



CHAPTER VII INCORRECT CLASSIFICATION OF SERVICE

7.1 Switchover to WCS composition scheme

While introducing the new service WCS through the Finance Act, with effect from 1 June 2007, the Government also introduced a composite scheme from the same date. It provided an option to service provider to pay service tax at the rate of two per cent (raised to four per cent with effect from 1 March 2008) on the gross amount charged for the works contract.

The Board clarified in January 2008 that a service provider who had paid service tax prior to 1 June 2007 for the taxable services provided on contracts for erection, commissioning or installation services, CCS or CON, as the case may be, was not entitled to change the classification of the same contract on or after 1 June 2007 and were not entitled to avail the composition scheme under WCS.

We identified 60 cases where the service providers had paid service tax under CCS and CON contracts before 1 June 2007. After 1 June 2007, they treated all these ongoing contracts as WCS and paid tax @ 2 per cent under composition scheme. This kind of switchover was irregular. This resulted in short payment of service tax of ₹ 95.74 crore, interest of ₹ 14.56 crore and penalty upto ₹ 95.74 crore could be levied.

In one such case, M/s Lanco Infratech Ltd, in Hyderabad II commissionerate, engaged in providing CCS paid service tax under this service up to May 2007 but started paying service tax at 2 per cent under WCS for the ongoing works with effect from 1 June 2007 even though such change over was not permissible. The assessee provided CCS of ₹ 229.99 crore during the period July 2007 to March 2008 and was liable to pay service tax of ₹ 9.34 crore on ₹ 75.57 crore i.e. 33 per cent of the amount of service provided but paid service tax of ₹ 1.56 crore only. Thus, there was short payment of ₹ 7.78 crore due to the incorrect classification.

On this being pointed out by us (March 2008), the department accepted (November 2008) the observation and stated that SCN for ₹ 7.78 crore along with interest and penalty had been issued.

Some other similar cases are tabulated below:-

Table No. 7

(Amount in lakh of rupees)

Assessee and commissionerate	Total value of service provided after 1 June 2007	Tax payable under CCS/CO N	Tax actually paid by treating under WCS	Short payment		
				ST	Interest	Penalty
M/s. Ahluwalia Contract (India) Ltd. In Noida	5929	733	122	611	79	611
M/s. JMC Projects India Ltd. in Ahmedabad ST	17448	712	360	352	46	352
M/s. Millenium Construction (Private) Limited in Gurgaon	6036	246	187	59	8	59
M/s. Jayant Furnishers in Mumbai ST	2124	263	44	219	28	219
M/s. Subhash Project and Marketing in Kolkata ST	216	87	44	43	13	43
M/s Essar Construction India Ltd, in Rajkot	15463	1893	319	1574	409	1574

7.2 Input credit taken under composition scheme

A service provider who opts for the Works' Contract Composition Scheme is not permitted to take cenvat credit of duties or cess paid on any inputs used in contract.

M/s. Rohan Builders (India) Pvt. Ltd, in Pune III commissionerate, paid service tax of ₹ 26.67 lakh under Works Contract Composition Scheme for a project of M/s Suessen Asia, Satara. We, found that the assessee had availed cenvat credit on inputs used for project and was ineligible for the composition scheme. He was liable to pay service tax of ₹ 1.60 crore at the rate applicable for CCS on the total receipt of ₹ 12.95 crore.

This resulted in short payment of ₹ 1.33 crore and interest of ₹ 13.48 lakh.

7.3 Evasion of service tax due to treating of service as sale

A works contract consists of two components, transfer of property in goods and works contract services provided. Where VAT or Sales Tax has been paid on the actual value of transfer of property in goods, this actual value shall be deducted from the total amount of the works contract to determine the value of services provided under the contract.

M/s Anant Raj Construction & Development Pvt. Ltd., was registered under WCS in Delhi ST commissionerate, for the period 2007-08. We found that it got some items of work done by sub contractors such as providing & laying of cement concrete of specified strength prepared through batch plant and providing of centring and shuttering done by sub-contractors. The sub-contractors charged works contract tax from the assessee in lieu of VAT/Sales Tax under composition scheme of VAT/Sales Tax. The assessee took cenvat credit of input service for the tax paid to the sub-contractors. Thereafter, the assessee treated these works as a sale of material to the final users and did not pay any service tax. The total value of such works aggregated to ₹ 6.94 crore. It was clear that this work done by the sub contractors included goods and services and could not be treated as a sale by the assessee. Since the sub contractors had charged the assessee under composite scheme of VAT/Sales Tax, the value of goods and the services had not been segregated and the assessee had to pay service tax of ₹ 29.74 lakh under WCS. This resulted in short payment of service tax of ₹ 29.74 lakh. Besides, interest of ₹ 11.72 lakh and penalty were also recoverable.

When we pointed this out (March 2009), the department replied (April 2010) that SCN had been issued.