

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was leviable to service tax with effect from 9 July 2004 i.e., the day exemption notification dated 21 August 2003 was rescinded.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).