

Chapter 6: Other Compliance Issues

During the course of this performance audit we observed 44 cases of incorrect application of rate of service tax and non/short payment of interest involving ₹ 8.84 crore.

6.1 Incorrect application of rate of service tax

As per Finance Act, 1994, service tax on commercial or industrial construction service under section 65 (zzq) was leviable with effect from 10 September 2004 while service tax on works contract under Section 65 (zzzza) was leviable with effect from 1 June 2007. As per Board's circular dated 4 January 2008, changing classification of service rendered for construction of a project from commercial or industrial construction service to WCS is not permissible.

We observed from the examination of records of **M/s. Shapoorji Pallonji & Company Ltd.**, in Ahmedabad (ST) Commissionerate that they provided construction service towards two projects viz. **Tata Motors Ltd. (TML)** and **Bhavnagar Energy Company Ltd. (BECL)** started from October 2008 and July 2010 respectively classifying the same as Commercial or Industrial Construction Service. The assessee was availing Cenvat credit of inputs, capital goods and input services and did not avail abatement under notification dated 1 March 2006 and discharged service tax at the normal rate of 12.36 per cent under Commercial or Industrial Construction service. We noticed that they changed the classification of the above said projects to WCS from July 2012 to March 2013 and paid service tax on taxable value of ₹ 71.31 crore after availing abatement of 60 per cent which is incorrect. Further, as they availed input credit, service tax is required to be paid on 100 per cent of taxable value without any abatement. This resulted in short levy of service tax of ₹ 4.46 crore.

We pointed this out (February 2014), the department while accepting the objection stated (February 2014) that draft show cause notice is being issued.

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

6.2 Non/short payment of interest

Section 75 of the Finance Act, 1994, envisages that every person, liable to pay the tax in accordance with the provisions of Section 68 or rules made thereunder, fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay interest for the period by which such crediting of the tax or any part thereof is delayed.

A few illustrative cases are given below:

6.2.1 M/s. Jaihind Projects Ltd., in Ahmedabad-ST Commissionerate, engaged in providing WCS paid service tax of ₹ 27.03 crore belatedly during the period 2010-11 to 2013-14. From the details furnished by assessee we noticed that the interest payable for belated payment of service tax was ₹ 2.60 crore. However, the assessee discharged interest liability of ₹ 1.02 crore. This resulted in short levy of interest of ₹ 1.58 crore.

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

6.2.2 M/s. Adarsh Noble Corporation Ltd., in Bhubaneswar-I Commissionerate, engaged in providing WCS paid service tax of ₹ 6.85 crore belatedly during the period 2012-13 and 2013-14. However, the assessee did not discharge interest liability of ₹ 65.48 lakh. This resulted in non-payment of interest of ₹ 65.48 lakh.

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

6.2.3 M/s. Sri Avantika Contractors (I) Ltd., in Patna Commissionerate, engaged in providing WCS paid service tax of ₹ 1.08 crore belatedly during the period 2010-11 and 2012-13. However, the assessee did not discharge interest liability of ₹ 35.27 lakh. This resulted in non-payment of interest of ₹ 35.27 lakh.

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

6.2.4 M/s. Gannon Dunkerley and Co. Ltd., in Kolkata (ST) Commissionerate paid service tax of ₹ 2.41 crore of in respect of WCS belatedly during the period 2013-14, but did not pay interest for delayed payment of service tax. This resulted in non-payment of interest of ₹ 24.71 lakh.

We pointed this out (May 2014), the assessee paid the interest of ₹ 24.71 lakh in June 2014. However, the reply from the Department/Ministry is still awaited (June 2015).

6.2.5 During the examination of records at Mumbai-I (ST) Commissionerate, we observed that **M/s. RNA Universal** made delayed payment of service tax of ₹ 3.24 crore during October 2011 to March 2014 but did not pay interest for delayed payment of service tax. This resulted in non-payment of interest of ₹ 19.98 lakh.

We pointed this out (December 2014), the department intimated (May 2015) the recovery of ₹ 9.98 lakh and further stated that the details of balance amount of recovery will be intimated soon.

6.2.6 During the examination of records of **M/s. Jaycon Infrastructure Ltd.**, in Chandigarh Commissionerate, we observed that the assessee paid interest amount of ₹ 12.72 lakh on delayed payment of service tax against liability of ₹ 34.93 lakh for the period October 2012 to September 2013. This resulted in short payment of interest of ₹ 22.21 lakh.

We pointed this out (May 2014), the reply of the Department/Ministry is still awaited (June 2015). However, the assessee paid the differential interest of ₹ 22.21 lakh.

6.2.7 During the examination of records at Nagpur Commissionerate, we observed that **M/s. Sandesh Infrastructure Ltd.**, paid interest amount of ₹ 4.18 lakh on delayed payment of service tax against liability of ₹ 26.43 lakh for the period 2011-12 to 2013-14. This resulted in short payment of interest of ₹ 22.25 lakh.

On being pointed out (January 2015), the department intimated (April 2015) the recovery of ₹ ten lakh and further stated that the details of balance amount of recovery will be intimated soon.

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

New Delhi

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Comptroller and Auditor General of India