

PREFACE

This Report for the year ended March 2010 has been prepared for submission to the President of India under the Article 151(1) of the Constitution of India.

Audit of Revenue Receipts – Indirect Taxes of the Union Government is conducted under section 16 of the Comptroller and Auditor General of India (Duties, Powers and Conditions of Service) Act, 1971.

The Report presents the results of audit of receipts of service tax.

The observations included in this Report have been selected from the findings of the test check conducted during 2009-10, as well as those which came to notice in earlier years but were not included in the previous Reports.

EXECUTIVE SUMMARY

This Report contains 44 paragraphs with a revenue implication of ₹ 70.38 crore. We had issued another 150 paragraphs involving money value of ₹ 91.80 crore to the department/Ministry on which rectificatory action was taken in the form of issuing of show cause notices, adjudicating of show cause notices and recovery of ₹ 31.71 crore. A few significant findings included in this Report are mentioned in the following paragraphs:-

Chapter I: Service tax receipts

- In the last five years (including this year's Report), we had included 715 audit paragraphs involving ₹ 1,159.94 crore. Of these, the Government had accepted audit observations in 597 audit paragraphs involving ₹ 599.55 crore and had recovered ₹ 217.53 crore.

{Paragraph 1.6.1}

Chapter II: Non-payment of service tax

- Service tax totalling ₹ 50.36 crore was not paid by the registered service providers, recipient of services and unregistered service providers.

{Paragraphs 2.1 to 2.3}

Chapter III: Short payment of service tax

- Service tax totalling ₹ 11.80 crore was short paid due to incorrect self assessment, suppression of value of service etc.

{Paragraphs 3.1 to 3.6}

Chapter IV: Cenvat credit

- Instances of utilisation of cenvat credit for payment of tax on input services, premature availing of cenvat credit of input services, non-maintenance of separate account for common input services used in taxable/exempted services, availing of credit on ineligible services, availing of credit on invalid documents or excess availing of credit were noticed in audit. Service tax involved in these cases was ₹ 7.89 crore.

{Paragraphs 4.1 to 4.6}

Chapter V: Non-payment of interest

➤ **Cases of non-payment of interest on delayed payment of service tax involving money value of ₹ 32.88 lakh were noticed in audit.**

{Paragraphs 5.1 to 5.2}

CHAPTER I SERVICE TAX RECEIPTS

1.1 Tax administration

Service tax was introduced from 1 July 1994 through the Finance Act, 1994. Administration of service tax has been vested with the central excise department under the Ministry of Finance (the Ministry). The Central Board of Excise and Customs (the Board) has set up a separate apex authority headed by the Director General Service Tax (DGST) at Mumbai for the administration of service tax. Commissioners of central excise/service tax have been authorised to collect service tax within their jurisdiction.

1.2 Results of audit

This Report contains 44 paragraphs, featured individually or grouped together, arising from test check of records maintained in departmental offices and premises of the service providers. The revenue implication of these paragraphs is ₹ 70.38 crore. We had also issued another 150 paragraphs involving money value of ₹ 91.80 crore for the audit conducted up to March 2010. The department/Ministry had already taken rectificatory action in these 150 paragraphs in the form of issuing of show cause notices, adjudicating show cause notices and recovery of ₹ 31.71 crore.

1.3 Trend of receipts

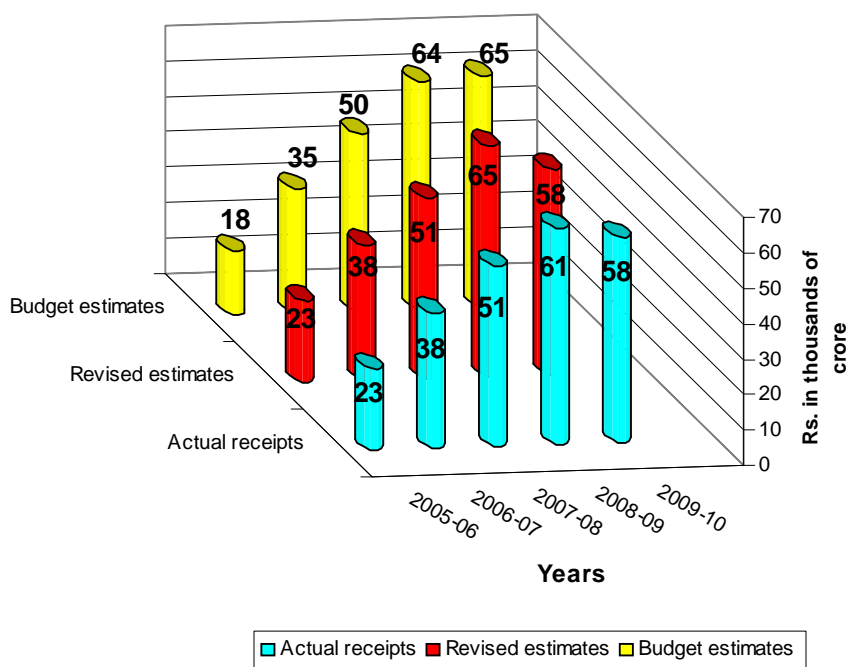
Revenue projected through annual budget and actual receipts from service tax during the years 2005-06 to 2009-10 is exhibited in the following table and graph:-

Table no. 1

(Amounts in crore of ₹)

Year	No. of services subjected to service tax	Budget estimates	Revised budget estimates	Actual receipts *	Difference between actual receipts and budget estimates	Percentage variation
2005-06	81	17,500	23,000	23,055	5,555	31.73
2006-07	97	34,500	38,169	37,598	3,098	8.98
2007-08	104	50,200	50,603	51,301	1,101	2.19
2008-09	108	64,460	65,000	60,940	(-) 3,520	(-) 5.46
2009-10	115	65,000	58,000	58,422	(-) 6,578	(-) 10.11

* Figures as per the Finance Accounts

Graph 1: Service Tax Receipts - Budget, Revised and Actual

During the period 2005-06 to 2009-10 the actual collections of service tax were fairly close to the budget estimates except for 2009-10 when these were 10.11 per cent lower than the budget estimates. There was a reduction of ₹ 2,519 crore (4.13 per cent) in service tax collection in the year 2009-10 as compared to the year 2008-09. This was primarily due to a reduction in the service tax rate from 12 per cent to 10 per cent.

1.4 Outstanding demands

The number of cases and amount involved in demands for service tax outstanding* for adjudication/recovery as on 31 March 2010 are mentioned in the following table:-

Table no. 2**(Amounts in crore of ₹)**

Pending decision with	As on 31 March 2009				As on 31 March 2010			
	Number of cases		Amount		Number of cases		Amount	
	More than five years	Less than five years	More than five years	Less than five years	More than five years	Less than five years	More than five years	Less than five years
Adjudicating officers	10,891	46,572	46.80	11,575.80	774	30,896	1,369.13	14,849.99
Appellate Commissioners	37	2,588	27.56	1,132.93	66	3,987	7.74	483.40
Board	0	3	0.00	1.97	0	5	0.00	5.07
Government	4	6	5.73	2.42	5	2	0.27	0.10
Tribunals	60	5,294	28.78	2,639.92	154	3,161	147.98	35,641.07
High Courts	24	173	7.56	110.18	49	597	18.22	561.19
Supreme Court	0	121	0.00	7.20	3	31	0.67	20.26
Pending for coercive recovery measures	4,117	18,396	9.95	6,836.11	3,306	24,770	26.94	1,416.40
Total	15,133	73,153	126.38	22,306.53	4,357	63,449	1,570.95	52,977.48

* Figures furnished by the Ministry

A total of 67,806 cases involving tax of ₹ 54,548.43 crore were pending as on 31 March 2010 with different authorities, of which 46.70 per cent in terms of number were with the adjudicating officers of the department. Pendency for recovery of demands had increased from 22,513 cases in 2008-09 to 28,076 cases in 2009-10 i.e. an increase of 24.71 per cent.

1.5 Fraud/presumptive fraud cases

The position of fraud/presumptive fraud cases* alongwith the action taken by the department against defaulting assesseees during the period 2007-08 to 2009-10 is depicted in the following table:-

Table no. 3

(Amounts in crore of ₹)

Year	Cases detected		Demand of tax raised	Penalty imposed		Tax collected	Penalty collected	
	Number	Amount	Amount	Number	Amount	Amount	Number	Amount
2007-08	1,716	787.18	574.54	171	179.04	331.74	34	2.74
2008-09	2,330	3,770.64	2,236.07	156	170.20	429.26	20	0.48
2009-10	2,046	3,041.60	2,510.77	110	19.41	456.84	27	0.76
Total	6,092	7,599.42	5,321.38	437	368.65	1,217.84	81	3.98

* Figures furnished by the Ministry

The above data indicates that while a total of 6,092 cases of fraud/presumptive fraud were detected during the years 2007-10 by the department involving tax of ₹ 7,599.42 crore, it raised demand of ₹ 5,321.38 crore only and recovered ₹ 1,217.84 crore (22.88 per cent). Similarly, out of the penalty of ₹ 368.65 crore that was imposed, the department could recover only ₹ 3.98 crore (1.08 per cent).

1.6 Impact of audit reports

1.6.1 Revenue impact

In the last five audit reports (including the current years' report), we had pointed out short levy and other deficiencies with revenue implication of ₹ 1,159.94 crore in 715 audit paragraphs. Of these, the Government had accepted audit observations in 597 audit paragraphs involving ₹ 599.55 crore and had recovered ₹ 217.53 crore. The details are shown in the following table:-

Table no. 4

(Amounts in crore of ₹)

Year of Audit Report	Paragraphs included		Paragraphs accepted						Recoveries effected					
			Pre printing		Post printing		Total		Pre printing		Post printing		Total	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
2005-06	83	266.47	38	28.40	2	0.39	40	28.79	20	7.38	5	1.06	25	8.44
2006-07	125	79.02	117	65.49	1	1.74	118	67.23	60	18.19	34	5.23	94	23.42
2007-08	158	276.72	112	47.43	14	24.74	126	72.17	57	23.22	11	1.67	68	24.89
2008-09	155	375.55	130	305.13	8	4.92	138	310.05	90	127.49	1	0.24	91	127.73
2009-10	194	162.18	175	121.31	--	--	175	121.31	112	33.05	--	--	112	33.05
Grand Total	715	1159.94	572	567.76	25	31.79	597	599.55	339	209.33	51	8.20	390	217.53

1.7 Follow-up on audit reports

Public Accounts Committee, in their Ninth Report (Eleventh Lok Sabha) desired that remedial/corrective action taken notes (ATNs) on all paragraphs of the Reports of the Comptroller and Auditor General, duly vetted by audit, be submitted to them within a period of four months from the date of the laying of the audit report in Parliament.

The Ministry of Finance had not submitted remedial action taken notes on 36 paragraphs relating to Report No. 13 of 2009-10 for eight months from the tabling of the Report.

CHAPTER II

NON-PAYMENT OF SERVICE TAX

Service tax is levied on specified services. The rate of tax has been fixed at five per cent up to 13 May 2003, eight per cent from 14 May 2003, 10 per cent from 10 September 2004, 12 per cent from 18 April 2006 and 10 per cent from 24 February 2009.

A few illustrative cases of non-levy/non-payment of service tax of ₹ 50.36 crore are mentioned in the following paragraphs. These observations were communicated to the Ministry through 25 draft audit paragraphs. The Ministry/department had accepted (till December 2010) the observations in 12 draft audit paragraphs with a revenue implication of ₹ 12.56 crore of which ₹ 48.04 lakh had been recovered.

2.1 Tax not paid by registered service provider

2.1.1 Software maintenance services

Management, maintenance or repair service was brought into service tax net with effect from 1 July 2003. Maintenance of computer software was exempt from levy of service tax vide notification dated 21 August 2003. The department clarified on 17 December 2003 that computer software was not liable to service tax as the same was not goods. However, Honorable Supreme Court's Judgement in the case of Tata Consultancy Services Vs. State of Andhra Pradesh {2004 (178) ELT 22 (SC)}, held that software came within the definition of goods. The Board clarified vide circular dated 7 October 2005 and 7 March 2006 that maintenance or repair or servicing of software was leviable to service tax with effect from 9 July 2004 i.e., the day exemption notification dated 21 August 2003 was rescinded.

M/s Mind Tree Ltd., Bangalore, engaged in providing software maintenance service, started paying service tax only with effect from December 2005, instead of from 9 July 2004. This resulted in non-payment of service tax of ₹ 644.69 lakh, including education cess, on the revenue realised from software maintenance service amounting to ₹ 6320.52 lakh, for the period from 9 July 2004 to 30 November 2005.

When we pointed this out (April 2009), the department stated (June 2010) that no service tax was payable by the assessee for the period between July 2004 to October 2005, in view of the Board's Circular dated 7 October 2005. However, as a protective measure, a show cause notice was issued to the assessee during April 2010.

The Department's reply was not acceptable because the Board had clarified in its subsequent circular dated 7 March 2006 that software maintenance services would be liable to service tax retrospectively from 9 July 2004.

The reply of the Ministry had not been received (December 2010).

2.1.2 Sale of space or time for advertisement

Sale of advertising space or time for advertisement service includes any service in relation to sale of space or time for display, advertising, showcasing of any product on billboards and public places excluding advertisement in print media and sale of time slots by a broadcasting agency or organisation.

2.1.2.1 Railway Division Guntakal and Ananthapur Municipal Corporation in Tirupathi commissionerate, Vijayawada & Guntur Railway Divisions and Vijayawada Guntur Tenali Mangalagiri (VGTM) Urban Development Authority under Guntur commissionerate and 53 Municipalities and 13 Municipal Corporations in commissionerates of Hyderabad I and III, Visakhapatnam I and II, Guntur and Tirupathi, collected ₹ 34.92 crore towards sale of advertising space to various private parties between the period from 2006-07 to 2008-09 but did not pay service tax of ₹ 4.27 crore. The tax was recoverable with interest.

When we pointed this out (June 2009 and April 2010), the department reported issue of show cause notices in four cases. Response in the remaining cases was awaited (December 2010).

The reply of the Ministry had not been received (December 2010).

2.1.2.2 M/s Hyderabad Metro Development Authority (HMDA) in Hyderabad II commissionerate, rendered renting of immovable property services and sale of space for advertisement services and received ₹ 186.12 lakh for the period from May 2006 to May 2007 but did not pay service tax. It started paying service tax on similar receipts only from June 2007 though the service was taxable from May 2006. Service tax of ₹ 22.81 lakh was payable with interest.

When we pointed this out (September 2009), the department accepted the audit observation and reported (June 2010) that action was being initiated in the matter.

The reply of the Ministry had not been received (December 2010).

2.1.3 Construction of complex residential service

Under section 65 (30a) of the Finance Act, 2005, "Construction of Complex (Residential) Service" means construction of a new residential complex or a part thereof, completion and finishing services in relation to residential complex and other similar services or repair, alteration renovation, restoration or similar services in relation to residential complex.

M/s Alien Developers (P) Ltd., in Hyderabad-IV commissionerate, providing services for construction of residential complexes, received booking advance of ₹ 46.35 crore during the year 2008-09 for the work "Construction of Aliens Space Station". The assessee did not pay any service tax on this amount on the ground that there was no service tax liability since Board had clarified on 29 January 2009 that the initial agreement between the promoters/builders/developers and ultimate owner was in the nature of "agreement to sell" and the property remained under the ownership of the seller (i.e. the promoter/builder/developer). It was only after the completion of the construction and full payment of the agreed sum that a sale deed was executed and ownership of the property got transferred to the ultimate owner.

The circular was based on the premise that prior to transfer to the ultimate owner (customer) the property belonged to promoter or developer and hence any service provided by him towards construction was in the nature of self service.

Board's clarification relied upon by the assessee was not applicable in the instant case. The assessee i.e. promoter/developer /builder was not the owner of the property and only a holder of agreement-cum-General Power of Attorney (GPA). It was evident from the agreement between the assessee and the land owners viz. Chilakamarri Mukunda Reddy and forty other owners (the land being a combined property) that the assessee was only to develop the property by construction of a complex with all incidental works, bearing all the expenditure himself. There was no transfer of ownership between the two parties. This was further borne out by the fact that the final sale deed conferring ownership of a flat on their intending purchasers had been entered into between original owners of land and intending purchasers, with developer acting only on behalf of original owners. Thus, it was clear that the service rendered by the assessee in the instant case was taxable service, attracting service tax of ₹ 1.89 crore on the gross value of ₹ 46.35 crore.

We pointed this out to the department in September 2009. Reply was awaited (December 2010).

The reply of the Ministry had not been received (December 2010).

2.1.4 Survey and map making service

Under section 65(105)(zzzc) the Finance Act, 2005, any service provided or to be provided in relation to survey and map making is a taxable service from 16 June 2005. The Board clarified in August 2007 that a sub-contractor is essentially a taxable service provider. From May 2008 as per explanation (c) under section 67 of the Act gross amount inter alia includes book adjustment and any amount credited or debited, as the case may be to any account, whether called 'suspense account' or by any other name in the book of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

M/s Speck Spatial Tech Ltd., (SSTL) Hyderabad (a wholly owned subsidiary of M/s SSL) under Hyderabad II commissionerate, engaged in rendering taxable services like GIS consultancy and development of application based geo spatial technology services, got a sub contract from M/s SSL for services relating to survey and map making. For such services payment of ₹ 12.85 crore was received by M/s SSTL by book transfer for the year 2008-09. Service tax of ₹ 1.59 crore payable thereon, was not paid and was recoverable with interest.

We pointed this out to the department in April 2010. Reply was awaited (December 2010).

The reply of the Ministry had not been received (December 2010).

2.1.5 Banking and financial services

Section 65(12) of the Finance Act, 1994, defines financial and banking service as specified services provided by a banking company or a financial institution.

The banking and financial services includes financial leasing which consists of equipment leasing, hire purchase and lease management.

M/s Asian Paints Ltd., Patancheru in Hyderabad 1 commissionerate, engaged in the manufacture of paints and thinners, supplied tinting machines to its dealers on rental basis. The tinting machines were used by the dealers for mixing base paint with colour to get the desired shade as per requirement of the customers. The assessee received ₹ 9.19 crore towards such rentals during the years 2005-06 to 2007-08. Though the rental income received by the assessee attracted service tax of ₹ 1.07 crore for equipment leasing under banking and financial services, the assessee did not pay service tax.

When we pointed this out (May 2008), the department stated (September 2009) that as lease rentals were recovered from the dealers and not from customers, the services rendered by the assessee could not be regarded as banking and financial service. It was also stated that the lease fell under the category of operating lease and not financial lease and hence not taxable.

The reply of the department was not acceptable. The conditions prescribed for financial leasing viz. contract for lease between lessee and lessor, use of asset by the lessee, option to lessee to own the asset at the end of lease period, etc. were fulfilled in the lease contract. Further, the Ministry's circular letter dated 29 February 2008 had clarified that status of the recipient of service (like customer, dealer) was not relevant for the purpose of levy of service tax.

The reply of the Ministry had not been received (December 2010).

2.1.6 Works contract service

Works contract service means any service provided or to be provided to any person by any other person in relation to the execution of works contract. It excludes contracts for roads, airports, railways transport terminals, bridges, tunnels and dams. As per section 65(3a) of Finance Act, 1994, 'airport' means a landing and take off area for aircrafts, with runways and aircraft maintenance and passenger facilities and includes aerodrome. While airports are excluded from the works contract service definition, any construction near airport but not related to any of the items referred to in the meaning of airport, attracts service tax.

2.1.6.1 M/s SEW Constructions, Hyderabad, in Hyderabad II commissionerate, entered into a contract in December 2007 with M/S GMR, Hyderabad International Airport Ltd. (GMRHIAL), Shamshabad, Hyderabad, for construction of cargo agent's building for ₹ 21.98 crore. Since construction of this nature was not covered under definition of airport construction, it attracted service tax under the category of works contract service but applicable service tax of ₹ 90.57 lakh was not paid. The service tax was required to be recovered along with interest.

We pointed this out to the department in February 2010. Reply was awaited (December 2010).

The reply of the Ministry had not been received (December 2010).

2.1.6.2 M/s 3M India Pvt. Ltd., Bangalore, in Bangalore (Large Tax Payers Unit) commissionerate, engaged in the manufacture of adhesives, scrubbers etc., was also a registered service provider. During October 2007, the assessee

entered into an agreement with M/s Canara Bank for replacing the signage of Canara Bank. The work inter alia, included fabrication, erection of signage, transportation of signages from work place to the branches, ATMs and offices of the Bank and dismantling the existing signages. During the period from February 2008 to December 2008, the assessee received total payment of ₹ 19.98 crore for providing the service. It was in the nature of works contract service but service tax of ₹ 77.07 lakh was not paid and recoverable with interest.

When we pointed this out (April 2009), the department replied (February 2010) that though the activity undertaken by the assessee involved rendering of services like inspection, fabrication and installation at site, the assessee had not received any extra consideration for the incidental services & that sales tax had been discharged on the entire value. Hence the assessee was not liable to pay service tax.

The department's reply was not acceptable, because the contract involved not only the sale of goods but also the services of erection, installation and wiring. Therefore, the composite payment was both for sale of signages and related services and the assessee was liable to pay service tax.

The reply of the Ministry had not been received (December 2010).

2.1.7 Manpower recruitment and supply agency services

As per section 65 (68) of the Finance Act, 1994 'manpower recruitment or supply agency' means any person engaged in providing any service directly or indirectly in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person.

Two assessees in Hyderabad II commissionerate and two assessees in Hyderabad IV commissionerate, engaged in providing recruitment and supply agency services, collected service charges of ₹ 1.48 crore during the period April 2006 to March 2008 but did not pay the applicable service tax of ₹ 18.26 lakh which was recoverable with interest and penalty.

When we pointed this out (February 2009), the department (July 2009) admitted the audit observation in two cases and reported that action had been initiated to safeguard government revenue. Reply had not been received in respect of two assessees of Hyderabad II commissionerate.

The reply of the Ministry had not been received (December 2010).

2.1.8 Business support services

Business support service was brought into service tax net with effect from 1 May 2006. As per section 65(104c) of Finance Act, 1994, business support services means services provided in relation to business or commerce and includes managing distribution and logistics and infrastructural support services and other transaction processing etc.

M/s Eveready Industries India Ltd., M/s Texmaco Ltd., Belgharia in Kolkata service tax commissionerate and M/s SAIL-ISP, Barnpur, in Bolpur commissionerate engaged in manufacture of batteries, bogies and iron & steel products respectively, had provided personnel, vehicles, phones, hospitality, guest house facilities, infrastructural support, electricity, water etc. to support

the business and commerce of their clients. The assessee had collected ₹ 273.78 lakh between May 2006 and March 2008 for rendering such operational assistance and infrastructural support but service tax of ₹ 33.44 lakh leviable thereon, under business support services was not paid.

When we pointed this out (between February 2008, May 2008 and December 2008), the department admitted the audit observations of M/s Eveready Industries India Ltd. and M/s SAIL-ISP and reported (November 2009) issuance of show cause cum demand notices of ₹ 13.72 lakh in the first case and ₹ 7.92 lakh in the other case covering the period from May 2006 to May 2009. In the case of M/s Texmaco Ltd. the department did not admit (November 2009) the observation without citing any reasons.

The reply of the Ministry had not been received (December 2010).

2.1.9 Commercial and industrial construction service

As per section 65(28) of the Finance Act, 1994, commercial or industrial construction service inter alia covers construction of new building or a civil structure or part thereof, and construction of a pipe line or conduit which is used or to be used primarily for commerce or industry or work intended for commerce or industry but does not include service provided in respect of roads, air ports, railways, transport terminals, bridges, tunnels and dams.

2.1.9.1 M/s Ahlcon India Pvt. Ltd., in Delhi service tax commissionerate, engaged in rendering construction services, executed works contract for M/s Ahluwalia Contracts (I) Ltd. as a sub-contractor. The assessee received ₹ 2.49 crore during April 2008 to September 2008 for providing sub contract service. The service tax of ₹ 30.72 lakh leviable thereon was not paid which was recoverable with interest.

When we pointed this out (June 2009), the department stated (January 2010) that it had directed the assessee to deposit tax with interest.

The reply of the Ministry had not been received (December 2010).

2.1.9.2 M/s Haryana Tourism Corporation Ltd., Chandigarh (Corporation) entered into agreements with nine contractors for construction of new rooms/shops/halls/buildings and up-gradation/modernisation/renovation of tourist complexes in the State of Haryana. The contractors provided construction services to the Corporation valued as ₹ 3.06 crore, during the period September 2004 and November 2007. The applicable service tax amounting to ₹ 11.33 lakh was not paid. It was recoverable with interest and penalty.

When we pointed this out to Panchkula and Rohtak commissionerates in March 2008 and October 2009 respectively, the Commissioner of Central Excise, Panchkula stated in December 2009 that a sum of ₹ 5.86 lakh (including interest) had been recovered in three cases between May 2008 and January 2009 and show cause notices were issued in four cases. Further report on the remaining two cases of Rohtak commissionerate had not been received (December 2010).

The reply of the Ministry had not been received (December 2010).

2.1.10 Business auxiliary service

Section 65(19) of the Finance Act as amended in May 2006 defines 'business auxiliary services to mean any taxable service provided or to be provided to a client by any person for promotion or marketing or sale of goods, promotion or marketing of services or any customer care or recovery of cheques etc., and includes services as a commission agent'.

As per explanation below the rule, inserted vide notification dated 10.05.08, where the transaction is with any associated enterprise, any amount debited against the associated enterprises for value of taxable service in the books of account of the service provider, shall be treated as payment received for providing such services.

M/s Timtech India Pvt. Ltd., Hoogly, in Kolkata service tax commissionerate, rendered services to its associated companies in relation to sale of goods and realised commission of ₹ 245.35 lakh during the period 2008-09 by debiting to respective parties' accounts. The assessee did not pay service tax amounting to ₹ 25.27 lakh which was recoverable with interest.

When we pointed this out (November 2009), the department admitted the audit observation and reported (February 2010) that a show cause cum demand notice was being issued.

The reply of the Ministry had not been received (December 2010).

2.1.11 Renting of immovable property

As per section 65(90a) of the Finance Act, 1994 'renting of immovable property' service includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business of commerce.

M/s Gujarat State Petroleum Corporation in Ahmedabad III commissionerate, had entered into production sharing contracts (PCS) jointly with various joint venture partners for exploration of oil and gas on percentage basis. The assessee had recovered ₹ 87.86 lakh from other parties by way of debit notes on 31 March 2008 towards asset utilisation, space utilisation and warehouse utilisation charges. The service tax liability of ₹ 10.86 lakh was not discharged and was recoverable with interest.

When we pointed this out (December 2008), the department accepted the observation and intimated (September 2009) that a show cause notice was being issued.

The reply of the Ministry had not been received (December 2010).

2.2 Services received from foreign service providers

Rule 2(1)(d)(iv) of the Service Tax Rules, 1994, stipulates that in respect of taxable service, provided by a person, who is a non-resident or is from outside India and does not have an office in India, the person receiving the taxable service in India is liable to pay service tax.

2.2.1 Intellectual property rights service

Section 65(55 b) of the Finance Act, 1994, defines 'Intellectual property rights service' to mean transferring temporarily, or permitting the use of any intellectual property right. It also includes any right to intangible property viz. trade marks, designs, patents etc. Intellectual property right service is taxable with effect from 10 September 2004.

2.2.1.1 M/s One Entertainment Network Pvt. Ltd., in Mumbai service tax commissionerate, entered into an agreement with M/s Satellite Television Asian Region Ltd. (StarL) Hong Kong for grant of rights by StarL to One Entertainment Network Pvt. Ltd. to distribute and market the channels Star Plus and Star Utsav. The said agreement provided for use of trade marks and trade names for six years by the assessee. The assessee paid ₹ 70.70 crore for the years 2006-07 and 2007-08 in foreign currency to Star L. The applicable service tax under intellectual property rights service amounting to ₹ 8.71 crore was not paid by the assessee and was recoverable with interest.

We have pointed this out in May 2009; reply of the department was awaited (December 2010).

The reply of the Ministry had not been received (December 2010).

2.2.1.2 M/s Introducing (India) Pvt. Ltd., in Ahmedabad commissionerate of Service Tax, had received the taxable service i.e. "Intellectual Property Service" from M/s Inductotherm Industries Inc. USA and paid ₹ 9.17 crore as royalty to M/s Inductotherm Industries Inc. USA for the period from October 2005 to March 2007 but did not discharge service tax liability of ₹ 60.88 lakh which was recoverable with interest.

When we pointed this out (January 2008), the department accepted the objection and confirmed demand of ₹ 8.98 lakh for the period 1 October 2005 to 23 January 2006 in August 2009 and of ₹ 25.99 lakh for the period from 1 October 2006 to 31 March 2007 in December 2008. It further intimated that SCN for the period 24 January 2006 to 30 September 2006 could not be issued as it was barred by limitation and that the case had been referred to vigilance section to initiate necessary action. Failure on the part of the department to take timely action for the period 24 January 2006 to 30 September 2006 had resulted in loss of revenue of ₹ 25.91 lakh.

The reply of the Ministry had not been received (December 2010).

2.2.2 Business support service

M/s Deloitte Consulting India Pvt. Ltd., Hyderabad in Hyderabad IV commissionerate, engaged in providing consultancy services paid an amount of ₹ 41.01 crore to a foreign agency towards business support services during the years 2007-08 and 2008-09. The assessee did not pay service tax of ₹ 5.07 crore which was recoverable with interest.

When we pointed this out (September 2009), the department intimated (February 2010) that the assessee had been asked to pay the amount.

Reply of the Ministry had not been received (December 2010).

2.2.3 Business auxiliary service

M/s Hindustan Aeronautics Ltd., in Lucknow commissionerate, paid ₹ 761.28 lakh and ₹ 785.70 lakh during the years 2006-07 to 2008-09 on account of Professional, Consultancy & Foreign technical fees and business auxiliary services to foreign service providers but did not pay service tax of ₹ 4.27 crore on the above payments.

When we pointed this out (February 2010), the department replied (August 2010) that SCN was being issued.

The reply of the Ministry had not been received (December 2010).

2.2.4 Advertising agency service

As per section 65(3) of Finance Act, 1994, the advertising agency has been defined as any person engaged in providing any service connected with preparing display or exhibition of advertisement and includes an advertisement consultant. It was also clarified in CBEC instruction dated 31 October 1996, Trade Notice dated 31 October 1996 that “if the market research relates to advertisement then the market research forms part of the service in relation to advertisement and all expenses charged from the client on this account are includible in the value of the services”.

M/s Lintas India Pvt. Ltd., in Mumbai service tax commissionerate, had paid ₹ 378.59 lakh in foreign currency to foreign service providers during 2006-07 and 2007-08 for studio research, marketing and client presentation services. The services so provided were covered under the definition of advertising agency services and accordingly, the assessee was liable to pay service tax of ₹ 46.56 lakh which was recoverable with interest.

When we pointed this out (September 2008), the department intimated (September 2009) that the assessee had paid service tax of ₹ 15.09 lakh and interest of ₹ 4.67 lakh for the period 2006-07 and 2007-08, after bifurcation of taxable and non taxable services. It also intimated that details of non taxable services have been called for from the assessee for verification and additional service tax payable, if any, would be communicated after verification. Further reply of the department was awaited (December 2010).

The reply of the Ministry had not been received (December 2010).

2.2.5 Consulting engineers service

Section 65(31) of the Finance Act, 1994, states that ‘consulting engineer’ means any professionally qualified engineer or any body corporate or any other firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering.

M/s Spectrum Coal & Power Ltd., Korba, in Raipur commissionerate, received technical know-how services falling under the category of “Consulting Engineer Service”, from Foreign Service providers and paid service charges in foreign currency amounting ₹ 3.39 crore during the years 2004-05 to 2008-09 but the assessee did not pay service tax amounting ₹ 37.55 lakh, leviable on the value of services which was recoverable along with interest of ₹ 16.30 lakh.

When we pointed this out (August 2010), the department accepted the audit observation (August 2010) and intimated that the assessee had deposited an amount of ₹ 15,60,741/- including interest in March 2010. Further progress relating to recovery of the balance was awaited (December 2010).

The reply of the Ministry had not been received (December 2010).

2.2.6 Underwriters service

Clause (116) of section 65 defines the term 'underwriter' as follows:

“Underwriter” has the meaning assigned to it in clause (f) of rule 2 of Securities and Exchange Board of India (Underwriters) Rules, 1993.’

As per rule 2(f) of the Securities and Exchange Board of India (Underwriters) Rules, 1993, an underwriter means a person who engages in the business of underwriting of an issue of securities of a body corporate.

M/s Educomp Solution Ltd., in Delhi service tax commissionerate, engaged in technology based education products and services paid underwriting commission of ₹ 2,52,87,696/- in October 2006 to foreign merchant bankers. The services rendered by the merchant banker were chargeable to service tax under the head 'Underwriters Service' from 16 October 1998.

The service tax including cess of ₹ 30.95 lakh besides interest of ₹ 11.06 lakh and penalty as required under section 76 to 78 of the Act were recoverable from the said company.

When we pointed this out (July 2008), the department stated (June 2009) that the company was in the process of depositing the service tax alongwith interest.

The reply of the Ministry had not been received (December 2010).

2.2.7 'Broadcasting services' and management on business consultant's services

'Broadcasting services' and 'management or business consultant's services' were brought under the service tax net with effect from 16 July 2001 and 16 October 1998 respectively.

M/s Sky B(Bangla) and M/s Supreme and Company Pvt. Ltd., in Kolkata Service tax commissionerate, engaged in rendering broadcasting services and manufacture of transmission line hardware, had paid ₹ 90.01 lakh between April 2006 and March 2009, to foreign service providers for receiving broadcasting and business consultancy services respectively. The assessee did not pay the applicable service tax of ₹ 10.95 lakh, which was recoverable with interest.

When we pointed this out (April and May 2009), the department admitted the observations and reported (June 2009 and January 2010) that service tax of ₹ 6.81 lakh including interest had been recovered in the first case and show cause cum demand notice of ₹ 5.29 lakh was being issued in the second case.

The reply of the Ministry had not been received (December 2010).

2.3 Non-payment of service tax by unregistered service providers

Rule 4 of the Service Tax Rules, 1994 stipulates that every person liable for paying the service tax shall make an application for registration within a period of 30 days from the date on which the service tax under the Finance Act is levied or from the date of commencement of business of providing taxable service if such business is commenced after introduction of the levy under the Finance Act.

2.3.1 Construction of complex residential service

Under section 65 (30a) of the Finance Act, 2005, “Construction of Complex (Residential) Service” means construction of a new residential complex or a part thereof, completion and finishing services in relation to residential complex or restoration of or similar services in relation to residential complex.

Eighty seven contractors in Indore and Bhopal commissionerates (Indore 16 & Bhopal 71) rendered the service of “Construction of Complex (Residential) Service” and received payment of ₹ 9,355.45 lakh (Indore - ₹ 991.21 lakh + Bhopal ₹ 8,364.24 lakh) during the period from October 2006 to October 2009. Preliminary cross examination of the said information with the service tax records of the service tax ranges disclosed that these contractors were not registered with the department under the said service and as such did not discharge the liability of service tax. This resulted in non-payment of service tax of ₹ 1150.85 lakh including cess (Indore ₹ 121.84 lakh + Bhopal ₹ 1029.01 lakh). All the cases were required to be verified and service tax recovered thereafter with interest and penalty.

We pointed this out to the department (March 2010) to which response was awaited (December 2010).

The reply of the Ministry had not been received (December 2010).

2.3.2 Commercial and industrial construction service

As per section 65(28) of the Finance Act, 1994, commercial or industrial construction service inter alia covers construction of new building or a civil structure or part thereof and construction of a pipe line or conduit which is used or to be used primarily for commerce or industry or work intended for commerce or industry but does not include service provided in respect of roads, air ports, railways, transport terminals, bridges, tunnels and dams.

Five Contractors (service providers) in Bhopal commissionerate, received ₹ 1.88 crore from the construction Division No (I) & (II) CPA & CPWD Divison I/II during the period from March 2006 to October 2007 for rendering taxable service under “Commercial or Industrial Construction Services”. Cross linking/examination of said information/payment details with service tax records of service tax range further revealed that these service providers viz. contractors were not registered with the department under the said service and did not discharge the liability of service tax. This resulted in non payment of service tax of ₹ 23.14 lakh (cess included) by these unregistered service providers which was recoverable with interest and penalty under section 73, 75 & 76 of the Finance Act, 1994.

We pointed this out to the department in (February 2010). Reply was awaited (December 2010).

The reply of the Ministry had not been received (December 2010).

2.3.3 Franchise service

As per section 65(47), 'franchise' means an agreement by which franchiser is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with the franchise, whether or not a trade mark, service mark, trade name or logo or any such symbol.

M/s Labelle Body Care Pvt. Ltd., Secunderabad in Hyderabad II commissionerate, engaged in providing health, fitness and beauty parlor services, paid royalty of ₹ 85.43 lakh to the spouse of the Director of the company for using brand name between the years 2007-08 and 2008-09. Though the service of providing of brand name was taxable under the franchise service category, the individual concerned neither registered herself under the said category of service nor paid service tax on the royalty received. Service tax of ₹ 10.56 lakh was recoverable along with interest and penalty.

We pointed this to the department in February 2010. Reply was awaited (December 2010).

The reply of the Ministry had not been received (December 2010).

CHAPTER III

SHORT PAYMENT OF SERVICE TAX

Some instances of short payment of service tax due to incorrect self assessment, suppression of value of service which are not included in the foregoing chapters, are mentioned in the following paragraphs. They have a total revenue implication of ₹ 11.80 crore and were communicated to the Ministry through 7 draft audit paragraphs. The Ministry/department had accepted (till December 2010) the audit observations in 5 draft audit paragraphs with total revenue implication of ₹ 11.24 crore.

3.1 Incorrect self assessment

From 16 July 2001 onwards, the scheme of self assessment procedure was introduced under which a person liable to pay service tax can himself assess the service tax and deposit in the Government account. In addition, he is required to submit periodical returns, in the prescribed form, to the concerned superintendent of central excise. For the purpose of verification, the superintendent is empowered to call for any accounts, documents or other evidence from the assessee, as deemed necessary.

M/s BGR Energy Systems Ltd., in Chennai service tax commissionerate, providing erection, commissioning or installation service, commercial or industrial construction service, works contract service, etc., had a gross income of ₹ 1344.06 crore during the year 2007-08. The assessee adjusted sundry debtors of ₹ 637.68 crore from gross income and paid service tax on only ₹ 215.34 crore, treating it as the taxable value under all the services. The break up of the differential value of ₹ 491.04 crore was not made available and the nature of this income and reasons for not paying tax were not intimated to us. We worked out a tentative value of short payment of service tax of ₹ 9.74 crore and asked the department to work out the exact amount of short levy.

When we pointed this out (February 2009), the department admitted the audit observation and stated (December 2010) that the case had been referred to Director General of Central Excise Intelligence (DGCEI) to examine the issue whether there was short payment of service tax for the period prior to the period covered in audit observation and on the basis of DGCEI's report, show cause notice will be issued.

Reply of the Ministry had not been received (December 2010).

3.2 Service tax collected but not deposited

M/s Galgal Cement Works, Barmana, ACC Units I & II, in Chandigarh I commissionerate, (manufacturer of clinker and cement under Chapter/heading 2523.10/2523.29), received services to the tune of ₹ 1441.41 lakh from forty service providers in the year 2007-08. We checked the ST-3 returns filed by these 40 service providers in Bilaspur Range and found that they had paid only ₹ 98.74 lakh against the service tax of ₹ 178.16 lakh payable. This resulted in

short payment of service tax of ₹ 79.42 lakh which was recoverable alongwith interest and penalty.

When we pointed this out (March 2009), the department stated (October 2009) that the defaulters were being asked to deposit the service tax immediately failing which show cause notices would be issued.

Reply of the Ministry had not been received (December 2010).

3.3 Advance payment

As per section 67(3) of the Finance Act, 1994, gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

M/s National Thermal Power corporation Ltd. (Consulting wing), (NTPC) in Noida commissionerate, was providing consulting engineers services to Power Grid Corporation of India Ltd. (Power Grid), for construction of additional line bays in Korba Super Thermal Power Project, of NTPC. As per the agreement between NTPC and Power Grid, NTPC had to execute the job of design, engineering, procurement, supply, construction, erection, testing and commissioning of additional line bays, as a deposit work. For the entire work, Power Grid agreed to pay to NTPC, the actual expenditure incurred by NTPC plus a consolidated additional charge at the rate of 19 per cent. The overhead charges of 19 per cent was meant for consulting engineer services.

M/s NTPC received payment of ₹ 1062.61 lakh from Power Grid and was liable to pay service tax on ₹ 201.90 lakh which was nineteen percent service charges. It paid service tax only on ₹ 128.63 lakh (63.71 per cent of ₹ 201.90 lakh) on the ground that it had completed work of ₹ 677.03 lakh (63.71 per cent) out of the payment of ₹ 1062.61 lakh received. Since the amount had already been received in the nature of an advance, service tax was payable on the entire amount. Therefore, service tax of ₹ 19.78 lakh was recoverable on the differential amount of ₹ 73.27 lakh.

When we pointed this out (November 2009), the department did not accept the audit observation (October 2010) and stated that the NTPC had undertaken the above project for and on behalf of power grid corporation as an agent and the amount of ₹ 1062.61 lakh received by the NTPC should not be treated as advance payment rather it should be considered as deposit (imprest money). Hence service tax on the consultancy services is payable on the actual value of execution of the work.

The department's reply is not acceptable because as per clause 5.3.2 of the agreement, payments made in advance by Power Grid, for the deposit work included the component of overhead charges. Therefore, service tax was payable on the overhead (consulting engineer service) charges immediately on receipt of advance. As per explanation (a) under section 67 of the Finance Act, 1994, 'consideration' includes any amount that is payable for the taxable services provided or to be provided and service tax will be payable as soon as advance is received, even if service is provided later.

Reply of the Ministry had not been received (December 2010).

3.4 Value of consideration not added to gross taxable value

Rule 3 of the Service Tax (Determination of Values) Rules, 2006, provides that, subject to the provisions of section 67, the value of taxable service, where the consideration received is not wholly or partly consisting of money, shall be determined by the service provider in the following manner : -

(a) the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration;

(b) where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service.

Rule 2 (l) (d) (iv) of the Service Tax Rules, 1994, stipulates that in respect of taxable service provided by a person, who is a non-resident or is from outside India and does not have an office in India, the person receiving the taxable service in India is liable to pay service tax.

3.4.1 M/s Juhu Beach Resorts India Ltd., in Mumbai (ST) commissionerate, registered under the category of intellectual property services and management consultancy services, paid ₹ 346.64 lakh during April 2006 to December 2006 towards reimbursement of expenses towards telephone charges, central reservation charges, mobile charges, mail charges etc. to M/s Marriott Worldwide Corporation, USA. However, the amount was not included in the gross amount for payment of service tax and hence the taxable service was under assessed by such consideration. This resulted in a short payment of service tax of ₹ 42.43 lakh.

On this being pointed out (April 2008), the department admitted (June 2008) that assessee was liable to pay service tax on amount paid to the US Company towards reimbursement of expenses. Further development was awaited (December 2010).

Reply of the Ministry had not been received (December 2010).

3.4.2 As per section 67 of the Finance Act, 1994, the value of any taxable service shall be the gross amount charged by the service provider.

M/s Exhibition Society, Hyderabad in Hyderabad II commissionerate, providing exhibition services, received ₹ 2.88 crore during the period 2006-07 to 2008-09 towards providing electricity and lighting facility to exhibitors. However, the assessee did not include this amount in the value of service while discharging his service tax liability. This resulted in under valuation of service and consequential short payment of service tax of ₹ 35.49 lakh besides interest.

We pointed this out to the department in March 2010. Reply was awaited (December 2010).

Reply of the Ministry had not been received (December 2010).

3.5 Transport of goods by road

Service tax on transport of goods by road is levied with effect from 1 January 2005. As per rule 2(1)(d)(v) of Service Tax Rules, 1994, the person making payment towards freight would be liable to pay service tax on services of GTA in case the consignor or consignee of the goods transported is one in the organised sectors.

M/s Manney Engineering Pvt. Ltd., Cherlapally, in the Hyderabad III commissionerate, engaged in the manufacture of MS towers and parts thereof, incurred ₹ 8.86 crore towards inward and outward freight between the period from 2006-07 and 2008-09. However, the assessee paid service tax on only ₹ 6.31 crore. This resulted in short payment of service tax of ₹ 7.80 lakh payable on the balance of ₹ 2.55 crore which was recoverable with interest.

When we pointed this out (December 2009), the department admitted the objection and stated (June 2010) that a show cause notice was under issue.

Reply of the Ministry had not been received (December 2010).

3.6 Commercial or industrial construction service

M/s N.S.K. Builders, Trichy, in Tiruchirapalli commissionerate, providing commercial or industrial construction service paid service tax of ₹ 53.04 lakh in August 2007 and January 2008 against the tax liability of ₹ 73.86 lakh. The assessee stated that the balance had been paid during April to June 2007. On the scrutiny of the relevant challans we found that they actually related to other payments and did not pertain to the period from April to June 2007. Therefore, service tax of ₹ 20.82 lakh short paid was recoverable with interest.

When we pointed this out (September 2009), the department admitted the audit observation and stated (April 2010) that a draft show cause notice was being issued.

Reply of the Ministry had not been received (December 2010).

CHAPTER IV CENVAT CREDIT OF SERVICE TAX

With effect from 16 August 2002, under the Service Tax Credit Rules, 2002, service tax on output services was allowed to be paid out of cenvat credit of service tax paid on input services. From 10 September 2004, the said Rules were integrated with the Cenvat Credit Rules, 2004. Under Cenvat Credit Rules, the credit availed can be utilised for payment of central excise duty on finished goods or service tax payable on output services subject to fulfilment of certain conditions. A few cases of incorrect grant of cenvat credit involving tax of ₹ 7.89 crore, noticed in test check, are described in the following paragraphs. These observations were communicated to the Ministry through 10 draft audit paragraphs. The Ministry/department had accepted (till December 2010) the audit observations in six draft audit paragraphs with money value of ₹ 5.38 crore of which ₹ 0.78 crore had been recovered.

4.1 Cenvat credit utilised for payment of tax on input service

Under rule 3(4)(e) of the Cenvat Credit Rules, 2004, the cenvat credit of service tax paid on input services can be utilised for paying service tax on output services.

4.1.1 M/s Thyssen Krupp Electrical Steel India Pvt. Ltd., in Nasik Service Tax commissionerate, availed cenvat credit on various input services. The assessee used this credit to pay service tax on the service received from foreign service provider and on the goods transport agency services (GTA). As the above services were input services, the utilisation of cenvat credit of ₹ 94.57 lakh in 2009-10 was irregular and recoverable with interest.

When we pointed this out (April 2010), the department intimated (April 2010) that action for recovery was being initiated against the assessee.

Reply of the Ministry had not been received (December 2010).

4.1.2 Four assesses, one each in Kolkata, Mumbai commissionerates of service tax, one each in Haldia and Pune III commissionerates of central excise, paid service tax of ₹ 48.88 lakh on GTA services out of accumulated cenvat credit during the period from April 2006 to March 2008. Since GTA is an input service, cenvat credit was wrongly utilised and the entire amount was required to be recovered alongwith interest.

When we pointed this out (between September 2008 to November 2009), the department admitted (between December 2009 to May 2010) the audit observations in all cases and reported recovery of ₹ 12 lakh in one case and initiation of recovery proceedings in remaining cases.

Reply of the Ministry had not been received (December 2010).

4.2 Premature availing of cenvat credit on input services

Rule 4(7) of Cenvat Credit Rules, 2004, provides that cenvat credit of tax paid on input services shall be allowed, on or after the day on which payment is

made for the input service and service tax. Further Rule 14 provides that where the cenvat credit has been taken or utilised wrongly, the same alongwith interest shall be recovered from the manufacturer or the provider of output service.

4.2.1 Two assesses, one each in Bhubaneswar I and Bhubaneswar II commissionerates, engaged in manufacturing of sponge iron, paid service tax for goods transport agencies (GTA) services for the month of October 2007, February 2008, April 2008 and February 2009 through TR-6 challans on 5th to 20th day of subsequent month but took the credit during the month prior to the payment of service tax. This resulted in premature availing of cenvat credit on service tax of ₹ 118.46 lakh which was incorrect.

When we pointed this out (between October 2008 to February 2010), the department (between February 2010 to March 2010) admitted the audit observation in the first case and stated that demand of ₹ 1.31 crore had been confirmed against the assessee and in other case it stated that the matter was under examination.

Reply of the Ministry had not been received (December 2010).

4.2.2 M/s Venkat Sai Media Pvt. Ltd., Hyderabad, in Hyderabad II commissionerate, engaged in providing business auxiliary services and cable operator services, availed service tax credit of ₹ 39.70 lakh to the end of 31 March 2009 on the basis of outstanding input service creditors bills. As it had neither paid for the input service nor the service tax thereon, the availing of such credit on outstanding bills was incorrect and the service tax credit availed was recoverable along with interest.

When we pointed this out (June 2009), the department reported (August 2009) the reversal of credit of ₹ 39.70 lakh by the assessee, but stated that no interest needs to be paid since the credit taken was not utilised by the assessee. The reply of the department was contrary to the Board's clarification of 3 September 2009 stating that interest had to be paid on reversal irrespective of whether the credit had been utilised or not.

Reply of the Ministry had not been received (December 2010).

4.3 Separate account for common input services used in taxable/exempted services not maintained

As per rule 6(2) of the Cenvat Credit Rules, 2004 where a provider of output service avails of cenvat credit in respect of any input services and provides such output services which are chargeable to tax as well as exempted from service tax, then the provider of output service shall maintain separate accounts for input services meant for use in providing output service and quantity of input services used in the exempted services. Further as per rule 6(3) of said Cenvat Credit Rules, provider of output services opting not to maintain separate accounts shall have an option either to pay an amount equal to eight per cent of the value of exempted service under rule 6(3)(i) or pay an amount equivalent to the cenvat credit attributable to inputs and input services used in or in relation to the manufacture of exempted goods or for provision of exempted services under rule 6(3)(ii) after compulsorily intimating in writing

to the Superintendent of Central Excise and pay provisionally for every month under rule 6(3A).

M/s Xavier Labour Relations Institute, in Jamshedpur commissionerate, provided taxable output services such as Management Consultancy, Mandap Keeper, Manpower Recruitment Agency, Renting of immovable Property etc. as well as exempted services such as Post Graduate Diploma in Management, Personal Management, Industrial Relations, Management Insurance and Human resources during April 2008 to March 2009. The assessee did not maintain separate account of input services for exempted & taxable services. It realised an amount of ₹ 2180.75 lakh on exempted services but did not pay amount of ₹ 1.74 crore being eight per cent of the value of exempted services

When we pointed this out (September 2009), the department stated (April 2010) that the amount of cenvat credit attributable to input service used for exempted services was ₹ 26.63 lakh in terms of rule 6 (3A)(C) of Cenvat Credit Rules which had been realised on 1 February 2010 and the assessee is further being persuaded to deposit the interest.

The reply of the department is not tenable as the assessee had neither exercised option under rule 6 (3)(ii) nor paid pro rata amount on monthly basis as required under Rule 6(3A). Hence he was not eligible to pay under rule 6(3A)(C) and amount of ₹ 1.74 crore was recoverable with interest under rule 6(3)(i).

Reply of the Ministry had not been received (December 2010).

4.4 Incorrect distribution of service tax credit on ineligible services

Rule 7 read with rule 2(1) of the Cenvat Credit Rules 2004, provides that, input service distributor (ISD) may distribute the cenvat credit of service tax paid on the input service to its manufacturing units or units providing output service, used in relation to manufacture of final products

M/s Bharat Petroleum Corporation Ltd., Kolkata, registered as Input Service Distributor, in Kolkata Service tax commissionerate, availed cenvat credit of ₹ 37.66 lakh during the period 2006-07 to 2008-09, on GTA services used for inward transportation of traded petroleum products manufactured by other oil companies like IOCL, HPL etc. The assessee distributed the credit to its manufacturing units. Since service so received did not have any nexus with the manufactured goods of its units, it fell outside the scope of input service. This resulted in incorrect availing and distribution of credit amounting to ₹ 37.66 lakh, which was recoverable with interest.

When we pointed this out (December 2008), the Department accepted the audit observation and reported (March 2010) that the show cause cum demand notice was under issue to the assessee.

Reply of the Ministry had not been received (December 2010).

4.5 Incorrect availing of cenvat credit on invalid documents

Rule 9(1)(f) of the Cenvat Credit Rules, 2004, provides that cenvat credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of an invoice, a bill or challan issued by a service provider of input service on or after the 10th day of September, 2004.

M/s DSC Ltd., Kota and M/s Bharti Hexagon Ltd., Jaipur, in Jaipur I commissionerate, engaged in providing services of technical inspection and certification services, GTA, consulting engineer services and cellular telephony services respectively, availed cenvat credit of service tax and education cess of ₹ 26.60 lakh on the basis of debit notes raised by the various service providers in the year 2008-09. The availing of service tax credit on the basis of invalid documents i.e. 'debit note' was irregular.

When we pointed this out (May 2010), the department intimated (March 2010) in one case that show cause notice was being issued and in another case department did not accept the audit observation and stated (June 2010) that the Board vide its circular dated 30 April 2010 had clarified that credit could be allowed under rule 4(7) of Cenvat Credit Rules, 2004 on the payment made through debit notes and credit notes.

Reply of the department was not tenable as the said circular had clarified the condition for availing cenvat credit under rule 4(7) of Cenvat Credit Rules, 2004 but it was silent about provisions of rule 9(1), which specified the documents required for availing cenvat credit.

Reply of the Ministry had not been received (December 2010).

4.6 Excess availing of cenvat credit

Rule 14 of the Cenvat Credit Rules, 2004 provides that where the cenvat credit has been availed or utilised wrongly, the same along with interest shall be recovered from the manufacturer or the provider of output service.

M/s Larsen and Toubro Ltd., New Delhi, in Delhi commissionerate of Service Tax, engaged in providing consulting engineering services and different construction services availed cenvat credit of ₹ 11.23 lakh during the period 2007-08 against the actual entitlement of ₹ 23,848. This had resulted in excess availing of cenvat credit of ₹ 10.99 lakh.

The matter was referred to the department in September 2009, their reply was awaited (May 2010).

Reply of the Ministry had not been received (December 2010).

CHAPTER V NON-PAYMENT OF INTEREST

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. Two cases of non-payment of interest involving revenue of ₹ 32.88 lakh are mentioned below. These observations were communicated to the Ministry through two draft audit paragraphs. The Ministry/department had accepted the audit observations in both draft audit paragraphs of which ₹ 7 lakh had been recovered.

5.1 Immovable property and advertising services

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 5th 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 31st of March itself. Failure to pay service tax by the due date attracts interest at the rate of 13 per cent per annum.

M/s Hyderabad Metro Development Authority (HMDA), in Hyderabad-II commissionerate, engaged in rendering of renting of immovable property service and sale of space for advertisement service, paid service tax of ₹ 287.54 lakh on these services for the years 2007-08 and 2008-09 beyond due dates, with delays ranging from 30 to 727 days. Interest of ₹ 19.36 lakh thereon was required to be recovered from the assessee.

When we pointed this out (September 2009), the department accepted the audit observation and reported (June 2010) that action was being initiated to recover interest for period of delay. Further development was awaited (December 2010).

Reply of the Ministry had not been received (December 2010).

5.2 Storage and warehousing services

M/s AM Enterprises, in Haldia commissionerate and M/s BPCL, Kolkata, in Kolkata service tax commissionerate, were registered service tax payers of port service and Storage and warehousing services respectively. During the period April 2007 to March 2009, M/s AM Enterprises, collected advances for services to be provided but paid the service tax later on finalization of bills with their customers. In the case of M/s BPCL, service tax on storage and warehousing for the period 2004-05 to 2006-07 (up to January 2007) was paid in March 2007. The delay in payment varied from one month to twenty four months. The non payment of interest on such belated payments of service tax was ₹ 2.28 lakh and ₹ 6.52 lakh respectively.

When we pointed this out (July 2009 and December 2008), the department while admitting the observations reported (October 2009 and March 2010) recovery of ₹ 7 lakh for the period 2004-05 to 2008-09 in the first case and stated that show cause cum demand notice in the second case was being issued.

Reply of the Ministry had not been received (December 2010).

New Delhi
Dated :

(SUBIR MALLICK)
Principal Director (Indirect Taxes)

Countersigned

New Delhi
Dated :

(VINOD RAI)
Comptroller and Auditor General of India

Glossary of terms and abbreviations

Abbreviated form	Expanded form
Board	Central Board of Excise and Customs
commissionerate	Commissionerate of central excise/service tax
ELT	Excise Law Times
GTA	Goods transport agency
Ltd.	Limited
Pvt.	Private
SCN	Show cause notice
the Ministry	The Ministry of Finance