



## CHAPTER X MISCELLANEOUS TOPICS OF INTEREST

### 10.1 Non payment of service tax on CCS by sub contractor

The Board's Circular No.96/7/2007-ST dated 23 August 2007 stipulates that where a taxable service provider outsources a part of the work by engaging another service provider (sub-contractor), the sub-contractor has to pay service tax on services provided by him.

As per Section 65(25b) of Finance Act, 1994, CCS includes construction of a pipe line or conduit used or intended for commerce or industry.

**10.1.1** M/s Dharti Dredging and Infrastructure Ltd, in Hyderabad-II commissionerate, was awarded a sub contract valued at ₹ 32 crore by M/s Punj Lloyd Ltd. for execution of pipeline trenching and back filling work. This was a part of the main contract of laying of 20 gas pipelines from Uran to Trombay. The assessee received payment during the period April 2005 to March 2008 for execution of work but did not pay service tax of ₹ 3.85 crore. The assessee was also liable to pay interest of ₹ 83.74 lakh and penalty upto ₹ 3.85 crore.

On this being pointed out by us (September 2008), the department accepted the observation (April 2009) and intimated that SCN for ₹ 3.85 crore had been issued (March 2009).

**10.1.2** During the test check of records of M/s Hindustan Steelworks and Construction Ltd. in Raipur commissionerate, we observed that M/s Sunil Hi Tech Engineers Ltd. provided services as subcontractor of M/s Hindustan Steelworks for which they received ₹ 7.65 crore during the year 2007-08. The subcontractor did not charge any service tax from the assessee. It is evident that the subcontractor has not paid the service tax of ₹ 94.56 lakh. Interest of ₹ 12.29 lakh and penalty upto ₹ 94.56 lakh was also leviable.

**10.1.3** M/s Jain Infra Projects Ltd., in Division-III of Kolkata ST commissionerate, engaged in providing CCS as a 'sub-contractor', received payment of ₹ 5.09 crore for services provided but did not pay service tax of ₹ 62.66 lakh during the period April 2006 to March 2008. Interest of ₹ 12.20 lakh and penalty was also leviable.

## 10.2 Non payment of Service Tax by contractor

**10.2.1** The Air Force allotted the work of construction of dwelling units and external services for officers and airmen at Chandigarh to M/s Megh Raj Bansal, Manimajra, in Chandigarh commissionerate, in June 2006. We found that the contractor received a sum of ₹ 21.72 crore from Indian Air Force upto June 2008 on which service tax of ₹ 2.68 crore was neither charged by the contractor nor paid by the recipient of services.

On being pointed out by us (December 2008), the department intimated (April 2009) that a SCN for ₹ 2.68 crore (without allowing abatement) had been issued (April 2009). Further progress was awaited (December 2010).

**10.2.2** M/s. Maytas Infra Ltd., in Hyderabad II commissionerate, received ₹ 92.28 crore during January 2006 to March 2008 for construction of staff quarters for IIT, Chennai and armed forces but did not discharge the service tax liability of ₹ 3.61 crore. The assessee was also liable to pay interest of ₹ 46.93 lakh and penalty upto ₹ 3.61 crore.

## 10.3 Import of service

Section 66A of Finance Act, 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.

**10.3.1** M/s. Nagarjuna Constructions Company Limited, in Hyderabad II commissionerate, engaged the services of persons from outside India and not having office in India, as lead managers and paid an amount of ₹ 12.99 crore as commission. Although service tax of ₹ 1.32 crore was payable, the assessee paid an amount of ₹ 25 lakh only in November 2007 leaving a balance of ₹ 1.07 crore. The assessee was also liable to pay interest of ₹ 13.76 lakh and penalty upto ₹ 1.07 crore.

**10.3.2** In another case, M/s Aliens Developers (P) Ltd. in Hyderabad IV commissionerate, received architectural services from four foreign companies who were not having offices in India during the year 2006-07 and 2007-08 and paid ₹ 4.58 crore as service charges but did not discharge service tax liability of ₹ 56.13 lakh. The assessee was also liable to pay interest of ₹ 7.30 lakh and penalty upto ₹ 56.13 lakh.

#### 10.4 Issue of incorrect SCN

M/s Bharucha & Motiwala Poona Pvt Ltd., in Pune III commissionerate, engaged in providing CCS, paid service tax on abated value of service provided during the period March 2006 to June 2006 but also availed cenvat credit on input services. The Department noticed the irregularity and directed the assessee to pay the differential amount of service tax on the basis of gross value instead of paying differential service tax, the assessee paid the amount of cenvat credit availed during March 2006. The Department issued a Show Cause Notice demanding the differential service tax for the month of March 2006 only. The SCN should have covered the period from April 2006 to June 2006 also as the assessee had continued to avail and utilise the cenvat credit on input services during the period.

Due to this non-inclusion, the demand of ₹ 39.63 lakh including interest had not been raised.

#### 10.5 Non-filing of return electronically

According to Notification No. 27/2006-ST dated 21 September 2006, an assessee, who has paid service tax of rupees fifty lakh or above in the preceding financial year or has already paid service tax of rupees fifty lakh in the current financial year, shall deposit the service tax to be paid by him electronically, through internet banking with effect from 1 October 2006.

M/s National Building Construction Company Ltd., in Raipur commissionerate, paid service tax of ₹ 55.40 lakh during 2007-08 through GAR-7 challan and not electronically, which was in contravention to the notification.

Similarly M/s Tirath Ram Ahuja Private Ltd., in Delhi ST commissionerate, also had not used the e-payment option from October 2006 onwards though the assessee had made service tax payment of more than ₹ 50 lakh during the year 2005-06.

#### 10.6 Difference in figure as shown in ST-3 returns with TR-6 challans

**10.6.1** We compared the returns and the challans submitted by M/s. Ahluwalia Contracts (India) Ltd., in Division-II of Kolkata ST commissionerate and found that a return filed in March 2006 showed that service tax and education cess of ₹ 43.53 lakh and ₹ 0.87 lakh respectively were paid through challan no. 044/01/1036/06-07. However, the challan showed that service tax and education cess amounting to ₹ 21.05 lakh and ₹ 0.42 lakh were actually deposited. This had resulted in short payment of service tax including education cess of ₹ 22.93 lakh. The assessee was also liable to pay interest of ₹ 5.97 lakh and penalty upto ₹ 22.93 lakh.

Reply of the department was awaited (December 2010).

**10.6.2** M/s Gannon Dunkerley Company Limited, in Delhi commissionerate, had enclose challans that were less than the amount shown

in the returns during the financial year 2006-07 by an amount of ₹ 158.24 lakh.

On this being pointed out by us (February 2008), the department intimated (April 2010) that the assessee had furnished copies of challans for ₹ 149.35 lakh but had not given any reply for the remaining amount of ₹ 8.89 lakh. Thus, the short payment of ₹ 8.89 lakh was recoverable with applicable interest and penalty.

**New Delhi**  
**Dated :**

**(SUBIR MALLICK)**  
**Principal Director (Indirect Taxes)**

**Countersigned**

**New Delhi**  
**Dated :**

**(VINOD RAI)**  
**Comptroller and Auditor General of India**