

PREFACE

This Report for the year ended March 2011 has been prepared for submission to the President of India under the Article 151(1) of the Constitution of India.

Audit of Revenue Receipts – Indirect Taxes of the Union Government is conducted under section 16 of the Comptroller and Auditor General of India (Duties, Powers and Conditions of Service) Act, 1971.

The Report presents the results of audit of receipts of service tax.

The observations included in this Report have been selected from the findings of the test check conducted during 2010-11, as well as those which came to our notice in earlier years but were not included in the previous Reports.

EXECUTIVE SUMMARY

This Report contains 24 paragraphs with a revenue implication of ₹ 49.48 crore, out of which ₹ 3.21 crore has been recovered. We had also issued another 175 paragraphs involving money value of ₹ 155.26 crore to the Commissionerate/Ministry on which rectificatory action was taken in the form of issue of show cause notices, adjudication of show cause notices and recovery of ₹ 75.55 crore. A few significant findings included in this Report are mentioned in the following paragraphs:-

Chapter I: Service tax receipts

- In the last five years (including this year's Report), we had included 831 audit paragraphs involving ₹ 1098.21 crore. Of these, the Government had accepted audit observations in 750 audit paragraphs involving ₹ 759.05 crore and had recovered ₹ 290.45 crore.

{Paragraph 1.9.1}

Chapter II: Un-registered service providers

- Service tax totalling ₹ 24.36 crore was not paid by un-registered service providers.

{Paragraphs 2.1 to 2.4}

Chapter III: Valuation of taxable services

- Service tax totalling ₹ 9.45 crore was short paid due to incorrect valuation of taxable services.

{Paragraphs 3.1 to 3.3}

Chapter IV: Non-payment of service tax by registered service providers

- Service tax totalling ₹ 5.64 crore was not paid by registered service providers.

{Paragraphs 4.1 to 4.4}

Chapter V: Cenvat credit

- Instances of irregular utilisation of cenvat credit for payment of tax on input services, availing of credit on ineligible services, non-maintenance of separate account for common input services used in taxable/exempted services, premature availing of cenvat credit of input services etc. were noticed. Service tax involved in these cases amounted to ₹ 5.06 crore.

{Paragraphs 5.1 to 5.4}

Chapter VI: Exemptions

- Cases of short payment of service tax due to incorrect availing of exemption involving money value of ₹ 4.39 crore were noticed in audit.

{Paragraphs 6.1 to 6.2}

Chapter VII: Service tax under reverse charge

- Cases of short payment of service tax under reverse charge method involving money value of ₹ 57.89 lakh were noticed in audit.

{Paragraphs 7.1 to 7.3}

CHAPTER I

SERVICE TAX RECEIPTS

1.1 Tax administration

1.2 Results of audit

1.3 Trend of receipts

1.4 Service tax receipts vis-à-vis cenvat credit utilised

1.5 Refund of service tax

1.6 Outstanding demands

1.7 Fraud/presumptive fraud cases

1.8 Services contributing major revenue

1.9 Impact of audit reports

1.10 Follow-up on audit reports

CHAPTER I SERVICE TAX RECEIPTS

1.1 Tax administration

Service tax was introduced from 1 July 1994 through the Finance Act, 1994. Administration of service tax has been vested with the Central Board of Excise and Customs under the department of Revenue in the Ministry of Finance (the Ministry). The Board had created seven exclusive service tax Commissionerates and the Commissioners of central excise had also been authorised to collect service tax within their jurisdiction.

1.2 Results of audit

This Report contains 24 paragraphs, featured individually or grouped together, arising from test check of records maintained in departmental offices and premises of the service providers. The revenue implication of these paragraphs is ₹ 49.48 crore, out of which ₹ 3.21 crore had been recovered. In nine out of these 24 paragraphs, involving revenue of ₹ 30.43 crore, the department/Ministry had accepted the contention of audit but the rectificatory action was pending. In addition to these, we had also issued another 175 paragraphs involving money value of ₹ 155.26 crore, on which the department/Ministry had already taken rectificatory action in the form of issue of show cause notices, adjudicating show cause notices and recovery of ₹ 75.55 crore.

A case involving substantial revenue, where the department had taken rectificatory action on the basis of audit objection, is given below by way of illustration.

M/s Krishna Patnam Port Company Ltd., Nellore in Guntur Commissionerate, engaged in providing of Port services, paid service tax of ₹ 3 crore as against ₹ 12.99 crore payable on the provision of services valued ₹ 139.05 crore for the months August 2010 and September 2010. This resulted in short payment of service tax of ₹ 9.99 crore which needed to be recovered along with interest of ₹ 20.99 lakh. Further the assessee did not pay service tax by due dates for the half year ending September 2010. The delay in payment ranged from 2 to 10 days. These belated payments attracted interest which worked out to ₹ 0.81 lakh. The total amount of service tax together with interest recoverable thereof, worked out to ₹ 10.20 crore.

When we pointed this out (November 2010), the Commissionerate accepted the audit observation and reported (February 2011) recovery of ₹ 17.72 crore towards short payment of service tax and interest on delayed payments, covering the period upto November 2010.

1.3 Trend of receipts

Revenue projected through annual budget and actual receipts from service tax during the years 2006-07 to 2010-11 is exhibited in the following table and graph:-

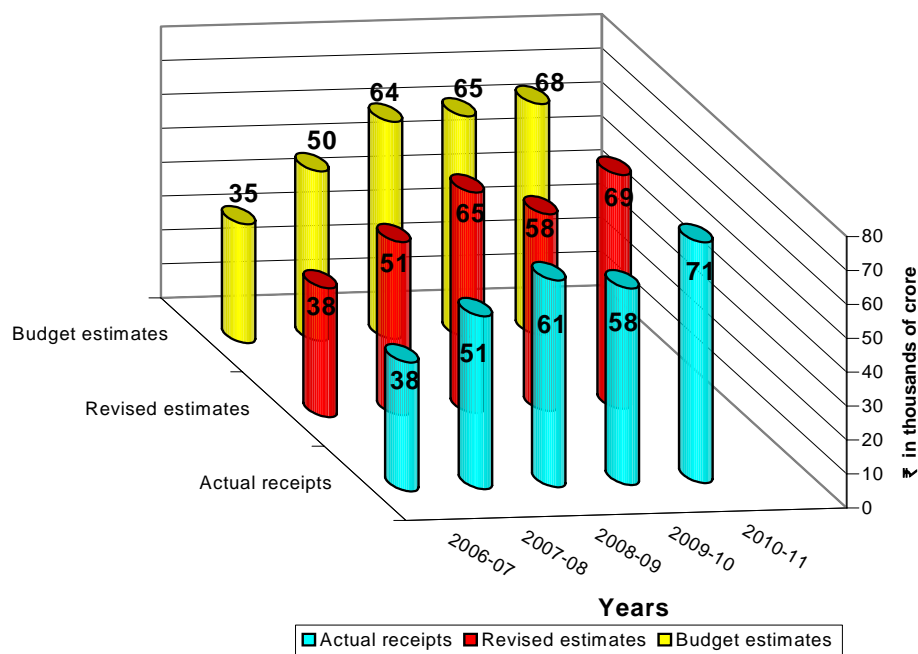
Table no. 1

(Amounts in crore of ₹)

Year	No. of services subjected to service tax	Budget estimates	Revised estimates	Actual receipts*	Difference between actual receipts and budget estimates	Percentage variation
2006-07	97	34,500	38,169	37,598	3,098	8.98
2007-08	104	50,200	50,603	51,301	1,101	2.19
2008-09	108	64,460	65,000	60,940	(-) 3,520	(-) 5.46
2009-10	115	65,000	58,000	58,422	(-) 6,578	(-) 10.11
2010-11	121	68,000	69,400	71,016	3,016	4.43

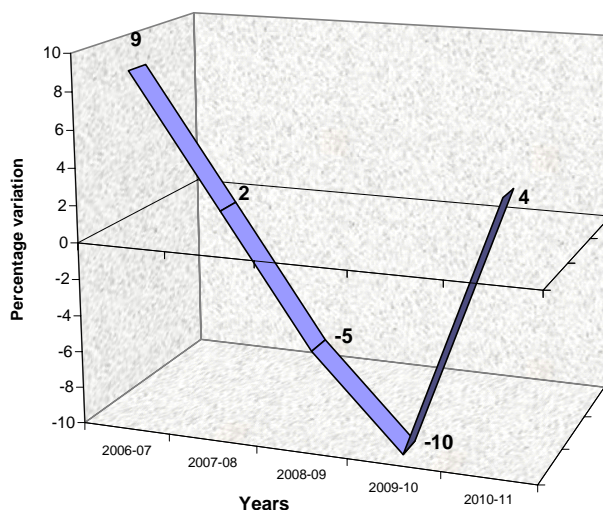
* Figures as per the Finance Accounts

Graph 1: Service Tax Receipts - Budget, Revised and Actual



During the period 2006-07 to 2010-11, the actual collections of service tax were fairly close to the budget estimates except for 2009-10 when these were 10.11 per cent lower than the budget estimates. There was a substantial increase of ₹ 12,594 crore (21.55 per cent) in service tax collection in the year 2010-11 as compared to the year 2009-10. The percentage variation between the actual receipts and budget estimates during the years 2006-07 to 2010-11 is depicted in the following graph:-

Graph 2 : Percentage variation of actual receipts over budget estimates



1.4 Service tax receipts vis-à-vis cenvat credit utilised

A comparative statement showing the details of service tax paid in cash through personal ledger account (PLA) and through cenvat credit account during the years 2009-10 to 2010-11 is given in the following table :

Table no. 2

(Amounts in crore of ₹)

Year	Service tax paid through PLA	Service tax paid through cenvat credit*	Percentage of cenvat to duty paid through PLA
2009-10	58,422	5,316	9.10
2010-11	71,016	5,349	7.53

* Figures furnished by the Ministry

The figures indicated that the actual service tax receipts (in cash) had gone up substantially in the year 2010-11. The duty payment through cenvat during the same period had increased marginally.

1.5 Refund of service tax

A comparative statement showing the details of refund of service tax* during the years 2009-10 and 2010-11 is given in the table below:

Table no.3

(Amounts in crore of ₹)

Year	Refund		Interest on refund	
	Number of cases	Amount	Number of cases	Amount
2009-10	9,852	1,409.68	29	0.38
2010-11	14,320	2,153.00	4	0.15

* Figures furnished by the Ministry

The figures indicated that interest was paid on refunds in very few cases.

1.6 Outstanding demands

The number of cases and amount involved in demands for service tax outstanding for adjudication/recovery as on 31 March 2011 are mentioned in the following table:

Table no. 4

(Amounts in crore of ₹)

Pending decision with	As on 31 March 2010				As on 31 March 2011			
	Number of cases		Amount		Number of cases		Amount	
	More than five years	Less than five years	More than five years	Less than five years	More than five years	Less than five years	More than five years	Less than five years
Adjudicating officers	774	30,896	1,369.13	14,849.99	143	26,325	17.39	30,248.66
Appellate Commissioners	66	3,987	7.74	483.40	26	5,843	1.53	4,792.90
Board	0	5	0.00	5.07	0	17	0.00	2.27
Government	5	2	0.27	0.10	1	70	0.04	7.82
Tribunals	154	3,161	147.98	35,641.07	176	4,465	1,218.48	9,756.18
High Courts	49	597	18.22	561.19	115	1,044	53.94	672.12
Supreme Court	3	31	0.67	20.26	1	77	0.03	183.12
Pending for coercive recovery measures	3,306	24,770	26.94	1,416.40	2531	22,191	24.65	1,279.58
Total	4,357	63,449	1,570.95	52,977.48	2,993	60,032	1,316.06	46,942.65

Figures furnished by the Ministry

A total of 63,025 cases involving tax of ₹ 48,258.71 crore were pending as on 31 March 2011 with different authorities, of which 42 per cent in terms of number were with the adjudicating officers of the department.

1.7 Fraud/presumptive fraud cases

The position of fraud/presumptive fraud cases alongwith the action taken by the department against defaulting assesseees during the period 2008-09 to 2010-11 is depicted in the following table:-

Table no. 5

(Amounts in crore of ₹)

Year	Cases detected		Demand of tax raised	Penalty imposed		Tax collected	Penalty collected	
	Number	Amount		Number	Amount		Number	Amount
2008-09	2,330	3,770.64	2,236.07	156	170.20	429.26	20	0.48
2009-10	2,046	3,041.60	2,510.77	110	19.41	456.84	27	0.76
2010-11	2,279	3,850.00	5,159.00	299	300.00	1,820.00	38	1.16
Total	6,655	10,662.24	9,905.84	495	489.61	2,706.10	85	2.40

Figures furnished by the Ministry

The foregoing table indicates that while a total of 6,655 cases of fraud/presumptive fraud were detected during the years 2008-11 by the department involving tax of ₹ 10,662.24 crore, it raised demand of ₹ 9,905.84 crore only and recovered ₹ 2,706.10 crore (27.32 per cent). Similarly, out of the penalty of ₹ 489.61 crore that was imposed, the department could recover only ₹ 2.40 crore (0.49 per cent).

1.8 Services contributing major revenue

Services which yielded revenue of more than ₹ 1,000 crore during 2010-11 alongwith corresponding figures for 2009-10 are mentioned in the following table:-

Table no. 6

(Amounts in crore of ₹)

Sl. No.	Service code	Name of the service	2009-10 (Actual)	2010-11 (Actual)	Percentage variation of actual over previous year	Percentage share in total collection
1.	BFN	Banking and Financial Services	4,014.63	4,283.77	6.70	6.04
2.	TES	Telecommunication service	3,389.92	4,252.59	25.45	6.00
3.	GIB	General Insurance Service	3,399.30	4,250.44	25.04	5.99
4.	BAS	Business Auxiliary services	3,385.41	3,901.43	15.24	5.50
5.	IMP	Services provided in relation to renting of immovable property, other than residential properties and vacant land, for use in the course or furtherance of business or commerce	2,023.09	3,001.24	48.35	4.23
6.	MRA	Manpower recruiting agency	2,052.05	2,705.64	31.85	3.82
7.	EWC	Services provided in relation to the execution of works contract	1,569.04	2,670.67	70.21	3.77
8.	BSS	Business support services	1,781.93	2,563.02	43.83	3.61
9.	IAX	Insurance auxiliary services	2,567.87	2,557.14	(-) 0.42	3.61
10.	MRS	Maintenance and repair	2,107.60	2,447.87	16.14	3.45
11.	GTA	Goods transport agency	1,884.01	2,157.83	14.53	3.04
12.	CER	Consulting engineer	2,084.63	2,132.79	2.31	3.01
13.	CAI	Commissioning and installation	1,494.11	1,823.18	22.02	2.57
14.	MIN	Services outsourced for mining of mineral, oil or gas	1,180.45	1,801.18	52.58	2.54
15.	MGC	Management consultant	1,585.57	1,769.41	11.59	2.50
16.	CCS	Construction services	1,319.81	1,544.53	17.03	2.18
17.	ISS	Information technology software	1,378.02	1,495.80	8.55	2.11
18.	SEA	Security Agency	1,059.84	1,314.03	23.98	1.85
19.	CON	Construction of residential complexes	542.83	1,226.06	125.86	1.73
20.	PRT	Port services	940.46	1,115.07	18.57	1.57

* Figures furnished by the Ministry.

1.9 Impact of audit reports

1.9.1 Revenue impact

During the last five years (including the current year's report), we reported 831 audit paragraphs involving service tax of ₹ 1,098.21 crore. Of these, the Government had accepted audit observations in 750 audit paragraphs involving ₹ 759.05 crore and had recovered ₹ 290.45 crore. The details are shown in the following table:

Table no. 7

(Amounts in crore of ₹)

Year of Audit Report	Paragraphs included		Paragraphs accepted						Recoveries effected					
			Pre printing		Post printing		Total		Pre printing		Post printing		Total	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
2006-07	125	79.02	117	65.49	1	1.74	118	67.23	60	18.19	34	5.23	94	23.42
2007-08	158	276.72	112	47.43	14	24.74	126	72.17	57	23.22	11	1.67	68	24.89
2008-09	155	375.55	130	305.13	8	4.92	138	310.05	90	127.49	1	0.24	91	127.73
2009-10	194	162.18	175	121.31	9	2.60	184	123.91	112	33.05	9	2.60	121	35.65
2010-11	199	204.74	184*	185.69	--	--	184	185.69	122	78.76	--	--	122	78.76
Grand Total	831	1,098.21	718	725.05	32	34.00	750	759.05	441	280.71	55	9.74	496	290.45

* In 175 out of the 184 accepted cases, rectificatory action has been taken by the department by way of issue of show cause notices, adjudication or recoveries.

1.9.2 Amendment to Act/Rules

Table no.8

Reference of audit report (AR) paragraph	Issue raised by audit	Amendment to Act/Rules etc.
Paragraph 2.2 of AR 30 of 2010-11	Absence of provisions for reversal of Cenvat credit on input services used for written off output services	This requirement has been addressed in the Point of Taxation Rules, 2011. Now, the payment of service tax is linked with raising of invoice, providing of output service or receipt of payment for output service, whichever is earlier.
Paragraph 1.2.6 of AR 15 of 2011-12	Avoidance of tax on Foreign Exchange broking services.	In the Budget 2011-12, the relevant rules have been amended ¹ . Now the service tax is payable as a transaction graded percentage depending on the value of turnover of currency exchange. Alternatively, the value of service may be determined as the difference between the transaction value and the RBI reference rate.
Paragraph 1.2.7 of AR 15 of 2011-12	Inconsistent treatment for availing cenvat credit on interest income by banks and financial institution.	In the Budget 2011-12 amendment had been made in the Cenvat Credit Rules, 2004 requiring a banking company and a financial institution including a non-banking financial company providing taxable service to pay, for every month, an amount equal to fifty per cent of the cenvat credit availed on inputs and input services in that month. Thus effectively, only 50 per cent of the cenvat credit availed is allowed to be utilised towards payment of tax or duty.

1.10 Follow-up on audit reports

Public Accounts Committee, in their Ninth Report (Eleventh Lok Sabha) desired that remedial/corrective action taken notes (ATNs) on all paragraphs of the Reports of the Comptroller and Auditor General, duly vetted by audit, be submitted to them within a period of four months from the date of the laying of the audit report in Parliament.

The Ministry of Finance had submitted remedial action taken notes on all Audit Report paragraphs relating to Service Tax.

¹ Vide Notification No.3/2011 – ST, dated 1 March 2011 and Notification No.24/2011 – ST and 26/2011 – ST, both dated 31 March 2011.

CHAPTER II
UN-REGISTERED SERVICE PROVIDERS

2.1 Management, maintenance or repair service

2.2 Services for Commercial or industrial construction, construction of complex, site formation and works contract

2.3 Manpower recruitment and supply agency services

2.4 Business auxiliary service

CHAPTER II UN-REGISTERED SERVICE PROVIDERS

Section 69 of the Finance Act, 1994, read with rule 4 of the Service Tax Rules, 1994, provides that every person liable to pay service tax shall make an application for registration to the concerned central excise officer in form ST-1, within a period of 30 days from the date on which the service tax under section 66 of the Act above is levied or from the date on which the service tax under the Finance Act is levied or from the date of commencement of business of providing taxable service if such business is commenced after introduction of the levy under the Finance Act.

We noticed cases where the assessee had not registered and not paid service tax of ₹ 24.36 crore, which are described in the following paragraphs. We communicated these observations to the Ministry through four draft audit paragraphs. The Ministry/Commissionerate had accepted (December 2011) the audit observations in two draft audit paragraphs with money value of ₹ 22.65 crore.

2.1 Management, maintenance or repair service

With the amendment made in section 65(64) of Finance Act 1994, with effect from 16 June 2005, the service of management, maintenance or repairs of properties (MMR), whether movable or immovable, has been brought in the tax net. As per clarification issued by Finance Ministry vide circular no.110/4/2009-ST dated 23 February 2009, maintenance or repairs of roads is taxable under the above category of service. It has also been clarified that activities namely resurfacing, renovation, strengthening, relaying and filling of potholes on the roads would fall under the category of maintenance or repair activities and would be taxable if service is provided under a contract or agreement. However, with effect from 27 July 2009, vide notification no.24/2009-ST dated 27 July 2009, specific exemption has been granted to the management, maintenance or repairs of roads. Therefore, service of maintenance or repairs of roads was taxable during the period from 16 June 2005 to 26 July 2009. As far as other immovable properties are concerned (Buildings, Parks, Bridges, irrigation Projects etc) there is no specific exemption to the service of management, maintenance or repairs of the said properties. Therefore, these services continue to be taxable.

Sixty nine contractors working for five Maharashtra State Public Works Divisions, (PWD-I & II Nagpur, Bhandara, Chandrapur and SPD Amravati) in Nagpur commissionerate, providing service of MMR were not registered with the service tax department and had neither charged service tax in the bills raised nor paid it to the government account during 2007-08 to 2009-10.

When we pointed this out (August 2010 and December 2010) with request to review the matter in respect of all similar works undertaken by State Public Works Divisions and other local bodies, the Commissionerate accepted the objection (March 2011) and reported that show cause notices of ₹ 21.86 crore had been issued to five service providers where as in respect of other service providers, action for recovery of service tax was under progress.

The reply of the Ministry had not been received (December 2011).

2.2 Services for Commercial or industrial construction, construction of complex, site formation and works contract

Service tax on services for commercial or industrial construction, construction of complex and Site formation has been levied with effect from 16 June 2005. Service tax on works contract service has been levied with effect from 1 June 2007.

Sixteen Contractors in Patna commissionerate, received ₹ 16.48 crore from the M/s Power Grid Corporation India Ltd., Patna (PGCIL) during the period June 2005 to November 2010 for rendering taxable service under “Site formation service”, “Construction of Complex (Residential) Service” or “Works contract service”. Cross linking /examination of said information with database of registered service tax assesseees of the Commissionerate revealed that these service providers i.e. contractors were not registered with the department under the said services and thus, prima facie, did not discharge the liability of service tax. This resulted in non payment of service tax of ₹ 78.85 lakh including cess by these unregistered service providers which was recoverable with interest and penalty.

When we pointed this out (December 2010), the Ministry accepted the audit observation (November 2011) and stated that two service providers had obtained registration and made part payment of ₹ 2.77 lakh. It was further stated that show cause notices had been issued to the five service providers, were being issued to another eight service providers and remaining one service provider was being pursued to pay the revenue.

2.3 Manpower recruitment and supply agency services

Service tax on manpower recruitment and supply agency service has been levied with effect from 16 June 2005.

We found thirteen contractors supplying manpower to eight units, in Calicut commissionerate who had not paid service tax amounting to ₹ 1.25 crore during the period 2006-07 to 2009-10.

When we pointed this out (April 2010), the Commissionerate replied (August 2010) that some of the service providers had already paid ₹ 30.77 lakh and show cause notices were issued/being issued to others. It was also stated that in respect of service providers outside Kerala (August 2010), the respective jurisdictional Commissionerates had been asked to take appropriate action.

The reply of the Ministry had not been received (December 2011).

2.4 Business auxiliary service

Service tax on business auxiliary service has been levied with effect from 10 September 2004.

M/s Reliance Telecom Ltd., Kasumpti, Shimla in Chandigarh I commissionerate, providing “cellular mobile telephony services” was availing services like franchisee and agencies (commission agents) for selling of connections, charging/recharging coupons and collecting payments on commission basis from 21 service providers but there was no evidence on records to show that these 21 service providers had paid service tax on these services. Service Tax amounting ₹ 46.03 lakh was leviable on account of commission of ₹ 3.97 crore paid during 2005-06 and 2006-07 to these service providers.

The matter was brought to the notice of the Commissionerate (April 2009 & February 2011). The reply of the Commissionerate was awaited (March, 2011).

The reply of the Ministry had not been received (December 2011).

CHAPTER III
VALUATION OF TAXABLE SERVICES

3.1 Undervaluation of taxable value resulting in short payment of service tax

3.2 Suppression of value of services

3.3 Incorrect self assessment

CHAPTER III 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. We noticed a few cases of incorrect valuation of taxable service leading to short payment of service tax of ₹ 9.45 crore, which are described in the following paragraphs. We communicated these observations to the Ministry through four draft audit paragraphs.

3.1 Undervaluation of taxable value resulting in short payment of service tax

Section 67(1) of the Finance Act, 1994, stipulates that where provision of service is for a consideration in money, service tax is chargeable on the gross amount charged by the service provider for such service rendered by him.

Further Rule 5 (1) of Service Tax (Determination of Value) Rules, 2006 provides that all expenditure or costs incurred by the service provider in the course of providing taxable service shall be included in the value for the purpose of charging service tax except those incurred as a ‘pure agent’ of the recipient of service, subject to fulfilment of all the conditions mentioned under Rule 5(2), *ibid.* This Rule *inter alia* states that where the service provider act as ‘pure agent’ the liability to make payment to the third party should be on the recipient of service and the service provider should recover from the recipient of service, only such amount as has been paid by the service provider to the third party.

3.1.1 Service tax on ‘Stock Broker’s Service’ was payable from 1 July, 1994. Section 65 (105)(a) of the Finance Act, 1994, defines this service as any service provided / to be provided to any person in connection with the sale and purchase of securities listed on a recognised stock exchange.

We scrutinised the contract notes and invoices of three registered Stock Brokers viz. M/s Anand Rathi Share and Stock Service Ltd. (ARSSSL), M/s Angel Broking Ltd. (ABL) and M/s Angel Capital & Debt Market Ltd. (ACDML) in Service Tax Mumbai-I commissionerate and two Stock Brokers viz. M/s India Infoline Ltd. (IIL), M/s India Infoline Commodities Ltd. (IICL) in Service Tax Mumbai II commissionerate. These assesseees were engaged in the sale and purchase of securities for its various clients through the recognised stock exchange(s). We found that they had recovered ₹ 52.88 crore during April 2006 and May 2008 as transaction charges from their clients, in addition to brokerage but had not included the same in the taxable value. This resulted in short payment of service tax of ₹ 6.53 crore, which was recoverable with interest.

When we pointed this out (April/May 2010), the Commissionerate stated (November 2010), in the case of ARSSSL that transaction charges were borne by the clients and the stock brokers being only the facilitator of the trade were not liable to pay service tax thereon and further contended that since it was in the nature of a statutory levy, no service tax could be levied on the same. The reply was incorrect as the transaction charges were a liability imposed by stock exchanges on its trading members i.e. stock brokers and not a liability of the clients. This is evident from the circular issued by National Stock Exchange on 11 December 2000 to its trading members.

In the case of IIL, the Commissionerate stated (December 2010) that the stock broker was recovering transaction charges as a pure agent of its clients and hence the same was not part of the taxable value. The reply was incorrect as the transaction charges were a liability of the stock brokers and there was no question of them acting as ‘pure agents’ of their clients.

In the cases of ACDML and ABL, the Commissionerate cited (August 2010) CESTAT decision in case of M/s Anagram Capital Ltd. Vs. Commissioner of Central Excise and Service Tax, Ahmedabad {2010 (17) S.T.R. 55 (Tri.-Ahmd.)} and stated that the assesseees were not liable to pay service tax on transaction charges. The case law quoted by the Commissionerate is not relevant here. In that case, stay order in favour of assessee had been given on the grounds that the demand was time barred. On the contrary, in the case of M/s Sriram Insight Share Brokers Ltd. Vs. Commissioner of Service Tax, Kolkata {2009 (14) S.T.R. 86 (Tri.-Kol)} it was held that the transaction charges, were to be included in the gross value by stock broker and not of the client of the stock broker. The Board had also clarified vide F. No.187/107/2010-CX.4, dated 17 September 2010, that except Security Transaction Tax and Stamp Duty, all other charges, including transaction charges, recovered by the broker from the buyer/seller of securities (clients) are to be included in the taxable value.

The reply of the Ministry had not been received (December 2011).

3.1.2 M/s GAC Shipping (India) (P) Ltd., W. Island, Ernakulam in Cochin commissionerate, did not include expenses such as garbage removal charges, customs overtime charges, cost of charts and flags, hatches cleaning charges, fender charges and charterers’ agency fee incurred in the course of providing taxable service in the taxable value for the period April 2006 to September 2008. This had resulted in short levy of service tax amounting to ₹ 12.08 lakh.

When we pointed this out (June 2008), the Commissionerate stated (February 2011) that the show cause notice had been issued and was pending adjudication.

The reply of the Ministry had not been received (December 2011).

3.2 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.

M/s Electrical Manufacturing Co. Ltd., in Patna commissionerate, received gross amount of ₹ 21.90 crore during the period November 2007 to November 2010 from M/s PGCIL for erection, commissioning, installation, freight and insurance. The service tax and education cess liability of M/s EMC on the gross receipt of ₹ 21.90 crore was ₹ 2.12 crore.

Scrutiny of the returns of M/s EMC showed that it was filing returns under 'Works Contract Service' whereas its registration was under erection, commissioning or installation (CAI), commercial or industrial construction (CCS), consulting engineer (CER), survey and map making (SUR) and transport of goods by road (GTA) services but not under works contract service. However, it had declared taxable value of only ₹ 9.05 crore and paid tax of only ₹ 36.66 lakh at the rate of 4 per cent i.e. rate applicable for composite scheme of works contract which was not applicable as it was not registered for works contract service. Thus, the assessee had not paid service tax and education cess of ₹ 1.75 crore. This was recoverable alongwith interest of ₹ 42.84 lakh (upto June 2011) and appropriate penalty.

We pointed this out in December 2010. The reply of the Commissionerate and the Ministry had not been received (December 2011).

3.3 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 assess his own service tax and deposit it in 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 Life Insurance Corporation of India Ltd. in service tax commissionerate, Mumbai I received ₹ 18.42 crore as legal documentation fees and upfront fees during 2006-07 and 2008-09 as per their financial records (trial balance) and had paid only ₹ 1.65 crore against ₹ 2.27 crore payable as service tax thereon. This resulted in short payment of service tax of ₹ 62.05 lakh, which was recoverable with interest.

When we pointed this out (August 2009), the Commissionerate intimated (November 2009) that the assessee had made differential service tax payment of ₹ 12 lakh for 2006-07 and ₹ 36.81 lakh for 2008-09 from its cenvat credit account. The Commissionerate stated that assessee had opted for 'provisional assessment' for 2008-09 and as per the final return filed (October 2009) by them, differential short payment of service tax for this period was ₹ 36.81 lakh. Interest on delayed payment was yet to be recovered (December 2011).

The reply of the Ministry had not been received (December 2011).

CHAPTER IV
NON-PAYMENT OF SERVICE TAX BY
REGISTERED SERVICE PROVIDERS

4.1 Courier service

4.2 Works contract service and construction of complex service

4.3 Business auxiliary service

4.4 Renting of immovable property

CHAPTER IV

NON-PAYMENT OF SERVICE TAX BY REGISTERED SERVICE PROVIDERS

Service tax is levied on specified services. The rate of tax was fixed at five per cent upto 13 May 2003, eight per cent from 14 May 2003, 10 per cent from 10 September 2004, 12 per cent from 18 April 2006 and 10 per cent from 24 February 2009.

We noticed a few cases of non-levy of service tax resulting in non-payment of service tax of ₹ 5.64 crore, which are described in the following paragraphs. We communicated these observations to the Ministry through five draft audit paragraphs. The Ministry/Commissionerate had accepted (December 2011) the audit observations in four draft audit paragraph with money value of ₹ 5.23 crore.

4.1 Courier service

Under section 65(33) of the Finance Act, 1994, 'courier agency' means any person engaged in the door-to-door transportation of documents, good or articles utilizing the services of a person, either directly or indirectly, to carry or accompany such document, goods or articles.

M/s Expressit Courier Services Private Ltd. in Service Tax, Mumbai I commissionerate, engaged in providing 'Courier Services' filed (May 2010) belatedly, the service tax returns for the half yearly periods ending March 2009, September 2009 and March 2010 in May 2010. We found that the assessee had not paid the service tax shown in the returns for the period from November 2008 to March 2010, which amounted to ₹ 1.42 crore. Although the omission could have been ascertained by preliminary scrutiny of the returns, the Commissionerate had failed to detect the non-payment of tax and had not issued any show cause notice. Non payment of service tax of ₹ 1.42 crore was recoverable with interest.

When we pointed this out (June 2010), the Commissionerate admitted the audit objection (June 2011) and stated that show cause cum demand notice had been issued in May 2011 to recover service tax of ₹ 2.35 crore alongwith interest and penalty.

The Commissionerate did not intimate the action taken on the officials who had failed to detect the non-payment of tax from preliminary scrutiny of the returns. Even after we pointed out the non-payment, the officials concerned issued the show cause notice after almost a year.

The reply of the Ministry had not been received (December 2011).

4.2 Works contract service and construction of complex service

Under section 65(105) (zzzza) of the Finance Act, 1994 ‘works contract service’ means any service provided or to be provided to any person by any other person in relation to the execution of works contract. It excludes contracts for roads, airports, railways transport terminals, bridges, tunnels and dams.

M/s P&R Infra Projects Ltd., Chandigarh in Chandigarh I commissionerate, had provided works contract service and erection and installation service as a sub-contractor to various clients and received an amount of ₹ 74.19 crore during the period April 2007 to March 2010. We found that the assessee had been making delayed payments of tax. After we raised the issue (April 2010), the assessee paid service tax of ₹ 1.88 crore in May and June 2010 but did not pay interest of ₹ 78.48 lakh which was also recoverable due to the delayed payments.

When we pointed this out (March 2011), the Ministry accepted the audit observation and stated that a show cause notice was being issued (December 2011).

4.3 Business auxiliary service

Section 65(19) of the Finance Act as amended in May 2006 defines ‘business auxiliary services to mean any taxable service provided or to be provided to a client by any person for promotion or marketing or sale of goods, promotion or marketing of services or any customer care or recovery of cheques etc., and includes services as a commission agent’.

4.3.1 M/s Ashok Chaturvedi, in Delhi service tax commissionerate, had received payment aggregating to ₹ 2.50 crore from an individual for refraining from participating in various bids during the period 2005-06. By abstaining/refraining from bids on the request of an individual for a consideration, the assessee had indirectly promoted the business of that individual. As such the service rendered by the assessee was classifiable under the head ‘business auxiliary service’ but the assessee had not discharged his service tax liability on the same. Service tax and cess of ₹ 25.50 lakh, besides interest of ₹ 15.19 lakh and penalty were recoverable.

When we pointed this out (June and November 2008), the Commissionerate stated (November 2010) that a show cause notice demanding service tax including cess aggregating to ₹ 25.50 lakh alongwith interest and penalty had been issued to the assessee.

The Ministry in its reply (December 2011) stated that the matter is under examination.

4.3.2 M/s Protech Galvanisers and Fabricators Pvt. Ltd. Bhiwadi in Jaipur I commissionerate, received consideration of ₹ 5.21 crore towards rendering of taxable services under category of Erection, Commissioning, Installation Services and Business Auxiliary Services and also paid freight ₹ 30.69 lakh

related to transportation of goods by road services (as recipient) during the period from October 2009 to March 2010 on which service tax of ₹ 20.74 lakh was liable to be paid but the assessee failed to discharge the liability of service tax. Further, the assessee also did not file half yearly return ST-3 as required under aforesaid provisions.

When we pointed this out (November 2010), the Ministry accepted the audit observation and stated (September 2011) that show cause notice for non payment of service tax was being issued. It also stated that the show cause notice for non submission of service tax returns had already been issued to the assessee.

4.4 Renting of immovable property

As per section 65(90a) of the Finance Act, 1994 'renting of immovable property' service includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business of commerce.

Municipal Corporation, U.T. Chandigarh in Chandigarh I commissionerate, received ₹ 7.60 crore as ground rent during 2007-2009 in respect of hotel sites, but no service tax was paid by the corporation as required under the rules *ibid*. This resulted in non payment of service tax amounting to ₹ 93.97 lakh which was recoverable with interest.

When we pointed this out (November 2010), the Ministry admitted (October 2011) the objection and stated that show cause notice was being issued.

CHAPTER V CENVAT CREDIT

5.1 Cenvat credit utilised for payment of tax on input services

5.2 Cenvat credit of service tax paid on transportation services beyond the place of removal

5.3 Separate account for common input services used in taxable/exempted services not maintained

5.4 Premature availing of cenvat credit on input services

CHAPTER V CENVAT CREDIT

Under the Cenvat Credit Rules, 2004, the credit availed on service tax paid on input services and central excise duty paid on inputs and capital goods can be utilised for payment of central excise duty on finished goods or service tax payable on output services subject to fulfilment of certain conditions. We noticed some cases of incorrect grant of cenvat credit involving ₹ 5.06 crore of service tax which are described in the following paragraphs. We communicated these observations to the Ministry through six draft audit paragraphs. The Ministry/department had accepted (December 2011) the audit observations in two draft audit paragraph with money value of ₹ 1.46 crore.

5.1 Cenvat credit utilised for payment of tax on input services

Under the provisions of rule 3(4)(e) of the Cenvat Credit Rules, 2004, cenvat credit can be utilised for payment of service tax only on output services.

5.1.1 M/s Thermax Ltd., in Pune I commissionerate, availed cenvat credit of ₹ 1.92 crore on various input services. The assessee utilised this credit to pay service tax on the input services received from various foreign service providers during the period April 2005 to March 2008. The utilisation of cenvat credit of ₹ 1.92 crore for inputs services was irregular, which was recoverable in cash alongwith interest.

When we pointed this out (December 2008), the Ministry did not admit (December 2011) the audit observation and stated that the services received from foreign service providers were input services for the assessee, hence, cenvat credit of tax paid on these services was admissible to the assessee.

The reply of the Ministry supports our contention that these services were input services for the assessee. Hence the cenvat credit on the tax paid were admissible but only for paying service tax on output services. In the instant case, the cenvat credit was used to pay service tax on input services, which was not admissible.

5.1.2 M/s ISMT Ltd., in Pune III commissionerate, utilised cenvat credit of ₹ 22.13 lakh during April 2006 to March 2007 for payment of service tax towards the goods transport agencies services availed for inward transport of inputs/capital goods. As these services were input services, the utilisation of cenvat credit of ₹ 22.13 lakh for these input service was irregular, which was recoverable in cash alongwith interest.

When we pointed this out (February 2011), the Commissionerate stated (June 2011) that since GTA service had been omitted from output service definition from 1st March 2008, the same had to be treated as output service for the period prior to 2008. Further, the Commissionerate had referred to decision held in Asian Tubes Ltd. {(2010 (19) STR 315 (Commr. Appeal)} where it was held in view of the explanation to rule 2(p) of Cenvat Credit Rules, 2004, effective prior to 19 April 2006, that the manufacturer service recipient was a deemed service provider and any service provided by him was to be deemed

as an output service and that the cenvat credit availed towards the payment of service tax was in accordance with law.

The decision quoted by the Commissionerate was not applicable in the instant case, as the period of objection pertained to the period April 2006 to March 2007 and the said explanation was done away vide notification 8/2006/CE dated 19 April 2006. Further, the reply of the Commissionerate was at variance with Board circular (23/8/2007) which clarified that the service provided by a Goods Transport Agent (GTA) for which the consignor or consignee is made liable to pay service tax does not become an 'output service' for such consignor or consignee and that the payment of such service tax cannot be made through credit accumulated by such consignor or consignee.

The reply of the Ministry had not been received (December 2011).

5.2 Cenvat credit of service tax paid on transportation services beyond the place of removal

Under rule 2(l) of Cenvat Credit Rules, 2004, input service means any service (i) used by a provider of taxable service for providing an output service, or (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal and includes services used in relation to setting up, modernisation, renovation or repairs of a factory, premise of provider of output service or an office relating to such factory or premises, inward transportation of inputs or capital goods and outward transportation upto the place of removal.

Under the provisions of rule 3 of the Cenvat Credit Rules, 2004, a manufacturer is allowed to take credit of service tax paid on any 'input service' used in the manufacture of final goods. Service tax paid by the manufacturer for outward transportation of final products beyond the place of removal is not an input service and credit of tax paid on such service is not admissible.

5.2.1 M/s Vedanta Aluminium Ltd., Langigarh a manufacturer of Calcined Alumina in Bhubaneswar I commissionerate, had availed cenvat credit of ₹ 1.30 crore towards service tax paid during the period between April 2008 and March 2010 on certain services like construction service viz., construction of barrack and hostel at civil township and outdoor catering services. The availing of service tax credit on these services was incorrect as these fell outside the scope of input service and had no nexus with process of manufacture of final products.

When we pointed this out between (April and October 2010) the Ministry accepted (October 2011) the audit observation and stated that show cause notice was under process of issue.

5.2.2 M/s PSL Ltd., Phagi in Jaipur I commissionerate, availed exemption on spirally welded M S Pipes supplied to 'Bisalpur Water Supply Project'

financed by the Asian Development Bank. Scrutiny of records revealed that the original contract of manufacture and supply of spiraled M S pipes for the Project was awarded to M/s Larsen & Toubro Ltd., Chennai who subsequently sub contracted this work to the assessee. The main contractor agreed for free supply of principal raw material HR coil to the sub contractor and the subcontractor carried out entire manufacture of spirally welded M S pipes on behalf of the main contractor. As per terms and conditions of agreement entered between the assessee (sub contractor) and M/s Larsen & Toubro Ltd., Chennai (Main contractor), service tax paid by the assessee on transportation of H.R coil would be reimbursed by the main contractor. Consequently the assessee got reimbursement of service tax paid by him amounting to ₹ 30.65 lakh (service tax ₹ 29.76 lakh, education cess ₹ 0.59 lakh and SHE cess ₹ 0.30 lakh) from main contractor by raising invoices and also availed cenvat credit thereof.

Since the assessee got reimbursement of service tax paid by him on GTA service from main contractor, the assessee was not entitled to avail cenvat credit thereof by treating it as input service as this was input service only for the main contractor. Interest under rule 14 of the Cenvat Credit Rules, 2004, was also to be recovered.

When we pointed this out (February 2011), the Commissionerate stated (May 2011) that the assessee had correctly taken cenvat credit of service tax paid by him through challan on transportation of inputs as the inputs were used by them in the manufacture of final products. The reply of the Commissionerate is not acceptable to audit as the service tax paid by the assessee on transportation of inputs was reimbursed by the main contractor. Therefore the assessee was not entitled to avail cenvat credit of service tax on GTA service as this was an input service for the main contractor.

The reply of the Ministry had not been received (December 2011).

5.3 Separate account for common input services used in taxable/exempted services not maintained

As per rule 6(2) of the Cenvat Credit Rules, 2004 where a provider of output service avails of cenvat credit in respect of any input services and provides such output services which are chargeable to tax as well as exempted from service tax, then the provider of output service shall maintain separate accounts for input services meant for use in providing output service and quantity of input services used in the exempted services. Further as per rule 6(3) of said Cenvat Credit Rules, provider of output services opting not to maintain separate accounts shall have an option either to pay an amount equal to eight per cent of the value of exempted service under rule 6(3)(i) or pay an amount equivalent to the cenvat credit attributable to inputs and input services used in or in relation to the manufacture of exempted goods or for provision of exempted services under rule 6(3)(ii) after compulsorily intimating in writing to the Superintendent of Central Excise and pay provisionally for every month under rule 6(3A).

M/s Tata Consulting Engineers Ltd., in Mumbai I service tax commissionerate, provided taxable as well as exempted services during the 2008-09 and 2009-10 but had not maintained separate accounts of cenvat credit availed on inputs/input services. The assessee had neither exercised the option to pay an amount equal to 8 per cent (five per cent with effect from July 2009) of the value of exempted services nor did the assessee pay an amount equivalent to the cenvat credit attributable to inputs and input services used in or in relation to the provision of exempted services. The total exempted services provided during the period April 2008 to September 2009 was ₹ 14.96 crore. Therefore the assessee was liable to pay ₹ 1.15 crore (being 8 per cent of the value of the exempted services during April 2008 to June 2009 and 5 per cent during July 2009 to September 2009).

When we pointed out (March 2010), the assessee intimated (April 2010) the Commissionerate about opting for payment of amount equivalent to the cenvat credit attributable to inputs/input services used in or in relation to provision of exempted output service subject to conditions and procedure specified in Rule 6(3A). Accordingly assessee paid ₹ 14.05 lakh under Rule 6(3A)(h) read with Rule 6(3A)(c) and ₹ 2.53 lakh towards interest calculated as per Rule 6(3A)(i).

The Commissionerate had not issued any show cause notice and this issue was not observed by internal audit conducted during December 2009. Reply was awaited from the Commissionerate (December 2011).

The reply of the Ministry had not been received (December 2011).

5.4 Premature availing of cenvat credit on input services

Rule 4(7) of the Cenvat Credit Rules, 2004, provides that cenvat credit of tax paid on input services shall be allowed, on or after the day on which payment is made for the input service and service tax. Further, rule 14 of the rules *ibid*, provides that where the cenvat credit has been taken or utilised wrongly, the same alongwith interest shall be recovered from the manufacturer or the provider of output service.

M/s Gwalior Chemical Industries Ltd., Nagada, in Indore commissionerate, availed cenvat credit of service tax paid on various input services on 31 August 2009. The payment of value of these input services including service tax was made in the subsequent month i.e. from 2 September 2009 to 21 September 2009. As the cenvat credit was availed before the payment of value of service charges, therefore, the cenvat credit of ₹ 16.24 lakh was wrongly availed, which was recoverable alongwith interest and penalty.

When we pointed this out (October 2010) the Commissionerate stated that the assessee had agreed to pay the amount. Further reply was awaited (December 2011).

The reply of the Ministry had not been received (December 2011).

CHAPTER VI EXEMPTIONS

6. Incorrect availment of exemption

6.1 Irregular abatement

6.2 Irregular exemption by builder/developer

CHAPTER VI EXEMPTIONS

A few interesting issues pertaining to the short payment of service tax due to incorrect availment of exemption are mentioned in the following paragraphs. These issues have a total revenue implication of ₹ 4.39 crore and were communicated to the Ministry through two draft audit paragraphs. The Ministry had accepted (December 2011) the audit observation in one draft audit paragraph with revenue implication of 1.09 crore.

6. Incorrect availment of exemption

Under section 93 of the Finance Act, 1994, the Government is empowered to exempt services attracting service tax from the whole or any part of the tax leviable thereon, either generally or subject to conditions, as may be specified in the notifications granting these exemptions.

6.1 Irregular abatement

By a notification dated 1 March 2006, construction services are exempt from the levy of service tax to the extent of 67 per cent of the value of taxable service subject to the conditions that (i) cenvat credit on inputs, input services and capital goods is not availed of; (ii) the benefit of exemption of the cost of material under notification dated 20 June 2003 is not availed of, (iii) the gross amount charged includes the value of good and materials supplied or provided or used by the provider of the construction service for providing such service and (iv) services provided are not exclusively for completion and finishing services in relation to building or civil construction.

M/s Alstom Projects India Ltd., in Delhi Service Tax Commissionerate, availed cenvat credit of ₹ 9.33 crore on various input services from April 2006 to October 2007. It utilised ₹ 78.73 lakh of cenvat credit for payment of service tax and cess on construction of ‘commercial or industrial construction services’ and ‘construction of complex services’. It also availed abatement of 67 per cent amounting to ₹ 26.42 crore, which was irregular since it had availed and utilised cenvat credit on input services. Consequently, there was short payment of service tax of ₹ 3.30 crore, which was recoverable with interest.

When we pointed this out (August and October 2008), the Commissionerate stated (March 2011) that a show cause notice demanding service tax including cess of ₹ 3.33 crore, besides interest and penalty, had been issued to the assessee.

The reply of the Ministry had not been received (December 2011).

6.2 Irregular exemption by builder/developer

The Board vide circular dated 29 January 2009 exempted service for construction of complex provided by builder/developer in respect of construction meant for personal use as well as outright sale of completed building on payment of entire consideration in lump-sum.

M/s ETA Star Property Developers Ltd., Chennai, in service tax commissionerate, Chennai, received ₹ 26.53 crore from clients for rendering service for works contract/construction of residential complex between January 2009 and June 2010 but did not pay service tax citing Board circular *ibid*. We observed that there was no outright sale of flat and exemption was not available to the assessee under the said circular. Hence, service tax and cess of ₹ 1.09 crore was recoverable along with interest.

When we pointed this out (December 2010 and April 2011), the Ministry accepted the observation (September 2011) and reported that show cause notice was being issued.

*CHAPTER VII
SERVICE TAX UNDER
REVERSE CHARGE*

7.1 Sales commission, advertisement and customs clearance charges

7.2 Management consultant and intellectual property services

7.3 Commission on export sale

CHAPTER VII

SERVICE TAX UNDER REVERSE CHARGE

Under section 66A(1) of the Finance Act, 1994, where any service specified in clause (105) of section 65 is (a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and (b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India, such service shall, for the purposes of this section, be taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this chapter shall apply.

Rule 2 (1) (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.

We noticed a few cases of short payment of service tax of ₹ 57.89 lakh, under reverse charge, which are described in the following paragraphs. We communicated these observations to the Ministry through three draft audit paragraphs.

7.1 Sales commission, advertisement and customs clearance charges

M/s Symbiotec Pharma Lab. Ltd., Indore, in Indore commissionerate, engaged in the manufacture of bulk drugs falling under chapter 29 of Central Excise Tariff Act, 1985, paid an amount of ₹ 161.16 lakh in foreign currency on account of services received viz., sales commission, advertisement and customs clearance charges from the foreign service providers during the period from 2006-07 to 2008-09. However, service tax of ₹ 19.92 lakh including cess leviable thereon was not paid. This resulted in non-payment of service tax which was recoverable with interest and penalty.

When we pointed this out (April 2010), the Commissionerate intimated (November 2010) that for the period 2006-07 and 2007-08, the assessee had paid ₹ 3.20 lakh (₹ 1.90 lakh from cenvat account and ₹ 1.30 lakh through PLA) in September 2008 and for the period 2008-09 and 2009-10, he had paid ₹ 15.15 lakh in March and April 2010.

The reply did not settle the issue. For the period from 2006-07 to 2008-09, the assessee paid service tax on taxable service of ₹ 97.68 lakh only instead of on ₹ 161.16 lakh. The reasons for non payment of service tax on the residual amount of ₹ 63.48 lakh had not been disclosed. Moreover, the rate of service

tax during that period was 12 per cent whereas the tax was paid at the rate of 10 per cent. Even the payment of service tax of ₹ 1.90 lakh through cenvat credit account was not acceptable in terms of rule 3(4)(e) of the Cenvat Credit Rules, 2004, as the service tax was being paid for an input service.

The reply of the Ministry had not been received (December 2011).

7.2 Management consultant and intellectual property services

The applicable rate of service tax on taxable services was changed from 12.36 per cent to 10.3 per cent with effect from 24 February 2009.

In M/s Reliance Industries Ltd. Vs the Commissioner of Central Excise, Rajkot {reported in 2008(10) S.T.R. 243 (Tri.-Ahmd)}, it was held that rate of tax prevailing on date of rendering services will be applicable in the absence of a specific provision.

M/s Flakt (India) Ltd. and M/s Vesuvius India Ltd in Kolkata Service Tax commissionerate, had received management consultant and intellectual property services from foreign service providers between January 2008 and January 2009 and paid the service charges in March 2009 and May 2009. We observed that assesses had paid service tax at 10.3 per cent prevailing on the date of payment of service tax instead of 12.36 per cent which was the rate applicable during receipt of the service. This resulted in short levy of service tax of ₹ 21.80 lakh, which was recoverable with interest.

When we pointed this out (October 2009 and February 2010), the commissionerate while not admitting the observation in the first case, stated (February 2010) that the service tax was payable only on receipt of value of the service and the time of providing the service was not relevant. The Commissionerate however admitted (September 2010) the objection against the other assessee. Thus, the Commissionerate took different stands in two different cases.

The reply of the Ministry had not been received (December 2011).

7.3 Commission on export sale

M/s Spray Engineering & Device Ltd., Unit-I Baddi in Chandigarh I commissionerate, received taxable services provided by foreign based agent and showed ₹ 134.86 lakh towards commission on export sale in its Commission Ledger Account for financial year 2006-07 but did not pay service tax of ₹ 16.51 lakh on this amount, which was recoverable alongwith interest.

When we pointed this out (April 2008 and November 2009) the Commissionerate stated (March 2010) that the assessee had actually paid ₹ 131.28 lakh to agent and the difference in amount booked and paid was due to fluctuation in value of foreign currency. The service tax due of ₹ 16.17 lakh had been deposited by the assessee during the year 2008-09. We scrutinised the TR-6 challans and found that the assessee had deposited ₹ 5.17 lakh for unit I and ₹ 11 lakh for its other unit. It was not clear why the service tax was deposited by two units whereas the commission was booked in the ledger account of only unit I. Therefore, we sought from the Commissionerate, the details of service received by each of the two units. Further reply of the Commissionerate was awaited (December 2011).

The reply of the Ministry had not been received (December 2011).

New Delhi
Dated :

(SUBIR MALLICK)
Principal Director
(Central Excise and Service Tax)

Countersigned

New Delhi
Dated :

(VINOD RAI)
Comptroller and Auditor General of India

Glossary of terms and abbreviations

Abbreviated form	Expanded form
Board	Central Board of Excise and Customs
commissionerate	Commissionerate of central excise/service tax
GTA	Goods transport agency
Ltd.	Limited
PLA	Personal Ledger Account
Pvt.	Private
the Ministry	The Ministry of Finance