CHAPTER VII
SERVICE TAX UNDER REVERSE CHARGE

7.1 Sales commission, advertisement and customs clearance charges

7.2 Management consultant and intellectual property services

7.3 Commission on export sale

CHAPTER VII
SERVICE TAX UNDER REVERSE CHARGE

Under section 66A(1) of the Finance Act, 1994, where any service specified in clause (105) of section 65 is (a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and (b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India, such service shall, for the purposes of this section, be taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this chapter shall apply.

Rule 2 (l) (d) (iv) of the Service Tax Rules, 1994, stipulates that in respect of taxable service provided by a person, who is a non-resident or is from outside India and does not have an office in India, the person receiving the taxable service in India is liable to pay service tax.

We noticed a few cases of short payment of service tax of ₹ 57.89 lakh, under reverse charge, which are described in the following paragraphs. We communicated these observations to the Ministry through three draft audit paragraphs.

7.1 Sales commission, advertisement and customs clearance charges

M/s Symbiotec Pharma Lab. Ltd., Indore, in Indore commissionerate, engaged in the manufacture of bulk drugs falling under chapter 29 of Central Excise Tariff Act, 1985, paid an amount of ₹ 161.16 lakh in foreign currency on account of services received viz., sales commission, advertisement and customs clearance charges from the foreign service providers during the period from 2006-07 to 2008-09. However, service tax of ₹ 19.92 lakh including cess leviable thereon was not paid. This resulted in non-payment of service tax which was recoverable with interest and penalty.

When we pointed this out (April 2010), the Commissionerate intimated (November 2010) that for the period 2006-07 and 2007-08, the assessee had paid ₹ 3.20 lakh (₹ 1.90 lakh from cenvat account and ₹ 1.30 lakh through PLA) in September 2008 and for the period 2008-09 and 2009-10, he had paid ₹ 15.15 lakh in March and April 2010.

The reply did not settle the issue. For the period from 2006-07 to 2008-09, the assessee paid service tax on taxable service of ₹ 97.68 lakh only instead of on ₹ 161.16 lakh. The reasons for non payment of service tax on the residual amount of ₹ 63.48 lakh had not been disclosed. Moreover, the rate of service

tax during that period was 12 per cent whereas the tax was paid at the rate of 10 per cent. Even the payment of service tax of ₹ 1.90 lakh through cenvat credit account was not acceptable in terms of rule 3(4)(e) of the Cenvat Credit Rules, 2004, as the service tax was being paid for an input service.

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

7.2 Management consultant and intellectual property services

The applicable rate of service tax on taxable services was changed from 12.36 per cent to 10.3 per cent with effect from 24 February 2009.

In M/s Reliance Industries Ltd. Vs the Commissioner of Central Excise, Rajkot {reported in 2008(10) S.T.R. 243 (Tri.-Ahmd)}, it was held that rate of tax prevailing on date of rendering services will be applicable in the absence of a specific provision.

M/s Flakt (India) Ltd. and M/s Vesuvius India Ltd in Kolkata Service Tax commissionerate, had received management consultant and intellectual property services from foreign service providers between January 2008 and January 2009 and paid the service charges in March 2009 and May 2009. We observed that assesses had paid service tax at 10.3 per cent prevailing on the date of payment of service tax instead of 12.36 per cent which was the rate applicable during receipt of the service. This resulted in short levy of service tax of ₹ 21.80 lakh, which was recoverable with interest.

When we pointed this out (October 2009 and February 2010), the commissionerate while not admitting the observation in the first case, stated (February 2010) that the service tax was payable only on receipt of value of the service and the time of providing the service was not relevant. The Commissionerate however admitted (September 2010) the objection against the other assessee. Thus, the Commissionerate took different stands in two different cases.

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

7.3 Commission on export sale

M/s Spray Engineering & Device Ltd., Unit-I Baddi in Chandigarh I commissionerate, received taxable services provided by foreign based agent and showed ₹ 134.86 lakh towards commission on export sale in its Commission Ledger Account for financial year 2006-07 but did not pay service tax of ₹ 16.51 lakh on this amount, which was recoverable alongwith interest.

When we pointed this out (April 2008 and November 2009) the Commissionerate stated (March 2010) that the assessee had actually paid ₹ 131.28 lakh to agent and the difference in amount booked and paid was due to fluctuation in value of foreign currency. The service tax due of ₹ 16.17 lakh had been deposited by the assessee during the year 2008-09. We scrutinised the TR-6 challans and found that the assessee had deposited ₹ 5.17 lakh for unit I and ₹ 11 lakh for its other unit. It was not clear why the service tax was deposited by two units whereas the commission was booked in the ledger account of only unit I. Therefore, we sought from the Commissionerate, the details of service received by each of the two units. Further reply of the Commissionerate was awaited (December 2011).

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

New Delhi **(SUBIR MALLICK)**
Dated : **Principal Director**
(Central Excise and Service Tax)

Countersigned

New Delhi **(VINOD RAI)**
Dated : **Comptroller and Auditor General of India**