CHAPTER XVII : SERVICE TAX RECEIPTS

17.1 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/service tax have been authorised to collect service tax within their jurisdiction. The number of services under the net has increased from 41 in 2001-02 to 81 in 2005-06.

17.2 Trend of receipts

Revenue projected through annual budget and actual receipts from service tax during the years 2001-02 to 2005-06 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
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	14199	49	0.35
2005-06	81	17500	23000	23055**	5555	31.73

* Figures as per Finance Accounts

** Figure is provisional

In 2004-05 and 2005-06, actual collections had been higher than the budget estimates by 0.35 and 31.73 per cent.

17.3 Outstanding demands *

The number of cases and amount involved in demands for service tax outstanding for adjudication/recovery as on 31 March 2006 are given below:

(Amount in crore of rupees)

		As on 31 March 2005				As on 31 March 2006			
		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	58	22619	2.67	1235.67	39	35480	5.01	955.89

(b)	**Pending before**								
(i)	Appellate Commissioners	0	578	0.00	759.72	0	478	0.00	221.57
(ii)	Board	0	7	0.00	2.11	2	17	0.08	0.91
(iii)	Government	0	2	0.00	0.08	0	1	0.00	0.06
(iv)	Tribunals	8	224	0.02	402.70	7	318	1.51	157.05
(v)	High Courts	9	105	0.01	35.47	11	77	0.12	10.82
(vi)	Supreme Court	0	11	0.00	0.57	1	3	0.01	0.53
(c)	**Pending for coercive recovery measures**	474	9067	0.23	64.42	6	5889	0.09	86.20
	Total	**549**	**32613**	**2.93**	**2500.74**	**66**	**42263**	**6.82**	**1433.03**

* Figures furnished by the Ministry and relates to 87 commissionerates of central excise and four commissionerates of service tax.

A total of 42329 cases involving tax of Rs.1439.86 crore were pending as on 31 March 2006 with different authorities, of which 84 per cent in terms of number were with the adjudicating officers of the department. Pendency of demands with adjudicating officers has increased from 22677 in 2004-05 to 35519 cases in 2005-06 i.e. an increase of 56.63 per cent.

17.4 Fraud/presumptive fraud cases *

The position of fraud/presumptive fraud cases alongwith the action taken by the department against defaulting assessees during the period 2003-04 to 2005-06 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
2003-04	993	172.67	130.85	239	30.24	14.94	115	0.09
2004-05	1410	296.05	181.22	323	22.32	20.01	159	0.23
2005-06	1550	375.53	202.79	231	6.34	44.46	47	0.07
Total	**3953**	**844.25**	**514.86**	**793**	**58.90**	**79.41**	**321**	**0.39**

* Figure furnished by the Ministry and relates to 91 commissionerates of central excise and five commissionerates of service tax.

The above data reveals that while a total of 3953 cases of fraud/presumptive fraud were detected during the years 2003-06 by the department, involving tax of Rs.844.25 crore, it raised demand of Rs.514.86 crore only and recovered Rs.79.41 crore (15.42 per cent). Similarly, out of penalty of Rs.58.90 crore imposed, the department recovered only Rs.0.39 crore (0.66 per cent).

17.5 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 the following table :

(Amount in crore of rupees)

		As on 31 March 2005		As on 31 March 2006*	
		Number of cases	**Duty involved**	**Number of cases**	**Duty involved**
(a)	Pending decision by Court of law	7	0.03	4	2.92
(b)	Pending decision by Government of India or Board	0	0.00	0	0.00
(c)	Pending adjudication with the Commissioners	8	16.65	4	15.13
	Total	**15**	**16.68**	**8**	**18.05**

* Figure furnished by the Ministry and relates to 91 commissionerates of central excise and five commissionerates of service tax.

17.6 Contents

This section contains 83 paragraphs (including cases of total under assessment) featured individually or grouped together with revenue implication of Rs.266.47 crore directly attributable to audit pointing out non-compliance to rules/regulations. The Ministry/department had accepted (till December 2006) audit observations in 38 paragraphs involving Rs.28.40 crore and had recovered Rs.7.38 crore.

17.7 Impact/followup of Audit Reports

During the last five years (including the current years's report), audit through its Audit Report had pointed out short levy etc., totalling to Rs.444.88 crore in 216 audit paras. Of these, Government had accepted audit observations in 162 audit paras involving Rs.154.90 crore and had since recovered Rs.23.63 crore. The details are abstracted in the following table.

(Amount in crore of rupees)

Year of Audit Report	Paragraphs included		Paragraphs accepted						Recoveries effected					
			Pre printing		Post printing		Total		Pre printing		Post printing		Total	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
2005-06	83	266.47	38	28.40	--	--	38	28.40	20	7.38	--	--	20	7.38
2004-05	48	86.57	42	35.59	Nil	Nil	42	35.59	8	5.41	7	1.46	15	6.87
2003-04	20	17.56	19	17.25	Nil	Nil	19	17.25	2	0.33	4	0.35	6	0.68
2002-03	42	42.21	35	40.43	5	1.16	40	41.59	2	2.04	2	1.79	4	3.83
2001-02	23	32.07	23	32.07	Nil	Nil	23	32.07	2	2.97	2	1.90	4	4.87
Grand Total	**216**	**444.88**	**157**	**153.74**	**5**	**1.16**	**162**	**154.90**	**34**	**18.13**	**15**	**5.50**	**49**	**23.63**

CHAPTER XVIII : INCORRECT EXEMPTION/CENVAT CREDIT

Exemption from payment of service tax is granted by issue of notification under section 93 of Finance Act, 1994 and cenvat credit of service tax paid on specified input services is admissible under Cenvat Credit Rules. Some illustrative cases of incorrect exemption or cenvat credit noticed during test audit are depicted below :

18.1 Incorrect availment of exemption by persons other than goods transport agencies

Service tax on transport of goods by road has been reimposed with effect from 1 January 2005. Goods transport agency (GTA) is liable to pay service tax on gross transportation charges collected from customer in relation to transport of goods by road. However, vide notification no.35/2004-ST dated 3 December 2004, liability to pay service tax has also been casted on the recipient of services from GTA, when recipient of services is consignor or consignee of the goods and falls under any one of the seven categories mentioned therein (a factory, company, corporation, society, cooperative society, dealer of excisable goods or a corporate body).

By notification no.32/2004-ST dated 3 December 2004, 75 per cent value of the taxable service provided by GTA to a customer is exempt from levy of service tax subject to the conditions that credit of duty paid on inputs or capital goods used for providing such taxable service is not taken and benefit of notification no.12/2003-S.T. dated 20 June 2003 is not availed by GTA. These conditions are relevant to GTA. Therefore, exemption of 75 per cent prescribed therein is also applicable to GTA, when GTA is liable to service tax. Hence, recipients of services, paying service tax under notification no.35/2004-ST dated 3 December 2004, are not eligible to such exemption.

Test check of records of 688 manufacturers in fifty six commissionerates/Service Tax, engaged in manufacture of various excisable goods, revealed that they received services from GTAs and paid them transportation charges. Though the service tax was payable on gross transportation charges, yet they paid service tax on 25 per cent amount of the freight charges claiming exemption under notification no.32/2004-ST. However, four manufacturers in Bhopal (1), Belapur (2) and Raigad (1) commissionerates, did not pay any service tax at all. It was further noticed that two assessees in Goa and Kolkata commissionerates paid service tax on 25 per cent value of freight charges and also availed cenvat credit of service tax paid. Availment of exemption was incorrect as assessees were not GTAs but recipient of GTA's services in the capacity of consignor or consignee. Therefore, they were required to pay service tax on gross amount of freight charges paid to GTAs .This resulted in incorrect availment of exemption/non-payment of service tax of Rs.223.56 crore during the period from January 2005 to April 2006, which was recoverable with interest.

On this being pointed out (between May 2005 and October 2006), the department admitted the objection in one case relating to Kolkata Commissionerate and show cause notice was under issue. In three other cases (Belapur, Bhopal and Bolpur Commissionerates) it reported recovery of Rs.88.15 lakh and issue of show cause notice for Rs.3.53 lakh in one case.

The Ministry stated in 684 cases (between July and December 2006) that tax exemption was paid correctly as exemption was admissible subject to fulfilment of condition of non-

availment of cenvat credit benefit and exemption under notification no.12/2003-CE and that its applicability to GTA was not restricted by notification. Reply in four cases had not been received (December 2006).

Reply of Ministry is not tenable as exemption has been provided on taxable services provided by GTA to a customer and the conditions prescribed in the notification are relevant to GTA and not to the recipient of GTA services (i.e. customer). These conditions are required to be fulfilled by GTAs. Therefore, the notification as is in vogue is applicable to GTA only and not to recipient of services of GTA (i.e. customer).

18.2 Incorrect utilisation of cenvat credit for payment of service tax on input services

Rule 3(4) of Cenvat Credit Rules, 2004, stipulates that cenvat credit may be utilised for payment of any duty of excise on any final product or on inputs/capital goods, if inputs/capital goods are cleared as such or for service tax on any output service.

Ten manufacturers of excisable goods in Allahabad, Chennai I, Hyderabad III, Kanpur, Nagpur and Raigad commissionerates, availed cenvat credit of Rs.2.69 crore between January 2005 to March 2006 on account of service tax paid on goods transport services, telephone services, courier services, banking services etc. They utilised the credit for payment of service tax payable on services availed of GTA for transportation of input goods or output goods. Since these services were input services, utilisation of credit was not correct. Service tax in such cases was to be paid by them in cash.

On this being pointed out (between March and June 2006), the Ministry admitted the objection in three cases and reported (November and December 2006) recovery of Rs.20.79 lakh in one case. Reply in the remaining cases had not been received (December 2006).

18.3 Incorrect availment of cenvat credit

Under rule 2 (l) (ii) of Cenvat Credit Rules, 2004, input service means any service used by the manufacturer whether directly or indirectly in or in relation to the manufacture of final products and clearance of final products from the place of removal and includes services used in relation to setting up, modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal.

M/s. L.G. Polymers India Private Limited, in Visakhapatnam I commissionerate, engaged in the manufacture of polystyrene, availed cenvat credit of service tax paid on certain services like car maintenance, cell phone charges, telephone services, xerox copies, courier service, LC amendment charges, insurances charges etc. The availment of cenvat credit on input services was not in order since those were not specified categories of input services. This resulted in incorrect availment of credit of Rs.15.73 lakh during the period from 10 September 2004 to 31 January 2005.

On this being pointed out (February 2005), the Ministry admitted the objection and reported (August 2006) confirmation of demand of Rs.15.73 lakh besides imposition of penalty of Rs.one lakh in February 2006.

18.4 Incorrect availment of suo-moto cenvat credit

The Board clarified on 13 October1997 that there is no provision in the Finance Act, 1994 to adjust service tax due against tax already paid. Therefore, the assessee has to file a refund claim under section 11B as made applicable to service tax. Tribunal in case of M/s. Comfit Sanitary Napkins (I) Private Limited {2004 (174) ELT 220} also held that the assessee cannot take suo-moto refund/credit but should follow the procedure laid down under section 11 B of Central Excise Act.

M/s. Aircell Digilink (India) Limited, in Jaipur I commissionerate, engaged in the activity of providing cellular mobile telephony service, made double payment of service tax of Rs.1.76 crore for the months September 2004 to March 2005. Payment was made once through cenvat credit account and second time through TR-6 challan. The assessee took suo-moto cenvat credit of the amount paid through TR-6 challan in his books of accounts (August 2005) which was incorrect.

On this being pointed out (October 2005), the Ministry while admitting the objection stated (December 2006) that show cause notice had been issued for recovery of Rs.2.63 crore alongwith interest and imposition of penalty.

CHAPTER XIX : NON-LEVY OF SERVICE TAX

19.1 Non-payment of service tax on services rendered by foreigners

Rule 2 of Service Tax Rules, 1994, as made effective from 16 August 2002, provides that in relation to any taxable service provided by a person who is a non-resident or is from outside India not having any office in India, the person receiving taxable service in India is liable for payment of service tax.

19.1.1 M/s. MCC PTA India Corporation Private Limited, in Haldia commissionerate, engaged in the manufacture of purified terepthalic acid entered into two separate agreements with M/s. Mitsubishi Chemical Corporation, Japan, termed as 'License Agreement' and 'Technical Document Provision Service Agreement'. According to the former agreement, the assessee availed services such as detailed engineering, construction and operation of the plant, training, operation manual and basic engineering document and various other technical assistance. Under latter agreement, the assessee availed assistance in the form of receiving general information, technical documents necessary for doing business of terepthalic acid and to learn about the general trend and surroundings for the development of terepthalic acid. These services fell within the ambit of the definition of consulting engineer's service and therefore, service tax of Rs.3.11 crore was recoverable.

On this being pointed out (April 2004), department stated (July 2004) that the service charges had been paid in the name of "royalty" and since "royalty" had not been specifically included in the definition of consulting engineer, service tax was not payable on the amount so charged.

Contention of department is not tenable in view of the fact that the nature of services availed is the determining factor and not the name in which it is termed. Since the services availed by the assessee are in the nature of technical advice and assistance, appropriate service tax is leviable on such services under the broad definition of consulting engineer.

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

19.1.2 M/s. Ispat Industries Limited, in Raigad commissionerate, received services falling under the category of 'consulting engineers' from foreign consultants and paid service charges in foreign currency amounting to Rs.38.08 crore for the years 2002-03 and 2003-04. However, assessee did not pay service tax of Rs.2.38 crore due thereon.

On this being pointed out (December 2004), department accepted the objection and stated (June and August 2005) that they were already seized of the matter and had issued letters dated 2 December 2003 and 6 December 2004 directing the assessee to furnish information.

Department's contention is not tenable as the said letters were general in nature. Further, the assessee was liable to pay service tax since 16 August 2002 but department did not quantify the demand on payments made to foreign consultants prior to the issue having been pointed out by audit. The department issued show cause notice in May 2005 only. Reasons for delay in issue of show cause notice were also awaited (February 2006).

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

19.1.3 M/s. Hindustan Petroleum Corporation Limited, in Visakhapatnam I commissionerate, engaged in the manufacture of various petroleum products, obtained several services from different foreign companies. The services included basic engineering design, mechanical design, support and inspection, pre commissioning/commissioning, technical assistance/consultancy and transfer of rights with respect to process technology. These services/technology were utilised in the diesel hydro desulphurisation unit, flue gas desulphurisation unit, sulphur degassing units, etc. of the refinery. The assessee made payments of Rs.20.53 crore in foreign currency to M/s. Axens and M/s. Institute Francais De Petrole (France), M/s. Technip Benelux (Netherlands), M/s. UOP LLC (USA) and M/s. Balco Technologies Corporation (USA) for such services during the period 2003-04 and 2004-05. Despite the fact that these services were covered within the ambit of consulting engineers services, scientific and technical consultancy services and intellectual property services, the assessee neither disclosed these services in their service tax return nor discharged service tax of Rs.1.97 crore due thereon.

On this being pointed out (April 2006), the Ministry admitted the objection and reported (December 2006) that necessary show cause notices were being issued.

19.1.4 M/s. Hero Honda Motors Limited, in Gurgaon commissionerate, paid model fee of Rs 25.23 crore to M/s. Honda Motor Company Limited, Japan for rendering advice, consultancy and technical assistance for the development of two models of motorcycle and remitted the amount in Japanese currency (Yen) between November 2004 and March 2005. The assessee was liable to pay service tax of Rs.1.33 crore (service tax of Rs. 2.57 crore – research and development cess deduction of Rs.1.24 crore) which was neither paid nor was it demanded by department.

On this being pointed out (October 2005), department stated (January 2006) that show cause notice had been issued to the assessee.

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

19.1.5 Nine assessees in Chennai I, III, IV, Hyderabad IV, Meerut I, Pune I, Thane II commissionerates and Chennai Service Tax Commissionerate, incurred expenditure of Rs.35.37 crore during the period between March 2002 and March 2005 towards technical know-how/assistance, consultancy services etc., received from foreign service providers. Though these services were liable to service tax under the category of consulting engineers, yet the assessees did not pay service tax of Rs.2.66 crore.

On this being pointed out (between November 2004 and July 2006), the Ministry admitted objection in eight cases and intimated (November and December 2006) issue of show cause notices to four assessees for recovery of service tax of Rs.3.92 crore for the period between April 2000 and March 2006. Reply in the remaining case had not been received (December 2006).

19.1.6 M/s. Hind Agro Industries Limited in Lucknow and M/s. Hero Honda Motors Limited, in Gurgaon commissionerates, paid commission of Rs.10.53 crore during the period between 16 August 2002 and 31 March 2005 to foreign service providers for procurement of export orders and sale of goods to the concerned parties out of India. Since such services were taxable under clearing & forwarding agent services, service tax of Rs.84.34 lakh was leviable. Service tax was not paid by assessees which was recoverable with interest.

On this being pointed out (between September 2005 and February 2006), department intimated (March 2006) issue of show cause notice to M/s. Hind Agro Industries Limited.

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

19.1.7 M/s. Arvin Exhaust (India) Limited and three others, in Chennai Commisssionerate of Service Tax and Chennai III commissionerate, engaged in manufacture of parts of motor vehicles/cars, received technical assistance/know-how on product formulation, trademark designs, patents etc., from their foreign collaborators and paid royalty totalling Rs.2.31 crore during the period from September 2004 to June 2005 in three cases and Rs.2.27crore during the year 2004-05 in one case. However, service tax amounting to Rs.43.59 lakh on the intellectual property services received from the foreign service providers was not demanded and collected from the assessees.

On this being pointed out (between October 2005 and March 2006), the Ministry while admitting objection stated (December 2006) that amount of Rs.13.28 lakh had been recovered from two assessees and show cause notices had been issued to other two assessees.

19.2 Non-levy of service tax on services rendered by indigenous service providers

19.2.1 Inter-connection usage charges

Leased circuit services are brought under service tax net with effect from 16 July 2001. The Board clarified on 8 August 2002 that inter-connectivity linked charges are nothing but charges for providing leased circuits hence service tax is leviable. On the same analogy, inter-connection usage charges which are recovered/collected by one operator from another operator as service revenue, for providing services of their networks, are also liable to service tax.

M/s. Bharti Hexacom India Limited, M/s. Aircell Digilink (India) Limited and M/s. Shyam Telelink Limited, in Jaipur I commissionerate engaged in the activity of providing cellular mobile telephony service, received call charges (inter-connect revenue) from other operators for all calls terminating in their net working without service tax. Since inter-connect charges were being received for providing service to consumers of other operators, service tax was required to be charged from those operators. Omission to do so resulted in non-levy of service tax of Rs.3.88 crore during the period from May 2003 to August 2005.

On this being pointed out (August 2005), department stated (December 2005) that the Ministry had intimated (No.149/2/2004-CX-4 dated 15.6.2004), to the BSNL that inter-connection usage charges would not be chargeable to service tax, in any case these would get taxed through the call charges.

Reply of the department is not tenable as Ministry's said letter to Bharat Sanchar Nigam Limited is not in tune with the intent of the legislature which brought the access charges under the service tax net from 16 July 2001. A similar situation had also arisen earlier in 1996 when similar stand was taken by the Board by stating that access charges are charged through the call charges from the customers and therefore these charges need not be recovered from the phone operators. In spite of that, access charges have been brought under tax net, separate from call charges. In case intention of the Government is not to levy tax on such charges, relevant provisions of Finance Act should be amended suitably.

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

19.2.2 Clearing and forwarding agents

Tribunal in the case of M/s. Prabhat Zarda Factory (India) Limited {2002 (145) ELT 222} held 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. Indian Explosives Limited, in Ranchi commissionerate, engaged in the manufacture of chemical goods received selling commission of Rs.16.77 crore for selling and marketing activities undertaken for the products of its subsidiary company i.e. M/s. Initiating Explosive Systems during the period from April 2002 to March 2004. Service tax of Rs.1.47 crore payable thereon was not paid. Department also did not raise any demand.

Similarly M/s. Bhuwalka Steel Industries Limited, in Thane I commissionerate, engaged in processing orders and passing them on to the principals, received Rs.10.48 crore as brokerage and commission during the years 2002-03 and 2003-04. However, service tax of Rs.64.65 lakh payable thereon was not paid.

On this being pointed out (January and September 2005), the Ministry in the first case stated (December 2006) that Tribunal in case of M/s. Larsen and Toubro {2006 (3) STR 321 Tri-LB} had overruled decision in M/s. Prabhat Zarda case and decided that activity of mere procurement and booking orders on payment of commission would not amount to providing services as clearing and forwarding agent. It further stated that services of commission agent were exempt from service tax during the period from 1 July 2003 to 8 July 2004 under business auxiliary services. Reply in the second case had not been received (December 2006).

Reply is not tenable as decision of Tribunal cited by Ministry is not relevant to the instant case as the assessee was engaged in activity of consignment, distribution and selling of products of its subsidiary company. Further instant services were not exempt as notification exempted business auxiliary services whereas services of the assessee fall under clearing and forwarding agents services and not under business auxiliary services in terms of Board's clarification of 20 June 2003.

19.2.3 Equipment leasing services

Financial leasing services including equipment leasing and hire purchase are chargeable to service tax with effect from 16 July 2001.

M/s. Goodlass Nerolac Paints Limited, in Pune II commissionerate, supplied their equipment and colour dispensers on lease to their dealers and recovered lease charges amounting to Rs.13.70 crore during 2002-03 and 2003-04. However, service tax of Rs.87.69 lakh leviable thereon was neither paid by the assessee nor was it demanded by the department, which was recoverable with interest of Rs.28.19 lakh.

On this being pointed out (August 2004), the Ministry admitted (November 2006) the objection.

19.2.4 Business auxiliary service

Business auxiliary service has been brought under service tax with effect from 1 July 2003. Section 65 (19) of the Finance Act, 1994 as amended, defines "business auxiliary service" to

mean, inter alia, any service in relation to promotion or marketing or sale of goods; or promotion or marketing of services; or any customer care service in any manner to a client.

M/s. Berger Paints India Limited and M/s. Shalimar Paints India Limited, Howrah in Kolkata II commissionerate, entered into contracts with some of their dealers for supply and installation at their premises of color bank and color space machines which were basically programmed for instant production of paints. Assessees were to install on a rental basis the said system complete with supporting softwares, matching hardwares and other equipment and appliances necessary for making the product ready for delivery at the dealers' premises and thus to assist such dealers towards promotion of sale and marketing of the product of their respective brands. Such assistance fell within the ambit of the definition of business auxiliary service. The assessees collected charges amounting to Rs.10.77 crore from April 2003 to December 2004 from their dealers but did not pay service tax of Rs.86.20 lakh. Department also did not demand it. This was recoverable with interest.

On this being pointed out (February 2005), the Ministry admitted objection and intimated (November 2006) issue of show cause notices for Rs.86.20 lakh.

19.2.5 Job work service

Service tax was required to be paid from 10 September 2004 on job work service not involving manufacture rendered by a commercial concern. Notification dated 1 March 2005 exempts services provided for production of goods on job work not amounting to manufacture, subject to the condition that such goods are returned to the client for use in the manufacture of excisable goods.

M/s. POS Hyundai Steel Manufacturing (India) Private Limited, in Chennai IV commissionerate, carried out the job work of slitting/shearing/rewinding of CR steel coils sent by M/s. Hyundai Motor India Limited and the processed goods were returned without payment of duty. The assessee was paid job charges at the mutually accepted rates. The said job work processes, not amounting to manufacture, carried out by the assessee fell under the category of business auxiliary service and service tax and education cess totalling Rs.23.25 lakh was payable on the job charges of Rs.227.92 lakh collected during the period from 10 September 2004 to 28 February 2005.

On this being pointed out (May, July and December 2005), the Ministry admitted the objection and reported recovery of Rs.25.96 lakh in January 2006.

19.2.6 Interior decorator

Under section 65 (59) of the Finance Act, 1994 as amended, interior decorator means any person engaged, whether directly or indirectly, in the business of providing any advice, consultancy, technical assistance, or in any other manner, service relating to planning, design and beautification of spaces, whether man-made or otherwise and also includes a landscape designer.

M/s. Berger Paints India Limited, Howrah, in Kolkata II commissionerate, entered into contract with different customers for rendering home decoration service. Accordingly, the assessee provided raw material (colour) as well as technical support to the general customers as per their requirement for interior decoration through its consulting departments, viz, home decor service. Assessee realized a gross service charge of Rs.13.30 crore which also included the cost of material supplied. Since material cost was not available separately, only 33 per cent of the gross amount so realized was taken as the value of chargeable service applying

rationale of notification dated 21 August 2003. Service tax of Rs.35.11 lakh was leviable during April 2003 to December 2004 which was neither paid by assessee nor was demanded by department.

On this being pointed out (February 2005), department stated (August 2005) that a show cause notice had been issued to the assessee. Further developments in the case and reply of the Ministry had not been received (December 2006).

19.2.7 Port services

Port service was brought under service tax net with effect from 1 July 2003.

M/s. Vikram Ispat, in Raigad commissionerate, having its own jetty facilities, barges, floating crane and tugging facilities for transhipment, loading and unloading of goods, also provided these services to other parties. The assessee received shipping income of Rs.4.15 crore (approx) during July 2003 to March 2004 but service tax of Rs.33.19 lakh payable thereon was not paid. Department also did not demand the tax.

On this being pointed out (December 2004), department admitted the objection and stated (June 2005) that notice to recover the service tax was being issued.

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

19.3 Escapement of service tax

19.3.1 Broadcasting (radio and television) services have been brought under the ambit of service tax from 16 July 2001.

M/s. Malayalam Communications Limited in Thiruvananthapuram commissionerate, engaged in providing broadcasting services, paid service tax on a value of Rs.6.69 crore as against the services rendered for the value of Rs.17.02 crore during the period from July 2001 to March 2003. Since there was wide variation in the value of service adopted for payment of service tax and value of services rendered, department was asked (January 2004) to investigate the matter and recover differential tax under intimation to audit.

Department stated (May 2006) that the records for the years 2001-02 to 2003-04 had been scrutinized and show cause notice for suppression of tax of Rs.1.98 crore had been issued in November 2005 which was pending adjudication.

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

19.3.2 Service tax on "security agency's service" has been levied from 16 October 1998.

M/s. Kaloti Security Agency, in Nagpur commissionerate, filed ST-3 returns during the years 2000-01 to 2004-05 and declared a total gross receipt of Rs.21.08 lakh for these years. Service tax was also paid on declared value. A cross verification of receipt with income tax returns revealed that the total gross receipt for said period was Rs.3.32 crore. Assessee concealed receipt of Rs.3.11 crore on which service tax of Rs.20.29 lakh was escaped. This was recoverable with interest and penalty under section 78 of the Finance Act, 1994.

On this being pointed out (September 2005), the Ministry while admitting objection, reported (December 2006) that demand of Rs.31.19 lakh had been confirmed and penalty of Rs.31.40 lakh imposed for violation of sections 76, 77 and 78.

CHAPTER XX : MISCELLANEOUS TOPICS OF INTEREST

20.1 Short levy of service tax

Under section 67 of Finance Act 1994, the value of any taxable service shall be gross amount charged by the service provider for services rendered by him excluding material cost.

20.1.1 M/s. TRF Limited, in Jamshedpur commissionerate, carried out turnkey project work which involved consultancy services to its clients. Assessee paid service tax on net amount after reducing depreciation, profit out of project, employee's cost etc. instead of service tax on gross amount of taxable service. This resulted in short payment of service tax of Rs.7.76 crore during the period April 2003 to March 2005.

On this being pointed out (August 2005), the Ministry admitted the objection (November 2006).

20.1.2 M/s. Kesar Enterprises Limited, in Meerut II commissionerate, collected service charges of Rs.19.53 crore on account of storage and warehousing services rendered at Kandla by giving storage tanks on hire for storage of bulk chemicals during April 2003 to March 2005. Assessee paid service tax of Rs.1.10 crore whereas the service tax payable was Rs.1.71 crore. This resulted in short payment of service tax of Rs.61.42 lakh which was recoverable with interest of Rs.10.48 lakh and penalty of Rs.1.10 lakh.

This was pointed out between November 2005/February 2006; reply of the Ministry/department had not been received (December 2006).

20.2 Non recovery of service tax

Service tax on services rendered by 'clearing and forwarding agents' and 'transport operators' was levied from 11 July 1997 and 16 November 1997 respectively and in terms of the Service Tax Rules, 1994, it was to be recovered from the recipient of services.

The Apex Court in the case of Laghu Udhyog Bharti {1999 (112) ELT 365 (SC)} held that recipient of services cannot be made liable to pay service tax and that the service tax rules made in this regard were held to be ultra vires to the Finance Act, 1994. The Finance Act, 1994, was amended with retrospective effect vide section 117 of the Finance Act, 2000, to provide for service tax recovery from the recipient of the services. Further, such service receivers were required to file returns on or before 14 November 2003 showing proof of payment. Failure to comply with the above provisions attracted interest at 15 per cent.

20.2.1 Goods transport operators

Twenty three assessees, in Chandigarh, Vadodara I and II commissionerates, engaged in manufacture of various excisable goods, did not pay service tax of Rs.1.94 crore on freight paid to various goods transport operators during the period from 16 November 1997 to 1 June

1998. Department did not take action to recover service tax. Service tax was recoverable with interest.

On this being pointed out (between March 2001 and February 2004), the Ministry/department admitted the objection and intimated (between October 2005 and November 2006) that service tax of Rs.3.04 crore had been recovered; service tax of Rs.0.03 crore had been confirmed and demand for Rs.0.30 crore had been raised which was pending decision.

20.2.2 Clearing and forwarding agents

Fourteen assessees, in Chandigarh and one assessee in Vadodara I commissionerates, sold their finished products through clearing and forwarding agents and paid service charges/commission of Rs.23.67 crore between 16 July 1997 to 31 August 1999. Service tax amounting to Rs.1.18 crore leviable thereon was not paid. This was recoverable with interest and penalty.

On this being pointed out (between March 2001 and February 2005), department intimated (October 2005) that in seven cases service tax of Rs.72.77 lakh had been recovered. In the case relating to Vadodara I Commissionerate, it stated (May 2005) that the services rendered do not fall under the category of clearing and forwarding agent as the agent did not receive and despatch the goods as per the direction of assessee.

The reply of department is not tenable as service provider maintained records depicting receipt and despatch of goods and stock position of goods every month.

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

20.3 Non-levy of interest

Section 75 of Finance Act, 1994, stipulates recovery of interest at the rate of 18 per cent per annum up to 15 July 2001, 24 per cent from 16 July 2001 to 15 August 2002, 15 per cent from 16 August 2002 to 9 September 2004 and 13 per cent thereafter for the period by which such credit of the tax or any part thereof is delayed.

The scrutiny of records of the Directorate of Film Festival revealed that it was registered in the category of mandap keeper service for booking of auditorium. Instead of depositing the service tax in designated bank, it deposited service tax along with hire charges in the account of Pay and Accounts Office (MS), Ministry of Information and Broadcasting, New Delhi during March 2001 to March 2005. After the matter was taken up by the Central Excise Department, the directorate deposited service tax of Rs.30.48 lakh on 31 March 2005 for the period from March 2001 to October 2004. Further, Rs.5.17 lakh for the period November 2004 to February 2005 was deposited on 6 May 2005 and Rs.0.38 lakh for the month of March 2005 was deposited on 25 July 2005. No action was taken for recovery of interest of Rs.11.49 lakh for delayed payment of service tax.

On this being pointed out (April 2006), department stated (November 2006) that the action for recovery of interest would be taken.

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

20.4 Other cases

In 120 other cases of short/non-levy of service tax, the Ministry/department had accepted objections involving tax of Rs.2.73 crore and reported recovery of Rs.1.55 crore in 109 cases till December 2006.

New Delhi **(JAYANTI PRASAD)**
Dated : **Principal Director (Indirect Taxes)**

Countersigned

New Delhi **(VIJAYENDRA N. KAUL)**
Dated : **Comptroller and Auditor General of India**