

## **CHAPTER VI MISCELLANEOUS TOPICS OF INTEREST**

A few interesting issues pertaining to the short payment of service tax due to incorrect self assessment, suppression of value of service etc., which are not included in the foregoing chapters, are mentioned in the following paragraphs. These issues have a total revenue implication of Rs. 12.38 crore and were communicated to the Ministry through 26 draft audit paragraphs. The Ministry/department has accepted (till January 2010) the audit observations in 24 draft audit paragraphs with total revenue implication of Rs. 9.47 crore, of which Rs. 5.07 crore has been recovered.

### **6.1 Incorrect self assessment of tax**

From 16 July 2001 onwards, the scheme of self assessment procedure was introduced under which a person liable to pay service tax can itself assess the service tax and deposit it, in the Government account. In addition, he is required to submit periodical returns, in the prescribed form, to the concerned superintendent of central excise. For the purpose of verification, the superintendent is empowered to call for any accounts, documents or other evidence from the assessee, as deemed necessary.

**6.1.1** M/s Juhu Beach Resorts India Pvt. Ltd. in Mumbai service tax commissionerate, received management consultancy services from Marriott Worldwide Corporation and paid Rs. 35.26 crore for the period from April 2004 to December 2007 involving service tax liability of Rs. 4.02 crore. However, the assessee paid service tax of Rs. 2.04 crore only. Thus, there was a short payment of service tax of Rs. 1.98 crore which was recoverable with interest of Rs. 55.32 lakh.

On this being pointed out (April 2008), the department intimated (June 2009) that show cause notices for the recovery of Rs. 2.75 crore for the period April 2004 to December 2007 had been issued in March 2009. Out of the above amount, Rs. 21.04 lakh (including interest of Rs. 3.28 lakh) has been paid by the assessee in June 2008.

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

**6.1.2** M/s Hindustan Unilever Ltd. in Chennai service tax commissionerate, engaged in providing business auxiliary service, beautician service etc., also received GTA service and paid freight charges for transport of goods under the heads primary freight, secondary freight, inter-depot freight and inter-branch freight etc. The assessee incurred freight charges of Rs. 146.50 crore during the years 2004-05, 2005-06 and 2006-07 on which service tax payable worked out to Rs. 416.28 lakh at the appropriate rates on 25 per cent freight charges. However, the assessee paid service tax of Rs. 361.41 lakh which resulted in short payment of service tax of Rs. 54.87 lakh which needed to be recovered along with appropriate interest.

On this being pointed out (April, May and December 2008), the Ministry accepted the audit observation and stated (January 2010) that a show cause notice demanding service tax of Rs. 3.52 crore<sup>1</sup> on full freight charges for the period from January 2005 to March 2008 had been issued to the assessee in August 2008 and was under adjudication.

**6.1.3** M/s Ortel Communications Ltd., M/s Security and Intelligence Service (India) Ltd., M/s Eagle View Security Services Pvt. Ltd. and M/s Power Con Projects and Associates Ltd. in Bhubaneswar I commissionerate, paid Rs. 2.16 crore as against Rs. 2.49 crore payable towards service tax during the period between December 2004 and March 2006. This resulted in short payment of service tax amounting to Rs. 32.69 lakh which is recoverable with interest and penalty.

On this being pointed out (May 2006), the department stated (February 2009) that the tax of Rs. 33,502 and interest of Rs. 7,331 had been recovered from M/s Eagle View Security Services Pvt. Ltd. and show cause notices had been issued or were under issue to the other three assessees.

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

**6.1.4** M/s Nokia India Pvt. Ltd. in Delhi service tax commissionerate, did not correctly assess service tax liability on the taxable service of installation, commissioning and implementation services provided during November 2006. This resulted in short payment of tax of Rs. 13.40 lakh which was recoverable with interest of Rs. 3.32 lakh and penalty of Rs. 6.22 lakh.

On this being pointed out (December 2007 and August 2008), the department stated (April 2009) that show cause notice demanding service tax of Rs. 35.08 crore<sup>2</sup> not paid on various services provided during the period from October 2003 to September 2006, and for recovery of cenvat credit of Rs. 26.20 lakh incorrectly utilised, during April 2006 to September 2006, had been issued to the assessee, besides levying applicable interest and penalty.

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

## **6.2 Incorrect suo-moto adjustment of service tax**

Section 83 of the Finance Act, 1994 stipulates that the provisions of section 11B of the Central Excise Act, 1944 shall apply to service tax as well. Section 11B provides that any person claiming refund of excise duty may make an application within one year.

Sub-rule 3 of rule 6 of the Service Tax Rules, 1994 provides that where an assessee has paid to the credit of the Central Government service tax in respect

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<sup>1</sup> The difference between the amount pointed out by audit (Rs. 54.87 lakh) and the demand raised by the department (Rs. 3.52 crore) is due to the difference in period as well as calculation. Audit has worked out the short payment on 25 per cent value of service charges whereas the department has raised demand on 100 per cent value alleging suppression of facts.

<sup>2</sup> The difference between the amount pointed out by audit (Rs. 13.40 lakh) and the demand raised by the department (Rs. 35.08 crore) is due to coverage of larger period and more services provided by the assessee in the show cause notice.

of a taxable service, which is not so provided by him either wholly or partially for any reason, the assessee may adjust the excess service tax so paid by him against his service tax liability for the subsequent period, if the assessee has refunded the value of taxable service and the service tax thereon to the person from whom it was received.

**6.2.1** M/s Citibank N.A., Chennai, in Chennai service tax commissionerate, engaged in providing banking and financial services, business auxiliary services, etc., adjusted the excess service tax of Rs. 1.78 crore paid in April and May 2005 for the service tax liability during the months of June, July and August 2005. The suo-moto adjustment of excess tax by the assessee in the subsequent months was not in order and the assessee should have claimed refund of excess paid tax from the department within the stipulated period.

On this being pointed out (May 2008), the Ministry accepted the audit observation and stated (January 2010) that a show cause notice was being issued.

**6.2.2** M/s Bharti Airtel Ltd. in Bhopal commissionerate, engaged in providing telephone service, paid service tax of Rs. 195.73 lakh for the month of March 2005 against the liability of Rs. 189.19 lakh. The amount of Rs. 6.54 lakh paid in excess by oversight was adjusted against service tax liability for the subsequent month of April 2005. This suo-moto adjustment of service tax against future liability was not allowable under the rules and for this the assessee was required to file a refund claim under the provisions of section 11B of the said Act. The wrong adjustment of the service tax was liable to be recovered alongwith interest.

On this being pointed out (March 2007), the department stated (June 2007) that the adjustment of excess service tax paid was permissible in view of various judicial pronouncements.

The reply of the department is not tenable as judicial pronouncements cited are not in the case of the assessee or by the jurisdictional court. Also, the reply is contradictory to the Ministry's clarification (13 October 1997) that there is no provision in the Finance Act, 1994 to adjust service tax already paid. Besides, the CESTAT in the case of Sudhir Paper Ltd. {2002 (148) ELT 275 (Tri-Bang.)} based on the judgement of the Supreme Court of India in the case of M/s Doaba Cooperative Sugar Mills {1988 (37) ELT 478 (SC)} has specifically emphasised that the revenue authorities are bound by the statute of law. The department further intimated (June 2008) that a show cause notice was being issued.

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

**6.2.3** Rule 6(4A) of the Service Tax Rules, 1994 (with effect from 1 March 2007) provides that where an assessee has paid to the credit of the Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be. Sub-rule (4B) of the said

rule prescribes a monetary limit of rupees fifty thousand for adjustment for a relevant month or quarter, as the case may be.

M/s CMA CGM East and South India Pvt. Ltd. in Chennai service tax commissionerate, engaged in providing business support service and steamer agent service paid excess service tax in the months of May, July and August 2007 which was adjusted in the subsequent months beyond the monetary limit mentioned above. This resulted in excessive suo-moto adjustment of Rs. 27.46 lakh (business support services of Rs. 19.11 lakh and steamer agency services of Rs. 8.35 lakh) during the year 2007-08.

On this being pointed out (August 2008), the Ministry accepted the audit observation and stated (January 2010) that a show cause notice for Rs. 27.46 lakh had been issued to the assessee.

### **6.3 Suppression of value of services**

Section 78 of the Finance Act, 1994 provides for levy of penalty on non-payment of tax by suppression of facts.

**6.3.1** M/s Haldia Steels Limited (unit-II) in Bolpur commissionerate, engaged in the manufacture of sponge iron, billets etc., cleared its final product on payment of duty. Scrutiny of records indicated that the assessee had paid Rs. 8.03 crore to transporters during 2007-08 for carrying of inputs but declared the same at Rs. 3.32 crore in ST 3 returns and discharged service tax liability on Rs. 3.32 crore only. This resulted in short payment of service tax of Rs. 58.22 lakh which was recoverable with interest of Rs. 2.52 lakh (upto July 2008) and penalty.

On the matter being pointed out (August 2008), the department reported (March 2009) recovery of Rs. 60.74 lakh on 30 December 2008 including interest of Rs. 2.52 lakh. Since the interest was paid upto July 2008, interest amounting to Rs. 3.15 lakh for the period from August 2008 to December 2008 was also recoverable.

The Ministry admitted the audit observation and stated (November 2009) that a show cause notice demanding interest of Rs. 10.02 lakh was being issued.

**6.3.2** Scrutiny of records of M/s J.K. Avtar Pvt. Ltd., Unit II, Assam, in Shillong commissionerate, indicated that the assessee was required to pay service tax to the extent of Rs. 13.24 lakh (inclusive of arrears of service tax of rupees four lakh pertaining to the year 2005-06) for providing goods transport agency service (GTA) during the period from April 2007 to March 2008, but no amount was paid. The assessee also did not indicate the value of services provided in ST-3 returns for the period from April 2007 to March 2008. By suppressing the value of taxable service in the ST-3 return for the period mentioned above, the assessee evaded service tax of Rs. 9.24 lakh excluding the arrears of service tax of rupees four lakh pertaining to the year 2005-06. No action was taken by the department to recover service tax with applicable interest and penalty.

On this being pointed out (February 2009), the department admitted the audit observation and stated (June 2009) that the assessee was asked to pay Rs. 9.24 lakh alongwith interest, out of which Rs. 1.24 lakh had been recovered.

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

**6.3.3** M/s Andhra Pradesh Trade Promotion Corporation (APTPC) in Hyderabad II commissionerate, engaged in providing services of hire purchase of consumer durable goods and vehicles to government employees, collected interest charges of Rs. 173.16 lakh during 2005-06 on which service tax of Rs. 17.66 lakh was payable. As against this, the assessee declared Rs. 29.13 lakh only towards interest charges in its half yearly returns on which service tax of Rs. 2.97 lakh was paid. Understatement of interest charges collected resulted in short payment of service tax by Rs. 14.69 lakh which was recoverable with interest and penalty.

On the matter being pointed out (July 2008), the department intimated (March 2009) that the demand of tax had been confirmed (February 2009).

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

#### **6.4 Service tax collected but not paid to the Government**

In terms of section 68 of the Finance Act, 1994 read with rule 6 of the Service Tax Rules, 1994, service tax is to be paid to the credit of the Central Government by the 5<sup>th</sup> day of the month following the month in which payments are received except during the month of March where tax is to be paid by the end of March itself.

M/s GEI Industrial Systems Pvt. Ltd., Bhopal, in Bhopal commissionerate, engaged in the manufacture of heat exchangers/industrial fans and parts thereof provided technical services and received rupees two crore from the clients. The assessee also charged service tax of Rs. 22.66 lakh through the invoices from its service receivers. Neither did the assessee deposit the service tax so recovered into the Government account nor was it demanded by the department. The service tax was recoverable with interest and penalty.

On this being pointed out (June 2009), the department intimated (June 2009) that the assessee has agreed to deposit the service tax. Further update in the case has not been received (January 2010).

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

#### **6.5 Non-monitoring of returns**

Section 70 of the Finance Act, 1994 read with rule 7(i) of Service Tax Rules, 1994 stipulates that every person liable to pay service tax shall assess the tax itself and shall furnish half yearly return in form ST-3 by 25<sup>th</sup> of the month following the half year. Failure to furnish return and pay service tax would entail levy of interest and penalty.

M/s Balaji Detective and Security Service (I) Pvt. Ltd., Indore, in Indore commissionerate engaged in providing security services, recovered service charges of Rs. 3.72 crore during February to April 2008 from different clients/customers. Service tax of Rs. 45.94 lakh was payable but the assessee paid only Rs. 6.62 lakh (i.e. Rs. 1.62 lakh on 31 March 2008 and Rs. 5 lakh on 18 July 2008). The tax short paid amounting to Rs. 39.32 lakh was recoverable with interest. In addition, interest was also recoverable on delayed payment of tax of rupees five lakh for the month of March 2008 paid on 18 July 2008. It was also noticed that the assessee had not submitted ST-3 returns since October 2007 onwards. The department did not monitor the submission of returns by the assessee for which penal action was also required to be taken.

On this being pointed out (August 2008), the Ministry admitted the audit observation and reported (November 2009) recovery of Rs. 62.86 lakh including interest. It further stated that the show cause notice for imposing penalty was under issue.

#### **6.6 Other cases**

In 241 other cases of short payment of service tax involving a revenue implication of Rs. 4.92 crore, the Ministry/department has accepted all the audit observations and reported recovery of Rs. 3.56 crore up to January 2010.

**New Delhi**  
**Dated :**

**(SUBIR MALLICK)**  
**Principal Director (Indirect Taxes)**

**Countersigned**

**New Delhi**  
**Dated :**

**(VINOD RAI)**  
**Comptroller and Auditor General of India**