

Chapter 2: Existing Systems and Procedures

2.1 Identification of works contract service providers by department

Director General of Service Tax (DGST) issued instructions in May 2003 to the field formations to obtain information on unregistered service providers from various sources such as yellow pages, regional registration authorities and through inter-governmental and inter-departmental co-ordination especially with Income Tax and State Sales Tax departments through Regional Economic Intelligence Committee (REIC) meetings. Further, CBEC directed its field formations in November 2011 that a special cell be created in each Commissionerate to focus on widening of tax base by bringing in potential assesseees.

2.1.1 We enquired from the selected Commissionerates² regarding the details of registration made through departmental initiative i.e., through anti-evasion wing, Director General of Central Excise Intelligence (DGCEI), survey, any other sources etc. From the data received it is observed that only in 26 cases in Bhopal (2), Coimbatore (1) and Jamshedpur (23) Commissionerates, the registration was made through departmental initiatives as mentioned above under WCS. We observed that between 2010-11 and 2013-14 total number of registrations under WCS for the above three Commissionerates were 1606, 489 and 958 respectively. On comparison it is observed that the percentage of registrations due to departmental initiatives was 0.12, 0.20 and 2.40 per cent respectively which is negligible. Remaining 30 Commissionerates did not provide the information.

We pointed this out (between December 2014 and January 2015), the reply of the Department/Ministry is still awaited (June 2015).

2.1.2 Prevention of tax evasion and widening of tax base are two important functions of tax administration for optimum tax realisation. With increasing reliance on voluntary compliance by tax payers at large, it becomes increasingly important for department to put in place an effective mechanism for collecting information from various sources in order to bring unscrupulous assesseees into tax net.

² Ahmedabad (ST), Ahmedabad-III, Bengaluru-I (ST), Bengaluru-II (ST), Bengaluru-V, Bhopal, Bhubaneswar-I, Bilaspur, Calicut, Chandigarh-I, Chennai (LTU), Chennai (ST), Coimbatore, Delhi-I (ST), Durgapur (ST), Ghaziabad, Haldia (ST), Hyderabad-II, Hyderabad-IV, Jabalpur, Jaipur-I, Jamshedpur, Kolkata (ST), Lucknow, Ludhiana, Mumbai-I (ST), Mumbai-II (ST), Nagpur, Patna, Pune-III, Raipur, Ranchi and Salem

We enquired from the selected Commissionerates regarding the details of surveys conducted by the department. The data received from the four Commissionerates³ depicted that 297 surveys were conducted in the selected ranges of above four Commissionerates. We further noticed that eight Commissionerates⁴ did not conduct any survey. Remaining 21 Commissionerates did not provide data regarding the quantum of surveys undertaken by them.

During the course of audit 425 unregistered assesseees were found as detailed in para 2.2.1. Though survey is an important tool to identify the unregistered service providers to bring them into tax net, it appears that the department is not using this tool effectively.

We pointed this out (between December 2014 and January 2015), the reply of the Department/Ministry is still awaited (June 2015).

2.2 Non registration of assesseees

Section 67 of the Finance Act, 1994, envisages that where the provision of service is for a consideration in money, value of taxable service shall be the gross amount charged for such service. As per rule 6 of Service Tax Rules, 1994, of the above said rules read with Section 68 of the Finance Act, 1994, the service tax shall be paid by the prescribed due dates, i.e., 6th day of the next month (except for March).

As per notification dated 20 June 2012, the service tax in respect of services provided by individual, Hindu Undivided Family, proprietary firm or partnership firm including association of persons located in the taxable territory to a business entity registered as a body corporate, located in the taxable territory is partially payable (50 per cent) by recipient of service and remaining 50 per cent by service provider.

2.2.1 On examination of records from data/dump-data relating to works contractors gathered from various sources such as state VAT returns, income tax returns and from the records of some registered service providers, we found that 425 works contractors, had neither registered with the department nor paid service tax. The service tax revenue involved is ₹ 447.76 crore. Information of non-registered assesseees are tabulated in Table 2.1.

³ Coimbatore, Jabalpur, Jamshedpur and Salem

⁴ Ahmedabad-III, Ahmedabad (ST), Bhopal, Bhubaneswar-I, Chandigarh-I, Hyderabad-IV, Jaipur-I, and Ludhiana

Table 2.1: Non-registered assessees

			(Crore of ₹)
Name of the assessee (M/s.)	Taxable value	Service tax liability	
1. SPL and GDC Joint Venture	1,798.41	86.50	
2. Archon Engicon Limited	1,668.15	76.87	
3. Dineshkumar B.Patel	541.23	25.22	
4. J.S. Designs	389.03	19.09	
5. Ravi Construction	211.77	10.47	
6. Maruti Construction Company	195.20	9.63	
7. Aishwarya Infrastructure & Developers	166.38	7.08	
8. M. Venkatarama Reddy	142.75	6.46	
9. Balaji Builders	137.31	6.30	
10. S. R. Ravi Shankar	121.98	5.64	
11. Others (415 assessees)	4,262.90	194.49	
Total (425 assessees)	9635.11	447.76	

We pointed this out (between October 2014 and January 2015), the reply of the Department/Ministry is still awaited (June 2015).

A few Illustrative cases are given below:-

2.2.1.1 From the records of Commercial Tax Department, Ahmedabad, we noticed that six assessees (Sl.No.1 to 6 of above table) in Ahmedabad provided WCS during 2010-11 to 2013-14 involving taxable value of ₹ 4,803.79 crore. However, they had neither registered with the department nor paid service tax. The service tax revenue involved is ₹ 227.78 crore.

We pointed this out (December 2014), the reply of the Department/Ministry is still awaited (June 2015).

2.2.1.2 From the records of Commercial Tax Department, Bengaluru, we noticed that four assessees (Sl.No.7 to 10 of above table) in Bengaluru provided WCS during 2010-11 to 2013-14 involving taxable value of ₹ 568.42 crore. However, they had neither registered with the department nor paid service tax. The service tax revenue involved is ₹ 25.48 crore.

We pointed this out (December 2014), the reply of the Department/Ministry is still awaited (June 2015).

2.2.1.3 From the records of Commercial Tax Department, Bengaluru, we noticed that **M/s. CEC –SOMA-CC JV** and **M/s. Krishi Infratech** in Bengaluru provided WCS during 2010-11 to 2013-14 involving taxable value of ₹ 216.11 crore. However, they had neither registered with the department nor paid service tax. The service tax revenue involved is ₹ 9.97 crore.

We pointed this out (December 2014), the reply of the Department/Ministry is still awaited (June 2015).

2.2.1.4 From the records of Income Tax and Commercial Tax Department, Hyderabad, we noticed that **M/s. Siddhardha Constructions**, Hyderabad provided WCS during 2013-14 involving taxable value of ₹ 56 crore. However, they had neither registered with the department nor paid service tax. The service tax revenue involved is ₹ 2.77 crore.

We pointed this out (December 2014), the reply of the Department/Ministry is still awaited (June 2015).

2.2.1.5 From the records of **M/s. Mangalam Build Developers Ltd.**, Jaipur, we noticed that **M/s. Devi Construction Company** (proprietary firm) provided WCS in respect of construction of road for residential complex during 2013-14 involving taxable value of ₹ 31.65 crore. However, they had neither registered with the department nor paid service tax. The service tax revenue involved is ₹ 78.25 lakh being 50 per cent of service tax liability.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

2.2.1.6 From the records of Tamil Nadu Value Added Tax (TNVAT) dump data as well as records of **M/s. Sreevatasa Real Estate (P) Ltd.**, Coimbatore, we noticed that **M/s. Varsha Colour World**, Salem provided WCS during 2010-11 to 2013-14 involving taxable value of ₹ 2.45 crore. However, they had neither registered with the department nor paid service tax. The service tax revenue involved is ₹ 11.12 lakh.

We pointed this out (January 2015), the department intimated (March 2015) that **M/s. Varsha Colour World** had obtained the registration consequent to CERA audit.

The reply of the Ministry is still awaited (June 2015).

Recommendation No.1

Inter departmental co-ordination should be made obligatory mainly with Commercial Tax Department for identification of unregistered service providers and broadening of tax base in particular with VAT records through the Regional Economic Intelligence Committee meetings. The result of this exercise should be reflected in periodical report such as Monthly Technical Reports (MTRs).

CBEC in its reply (June 2015) stated that Tax 360⁰ program has been started within Department of Revenue wherein data is shared between CBEC, Central Board of Direct Taxes (CBDT), Ministry of Corporate Affairs (MCA-21) and six VAT departments viz., Maharashtra, Gujarat, Kerala, Tamil Nadu, Andhra Pradesh and West Bengal. The Directorate General of Systems and Data

Management is the nodal agency for CBEC which compiles the data and shares it with the respective field formations. It further stated that Section 15A and Section 15B of the Central Excise Act, 1944 were inserted vide the Finance Act, 2014 which have been made applicable to like matters in service tax vide Section 83 of the Finance Act, 1994 which make it obligatory for certain specified categories of persons to furnish information returns to the department. This includes any authority under the State Government, Electricity department, etc.

While the steps taken by the Ministry are in the right direction for establishing inter department co-ordination, however, the Ministry may ensure that the results of the same is reflected in the MTRs.

Recommendation No.2

CBEC may consider to design a tool to co-relate service tax payments from the ST-3 return filed either by service provider or service recipient involving service tax liability under reverse charge mechanism.

CBEC in its reply (June 2015) stated that guidelines are being issued to the field formations for conducting detailed scrutiny of returns in which the aspect of matching payment of service tax by the service provider and recipient under reverse charge would be taken care of. The returns would be selected on the basis of risk parameters including local risk factors. As such, in the ST-3 returns filed by the service provider and recipient, individual transactions are not recorded. Thus, this aspect can be looked into only when audit, anti-evasion inquiry or detailed manual scrutiny of returns is taken up.

CBEC in its letter dated 16 March 2012 while introducing the reverse charge on WCS stated that “it has been noticed that a number of registrants collect the tax but do not pay the same to the Department. This is a serious loss of the revenue even though the compliant section at the recipient end is often not benefitted. To ensure proper collection, while not inconveniencing small business, a new scheme is proposed to be introduced”. So the intention behind introduction of reverse charge is to ensure that the due service tax to the Government is to be paid by both service provider and service receiver. Though no individual transactions are recorded in ST-3 return, the audit opines that in the era of Information Technology, CBEC may consider introduction of a mechanism, so that this issue is taken care of.

2.3 Delay in registration

As per rule 4 of the Service Tax Rules, 1994, read with Section 69 of the Finance Act, 1994, every person liable for paying service tax shall make an

application in Form ST-1 for registration within a period of thirty days from the date on which the service tax is levied or within a period of thirty days from the date of commencement of business, as the case may be. In case of failure to register within the stipulated time limit he shall be liable to a penalty which may extend to ₹ 10,000 as per Section 77 (1)(a) of the Finance Act, 1994.

We enquired from the selected Commissionerates regarding the amount of penalty levied in case of belated registrations. Only Patna and Jaipur-I Commissionerates supplied the information. We noticed, 17 cases of belated registrations ranging from 27 to 30 months and the department did not impose any penalty in these cases. This resulted in non-levy of penalty of ₹ 1.7 lakh. Remaining selected 31 Commissionerates did not provide this data.

We pointed this out (December 2014), the reply of the Department/Ministry is still awaited (June 2015).

2.4 Non-filing of returns

Rule 7 of the Service Tax Rules, 1994, read with Section 70 (1) of the Finance Act, 1994, stipulates that every person liable to pay service tax shall himself assess the tax due on the services provided by him and furnish to the Superintendent of Central Excise a half yearly return in form ST-3 by the 25th of the month following the particular half year.

2.4.1 We enquired from the selected Commissionerates regarding the details of returns received and scrutinised. From the data received from Ahmedabad (ST), Bhubaneswar-I, Calicut, Chandigarh-I, Ludhiana and Salem Commissionerates, it was observed that 37 per cent of returns i.e., 21,386 returns were not filed out of 57,907 due. Remaining 27 Commissionerates either did not provide the details or provided incomplete details.

A few illustrative cases are given below:-

2.4.1.1 During the examination of records of M/s. Alliance Projects, in Chennai (ST) Commissionerate, we observed that the assessee was engaged in the WCS from January 2006. Though the assessee earned gross income of ₹ 197.74 crore for the years 2005-06 to 2010-11 and paid service tax, they did not file ST-3 returns till May 2014.

We pointed this out (September 2014), the department stated (October 2014) that the internal audit had covered the period from April 2007 to September 2012 and noticed that the service provider either filed belatedly

or not filed ST-3 returns for the period from 2005-06 to 2011-12 and recovered late fee of ₹ 0.77 lakh.

The reply of the department is not acceptable since the assessee did not file ST-3 returns till date as noticed from the assessee's letter dated 2 May 2014, despite recovery of late fee. Moreover, the assessee in its letter stated that the system was not accepting the belated return. It indicates that the monitoring mechanism to watch submission of returns is weak and lacks follow up by the department.

The reply of the Ministry is still awaited (June 2015).

2.4.1.2 Although details of non-submission of returns were not furnished by Mumbai-I (ST) and Mumbai-II (ST) Commissionerates, it was noticed from the examination of records at ranges that **M/s. Hubtown Ltd.** and **M/s. ACE Pipeline Contracts Pvt. Ltd.**, in above Commissionerates respectively had not filed ST-3 returns during the period between 2012-13 and 2013-14.

We pointed this out (between September 2014 and January 2015), the department while admitting the objection intimated (between February and March 2015) the recovery of ₹ 1.07 lakh from both the assessees.

The reply of the Ministry is still awaited (June 2015).

2.4.1.3 Further, though details of non-submission of returns were not furnished by the Ghaziabad Commissionerate, we observed from the records available at department that 180 registered WCS providers, had not filed their returns for the period 2013-14.

We pointed this out (January 2015), the department stated (February 2015) that show cause notice have been issued in 74 cases and in other 106 cases the issue of show cause notice is under process.

The reply of the Ministry is still awaited (June 2015).

2.5 Non-levy of late fee on belated filing of returns

Rule 7C of the Service Tax Rules, 1994, envisages late fee for delay in furnishing of returns as detailed below: -

- a. fifteen days from the date prescribed for submission of such return an amount of ₹ 500;
- b. beyond 15 days but not later than 30 days from the date prescribed for submission of such return an amount of ₹ 1,000; and
- c. beyond 30 days from the date prescribed for submission of such return, an amount of ₹ 1,000 plus ₹ 100 for every day from the 31st day till the date of furnishing the said return is leviable.

However, the maximum late fee leviable should not exceed ₹ 2,000 upto 7 April 2011 and thereafter ₹ 20,000 per return as prescribed in Section 70(1) of the Finance Act, 1994.

2.5.1 We enquired from the selected Commissionerates regarding the details of returns received belatedly and consequent levy of late fee. From the data received from 17 Commissionerates, we noticed belated filing of returns during 2010-11 to 2013-14 in 1,857 cases with delay ranging upto 49 months involving late fee of ₹ 1.70 crore. Remaining 16 Commissionerates did not provide the details.

We pointed this out (between December 2014 and January 2015), the reply of the Department/Ministry is still awaited (June 2015).

An illustrative case is given below:-

2.5.1.1 We observed 833 instances of belated filing of ST-3 returns in Bhubaneswar-I Commissionerate during 2010-11 to 2013-14 with delay ranging upto 49 months on which late fee leviable is ₹ 82.58 lakh which was not levied.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

Audit is of the opinion that non-filing of ST-3 returns may lead to non-assessment of value of service on which service tax was paid. Further, the correctness of exemption, Cenvat, abatement claimed, etc. cannot be verified in the absence of returns. The delayed filing of returns may lead to piling of work of scrutiny, time bar of cases, increase in work load of the department viz., issuance of SCNs, calculation and collection of late fee from delayed filers etc.

Recommendation No.3

Monitoring mechanism to watch non/late filers should be strengthened keeping in view of determination of service tax payments through self assessment.

CBEC in its reply (June 2015) stated that the Directorate General of Systems and Data Management has created a report utility in ACES (Assessee-Wise Detailed Report (AWDR)) for identifying stop filers/non-filers/late filers which can be viewed by the field officers for further necessary action at their end.

During test check audit observed that no action was taken at Commissionerate level. Audit further suggests that in the automated environment of ACES, the CBEC may consider automatic levy of late fee on belated filing of returns.

2.6 Scrutiny of returns

2.6.1 Review and correction

The department use the Review and Correction (R & C) mechanism to rectify the defects of returns. Board vide letter dated 1 June 2012 directed that every Range Officer is required to undertake R & C within 30 days to rectify the anomalies.

We enquired from the selected Commissionerates about the quantum of returns marked for R & C and its disposal. From the data received from six Commissionerates, we noticed that 13,293 ST-3 returns were marked for R & C out of 21,846 returns filed during 2010-11 to 2013-14. Out of the above 13,293 returns, 7,740 returns were pending as on 31 August 2014. We also noticed that out of 5,553, returns only in 13 cases penalty of ₹ 0.99 lakh was demanded by the department. The remaining 27 Commissionerates either did not provide the details or provided incomplete details.

We pointed this out (between December 2014 and January 2015), the reply of the Department/Ministry is still awaited (June 2015).

From the above, it is evident that this vital tool for scrutiny of returns has not been put into effective use. It was also observed that the delay in undertaking R & C work involved the risk of loss of revenue.

2.6.2 Detailed scrutiny

The purpose of detailed scrutiny is to establish the validity of information furnished in the tax return and to ensure correctness of valuation, availing of Cenvat credit, classification and effective rate of tax applied after taking into consideration the admissibility of exemption notification availed etc. Unlike preliminary scrutiny, detailed scrutiny is to cover only certain selected returns, identified on the basis of risk parameters, developed from the information furnished in the returns submitted by the taxpayers.

Chapter 4 of the Manual for Scrutiny of Service Tax Returns, 2009 envisages that not more than two per cent of the total returns are to be selected on the basis of identified risk parameters for detailed scrutiny.

As per CBEC's circular dated 11 May 2009, once ACES is implemented, returns would be automatically listed in descending order of risk and submitted to Commissioner for selection. As per Board's letter dated 1 June 2012, the Ranges will do the detailed manual scrutiny till such time as the process of selection of returns for detailed scrutiny is automated in ACES.

We enquired from the selected Commissionerates about the data of detailed scrutiny done by department during the period 2010-11 to 2012-13. In

response to our query, 32 Commissionerates intimated that they have not undertaken any detailed scrutiny under WCS. Only Hyderabad IV Commissionerate had carried out detailed scrutiny in respect of two returns during the period 2010-11 to 2012-13.

It was observed that during 2011-12 and 2012-13 only 121 returns were scrutinised by the 26 selected Commissionerates which is less than 0.1 per cent of the total returns received pertaining to all services as brought out in CAG's Report No.4 of 2015.

2.7 Non-verification of remittance details

With effect from 1 April 2010, as per proviso to rule 6(2) of Service Tax Rules, 1994, where an assessee has paid a total service tax of ₹ 10 lakh or more including the amount paid by utilisation of Cenvat credit, in the preceding financial year, he shall deposit the service tax liable to be paid by him electronically, through internet banking. The provision was further amended and electronic payment of service tax has been made mandatory for all service providers who paid more than ₹ one lakh with effect from 1 January 2013.

During the examination of records in Coimbatore Commissionerate, we observed that eight assessees remitted the service tax through manual challan although they are liable to make the payment electronically.

We further noticed that in respect of 27 cases in five Commissionerates, the service tax payments depicted in the ST-3 return did not match with the amount of remittance shown in Electronic Accounting System in Excise and Service Tax (EASIRST). This needs further verification by the department.

We pointed this out (between December 2014 and January 2015), the reply of the Department/Ministry is still awaited (June 2015).

2.8 Internal control

2.8.1 Monitoring of submission of list of records

As per rule 5(2) of the Service Tax Rules, 1994, every assessee shall furnish to the Superintendent of Central Excise at the time of filing returns for the first time a list in duplicate of all records prepared or maintained by them.

We enquired from the selected Commissionerates regarding the details of submission of list of books furnished by assessees with their first return. To our enquiry only six Commissionerates responded. The data received from them depicts that 498 assessees did not furnish the list of books of accounts.

It is evident that the department did not monitor the filing of above records. The remaining 27 Commissionerates did not provide the data.

We pointed this out (between December 2014 and January 2015), the reply of the Department/Ministry is still awaited (June 2015).

Recommendation No.4

CBEC may review the requirement of submission of records and to ensure that the rule may be adhered to strictly or else the provision may be revised accordingly.

The Ministry in its reply (June 2015) admitted the recommendation for compliance.

2.8.2 Non-issuance of show cause notice for further period

As per section 73(1A), of Finance Act, 1994, the Central Excise Officer may serve, subsequent to any notice or notices served, a statement, containing the details of service tax not levied or paid or short levied/short paid or erroneously refunded for the subsequent period on the person chargeable to service tax, then, service of such statement shall be deemed to be service of the notice on such person subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.

2.8.2.1 During the examination of records of **M/s. Aparna Construction and Estates Pvt. Ltd.**, in Hyderabad-II Commissionerate, we noticed that the department issued a show cause notice demanding service tax of ₹ 6.13 crore for the period from 2010-11 to 2011-12 on 22 September 2014. However, it was noticed that no subsequent statement/show cause notice was issued for further period from April 2012 to October 2014. This resulted in non-levy of service tax of ₹ 6.43 crore.

We pointed this out (October 2014), the department stated (November 2015) that the issue would be examined and compliance reported.

The reply of the Ministry is still awaited (June 2015).

2.8.2.2 Similarly, in the case of **M/s. Palada Constructions Pvt. Ltd.**, in Coimbatore Commissionerate the department issued a show cause notice demanding service tax of ₹ 4.59 crore for the period 2008-09 to 2011-12 on 17 October 2013. However, no subsequent statement/show cause notice was issued for further period from April to June 2012 till November 2014. This resulted in non-levy of service tax of ₹ 14.83 lakh.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

2.9 Selection of mandatory units for audit

Internal audit is one of the main compliance verification mechanism in the department, which involves selection of assessee units on the basis of risk parameters and scrutiny of records of the assessee to ascertain the level of compliance with the prescribed rules and regulations. Every Commissionerate has an audit cell, manned by an Assistant/Deputy Commissioner and auditors and headed by an Additional/Joint Commissioner and this cell prepares co-ordinates and monitors the audit plan.

As per paragraph 5.1.2 of Service Tax Audit Manual, 2011 tax payer whose annual service tax payment (including Cash and Cenvat) was ₹ three crore or more in the preceding financial year would be subjected to mandatory audit each year and those paying service tax between ₹ one and ₹ three crore to be audited once in every two years.

2.9.1 In Ahmedabad (ST) Commissionerate we noticed that two WCS providers viz., **M/s. S. Khurana Engg. Pvt. Ltd.** and **M/s. HPCL** paid service tax exceeding ₹ three crore, during 2010-11 to 2013-14 were to be mandatorily covered by internal audit every year. However, internal audit was not conducted in these two cases.

Five⁵ other WCS providers in Bengaluru (ST) Commissionerate paid service tax exceeding ₹ three crore, during 2010-11 to 2013-14 which are required to be mandatorily covered by internal audit every year which was not done.

We pointed this out (December 2014), the reply of the Department/Ministry is still awaited (June 2015).

⁵ M/s. Synergy Property Development Services Pvt. Ltd., M/s. Eureka Forbes Ltd., M/s. L & W Construction Pvt. Ltd., M/s. Salarpuria Properties Pvt. Ltd. and M/s. Provident Housing Ltd.