

## CHAPTER VI EXEMPTIONS

### **6. Incorrect availment of exemption**

#### **6.1 Irregular abatement**

#### **6.2 Irregular exemption by builder/developer**

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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.