

CHAPTER IV VALUATION OF TAXABLE SERVICES

Service tax is levied on various taxable services on the basis of value charged by the service provider. Its valuation is governed by section 67 of the Finance Act, 1994 read with the rules under Service Tax (Determination of Value) Rules, 2006. A few illustrative cases of short levy of service tax of Rs. 8.16 crore are mentioned in the following paragraphs. These observations were communicated to the Ministry through seven draft audit paragraphs. The Ministry/department has accepted (till January 2010) the audit observations in six draft audit paragraphs with total revenue implication of Rs. 7.38 crore, of which Rs. 1.66 crore has been recovered.

4.1 Incorrect adoption of the value of service

Section 67 of the Finance Act, 1994, envisages that the value of taxable service in relation to commissioning or installation services, is the amount charged by the service provider for rendering such services. Further, notifications dated 21 August 2003 and 1 March 2006 provide that, in the cases of contracts involving provision of services along with supply of materials, the service provider may pay the service tax on 33 per cent of the gross contract amount.

M/s CMC Ltd., in Kolkata service tax commissionerate, engaged in providing software and hardware solutions, executed jobs of installation and commissioning alongwith supply of equipment under composite price contracts without having any price breakup for supply, installation and commissioning works. The assessee paid service tax at two per cent instead of 33 per cent of the gross contract value which was applicable for installation and commissioning work. Incorrect adoption of value resulted in short payment of service tax of Rs. 5.62 crore during the period from 2004-05 to 2007-08.

On this being pointed out (May 2008), the department accepted the audit observation and stated (May 2009) that a draft show cause cum demand notice was being issued.

The reply of the Ministry has not been received (January 2010).

4.2 Value of service adopted not based on sole consideration

Section 67(2) of the Finance Act, 1994, read with rule 3(a) of the Service Tax (Determination of Value) Rules, 2006, effective from 19 April 2004, stipulates that where provision of service is for a consideration not wholly or partly consisting of money, the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration.

M/s Kandla Port Trust (KPT), Vadinar, in Rajkot commissionerate, provided port services to M/s Essar Oil Ltd. (EOL), in connection with

installation/creation of various new ports, related facilities in the KPT water limits and also in land/road area of KPT at Off-shore Oil Terminal (OOT), Vadinar. M/s EOL paid Rs. 6.68 crore between February 2007 and March 2008 to KPT as wharfage and berthing charges at 51.43 per cent of the scale of rates (SORs) of KPT for the products brought by EOL at the Vadinar Terminal. The assessee also paid service tax of Rs. 82.38 lakh on this amount. Audit observed that payment of service tax of 51.43 per cent of scale of rates was not correct because the assessee and EOL had entered into an agreement by virtue of which KPT had extended its facilities to be used and developed by the EOL and the developed assets were to be repatriated to KPT free of cost on a future date. In consideration thereof, the charges leviable were reduced to 51.43 per cent of the actual scale of rates of KPT. In such cases, the service tax of Rs. 1.60 crore should have been paid on the full service charge of Rs. 12.98 crore which was chargeable by KPT in normal circumstances from any other assessee for providing similar services under rule 3 (a) of the aforesaid Rules. This resulted in short payment of service tax of Rs. 77.87 lakh.

The matter was pointed out to the department/Ministry in August 2008/October 2009; its replies have not been received (January 2010).

4.3 TDS not included in the value of service

Section 67 of the Finance Act, 1994 stipulates that the value of any taxable service should be the gross amount charged by the service provider. The Director General of service tax clarified that tax deducted at source (TDS) is includible in the gross amount charged.

M/s Saint Gobain Glass India Ltd. and M/s Mainetti (India) Pvt. Ltd., in Chennai service tax commissionerate, engaged in the manufacture of excisable goods availed of technical know-how from foreign service providers. The assessees paid royalty of Rs. 9.29 crore and Rs. 8.95 crore for the period from January 2005 to December 2005 and from May 2005 to December 2005 after deducting the TDS amount of Rs. 1.03 crore and Rs. 1.34 crore respectively. Service tax was paid on the value after excluding TDS. The exclusion of TDS resulted in short payment of service tax of Rs. 28.82 lakh which was recoverable with interest.

On the above being pointed out (between March and December 2008), the department admitted the audit observations (between July 2008 and February 2009) and reported recovery of tax of Rs. 12.64 lakh and interest of Rs. 5.21 lakh in June and July 2008 from M/s Saint Gobain Glass India Ltd. and issued show cause notice to the other assessee.

The Ministry accepted (November 2009) the audit observation in the case of M/s Mainetti (India) Pvt. Ltd. and intimated that a show cause notice for Rs. 16.50 lakh had been issued in September 2008.

4.4 Other cases

In three other cases of valuation of taxable services involving Rs. 1.48 crore, the Ministry/department has accepted the audit observations and reported recovery of the total amount.