

## **CHAPTER V**

### **NON-LEVY/SHORT LEVY OF INTEREST AND PENALTY**

Where a person liable to pay service tax under section 68 of the Finance Act, 1994 or the Rules made thereunder fails to pay the tax or any part thereof within the prescribed time, he is liable to pay interest at 13 per cent per annum for the period of default under section 75 of the aforesaid Act. Further, the penalty for failure to pay tax is also leviable, in addition to tax and interest under section 76 of the Act. A few illustrative cases of non-levy of interest and penalty involving revenue of Rs. 1.86 crore are mentioned in the following paragraphs. These observations were communicated to the Ministry through nine draft audit paragraphs. The Ministry/department has accepted (till January 2010) the audit observations in eight draft audit paragraphs with a revenue implication of Rs. 1.48 crore, of which Rs. 56.53 lakh has been recovered.

#### **5.1 Non-payment of interest**

As per rule 6(1) of Service Tax Rules, 1994, service tax in respect of any service provided by a service provider during a month is to be paid to the credit of the Central Government by the 5<sup>th</sup> of the month immediately following the month in which payments are received except for the month of March where tax is to be paid by the 31<sup>st</sup> of March itself. Failure to pay service tax by the due date attracts interest at the rate of 13 per cent per annum. Besides, penalty of not less than Rs. 200 per day during which such failure continues or at the rate of two per cent of such tax per month, whichever is higher, is payable subject to a maximum limit of service tax due.

M/s Raasi Refractories Ltd. in Hyderabad III commissionerate and M/s NCS Industries Ltd., in Visakhapatnam II commissionerate, were registered service tax payers of goods transport agency and warehousing services respectively. The assessee, during the period 2005-06 and 2006-07, paid service tax with delays ranging from 18 to 568 days. In addition, M/s Raasi Refractories Ltd. has also not paid the service tax for the period from October 2006 to January 2008. The interest and penalty due on such belated payments/non-payment of service tax aggregates to Rs. 40.07 lakh.

On the matter being pointed out (March 2007 and February 2008), the department stated (January and March 2009) that the demand of Rs. 22.79 lakh covering the period from January 2005 to September 2006 had been confirmed and Rs. 2.21 lakh recovered in February 2009.

The reply of the Ministry has not been received (January 2010).

#### **5.2 Non-recovery of interest**

Scrutiny of the records of the superintendent of central excise, Duliajan range indicated that five security service providers since 1998 and one service provider since 2003 had been providing security service to M/s Oil India Ltd., Duliajan, but obtained service tax registration only in 2004 though 'security service agency service' came under service tax net on 16 October 1998. On

the demand of the central excise department, these assesseees paid service tax amounting to Rs. 51.51 lakh in March 2007 relating to the period from 16 October 1998 to June 2003 and Rs. 105.25 lakh in August 2006 relating to the period from July 2003 to June 2006. However, interest of Rs. 38.47 lakh and penalty for delayed payment of service tax was not recovered.

On this being pointed out (May 2008), the department stated (May 2009) that action would be taken to recover the interest.

The reply of the Ministry has not been received (January 2010).

### **5.3 Short payment of interest**

M/s Pratyusha Associates Shipping Private Ltd. in Visakhapatnam I commissionerate, engaged in providing commercial or industrial construction service and port services, paid service tax on port services for the period from May 2007 to February 2008 with delays ranging from 208 to 487 days. The interest liability for delayed payment of tax was Rs. 30.12 lakh against which the assessee paid Rs. 2.04 lakh only. Interest of Rs. 28.08 lakh short paid was recoverable from the assessee. It was also noticed that assessee paid service tax of Rs. 26.03 lakh on commercial or industrial construction service and goods transport agency services for February and March 2008 with delays of 182 to 208 days which attracted interest of Rs. 1.73 lakh. Thus, the total interest payable by the assessee worked out to Rs. 29.81 lakh.

On this being pointed out (November 2008), the Ministry accepted (January 2010) the audit observation and reported recovery (December 2008) of Rs. 1.73 lakh and intimated that show cause notice for recovery of interest of Rs. 40.37 lakh was being issued.

### **5.4 Non-levy of interest on incorrect cenvat credit**

Rule 14 of the Cenvat Credit Rules, 2004 provides for levy of interest on the amount of cenvat credit taken or utilised wrongly by the manufacturer or the provider of the output service.

M/s APAR Industries Ltd. in Vapi commissionerate, availed of and utilised the cenvat credit of service tax of Rs. 1.54 crore on outward freight during the period from January 2005 to June 2007. The assessee reversed the service tax credit on 5<sup>th</sup> September 2007. However, applicable interest was not levied. This resulted in non-levy of interest of Rs. 25.12 lakh on cenvat credit wrongly availed.

On this being pointed out (September 2008), the department accepted the audit observation and intimated (December 2008) that a show cause notice was being issued.

The reply of the Ministry has not been received (January 2010).

### **5.5 Other cases**

In six other cases of non-levy of interest amounting to Rs. 52.59 lakh, the Ministry/department has accepted all the audit observations and reported recovery of the total amount.