

CHAPTER X : MINISTRY OF POWER

Central Electricity Authority

10.1 Non-collection of Service Tax

The Central Electricity Authority did not collect service tax of Rs. 62.10 lakh from its clients and ended up as an assessee in default before the Department of Central Excise.

The Government of India, Ministry of Finance imposed service tax on the services provided by consulting engineers with effect from 7 July 1997 vide notification no. 23/97-ST dated 2.4.97. 'Consulting engineers' included an engineering firm who, either directly or indirectly rendered any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering. Section 68(1) of the Finance Act 1994 (the Act) as amplified by the decision in the Tata Consultancy Services v. Union of India, 2001 (130) ELT 726 (Karnataka) made it clear that the levy would fall on every person providing the service including juristic persons. Service tax was payable even if the service was provided to Central Government, any State Government or Public Sector Undertaking. The gross amount charged by such engineers from the clients for such services rendered is subject to the imposition of service tax at the specified rate. If a person liable to pay the service tax, failed to credit it to the Central Government within the prescribed period, he was liable to pay simple interest at the rate of 15 *per cent per annum* for the period by which such credit was delayed.

The Central Electricity Authority (CEA) under the Ministry of Power is engaged, *inter-alia*, in providing consultancy services against consultancy fees and is accordingly liable to service tax. During October 1999 to February 2005, CEA charged consultancy fees aggregating Rs. 963.25 lakh from the clients. The service tax at the rates specified in the Act on the above consultancy fees worked out to Rs. 62.10 lakh which CEA failed to recover from clients and deposit with the Government. CEA also exposed itself to the additional liability of interest amounting to Rs. 14.29 lakh upto August 2005 for the delay in remittance of service tax.

CEA stated (May 2005) that it had not been registered as an assessee with the Government for payment of service tax and the matter for grant of exemption from payment of service tax had been taken up with the Central Excise Department. The Central Excise Department clarified (August 2005) that no exemption has been provided to any Government Department or Public Sector

Undertakings in respect of any taxable services rendered by them and asked CEA to comply with the service tax law.

Thus, not only did CEA fail to collect from its clients service tax of Rs. 62.10 lakh which it is liable to pay to the Government but also exposed itself to an interest liability of Rs. 14.29 lakh (as on August 2005) by becoming an assessee in default before the Department of Central Excise. The total liability incurred by CEA owing to its failure to fulfill its obligations of payment of service tax amounted to Rs. 76.39 lakh.

Badarpur Thermal Power Station

(Under the Management of National Thermal Power Corporation)

10.2 Non-deduction of income tax

Defective scheme of leave travel concession led to non-deduction of income tax aggregating Rs. 36.37 lakh at source on claims allowed on self certification basis for journeys performed by the employees.

According to Section 10(5) of the Income Tax Act, 1961 (I.T. Act) the value of any leave travel concession (LTC) shall be exempt from income tax only to the extent of expenses actually incurred for such travel. No exemption can be claimed without performing any journey and incurring actual expenses thereon. The Drawing and Disbursing Officers (DDO) of Government departments are responsible for ensuring deduction of income tax from the salary of the employees.

The employees of Badarpur Thermal Power Station (BTPS), whose salaries are funded by the Ministry of Power and managed by National Thermal Power Corporation (NTPC) on behalf of the Government, are governed by NTPC Leave Travel Concession (LTC) Rules effective from July, 1981. These Rules allowed employees and their family, reimbursement of actual fare limited to the amount of fare as per the entitled class of travel from the headquarters to the nearest railhead/airport of the place of visit either to home town or any other place in India once in a block of two years. The employees had the option to claim reimbursement of expenditure on LTC journey for distance upto 1250 Km (revised to 1400 Km in February 2002) on the basis of self-certification.

Claims were admitted on the basis of certificates to the effect that the claimant incurred expenditure not less than the amount of claim. BTPS disbursed a sum of Rs. 121.22 lakh during 2003-04 on account of LTC claims on certification basis. The amounts so paid were also allowed exemption from income tax on

the ground that the employees had given a certificate stating that they had travelled not less than 1400 Km and incurred expenditure on fare for which reimbursement had been sought. Audit observed that in the absence of details of the dates on which the journey occurred, fares paid, mode of travel and other indications of actual performance of journey by the claimants, the correctness of the claims was not possible to be verified. Audit held that exempting the LTC without any proof of actual journey (other than self certification) was against the spirit of the exemption allowed under the IT Act, which was to be allowed only on the actual expenditure incurred on leave travel. On this being pointed out by audit, BTPS stated (July 2005) that from April 2005 they have begun to strictly deduct income tax at source on LTC payments made or claimed on certification basis. The Ministry endorsed this action of BTPS in December 2005.

Not taking similar action till it was pointed out by audit resulted in income tax amounting to Rs. 36.37 lakh not being deducted and credited to the Government account in only one year, i.e. 2003-04. The BTPS had also exposed itself to a likely interest and penalty demand amounting to Rs. 41.83 lakh from the Income Tax Department. Considering that the fact that the scheme for reimbursement of LTC claims on certification basis had been vogue since 1981, the income tax liability including interest and penalty would be much more.