

CHAPTER V : REVIEW ON SERVICE TAX ON MANPOWER RECRUITMENT AGENCY'S SERVICES AND SECURITY AGENCY'S SERVICES

5.1 Highlights

- Measures taken by the department to bring unregistered service providers into tax net proved ineffective and inadequate. Audit identified 2492 unregistered service providers in 45 commissionerates with estimated loss of revenue of Rs.40.96 crore.

(Paragraph 5.7)

- Service tax of Rs.2.69 crore was not paid by academic institutions providing manpower recruitment agency services. Penalty and interest amounting to Rs.4.09 crore was also leviable.

(Paragraph 5.8)

- In 51 commissionerates of central excise around 25 per cent of returns due were not submitted by manpower recruitment and security agencies, while 11 and 20 per cent respectively were received late.

(Paragraph 5.10.1)

- Service tax of Rs.10.04 crore was evaded by 141 assesseees in 20 commissionerates during the period when they did not file returns. Penalty and interest amounting to Rs.14.04 crore was also leviable.

(Paragraph 5.10.2)

- Short payment of Rs.43.44 crore inclusive of interest and penalty on account of suppression of taxable value by 289 assesseees in 39 commissionerates was noticed.

(Paragraph 5.11.7)

- Penalty leviable under section 78 amounting to Rs.6.97 crore from two service providers, who had not paid service tax/suppressed the value of services not demanded.

(Paragraph 5.12)

5.2 Introduction

Service tax on 'manpower recruitment agency' was levied with effect from 7 July 1997. Section 65(68) of Finance Act, 1994, defines manpower recruitment agency as 'any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment of manpower to a client'.

Service tax on 'security agency' services was levied from 16 October 1998. Section 65(94) of Finance Act, 1994, defines security agency as 'any commercial concern engaged in the business of rendering services relating to security of property, whether movable or immovable or of any person, in any manner and includes services of investigation, detection or verification of any fact or activity of personnel or other nature or otherwise, including services of providing security personnel'.

Section 69 of the Act *ibid* read with rule 4 of Service Tax Rules, 1994, provides that every person liable to pay service tax shall make an application for registration to the concerned central excise officer in form ST-1 within a period of 30 days of service tax becoming leviable.

5.3 Audit objectives

Manpower agency was recognised as an evasion prone service by the Board in September 2003. Preliminary checks by audit had revealed that department's measures to widen assessee base did not seem adequate. Review was, therefore, conducted in audit to seek assurance that: -

- the monitoring mechanism devised to ensure that potential assessees providing above two services had been brought under the purview of service tax was adequate;
- tax administration was efficient and effective in ensuring compliance to legislations and rules; and
- internal controls were in place.

5.4 Scope of audit

Records of 54 out of 93 central excise commissionerates covering 24 States were test checked. Period covered under audit was from 1999-2000 to 2003-04. The findings are contained in the succeeding paragraphs.

5.5 Trend of revenue

Revenue from manpower recruitment agencies (Rs.25.90 crore) constituted 0.43 per cent while revenue from security agencies (Rs.80.28 crore) constituted 1.34 per cent of total revenue on services amounting to Rs.5792.43 crore in 54 commissionerates during the year 2003-04.

The table below indicates trend of revenue in respect of test checked commissionerates.

5.5.1 Manpower recruitment agency

(Amount in crore of rupees)

No. of commissionerates	1999-2000		2000-01		2001-02		2002-03		2003-04	
	No. of assessees	Amt.	No. of assessees	Amt.	No. of assessees	Amt.	No. of assessees	Amt.	No. of assessees	Amt.
54	1945	5.49	2325	9.14	2859	9.69	4134	13.12	5725	25.90

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(Amount in crore of rupees)

Percentage growth (+) or (-) over previous year								
No. of commissionerates	2000-01		2001-02		2002-03		2003-04	
	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.
54	20	66	23	6	45	35	38	97

- Percentage growth in number of assessee came down in 2003-04 after having consistently risen in previous years. Interestingly though, there was a spurt in revenue in the same year indicating more intensive collection rather than expansion of assessee base.
- In Delhi IV commissionerate, there was decline of 58 per cent of revenue during 2002-03 over the year 2001-02 while the number of assessee increased by 13 per cent. On the other hand, number of assessee had increased significantly by 88 per cent in the year 2003-04, while increase in revenue was only 12 per cent in the same commissionerate.
- In Kanpur commissionerate, however, there was decline of 43 per cent of revenue during 2003-04 over the year 2002-03, though service providers increased by 19 per cent during this period.

5.5.2 Security agency

(Amount in crore of rupees)

No. of commissionerates	1999-2000		2000-01		2001-02		2002-03		2003-04	
	No. of assessee	Amt.	No. of assessee	Amt.	No. of assessee	Amt.	No. of assessee	Amt.	No. of assessee	Amt.
54	1197	20.21	1620	28.88	2043	36.53	3055	47.63	4263	80.28

(Amount in crore of rupees)

Percentage growth (+) or (-) over previous year								
No. of commissionerates	2000-01		2001-02		2002-03		2003-04	
	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.
54	35	43	26	26	50	30	40	69

- In Patna commissionerate, there was increase of 36 per cent in number of service providers, but revenue declined sharply by 46 per cent during 2003-04 over the year 2002-03.
- In Ahmedabad commissionerate, against increase of 62 per cent in the assessee base, revenue rose by 40 per cent only during the year 2003-04 compared to 2002-03.

5.6 Inadequate efforts by department in bringing unregistered service providers into tax net

5.6.1 Surveys

Prevention of tax evasion and widening of tax base are two important functions of tax administration for optimum tax realisation. With increasing reliance on voluntary compliance by tax payers at large, it becomes increasingly important for department to put in place an effective mechanism for collecting information from various sources in order to bring unscrupulous assesseees into tax net.

Board issued instructions to all commissionerates on 5 November 1999 to undertake survey and intelligence gathering to identify tax evaders with a view to improve the working of their service tax cells. As part of action plan drawn by director general service tax (DGST) and circulated to chief commissioners on 26 May 2003, the department was to collect intelligence, conduct surveys and to identify unregistered service providers and get them registered. Further instructions to field formations to carry out extensive surveys, collect intelligence and conduct searches on selective basis in respect of identified evasion prone services of which manpower recruitment was one were given in September 2003. Position of surveys undertaken by some commissionerates during 2003-04 and its impact on revenue is as follows: -

No. of commissionerates	No. of surveys	No. of persons issued registration			Total additional revenue realised for all services*
		For all services	Manpower recruitment agencies	Security agencies	
35	2382	10194	168	110	3.42

* Breakup for manpower and security agencies not available.
 Figures furnished by commissionerates.

- Audit noted that no target of minimum surveys was fixed for any commissionerate.
- Some commissionerates like Pune I did not maintain any record of surveys.
- In Pondicherry commissionerate, 55 surveys were carried out but not a single unregistered service provider was identified for registration.
- In nine commissionerates, prominent among them being Delhi I, Hyderabad II and Chandigarh, no survey was carried out.

5.6.2 Search and seizure

Amendment in section 82 of Finance Act, 1994, with effect from 16 August 2002, vests powers with commissioner of central excise to search premises and seize documents, where necessary. DGST vide communication of 27 June 2003 instructed commissioners to exercise this power in an effective and meaningful manner. From information furnished by 49

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commissionerates, it was revealed that only 16 had conducted search and seizure, that too, on a very limited scale. The position is given in the table below: -

(Amount in crore of rupees)

No. of commissionerates	Period	No. of searches	No. of seizure	Manpower recruitment agency		Security agency	
				No. of SCN	Service tax involved	No. of SCN	Service tax involved
49	2002-03	16	3	4	0.07	11	1.95
49	2003-04	42	10	8	1.26	22	3.69

Figures furnished by commissionerates.

- Delhi III commissionerate carried out nine searches during 2003-04 without any impact on revenue.
- In 33 commissionerates, including Mumbai I, Delhi I, Delhi II and Chennai II where large base of manpower recruitment and security agencies could be reasonably expected to be in operation, no search and seizures were conducted.

5.7 Escapement from tax net due to non-registration

Effort was made by audit on a limited scale to gauge the extent of evasion of tax by active though unregistered service providers in the backdrop of inadequate and ineffective measures taken by department to widen assessee base. For this purpose information from various sources such as yellow pages, newspapers, websites, income tax returns and other secondary records etc. was collected. Preliminary findings by audit revealed that, prima facie, 2492 service providers (manpower recruitment agency 1330 and security agency 1162) in 45 commissionerates had not registered themselves with central excise department. In order to firm up findings of audit, income tax records and other secondary records such as those of registrar of companies, employees provident fund commissioner, industrial units and various institutes of 73 manpower recruitment and 322 security agencies were verified. Service tax evaded by them was to the extent of Rs.7.99 crore, besides interest of Rs.2.93 crore and penalty of Rs.7.99 crore upto 2003-04 as per the table given below: -

5.7.1 Manpower recruitment agency

(Amount in crore of rupees)

Nature of record	No. of commissionerates	No. of service providers	Gross value of service provided	Amount of service tax not paid	Interest payable	Penalty
Income tax returns	17	50	28.87	1.55	0.65	1.55
Secondary records	12	23	11.60	0.58	0.25	0.58

5.7.2 Security agency

(Amount in crore of rupees)

Nature of record	No. of commissionerates	No. of service providers	Gross value of service provided	Amount of service tax not paid	Interest payable	Penalty
Income tax returns	21	96	63.72	3.78	1.58	3.78
Secondary records	31	226	31.96	2.08	0.45	2.08

Some illustrative cases are given below: -

Scrutiny of income tax returns and annual accounts filed with registrar of companies revealed that M/s. Safeguard Manpower Services Pvt. Ltd. in Hyderabad II commissionerate had realised Rs.7.04 crore from their client on account of manpower recruitment services during 1999-2000 to 2002-03. They, however, did not register themselves with the department and evaded service tax to the tune of Rs.35.21 lakh. The agency was also liable to pay interest of Rs.12.62 lakh, besides penalty of Rs.35.21 lakh. On this being pointed out (August 2005), the Ministry stated (November 2005) that the service provider was not conducting business from the address given in the income tax returns and that efforts were being made to locate his whereabouts.

Income tax returns of M/s. Multisystem Security and Services Pvt. Ltd. in Delhi II commissionerate revealed that they earned gross amount of Rs.5.81 crore on account of security agency's services during 2001 and 2002-03, but did not get themselves registered, nor did they pay service tax. This resulted in evasion of service tax to the extent of Rs.29.00 lakh, besides interest of Rs.10.92 lakh and penalty of Rs.29.00 lakh leviable thereon. On this being pointed out (August 2005), the Ministry intimated (November 2005) that legal action is being taken for recovery of service tax.

Similarly, scrutiny of income tax returns of M/s. Rajan Enterprises, Faridabad and M/s. Security Guard Corporation in Delhi IV commissionerate revealed that Rs.3.58 crore for recruitment of manpower for the period 2002-03 to 2003-04 and Rs.4.08 crore for security agency services during 1999-2000 and 2001-02 had been realised. The agencies had not registered with the department and thus evaded service tax to the tune of Rs.24.49 lakh, besides interest of Rs.6.31 lakh and penalty of Rs.24.49 lakh leviable thereon (first case) and Rs.20.38 lakh, besides interest of Rs.13.65 lakh and penalty of Rs.20.38 lakh for the latter. On this being pointed out (August 2005), the Ministry intimated (November 2005) that action is being pursued by the department.

5.7.3 Estimation of service tax loss in respect of unregistered service providers

In the absence of any predetermined mechanism to estimate quantum of service tax escaping, audit attempted to use parameter of average revenue yield from registered assesseees. On a conservative estimate service tax to the extent of Rs.21.95 crore was evaded by unregistered service providers during the year 2003-04 alone, besides penalty of Rs.10 lakh as per the following table: -

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Manpower recruitment agency

(Amount in crore of rupees)

No. of commissionerates	Year	No. of unregistered service providers	No. of registered service providers	Total revenue	Revenue yield per service provider	Revenue loss	Penalty
30	2003-04	1257 (1330-73)	4778	22.60	0.0047	5.91	0.06

Security agency

(Amount in crore of rupees)

No. of Commissionerates	Year	No. of unregistered service providers	No. of registered service providers	Total revenue	Revenue yield per service provider	Revenue loss	Penalty
45	2003-04	840 (1162-322)	3610	69.08	0.0191	16.04	0.04

- If the projections were to be made on what audit had actually worked out as average yield on test checked cases the figure of estimated revenue loss could be much higher.

5.8 Service tax not paid by academic institutions

DGST clarified in a compilation titled 'service tax through questionnaire' that academic institutions performing tasks of commercial concern assisting in manpower recruitment fell within the scope of definition of term manpower recruitment agency and were liable to pay service tax.

Scrutiny of six large academic institutions such as Indian Institute of Technology, management institutes, etc. revealed that they were performing such tasks by arranging campus interviews and had not got themselves registered. Service tax was also not paid by them. They had realised an amount of Rs.50.23 crore in relation to manpower recruitment during 1997-2004 on which service tax to the tune of Rs.2.69 crore was payable, besides interest of Rs.1.40 crore and penalty of Rs.2.69 crore.

5.9 Internal control at apex level

The post of DGST was created in December 1997 mainly to strengthen monitoring of collection and assessment of service tax; study staff requirement; suggest measures to increase revenue collection and to inspect service tax cells in commissionerates.

Review of functioning of DGST revealed that their recommendation for immediate creation of six independent service tax commissionerates in the budget proposals for the year 1999-2000 were implemented only in September 2004. One of the functions of DGST was to study and create database and update the same from time to time. DG had instructed commissionerates on 26 May 2003 for creation of complete and upto date database in respect of potential service tax assessees. No database was, however, found created either by cells in

commissionerates or at DGST. There was also requirement of fortnightly report on creation of database from division to commissioner and then to chief commissioner which was not being followed by commissionerates. Though DGST had been regularly issuing circulars to all commissioners regarding 'modus operandi' for taking remedial action since January 2003, no feedback was received from zones/commissionerates in the absence of any prescribed return.

5.10 Control mechanism in commissionerates

5.10.1 Ineffective monitoring of returns from registered service providers

According to section 70 of Finance Act, 1994, read with rule 7(i) of Service Tax Rules, 1994, every person liable to pay service tax is required to assess the tax himself and furnish half yearly return in Form ST-3 by 25th of the month following the half year. Failure to furnish return in time attracts penalty subject to maximum of Rs.1000 under section 77 (or maximum of Rs.2000 after 16 July 2001).

Out of 54 commissionerates test checked in audit, information on submission of returns was furnished by only 51 in respect of manpower recruitment agency and 49 commissionerates in respect of security agency.

Position of submission of returns by registered service providers during the period from 1999-2000 to 2003-04 is as follows: -

Manpower recruitment agency

(Amount in lakh of rupees)

No. of commissionerates	No. of assessee registered	No. of returns due	No. of returns received	Returns received by due date	Returns received late	No. of returns not received	Penalty levied	Penalty not levied
51	11005	24682	18608	16609	1999	6074	0.80	54.04

Figures furnished by commissionerates.

Security agency

(Amount in lakh of rupees)

No. of Commissionerates	No. of assessee registered	No. of returns due	No. of returns received	Returns received by due date	Returns received late	No. of returns not received	Penalty levied	Penalty not levied
49	8067	17031	12907	10285	2627	4119	2.54	33.90

Figures furnished by commissionerates.

- Penalty leviable on defaulters to the extent of Rs.87.94 lakh was not levied.
- Twenty five per cent of the returns due were not submitted by the two agencies.
- Eleven per cent and 20 per cent of the returns were received late in respect of manpower recruitment and security agencies respectively.

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- In Lucknow and Ludhiana commissionerates, 81 and 76 per cent respectively of returns due from security agencies were not received.
- In Ludhiana and Coimbatore commissionerates, 90 and 88 per cent respectively of returns due from manpower recruitment agencies had not been received.
- In Guntur commissionerate, no return was filed by the agencies at all.

5.10.2 Service tax evaded during period when returns were not filed

For want of proper watch by department over submission of returns and non-imposition of penalty in cases of default, the number of service providers not filing them was significantly high. Independent verification of income tax returns and secondary records of some defaulters by audit revealed that 141 assesseees (52 of manpower recruitment and 89 of security agencies) in 20 commissionerates had provided services attracting tax during periods when they had not filed returns, but had not paid it. Department did not take any action for non submission of returns by these defaulters, nor did they verify whether the defaulters were actively engaged in providing services during period of default. This resulted in evasion of service tax to the extent of Rs.10.04 crore, besides interest of Rs.4.00 crore in addition to penalty of Rs.10.04 crore during 1998-99 and 2003-04.

Some illustrative cases are given below: -

M/s. Purva Sainik Kalyan Nigam Ltd., a security service agency in Lucknow commissionerate, got itself registered with the department in June 2003 and filed returns due from April 2003 onwards. Independent verification of income tax returns, however, revealed that they had been providing services as security agency for the period from 2000-01 to 2002-03 without registration. This resulted in evasion of service tax to the tune of Rs.6.39 crore, besides interest of Rs.2.80 crore and penalty of Rs.6.39 crore. On this being pointed out (August 2005) the Ministry stated (November 2005) that investigations are being made to ascertain the suppressed value.

Verification of income tax returns submitted by Ms. Crux Management in Hyderabad II commissionerate revealed that assessee rendered manpower recruitment services during the period 1999-2000 to 2002-03 for which no service tax returns were filed. Non-payment of service tax by the agency was to the extent of Rs.38.78 lakh besides interest of Rs.11.11 lakh and penalty of Rs.38.78 lakh. On this being pointed out (August 2005), the Ministry intimated (November 2005) that the records are being verified.

5.11 Procedure devised to check under assessment ineffective

Prior to 16 July 2001, on filing of quarterly return (Form ST-3) by assessee, central excise officer was required to pass an order in writing assessing taxable value of service and determining service tax payable under section 71 *ibid*. From 16 July 2001 onwards, scheme of self-assessment procedure was introduced under which every person liable for service tax himself assessed tax and furnished to the superintendent of central excise a half yearly return

in form ST-3. For purpose of verification, department was empowered to call for any accounts, documents or other evidence from the assessee, as deemed necessary.

Information on assessment/verification was furnished by 43 commissionerates in respect of manpower recruitment agency and 45 commissionerates in respect of security agency.

Position of assessments/verification finalised by the department for the period from 1998-99 to 2003-04 test checked in audit revealed the following: -

5.11.1 Prior to 16 July 2001

Manpower recruitment agency

(Amount in lakh of rupees)

No. of commiss-ionerates	No. of returns received	Assessed	Pending assessment	Further information/ documents called for	Additional demands raised	
				No.	No.	Amount with interest and penalty
43	9767	9079	688	207	1	0.21

Security agency

(Amount in lakh of rupees)

No. of commiss-ionerates	No. of returns received	Assessed	Pending assessment	Further information/ documents called for	Additional demands raised		Recovery	
				No.	No.	Amount with interest and penalty	No. of demands	Amount
45	4269	4014	255	34	24	128.27	20	11.23

- Around seven per cent of returns relating to manpower recruitment agencies and six per cent relating to security agencies were still to be assessed.
- Mumbai I commissionerate had called for further information/documents in 219 cases (205 manpower recruitment and 14 security agencies) but no additional demand was raised.
- In Surat I and Lucknow commissionerates none of the returns received prior to 16 July 2001 in respect of security agencies was assessed.
- In Kanpur commissionerate such non-assessment was as high as 79 per cent in respect of both manpower recruitment agencies and security agencies.
- A meagre nine per cent of demands raised in respect of security agencies were recovered.

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5.11.2 After 16 July 2001**Manpower recruitment agency**

(Amount in lakh of rupees)

No. of commissionerates	No. of returns received	Verified	Pending verification	Further information/ documents called for	Additional demands raised	
				No.	No.	Amount with interest and penalty
49	14308	13124	1184	103	4	0.74

Security agency

(Amount in lakh of rupees)

No. of commissionerates	No. of returns received	Verified	Pending verification	Further information/ documents called for	Additional demands raised		Recovery	
				No.	No.	Amount with interest and penalty	No. of demands	Amount
44	8969	7551	1418	16	19	30.03	7	1.46

- After self assessment procedure with effect from 16 July 2001, eight per cent and 16 per cent of returns of manpower recruitment agencies and security agencies respectively were yet to be verified with regard to correctness of the amount paid during the period August 2001 to March 2004.
- Recovery of paltry sum of Rs.1.46 lakh was made in security agencies.
- Mumbai I commissionerate had called for further information/documents in 98 cases in respect of manpower recruitment agencies, but no additional demands were raised.

5.11.3 Inadequate information in return (ST-3) for assessment

Proforma of ST-3 return did not require assessee to give details of value of taxable service charged, value of taxable service realised, amount of service tax payable alongwith details of payment made to government credit and amount of interest, if any payable. Vital information such as date of commencement of service, period during which no service was rendered, etc. was not required to be furnished. Return was not accompanied by any other documents like balance sheet and profit and loss account from which value of taxable service declared in the form could be cross checked and correlated. The department was only verifying correctness of the amount self assessed by service provider on the basis of scant information contained in ST-3. Whether or not service tax credit on inputs service had been availed was not evident in ST-3. Neither could the tax on input service as having been paid by assessee be ascertained.

5.11.4 Correctness of service tax assessed by assessee not verified

Under section 71 of Finance Act, 1994, superintendent of central excise was required to verify correctness of the tax assessed by assessee on the basis of information contained in ST-3 returns. Member (Service Tax) in his communication dated 8 August 2003 addressed to all chief commissioners stressed the need for intelligent scrutiny of half yearly returns. Some of ST-3 returns duly verified by department were scrutinised in audit. Cases of short payment of service tax on the basis of information contained in ST-3 returns which had escaped notice of department came to light indicating that verification was slack and deficient. Some cases noticed by audit are illustrated below: -

Rate of service tax was revised upward from five per cent to eight per cent with effect from 14 May 2003. However, in 23 cases, assessee continued to calculate service tax at lower rate. This resulted in short payment of service tax to the tune of Rs.31.18 lakh.

Fifty two other cases of non-payment of service tax/interest to the extent of Rs.44.23 lakh for various reasons such as interest on delayed payment, service tax not paid on gross amount, incorrect assessment of service tax etc were noticed by audit.

Scrutiny of returns filed by M/s. Tops Detectives and security agencies in Mumbai V commissionerate revealed that value of service tax realised was not shown separately. Department verified the returns without basic information. If value of service realised was the same as billed, short-payment of service tax worked out to Rs.45.47 lakh for the period from April 1999 to March 2002.

5.11.5 Provision for best judgment assessment not used adequately

In case of failure of assessee to file return under section 70 or non-compliance of provision of section 71, assistant commissioner was empowered to make assessment of the value of taxable service to the best of his judgment under section 72. From information furnished by commissionerates test checked in audit, it was revealed that no assessment under section 72 was made in so far as manpower recruitment and security agencies were concerned except Madurai commissionerate. Powers thus were almost not made use of. Section 72 has, however, been withdrawn with effect from 10 September 2004.

5.11.6 Provision for verification of tax withdrawn

While DGST in their performance report for 2003-04 had recommended statutory changes in the Act for prosecution of frequent offenders/tax evaders, even elementary checks in the form of verification of correctness of the tax (assessed by assessee himself) on the basis of his return has been dispensed with by withdrawal of section 71 from September 2004. With this department can no longer call for any accounts, documents or other evidence from assessee for the purpose of checking correctness of the amount. No alternative procedures for checking and verification of amount self assessed by assessee have been put in place.

5.11.7 Taxable values suppressed by the assessee

Attempt was made by audit to ascertain extent of correctness of tax paid by 289 assesseees (43 manpower recruitment and 246 security agencies) by cross verification of their income tax returns and other secondary records. Check revealed deliberate attempt to suppress value of services and consequently evade service tax to the extent of Rs.18.40 crore during the years 1998-99 to 2003-04, besides interest of Rs.6.64 crore and penalty of Rs.18.40 crore being payable. Service tax so evaded by suppression of value represented 17 per cent of total revenue earned from these two services in 54 commissionerates during 2003-04.

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Some illustrative cases are given below: -

Scrutiny of income tax returns of M/s. Om Sai Professional Detective and Security Services in Guntur commissionerate revealed that the agency had shown income of Rs.39.57 crore towards services rendered to their client. But in ST-3 returns gross income was shown as Rs.7.82 crore. This resulted in undervaluation of taxable revenue on services to the extent of Rs.31.75 crore with consequential short payment of service tax to the tune of Rs.1.98 crore, besides interest of Rs.65.33 lakh and penalty of Rs.1.98 crore during the period from 1999-2000 to 2002-03. On this being pointed out (August 2005), the Ministry stated (November 2005) that demand notice was being issued.

Comparison of income tax returns of M/s. Hindustan Investigation and Security Service in Delhi IV commissionerate with ST-3 return showed that assessee had undervalued services to the extent of Rs.23.26 crore. This resulted in short payment of Rs.1.28 crore, besides interest of Rs.54.03 lakh and penalty of Rs.1.28 crore. On this being pointed out (August 2005), the Ministry stated (November 2005) that the matter was being investigated.

5.12 Penalty for non-payment/suppression of value not demanded

According to section 78 where any service tax has not been levied or paid or short paid by reasons of fraud or collusion or wilful misstatement or suppression of facts or intention to evade payment of service tax, penalty not less than, but not exceeding twice the amount of service tax due is leviable.

SCN demanding Rs.6.83 crore of service tax on suppressed value was issued to M/s. Ma Foi Management Consultant in Chennai II commissionerate. However, minimum penalty of Rs.6.83 crore was not demanded.

M/s. BHEL Complex Co-operative Labour Contract Society rendering security service got itself registered in October 2004 and paid service tax amounting to Rs.13.68 lakh in Trichy commissionerate for the earlier period from 16 October 1998 to 24 October 2004, on this being pointed out by internal audit. Interest of Rs.3.15 lakh and penalty of Rs.13.68 lakh was, however, not levied.

On this being pointed out (August 2005), the Ministry Stated (November 2005) that the appropriate interest has since been recovered and that the penalty has been waived by the adjudicating authority.

5.13 Delay in adjudication

In 28 commissionerates of central excise, adjudication of 343 SCNs issued to manpower recruitment and security agencies involving revenue of Rs.7.19 crore was pending as on 30 September 2004, of which, 85 SCNs involving revenue of Rs.1.32 crore were pending for more than two years.

Provisions of section 73 of Finance Act, 1994, relating to issue of SCN and recovery of service tax short levied were purportedly substituted on lines of section 11A of Central Excise Act by Finance Act, 2004 with effect from 10 September 2004. However the crucial provisions of section 11A which prescribe time limit for finalisation of adjudication process were not incorporated in section 73. The adjudication officer is thus not required to finalise a demand case within a prescribed time frame which could lead to delays in finalisation of cases and recovery of service tax.

5.14 Service tax code number based on permanent account number (PAN) not allotted

Board in their letter dated 27 August 2001 issued instructions for allotment of service tax code numbers based on PAN allotted by income tax department to all service providers. Board in circular dated 21 February 2002 issued further instruction for allotment of PAN based service tax code numbers.

Position of allotment of PAN based service tax code number as on 30 September 2004 in 46 commissionerates where information was made available is given in the table below: -

Manpower recruitment agency

No. of commissionerates	No. of service providers	No. of service tax providers not allotted STCNs	Percentage
46	5538	2998	54

Security agency

No. of commissionerates	No. of service providers	No. of service tax providers not allotted STCNs	Percentage
46	3900	2614	67

- Work of allotment of service tax code numbers which could be crucial from the point of view of cross verification of value of services from the income tax returns was yet to be completed even after lapse of more than three years.
- Information received from Delhi I, Delhi II, Pune III, Calicut and Shillong commissionerates, showed that no service provider in the two services was allotted service tax code numbers.

5.15 Audit impact

The review contains audit comments involving financial implication of Rs.123.46 crore arising out of non-compliance to Act/Rules/Notifications etc. It also contains audit observations arising out of procedural shortcomings with financial implication of Rs.9.53 crore. The department issued SCNs amounting to Rs.4.68 crore and recovered an amount of Rs.34.92 lakh.

5.16 Conclusion

Growth of revenue is directly linked with the growth of assessee base. Efforts made by the department to bring into net unregistered service providers and augment revenue being considered inadequate, attempt made by audit on a limited scale has disclosed the existence of a large number of unregistered service providers. Returns are main tools through which department was required to watch and ensure that service tax was paid by registered service providers regularly and without interruption. Lack of monitoring and follow-up resulted in large scale evasion of service tax during the period when returns were not filed by them. There was also general propensity of the assessees to pay less tax than was due from them, largely due to the ineffective control mechanism and notion of 'voluntary compliance'.

5.17 Recommendations

Audit recommends that ST-3 form include details of date of commencement of service, period during which service was not rendered and such like vital information to prevent escapement of tax. Time limit for adjudication of service tax cases should be introduced on the lines of section 11A of Central Excise Act to speed up finalisation. A separate Act for service tax, which had already been drafted and sent to the Ministry by Directorate of Service Tax way back in February 2001 should be enacted expeditiously for smooth and effective administration of service tax. An alternative procedure for checking and verification of tax due as assessed by assessee is recommended in view of withdrawal of section 71 and 72 of the Act.

The above observations were pointed out to Ministry in August 2005. They were largely in agreement with the need to tone up administration. The Board stated (November 2005) that audit observations and recommendations have been taken note of and corrective steps where necessary would be taken after detailed examination.

**New Delhi
Dated : 22 March 2006**

**(JAYANTI PRASAD)
Principal Director (Indirect Taxes)**

Countersigned

**New Delhi
Dated : 30 March 2006**

**(VIJAYENDRA N. KAUL)
Comptroller and Auditor General of India**