

Chapter 4 : Compliance issues

During the course of this audit, we observed 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. Out of this, an amount of ₹ 7.95 lakh has been recovered in 69 cases so far.

4.1. Non-remittance of service tax

As per Section 73A of Finance Act, 1994, as amended, any person who is liable to pay Service Tax and has collected any amount in any manner as representing Service Tax, shall forthwith pay the amount so collected to the credit of the Central Government.

During the examination of records of M/s. Impresario Event Management Pvt., Ltd. and M/s. Jeevan Telecasting Corporation in Cochin Commissionerate and M/s. Saksham Events in Jaipur Commissionerate, we observed that all these assesseees did not deposit with government the service tax amounting to ₹ 1.17 crore collected by them during 2015-16.

We pointed these out (between September and November 2016), the Ministry intimated (May 2017) recovery of ₹ 12.25 lakh alongwith interest of ₹ 0.99 lakh in respect of M/s. Saksham Events and stated in respect of M/s. Impresario Event Management Pvt. Ltd., that they directed the assessee to pay the amount immediately and in respect of M/s. Jeevan Telecasting Corporation, that DGCEI unit has booked a case against the assessee.

4.2. Non-inclusion of value of additional consideration

As per Section 67(1)(ii) of the Finance Act, 1994, where service tax is chargeable on any taxable service with reference to its value and where the provision of service is for a consideration not wholly or partly consisting of money, then the value of such taxable service will be inclusive of money value equivalent of such consideration.

We observed additional consideration like expenses paid to the staff of the service provider borne by the service recipient, free duty credit script value used for procurement of restaurant service and free air time for promotional activities was not included in the taxable value. This resulted in non-payment of service tax of ₹ 4.10 crore by 11 assesseees in six Commissionerates.

We pointed these out (between November and December 2016), the Ministry reported (May 2017) recovery of ₹ 6.17 lakh including interest in two cases viz., M/s. C Square Promos and Events and M/s. Aura Integrated Solutions Pvt. Ltd., while intimated that SCN was being issued in two cases (viz., Mr. Vishal (Ajay) Devgan and Mr. Arjun Rampal) and in one case viz Mr. Ritesh Vilasrao Deshmukh, the SCN was issued. Replies in the remaining cases are awaited.

A few cases are illustrated below:

During the examination of records of Mr. Salman Khan, Mr. Arjun Rampal in Mumbai ST-IV Commissionerate, Mr. Ritesh Vilasrao Deshmukh in Mumbai ST-III Commissionerate and Mr. Vishal (Ajay) Devgan in Mumbai ST-VI Commissionerate, we observed from the agreements between producer and actors that the producers, being service recipients, agreed to provide for and bear expenses relating to arrangement of the services for travel, lodging and boarding of the make-up artist, hair stylist and spot boy. Though these fall in the ambit of additional consideration directly and inextricably linked to the services provided by the assesseees to the said service recipients, the value of this additional consideration was not included in taxable value of the assesseees. Non-inclusion of the additional consideration during 2013-14 to 2015-16 resulted to non-payment of service tax of ₹ 3.47 crore.

We pointed this out (between November and December 2016), the Ministry reported (May 2017) issue of SCN in case of Mr. Ritesh Vilasrao Deshmukh and stated that SCN was being issued in the case of Mr. Vishal (Ajay) Devgan and Mr. Arjun Rampal. Reply in the case of Mr. Salman Khan was awaited.

4.3. Non-payment/short payment of service tax

In 14 Commissionerates, we observed 45 cases of non/short payment of service tax of ₹ 12.56 crore due to non-compliance with applicable ST provisions and rules.

We pointed these out (between October and December 2016), the Ministry while admitting the objection involving amount of ₹ 5.93 crore in 28 cases and intimated the recovery of ₹ 4.58 crore in 22 cases. Reply of the Ministry in the remaining cases is awaited (May 2017).

A few cases are illustrated below:

4.3.1. During the examination of records of M/s. Prasar Bharati Broadcasting Corporation in Delhi ST-I Commissionerate, we observed that the assessee raised invoices in respect of advance license fee for Gyan Vani Channel of

IGNOU amounting to ₹ 10.43 crore during the period 2014-15 and 2015-16. However, the assessee had not charged the service tax of ₹ 1.38 crore on the invoices raised to M/s. IGNOU. This resulted in non-payment of service tax of ₹ 1.38 crore.

We pointed this out (December 2016), the Ministry while admitting the objection stated (May 2017) that the assessee deposited the entire amount.

4.3.2. M/s. Noida Software Technology Park Limited in Delhi ST-III Commissionerate is providing the services under broadcasting service, scientific and consultancy service, legal service, rent-a-cab service etc. On analysis of records of the assessee, we noticed short payment of service tax on account of difference in service tax payments as indicated in ledger vis-a-vis service tax paid through Cenvat and Cash of ₹ 63.41 lakh relating to the period 2014-15 and 2015-16.

We pointed this out (November 2016), Ministry stated (May 2017) that the assessee would deposit their service tax liability at the earliest and further progress was awaited.

4.3.3. Similarly, short payment of service tax on account of difference in service tax payments as indicated in ledger vis-a-vis service tax paid through Cenvat and Cash of ₹ 66.05 lakh for the period 2013-14 and 2015-16 was noticed in case of M/s. Celebration Events Pvt., Ltd., in Delhi ST-I Commissionerate, providing event management services.

We pointed this out (August 2016), the Ministry while admitting the objection stated (May 2017) that the assessee deposited the entire amount.

4.4. Non-payment of service tax under Reverse charge mechanism

Section 68(2) of Finance Act 1994, envisages that the service recipient is liable to pay service tax on specified categories of services.

We noticed issues of non-payment of service tax under reverse charge on the services related to rent-a-cab, legal services, manpower recruitment agency services, import of services, etc. by the service providers of entertainment sector in 16 cases involving revenue implication of ₹ 1.01 crore.

We pointed this out (between August 2016 and December 2016), the Ministry while admitting the objection involving amount of ₹ 98.83 lakh in 12 cases and intimated the recovery of ₹ 92.19 lakh in 11 cases. Reply of the Ministry in the remaining four cases was awaited (May 2017).

A few cases are illustrated below: -

4.4.1. During the examination of records of M/s. Information TV India Pvt. Ltd., in Delhi ST-II Commissionerate providing broadcasting services besides other services, it was observed that the assessee had not paid service tax of ₹ 22.16 lakh pertaining to legal consultancy, renting of motor vehicle and detective services under the reverse charge mechanism for the period 2015-16.

We pointed this out (August 2016), the Ministry intimated (May 2017) the recovery of entire amount.

4.4.2. During the examination of records of M/s. Sahara India TV Networks in Noida ST Commissionerate providing broadcasting services, alongwith other services, it was observed that the assessee had not paid service tax of ₹ 13.05 lakh pertaining to legal services, import of services, manpower and renting of motor vehicle services under the reverse charge mechanism for the period 2015-16.

We pointed this out (August 2016), the Ministry stated (May 2017) the reply would follow.

4.5. Incorrect / Excess availing of Cenvat credit

4.5.1. Ineligible credit on input services

Rule 2(l) of Cenvat Credit Rules, 2004, defines input service, inter alia, as any service used by a provider of output service for providing an output service, and included service such as modernisation, renovation or repairs of factory, etc. but excludes services provided by way of renting of motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods, services provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or Home Travel Concession, when such service are used primarily for personal use or consumption of any employee.

During examination of records, in seven Commissionerates, we observed 12 cases that the assessees irregularly availed Cenvat credit of ₹ 1.02 crore on ineligible input services during the period 2013-14 to 2015-16.

We pointed this out (between August 2016 and December 2016), the Ministry while admitting the objection involving amount of ₹ 36.64 lakh in four cases, intimated the recovery of ₹ 15.68 lakh in three cases. In six cases

involving amount of ₹ 61.28 lakh while the field formations intimated the recovery of ₹ 41.65 lakh in four cases, no confirmation was received from the Ministry. Reply of the Ministry in the remaining two cases was awaited (May 2017).

A few cases are illustrated below:

4.5.1.1. During the examination of records of M/s. Whatson India Media Pvt., Ltd., in Mumbai ST-III Commissionerate, we observed that the assessee had planned to sell the company for which an agency M/s. Virus Techno Innovation Pvt., Ltd., was engaged to search for potential investor interested in purchase of the company. The assessee paid ₹ 2.80 crore including service tax of ₹ 30.90 lakh to the agency and also availed the credit of ₹ 30.90 lakh. The credit availed by the assessee did not qualify under rule 2(l) of Cenvat Credit Rules, 2004 as this service was not used for providing output service. This resulted in irregular availment of Cenvat credit of ₹ 30.90 lakh.

We pointed this out (November 2016) the Ministry intimated (May 2017) the recovery of ₹ 32.42 lakh including interest.

4.5.1.2. During the examination of records of M/s. Polymer Media Pvt. Ltd. in Chennai ST-II Commissionerate engaged in providing broadcasting services besides other services, it was observed that the assessee availed the input service credit of ₹ 17.87 lakh during the period 2013-14 to 2015-16 on services relating to vehicle hire charges. The motor vehicle hired by the assessee did not fall under the definition of capital goods and hence ineligible for availing input credit. This resulted in irregular availment of Cenvat credit of ₹ 17.87 lakh.

We pointed this out (August 2016), while admitting the objection stated (May 2017) that the SCN was under issue.

4.5.2. Excess availment of Cenvat credit

A service provider can avail credit of service tax paid on input services related to his service activities and duties paid on inputs and/or capital goods and can utilize credit so availed in payment of service tax.

During examination of records, in eight Commissionerates, we observed 11 cases of excess availing of Cenvat credit amounting to ₹ 73.00 lakh during the period 2013-14 to 2015-16.

We pointed these out (between September and December 2016), the Ministry/department, while admitting the objection involving amount of ₹ 17.74 lakh in five cases, intimated the recovery of ₹ 10.84 lakh in three

cases. Reply of the Ministry / department in the remaining six cases was awaited (May 2017).

4.5.3. Cenvat credit taken on ineligible documents

Rule 9 of Cenvat Credit Rules, 2004, specifies the documents on the basis of which a manufacturer / service provider is allowed Cenvat credit of duty / service tax paid on input / capital goods or input services.

During examination of records, we observed six cases in four Commissionerates where Cenvat credit was availed on the basis of ineligible documents. This resulted in irregular availing of Cenvat credit of ₹ 1.25 crore during 2013-14 to 2015-16.

We pointed these out (between August and December 2016), the Ministry admitted the objection involving amount of ₹ 3.43 lakh in two cases and intimated the recovery of ₹ 1.91 lakh in one of these two cases. Reply of the Ministry in the remaining four cases was awaited (May 2017).

One case is illustrated below:

During the examination of records of M/s. Lamhas Satellite Services Ltd., in Mumbai ST-VII Commissionerate, we observed that the assessee availed credit of ₹ 58.15 lakh during 2013-14 to 2015-16 on the basis of proforma invoices, which resulted in incorrect availment of Cenvat credit of ₹ 58.15 lakh.

We pointed this out (December 2016), the Ministry stated (May 2017) that the reply would follow.

4.5.4. Non-reversal of Cenvat credit

As per rule 6(2) of Cenvat Credit Rules, 2004, where an assessee deals with both dutiable and exempted service, he shall maintain separate account of receipt, consumption and inventory of input/input services intended for use in dutiable service and those intended for use in exempted service and take credit of only the former portion. Further, the provider of output services, opting not to maintain separate accounts, shall pay an amount equal to six per cent of the value of the exempted good and exempted services or pay an amount as determined under sub-rule 3A²⁰ of Cenvat Credit Rules, 2004. As per Rule 2(e), 'exempted services' means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on

²⁰ Assessee can provisionally pay an amount of ineligible credit every month based on the previous year figures, and at the close of the year arrive at the actual ineligible credits based on the actual value of clearances and pay the difference if any along with interest

which no service tax is leviable under section 66B of the Finance Act. Further as per Section 66D (e) of Finance Act, 1994, trading of goods is an item in the negative list.

We observed 15 cases, in nine Commissionerates, where the assessee had either not reversed or short reversed the amount of ₹ 18.73 crore payable under rule 6 of the Cenvat Credit Rules, 2004, during the period of review.

We pointed these out (between August and December 2016), the Ministry admitted the objection involving amount of ₹ 60.03 lakh in seven cases and intimated the recovery of ₹ 47.95 lakh in five cases. In one case Ministry did not accept the objection which is discussed below. Reply of the Ministry in the remaining cases is awaited (May 2017).

A few cases are illustrated below: -

4.5.4.1. During examination of records of M/s Prime Focus Limited (PFL) in Mumbai ST-IV Commissionerate, we observed that assessee transferred the Conversion business at Chandigarh and Mumbai together with all assets along with assumed obligations, and employees, as an ongoing concern to M/s. Prime Focus World Creative Services Pvt., Ltd., under a Business Transfer Agreement. The assessee received a consideration of ₹ 229.70 crore towards this transfer during 2013-14 and 2014-15. The business transfer of an ongoing concern is exempted service and the assessee was also not maintaining separate account. Hence the assessee was required to reverse cenvat credit, calculated at 6 per cent of value of exempted service, amounting to ₹ 13.78 crore on inputs relating to this exempted service.

We pointed this out (December 2016), the Ministry stated (May 2017) that the transfer of business includes transfer of various assets and business liabilities as a whole and therefore, does not qualify as “service” as defined under Section 65(44) of the Finance Act, 1944. Hence no reversal of Cenvat credit is required.

The reply of the Ministry is not acceptable since the transfer of assets included movable and immovable assets as per Business Transfer agreement. Hence it qualifies as “service” as defined under Section 65(44) of the Finance Act, 1944 and the assessee was required to reverse cenvat credit, calculated at 6 per cent of value of exempted service.

4.5.4.2. During the examination of records of M/s. Jagran Prakashan Ltd., in Delhi ST-II Commissionerate, we observed that the assessee had provided both taxable and exempted services and did not maintain separate accounts for input services used in the provision of taxable and exempted services in

respect of all administrative services i.e., renting, courier, legal etc. Hence the assessee is liable to pay an amount of ₹ 1.75 crore at the rate of six per cent of exempted services of ₹ 29.24 crore during 2013-14 to 2015-16.

We pointed this out (September 2016), the Ministry stated (May 2017) the SCN is being issued.

4.5.5. Cenvat credit on old invoices

Rule 4 of the Cenvat Credit Rules, 2004, was amended with effect from 1 September 2014 to provide inter alia that Cenvat credit shall not be allowed after six months of the date of documents issued under rule 9 ibid. The time limit of six months was enhanced to one year with effect from 1 March 2015.

During the examination of records of M/s. Den Enjoy Cable Pvt., Ltd. and M/s. M.H. One TV Network Ltd. in Delhi ST-III Commissionerate and M/s. Executive Events in Cochin Commissionerate, we observed that the assessee availed credit of duty paid on the basis invoices which were older than six months/one year during the period 2013-14 to 2015-16. This resulted in irregular availing of Cenvat credit of ₹ 33.32 lakh.

We pointed this out (between September and November 2016), the Ministry while admitting the objection in two cases, intimated (May 2017) the recovery of ₹ 0.87 lakh in the case of M/s. Den Enjoy Cable Pvt., Ltd. Reply in the case of M/s. Executive Events is awaited.

4.5.6. Availing of Cenvat credit without making payment

Sub-rule 7 of rule 4 of Cenvat Credit Rules, 2004 stipulates that the Cenvat credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received. Further, proviso to the said rule provides that in case the payment of the value of input service and service tax paid or payable as indicated in the invoice/bill is not paid within three months of the date of the invoice/bill, the service provider who has taken credit on such input service shall pay an amount equivalent to the Cenvat credit availed on such input service.

Further, this rule provides that if any payment or part thereof, made towards an input service is refunded or credit note is received by the manufacturer or the service provider who has taken credit on such input services, he shall pay an amount equal to the Cenvat credit availed in respect of the amount so refunded or credited.

During examination of records we observed six cases in five Commissionerates where the service providers availed Cenvat credit on input services in violation of above rules either by not making payment for value of input service along with service tax payable thereon within the prescribed time limit of three months. This resulted in irregular availing of Cenvat credit of ₹ 4.93 crore.

We pointed these out (between August and December 2016), the Ministry while admitting the objection involving amount of ₹ 28.20 lakh in four cases, intimated the recovery of ₹ 6.62 lakh in two cases. Reply of the Ministry in the remaining cases is awaited (May 2017).

One case is illustrated below:-

Scrutiny of records of M/s. Sahara India TV Network in Noida ST Commissionerate, revealed that the assessee had availed and utilised Cenvat credit of ₹ 4.56 crore on input services in respect of which the assessee had not paid the value of input service till the date of audit (November 2016). This resulted in irregular availing of Cenvat credit of ₹ 4.56 crore during the period 2013-14 to 2015-16.

We pointed this out (November 2016), while the reply of the Ministry was awaited (May 2017), the assessee reversed (December 2016) the credit of ₹ 4.56 crore.

4.5.7. Non-reversal of proportionate Cenvat credit on the capital goods sold

As per rule 3(5A)(a)(ii) of the Cenvat Credit Rules, 2004, if the capital goods on which Cenvat credit has been taken are removed after being used, the provider of output service shall pay an amount equal to the Cenvat credit taken on the said capital goods reduced by the percentage points calculated by straight line method at the rate of 2.5 per cent for each quarter of a year or part thereof from the date of taking Cenvat credit.

During the examination of records of M/s. Saravanan Video Centre, in Chennai ST-II Commissionerate and M/s. Kerala Communications Cable Ltd., in Cochin Commissionerate, we observed that the assessee had sold the imported capital goods (on which they had already availed Cenvat credit) but omitted to reverse the equivalent Cenvat credit during 2013-14 to 2015-16. It resulted non-reversal of Cenvat credit of ₹ 27.44 lakh.

We pointed these out (between September and December 2016), the Ministry intimated (May 2017) the recovery of ₹ 9.12 lakh in respect of

M/s. Saravanan Video Centre and stated that an SCN was being issued to M/s. Kerala Communications Cable Ltd.

4.6. Non / short payment of Swachh Bharat Cess

Section 119 of the Finance Act, 2015 contains provisions for levy and collection of Swachh Bharat Cess (SBC) at the rate of 0.5 per cent on all taxable services effective from 15 November 2015.

During examination of records in four Commissionerates, we observed non-payment of Swachh Bharat Cess amounting to ₹ 56.99 lakh by six assessees. We pointed this out (between August and November 2016), the Ministry while admitting the objection in all the cases, intimated (May 2017) the recovery of ₹ 56.27 lakh.

4.7. Non / short payment of interest

Section 75 of the Finance Act, 1994, envisages that every person, liable to pay the tax in accordance with the provisions of Section 68 or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay interest for the periods by which such crediting of the tax or any part thereof is delayed.

During examination of records, we observed the non / short payment of interest of ₹ 1.45 crore on delayed payment of service tax in 19 cases in nine Commissionerates.

We pointed these out (between August and December 2016), the Ministry admitted the objection involving amount of ₹ 97.75 lakh in 12 cases and intimated the recovery of ₹ 35.82 lakh in seven cases. Reply of the Ministry in the remaining seven cases was awaited (May 2017).

Two case are illustrated below:-

4.7.1. During the examination of records of M/s. Impresario Event Management India Ltd., in Cochin Commissionerate, engaged in providing Event Management Services, we observed that they delayed the payment of service tax of ₹ 70.07 lakh and ₹ 56.32 lakh for the years 2013-14 and 2014-15 respectively, with delay ranging from 250 days to 544 days. But the applicable interest of ₹ 28.41 lakh was neither paid by the assessee nor demanded by the department.

We pointed this out (October 2016), the Ministry stated (May 2017) that they directed the assessee to pay the amount.

4.7.2. During the examination of records of M/s. MYSTIC An Entertainment Company in Mumbai ST-VI Commissionerate engaged in providing programme producer service, we observed that the assessee short paid the interest of ₹ 21.04 lakh during 2013-14 to 2015-16 on which no action was initiated by the department.

We pointed this out (October 2016), the Ministry stated (May 2017) that the reply would follow.

The instances of non-adherence to taxation rules by assesseees drive home the need to put in place a more automated compliance verification mechanism, based on technology and data analytics, to make non-compliance difficult.

New Delhi
Dated: 11 July 2017


(HIMABINDU MUDUMBAI)
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Countersigned

New Delhi
Dated: 11 July 2017


(SHASHI KANT SHARMA)
Comptroller and Auditor General of India

