



## CHAPTER III ABATEMENT

### 3.1 Abatement

As per departmental notifications for CON/CCS, the service provider has the option to claim abatement of 67 per cent of the gross amount charged and pay tax on the balance, provided he has not availed cenvat credit for inputs or capital goods or input services.

We observed irregular availing of abatement resulting in short payment of service tax of ₹ 170.44 crore in 127 cases. Interest of ₹ 13.53 crore and penalty upto ₹ 170.34 crore is also leviable in these cases. Some of the cases are cited by way of illustrations.

#### 3.1.1 *Simultaneous availing of cenvat credit and abatement*

**3.1.1.1** M/s Della Technica & Interior Designers Construction Pvt Ltd., in Division I of Mumbai commissionerate, had availed the benefit of 67 per cent abatement as per the above notification in respect of all projects while simultaneously availing cenvat credit of service tax paid on input services, during the period from March 2006 to March 2008. In view of the proviso to the notification, the benefit of abatement was not available to the assessee and tax was payable on the gross value of the contracts. This resulted in short payment of service tax by ₹ 7.59 crore, including interest.

On this being pointed out by us, the department accepted the audit observation and intimated that SCN for ₹ 6.36 crore had been issued and the assessee had agreed to pay the balance of ₹ 30.38 lakh.

**3.1.1.2** Similarly in another case M/s Shapoorji Pallonji & Co. Ltd, in Delhi ST commissionerate, availed abatement as well as cenvat credit on inputs during the period April 2006 to March 2007. This resulted in short payment of service tax of ₹ 1.75 crore. Besides, interest of ₹ 45.47 lakh and penalty upto ₹ 1.75 crore were also leviable.

When we pointed this out in August 2008, the department replied (April 2010) that assessee had stated that in projects where abatement was taken, cenvat credit had not been taken. The department did not verify the reply of assessee before replying to the audit observation. This reply could not be verified by us as the project wise details of cases wherein abatement was taken was not furnished.

Details of some more cases are tabulated below: -

**Table No. 5**

(Amount in lakh of rupees)

Sl. No.	Name of Assessee & Commissionerate	Period during which abatement taken	Also availed cenvat credit on	Short payment of service tax	Interest	Penalty
1.	M/s ALSTOM Projects India Pvt. Ltd. in Delhi ST	04/2006 to 03/2007	Input Service	329.76	60.73	329.76
2.	M/s B L Kashyap & Sons in Delhi ST	04/2006 to 10/2007	Input Service	226.10	58.79	226.10
3.	M/s Larsen & Toubro Ltd. (ECC Division) in Chennai ST	10/2005 to 03/2006	Input Service	361.70	141.06	361.70
<b>Total</b>				<b>866.36</b>	<b>247.29</b>	<b>866.36</b>

Replies of the department in respect of cases at Sl. No. 1 and 2 were awaited (December 2010). In respect of the case at Sl. No. 3 on being pointed out (May 2009), the department replied that upto February 2006, the assessee availed and utilised cenvat credit under notification dated 10 September 2004 and utilised the balance cenvat credit during March 2006.

The reply of department was not acceptable for the reasons (i) abatement was available to the assessee if no cenvat credit is availed on inputs, capital goods or input services; (ii) the assessee had no unutilised/accumulated credit at the end of February 2006, and (iii) the condition for availing abatement notification was not fulfilled.

### **3.1.2 Value of goods and material not included in gross value of service**

When service tax is paid on abated value, the quantum of abatement is calculated on the gross amount charged which has to include the value of goods and material supplied or provided or used for providing the taxable service by the service provider.

**3.1.2.1** M/s B.P. Construction, Bhiwadi in Jaipur I commissionerate provided CCS services to M/s. Gems Cab Industrial, Bhiwadi, a manufacturer engaged in manufacture of insulated wire and cable and paid service tax of ₹ 6.94 lakh on abated value of service charges of ₹ 212.41 lakh. Scrutiny of records revealed that the cost of materials supplied by the manufacturer amounting to ₹ 255.03 lakh was not included into the gross receipt for charging service tax which led short payment of service tax ₹ 9.90 lakh. Interest of ₹ 4.28 lakh is also leviable under section 75 of Finance Act.

On this being pointed out (July 2009), the department reported (March 2010) recovery of service tax of ₹ 9.90 lakh and interest of ₹ 3 lakh. It was also intimated that efforts are being made to recover the balance interest of ₹ 1.28 lakh.

**3.1.2.2** M/s. Kunnel Engineers and Contractors, Ernakulam, in Cochin commissionerate, provider of CCS, CON and WCS had also provided services as sub contractor. As a sub contractor, the assessee availed abatement but did not add the value of raw material provided free of cost by main contractor/builder. This resulted in reduction of the gross amount charged and

consequent reduction in abated value on which tax was paid. Therefore, the assessee was liable to pay additional service tax after adding the value of free goods and re-working the abatement and tax payable.

In other similar cases involving M/s. National Building Construction Ltd. (site office at Kohra) and M/s Kirloskar Brothers Ltd. both in Raipur commissionerate and M/s L&T Limited (ECC Division), M/s B R Kohli Construction Pvt. Ltd. and M/s Toyota Construction Company in Hyderabad II, Delhi ST and Nagpur commissionerates respectively, abatement was taken without adding value of material received free of cost.

### 3.1.3 ***Incorrect availing of abatement on completion and finishing service***

The abatement of 67 per cent cannot be taken if the taxable services provided are of the nature of completion and finishing service in relation to building, civil structure or residential complex.

In the following case, the assessee availed the benefit of abatement, which was inadmissible.

M/s Nitson & Amitsu Pvt Ltd, in Division-III of Kolkata ST commissionerate, engaged in providing CCS as well as CON, had provided 'completion and finishing' job viz. glazing, metal joinery & carpentry, painting, wall covering etc. of buildings or civil structures and residential complex. The assessee availed the benefit of abatement which was not admissible. This resulted in short payment of service tax ₹ 2.98 crore during the period from April 2006 to March 2008. The assessee was also liable to pay interest of ₹ 32.75 lakh and penalty of ₹ 2.98 crore.

This was pointed out in December 2008, the reply of the department was awaited (December 2010).

Other cases are tabulated below where abatement was taken on similar completion and finishing services.

**Table No. 6**

**(Amount in lakh of rupees)**

<b>Name of Assessee &amp; Commissionerate</b>	<b>Period during which abatement taken</b>	<b>Short payment of service tax</b>	<b>Interest</b>	<b>Penalty</b>
M/s Likproof in Mumbai ST	04/2005 to 03/2008	265.30	34.49	265.30
M/s Lloyds Insulations India Ltd. In Mumbai III	04/2005 to 03/2008	114.42	14.87	114.42
M/s Jayant Furnishers in Mumbai III	04/2005 to 03/2008	88.82	11.55	88.82
M/s Aline Curtain Walls Pvt. Ltd. In Kolkata ST	04/2005 to 03/2008	151.45	39.80	151.45
M/s Millennium Constructions Pvt. Ltd. In Delhi ST	04/2006 to 03/2008	98.72	12.83	98.72
<b>Total</b>		<b>718.71</b>	<b>113.54</b>	<b>718.71</b>

When we pointed this out, in the case of M/s. Likproof, the department accepted the audit observation and intimated that SCN has been issued to both the assessees.

The replies of the department in the remaining three cases were awaited (December 2010).

### **3.1.4 Incorrect availing of abatement on site formation and clearance service**

The abatement of 67 per cent is applicable only to CCS and CON and not to “site formation and clearance, excavation and earthmoving and demolition services.”

**3.1.4.1** M/s Inkor Auto Tech India (P) Ltd., in Chennai (Service Tax) commissionerate, had executed exclusive site preparation work during April 2007 to March 2008 and classified the works under CCS and availed of abatement which was inadmissible. This resulted in short payment of tax of ₹ 71.69 lakh.

This observation was pointed out to the department in May 2009. The reply was awaited (December 2010).

**3.1.4.2** Similarly M/s Subrahramanyan Construction Co (P) Ltd. (B-Division), in Chennai commissionerate, also executed exclusive site preparation work during April 2007 to March 2008 and classified the works under CCS and availed the abatement which was not in order. This resulted in short payment of tax of ₹ 14.07 lakh.

On this being pointed out (May 2009), the department replied (July 2009), that the assessee had carried out work in stages. As per Board’s clarification in paragraph 3.2 of the letter dated 28 February 2006, a composite service even if it consists of more than one service should be treated as single service based on the main or principle service.

The reply of the department was not acceptable because the clarification mentioned by the department was only applicable for Composite work order. In the instant case the assessee received work orders for different works and one among those orders was ‘site formation and clearance’. Hence Board’s clarification could not be applied in the instant case.

## **3.2 Ambiguity on availing of cenvat credit on capital goods under abatement scheme**

As per departmental notifications for CON/CCS, a service provider has the option to claim abatement of 67 per cent of the gross amount charged and pay tax on the balance, provided he has not availed cenvat credit for inputs or capital goods or input services.

M/s. Consolidated Construction Consortium Ltd., in Chennai ST commissionerate, paid tax on gross value for some contracts and availed cenvat credit. For other contracts, it paid tax on abated value. For these

contracts it did not avail cenvat credit on input/input services. However, it availed cenvat credit of ₹ 51.69 lakh on capital goods which were used for both kinds of contracts i.e. those with ST paid on full value as well as contracts under abatement scheme and cenvat credit of ₹ 129.90 lakh on capital goods used exclusively in abatement contracts. Since Cenvat credit had been availed, the benefit of abatement was not admissible. This resulted in non-payment of ST of ₹ 55.93 crore on the abated value. Interest of ₹ 13.45 crore and penalty of ₹ 55.93 crore were also payable.

The department stated in reply that since the assessee had neither availed nor utilised the cenvat credit in respect of contracts in which they had discharged duty under the abatement scheme, the credit availed by the assessee in respect of contracts where they had paid tax at full rate was in order. Therefore, the question of demanding tax did not arise.

The reply of the department was factually incorrect, because the assessee had himself intimated the department through letter dated 21 June 2007 that it had availed cenvat credit of ₹ 51.69 lakh on capital goods used for both abatement and gross value contracts and availed credit of ₹ 129.90 lakh on capital goods used exclusively for abatement contracts.