

CHAPTER III
VALUATION OF TAXABLE SERVICES

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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).