



CHAPTER IV EXEMPTION

4.1 Exemption

The services provided for construction of roads, airport, railways, transport terminals, bridges, tunnel and dam are not included in any of three construction services i.e. WCS, CCS and CON.

We observed irregular availing of exemption resulting in short payment of service tax of ₹ 19.24 crore in 15 cases. Interest of ₹ 3.11 crore and penalty of ₹ 19.24 crore is also leviable in these cases.

4.1.1 EPC project relating to canal work

Works contract services includes engineering, procurement and construction or commissioning (EPC) projects and the services rendered in connection with such projects are liable for service tax. M/s Lanco Infratech Ltd and M/s Larsen & Toubro Ltd (ECC Division), in Hyderabad II Commissionerate, executed EPC projects relating to canal works for irrigation projects undertaken by Government of Andhra Pradesh but these assesseees did not discharge service tax liability on gross consideration of ₹ 62.61 crore and ₹ 272.66 crore respectively received by them during the period July 2007 to March 2008 treating the project exempted from levy of service tax. The service tax payable under composite scheme was not paid by M/s Lanco Infratech Ltd and M/s Larsen & Toubro Ltd was of ₹ 1.65 crore and ₹ 5.62 crore respectively. These assesseees were also liable to pay interest of ₹ 94.45 lakh and penalty of ₹ 7.27 crore.

On this being pointed out by us (September 2008 and February 2009), the department accepted the audit observation and reported (December 2008) that SCN for ₹ 1.93 crore had been issued to M/s Lanco Infratech Ltd. The action taken in the case of M/s Larsen & Toubro Ltd had not been reported (December 2010).

4.1.2 M/s Lanco Infratech Ltd, in Hyderabad II Commissionerate, entered into contracts for construction of power projects and did not discharge service tax liability on the works relating to roads, dams, dam facilities, associated works, tunnels, bridges, etc. being constructed for the power project on the ground that they fall outside the scope of definition of CCS. This is incorrect as these works were undertaken in relation to setting up of power projects. Service tax of ₹ 7.73 crore was not paid during the period 2005-06 to 2007-08. The assessee was also liable to pay interest of ₹ 1.70 crore and penalty upto ₹ 7.73 crore. The observation was pointed out to the department in September 2008. The reply was awaited (December 2010).

4.2 Road works

The Board has clarified that if a contract for the construction of a commercial complex is a single contract and the construction of road is not recognised as a separate activity as per the contract, then the Service Tax would be leviable on gross amount charged for construction including the value of construction of roads.

Scrutiny of the contract agreement entered between M/s Jai Prakash Enterprises, assessee in Delhi ST commissionerate, and M/s Jay Pee Greens Limited in August 2004 revealed that the assessee had entered into a comprehensive agreement for development of nine Hole Golf Course and public park at Greater Noida at a total contract price of ₹ 76.72 crore and the construction of road was not recognised as a separate activity. The assessee, however, availed irregular exemption of ₹ 24.40 crore on account of construction of road during the period September 2004 to March 2008. This resulted in short payment of Service Tax of ₹ 99.53 lakh. Interest of ₹ 12.94 lakh and penalty upto ₹ 99.53 lakh were also leviable.

This was pointed out in March 2009, the reply of the department was awaited (December 2010).

4.3 Misclassification of components

Similarly, M/s Ramky Infrastructure Limited (Pharma city), in Visakhapatnam II commissionerate, entered into an agreement with M/s Ramky Pharma City (India) Limited, for construction of Pharma City and did not pay service tax on value of consideration of ₹ 61.14 crore received during the period September 2004 to March 2008 on certain components such as landscaping and arboriculture, roads and site grading etc. relating to the same work. As these components were executed in connection with construction of the single complex i.e. Pharma City, the entire work as a whole was taxable and tax exemption was not available on the components. Hence, service tax of ₹ 2.30 crore was payable. The assessee was also liable to pay interest of ₹ 29.91 lakh and penalty of ₹ 2.30 crore.