

Chapter IV

Non-compliance with rules and regulations

4.1 Introduction

We examined the records maintained by assessees that form the basis for calculation and payment of Service Tax and checked the correctness of tax payment as well as interest and availing of CENVAT credit and exemptions. We noticed 69 cases of non/short payment of Service Tax, irregular availing and utilisation of CENVAT credit and non-payment of interest having total revenue implication of ₹ 138.22 crore. Out of these, 62 cases which have been accepted by the department and recoveries made/ recovery proceedings initiated are mentioned in Appendix II and seven cases are discussed in the following paragraphs under three major headings:

These seven observations are discussed under three major headings:

- Non-Payment of Service Tax
- Incorrect Availing/ Utilisation of CENVAT Credit
- Non-Payment of Interest

4.2 Non-Payment of Service Tax

4.2.1 *Incorrect Application of Place of Provision of Service Rules*

Rule 6A(1)(d) of Service Tax Rules, 1994 envisages that if the place of provision of the service is outside India, then the provision of any service provided or agreed to be provided shall be treated as export of service. Further, query No.5.2.4 of CBEC's Guidance Notes clarified that in the case of a service recipient, the place relevant for determining location is the place where service is "used" or "consumed". Interest is payable for delayed payment of Service Tax under section 75 of the Finance Act, 1994.

M/s Alexandria Equities Management (India) Pvt. Ltd. in Hyderabad ST Commissionerate, who are engaged in providing 'Management or Business Consultancy Service', entered into an agreement to provide the above service to M/s ARE- Mauritius No.1 Ltd., Mauritius (Beneficiary Company). The terms and conditions of the agreement *inter alia* include that the services set forth in the agreement should be used by the Beneficiary Company outside India and all decisions relating to the investments in India, including the acquisition, management and disposition of portfolio investments, should be made solely by the Beneficiary Company. Further, it was noticed that the assessee provided the above services to the Beneficiary Company and did not discharge the Service Tax liability stating that the services were exported

outside India. However, based on the services provided, the Beneficiary Company had invested in taxable territory i.e. in India which cannot be termed as Export of Service as the services were used or consumed in India only. Thus, the assessee was liable to pay service tax of ₹ 1.01 crore during the period from 2010-11 to 2014-15 which was recoverable from the assessee along with interest.

When we pointed this out (July 2015), the department accepted (March 2016) the audit objection and stated that a show cause notice covering the entire amount raised in the audit objection had been issued (October 2015).

4.2.2 Non-adherence to Provisions Regarding Declared Service

According to provisions of Section 65B (44) and Section 66E (e) of Finance Act, 1994 effective from 1 July 2012, “Service” includes “declared service” and ‘agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act’ will be construed as a “declared service”.

Further, vide serial number (1) of Paragraph 2.3.2 of the Educational Guide published by CBEC on 20 June 2012, it was clarified that amount received in settlement of dispute will be part of consideration if the dispute pertains to consideration relating to service.

M/s Jyoti Limited, Vadodara in Vadodara-I Commissionerate, entered into a Joint Venture Agreement (JVA) (August 2007) with M/s. RNS Infrastructure Ltd., Hubli and three other parties for Karnataka Neeravari Nigam Limited project under which M/s Jyoti Limited was responsible for design, drawing, manufacture etc. related to the electromechanical work of the project. As part of settlement (April 2011) of a legal dispute relating to the project, M/s Jyoti Limited was to be paid ₹ 18 crore and M/s Jyoti Limited’s portion of work under the JVA was assigned to a third party. Under the above settlement, the assessee received ₹ 7.99 crore during July 2012 till the date of audit, on which Service Tax of ₹ 99.48 lakh was leviable in terms of provisions ibid. But during audit it was noticed that no service tax was levied, which was recoverable with interest.

When we pointed this out (July 2015), the Ministry accepted (November 2016) the audit objection and stated that a show cause notice demanding an amount of ₹ 1.17 crore had been issued (October 2016).

4.2.3 Non-Discharge of Service Tax under Reverse Charge Mechanism

As per Section 66A (1) of the Finance Act 1994 where any service specified in clause (105) of section 65 of the Act is provided or to be provided by a person who has established a business or has fixed establishment from which the

service is provided in a country other than India, and received by a person (recipient) in India, then in such cases the recipient of such service is liable to pay Service Tax.

During audit of Central Excise range in Kalamassery in Cochin Commissionerate, ST-3 returns and connected records of M/s Trans Asian Shipping Service Pvt. Ltd was subject to detailed scrutiny. It was noticed that the assessee paid container hire charges to foreign lessors but did not pay Service Tax in capacity as service recipient. Even though the assessee hired containers from six Foreign Service providers during the year 2012-13, details of payment made to M/s. Blue Sky Intermodal (UK) Limited only was available. An amount of ₹ 1.75 crore was paid to this Foreign Service provider on which the non-payment of Service Tax amounted to ₹ 21.66 lakh.

When we pointed this out (February 2014), the Ministry accepted (November 2016) the audit objection and stated that a show cause notice demanding an amount of ₹ 5.75 crore had been issued in respect of payment made to all Foreign Service providers during FY13 to FY15.

4.2.4 Undervaluation of Taxable Service

Section 67 of the Finance Act 1994, prescribes that where Service Tax is chargeable on any taxable service with reference to its value, then such value shall be the gross amount charged by the service provider for such services provided in a case where the provision of service is for a consideration in money.

M/s Oracle India Pvt. Ltd. in Bangalore ST-II Commissionerate, entered into Workforce Development Program (WDP) agreement with M/s NIIT Ltd. Bangalore for providing training on Oracle courses through M/s NIIT Ltd. to the students enrolling for such courses with effect from June 2011 and collected annual membership fees based on the number of NIIT centres covered under the WDP agreement. The assessee signed an Addendum to the WDP agreement whereby printing rights of study materials were transferred to NIIT as part of the WDP for a consideration per student per course. Since the printing rights of the study materials were granted to M/s NIIT as part of the course and that the Addendum was a part of WDP Agreement, the consideration received for printing rights of study materials were to be treated as part of the course fees.

A scrutiny of the Service Tax records pertaining to the assessee revealed that while paying Service Tax on the membership fees collected from M/s NIIT under Commercial Training or Coaching Services, the assessee did not include the consideration received towards printing rights of study materials in the

assessable value, resulting in short-payment of Service Tax of ₹ 1.63 crore for the period from FY12 to FY15.

When we pointed this out (July 2013), the Ministry accepted (November 2016) the audit objection and stated that a show cause notice had been issued (March 2016) to the assessee for ₹ 2.01 crore.

4.3 Incorrect Availing/Utilisation of CENVAT Credit

4.3.1 Non-Reversal of CENVAT Credit on Exempted Service

Rule 6 of the CENVAT Credit Rules, 2004 provides that CENVAT credit *shall not be allowed* on such quantity of input or input service used in or in relation to provision of exempted services.

According to provisions of Section 65B (44) of Finance Act, 1994 effective from 01 July 2012, “Service” includes “declared service” and as per Section 66E of the Finance Act 1994, declared services include construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, *except where the entire consideration is received after issuance of completion certificate by the competent authority.*

M/s Neptune Reality Pvt. Ltd. in Vadodara-I Commissionerate, started (May 2011) a project “Avalons Greenwoods”, received completion certificate from the Competent Authority on 23 March 2015. Further, out of total 54 units constructed under the project, 19 units either remained unsold as on 23 March 2015 or booked after the issue of completion certificate. Since the completion certificate was issued on 23 March 2015, the assessee was required to reverse CENVAT credit in respect of portion of input services deemed to have been used in the construction of these 19 Flats, which worked out to ₹ 18.10 lakh.⁴⁷

When we pointed this out (August 2015), the Commissionerate replied (December 2015) that the assessee reversed (August 2015) the credit ₹ 18.10 lakh along with interest of ₹ 0.16 lakh.

4.4 Non-Payment of Interest

As per Rule 6 of the Service Tax Rules, 1994 read with provisions of section 68 of the Finance Act, 1994 an assessee shall pay Service Tax at the prescribed rate on monthly basis by 5/6 of the month following the calendar month in which service is deemed to have been provided. Further, the Service Tax on

⁴⁷ Against total value of the project of ₹ 44.70 crore, ₹ 15.88 crore (i.e. 35.53 per cent) for these 19 flats was received after getting completion certificate. Total input service credit availed on this project was ₹ 50.95 lakh and its proportionate amount (35.53 per cent) relating to exempted services amounts to ₹ 18.10 lakh.

the service deemed to be provided in the month of March shall be paid by 31 March of the calendar year.

Further, Section 75 of Chapter V of Finance Act 1994, provides that every person who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed shall pay simple interest at such rate as is for the time being fixed by the central government. As per Rule 3 of Point of Taxation Rules, 2011 where the invoice is not issued within the time period specified in Rule 4A of the Service Tax Rules, 1994, the point of taxation shall be the date of completion of service.

4.4.1 Liability Due to Incorrect Application of Point of Taxation Rules

M/s E-nxt Financial Ltd. in ST-VII Mumbai Commissionerate, is engaged in providing services as Recovery Agent to the financial companies. Scrutiny of records revealed that for the services provided in March 2015, the assessee had not raised invoices/bills from the date of completion of taxable service or receipt of payments towards the value of such taxable service. In the books of Accounts, the assessee has shown an amount of ₹ 20.90 crore as unbilled revenue which has been adjusted or invoices raised in subsequent months from April 2015 to September 2015 and Service Tax was paid from the date of invoice. The Service Tax should have been paid by 31 March 2015 for the services provided up to March 2015. However, assessee failed to discharge the Service Tax liability as per point of taxation rules cited above for which it was liable to pay interest amounting to ₹ 54.13 lakh.

When we pointed this out (October 2015), the Ministry accepted (November 2016) the objection and stated that SCN was being prepared and processed for issuance as some information was required from the assessee.

4.4.2 Non-Payment of Interest on Belated Payment of Service Tax

M/s. ABC Techno Labs India Private Limited in Chennai ST I Commissionerate, had paid Service Tax belatedly from January 2013 to October 2013, but did not pay interest due thereon which worked out to ₹ 19.38 lakh.

When we pointed this out (October, 2015), the Ministry accepted (November 2016) the audit objection and stated that SCN was being issued.