

# Report of the Comptroller and Auditor General of India

for the year ended March 2016



**Union Government**  
**Department of Revenue**  
**(Indirect Taxes–Service Tax)**  
**Report No. 41 of 2016**

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**Laid on the table of Lok Sabha/Rajya Sabha \_\_\_\_\_**



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## **Preface**

This Report for the year ended March 2016 has been prepared for submission to the President of India under Article 151 of the Constitution of India.

The Report contains significant results of the compliance audit of the Central Board of Excise and Customs under Department of Revenue–Indirect Taxes (Service Tax) of the Union Government.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2015-16, as well as those which came to notice in earlier years but could not be reported in the previous Audit Reports. Instances relating to the period subsequent to 2015-16 have also been included, wherever necessary.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.





## Executive Summary

The Service Tax collection was ₹ 2,11,145 crore during financial year 2015-16 (FY16) and accounted for 29.77 per cent of Indirect Tax revenue in FY16. Indirect tax collection have risen as a per cent of GDP in FY16 after registering a slight decline during the preceding two years. The share of Indirect Taxes in Gross Tax revenue increased in FY16 vis-à-vis FY15. Service Tax revenue as a percentage of GDP has been increasing every year during last five years, though it declined marginally during FY15.

This Report has 162 audit observations on Service Tax, having financial implication of ₹ 256.88 crore. The Ministry/department had accepted (up to December 2016) 158 audit observations involving revenue of ₹ 252.65 crore and reported recovery of ₹ 78.47 crore. Significant audit findings are as follows:

### Chapter I: Service Tax Administration

- Manpower Recruitment Service, which was in third position in FY15, has become top Service Tax revenue paying service in FY16 followed by Telecommunication and General Insurance Premium services.

(Paragraph 1.7)

- Of the returns marked by ACES for review and correction, 79 per cent were pending corrective action.

(Paragraph 1.12.1)

- Adjudication cases involving Service Tax implication of over ₹ 76,124 crore were pending finalisation as on 31 March 2016.

(Paragraph 1.13)

- Success ratio of department's appeal against adjudication order has decreased to 25.53 per cent in FY16 from 32.69 per cent in FY14.

(Paragraph 1.15)

- There was a huge shortfall in the Internal audits conducted, as compared with audits due, across all categories of units.

(Paragraph 1.17)

- The Ministry could not provide complete data related to detailed scrutiny of returns, Internal Audit and disposal of refund cases for FY16 and data furnished in respect of registered assessees and preliminary scrutiny of returns, did not tally with information furnished for last Audit Report No. 1 of 2016.

(Paragraph 1.19)

- In the last five audit reports (including current year's report) we had included 810 audit paragraphs having financial implication of ₹ 2,181.44 crore against which the Ministry accepted 795 audit paragraphs having financial implication of ₹ 1,866.26 crore and had recovered ₹ 449.59 crore.

(Paragraph 1.23)

## Chapter II: Recovery of arrears

- Arrears of Service Tax, which was ₹ 22,014 crore in 2012-13, tripled to ₹ 71,257 crore in 2014-15. However, recovery during the year as a percentage of unrestrained recoverable arrears registered a steep fall from 42 *per cent* during 2013-14 to 10 *per cent* during 2014-15.

(Paragraph 2.7)

- No time limit was prescribed for communication of Order-in-Originals (OIOs) to Range Offices. We noticed that time taken to communicate OIOs to Range Offices ranged from one day to 2,949 days in 11 Commissionerates.

(Paragraph 2.8.1)

- In 49 test checked cases in eight Commissionerates, action for recovery under section 73 and 87 of the Finance Act 1994, was not initiated, which resulted in non-recovery of ₹ 14.86 crore.

(Paragraph 2.8.2)

- In 51 test checked cases in nine Commissionerates, pending from two to 10 years involving revenue of ₹ 613.07 crore, applications for early hearing were not filed.

(Paragraph 2.8.3)

- In 23 Commissionerates, no cases were transferred to Recovery Cell during the last three years, though there were arrears of ₹ 16,857 crore at the beginning of 2014-15 in these Commissionerates. This not only resulted into Recovery Cell being redundant but has also led to piling of arrears.

(Paragraph 2.8.5)

- CBEC constituted a Centralised Task Force (CTF) in 2004 to co-ordinate, facilitate, monitor and oversee the efforts of field formations in recovery of arrears. But it failed to make effective strategies for realisation of arrears.

(Paragraph 2.11.1)

### Chapter III: Effectiveness of Internal Audit

- This audit was carried out in 15 selected Audit Commissionerates covering the period from 2012-13 to 2014-15.
- During audit, we requisitioned 750 Assessee Master Files and 1,125 Internal Audit Files against which we received 396 Assessee Master Files and 886 Internal Audit Files. Further we did not receive full records relating to audit planning register, audit follow up register etc. ***In the absence of these records, we are not in a position to comment on the extent of compliance by the Internal Audit Commissionerates with the laid down procedures.***

(Paragraph 3.6)

- In nine commissionerates, where required data was made available, the Assessee Master Files (AMFs) were created in respect of only 0.58 per cent of the assesses instead of 100 per cent as prescribed. In view of practical constraints expressed by almost all the commissionerates in maintaining AMFs for all the assesses, the Ministry needs to devise proper risk assessment at Commissionerate level keeping in view centralised risk scoring of assesseees being done by DG Audit currently.

(Paragraph 3.8.1)

- There were inadequacies in Internal Audit Files, Audit Planning Register and Audit Follow Up Registers.

(Paragraphs 3.8.3, 3.9.1 and 3.9.2)

- There was delay in submission of draft audit reports by the Internal Audit Parties in more than fifty per cent of the cases in 10 Commissionerates.

(Paragraph 3.9.3)

- Monitoring Committee Meeting (MCMs) are to be held on monthly basis to examine the Internal Audit objections for sustainability. In six Audit Commissionerates, only 209 MCMs were held as against 306 MCMs due to be conducted.

(Paragraph 3.9.5)

- Poor maintenance of records by a wing which is the backbone of the compliance verification mechanism reflects poorly on the functioning of the department.

(Paragraph 3.10)

**Chapter IV: Non-compliance with rules and regulations**

- Audit observed instances of non-payment/short-payment of Service Tax, incorrect availing/utilisation of CENVAT credit and non-payment of interest on delayed payments having financial implication of ₹ 138.22 crore.

(Paragraph 4.1)

**Chapter V: Effectiveness of internal controls**

- Audit observed deficiencies in scrutiny and internal audit carried out by departmental officers, delayed issue of show cause notice etc., having financial implication of ₹ 118.66 crore.

(Paragraph 5.2)

## Chapter I

### Service Tax Administration

#### 1.1 Resources of the Union Government

The resources of Government of India include all revenues received by the Union Government, all loans raised by issue of treasury bills, internal and external loans and all moneys received by the Government in repayment of loans. Tax revenue resources of the Union Government consist of revenue receipts from direct and Indirect Taxes. Table 1.1 below shows the summary of resources for the financial year (FY) 16 and FY15.

**Table 1.1: Resources of the Union Government**

	(₹ in crore)	
	FY16	FY15
A. Total Revenue Receipts	19,42,200	16,66,717
i. Direct Tax Receipts	7,42,012	6,95,792
ii. Indirect Tax Receipts including other taxes	7,13,879	5,49,343
iii. Non-Tax Receipts	4,84,428	4,19,982
iv. Grants-in-aid & contributions	1,881	1,600
B. Miscellaneous Capital Receipts <sup>1</sup>	42,132	37,740
C. Recovery of Loans and Advances <sup>2</sup>	41,878	26,547
D. Public Debt Receipts <sup>3</sup>	43,16,950	42,18,196
<b>Receipts of Government of India (A+B+C+D)</b>	<b>63,43,160</b>	<b>59,49,200</b>
Source: Union Finance Accounts of respective years.		
Note: Total Revenue Receipts include ₹ 3,37,808 crore in FY15 and ₹ 5,06,193 crore in FY16, share of net proceeds of Direct and Indirect Taxes directly assigned to states.		

The total receipts of the Union Government increased to ₹ 63,43,160 crore in FY16 from ₹ 59,49,200 crore in FY15. In FY16, its own receipts were ₹ 19,42,200 crore including Gross Tax receipts of ₹ 14,55,891 crore of which Indirect Tax receipts including other taxes accounted for ₹ 7,13,879 crore.

#### 1.2 Nature of Indirect Taxes

Indirect Taxes are attached to the cost of the supply of goods/services and are, in this sense, transaction-specific rather than person-specific. The major Indirect Taxes/duties levied under Acts of Parliament are:

- a) **Service Tax:** Service Tax is levied on services provided within the taxable territory (Entry 97 of List 1 of the Seventh Schedule of the Constitution). Service Tax is a tax on services rendered by one person to another. Section 66B of the Finance Act, 1994 envisaged that there

<sup>1</sup> This comprises of value of bonus share, disinvestment of public sector and other undertakings and other receipts;

<sup>2</sup> Recovery of Loans and advances made by the Union Government;

<sup>3</sup> Borrowing by the Government of India internally as well as externally.

shall be a tax levied at the rate of 14 per cent on the value of all services, other than those specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.<sup>4</sup> ‘Service’ has been defined in section 65B (44) of the Finance Act, 1994 to mean any activity for consideration (other than the items excluded therein) carried out by a person for another and to include a declared service.<sup>5</sup>

- b) Customs duty:** Customs duty is levied on import of goods into India and on export of certain goods out of India (Entry 83 of List 1 of the Seventh Schedule of the Constitution).
- c) Central Excise duty:** Central Excise duty is levied on manufacture or production of goods in India. Parliament has powers to levy excise duties on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics but including medicinal and toilet preparations containing alcohol, opium etc (Entry 84 of List 1 of the Seventh Schedule of the Constitution).

This chapter discusses trends, composition and systemic issues in Service Tax using data from finance accounts, departmental accounts and relevant data available in public domain.

### 1.3 Organisational Structure

The department of Revenue (DoR) of Ministry of Finance (MOF) functions under the overall direction and control of the Secretary (Revenue) and coordinates matters relating to all the Direct and Indirect Union Taxes through two statutory Boards namely, the Central Board of Excise and Customs (CBEC) and the Central Board of Direct Taxes (CBDT) constituted under the Central Board of Revenue Act, 1963. Matters relating to the levy and collection of Service Tax are looked after by the CBEC.

Indirect Tax laws are administered by the CBEC through its field offices, the commissionerates. For this purpose, the country is divided into 27 zones of Central Excise and Service Tax headed by the Chief Commissioner. Under these 27 zones of Central Excise and Service Tax, there are 83 composite executive commissionerates that deal with both Central Excise and Service Tax, 36 exclusive Central Excise executive Commissionerates and 22 exclusive Service Tax executive Commissionerates headed by the Commissioner. Divisions and ranges are the subsequent formations, headed by Deputy/

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<sup>4</sup> Section 66B was inserted by the Finance Act, 2012 with effect from 1 July 2012; section 66D lists the items the negative list comprises of.

<sup>5</sup> Section 66E of the Finance Act, 1994 lists the declared services.

Assistant Commissioner and Superintendents respectively. Apart from these executive commissionerates, there are eight Large Tax Payer Units (LTU) commissionerates, 60 Appeal commissionerates, 45 Audit commissionerates and 20 Directorates General/Directorates dealing with specific function.

The overall sanctioned staff strength of the CBEC is 91,756 as on 31 March 2016. The organisational structure of CBEC is shown in Appendix I.

#### 1.4 Growth of Indirect Taxes - Trends and Composition

Table 1.2 depicts the relative growth of Indirect Taxes during FY12 to FY16.

Table 1.2: Growth of Indirect Taxes

Year	Indirect Taxes	GDP	Indirect Taxes as % of GDP	Gross Tax Revenue	(₹ in crore)
					Indirect Taxes as % of Gross Tax Revenue
FY12	3,92,674	90,09,722	4.36	8,89,118	44.16
FY13	4,74,728	99,88,540	4.75	10,36,460	45.80
FY14	4,97,349	1,13,45,056	4.38	11,38,996	43.67
FY15	5,46,214	1,25,41,208	4.36	12,45,135	43.87
FY16	7,10,101	1,35,76,086	5.23	14,55,891	48.77

Source: Tax revenue - Union Finance Accounts (Provisional), GDP – Press note of CSO<sup>6</sup>

It is observed that Indirect tax collection have risen as a per cent of GDP in FY16 after registering a slight decline during the preceding two years. The share of Indirect Taxes in Gross Tax revenue increased in FY16 vis-à-vis FY15.

#### 1.5 Indirect Taxes – Relative Contribution

Table 1.3 depicts the trajectory of the various Indirect Tax components in GDP terms for the period FY12 to FY16.

Table 1.3: Indirect Taxes – Percentage of GDP

Year	GDP	ST Revenue	ST Revenue as % of GDP	CE Revenue	CE Revenue as % of GDP	Custom Revenue	(₹ in crore)
							Custom Revenue as % of GDP
FY12	90,09,722	97,509	1.08	1,44,901	1.61	1,49,328	1.66
FY13	99,88,540	1,32,601	1.33	1,75,845	1.76	1,65,346	1.66
FY14	1,13,45,056	1,54,780	1.36	1,69,455	1.49	1,72,085	1.52
FY15	1,25,41,208	1,67,969	1.34	1,89,038	1.51	1,88,016	1.50
FY16	1,35,76,086	2,11,415	1.56	2,87,149	2.12	2,10,338	1.55

Source: Figures of tax receipts are as per Union Finance Accounts of respective years.

<sup>6</sup> Press note on GDP released on 31 May 2016 by Central Statistical Office (CSO), Ministry of Statistics and Programme Implementation. This indicates that the figures for GDP for FY14 and FY15 are based on New Series Estimates; and figure for FY16 are based on provisional estimates at current prices. The figures of GDP for FY12 and FY13 are based on current market price with base year 2004-05. Figures are being continually revised by CSO and this data is meant for an indicative comparison of fiscal performance with macro economic performance



Among the indirect taxes, the Service Tax revenue as a percentage of GDP has been increasing every year during last five years, though it declined marginally during FY15. The share of all major indirect taxes i.e. Central Excise, Service Tax and Customs revenue as a percentage of GDP has increased in FY16.

## 1.6 Growth of Service Tax - Trends and Composition

Table 1.4 depicts the growth trends of Service Tax in absolute and GDP terms during FY12 to FY16.

Table 1.4: Growth of Service Tax

Year	GDP	Gross Tax Revenue	Gross Indirect Taxes	Service Tax	Service Tax as % of GDP	Service Tax as % of Gross Tax Revenue	
						of Gross Tax Revenue	of Indirect Taxes
FY12	90,09,722	8,89,118	3,92,674	97,509	1.08	10.97	24.83
FY13	99,88,540	10,36,460	4,74,728	1,32,601	1.33	12.79	27.93
FY14	1,13,45,056	11,38,996	4,97,349	1,54,780	1.36	13.59	31.12
FY15	1,25,41,208	12,45,135	5,46,214	1,67,969	1.34	13.49	30.75
FY16	1,35,76,086	14,55,891	7,10,101	2,11,415	1.56	14.52	29.77

Source: Figures of tax receipts are as per Union Finance Accounts of respective years.

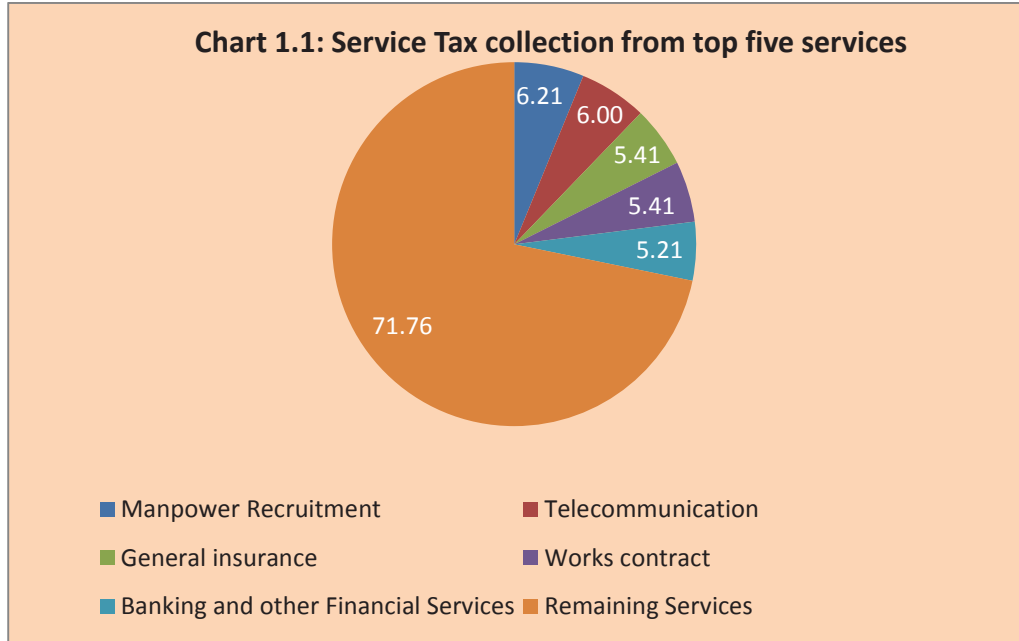
Service Tax accounted for 14.52 per cent of Gross Tax revenue during FY16. Share of service tax in gross tax revenue has been steadily increasing where as its share in total indirect taxes declined by around one per cent in FY16. Service sector grew by 9.2 per cent in 2015-16, marginally lower than the growth rate of 10.6 per cent<sup>7</sup> in 2014-15. The slowdown was mainly due to the deceleration in growth of the combined category of public administration, defence and other services to 6.9 per cent from 10.7 per cent in 2014-15.

## 1.7 Service Tax from Major Service Categories

As per Finance Act, 1994, the Service Tax was leviable on 119 services upto 30 June 2012. With the introduction of introduction of Negative list with effect from 1 July 2012, all services were taxable other than those entries specified under Section 66D like services by the Reserve Bank of India, services by a foreign diplomatic mission located in India, trading of goods, services by way of access to a road or a bridge on payment of toll charges, services by way of pre-school education and education up to higher secondary school or equivalent etc.

<sup>7</sup> Para 7. 12 of Economic Survey 2015-16 (Volume II)

It is observed that no single service is a major contributor to Service Tax. However, the top five categories of services contributed 28 per cent of the total service tax collection during FY16 which is depicted in pie chart 1.1. Remaining services that include categories of services such as Business Support Services, Business Auxiliary Services, Renting of Immovable property, Transport of Goods by Road, Life Insurance etc., contributed 72 per cent.



The Service Tax collections from these top five category of services during FY12 to FY16 are shown in Table 1.5.

**Table 1.5: Service Tax from Top Five Service Categories**

(₹ in crore)

Year	FY12	FY13	FY14	FY15	FY16
Manpower Recruitment	3,847	4,432	7,335	9,045	13,129
Telecommunication	5,402	7,538	12,643	13,531	12,690
General Insurance Premium	5,234	6,321	8,834	9,263	11,436
Works Contract	4,179	4,455	7,434	8,139	11,434
Banking and Other Financial Services	5,876	4,964	7,185	8,099	11,005

Source: Union Finance Accounts of respective years.

It is observed that Manpower Recruitment Service, which was in third position in FY15, has become top Service Tax revenue paying service in FY16 followed by Telecommunication and General Insurance Premium services.

### 1.8 Tax Base

"Assessee" means any person who is liable to pay Service Tax and includes his agent as per definition in Section 65(7) of the Finance Act, 1994 (as amended). Table 1.6 depicts the data of the number of persons registered with the Service Tax department under Section 69 of the Finance Act, 1994.

Table 1.6: Tax base in Service Tax

Year	No. of ST Registrations	% Growth Over Previous Year	No. of Temporary Registration (not PAN Based)	No. of Assesseees who Filed Returns	% of Registrants who Filed Returns
FY12	17,67,604	12.88 <sup>8</sup>	3,00,421	7,31,042	41.36
FY13	19,97,422	13.00	3,00,875	8,62,624	43.19
FY14	22,73,723	13.83	3,01,192	9,99,200	43.95
FY15	25,26,932	11.14	3,01,413	10,94,862	43.33
FY16	28,28,358	11.93	3,01,448	11,67,181	41.27

Source: Figures furnished by the Ministry. Comment on data discrepancy in Para 1.21

It is observed that number of registered persons as also the number of assesses filing returns is increasing steadily. However the per cent of the registered assesseees filing returns has declined by 2 per cent in FY16. ST Voluntary Compliance Encouragement Scheme (VCES) 2013, implemented during 2013-14, mainly aimed at encouraging non-filers and stop filers to file returns. In a performance audit conducted during 2015-16, it was observed that in 15 selected commissionerates, only 62 per cent of returns due for filing were actually filed post-VCES period by the declarants (Para 4.3.1 of CAG Audit Report No.22 of 2016). Department needs to examine reasons for non-filing of returns and take stringent action to ensure filing of due returns.

### 1.9 Budgeting Issues in Service Tax

Table 1.7 depicts a comparison of the Budget Estimates and the corresponding actuals for service tax receipts.

Table 1.7: Budget, Revised Estimates and Actual Receipts

(₹ in crore)						
Year	Budget Estimates	Revised Budget Estimates	Actual Receipts	Diff. between Actuals and BE	%age Variation between Actuals and BE	%age Variation between Actuals and RE
FY12	82,000	95,000	97,509	15,509	18.91	2.64
FY13	1,24,000	1,32,697	1,32,601	8,601	6.94	(-)0.07
FY14	1,80,141	1,64,927	1,54,780	(-)25,361	(-)14.08	(-)6.15
FY15	2,15,973	1,68,132	1,67,969	(-)48,004	(-)22.23	(-)0.10
FY16	2,09,774	2,10,000	2,11,415	1,641	0.78	0.67

Source: Union Finance Accounts and receipt budget documents of respective years.

It is observed that actual collection of Service Tax was slightly above the budget estimates and revised budget estimates during FY16.

<sup>8</sup> ST Registrations during FY11 were 15,52,521

### 1.10 Arrears of Service Tax

Every year we comment on arrears of service tax on the basis of data received from the Ministry in chapter I. This year a subject specific audit has been done on this subject and all the findings have been included in chapter II.

### 1.11 Additional Revenue Realised Because of Anti Evasion Measures

DGCEI as well as the Central Excise and Service Tax Commissionerates have well-defined roles in the task of detection of cases of evasion of Service Tax. While the Commissionerates, with their extensive database about units in their jurisdiction and presence in the field are the first line of defence against duty evasion, DGCEI specialises in collecting specific intelligence about evasion of substantial revenue. The intelligence so collected is shared with the Commissionerates. Investigations are also undertaken by DGCEI in cases having all India ramifications. Tables 1.8 depict the performance of DGCEI during last three years.

**Table 1.8: Anti-Evasion Performance of DGCEI During Last Three Years**

Year	Detections		Voluntary Payments During Investigation
	No. of Cases	Amount	
FY14	9,215	14,842	5,103
FY15	6,719	10,544	4,448
FY16	7,534	18,971	4,658

Source: Figures furnished by the Ministry.

It is observed that the number of Service Tax cases and the amounts detected by DGCEI has increased during FY16 as compared to decline noticed in FY15.

### Tax administration in Service Tax

#### 1.12 Scrutiny of Returns

CBEC introduced the concept of self-assessment in respect of Service Tax in 2001. With the introduction of self-assessment, the department also envisaged the provision of a strong compliance verification mechanism, inter alia, through scrutiny of returns. Even in the self-assessment era, the primary function of departmental officers continues to be assessment or confirmation of assessment as it is they who have a statutory liability to ensure correctness of tax payment.<sup>9</sup> This is undertaken through scrutiny of Service Tax returns, which in turn are to be selected on the basis of risk parameters. The Manual for Scrutiny of Service Tax Returns, 2009 envisages that scrutiny is to be carried out in two stages i.e. preliminary scrutiny of the return which is to be

<sup>9</sup> Manual for Scrutiny of Service Tax Returns, 2009, Para 1.2.1A.

carried out by ACES application and detailed scrutiny of assessment which is to be carried out manually on the returns marked by ACES or otherwise.

### 1.12.1 Preliminary Scrutiny of Returns

The purpose of preliminary scrutiny is to ensure completeness of information, timely submission of the return, timely payment of duty, arithmetical accuracy of the amount computed as duty and identification of non-filers and stop-filers.<sup>10</sup>

Table 1.9 depicts the performance of the department in carrying out preliminary scrutiny of returns.

**Table 1.9: Preliminary Scrutiny of Service Tax Returns**

Year	No of Returns Filed in ACES	No. of Returns Marked for Review & Correction	% of Returns Marked for Review & Correction	No. of Returns Cleared After Review & Correction	No. of Returns Pending for Review & Correction	% of marked Returns Pending Correction
FY14	18,21,672	6,34,413	34.83	70,849	5,63,564	88.83
FY15	20,18,354	6,04,794	29.96	83,229	5,21,565	86.24
FY16	21,28,652	4,92,387	23.13	1,05,415	3,86,972	78.59

Source: Figures furnished by the Ministry. Comments on data discrepancy in Para 1.21

The percentage of returns marked for Review and Correction (R&C) by ACES decreased to 23.13 per cent in FY16 which is a healthy sign indicating stabilization of ACES and it needs to be taken further.

It is also observed that 78.59 per cent of returns marked for R&C were pending correction as on 31 March 2016, despite drastic reduction in number and per cent of returns marked for R&C. One of the main intentions behind introducing preliminary scrutiny online was to release manpower for detailed manual scrutiny, which could then become the core function of the Range/Group.<sup>11</sup> The high figures of pendency for correction after R&C identification indicates that the same is far from being achieved.

Completion of R&C of returns in ACES is the prerequisite for scrutiny of subsequent returns submitted by the assesseees. Large number of returns pending for scrutiny carry the risk of demands becoming time barred and incorrect depiction of Service Tax collection.

### 1.12.2 Detailed Scrutiny of Returns

The purpose of detailed scrutiny is to establish the validity of information furnished in the tax return and to ensure correctness of valuation, availing of CENVAT credit, classification and effective rate of tax applied after taking into

<sup>10</sup> Manual for Scrutiny of Service Tax Returns, 2009, Para 1.2.1

<sup>11</sup> Manual for Scrutiny of Service Tax Returns, 2009 Para 1.2B

consideration the admissibility of exemption notification availed etc.<sup>12</sup> Unlike preliminary scrutiny, detailed scrutiny is to cover only certain selected returns, identified on the basis of risk parameters, developed from the information furnished in the returns submitted by the taxpayers.<sup>13</sup> After formation of separate Audit Commissionerates as part of restructuring of the department in October 2014, carrying out of detailed scrutiny of returns became the main job of the Executive Commissionerates.

Despite our repeated reminders, the Ministry did not furnish detailed scrutiny figures for FY14, FY15 and for first seven months of FY16. During November 2015 to March 2016, detailed scrutiny was carried out in respect of 9,785 returns and an amount of ₹ 74.45 crore recovered against short payment / non-payment of ₹ 149.82 crore detected.

Further, the Ministry did not furnish the actual number of returns marked for detailed scrutiny. In absence of complete details, the adequacy of detailed scrutiny could not be commented upon.

### 1.13 Adjudication

Adjudication is the process through which departmental officers determine issues relating to tax liability of assesseees. Such process may involve consideration of aspects relating to, inter alia, CENVAT credit, valuation, refund claims, provisional assessment etc. A decision of the adjudicatory authority may be challenged in an appellate forum as per the prescribed procedures.

Table 1.10 depicts age-wise analysis of Service Tax adjudication.

**Table 1.10: Cases Pending for Adjudication with Departmental Authorities**

(₹ in crore)

Year	Cases Pending as on 31 March		No. of Cases Pending for More than 1 Year
	No.	Amount	
FY14	19,925	31,790	4,383
FY15	33,122	77,463	12,668
FY16	30,453	76,124	8,587

Source: Figures furnished by the Ministry.

The number of pending adjudication cases including cases pending for more than one year decreased in FY16 in comparison to FY15 but the amount involved in these cases decreased only marginally.

<sup>12</sup> Manual for Scrutiny of Service Tax Returns, 2009, Para 1.2.1

<sup>13</sup> CBEC Circular 113/7/2009-ST dated 23 April 2009.

### 1.14 Disposal of Refund Claims

Section 11B of the Central Excise Act, 1944 provides the legal authority for claim and grant of refund. Further, section 11BB of the Act stipulates that interest is to be paid on refund amount if it is not refunded within three months of the date of application of refund

Table 1.11 depicts the status of disposal of refund claims by the department. The delay depicted is in terms of time taken from the date of receipt of refund application along with all details required for processing the claims.

**Table 1.11: Disposal of Refund Claims in Service Tax**

(₹ in crore)

Year	OB Plus Claims Received During the Year	No of Claims Disposed During the Year				Interest Payments	
		Total Number of Disposals	Within 3 Months and % of Disposals	Claims Disposed with Delay		No of Cases	Interest Paid
				< 1 year	> 1 year		
FY14	23,145	13,979	11,445 (81.87%)	1,494 (10.69%)	1,040 (7.44%)	0	0
FY15	*	13,381	*	*	*	14	5.58
FY16	67,749	37,296	*	*	*	*	*

Source: Figures furnished by the Ministry.

\*The Ministry did not provide complete data for FY15& FY16.

As the Ministry did not furnish break up of opening balance and claims received during the year and the details of disposal of cases during FY15 and FY16, the same could not be analysed.

Table 1.12 depicts an age-wise analysis of pendency of refund claims during last three years.

**Table 1.12: Age-Wise Pendency of Service Tax Refund Cases as on 31 March**

(₹ in crore)

Year	OB Plus Claims Received in the Year	Total Number of Refund Claims Pending as on 31 March		Refund Claims Pending for			
				Less than One Year		Over 1 Year	
		Number	Amount	Number	Amount	Number	Amount
FY14	23,145	8,154	4,487	6,391	3,582	1,763	905
FY15	*	13,913	8,390	10,848	5,642	3,065	2,747
FY16	67,749	30,453	76,124	21,866	*	8,587	*

Source: Figures furnished by the Ministry.

\*The Ministry did not provide the complete data for FY15 and FY16.

It is observed that both number of cases as well as amount involved in refund claims has increased drastically in FY16 as compared to FY14. The Ministry may look into the reason for the same. The complete data for FY15 and FY16 has not been provided by the Ministry despite our repeated reminders.

## 1.15 Appeal Cases

Besides the adjudicating authorities, there are several other authorities including departmental appellate authorities, courts of law etc where issues of law, interpretations etc. are considered. Besides, the department also resorts to coercive recovery measures in many instances. Huge amounts of revenue thus remain outside the Consolidated Fund of India for substantial periods of time. Based on data furnished by CBEC, we have tabulated the pendency of cases at various forums in Table 1.13.

**Table 1.13: Pendency of Appeal (CX & ST)**

Year	Forum	Appeals Pending at the End of the Year					
		Party's Appeals		Departmental Appeals		Total	
		No. of Appeals	Amount Involved (Cr. ₹)	No. of Appeals	Amount Involved (Cr. ₹)	No. of Appeals	Amount Involved (Cr. ₹)
FY14	Supreme Court	855	1,835	1,702	6,078	2,557	7,913
	High Court	5,856	9,359	5,505	6,764	11,361	16,123
	CESTAT	41,257	90,447	16,685	14,806	57,942	1,05,253
	Settlement Commission	109	230	4	1	113	231
	Commissioner (Appeals)	23,783	7,054	3,225	669	27,008	7,723
	<b>Total</b>	<b>71,860</b>	<b>1,08,926</b>	<b>27,121</b>	<b>28,318</b>	<b>98,981</b>	<b>1,37,244</b>
FY15	Supreme Court	815	2,202	1,754	6,428	2,569	8,630
	High Court	5,577	10,206	5,408	9,231	10,985	19,437
	CESTAT	44,710	1,05,905	16,719	14,240	61,429	1,20,145
	Settlement Commission	155	349	2	1	157	350
	Commissioner (Appeals)	25,617	6,272	3,676	655	29,293	6,927
	<b>Total</b>	<b>76,874</b>	<b>1,24,935</b>	<b>27,559</b>	<b>30,554</b>	<b>1,04,433</b>	<b>1,55,489</b>
FY16	Supreme Court	766	3,112	1,525	7,437	2,291	10,549
	High Court	5,663	13,507	4,900	11,073	10,563	24,580
	CESTAT	48,071	1,20,689	15,159	24,396	63,230	1,45,085
	Settlement Commission	129	192	0	0	129	192
	Commissioner (Appeals)	26,821	7,814	4,534	766	31,355	8,580
	<b>Total</b>	<b>81,450</b>	<b>1,45,314</b>	<b>26,118</b>	<b>43,672</b>	<b>1,07,568</b>	<b>1,88,986</b>

Source: Figures furnished by the Ministry

The Table indicates that cases involving revenue of ₹ 1,88,986 crore were pending in appeals at the end of FY16 which is about ₹ 33,000 crore more than the amount pending at the end of FY15. As no action can be initiated for recovery of revenue till the appeal is pending, locking up of revenue of ₹ 1,88,986 crore is a matter of concern.

The Ministry has provided the data regarding pendency of appeal separately for Service Tax for FY15 & FY16. The data is tabulated below:



**Table 1.14: Pendency of Appeal (ST)**

Year	Forum	Appeals Pending at the End of the Year					
		Details of Party's Appeals		Details of Departmental Appeals		Total	
		No. of Appeals	Amount Involved (Cr. ₹)	No. of Appeals	Amount Involved (Cr. ₹)	No. of Appeals	Amount Involved (Cr. ₹)
FY15	Supreme Court	179	450	359	1,762	538	2,211
	High Court	1,837	4,663	877	1,717	2,714	6,380
	CESTAT	16,245	54,654	5,585	6,762	21,830	61,416
	Settlement Commission	73	214	0	0	73	214
	Commissioner (Appeals)	15,112	3,373	1,925	357	17,037	3,730
	<b>Total</b>	<b>33,446</b>	<b>63,354</b>	<b>8,746</b>	<b>10,597</b>	<b>42,192</b>	<b>73,951</b>
FY16	Supreme Court	196	959	423	3,077	619	4,036
	High Court	2,115	6,300	859	2,218	2,974	8,518
	CESTAT	18,628	63,654	5,546	15,824	24,174	79,478
	Settlement Commission	52	94	0	0	52	94
	Commissioner (Appeals)	14,986	4,320	2,619	377	17,605	4,697
	<b>Total</b>	<b>35,977</b>	<b>75,327</b>	<b>9,447</b>	<b>21,496</b>	<b>45,424</b>	<b>96,823</b>

Source: Figures furnished by the Ministry

The Ministry has provided the details of disposal of appeal cases for FY14 to FY16. The data is tabulated below:

**Table No. 1.15: Breakup of Cases Decided During the Year**

Year	Forum	Department's Appeal				Party's Appeal			
		Decided In Favour of Deptt.	Decided Against the Deptt.	Remanded	% of Successful Appeal	Decided in favour of Party	Decided Against Party	Remanded	% of Successful Appeal
FY14	Supreme Court	21	82	5	19.44	14	33	3	28.00
	High Court	193	355	22	33.86	379	1247	223	20.50
	CESTAT	248	1,407	151	13.73	2,314	2,125	1,574	38.48
	Comm. (A)	1,141	1,248	31	47.15	7,064	12,888	697	34.21
	<b>Total</b>	<b>1,603</b>	<b>3,092</b>	<b>209</b>	<b>32.69</b>	<b>9,771</b>	<b>16,293</b>	<b>2,497</b>	<b>34.21</b>
FY15	Supreme Court	24	149	16	12.70	16	52	29	16.49
	High Court	230	712	130	21.46	447	1397	206	21.80
	CESTAT	216	1,121	218	13.89	2,255	1,987	1,874	36.87
	Comm. (A)	717	869	87	42.86	4,202	9,151	931	29.42
	<b>Total</b>	<b>1187</b>	<b>2,851</b>	<b>451</b>	<b>26.44</b>	<b>6,920</b>	<b>12,587</b>	<b>3,040</b>	<b>30.69</b>
FY16	Supreme Court	7	81	6	7.45	11	3	3	64.71
	High Court	51	211	25	17.77	118	361	172	18.13
	CESTAT	114	589	72	14.71	1,020	544	582	47.53
	Comm. (Appeals)	275	294	26	46.22	2,897	2,673	1,341	41.92
	<b>Total</b>	<b>447</b>	<b>1,175</b>	<b>129</b>	<b>25.53</b>	<b>4,046</b>	<b>3,581</b>	<b>2,098</b>	<b>41.60</b>

Source: Figures furnished by the Ministry

The table indicates that success ratio of department's appeal against adjudication order has decreased from 32.69 per cent in FY14 to 25.53 per

cent in FY16. The success ratio registered a steep decline when the department went in appeal to High Court (from 34 per cent in FY14 to 18 per cent in FY16) and to Supreme Court (from 19 per cent in FY14 to seven per cent in FY16).

### 1.16 Cost of Collection

Table 1.16 depicts the cost of collection vis-a-vis the revenue collection.

**Table 1.16: Central Excise and Service Tax Receipts and Cost of Collection**

(₹ in crore)

Year	Receipts from Service Tax	Receipts from Central Excise	Total Receipts	Cost of Collection	Cost of Collection as % of Total Receipts
FY12	97,356	1,44,540	2,41,896	2,227	0.92
FY13	1,32,601	1,75,845	3,08,446	2,439	0.79
FY14	1,54,780	1,69,455	3,24,235	2,635	0.81
FY15	1,67,969	1,89,038	3,57,007	2,950	0.83
FY16	2,11,415	2,87,149	4,98,564	3,162	0.63

Source: Union Finance Accounts of respective years.

The cost of collection increased marginally in FY16 but as a per cent of total receipts of Central Excise and Service Tax, it decreased marginally with a 40 per cent increase in the total receipts.

### 1.17 Internal Audit

Modernisation of Indirect Tax administration in India is based on the Canadian model. The new audit system EA 2000 has four distinct features: scientific selection after risk analysis, emphasis on pre-preparation, scrutinising of business records against statutory records and monitoring of audit points.

Audit processes include preliminary review, gathering and documenting systems' information, evaluating internal controls, analysing risks to revenue and trends, developing audit plan, actual audit, preparation of audit findings, reviewing the results with the assessee/Range Officer/Divisional Assistant Commissioner and finalisation of the report.

The Audit framework consists of three parts. Directorate General of Audit and the field Commissionerates share the responsibility of administration of Audit. While the Directorate is responsible for collection, compilation and analysis of audit results and its feedback to CBEC to improve tax compliance and to gauge levels of client satisfaction, audit parties from Commissionerates undertake audit in terms of EA 2000 audit protocol. In order to improve audit quality, CBEC took the assistance of Asian Development Bank in developing audit manuals, risk management manuals

and manuals to train auditors in EA 2000 and CAATs, which prescribe detailed processes for conduct of audit.

After the restructuring of the department in October 2014, new Audit Commissionerates has come into existence. Following which the department has reorganized the audible units into three categories i.e. Large, Medium and Small Units and allocates the manpower available with the Audit Commissionerate in fix percentage for each category.

Table 1.17 depicts details of Service Tax units due for audit during FY16 by audit parties of the Commissionerates vis-à-vis units audited.

**Table 1.17: Audits of Assessee Conducted During FY16**

Category	Number of Units Due	Number of Units Audited	Shortfall in Audit (No.)	Shortfall in Audit (%)
Large Units	5,050	1,906	3,144	62.26
Medium Units	7,618	2,705	4,913	64.49
Small Units	16,548	5,425	11,123	67.22

Source: Figures furnished by the Ministry

The Ministry furnished the figures from October 2015 to March 2016 i.e., only for six months. It is observed that during the above six months, there was a huge shortfall in the Internal audits conducted, as compared with audits due, across all categories of units.

The result of the audit conducted by the department is tabulated in table 1.18.

**Table 1.18: Amount Objected and Recovered During FY16**

(₹ in crore)

Category	Amount of Short Levy Detected	Amount of Total Recovery
Large Units	8,082	1,369
Medium Units	1,498	510
Small Units	1,101	482
Total	10,681	2,361

Source: Figures furnished by the Ministry.

It is observed that amount of short levy detected and recovered in Large units is significantly higher than other units indicating the need to allocate more resources for carrying out internal audit of Large units. This year a subject specific audit has been done on “Effectiveness of Internal Audit”, the findings of which have been included in chapter III.

### **1.18 Revenue Collection Due to Departmental Efforts**

Besides, the voluntary payment of Service Tax by the tax payers there are various methods by which the department collects the revenue due but not

paid by the taxpayers. These methods includes Scrutiny of Returns, Internal Audit, Anti-Evasion, Adjudication etc.

The result of departmental efforts is tabulated in Table 1.19

**Table 1.19 : Revenue Recovered by Departmental Efforts**

(₹ in crore)			
Sl. No.	Departmental Action	Recovery During FY15	Recovery During FY16
1	Internal audit	826.84	688.76
2	Anti-Evasion	3,236.42	3,009.21
3	Confirmed Demands*	621.57	1,015.36
4	Scrutiny of Returns	152.01	263.23
5	Recovery from Defaulters**	860.79	1,044.26
6	VCES	2,857.25	163.89
7	Income tax return/Tax deducted at source	406.67	235.68
8	Others***	251.40	736.21
	<b>Total</b>	<b>9,212.95</b>	<b>7,156.60</b>

Source: figures furnished by the Ministry

\* After adjudication of SCN

\*\* Recovery from defaulters is after issue of SCN and adjudication thereof.

\*\*\* Interests/late filing fee etc.

Total Service Tax collection during FY16 is ₹ 2,11,415 crore out of which only ₹ 7,156.60 crore is collected due to departmental efforts. Further, it is noticed that revenue collection shown under Internal Audit and Anti-evasion in Table 1.19 does not tally with the amount relating to same category shown in Table 1.18 and 1.8 respectively. In fact, the recoveries reflected in table 1.19 (₹ 3,009 crore) are far less than spot recoveries of Anti-Evasion reported in Table 1.8 (₹ 4,658 crore). Even though similar data discrepancy regarding data provided by the Ministry during FY15 was brought to the notice of Ministry through Audit Report on Service Tax last year (Report No. 1 of 2016), the Ministry sent similar data without proper verification again in 2016.

### **1.19 Non-furnishing of Data or Discrepancy in Data Furnished by the Ministry**

The Ministry could not provide complete data related to detailed scrutiny of returns, Internal Audit and disposal of refund cases for FY16 as format of data and responsibility to maintain the data were revised from November 2014. This indicates that continuity of maintenance of critical data is not ensured during change management in CBEC. Further, CBEC provided data relating to various performance parameters such as scrutiny of returns, refunds, internal audit etc. However, we observed in respect of registered assesseees and preliminary scrutiny of returns<sup>14</sup>, data furnished did not tally with information

<sup>14</sup> Tables 1.6 and 1.9

furnished for last Audit Report no. 1 of 2016. There is an urgent need to improve the quality of data maintenance in respect of Service Tax.

## 1.20 Audit Effort and Service Tax Audit Products - Compliance Audit Report

Compliance audit was conducted as per Regulations on Audit and Accounts, 2007 (as amended) and in conformity with the Auditing Standards, 2<sup>nd</sup> Edition, 2002 issued by the Comptroller and Auditor General of India.

### 1.21 Sources of Information and the Process of Consultation

Data from the Union Finance Account, along with examination of basic Records/ documents in DoR, CBEC, and their field formations, MIS and MTRs of CBEC along with other stake holder reports were used. We have nine field offices headed by Director Generals (DGs)/Principal Directors (PDs) of Audit, who managed audit of 1,082 units (CX&ST) in FY16.

### 1.22 Report Overview

The current report has 162 paragraphs having financial implication of ₹ 256.88 crore. There were generally three kinds of observations: non-payment of Service Tax, short payment of Service Tax, irregular availing and utilisation of CENVAT credit etc. The department/Ministry has already taken rectificatory action involving money value of ₹ 252.65 crore in case of 158 paragraphs in the form of issue of show cause notices, adjudication of show cause notices and reported recovery of ₹ 78.47 crore.

### 1.23 Response to CAG's Audit, Revenue Impact/Follow-up of Audit Reports

In the last five audit reports (including current year's report) we had included 810 audit paragraphs (Table 1.20) having financial implication of ₹ 2,181.44 crore.

Table 1.20: Follow up of Audit Reports

Year		FY12	FY13	FY14	FY15	FY16	Total	
Paragraphs Included	Number	152	151	178	167	162	810	
	Amount	500.23	265.75	772.08	386.50	256.88	2,181.44	
Paragraphs Accepted	Pre Printing	Number	150	147	171	163	158	789
		Amount	498.65	262.29	477.22	372.80	252.65	1,863.61
	Post Printing	Number	1	4	--	1	--	6
		Amount	0.52	1.81	--	0.32	--	2.65
	Total	Number	151	151	171	164	158	795
		Amount	499.17	264.1	477.22	373.12	252.65	1,866.26
Recoveries Effected	Pre Printing	Number	88	95	92	104	122	501
		Amount	84.58	65.28	130.29	53.02	78.47	411.64
	Post Printing	Number	4	9	11	3	--	27
		Amount	0.85	2.07	33.93	1.10	--	37.95
	Total	Number	92	104	103	107	122	528
		Amount	85.43	67.35	164.22	54.12	78.47	449.59

Source: CAG Audit Reports

It is observed that the Ministry had accepted audit observations in 795 audit paragraphs having financial implication of ₹ 1,866.26 crore and had recovered ₹ 449.59 crore.



## Chapter II

### Recovery of Arrears

#### 2.1 Introduction

Tax administration in Central Excise & Service Tax envisages that the assessee makes self-assessment of duty payable and after payment of duty submit returns to the department. The department scrutinizes the returns filed by the assessee and in case of any short /non-levy of duty, takes action by way of issuing demand cum show cause notice (SCN) for recovery of the amount. The SCN is then adjudicated by the appropriate authority. Any amount recoverable from the assessee due to confirmation of demands in favour of the department by virtue of Orders-in-Original (OIOs), or further Orders-in-Appeal (OIA), Tribunal orders, and Courts' Orders, but not paid by the assessee becomes arrears.

Arrears of revenue arise as a result of the following:

- Confirmation of demands by the adjudicating authority
- Rejection of appeal of the assessee by the appellate authority
- Grant of stay applications with condition of pre-deposits
- Order in favour of the department by Tribunals, High courts and Supreme Court.

Recovery of arrears constitutes a crucial function of the department of Revenue. The main statutory provisions dealing with recovery of arrears in Service Tax are as follows:

Section 73 of the Finance Act 1994, empowers Service Tax officers to take action for recovery of arrears by way of issue of demand and pursuing with the assessee.

In case recovery is not effected under section 73, section 87 further empowers the department to take coercive actions such as deducting any amount payable to the defaulter, detaining any movable or immovable property or referring the case to District Collector for recovery of the dues as if it were an arrear of land revenues.

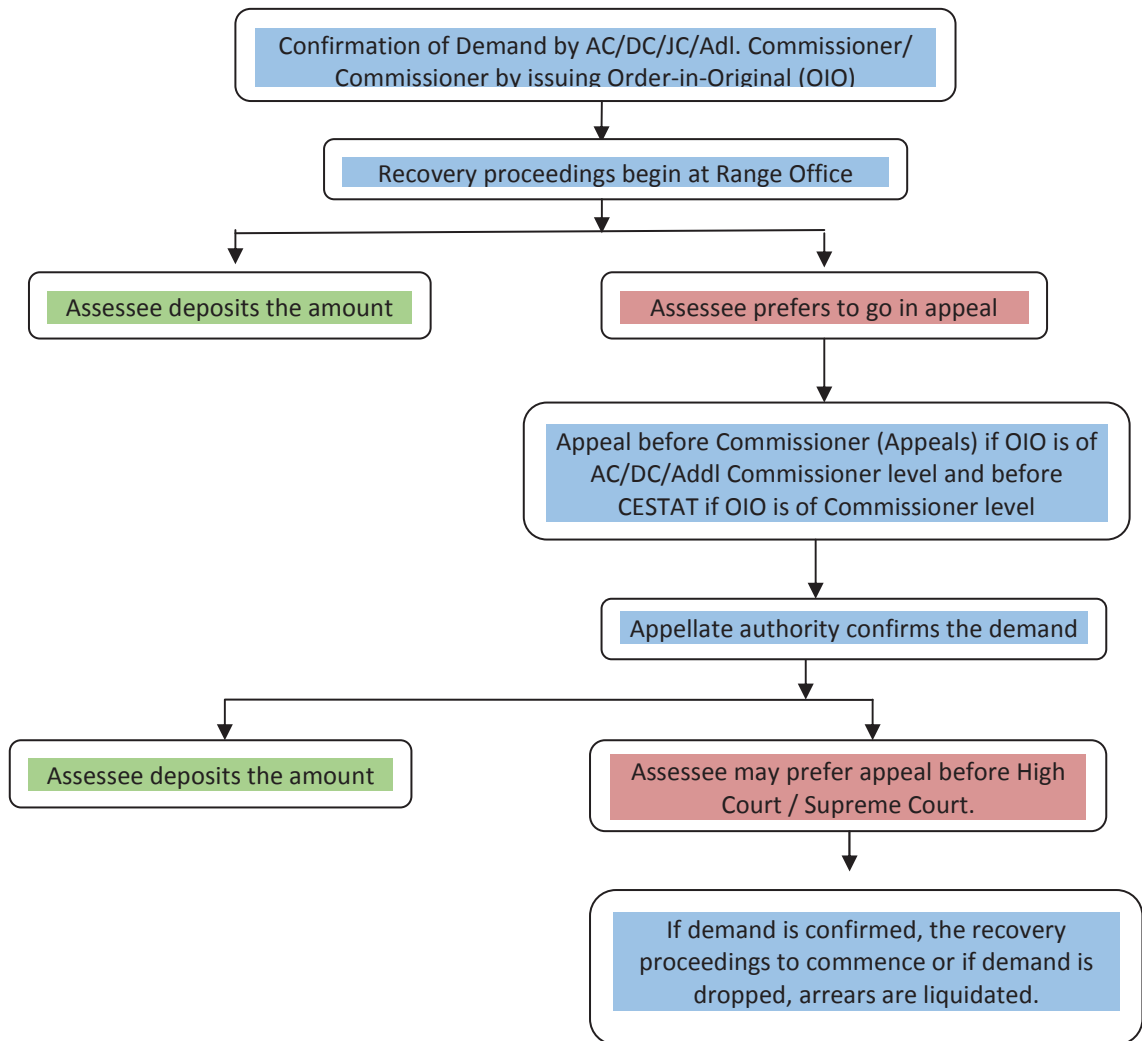
Section 83 of Finance Act 1994 provides that provisions of the some sections of the Central Excise Act 1944, as in force from time to time, shall apply to Service Tax also.

The process of recovery of arrears starts with confirmation of demand against the defaulter assessee and includes a number of appellate forums



wherein assessee as well as the department can go for appeal. The process of Recovery of arrears is depicted in following flowchart:

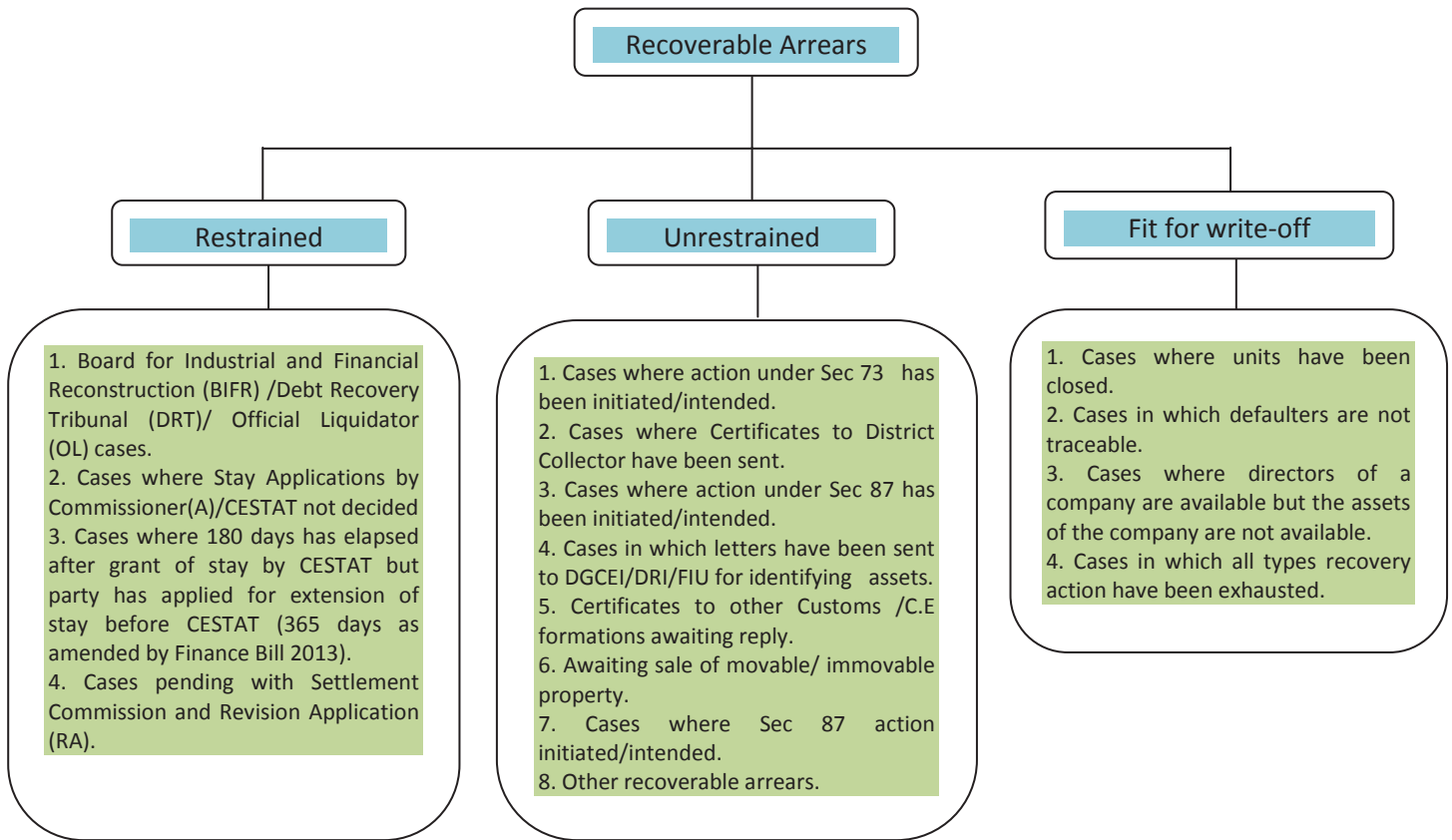
**Chart 2.1: The Process of Recovery of Arrears**



## 2.2 Classification of Arrears

Arrears are classified into two main categories viz. recoverable and irrecoverable arrears. All stayed arrears are irrecoverable. The recoverable arrears are further classified as restrained, unrestrained and fit for write off as explained in Chart below:

**Chart 2.2: Classification of Arrears**



### 2.3 Organisational Structure

The functions, in respect of recovery of arrears in CBEC, have been divided between field formations and the Task force for recovery as follows:

#### Field Formations

- i. **Range:** Ranges are the lowest level field formation entrusted with the task of maintaining the records relating to arrears and appeals, initiating recovery process and submitting reports to higher authorities.
- ii. **Division:** Divisional Officers (Assistant/ Deputy Commissioner) are entrusted with supervising Range officers and to ensure that they are performing their duties in accordance with the prescribed rules/regulations/instructions.
- iii. **Commissionerate:** Recovery of arrears is the overall responsibility of the jurisdictional commissioners. They are required to review and monitor the functions of range and divisional officers regarding recovery of arrears. Besides, they should exercise the functions for

vacation of stay orders, filing for early hearing of CESTAT/Court matters, taking action for attachment of property of defaulters and follow up of cases pending in the Board for Industrial and Financial Reconstruction (BIFR)/Debt Recovery Tribunal (DRT)/Official Liquidator (OL) etc. and watching progress and performance of Recovery Cell through monthly progress reports and taking follow up action.

- iv. **Recovery Cell:** Recovery Cell operates under the supervision and control of a jurisdictional commissioner. The major functions of Recovery Cell are to serve notice upon defaulters, attachment and sale of defaulter's property by public auction and to send a monthly progress report to the Commissionerate regarding arrears.

#### **Task Force for Recovery**

The Board (August 2004) constituted a centralized Taskforce for recovery of outstanding arrears of Central Excise and Custom duties, with a view to co-ordinate, facilitate, monitor and oversee the efforts of the Customs & Central Excise field formations towards recovery of arrears. Task force is headed by Chief Commissioner Tax Arrears Recovery (TAR) stationed at New Delhi with Six Nodal Officers TAR at Delhi, Mumbai, Kolkata, Chennai, Vadodara and Nagpur.

The Task Force is entrusted with the following responsibilities:

- Review of extent of revenue arrears
- Formulation and implementation of strategy for recovery.
- Monitoring the efforts of the Central Excise field formations.

As per OM No.F.No.296/34/2004-CX.9 (Pt) dated 11 August 2004, Zonal Chief Commissioners are responsible to identify potential cases of high revenue (i.e., arrear of more than ₹ one crore pending before CESTAT), appeal cases and other cases and furnish the information to the Nodal Officer. Nodal Officer has to make strategy, impart necessary instructions to field formations to deal with such recovery cases and monitor the progress of the same.

#### **2.4 Audit Objectives**

The subject specific compliance audit sought to assess

- The level of compliance with the prescribed rules and regulations as well as the guidelines issued by the department relating to recovery of dues

- Effectiveness of monitoring and control mechanism regarding recovery of arrears.

## 2.5 Audit Coverage

We examined the records of office of the Chief Commissioner (TAR) Delhi, all the six nodal offices under it and 32 Commissionerates out of 117 total Commissionerates<sup>15</sup> dealing with Service Tax. The period covered was from 2012-13 to 2014-15.

## 2.6 Audit Findings

We found instances of inordinate delay in various steps involved in recovery of arrears viz. communication of OIOs to Range Offices, initiation of recovery proceedings, filing of application for early hearing, transfer of cases to Recovery Cell and updating the status of arrear cases. We also observed absence of mechanism to know status of cases, improper maintenance of Appeal Register as well as relevant records/data at TAR, non-formulation of strategy by zonal TAR, inadequate inspection of the Commissionerates by TAR etc. The observations are discussed in succeeding paragraphs.

## 2.7 Departmental Performance in Respect of Recovery of Arrears

The performance of the department in respect of recovery of Service Tax arrears, during the years 2012-13 to 2014-15, is depicted below:

Table 2.1: Arrears of Service Tax during last three years

Year	Arrears at Commencement of the Year	Recovered during Year	Arrears Pending at the End of Year			
			Stayed	Un-stayed		
				Restrained	Unrestrained	
					Recoverable	Non-Recoverable
2012-13	22,013.85	5,836.42	17,897.94	25,881.29	2,935.37	518.87
2013-14	47,233.47	1,231.82	35,080.29	25,671.64	9,089.78	1,415.78
2014-15	71,257.49	900.70	45,805.94	6,525.85	2,102.63	5.07

Source: Information provided by Directorate General of Performance Management vide letter C.No. CC(TAR)48/2015-14408 dated 18 December 2015

It is observed that the arrears of Service Tax at the beginning of the year **tripled in** 2014-15 as compared to 2012-13. However, the recovery of arrears has shown a decreasing trend over the last three years. Recovery during the year as a percentage of unrestrained recoverable arrears at the beginning of the year, which was 42 *per cent* during 2013-14, decreased to 10 *per cent* during 2014-15.

<sup>15</sup> post restructuring of the field formations by CBEC in October 2014

The performance of 22 Commissionerates out of 32 selected Commissionerates that provided complete data for last three years is given in the table 2.2. As the data furnished by remaining ten Commissionerates<sup>16</sup> was incomplete, no inference could be drawn regarding performance of these Commissionerates.

**Table 2.2: Performance of 22 selected Commissionerates during last three years**

(₹ in crore)

Year	Arrears at Commencement of the Year	Recovered during Year	Arrears Pending at the End of Year			
			Stayed	Un-stayed		
				Restrained	Unrestrained	
					Recoverable	Non – Recoverable
2012-13	5,458.53	158.68	3,538.62	6,706.07	401.46	134.49
2013-14	10,773.91	183.73	7,467.34	7,799.95	1,010.74	28.02
2014-15	18,808.42	211.49	9,764.18	5,886.60	2,597.64	21.31

Source: Information provided by some of selected Commissionerates to audit

It is observed that the arrears of Service Tax at the beginning of the year **tripled in 2014-15** as compared to 2012-13 in these Commissionerates also. Recovery during the year as a percentage of unrestrained recoverable arrears at the beginning of the year, which was 46 *per cent* during 2013-14, decreased to 21 *per cent* during 2014-15. Stayed arrears also almost tripled during the three year period.

From the data provided, it is also observed that:

- In six Commissionerates i.e. Chennai ST-I, LTU Chennai, Ahmedabad ST, Rajkot, Ludhiana and Bolpur, recovery in 2014-15 decreased in comparison of 2012-13.
- In 13 Commissionerates i.e. Chennai ST-I, Puducherry, Trivandrum, Jaipur, Surat-II, Vadodara-I, Raipur, Chandigarh-I, Ludhiana, Panchkula, Kolkata ST-I, Guwahati and Patna, pendency of arrears increased more than 100 *per cent*. Increase in arrears was very steep in Jaipur (9,062 *per cent*) and Surat-II (879 *per cent*). Rajkot, Bolpur and Noida-ST Commissionerates performed well and the arrear pendency decreased in 2014-15.
- In six Commissionerates i.e. Puducherry, Jaipur, Surat-II, Vadodara-I, Kolkata ST-I, and Noida ST, increase in stayed arrear was more than 500 *per cent*.

<sup>16</sup> Bangalore ST-I, Manglore, Ghaziabad, Hapur, Jamshedpur, Delhi ST-II, LTU Delhi, Bhubaneshwar-I, ST-III Mumbai, Nagpur- II

The Ministry offered no comments (December 2016), considering this only statistical information and did not furnish any reply on the performance of these Commissionerates.

## 2.8 Functioning of Field Formations

### 2.8.1 Inordinate Delay in Communication of Orders-in-Original to Range Offices

The Board in its circular dated 24 December 2008 stipulated that the details of Adjudication Orders shall be entered in the Confirmed Demand Register and action taken for recovery as laid down in Chapter 18 Part III of the CBEC's Central Excise Manual. However, the circular did not prescribe any time limit for communication of OIO to Range Office.

Audit observed (October 2015 to February 2016) that out of 32 test checked Commissionerate, in case of 73 OIOs in 11 Commissionerates, the time taken to communicate OIOs to the Range offices ranged between 01 to 2,949 days. In absence of a prescribed time limit, considering one week time as acceptable to communicate OIO to Range, audit analysed Commissionerate wise delays and details of the Commissionerates with significant delays are depicted in table below:-

**Table 2.3: Delay in communication of Orders-in-Original**

Sl. No.	Commissionerate	Delay up to One Month	Delay from One to Three Months	Delay Beyond Three Months	Total Cases with Delay Beyond a Week
1	Hyderabad ST	15	2	1	18
2	Gwalior	0	1	2	3
3	Puducherry	3	0	0	3
4	Trivandrum	8	7	1	16
5	Chennai ST-I	8	3	0	11
6	Bhubaneswar-I	3	2	0	5
7	Delhi ST – II	0	1	0	1
8	Jaipur	2	0	0	2
9	Noida ST	2	0	1	3
10	Surat-II	5	0	0	5
11	Vadodara-I	5	1	0	6
	<b>Total</b>	<b>51</b>	<b>17</b>	<b>5</b>	<b>73</b>

A few cases are illustrated below:

i) In case of M/s Chaturvedi Travels & Tours in Gwalior Commissionerate, two OIOs<sup>17</sup> of October 2006 and December 2007 were

<sup>17</sup> OIO No. 314 /06 dated 24 October 2006 and OIO No. 158/ST/ST/DC/Gwl/07 dated 13 December 2007

delivered to the Range Office on 01 December 2014 i.e. after a delay of 98 and 84 months respectively.

The Ministry stated (December 2016) that in 2 cases OIO were sent to range office and to the party in stipulated period. However, no details were furnished to verify the claim. The Ministry further stated that efforts would be made to get the OIO delivered at the earliest.

ii) In case of M/s. Maswas Travels Pvt. Ltd., in Hyderabad ST Commissionerate, an OIO was delivered to Range Office on 27 July 2007 i.e. after a delay of 107 days.

The Ministry stated that some procedural issues might lead to delay in communication of OIO and that the observation however would be noted for future.

In remaining 70 cases, the Ministry replied (December 2016) as follows:

In 10 cases it was stated that delay period ranging 3-85 days was well within appeal period and in 12 cases, it was stated that delay was around 30 days. In 17 cases it was stated that delay was due to practical problems i.e. preparing multiple copies, printer, stationary, dispatch and involvement of staff in other priority works.

Reply is not tenable as OIO should be communicated to Range within reasonable time, otherwise the next steps in recovery of arrears would be further delayed.

In 16 cases it was stated that instructions have been issued to Divisions/sections to communicate OIO to Ranges without delay, while the Ministry regretted the delay in one case and attributed delay to restructuring in one case.

In all these 57 cases, it was also stated that efforts will be made to get the OIO delivered to range office at the earliest in future.

In six cases it was stated that there were no delay in communication of OIO to range office without forwarding any details in support of this claim.

In seven cases it was stated that though no time limit was stipulated for communicating the order in the Act, the actual communication time was within permissible and plausible time.

Different responses by the Ministry in different cases of delay of similar nature indicate that the Ministry did not have a uniform view on this matter and simply forwarded responses of various field formations. The Ministry needs to specify a time limit for early communication of OIOs to Ranges and ensure monitoring of the same.

### 2.8.2 Non-initiation/Delay in Recovery Proceedings

The Officers of the Service Tax have been empowered under section 73 and section 87 of the Finance Act 1994 to recover the arrears of revenue of Service Tax.

**Section 73** empowers the Central Excise Officer to serve notice to the person, chargeable with service tax, which has not been levied or paid or short-levied or short-paid or erroneously refunded. Time limit for serving a notice under this situation is 'one year' from the relevant date. But in case of fraud, collusion, willful misstatement, suppression of facts, contravention of any of the provisions of this Act or Rules the time limit for serving the notice is extended up to five years.

**Section 87** empowers Central Excise officer to recover amount payable by an assessee from a third party who holds money on account thereof.

i) Audit observed (October 2015 to February 2016) that, in 49 cases in eight Commissionerates<sup>18</sup>, action for recovery under section 73 and 87 of the Finance Act 1994, was not initiated, which resulted in non-recovery of ₹ 14.86 crore. Commissionerate-wise position is detailed below:

**Table 2.4: Non-initiation of recovery proceedings**

Commissionerate	Total Cases	Amount	Amount (₹ in lakh)			
			Year wise Break up			
			Less than 5 Years		More than 5 Years	
			Number	Amount	Number	Amount
Ahmedabad S. Tax	2	122.75	0	0	2	122.75
Bhubneshwar	4	61.41	1	2.48	3	58.93
Bangalore ST-I	5	228.2	0	0	5	228.2
Noida ST	1	6.45	1	6.45	0	0
Hapur	12	123.31	2	87.56	10	35.75
Ghaziabad	5	320.79	3	292.83	2	27.96
Patna	2	76.32	1	16.31	1	60.01
Jamshedpur	18	547.2	16	524.24	2	22.96
<b>Total</b>	<b>49</b>	<b>1,486.43</b>	<b>24</b>	<b>929.87</b>	<b>25</b>	<b>556.56</b>

Some cases are illustrated below:

(a) A demand of ₹ 84.37 lakh was confirmed (March 2008) against M/s. Shadow Consultancy Services Pvt. Ltd., in Ahmedabad Commissionerate.

<sup>18</sup> Ahmedabad ST, Bhubaneswar, Bangalore ST-I, Noida ST, Hapur, Ghaziabad, Patna, Jamshedpur



The stay was dismissed by CESTAT (December 2010). The assessee withdrew (August 2012) application filed before Hon'ble Gujarat High Court.

The department issued notices (December 2011) under section 87 to National Textiles Corporation (NTC), and Bank of Baroda/Central Bank of India/ICICI Bank for recovery of arrear. A letter dated 4 January 2012 was issued to Income Tax department. Consequently, an amount of ₹ 6.29 lakh was realised from NTC & Central Bank of India (September 2010).

About 40 months have elapsed from the date of withdrawal of Civil Application filed by the assessee before Honourable Gujarat High Court. However, neither certificate for recovery of arrears was prepared and sent to the District Collector nor any efforts made to identify movable/immovable property in the name of the assessee, its proprietor, partners, directors etc. by approaching other government/non-government agencies, for recovery arrears dues.

The Ministry re-iterating the action taken by the department, stated that no property was identified despite many efforts and that the case would be sent to revenue authority for recovery on identification of property in the name of assessee.

Inaction/insufficient action by the department resulted in non-recovery of dues of ₹ 78.08 lakh.

(b) A demand of ₹ 77.58 lakh was confirmed (November 2011) against M/s. IED Limited Ghaziabad in Ghaziabad Commissionerate which was upheld by the appellate authority (May 2012). The party approached the CESTAT but no stay was granted. The department did not initiate any action to recover the dues.

The Ministry stated (December 2016) that letters were written between February-April 2016 to bank and sub-registrar Ghaziabad to identify property of the defaulter. Thus, action was initiated after being pointed out by Audit i.e. almost four years after appellate authority upheld the demand.

In respect of remaining 47 cases, the Ministry's replies were as follows:

In five cases, the Ministry stated that no action was initiated against the assessee as they were not traceable despite best efforts of the department.

In one case, it was stated that detention notice was issued in March 2013 and letters to assessee, its partners and authorities were written in 2015-2016. Thus the department took action with delay.

In one case it was stated that due to death of the proprietor and no legal heir of the firm, action was being initiated for write off of the arrear.

In four cases it stated that recovery position of the case was being ascertained from the concerned Divisions of the department and final reply is awaited.

In 24 cases, it stated that a series of actions have been taken by the department but no details regarding date of action taken were furnished, in absence of which timeliness of action taken could not be ascertained.

In 12 cases it stated that in case of Service Tax, details of assets of Service providers are not available with the department and the assesses change their addresses without intimation to the department and hence assessee became untraceable and no action could be initiated by the department.

In view of inability expressed by the department to identify assets of defaulters and trace the assessee, the department needs to devise a mechanism to make it mandatory for assesses above a particular threshold limit to furnish as well as update details of assets to the department and also consider strong penal provisions in case of non-intimation of change of address by Service Providers.

ii) It was further noticed that in eight cases amounting to ₹ 1.49 crore, in three Commissionerates<sup>19</sup>, the action was taken with delay ranging from 19 to 80 months.

One case is illustrated below:

A demand of ₹ 54.42 lakh was confirmed (March 2010) against M/s Atwal & Associates in Bhavnagar Commissionerate. The appeal of the party was dismissed (22 July 2013) by the appellate authority. Only simple letters were written (December 2013 and March 2015) to the party after five and 20 months from dismissal of appeal and one letter written to third party after 20 months from dismissal of appeal and no other action was taken.

We pointed this out (December 2016). The Ministry stated (December 2016) that action had already been taken under section 87. However, as no details regarding action taken were provided, timeliness of action taken cannot be verified.

In one case it was stated that efforts were made but the assessee was not traceable and as assessee was from unorganized sector and change their premise address frequently, its assets could not be traced.

In one case it was stated that records of the case were dislocated due to restructuring of the Commissionerate, which led to delay.

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<sup>19</sup> Bhavnagar, Surat-II, Vadodara-I

In one case, the Ministry stated (December 2016) that action had already been taken under section 87. However, as no details regarding action taken were mentioned in the reply, timeliness of action taken cannot be ascertained.

In four cases it was stated that action was taken and that delay was due to restructuring in October 2014. Reply is not tenable as for the cases pertaining to period 2008 to 2011, delay cannot be attributable to restructuring which took place in October 2014 and action stated in the reply was taken in 2016.

### 2.8.3 Non-filing of Application for Early Hearing

CBEC, vide circular no. 746/62/2003-CX, dated 22 September 2003, stated that the Commissionerates should file Miscellaneous Applications, in terms of Rule 28C of the Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) (Procedure) Rules, 1982, for out-of-turn early hearing of the cases with high revenue stakes, indicating clearly the grounds for such prayer. It was further stated that in order to get interim stay orders vacated, the Commissionerates must take proactive measures by filing Miscellaneous Petition before Supreme Court/High Court/CESTAT for early hearing (EHP), specifying the grounds clearly and for prompt follow-up of appeal matters, particularly in respect of Civil Appeals/SLPs before the Supreme Court, through effective liaising with the Directorate of Legal Affairs. Further, Chief Commissioner (TAR) vide letter C.No. CC/TAR/54/2009/3 dated 15 January 2010 instructed field formations to monitor all cases involving revenue of more than ₹ 50 lakh (irrespective of age) and approaching CESTAT for early decision.

i) Audit observed (December 2015 to February 2016) that in 51 cases in nine Commissionerates<sup>20</sup>, pending from 2 to 10 years involving revenue of ₹ 613.07 crore, applications for early hearing were not filed. Commissionerate wise position is depicted in Table 2.5:

Table 2.5 : Non-filing of Application for Early Hearing

Sl. No.	Name of the Commissionerates	No. of Cases	Amount	(₹ in crore)
1	Bhavnagar	5	11.14	
2	Ghaziabad	2	18.51	
3	Hapur	1	1.34	
4	LTU, Chennai	12	159.40	
5	Puducherry	5	61.92	
6	Service tax - I, Chennai	14	314.03	
7	Surat-II	6	19.27	
8	Trivandrum	1	2.39	
9	Vadodara-I	5	25.07	
	<b>Total</b>	<b>51</b>	<b>613.07</b>	

<sup>20</sup>LTU Chennai, Puducherry, ST-I Chennai, Trivandrum, Noida ST, Hapur, Ghaziabad, Bhavnagar, Surat-II, Vadodara-I

**ii) Non-filing of Applications for Early Hearing in High Revenue Cases:**

Cases where no action was taken by the department for early hearing included 16 cases pertaining to ten assessees where arrears involved in each case was ₹ 10 crore and above where the stay was granted between 02 August 2010 to 17 June 2014 as detailed in table 2.6:

**Table 2.6: Non-filing of application for early Hearing (High Revenue cases)**

(in ₹ crore)				
Sl. No.	Name of the Assessee	Commissionerate	Amount of Arrears	Date of grant of stay
1	M/s. Freight System India Pvt. Ltd.,	Chennai ST-I	168.63	02.08.2012
2	M/s. Royal Sundaram Alliance Insurance Company Ltd.,	Chennai LTU	85.58	12.12.2012
3	M/s. Wipro Ltd.,	Puducherry	53.10	02.07.2014
4	M/s. CITI Lights Property Pvt. Ltd.	Chennai ST-I	37.86	10.04.2013
5	M/s. Sify Technologies Pvt. Ltd. (3 cases)	Chennai LTU	35.86	17.06.2014
6	M/s. CH Robinson Worldwide Freight India Pvt. Ltd.	Chennai ST-I	35.58	14.03.2013
7	M/s. Dishnet Wireless Ltd.	Chennai ST-I	32.52	02,08,2010
8	M/s. Alston T&D India Ltd., (formerly M/s. Areva T &D India Ltd.) (5 cases)	Chennai LTU	24.93	09,05,2011, 04.12.2012, 23.01.2013, 07.03.2013, (two cases)
9	M/s. Plaza Maintenance and Services	Chennai ST-I	15.56	07.09.2010
10	M/s. Uttam Toyota	Ghaziabad	10.69	21.01.2011

We pointed out these 16 cases (between February 2016 to March 2016). The Ministry, in four cases stated (December 2016) that as per RFD report, Early Hearing Petition (EHP) has to be filed in CESTAT in cases involving revenue of ₹ five crore and above and pending for more than one year.

In case of M/s. Freight System India Pvt. Ltd., it was replied that EHP had already been filed, though, date of filing of EHP was not provided. It was further stated that CESTAT, as a matter of practice, does not give importance to the EHP applications and determine the cases on the basis of their own criteria.

In eight cases, it was stated that action was being taken for filing EHP and in three cases, it was informed that EHP was filed.

**iii) Non-utilisation of Opportunity Given by CESTAT for Early Hearing**

Audit further noticed that (December 2015) in case of M/s Gulshan Rai II in Ghaziabad Commissionerate involving arrears of ₹ 7.81 crore, the CESTAT observed (May 2012), that as the matter was concerned with certain legal aspects and also demand was running into crores of rupees, it would be proper to hear the appeal early, if any of the parties file necessary application in that behalf. But no early hearing application was filed even after a lapse of three years though draft for the application was sent (November 2013) to Additional Commissioner.

Thus, the opportunity given by CESTAT to speed up the case was not utilised by the department which resulted in arrears remaining unrealised.

In respect of remaining 34 cases the Ministry replies were as follows:

In 15 cases, it was stated that EHP has been filed or under process.

In 10 cases, it was stated that as per RFD report/Action Plan dated 01 September 2014, EHP has to be filed in CESTAT in cases involving revenue of ₹ five crore and above and pending for more than one year. It was further stated that CESTAT, as a matter of practice, does not give importance to the EHP applications and determine the cases on the basis of their own criteria.

In one case, it was stated that as duty involved in the case was less than ₹ one crore, there was no need to approach CESTAT for early hearing. The reply is not tenable as the instructions contain the word 'Arrear' not 'Duty' and total arrear in this case was ₹ 1.76 crore.

In one case, it was stated that EHP was filed but it was dismissed by CESTAT stating that there was no urgency for early hearing of appeal in view of the pendency of huge demand cases.

In one case, it was stated that revised instruction requires to approach CESTAT for early hearing of cases involving revenue ₹ one crore.

In five cases, it was stated that CESTAT in its judgment {2008 (230) ELT 64 (Tri-Mum)} stated that revenue of more than ₹ one crore can not be the only criteria for early hearing and should also include other factors as issue covered by SC/HC/tribunal decision, issue being of recurring nature and revenue involved being substantially high or any extraordinary situation.

In one case, reply was awaited (December 2016).

**The Ministry forwarded replies of various Commissionerates which mentioned different threshold limits to approach CESTAT for early hearing viz. Revenue involving ₹ five crore and above and pending for more than five years, Duty involving ₹ one crore, Revenue ₹ one crore. Thus, the Ministry simply forwarded differing views given by various Commissionerates to CAG without analyzing and taking a stand on the same.**

The Ministry needs to examine the issue in consultation with CESTAT and issue suitable and clear instructions to field formations for compliance so that early hearing applications of the department are not dismissed by CESTAT.

#### **2.8.4 Bunching of Cases**

CBEC vide circular No. 296/34/2004-CX.9(Pt) dated the 11 August, 2004, stipulated that the Jurisdictional Commissioner should also organize bunching of cases on same issues involving substantial revenue and request the Tribunal for disposal on priority.

Audit observed (November 2015 to January 2016 and July 2016) that bunching of cases on same issues involving substantial revenue was not done in any of the 13 Commissionerates<sup>21</sup> and Tribunal was not requested for disposal of those cases on priority, at any time. The information from rest of 19 Commissionerates was not received.

Detailed examination in two Commissionerates, out of the 13 Commissionerates mentioned above, revealed that there were eight cases which could have been bunched, as detailed in Table 2.7:

**Table 2.7: Bunching of Cases not Done**

			(₹ in crore)
Sl. No.	Name of the Commissionerate	No. of Cases	Amount
1.	Hyderabad ST	02	41.64
2.	LTU Chennai	06	15.61
	<b>Total</b>	<b>8</b>	<b>57.25</b>

Thus, inaction of the department to send the list of identical issues to CDR, for requesting CESTAT for early disposal of the case, resulted in pendency of revenue arrear of ₹ 57.25 crore.

Two illustrative cases are given below:

i) Demand of ₹ 9.63 crore in three OIOs was confirmed against M/s PLR Projects Ltd. in Hyderabad Service Tax Commissionerate for “Non inclusion of

<sup>21</sup> Hyderabad Service Tax, LTU Chennai, Service Tax-I Chennai, Service Tax-I Kolkata, Guwahati, Bolpur, Jamshedpur, Patna, Bhavnagar, Surat-II, Vadodra-I, Gwalior & Raipur

value of free supply materials by the Service Receiver in Gross Receipts”. The demand was stayed by the appellate authorities but the bunching of cases was not done by the department.

ii) Demand of ₹ 32.01 crore in three OIOs was confirmed against M/s BGR Mining & Infra Pvt. Ltd. In Hyderabad Service Tax Commissionerate for “Irregular availment of CENVAT credit on Tippers/ Dumpers”. The demand was stayed by the appellate authorities but the bunching of cases was not done by the department.

The Ministry stated (December 2016) that in both the cases, the Commissioner (AR) was asked to request the tribunal for linking of the subject appeals and for early hearing of the matter. Further progress regarding filing of appeal is awaited.

In five cases the Ministry stated (December 2016) that action was being taken for filing of application for bunching of cases and in one case it was stated that application for bunching was filed (August 2016).

#### **2.8.5 Non-transfer of Cases to Recovery Cell**

The Central Excise Officers have been empowered to attach and sell movable and or immovable properties of any person who has failed to pay any sum due to the government vide Notification No. 48/97-CE(NT) dated 2 September 1997 issued under section 12 of the Central Excise Act, 1944 which made section 42 (1)(C) (ii) of the Customs Act, 1962 applicable to like matters in Central Excise.

If no recovery is made by departmental efforts, cases needs to be transferred to Recovery Cell which have been empowered to take action for recovery by attachment and sale of property of the defaulter.

Further, the Board desired<sup>22</sup> (October 2000) that all cases, of 1999 and earlier years already referred to District Authorities, where there is no effective action or response, should be referred to Recovery Cell of the Commissionerate where the assessee may have, as per available information, some movable/immovable property so that action can be initiated as per circular No. 365/81/97-CX dated 15 December 1997.

Audit observed (October 2015 to February 2016) that out of 32 test checked Commissionerates, only Guwahati Commissionerate, transferred 2,108 cases involving ₹ 264.54 crore to Recovery Cell during audit period and no information was provided by four Commissionerates. In the remaining 27

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<sup>22</sup> vide circular No 552/48/2000-C Dated 4 October 2000

Commissionerates<sup>23</sup> no cases were transferred to Recovery Cell during any of the year. Four out of the 27 Commissionerates did not provide details of arrears. Further in 23 Commissionerates, which provided data of arrears for the year 2014-15, amount in arrear was ₹ 16,857 crore at the beginning of the year 2014-15. Further in the data furnished by five Commissionerates<sup>24</sup> regarding cases transferred to Recovery Cell, it was mentioned that revenue of arrears was nil while in these Commissionerates there were 6,960 cases of arrears involving ₹ 5,956 crore pending.

Thus non-transfer of cases has not only resulted into Recover Cell being redundant but also has led to piling of arrears and poor recoveries thereof.

We pointed these out between (January 2016 to March 2016).

The reply of the Ministry (December 2016) in respect of 31 Commissionerates was as follows:

In one case, it was stated that Audit observation had been noted.

In five cases, it was stated that there was no Recovery Cell and recovery was being monitored at Division level. In nine cases, Recovery Cell existed but recovery was still being monitored by Division. In two cases, it was stated that Recover Cell was made functional recently.

In five cases, it was stated that Recovery Cell was functional / cases were being transferred to Recovery Cell, however, no details of cases transferred were provided.

In four cases, it was stated that there was no case fit for transfer to Recovery Cell.

In one case, it was stated that that cases of arrears more than ₹ 50 lakh are being monitored by Recovery Cell.

In two cases, it was stated that no cases were being transferred from Divisions to Recovery Cell.

In one case, it was stated that there was no provision in Service Tax requiring transfer of cases to Recovery Cell.

In one case it was stated that the circular no. 368/81/97-CX dated 15 December 1997 suggested referring of cases to the Recovery Cell of those Commissionerates where the assessee may have some movable/immovable property. The Recovery Cell is therefore expected to deal with the references

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<sup>23</sup> Puducherry, LTU Chennai, Service Tax - I, Chennai, Trivandrum, Chandigarh-I, Chandigarh-II, Ludhiana, Punchkula, Bangalore ST-I, Mangalore, Noida Service Tax, Ghaziabad, Jamshedpur, Patna, Delhi ST-II, Gwalior, Raipur, Ahmedabad ST, Bhavnagar, Jaipur, Rajkot, Surat-II, Vadodara-I, Hyderabad ST, Bhubaneswar-I, ST-III Mumbai, Nagpur-II

<sup>24</sup> Puducherry, LTU Chennai, ST-I Chennai, Ludhiana, Jaipur



received from other Commissionerates in the form of Appendix-I giving details of movable and immovable property in this Commissionerate. Therefore all the arrears of the Commissionerate are not expected to be transferred to the Recovery Cell.

The reply is not tenable as the circular no. 365/81/97-CX dated 15 December 1997 does not limit to the extent of the cases received to Recover Cell from other Commissionerates (have to be transferred to Recovery Cell). There are cases where the property of the defaulter may exist in the same Commissionerate and the authorised officer has to issue Appendix II accordingly. Further, the Board vide circular no. 552/48/2000-CX dated 4 January 2000, also instructed that all cases, where departmental efforts do not yield results, are to be taken up for action by Recover Cell. Thus, the Commissionerate has to identify the cases where no recovery is made by departmental efforts and transfer all such cases to Recovery Cell of same or different Commissionerates where any asset/property is available.

Thus, the Recovery Cell exists in most of the Commissionerates but same is not functional and different field formations are having different views on the function of Recovery Cell. Further, the Ministry has simply forwarded the contradictory views of field formations to CAG without any analysis, including response in one case about absence of provision in Service Tax requiring transfer of cases to Recovery Cell and another response that Recovery Cell is responsible for cases transferred from other Commissionerates only. This shows casual approach of the Ministry to observations raised by the CAG.

The Board may issue clear instructions to field formations for effective functioning of Recovery Cell and ensure effective monitoring of the same.

## **2.9 Internal Control**

### **2.9.1 Non-updation of Status of Arrear Cases**

We observed in some cases that lack of monitoring of the recovery cases resulted in improper categorization of the cases as detailed below:

i) We noticed (December 2015) that in three cases in Bhubaneswar Commissionerate, assessees who were regularly filing their income tax returns to Income Tax Department were classified as 'defaulters not traceable' involving revenue arrear of ₹ 23.22 lakh. The department could have approached Income Tax department to ascertain the whereabouts of the assessees.

The Ministry stated (December 2016) that name of defaulters involved in 3 cases had not been furnished. The reply is not tenable as the names were provided to the department with the audit observations.

ii) We noticed (November 2015) that a demand of ₹ 4.80 lakh was confirmed on 31 January 2006 against M/s S M Telesys, in the jurisdiction of Service Tax Commissionerate, Noida. As per the TAR for the month of March 2015, the case was categorised “pending with BIFR”, whereas the case was already decided by the BIFR in May 2011. Thus, the case was wrongly categorized and as a result wrongly monitored for further action.

The Ministry admitted the observation (December 2016) and stated that action under section 87 had been initiated to recover the dues.

iii) We noticed (November 2015) that a demand of ₹ 1.53 crore was confirmed against M/s Logix Soft Tele Pvt. Ltd. Noida in the jurisdiction of Service Tax Noida Commissionerate on 17 February 2014. As per the TAR for the month of March 2015, the case was categorized “under appeal period not over” whereas appeal period was already over on 18 May 2014.

The Ministry admitted the observation (December 2016) and stated that case has since been shown in ‘CESTAT stay category’ as stay has been granted by the CESTAT in the case.

### **2.9.2 Inflated Arrears**

The monthly Tax Arrear Report reflects the amount of arrears outstanding against the defaulter at the end of the each month. Audit noticed that in Hapur Commissionerate and Ghaziabad Commissionerate the arrears were shown in excess by ₹ 37.68 lakh in three cases as discussed below:

i) We observed (January 2016) that a demand of ₹ 1.94 crore was confirmed against M/s Harish Aneja & Others, Bareilly in Hapur Commissionerate. The party deposited ₹ 27.00 lakh out of the confirmed demand, which was not appropriated in the arrears shown in TAR. Thus, the arrears were inflated by ₹ 27.00 lakh.

The Ministry admitted the observation and stated (December 2016) that arrear has been reduced in the TAR report accordingly.

ii) We observed (January 2016) that a demand of ₹ 2.03 crore was confirmed against M/s Commercial Motors, Bareilly in Hapur Commissionerate. The party deposited ₹ 7.63 lakh out of the demand confirmed, which was not appropriated in the arrears shown in TAR. Thus the arrears were inflated by ₹ 7.63 lakh.

The Ministry stated (December 2016) that the party deposited on ₹ 1.12 lakh and not ₹ 7.43 lakh and arrears had been reduced accordingly in TAR.

The reply is not tenable as the party deposited ₹ 7.63 lakh vide Challan No. 00433 dated 26 February 2013 (₹ 1.12 lakh) and Challan No. 00310 dated 20 May 2015 (₹ 6.51 lakh) which was also confirmed by the Range Officer.

iii) We observed (January 2016) that a demand of ₹ 12.24 lakh was confirmed against M/s H. M. Construction, Moradabad, Hapur Commissionerate. The party deposited ₹ 3.05 lakh, out of the demand confirmed, which was not appropriated in the arrear shown in TAR. Thus, the arrear was inflated by ₹ 3.05 lakh.

The Ministry stated (December 2016) that the party had not deposited any amount and therefore the amount of arrears as shown in the TAR report was correct. The reply is not tenable as the deposit of ₹ 3.05 lakh by the party was mentioned in the stay order of CESTAT.

### ***2.9.3 Lack of Coordination Among Different Wings within the Department***

We observed (December 2015) that reconciliation was not being done by Rayagada Division in Bhubaneswar Commissionerate with the Tribunal section of the Commissionerate (Hqrs.). 13 and 20 cases being shown as pending in CESTAT and Commissioner (Appeal) involving ₹ 70.87 crore and ₹ 3.82 crore respectively were shown as pending by the Division. But cross verification of the position of pending stayed arrears in Tribunal section of the Commissionerate (Hqrs.) revealed that these cases were not actually pending. One such case viz., M/s. K.K. Thakar involving an amount of ₹ 1.02 crore though disposed off by CESTAT in October 2015 was shown as pending. Non-reconciliation by Recovery Cell/Divisions led to the cases being shown as pending and recovery is stalled resulting in inaction of the department to recover the government dues of ₹ 74.69 crore.

The Ministry stated (December 2016) that Divisional officer had been requested for the reconciliation of differences and initiate recovery action.

### **2.10 Monitoring**

#### ***2.10.1 Absence of Mechanism to Know Status of Cases***

We observed (December 2015) that there is no mechanism in field formations to know the status of the cases of recovery. During the scrutiny of records, it was noticed that in most of the cases, the department requested the assesseees to furnish the status of the cases pending in the CESTAT, rather than monitoring the cases itself. A few instances are mentioned below:

i) A demand of ₹ 2.24 lakh and equal penalty besides interest at applicable rates was confirmed (September 2010) against M/s Samrat Studio & Colour Lab., Jaipur in Jaipur Commissionerate. Scrutiny of records revealed

that the assessee filed an appeal (June 2012) in the CESTAT against the order. The Range office requested (December 2015) the assessee to inform the present status of the case instead of monitoring the status of the case by Range Office.

The Ministry admitted the observation in this case and stated (December 2016) that status of case is ascertained from HQ Review branch as the CESTAT website is not functional and in present case, Range Officers erroneously asked the status from the assessee. It further stated that from this instance alone it is not appropriate to infer that there is no mechanism in the department to know the status of cases.

The Board needs to strengthen the mechanism such as periodical reports from legal representative etc. to ascertain the status of cases.

ii) A demand of ₹ 10.37 crore and equal penalty besides interest at applicable rates was confirmed (January 2013) against M/s. Prajay Engineers Syndicate Ltd., in Hyderabad Commissionerate. Scrutiny of records revealed that the Range Officer Service Tax requested (06 November 2015) the assessee to intimate the present status of the case. Audit noticed that stay of demand was already granted by CESTAT on 16 June 2015.

The Ministry stated (December 2016) that the facility to know the status of cases pending at CESTAT Hyderabad was not available on website, hence, the assessee was requested to intimate the present status of case.

iii) We noticed (November 2015) that a demand of ₹ 4.80 lakh was confirmed (31 January 2006) against M/s S M Teleys, in the jurisdiction Service Tax Commissionerate, Noida (as pointed out in para 7.3.1 (ii)). The assessee informed (March 2011) the department that the company is declared sick (February 2007) by the Board for Industrial and Financial Reconstruction (BIFR). The department requested (February 2013) the BIFR for the present status of the case. The department came to know (November 2013) that the premises were auctioned.

It indicates that the department neither took timely action for the recovery of dues nor was aware that the assessee was declared a sick firm and the property was auctioned.

The Ministry stated (December 2016) that an officer was deputed to the office of BIFR and the case was decided by BIFR in September 2013. Later, departmental officer visited the premises and came to know that property of the defaulter was auctioned by IFCI and acquired by Lavanya Ayurvedic Hospital. The department is pursuing the matter with IFCI and banks. However, details of departmental action in BIFR i.e. lodging of the

department claim, details of BIFR proceedings etc were neither available on the case file scrutinised by audit nor provided by the Ministry.

### **2.10.2 Use of Software Application by the Department to Monitor Recovery of Arrears**

Though the positions of recoveries are reflected in Tax Arrear Reports, there is no software/module exclusively for arrears compilation and monitoring. Use of an IT system/ computer software/program in the department for recovery of arrears may be an effective tool. Adequacy of the system, application and procedural controls, availability of MIS reports for management and sharing of information etc. cannot be ensured in the absence of such IT system /computer software/program.

Audit noticed that in 18 Commissionerates, the department had no computerized software/program or a system to monitor the extent of arrears of revenue, compliance of prescribed rules and regulations at different level of execution etc., ensuring arrears recovery by the department in an efficient and effective manner. The information from rest of the 14 Commissionerates was not received as of date.

Lack of IT enabled system has resulted in poor monitoring of recovery process.

When we pointed these out between (January 2016 to March 2016), the Ministry stated (December 2016) that the Board has taken initiatives to monitor the recovery of arrears electronically. Monthly reporting of arrears by field formation has been digitized and efforts are underway to digitize the manual registers.

It is expected that the digitization would improve the monitoring of recovery of arrears.

### **2.10.3 Non-maintenance of Appeal Register**

The Board circular No 224/37/2055-CX 6 dated 24 December 2008 prescribed various measures such as preparation of draft para-wise comments on the appeal filed by the assessee and regular upkeep of register through monthly review of records for effective monitoring of cases pending with legal forums.

We observed (October 2015 to February 2016) that the Appeal Register was not being maintained in 18 Ranges in the jurisdiction of four Commissionerates.

We pointed these out between January 2016 and February 2016. The Ministry stated (December 2016) that instructions have been issued to field formations to maintain Appeal Register.

## **2.11 Functioning of Task Force for Recovery**

### **2.11.1 Non-formulation of Strategy by Zonal TAR**

The Board (CBEC) constituted (August-2004) a Centralised Task Force (CTF) to co-ordinate, facilitate, monitor and oversee the efforts of Customs and Central Excise field formations in recovery of arrears. CTF was entrusted with a vital task of reviewing the position of arrears of revenue of Central Excise and Customs and to finalise and implement the strategy for realisation of arrears with the objective of meeting the targets. This strategy covers all cases before CESTAT, Commissioner (Appeals) and Settlement Commission. Apart from them, in respect of Commissioners' undisputed arrears, CTF was to formulate a collection strategy. The nodal officer was also required to take up monthly monitoring of cases, where defaulters were not traceable and their assets not available which have been referred to DGRI/DGCEI.

We observed that though the department was entrusted with the finalising and implementing strategies for realisation of arrears, it did not take any such action for realization of arrears. This may be correlated with the fact that huge arrears were pending in CESTAT due to indefinite timeline for stay where the CTF did not finalise any planning / issue direction in this regard. The facts were also evident that as of March 2015, in respect of Service Tax, cases involving arrears of an amount of ₹ 67,399.89 crore were pending with the CESTAT (All India), arrears of ₹ 24.60 crore with Settlement commission and arrears of ₹ 1,769.81 crore were outstanding with the Commissioner (Appeals) against a total arrears of revenue of ₹ 79,743.46 crore (all zones). These constituted 86.77 per cent of the total arrears of recovery. Thus, due to ineffective strategy, these arrears could not be liquidated and showed a continuously increasing trend.

When we pointed this out (January 2016), the Ministry stated (December 2016) that strategies have been formulated by the TAR involving a number of initiatives and the same are being followed by the Commissionerates and monitored by TAR. In respect of cases before legal entities, the Ministry stated that these are independent entities and departmental instruction cannot override them.

The reply is not tenable as Audit has not insisted on directing the legal entities but on making strategies to pursue the cases with legal entities by way of request for early hearing, vacation of stay, etc. as envisaged in TAR functions.

### **2.11.2 Non-maintenance of Relevant Records/Data at TAR.**

Maintenance of relevant data is the basis to formulate strategy and action plan to discharge functions effectively. To discharge its functions envisaged by O.M. dated 11 August 2004, Zonal TARs are required to maintain data relating to arrears of field formations in its jurisdiction.

In TAR Nagpur, the information could not be compiled due to restructuring and shifting of office.

Information in respect of TAR Chennai and Vadodara were not provided by the department.

In the absence of data, Audit could not comment on the working of these TARs.

We pointed these out (February 2016), the Ministry stated (December 2016) that restructuring of TAR has taken place in August 2015 shifting the responsibility of CC(TAR) to Director General of Performance Management (DGPM) and placing zonal nodal offices under Director General of Tax Payers Services (DGTPS). The transition was taking place at the time of Audit, due to which records could not be furnished to Audit.

Reply is not tenable as the Board should ensure proper change management/transition plan to ensure that functioning of the department is not hampered.

### **2.11.3 Non/Inadequate Inspection of the Commissionerates by TAR**

OM No. F. No. 296/34/2004-CX 9 (PT) dated 11 August 2004, prescribes test check of the performance of the Commissionerates by initial inspection in all the Commissionerates in his charge and thereafter by periodical inspection/interaction with jurisdictional officers.

We observed (November 2015) that the Nodal Office Kolkata did not carry out any inspection during 2013-14, and only three Commissionerates were inspected out of 19 Commissionerate under its jurisdiction in 2014-15.

Thus, the Nodal Officers, TAR Kolkata did not comply with the Board instructions for inspection of the Commissionerates in its jurisdiction.

Information in respect of TAR Chennai and Vadodara was not provided by the department, and hence, we are not in position to comment on working of TAR at Chennai and Vadodara.

We pointed these out (February 2016) and the Ministry stated (December 2016) that nodal offices could not carry out inspections as there was shortage of staff due to restructuring/transition of TAR.

Reply is not tenable as the objection pertained to period 2012-13 to 2014-15 and restructuring took place in August 2015. Further, the Board should ensure that at the time of change management/transition, functioning of the department should not be hampered.

## **2.12 Conclusion**

Recovery of arrears is not being given due importance despite the mounting arrears. Elaborate instructions of the Board regarding monitoring of arrears, taking effective steps like requesting for early disposal, bunching of cases, and prompt action on finalization of Appeals or vacation of stay to safeguard the government revenue are neither understood by field formations nor being complied with. Special institutional arrangements like creation of Recovery Cell and Task force have not made any significant impact on the recovery process. In the age of digital environment, the Board has failed to exploit the potential of IT for monitoring of arrears.





## **Chapter III**

### **Effectiveness of Internal Audit**

#### **3.1 Introduction**

Internal Audit is one of the main compliance verification mechanisms in the Service Tax department in the era of self-assessment and is undertaken under Rule 5A of Service Tax Rules, 1994. The Internal Audit function involves selection of assessee units on the basis of risk parameters and scrutiny of records of the assessee in a uniform, efficient and comprehensive manner in accordance with the audit standards. For this purpose, the Central Board of Excise and Customs has laid down detailed guidelines in the form of the Service Tax Audit Manual (STAM), 2011 for audit of Service Tax, which prescribe detailed processes for conduct of audit.

#### **3.2 Organisational Set-up**

The Service Tax department was restructured in October 2014. Before restructuring, Internal Audit was conducted by an Audit Cell in each Commissionerate, manned by an Assistant/Deputy Commissioner and auditors and headed by an Additional/Joint Commissioner.

After the restructuring, separate Audit Commissionerates were created under the supervision of Directorate General of Audit (DG Audit). Each Audit Commissionerate is assigned jurisdiction over assessees associated with two or three executive Commissionerates.

In the restructured set-up, Audit Commissionerate comprises of a headquarters similar to an Executive Commissionerate and subordinate offices called Circles similar to Divisions. Each Circle is headed by a Deputy/Assistant Commissioner and comprises of Audit Groups equivalent to the Range offices which have Superintendents and Inspectors.

The Directorate General of Audit, Customs and Central Excise, New Delhi (headed by Director General) with its seven zonal units at Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata and Mumbai, each headed by an Additional Director General, is required to ensure the efficient and effective implementation of the audit system (based on EA 2000 Methodology) and also to evolve and improve audit techniques and procedures through periodic review.

#### **3.3 Audit Objectives**

The objective of this audit was to verify the extent of compliance of the Internal Audit Commissionerates with the laid down:-

- Rules/manual/norms/ guidelines and
- Mechanism for the follow-up of audit findings and rectificatory action thereof.

### **3.4 Audit Criteria**

The sources of audit criteria include the provisions/ guidelines in the following Act, Manuals and Circulars of the department:-

- a) Rule 5A of Service Tax Rules, 1994
- b) Service Tax Audit Manual, 2011
- c) Manual for Quality Assurance Review, 2007
- d) Notifications, Circulars, Instructions, Guidelines etc issued by the CBEC from time to time

### **3.5 Scope, Coverage and Audit Methodology**

There are 117 executive Commissionerates and 39 offices of exclusive Service Tax and combined Central Excise and Service Tax Audit Commissionerates all over India. 15 Audit Commissionerates out of 39 were selected.

We examined the assessee master files, internal audit files, audit planning register and follow-up register etc. for the period 2012-13 to 2014-15 available with selected Audit Commissionerates and Executive Commissionerates.

### **3.6 Non-Production of Records**

During audit, we requisitioned 750 Assessee Master Files and 1,125 Internal Audit Files against which we received 396 Assessee Master Files and 886 Internal Audit Files. Further we did not receive full records relating to audit planning register, audit follow up register etc. ***In the absence of these records, we are not in a position to comment on the extent of compliance by the Internal Audit Commissionerates with the laid down procedures.***

### **3.7 Audit Findings**

We found instances of non/incomplete maintenance of Assessee Master Files, Audit Planning Register, Audit Follow up Register etc. Further, during scrutiny of sample Internal Audit Files, we noticed lack of documentation of Desk Review, Audit Plan and Verification Report. The observations are discussed in succeeding paragraphs.

### 3.8 Planning, Desk Review and Conduct of Field Audit

#### 3.8.1 Assessee Master File

As per para 6.1.1 of Chapter 6 of Service Tax Audit Manual (STAM), 2011—risk assessment based audit requires a strong database for profiling each taxpayer so that risk factors relevant to a taxpayer may be identified in a scientific manner and audit is planned and executed accordingly.

Further, as per para 6.1.2 of chapter-6 of STAM, 2011, an Assessee Master File (AMF) is required to be maintained in the Audit Cell for each taxpayer registered with the department. The Audit Cell should collect all relevant information and documents about the taxpayer from various sources (including taxpayer himself), arrange it methodically and regularly update it. The AMF should contain all relevant information about a taxpayer in three parts. (i) Taxpayer's profile, (ii) business particulars of the taxpayer and (iii) documents such as application for registration, registration certificate, balance sheets, annual reports, previous Audit Report, LAR etc., pertaining to the taxpayer. The AMF should be maintained as per the format prescribed in Annexure-III to the STAM, 2011. Taxpayer's profiles are also required to be maintained in electronic form.

Of the 15 selected Commissionerates, two Commissionerates<sup>25</sup> did not provide the number of master files created and four Audit Commissionerates<sup>26</sup> did not inform the total number of assessees. In the remaining nine Commissionerates, we observed that against a total number of 5,56,048 registered assessees<sup>27</sup>, AMFs were created in respect of only 3,239 assessees (0.58 per cent) for the period 2012-13 to 2014-15. In Mumbai ST Audit III Commissionerate, no AMF was created. In Delhi ST Audit I Commissionerate, the percentage of the assessees for whom AMF was created was only a miniscule 0.05 per cent (88 AMFs against 1.77 lakh assessees).

In scrutiny of sample files, we observed that

- In 91 per cent of the cases verified (359 out of 396 AMFs made available), AMFs were not found complete/updated as prescribed in Annexure-III of the STAM, 2011.

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<sup>25</sup> Chennai Audit I and Cochin Audit

<sup>26</sup> Hyderabad Audit, Lucknow Audit, Patna Audit and Chandigarh Audit

<sup>27</sup> Ahmedabad Audit II, Jaipur Audit, Bangalore ST Audit, Delhi ST Audit I, Bhopal Audit I, Bhopal Audit II, Bhubaneswar Audit, Mumbai ST Audit III and Kolkata ST Audit.

- In five Commissionerates<sup>28</sup>, AMFs were updated after the selection of units for audit.
- 10 Commissionerates<sup>29</sup> did not maintain AMF in electronic format as prescribed in the manual.

We could not examine this aspect in Chennai Audit I, Delhi ST Audit I and Mumbai ST Audit III Commissionerates as no AMF was produced.

Thus the database of the assesseees required for risk assessment is not being maintained.

When we pointed this out (October 2015 to April 2016), the Ministry forwarded Commissionerate wise replies, the gist of which is detailed below:

The general response of many commissionerates is that maintaining AMFs for all assesseees is not practical given the huge number of assesseees and action is being taken to create AMFs for all assesseees.

In case of Bhubaneswar I , it was replied that AMFs are created for audited units only and that after formation of Audit Commissionerate and since the audit year 2015-16, the risk factor is calculated centrally by the DG, Audit and made available to all Audit Commissionerates which are relied upon for selection of units for auditing.

Delhi ST-I contested the audit observation stating that it is not practically feasible to create 1.77 lakh AMFs before embarking on audit. They further stated that as per Board Circular No. 995/2/2015-CX dated 27 February 2015, the list of units to be audited is being centrally prepared by DG Audit based on various parameters and local Commissionerate can tweak the said list by a maximum of 5 per cent and hence, effectively the role of AMF in risk profiling for units to be selected is negligible. They also stated that they are taking up this matter with DG Audit to revise the Audit Manual.

The Ministry simply forwarded responses of Bhubaneswar I and Delhi ST I commissionerates regarding use of risk profiling done by DG Audit, instead of AMFs created by individual commissionerates and replies of other Commissionerates that the AMFs are being created, without giving the Ministry's view on the same.

***In view of practical constraints expressed by almost all the commissionerates in maintaining AMFs for all the assesseees and response of Bhubaneswar I and Delhi ST I Commissionerates regarding role of DG Audit in calculating risk scores of assesseees centrally, the Ministry needs to evolve***

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<sup>28</sup> Ahmedabad Audit II, Jaipur Audit, Bhopal Audit I, Hyderabad Audit and Bangalore ST Audit

<sup>29</sup> Bangalore ST Audit, Ahmedabad Audit II, Jaipur Audit, Chennai Audit I, Bhopal Audit I, Bhopal Audit II, Hyderabad Audit, Bhubaneswar Audit, Lucknow Audit and Patna Audit

***a practical way of risk profiling of assessees by commissionerates which will capture the localised risk and can be used in combination with centralised risk scoring done by DG Audit.***

### **3.8.2 Inadequacy in Risk-Assessment for Selection of Units for Audit**

As per para 5.1.2 of the Service Tax Audit Manual (STAM), 2011, the categorization of the audit is to be done on the basis of annual revenue for the preceding financial year. The annual revenue includes cash as well as CENVAT.

We noticed the following inadequacies in selection of units for audit with reference to provisions of STAM, 2011.

- In Mumbai ST Audit III Commissionerate, the selection of mandatory units for the year 2012-13 to 2014-15 was done on the basis of revenue figures available in the Personal Ledger Account (PLA). However, the PLA depicts only cash revenue. Hence, mandatory units were determined only on the basis of cash revenue without the CENVAT element. As such, the selection of units was not as per the norms of the STAM, 2011.

When we pointed this out (November 2015), the Ministry accepted the facts and stated (December 2016) that new norms for selecting the units for internal audit are applicable from 1 July 2015 and the same are being followed now.

- In Bengaluru ST Audit Commissionerate, there was a decline in revenue (99 *per cent*) for the year 2013-14 in respect of 12 assessees and their category had changed from 'A' (mandatory) to C & D (non-mandatory) and none of these units were audited during 2014-15. Since, there was a steep decline in the revenue, the related assessees involving high risk potential should have been selected for audit. Failure of the Commissionerate to do so indicated the inadequacy of risk assessment.

When we pointed this out (December 2015), the Ministry accepted the facts and stated (December 2016) that out of the 12 units, nine units have already been audited and two units are proposed to be audited in the FY17 and one unit had surrendered its registration. The Ministry further added that in three cases, the internal audit had detected audit objections amounting to ₹ 4.81 crore and recovered ₹ one crore.

### **3.8.3 Inadequate Desk Review/Audit Plan/Verification**

- a) Prior to actual conduct of audit, the auditors are required to write an intimation letter to the assessee for conduct of audit and to gather as

much information as per the list of documents prescribed<sup>30</sup> for carrying out Desk Review and analyse the information. A list of documents required for carrying out Desk Review is also included in the said Annexure. The objective of desk review is to devise a focused audit plan.

- b) After the Desk review, an Audit Plan is prepared to give a reasonable view regarding potential risk areas, abnormal trends and unusual developments, which need detailed verification. Audit Plan should be a clear plan of action in a standard Format<sup>31</sup>.
- c) The audit party conducts the verification by checking the points mentioned in the Audit Plan. Entry in the Working Papers must be made for each item of the audit plan<sup>32</sup>.

To assess the compliance of these three procedures, Audit conducted a test check of 886 assessee audit files in 15 Audit Commissionerates of Service Tax and found inadequate documentation in 185 internal audit files (21 per cent) in nine Commissionerates. Summary of the observations is given below:

- Desk review was either not found attached or inadequately prepared in 55 internal audit files in six Commissionerates<sup>33</sup>.
- Audit Plan was not found attached or not prepared as per the prescribed format in 70 Internal Audit Files in three Commissionerates<sup>34</sup>.
- Verification report was not found attached as mandated in 134 internal audit files in nine Commissionerates<sup>35</sup>.

Some important observations are as under:

- In Cochin Audit Commissionerate and Executive Commissionerates of Trivandrum, Cochin & Calicut, in 20 out of 55 Audit case files, no working papers were prepared. In these cases, the Audit Parties merely prepared a note titled 'Desk Review' indicating the dates of audit and the general areas proposed to be examined during the audit and some basic data like balance sheet, profit & loss account and ER-I returns etc. without

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<sup>30</sup> Annexure IV of the STAM, 2011

<sup>31</sup> Format of Audit Plan as per Annexure VIII of the STAM, 2011 is Subject, Specific Issue, Source Document, Back-up Document, Coverage Period and Selection Criteria.

<sup>32</sup> Format of Verification Report as per Annexure VIII of the STAM, 2011 is Date of verification, Name of the auditor verifying the issue, issue in brief, Ref. No. of Audit Plan, Documents verified, Brief account of the process and extent of verification, Auditor's observation and conclusion in brief, Quantification of revenue, if any and Documents relied upon.

<sup>33</sup> Cochin Audit, Chandigarh Audit, Lucknow Audit, Jaipur Audit, Ahmedabad Audit II and Chennai Audit I

<sup>34</sup> Cochin Audit, Chandigarh Audit and Patna Audit

<sup>35</sup> Cochin Audit, Chandigarh Audit, Kolkata ST Audit, Lucknow Audit, Patna Audit, Ahmedabad Audit II, Chennai Audit I, Mumbai ST Audit III and Jaipur Audit

any analysis of this records. As working papers were not prepared, there was no evidence that there was proper examination of the various financial statements, calculation of various financial ratios and conduct of trend analysis. This indicated that no proper desk review was conducted in these cases affecting the preparation of good quality Audit Plans.

- In Patna Audit Commissionerate, in 55 cases out of 76 cases test checked, Audit plans were not prepared in accordance with provisions of the Service Tax Audit Manual and verification report along with working papers were not found attached in 31 cases.
- In Lucknow Audit Commissionerate out of 57 cases test checked, Desk Review was not prepared in 12 cases and verification reports along with working papers were not prepared in 36 cases.

When we pointed this out (October 2015 to January 2016), the Ministry accepted the audit objection in all the cases and stated (December 2016) that necessary rectification measures were taken/would be taken in due course.

### **3.8.4 Inadequate Scrutiny of Internal Audit Files**

As per para 8.4.2 of STAM, 2011, it is the duty of the Audit Cell to examine the draft audit report.

We examined the details available in Internal Audit Files and found lapses in nine Internal Audit Files relating to non/ short payment of Service Tax, non-recovery of mandatory penalty, irregular availing/ utilization of CENVAT credit etc., in three Audit Commissionerates<sup>36</sup> amounting to ₹ 3.24 crore.

The Ministry in its reply (December 2016) accepted the audit objection in two cases<sup>37</sup> and reply of the Ministry is awaited in six cases<sup>38</sup>. The detail of one case is discussed below:

In respect of M/s Essar Offshore Subsea Ltd. in Mumbai ST Audit III Commissionerate, it was noticed that the department had settled three audit paras without recovering the mandatory penalty amounting to ₹ 8.28 lakh. The Ministry replied (December 2016) that the terms “fraud, collusion, willful mis-statement, suppression of facts, contravention of any of the provisions of Chapter or of the rules made thereunder” as used under sub section (4) to Section (73), were not invocable, for imposition of penalty and as the assessee had paid both Service Tax and applicable interest, the taxpayer got

<sup>36</sup> Hyderabad Audit, Chennai Audit I and Mumbai ST Audit III

<sup>37</sup> M/s. Indu Projects Ltd & Ms. Keimed Pvt. Ltd. in Hyderabad Audit Commissionerate

<sup>38</sup> M/s. Pane NSK Steering System (P) Ltd., M/s. BSNL, M/s. Celebrity Fashions Ltd., M/s. EMI Infrastructure Pvt. Ltd., M/s. MN Ravi Prasad, M/s. Mahindra Integrated Township Ltd. in Chennai Audit I Commissionerate



the benefit of Section 73 (3) of Chapter V of the Finance Act, 1994, which was ratified by the Monitoring Committee Meeting.

The reply of the Ministry is not acceptable as payment of penalty up to 25 per cent of objected money value under Section 73(4A) of the Finance Act, 1994 was mandatory.

**Poor desk review and audit planning adversely affected the quality of internal audit. Further, due to non-availability of verification report and working papers, proper accountability of Internal Audit Party (IAP) cannot be ensured.**

### **3.9 Monitoring of Internal Audit Process**

#### **3.9.1 Maintenance of Audit Planning Register (APR)**

As per para 8.5.1 of STAM 2011, the Audit Planning Register is to be maintained in the prescribed format<sup>39</sup>. It will facilitate in ensuring: (i) all units allotted to an Audit Group have been audited; and (ii) wherever audit has been completed, the Audit Reports are issued in time and it will also ensure that if audit of any unit could not be taken up, the same can be included in the schedule for the subsequent period.

We observed in 14 Commissionerates<sup>40</sup>, the audit planning register was incomplete/not maintained in the format prescribed in the STAM, 2011 or not produced to the audit.

When we pointed this out (October 2015 to April 2016), the Ministry accepted the facts and stated (December 2016) that now the register is being maintained properly as per new audit manual.

#### **3.9.2 Maintenance of Audit Follow-up Register**

As per para 8.5.6 of the STAM, 2011 the details of draft Audit Reports discussed by MCM, final decision on the reports is taken in the meeting and the further follow-up action should be entered in the 'Audit Follow-up Register (AFR)'<sup>41</sup> (in the format prescribed in the STAM, 2011), as soon as the Audit Report is approved. The abstract for each month should be put up by

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<sup>39</sup> Format of Audit Planning Register is Sl. No., Name of Unit, IAP No., Propose Month of Audit, Actual Date of Audit, Submission of DAR to Audit Cell, Audit Report No, Date of Issue etc.

<sup>40</sup> Delhi ST Audit I, Chandigarh Audit, Bhopal Audit I, Kolkata ST Audit, Bhopal Audit II (Raipur), Hyderabad Audit, Ahmedabad Audit II, Jaipur Audit, Mumbai ST Audit III, Lucknow Audit, Patna Audit, Chennai Audit I, Cochin Audit {Trivandrum, Calicut, Cochin executive Commissionerates} and Bangalore ST Audit.

<sup>41</sup> Format of Audit Follow up Register is AR No., Name of Assessee, Range and Division, Reg. No. of Assessee, Period of Audit, Date Audit, IAP No., Para No., whether accepted by MCM, duty involved, Spot Recovery, Recovery other than spot recovery before issuance of SCNs, Division file No. SCN No. & Date, Amount in SCN, Reason of closure of para & date of closure of para.

Audit Cell to Additional/Joint Commissioner (Audit) by 10<sup>th</sup> of the following month.

We observed in Delhi ST Audit I Commissionerate (2014-15) and Ahmedabad Audit-II Commissionerate (2012-13 to 2014-15) that AFR was not maintained. In six Audit Commissionerates<sup>42</sup> and one Executive Commissionerate (Bengaluru), AFR was not properly maintained/ updated. Further, in three audit Commissionerates (Chandigarh, Kolkata ST and Patna), monthly abstracts of AFR were not prepared.

When we pointed this out (October 2015 to April 2016), the Ministry accepted the facts and stated (December 2016) that now the register is being maintained properly as per new audit manual.

### **3.9.3 Submission of Draft Audit Report (DAR)**

As per Para 8.1.4 of the Service Tax Audit Manual, 2011, the draft audit report should be submitted by the internal audit party to Audit Circle within the shortest time span possible i.e. within 20-25 days of the commencement of audit in the taxpayer's place.

We observed in 10 Commissionerates<sup>43</sup> that out of 609 files test checked, there was delay in submission of draft audit reports in 344 files during the period 2012-13 to 2014-15. Out of these 344 files, three DARs were submitted with delay of more than one year and in 55 DARs delay was ranging from three months to one year. Moreover, in 81 cases we could not quantify the delay in submission of draft audit reports due to absence of information.

A few cases are illustrated below:

- In Delhi ST Audit I Commissionerate, in case of M/s Richo India Ltd., the DAR was submitted with the delay of 776 days.
- In Chandigarh Audit Commissionerate, in case of M/s Ludhiana Builders, the DAR was submitted with the delay of 685 days.
- In Bangalore ST Audit Commissionerate, in case of M/s Vodafone South Ltd., the DAR was submitted with the delay of 530 days.

When we pointed this out (October 2015 to April 2016), the Ministry accepted (December 2016) the audit objection and attributed the delay in submission of draft audit report to delay in receipt of documents/replies or non-cooperation by the assesseees.

<sup>42</sup> Bhopal Audit I, Bhopal Audit II, Hyderabad Audit, Chennai Audit I, Chandigarh Audit and Patna Audit

<sup>43</sup> Bangalore ST Audit, Chennai Audit I, Chandigarh Audit, Delhi ST Audit I, Kolkata ST Audit, Hyderabad Audit, Bhubaneswar Audit, Lucknow Audit, Patna Audit and Cochin Audit

### 3.9.4 Evaluation of Audit Reports

As per para 8.3.2 of Chapter 8 of the STAM, 2011, the Monitoring Committee should also evaluate the working of Audit Groups in respect of each audit. The scoring of Audit Report should be done with a view to evaluate the standard of audit conducted. Greater emphasis should be placed on the quality of audit and recovery of short levy rather than on the quantum of detection. The evaluation is not meant for reprimanding or fixing responsibility but is aimed at assessing the quality of audit and correcting the shortcomings for future.

We observed in eight Commissionerates<sup>44</sup>, that out of a total 560 internal audit files, no scoring had been done in 388 files (69 per cent). Moreover, in 177 files (32 per cent) in three Commissionerates<sup>45</sup>, no scoring was done in any of the internal audit files.

When we pointed this out (October 2015 to April 2016), the Ministry accepted the facts and stated (December 2016) that the audit comment is noted for future compliance.

### 3.9.5 Monitoring Committee Meeting (MCM)

As per para 8.2.2 of the STAM, 2011, the Audit cell should organize Monitoring Committee Meetings (MCM) on at least monthly basis under the chairmanship of the Commissioner during which each of the audit objection/observations would be examined for its sustainability. The minutes of each such meeting should be drawn, pointing out the decision on each of the audit objection regarding its sustainability and directions for future action. The objections rejected by the meeting will be treated as closed.

We observed that during the period 2012-13 to 2014-15, in six Audit Commissionerates (including related executive Commissionerates)<sup>46</sup> 209 monthly MCMs were held as against 306 MCMs due to be conducted. Hence, there was a shortfall of 97 MCMs (31.70 per cent).

When we pointed this out (October 2015 to April 2016), the Ministry accepted the facts and stated (December 2016) that it was due to restructuring of the department and that the MCMs are being held regularly now.

<sup>44</sup> Bangalore ST Audit, Lucknow Audit, Patna Audit, Ahmedabad Audit II, Delhi ST Audit I, Chennai Audit I, Cochin Audit and Mumbai ST Audit III.

<sup>45</sup> Delhi ST Audit I (25 cases), Mumbai ST Audit III (77 cases) and Ahmedabad Audit II (75 cases)

<sup>46</sup> Patna Audit (including Ranchi Executive Commissionerate), Chennai Audit I (including Chennai III Executive Commissionerate), Cochin Audit (Calicut and Thiruvananthapuram Executive Commissionerate), Lucknow Audit, Kolkata ST Audit and Mumbai ST Audit III

### **3.9.6 Finalization and Issuance of Final Audit Report**

As per para 8.3.1 of the STAM, 2011, based on the decision of the MCM, the draft audit report should be finalized by the Audit Cell within 15 days from the date of MCM.

We observed in 13 Audit Commissionerates that out of 813 test check files, there was delay in finalization of draft audit report in 291 cases. The delay was up to three months in 213 cases and more than three months in 78 cases.

A few cases are illustrated below:

- In Bangalore ST Audit Commissionerate, in the case of M/s Starworth Infra & Construction Ltd., the delay was of 518 days after the discussion in MCM. In case of M/s Parametric Technology Pvt. Ltd. and M/s Divas Langdon & Sech Consulting Pvt. Ltd., the delay was of more than 300 days after the discussion in MCM.
- In Delhi ST Audit I Commissionerate, out of the selected sample, none of the FARs found to be issued in time. Two FARs were issued with delay of more than one year after the discussion in the MCM and in eight cases FARs were yet to be issued (April 2016) though the same were discussed in MCM held in February to April 2015.
- In Cochin Audit I Commissionerate, in case of M/s Invis Multimedia Ltd., the delay was of 247 days in issuing the Final Audit Report after the discussion in MCM.

When we pointed this out (October 2015 to April 2016), the Ministry accepted the audit objection and stated (December 2016) that the delay in finalization of draft audit reports was for want of recovery particulars in respect of the observations accepted by the assesseees or compliance of queries raised in MCM committees.

***Improper maintenance of Audit Planning and Follow up Registers have direct impact on effective watch on internal audit process. Further, non-maintenance of timeliness in issuance of FAR to the assessee doesn't reflect well on the image of the department.***

### **3.10 Conclusion**

Risk based audit has been adversely affected due to non/ incomplete maintenance of Assessee Master Files in most of the cases. The Ministry needs to devise proper risk assessment at Commissionerate level keeping in view centralised risk scoring of assesseees being done by DG Audit currently. Lacunae such as poor desk review, audit planning and non-documentation of

verification reports raise questions on the quality of work done by IAP. Further, Draft Audit Reports are being finalised with significant delay and adherence to the timelines is not monitored. Poor maintenance of records by a wing which is the backbone of the compliance verification mechanism reflects poorly on the functioning of the department.

## 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.<sup>47</sup>

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

<sup>47</sup> 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.



## **Chapter V**

### **Effectiveness of Internal Controls**

#### **5.1 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<sup>48</sup> are being achieved:

- fulfilling accountability obligations ;
- complying with applicable laws and regulations ;
- Safeguarding resources against loss, misuse and damage.

In the era of self-assessment, recognizing the need for a strong compliance verification mechanism, CBEC has put in place systems of internal control viz. audit and return scrutiny. The return scrutiny is envisaged in a two-part system - a preliminary scrutiny which would be online covering all the returns and a detailed manual scrutiny of select returns, identified on the basis of risk parameters, to be done by the Division/ Range offices. The audit commissionerates carry out Internal Audit of select assesses to verify their compliance with rules and regulations relating to Service Tax. With increasing reliance on voluntary compliance and new services regularly being brought under the tax net, there are also instructions in place to identify persons who were liable to pay tax but had avoided to pay so as to bring them into the tax net thereby broadening the tax base.

#### **5.2 Results of Audit**

During the course of examination of records, we came across several shortcomings in compliance of field formations to the instructions in place regarding broadening of tax base, return scrutiny and Internal Audit of assessees. These suggest that the department should look into the adequacy of extant systems and procedures. We communicated these observations to the Ministry through 91 draft audit paragraphs having financial implication of ₹ 118.66 crore. Out of these, 63 cases which have been accepted by the department and recoveries made/ recovery proceedings initiated are mentioned in Appendix III and 28 cases are discussed in the following paragraphs under four major headings:

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<sup>48</sup> INTOSAI GOV 9100 – Guidelines for Internal Control Standards for the Public Sector

- Broadening of Tax Base
- Scrutiny of Returns
- Internal Audit of Assesseees
- Other Issues

### **5.3 Broadening of Tax Base**

As per the Board's instruction dated 23 November 2011, the special cell in the Commissionerate had to obtain information on unregistered service providers from different sources such as yellow pages, newspaper advertisements, Income Tax department, regional registration authorities and websites, information from municipal corporations and major assesses including PSUs and private sector organisations regarding various services being availed by them.

Two cases where the department failed to identify the Service Tax defaulters are narrated below:

#### **5.3.1 Non Levy of Service Tax including Interest on Consultancy Services**

As per section 65A of the Finance Act, 1994, the term 'Insurance auxiliary service' means any service provided by an actuary, an intermediary or insurance intermediary or an insurance agent in relation to general insurance business or life insurance business and includes risk assessment, claim settlement, survey and loss assessment. Interest also payable for delayed payment of Service Tax.

Audit (September 2015) of income tax records at Circle-2, Pr. CIT, Hazaribagh charge of an assessee M/s Life line Advisory & Consultancy Pvt. Ltd. (PAN No. AABCL6766A) revealed that the assessee received ₹ 1.75 crore during 2010-11 as subscription and consultancy receipt, on which the assessee is liable to pay Service Tax including interest amounting to ₹ 31.05 lakh, which was not discharged by the assessee.

When we pointed this out (September 2015), the Ministry replied (December 2016) that the assessee is neither registered with the department nor traceable at the address given. Further, the Ministry described all the actions taken by the department from December 2015 (i.e. post audit objection) to December 2016 for tracing the assessee.

Thus, non initiation of timely action on the Board's instructions cited ibid by collecting details from Income Tax returns resulted in loss of Government revenue to the tune of ₹ 31.05 lakh.

### **5.3.2 Non-Registration and Non-Payment of Service Tax by Service Providers**

Audit observed from the cross check of surrendered registrations with information collected from Vaikon Municipality, other assesses and websites that 15 assesseees<sup>49</sup> who surrendered registrations were continuing their activities for more than eight years. It was further noticed that no Service Tax registration was taken by nine other service providers.

When we pointed this out (January 2014) during audit of Central Excise Range, Vaikon, the Ministry replied (December 2016) that five SCNs were issued in acceptance of CERA objection. The Ministry further stated Vaikon Range had conducted investigations about the tax liability of 25 co-operative Banks/ societies and issued total number of 50 SCNs to 22 Co-operative Banks/ societies demanding Service Tax.

Analysis of SCNs issued to the Co-operative societies revealed that the action was initiated post CERA objection. Even if it is accepted that action has been initiated before we pointed these in audit, it is evident that follow up by the department was ineffective as the prospective assesseees took their own time to furnish the necessary details.

Delayed action by field formations in identifying non-registrants and non-filers might either render the demands time barred or the assesseees untraceable. Thus, there is a need for Board to ensure that its instructions regarding tax base broadening are implemented effectively by its field formations.

### **5.4 Inadequate Scrutiny of Returns**

During examining ST-3 returns at ranges, 10 instances were observed by us 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 as detailed in Table 5.1. In all these cases, action for recovery of tax / interest has been initiated and the Ministry attributed inadequate scrutiny of returns to problems associated with ACES as discussed in the Table 5.1.

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<sup>49</sup> Ten co-operative banks, Vaikon Kuries (Non-banking financial institution), Travancore Devaswom Board, St.Thomas Parish Hall and Commercial Centre, Chembu Welfare Centre and NSS Union

**Table 5.1 : Observations on Inadequate Scrutiny of Returns**

Sl. No.	Name of Commissionerate/ Assessee	Gist of Audit Objection	Reasons given for Shortcomings by the Ministry
1.	Ludhiana/M/s. Creative Cable Network Pvt. Ltd.	Non-payment of interest and late fee	The ACES was showing returns for view only and not for Review.
2.	Bhubaneswar-II/ nine service providers	Short payment of Service Tax	Returns were not available in ACES/ manual form.
3.	Mumbai ST-IV/ M/s. Aban Offshore Pvt. Ltd.	Short payment of interest	Due to the time taken to establish ACES network at the newly acquired premises of the reorganized Commissionerate.
4.	Siliguri/ M/s. Subba Micro System Ltd.	Non-payment of interest	Due to technical reasons in the ACES system, ST-3 returns filed by the assessee online were not being reflected in the dashboard of the concerned Range Officer.
5.	Mumbai ST-VII/ M/s. Blue Star Ltd.	Non detection of access availing of CENVAT credit	Return not taken up for detailed scrutiny as the unit was a category A unit to be mandatorily audited every year.
6.	Chandigarh-I/ M/s. Jaycon Infrastructure Ltd.	Short payment of interest	Returns not scrutinized due to heavy work load and connectivity issues in ACES.
7.	Mumbai ST-VII/ 108 returns	Non recovery of late fee on delayed filing of ST-3 returns	Due to non functioning of ACES during relevant period.
8.	Kolkata ST-I/ M/s. Nicco Corporation Ltd.	Short payment of Service Tax	Due to acute shortage of manpower.
9.	Siliguri/ M/s. Subba Micro System Ltd.	Short payment of Service Tax	Due to technical reasons in the ACES system, ST-3 returns filed by the assessee online were not being reflected in the dashboard of the concerned Range Officer.
10.	Nagpur-II/M/s. Avaneesh Logistics Pvt. Ltd.	Non-payment of interest	Returns not marked for 'Review and Correction' by the ACES.

The roll out of ACES began in December 2008 and even after eight years, field formations cited technical problems in ACES as the reasons that hampered their return scrutiny work and these constraints were endorsed by the Ministry as the above reasons were forwarded by the Ministry in response to audit.

Two cases are illustrated below:

#### **5.4.1 Non Detection of Non-Payment of Interest**

Scrutiny of ST-3 Return and payment details of M/s Avaneesh Logistics Pvt. Ltd in Wanjra Range of Nagpur II Commissionerate revealed that the assessee

did not pay interest amounting to ₹ 35.71 lakh on delayed payment of Service Tax during the period 2012-13 to 2014-15.

When we pointed this out (September 2015), the Ministry intimated (December 2016) that the assessee had deposited an amount of ₹ 26.20 lakh for the period from June 2012 to March 2015. Further, for the departmental lapse the Ministry stated that the preliminary scrutiny of online periodic returns by the jurisdictional office is limited to the returns selected by ACES as “marked for review” and the ST-3 Returns of M/s Avaneesh Logistics Pvt. Ltd. for the period July 2012 to March 2015 were not “marked for review” by ACES.

In preliminary scrutiny of returns, identification of delay in payment of Service Tax is a very important check to ensure that interest thereon is paid by the assessee. Preliminary scrutiny of returns was automated through ACES to free manpower for detailed scrutiny of returns. But the above reply of the Ministry shows that non-payment of interest on late payment of Service Tax is not identified by the ACES to mark the return for ‘Review and Correction’. The Ministry also forwarded the above reply without examining or explaining reasons for this lacuna in ACES. This serious lacuna in ACES needs to be examined and suitably addressed by the Ministry.

#### **5.4.2 Non Detection of Excess Availing of CENVAT Credit**

Scrutiny of ST-3 Return of M/s Blue Star Ltd. in Service Tax-VII Mumbai Commissionerate, a registered service provider under the category of Works Contract Services revealed that during the period 2012-13 and 2013-14, the assessee had carried forward the CENVAT credit balances with an excess amount of ₹ 17.53 lakh including Cess. This was reflected on the face of the return filed in November 2013 for the aforesaid period under ‘Following issues have been found in your return’. However, no corrective action was taken till pointed out by CERA party in September 2015. This resulted in excess availing of CENVAT credit of ₹ 17.53 lakh which was irregular.

When we pointed this out (September 2015), the Ministry intimated (November 2016) that the assessee had reversed the said CENVAT credit ₹ 17.53 lakh. Further, for the departmental lapse, the Ministry stated that since the unit was under category ‘A’ and to be mandatorily audited every year, the same was not taken up for scrutiny.

The reply of the Ministry is not acceptable as preliminary scrutiny is to be done on all the returns and this mistake was marked for ‘Review and Correction’ by the ACES.



## 5.5 Shortcomings Noticed in Internal Audit of Assesseees

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. Internal Audit Parties (IAPs) 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.

Our observations on Effectiveness of Internal Audit conducted as a focused audit in selected commissionerates are reported in Chapter III. During the course of our regular compliance audit of Commissionerates, we attempted to check the adequacy of coverage of assesseees as well as the quality of audits undertaken by the IAPs by auditing a sample of assesseees falling under one of the following two categories a) already audited by IAP and b) due for audit but not covered by IAP. We noticed cases of non/short payment of tax / interest or irregular availing of CENVAT credit by the assesseees, of which 13 cases are narrated below:

### 5.5.1 Examination of Records of Selected Assesseees Already Covered by Internal Audit:

During the course of our examination of records of selected assessee already covered under Internal Audit, we came across certain instances where IAPs of the Commissionerate had omitted to point out certain significant cases of non-compliance by assesseees. Eleven such cases are illustrated below:

#### 5.5.1.1 Short Payment of Service Tax under Credit Card Services

Section 65(105)(zzzw) of Finance Act 1994, as amended defined Credit Card Services, which became taxable from 1 May 2006, as any service provided or to be provided to any person, by any other person, in relation to credit card, debit card, charge card or other payment card service in any manner.

M/s. Federal Bank Ltd. Aluva, an assessee in Cochin Commissionerate provided Credit Card related services. As per report of M/s. National Payment Corporation of India (NPCI), a nodal agency for domestic card related transactions, amount and Service Tax receivable by the bank in respect of Credit Card related transactions was ₹ 41.15 crore and ₹ 5.09 crore respectively for the year 2012-13. The assessee, however, paid

Service Tax only on a value of ₹ 27.02 crore during the year 2012-13, resulting in short payment of Service Tax of ₹ 1.75 crore.

Internal audit covering the period upto October 2013 was conducted in November 2013 and lapse subsequently detected by CERA was not found out.

When we pointed this out (February 2014), the Ministry replied (November 2016) that the amount of ₹ 1.89 crore was paid along with interest of ₹ 0.64 crore by the assessee. For the failure of IAP, the Ministry stated that the IAP could not detect the lapse from the periodical returns as the reworked assessable value and taxes were not shown in the returns.

Reply of the Ministry is not acceptable as the main objective of Internal Audit is to ascertain the veracity of the details furnished by the assessee in periodical returns vis-à-vis its financial records and the IAP had failed to ensure that.

#### **5.5.1.2 Non-Payment of Research & Development Cess on Payments Made for Import of Technology**

Section 3 of the Research and Development (R&D) Cess Act, 1986 provides for collection of a cess at such rates not exceeding 5 percent (presently 5 per cent) to be levied and collected on all payments made towards the import of technology. Further, notification 17/2004 ST dated 10 September 2004 exempted the taxable service in relation to intellectual property rights (IPR) service from so much of the ST leviable thereon under section 66 of the said Act, as is equivalent to the amount of cess paid towards the import of technology.

M/s Vodafone South Ltd in Hyderabad ST Commissionerate, who are providing Telecommunication Service, had imported technology during the period from 2012-13 to 2014-15 and incurred an amount of ₹ 49.95 crore but did not pay Research and Development Cess (R&D Cess). As per the provisions of the Act *ibid*, the assessee is required to pay R&D Cess of ₹ 2.50 crore which needs to be recovered from the assessee along with interest.

Though Internal Audit of the assessee was conducted twice in May-June 2014 and April-May 2015 for 2012-13 and 2013-14 respectively but non-payment of R&D cess was not pointed out, resulting in error remaining undetected until pointed out by CERA party.

When we pointed this out (July 2015), the Ministry did not admit the audit objection (November 2016) stating that collection of R&D cess is not covered under Finance Act 1994, therefore no audit objection was raised by the

officers during the course of Internal Audit and no remedial action can be taken by the department.

The reply of the Ministry is not acceptable as exemption from payment of Service Tax under the notification *ibid* is dependent on R&D Cess paid by the assessee, it was the duty of the IAP to check the payment of R&D cess.

#### **5.5.1.3 Non-Adherence to Rule 6 (3B) of CENVAT Credit Rules 2004**

According to Rule 6(3B) inserted in CENVAT Credit Rules (CCR), 2004 with effect from 1 April 2011, notwithstanding anything contained in sub rules (1), (2) & (3), a banking company and a financial institution including a non-banking financial company engaged in providing services by way of extending deposits, loans or advances, shall pay for every month an amount equal to fifty percent of the CENVAT credit availed on inputs and input services in that month.

M/s UAE Exchange and Financial Services Ltd., a non-banking finance company in Cochin Commissionerate, availed CENVAT credit of ₹ 81.60 lakh and ₹ one crore respectively for the years 2011-12 and 2012-13 being Service Tax paid on input services. The assessee, however, did not pay 50 per cent of the credit availed on input services. This had resulted in non-payment of ₹ 90.92 lakh under Rule 6(3B) of CCR 2004 for the period 2011-12 to 2012-13.

Internal Audit conducted in August 2013 covering the period up to July 2013, did not identify this lapse.

When we pointed this out (February 2014), the Ministry accepted the audit objection (November 2016) and stated that two show cause notices amounting to ₹ 2.21 crore had been issued for period covering FY12 to FY15. Further, for the failure of the IAP, the Ministry stated that the party had detected other lapses involving revenue of ₹ 2.32 crore but could not detect the lapse pointed out by CERA party.

The reply of the Ministry is not acceptable as this objection was related to rule 6(3B) of CENVAT Credit Rules, 2004 specifically applicable for this sector units only and hence the IAP should have included this check in their audit plan for this unit.

#### **5.5.1.4 Non-Payment of Service Tax on Land Owner's Share of Flats**

Services in relation to construction of a new residential complex or a part thereof is liable to Service Tax under Sections 65(105)(zzzh) and under Section 66B (with effect from 1 July 2012) of the Finance Act 1994. Rule 3(a) of Point of Taxation Rules, 2011 stipulates that date of completion of service shall be considered as the point of taxation in case the invoice for the

provision of service is not issued within the time prescribed under Service Tax Rules, 1994. Paragraph 2 of CBEC Circular No.151/2/2012-ST dated 10 February 2012 clarifies that Service Tax is liable to be paid by the builder/developer on the construction service involved in the Joint Development Agreements (JDAs) for the flats to be given to the landowner. The value for these flats given to landowners would be equal to the value of similar flats charged by the developer/builder from other service recipients.

M/s Arya Gruha Pvt. Ltd., Bangalore, in ST-II Commissionerate, an assessee was engaged in construction of residential complexes. As per the JDAs entered into (March 2009 and April 2010) by the assessee with the landowners, possession of 33 residential units were handed over to the land owners during the period from June 2013 to April 2015 i.e. after issue of circular quoted *ibid*. Hence the assessee was liable to pay Service Tax on the construction service involved in these flats, which was not paid by the assessee.

This non-payment of Service Tax was not detected by the IAP of the erstwhile Service Tax Commissionerate, Bangalore during their audit (January 2014) which partially covered objection period.

When we pointed this out (January 2015), the Ministry accepted the revenue lapse (August 2016) and stated that a demand of ₹ 1.06 crore had been issued and that the assessee paid (July 2015) an amount of ₹ 20 lakh. For the failure of IAP, the Ministry further stated that the assessee did not provide all the details at the time of Internal Audit and the Balance Sheet for the FY14 was also not finalised by January 2014 i.e. at the time of audit and hence the IAP could not detect this lapse.

The reply of the Ministry is not acceptable as the IAP had not included the issue of non-furnishing of records by the assessee in its report.

#### **5.5.1.5 Non-Payment of Service Tax on Works Contract Service under Partial Reverse Charge Method**

As per Notification No.30/2012/ST dated 20 June 2012, the service provider and service recipient have to pay 50 per cent each of the Service Tax payable in respect of services provided or agreed to be provided in service portion in execution of works contract.

M/s. Hi-Build Coatings Pvt. Ltd. Kalamasserry, in Cochin Commissionerate received works contract services from M/s.SLN Balaji Constructions (AHAPR 5350DSD001), Kancheepuram, Tamil Nadu during the period 2012-13 to 2013-14. The assessee paid ₹ 6.57 crore to the service provider towards value of works contract service and Service Tax liability on this worked out to ₹ 32.49 lakh. The assessee, however, did not pay ₹ 16.25 lakh towards

50 per cent of Service Tax liability as service recipient under Partial Reverse Charge Method. The service provider also neither showed the amount of Service Tax in the invoice nor collected Service Tax from the assessee. The non-payment of Service Tax by the service provider (M/s SLN Balaji Constructions) was also pointed out.

Even though Internal Audit covering the period up to March 2013 was conducted in May 2013, this issue was not pointed out.

When we pointed this out (March 2014), the Ministry replied (November 2016) that an amount of ₹ 21.19 lakh including interest was recovered and SCN is being issued to recover the balance amount. The Ministry further stated that this issue was raised by IAP which conducted Internal Audit of the assessee in the last week of the March 2014.

The reply of the Ministry is not acceptable as the reply of the Ministry is silent on the failure of IAP which had conducted the audit of the assessee for FY13 but did not raise this issue then.

#### **5.5.1.6 Non-Compliance with Point of Taxation Rules**

Rule 3 of the Point of Taxation Rules, 2011, provides inter alia, that where the invoice is not issued within the time periods specified in rule 4A of the Service Tax Rules, 1994, the point of taxation shall be date of completion of provision of the service. Further Section 75 of the 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 fixed by the Central Government.

M/s Coal India Ltd. in Kolkata ST-I Commissionerate (erstwhile under Kolkata ST Commissionerate) engaged in providing Management Consultant service and Renting of Immovable Property service to its subsidiary companies. The assessee charged ₹ 5 per ton of coal produces as 'Apex charges' for providing consultancy services to such companies. Further, the assessee leased land, buildings etc. to Indian Institute of Coal Management at specified rent payable monthly. We observed that assessee issued invoices for such services on quarterly basis and also discharged Service Tax liability quarterly. Scrutiny however revealed that at the end of each month, quantity of monthly production of coal was available with the assessee. Thus for both the services, completion of provision of service was the last date of each month and the assessee was liable to pay interest of ₹ 19.96 lakh for the period 2011-12 on account of payment of service tax quarterly instead of monthly. For the subsequent period, the department was requested to ascertain the interest amount.

The assessee was audited by the department in February 2013 covering the period 2011-12. However, the lapse remained undetected until pointed out by us.

When we pointed this out (June 2013), the Ministry did not accept the audit objection (November 2016) stating that explanation 1 under Rule 6 of Point of Taxation Rules, 2011 provides that the date of completion of every event requiring the service receiver to make payment to service provider shall be deemed to be the date of completion of service. The agreement provides that the payment would be made at regular interval as mutually agreed upon, and invoices are raised on quarterly basis as agreed upon, the question of payment of Service Tax on monthly basis did not arise.

The reply of the Ministry is not acceptable as from the production reports collected from the assessee during verification, it is clear from the date of the said reports, that production figures were available at the end of each month which established the completion of provision of service at the end of each month. Since bills were not raised within 14 days in each subsequent month, the event which would require the assessee to pay the Service Tax i.e. “Point of Taxation” will be the date of completion of provision of such service at the end of each month.

#### **5.5.1.7 Short Payment of Service Tax on GTA and Manpower Supply Agency Service Under Reverse Charge Method**

Rule 2 (1)(d)(iv) of the Service Tax Rules, 1994, read with Notification No. 30/2012-ST dated 20 June 2012, inter-alia envisages that in respect of service provided by goods transport agency and manpower supply agency, the person receiving the taxable service is liable to pay Service Tax either partially or fully as prescribed in the statute.

Further, the Board has issued guidelines vide letter F. No. 137/27/2007 CX.4, dated 08 February 2007, which made it mandatory to scrutinize returns on a regular basis. Again as per Para 2.3B of the aforesaid Manual, preliminary scrutiny of returns is to be done through ACES but till the implementation of the same, preliminary scrutiny was to be done manually.

M/s Hindustan Unilever Ltd. in Haldia Commissionerate and M/s Karthik alloys Ltd. (U-II), in Bolpur Commissionerate discharged their Service Tax liability under the categories of GTA, Manpower Recruitment/ Supply agency etc as a recipient of services. Verification of ST-3 return via-a-vis financial records revealed that the assesseees have failed to pay their tax liabilities in

entirety, which resulted in short-payment of Service Tax of ₹ 16.11 lakh<sup>50</sup> which was recoverable along with applicable interest.

M/s Hindustan Unilever Ltd. was audited by the department in June 2013 covering the period 2012-13. Further, in respect of M/s Karthik Alloys Ltd. preliminary scrutiny of the ST-3 returns for the period 2013-14 was done by the department in ACES as well as manually. However, the lapses in both the cases remained undetected until pointed out by CERA Audit.

When we pointed this out (November 2013 and August 2014), the Ministry accepted (December 2016) the audit objection and reported recovery of the objected amount of ₹ 11.66 lakh from M/s Hindustan Unilever Ltd. and issue of Show Cause Notice to M/s Karthik Alloys Ltd. for an amount of ₹ 5.54 lakh. For the failure of IAP in the case of M/s Hindustan Unilever Ltd., the Ministry stated that the lapse could not be detected as at the time of Internal Audit financial statements/ balance sheet were not ready. In the case of M/s Karthik Alloys Ltd, they stated that only manual preliminary scrutiny of returns was done by the Commissionerate as during that time ACES was not working properly.

The reply of the Ministry is not acceptable as there is specific check for payment of Service Tax under reverse charge in Annexure-VIII of Service Tax Audit Manual 2011 and details about the same could be gathered from other financial statements like Trial Balance.

#### **5.5.1.8 Short Payment of Service Tax on Works Contract Service Under Partial Reverse Charge Method**

As per rule 2(1)(d) of Service Tax Rules, 2004, service portion in execution of a works contract is liable to Service Tax. Notification No. 30/2012-ST dated 20 June 2012 stipulated that both recipient and provider of works contract service shall pay 50 per cent of Service Tax payable each.

Rule 2A(ii) of Service Tax (Determination of Value) Rules, 2006 provides that person liable to pay tax on the service portion involved in the execution of the works contract entered into for finishing services, shall pay Service Tax on 60 per cent of the total amount charged.

M/s Agarwal Metal Works Private Limited, Bhiwadi, in Alwar Commissionerate, received works contract services for office building from M/s Shusheel Construction, Gurgaon during the period November 2013 to July 2014. The value of services received was ₹ 2.10 crore, on which Service Tax payable after allowing abatement of 40 per cent works out to

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<sup>50</sup> ₹ 9.29 lakh for the period 2012-13 in the case of M/s Hindustan Unilever Ltd. and ₹ 6.82 lakh for the period 2013-14 in case of M/s Karthik Alloys Ltd.



₹ 15.57 lakh. Out of this, ₹ 7.78 lakh was to be paid by assessee and the service provider each. Invoices issued by the service provider neither mentioned the Service Tax registration number nor charged the Service Tax resulting in non-payment of balance Service Tax amount ₹ 7.78 lakh by the service provider. Further, assessee paid Service Tax ₹ 3.33 lakh only against payable ₹ 7.78 lakh. Thus, assessee has short paid Service Tax by ₹ 4.45 lakh. Total Service Tax short paid works out to ₹ 12.33 lakh on the works executed.

Internal Audit, though conducted for the period April 2014 to March 2015, which covered part of period mentioned in audit objection, had not pointed out the lapse detected by CERA.

When we pointed this out (August 2015), the Ministry accepted the revenue portion of audit objection (September 2016) and stated that the assessee deposited ₹ 4.26 lakh of Service Tax along with interest ₹ 2.53 lakh. In case of service provider it was stated that the jurisdictional office was requested to take necessary action. For the failure of IAP, the Ministry stated the IAP could not detect this lapse as the assessee did not produce relevant records at the time of audit.

The reply of the Ministry is not acceptable as the IAP had not included the issue of non-furnishing of records by the assessee in its report.

#### **5.5.1.9 Irregular Availing of CENVAT Credit on Services Rendered in Jammu and Kashmir**

Section 64(1) of the Finance Act, 1994 stipulates that the provisions of Service Tax will be applicable to the whole of India except the State of Jammu and Kashmir. As per Rule 2(e) of CENVAT Credit Rules, 2004, exempted service includes a service on which Service Tax is not payable under Section 66B of the Act. Further, as per Rule 6(1) of CENVAT Credit Rules, 2004, CENVAT credit shall not be allowed on such quantity of inputs / input services used for the provision of exempted services.

M/s Onmobile Global Ltd., Bangalore in Bangalore ST-II Commissionerate, was paying Service Tax on service income received from the customers all over India except for the service income for services rendered in Jammu and Kashmir, which were exempted services. The assessee availed CENVAT credit of all inputs and input services used for providing these output services. Though the assessee is providing both taxable and exempted services, neither separate accounts were maintained for the inputs and input services utilized for the taxable services and the exempted services, nor did the assessee reverse proportionate CENVAT credit for the period from 2010-11 to 2011-12 for the exempted services.



The IAP of the erstwhile Service Tax Commissionerate, Bangalore, did not detect this non-payment though the unit was audited (August 2011 to November 2011) covering the period up to September 2011.

When we pointed this out (June 2013), the Ministry accepted the audit objection and stated (November 2016) that the assessee had paid total amount of ₹ 59.41 lakh including interest and penalty. For the failure of IAP, the Ministry stated that Internal Audit was done on the basis of test check of sample documents and not on the basis of 100 per cent verification. Therefore, the lapse could not be detected.

The reply of the Ministry is not acceptable as this lapse related to services provided in the state of Jammu and Kashmir for which there is a specific check in Service Tax Audit Manual 2011.

#### **5.5.1.10 Excess Availing of CENVAT Credit**

According to third proviso of Rule 4(7) of CENVAT Credit Rules, 2004, if any payment or part thereof made towards an input service is refunded or a credit note is received by the service provider after availing the CENVAT credit on such input service, then he shall be required to pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited. Thus in case of refund or receipt of credit note, the proportionate amount of CENVAT credit is to be reversed by the service recipient.

Scrutiny of CENVAT credit records of M/s Trackon Courier Private Limited in Delhi ST Commissionerate for the period 2012-13 to 2014-15 revealed that the assessee had received discount from its input service providers on monthly/annual basis through credit notes/invoices after procurement of input services. However, the assessee did not proportionately reverse the CENVAT credit as required under the rule *ibid*. This resulted in irregular availing of CENVAT credit of ₹ 13.36 lakh. The same was payable by the assessee along with interest of ₹ 5.26 lakh.

The Internal Audit of the unit was conducted (June 2015) by the department for the period upto FY14 covered in the LDP but this lapse was not detected by them.

When we pointed this out (October 2015), the Ministry accepted the revenue portion of the audit objection (September 2016) and stated that the assessee deposited the objected amount in September 2015. For the lapse of IAP, the Ministry stated that this issue was in the notice of the department and was being examined in light of the Board's Circular No. 877/15/2008-CX dated 17 November 2008.

Reply of the Ministry is not acceptable as the Circular mentioned in the Ministry's reply relates to CENVAT credit availed on inputs whereas audit objection was related to excess availing of CENVAT credit of input services which was reversible as per Rule cited above.

**5.5.1.11 Irregular Availing of CENVAT Credit of Service Tax on Invoices of Input Service Distributor (ISD)**

As per Rule 9 (2) of CENVAT Credit Rules, 2004, no CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document.

M/s Jaquar & Company Pvt. Ltd. Unit I and Unit II in Alwar Commissionerate, irregularly availed CENVAT credit of ₹ 13.07 lakh during 2013-14 & 2014-15 on the basis of the invoices, which were in the name of corporate office, Gurgaon which was already registered as ISD. When we pointed this out (September 2015) the assessee debited the amount.

Internal audit though carried out up to March 2014 (Unit-I) partially covering the period mentioned in our LDP, had not pointed out the lapse detected by CERA party.

When we pointed this out (September 2015), the Ministry intimated (November 2015) that the assessee already debited the amount. For the failure of IAP, the Ministry stated that at the time of Internal Audit, along with the ER1 and ER6 returns, the documents related to CENVAT credit taken by assessee were not submitted to Internal Audit. Hence, the wrongly taken CENVAT credit could not be detected.

The reply of the Ministry is not acceptable as the IAP had not included the issue of non-furnishing of records by the assessee in its report.

**5.5.2 Inadequate Compliance with Norms for Coverage of Units by Internal Audit**

Para 5.1.2 of the Service Tax Audit Manual, 2011 envisages that service providers paying Service Tax of ₹ one crore to ₹ three crore (Cash + CENVAT) in a year are to be audited once in two years. 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.

### **5.5.2.1 Non-payment of Service Tax on Late Delivery Charges and Forfeiture of Deposit**

As per Section 66E (e) of the Finance Act, 1994 as amended from time to time, 'declared service' includes 'agreeing to the obligation to refrain from act, or to tolerate an act or situation, or to do an act'.

M/s Security Paper Mill, Hoshangabad in Bhopal Commissionerate, for the period 2012-13 to 2014-15 had disclosed receipt aggregating to ₹ 4.71 crore on account of late delivery charges and forfeiture of deposit during the said period. The assessee, however, did not pay Service Tax including cess aggregating to ₹ 58.25 lakh on the same which was recoverable with applicable interest and penalty.

Though the unit was due for Internal Audit once in two years as per norms, it was not covered in Internal Audit during FY13 to FY15.

When we pointed this out (August 2015), the Ministry accepted (October 2016) the audit objection and stated that show cause notice amounting to ₹ 80.71 lakh had been issued covering period from FY13 to June 2016. For not auditing the assessee, the Ministry stated that the assessee falls under category D during the relevant period of which ten percent units only are to be audited every year as per audit manual.

The reply of the Ministry is not correct because the assessee had paid more than ₹ one crore in cash during FY14 and FY15 and hence it falls under category B units, of which fifty percent units are to be audited per year as per audit manual.

### **5.5.2.2 Short Payment of Service Tax under Works Contract Service**

Notification No.26/2012-ST dated 20 June 2012, effective from 01 July 2012, provides for payment of Service Tax on 25 per cent of the total value in case of construction of residential complex service provided that the value of land is included in the amount charged from the service receiver. Only VAT/Sales Tax paid on transfer of property in goods involved can be excluded from gross amount charged for Works Contract as per Explanation to Para 3(1) of Notification No.32/2007-ST dated 22 May 2007.

M/s Cybercity Builders & Developers Pvt. Ltd., in Hyderabad-IV Commissionerate undertook construction of a residential complex near Hi-Tech City Station, Hyderabad and discharged Service Tax liability at the rate of 4.944 per cent (on 40 per cent value) for the amounts received towards agreements entered up to 30 June 2012 under Works Contract Service and at the rate of 3.09 per cent (on 25 per cent value) for the amounts received towards agreements entered into with effect from 01 July 2012. However, it

was noticed that the assessee discharged Service Tax liability on the amounts after excluding the cost of land (undivided share of land).

As per the Rules and Notifications mentioned *ibid*, the entire amount received towards sale of flats including the cost of land except VAT/Sales Tax paid shall form part of the taxable value for payment of Service Tax on 25 percent of the total value. Thus, the non-inclusion of land cost in gross amount resulted in short payment of Service Tax of ₹ 54.48 lakh, which was recoverable from the assessee along with interest.

Although the assessee was a category B unit to be audited once in two year, it was last audited upto March 2012 resulting in non-detection of error until pointed out by CERA (February 2015).

When we pointed this out (February 2015), the Ministry replied (September 2016) that the objection was accepted and a show cause notice was under preparation. Further, for the departmental lapse, the Ministry stated, that the unit was not figuring in the list of units issued by the DG Audit hence, it was not selected for audit in FY16.

The reply of the Ministry is not acceptable as this unit had not been audited since FY13, despite being a category B unit.

## **5.6 Other Issues**

### **5.6.1 Short Coming in Follow-up Action**

M/s Akbar Travels of India (P) Ltd, in Calicut Commissionerate, did not include Productivity Linked Bonus (PLB) and Incentives received from Air Carriers in taxable value under Air Travel Agent Service. During the period 2010-11 to 2012-13, Calicut, Kannur and Tirur Branches of the assessee together collected ₹ 1.92 crore towards PLB and Incentives. Service Tax liability was, however, discharged only for an amount of ₹ 31.39 lakh. This had resulted in short-payment of Service Tax of ₹ 16.71 lakh. Similar issue relating to Tirur and Edappal branches of the assessee for the period 2008-09 to 2010-11, converted as DAP No.16A/ST/2012-13 was accepted by the department and had featured under consolidated para No.2.1 (Annexure II) of AR 6 of 2014.

When we pointed this out (July 2013) during audit of Service Tax Range, Kozhikode, the Commissionerate accepted the objection (July 2014 and January 2016) and stated that the PLB and Incentives related to amount received by their four branches at Calicut, Kannur, Tirur and Edappal, should be part of assessable value. It was also stated that SCNs were issued to all the four branches of the assessee in October 2015 totalling ₹ 1.33 crore.

Even though similar issue had already been brought to the notice of the department, failure to take remedial action against the other branches of the

assessee revealed absence of an effective mechanism in the department for ensuring follow up action even in respect of issues brought to the notice of CBEC. This had resulted in continued tax evasion by branches of the same assesses in respect of whom mention was made in Audit Report No.6 of 2014.

Further progress of adjudication of the SCNs and the reply of the Ministry is awaited (December 2016).

### **5.6.2 Non Issuance of Periodical SCNs**

Section 68 of the Finance Act 1994, read with notification no. 30/2012-ST dated 20 June 2012, as amended from time to time, inter-alia provides that in respect of manpower services, 75 per cent of the Service Tax liability is to be paid by recipient of the service and 25 per cent by the service provider.

M/s Supreme & Co. Pvt. Ltd. (Unit-II) in Kolkata ST-II Commissionerate (erstwhile under Haldia Commissionerate) engaged in manufacture of article of iron, steel, aluminium and for such manufacturing activity used different input services. Verification of ST-3 return vis-à-vis financial records revealed that the assessee had paid ₹ 3.86 crore during the year 2012-13 and 2013-14, to various manpower service providers for receiving contract labour in their factory. However, the assessee failed to discharge the 75 per cent of the Service Tax liability as the recipient of the service. This resulted in non-payment of Service Tax of ₹ 35.81 lakh during the period from 2012-13 to 2013-14, which was recoverable along with applicable interest.

When we pointed this out (September 2014), the Ministry accepted the audit observation (December 2016) and intimated that SCN is under process. Further, for the failure of the IAP, the Ministry stated that the IAP had also pointed out the same issue for the period of FY12.

The reply of the Ministry confirms the lapse on the part of jurisdictional officers as on an issue which was already pointed out by the IAP, the omission was continued by the assessee but no periodical SCN was issued by the department. Further, after again being pointed out by CERA party, the SCN could not be issued even after lapse of more than two years.

### **5.6.3 Non Reversal of CENVAT Credit in Consequence to Refund Order**

As per rule 3 of CENVAT Credit Rule, 2004 a service provider shall be allowed to take credit of duties or tax or cess paid on any input or input services. Rule 5 of CENVAT Credit Rules, 2004 allows refund of CENVAT credit of inputs and input services used in the manufacture of exported goods or provision of output service which is exported without payment of Service Tax.

LTU Mumbai Commissionerate disallowed (April and July 2014) inadmissible credit of ₹ 11.52 lakh on account of deficiencies in some invoices while sanctioning refund claims of M/s Sonata Information Technology Ltd. pertaining to the period 2012-13 and 2013-14. The assessee also agreed with the deficiencies pointed out by the department. Audit scrutiny of records revealed that on receipt of refund orders, neither the assessee reversed the said credit in their CENVAT Account nor the department took any action to ensure reversal of CENVAT credit by the assessee. This resulted in non-reversal of CENVAT Credit of ₹ 11.52 lakh.

When we pointed this out (July 2015), the Ministry (December 2016) stated that the assessee had reversed (August 2015) CENVAT credit of ₹ 11.52 lakh but did not accept the department failure stating that the deficiencies were detected by the department itself and debit of CENVAT credit after one year had no revenue implication. The Ministry, however, regretted the overall delay in recovery.

The reply of the Ministry is not acceptable as the department stated in response to Statement of Facts that compliance on the matter was sought from the assessee after receipt of CERA objection. Moreover, no Internal Audit was conducted by the department for the period FY13 to FY15 though the unit is to be audited annually. Thus the non-reversal by assessee would have in fact gone unnoticed if not pointed out by CERA, thereby indicating ineffective follow up by the department.

New Delhi  
Dated: 24 January 2017

  
(HIMABINDU MUDUMBAI)  
Principal Director (Service Tax)

Countersigned

New Delhi  
Dated: 24 January 2017

  
(SHASHI KANT SHARMA)  
Comptroller and Auditor General of India



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# **APPENDICES**

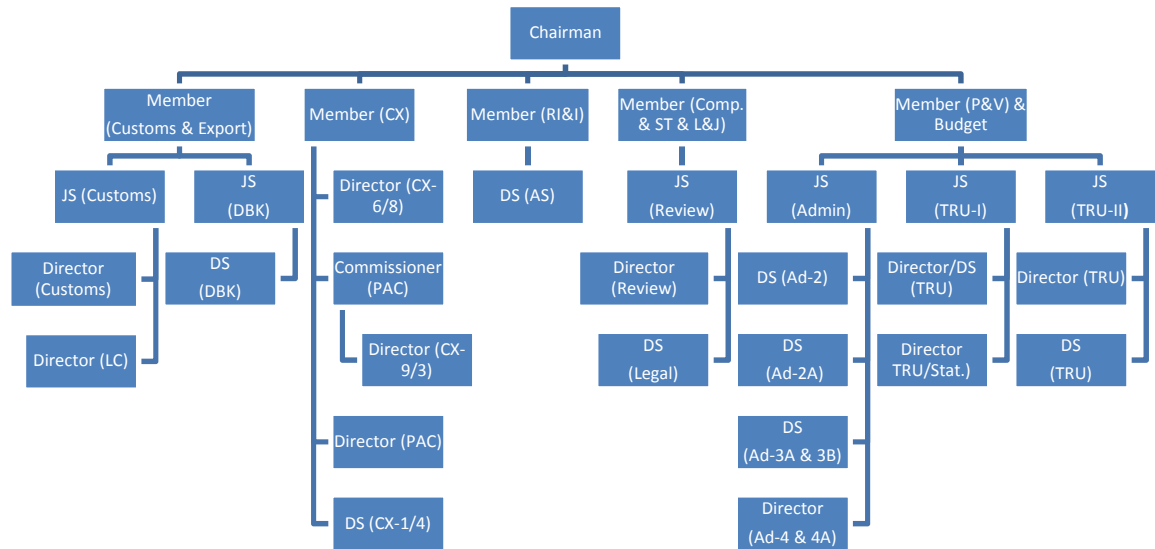
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## Appendix I

### Organisational Chart of Central Board of Excise and Customs



**Appendix II**  
**(Reference: Paragraph 4.1)**

(₹ in crore)

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
<b>Non Payment of Service Tax</b>					
1	25B	26.75	26.75		Hyderabad ST
2	40D	18.71	18.71	14.01	Ludhiana
3	5A	8.63	7.53		Mumbai ST-I
4	6B	6.59	6.59	6.59	Mumbai ST-VII
5	14B	1.93	1.93	1.93	Mumbai ST VII
6	10D	1.80	1.80	1.80	Vadodara-I
7	10A	1.14	1.14	1.14	Patna
8	27D	1.01	1.01	1.01	Chennai ST-I
9	29B	0.82	0.82		Bhubaneswar-II
10	24B	0.78	0.78	0.37	Hyderabad ST
11	88D	0.59	0.59	0.31	Bengaluru ST I
12	11A	0.53	0.53	0.21	Patna
13	6A	0.51	0.51	0.30	Mumbai ST-I
14	10B	0.41	0.41	0.41	Mumbai ST-VII
15	13A	0.40	0.40	0.40	Jaipur
16	20B	0.35	0.35	0.35	Hapur
17	37B	0.30	0.30	0.30	Ahmedabad ST
18	5B	0.16	0.16	0.16	Chennai ST-II
19	4B	0.14	0.14	0.14	Hyderabad-IV
20	12D	0.14	0.14	0.14	Vadodara-I
21	56D	0.14	0.14	0.14	Mumbai ST-VII
22	16A	0.13	0.13	0.13	Faridabad-I

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
23	15B	0.13	0.13	0.13	Mumbai ST-VI
24	17B	0.12	0.12	0.12	Mumbai ST-VII
25	9B	0.11	0.11	0.11	Mumbai ST-VII
26	24D	0.10	0.10	0.10	Chennai-IV
<b>Short Payment of Service Tax</b>					
27	62D	6.47	6.47		Mumbai ST-VII
28	23B	3.88	3.88	3.88	Hyderabad ST
29	32B	2.20	2.20	2.20	Mumbai ST-VII
30	55D	2.10	2.10		Kolkata ST-I
31	21B	1.71	1.71	0.94	Jamshedpur
32	7B	0.85	0.85	0.85	Mumbai ST-VII
33	28B	0.52	0.52	0.52	Nagpur-II
34	93D	0.50	0.50	0.50	Cochin
35	34B	0.44	0.44		Visakhapatnam
36	35B	0.27	0.27	0.10	Trivandrum
37	39D	0.16	0.16	0.16	Haldia
38	8B	0.13	0.13	0.13	Delhi ST-III
39	27B	0.12	0.12	0.12	Hyderabad-II
40	18B	0.11	0.11	0.11	Nagpur-II
41	19B	0.11	0.11	0.11	Cochin
42	12B	0.11	0.11	0.11	Chennai ST-IV
<b>Irregular Availing/Utilisation of CENVAT Credit</b>					
43	25D	10.23	10.23	0.05	Chennai-III
44	63D	0.65	0.65		Mumbai ST-III
45	99D	0.58	0.58	0.58	Mumbai ST-I

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Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
46	2B	0.41	0.41	0.41	Rajkot
47	14A	0.40	0.40	0.40	Jaipur
48	61D	0.32	0.32	0.32	Mumbai ST-VII
49	79D	0.31	0.31		Chennai LTU
50	1A	0.26	0.26	0.26	Pune-II
51	13B	0.24	0.24	0.24	Madurai
52	33B	0.16	0.16	0.16	Mumbai ST-VII
53	15A	0.15	0.15	0.15	Mumbai ST-V
54	2A	0.14	0.14	0.14	Mumbai ST-III
55	3B	0.12	0.12	0.12	Indore
56	36B	0.10	0.10	0.10	Nagpur-II
<b>Non Payment of Interest</b>					
57	31B	0.41	0.41	0.41	Mumbai ST-VII
58	11B	0.28	0.28	0.28	Mumbai ST-VII
59	16B	0.15	0.15	0.15	Mumbai ST-VII
60	4A	0.13	0.13	0.13	Nagpur-II
61	22B	0.13	0.13	0.11	Ranchi-II
62	26B	0.11	0.11	0.11	Hyderabad-ST
<b>Small money value observations which were accepted by the department and rectificatory action taken but not converted into Draft Audit Paragraphs</b>					
63		<b>19.99</b>	<b>19.99</b>	<b>10.59</b>	
	<b>Total</b>	<b>127.37</b>	<b>126.27</b>	<b>54.74</b>	

**Appendix III**  
**(Reference: Paragraph 5.2)**

(₹ in crore)

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
<b>Broadening of Tax Base</b>					
1	81D	8.02	8.02		Cochin
<b>Failure of Scrutiny of Returns</b>					
2	43D	0.82	0.82	0.82	Chandigarh-I
3	26D	0.19	0.19	0.19	Trichy
<b>Internal Audit Not Conducted</b>					
4	28D	47.30	47.30		Chennai ST-II
5	1D	4.82	4.82		Bhavnagar
6	77D	1.31	1.31		Chennai ST II
7	84D	1.22	1.22		Kolkata ST-I
8	108D	1.22	1.22		Kolkata ST-I
9	112D	1.22	1.22		Kolkata ST-I
10	13D	1.18	1.18	1.18	Vadodara-I
11	91D	1.05	1.05	1.05	Delhi ST-II
12	70D	0.94	0.94		Delhi ST-II
13	53D	0.92	0.92	0.75	Delhi ST-I
14	44D	0.89	0.89	0.40	Chennai ST II
15	67D	0.84	0.84	0.84	Mumbai ST-III
16	3D	0.81	0.81	0.66	Vadodara-I
17	60D	0.68	0.68	0.68	Mumbai ST-III
18	105D	0.60	0.60	0.60	Delhi ST-I
19	101D	0.37	0.37	0.37	Delhi ST-III
20	52D	0.33	0.33	0.33	Delhi ST-III

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Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
21	20D	0.32	0.32	0.32	Hyderabad ST
22	32D	0.32	0.32	0.32	Delhi ST-I
23	65D	0.32	0.32	0.32	Mumbai ST-III
24	5D	0.29	0.29	0.29	Vadodara-I
25	57D	0.27	0.27	0.27	Mumbai ST-VII
26	68D	0.27	0.27	0.27	Mumbai ST-III
27	15D	0.25	0.25	0.25	Delhi ST-I
28	58D	0.24	0.24	0.24	Mumbai ST-VII
29	59D	0.22	0.22	0.22	Mumbai ST-III
30	102D	0.20	0.20	0.20	Delhi ST-III
31	7D	0.19	0.19	0.19	Vadodara-I
32	69D	0.19	0.19	0.19	Delhi ST II
33	30D	0.18	0.18	0.18	Delhi ST-I
34	29D	0.16	0.16	0.16	Delhi ST-II
35	115D	0.16	0.16	0.16	Delhi ST-I
36	6D	0.15	0.15	0.15	Ahmedabad-III
37	34D	0.15	0.15	0.15	Delhi ST-III
38	22D	0.14	0.14	0.14	Mumbai ST-VII
39	35D	0.13	0.13	0.13	Delhi ST-II
40	74D	0.12	0.12	0.12	Chandigarh-I
41	103D	0.12	0.12		Delhi ST-II
42	104D	0.12	0.12	0.12	Delhi ST-III
43	71D	0.11	0.11		Delhi ST-II
44	106D	0.11	0.11	0.11	Delhi ST-II
45	31D	0.10	0.10	0.10	Delhi ST-III

Sl. No.	DAP No.	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
46	33D	0.10	0.10	0.10	Delhi ST-II
<b>Internal Audit Did Not Detect the Lapse</b>					
47	46D	10.58	10.58		Cochin
48	11D	3.50	3.50		Vadodara-II
49	89D	1.73	1.73	0.40	Bengaluru ST-II
50	97D	0.86	0.86		Udaipur
51	2D	0.41	0.41	0.41	Rajkot
52	76D	0.41	0.41		Alwar
53	72D	0.37	0.37	0.37	Raipur
54	50D	0.36	0.36	0.36	Daman
55	4D	0.31	0.31	0.31	Vadodara-II
56	21D	0.22	0.22	0.22	Cochin
57	18D	0.21	0.21	0.21	Indore
58	109D	0.21	0.21	0.21	Bengaluru ST-I
59	73D	0.17	0.17	0.17	Bilaspur
60	8D	0.14	0.14		Rajkot
61	78D	0.14	0.14	0.14	Chennai ST-I
62	113D	0.11	0.11	0.11	Chennai-IV
63	107D	0.11	0.11		Hyderabad ST
	<b>Total</b>	<b>99.50</b>	<b>99.50</b>	<b>15.48</b>	



## Glossary

ACES	Automation of Central Excise and Service Tax
AFR	Audit Follow-up Register
AICTE	All India Council for Technical Education
AMF	Assessee Master File
APR	Audit Planning Register
BE	Budget Estimate
BIFR	Board for Industrial and Financial Reconstruction
Board	Central Board of Excise and Customs (CBEC)
BSNL	Bharat Sanchar Nigam Limited
CAAT	Computer Aided Audit Technique
CB	Closing Balance
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise and Customs
CDR	Chief Departmental Representative
CEGAT	Customs, Excise & Gold (Control) Appellate Tribunal
CENVAT	Central value added tax
CERA	Central Excise Receipt Audit
CESTAT	Customs, Excise and Service Tax Appellate Tribunal
CTF	Centralised Task Force
CX	Central Excise
DAP	Draft Audit Paragraph
DAR	Draft Audit Report
DG	Director General
DGCEI	Director General of Central Excise (Intelligence)
DGST	Director General of Service Tax
DGPM	Director General of Performance Management

DGTPS	Director General of Tax Payers Services
DRI	Directorate of Revenue Intelligence
DRT	Debt Recovery Tribunal
DGICCE	Director General of Inspection Customs and Central Excise
DoR	Department of Revenue
EA	Excise Audit
EHP	Early Hearing Petition
FAR	Final Audit Report
FIU	Financial Intelligence Unit
FY	Financial Year
GDP	Gross Domestic Product
GTA	Goods Transport Agency
HC	High Court
HQ	Headquarters
IAP	Internal Audit Party
IFCI	Industrial Finance Corporation of India
INTOSAI	International Organization of Supreme Audit Institutions
IT	Information Technology
ITD	Income Tax Department
ITR	Income Tax Return
JDA	Joint Development Agreement
JVA	Joint Venture Agreement
LTU	Large Taxpayer Unit
MCM	Monitoring Committee Meeting
MIS	Management Information System
Ministry / Department	Ministry of Finance (Department of Revenue)

MTR	Monthly Technical Report
NTC	National Textiles Corporation
OB	Opening Balance
OIA	Order-in-Appeal
OIO	Order-in-Original
ONGC	Oil and Natural Gas Corporation
OL	Official Liquidator
PD	Principal Director
PLA	Personal Ledger Account
Pr. CIT	Principal Commissioner of Income Tax
PSU	Public sector undertaking
R & C	Review and Correction
RE	Revised Estimate
RFD	Research Framework Document
SC	Supreme Court
SCN	Show Cause Notice
SLP	Special Leave Petition
SOF	Statement of Facts
ST	Service Tax
STAM	Service Tax Audit Manual
TAR	Task Arrears Recovery
TDS	Tax Deducted at Source
TRU	Tax Research Unit
VCES	Voluntary Compliance Encouragement Scheme
WDP	Workforce Development Program

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