



## CHAPTER V ADVANCE

### 5. Service tax on advance payments

As per amended rule provisions applicable from 16 June 2005 when payment relatable to taxable services are received during the course of provision of service, service tax is liable to be paid to the extent of receipt of payment. In other words, a person is liable to pay service tax as soon as the consideration towards the taxable services is received.

**5.1** We found instances where service tax was not paid on advances received.

- During 2005-06 to 2007-08 M/s Larsen and Toubro Ltd., in Kolkata ST commissionerate, received advance payment for CCS from M/s Bhusan Steel & Strips Ltd., M/s Tata Steel Ltd. and M/s NTPC etc. It did not pay applicable service tax of ₹ 18.13 crore on receiving the advances.
- During April 2007 to February 2008 M/s. Larsen & Toubro Ltd. in Ahmedabad ST commissionerate, received advances of ₹ 35.01 crore for CCS and ₹ 160.80 crore for WCS. It did not pay applicable service tax of ₹ 7.63 crore on receiving the advances.

When we pointed this out (April 2009), the department (Ahmedabad ST commissionerate) reported (August 2009) that two SCNs for non payment of service tax of ₹ 16.72 crore and ₹ 6.88 crore had been issued.

- M/s Tarapore and Company, in Jamshedpur commissionerate, received advances of ₹ 1.05 crore and ₹ 95.70 lakh in November 2006 and February 2007 respectively for providing CCS. It did not pay service tax of ₹ 24.78 lakh.
- M/s Anant Raj Construction & Developers Pvt. Ltd., registered under WCS, in Delhi commissionerate, formed on 4 October 2007, with a paid up capital of ₹ 50 lakh, as a wholly owned subsidiary company of M/s Anant Raj Industries Ltd for the purpose of providing WCS to their holding company for construction of various Building/civil structures. The assessee received amounts from its holding company and accounted for them under the head 'Loan', which amounted to ₹ 57.11 crore as on 31 March 2008. These "loans" were actually advances received from holding company because as per contract the assessee was provided advances for supply of goods and construction work. By treating the advances as loans, they did not pay service tax of ₹ 2.33 crore.

The department replied (February, 2009) in respect of the second case that the assessee had stated that he was discharging his service tax liability on the adjustment bills issued after executing the work. The reply of the assessee confirmed that it was not complying with the provisions of the Act on the advances received. In respect of the fourth case, department replied (April 2010) that SCN had been issued to the assessee.

In all the above cases, the department had to ascertain the time period between the receipt of the advance and dates when the service tax was paid against these amounts. This represented the delay in payment for which interest had to be charged. In case some part of tax had not been paid, it had to be recovered with appropriate interest and penalty.

## **5.2 Short payment of Service tax on advance as a result of change in rate of duty**

The Board clarified in July 2005 that, when advance payment is received for a service which is non-taxable at the time of receipt of payment but becomes taxable during the course of provision of service, such payment would have to be apportioned appropriately between the two periods and that part of service provided on or after the service becomes taxable services, is only liable for service tax. Similarly, when payment is received in advance for services to be provided but subsequently the services are not actually provided, then in such cases service tax paid is liable to be refunded.

It follows that such apportioning has also to be done in case of advance payments received for a taxable service on which service tax has been paid at the prevailing rate and the rate of service tax is enhanced subsequently, while the services being provided. Service tax is payable at enhanced rates on the amount of advance payment which relates to the service provided after date of enhancement.

We found from the ST-3 returns of two service providers of CCS and WCS, M/s Bharat Heavy Electrical Ltd (BHEL) (PSWR), Nagpur and M/s Sunil Hitech Engineers Ltd, in Nagpur commissionerate, that they had received advance payment of ₹ 72.01 crore and ₹ 34.97 crore during the periods June 2005 to April 2006 and September 2007 to February 2008 respectively for services to be provided. Out of these amounts, ₹ 4.03 crore and ₹ 34.18 crore respectively could be adjusted till the date of enhancement of rate of service tax under CCS (18.4.2006) and WCS (1.3.2008) respectively. The balance of advance of ₹ 68.77 crore, service was rendered by the assessee after the date of enhancement of rate of service tax. However the assessee paid the service tax on the entire advance at pre-revised rates and did not pay the differential service tax after date of enhancement of rates. This resulted in short payment of service tax of ₹ 1.40 crore (₹ 1.39 crore and ₹ 1.62 lakh). Interest of ₹ 54.09 lakh was also payable.

On this being pointed out by us (March 2008 and February 2009), the department replied (July 2008 and February 2009) in the case of M/s Bharat Heavy Electrical Ltd (BHEL) that there was no provision to demand service tax at enhanced rate, for which service was rendered after the date from which the rate of tax was enhanced.

Reply of the department was not tenable in view of Board's clarification of July 2005.