

CHAPTER VI

CESS NOT LEVIED OR DEMANDED

Cess is levied and collected in the same manner as excise duty under the provisions of various Acts of the Parliament.

A few cases where applicable cess amounting to Rs. 1.95 crore was not levied or demanded are mentioned in the following paragraphs. These observations were communicated to the concerned Ministries through five draft audit paragraphs. The Ministries/department had accepted (till December 2009) the audit observations in two draft audit paragraphs with a financial implication of Rs. 1.41 crore of which Rs. 59.59 lakh had been recovered.

6.1 Non-levy of cess on textiles and textile machinery

Under section 5(A)(1) of the Textile Committee Act, 1963 read with the Ministry of Commerce notification dated 1 June 1977, cess on textiles and textile machinery manufactured in India is leviable at the rate of 0.05 per cent ad valorem. The authority to collect such cess is vested with the 'Textiles Committee' constituted under section 3 of the foregoing Act.

Test check of records of four assessees engaged in the manufacture of textile material/machinery in the Union Territory of Dadra and Nagar Haveli, indicated that they did not pay applicable cess of Rs. 98.49 lakh on processed fabrics and textile machinery valued at Rs. 1,969.91 crore and cleared between April 2005 and May 2007. The Textile Committee also did not take any action to collect the applicable cess.

On the matter being pointed out (between June 2008 and August 2008), the Ministry of Textiles stated (November 2009) that the recovery of cess was being closely pursued on priority basis.

6.2 Non-levy/payment of cess on cement

Section 9(1) of the Industries (Development and Regulation) Act, 1951 (read with Cement Cess Rules, 1993 made there under), stipulates that every manufacturer producing cement in cement plants of capacity not lower than 99,000 tonne per annum based on rotary kiln and 66,000 tonne per annum based on vertical shaft kiln, shall pay cess at the rate of Re. 0.75 per tonne of cement manufactured and removed from the factory. Rules 3 and 4 of the said Rules further stipulate that every manufacturer of cement who is liable to pay cess shall submit to the 'Development Commissioner' for cement industry, under the Ministry of Commerce and Industry, Government of India, a monthly return relating to stocks of cement produced and removed during the preceding month and shall remit the amount of cess to the said authority by 15th of the following month.

Five manufacturers of cement in Nalgonda (Andhra Pradesh), in Hyderabad III commissionerate, cleared 27.99 lakh tonne of cement manufactured in their factories during the period from April 2002 to July 2004 without payment of cess, notwithstanding the fact that the installed capacity of these factories,

based on rotary kilns was in excess of 99,000 tonne per annum and cess was accordingly payable. The total cess not paid by the five assessees amounted to Rs. 20.99 lakh.

On the observations being pointed out (between December 2003 and June 2008), the Ministry of Commerce and Industry informed (July 2008) that the assessees had been directed to pay the applicable cess.

6.3 Non-levy of cess on tractors

In terms of the Ministry of Industry, Department of Industrial Development, order dated 6 September 1985 read with the orders dated 22 March 1990 and dated 26 May 1994, cess at the rate of 0.125 per cent is leviable on tractors of more than 25 horse power under the Automobile Cess Rules, 1984. The cess is leviable on tractors whether exported or cleared for home consumption.

M/s International Tractors Ltd., in Jalandhar commissionerate of central excise, engaged in the manufacture of tractors and parts thereof, manufactured tractors exceeding 25 horse power and cleared these for export without paying automobile cess. The assessee exported 2,915 tractors valuing Rs. 125.35 crore between April 2003 and March 2006 on which automobile cess amounting to Rs. 16 lakh was payable.

On the observation being pointed out (between January 2007 and June 2008), the department stated (June 2008) that a show cause notice demanding Rs. 3.24 lakh on export of 699 tractors between May 2007 and March 2008 had been issued (June 2008). Action taken to recover cess for the period prior to May 2007 had not been intimated (October 2009).

The reply of the Ministry has not been received (December 2009).

6.4 Short payment of education cess

Education cess (with effect from 10 September 2004), at the rate of two per cent of the service tax payable, was imposed under section 91 read with section 95 of the Finance (No. 2) Act, 2004.

Scrutiny of ST-3 returns of M/s HDFC Bank Ltd., in Mumbai service tax commissionerate, indicated that during the period from October 2006 to April 2007, the assessee had wrongly calculated the amount of education cess on the service tax payable. This resulted in short payment of education cess of Rs.14.37 lakh during the aforementioned period.

On this being pointed out (December 2007), the Ministry stated (September 2009) that the assessee had actually deposited the cess under a wrong accounting head. However, in compliance with the audit observation, the assessee had again paid the education cess of Rs. 14.37 lakh alongwith Rs. 2.50 lakh as interest for delayed payment in June 2008 and December 2008 respectively.

6.5 Other cases

In 20 other cases of cess not levied or demanded involving a total amount of Rs. 42.73 lakh, the Ministry/department has accepted all audit observations and reported full recovery.