

CHAPTER XIX : SERVICE TAX RECEIPTS

19.1 Tax administration

Service tax was introduced from 1 July 1994 through Finance Act, 1994. Administration of service tax has been vested with the central excise department under the Ministry of Finance (the Ministry). Central Board of Excise and Customs (the Board) has set up a separate apex authority headed by Director General Service Tax (DGST) at Mumbai for its administration. Commissioners of central excise have been authorised to collect service tax within their jurisdiction. The number of services under the net has increased from 26 in 1999-2000 to 71 in 2004-05.

19.2 Trend of receipts

Revenue projected through annual budget and actual receipts from service tax during the years 2000-01 to 2004-05 is exhibited in the table below:-

(Amount in crore of rupees)

Year	No. of services covered by tax	Budget estimates	Revised budget estimates	Actual receipts*	Difference between actual receipts and budget estimates	Percentage variation
2000-01	26	2200	2200	2612	412	18.73
2001-02	41	3600	3600	3302	(-) 298	(-) 8.28
2002-03	51	6026	5000	4122	(-) 1904	(-) 31.60
2003-04	58	8000	8300	7890	(-) 110	(-) 1.38
2004-05	71	14150	14150	14196**	46	0.33

* Figure as per Finance Accounts

** Figure is provisional

It can be seen that except in 2000-01 and 2004-05, actual collections had been lower than the budget estimates all through the five year period. Shortfall ranged from Rs.110 crore to Rs.1904 crore or 1.38 to 31.60 per cent over budget estimates during these years. In one of the five years i.e. 2002-03 receipt did not match even scaled down revised estimates and in 2003-04 did not reach increased budget estimate.

19.3 Outstanding demands *

The number of cases and amount involved in demands for service tax outstanding for adjudication/recovery as on 31 March 2005 are given below:

(Amount in crore of rupees)

		As on 31 March 2004				As on 31 March 2005			
		Number of cases		Amount		Number of cases		Amount	
		More than five years	Less than five years	More than five years	Less than five years	More than five years	Less than five years	More than five years	Less than five years
(a)	Pending with Adjudicating officers	41	29374	2.02	700.54	153	25466	2.67	1256.29

(b)	Pending before								
(i)	Appellate Commissioners	0	823	0.00	85.48	0	589	0.00	764.77
(ii)	Board	0	14	0.00	0.12	0	7	0.00	2.11
(iii)	Government	0	0	0.00	0.00	0	2	0.00	0.08
(iv)	Tribunals	0	283	0.00	81.16	8	291	0.03	407.07
(v)	High Courts**	8	149	0.00	27.12	9	105	0.05	35.47
(vi)	Supreme Court	0	10	0.00	4.20	0	11	0.00	0.57
(c)	Pending for coercive recovery measures	16	5444	0.00	38.55	474	9248	0.23	65.67
	Total	65	36097	2.02	937.17	648	35719	2.97	2532.05

* Figure furnished by the Ministry and relates to 93 commissionerates of central excise (commissionerates).

** The Ministry intimated that the amount when rounded off amounts to zero

A total of 36,367 cases involving tax of Rs.2535.02 crore were pending as on 31 March 2005 with different authorities, of which 70 per cent in terms of number were with the adjudicating officers of the department. Pendency of demands for coercive recovery measures with the departmental officers has increased from 5,460 in 2003-04 to 9,722 cases in 2004-05 i.e an increase of about 78 per cent.

19.4 Fraud/presumptive fraud cases *

The position of fraud/presumptive fraud cases alongwith the action taken by the department against defaulting assesseees during the period 2002-03 to 2004-05 is depicted in the following table :

(Amount in crore of rupees)

Year	Cases detected		Demand of duty raised	Penalty imposed		Duty collected	Penalty collected	
	Number	Amount	Amount	Number	Amount	Amount	Number	Amount
2002-03	195	40.26	14.46	22	3.08	1.56	6	0.01
2003-04	995	172.75	130.85	240	30.38	14.94	115	0.09
2004-05	1415	296.54	181.23	323	22.32	19.74	159	0.23
Total	2605	509.55	326.54	585	55.78	36.24	280	0.33

* Figure furnished by the Ministry and relates to 93 commissionerates

The above data reveals that while a total of 2,605 cases of fraud/presumptive fraud were detected during the years 2002-05 by the department, involving tax of Rs.509.55 crore, it raised demand of Rs.326.54 crore only and recovered Rs.36.24 crore (11.10 per cent). Similarly, out of penalty of Rs.55.78 crore imposed, the department recovered only Rs.0.33 crore (0.59 per cent).

19.5 Provisional assessments*

The number of cases of provisional assessments and amount involved therein as on 31 March 2004 and 31 March 2005 is exhibited in table as follows :-

(Amount in crore of rupees)

		As on 31 March 2004		As on 31 March 2005	
		Number of cases	Duty involved	Number of cases	Duty involved
(a)	Pending decision by Court of law	7	0.01	7	0.03
(b)	Pending decision by Government of India or Board	0	0.00	0	0.00
(c)	Pending adjudication with the Commissioners	3	0.09	8	16.65
	Total	10	0.10	15	16.68

* Figure furnished by the Ministry and relates to 93 commissionerates

19.6 Contents

This section contains 48 paragraphs (including cases of total under assessment) featured individually or grouped together with revenue implication of Rs.86.57 crore directly attributable to audit pointing out non-compliance to rules/regulations. The Ministry/department had accepted audit observations in 42 paragraphs involving Rs.35.59 crore and recovered Rs.5.41 crore till January 2006.

CHAPTER XX : NON/SHORT LEVY OF SERVICE TAX

Test check of records relating to service tax assessments revealed cases of non-payment, non-levy, short levy or non-recovery, some of which are given below :

20.1 Non-payment of service tax

20.1.1 Broadcasting services

Broadcasting services have been brought under service tax net with effect from 16 July 2001.

Test check of records of service tax division-X, in Delhi I commissionerate of service tax, revealed that Prasar Bharti Corporation, registered with service tax department in August 2003 collected broadcasting service charges of Rs.936.05 crore in respect of Doordarshan commercial service and All India Radio commercial broadcasting service from 16 July 2001 to 31 March 2003 from clients. Service tax of Rs.46.80 crore due on these service charges was, however, not paid. Department too did not initiate any proceedings to recover the same.

On this being pointed out (November 2004), the Ministry stated (November 2005) that as per Board's letter dated 27 March 2003, Prasar Bharti (Doordarshan and All India Radio) was not liable to pay service tax prior to 1 April 2003.

Reply of the Ministry is not tenable as Board in its earlier circular dated 9 July 2001 had clarified that, under provisions of section 22 of Prasar Bharti Act, 1990, the Corporation, was exempted from only direct taxes since they were not borne by it from its own income, but not indirect taxes. Board in its subsequent circular dated 27 March 2003 rendered Corporation not liable to pay service tax and yet again modified its decisions through subsequent circular of 14 July 2003 making Prasar Bharti liable to pay service tax from 1 April 2003. Since specific notification under section 93 (1) or (2) of Finance Act, 1994 as amended, was not issued granting exemption to the Corporation from payment of service tax, it was recoverable for the period 16 July 2001 to 31 March 2003.

20.1.2 Management consultancy services

Section 65(65) of Finance Act 1994, envisages that management consultant is one who is engaged in providing any service, either directly or indirectly, in connection with management of any organisation in any manner and includes any person who renders any advice, consultancy or technical assistance, relating to conceptualizing, devising, development, modification, rectification or upgradation of any working system of any organization. Further, section 68 of the Act, provides that every person providing taxable service to any person shall pay service tax at the rate and within such period as may be prescribed. Interest and penalty shall also be leviable on non/delayed payment of service tax under section 75 and 76 of the Act, *ibid*.

M/s. Hero Cycles Ltd. and M/s. Jagatjit Industries, in Ludhiana and Jalandhar commissionerates, received Rs.14.40 crore during April 2001 to March 2004 on account of royalty for use of their trade mark by various organisations. As use of 'trade mark' fell under category of "management consultancy" the assesseees were liable to pay service tax. This also found support in regional advisory committee (ST Section Madurai Commissionerate) meeting held on 29 August 2003 {2003 (111) ECR 14C} wherein it was clarified that if

manufacturer gave consent to another manufacturer for use of his trade mark and realised the amount (royalty) for the use of trade mark, it would be covered under management consultant's service and liable to service tax. No service tax was paid by the assessee. Non-payment of service tax amounted to Rs.1.04 crore besides levy of interest of Rs.23.68 lakh (upto December 2004).

On this being pointed out (December 2004), the department in one case stated (May 2005) that SCN for Rs.1.22 crore had been issued in April 2005. Reply in the second case was awaited (May 2005).

Reply of the Ministry had not been received (January 2006).

20.1.3 Clearing and forwarding agents

Under sections 66 and 67 of Finance Act, 1994 read with notification dated 11 July 1997 service provided by clearing and forwarding agent is chargeable to service tax. Clause 25 of section 65 ibid (as amended by subsequent Finance Acts) defines clearing and forwarding agent as any person who is engaged in providing any service, either directly or indirectly, connected with clearing and forwarding operations in any manner to any other person and includes consignment agents. Further, it has judicially been held in *Prabhat Zarda Factory (India) Ltd. vs. commissioner* {2002 (145) ELT 222 (Tri-Kolkata)} that procuring orders and passing them on to principal for executing in lieu of commission is within the scope of services of clearing and forwarding agent even if goods are not directly dealt with by them. This service is chargeable to service tax under business auxiliary services from 1 July 2003.

M/s. New Tobacco Company Ltd. (Lessee: RDB Industries Ltd.), Kolkata, in Kolkata III commissionerate, manufacturing cigarettes and other tobacco products entered into agreements with different manufacturer/dealers of goods (principals) for procurement of orders on behalf of them from Videsh Sanchar Nigam Ltd., West Bengal State Electricity Board, etc., and passing them on to such manufacturer/dealers for execution in lieu of commissions payable by such principals. Scrutiny revealed that neither did assessee pay service tax on commission earned nor did the department demand the same. This resulted in non levy of service tax of Rs.1.02 crore during the period from 2001-02 to 2003-04. On this being pointed out (January 2005), the department contended (April 2005) that decision of the Tribunal was not relevant, since activity undertaken by assessee was that of commission agent and as per clause (2) of Board's circular dated 20 June 2003, such agents were chargeable to service tax under business auxiliary service which were exempt from service tax. Reply of the department is not acceptable since tribunal's judgment had not left any scope for doubt on classification of activities of commission agents as clearing and forwarding services. In the instant case, the assessee acting as clearing and forwarding agent had rendered services and, therefore, was liable to pay service tax from 2001-02 to 2003-04. Moreover, as per clause (3) of Board's circular of 20 June 2003, clearing and forwarding agents working on commission basis have been covered under the specific heading of clearing and forwarding service and not as claimed by the department, under the general heading of business auxiliary services which did not exist prior to July 2003. Reply of the Ministry had not been received (January 2006).

M/s. Saini Alloys Pvt. Ltd. in Noida commissionerate, collected Rs.18.19 crore as commission from customers for providing services on account of procurement of orders and promoting sales of products of those customers during the period from 2000-01 to 2003-04, but service tax of Rs.96.42 lakh due thereon was not levied. Further, interest and penalty was

also to be levied on the assessee. On this being pointed out (August 2004), the Ministry admitted the objection and stated (September 2005) that SCN for Rs.1.41 crore had been issued in January 2005.

M/s. Trumac Engineering Company, Ahmedabad and M/s. Paras Pharmaceuticals, Kalol in Ahmedabad I and III commissionerates, availed services of clearing and forwarding agents between 16 July 1997 and 16 October 1998 and paid Rs.750.38 lakh (Rs.689.23 lakh plus Rs.61.15 lakh) towards commission. During the period of agreement, service providers were required to effect sales of the goods of principal and arrange recovery of outstanding dues from customers. However, assessee neither filed ST-3A return nor paid service tax as contemplated in the rule. This resulted in non-payment of service tax to the extent of Rs.41.54 lakh including interest of Rs.4.02 lakh. On this being pointed out (August and September 2004), the Ministry admitted the objection and intimated (December 2005) issue of a show cause notice for Rs.64.58 lakh.

M/s. Tinplate Company India Ltd. (TCIL), in Jamshedpur commissionerate, entered into agreement with M/s. TISCO Ltd., Jamshedpur on 30 March 1998 appointing the assessee as consignment agent of M/s. TISCO Ltd. for consigning converted excisable goods to customers. M/s. TCIL received commission of Rs.8.97 crore against consignment of 3,58,983 tonne of products during the period April 2001 to March 2003. Service tax amounting to Rs.54.94 lakh was not paid which was recoverable with interest and penalty. On this being pointed out (June 2004), the department stated (October 2004) that service tax was not recoverable from M/s. TCIL as service was not provided by them but was recoverable from respective consignment agents. It, however intimated that demand cum SCN had been issued to M/s. TCIL. Reply of the department is not tenable as M/s. TCIL received payment for providing consignment agents services. Therefore liability to pay tax lay with M/s. TCIL. The Ministry stated (December 2005) that the assessee had paid Rs.5.64 lakh but SCN was pending decision.

20.1.4 Interconnection usage charges

Leased circuit services were brought under service tax net by Finance Act, 2001, with effect from 16 July 2001. Board clarified on 8 August 2002 that 'inter-connectivity linked charges' were charges for providing 'leased circuits', hence service tax would be leviable. On the same analogy interconnection usage charges which are recovered/collected by one operator from another operator as service revenue, for providing service of their networks, were also liable to service tax.

M/s. Hexacom India Ltd. in Jaipur I commissionerate, were engaged in activity of providing cellular mobile telephony service. Scrutiny of records revealed that bills raised by assessee on other operators viz. Bharat Sanchar Nigam Ltd., Videsh Sanchar Nigam Ltd., Reliance Infocomm Ltd., Shyam Telelinks Ltd., ESSAR, etc. on account of interconnectivity usage charges (IUC) with effect from May 2003 for providing service to consumers of those operators were without charging service tax. Since interconnect revenue was service revenue received for providing service to consumers of other operators and exhibited in profit and loss account as service revenue, service tax was required to be charged from those operators. Omission to do so resulted in non-levy of service tax amounting to Rs.1.22 crore during the period May 2003 to March 2004.

On this being pointed out (February 2005), the Ministry stated (September 2005) that it had clarified vide its letter dated 15 June 2004 that IUC will not be chargeable to service tax and other such charges would get taxed through caller charges.

Reply of the Ministry is not tenable. As IUC included charges towards interconnect link cost and set up cost which are leviable to service tax, service tax is required to be levied. Subjecting these amounts to tax subsequently through caller charges is not relevant as the point of tax becoming due would be the service provider who has provided the interconnections service.

20.1.5 Erection, commissioning and installation services

Section 65(28) of Finance Act, 1994 (as amended by Finance Act 2003) defines “commissioning and installation” as any service rendered by commissioning and installation agency in relation to commissioning and installation of plant, machinery or equipment. Service tax at the rate of eight per cent on gross amount charged by commercial concern for such service excluding cost of parts or other material if any, sold while rendering such service is leviable from July 2003 vide notifications dated 20 June 2003 and 21 August 2003.

In case of composite contract for supplying plant machinery or equipment and its commissioning and installation, service tax is payable on 33 per cent of gross amount charged from customer vide notification dated 21 August 2003.

M/s. Johnson Lifts Pvt. Ltd., in Chennai IV commissionerate, manufacturer of lifts and parts of lifts was engaged in supply, commissioning and installation of lifts on contract basis. During 2003-04, the contract receipts towards supply, commission and installation of lifts was Rs.79.73 crore. Service tax payable (eight per cent) on 33 per cent of gross contract value for the year worked out to Rs.2.10 crore. Department, however, allowed for central excise purpose, 15 per cent of contract amount as abatement towards commissioning and installation. Thus, on conservative estimate, 15 per cent of the contract amount was taken as the value of commissioning and installation i.e. Rs.11.98 crore (15 per cent of Rs.79.93 crore) for which service tax payable but not paid worked out to Rs.0.96 crore.

Assessee also purchased eight escalators and installed and commissioned them at premises of customers. Total contract receipts for these during 2003-04 were Rs.2.39 crore and service tax leviable worked out to Rs.6 lakh which also had not been paid. On this being pointed out (October and December 2004), department stated (February 2005) that since assessee manufactured lifts at customer’s premises by way of supply of components and erection thereof, the said activity was manufacturing activity and not that of service under ‘erection, commissioning and installation service’. Further the term ‘erection’ was included in the said service with effect from 10 September 2004 and Ministry also clarified in their circular of 20 June 2003 that all activities other than commissioning and installation of plant and machinery per se would not be chargeable to service tax. The reply is not tenable since as per terms of contract, construction of lift, well and related items of work were responsibilities of the customers. Since assessee had installed and commissioned the lifts, service tax was payable. Reply of the Ministry had not been received (January 2006).

M/s. Karnataka Vidyuth Karkhane, Bangalore, in Bangalore commissionerate of service tax, engaged in manufacture of plant and machinery realised Rs.293.33 lakh between July 2003 and August 2004 from various customers on account of erection, commissioning and installation of plant and machinery. Though such services were liable, service tax of Rs.23.47 lakh due thereon was not levied. On this being pointed out (October 2004), the Ministry

stated (January 2006) that erection charges came into service tax net only with effect from 10 September 2004 and, hence, service tax was not leviable for the period prior to 10 September 2004. Reply of the Ministry is not tenable as erection services are in nature of 'technical assistance' to buyer of plant and machinery and prior to 10 September 2004 it was leviable to service tax under 'consulting engineer's services' from 7 July 1997 as clarified by Board vide circular dated 18 December 2002.

20.1.6 Business auxiliary services

"Business auxiliary services" has been brought under service tax net with effect from 1 July 2003. Section 65(19) of Finance Act, 1994, envisages that "business auxiliary services" means any commercial concern which is engaged in providing any service to any client in relation to promotion or marketing or sale of goods, promotion or marketing of services or any customer care service, or any incidental or auxiliary support service such as billing, collection or recovery of cheque etc.

M/s. Emtici Engineering Ltd., Vallabh Vidyanagar, in Vadodara I commissionerate, entered into agreement with M/s. Eimco Elecon (I) Ltd., Vallabh Vidyanagar on 1 January 2003 (i) to provide after sales service to equipment users; (ii) enhance sales of equipments; (iii) instal and place in proper operation all new equipments sold; and (iv) make periodic visit to customer and potential customers on payment of service charges. For services rendered during July 2003 and March 2004, M/s. Eimco Elecon paid Rs.5.65 crore to service provider. However, service provider (M/s. Emtici Engineering Ltd. Vallabh Vidyanagar) neither registered themselves with jurisdictional service tax branch nor paid service tax. This resulted in non payment of service tax of Rs.45.23 lakh. On this being pointed out (January 2004), the Ministry admitted the objection (July 2005) and stated that SCN for Rs.42.23 lakh had been issued.

M/s. Elgi Equipments Ltd. Singanallur, in Coimbatore commissionerate, entered into agreements with M/s. Valvoline Cummins Ltd. and M/s. Chemoleum Ltd. whereby, assessee would arrange to market products of those companies through its dealer networks and would endeavor to promote sale of licensed products and arrange for regular follow-up through its personnel. The assessee also granted non-exclusive licence to the said companies for affixing or using its trade marks/brand name viz 'ELGI/AIRLUBE and also provided its marketing network for promotion of sales. Assessee received royalty of Rs.1.43 crore during 2003-04 for marketing services rendered to these companies but service tax of Rs.11.46 lakh due thereon was not paid. On this being pointed out (May June and December 2004), the Ministry stated (September 2005) that royalty received by assessee was solely consideration for use of brand name and nothing else, therefore royalty charges received by assessee attracted service tax from 10 September 2004 under the heading 'intellectual property service'. The reply is not tenable as assessee had provided marketing services and also granted trademark licence. Grant of trademark licence for compliance of quality assurance of product as provided in the agreement is 'a customer care service' provided on behalf of the companies. Customer care service is covered by definition of 'business auxiliary service'. Therefore, assessee is liable to pay service tax under 'business auxiliary service'.

20.2 Non-levy of service tax on services rendered by foreign service providers

Rule 6 of Service Tax Rules, 1994, provides that where a person liable to service tax is non-resident or is from outside India, such person shall pay service tax by demand draft alongwith

the return prescribed within 30 days from date of raising bill on the client for taxable service rendered. However, vide rule 2(d) (iv) inserted with effect from 16 August 2002, person receiving taxable services in India has been made liable for payment of service tax on services provided by person who is non-resident or is from outside India not having any office in India.

20.2.1 Five assesseees, in Chandigarh and Ludhiana commissionerates, paid sum of Rs.223.26 crore to various foreign firms towards rendering services viz. technical know-how, imported technology, technical guidance during 1998-99 to 2003-04. These services fell under the definition of consulting engineer services. No service tax was, however, paid by the assesseees in terms of provision mentioned above. This resulted in non-payment of service tax amounting to Rs.13.63 crore which was recoverable with interest of Rs.3.61 crore.

On this being pointed out (between June 2004 and December 2004), the Ministry admitted the objection (November 2005)

20.2.2 M/s. Bharat Heavy Electricals Ltd., Haridwar in Meerut I commissionerate, paid a sum of Rs.24.60 crore to foreign consultants for services in the field of management consultancy between April 2001 and March 2004. Since services were rendered in India, service tax amounting to Rs.1.46 crore was leviable. Although income tax and other taxes were deducted at source before releasing payment to foreign consultants, service tax was not recovered.

On this being pointed out (August and October 2004), the Ministry admitted the objection (November 2005).

20.2.3 Chief Engineer, National Highways, Public Works Department, Government of Karnataka, availed services falling under category of 'consulting engineers' from two foreign consultants viz. M/s. Scott Wilson Kirkpatrick and Company Ltd. U.K. and M/s. Booz Allen Hamilton Inc. U.S.A. Service charges of Rs.21.32 crore were paid during the years 1999-2000 to 2001-02. Since service had been rendered in India, service tax of Rs.1.07 crore was payable but the same was not paid.

On this being pointed out (March 2004), the Ministry while admitting objection stated (September 2005) that demands for Rs.1.24 crore had been confirmed and Rs.65.83 lakh recovered which includes Rs.25.36 lakh as interest. Report on recovery of remaining amount had not been received (January 2006).

20.2.4 M/s. L.G. Electronics Ltd., in Noida commissionerate, engaged in manufacture and marketing of various electronic house hold goods paid an amount of Rs.7.07 crore, in foreign currency, towards advertisement, publicity and sales promotion during 2003-04 but service tax amounting to Rs.56.59 lakh payable thereon was not paid.

This was pointed out (January 2005), reply of the Ministry/department had not been received (January 2006).

20.2.5 M/s. Tata Holset, Dewas, in Indore commissionerate, as part of joint venture with Holset Engineering Company Ltd., United Kingdom, received technical information and services to manufacture turbo charger. Assessee paid royalty of Rs.7.15 crore against receipt of such technical services between July 1997 and January 2004. Records further revealed that assessee was authorised by foreign service provider through an agreement that the taxes payable in India be deducted from royalty and remitted to government by the assessee.

Service tax of Rs.48.59 lakh due thereon was, however, not paid which was recoverable with interest of Rs.10.14 lakh.

On this being pointed out (April 2004), the Ministry admitted the objection and stated (August 2005) that SCN had been issued (October 2004) for recovery of service tax of Rs.52.33 lakh alongwith interest and penalty.

20.2.6 M/s. Tisco Ltd., in Jamsheedpur commissionerate, paid foreign consultants for technical know-how, drawing and design consultancy fee amounting to Rs.4.87 crore during the period April 2002 to March 2003 but service tax amounting to Rs.24.35 lakh was not paid by the assessee.

On this being pointed out (August 2003), the Ministry admitted the objection and stated (September 2005) that service tax amounting to Rs.1.87 crore alongwith interest of Rs.19.72 lakh had been recovered.

20.2.7 M/s. Bharat Aluminium Company Ltd., Korba in Raipur commissionerate, paid Rs.9.68 crore to certain foreign consultants (agencies) against consulting charges (in foreign exchange outflow) during the financial years 2001-02 and 2002-03 on which service tax of Rs.48.40 lakh was recoverable. Service tax was, however, not paid either by assessee (receiver of taxable service) or by agencies, which had rendered taxable services.

On this being pointed out (March 2004), the Ministry admitted the objection and stated (October 2005) that SCN had been issued (February 2005).

20.2.8 M/s. S.S. Oral Hygiene Products Pvt. Ltd., in Hyderabad-IV commissionerate, engaged in manufacture of tooth paste, incurred certain expenditure in foreign currency towards technical assistance fees. Scrutiny of annual accounts for the years 2000-2001 to 2003-2004 revealed that assessee paid Rs.4.16 crore during the period from July 2001 to March 2004 to a New York based firm M/s. Colgate Palmolive Company towards fees for technical assistance provided by them by deputing technicians who rendered assistance/supervision in the manufacture of tooth paste in conformity with the standards and quality specified by the said foreign based company. Service tax amounting to Rs.25.22 lakh was neither paid by service provider/service receiver nor demanded by the department.

On this being pointed out (December 2004/April 2005), the Ministry admitted the objection and stated (September 2005) that SCN for Rs.27.53 lakh had been issued in April 2005.

20.3 Short payment of service tax

20.3.1 Notification dated 16 December 2002 exempts taxable services provided by consulting engineer to a client on transfer of technology from so much of the service tax leviable thereon under section 66 of Finance Act, 1994, as is equivalent to the amount of cess paid on the said transfer of technology under provision of section 3 of the Research and Development Cess Act, 1986.

Scrutiny of records of Gurgaon and Faridabad commissionerates, revealed that five assesseees (three in Gurgaon and two in Faridabad) received services in form of technical know-how/technical assistance from foreign consultants and paid an aggregated amount of Rs.48.29 crore to service providers from 14 May 2003 to August 2004. Since assesseees had already paid cess at the rate of five per cent on transfer of technology, service tax at three per cent (8 minus 5 per cent) was recoverable which worked out to Rs.1.45 crore.

On this being pointed out (August and November 2004), the Ministry admitted the objection (November 2005).

20.3.2 M/s. Jay Pee Bela Plant, Rewa (formerly known as M/s. Jay Pee Bela Cement, Rewa) was registered for payment of service tax under category of goods transport operators service in Bhopal commissionerate. The assessee had goods transport operations through regional marketing offices (RMO) located at Delhi, Allahabad and Patna. Scrutiny of financial records revealed that they had received Rs.15.45 crore during December 1997 to June 1998 for providing transport services. Service tax of Rs.77.26 lakh was payable but assessee paid Rs.6 lakh only for Rewa region. Balance of Rs.71.26 lakh was recoverable with interest of Rs.35.76 lakh (till March 2001).

On this being pointed out (June 2001), the department stated (June 2005) that demand of service tax of Rs.47.40 lakh, payment of interest and penalty at appropriate rate till the date of actual payment of service tax had been confirmed (March 2005) in respect of RMO, Rewa. Case of RMO at Delhi, Allahabad and Patna was to be decided by their jurisdictional adjudication authorities as assessee had got himself registered subsequently at those places.

The Ministry admitted the objection (January 2006).

20.4 Non-recovery of service tax on services of goods transport operators

Under notification dated 5 November 1997 effective from 16 November 1997, recipients of services of goods transport operators are liable to pay service tax at the rate of five per cent of the freight charges paid to goods transport operators. In case of *Laghu Udyog Bharati* {1999 (112) ELT 365}, Supreme Court held that recipients of services cannot be made liable to pay service tax and the rules made in this regard are ultra vires Finance Act, 1994. In order to validate recovery of service tax from recipients, Finance Act, 1994 had been amended with retrospective effect vide section 117 of Finance Act, 2000.

By Finance Act, 2003, a new section 71A was introduced requiring service receiver/user of transport operator to file return for the relevant period (i.e. 16 November 1997 to 1 June 1998) within six months from 14 May 2003.

In case of *M/s. Ruby Woollen Pvt. Ltd.* {2002 (103) ECR 176 (T)}, it was held that service tax along with interest became payable retrospectively with introduction of section 116 and 117 of Finance Act, 2000.

Eight assessees in Chennai II, III and IV, Indore, Jaipur II, Salem, Trichy and Vadodra II commissionerates, paid freight charges to goods transport operators during the period 16 November 1997 to 1 June 1998 for hiring transport services. Service tax of Rs.1.48 crore leviable thereon was, however, not paid. Department too did not take any action for recovery. Service tax was, therefore, recoverable with interest.

On this being pointed out (between September 2000 and March 2005), the Ministry admitted the objection and stated (between August and November 2005) that service tax of Rs.46.82 lakh had been recovered with interest of Rs.3.36 lakh from three assessees.

20.5 Unauthorised adjustment of service tax

Section 83 of Finance Act 1994, provides that provisions of section 11B of Central Excise Act, 1944 in force from time to time shall apply to service tax as well. Section 11B stipulates

that any person claiming refund of any duty of excise may make an application within one year.

Rule 6(3) of Service Tax Rules, 1994, provides that where an assessee has paid service tax in respect of a taxable service, which is not so provided by him either wholly or partially for any reason, he may adjust excess service tax so paid by him (calculated on a pro rata basis) against service tax liability for the subsequent period, if the assessee has refunded the value of taxable service and service tax thereon to the person from whom it was received.

M/s. TVS Motor Company Ltd., Hosur in Chennai III commissionerate, paid service tax of Rs.81.58 lakh for the period from November 2002 to November 2003 as recipient of service availed of from non-resident Indian on technical consultancy, engineering consultancy, marketing research etc. They found that tax of Rs.41.20 lakh had been paid in excess by oversight. Of this amount, they adjusted Rs.14.38 lakh against service tax liability during November 2003 to January 2004. In February 2004, the assessee intimated department that Rs.14.38 lakh had been adjusted and balance would be adjusted against future liability of service tax. Such *suo motu* adjustment of service tax against future liability was not correct, being not covered by rule 6(3) of Service Tax Rules, 1994, and therefore assessee should have claimed refund under section 11B of Central Excise Act, 1944.

On this being pointed out (March, April and May 2004), the Ministry admitted the objection and stated (July 2005) that SCN for Rs.41.20 lakh had been issued in May 2004.

20.6 Other cases

In 48 other cases of non/short levy of service tax the Ministry/department had accepted objections involving duty of Rs.3.52 crore and reported recovery of Rs.0.69 crore in 30 cases till January 2006.

New Delhi
Dated :

(JAYANTI PRASAD)
Principal Director (Indirect Taxes)

Countersigned

New Delhi
Dated :

(VIJAYENDRA N. KAUL)
Comptroller and Auditor General of India

