

## Chapter II

### Non Compliance with Rules and Regulations

#### Central Excise

**2.1** We examined the records maintained by the assesseees in relation to the payment of Central Excise duty and checked the correctness of duty payment and availing of cenvat credit. We noticed cases of incorrect grant of cenvat credit, non/short payment of Central Excise duty and non-payment of interest involving revenue of ₹ 61.44 crore. We communicated these observations to the Ministry through 78 draft audit paragraphs. The Ministry/Commissionerate accepted (May 2013) the audit observations in 76 draft audit paragraphs and initiated/completed corrective action in all these cases involving revenue of ₹ 60.74 crore. We have furnished the details of these paragraphs in Appendix III. The Ministry admitted one draft audit paragraph but did not report any corrective action. The Ministry is yet to respond to one draft audit paragraph (May 2013).

#### **Non reversal of cenvat credit in respect of inputs and input service used in generation of electricity not used in manufacture**

**2.2** Rule 6 (1) of the Cenvat Credit Rules 2004 stipulates that no credit of specified duty shall be allowed on inputs/input services used in the manufacture of final products which are exempt or chargeable to “nil” rate of duty.

**2.3** Further, Rule 6(3) provides that if cenvat credit is availed on common inputs/ input services which are used in manufacture of exempted goods as well as in dutiable goods and separate accounts of their use are not maintained, then the manufacturer shall either pay an amount equal to ten per cent of value of the exempted goods 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 provision of exempted services, subject to the conditions and procedure specified therein.

**2.4** M/s Neelachal Ispat Nigam Ltd. in Bhubaneswar I Commissionerate, engaged in manufacture of pig iron availed cenvat credit on inputs like power oil, transformer oil, oil and lubricants, boric powder, LPG gas etc. and common input services like GTA, courier service etc. The assessee generated electricity part of which, valuing ₹ 17.89 crore, was sold to M/s GRIDCO during FY08. As the assessee did not maintain separate accounts of inputs/ input services, he was liable to pay either an amount of ₹ 1.79 crore being ten per cent of the value of electricity sold or an amount equivalent to cenvat credit involved in generation of electricity sold to M/s GRIDCO.

**2.5** *When we pointed this out (August 2008), the Ministry stated (December 2012) that electricity is not an excisable product, hence provision of rule 6 of Cenvat Credit*

*Rules 2004 would not apply to the case. However, in view of the decision of Supreme Court in the case of M/s Maruti Suzuki Ltd. cited in 2009 (240) ELT 641 (SC), the assessee was not eligible to avail credit on inputs and input services used in the generation of electricity sold to M/s GRIDCO. We await further progress (May 2013).*

### **Short payment of duty on petroleum products sold to oil companies**

**2.6** According to section 4(3)(d) of Central Excise Act, 1944, 'transaction value' means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to or on behalf of the assessee, by reason of, or in connection with sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter, but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or payable on such goods.

**2.7** M/s. Bharat Petroleum Corporation Ltd. (BPCL) Kochi Refinery, in Cochin Commissionerate, engaged in manufacture of petroleum products, cleared petroleum products to oil companies through pipeline transfer at Refinery Gate Price (RGP), fixed fortnightly, based on the quantity computed at 15<sup>0</sup> C. The assessee prepared excise invoices for the transaction for each consignment and paid duty on the value indicated in the excise invoice. Payments from oil companies was on the basis of fortnightly-raised commercial invoices on the basis of a document viz. joint certificate indicating quantity cleared from the refinery during the fortnight as confirmed by recipient oil companies. The assessee accounted for an amount of ₹ 6.28 crore as transit gain during the year FY10, being the net difference between the commercial invoice and excise invoice, for which it did not however pay duty.

**2.8** When we pointed this out (November 2010), the Commissionerate stated (April 2012) that removal is the crucial stage for payment of duty and condition of goods at the time of removal is relevant and the law does not provide for tracking buyers premises to determine actual duty liability with reference to receipt quantity. The Commissionerate further stated that there was no manufacturing activity taking place in the case of transit gain and levy of duty on differential value involved in transit gain is against section 3 of Central Excise Act, 1944. However protective SCN for ₹ 17.04 crore was issued to the assessee.

**2.9** The reply of the Commissionerate is not acceptable. The explanation to section 4(1) and the definition of transaction value as defined in section 4(3)(d) show clearly that any amount the buyer is liable to pay to the assessee, in connection with the sale, whether or not payable at the time of sale, is to be considered in the computation of transaction value.

**2.10** The difference between figures recorded in the commercial and excise invoices, was attributable to goods manufactured and cleared at the time of removal and hence any further consideration received would be part of the transaction value.

**2.11** Further, Board in para 2(i) of Circular No. 804/2005 dated 4 January 2005 clarified that duty shall be paid on any differential quantity between the quantity cleared and actually received by the end user.

**2.12** The reply of the Ministry remains to be received (May 2013).

### **Service Tax**

**2.13** We examined the records maintained by the assessees in relation to the payment of Service Tax and checked the correctness of Service Tax payment and availing of cenvat credit. We noticed cases of incorrect grant of cenvat credit, non/short payment of Service Tax and non-payment of interest involving revenue of ₹ 478.04 crore. We communicated these observations to the Ministry through 124 draft audit paragraphs. The Ministry/Commissionerate had accepted the audit observation in 123 draft audit paragraphs and had initiated/completed corrective action in all these cases involving revenue of ₹ 476.62 crore. Details of these paragraphs are available in Appendix IV. In respect of one draft audit paragraph, though the Ministry admitted the audit objection, it is yet to communicate completion of rectificatory action.

### **Manpower recruitment and supply agency services**

**2.14** As per section 65(68) of the Finance Act 1994 'manpower recruitment or supply agency' means any person engaged in providing any service directly or indirectly in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person.

**2.15** M/s SAIL Refractories, Unit IFFICO, Ramgarh in Ranchi Commissionerate, paid ₹ 6.28 crore to six Manpower Recruitment Agencies during the period April 2008 to March 2011, on which Service Tax of ₹ 78.67 lakh leviable from the agencies was not paid. This resulted in non-realisation of Service Tax of ₹ 78.67 lakh.

**2.16** *When we pointed this out (May 2011), the Ministry accepted (January 2013) Audit's contention and confirmed issue of show cause notice to one service provider. The other show cause notices are under issue.*