

## **CHAPTER III**

### **SHORT PAYMENT OF SERVICE TAX**

Some instances of short payment of service tax due to incorrect self assessment, suppression of value of service which are not included in the foregoing chapters, are mentioned in the following paragraphs. They have a total revenue implication of ₹ 11.80 crore and were communicated to the Ministry through 7 draft audit paragraphs. The Ministry/department had accepted (till December 2010) the audit observations in 5 draft audit paragraphs with total revenue implication of ₹ 11.24 crore.

#### **3.1 Incorrect self assessment**

From 16 July 2001 onwards, the scheme of self assessment procedure was introduced under which a person liable to pay service tax can himself assess the service tax and deposit 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.

M/s BGR Energy Systems Ltd., in Chennai service tax commissionerate, providing erection, commissioning or installation service, commercial or industrial construction service, works contract service, etc., had a gross income of ₹ 1344.06 crore during the year 2007-08. The assessee adjusted sundry debtors of ₹ 637.68 crore from gross income and paid service tax on only ₹ 215.34 crore, treating it as the taxable value under all the services. The break up of the differential value of ₹ 491.04 crore was not made available and the nature of this income and reasons for not paying tax were not intimated to us. We worked out a tentative value of short payment of service tax of ₹ 9.74 crore and asked the department to work out the exact amount of short levy.

When we pointed this out (February 2009), the department admitted the audit observation and stated (December 2010) that the case had been referred to Director General of Central Excise Intelligence (DGCEI) to examine the issue whether there was short payment of service tax for the period prior to the period covered in audit observation and on the basis of DGCEI's report, show cause notice will be issued.

Reply of the Ministry had not been received (December 2010).

#### **3.2 Service tax collected but not deposited**

M/s Galgal Cement Works, Barmana, ACC Units I & II, in Chandigarh I commissionerate, (manufacturer of clinker and cement under Chapter/heading 2523.10/2523.29), received services to the tune of ₹ 1441.41 lakh from forty service providers in the year 2007-08. We checked the ST-3 returns filed by these 40 service providers in Bilaspur Range and found that they had paid only ₹ 98.74 lakh against the service tax of ₹ 178.16 lakh payable. This resulted in

short payment of service tax of ₹ 79.42 lakh which was recoverable alongwith interest and penalty.

When we pointed this out (March 2009), the department stated (October 2009) that the defaulters were being asked to deposit the service tax immediately failing which show cause notices would be issued.

Reply of the Ministry had not been received (December 2010).

### **3.3 Advance payment**

As per section 67(3) of the Finance Act, 1994, gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

M/s National Thermal Power corporation Ltd. (Consulting wing), (NTPC) in Noida commissionerate, was providing consulting engineers services to Power Grid Corporation of India Ltd. (Power Grid), for construction of additional line bays in Korba Super Thermal Power Project, of NTPC. As per the agreement between NTPC and Power Grid, NTPC had to execute the job of design, engineering, procurement, supply, construction, erection, testing and commissioning of additional line bays, as a deposit work. For the entire work, Power Grid agreed to pay to NTPC, the actual expenditure incurred by NTPC plus a consolidated additional charge at the rate of 19 per cent. The overhead charges of 19 per cent was meant for consulting engineer services.

M/s NTPC received payment of ₹ 1062.61 lakh from Power Grid and was liable to pay service tax on ₹ 201.90 lakh which was nineteen percent service charges. It paid service tax only on ₹ 128.63 lakh (63.71 per cent of ₹ 201.90 lakh) on the ground that it had completed work of ₹ 677.03 lakh (63.71 per cent) out of the payment of ₹ 1062.61 lakh received. Since the amount had already been received in the nature of an advance, service tax was payable on the entire amount. Therefore, service tax of ₹ 19.78 lakh was recoverable on the differential amount of ₹ 73.27 lakh.

When we pointed this out (November 2009), the department did not accept the audit observation (October 2010) and stated that the NTPC had undertaken the above project for and on behalf of power grid corporation as an agent and the amount of ₹ 1062.61 lakh received by the NTPC should not be treated as advance payment rather it should be considered as deposit (imprest money). Hence service tax on the consultancy services is payable on the actual value of execution of the work.

The department's reply is not acceptable because as per clause 5.3.2 of the agreement, payments made in advance by Power Grid, for the deposit work included the component of overhead charges. Therefore, service tax was payable on the overhead (consulting engineer service) charges immediately on receipt of advance. As per explanation (a) under section 67 of the Finance Act, 1994, 'consideration' includes any amount that is payable for the taxable services provided or to be provided and service tax will be payable as soon as advance is received, even if service is provided later.

Reply of the Ministry had not been received (December 2010).

### **3.4 Value of consideration not added to gross taxable value**

Rule 3 of the Service Tax (Determination of Values) Rules, 2006, provides that, subject to the provisions of section 67, the value of taxable service, where the consideration received is not wholly or partly consisting of money, shall be determined by the service provider in the following manner : -

(a) 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;

(b) where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service.

Rule 2 (l) (d) (iv) of the Service Tax Rules, 1994, stipulates that in respect of taxable service provided by a person, who is a non-resident or is from outside India and does not have an office in India, the person receiving the taxable service in India is liable to pay service tax.

**3.4.1** M/s Juhu Beach Resorts India Ltd., in Mumbai (ST) commissionerate, registered under the category of intellectual property services and management consultancy services, paid ₹ 346.64 lakh during April 2006 to December 2006 towards reimbursement of expenses towards telephone charges, central reservation charges, mobile charges, mail charges etc. to M/s Marriott Worldwide Corporation, USA. However, the amount was not included in the gross amount for payment of service tax and hence the taxable service was under assessed by such consideration. This resulted in a short payment of service tax of ₹ 42.43 lakh.

On this being pointed out (April 2008), the department admitted (June 2008) that assessee was liable to pay service tax on amount paid to the US Company towards reimbursement of expenses. Further development was awaited (December 2010).

Reply of the Ministry had not been received (December 2010).

**3.4.2** As per section 67 of the Finance Act, 1994, the value of any taxable service shall be the gross amount charged by the service provider.

M/s Exhibition Society, Hyderabad in Hyderabad II commissionerate, providing exhibition services, received ₹ 2.88 crore during the period 2006-07 to 2008-09 towards providing electricity and lighting facility to exhibitors. However, the assessee did not include this amount in the value of service while discharging his service tax liability. This resulted in under valuation of service and consequential short payment of service tax of ₹ 35.49 lakh besides interest.

We pointed this out to the department in March 2010. Reply was awaited (December 2010).

Reply of the Ministry had not been received (December 2010).

### **3.5 Transport of goods by road**

Service tax on transport of goods by road is levied with effect from 1 January 2005. As per rule 2(1)(d)(v) of Service Tax Rules, 1994, the person making payment towards freight would be liable to pay service tax on services of GTA in case the consignor or consignee of the goods transported is one in the organised sectors.

M/s Manney Engineering Pvt. Ltd., Cherlapally, in the Hyderabad III commissionerate, engaged in the manufacture of MS towers and parts thereof, incurred ₹ 8.86 crore towards inward and outward freight between the period from 2006-07 and 2008-09. However, the assessee paid service tax on only ₹ 6.31 crore. This resulted in short payment of service tax of ₹ 7.80 lakh payable on the balance of ₹ 2.55 crore which was recoverable with interest.

When we pointed this out (December 2009), the department admitted the objection and stated (June 2010) that a show cause notice was under issue.

Reply of the Ministry had not been received (December 2010).

### **3.6 Commercial or industrial construction service**

M/s N.S.K. Builders, Trichy, in Tiruchirapalli commissionerate, providing commercial or industrial construction service paid service tax of ₹ 53.04 lakh in August 2007 and January 2008 against the tax liability of ₹ 73.86 lakh. The assessee stated that the balance had been paid during April to June 2007. On the scrutiny of the relevant challans we found that they actually related to other payments and did not pertain to the period from April to June 2007. Therefore, service tax of ₹ 20.82 lakh short paid was recoverable with interest.

When we pointed this out (September 2009), the department admitted the audit observation and stated (April 2010) that a draft show cause notice was being issued.

Reply of the Ministry had not been received (December 2010).