

## Chapter IV

### Effectiveness of internal controls

#### 4.1 Introduction

Internal control is an integral process that is effected by an entity's management and personnel and is designed to address risks and to provide reasonable assurance that in pursuit of the entity's mission, the following general objectives are being achieved:

- executing orderly, ethical, economical, efficient and effective operations;
- fulfilling accountability obligations;
- complying with applicable laws and regulations;
- safeguarding resources against loss, misuse and damage.<sup>40</sup>

#### 4.2 Result of Audit

During the course of examination of records, we came across several instances in areas such as internal audit, scrutiny, which suggest that the department should look into the adequacy of extant systems and procedures. We communicated these observations to the Ministry through 67 draft audit paragraphs having financial implication of ₹ 170.01 crore.

The Ministry/Department accepted (upto January 2016) revenue aspect of the audit observations in 65 draft audit paragraphs having financial implication of ₹ 166.88 crore, of which ₹ 20.57 crore had been recovered. The Ministry did not accept the audit objection in two cases. Out of above 65 paras, the Ministry accepted departmental failure in 50 paras having financial implication of ₹ 146.61 crore (Appendix III). The Ministry accepted the audit objection only on revenue part in 12 cases. We await the Ministry's response in remaining three cases. The interesting observations are discussed under four major headings:

- Broadening of Tax Base
- Scrutiny of returns
- Internal audit of assesseees
- Other Issues

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<sup>40</sup> INTOSAI GOV 9100 – Guidelines for Internal Control Standards for the Public Sector

### **4.3 Broadening of Tax Base**

*As per the Director General of Service Tax's Action Plan circulated to Chief Commissioners on 26 May 2003, field formations were required to obtain information from major assesseees including PSUs and private sector organisations regarding various services being availed by them and to obtain details of such services providers including their addresses. Further, every range officer had to obtain information from major assesseees including PSUs regarding various services being availed by them and to obtain details of such service providers to broaden the tax base. Further, the Board issued instruction (November 2011) to create a special cell in each Commissionerate to identify potential assesseees.*

We noticed three instances where the department failed to identify the Service Tax defaulters, two of which are narrated below:

#### **4.3.1 Service Tax collected but not remitted to the Government account**

*Section 68 (1) of the Finance Act provides that every person providing taxable service to any person shall pay Service Tax at the rate specified in Section 66 in such manner and within such period as may be prescribed.*

M/s Master Mind Classes and M/s Gateway in Chandigarh I Commissionerate, received ₹ 23.84 lakh and ₹ 9.89 lakh respectively towards Service Tax from Government of Haryana for providing coaching to Scheduled Caste and Backward Classes for various examination during FY12. It was further observed that M/s Gateway filed the ST-3 return for FY12 showing value as 'nil' while M/s Master Mind Classes had not filed any ST-3 return for FY12. None of the assessee deposited the Service Tax collected. This resulted in evasion of Service Tax of ₹ 33.73 lakh. The observation was noticed during the expenditure audit of Haryana Government department.

When we pointed this out (January 2014), the Ministry (October 2015) while informing that SCNs were issued (August 2015) for amounts pointed out by audit, stated that as both the assesseees did not file returns for the relevant period, the lapse could not be detected.

The reply of the Ministry was not acceptable because as per circular cited above the department should have gathered information from other government departments regarding taxable services received by them to identify potential assesseees.

#### **4.3.2 Non registration and non payment of Service Tax by a Service provider**

*Notification No.30/2012/ST dated 20 June 2012 specified that with effect from 1 July 2012, in the case of supply of manpower services, if the service recipient is a Company or body corporate and the service provider is a non body corporate, 25 percent and 75 percent of Service Tax liability have to be discharged by the service provider and service recipient respectively.*

We noticed that Shri Binu Paulose was paid labour charges of ₹ 67.39 lakh by M/s OEN India Ltd. in Cochin Commissionerate. Shri Binu Paulose, however, was not registered with the Department and also had not paid Service Tax for FY11 to FY13. We verified the non-registration of Shri Binu Paulose with Central Excise and Service Department from the database of the Commissionerate as well as from NSDL site.

Even though internal audit of M/s OEN India Ltd was conducted in December 2013 covering the period up to March 2013, non-registration and non-payment of Service Tax by Shri Binu Paulose was not pointed out.

When we pointed this out (January 2014), the Ministry admitted the audit objection and stated (November 2015) that two SCNs were issued (October 2014) demanding a total amount of ₹ 13.96 lakh.

Reply of the Ministry was silent on failure of internal audit Party (IAP) to point out this omission.

#### **4.4 Inadequate scrutiny of returns**

During examining ST-3 returns at ranges, we came across instances where the liability to pay tax or interest on delayed payment of tax escaped the notice of the authorities due to inadequate scrutiny of returns. We pointed this out through 11 draft paragraphs to the Ministry. The Ministry accepted the audit objection and department failure in 10 cases, which are reported in Appendix III and two cases are illustrated below:

##### **4.4.1 Non payment of interest on delayed payment of Service Tax**

*Section 68 of the Finance Act, 1994, provides that every person providing any taxable service shall pay Service Tax at the rate prescribed. Rule 6 of the Service Tax Rules, 1994, stipulates that Service Tax shall be paid to the credit of the Central Government by the 6<sup>th</sup> day of the month, if the duty is deposited through internet banking or by the 5<sup>th</sup> day of the month in any other case, immediately following the calendar month in which the payments are received. If the assessee fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, he shall pay simple interest at prescribed rates under Section 75 of the Finance Act, 1994.*

Detailed scrutiny of records of M/s ACE Pipeline Contracts Pvt. Ltd. in Mumbai VI Commissionerate revealed (December 2014) that during FY13 and FY14, the assessee paid Service Tax of ₹ 4.74 crore belatedly, on which the total interest leviable worked out to ₹ 43.12 lakh. However, the assessee had paid interest of ₹ 9.29 lakh only, resulting in short payment of interest amounting to ₹ 33.83 lakh. This discrepancy was not pointed out by the department as no preliminary scrutiny was carried within the stipulated time. When we pointed this out (December 2014), the Ministry stated (December 2015) that the assessee paid the recoverable interest and that as the assessee had filed ST-3 returns after due dates (i.e. for April 2011 to September 2011 on 29 March 2012), in the absence of returns, scrutiny could not be done in time.

The reply of the Ministry, which was for the year FY12, was not relevant for period pointed out by audit (i.e. FY13 and FY14) and hence not acceptable.

#### **4.4.2 Non-payment of Service Tax**

*Para 1.2B of Manual for Scrutiny of Service Tax Returns, 2009 stipulates that all the ST-3 returns shall be subjected to preliminary scrutiny to ensure inter alia timely payment of Service Tax. Rule 6 of the Service Tax Rules, 1994, prescribes payment of Service Tax on or before 5<sup>th</sup>/6<sup>th</sup> of the month immediately following the calendar month in which service was deemed to be provided.*

Preliminary scrutiny of the ST-3 Returns conducted during the audit of Bellary Range in Belgaum Commissionerate revealed that M/s Hothur Industries Ltd., Bellary did not pay Service Tax and Cess of ₹ 9.12 lakh as declared in the ST-3 returns for the period from May 2011 to August 2011. Since the Range Officer did not conduct preliminary scrutiny of the returns, the department could not detect the non-payment.

When we pointed this out (January 2013), the Ministry admitted the audit objection (January 2016) and reported recovery of ₹ 16.66 lakh including interest. Further, the Ministry stated that concerned range officer was being warned about the said lapse.

#### **4.5 Internal Audit of assesseees**

The three important prongs of the compliance verification system adopted by the department comprise scrutiny of returns, audit, and anti-evasion. Compliance verification through audit entails conduct of audit at assessee premises by following prescribed procedures including selection of assessee units based on risk parameters and scrutiny of records of the assessee to ascertain the level of compliance with the prescribed rules and regulations. Every Commissionerate has, within its Internal Audit section, an Audit cell,

manned by an Assistant/Deputy Commissioner and Auditors and headed by an Additional/Joint Commissioner. The Audit cell is responsible for planning, monitoring and evaluating the audits conducted. Audit parties consisting of Superintendents and Inspectors carry out the audit at assessee premises in accordance with the Audit Plan and as per the procedures outlined in the Service Tax Audit Manual, 2011.

We attempted to check the adequacy of coverage of assessees as well as the quality of audits undertaken by the IAPs by auditing a sample of assessees falling under one of the following two categories a) already audited by a IAP and b) due for audit but not covered by IAP at the time of audit by our Audit. We noticed several cases of non/short payment of tax/interest or irregular availing of CENVAT credit by the assessees. We communicated these observations to the Ministry through 51 draft audit paragraphs. The Ministry/department accepted the audit objection and department failure in 39 cases (Appendix III). Some important observations are narrated below:

#### **4.5.1 Examination of records in selected assessee premises already covered by internal audit:**

During the course of our examination of records in selected assessee premises already covered by internal audit, we came across certain instances where audit parties of the Commissionerate had omitted to point out certain significant cases of non-compliance by assessees.

##### **4.5.1.1 Non-payment of Service Tax on the Courses not approved by AICTE**

*Any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification recognized by any law for the time being in force was exempted from the whole of the Service Tax leviable as this service is in negative list. Further, CBEC vide Circular No.107/1/2009-S.T., dated 28 January 2009 stipulated that from the year 2005 onwards, a technical institution or establishment (which is otherwise recognized being a university, or affiliate college) not having AICTE (All India Council for Technical Education) approval cannot be called to be the one issuing any certificate or diploma or degree or any educational qualification recognized by the law for the time being in force and thus be within the ambit of Service Tax. However a 'Deemed University' was exempted from this requirement.*

M/s. Indian Institute of Management (IIM), Ahmedabad in Ahmedabad ST Commissionerate, did not pay Service Tax on the course fees recovered from students of Post Graduate Programme (PGP), PGP-ABM, PGP-X and fellowship programme and small duration courses termed as MDP till 30 April 2011. It started making payment of Service Tax under Commercial Training

and Coaching with effect from 1 May 2011 on the incomes received from MDPs only and continued to avail the benefit of exemption on long duration courses like PGPs, PGP-ABM, PGP-X and fellowship programmes. However, we noticed that these courses were neither approved by the Law in force at that time nor it had the approval of AICTE. The IIM is a registered Society and it has not even been given status of 'Deemed University' by the Central Government. Thus, the exemption from payment of Service Tax availed by the Institute during the above period was not in order. The assessee received a total sum of ₹ 338.63 Crore on various long duration courses conducted between FY10 to FY14. This resulted in non-payment of Service Tax to the tune of ₹ 38.21 crore which is required to be recovered along with interest.

When we pointed this out (August 2014), the Ministry accepted the audit objection and stated (December 2015) that a Show Cause Notice (SCN) of ₹ 41.94 crore to the assessee. The Ministry further added that explanation of the officers of the IAP, who conducted the audit, was also called for.

#### **4.5.1.2 Incorrect availing of CENVAT credit**

*As per Rule 9 of the CENVAT Credit Rules, 2004, the provider of output service shall take CENVAT credit on the basis of any of the documents specified therein and shall maintain proper records for the receipt and consumption of the input services.*

M/s. Lakshmi Vilas Bank Ltd., Karur in Trichy Commissionerate, was a registered Service Tax payer under Banking and other financial services. We noticed, during audit, that on the CENVAT credit availed during FY08 to FY11 amounting to ₹ 7.71 crore, the assessee did not maintain proper records viz; monthly opening balance, receipts, utilization and closing balance. Further, the correctness of credit for a sum of ₹ 32.66 lakh availed based on statements received from Branches, instead of original documents, during February 2009 to March 2010 could not be ascertained.

When we pointed this out (March 2012), the Ministry admitted the audit objection (October 2015) and stated that SCN issued demanding ₹ 6.02 crore for the period from October 2006 to September 2011 was adjudicated (April 2013) confirming the demand with equal penalty and applicable interest. For the failure of IAP, the Ministry stated that the assessee failed to produce valid documents despite many opportunities given to them. Hence, this is a case of suppression of facts by the assessee and not a failure IAP.

The reply of the Ministry was not acceptable as we pointed out the same objection while conducting audit of the records of the assessee.

#### **4.5.1.3 Incorrect classification and abatement resulting in short payment of Service Tax**

*Section 65(39a) of the Finance Act, 1994 defines “Erection, Commissioning or Installation” service as any service provided by a commissioning and installation agency including plumbing, drain laying or other installations for transport of fluids or such other similar services. Section 65(105)(zzza) of the Act (Works Contract) stipulates that transfer of property in goods is an essential condition for classification of service under Works Contract. In case of non-payment/short payment of Service Tax, interest is payable as per Section 75 of the Act.*

M/s. Teamco Hitech Engineering Limited Chennai, in Chennai Service Tax-III Commissionerate<sup>41</sup>, undertook the work of fabrication and erection of pipes, aligning, supporting job under piping work and supply of skilled labour as per the Work Order awarded by M/s Bridge and Roof Company (India) Ltd. in September, 2007. As per the order, all raw materials such as pipes, fitting, structural materials, equipment were provided to the assessee on ‘Free Issue’ basis by Project Owner through M/s Bridge and Roof Company (India) Ltd. The assessee classified the service as Works contract service and discharged Service Tax at the rate of two percent/four percent (with effect from 1st April 2008) on optional composite scheme under works contract services. However, as no transfer of property in goods was involved, the service had to be classified under 'Erection, Commissioning and installation services' only and Service Tax to be discharged at full rates (i.e. at the rate of 10 per cent/12 per cent) on the gross receipts. The incorrect classification of service and claim of abatement resulted in short payment of Service Tax of ₹ 72.25 lakh which was recoverable along with applicable interest during the period FY08 to FY10.

When we pointed this out (December 2011), the Ministry admitted the audit objection (October 2015) and stated that SCN issued demanding ₹ 1.01 crore was adjudicated (April 2013) confirming the demand with equal penalty and applicable interest and the assessee paid an amount of ₹ 28.47 lakh. For the failure of IAP, the Ministry stated that the lapse could not be detected by periodical returns as the assessee deliberately suppressed the facts.

The reply of the Ministry was not acceptable as we had pointed out the same objection while conducting audit of the records of the assessee.

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<sup>41</sup> earlier in Chennai III Commissionerate



#### **4.5.1.4 Non-payment of Service tax under Import of Service**

*Section 66A of the Finance Act, 1994 read with Rule 2 (i) (d)(iv) of Service Tax Rules, 1994, stipulates that if the service provider is situated outside India, the person receiving the taxable service in India is liable to pay service tax. On belated payment of service tax, interest is leviable under Section 75 of the Act.*

M/s. Mobis India Limited, in Chennai LTU Commissionerate, incurred expenditure of ₹ 3.32 crore in foreign currency towards commission paid on various dates to agents located outside India in FY11 and FY12. On the commission paid towards import of service, the service tax payable by the assessee as service recipient in India was not paid.

When we pointed this out (April 2013), the Ministry stated (September 2015) that an SCN was issued for ₹ 77.67 lakh for the period from 2010-2014. For internal audit failure, the Ministry stated that the documents were taken up on selective and sample basis in internal audit, with only one month in a year being selected for intensive scrutiny. The Ministry further added the taxpayer cleverly camouflaged and suppressed these forex payments relating to event management from the knowledge of the IAP.

The reply of the Ministry could not be accepted as our objection was based on scrutiny of balance sheet and amount as high as ₹ 3.32 crore in FY12 should have been analysed by IAP. Thus, reply given for lapse indicated deficiency in desk review and identification of issues for detailed check during verification of records in assessee premises.

#### **4.5.1.5 Non-payment of Service tax and interest thereon**

*Section 65(104c) lists out services falling under Business Support Service. Further, as per Rule 4 (b) of Place of Provision of Services Rules, 2012 the place of the provision of a service shall be the location where the services are actually performed, if services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for provision of service. Further, in case of intermediary service, as per sub-rule 9 (c) of the Rules *ibid*, the place of provision of service shall be the location of service provider.*

M/s Bosch Rexroth (I) Ltd., in Ahmedabad-Service Tax Commissionerate, signed a General Service agreement with its associated company Bosch Rexroth AG, Germany (BRAG) on 1 April 2007. Accordingly to the agreement, a team of 3-4 members called Global Accounts Managers (GAM) from BRAG would sit at the Sanand plant of the assessee and supervise and coordinate all activities within the country (India) and for that, BRAG would pay BRIN an



amount agreed to by both the parties on quarterly basis. During FY10 to FY14, M/s Bosch Rexroth (I) Ltd. received ₹ 2.56 crore from Bosch Rexroth AG for such services but the assessee did not pay Service tax on the service income, treating it as export of service. Since GAM team members provided the services from taxable territory of India (Sanand, Ahmedabad), as per provisions mentioned *ibid*, such services could not be considered as export of service and the assessee company who received payment for the service, was liable to pay Service tax of ₹ 26.72 lakh and interest of ₹ 18.74 lakh for the delayed payment.

When we pointed this out (February 2015), the Ministry intimated (November 2015) that the assessee paid Service Tax of ₹ 26.72 lakh and interest of ₹ 18.74 lakh besides a penalty of ₹ 5.85 lakh. Further, the Ministry added that IAP also pointed out the same issue for the same amount.

The reply of the Ministry could not be accepted as the Commissionerate's reply and copy of the challan clearly indicated that payment was made on account of our Audit.

#### **4.5.1.6 Wrong availing of CENVAT credit on Construction services**

*As per Rule 2(l) of the CENVAT Credit Rules, 2004, with effect from 1 July 2012, input service excludes among other services, commercial or industrial construction services specified in sub-clause (zzq) of clause (105) of Section 65 of the Finance Act, in so far as they are used for construction of a building or a civil structure or a part thereof except for the provision of one or more of the specified services”.*

*Further, the Board vide Circular No. 98/1/2008-S.T., dated 4 January 2008 stated that input credit of Service Tax can be taken only if output is a ‘service’ liable to Service Tax or a ‘goods’ liable to excise duty.*

Indian Institute of Management, Ahmedabad in Ahmedabad Service Tax Commissionerate, availed CENVAT credit of ₹ 32.63 lakh on civil construction, maintenance and repairs for the civil structures situated in its premises during the period FY10 to FY14. As defined in clause (105)(zzq) of the Finance Act 1994, CENVAT credit on such input services was not admissible to the assessee in terms of provisions quoted *ibid*. Further, for the period starting from July 2012, it was not admissible by virtue of specific exclusion from the definition of input services itself. Thus the assessee wrongly availed CENVAT credit of ₹ 28.42 lakh. Irregular availing of CENVAT credit was worked out after reducing the amount objected by the IAP.

When we pointed this out (August 2014), the Ministry replied (October 2015) that an SCN for ₹ 28.42 lakh was issued (October 2014). Further, the Ministry added that IAP already pointed out wrong availing of CENVAT credit of ₹ 4.21 lakh on Construction Services for FY13.

The reply of the Ministry was not acceptable as SCN issued clearly referred to our objection and internal audit para related to only one RA bill of October 2012 involving input service credit of ₹ 4.21 lakh and other instances of irregular availing of CENVAT credit remained unnoticed until pointed out by us.

#### **4.5.1.7 Non payment of Service Tax**

*As per Notification No. 45/2012-Service Tax dated 7 August 2012, read with Notification No. 30/2015 dated 20 June 2012 in respect of services provided or agreed to be provided by a director of a company to the said company, the Service Tax liability was fixed on service recipient.*

We scrutinised the master files of assessees maintained in Internal Audit Branch of the Jaipur-II Commissionerate for the period of FY12 to FY14. We noticed that M/s BMD Pvt. Ltd. and M/s Mewar Technocas Pvt. Ltd. had paid remuneration, fee and commission to their Directors amounting to ₹ 70 lakh but Service Tax payable thereon amounting ₹ 8.65 lakh was not paid as per notification *ibid*. Thus, Service Tax ₹ 8.65 lakh was recoverable from the assessees along with interest as per section 75 of Finance Act, 1944.

When we pointed this out (May 2014), the Ministry accepted the objection (November 2015) and stated that an SCN amounting ₹ 15.06 lakh to M/s BMD Pvt. Ltd. and ₹ 4.82 lakh to M/s Mewar Technocas Pvt. Ltd. had been issued.

The reply of the Ministry was silent on failure of internal audit.

#### **4.5.1.8 Non payment of interest**

M/s Incap Ltd. in Guntur Commissionerate and M/s Maha Electronics Pvt. Ltd. in Hyderabad II Commissionerate paid Service Tax belatedly during FY12 to FY14. But they did not pay the full interest due resulting in short payment of interest amounting to ₹ 12.64 lakh and ₹ 26.52 lakh respectively.

When we pointed this out (September and December 2014), the Ministry accepted the audit observations and stated (September-October 2015) that the assessee had paid the interest. The Ministry further added that internal audit had already pointed out the same issue.

The reply of the Ministry was not acceptable as even after being pointed out by IAPs, the substantial amount of interest was recovered only after being pointed out by us.

#### **4.5.1.9 Other cases**

We noticed in three other cases<sup>42</sup>, the instances of non-payment of Service Tax by the assessee involving revenue of ₹ 1.11 crore which were not pointed out by the internal audit parties of the department. The Commissionerates accepted the audit observation in all cases. We await the Ministry's response in all these cases (January 2016).

We observed that though internal audit was carried out by the IAP of the Commissionerate in all the above cases, the lapse remained undetected until pointed out by us.

#### **4.5.2 Inadequate compliance with norms for coverage of mandatory units by internal audit**

Para 5.1.2 of the Service Tax Audit Manual, 2011 envisages that service providers paying Service Tax of ₹ 3 crore or more (cash + CENVAT) in a year are to be audited every year mandatorily. We noticed following instances where internal audit of the unit was not conducted, although due, resulting in non detection of lapses committed by the assessee until pointed out by us.

##### **4.5.2.1 Non-payment of interest on belated payment of Service Tax**

*Section 75 of the Finance Act, 1994, envisages that every person liable to pay Service Tax should pay simple interest at the prescribed percentage, in case the Service Tax payable was paid belatedly into the Government account. The rate of interest was 18 percent per annum as per Notification No. 14/2011-ST dated 01 March 2011.*

Scrutiny of records of M/s Duster Total Solutions Services Pvt. Ltd. in Bangalore ST-II Commissionerate revealed that the assessee paid Service Tax for the period from October 2011 to December 2012 with a delay ranging from 138 to 227 days. However, the assessee did not pay interest on such delayed payments amounting to ₹ 1.78 crore.

When we pointed this out (June 2013), the Ministry stated (November 2015) that an SCN issued (October 2013) to the assessee was adjudicated (January 2015) confirming the demand of ₹ 2.12 crore for the period October 2011 to March 2013 and that the assessee paid (May 2013 to February 2014)

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<sup>42</sup> IIM, Ahmedabad in Ahmedabad ST Commissionerate, M/s Usha Martin Industries Ltd. in Ranchi Commissionerate and M/s Electronics Corporation of India Ltd. in Hyderabad II Commissionerate

₹ 86.52 lakh towards this demand. The Ministry further stated before the CERA audit was conducted, the anti-evasion branch had already initiated proceedings against the assessee during the month of January 2013 and SCN dated 30 September 2013 was issued.

The reply of the Ministry could not be accepted as the SCN issued clearly indicated that it was based on our objections and that without our audit, the Service Tax liability would not have come to light. There was no reference of anti-evasion/departmental efforts in the SCN.

#### **4.6 Other Issues**

##### **4.6.1 Inordinate delay in issue of SCN**

Section 66A of the Finance Act, 1994, read with the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, prescribed that the person receiving the taxable service in India was liable to pay Service Tax in respect of taxable services provided by a person who was a non-resident or was from outside India and did not have an office in India.

M/s Bharat Earth Movers Ltd, Kolar in Bangalore LTU Commissionerate, had incurred expenditure of ₹ 8.19 crore in foreign currency towards commission and other services received from outside India during FY11 and FY12. But the assessee did not pay the Service Tax and Cess of ₹ 84.41 lakh on the same.

When we pointed this out (January 2013), the Ministry stated (October 2015) that an SCN was issued (April 2013) demanding Service Tax and Cess of ₹ 2.70 crore on amount received from outside India for the period from FY08 to FY12. The Ministry further stated that the department issued another SCN (April 2012) demanding Service Tax of ₹ 5.95 crore covering the period FY07 to FY11 to the assessee and therefore, it was incorrect to say that the SCN was issued only after we pointed out the issue in January 2013. Hence, they held that the charge made against the department for lack of action resulting in loss of revenue was unacceptable.

The Ministry's reply revealed that there was inordinate delay on the part of Bangalore Service Tax Commissionerate as the first letter seeking the value of services received from outside India was issued only in November 2009, after a lapse of 22 months from completion of audit and 16 months from the issue of audit note. The Service Tax Commissionerate continued to issue such letters up to December 2011 without initiating any concrete action to protect revenue even though the demand for FY07 was in risk of getting time-barred. The summons were issued to the assessee only in March 2012. Thus, there was delay of 50 months from the completion of audit and 44 months from

issue of Audit Note on the part of Bangalore Service Tax Commissionerate in issuing SCN. This delay risks the demands being issued declared time-barred in adjudication.

Further, the Ministry needs to look into the reasons for failure of internal controls in the Commissionerate resulting in issue of two SCNs on same issue for overlapping period.

#### **4.6.2 Non-imposition of penalty under section 73(4A) of Finance Act 1994**

According to Section 73(4A) of Finance Act 1994 effective from 8 April 2011, where during the course of any audit, investigation or verification, it is found that any Service Tax has not been levied or paid or has been short levied or short paid but the true and complete details of transactions are available in the specified records, the person chargeable to Service Tax may pay the Service Tax in full or in part, as he may accept to be the amount of tax chargeable along with interest payable and penalty equal to one percent of such tax for each month, for the period during which the default continues, up to a maximum of 25 percent of the tax amount, before service of notice on him.

Internal audit Wing of Calicut Commissionerate, closed audit paras, raised after April 2011, without imposing penalty as per section 73(4A), when the assessee paid amount of Service Tax pointed out in the paras. Non-payment of penalty in respect of 25 assessee units test checked amounted to ₹ 31.64 lakh.

When we pointed this out (May 2013), the Ministry replied (December 2015) that out of the 25 cases pointed out by Audit, 15 assesseees paid the penalty amounting to ₹ 12.76 lakh. The Ministry contested the imposition of penalty under Section 73(4A) inserted on 8 April 2011, stating under this provision, penalty was leviable in cases where there was intentional evasion of tax, that too on cases starting after this date. They stated that the same was reiterated in para 4.11 of CBEC Budget letter DOF NO. 334/3/2011-TRU dated 28 February 2011.

The reply is not acceptable as the Act amended in April 2011 was applicable to all cases, whether of fraud, suppression etc. or otherwise irrespective of the contents of letter of February 2011. It was only after amendment in May 2012 that the section was made applicable only to cases of intentional evasion. Thus invoking of penalty under section 73(4A) as pointed out by us is justifiable.

New Delhi  
Dated: 10 February 2016

  
(HIMABINDU MUDUMBAI)  
Principal Director (Service Tax)

Countersigned

New Delhi  
Dated: 10 February 2016

  
(SHASHI KANT SHARMA)  
Comptroller and Auditor General of India