

## Executive summary

We conducted a Performance Audit on levy and collection of Service Tax on Entertainment Sector, to seek an assurance regarding adequacy of Service Tax rules and regulations relating to entertainment sector and systems in place to ensure compliance to the same. The audit was conducted in 17 selected Commissionerates, including one division and one range in each Commissionerates and examination of records relating to 307 assesseees. The audit covered the three years period from 2013-14 to 2015-16.

The audit revealed certain inadequacies in the extant provisions as well as systemic deficiencies relating to the levy and collection of service tax on Entertainment Sector, the summary of which is given below:-

- a. Taxable commercial activities escaped taxation due to clubbing of theatrical rights that are exempted with taxable non-theatrical rights/other activities by way of an agreement treating the entire consideration only towards theatrical rights.

(Paragraph 2.3)

- b. Copyrights transferred with limitations were treated as transferred in perpetuity resulting the escapement of revenue.

(Paragraph 2.5.1)

- c. There were instances of artists/producers entering into agreements with foreign entities to establish a service recipient(s) and place of provision in the non-taxable territory and thereby consideration for the portion of service provided outside India was treated as exports.

(Paragraph 2.6.1)

- d. Wrong availment of Cenvat credit of ₹ 14.71 crore under sponsorship services.

(Paragraph 2.7)

- e. Cross verification of Service Tax Data obtained from the department with other databases like Income Tax, Ministry of Corporate Affairs (MCA), etc. revealed cases of non-registration of assesseees engaged in taxable services, which included assesseees providing taxable services exceeding ₹ 10 lakh (the threshold limit for service Tax) and also cases of under reporting of income under Service Tax.

(Paragraph 3.1)

- f. There were instances of shortcomings in monitoring of filing of returns, efficacy of scrutiny of returns, deficiencies in the internal audit systems and problems in the process of show cause notices and adjudication.

(Chapter 3)

- g. There were 156 cases of non-compliance to prescribed rules / provisions resulting in non / short payment of service tax / interest / Swachh Bharat Cess, incorrect / excess availing of cenvat credit and incorrect claim of benefits of export of services involving revenue of ₹ 48.13 crore.

(Chapter 4)

### Summary of Recommendations

1. Since the assesseees are exploiting the ambiguity in the terms 'theatrical' and 'non-theatrical' while drafting of agreements for transfer of rights, there is a need to bring legislative clarity for these terms.
2. Place of Provision of Services Rules need to be directly linked to service specific issues to avoid undue benefit of the interpretations and to safeguard the intent of legislation in giving export benefits.
3. Existing ambiguity in the available provisions for Cenvat Credit under Sponsorship Services in the entertainment sector needs to be clarified through relevant amendment to the Rules.

Ministry stated (May 2017) that any amendment in the present rules of Service Tax would constitute a futile exercise since "Goods and Service Tax" is to be implemented with effect from 1 July 2017 and that the recommendations are, however, noted for future compliance.

As the recommendations are relevant in GST regime also, to ensure clarity in the new legislations, the recommendations made by audit should be examined by GST policy wing of CBEC.

4. The department needs to activate the special cell and evolve a system of using the third party data as well as details from the records of filers to identify potential non-registrants as well as defaulters.
5. The Board may consider automation of the process of identifying and issuing notices for levy of penalty/late fee on non/belated filing of returns.

6. The Board needs to strengthen its Tax 360 programme to ensure that data already available is utilised optimally and also should identify sector specific data sets and correlate the same in Tax 360 programme.
7. The Board should consider revising the system through which automated check lists for preliminary scrutiny in ACES are drawn.

With reference to the above recommendations No.4 to 7 the Ministry stated (May 2017) that under CBEC-GST Application the above provisions is being incorporated as per the CGST Law and would be managed by the common portal namely GSTN portal.

Ministry was requested to share specific details of CBEC-GST application which would address recommendations made by audit and details are awaited (June 2017).

