

## Chapter 5 : Other topics of interest

### 5.1 Service Tax related compliance issues

#### 5.1.1 Import of services

Section 66A of Finance Act, 1994 (prior to 1 July 2012) and rule 2(1)(d)(G) of Service Tax Rules, 1994 envisage that where any service is provided by a person who has established a business in a country other than India/outside the taxable territory which is received by a person within India/taxable territory, the service recipient shall be liable for payment of Service Tax in relation to any taxable service provided.

(i) Test-check of records of M/s GKN Driveline (I) Ltd. in Delhi-LTU Commissionerate revealed that the assessee's balance sheets for the years 2010-11, 2011-12 and 2012-13 depicted reimbursement of expenses of ` 1.42 crore, ` 1.37 crore and ` 2.66 crore respectively. We observed that the reimbursement of expenses included the charges of Mr. Deog Woo Jung of M/s GKN Driveline Korea Ltd., South Korea and Mr. Raj Kalra of M/s GKN Automotive Ltd., United Kingdom who were working for assessee on contract basis under the secondment. However, the assessee had not paid the Service Tax of ` 61.56 lakh on the reimbursement of expenses made to foreign companies.

We pointed this out in February 2014.

We await the response of the Ministry (October 2014).

(ii) Test check of records of M/s Tata Cummins Ltd. in Jamshedpur Commissionerate revealed that the assessee had paid Service Tax under reverse charge mechanism for gross value of services amounting to ` 28.95 crore and ` 17.12 crore against the royalty paid to M/s Cummins Inc., USA for the period 2011-12 and 2012-13. However, as the assessee had depicted ` 30.38 crore and ` 17.98 crore in the trial balance during the period 2011-12 and 2012-13 against royalty, the resultant short payment of Service Tax was ` 25.26 lakh (worked out on the differential amount of ` 2.28 crore).

We pointed this out in January 2014.

We await the response of the Ministry (October 2014).

#### 5.1.2 Service Tax on remuneration to Directors

As per notification dated 20 June 2012, as amended vide notification dated 7 August 2012, Service Tax is leviable at the applicable rates (on reverse mechanism basis) in respect of services provided or agreed to be provided by a director of a company to the said company.

Examination of records of three assessees revealed that the assessees had made payment of remuneration to its Director(s) under the period covered in audit. However, scrutiny of Service Tax returns and related records revealed that the companies had not paid Service Tax on the remuneration paid. We have depicted the findings in the table below;

**Table No.12**

**Illustrative cases relating to Service Tax on remuneration to Directors**

Name of assessee	Commissi- onerate	Period	Remuneration paid to Directors	ST liability*	Reply of Ministry/ department
M/s Supreme Treves Pvt. Ltd.	Daman	2012- 13	` 5.49 crore	` 67.81 lakh	The Ministry intimated (October 2014) that issue of show cause notice was under process.
M/s Asia Motor Works Ltd.	Rajkot	2012- 13	` 2.51 crore	` 31.05 lakh	Ministry intimated (October 2014) that the matter is under examination.
M/s Shivam Motors Pvt. Ltd.	Raipur	2012- 13	` 1.55 crore	` 19.20 lakh	Ministry intimated (October 2014) that SCN for ` 19.20 lakh has been issued to the assessee.

\* excluding interest and penalty.

**5.1.3 Irregular availing of abatement on goods transport agency services**

Notification No. 26-ST dated 20 June 2012 specified the percentage of abatement/exemption on the value of service received for the purpose of Service Tax payable under Section 66B of the Finance Act. The abatement is subject to the condition as mentioned against such services received. In case of goods transport agency services (GTA), the abatement of 75 per cent of the value of service was subject to the condition that service provider has not availed Cenvat credit on inputs, capital goods and input services used for providing the taxable service under the provisions of the Cenvat Credit Rules, 2004.

(i) During test check of records of M/s Jamna Auto Industries Ltd. in Jamshedpur Commissionerate, we observed that the assessee had availed abatement of ` 3.18 crore on GTA services during the period from July 2012 to March 2013. Since the assessee has not shown any proof regarding non-

availing of Cenvat credit from the service providers, the availing of abatement is not correct. This resulted in short payment of Service Tax of ` 39.26 lakh.

We pointed this out in March 2014.

*The Ministry intimated (October 2014) that the matter is under examination at the concerned range. Some of the service providers have since submitted certificates of non-availment of credit.*

(ii) M/s Denso India Ltd., in Noida Commissionerate, manufacturer of auto parts had availed abatement of ` 2.06 crore on GTA services during the period from July 2012 to March 2013. Since the assessee has not shown any proof regarding non-availing of Cenvat credit from the service providers, the availing of abatement is not correct. This resulted in short payment of Service Tax of ` 25.40 lakh.

We pointed this out in April 2014.

*The Ministry stated (October 2014) that there is no requirement of furnishing any proof as per clarification dated 29 February 2008.*

The reply of the Ministry is not acceptable since the above exemption notification imposes a condition as a pre-requisite for claiming the abatement viz. non-availing of Cenvat by service provider. Hence, submission of proof by service receiver is required to avail abatement with effect from 1 July 2012. Further, the Ministry has confirmed ongoing examination of certificates since received at Jamshedpur Commissionerate as pointed out in the previous case.

#### **5.1.4 Irregular adjustment of R and D cess**

Notification dated 10 September 2004 allowed the set-off of Research and Development (R and D) cess paid against the Service Tax payable under Section 66. Until Notification dated 19 September 2011 became effective, cess had to be paid before the benefit of the exemption could be taken. Notification dated 19 September 2011 stipulated that the exemption is allowable if the cess is paid within six months from the date of invoice or in case of associated enterprises, the date of credit in the books of accounts.

Test check of records of M/s Luk India Pvt. Ltd., in Chennai III Commissionerate, revealed that the assessee paid Service Tax on various services rendered by their holding company and other associated companies from outside India, as a service recipient. During the period from October 2011 to March 2013, the assessee discharged their Service Tax liability on intellectual property service taking the benefit of the exemption without

complying with the provisions cited. We pointed out the resultant short payment of Service Tax of ` 54.17 lakh.

We pointed this out in February 2014.

*The Ministry intimated (October 2014), that an amount of ` 13.60 lakh with interest of ` 4.22 lakh was so far recovered. Show cause notice is under issue for the balance amount.*

#### **5.1.5 Non-payment of Service Tax**

Service Tax is leviable on Renting of Immovable Property with effect from 1 June 2007. Further, as per Explanation (v) to Section 65(105)(zzzz) of the Finance Act, 1994 inserted with effect from 1 July 2010, "immovable property" includes vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce. Further, department vide Para 10 of Annexure-B to JS (TRU-II) letter D.O.F.No. 334/1/2010-TRU dated 26 February 2010 had also clarified that Service Tax is payable on rent of a vacant land if there is an agreement or contract between the lessor and lessee that a construction on such land is to be undertaken for furtherance of business or commerce during the tenure of the lease. Again, as per Section 67 of the Finance Act, 1994, as amended, Service Tax is payable on gross amount charged by service provider for service provided or to be provided. Thus, Service Tax is payable as soon as advance is received.

M/s Mahabharat Motors Manufacturing Company Pvt. Ltd. (MMMCPL), in Haldia Commissionerate, was registered in Kolkata ST Commissionerate as it provided renting of immovable property services alongwith its manufacturing activities. Scrutiny of Balance Sheet and Ledgers of Premium on Licensing of Land and Agreement thereof for the period 2011-12 revealed that the assessee had received a sum of ` 6.00 crore as an advance from M/s BOC India Ltd., for granting license to set up a facility, *inter alia*, for production and distribution of industrial gases. We observed that the assessee did not pay Service Tax on amount so received. This resulted in non-payment of Service Tax of ` 61.80 lakh.

We pointed this out in March 2014.

We await the reply of the Ministry (October 2014).

## **5.2 Delay in issue of show cause notice resulting in loss of revenue**

Section 73 of the Finance Act, 1994, envisages the issue of show cause notice on a person chargeable with Service Tax within the prescribed time specified therein. Further, vide Circular dated 10 February 1997, the Board had reiterated extant instructions to its field formations on this issue.

During scrutiny of records of M/s Munjal Showa Ltd., in Gurgaon Commissionerate, engaged in the manufacture of motor vehicle parts, we observed that the Commissioner, Service Tax, Delhi dropped the Service Tax demand of ` 79.17 lakh for the period from October 2007 to September 2008 and ` 4.53 crore for the period from May 2008 to March 2010. The reason cited was that the cases had become time-barred as show cause notices had been issued only on 8 September 2009 and 8 October 2010 respectively. Non-issuance of show cause notices within the prescribed time resulted in loss of revenue of ` 5.33 crore.

We pointed this out in February 2014.

*The department intimated (June 2014) that the case under reference had been adjudicated by Commissioner (ST), Delhi, hence no further comments could be offered.*

We note that the department's reply is silent on the reason for the departmental lapse as to why the show cause notices had been issued belatedly.

We await the Ministry's reply (October 2014).

### **5.3 Incorrect utilisation of Cenvat Credit on basic excise duty towards payment of Cess**

As per sub-rule 7(b) of rule 3 of the Cenvat Credit Rules 2004, Cenvat credit of basic excise duty cannot be utilised for payment of Education Cess.

**5.3.1** During scrutiny of ER-1 returns of M/s H. D. Motor Company India, in Gurgaon Commissionerate, we observed that the assessee had utilised Cenvat credit of ` 24.50 lakh paid on basic excise duty towards payment of Education Cess and Secondary and Higher Education Cess during the year 2012-13.

We pointed this out in March 2014.

*The Ministry intimated (October 2014) that show cause notice for ` 2.56 crore has been issued to the assessee based on the audit observation.*

**5.3.2** Similarly, on scrutiny of ER-1 returns of M/s NGK Spark Plugs (India) Pvt. Ltd., in Gurgaon Commissionerate, engaged in the manufacturing of spark plugs, we observed that the assessee had utilised Cenvat credit of ` 43.04 lakh during the years 2010-11 to 2012-13 incorrectly as in the previous instance.

We pointed this out in March 2014.

*The Ministry intimated (October 2014) that show cause notice for ` 63.92 lakh has been issued to the assessee.*

#### **5.4 Other cases**

Besides the instances discussed above, we also observed 103 other cases involving non/short payment of Central Excise duty/Service Tax/interest of ` 7.12 crore. The Ministry/department accepted the observations in 51 cases where revenue implication of ` 1.98 crore had been pointed out. The Ministry/department intimated recovery of ` 2.26 crore (including interest and penalty) in 49 of these cases.

New Delhi

Dated: 26 November 2014



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Principal Director (Central Excise)

**Countersigned**

New Delhi

Dated: 26 November 2014



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