



## CHAPTER IX SERVICE TAX COLLECTED BUT NOT REMITTED

### 9. Service tax collected but not remitted to the Government

Section 73 A of the Finance Act, 1994 (as amended from 18 April 2006), provides that any person, who is liable to pay service tax and has collected any amount in excess of the service tax assessed, shall forthwith pay the amount so collected to the credit of the Central Government.

We noticed that in 14 cases, service providers of CCS, CON and WCS had collected service tax of ₹ 3.87 crore but did not remit it to the Government account. They were also liable to pay interest of ₹ 60.74 lakh and penalty upto ₹ 3.87 crore. Three cases with a financial implication of ₹ 53.80 lakh were accepted and excess service tax recovered by the department.

A few illustrative cases are mentioned below: -

**9.1** M/s Hindustan Steelworks and Construction Ltd., in Raipur Commissionerate, provided CCS to Bhilai Steel Plant and charged service tax at the rate of 12 per cent on gross amount but paid service tax after claiming abatement. During the period 2005-06 to 2006-07 the assessee charged service tax of ₹ 1.07 crore against construction service of ₹ 7.80 crore provided but remitted only ₹ 29.48 lakh. This led to short remittal of ₹ 77.32 lakh (excluding education cess). The assessee was also liable to pay interest of ₹ 20.10 lakh and penalty up to ₹ 77.32 lakh.

**9.2** M/s Ahluwalia Contracts Ltd, in Ludhiana Commissionerate, was engaged in providing taxable services under CCS. We found that the assessee had provided taxable service of ₹ 34.79 crore and charged service tax of ₹ 1.42 crore (at the rate of 12.36 per cent on abated value) from August 2007 to March 2008. However, it had deposited service tax of ₹ 71.57 lakh (at the rate of 2.06 per cent up to February 2008 and at the rate of 4.12 per cent for March 2008) during the above said period. This resulted in undue retention of service tax of ₹ 70.35 lakh which was required to be recovered along with interest of ₹ 9.15 lakh and penalty upto ₹ 70.35 lakh.

**9.3** M/s. BHEL, in Kolkata ST Commissionerate, engaged in providing CCS, had entered into a contract with West Bengal Power Development Corporation Ltd. In the letter of intent (March 2007) it was fixed that all applicable taxes and duties should be as per prevailing rates on date of offer (27 October 2006) and in case of any decrease in rate of taxes and duties, the excess amount of such duties and taxes shall be refunded by the assessee. We found that the total contract price was ₹ 197.07 crore including applicable service tax at the rate of 12.24 per cent when the contract was signed. Subsequently, the particular project was converted into WCS and service tax was paid by the assessee under composition scheme at the rate of 2.06 per cent on gross amount received. The excess service tax collected was neither refunded to the West Bengal Power Development Corporation Ltd nor

deposited with the Government exchequer. This resulted in short payment of service tax of ₹ 39 lakh. The assessee was also liable to pay interest of ₹ 10.15 lakh and penalty up to ₹ 39 lakh.

**9.4** M/s Vijaynath Interiors and Exteriors Pvt. Ltd, in Mumbai I division under Mumbai ST commissionerate, had, paid service tax of ₹ 74.46 lakh for the half year ending March 2008. ST-3 return for the said half year was not filed by the assessee. On reconciliation with the bank statements and the details of the receipts during the said period, it was seen that the assessee had collected an amount of ₹ 2.77 crore during the month of March 2008 which included service tax of ₹ 34.18 lakh. This was over and above the tax paid of ₹ 74.46 lakh. The service tax of ₹ 34.18 lakh was collected but not paid till the date of audit (August 2008).

On this being pointed out by us (August 2008), the assessee paid service tax of ₹ 34.18 lakh and interest of ₹ 0.89 lakh (August 2008).