

CHAPTER II
UN-REGISTERED SERVICE PROVIDERS

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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).