

## Chapter 5: Availment of Exemptions

Under section 93 of Finance Act, 1994, the Government is empowered to exempt generally or subject to such conditions as may be specified in the notification, taxable service of any specified description from the whole or any part of the service tax leviable thereon.

During the course of this performance audit we observed 14 cases of incorrect availing of exemptions involving an amount of ₹ 17.81 crore.

A few illustrative cases are given below:-

### 5.1 Incorrect availing of exemption

**5.1.1** As per Sl.No.13 (a) of notification dated 20 June 2012, construction of a road, bridge, tunnel or terminal for road transportation for use by general public are exempt from service tax.

During the examination of records of **M/s. L & W Construction Pvt. Ltd.**, in Bengaluru-I (ST) Commissionerate, we observed that the assessee has entered into agreements with **M/s. Apricot Realtors Pvt. Ltd.**, Kancheepuram, Chennai to carry out the design and build works for bridges, overhead tanks and reservoirs in the proposed industrial town ship hub at Chennai for a consideration of ₹ 131.57 crore during 2013-14. The assessee claiming the exemption did not discharge the service tax on this amount. Since the work done by the assessee were not for road transportation for use by general public but to industrial hub the availment of exemption is incorrect. This resulted non-levy of service tax of ₹ 6.50 crore.

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

**5.1.2** During the examination of records of **M/s. Indian Oil Corporation Ltd.**, in Bhubaneswar-I Commissionerate, we observed that the assessee awarded the work to **M/s. Gangadhar Jena, M/s. Nirmal Ku Swain, M/s. Niranjana Khuntia** and **M/s. RKD Constructions Pvt. Ltd.**, for construction of road within IOC Pradeep Oil refinery at Paradeep for an amount of ₹ 23.72 crore during 2010-11 and 2011-12. Since the work done by the above four assesseees were not for road transportation for use by general public, service tax of ₹ 93.19 lakh was liable to be paid. This resulted in non-levy of service tax of ₹ 93.19 lakh.

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

**5.1.3** During the examination of records of **M/s. Sreevatsa Real Estates Pvt. Ltd.**, in Coimbatore Commissionerate, we observed that the assessee awarded the work to **M/s. P.A. Constructions**, for construction of road at Srvatsa Sankara Residential Apartment Complex at Kalapatti for an amount of ₹ 5.60 crore during 2012-13 and 2013-14. Since the work done by **M/s. P.A. Constructions** was not for road transportation for use by general public service tax of ₹ 27.69 lakh was liable to be paid. We further noticed that **M/s. P.A. Constructions** was also not registered with the department. This resulted in non-levy of service tax of ₹ 27.69 lakh.

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

## **5.2 Irregular availing of exemption**

As per Section 65(105)(zzza) of the Finance Act, 1994, (prior to 1 July 2012), taxable service in respect of works contract means 'service provided to any person, by another person in relation to the execution of works contract, excluding works contract in respect of road, airports, railways, transport terminals, bridges, tunnels and dams.

As per S.No.12 (a) of Notification dated 20 June 2012 services provided to the Government, a local authority or a governmental authority by way of construction or any other original works meant predominantly for use other than for commerce is exempted from levy of service tax.

**5.2.1** During the examination of records of **M/s. Tata Projects Ltd.**, in Hyderabad-II Commissionerate, we observed that the assessee received an amount of ₹ 29.92 crore towards provision of services from **M/s. GMR** for construction of private railway sidings for their power plants but did not discharge service tax liability of ₹ 3.70 crore on the pretext that the work related to railways. Since the construction was done for a private company for its power plant and not for railways, the availing of exemption was incorrect. This resulted in non-levy of service tax of ₹ 3.70 crore.

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

**5.2.2** During the examination of records of **M/s. Ramalingam Constructions (P) Ltd.**, in Salem Commissionerate, we observed that the assessee constructed corporate office building for **M/s. Tamil Nadu Small Industries Development Corporation Ltd., Chennai (TANSIDCO)** and received

₹ 33.44 crore between 2010-11 and 2013-14. However, the assessee did not discharge the service tax on this amount. However, we noticed that **M/s. TANSIDCO** was engaged in development and maintenance of industrial estates, including private lands for nominal service charge. They are also engaged in supply/sale of raw materials under marketing assistance scheme besides undertaking outright sale of developed land, hire purchase, lease rental scheme and collected processing fee. Since **M/s. TANSIDCO** has undertaken commercial activity, availing of the exemption by the assessee is incorrect. This resulted in non-levy of service tax of ₹ 1.50 crore for the period 2010-11 to 2013-14.

On being pointed out (December 2014), the department while admitting the objection stated (March 2015) that action is being initiated.

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

### 5.3 Other cases

As per Sl. No.12 (c) of notification dated 20 June 2012, services provided to the Government, a local authority or a governmental authority by way of construction of a structure meant predominantly for use as an educational institution is exempted from levy of service tax.

**5.3.1** During the examination of records of **M/s. KMV Projects Pvt. Ltd.** and **M/s. IVRCL Infrastructure and Projects Ltd.**, in Hyderabad-II Commissionerate, we observed that these assessees incorrectly availed exemption on the construction services provided to the private educational institutions of ₹ 39.61 crore during 2012-13 and 2013-14 and did not pay service tax. This resulted in non-levy of service tax of ₹ 1.96 crore.

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

**5.3.2** During the examination of records of **M/s. Bhayana Builders (P) Ltd.**, in Delhi-II Commissionerate, we observed that the assessee incorrectly availed exemption on the construction services provided to the private educational institutions of ₹ 9.25 crore during July 2012 to March 2013 and did not pay service tax. This resulted in non-levy of service tax of ₹ 45.72 lakh.

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

**5.3.3** Section 65(105)(zzzza) of the Finance Act, 1994, (Prior to 1 July 2012) defines taxable service in respect of works contract as "Service provided to any person, by another person in relation to the execution of works contract,

excluding works contract in respect of road, airports, railways, transport terminals, bridges, tunnels and dams. "Residential Complex" as defined in Section 65 (91a) of Finance Act, 1994 means any complex comprising of a building or buildings, having more than 12 residential units.

During the examination of records of **M/s. R.R. Thulasi Builders (I) Pvt. Ltd.**, in Salem Commissionerate, we observed that the assessee constructed 30 residential quarters for the Central University of Tamilnadu, Tiruvarur and 48 residential quarters for National Institute of Technology, Trichy during 2010-11 and 2011-12 under works contract category for ₹ 25.34 crore and claimed exemption from payment of service tax. Since the number of residential units constructed was more than 12, the availing of exemption was incorrect. This resulted in non-levy of service tax of ₹ one crore.

We pointed this out (January 2015), the department stated (March 2015) that as per circular dated 29 January 2009 exemption is available if construction is made for personal use,

The reply of the department is not acceptable since the above exemption is available only when the number of units involved in the construction is less than 12.

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