Chapter III

Service Tax liability in Port sector

3.1 Introduction

Service Tax on 'Port Services' provided by the major ports and their authorised persons was introduced with effect from 16 July 2001 and the same was extended to minor ports with effect from 1 July 2003. 'Port Services' as defined under Section 65(82) of the Finance Act, 1994 (with effect from 1 July 2010 and as applicable upto 30 June 2012) covered "any service rendered within a port or other port, in any manner".

Port Services sector is one of the major revenue earning service sectors netting revenue of over ₹ 1,670 crore in 2012-13. Ports render services in relation to vessels arriving at/ departing from the ports and in relation to cargo being imported and exported. The services include pilotage, tugging, berthing, mooring, remooring of the vessels, loading and unloading of the cargo, ship to ship transfer of cargo, weighing of cargo, transport of the cargo from wharf on tippers, storage, handling, and services like supply of water, electricity to vessels, bunkering, ship chandler services, ship repair services, railway haulage charges for rail-borne goods, local haulage and storage, manpower services etc.

The state of Andhra Pradesh with a coastline of 975 kilometres, which is the second longest in the country, has one major port – Visakhapatnam Port, and five minor ports, viz. Kakinada Deep Sea Port, Kakinada Anchorage Port, Gangavaram Port, Krishnapatnam Port and Rawa/South Yanam Port, in operation. The state of Odisha has coastline of 480 kilometre, with Paradeep Port as major port, and two minor ports, viz. Dhamra Port and Gopalpur Fair Weather Port.

3.2 Audit objectives

We examined the adequacy of the mechanisms in place in Andhra Pradesh and Odisha, to ensure that Service Tax due to the Government of India from port sector was in fact reaching the Government. Audit was conducted to assess:

i. the adequacy of rules, regulations, notifications, circulars/instructions/trade notices etc. issued from time to time in relation to levy, assessment and collection of Service Tax relating to services in ports' sector;
ii. whether the extant provisions of law are being complied with adequately;

iii. whether there was an adequate mechanism to identify and bring in potential service providers into tax net for levy of Service Tax; and

iv. whether there was an effective monitoring and internal control mechanism.

3.3 Audit coverage

We examined records at 5 Commissionerates, 6 Ports (Service Tax assessees) and 12 port service providing units in Andhra Pradesh and Odisha. The period covered was 2010-11 to 2012-13.

We reviewed the effectiveness of administration of the levy of Service Tax on 'port services' starting with the process of registration of assessees, monitoring of receipt of returns, scrutiny of returns, internal audit, etc. to identify instances of non compliance resulting in loss of revenue.

3.4 Audit findings

Scrutiny of assessee records in the audited units revealed system and compliance related issues having financial implication of ₹ 44.89 crore. The Ministry accepted (December2014) the audit observations having financial implication of ₹ 38.59 crore and recovered ₹ 29.70 crore. The major findings are discussed below in the following paragraphs:

3.5 System issues

3.5.1 Non-filing/late filing of returns

Section 70 of the Finance Act, 1994 provides that every person liable to pay the Service Tax shall himself assess the tax due on the services provided by him and shall submit the prescribed return. For delayed submission of return, the assessee shall pay late fee not exceeding ₹ 20,000/- The rates of late fee for delayed submission of return, depending on the number of days of delay, are prescribed in Rule 7C of Service Tax Rules, 1994.

Information furnished by the Visakhapatnam-I, Visakhapatnam-II, Guntur and Hyderabad-II Commissionerates indicated that in Andhra Pradesh during last three years, out of 693 Service Tax returns due from port service providers, 605 returns have been received in time, 44 returns were received belatedly and 44 returns were not received at all. In Bhubaneshwar I Commissionerate, out of 91 Service Tax returns due, 85 returns were received in time and 6 returns were not received at all.

There was no evidence of any action, in the nature of show cause notices/imposition of penalty under section 77(2) of the Finance Act, 1994 in respect of assessees who had failed to submit returns. Even late fee was not

deposited by assessees who filed returns belatedly. No action was taken by the department in such cases.

When we pointed this out (February 2014), the Ministry intimated (December 2014) recovery of ₹ 2.49 lakh in 43 cases from the non-filers/late filers in Visakhapatnam-I, II, Hyderabad-II Commissionerates and show cause notices were issued in three cases in Bhubaneswar-I Commissionerate.

3.5.2 Failure to conduct preliminary and detailed scrutiny

Under ACES, preliminary scrutiny of returns is carried out by the system and returns with discrepancies are identified by the system for review and correction. The returns marked for review are to be validated in consultation with the assessee and re-entered into the system. Further, as per Board's circular dated 11 May 2009, once ACES is implemented, returns would automatically be listed in descending order of risk and submitted to Commissioner for selection.

On verification of records, it was noticed that out of 82 Service Tax returns received from port service providers during the period 2010-11 to 2012-13 in Guntur and Hyderabad-II commissionerates in Andhra Pradesh, preliminary scrutiny was conducted in respect of 35 returns only.

In Odisha, out of 85 Service Tax returns received in Bhubaneshwar-I Commissionerate, preliminary scrutiny was conducted only in 73 cases. Thus, in 57 per cent of returns in Andhra Pradesh and 14 per cent of returns in Odisha, preliminary scrutiny was not conducted.

No detailed scrutiny of any ST-3 returns relating to services in port sector was conducted during these three years in, Guntur and Hyderabad II commissionerates.

In Bhubaneswar I commissionerate, detailed scrutiny in respect of only one return was conducted. We also observed that ACES functionality to list returns in the order of risk was also not operational and system was not selecting any return for detailed scrutiny.

When we pointed this out (February 2014), the Ministry admitted (December 2014) the fact that ACES module for identification of returns for detailed scrutiny was not functional. It further informed that in Hyderabad-II commissionerate, all the assessees registered under port services are Category A units who are subjected to annual audit hence, detailed scrutiny is not required. Audit is conducted every year on major service providers In Bhubaneswar-I commissionerate.

The Ministry reply is silent regarding non-completion of preliminary scrutiny pointed out in the para.

3.5.3 Shortfall in Internal Audit

As per Service Tax Audit Manual, 2011, Service Tax units paying tax (annual) more than ₹ three crore (Category A units) are to be mandatorily audited every year. Further, units paying Service Tax between ₹ one and three crore are to be audited once in two years (Category B).

(i) We observed that M/s KEI-RSOS Ltd. In Visakhapatnam-II Commissionerates was not audited after December 2011 though it is a Category A units.

(ii) On scrutiny of records of M/s Krishnapatnam Port Company Ltd. (KPCL) in Guntur commissionerate we observed that the assessee issued credit notes in May 2011 to importers for delay in loading/unloading the goods and adjusted the amounts payable against amounts charged for port services rendered. This arrangement led to amounts equivalent to those mentioned in the credit notes and totalling ₹ 2.88 crore not being included in the gross amount chargeable to Service Tax which resulted in short payment of Service Tax of ₹ 35.20 lakh including interest.

When we pointed this out (February 2014), the Ministry intimated (December 2014) recovery of ₹ 40.80 lakh including interest and penalty.

Though KPCL was a Category A unit, it had not been audited by Internal Audit in 2011-12 and 2012-13. The error in calculation of taxable value of services was not such which could have been detected through detailed scrutiny (as the ST-3 return format does not provide for inclusion of details such as credit notes adjusted etc).

Recommendation No. 2

- *We recommend that the details of credit notes issued and adjusted by the assessee may be included in ST-3 return to facilitate detection of the issue in scrutiny. Alternatively instructions for verifying the details of credit notes may be incorporated in the Manual for Scrutiny of Returns, 2009.*

3.5.4 Pending arrears of revenue

As per Board's circular dated 1 January 2013, in cases where appeal is filed with a stay application against an order in original with Commissioner (Appeal) or CESTAT, recovery is to be initiated 30 days after the filing of appeal, if no stay is granted or after the disposal of stay petition in accordance with the conditions of stay, if any, whichever is earlier.

As per sub-section 2A to section 35C of the Central Excise Act, 1944 where an order of stay is made in any proceeding relating to an appeal, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and

eighty days from the date of such order. If such appeal is not disposed of within one hundred and eighty days, the stay order shall, on expiry of that period, stand vacated.

However, Hon'ble Supreme Court in case of M/s Kumar Cotton Mills Pvt. Ltd. v/s CCE, Ahmedabad {2005 (180) E.L.T. 434 (SC)} held that the stay does not stand vacated automatically after one hundred and eighty days due to non-disposing off the appeal for the reasons beyond the control of the assessee and appellate tribunal can extend the stay in such cases. Punjab & Haryana High Court in the case of M/s PML Industries Ltd. vs. CCE {2013 (4) TMI 101 – P&H High Court} while relying on the decision held that the department can move an application for the vacation of stay after one hundred and eighty days on proof of the fact that delay in finalization of the case is attributable to the assessee.

We observed that as on 31 March 2013, there were 21 cases involving ₹ 45.21 crore pending as arrears in Visakhapatnam-I, II, Guntur and Hyderabad-II commissionerates where stay application is pending with Commissioner (Appeals) and CESTAT for more than 30 days. However, recovery procedure for these arrears has not yet been started by the department.

We also observed that in 22 cases in Visakhapatnam-I and II commissionerates involving revenue of ₹ 159.67 crore, CESTAT had stayed recovery of arrears. We observed that in all these cases, the period of 6 months had already expired. However, the department had not initiated review of these cases for filing applications for the vacation of stay in suitable cases.

When we pointed this out (February 2014), the Ministry intimated (December 2014) that in Visakhapatnam-II Commissionerate ₹ 1.78 crore was recovered and early hearing petition has been filed in suitable cases. Necessary action is being taken in Guntur Commissionerate to get the stay vacated. It further intimated that parties are under appeals in Hyderabad-II Commissionerate and stay has been granted by the CESTAT.

Recommendation No. 3

- *The Board may consider amending section 35C(2A) of the Central Excise Act, 1944 in view of Supreme Court decision in case of M/s Kumar Cotton Mills Pvt. Ltd. v/s CCE, Ahmedabad {2005 (180) E.L.T. 434 (SC)} regarding vacation of stay after one hundred and eighty days.*

3.6 Compliance issues

We conducted detailed examination of records relating to selected assessee ports and other port service providers. Certain issues of non-compliance with the statutory provisions, Cenvat related issues, incorrect availing of exemptions which we observed in the course of examination for records are highlighted below:

3.6.1 Non/short payment of Service Tax on upfront rental fee/concession fee of rental income

As per Section 68, every person providing taxable service to any person shall pay Service Tax at the rate specified in section 66B (or earlier section 66).

Prior to 1 July 2012, 'renting of immoveable property' as defined in Section 65(90a), included, *inter alia,* renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce subject to certain exceptions prescribed therein. With effect from 1 July 2012, 'renting of immovable properties' has been included under 'declared services' list specified in Section 66E of the Finance Act, 1994.

Board's circular dated 27 July 2005 clarifies that when advance payment is received for a service which is non-taxable at the time of receipt of payment but becomes taxable during the course of provision of service, such payments would have to be apportioned appropriately between the two periods and only that part of service provided on or after the service becomes taxable service, is liable for Service Tax.

Explanation 2 under section 65(90a) of Finance Act, 1994, clarifies that for the purpose of this clause, 'renting of immovable property' includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property. Further, Board clarified in its circular dated 10 February 2012 that in Build-Operate-Transfer (BOT) projects, the renting of immovable property by the Government is a service and Service Tax is payable by Government or its agency on the consideration received for the same.

(i) We observed that during 2008-09, M/s Visakhapatnam Port Trust (VPT) received an amount of ₹ 201.98 crore from M/s HPCL, Visakhapatnam and ₹ 7.64 crore from M/s Rashtriya Chemicals and Fertilizers Ltd. As upfront fee towards lease rent of 248.18 acres and 10 acres of land respectively.

These upfront fees were in nature of advance received from service receiver for services to be provided and attracted Service Tax from the time the activity became taxable viz. 1 July 2010. This resulted in non-payment of

Service Tax of ₹ 19.24 crore and ₹ 72.37 lakh in respect of these two transactions.

Further, VPT had leased out certain portions of port area on rent/lease for commercial use and received estate rental incomes. We observed that though on receipt of such amounts, VPT was paying Service Tax, it failed to discharge Service Tax liability of ₹ two crore in some instances. This resulted in short payment of Service Tax of ₹ two crore.

When we pointed this out (February 2014), the Ministry admitted (December 2014) the objection and recovered ₹ 26.27 crore.

(ii) Govt. of Andhra Pradesh and Krishnapatnam Port Company Limited (KPCL), Nellore, entered into a PPP agreement in 2004 for development of Krishnapatnam Port on Build, Operate and Transfer (BOT) basis. Govt. of Andhra Pradesh was the owner of specified land and water front within port limit. As per the agreement, KPCL had to pay annual lease charges calculated at the rate of 2 per cent of the fair market value of the land to the Govt. of Andhra Pradesh with an escalation of 6.5 per cent. With respect to submerged land and the water area, KPCL had to pay lease charges at the rate of ₹ 1 per annum per 1000 acres during the lease period. Additionally, the concessionaire (KPCL) had to pay concession fee, as a percentage of gross income to the Govt. of Andhra Pradesh for right to use or develop such land. Rate of concession fee was fixed at 2.6 per cent for the first 30 years. Thus, Govt. of Andhra Pradesh though liable to pay Service Tax on lease charges amounting to ₹ 3.69 lakh and concession fee amounting to ₹ 70.62 crore received from KPCL during the period from 2008-09 to 2012-13 failed to do so. This resulted in non-payment of Service Tax of ₹ 7.77 crore which is recoverable from the nodal agency of Govt. of Andhra Pradesh i.e. Port Officer, Machilipatnam.

When we pointed this out (February 2014), the Ministry intimated (December 2014) that show cause notice was issued for ₹ 7.58 crore to Port Officer, Machilipatnam.

3.6.2 Cenvat credit

A provider of taxable services can, in terms of rule 4 of the Cenvat Credit Rules, 2004, avail credit of excise duty paid on inputs and capital goods and Service Tax paid on any input service. The credit can be utilised towards payment of Service Tax subject to the fulfilment of certain conditions.

3.6.2.1 Non maintenance of separate account for taxable and exempted service

Rule 6(1) of Cenvat Credit Rules, 2004, envisages that Cenvat credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services.

In case the service provider fails to maintain separate accounts relating to taxable and exempted services, then as per rule 6(3), the assessee shall follow either of the following options, as applicable to him, namely:-

(i) the manufacturer of goods shall pay an amount equal to six per cent of value of the exempted goods or exempted services; or

(ii) the manufacturer of goods or the provider of output service shall pay an amount equivalent to the Cenvat credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services.

On scrutiny of records of M/s KPCL in Guntur Commissionerate, we observed that though the assessee had provided both taxable as well as exempted services in 2012-13, it had not maintained separate accounts. The assessee had provided exempted services for ₹ 47.84 crore during 2012-13 but had not paid either 6 per cent of value of exempted services i.e. ₹ 2.87 crore or complied with the other option available.

When we pointed this out (February 2014), the Ministry intimated (December 2014) that show cause notice is under process.

3.6.2.2 Irregular availing of Cenvat credit on capital goods

(i) Cenvat credit in respect of capital goods is not permissible in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer or provider of output service claims as depreciation (under Section 32 of the Income Tax Act, 1961) vide Rule 4(4) of the Cenvat Credit Rules, 2004. As per Rule 14, where Cenvat credit has been availed/utilised wrongly, the same along with interest shall be recovered.

M/s Zam Engg. and Logistics Pvt. Ltd. in Guntur Commissionerate, had imported capital goods, viz. Caterpillars during 2010-11 and availed the benefit of depreciation under the Income Tax Act, on the value including the countervailing duties. However, during 2011-12 and 2012-13, Cenvat credit of ₹ 93.05 lakh was wrongly availed and further utilised for payment of Service Tax. This resulted in irregular availing of Cenvat credit of ₹ 1.34 crore including interest ₹ 40.98 lakh on capital goods. Further, although internal audit had been conducted for the period, this lapse had not been detected.

When we pointed this out (February 2014), the Ministry intimated (December 2014) that show cause notice is under process.

Recommendation No. 4

- *Since the CVD is administered by CBEC, it is recommended that the CVD may be allowed to the asseessee as Cenvat credit only, Depreciation may be allowed only on the net value of the capital good (excluding CVD) to prevent recurrence of such instances.*

(ii) The expression "Capital goods" has been defined in Rule 2(a) of Cenvat Credit Rules, 2004. As per Board's circular dated 08 July 2010, the credit of input used for repair and maintenance of capital goods are not admissible and goods like cement and steel items used for laying 'foundation' and for building 'supporting structures' cannot be treated as either inputs for capital goods or as inputs in relation to the final products and therefore, no credit of duty paid on the same can be allowed under the Cenvat Credit Rules, 2004.

In the case of M/s Vikram Cements V/s CCE, Indore {2005 (187) ELT 145 (SC)}, it has been conclusively held by the Apex Court that the definition of capital goods is not inclusive and only the items covered under the definition and used in the factory of the manufacturer can be treated as capital goods.

On scrutiny of records of M/s VPT, we observed that the assessee had availed Cenvat credit on goods, viz. rail, rail sleeper, fishplates, MS bolts, plates, welding electrodes etc. treating them as capital goods. This resulted in irregular availing of Cenvat credit of ₹ 38.16 lakh.

When we pointed this out (February 2014), the Ministry admitted the objection and intimated (December 2014) that a show cause notice was issued for ₹ 17.27 lakh and for balance amount protective SCN is under preparation.

3.6.3 Irregular availing of Cenvat credit on ineligible services

As per Rule 2(v) of Cenvat Credit (Amendment) Rules, 2011 which came into force from 1 April 2011, 'input service' is defined as services used by a provider of taxable service for providing an output service and excludes such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee.

Further, 'input services' also exclude general insurance, authorised service station services, supply of tangible goods, insofar as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods. Cenvat Credit Rules, 2004, has stipulated list of services for which motor vehicle can be included under definition of Capital goods. Port services do not figure in that specified list. Board's circular dated 29 April 2011 specifically disallows Cenvat credit on 'Rent-a- cab' service'.

We observed in seven cases incorrect availing of Cenvat credit on ineligible services amounting to ₹ 1.69 crore. One of these cases is illustrated below:-

M/s KPCL in Guntur commissionerate had availed Cenvat credit on services in respect of motor vehicles, authorised service station services, general insurance services, supply of tangible goods, rent-a-cab, accommodation for short duration, helicopter hire charges etc. during 2011-12 and 2012-13. In terms of rules *ibid*, these services are inadmissible for Cenvat credit purposes. This resulted in irregular availing of Cenvat credit of ₹ 1.46 crore. Though KPCL was a Category A unit, it had not been audited by Internal Audit in 2011-12 and 2012-13.

When we pointed this out (February 2014), the Ministry intimated (December 2014) that show cause notice will be issued after verification of information furnished by the assessee.

3.6.4 Short payment of Service Tax on import of business auxiliary services

Rule 7 of Service Tax (Determination of Value) Rules, 2006 envisaged that the value of taxable service received under the provisions of section 66A, shall be such amount as is equal to the actual consideration charged for the services provided or to be provided.

On scrutiny of records of M/s KPCL in Guntur Commissionerate we observed that the Service Tax was paid on payment made in foreign exchange to service providers for services of business promotion, capital expenditure, other expenses, professional charges and travelling expenses. However, the Service Tax was calculated treating the amount paid as inclusive of Service Tax, instead of calculating on gross value of services at applicable rates. This resulted in short payment of Service Tax of ₹ 10.94 lakh including interest.

When we pointed this out (February 2014), the Ministry intimated (December 2014) that the assessee had paid ₹ 11.88 lakh including interest and penalty.

3.6.5 Non-payment of Service Tax under reverse charge mechanism

As per Section 68(2) of Finance Act, 1994, in respect of any taxable service notified by the Central Government, the Service Tax thereon shall be paid by such person in such manner as may be prescribed and all the provisions shall apply to such person as if he is the person liable for paying Service Tax in relation to such service. The Central Government had notified new partial reverse charge mechanism, under which liability of paying Service Tax in respect of certain services and as per the prescribed percentages, lies with service receiver vide notification No. 30/2012-ST dated 20 June 2012 effective from 1 July 2012.

We observed non-payment of Service Tax under reverse charge mechanism in the following cases:

3.6.5.1 On works contract

Board in its notification dated 20 June 2012, exempted services by way of construction, erection, commissioning or installation of original works pertaining to port. 'Original work' as defined in Rule 2(a) in Service Tax (Determination of Value) Rules, 2006, means:

(i) all new constructions;
(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

Hence, all construction related works contracts other than original works pertaining to port would be taxable with effect from 1 July 2012.

M/s VPT and M/s Visakha Container Terminal Pvt. Ltd., in Visakhapatnam-I Commissionerate had received services after 1 July 2012, for construction works other than original. However, Service Tax under reverse charge amounting to ₹ 52.18 lakh was not paid by them.

Further, we observed that although internal audit had been conducted in respect of M/s Visakha Container Terminal Pvt. Ltd., for the same period, this aspect had not been pointed out.

When we pointed this out (February 2014), the Ministry admitted the objection (December 2014) and intimated a recovery of ₹ 0.61 lakh from M/s Visakha Container Terminal Pvt. Limited and further informed that show cause notice will be issued to M/s Visakhapatnam Port Trust after examination of records.

3.6.5.2 On support services received from Government

The activity of providing employees on deputation by one organisation to another would be covered under the definition of 'support services' w.e.f. 1 July 2012 vide notification dated 20 June 2012.

On scrutiny of records of M.s VPT in Visakhapatnam-I commissionerate and Paradeep Port Trust (PPT) in Bhubaneswar-I commissionerate we observed that some officers/staff had served on deputation basis from Central/State Government. Value of such services received by both the assessees between July 2012 and August 2013 amounted to ₹ 1.13 crore. However, Service Tax liability on such service under reverse charge mechanism had not been discharged by them. This resulted in non-payment of Service Tax of ₹ 14.01 lakh.

When we pointed this out (February 2014), the Ministry admitted the objection and intimated (December 2014) that show cause notice was issued.

3.6.5.3 On renting of motor vehicle

As per Notification dated 20 June 2012, Service Tax under reverse charge mechanism has to be paid by service receiver in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not engaged in the similar line of business. Notification no. 26/2012 provides for abatement of 60 per cent on renting of motor vehicle, provided no Cenvat credit is availed on input, input services and capital goods. Irrespective of whether abatement has been claimed or not, the service recipient would be liable to bear Service Tax on 40 per cent of the value paid to service provider.

M/s VPT and M/s Bothra Shipping Services Ltd. in Visakhapatnam I commissionerate and M/s Kakinada Marine and Offshore Complex in Visakhapatnam II commissionerate, had received 'Renting of motor vehicle service' amounting to ₹ 2.22 crore from the individual private operators during the period between July 2012 to March 2013. However, Service Tax amounting to ₹ 10.96 lakh was not paid by them. This resulted in non-payment of Service Tax of ₹ 10.96 lakh.

When we pointed this out (February 2014), the Ministry admitted the objection and intimated a recovery of ₹ 0.50 lakh in one case and informed that show cause notice is under preparation in other case (December 2014).

3.6.6 Fulfilment of interest liability

As per Section 75 of the Finance Act, 1994, every person liable to pay Service Tax, who fails to credit it to the account of the Central Government, within the period prescribed, shall pay simple interest for the period by which such crediting is delayed.

As per Rule 3(a) of Point of Taxation Rules, 2011, Point of Taxation shall be the time when the invoice for the service provided or to be provided is issued provided where that the invoice is not issued within fourteen days of the completion of the provision of the service, the point of taxation shall be date of such completion.

On scrutiny of records of M/s South India Corporation Ltd., (SICL) in Visakhapatnam-I commissionerate we observed that in some cases, the assessee had not issued invoices within 30 days of completion of provision of service. Service Tax liability on such invoices was discharged taking issue of invoice as point of taxation which was not correct going by the Point of Taxation Rules, 2011. Hence, interest of ₹ 12.33 lakh was recoverable.

We also observed in three other cases in Visakhapatnam-I and Guntur commissionerates the assessees neither discharged their interest liability nor the department initiated any action to recover the interest. This resulted in non-payment of ₹ 31.91 lakh.

When we pointed this out (February 2014), the Ministry admitted the objection and intimated recovery of ₹ 20.11 lakh in three cases and in one case show cause notice is under preparation.

3.7 Other cases

Besides the instance discussed above, 39 other cases of involving non-payment of Service Tax, irregular availing of exemption, irregular availing/utilisation of Cenvat credit, non-payment of interest of ₹ 58.67 lakh were also noticed. Ministry accepted the observations in 33 cases and intimated the recovery of ₹ 53.91 lakh.

3.8 Conclusion

Audit is of the view that performance of the subordinate offices of CBEC in areas such as compliance verification through scrutiny and internal audit etc. needs to be strengthened in order that risk of revenue not reaching the Government may be minimised.