

CHAPTER IV
NON-PAYMENT OF SERVICE TAX BY
REGISTERED SERVICE PROVIDERS

4.1 Courier service

4.2 Works contract service and construction of complex service

4.3 Business auxiliary service

4.4 Renting of immovable property

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Service tax is levied on specified services. The rate of tax was fixed at five per cent upto 13 May 2003, eight per cent from 14 May 2003, 10 per cent from 10 September 2004, 12 per cent from 18 April 2006 and 10 per cent from 24 February 2009.

We noticed a few cases of non-levy of service tax resulting in non-payment of service tax of ₹ 5.64 crore, which are described in the following paragraphs. We communicated these observations to the Ministry through five draft audit paragraphs. The Ministry/Commissionerate had accepted (December 2011) the audit observations in four draft audit paragraph with money value of ₹ 5.23 crore.

4.1 Courier service

Under section 65(33) of the Finance Act, 1994, ‘courier agency’ means any person engaged in the door-to-door transportation of documents, good or articles utilizing the services of a person, either directly or indirectly, to carry or accompany such document, goods or articles.

M/s Expressit Courier Services Private Ltd. in Service Tax, Mumbai I commissionerate, engaged in providing ‘Courier Services’ filed (May 2010) belatedly, the service tax returns for the half yearly periods ending March 2009, September 2009 and March 2010 in May 2010. We found that the assessee had not paid the service tax shown in the returns for the period from November 2008 to March 2010, which amounted to ₹ 1.42 crore. Although the omission could have been ascertained by preliminary scrutiny of the returns, the Commissionerate had failed to detect the non-payment of tax and had not issued any show cause notice. Non payment of service tax of ₹ 1.42 crore was recoverable with interest.

When we pointed this out (June 2010), the Commissionerate admitted the audit objection (June 2011) and stated that show cause cum demand notice had been issued in May 2011 to recover service tax of ₹ 2.35 crore alongwith interest and penalty.

The Commissionerate did not intimate the action taken on the officials who had failed to detect the non-payment of tax from preliminary scrutiny of the returns. Even after we pointed out the non-payment, the officials concerned issued the show cause notice after almost a year.

The reply of the Ministry had not been received (December 2011).

4.2 Works contract service and construction of complex service

Under section 65(105) (zzzza) of the Finance Act, 1994 ‘works contract service’ means any service provided or to be provided to any person by any other person in relation to the execution of works contract. It excludes contracts for roads, airports, railways transport terminals, bridges, tunnels and dams.

M/s P&R Infra Projects Ltd., Chandigarh in Chandigarh I commissionerate, had provided works contract service and erection and installation service as a sub-contractor to various clients and received an amount of ₹ 74.19 crore during the period April 2007 to March 2010. We found that the assessee had been making delayed payments of tax. After we raised the issue (April 2010), the assessee paid service tax of ₹ 1.88 crore in May and June 2010 but did not pay interest of ₹ 78.48 lakh which was also recoverable due to the delayed payments.

When we pointed this out (March 2011), the Ministry accepted the audit observation and stated that a show cause notice was being issued (December 2011).

4.3 Business auxiliary service

Section 65(19) of the Finance Act as amended in May 2006 defines ‘business auxiliary services to mean any taxable service provided or to be provided to a client by any person for promotion or marketing or sale of goods, promotion or marketing of services or any customer care or recovery of cheques etc., and includes services as a commission agent’.

4.3.1 M/s Ashok Chaturvedi, in Delhi service tax commissionerate, had received payment aggregating to ₹ 2.50 crore from an individual for refraining from participating in various bids during the period 2005-06. By abstaining/refraining from bids on the request of an individual for a consideration, the assessee had indirectly promoted the business of that individual. As such the service rendered by the assessee was classifiable under the head ‘business auxiliary service’ but the assessee had not discharged his service tax liability on the same. Service tax and cess of ₹ 25.50 lakh, besides interest of ₹ 15.19 lakh and penalty were recoverable.

When we pointed this out (June and November 2008), the Commissionerate stated (November 2010) that a show cause notice demanding service tax including cess aggregating to ₹ 25.50 lakh alongwith interest and penalty had been issued to the assessee.

The Ministry in its reply (December 2011) stated that the matter is under examination.

4.3.2 M/s Protech Galvanisers and Fabricators Pvt. Ltd. Bhiwadi in Jaipur I commissionerate, received consideration of ₹ 5.21 crore towards rendering of taxable services under category of Erection, Commissioning, Installation Services and Business Auxiliary Services and also paid freight ₹ 30.69 lakh

related to transportation of goods by road services (as recipient) during the period from October 2009 to March 2010 on which service tax of ₹ 20.74 lakh was liable to be paid but the assessee failed to discharge the liability of service tax. Further, the assessee also did not file half yearly return ST-3 as required under aforesaid provisions.

When we pointed this out (November 2010), the Ministry accepted the audit observation and stated (September 2011) that show cause notice for non payment of service tax was being issued. It also stated that the show cause notice for non submission of service tax returns had already been issued to the assessee.

4.4 Renting of immovable property

As per section 65(90a) of the Finance Act, 1994 'renting of immovable property' service includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business of commerce.

Municipal Corporation, U.T. Chandigarh in Chandigarh I commissionerate, received ₹ 7.60 crore as ground rent during 2007-2009 in respect of hotel sites, but no service tax was paid by the corporation as required under the rules *ibid*. This resulted in non payment of service tax amounting to ₹ 93.97 lakh which was recoverable with interest.

When we pointed this out (November 2010), the Ministry admitted (October 2011) the objection and stated that show cause notice was being issued.