepted the audit objection (June 2017) and stated that a draft SCN was under preparation. Further progress was awaited (October 2017)

3.2.5 Non-discharge of Service Tax by service recipient under reverse charge mechanism

The service recipient is liable to pay Service Tax under Reverse Charge Mechanism in certain cases. As per clause (h) of Notification dated 20 June 2012, where service provider engaged in man power supply is individual, proprietor, partnership, HUF or association of person and the service recipient is body corporate, the service recipient is liable to pay Service Tax to the extent of 75 per cent of taxable value.

M/s CTA Logistics in Ahmedabad ST Commissionerate, received manpower supply services amounting to ₹ 2.48 crore during FY13 to FY14. In some of the invoices service providers clearly mentioned that Service Tax was required to be paid on 75 per cent of the value by service recipient. However the assessee, being service recipient, did not pay any Service Tax under

reverse charge mechanism as per above notification. This resulted in non-payment of Service Tax of ₹ 23.02 lakh calculated on 75 per cent of the taxable value of the service received.

When we pointed this out (August 2014) the Ministry accepted the audit objection and stated (September 2017) that SCN was under preparation.

Further progress was awaited (October 2017).

3.3 Incorrect availing/utilisation of CENVAT credit

3.3.1 Non-reversal of CENVAT credit on exempted service

Rule 6 of the CENVAT credit Rules, 2004 provides that CENVAT credit *shall not be allowed* on such quantity of input or input service used in or in relation to provision of exempted services.

3.3.1.1 M/s Apollo Hospitals Enterprise Ltd., in Hyderabad ST Commissionerate, was engaged in providing Cosmetic & Plastic Surgery service, Franchise service, Renting of immovable property service etc. It was noticed that during the period from FY13 to FY15, the assessee also rendered health care services by a clinical establishment, which is an exempted service. The assessee had taken the credit of tax paid on common input services like common premises rent and security services etc. Therefore, the assessee was required to reverse the CENVAT credit attributable to input services for providing the exempted service for the above period which worked out to ₹ 2.16 crore besides interest.

When we pointed this out (November 2015) the Ministry accepted the audit objection and stated (May 2017) that an amount of ₹ 81.35 lakh was recovered and a SCN was being issued for recovery of remaining amount.

3.3.1.2 M/s Alembic Ltd., in Vadodara-I Commissionerate, availed CENVAT credit of Service Tax paid on services utilized for construction of Residential complex comprising of 532 residential units. Total amount of CENVAT credit availed by the assessee amounted to ₹ 3.54 crore during FY13 and FY15.

On scrutiny, we noticed that the assessee got booking for 360 units before receipt of completion certificate (July 2014) on which Service Tax was paid. However, in respect of remaining 172 units (32.33 per cent) booked after receipt of completion certificate, Service Tax was not required to be paid by the assessee.

Since, the construction services provided by the assessee in respect of these 172 units were exempted from payment of Service Tax, it was not entitled to avail CENVAT credit for input services utilized in respect of these units. Thus,

the assessee was required to reverse the proportionate CENVAT credit of ₹ 1.14 crore.

When we pointed this out (August 2015) the Ministry accepted the audit objection and reported (May 2017) that the assessee had reversed under protest the CENVAT credit of ₹ 1.18 crore as per the proportionate of area of unit sold and that the SCN was not issued in view of further investigation. Further progress was awaited (October 2017).

3.3.2 Premature utilisation of CENVAT credit on exempted service

As per rule 3 (4) of the CENVAT Credit Rules, while paying duty of Service Tax, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month/quarter for payment of duty or tax relating to that month/quarter.

M/s Man Structurals Private Ltd., in Jaipur Commissionerate, provided works contract services to M/s UP Power Transmission Corporation Ltd., (UPPTL), Allahabad for a value of ₹ 13.18 crore, on which Service Tax (including cess) of ₹ 93.04 lakh was payable. Scrutiny of records revealed that against the total liability of ₹ 93.04 lakh for the months of January to March 2016, the assessee paid ₹ 45.99 lakh through cash and remaining amount of ₹ 47.05 lakh by utilisation of CENVAT credit. The assessee had no credit balances in his CENVAT account as on 31st March 2016. The CENVAT credit utilised was availed by the assessee during the months of April to June 2016, whereas the amount of Service Tax was to be paid during January to March 2016. Thus, utilization of CENVAT credit ₹ 47.05 lakh availed after March 2016 for payment of Service Tax to be paid during January to March 2016 was incorrect, which resulted in short payment of Service Tax.

When we pointed this out (September 2016) the Commissionerate stated (December 2016) that the assessee deposited ₹ 47.05 lakh alongwith interest of ₹ 2.48 lakh.

The Ministry in its reply (September 2017) claimed that the issue was pointed out by its IAP. While we acknowledge that IAP pointed out non-payment of Service Tax by the assessee, the Ministry may note that audit point is on a different issue i.e., premature utilisation of CENVAT credit by the assessee for payment of Service Tax.

3.3.3 Non-Payment of amount of CENVAT credit availed on clearance of inputs as such

Rule 3(5) of CENVAT Credit Rules (CCR), 2004, provides that when inputs or capital goods, on which CENVAT credit had been taken, are removed as such from the premises of provider of output service, the provider of output service shall pay an amount equal to the credit taken in respect of such inputs or capital goods.

M/s. Vodafone Cellular Ltd, in Cochin Commissionerate, cleared (January 2015) three pairs of dark fibre (inputs) with a value of ₹ 3.05 crore as such to M/s. Vodafone South Ltd, Mumbai. The assessee, however, did not reverse proportionate CENVAT credit of ₹ 41.31 lakh, as per ST-3 return for the second half year of FY15, even though reversal of ₹ 41.31 lakh was shown in the invoice. This had resulted in short-reversal of CENVAT credit of ₹ 41.31 lakh.

When we pointed this out (October 2015) the Ministry accepted the audit objection (August 2017) and stated that a SCN was being issued to the assessee.

3.3.4 Incorrect availing of CENVAT credit on input services for older period

As per Notification No. 21/2014-CE(NT) with effect from 01 September 2014, the provider of input service shall not take CENVAT credit of input services after six months of the date of issue of the documents specified in Rule 9(1) of CENVAT Credit Rules, 2004 which was extended up to one year with effect from 1st March 2015.

Audit scrutinised CENVAT register of input service pertaining to M/s Netmagic IT Services Ltd., in Mumbai ST-VI Commissionerate, for the months of September 2014 to March 2015. It was observed that the assessee had availed Service Tax credit of ₹ 12.70 lakh on input services of older period i.e. after six months/one year of the date of issue of documents. This resulted in irregular availing of CENVAT credit which was recoverable alongwith interest.

When we pointed this out (November 2016) the assessee had paid CENVAT credit of ₹ 12.70 lakh along with interest of ₹ 7.84 lakh

The Ministry's reply was awaited (October 2017).

Chapter IV

Effectiveness of Internal Controls

4.1 Introduction

Internal controls in an organisation are designed to address risks and to provide reasonable assurance that in pursuit of the entity's mission, the following general objectives⁴² are being achieved:

- fulfilling accountability obligations ;
- complying with applicable laws and regulations ;
- safeguarding resources against loss, misuse and damage.

In the era of self-assessment, recognizing the need for a strong compliance verification mechanism, CBEC has put in place systems of internal control by way of two functions i.e. Scrutiny of Returns and Internal Audit. With increasing reliance on voluntary compliance and new services regularly being brought under the tax net, there are also instructions in place to identify persons who were liable to pay tax, but had avoided to pay, so as to bring them into the tax net thereby broadening the tax base.

4.2 Results of Audit

During the course of examination of records, we came across several shortcomings in compliance to the instructions in place regarding return scrutiny, Internal Audit of assesseees and functioning of jurisdictional officers. These suggest that the department should look into the adequacy of extant systems and procedures.

We communicated our observations to the Ministry through 103 draft audit paragraphs having financial implication of ₹ 165.88 crore. 41 cases accepted by the Ministry were included in **Appendix IV**. The remaining 62 cases (**Appendix V**), include 34 cases in which the Ministry did not accept departmental lapse and 28 cases, where the Ministry's response/final reply was awaited (October 2017).

⁴² INTOSAI GOV 9100 – Guidelines for Internal Control Standards for the Public Sector

The observations had been discussed in the following paragraphs under four major headings:

- Scrutiny of Returns
- Non-conduct of Internal Audit
- Non-detection of lapse by Internal Audit
- Functioning of jurisdictional officers

4.3 Inadequacies in the system of preliminary scrutiny

After the introduction of ACES, preliminary scrutiny of returns was being done by the system itself. The purpose of preliminary scrutiny of returns was to ensure completeness of information, timely submission of return, payment of duty, arithmetical accuracy of the amount computed and identification of non-filers/stop filers. In case any discrepancy was found by the ACES systems, all such returns were marked for R&C⁴³. These returns marked for R&C by ACES should be validated in consultation with the assessee and re-entered into the system. The preliminary scrutiny of returns and R&C was to be completed within three months from the date of receiving the returns.

During examination of ST-3 returns at ranges, we noticed 11 instances where due to inadequacies in the system of preliminary scrutiny, short/non-payment of tax liability exhibited in the ST-3 return or non-payment of interest on delayed payment of tax were not detected. In 10 cases pertaining to short/non-payment of Service Tax and interest (included in Section A of **Appendix-IV**), the Ministry accepted the audit objection and attributed these lapses to non-availability of the facility in the ACES which would be addressed in the new GST regime. One case not accepted by the Ministry is discussed below:

4.3.1 Non-detection of short payment of Service Tax and non-payment of Interest

As per Rule 6 (1) of Service Tax Rules, 1994, Service Tax is to be paid on monthly basis by the 5th of following month. However, payment for the Month of March is required to be made by 31st of March itself. Further, Section 75 of the Finance Act 1994, provides that every person who fails to credit the tax or any part thereof to the account of the Central Government

⁴³ The process of resolving discrepancies in respect of marked returns is called R&C.

within the period prescribed shall pay simple interest at such rate as is for the time being fixed by the Central Government.

Scrutiny of ST-3 return of M/s. Essar Shipping Ltd., in Mumbai ST-II Commissionerate, revealed that the assessee had not paid interest of ₹ 9.14 crore on delayed payment of Service Tax for the FY15 and FY16. Further, against the total Service Tax liability of ₹ 13.90 crore including Swachh Bharat Cess for the month of March 2016, the assessee paid only ₹ 7.65 crore. This resulted in short payment of Service Tax of ₹ 6.25 crore, on which interest of ₹ 83.94 lakh was also payable.

When we pointed this out (December 2016) the assessee had partly paid (December 2016 to February 2017) an amount of ₹ 5.52 crore and stated that balance amount along with interest would be paid in due course.

The Ministry did not accept the audit objection (September 2017) stating that the matter was already in its notice and DGCEI investigation against the assessee was going on. The reply of the Ministry was not relevant as the audit objection related to inadequacies in the system of preliminary scrutiny of the returns, which had no link with DGCEI investigation quoted by the Ministry.

4.4 Non-conduct of Internal Audit

Compliance verification through audit entails conduct of audit by the Department's Internal Audit Parties (IAPs) of assessee units selected based on risk parameters. During the course of our regular compliance audit, we attempted to check the adequacy of coverage of assessee units and the likely impact of non-conduct of Internal Audit by the department in case of assessee units due for audit. We detected lapses involving money value of ₹ 25.09 crore in case of 21 assessee units, which were due for audit as per departmental norms but not audited by IAPs. Of these, 19 cases were accepted by the Ministry (included in Section B of **Appendix IV**). One case was not accepted by the Ministry and in one case reply of the Ministry was silent on non-conduct of Internal Audit, which had been discussed below:

4.4.1 Service Tax collected but not deposited

As per section 68 of the Finance Act, 1994 read with rule 6 of the Service Tax Rules, 1994, Service Tax shall be paid to the credit of the Central Government by the 6th day of the month if the duty is deposited electronically through internet banking, or, in any other case, the 5th day of the following month, as the case may be, except during the month of March where tax is to be paid by the end of the March itself. Rule 7 of the Service Tax Rules, 1994, read

with Section 70(1) of the Finance Act, 1994, stipulates that every person liable to pay Service Tax shall himself assess the tax due on the services provided by him and furnish to the Superintendent of Central Excise a half yearly return in form ST-3 by the 25th of the month following the particular half year.

M/s Newtime Contractors & Builders Pvt. Ltd., in Chandigarh-I Commissionerate, though was due for Internal Audit in FY16, was not audited by the department. Scrutiny of records of this assessee revealed that the assessee had provided construction services to their clients and charged Service Tax of ₹ 35.30 lakh through running bills during FY14 and FY15. However, the assessee neither filed Service Tax returns during the above period nor deposited the Service Tax of ₹ 35.30 lakh collected from clients into Government account. Further the assessee received (April 2013) an amount of ₹ 2.79 crore as mobilization advance from Oliver Engineering Pvt. Ltd., but the assessee did not discharge his Service Tax liability of ₹ 13.79 lakh on the advance received till the date of audit. Thus, a total amount of Service Tax of ₹ 49.09 lakh was recoverable from the assessee, besides levy of penalty for non-filing of returns.

When we pointed this out (February 2016) the Ministry (September 2017) stated that the department was aware of the matter as they sought record when the assessee did not file ST-3 returns. They further stated that as the assessee did not submit any records, using income details of FY13 and FY16 collected (January 2017) from the Income Tax department, they issued an SCN of ₹ 1.51 crore to the assessee for FY13 to FY16.

The fact remained that the department initiated action (January 2017) only after the matter was reported by us (February 2016) and that Internal Audit was not done when due.

4.4.2 Non-payment of Service Tax on import of service

As per Sl.No.10 of Notification No.30/2012 dated 20 June 2012, if the taxable service is provided by a person located in non-taxable territory to a person located in a taxable territory and the place of provision of service is in taxable territory, then Service Tax would be payable by recipient of services.

M/s Posidex Technologies Pvt. Ltd., in Hyderabad ST Commissionerate, was due for Internal Audit in FY15 but audit was not conducted. Our scrutiny revealed that the assessee had incurred an expenditure of ₹ 2.04 crore towards Technical Consultancy & Professional Services received from various foreign service providers during the period between April 2013 and

March 2015. In terms of provisions mentioned supra, the assessee was liable to pay Service Tax of ₹ 25.21 lakh on the said amount along with interest. This resulted in non-payment of Service Tax of ₹ 25.21 lakh on import of services.

When we pointed this out (January 2016) the Ministry accepted the objection and stated (December 2016) that the assessee paid Service Tax of ₹ 25.21 lakh along with interest of ₹ 7.12 lakh. The reply of the Ministry was silent on the non-conduct of Internal Audit.

4.5 Non-detection of lapses by IAPs

The IAPs carry out the audit of assessee units in accordance with the Audit Plan and as per the procedures outlined in the Service Tax Audit Manual, 2011 replaced with Central Excise and Service Tax Audit Manual, 2015 (CESTAM-2015).

During the course of our regular compliance audit, we attempted to examine the quality of audits undertaken by the IAPs by auditing a sample of assessees already audited by IAP. Of the 57 instances where we pointed out omission of IAPs to detect certain significant cases of non-compliance by assessees, the Ministry accepted nine cases (Section C of **Appendix IV**). Of the remaining 48 cases (Section C of **Appendix-V**), in 12 cases, for which the Ministry stated that explanation from officers responsible for the lapse was called for, final reply was awaited. The Ministry contested the audit objection in 25 cases and reply was awaited in 11 cases. A few instances had been illustrated below:

4.5.1 Non-detection of irregular claim of export benefit exemption

According to Rule 6A(1)(d) of Service Tax Rules, 1994, a service can be treated as export of service only if the place of provision as per the Place of Provision of Service Rules is outside India.

As per Rule 9(b) of Place of Provision of Services Rules, 2012, place of provision of 'Online information and database access or retrieval or both in electronic form through computer network service (OIDAR)', as defined under Rule 2(I) is the location of the service provider.

CBEC's Guidance Notes (query No.5.2.4) clarified that in the case of a service recipient, the place relevant for determining location is the place where service is "used" or "consumed". Further, Rule 4A of Service Tax Rules, 1994 provides that CENVAT credit should be availed on invoice bill or challan which

contains description and value of taxable service provided or agreed to be provided and the Service Tax payable thereon.

4.5.1.1 Irregular claim of exemption and export benefits

M/s OnMobile Global Ltd., in Bangalore ST-II Commissionerate, established a data centre in Bangalore for providing Value Added Services (VASs) to the customers of various telecom operators. The assessee classified the services correctly under Online Information Data Base Access and Retrieval (OIDAR) and paid Service Tax on these services provided to the telecom operators located in the taxable territory. However, in case of such services provided to the telecom operators located outside taxable territory, the assessee did not pay Service Tax of ₹ 23.35 crore for the period from FY13 to FY16, treating them as export of services. Although the Internal Audit Wing of the department audited the unit in February 2015, covering the period up to September 2014, this non-payment was not detected.

When we pointed this out (August 2016) the Ministry contested (September 2017) the audit objection on the grounds that the DGCEI already started its investigation in June 2016 whereas CAG Audit had pointed out this issue in July 2016.

The reply of the Ministry was not relevant to the issue on hand about failure of IAP, that conducted audit of this assessee in February 2015, in detecting wrong claim of exemption by the assessee.

4.5.1.2 Incorrect claim of export of services and incorrect availing of CENVAT credit

M/s Deloitte, Haskins & Sells, in Vadodara-I (audited upto FY14 by IAP) claimed exemption from payment of Service Tax on services provided to overseas clients treating them as export of services. We noticed that the assessee had provided service to Foreign Institutional Investors (FIIs) with Head Office located overseas but working in India as well, which had invested in Indian share market and were set-up and registered in India with the Securities and Exchange Board of India (SEBI). Hence the services cannot be considered as export of service in terms of Rule 6A (1)(d) of Service Tax Rules, 1994. Assessee did not pay Service Tax on 50 service invoices/bills in FY15 involving such services on which it was liable to pay Service Tax of ₹ 91.21 lakh. Since details for FY15 only were made available to Audit, the department was requested to verify this aspect for all the transactions of the assessee after introduction of Place of Provision of Services Rules, 2012. Further, we noticed that the assessee had availed CENVAT credit on 14

invoices for which it could not provide any details of its nature and admissibility, in absence of which genuineness of availability of such credit could not be verified. Hence, the department was requested to verify admissibility of such invoices and take necessary action.

When we pointed this out (August 2015) the Ministry accepted the audit observation and informed (September 2017) that SCN of ₹ 10.96 crore was issued to the assessee. For the failure of IAP, it stated that as Internal Audit was done on test check basis, there was no lapse on part of IAP.

The reply of the Ministry was not acceptable as a specific check was prescribed in column 12 of annexure VIII of Service Tax Audit Manual, 2011 for checking the correctness of exemption claimed by the assessees.

4.5.1.3 Incorrect availing of exemption of export of services

As per section 65(105)(k) of the Finance Act, 1994 "taxable service" means/includes any service provided or to be provided to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner. Rule 6A of the Service Tax Rules, 1994 stipulates that the provision of any service provided or agreed to be provided shall be treated as export of service (among others) only when the recipient of service is located outside India and the payment for such service has been received by the provider of service in convertible foreign exchange.

Audit, during verification of records of M/s. Star World International Service (India) Pvt. Ltd., in Chennai ST-I Commissionerate (audited in April 2015 by IAP), noticed that during FY14 an amount of ₹ 63.84 lakh was short reported in the ST-3 Returns filed by the assessee. This amount pertained to service charges on manpower supply services provided to M/s. Shriram EPC Ltd., Chennai for their project work at Iraq and the assessee classified the service under Export of services and did not pay Service Tax. It was further noticed that the amount was received by the assessee in Indian currency only. Audit pointed out that as the service recipient was located in India and the payment for the services was received by the assessee in Indian currency, the service should not be considered as Export of services and the Service Tax of ₹ 7.89 lakh was recoverable along with interest of ₹ 2.84 lakh.

When we pointed this out (March 2016) the Ministry while informing (May 2017) that the demand was confirmed, did not accept the audit objection quoting para 2.53 of Foreign Trade Policy, as per which export

proceeds realised in Indian Rupees against exports to Iran were permitted to avail exports benefits and the same might be applicable to Iraq as well.

The reply of the Ministry was contradictory as on one hand it stated that the demand had been confirmed and on the other hand contested the audit objection on the presumption that provision made specifically for Iran might be applicable for Iraq as well. In view of non-fulfilment of conditions prescribed, the service should not be considered as export of service and hence Service Tax was leviable as pointed out by us.

4.5.2 Non-detection of short-payment of Service Tax

4.5.2.1 Short payment owing to non-adherence to Point of Taxation Rules

According to Rule 3 of Point of Taxation of Rules 2011 introduced with effect from 1 April 2011, the point of taxation shall be, the time, when the invoice for the service provided or to be provided is issued and in a case where the person providing the service receives a payment before issue of invoice, be the time when he receives such payment, to the extent of such payment. Proviso to Rule 9 stated that services for which provision was completed on or before 30 June 2011, or where the invoices were issued up to the 30 June 2011, the point of taxation shall, at the option of the taxpayer, be the date on which the payment was received or made as the case may be.

During the examination of records of M/s Jelitta Publicity, Kottayam, in Cochin Commissionerate (audited in May 2014 by IAP), it was noticed from the sundry debtors and provision for bad debt shown in the books of accounts that the assessee had short paid Service Tax amounted to ₹ 2.85 crore due to non-adherence to Point of Taxation Rules, 2011 in FY12.

When we pointed this out (September 2015) the Ministry accepted the audit objection and stated (July 2017) that SCN demanding Service Tax of ₹ 8.60 crore including cess for the period FY12 to FY15 along with interest and penalties was issued to the assessee. For the failure of IAP, it stated that the objection could not be detected as the Internal Audit was done on a test check basis.

The reply of the Ministry was not acceptable as financial records of the assessee i.e. Balance Sheet, P&L account were to be scrutinised exhaustively while conducting Desk Review and not on test check basis.

4.5.2.2 Short payment of Service Tax on advances received

As per Section 67(3) of the Act, gross amount charged for taxable service shall include any amount received towards the taxable service before, during or after such provision of service.

M/s Skyline Builders in Cochin Commissionerate (audited in April 2014 by IAP), received advances (which included land value also) of ₹ 70.19 crore, ₹ 93.23 crore and ₹ 105.64 crore during FY13, FY14 and FY15 respectively. In the ST-3 returns for the years FY13, FY14 and FY15, this advance amount was not included in taxable value. The non-consideration of total amount received as 'advance from customers' for calculation of Service Tax had resulted in short-payment of Service Tax of ₹ 2.14 crore for the three years (after allowing abatement of 75 per cent of differential taxable value) and interest up to 31 August 2015 of ₹ 86.61 lakh.

When we pointed this out (September 2015) the Ministry accepted the audit objection and stated (July 2017) that SCN demanding Service Tax of ₹ 8.60 crore including cess for the period FY12 to FY15 along with interest and penalties was issued to the assessee. For the failure of IAP, it stated that the objection could not be detected as the Internal Audit was done on a test check basis.

The reply of the Ministry was not acceptable as financial records of the assessee i.e. Balance Sheet, P&L account, Trial Balance should be scrutinised exhaustively while conducting Desk Review and not on test check basis.

4.5.2.3 Short payment of Service Tax under reverse charge mechanism

In two cases⁴⁴, we pointed out that though IAP conducted audit of these assessees, they failed to detect short payment of Service Tax amounting to ₹ 1.61 crore under reverse charge mechanism. The Ministry accepted (April 2017 and July 2017) the revenue loss pointed out but stated that IAP had not audited these units. The reply of the Ministry was not tenable because as per the copies of IAP reports available with Audit, IAP had audited these units for part period covered in our audit objection.

⁴⁴ Hyderabad ST (M/s Globallogic Technologies Ltd.,) and Guntur Commissionerate (M/s GS Alloy Castings Ltd., Unit II)

4.5.2.4 Short payment of Service Tax due to misclassification of service

M/s Oswal Cables Pvt. Ltd., in Jaipur Commissionerate, was audited in October 2015 by IAP. Our examination of same assessee records (February 2016) revealed that the assessee provided Erection, Commissioning and Installation services to M/s Power Grid Corporation of India Ltd., for a value of ₹ 3.54 crore during FY13 and FY14, on which Service Tax amounting to ₹ 43.79 Lakh (including cess) was payable. Scrutiny revealed that the assessee paid Service Tax ₹ 17.49 Lakh on 40 per cent value of service after availing 60 per cent abatement incorrectly classifying the service as works contract service. Classifying this service as works contract service was incorrect as no transfer of property in goods was found involved in execution of this service. Therefore misclassification of service resulted in short payment of Service Tax of ₹ 26.30 lakh by the assessee.

When we pointed this out (February 2016) the Ministry stated (May 2017) that a SCN for the period April 2011 to March 2016 had been issued to the assessee for the recovery of Service Tax of ₹ 32.55 lakh. The reply of the Ministry was silent on failure of IAP.

4.5.3 Non-detection of non-payment of Service Tax

4.5.3.1 Non-payment of Service Tax due under reverse charge mechanism

Section 66B of the Finance Act, 1994 read with Rule 2(1)(d)(G) of Service Tax Rules, 1994, and Notification No.30/2012-ST dated 20 June 2012 stipulated that the recipient of services shall be liable to pay Service Tax on any taxable services received by a person in taxable territory from a person located in non-taxable territory.

Verification of the records pertaining to M/s Mercedes-Benz Research and Development India Pvt. Ltd., in Bangalore ST-II Commissionerate, revealed that the assessee received various services such as Information Technology Software Services, Professional and Technical Consultancy Services etc. from service providers located outside India and was liable to pay Service Tax thereon under reverse charge mechanism. However, the assessee did not pay Service Tax of ₹ 1.08 crore on these services received for the period from FY12 to FY16. This unit was audited by IAP in March 2014 but this lapse was not pointed out.

When we pointed this out (June 2016) the Commissionerate reported (March 2017) payment of Service Tax of ₹ 1.08 crore besides interest of ₹ 60.51 lakh on the basis of audit objection for the period FY12 to FY16. The

Ministry did not accept (October 2017) the lapse of the department by stating that the Internal Audit conducted in February 2012 (for the period upto FY11) had detected this issue on which SCN was issued for the period upto FY11. Therefore, the IAP which conducted the subsequent audit in March 2014 did not point out the same as the periodical SCN had to be issued/proposed by Range/Division concerned.

The reply of the Ministry was not acceptable in view of a specific check prescribed in column 17 of annexure VIII of Service Tax Audit Manual, 2011 for checking the previous SCN issued to the assessee and period covered therein to see whether the similar lapse continued. Further, despite the issue being in the knowledge of the department for the earlier period, if the issue had not been flagged by the CAG Audit, demand could have become time barred.

4.5.3.2 Non-payment of Service Tax on business support services

Services provided to a person by any other person in relation to support services of business or commerce, in any manner was taxable service till 30 June 2012. Service Tax on all services except those which were exempted vide any notification or were those which were entered in the negative list were liable to Service Tax with effect from July 2012.

M/s. Checkmate Services Pvt. Ltd., in Vadodara-I Commissionerate, rendered services of handling and transportation of municipal wastes worth ₹ 3.46 crore during FY13 to FY15 to M/s. UPL Environmental Engineers Ltd., (UPL EEL). These services fall under business support services, on which Service Tax of ₹ 42.80 lakh was payable. However, no Service Tax has been paid by the assessee on this amount.

When we pointed this out (January 2016) the Ministry accepted (September 2017) the audit observation and issued SCN for an amount of ₹ 2.15 crore. Further, for the failure of IAP, the Ministry stated that Internal Audit was done on test check basis due to which the Ministry said lapse could not be detected.

The reply of the Ministry was not acceptable because this non-payment of Service Tax continued for three financial years and hence non-inclusion of this issue in IAP's audit plan indicated poor quality of desk review.

4.5.3.3 Non-payment of Service Tax on declared service

As per Section 66E(e) of the Finance Act, 1994 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' shall constitute a 'declared service' and shall be taxable.

Scrutiny of Service Tax and financial records of M/s M.P. Audyogik Kendra Vikas Nigam (India) Ltd in Indore Commissionerate revealed (August 2016) that for the period FY13 to FY16, the assessee had shown an income of ₹ 9.54 crore on account of "Penalty/Fine and Others". This falls under the ambit of declared service as per Section 66E(e) quoted *ibid* but Service Tax of ₹ 69.89 lakh (including cess), leviable on this amount of income, was not paid by the assessee. The same was liable to be recovered from the assessee along with interest and penalty.

When we pointed this out (August 2016) the Ministry did not accept the audit objection and stated (September 2017) that penalty/fine for violation of an agreement cannot be considered as "consideration received" under section 67 of Finance Act, 1994 and hence not a 'service'. They further held that penalties and fines, being levied for inability of person to meet commitment as agreed upon, should in no way be considered as "rendering of service".

The reply of the Ministry was not acceptable because "to tolerate an act" had been specifically included in declared service as per section 66 of the Finance Act, 1994.

4.5.4 Non-detection of irregular availing/utilization of CENVAT credit

As per Rule 6(3)(ii) of CENVAT Credit Rules, 2004, service provider, having both taxable and exempted services has to maintain separate accounts for receipt and use of inputs/services. A service provider opting not to maintain separate accounts, has an option to proportionately reverse CENVAT credit pertaining to exempt services as prescribed under Rule 6(3A). To calculate this proportionate amount, total Cenvat credit availed on inputs/input services during the financial year should be considered.

4.5.4.1 Short-reversal of CENVAT credit

IAP conducted (December 2013) audit of M/s Motor World Ltd., 'Nandi Toyota', in Bangalore ST-II Commissionerate, covering the period up to September 2013. Our scrutiny (July 2015) revealed that the assessee availed CENVAT credit on inputs and input services utilised commonly for both taxable and exempted services and did not maintain separate accounts. The

assessee reversed a portion of CENVAT credit but calculated the amount reversible by adopting only the common input services used for both taxable and exempted services instead of all input services as prescribed. This resulted in short-reversal of ₹ 1.32 crore during FY13 to FY15.

When we pointed this out (July 2015) the Ministry did not accept the audit objection and stated (September 2017) that the assessee was eligible for CENVAT credit in full on input services exclusively used for providing taxable services and calculation of assessee was correct. It was also informed that an SCN demanding ₹ 1.05 crore was issued on the basis of the audit observation to safeguard revenue and that the assessee paid (September 2015 and January 2017) an amount of ₹ 1.10 crore under protest against this demand.

The reply of the Ministry was not acceptable because for an assessee not maintaining separate account for taxable and exempted input service, CENVAT credit reversal should be determined as prescribed in rule 6(3A) of CENVAT Credit Rules, 2004 in which whole of CENVAT credit was to be taken for calculation of reversal of CENVAT credit amount.

4.5.4.2 Irregular availing of CENVAT credit

As per Notification No. 26/2012-ST dated 20 June 2012 applicable with effect from 01 July 2012, an abatement of 75 per cent of the gross amount is given in case of Construction of a complex, building, civil structure or a part thereof, intended for sale to a buyer, wholly or partially except where entire consideration is received after issuance of completion certificate by the competent authority, provided that no CENVAT credit on inputs used for providing the taxable service has been taken under the provisions of CENVAT Credit Rules, 2004.

Scrutiny of Service Tax records of M/s. Paras Realtech Ltd., in Delhi ST-I Commissionerate (audited in June 2015 by IAP), revealed that during FY13 and FY14, the assessee had availed CENVAT credit of ₹ 77.35 lakh on inputs in addition to input services and capital goods, which was not admissible as per notification quoted. Hence, the CENVAT credit of ₹ 77.35 lakh irregularly availed on inputs was required to be recovered with interest.

When we pointed this out (November 2015) the Ministry (August 2017) while informing that a SCN had been issued (September 2016) stated that as the verification of CENVAT was carried out on sample basis of invoices submitted by the assessee to the IAP, the said lapse could not be detected.

The reply of the Ministry was not acceptable as a specific check was prescribed in column 12 of Annexure VIII of Service Tax Audit Manual, 2011 for checking the correctness of exemption claimed by the assessee and the required information was available in the ST-3 return itself.

4.5.5 Non-detection of non-remittance of Service Tax collected

M/s Writers & Publishers Pvt. Ltd., in Bhopal Commissionerate, was audited by IAP covering the objection period. Our scrutiny (August 2016) of records of this assessee revealed that during FY13 to FY16, the assessee paid Service Tax on Renting of Immovable Property Service on abated value of service ₹ 24.11 crore, but charged and collected the Service Tax on full gross value of service of ₹ 25.41 crore from its client. Thus, the assessee collected Service Tax of ₹ 0.17 crore, on amount of abatement so availed, from its client but did not deposit to the credit of Central Government.

Similarly in case of M/s. Vishwa Infrastructures and Services Pvt. Ltd., in Hyderabad ST Commissionerate, covered by IAP for the period upto March 2013, we noticed that the assessee did not remit Service Tax amounting to ₹ 0.20 crore collected by them.

When we pointed these out (September 2016 and February 2016) the Ministry accepted the audit objection (October 2017 and April 2017) but were silent on failure of IAPs in both cases.

4.5.6 Non-detection of short/non-payment of interest

As per Section 75 of the Finance Act, 1994, interest is payable on payment of Service Tax at the prescribed rates.

M/s. Durga Construction Co., in Kutch Commissionerate, had made delayed payment of Service Tax in FY15 and FY16. However, interest applicable for the delay in payment amounting to ₹ 1.25 crore was not paid by the assessee. The IAP which audited (September 2016) the assessee's records did not point out the same.

When we pointed this out (November 2016) the Ministry accepted the audit objection and informed (June 2017) that the assessee had paid the interest amount. For failure of IAP, the Ministry stated that Internal Audit was done on test check basis.

The reply of the Ministry for IAP failure was not acceptable in view of a specific provision for checking all ST-3 returns under column 20 of Annexure IV of Service Tax Audit Manual, 2011.

4.5.7 Non-identification of unregistered service providers/tax defaulters by Internal Audit

We noticed during verification of M/s Eastern Coalfields Ltd., in Dhanbad Commissionerate that 27 service providers of the assessee did not levy Service Tax amounting to ₹ 22.44 lakh on work contracts service provided to the assessee. Similarly our examination of records of M/s Popy Umbrella Mart in Cochin Commissionerate revealed that the service provider of this assessee neither obtained registration nor paid Service Tax amounting to ₹ 10.01 lakh. Though IAP audited (January and August 2014) the assessee, they did not detect these lapses.

When we pointed these out, the Ministry accepted the revenue loss in both cases (May 2017 and September 2017) and for the failure of IAP stated that the IAP had conducted audit of the service recipient and not the service provider. The reply of the Ministry could not be accepted as a specific check was prescribed for scrutiny of expenditure accounts of the assessee to see whether Service Tax liability on those accounts had been fulfilled or not.

4.5.8 Cases where details of internal audit were not provided

In five instances (included in Section C⁴⁵ of **Appendix V**) of short/non-payment of Service Tax etc. noticed by us, the details of Internal Audit such as selection of these units for audit, conduct of audit, IAP Report etc were not provided to us. Hence we were unable to examine the efficacy of Internal Audit in these cases. Two such cases had been illustrated below:

4.5.8.1 Non-payment of Service Tax under reverse charge mechanism

Section 66B of the Finance Act, 1994 read with Rule 2(1)(d)(G) of Service Tax Rules, 1994, and Notification No.30/2012-ST dated 20 June 2012 stipulated that the recipient of services shall be liable to pay Service Tax on any taxable services received by a person in taxable territory from a person located in non-taxable territory.

Scrutiny of the annual accounts of M/s Johnson & Johnson Ltd., in Mumbai LTU Commissionerate for the period FY12 and FY13 revealed that the assessee paid an amount of ₹ 122.80 crore and ₹ 137.14 crore respectively as royalty to M/s Johnson & Johnson, USA. However, a prima facie reconciliation of this expenditure with the ST-3 returns revealed short-reporting of taxable value offered for tax in the ST-3 returns.

⁴⁵ Sl. Nos. 8, 10, 12, 24 and 38 of Section C of Appendix-V.

When we pointed this out (August 2014) the Commissionerate (August 2016) intimated that assessee had paid Service Tax amount of ₹ 1.65 crore along with interest of ₹ 1.19 crore but details of Internal Audit were not provided. The reply of the Ministry was awaited (October 2017).

4.5.8.2 Short payment of Service Tax due to non-reflection of CENVAT credit utilization in the return

Section 68 of the Finance Act, 1994, provides that every person providing any taxable service shall pay Service Tax at the rate prescribed. Rule 6 of the Service Tax Rules, 1994, stipulates that Service Tax shall be paid to the credit of the Central Government by the 5th/6th of the month, immediately following the calendar month in which the payments are received except for the month of March where tax is to be paid by the 31st of March itself.

Scrutiny of records M/s. Starlog Enterprises Ltd in Mumbai ST-II Commissionerate revealed that as per reconciliation statement of FY16, the assessee had paid total Service Tax liability of ₹ 4.98 crore (₹ 3.41 crore in cash & ₹ 1.57 crore by utilisation of CENVAT credit) for the period from October 2015 to March 2016. However, CENVAT Credit utilization was not reflected in the ST-3 Return and the entire amount of ₹ 1.57 crore was included in closing balance of CENVAT Credit in the ST-3 return. This resulted in short payment of Service Tax of ₹ 1.57 crore which was to be recovered along with interest and penalty.

When we pointed this out (January 2017) the Ministry accepting the audit objection (September 2017) reported payment of Service Tax liability of ₹ 91.24 lakh including interest of ₹ 12.95 lakh by the assessee and stated that an SCN was being issued for the balance amount. But the Ministry could not confirm the details of Internal Audit due to non-availability of this information in the newly constituted GST Audit I Commissionerate, Mumbai and final reply was awaited (October 2017).

4.6 Shortcomings in functioning of Jurisdictional Commissionerates

We noticed 14 cases indicating shortcomings in functioning of jurisdictional Commissionerates. The Ministry accepted three cases (Section D of **Appendix-IV**) whereas in 11 cases (Section D of **Appendix-V**), the Ministry did not accept the Audit observation/reply was awaited.

Some cases are illustrated below:

4.6.1 Non-identification of defaulters from Government records

As per the Board's instruction dated 23 November 2011, the special cell in the Commissionerate had to obtain information from different sources such as yellow pages, newspaper advertisements, Income Tax department, regional registration authorities and websites, information from municipal corporations and major assesses including PSUs and private sector organisations regarding various services being availed by them.

During test check of records of Mission Director, National Health Mission, Panchkula (Haryana) for FY12 to FY16, it was noticed that the said office hired the taxis for the officers of their department from M/s Shagun Enterprises, Chandigarh. We scrutinized the records/bills & vouchers of M/s Shagun Enterprises, registered under Service Tax in Chandigarh I Commissionerate, and found that the assessee had received ₹ 2.60 crore for providing Rent-a-Cab service for the period FY13 to FY16 from the Office of the Director, National Health Mission, Panchkula and was liable to pay Service Tax. But the assessee had neither filed Service Tax return (ST-3) nor paid Service Tax amounting to ₹ 13.05 lakh which was recoverable with interest of ₹ 6.48 lakh.

When we pointed this out (April 2016) the Ministry admitted the audit objection and reported (September 2017) that the assessee had paid the total Service Tax liability including interest and penalty amounting to ₹ 25.22 lakh. The Ministry had further stated that the assessee had not filed any ST-3 returns, therefore, no scrutiny of returns/Internal Audit was conducted.

The Ministry's reply was not relevant to the point that we made about utilizing information available in Government records to identify tax defaulters.

4.6.2 Non-realisation of late fee on delayed submission of returns

Section 70 of the Finance Act 1994, provides for levy of late fee not exceeding ₹ 20,000/- for delayed submission of return.

Audit examination of the records of Service Tax Range Moradabad, under Hapur Commissionerate, revealed that 325 ST-3 returns pertaining to FY15 were submitted with delay ranging from one day to 482 days. The department did not ensure the recovery of late fee amounting to ₹ 34.55 lakh on these delayed returns.

When we pointed this out (April 2016) the Commissionerate admitted the audit observation and intimated (September 2016) that recovery proceedings had been initiated and so far 10 SCNs were issued and SCNs regarding remaining defaulters were under process.

Further progress and reply of the Ministry were awaited (September 2017).

4.6.3 Short coming in follow-up action

The internal control mechanisms in the department like scrutiny of returns or Internal Audit would have the required impact only if the jurisdictional officers take proper follow up action on the lapses noticed earlier. We noticed two instances of short coming in follow-up action by departmental officers and revenue loss of ₹ 0.44 crore would have remained undetected if not pointed out by audit. Both the cases are illustrated below:

4.6.3.1 Short payment of Service Tax

Our scrutiny of M/s Vishwa Infrastructures and Services Pvt. Ltd., in Hyderabad Service Tax Commissionerate revealed that the assessee short paid Service Tax of ₹ 30.62 lakh for FY15. Further, Internal Audit conducted for the period up to March 2013, had pointed out four similar objections for FY13. But still the jurisdictional range office had not taken action to ensure payment of Service Tax in subsequent years until pointed out by CAG Audit.

When we pointed this out (February 2016) the Ministry accepted (April 2017) the audit objection and recovered ₹ 30.62 lakh, while the interest still remained to be recovered. The Ministry further stated that as the assessee had already declared the default, no separate action was required.

The reply of the Ministry indicated failure of the department in ensuring compliance by assessee even in known cases of default in earlier period.

4.6.3.2 Short reversal of CENVAT credit

As per Rule 2(e) of CENVAT Credit Rules, 2004 read with section 66B and 66D of the Finance Act 1994, effective from 1 July 2012, the activity of trading specified in the negative list is "exempted service". Further in case where both taxable and exempted services are provided and the service provider did not opt to maintain separate accounts relating to common input services, then as prescribed in Rule 6(3) of the said Rules, the service provider is liable to pay either an amount equal to six per cent of the value of the exempted

services or reverse the Cenvat credit attributable to exempt stream as prescribed in Rule 6(3A).

On verification of records of M/s. ISS SDB Security Services Pvt. Ltd., in Chennai ST-II Commissionerate, we noticed that during FY13 to FY16, the assessee had availed CENVAT credit on common input services relating to both taxable and exempted services (Trading) and utilised the credit for payment of Service Tax on taxable services, without reversing CENVAT credit of ₹ 10.28 lakh attributable to trading activity which has to be paid along with applicable interest.

IAP of the department had also pointed out the same mistake for FY13 and FY14 and assessee reversed the CENVAT amount. But CAG Audit on verification of the ST-3 returns with annual accounts of the assessee found that the assessee had made short reversal of CENVAT credit of ₹ 8.92 lakh for FY13 to FY14 and non-reversal of ₹ 1.36 lakh for FY15. Hence, the department failed to ensure correctness of the CENVAT reversal by the assessee even after IAP noticed this lapse on part of the assessee.

When we pointed this out (March 2016) the Ministry while not accepting the audit objection (September 2017) stated that the matter was already in its knowledge as IAP had already pointed out the lapse and that the assessee had reversed the incorrectly availed CENVAT credit of ₹ 10.28 lakh and also paid due interest of ₹ 2 lakh.

The reply of the Ministry was not acceptable as Audit had not pointed the failure of IAP but the lapse in follow up action of the department which resulted in short recovery of objected amount, which was corrected only after being pointed out by CAG Audit.

4.6.4 Excess grant of refund

As per Board's circular dated 1 March 2005, all refund/rebate claims involving an amount of ₹ 5 lakh or above should be subjected to pre-audit at the level of Jurisdictional Commissioner.

M/s. Sonata Information Technology Ltd., in LTU Mumbai Commissionerate, engaged in providing Information Technology Software Services, filed revised refund claim of ₹ 82.65 lakh for the quarter October 2012 to December 2012 which was sanctioned by the department in April 2014. Audit scrutiny revealed that there was excess grant of refund of ₹ 20.46 lakh on account of availing pre-mature CENVAT credit of Service Tax paid under reverse charge

and non-exclusion of TDS of from export turnover. Though the refund claim was pre audited in April 2014, these discrepancies were not pointed out.

When we pointed this out (June 2015) the Ministry (July 2016) informed that an SCN demanding recovery of excess refund of amount of ₹ 20.46 lakh was issued (September 2015) to the assessee. The Ministry stated that pre audit of the refund claim was confined to confirming the amounts of CENVAT credit availed in returns filed with the amount claimed in refund application which was found to tally. The Ministry further stated that the refund claim was also accompanied by a certificate duly signed by an independent Chartered Accountant (CA) certifying the correctness of refund claim.

The reply of the Ministry was not tenable as it can not absolve itself of the responsibility of ensuring correctness of refund sanctioned by quoting certification by a CA and the Ministry also needed to ensure proper action against the CA who had certified the refund claim incorrectly.

4.6.5 *Lacunae in issue of SCNs*

As per the provision under Section 73 of Chapter V of the Finance Act, 1994 where any Service Tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may within eighteen months from the relevant date, serve notice on the person chargeable with the Service Tax.

4.6.5.1 Non-issuance of SCN in time

M/s National Hydro Power Corporation Ltd., (NHPC) in Patna Commissionerate, received ₹ 31.09 crore during FY13 to FY15 from the Ministry of Road as agency fee. But the assessee did not deposit Service Tax and Education Cess amounting to ₹ 3.84 crore.

When we pointed this out (March 2016) the Commissionerate replied (January 2017) that on the same issue the assessee has filed an appeal before the CESTAT for the period FY09 to FY12 on which stay was granted.

The reply of the Commissionerate could not be accepted as this issue covering the period FY09 to FY12 was reported in CAG's Report no. 4 of 2015 (Para 7.4.1.1) where failure of internal audit in detecting the lapse was pointed out and the department intimated confirmation of the demand in this case during adjudication. Even after being pointed out by CAG during earlier period, the department did not issue SCN of ₹ 3.84 crore for the subsequent period i.e. FY13 to FY15. This carried the risk of a part of the tax payable becoming time barred.

The reply of the Ministry was awaited (October 2017).

4.6.5.2 Non-inclusion of demand in the SCN

Scrutiny of the records of North Division under Kolkata ST-I Commissionerate (November 2015) revealed that the IAP raised the observations for ₹ 1.70 crore for the period from FY10 to FY12 and of ₹ 13.10 lakh for the period from FY10 to FY11 in respect of M/s Genius Consultants Ltd. and M/s Nomura Research Institute Financial Technologies India Pvt. Ltd. Both the issues were discussed in the Monitoring Committee Meeting (MCM) held in February 2013 and February 2014 respectively and decision for issue of SCNs was taken. Finally, the department had issued SCNs in October 2015 excluding demands of ₹ 29.26 lakh and ₹ 5.42 lakh respectively pertaining to FY10 as the same had got time barred. Thus delay in issue of SCN had resulted in revenue loss of ₹ 34.68 lakh.

When we pointed this out (November 2015) the Ministry admitted the audit objection (September 2017) and stated that delay in issuance of SCN was due to late forwarding of Draft SCN by the concerned division and an explanation from the concerned officers was called for.



New Delhi

(HIMABINDU MUDUMBAI)

Dated: 27 November 2017 Principal Director (Goods and Services Tax-I)

Countersigned



New Delhi

(RAJIV MEHRISHI)

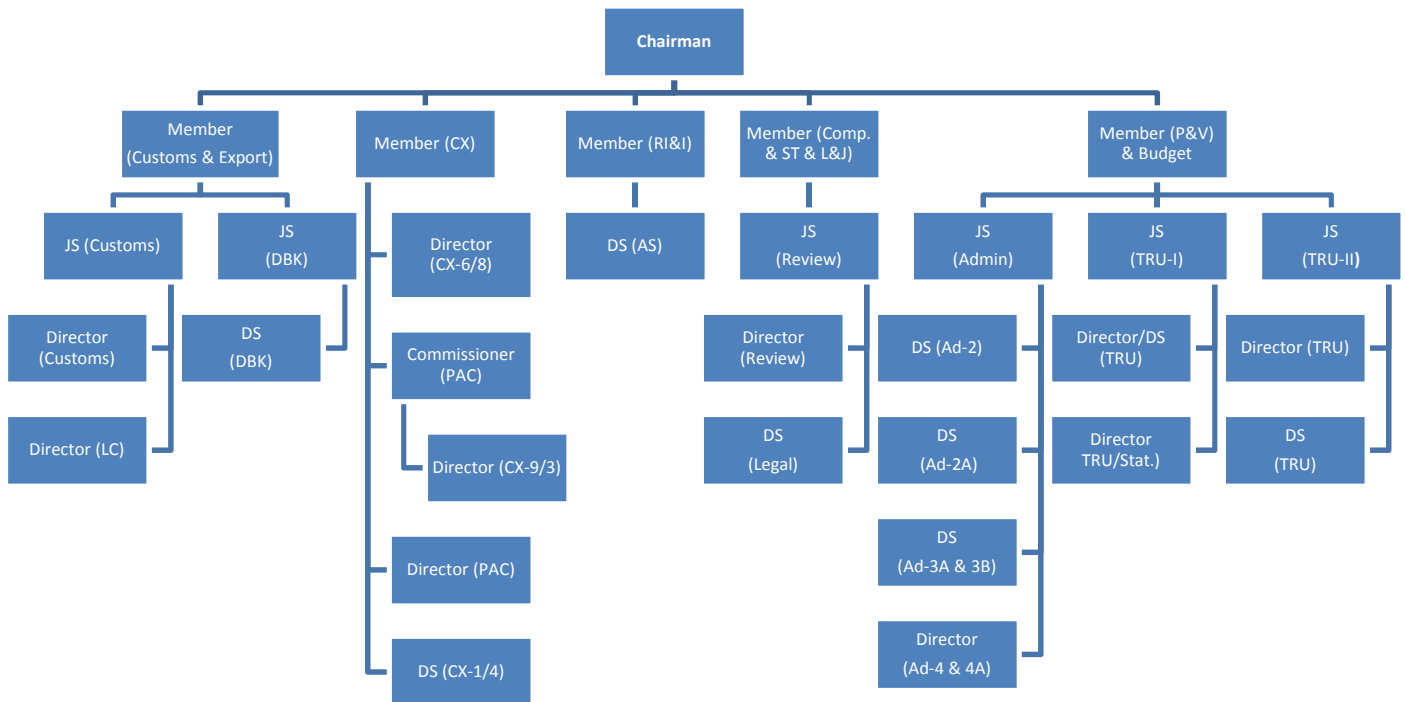
Dated: 27 November 2017 Comptroller and Auditor General of India

APPENDICES

Appendix I

Organisational structure of CBEC

(Reference: Paragraph 1.3)



Appendix-II
Unregistered service providers and their gross receipts noticed
from the data collected from Registrar of Companies (ROC)
(Reference: Paragraph 2.5.5.1)

(₹ in lakh)

Sl. No.	Name of Service Provider	PAN/TIN number	Period	Gross Receipts
1	Edunova Education Foundation, Ahmedabad	AADCE0039M	2013-14	11.16
			2014-15	2.71
			2015-16	0.00
2	Gateways Migration & Education Pvt. Ltd., Ahmedabad	AAECG2987K	2013-14	119.74
			2014-15	139.61
			2015-16	132.04
3	Genesis Learning Initiatives Pvt. Ltd, Ahmedabad	AADCG6832C	2013-14	448.19
			2014-15	469.27
			2015-16	441.85
4	Gujarat Foundation for Entrepreneurial Excellence, Ahmedabad	AAECG4260F	2013-14	0.00
			2014-15	319.18
			2015-16	155.95
5	Hands-on Educational Resources Pvt. Ltd., Ahmedabad	AACCH7115G	2013-14	56.34
			2014-15	20.23
			2015-16	5.99
6	Indo-American Immigration and Education Services Pvt. Ltd., Ahmedabad	AACCI6104J	2013-14	0.00
			2014-15	0.00
			2015-16	12.09
7	ISBM Excellenz Education Pvt. Ltd., Ahmedabad	CIN - U80301GJ2009 PTC056389	2013-14	30.72
			2014-15	0.00
			2015-16	0.00
8	NCVT Institute Pvt. Ltd., Ahmedabad	AADCN4264D	2013-14	0.00
			2014-15	14.11
			2015-16	0.00
9	Neptune Educational Consultants Pvt. Ltd., Ahmedabad	AACCN5204E	2013-14	360.52
			2014-15	691.86
			2015-16	627.00
10	Pellucid Knowledge Solution Pvt. Ltd., Ahmedabad	AAGCP5655F	2013-14	0.00
			2014-15	16.28
			2015-16	18.06
11	Redbricks Education Foundation, Ahmedabad	AAECR2399G	2013-14	61.12
			2014-15	96.34
			2015-16	159.89
12	Redbricks Junior Education Limited, Ahmedabad	AADCC5397E	2013-14	78.33
			2014-15	90.85

Sl. No.	Name of Service Provider	PAN/TIN number	Period	Gross Receipts
			2015-16	101.29
13	Holistic Alliance Education Private Limited	AACCH1438C /U80302RJ2008 PTC027942	2014-15	67.60
			2015-16	78.24
14	Globetrotters Educational Innoventions Private Limited	AACCG7895E / U80302RJ2007 PTC023965	2013-14	2737.71
			2014-15	3172.64
			2015-16	3919.65
15	Chaprana Career Consultancy Pvt. Ltd., Jaipur	AACCC3782G / U80302RJ2004 PTC019311	2014-15	11.96
16	TULSI Edutainment Pvt. Ltd., Jaipur	AADCT6584C / U80302RJ2010 PTC033457	2014-15	11.13
17	Strands Education Pvt. Ltd., Ajmer	AAQCS8722C / U80302RJ2012 PTC037555	2014-15	12.41
			2015-16	13.52
18	Sea Stone Marine Academy Pvt. Ltd., Jaipur	AAFCB5604B / U80302RJ2013 PTC043150	2014-15	18.72
			2015-16	18.95
19	International Institute of Management and Technology Studies, jaipur	AADCI3389N / U80302RJ2013 PTC043006	2013-14	167.36
			2014-15	156.38
20	Anima Educare Academy Pvt. Ltd., Jhunjhunu	AAICA9077C / U80302RJ2010 PTC03736	2014-15	12.85
			2015-16	5.60
21	Divine Institute of Information Technology Pvt. Ltd., Jaipur	AAECD7677H / U80302RJ2012 PTC040548	2013-14	20.22
			2014-15	16.84
22	IDA Education Private Limited, Jaipur	AACCI4381D / U80302RJ2010 PTC033075	2013-14	118.53
			2014-15	39.78
23	IIFA (INDIA) Private Ltd., Jaipur	AABCI3570K / U80302RJ2005 PTC020691	2013-14	69.52
			2014-15	108.50
Total				15,458.83

Appendix III
List of cases of non-compliance by assessees
accepted by the Ministry
(Reference: Paragraph 3.1)

(₹ in crore)

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
Non Payment of Service Tax					
1	30D	4.58	4.58		Ahmedabad ST
2	33D	2.88	2.88		Ahmedabad ST
3	4B	2.65	2.65		Vadodara-I
4	1A	2.44	2.44	2.44	Pune-II
5	31D	1.81	1.81		Vadodara-I
6	122D	1.75	1.75		Jaipur
7	6D	0.95	0.95		Pune-II
8	42B	0.88	0.88		Bilaspur
9	30B	0.84	0.84	0.84	Mumbai ST-V
10	14A	0.83	0.83	0.78	Bhopal
11	22B	0.72	0.72	0.72	Jalandhar
12	9A	0.65	0.65	0.03	Kolkata ST-II
13	8A	0.57	0.57		Kolkata ST-II
14	5A	0.47	0.47		Ludhiana
15	32B	0.47	0.47		Ahmedabad-III
16	15B	0.46	0.46	0.46	Delhi ST-II
17	9D	0.44	0.44	0.44	Hyderabad-I
18	10A	0.40	0.40		Kolkata ST-II
19	23B	0.39	0.39		Vadodara-I

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
20	19B	0.31	0.31	0.31	Gurgaon ST-II
21	52D	0.31	0.31	0.28	Pune-II
22	2A	0.25	0.25	0.25	Kolhapur
23	40B	0.23	0.23		Calicut
24	44B	0.21	0.21	0.21	Jaipur
25	41B	0.15	0.15		Vadodara-I
26	3B	0.14	0.14	0.14	Hyderabad ST
27	21A	0.13	0.13		Lucknow
28	8B	0.12	0.12	0.12	Chandigarh-II
29	21B	0.12	0.12	0.12	Rourkela
30	37D	0.12	0.12		Vadodara-I
31	36B	0.10	0.10	0.10	Ahmedabad-III
Short Payment of Service Tax					
32	2B	2.94	2.94	2.94	Mumbai ST-V
33	6B	2.51	2.51	2.51	Mumbai ST-V
34	7B	2.45	2.45	2.45	Mumbai ST-V
35	17B	1.97	1.97	1.97	Bangalore-V
36	9B	1.65	1.65		Jaipur
37	59D	1.15	1.15	0.86	Mumbai ST-II
38	20A	0.89	0.89		Jamshedpur
39	29B	0.80	0.80	0.80	Kolhapur
40	10B	0.49	0.49	0.49	Vadodara-I
41	42D	0.49	0.49	0.26	Chennai ST-I

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
42	2D	0.30	0.30	0.30	Nagpur-II
43	45D	0.27	0.27	0.27	Chennai ST-I
44	35B	0.26	0.26	0.22	Calicut
45	34B	0.22	0.22		Vadodara-I
46	11D	0.21	0.21	0.21	Hyderabad ST
47	17D	0.21	0.21	0.21	Visakhapatnam
48	38B	0.17	0.17		Anand
49	25B	0.16	0.16	0.16	Calicut
50	13A	0.13	0.13		Gurgaon ST
51	26B	0.13	0.13	0.13	Cochin
52	31B	0.13	0.13	0.13	Hyderabad-II
53	11A	0.10	0.10	0.10	Delhi ST-II
Irregular Availing/Utilisation of CENVAT Credit					
54	6A	5.71	5.71	5.71	Kakinada
55	12A	2.05	2.05	0.79	Cochin
56	92D	1.42	1.42	1.42	Raipur
57	27B	0.68	0.68	0.68	Lucknow
58	13B	0.55	0.55	0.55	Bangalore LTU
59	118D	0.42	0.42		Kolkata ST-II
60	39B	0.36	0.36	0.36	Cochin
61	33B	0.33	0.33	0.33	Chennai ST-I
62	87D	0.23	0.23	0.23	Delhi ST-II
63	100D	0.19	0.19	0.19	Delhi ST-II

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
64	56D	0.15	0.15	0.15	Mumbai ST-VI
65	1B	0.14	0.14	0.14	Kolhapur
66	28B	0.13	0.13	0.13	Kolkata ST-II
67	94D	0.13	0.13	0.13	Jaipur
68	12B	0.12	0.12	0.12	Delhi ST-II
69	14B	0.12	0.12	0.12	Chennai ST-I
70	15A	0.11	0.11	0.11	Delhi ST-II
71	11B	0.10	0.10		Cochin
Non Payment of Interest					
72	34D	0.93	0.93	0.93	Vadodara-I
73	28D	0.31	0.31	0.03	Kolkata ST-II
74	16B	0.29	0.29	0.29	Bangalore-V
75	5B	0.21	0.21	0.14	Surat-I
76	24B	0.18	0.18	0.18	Chennai ST- I
77	45B	0.15	0.15	0.15	Bilaspur
78	37B	0.12	0.12	0.12	Mumbai ST-V
79	18B	0.10	0.10	0.10	Jaipur
80	20B	0.10	0.10	0.10	Delhi ST-II
Small money value observations which were accepted by the department and rectificatory action taken but not converted into Draft Audit Paragraphs					
		22.51	22.51	19.66	
	Total	81.84	81.84	53.85	

Appendix IV
List of cases on departmental lapses
accepted by the Ministry
(Reference: Paragraph 4.2, 4.3, 4.4 and 4.5)

(₹ in crore)

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
Section A: Failure in Scrutiny of Returns					
1	61D	2.80	2.80	2.80	Mumbai ST-II
2	39D	1.42	1.42	1.42	Kolkata ST-I
3	75D	0.69	0.69	0.69	Bangalore ST-II
4	27D	0.62	0.62	0.62	Kolkata ST-II
5	72D	0.47	0.47	0.47	Bangalore ST-II
6	29D	0.41	0.41	0.24	Kolkata ST-II
7	73D	0.38	0.38	0.38	Bangalore ST-II
8	41D	0.16	0.16	0.16	Chandigarh-I
9	60D	0.16	0.16	0.16	Mumbai ST-VI
10	107D	0.11	0.11	0.11	Indore
Section B: Non Conduct of Internal Audit					
11	104D	10.98	10.98		Mumbai ST-V
12	88D	6.24	6.24	6.24	Bangalore ST-II
13	21D	1.74	1.74		Bhubaneswar-I
14	80D	0.77	0.77		Chennai ST-I
15	96D	0.68	0.68		Mumbai ST-V
16	89D	0.58	0.58	0.58	Bangalore ST-II
17	51D	0.47	0.47		Jamshedpur
18	66D	0.45	0.45	0.45	Delhi ST-II

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
19	5D	0.41	0.41	0.41	Mumbai ST-IV
20	114D	0.35	0.35	0.35	Rourkela
21	53D	0.28	0.28	0.28	Mumbai ST-V
22	3D	0.25	0.25	0.25	Mumbai ST-I
23	16D	0.23	0.23	0.23	Hyderabad ST
24	99D	0.21	0.21	0.21	Delhi ST-II
25	54D	0.14	0.14	0.14	Kolhapur
26	55D	0.13	0.13	0.13	Mumbai ST-VI
27	67D	0.13	0.13		Delhi ST-III
28	124D	0.13	0.13	0.13	Delhi ST-III
29	1D	0.11	0.11	0.11	Mumbai ST-V
Section C: Non-detection of lapse by Internal Audit					
30	62D	0.84	0.84		Cochin
31	38D	0.60	0.60	0.39	Vadodara-I
32	70D	0.55	0.55	0.55	Bangalore LTU
33	36D	0.54	0.54	0.54	Vadodara-I
34	108D	0.48	0.48		Ahmedabad ST
35	78D	0.32	0.32		Bangalore ST-II
36	79D	0.32	0.32	0.32	Bangalore ST-II
37	18D	0.17	0.17	0.17	Hyderabad-III
38	112D	0.11	0.11		Vadodara I
Section D: Shortcomings in functioning of Jurisdictional Commissionerates					
39	71D	2.72	2.72	2.72	Bangalore LTU

Report No. 43 of 2017 (Indirect Taxes – Service Tax)

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
40	85D	0.21	0.21	0.21	Cochin
41	43D	0.17	0.17		Chennai ST-II
	Total	38.53	38.53	21.46	

Appendix V**List of observations on departmental lapse not accepted/reply awaited discussed in Chapter-IV****(Reference: Paragraph 4.2, 4.3, 4.4, 4.5 and 4.6)****(₹ in crore)**

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
Section A: Failure in Scrutiny of Returns					
1	101D	16.19		5.52	Mumbai ST-II
Section B: Non-conduct of Internal Audit					
2	129D	0.49			Chandigarh-I
3	13D	0.32	0.32	0.32	Hyderabad ST
Section C: Non-detection of lapse by Internal Audit					
4	126D	23.35			Bangalore ST-II
5	123D	10.96	10.96		Vadodara-I
6	64D	8.60	8.60		Cochin
7	65D	5.31	5.31		Cochin
8	98D	2.84	2.84	2.84	Mumbai LTU
9	133D	2.15	2.15		Vadodara-I
10	102D	1.77			Mumbai ST-II
11	77D	1.69		1.69	Bangalore ST-II
12	115D	1.57	1.57	1.04	Mumbai ST-II
13	76D	1.32		1.10	Bangalore ST-II
14	35D	1.25	1.25	1.25	Kutch
15	19D	0.99	0.99		Hyderabad ST
16	68D	0.77	0.77		Delhi ST-I
17	120D	0.72	0.72		Nellore
18	106D	0.70			Indore

Report No. 43 of 2017 (Indirect Taxes – Service Tax)

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
19	10D	0.62	0.62	0.62	Guntur
20	46D	0.50	0.50	0.50	Cochin
21	14D	0.42			Visakhapatnam
22	113D	0.38	0.38	0.38	Vadodara-I
23	24D	0.38			Jaipur
24	103D	0.34	0.34	0.34	Mumbai ST-II
25	109D	0.34	0.34	0.34	Trichy, Coimbatore
26	25D	0.33	0.33		Jaipur
27	105D	0.24	0.24		Bhopal
28	74D	0.24		0.24	Bangalore ST-II
29	22D	0.23	0.23	0.23	Jaipur
30	49D	0.22	0.22	0.05	Dhanbad
31	8D	0.20	0.20		Hyderabad ST
32	138D	0.20			Indore
33	15D	0.17	0.17		Visakhapatnam
34	44D	0.17			Chennai ST-I
35	12D	0.16	0.16		Guntur
36	116D	0.15	0.15	0.15	Cochin
37	81D	0.15	0.15	0.15	Chennai ST-II
38	97D	0.13		0.13	Mumbai ST-II
39	111D	0.10	0.10		Ahmedabad ST
40	47D	24.16	24.16		Hyderabad ST
41	63D	2.72	2.72		Cochin
42	127D	1.81	1.81	1.81	Mumbai ST-V

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
43	20D	1.45	1.45		Hyderabad-II
44	32D	0.66	0.66	0.10	Daman
45	134D	0.62	0.62		Ahmedabad ST
46	121D	0.55	0.55		Jaipur
47	135D	0.40	0.40		Chennai ST-II
48	23D	0.37	0.37		Jaipur
49	117D	0.27	0.27	0.27	Jaipur
50	57D	0.25	0.25	0.25	Mumbai ST-VI
51	83D	0.23	0.23		Calicut
Section D: Shortcomings in functioning of Jurisdictional Commissionerates					
52	50D	3.84			Patna
53	84D	0.63	0.63		Cochin
54	110D	0.63	0.63		Ahmedabad ST
55	48D	0.35	0.35		Hapur
56	119D	0.35	0.35		Kolkata ST-I
57	90D	0.32			Bangalore ST-II
58	7D	0.32	0.32	0.31	Hyderabad ST
59	91D	0.24	0.24	0.24	Bangalore ST-II
60	4D	0.20	0.20		Mumbai LTU
61	95D	0.20	0.20		Chandigarh-I
62	131D	0.12		0.12	Chennai ST-II
Total		127.35	76.02	19.99	

Note: Sl. No. 40 to 51 represent cases where the Ministry stated that the explanation of the official responsible for the lapse being called for. Final reply was awaited in these cases.

Glossary

AC	Assistant Commissioner
ACES	Automation of Central Excise and Service Tax
AICTE	All India Council for Technical Education
BE	Budget Estimates
Board	Central Board of Excise and Customs
CA	Chartered Accountant
CAAP	Computer Assisted Audit Programme
CAAT	Computer Assisted Audit Techniques
CAG	Comptroller and Auditor General of India
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise and Customs
CC	Chief Commissioner
CCR	CENVAT Credit Rules
CDR	Commissionerate Division and Range
CE/CX	Central Excise
CEAM	Central Excise Audit Manual
CENVAT	Central Value Added Tax
CESTAT	Customs, Excise and Service Tax Appellate Tribunal
CSO	Central Statistical Office
CTC	Commercial Training or Coaching
CVD	Countervailing Duty
DC	Deputy Commissioner
DG	Director General
DGCEI	Directorate General of Central Excise Intelligence

DGST	Director General of Service Tax
DG GST	Director General of Goods and Services Tax
DoR	Department of Revenue
DRI	Directorate of Revenue Intelligence
EA 2000	Excise Audit 2000
EC	Education Cess
EOU	Export Oriented Unit
FII	Foreign Institutional Investor
FY	Financial Year
GDP	Gross Domestic Product
GST	Goods and Services Tax
IAP	Internal Audit Party
IIM	Indian Institute of Management
IIT	Indian Institute of Technology
ISD	Input Service Distributor
IT	Information Technology
JC	Joint Commissioner
LTU	Large Taxpayer Unit
MCA	Ministry of Corporate Affairs
MCM	Monitoring Committee Meeting
MIS	Management Information System
MNC	Multi National Companies
MOF	Ministry of Finance
MOU	Memorandum of Understanding
MTR	Monthly Technical Report

OIA	Order in Appeal
OIO	Order in Original
PD	Principal Director
PLA	Personal Ledger Account
R&C	Review and Correction
RBI	Reserve Bank of India
RE	Revised Estimates
ROC	Registrar of Companies
SAD	Special Additional Duty
SCN	Show Cause Notice
SHEC	Secondary and Higher Education Cess
ST	Service Tax
STAM	Service Tax Audit Manual
TDS	Tax Deducted at Source
UGC	University Grants Commission
VAS	Value Added Services
VCES	Voluntary Compliance Encouragement Scheme

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