



सत्यमेव जयते

**Report of the  
Comptroller and Auditor General of India  
for the year ended March 2015**



**Union Government  
Department of Revenue  
(Indirect Taxes - Service Tax)  
Report No. 1 of 2016**

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**Laid on the table of Lok Sabha/Rajya Sabha \_\_\_\_\_**

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## **Preface**

This Report for the year ended March 2015 has been prepared for submission to the President of India under Article 151 of the Constitution of India.

The Report contains significant results of the compliance audit of the Central Board of Excise and Customs under Department of Revenue – Indirect Taxes (Service Tax) of the Union Government.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2014-15; as well as those which came to notice in earlier years but could not be reported in the previous Audit Reports; instances relating to the period subsequent to 2014-15 have also been included, wherever necessary.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

## Executive Summary

The Service Tax collection was ₹ 1, 67,969 crore during financial year 2014-15 (FY15) and accounted for 30.75 percent of Indirect Tax revenue in FY15. Indirect tax collection as a ratio of GDP has decreased in FY15 vis-à-vis FY14, while as a ratio of Gross Tax revenue, it has increased. Service Tax revenue as a percentage of GDP has been increasing every year during last four years, though it declined marginally during FY15.

This Report has 166 audit observations on Service Tax, having financial implication of ₹ 386.35 crore. The Ministry/department had accepted (up to January 2016) audit observations involving revenue of ₹ 373.58 crore and reported recovery of ₹ 53.77 crore. Significant audit findings are as follows:

### Chapter I: Service Tax Administration

- Measures initiated by the department to improve recovery of arrears have not made significant impact. Arrear collection in FY15 has fallen drastically to 1.17 percent compared to 10.46 percent in FY14.

(Paragraph 1.12)

- Over 86 percent returns marked by ACES for review and correction were pending corrective action.

(Paragraph 1.14.1)

- Adjudication cases involving Service Tax implication of over ₹ 77,463 crore were pending finalisation as on 31 March 2015.

(Paragraph 1.15)

- Success ratio of department's appeal against adjudication order has decreased to 26.44 percent in FY15 from 33.47 percent in FY13.

(Paragraph 1.16)

- More than 46 percent of category 'A' Service Tax assesseees who were due for mandatory audit by the Central Excise and Service Tax department remained unaudited during FY15.

(Paragraph 1.19)

### Chapter II: Issue of Show Cause Notices and Adjudication process

- Eight demands, involving revenue of ₹ 3.34 crore, were concluded in adjudication as time barred due to late issue of Show Cause Notice (SCN).

(Paragraph 2.5.1)

- In 36 cases, SCN was not issued within the stipulated time period and out of these, 23 cases for which details were available involved a revenue implication of ₹ 22.17 crore.

(Paragraph 2.5.2)

- 46 cases involving revenue of ₹ 21.08 crore were pending for adjudication for more than two years.

(Paragraph 2.6.1)

### **Chapter III: Non-compliance with rules and regulations**

- Audit observed instances of non-payment/short-payment of Service Tax, incorrect availing/utilisation of CENVAT credit and non-payment of interest on delayed payments having financial implication of ₹ 216.34 crore.

(Paragraph 3.1)

### **Chapter IV: Effectiveness of internal controls**

- Audit observed deficiencies in scrutiny and internal audit carried out by departmental officers, delayed issue of show cause notice etc., having financial implication of ₹ 170.01 crore.

(Paragraph 4.2)

## Chapter I

### Service Tax Administration

#### 1.1 Resources of the Union Government

The Government of India's resources include all revenues received by the Union Government, all loans raised by issue of treasury bills, internal and external loans and all moneys received by the Government in repayment of loans. Tax revenue resources of the Union Government consist of revenue receipts from direct and Indirect Taxes. Table 1.1 below shows the summary of resources for the financial year (FY) 15 and FY14.

**Table 1.1: Resources of the Union Government**

	(₹ in crore)	
	FY15	FY14
A. Total Revenue Receipts	16,66,717	15,36,024
<i>i. Direct Tax Receipts</i>	6,95,792	6,38,596
<i>ii. Indirect Tax Receipts including other taxes</i>	5,49,343	5,00,400
<i>iii. Non-Tax Receipts</i>	4,19,982	3,93,410
<i>iv. Grants-in-aid and contributions</i>	1,600	3,618
B. Miscellaneous Capital Receipts <sup>1</sup>	37,740	29,368
C. Recovery of Loans and Advances <sup>2</sup>	26,547	24,549
D. Public Debt Receipts <sup>3</sup>	42,18,196	39,94,966
<b>Receipts of Government of India (A+B+C+D)</b>	<b>59,49,200</b>	<b>55,84,907</b>

Source: Union Finance Accounts of respective years.

Note: Total Revenue Receipts include ₹ 3,37,808 crore in FY15 and ₹ 3,18,230 crore in FY14, share of net proceeds of Direct and Indirect Taxes directly assigned to states.

The total receipts of the Union Government increased to ₹ 59,49,200 crore in FY15 from ₹ 55,84,907 crore in FY14. In FY15, its own receipts were ₹ 16,66,717 crore including Gross Tax receipts of ₹ 12,45,135 crore.

#### 1.2 Nature of Indirect Taxes

Indirect Taxes attach themselves to the cost of the supply of goods/services and are, in this sense, transaction-specific rather than person-specific. The major Indirect Taxes/duties levied under Acts of Parliament are:

- a) **Service Tax:** Service Tax is levied on services provided within the taxable territory (Entry 97 of List 1 of the Seventh Schedule of the Constitution). Service Tax is a tax on services rendered by one person

<sup>1</sup> This comprises of value of bonus share, disinvestment of public sector and other undertakings and other receipts

<sup>2</sup> Recovery of Loans and advances made by the Union Government

<sup>3</sup> Borrowing by the Government of India internally as well as externally



to another. Section 66B of the Finance Act, 1994 envisages that there shall be a tax levied at the rate of 12 percent on the value of all services, other than those specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.<sup>4</sup> 'Service' has been defined in section 65B (44) of the Finance Act, 1994 to mean any activity for consideration (other than the items excluded therein) carried out by a person for another and to include a declared service.<sup>5</sup>

- b) Central Excise duty:** Central Excise duty is levied on manufacture or production of goods in India. Parliament has powers to levy excise duties on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics but including medicinal and toilet preparations containing alcohol, opium etc (Entry 84 of List 1 of the Seventh Schedule of the Constitution).
- c) Customs duty:** Customs duty is levied on import of goods into India and on export of certain goods out of India (Entry 83 of List 1 of the Seventh Schedule of the Constitution).

### 1.3 Organisational structure

The Department of Revenue (DoR) of Ministry of Finance (MOF) functions under the overall direction and control of the Secretary (Revenue) and coordinates matters relating to all the Direct and Indirect Union Taxes through two statutory Boards namely, the Central Board of Excise and Customs (CBEC) and the Central Board of Direct Taxes (CBDT) constituted under the Central Board of Revenue Act, 1963. Matters relating to the levy and collection of Service Tax are looked after by the CBEC.

Indirect Tax laws are administered by the CBEC through its field offices, the executive commissionerates. For this purpose, the country is divided into 27 zones of Central Excise and Service Tax headed by the Chief Commissioner. Restructuring and re-organisation of field formations of CBEC has taken place in August 2014. Under 27 zones of Central Excise and Service Tax, there are 83 composite executive commissionerates, 36 exclusive Central Excise executive commissionerates and 22 exclusive Service Tax executive commissionerates headed by the Commissioner. Division and ranges are the subsequent formations, headed by Deputy/Assistant Commissioner and Superintendents respectively. Apart from these executive commissionerates,

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<sup>4</sup> Section 66B was inserted by the Finance Act, 2012 with effect from 1 July 2012; section 66D lists the items the negative list comprises of.

<sup>5</sup> Section 66E of the Finance Act, 1994 lists the declared services.

there are eight Large Tax Payer Units (LTU) commissionerates, 60 Appeal commissionerates, 45 Audit commissionerates and 20 Directorates General/Directorates dealing with specific function.

The overall sanctioned staff strength of the CBEC is 86,828 as on 31 March 2015. The organisational structure of CBEC is shown in Appendix I.

This chapter discusses trends, composition and systemic issues in Service Tax using data from finance accounts, departmental accounts and relevant data available in public domain.

#### 1.4 Growth of Indirect Taxes - trends and composition

Table 1.2 depicts the relative growth of Indirect Taxes during FY11 to FY15.

Table 1.2: Growth of Indirect Taxes

Year	Indirect Taxes	GDP	Indirect Taxes as % of GDP	Gross Tax revenue	(₹ in crore)	
					Indirect Taxes as % of Gross Tax revenue	
FY11	3,45,371	77,95,314	4.43	7,93,307		43.54
FY12	3,92,674	90,09,722	4.36	8,89,118		44.16
FY13	4,74,728	99,88,540	4.75	10,36,460		45.80
FY14	4,97,349	1,13,45,056	4.38	11,38,996		43.67
FY15	5,46,214	1,25,41,208	4.36	12,45,135		43.87

Source: Union Finance Accounts

It is observed that Indirect tax collection has decreased as a ratio of GDP in FY15 vis-à-vis FY14, while as a ratio of Gross Tax revenue it has increased.

#### 1.5 Indirect Taxes – relative contribution

Table 1.3 depicts the trajectory of the various Indirect Tax components in GDP terms for the period FY11 to FY15.

Table 1.3: Indirect Taxes – percentage of GDP

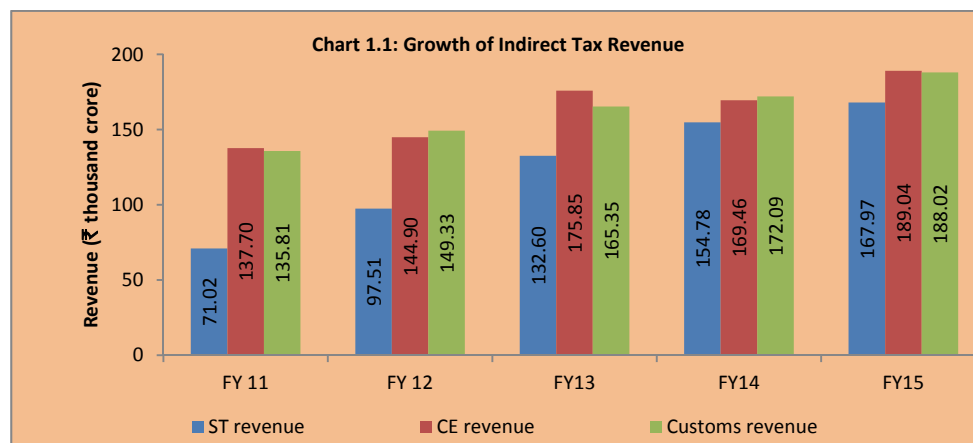
Year	GDP	ST revenue	ST revenue as % of GDP	CE revenue	CE revenue as % of GDP	(₹ in crore)	
						Custom revenue	Custom revenue as % of GDP
FY11	77,95,314	71,016	0.91	1,37,701	1.77	1,35,813	1.74
FY12	90,09,722	97,509	1.08	1,44,901	1.61	1,49,328	1.66
FY13	99,88,540	1,32,601	1.33	1,75,845	1.76	1,65,346	1.66
FY14	1,13,45,056	1,54,780	1.36	1,69,455	1.49	1,72,085	1.52
FY15	1,25,41,208	1,67,969	1.34	1,89,038	1.51	1,88,016	1.50

Source: Figures of tax receipts are as per Union Finance Accounts of respective years

Among the indirect taxes, the Service Tax revenue as a percentage of GDP has been increasing every year during last four years, though it declined marginally during FY15. During the same period Central Excise and Customs

revenue as a percentage of GDP showed declining trend, with Central Excise registering a slight improvement in FY15 as compared to FY 14.

The relative revenue contribution of the major Indirect Taxes is depicted in **Chart 1.1**.



## 1.6 Growth of Service Tax - trends and composition

Table 1.4 depicts the growth trends of Service Tax in absolute and GDP terms during FY 11 to FY15.

Table 1.4: Growth of Service Tax

Year	GDP	Gross Tax revenue	Gross Indirect Taxes	Service Tax	₹ in crore)		
					Service Tax as % of GDP	Service Tax as % of Gross Tax revenue	Service Tax as % of Indirect Taxes
FY11	77,95,314	7,93,307	3,45,371	71,016	0.91	8.95	20.56
FY12	90,09,722	8,89,118	3,92,674	97,509	1.08	10.97	24.83
FY13	99,88,540	10,36,460	4,74,728	1,32,601	1.33	12.79	27.93
FY14	1,13,45,056	11,38,996	4,97,349	1,54,780	1.36	13.59	31.12
FY15	1,25,41,208	12,45,135	5,46,214	1,67,969	1.34	13.49	30.75

Source: Figures of tax receipts are as per Union Finance Accounts of respective years

The Service Tax Revenue as a percentage of GDP has shown an increasing trend during the period except FY15. Overall Service Tax has contributed 13.49 percent of Gross Tax revenue during FY15. Share of service tax in gross tax revenue and total indirect taxes has been steadily increasing. Growth of services sector accelerated to 10.6 percent in 2014-15 where as it was 9.1 percent in 2013-14<sup>6</sup>. This is mainly due to growth acceleration in financial, real estate, and professional services to 13.7 percent from 7.9 percent.

<sup>6</sup> Para 7.11 of Economic Survey 2014-15

## 1.7 Service Tax from major service categories

Table 1.5 depicts Service Tax collected from top five category of services.

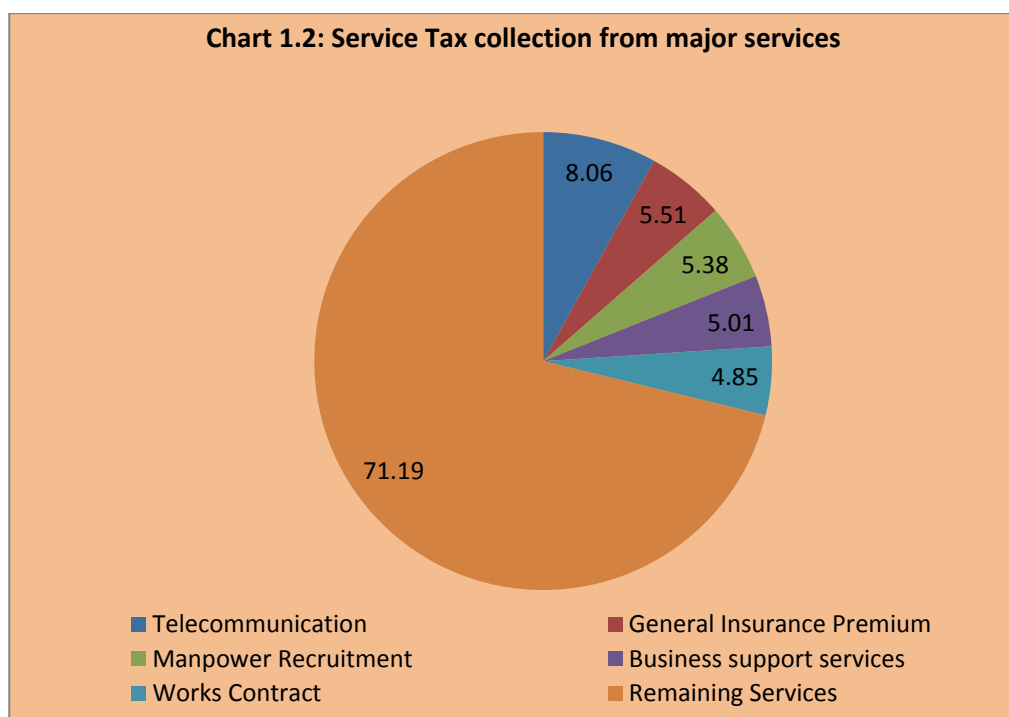
**Table 1.5: Service Tax from major service categories**

Year	₹ in crore)				
	FY11	FY12	FY13	FY14	FY15
Telecommunication	3,902	5,402	7,538	12,643	13,531
General Insurance Premium	3,877	5,234	6,321	8,834	9,263
Manpower Recruitment	2,870	3,847	4,432	7,335	9,045
Business Support Services	2,689	4,345	4,368	7,118	8,415
Works Contract	3,092	4,179	4,455	7,434	8,139

Source: Union Finance Accounts of respective years

It is observed that Telecommunication and General Insurance Premium services continue to be on top for Service Tax collection. It is also observed that Manpower Recruitment and Business Support Service had moved to third and fourth positions in FY15 among top revenue contributing services.

The pie chart 1.2 depicts the overall contribution of the major services during the year FY15.



It is observed that top five category of services contributed about 29 percent of the gross Service Tax collection.

## 1.8 Tax base

"Assessee" means any person who is liable to pay Service Tax and includes his agent as per definition in Section 65(7) of the Finance Act, 1994 (as amended). Table 1.6 depicts the data (pertaining to FY11 to FY15) of the

number of persons registered with the Service Tax department under Section 69 of the Finance Act, 1994.

**Table 1.6: Tax base in Service Tax**

Year	No of taxable services	No. of ST registrations	% growth over previous year	No. of assessees who filed returns	% of Registrants who filed returns
FY11	117	15,52,521		1,90,410	12.26
FY12	119	17,52,479	12.88	7,29,129	41.61
FY13	All*	19,82,297	13.11	8,54,831	43.12
FY14	All*	22,58,599	13.94	9,83,969	43.57
FY15	All*	25,11,728	11.21	10,50,760	41.83

Source: Figures furnished by the Ministry. Comment on data discrepancy in Para 1.21

\*Other than negative list

It is observed that number of registered persons as also the number of assesses filing returns is increasing steadily. However the percent of the registered assesses filing returns has remained almost constant around 41 to 43 per cent. The Ministry needs to look into the reasons for the same.

### **Voluntary Compliance Encouragement Scheme, 2013:**

The Honourable Finance Minister in his Budget 2013 Speech stated that there were nearly 17,00,000 registered assessees under service tax, only about 7,00,000 file returns and many have simply stopped filing returns. Stating so, he proposed to introduce a one-time scheme called 'Voluntary Compliance Encouragement Scheme, 2013' (VCES) in order to motivate the registered assesses who had stopped filing returns to file returns and pay the tax dues. The scheme was effective from 10 May 2013 and was open up to 31 December 2013. A sum of ₹ 7,750.30 crore was declared under VCES by 66,072 assesses. But as could be seen from Table 1.6, there is no improvement in percentage of registered assesses who filed returns. On the contrary, the percent of registrants who filed returns decreased from 43.12 percent and 43.57 percent in FY13 and FY14 respectively to 41.83 percent in FY15.

### **1.9 Budgeting issues in Service Tax**

Table 1.7 depicts a comparison of the Budget Estimates and the corresponding actuals for service tax receipts.

Table 1.7: Budget, Revised estimates and Actual receipts

(₹ in crore)						
Year	Budget estimates (BE)	Revised budget estimates	Actual receipts	Diff. between actuals and BE	%age variation between actuals and BE	%age variation between actuals and RE
FY11	68,000	69,400	71,016	3,016	4.44	2.33
FY12	82,000	95,000	97,509	15,509	18.91	2.64
FY13	1,24,000	1,32,697	1,32,601	8,601	6.94	(-)0.07
FY14	1,80,141	1,64,927	1,54,780	(-)25,361	(-)14.08	(-)6.15
FY15	2,15,973	1,68,132	1,67,969	(-)48,004	(-)22.23	(-)0.10

Source: Union Finance Accounts and receipt budget documents of respective years

It is observed that actual collection of Service Tax fell short of budget estimates by 22.23 percent during FY15. It is also observed that actual collection of Service Tax was almost equal to revised budget estimates in FY15 registering a shortfall of only 0.10 percent as compared to 6.15 percent last year.

### 1.10 Service Tax forgone under Finance Act, 1994

A perusal of the budget documents revealed that details of revenue foregone for Direct Taxes and other Indirect Taxes such as central excise and customs have been laid before Parliament each year during the respective budget commencing with the budget of 2006-07. However, the revenue foregone in respect of Service Tax is not available in the budget documents. In reply to the similar issue pointed out in paragraph No. 1.12 of Audit Report No. 6 of 2014 the Ministry replied that the figure is not being maintained due to absence of adequate data.

The same issue was examined by the Tax Administration Reform Commission, in its third report it was mentioned that for Service Tax, the department should consider ways to estimate revenue foregone figures and do a gap analysis.

Consequent upon mandatory e-filing of Service Tax return with effect from October 2011, the department may consider preparation of revenue foregone statement in respect of Service Tax.

### 1.11 Trade facilitation

#### 1.11.1 Creation of Large Taxpayer Units (LTUs)

For the trade facility LTUs have been set up by the Department. An LTU is self-contained tax office under the Department of Revenue acting as a single window clearance point for all matters relating to Central Excise, Service Tax, Income Tax and Corporate Tax. Eligible Tax Payers who opt for assessment in LTU shall be able to file their excise return, direct taxes returns and service

tax return at such LTUs and for all practical purposes will be assessed to all these taxes there under. These units are being equipped with modern facilities and trained manpower to assist the tax payers in all matters relating direct and indirect tax/duty payments, filing of documents and returns, claim of rebates/refunds, settlement of disputes etc. For trade facilitation eight LTUs have been established.

### 1.11.2 Automation of Central Excise and Service Tax

Automation of Central Excise and Service Tax (ACES) is the e-governance initiative by Central Board of Excise and Customs (CBEC), Department of Revenue, Ministry of Finance. It is one of the Mission Mode Projects (MMP) of the Govt. of India under National e-Governance Plan (NeGP). It is a software application which aims at improving tax-payer services, transparency, accountability and efficiency in the Indirect Tax administration in India. This application is a web-based and workflow-based system that has automated all major procedures in Central Excise and Service Tax.

### 1.12 Arrears of Service Tax

The law provides for various methods of recovery of revenues raised but not realised. These include adjusting against amounts, if any, payable to the person from whom revenue is recoverable, recovery by attachment and sale of excisable goods and recovery through the district revenue authority.

Table 1.8 depicts the performance of the department in respect of recovery of revenue arrears.

**Table 1.8: Arrears realisation – Service Tax**

(₹ in crore)			
Year	Amount in arrears at the commencement of the year	Collection during the year	Collection as % of arrears at the commencement of the year
FY13	45,609	5,836	12.80
FY14	69,863	7,311	10.46
FY15	76,928	901	1.17

Source: Figures furnished by the Ministry. Comment on data discrepancy in Para 1.21

It is matter of concern that the collection as ratio of arrears during FY15 has fallen drastically to 1.17 percent compared to 10.46 percent in FY14. Although, falling ratio of collection of arrears have been repeatedly pointed out by audit, there is no sign of improvement. There is a need to strengthen the recovery mechanism of the department.

### 1.13 Additional revenue realised because of Anti evasion measures

Director General of Central Excise (Intelligence) (DGCEI) as well as the Central Excise and Service Tax Commissionerates have well-defined roles in the task of detection of cases of evasion of Service Tax. While the Commissionerates, with their extensive database about units in their jurisdiction and presence in the field are the first line of defence against duty evasion, DGCEI specialises in collecting specific intelligence about evasion of substantial revenue. The intelligence so collected is shared with the Commissionerates. Investigations are also undertaken by DGCEI in cases having all India ramifications. Tables 1.9(a) depict the performance of DGCEI during last three years.

**Table 1.9(a): Anti-evasion performance of DGCEI during last three years**

(₹ in crore)

Year	Detections		Voluntary Payments during Investigation
	No. of cases	Amount	
FY13	835	5,131	880
FY14	1,191	8,032	1,489
FY15	806	5,703	1,420

Source: Figures furnished by the Ministry.

It is observed that the number of Service Tax cases and the amounts detected by DGCEI is significantly lower during FY15 compared to FY14.

Tables 1.9(b) depict the performance of Commissionerates during last three years.

**Table 1.9(b): Anti-evasion performance of Commissionerates during last three years**

(₹ in crore)

Year	Detections		Voluntary Payments during Investigation
	No. of cases	Amount	
FY13	5,875	7,827	2,819
FY14	8,024	6,810	3,614
FY15	5,648	4,138	3,132

Source: Figures furnished by the Ministry

It is observed that the number of Service Tax cases and the amounts detected by Commissionerates is significantly lower during FY15 compared to FY14.

## Tax administration in Service Tax

### 1.14 Scrutiny of returns

CBEC introduced the concept of self-assessment in respect of Service Tax in 2001. With the introduction of self-assessment, the department also envisaged the provision of a strong compliance verification mechanism, inter alia, through scrutiny of returns. Even in the self-assessment era, the primary



function of departmental officers continues to be assessment or confirmation of assessment as it is they who have a statutory liability to ensure correctness of tax payment.<sup>7</sup> This is undertaken through scrutiny of Service Tax returns, which in turn are to be selected on the basis of risk parameters. The Manual for Scrutiny of Service Tax Returns, 2009 envisages that scrutiny is to be carried out in two stages i.e. preliminary scrutiny of the return which is to be carried out by ACES application and detailed scrutiny of assessment which is to be carried out manually on the returns marked by ACES or otherwise.

#### **1.14.1 Preliminary scrutiny of returns**

The purpose of preliminary scrutiny is to ensure completeness of information, timely submission of the return, timely payment of duty, arithmetical accuracy of the amount computed as duty and identification of non-filers and stop-filers.<sup>8</sup>

Table 1.10 depicts the performance of the department in carrying out preliminary scrutiny of returns.

**Table 1.10: Preliminary scrutiny of Service Tax returns**

Year	No of returns filed in ACES	No. of returns marked for R&C	% of returns marked for R&C	No. of returns cleared after R&C	No. of returns pending for R&C	% of marked returns pending correction
FY13	21,75,169	11,20,695	51.52	3,17,383	8,03,312	71.68
FY14	17,98,773	6,28,512	34.94	70,146	5,58,366	88.84
FY15	19,57,446	5,90,250	30.15	81,307	5,08,943	86.22

Source: Figures furnished by the Ministry. Comments on data discrepancy in Para 1.21

\*R & C means review and correction

The percentage of returns marked for review and correction (R & C) by ACES has come down drastically to 30.15 percent in FY15 which is a healthy sign and indicates stabilisation of ACES and it needs to be taken further.

It is also observed that the number of returns filed on ACES has reduced in FY15 in comparison to FY13 whereas the number of registered assessee<sup>9</sup> has increased. The Ministry may look into the reasons for the same.

It is also observed that 86.22 percent of returns marked for R & C were pending as on 31 October 2015, despite drastic reduction in number and percent of returns marked for R & C as compared to FY13. One of the main intentions behind introducing preliminary scrutiny online was to release manpower for detailed manual scrutiny, which could then become the core

<sup>7</sup> Manual for Scrutiny of Service Tax Returns, 2009, Para 1.2.1A

<sup>8</sup> Manual for Scrutiny of Service Tax Returns, 2009, Para 1.2.1

<sup>9</sup> Data in Table 1.6

function of the Range/Group;<sup>10</sup> the high figures of pendency for correction after R & C identification indicates that the same is far from being achieved.

Completion of R & C of returns in ACES is the prerequisite for scrutiny of subsequent returns submitted by the assessee. Large numbers of returns were pending for scrutiny, risking the correctness of Service Tax collection.

#### 1.14.2 Detailed scrutiny of returns

The purpose of detailed scrutiny is to establish the validity of information furnished in the tax return and to ensure correctness of valuation, availing of CENVAT credit, classification and effective rate of tax applied after taking into consideration the admissibility of exemption notification availed etc.<sup>11</sup> Unlike preliminary scrutiny, detailed scrutiny is to cover only certain selected returns, identified on the basis of risk parameters, developed from the information furnished in the returns submitted by the taxpayers.<sup>12</sup>

Table 1.11 depicts the performance of the department in carrying out detailed scrutiny of returns.

**Table 1.11: Detailed Scrutiny of Service Tax returns**

Year	No. of returns marked for detailed scrutiny	No. of returns where detailed scrutiny was carried out	No. of returns where detailed scrutiny was pending	Age-wise analysis of pendency		
				Between six month to one year	between one and two years	Over 2 years
FY13	23,838	2,743	21,095	19,791	934	370
FY14	44,045	16,201	27,844	12,974	5,174	17,636
FY15	*					

Source: \*Figures for FY15 furnished by the Ministry does not pertain to detailed scrutiny

As per prescribed norms, only two percent of returns need to be examined in detailed scrutiny.<sup>13</sup> Hence, the total number of returns to be scrutinised in a whole year would be very low in respect of any range as total number of cases marked for detailed scrutiny were only 44,045 across all ranges (2,272) as on 31 March 2014.

It is cause of concern the large number (27,844) of returns marked for detailed scrutiny were pending as on 31 March 2014 as other than cases of fraud, there is no scope for issue of a demand notice to an assessee beyond

<sup>10</sup> Manual for Scrutiny of Service Tax Returns, 2009, Para 1.2B

<sup>11</sup> Manual for Scrutiny of Service Tax Returns, 2009, Para 1.2.1

<sup>12</sup> CBEC Circular 113/7/2009-ST dated 23 April 2009

<sup>13</sup> Manual for Scrutiny of Service Tax Returns 2009, Para 4.2A

18 months from the date of filing of returns by assessee.<sup>14</sup> It is essential that the department takes steps to analyse the reasons for long pendency so as to ensure revenue due to the Government is adequately safeguarded. It was further observed that a huge number of returns were pending for more than two years for detailed scrutiny.

It also appears that the data of age wise analysis of pendency furnished by Ministry is not correct for FY14.

### 1.15 Adjudication

Adjudication is the process through which departmental officers determine issues relating to tax liability of assessees. Such process may involve consideration of aspects relating to, inter alia, CENVAT credit, valuation, refund claims, provisional assessment etc. A decision of the adjudicatory authority may be challenged in an appellate forum as per the prescribed procedures.

Table 1.12 depicts age-wise analysis of Service Tax adjudication.

**Table 1.12: Cases pending for adjudication with departmental authorities**

(₹ in crore)

Year	Cases pending as on 31 March		No. of Cases Pending for more than 1 year
	No.	Amount	
FY13	22,690	64,599	4,478
FY14	19,925	31,790	4,383
FY15	33,122	77,463	12,668

Source: Figures furnished by Ministry

It is observed that adjudications involving revenue implication of ₹ 77,463 crore were pending finalisation as on 31 March 2015. Of these, 12,668 cases were pending for more than one year. While the number of pending adjudication cases increased by 66 percent in FY15 as compared to FY14, the amount involved in these cases increased by 143 percent. The number of cases pending for more than one year almost tripled in FY15 as compared to FY14. *Our observations on “Issue of SCN and Adjudication process” are detailed in Chapter II of this report.*

<sup>14</sup> ‘18 months’ in section 73(1) of the Finance Act substituted for ‘1 year’ by Finance Act, 2012 with effect from 28 May 2012

### 1.16 Appeal Cases

Besides the adjudicating authorities, there are several other authorities including departmental appellate authorities, courts of law etc., where issues of law, interpretations etc. are considered. Besides, the department also resorts to coercive recovery measures in many instances. Huge amounts of revenue thus remain outside the Consolidated Fund of India for substantial periods of time. Based on data furnished by CBEC, we have tabulated the pendency of cases at various forums in Table 1.14 (a).

**Table 1.13 (a): Pendency of Appeal (CX and ST)**

Year	Forum	Appeals pending at the end of the year					
		Details of party's appeals		Details of departmental appeals		Total	
		No. of Appeals	Amount involved (Cr. ₹)	No. of Appeals	Amount involved (Cr. ₹)	No. of Appeals	Amount involved (Cr. ₹)
FY 13	Supreme Court	760	1,429	1,632	5,743	2,392	7,172
	High Court	5,631	6,844	5,430	5,527	11,061	12,371
	CESTAT	35,964	63,278	15,832	12,010	51,796	75,288
	Settlement Commission	70	103	3	0	73	103
	Commissioner (Appeals)	23,233	7,103	2,965	558	26,198	7,661
	<b>Total</b>	<b>65,658</b>	<b>78,757</b>	<b>25,862</b>	<b>23,838</b>	<b>91,520</b>	<b>1,02,595</b>
FY 14	Supreme Court	855	1,835	1,702	6,078	2,557	7,913
	High Court	5,856	9,359	5,505	6,764	11,361	16,123
	CESTAT	41,257	90,447	16,685	14,806	57,942	1,05,253
	Settlement Commission	109	230	4	1	113	231
	Commissioner (Appeals)	23,783	7,054	3,225	669	27,008	7,723
	<b>Total</b>	<b>71,860</b>	<b>1,08,926</b>	<b>27,121</b>	<b>28,318</b>	<b>98,981</b>	<b>1,37,244</b>
FY 15	Supreme Court	815	2,202	1,754	6,428	2,569	8,630
	High Court	5,577	10,206	5,408	9,231	10,985	19,437
	CESTAT	44,710	1,05,905	16,719	14,240	61,429	1,20,145
	Settlement Commission	155	349	2	1	157	350
	Commissioner (Appeals)	25,617	6,272	3,676	655	29,293	6,927
	<b>Total</b>	<b>76,874</b>	<b>1,24,935</b>	<b>27,559</b>	<b>30,554</b>	<b>1,04,433</b>	<b>1,55,489</b>

Source: Figures furnished by the Ministry

The Table indicates that cases involving revenue of ₹ 1,55,489 crore were pending in appeals. As no action can be initiated for recovery of revenue till the appeal is pending, locking up of revenue of ₹ 1,55,489 crore is a matter of concern.

The Ministry has provided the data regarding pendency of appeal in respect of Service Tax exclusively for FY15. The data is tabulated below:

**Table 1.13 (b): Pendency of Appeal (ST)**

Year	Forum	Appeals pending at the end of the year					
		Details of party's appeals		Details of departmental appeals		Total	
		No. of Appeals	Amount involved (Cr. ₹)	No. of Appeals	Amount involved (Cr. ₹)	No. of Appeals	Amount involved (Cr. ₹)
FY 15	Supreme Court	179	450	359	1,762	538	2,211
	High Court	1,837	4,663	877	1,717	2,714	6,380
	CESTAT	16,245	54,654	5,585	6,762	21,830	61,416
	Settlement Commission	73	214	0	0	73	214
	Commissioner (Appeals)	15,112	3,373	1,925	357	17,037	3,730
	<b>Total</b>	<b>33,446</b>	<b>63,354</b>	<b>8,746</b>	<b>10,597</b>	<b>42,192</b>	<b>73,951</b>

Source: Figures furnished by the Ministry

The Ministry has provided the details of disposal of appeal cases for FY13 to FY15. The data is tabulated below:

**Table No. 1.13 (c): Breakup of cases decided during the year**

Year	Forum	Department's Appeal				% of Successful appeal (Deptt.)	Party's Appeal			% of successful appeal (Party)
		Decided in Favour of Deptt.	Decided against the Deptt.	Remanded	Decided in favour of party		Decided against party	Remanded		
FY13	Supreme Court	15	75	9	15.15	16	23	7	34.78	
	High Court	102	486	97	14.89	473	1,007	269	27.04	
	CESTAT	346	955	271	22.01	1,805	2,447	1,380	32.05	
	Comm. (Appeals)	1,162	1,198	139	46.50	6,432	13,221	1,575	30.30	
	<b>Total</b>	<b>1,625</b>	<b>2,714</b>	<b>516</b>	<b>33.47</b>	<b>8,726</b>	<b>16,698</b>	<b>3,231</b>	<b>30.45</b>	
FY14	Supreme Court	21	82	5	19.44	14	33	3	28.00	
	High Court	193	355	22	33.86	379	1,247	223	20.50	
	CESTAT	248	1,407	151	13.73	2,314	2,125	1,574	38.48	
	Comm. (Appeals)	1,141	1,248	31	47.15	7,064	12,888	697	34.21	
	<b>Total</b>	<b>1,603</b>	<b>3,092</b>	<b>209</b>	<b>32.69</b>	<b>9,771</b>	<b>16,293</b>	<b>2,497</b>	<b>34.21</b>	
FY15	Supreme Court	24	149	16	12.70	16	52	29	16.49	
	High Court	230	712	130	21.46	447	1,397	206	21.80	
	CESTAT	216	1,121	218	13.89	2,255	1,987	1,874	36.87	
	Comm. (Appeals)	717	869	87	42.86	4,202	9,151	931	29.42	
	<b>Total</b>	<b>1,187</b>	<b>2,851</b>	<b>451</b>	<b>26.44</b>	<b>6,920</b>	<b>12,587</b>	<b>3,040</b>	<b>30.69</b>	

Source: Figures furnished by the Ministry

It is observed that success ratio of department's appeal against adjudication order has decreased from 33.47 percent in FY13 to 26.44 percent in FY15. The success ratio of departmental appeals is around 43 percent when

decided by Commissioner (Appeal) but in extra-departmental higher forums it ranges from 13 percent to 21 percent in FY15. Appeals filed by the assesseees have better success rate in extra-departmental higher forums. There is a need to analyse the reasons of low success rate and to take effective measures to improve the success rate as well as to reduce the pendency of appeals.

### 1.17 Disposal of refund claims

Section 11B of the Central Excise Act, 1944 provides the legal authority for claim and grant of refund. Further, section 11BB of the Act stipulates that interest is to be paid on refund amount if it is not refunded within three months of the date of application of refund.

Table 1.13(a) depicts the status of disposal of refund claims by the department. The delay depicted is in terms of time taken from the date of receipt of refund application along with all details required for processing the claims.

**Table 1.14(a): Disposal of refund claims in Service Tax**

(₹ in crore)

Year	OB plus claims received during the year	No of claims disposed during the year				Interest payments	
		Total number of disposals	Within 3 months and % of disposals	Claims disposed of with delay		No of cases	Interest paid
				< 1 year	> 1 year		
FY13	26,672	15,897	12,328 (77%)	1,880 (12%)	1,689 (11%)	1	0.12
FY14	23,145	13,979	11,445 (81.87%)	1,494 (10.69%)	1,040 (7.44%)	0	0
FY15	*	13,381	*	*	*	14	5.58

Source: Figures furnished by the Ministry

\*The Ministry did not provide the data for FY15

It is observed that approximately 80 percent of the Service Tax related refund claim disposals are carried out within the prescribed period of three months.<sup>15</sup> Despite the fact that there is a liability on department to pay interest on delayed refunds, department is not paying interest to the assesseees in most of the cases. Board must ensure that the provisions regarding payment of interest on delayed refund are implemented in right earnest.

As the Ministry did not furnish the data related to cases received and breakup of disposal of cases during FY15, the same could not be analysed.

Table 1.13(b) depicts an age-wise analysis of pendency of refund claims during last three years.

<sup>15</sup> Section 11BB of the Central Excise Act made applicable to Service Tax by section 83 of the Finance Act 1994 (as amended)

**Table 1.14(b): Age-wise pendency of Service Tax refund cases as on 31 March**  
(₹ in crore)

Year	OB plus claims received in the year	Total number of refund claims pending as on 31 March		Refund claims pending for			
				Less than one year		Over 1 year	
		Number	Amount	Number	Amount	Number	Amount
FY13	23,803	7,906	41,874	5,824	30,018	2,082	11,856
FY14	23,145	8,154	4,487	6,391	3,582	1,763	905
FY15	*	13,913	8,390	10,848	5,642	3,065	2,747

Source: Figures furnished by the Ministry \* The Ministry did not furnish the data for FY15

It is observed that while number of cases has been increasing, the amount involved has drastically reduced as compared to FY13, though it increased as compared to FY14.

The complete data for FY15 is not provided by the Ministry despite our repeated reminders.

### 1.18 Cost of collection

Table 1.15 depicts the cost of collection vis-a-vis the revenue collection.

**Table 1.15: Central Excise and Service Tax receipts and cost of collection**  
(₹ in crore)

Year	Receipts from Service Tax	Receipts from Central Excise	Total Receipts	Cost of collection	Cost of collection as % of total Receipts
FY11	71,016	1,37,901	2,08,917	2,072	0.99
FY12	97,356	1,44,540	2,41,896	2,227	0.92
FY13	1,32,601	1,75,845	3,08,446	2,439	0.79
FY14	1,54,780	1,69,455	3,24,235	2,635	0.81
FY15	1,67,969	1,89,038	3,57,007	2,950	0.83

Source: Union Finance Accounts of respective years

It is observed that despite automation and extensive use of Information Technology, cost of collection started showing a rising trend from FY13 onwards.

### 1.19 Internal Audit

Modernisation of Indirect Tax administration in India is based on the Canadian model. The new audit system EA 2000 has four distinct features: scientific selection after risk analysis, emphasis on pre-preparation, scrutinising of business records against statutory records and monitoring of audit points.

Audit processes include preliminary review, gathering and documenting systems' information, evaluating internal controls, analysing risks to revenue and trends, developing audit plan, actual audit, preparation of audit findings, reviewing the results with the assessee/Range Officer/Divisional Assistant Commissioner and finalisation of the report.

The Audit framework consists of three parts. Directorate General of Audit and the field Commissionerates share the responsibility of administration of Audit. While the Directorate is responsible for collection, compilation and analysis of audit results and its feedback to CBEC to improve tax compliance and to gauge levels of client satisfaction, audit parties from Commissionerates undertake audit in terms of EA 2000 audit protocol. In order to improve audit quality, CBEC took the assistance of Asian Development Bank in developing audit manuals, risk management manuals and manuals to train auditors in EA 2000 and CAATs, which prescribe detailed processes for conduct of audit. Table 1.16 (a) depicts details of Service Tax units due for audit during FY15 by audit parties of the Commissionerates vis-à-vis units audited.

**Table 1.16(a): Audits of assesseees conducted during FY15**

Slab of annual duty (PLA+CENVAT)	Periodicity	Number of units due	Number of units planned	Number of units audited	Shortfall in audit (%)	Shortfall in audit in FY 14 <sup>16</sup> (%)
Units paying ST >₹ 3 crore (Category A)	Annual	5,702	5,702	2,183	61.72	46.71
Units paying ST between ₹ 1 and 3 crore (Category B)	Biennial	4,695	4,695	1,321	71.86	51.07
Units paying ST between ₹ 25 lakh and ₹ 1 crore (Category C)	Once in five years	6,710	6,710	1,340	80.03	49.19
Units paying ST <₹ 25 lakh (Category D)	2 % every year	14,088	14,088	2,860	79.70	49.20

Source: Figures furnished by the Ministry

It is observed that during FY15, not only there was a huge shortfall in the Service Tax audits conducted across all categories of units but the short fall increased substantially as compared to FY14.

The result of the audit conducted by the department is tabulated in table 1.16 (b).

**Table 1.16(b): Amount objected and recovered during the year**

(₹ in crore)

Slab of annual duty (PLA+CENVAT)	Amount of short levy detected	Amount of total recovery
Category A	4,695	1,025
Category B	1,457	255
Category C	513	190
Category D	253	121
Total	6,918	1,591

Source: Figures furnished by the Ministry

<sup>16</sup> Reported in Table 1.15(a) of C&AG Report No.4 of 2015 (Indirect Taxes-Service Tax)



It is observed that the amount of short levy detected and recovered in Category 'A' units is significantly higher than the non-mandatory units. The Ministry needs to ensure carrying out of internal audit of all Category 'A' (mandatory) units.

### 1.20 Revenue Collection due to Departmental Efforts

Besides, the voluntary payment of Service Tax by the tax payers there are various methods by which the department collects the revenue due but not paid by the taxpayers. These methods include Scrutiny of Returns, Internal Audit, Anti-Evasion, Adjudication etc.

The result of departmental efforts is tabulated in Table 1.17

**Table 1.17 : Revenue recovered by Departmental Efforts**

(₹ in crore)			
Sl. No.	Departmental Action	Recovery during FY14	Recovery during FY15
1	Internal audit	1,760.29	632.15
2	Anti-Evasion	2,865.53	2,765.57
3	Confirmed Demands	454.06	437.10
4	Pre Deposit	213.42	352.94
5	Scrutiny of Returns	188.66	139.04
6	Recovery from Defaulters	619.48	735.09
7	Provisional Assessment	6.85	8.37
8	VCES	3,301.73	2,741.94
9	ITR/TDS	58.00	306.30
10	Others	65.68	196.38
	<b>Total</b>	<b>9,533.70</b>	<b>8,314.88</b>

Source: Figures furnished by the Ministry

Total Service Tax collection during FY15 is ₹ 1,67,969 crore out of which only ₹ 8314.88 crore is collected due to departmental efforts. Further, it is noticed that revenue collection shown under Internal Audit and Anti-evasion in Table 1.17 does not tally with the amount shown in Table 1.16 and 1.9 respectively. In fact, the recoveries reflected in table 1.17 are far less than spot recoveries reported in Tables 1.16 and 1.9. The Ministry needs to examine this data.

### 1.21 Non-furnishing of Data and Discrepancy in data furnished by the Ministry

The Ministry could not provide data related to detailed scrutiny of returns and disposal of refund cases for FY15 as format of data and responsibility to maintain the data were revised from November 2014. This indicates that continuity of maintenance of critical data is not ensured during change management in CBEC. Further, CBEC provided data relating to various performance parameters such as scrutiny of returns, refunds, arrears

realisation, internal audit etc. However, we observed in respect of registered assesseees, preliminary scrutiny of returns and arrears realization<sup>17</sup>, data furnished did not tally with information furnished for last Audit Report no. 4 of 2015. There is an urgent need to improve the quality of data maintenance in respect of Service Tax.

### **1.22 Audit effort and Service Tax audit products - Compliance Audit Report**

Compliance audit was managed as per the Comptroller and Auditor General's (CAG) Audit Quality Management Framework, 2014 employing professional auditing standards of the Auditing Standards, 2<sup>nd</sup> Edition, 2002.

### **1.23 Sources of information and the process of consultation**

Data from the Union Finance Account, along with examination of basic Records/ documents in DoR, CBEC, and their field formations, MIS and MTRs of CBEC along with other stake holder reports were used. We have nine field offices headed by Director Generals (DGs)/Principal Directors (PDs) of Audit, who managed audit of 781 units (CX and ST) in FY15.

### **1.24 Report overview**

The current report has 166 paragraphs having financial implication of ₹ 386.35 crore. There were generally three kinds of observations: non-payment of Service Tax, short payment of Service Tax, irregular availing and utilisation of CENVAT credit etc. The department/Ministry has already taken rectificatory action involving money value of ₹ 373.58 crore in case of 162 paragraphs in the form of issue of show cause notices, adjudication of show cause notices and reported recovery of ₹ 53.77 crore.

### **1.25 Response to CAG's audit, revenue impact/follow-up of Audit Reports**

In the last five audit reports (including current year's report) we had included 846 audit paragraphs (Table 1.17) having financial implication of ₹ 2,129.15 crore.

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<sup>17</sup> Table 1.6, 1.8 and 1.10

**Table 1.17: Follow up of Audit Reports**

(₹ in crore)

Year		FY 11	FY 12	FY 13	FY 14	FY 15	Total	
Paragraphs included	Number	199	152	151	178	166	846	
	Amount	204.74	500.23	265.75	772.08	386.35	2,129.15	
Paragraphs accepted	Pre printing	Number	184	150	147	171	162	814
		Amount	185.69	498.65	262.29	477.22	373.58	1,797.43
	Post printing	Number	11	1	4	--	--	16
		Amount	17.79	0.52	1.81	--	--	20.12
	Total	Number	195	151	151	171	162	830
		Amount	203.48	499.17	264.1	477.22	373.58	1,817.55
Recoveries effected	Pre printing	Number	122	88	95	92	109	506
		Amount	78.76	84.58	65.28	130.29	53.77	412.68
	Post printing	Number	9	4	9	9	--	31
		Amount	2.24	0.85	2.07	33.80	--	38.96
	Total	Number	131	92	104	101	109	537
		Amount	81	85.43	67.35	164.09	53.77	451.64

Source: CAG Audit Reports

It is observed that the Ministry had accepted audit observations in 830 audit paragraphs having financial implication of ₹ 1817.55 crore and had recovered ₹ 451.64 crore.

## Chapter II

### Issue of Show Cause Notices and Adjudication process

#### 2.1 Introduction

Adjudication is a quasi-judicial function of the officers of the Central Excise and Service Tax Department. Through imposition of an appropriate penalty after adjudication, it seeks to ensure that no revenue loss is caused by the contravention of applicable laws/rules/regulations etc. However, if an innocent person is punished or the punishment is more than warranted by the nature of offence, it may undermine the trust between the Government and the tax payer. If, on the other hand, a real offender escapes the punishment provided by law, it may encourage commission of offences to the detriment of both the Government and the honest taxpayers.

There may be situations relating to the demand of tax not paid, short paid or erroneously refunded, misclassification, CENVAT credit wrongly availed, imposition of penalty etc. It is mandatory that a Show Cause Notice (SCN) is issued if the department contemplates any action prejudicial to the assessee. The SCN would detail the provisions of law allegedly violated and ask the noticee to show cause why action should not be initiated against him under the relevant provisions of the Act/Rules. Thus, an SCN gives the noticee the opportunity to present his case.

In the cases where Service Tax has not been paid or short paid or erroneously refunded, SCN is to be served within eighteen months from the relevant date in normal case (within one year up to 27<sup>th</sup> May 2012) and within five years from the relevant date in case of fraud, collusion, wilful suppression of facts, etc., with the intent to evade payment of duty or to get erroneous refund.

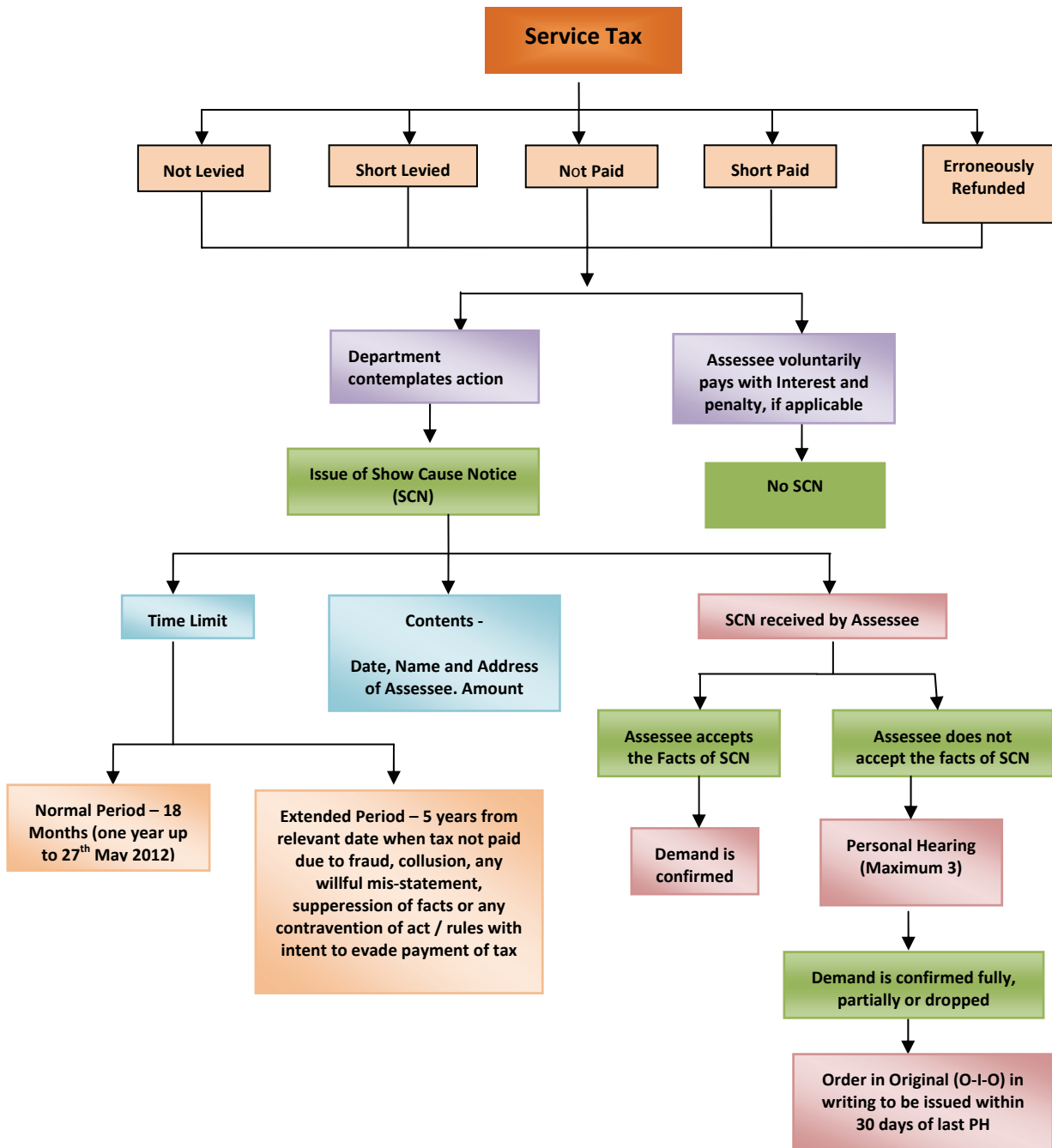
Further, it is provided in the Finance Act, 1994<sup>18</sup> that where it is possible to do so, the SCNs should be adjudicated within six month in normal cases and within one year in extended period cases, from the date of service of the notice on the person.

Adjudication proceedings shall be conducted by observing principles of natural justice. The noticee shall be given a Personal Hearing (PH) before deciding the case. There shall be a written Order in original (OIO) after the completion of adjudication process detailing facts of the case and justification of the adjudication order. Thus the idea is to ensure prompt initiation and speedy disposal of the adjudication cases. The process of adjudication is shown in the chart below:

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<sup>18</sup> With effect from 6 August 2014

**Chart 2.1  
SCN and Adjudication Process under Section 73 of the Finance Act, 1994**



## 2.2 Audit Objectives

The objectives of this audit were to examine:

- a) the adequacy of rules, regulations, notifications, circulars/instructions etc. issued from time to time in relation to adjudication process;
- b) whether the extant provisions of law are being complied with adequately;
- c) whether there was an effective monitoring and internal control mechanism.

## 2.3 Scope of Audit and Coverage

In this audit we covered 36 Commissionerates along with 92 Divisions and 80 Ranges falling under these Commissionerates.

Further, we checked 2,580 adjudication cases yet to be finalized, 5,767 adjudicated cases, 394 draft SCNs pending for issue, 1,837 call book cases and 849 cases decided against revenue in adjudication stage. The period covered was FY12 to FY14.

## 2.4 Audit Findings

We noticed irregularities in 964 cases involving revenue of ₹ 95.14 crore. The gist of major findings is summarised below:

- (i) Eight demands, involving revenue of ₹ 3.34 crore, were concluded in adjudication as time barred due to late issue of SCN.
- (ii) In 36 cases SCN was not issued within the stipulated time period, of which 23 cases involved a revenue implication of ₹ 22.17 crore and in balance 13 cases the value involved could not be worked out for want of details.
- (iii) 46 cases involving revenue of ₹ 21.08 crore were pending for adjudication for more than two years.
- (iv) 52 cases involving revenue of ₹ 22.35 crore were irregularly kept in call book.

The findings are discussed in subsequent paragraphs.

## 2.5 Issue of SCN

*Section 73(l) of the Finance Act, 1994 envisages, inter alia, that where Service Tax has not been paid or short paid or erroneously refunded, SCN is to be served within eighteen months from the relevant date in normal case (within one year up to 27<sup>th</sup> May 2012) and within five years from the relevant date in case of fraud, collusion, wilful suppression of facts, etc., with the intent to evade payment of duty or to get erroneous refund.*

In an era of automation, where the focus is on improving timelines, it could be seen that the time limit for issue of SCN in normal case was extended from one year to eighteen months from 28th May 2012 onwards. But still we noticed that extended period was invoked for issuing SCNs in normal cases also. The timelines prescribed in statute determine the outer limits for issuing SCN. But as could be seen from the observations discussed below, instead of finishing this task in minimum possible time, the extended period clause was invoked in certain cases in violation of the aforementioned provisions.

### **2.5.1 Invocation of extended period of time for issue of SCN**

We observed in eight cases in four Commissionerates<sup>19</sup> that the SCNs were issued invoking the extended period of time which, as held by Adjudicating Authority, was not in conformity with the provisions of statute. Failure on the part of the department to issue SCN in time, thus, resulted in loss of revenue to the tune of ₹ 3.34 crore. The Ministry has accepted the facts in all the cases (November 2015). One case is highlighted below:-

**2.5.1.1** In Chandigarh-I Commissionerate, two SCNs involving money value of ₹ 2.86 crore were issued (October 2010 and April 2011) to M/s. Himachal Futuristic Communications on the basis of audit observation by invoking the provisions of extended period of 5 years. However, the demand was dropped by the adjudicating authority holding the same as time-barred. This resulted in loss of revenue of ₹ 2.86 crore. No appeal was filed by the department against the order.

When we pointed this out (May 2014), the Ministry accepted (November 2015) the facts and stated that the department filed an appeal against the order in CESTAT.

### **2.5.2 Issue of Show Cause Notice**

Test check of records in nine Commissionerates<sup>20</sup> revealed that in 36 cases SCN was not issued within the stipulated time period. Out of these, 23 cases, for which details were available, involved a revenue implication of ₹ 22.17 crore. This might result in these SCNs being time barred. The Ministry accepted (November 2015) the facts in 18 cases and in 18 other cases stated that report would follow. In some cases the Ministry attributed the delay to non-availability of relied upon documents from internal audit parties or from the assesses, due to which demand could not be quantified. The reply could not be accepted as such delay in obtaining documents should

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<sup>19</sup> Guwahati, Kolkata ST, Chandigarh I and Udaipur

<sup>20</sup> Guwahati, Shillong, Durgapur, Kolkata ST, Kolkata ST-II, Jaipur-I, Indore, Coimbatore and Mumbai ST-V

be minimised and further, in exceptional case of some genuine grounds to avoid time limit, the department has the option to issue SCN without quantification of demand and to quantify and inform to the noticee before adjudication. Three cases are illustrated below:-

**2.5.2.1** As per Special Secretary and Member's letter dated 13 October 2010, where audit objection is admitted by the Commissionerate, the SCN should be issued immediately and in no case later than 30 days.

In Kolkata Service Tax Commissionerate, a CERA objection involving an amount of ₹ 16.75 crore plus interest of ₹ 73.44 lakh on M/s. Vodafone Essar East Ltd., issued in May 2010, was admitted in July 2011. But the SCN was issued in August 2013 i.e. much later than the date of admitting the said objection, by invoking extended period. However, as the issue became known to the department on the basis of CERA observation, such extended periods may be hit by time bar clause. Therefore, department should have issued SCN within 30 days following the Ministry's instructions cited above.

When we pointed this out (July 2014), the Ministry stated (November 2015) that the SCN was delayed due to further examination and to quantify any further amount.

**2.5.2.2** In the Service Tax-I Commissionerate, Mumbai on the basis of internal audit observation (raised in September 2008), the SCN showing demand of ₹ 2.05 crore pertaining to period January 2006 to March 2007 was issued to M/s. Indian Airlines Ltd., in January 2013. The said demand might be barred by limitation of time due to delay in issue of SCN.

When we pointed this out (September 2014), the Ministry stated (November 2015) that report would follow.

**2.5.2.3** M/s Selvel Advertising Private Ltd., in Kolkata Service Tax Commissionerate was issued SCN in April 2006 covering the period 1998-99 to 2000-01 demanding Service Tax under Advertising services by invoking extended period. On the same issue, periodical SCN covering the period from October 2004 and March 2005 was also issued and transferred to Call Book for being contested by the department. However, the Department did not raise any demand for the period 2001-02 to September 2004 involving revenue of ₹ 2.02 crore. Thus, non issue of SCN in time by the department might result in the issue being time barred.



When we pointed this out (June 2014), the ministry stated (November 2015) that the case file was not readily available due to restructuring of the Commissionerate.

### **2.5.3 Levy of penalty before closure of Internal Audit paras**

*Section 73(4A) of the Finance Act, 1994 stipulates levy of interest and penalty where during the course of any audit, investigation or verification, it is found that any Service Tax has not been paid or short-paid, but the true and complete details of transactions are available in the specified records. This section provides that the person chargeable to Service Tax may pay the Service Tax in full or in part alongwith interest payable thereon under section 75 and penalty equal to one percent of such tax for each month, for the period during which the default continues, up to a maximum of twenty-five percent of the tax amount, before service of notice on him and inform the Central Excise Officer of such payment in writing and the proceedings in respect of the said amount of Service Tax shall be deemed to have been concluded.*

We observed that 30 cases in five Commissionerates<sup>21</sup> had been closed without levying penalty amounting to ₹ 3.14 crore in contravention of the provisions under Section 73(4A). The Ministry accepted the facts (November 2015) in 23 cases and in seven cases stated that report would follow. Cases noticed in respect of two Commissionerates are highlighted below:-

**2.5.3.1** In Noida Commissionerate, the observations in respect of 20 assesseees were settled as they had made payment of arrears of Service Tax alongwith interest. The paras were settled without levying penalty amounting to ₹ 89.68 lakh in contravention of provision under Section 73(4A) of the Finance Act, 1994.

When we pointed this out (October 2014), the Ministry stated (November 2015) that suitable action was being taken in the matter.

**2.5.3.2** In Service Tax-I Commissionerate, Mumbai the closure of cases/direction for recovery of interest without levying penalty were made against four assesseees<sup>22</sup> amounting to ₹ 1.75 crore in contravention of the provisions under section 73(4A).

When we pointed this out (September 2014), the Ministry stated (November 2015) that suitable action was being taken in the matter.

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<sup>21</sup> Bolpur, Mumbai ST-I, Mumbai LTU, Aurangabad and Noida

<sup>22</sup> M/s. Atos Origin India Pvt. Ltd., M/s. Hindustan Dorr-Oliver Ltd., M/s. Hyundai and M/s. MSC Agency India

#### **2.5.4 Erroneous refunds**

*Section 73(l) of the Finance Act, 1994 inter alia, provides that where any Service Tax is erroneously refunded, SCN should be served within one year from the relevant date (within eighteen months with effect from 28 May 2012). Sub-section 2 of Section 84 provides that the Commissioner of Central Excise can pass review order within a period of three months from the date of communication of decision or order of the adjudicating authority.*

In Kolkata Service Tax Commissionerate, it was noticed that in 50 cases, erroneous refund was sanctioned (November 2010 to May 2011). Further scrutiny revealed that the Commissioner of Central Excise (Appeal) held (November 2011 and January 2012) that appeals filed against these refund orders in all 50 cases were not maintainable for being time barred as in all cases, Review Orders were passed beyond the statutory limit of three months from the date of communication of the decision of the adjudicating authority. It was also noticed that Commissioner requested (February 2012) the jurisdictional Deputy Commissioner to issue SCN for recovery of erroneous refund without delay in 44 cases where Departmental appeal was rejected (November 2011) by Commissioner (Appeal). Audit noticed that order of the Commissioner was communicated in February 2012 and by this time, one year period from the passing of OIOs in 14 cases already expired. The Department did not produce SCNs issued, if any and orders of the adjudicating authority in 47 cases.

It was further noticed from the review orders as made available to audit in 14 cases out of 50 cases, that the amount sanctioned as erroneous was ₹ 41.36 lakh. Thus, delayed issuance/non-issuance of SCNs for recovery of erroneous refund within one year from the date of refund orders resulted in the SCNs becoming time barred.

We pointed this out (September 2014) and the reply of the Ministry had not been received (January 2016).

#### **2.5.5 Completeness of SCN**

*As per the CBEC's Adjudication Manual, the amount demanded must be indicated in the SCN. If SCN is based on one ground, demand cannot be confirmed on other ground. The order should not travel beyond the SCN. Further, Section 73(l) of the Finance Act, 1994 stipulates, inter alia, that in case of non-payment/short payment of Service Tax, SCN is to be served within one year in normal case (within 18 months with effect from 28 May 2012) and within five years in case of fraud, collusion, wilful suppression of facts, etc., with the intent to evade payment of duty or to get erroneous refund.*

*Further, Board clarified<sup>23</sup> (October 2007) that on payment of Service Tax and interest before SCN, all proceedings shall be concluded. It has also been clarified that conclusion of proceedings in terms of Section 73 (3) implies conclusion of entire proceedings under the Finance Act, 1994.*

*As per Section 73(3) of the Finance Act, 1994 in case of non-payment/short payment of Service Tax, the person chargeable with the Service Tax may pay the same on the basis of his own ascertainment or on the basis of tax ascertained by a Central Excise Officer before service of notice on him and inform the Central Excise Officer of such payment in writing, who on receipt of such information shall not serve any notice in respect of the amount so paid.*

We observed in 22 cases in eight Commissionerates<sup>24</sup> that the demands of ₹ 20.68 crore besides interest and penalty were dropped in adjudication orders either for the reason of error in SCN or as the SCN did not spell out the amount of Service Tax short paid/not paid. Further, in 12 cases SCNs were issued although Service Tax with interest was already paid by the assessee and in two cases excess amount of Service Tax was demanded due to arithmetical mistake in calculation. The Ministry accepted (November 2015) the audit objection in 15 cases and in six cases stated that report would follow. In one case, the Ministry did not accept audit objection, which was illustrated below alongwith one more case:-

**2.5.5.1** In Guwahati Commissionerate, one SCN showing demand of ₹ 2.17 crore for the period September 2003 to April 2007 was issued ( March 2009) to the assessee, the General Manager, BSNL (Land Line) for recovery of CENVAT credit irregularly availed by the assessee. We observed that the Adjudicating Authority in its OIO (March 2013) had dropped the demands alongwith interest and penalty as there was no proposal at all to invoke the extended period in the SCN.

When we pointed this out (August 2014), the Ministry did not accept (November 2015) the audit objection and stated that as there was “willful suppression” in this case, and automatic invocation of extended period would come into play.

However, the fact remained that SCN was dropped in adjudication due to non invocation of extended period in the SCN and this order was not challenged.

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<sup>23</sup> Letter No. 137/167/2006 –CX-4 dated 03 July 2007

<sup>24</sup> Guwahati, Shillong, Bolpur, Kolkata ST, Vadodara I, Visakhapatnam I, Hyderabad II and Hyderabad III

**2.5.5.2** In Visakhapatnam-I Commissionerate, an amount of ₹ 25.01 crore was confirmed (October 2011) in OIO under Port Services against M/s. Esskay Shipping Pvt. Limited. However, verification of calculation attached to SCN had revealed that the actual amount of Service Tax required to be demanded would be ₹ 9.24 crore. Thus, there was an excess demand in SCN amounting to ₹ 15.77 crore during the period 2009-10 and 2010-11. This happened due to arithmetical mistake in calculation.

When we pointed this out (September 2014), the Ministry accepting (November 2015) the audit objection, stated that the railway freight though stated to be non taxable in the SCN, was added to the taxable value and appeared to be a clerical error. They further stated that the demand was confirmed in the OIO to the tune of ₹ 25.01 crore.

Department's contention, that an error amounting to ₹ 15.77 crore in SCN was a clerical error, was not acceptable and also such a major error was not noticed while adjudicating the SCN. Further progress in the case was awaited (January 2016).

#### **2.5.6 Serving of SCN**

*Section 37C of Central Excise Act, 1944 which is also applicable to Service Tax, provides that any SCN shall be served a) by sending it with registered post with acknowledgement due to the person for whom it is intended or his authorised agent, b) if it cannot be served as aforesaid, then by affixing a copy at a conspicuous space in factory or warehouse, c) if this is also not possible, then by affixing a copy on the notice board of the office or authority which issued the notice etc.*

*Further, as per CBEC's Draft Adjudication Manual, one of the most important principles of natural justice is that the noticee shall be given reasonable opportunity of being heard before any adverse order is passed against him.*

We observed in Rajkot Commissionerate an SCN raised (April 2010) against M/s New Gajjar Engineering, Jamnagar for a Service Tax demand was not delivered to the assessee as the department could not trace the assessee. The case was adjudicated (November 2011) without communicating SCN and holding of personal hearing which was against the principles of natural justice. We also observed that OIO was not communicated to the assessee in contravention of the aforesaid provision.

When we pointed this out (September 2014), the Ministry replied (November 2015) that in future, procedure under section 37C would be followed in case of necessity and that instructions in this regard would be followed in true spirit.

## 2.6 Procedure of Adjudication

*Sub-section (2A) of section 11A of Central Excise Act, 1944 provides that in order to effect expeditious disposal of the Central Excise offences and demands, in case any duty of Excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made there under with intent to evade payment of duty, where it is possible to do so, the adjudicating authority shall determine the amount of such duty, within a period of one year. Further, in any other case, where it is possible to do so, he shall determine the amount of duty of Excise which has not been levied or paid or has been short-levied or short-paid or erroneously refunded, within a period of six months, from the date of service of the notice on the person under sub-section 11A(1). However, there is no such equivalent provision in respect of Service Tax.*

*However, Section 33A (1) of Central Excise Act is applicable to Service Tax also as per section 83 of the Finance Act, 1994 in matters of giving the noticee an opportunity to be heard. Further, no adjournment shall be granted more than three times to a party during the proceeding (Section 33A of Central Excise Act). Moreover, normally thirty days time is given to reply to the SCN.*

### 2.6.1 Pending Adjudication Cases

We observed from test check of records of seven Commissionerates<sup>25</sup> that 46 SCNs in seven Commissionerates<sup>26</sup> were pending adjudication beyond two years as of 31 March 2014 involving revenue of ₹ 21.08 crore in 41 cases which audit could quantify. The pendency was between three to five years in 15 cases and more than six years in nine cases.

When we pointed this out (September 2015), the Ministry accepted (November 2015) the facts in 38 cases and stated that besides, frequent changes in adjudicating authorities, manpower and infrastructural constraints delay the adjudication process. Sometimes, as adjudication process involves verification of large number of documents, cross examination of witnesses etc., all these factors also contribute to delay in adjudication process. Further, in eight cases the Ministry stated that report would follow.

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<sup>25</sup> Chandigarh-I, Panchkula, Delhi ST, Bhopal, Raipur, Coimbatore and Vadodara-I

<sup>26</sup> Bhopal, Chandigarh I, Panchkula, Delhi ST, Raipur, Vadodara I and Coimbatore

### **2.6.2 Fixing of Personal Hearing**

*As per Section 33A (I) of Central Excise Act, 1944 which is applicable to Service Tax also, the Adjudicating Authority shall give an opportunity of being heard to a party.*

We observed in 11 cases of Hyderabad-II Commissionerate that personal hearing was not granted to the assessee even after more than two years of issuance of SCN.

When we pointed this out (August 2014), the Ministry accepted (November 2015) the facts and stated that in four cases adjudication process commenced. It was further stated that in seven cases, the files were pending for adjudication in view of pendency of department's appeal before honourable Supreme Court on EPC/Turnkey projects to which these SCNs related. Further scrutiny revealed that four out of these seven cases, for which details were made available by the Commissionerate, were transferred to call book in November 2015 only. This implied that in these four cases for which SCNs were issued in 2012, neither adjudication process was initiated nor cases transferred to call book for three years.

### **2.6.3 Grant of Personal Hearing**

*As per Section 33A of Central Excise Act, 1944 which is applicable to Service Tax also, the Adjudicating Authority shall give an opportunity of being heard to a party and adjourn the hearing and no such adjournment shall be granted more than three times to a party during the proceeding.*

During test check, we observed that in 208 cases in 16 Commissionerates<sup>27</sup>, adjournment was granted to the parties in excess of three times in contravention of the above mentioned statutory provisions.

The number of adjournment ranged from 4 to 12.

When we pointed this out (June 2014 to October 2014), the Ministry attributed (November 2015) the adjournments in 193 cases to transfer of adjudicating authority, request of assessee, non-traceability of assessee, non-appearance of parties for personal hearing and stated that extensions were given to follow principles of natural justice. Ministry's reply was awaited (January 2016) in 15 cases.

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<sup>27</sup> Guwahati, Kolkata ST, Shillong, Ranchi, Delhi ST, Delhi ST I, Delhi ST-IV, Chandigarh I, Panchkula, Ahmedabad ST, Vadodara I, Rajkot, Jaipur I, Jaipur II, Alwar and Udaipur

#### **2.6.4 Issuance of adjudication orders within stipulated period after completion of personal hearings.**

*As per Para No. 3 of Board's Circular dated 20 September 2010<sup>28</sup>, in all cases, where the personal hearing has already been completed, orders should normally be issued within a month of the date of completion of the personal hearing.*

We observed that Department passed OIOs in 472 cases in 21 Commissionerates<sup>29</sup> after a delay ranging from 01 day to beyond two years (in excess of 30 days from the date of completion of last personal hearing granted to the parties). Two-thirds of these delays were beyond one month. Such delay was more than one year in 14 cases.

When we pointed this out (June 2014 to October 2014), the Ministry accepted the facts in most of the cases (November 2015) and stated that it was due to acute shortage of staff, frequent change in adjudicating authorities, infrastructural constraints, high volume of records in the case, late submission of additional records by the assessee etc.

The reply was not acceptable as in any case, adjudication orders should have been issued within 30 days from the date of completion of PH.

#### **2.7 Effectiveness of Monitoring and Internal Control**

Monitoring and Internal Control is an integral process which addresses risk and provides reasonable assurance about effectiveness and adequacy of system and procedures. We noticed the following inadequacies in this regard.

##### **2.7.1 Review of Call Book cases**

*As per Board's Circular dated 14 December 1995<sup>30</sup>, the cases can be transferred to Call Book, where the department has gone in appeal to the appropriate authority, where injunction has been issued by the Supreme Court/High Court/Tribunal, cases where audit objections are contested or where Board has specifically ordered for keeping the case in Call Book.*

*Again Board had emphasized<sup>31</sup> that Call Book cases should be reviewed every month. The Director General of Inspection (Customs and Central Excise) had reiterated (December 2005) the need for monthly review stating that review*

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<sup>28</sup> Circular No. 130/12/2010-ST dated 20 September 2010

<sup>29</sup> Guwahati, Bolpur, Shillong, Chandigarh I, Panchkula, Noida, Mumbai LTU, Aurangabad, Vishakapatnam I, Hyderabad ST, Calicut, Cochin, Coimbatore, Indore, Bhopal, Jabalpur, Raipur, Bilaspur, Delhi ST, Delhi ST-I and Delhi ST-III

<sup>30</sup> Board's Circular No.162/73/95-CX dated 14 December 1995

<sup>31</sup> DO F No. 101/2/2003-CX-3 dated 3 January 2005

*of Call Book cases may result in substantial reduction in the number of unconfirmed demands in call book.*

During test check we noticed that in 64 cases in eight Commissionerates<sup>32</sup> kept in call book, periodical review of the cases was not done by the department. Three examples were given below:

- i) In Kolkata Service Tax Commissionerate, 20 cases were kept in Call Book without conducting review since September 2008. The Directorate General of Service Tax, Mumbai, and the Directorate of Inspection, Customs and Central Excise (Eastern Regional Unit) in their inspection Report in 2012 and 2013 had also advised to review the Call Book Cases periodically. Still the same was not complied.
- ii) Seven cases kept in the Call Book in the Division –III under the Vadodara-I Commissionerate were not reviewed periodically.
- iii) In Delhi ST Commissionerates and LTU Commissionerate, Delhi, 37 cases kept in the Call Book were not reviewed monthly.

When we pointed this out (September 2015), the Ministry accepted (November 2015) the facts in most of the cases and stated that they initiated review of call book cases.

### **2.7.2 Retention of cases in the Call Book**

*As per Board's clarification vide their letter F. No. 206/02/2010-CX.6 New Delhi, Dated 3 February 2010<sup>33</sup>, cases where audit objection has not been admitted by the department, and the same is not converted into SOF/ DAP by CERA, then the SCNs issued on account of said audit objection may be adjudicated after a period of one year from the date of sending the reply to the audit objection. However, before adjudication, it must be ensured that the audit objection has not been converted into SOF/DAP.*

52 cases in seven Commissionerates<sup>34</sup> having monetary implication of ₹ 22.35 crore were found to be kept in Call Book irregularly. Some of the reasons for this error were non-approval of the competent authority to transfer the case to Call Book, paras kept pending in Call Book although decisions in similar cases was given by higher authorities and paras kept pending in Call Book on the ground of contesting the CERA para although either no SOF/DP was issued by CERA in these cases or paras closed by CERA etc.

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<sup>32</sup> Kolkata ST, Vadodara I, Delhi ST, Delhi ST-I, Delhi ST-II, Delhi ST-III, Delhi ST-IV and Delhi LTU

<sup>33</sup> F. No. 206/02/2010-CX.6 New Delhi, Dated 03 February 2010

<sup>34</sup> Bolpur, Kolkata ST, Bengaluru LTU, Benaluru ST, Delhi ST, Bhopal and Indore



When we pointed this out (July 2014 to October 2014), the Ministry accepted the facts (November 2015) in most of the cases and further reported that cases were being taken out from the Call Book wherever necessary.

### **2.7.3 Monitoring mechanism of reporting through MTR**

*The Board had instructed (May 2003)<sup>35</sup> the Commissioners and Chief Commissioners to do the analysis of the reasons for pendency of adjudication cases and strengthen the monitoring system. Further, the department has the periodical reporting system i.e. Monthly Technical Report (MTR) for monitoring the cases relating to adjudications and their disposals, reasons for pendency, unconfirmed demands, call book cases pending etc. Some of these are monitored by DGICCE and some others by DGST.*

*Further, the department has to maintain the “Audit Follow-up Register” in respect of the observations of the Internal Audit after getting its final approval in the Monthly Audit Monitoring Committee meeting. Each CERA objection is noted in the registers in the CERA observation Cell. Similarly in Anti-evasion Cell, RST-5 (earlier 335J) Register is required to be maintained for every detection.*

*The regional unit of the DGICCE, New Delhi conducts the inspections of the field formation periodically. To assist CBEC, DGICCE monitors and evaluates, inter alia, the progress with reference to adjudication cases.*

We observed in test check in 13 Commissionerates<sup>36</sup> that different registers as prescribed were either not maintained at all or maintained incompletely. SCN Register did not contain any column for due date of issue of SCN. There was no reporting system regarding the cases where SCN was to be issued and there was no scope of reporting the same in MTR.

Thus, this indicated lack of monitoring and functioning relating to SCN and Adjudication Process.

When we pointed this out (September 2015), the Ministry accepted the facts in most of the cases (November 2015) and stated that necessary changes were being made and record maintained properly henceforth.

Further, we noticed discrepancy, as given below, in figures of pendency of adjudication in the MTR for the month of March 2014 in respect of Bhubaneswar-I Commissionerate which was submitted to the Director General of Service Tax, Mumbai by the Chief Commissioner, Bhubaneswar Zone and by Bhubaneswar-I Commissionerate:-

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<sup>35</sup> Letter No. 296/2/2003-CX dated 23 May 2003

<sup>36</sup> Kolkata ST, Shillong, Vadodara I, Rajkot, Mumbai ST-I, Mumbai LTU, Aurangabad, Bhubaneswar I, Indore, Bhopal, Delhi LTU, Noida and Ranchi

**(Pendency of adjudication as on 31<sup>st</sup> March 2014)**

Source	Chief Commissioner's Report		Commissioner's report	
	No.	Amt. (₹ in lakh)	No.	Amt. (₹ in lakh)
<b>OB</b>	390	45,147.11	383	53,331.09
<b>Receipts</b>	05	3,935.00	20	339.57
<b>Total</b>	395	49,082.11	403	53,670.66
<b>Disposal</b>	14	1,946.02	13	151.61
<b>CB</b>	381	47,136.09	390	53,519.05

When we pointed this out (July 2014), a revised statement was furnished (July 2014) by Commissioner, Bhubaneswar I to audit, which also did not match with the figures of Chief Commissioner's report.

**2.7.4 Internal control in respect of preparation and issuance of SCN**

*As per draft adjudication manual of the Department, the SCN should not be vague, confusing or self-contradictory. Issue of two SCNs on the same issue is not legally proper.*

We observed that in six cases in four Commissionerates<sup>37</sup>, demands were issued twice on the same issue and dropped by the Adjudicating Authority on the said ground. The Ministry accepted the audit objection (November 2015) in three cases. Further, in three cases the Ministry stated there was no irregularity in issuance of second SCN. The reply of the Ministry was not acceptable as the adjudicating authority had dropped the second SCN in all three cases stating that issuing two SCNs on the same issue was not legally proper. Two cases are highlighted below.

**2.7.4.1** In Noida Commissionerate, SCN was issued (March 2013) to Dish T.V. India Ltd for a Service Tax demand under reverse charge mechanism pertaining to the period (FY07 to FY11) for an amount of ₹ 1.25 crore. The assessee intimated that another SCN was issued on the same issue for the same period (FY07 to FY11). It was also ordered by the adjudicating authority (March 2014) that demand was withdrawn as the same demand was confirmed in November 2012. Thus, issue of two SCNs on one and same issue was not proper.

When we pointed this out (May 2014), the Ministry accepted the facts (November 2015) and stated that directions were issued to the field formation to take all care while issuing demand.

<sup>37</sup> Guwahati, Shillong, Kolkata ST and Noida

**2.7.4.2** In Shillong Commissionerate, an SCN was issued (August 2010) to BSNL, Manipur SSA, Imphal, for a Service Tax demand of ₹ 59.18 lakh, though the same demand had been adjudicated in June 2008. However, the Adjudicating authority had dropped the same issue (November 2011) to avoid double adjudication on the issue. Thus, there was a mistake in SCN issued.

Thus, issue of two SCNs on the same issue occurred due to absence of proper monitoring system in the department in this regard.

When we pointed this out (August 2014), the Ministry replied (November 2015) that point had been noted for further guidance.

## **2.8 Conclusion**

It was noticed during audit that the journey of SCN right from the first step of issue of SCN till its adjudication was fraught with delays and shortcomings. Administrative efficiency requires that the work is done in minimum possible time. The maximum time limits define the outer boundaries for completion of tasks. The time limit prescribed for issue of SCN was one year with provision to invoke extended period of five year for specific circumstances. But instead, it was seen that the extended period was used as a routine provision rather than a rare exception. Thus there is a need to reduce delays in various stages of issue and processing of SCN by systematic monitoring so that interests of both the government revenue and the assessee are protected.

## Chapter III

### Non-compliance with rules and regulations

#### 3.1 Introduction

We examined the records maintained by assesseees in relation to the payment of Service Tax and checked the correctness of tax payment and availing of CENVAT credit. We noticed cases of non/short payment of Service Tax, irregular availing and utilisation of CENVAT credit etc. We communicated these observations to the Ministry through 98 draft audit paragraphs having financial implication of ₹ 216.34 crore. The Ministry/Department accepted (up to January 2016) the audit observations in 97 draft audit paragraphs involving financial implication of ₹ 206.70 crore and in one case the Ministry did not accept the audit objection. Out of the 97 paragraphs, the Ministry accepted the 95 paragraphs involving an amount of ₹ 162.54 crore (Appendix-II) and in two cases the Ministry's reply is awaited. Of this accepted amount, ₹ 33.20 crore had been recovered. The interesting observations are discussed under two major headings:

- Payment of Service Tax
- Availing of CENVAT Credit

#### 3.2 Payment of Service Tax

##### 3.2.1 Mining of Mineral, Oil or Gas Service

*As per Section 65(105) of the Finance Act, 1994, mining of mineral, oil or gas service was leviable to service tax with effect from 1 June 2007 and was defined as any service provided or to be provided to any person in relation to mining of mineral, oil or gas.*

*As per Notification No 1/2002-ST dated 1 March 2002 extended the provisions of chapter V of the Finance Act 1994, to the designated areas in the continental shelf and Exclusive Economic zone of India as declared by the notification of the Govt. of India in Ministry of External Affairs Nos. S.O.429 (E) dated 18<sup>th</sup> July 1986 and S.O. 643(E) dated 19 July 1996.*

*The two notifications issued by the Ministry of External Affairs indicated the names of the wells and corresponding coordinates which were declared to be designated areas.*

*Notification No. 21/2009 dated 7 July 2009 further amended the notification no. 1/2002 of 1 March 2002 and substituted the words 'designated areas in the continental shelf' and ending with the words "with immediate effect" with installations, structures and vessels in the continental shelf of India and the exclusive economic zone of India".*

This meant that all the services, irrespective of whether rendered in designated or non designated areas, were taxable provided they fall within the continental shelf of India and economic zone of India.

**3.2.1.1** M/s Transocean Offshore Deepwater Drilling Inc. and M/s Sedco Forex International Drilling Inc. in Mumbai Service Tax-II Commissionerate, rendered service of mining of oil to ONGC Limited in areas other than those declared as designated areas, during the period 7<sup>th</sup> July 2009 to 12<sup>th</sup> November 2009. Audit observed that for providing these services, the assessee received an amount of ₹ 288.49 crore (₹ 196.75 crore + ₹ 91.74 crore) during September 2009 to December 2009. It was also noticed that no service tax was not paid on this amount, which was not correct since service tax was payable on all services pertaining to the continental shelf of India and the exclusive economic zone of India as per Notification cited above. This resulted in non-payment of service tax amounting to ₹ 30.27 crore (₹ 20.27 crore + ₹ 10 crore) for the services rendered for the above-mentioned period.

When we pointed this out (February and March 2010), the Ministry accepted the audit objection and stated (December 2015) that SCNs, demanding an amount of ₹ 38.70 crore and ₹ 14.31 crore issued to M/s Transocean Offshore Deepwater Drilling Inc. and M/s Sedco Forex International Drilling Inc. respectively, were adjudicated and demand confirmed in both cases.

**3.2.1.2** M/s B.G.Exploration and Production India Ltd. (BGEPIIL) in Service Tax-IV Mumbai Commissionerate, in consortium with ONGC and Reliance Industries Ltd. (RIL) had formed an Unincorporated Joint Venture and were engaged in the mining of mineral oil and natural gas activities, thereby sharing the cost and profit in the ratio of share holding in the Joint Venture (ie. BGEPIIL 30 per cent, ONGC 40 percent and RIL 30 per cent). ONGC provided transportation service for transportation of mineral oil from offshore to shore (distribution point) for which transportation charges amounting to ₹ 83.85 crore were recovered from the Joint Venture.

Further scrutiny revealed that ONGC charged Service Tax on 60 percent of invoice value (i.e. BGEPIIL and RIL's share). The balance 40 percent being ONGC's interest in the Joint Venture was treated as 'stock transfer' and thereby the value was reduced to the extent of 40 percent. Thus in view of the above provision, the total value of service (ie. Total transport charges) were required to be considered for the payment of Service Tax and not the partial amount. Non-adherence to the above provision resulted in short

payment of Service Tax amounting to ₹ 48.62 crore for the period<sup>38</sup> from May 2007 to March 2011 which was to be recovered along with interest and penalty.

When we pointed this out in (April 2012), the Commissionerate (May 2015) stated that Show Cause Notice for the period from October 2007 to September 2014 amounting to ₹ 39.43 crore was issued to the assessee.

Further reply of the department about the reasons for difference in Tax Effect and period covered between the audit observation and the SCN and the reply of the Ministry were awaited (January 2016).

### **3.2.2 Registration of assessees**

*Section 69(1) of the Finance Act, 1994, provides that it is mandatory for every person liable to pay Service Tax to get registered with Service Tax department. Further section 68(1) of the Act provides that every person providing taxable service to any person shall pay Service Tax.*

It was observed that M/s B.L. Kashyap and Sons Ltd. provided construction services to M/s HPCL Mittal Energy Limited (HMEL), Bathinda (Chandigarh II Commissionerate). However, the Service provider was neither registered with the department nor discharged his Service Tax liability during 2009-10 to 2011-12. The Service provider received ₹ 139.22 crore during the period 2009-10 to 2011-12 towards construction services but did not charge Service Tax from service recipient. This resulted in non-payment of Service Tax of ₹ 4.73 crore. The Service provider was also liable to pay interest and penalty under section 75, 76 and 78 of the Finance Act, 1994.

When we pointed this out (June 2012), the Commissionerate replied (January 2013) that the matter was referred to the Jurisdictional Commissioner of Service Tax Commissionerate, New Delhi, to conduct an enquiry and take the necessary steps to recover the government dues and further stated that the subject case was referred to Assistant Commissioner (Anti evasion), Service Tax Commissionerate, New Delhi to initiate the necessary action against the Service provider and recover the objected Service Tax amount.

The reply of the Ministry was awaited (January 2016).

### **3.2.3 Payment of Service Tax under Import of Service**

*As per Section 66 A(1) of the Finance Act 1994, where any service specified in clause (105) of section 65 is provided or to be provided by a person who has established a business or has fixed establishment from which the service is*

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<sup>38</sup> assessee had mentioned that till April 2007, Service Tax was paid on total value of transportation charges

*provided in a country other than India, and received by a person (recipient) in India then in such cases the recipient of such service is liable to pay Service Tax.*

M/s Ocap Chassis Parts Pvt. Ltd., Bhiwadi, a 100 percent Export Oriented Unit, in Alwar Commissionerate, made payments/incurred expenditure on account of the services received from foreign service provider. Scrutiny of Balance Sheet for the period 2012-13 and 2013-14 revealed that the assessee made payments/incurred expenditure of ₹ 2.87 crore on account of Travelling expenses, Bank charges, Exhibition charges, Material testing charges and CandF charges for various services received from foreign service providers, but Service Tax as required under provisions mentioned above was not paid on this amount. This has resulted in non-payment of Service Tax of ₹ 33.82 lakh including cess.

When we pointed this out (March 2015), the Ministry stated (October 2015) that an appeal of the Department in a similar case was pending before Honourable Supreme Court on which no stay had been granted. Therefore, no action could be taken contrary to the said judgement at this stage. However, protective show cause notice was issued (June 2015) for recovery of Service Tax of ₹ 43.51 lakh.

The reply of the Ministry was not accepted as even if the similar issue was pending in higher courts, an SCN to protect the revenue should have been issued by the department suo-moto, which was done only after being pointed out by us.

### **3.3 Availing of CENVAT credit**

#### **3.3.1 Non-reversal / Short reversal of CENVAT credit**

*As per Rule 6 of the CENVAT Credit Rules, 2004, CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services. As per Rule 2(e), 'exempted service' means taxable services which are exempt from the whole of the Service Tax leviable thereon, and includes services on which no Service Tax is leviable under section 66B of the Finance Act. Notification No. 03/2011-CE (NT) dated 1 March 2011 clarified that 'exempted services' includes 'trading'. Further, as per Board's Circular No.943/04/2011-CX, dated 29 April 2011, trading is an exempted service, even prior to 1 April 2008.*

M/s L and T Limited (Heavy Engg. Division), Powai in Mumbai Commissionerate, also engaged in trading activities, was eligible for availing proportionate CENVAT credit of input service. Accordingly the assessee exercised the option to reverse proportionate Service Tax credit with respect

to common services as per Rule 6(3)(ii) read with Rule 6(3A) for the financial years 2010-11, 2011-12 and 2012-13.

- (i) Audit observed that for arriving at proportionate credit to be reversed in respect of exempted services, trading activities were not considered during the financial year FY11. The proportionate CENVAT credit attributable to trading activities worked out to ₹ 22.03 lakh was required to be reversed along with interest amounting to ₹ 14.49 lakh. Similar exercise was required to be done for financial years FY09 and FY10 also.
- (ii) Audit also observed that for FY12 and FY13, the assessee was calculating and paying the Service Tax credit attributable to exempted output services including 'trading activities' on provisional-basis for each month; and had determined 8.23 per cent<sup>39</sup> (for FY12) and 9.28 percent (for FY13) as the final attributable Service Tax credit for the whole year.

However, audit scrutiny of the calculations vis-à-vis ER-1 returns filed by the assessee revealed that the assessee was not considering 'the total CENVAT credit taken on input services during the financial year' as stipulated in the provisions of Rule 6(3A)(c)(iii) of CENVAT Credit Rules, 2004. While reversing, the assessee was adopting only the 'CENVAT credit in respect of common input services', in contravention of the formula.

This omission resulted in incorrect calculation and short-reversal of amount of ₹ 65.49 lakh (for FY12) and ₹ 78.08 (for FY13). This was required to be reversed along with interest.

- (iii) Internal audit covering the period pointed out non-compliance to Rule 6 of the CENVAT Credit Rules, 2004 in respect of exempted goods and that the assessee was liable to pay an amount of Five percent (Six percent with effect from 1 April 2012) of the value of exempted goods. But Internal Audit did not point out any lapse in respect of exempted services (including 'trading') as pointed out by CERA.

When we pointed this out (April, 2014), the Ministry accepted the audit objection and stated (December 2015) that SCN was issued for FY10 to FY13 amounting to ₹ 1.41 crore and another SCN for the period FY14 amounting to ₹ 4 lakh was issued. It appeared that due to late issue of SCN, demand for FY09 had been time-barred.

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<sup>39</sup> as per the formula prescribed under Rule 6(3A)(c)(iii) of the CENVAT Credit Rules, 2004



## Chapter IV

### Effectiveness of internal controls

#### 4.1 Introduction

Internal control is an integral process that is effected by an entity's management and personnel and is designed to address risks and to provide reasonable assurance that in pursuit of the entity's mission, the following general objectives are being achieved:

- executing orderly, ethical, economical, efficient and effective operations;
- fulfilling accountability obligations;
- complying with applicable laws and regulations;
- safeguarding resources against loss, misuse and damage.<sup>40</sup>

#### 4.2 Result of Audit

During the course of examination of records, we came across several instances in areas such as internal audit, scrutiny, which suggest that the department should look into the adequacy of extant systems and procedures. We communicated these observations to the Ministry through 67 draft audit paragraphs having financial implication of ₹ 170.01 crore.

The Ministry/Department accepted (upto January 2016) revenue aspect of the audit observations in 65 draft audit paragraphs having financial implication of ₹ 166.88 crore, of which ₹ 20.57 crore had been recovered. The Ministry did not accept the audit objection in two cases. Out of above 65 paras, the Ministry accepted departmental failure in 50 paras having financial implication of ₹ 146.61 crore (Appendix III). The Ministry accepted the audit objection only on revenue part in 12 cases. We await the Ministry's response in remaining three cases. The interesting observations are discussed under four major headings:

- Broadening of Tax Base
- Scrutiny of returns
- Internal audit of assesseees
- Other Issues

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<sup>40</sup> INTOSAI GOV 9100 – Guidelines for Internal Control Standards for the Public Sector

### **4.3 Broadening of Tax Base**

*As per the Director General of Service Tax's Action Plan circulated to Chief Commissioners on 26 May 2003, field formations were required to obtain information from major assesseees including PSUs and private sector organisations regarding various services being availed by them and to obtain details of such services providers including their addresses. Further, every range officer had to obtain information from major assesseees including PSUs regarding various services being availed by them and to obtain details of such service providers to broaden the tax base. Further, the Board issued instruction (November 2011) to create a special cell in each Commissionerate to identify potential assesseees.*

We noticed three instances where the department failed to identify the Service Tax defaulters, two of which are narrated below:

#### **4.3.1 Service Tax collected but not remitted to the Government account**

*Section 68 (1) of the Finance Act provides that every person providing taxable service to any person shall pay Service Tax at the rate specified in Section 66 in such manner and within such period as may be prescribed.*

M/s Master Mind Classes and M/s Gateway in Chandigarh I Commissionerate, received ₹ 23.84 lakh and ₹ 9.89 lakh respectively towards Service Tax from Government of Haryana for providing coaching to Scheduled Caste and Backward Classes for various examination during FY12. It was further observed that M/s Gateway filed the ST-3 return for FY12 showing value as 'nil' while M/s Master Mind Classes had not filed any ST-3 return for FY12. None of the assessee deposited the Service Tax collected. This resulted in evasion of Service Tax of ₹ 33.73 lakh. The observation was noticed during the expenditure audit of Haryana Government department.

When we pointed this out (January 2014), the Ministry (October 2015) while informing that SCNs were issued (August 2015) for amounts pointed out by audit, stated that as both the assesseees did not file returns for the relevant period, the lapse could not be detected.

The reply of the Ministry was not acceptable because as per circular cited above the department should have gathered information from other government departments regarding taxable services received by them to identify potential assesseees.

#### **4.3.2 Non registration and non payment of Service Tax by a Service provider**

*Notification No.30/2012/ST dated 20 June 2012 specified that with effect from 1 July 2012, in the case of supply of manpower services, if the service recipient is a Company or body corporate and the service provider is a non body corporate, 25 percent and 75 percent of Service Tax liability have to be discharged by the service provider and service recipient respectively.*

We noticed that Shri Binu Paulose was paid labour charges of ₹ 67.39 lakh by M/s OEN India Ltd. in Cochin Commissionerate. Shri Binu Paulose, however, was not registered with the Department and also had not paid Service Tax for FY11 to FY13. We verified the non-registration of Shri Binu Paulose with Central Excise and Service Department from the database of the Commissionerate as well as from NSDL site.

Even though internal audit of M/s OEN India Ltd was conducted in December 2013 covering the period up to March 2013, non-registration and non-payment of Service Tax by Shri Binu Paulose was not pointed out.

When we pointed this out (January 2014), the Ministry admitted the audit objection and stated (November 2015) that two SCNs were issued (October 2014) demanding a total amount of ₹ 13.96 lakh.

Reply of the Ministry was silent on failure of internal audit Party (IAP) to point out this omission.

#### **4.4 Inadequate scrutiny of returns**

During examining ST-3 returns at ranges, we came across instances where the liability to pay tax or interest on delayed payment of tax escaped the notice of the authorities due to inadequate scrutiny of returns. We pointed this out through 11 draft paragraphs to the Ministry. The Ministry accepted the audit objection and department failure in 10 cases, which are reported in Appendix III and two cases are illustrated below:

##### **4.4.1 Non payment of interest on delayed payment of Service Tax**

*Section 68 of the Finance Act, 1994, provides that every person providing any taxable service shall pay Service Tax at the rate prescribed. Rule 6 of the Service Tax Rules, 1994, stipulates that Service Tax shall be paid to the credit of the Central Government by the 6<sup>th</sup> day of the month, if the duty is deposited through internet banking or by the 5<sup>th</sup> day of the month in any other case, immediately following the calendar month in which the payments are received. If the assessee fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, he shall pay simple interest at prescribed rates under Section 75 of the Finance Act, 1994.*

Detailed scrutiny of records of M/s ACE Pipeline Contracts Pvt. Ltd. in Mumbai VI Commissionerate revealed (December 2014) that during FY13 and FY14, the assessee paid Service Tax of ₹ 4.74 crore belatedly, on which the total interest leviable worked out to ₹ 43.12 lakh. However, the assessee had paid interest of ₹ 9.29 lakh only, resulting in short payment of interest amounting to ₹ 33.83 lakh. This discrepancy was not pointed out by the department as no preliminary scrutiny was carried within the stipulated time. When we pointed this out (December 2014), the Ministry stated (December 2015) that the assessee paid the recoverable interest and that as the assessee had filed ST-3 returns after due dates (i.e. for April 2011 to September 2011 on 29 March 2012), in the absence of returns, scrutiny could not be done in time.

The reply of the Ministry, which was for the year FY12, was not relevant for period pointed out by audit (i.e. FY13 and FY14) and hence not acceptable.

#### **4.4.2 Non-payment of Service Tax**

*Para 1.2B of Manual for Scrutiny of Service Tax Returns, 2009 stipulates that all the ST-3 returns shall be subjected to preliminary scrutiny to ensure inter alia timely payment of Service Tax. Rule 6 of the Service Tax Rules, 1994, prescribes payment of Service Tax on or before 5<sup>th</sup>/6<sup>th</sup> of the month immediately following the calendar month in which service was deemed to be provided.*

Preliminary scrutiny of the ST-3 Returns conducted during the audit of Bellary Range in Belgaum Commissionerate revealed that M/s Hothur Industries Ltd., Bellary did not pay Service Tax and Cess of ₹ 9.12 lakh as declared in the ST-3 returns for the period from May 2011 to August 2011. Since the Range Officer did not conduct preliminary scrutiny of the returns, the department could not detect the non-payment.

When we pointed this out (January 2013), the Ministry admitted the audit objection (January 2016) and reported recovery of ₹ 16.66 lakh including interest. Further, the Ministry stated that concerned range officer was being warned about the said lapse.

#### **4.5 Internal Audit of assesseees**

The three important prongs of the compliance verification system adopted by the department comprise scrutiny of returns, audit, and anti-evasion. Compliance verification through audit entails conduct of audit at assessee premises by following prescribed procedures including selection of assessee units based on risk parameters and scrutiny of records of the assessee to ascertain the level of compliance with the prescribed rules and regulations. Every Commissionerate has, within its Internal Audit section, an Audit cell,

manned by an Assistant/Deputy Commissioner and Auditors and headed by an Additional/Joint Commissioner. The Audit cell is responsible for planning, monitoring and evaluating the audits conducted. Audit parties consisting of Superintendents and Inspectors carry out the audit at assessee premises in accordance with the Audit Plan and as per the procedures outlined in the Service Tax Audit Manual, 2011.

We attempted to check the adequacy of coverage of assessees as well as the quality of audits undertaken by the IAPs by auditing a sample of assessees falling under one of the following two categories a) already audited by a IAP and b) due for audit but not covered by IAP at the time of audit by our Audit. We noticed several cases of non/short payment of tax/interest or irregular availing of CENVAT credit by the assessees. We communicated these observations to the Ministry through 51 draft audit paragraphs. The Ministry/department accepted the audit objection and department failure in 39 cases (Appendix III). Some important observations are narrated below:

#### **4.5.1 Examination of records in selected assessee premises already covered by internal audit:**

During the course of our examination of records in selected assessee premises already covered by internal audit, we came across certain instances where audit parties of the Commissionerate had omitted to point out certain significant cases of non-compliance by assessees.

##### **4.5.1.1 Non-payment of Service Tax on the Courses not approved by AICTE**

*Any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification recognized by any law for the time being in force was exempted from the whole of the Service Tax leviable as this service is in negative list. Further, CBEC vide Circular No.107/1/2009-S.T., dated 28 January 2009 stipulated that from the year 2005 onwards, a technical institution or establishment (which is otherwise recognized being a university, or affiliate college) not having AICTE (All India Council for Technical Education) approval cannot be called to be the one issuing any certificate or diploma or degree or any educational qualification recognized by the law for the time being in force and thus be within the ambit of Service Tax. However a 'Deemed University' was exempted from this requirement.*

M/s. Indian Institute of Management (IIM), Ahmedabad in Ahmedabad ST Commissionerate, did not pay Service Tax on the course fees recovered from students of Post Graduate Programme (PGP), PGP-ABM, PGP-X and fellowship programme and small duration courses termed as MDP till 30 April 2011. It started making payment of Service Tax under Commercial Training

and Coaching with effect from 1 May 2011 on the incomes received from MDPs only and continued to avail the benefit of exemption on long duration courses like PGPs, PGP-ABM, PGP-X and fellowship programmes. However, we noticed that these courses were neither approved by the Law in force at that time nor it had the approval of AICTE. The IIM is a registered Society and it has not even been given status of 'Deemed University' by the Central Government. Thus, the exemption from payment of Service Tax availed by the Institute during the above period was not in order. The assessee received a total sum of ₹ 338.63 Crore on various long duration courses conducted between FY10 to FY14. This resulted in non-payment of Service Tax to the tune of ₹ 38.21 crore which is required to be recovered along with interest.

When we pointed this out (August 2014), the Ministry accepted the audit objection and stated (December 2015) that a Show Cause Notice (SCN) of ₹ 41.94 crore to the assessee. The Ministry further added that explanation of the officers of the IAP, who conducted the audit, was also called for.

#### **4.5.1.2 Incorrect availing of CENVAT credit**

*As per Rule 9 of the CENVAT Credit Rules, 2004, the provider of output service shall take CENVAT credit on the basis of any of the documents specified therein and shall maintain proper records for the receipt and consumption of the input services.*

M/s. Lakshmi Vilas Bank Ltd., Karur in Trichy Commissionerate, was a registered Service Tax payer under Banking and other financial services. We noticed, during audit, that on the CENVAT credit availed during FY08 to FY11 amounting to ₹ 7.71 crore, the assessee did not maintain proper records viz; monthly opening balance, receipts, utilization and closing balance. Further, the correctness of credit for a sum of ₹ 32.66 lakh availed based on statements received from Branches, instead of original documents, during February 2009 to March 2010 could not be ascertained.

When we pointed this out (March 2012), the Ministry admitted the audit objection (October 2015) and stated that SCN issued demanding ₹ 6.02 crore for the period from October 2006 to September 2011 was adjudicated (April 2013) confirming the demand with equal penalty and applicable interest. For the failure of IAP, the Ministry stated that the assessee failed to produce valid documents despite many opportunities given to them. Hence, this is a case of suppression of facts by the assessee and not a failure IAP.

The reply of the Ministry was not acceptable as we pointed out the same objection while conducting audit of the records of the assessee.

#### **4.5.1.3 Incorrect classification and abatement resulting in short payment of Service Tax**

*Section 65(39a) of the Finance Act, 1994 defines “Erection, Commissioning or Installation” service as any service provided by a commissioning and installation agency including plumbing, drain laying or other installations for transport of fluids or such other similar services. Section 65(105)(zzza) of the Act (Works Contract) stipulates that transfer of property in goods is an essential condition for classification of service under Works Contract. In case of non-payment/short payment of Service Tax, interest is payable as per Section 75 of the Act.*

M/s. Teamco Hitech Engineering Limited Chennai, in Chennai Service Tax-III Commissionerate<sup>41</sup>, undertook the work of fabrication and erection of pipes, aligning, supporting job under piping work and supply of skilled labour as per the Work Order awarded by M/s Bridge and Roof Company (India) Ltd. in September, 2007. As per the order, all raw materials such as pipes, fitting, structural materials, equipment were provided to the assessee on ‘Free Issue’ basis by Project Owner through M/s Bridge and Roof Company (India) Ltd. The assessee classified the service as Works contract service and discharged Service Tax at the rate of two percent/four percent (with effect from 1st April 2008) on optional composite scheme under works contract services. However, as no transfer of property in goods was involved, the service had to be classified under 'Erection, Commissioning and installation services' only and Service Tax to be discharged at full rates (i.e. at the rate of 10 per cent/12 per cent) on the gross receipts. The incorrect classification of service and claim of abatement resulted in short payment of Service Tax of ₹ 72.25 lakh which was recoverable along with applicable interest during the period FY08 to FY10.

When we pointed this out (December 2011), the Ministry admitted the audit objection (October 2015) and stated that SCN issued demanding ₹ 1.01 crore was adjudicated (April 2013) confirming the demand with equal penalty and applicable interest and the assessee paid an amount of ₹ 28.47 lakh. For the failure of IAP, the Ministry stated that the lapse could not be detected by periodical returns as the assessee deliberately suppressed the facts.

The reply of the Ministry was not acceptable as we had pointed out the same objection while conducting audit of the records of the assessee.

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<sup>41</sup> earlier in Chennai III Commissionerate

#### **4.5.1.4 Non-payment of Service tax under Import of Service**

*Section 66A of the Finance Act, 1994 read with Rule 2 (i) (d)(iv) of Service Tax Rules, 1994, stipulates that if the service provider is situated outside India, the person receiving the taxable service in India is liable to pay service tax. On belated payment of service tax, interest is leviable under Section 75 of the Act.*

M/s. Mobis India Limited, in Chennai LTU Commissionerate, incurred expenditure of ₹ 3.32 crore in foreign currency towards commission paid on various dates to agents located outside India in FY11 and FY12. On the commission paid towards import of service, the service tax payable by the assessee as service recipient in India was not paid.

When we pointed this out (April 2013), the Ministry stated (September 2015) that an SCN was issued for ₹ 77.67 lakh for the period from 2010-2014. For internal audit failure, the Ministry stated that the documents were taken up on selective and sample basis in internal audit, with only one month in a year being selected for intensive scrutiny. The Ministry further added the taxpayer cleverly camouflaged and suppressed these forex payments relating to event management from the knowledge of the IAP.

The reply of the Ministry could not be accepted as our objection was based on scrutiny of balance sheet and amount as high as ₹ 3.32 crore in FY12 should have been analysed by IAP. Thus, reply given for lapse indicated deficiency in desk review and identification of issues for detailed check during verification of records in assessee premises.

#### **4.5.1.5 Non-payment of Service tax and interest thereon**

*Section 65(104c) lists out services falling under Business Support Service. Further, as per Rule 4 (b) of Place of Provision of Services Rules, 2012 the place of the provision of a service shall be the location where the services are actually performed, if services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for provision of service. Further, in case of intermediary service, as per sub-rule 9 (c) of the Rules *ibid*, the place of provision of service shall be the location of service provider.*

M/s Bosch Rexroth (I) Ltd., in Ahmedabad-Service Tax Commissionerate, signed a General Service agreement with its associated company Bosch Rexroth AG, Germany (BRAG) on 1 April 2007. Accordingly to the agreement, a team of 3-4 members called Global Accounts Managers (GAM) from BRAG would sit at the Sanand plant of the assessee and supervise and coordinate all activities within the country (India) and for that, BRAG would pay BRIN an



amount agreed to by both the parties on quarterly basis. During FY10 to FY14, M/s Bosch Rexroth (I) Ltd. received ₹ 2.56 crore from Bosch Rexroth AG for such services but the assessee did not pay Service tax on the service income, treating it as export of service. Since GAM team members provided the services from taxable territory of India (Sanand, Ahmedabad), as per provisions mentioned *ibid*, such services could not be considered as export of service and the assessee company who received payment for the service, was liable to pay Service tax of ₹ 26.72 lakh and interest of ₹ 18.74 lakh for the delayed payment.

When we pointed this out (February 2015), the Ministry intimated (November 2015) that the assessee paid Service Tax of ₹ 26.72 lakh and interest of ₹ 18.74 lakh besides a penalty of ₹ 5.85 lakh. Further, the Ministry added that IAP also pointed out the same issue for the same amount.

The reply of the Ministry could not be accepted as the Commissionerate's reply and copy of the challan clearly indicated that payment was made on account of our Audit.

#### **4.5.1.6 Wrong availing of CENVAT credit on Construction services**

*As per Rule 2(l) of the CENVAT Credit Rules, 2004, with effect from 1 July 2012, input service excludes among other services, commercial or industrial construction services specified in sub-clause (zzq) of clause (105) of Section 65 of the Finance Act, in so far as they are used for construction of a building or a civil structure or a part thereof except for the provision of one or more of the specified services”.*

*Further, the Board vide Circular No. 98/1/2008-S.T., dated 4 January 2008 stated that input credit of Service Tax can be taken only if output is a ‘service’ liable to Service Tax or a ‘goods’ liable to excise duty.*

Indian Institute of Management, Ahmedabad in Ahmedabad Service Tax Commissionerate, availed CENVAT credit of ₹ 32.63 lakh on civil construction, maintenance and repairs for the civil structures situated in its premises during the period FY10 to FY14. As defined in clause (105)(zzq) of the Finance Act 1994, CENVAT credit on such input services was not admissible to the assessee in terms of provisions quoted *ibid*. Further, for the period starting from July 2012, it was not admissible by virtue of specific exclusion from the definition of input services itself. Thus the assessee wrongly availed CENVAT credit of ₹ 28.42 lakh. Irregular availing of CENVAT credit was worked out after reducing the amount objected by the IAP.

When we pointed this out (August 2014), the Ministry replied (October 2015) that an SCN for ₹ 28.42 lakh was issued (October 2014). Further, the Ministry added that IAP already pointed out wrong availing of CENVAT credit of ₹ 4.21 lakh on Construction Services for FY13.

The reply of the Ministry was not acceptable as SCN issued clearly referred to our objection and internal audit para related to only one RA bill of October 2012 involving input service credit of ₹ 4.21 lakh and other instances of irregular availing of CENVAT credit remained unnoticed until pointed out by us.

#### **4.5.1.7 Non payment of Service Tax**

*As per Notification No. 45/2012-Service Tax dated 7 August 2012, read with Notification No. 30/2015 dated 20 June 2012 in respect of services provided or agreed to be provided by a director of a company to the said company, the Service Tax liability was fixed on service recipient.*

We scrutinised the master files of assessees maintained in Internal Audit Branch of the Jaipur-II Commissionerate for the period of FY12 to FY14. We noticed that M/s BMD Pvt. Ltd. and M/s Mewar Technocas Pvt. Ltd. had paid remuneration, fee and commission to their Directors amounting to ₹ 70 lakh but Service Tax payable thereon amounting ₹ 8.65 lakh was not paid as per notification *ibid*. Thus, Service Tax ₹ 8.65 lakh was recoverable from the assessees along with interest as per section 75 of Finance Act, 1944.

When we pointed this out (May 2014), the Ministry accepted the objection (November 2015) and stated that an SCN amounting ₹ 15.06 lakh to M/s BMD Pvt. Ltd. and ₹ 4.82 lakh to M/s Mewar Technocas Pvt. Ltd. had been issued.

The reply of the Ministry was silent on failure of internal audit.

#### **4.5.1.8 Non payment of interest**

M/s Incap Ltd. in Guntur Commissionerate and M/s Maha Electronics Pvt. Ltd. in Hyderabad II Commissionerate paid Service Tax belatedly during FY12 to FY14. But they did not pay the full interest due resulting in short payment of interest amounting to ₹ 12.64 lakh and ₹ 26.52 lakh respectively.

When we pointed this out (September and December 2014), the Ministry accepted the audit observations and stated (September-October 2015) that the assessee had paid the interest. The Ministry further added that internal audit had already pointed out the same issue.

The reply of the Ministry was not acceptable as even after being pointed out by IAPs, the substantial amount of interest was recovered only after being pointed out by us.

#### **4.5.1.9 Other cases**

We noticed in three other cases<sup>42</sup>, the instances of non-payment of Service Tax by the assessee involving revenue of ₹ 1.11 crore which were not pointed out by the internal audit parties of the department. The Commissionerates accepted the audit observation in all cases. We await the Ministry's response in all these cases (January 2016).

We observed that though internal audit was carried out by the IAP of the Commissionerate in all the above cases, the lapse remained undetected until pointed out by us.

#### **4.5.2 Inadequate compliance with norms for coverage of mandatory units by internal audit**

Para 5.1.2 of the Service Tax Audit Manual, 2011 envisages that service providers paying Service Tax of ₹ 3 crore or more (cash + CENVAT) in a year are to be audited every year mandatorily. We noticed following instances where internal audit of the unit was not conducted, although due, resulting in non detection of lapses committed by the assessee until pointed out by us.

##### **4.5.2.1 Non-payment of interest on belated payment of Service Tax**

*Section 75 of the Finance Act, 1994, envisages that every person liable to pay Service Tax should pay simple interest at the prescribed percentage, in case the Service Tax payable was paid belatedly into the Government account. The rate of interest was 18 percent per annum as per Notification No. 14/2011-ST dated 01 March 2011.*

Scrutiny of records of M/s Duster Total Solutions Services Pvt. Ltd. in Bangalore ST-II Commissionerate revealed that the assessee paid Service Tax for the period from October 2011 to December 2012 with a delay ranging from 138 to 227 days. However, the assessee did not pay interest on such delayed payments amounting to ₹ 1.78 crore.

When we pointed this out (June 2013), the Ministry stated (November 2015) that an SCN issued (October 2013) to the assessee was adjudicated (January 2015) confirming the demand of ₹ 2.12 crore for the period October 2011 to March 2013 and that the assessee paid (May 2013 to February 2014)

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<sup>42</sup> IIM, Ahmedabad in Ahmedabad ST Commissionerate, M/s Usha Martin Industries Ltd. in Ranchi Commissionerate and M/s Electronics Corporation of India Ltd. in Hyderabad II Commissionerate

₹ 86.52 lakh towards this demand. The Ministry further stated before the CERA audit was conducted, the anti-evasion branch had already initiated proceedings against the assessee during the month of January 2013 and SCN dated 30 September 2013 was issued.

The reply of the Ministry could not be accepted as the SCN issued clearly indicated that it was based on our objections and that without our audit, the Service Tax liability would not have come to light. There was no reference of anti-evasion/departmental efforts in the SCN.

#### **4.6 Other Issues**

##### **4.6.1 Inordinate delay in issue of SCN**

Section 66A of the Finance Act, 1994, read with the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, prescribed that the person receiving the taxable service in India was liable to pay Service Tax in respect of taxable services provided by a person who was a non-resident or was from outside India and did not have an office in India.

M/s Bharat Earth Movers Ltd, Kolar in Bangalore LTU Commissionerate, had incurred expenditure of ₹ 8.19 crore in foreign currency towards commission and other services received from outside India during FY11 and FY12. But the assessee did not pay the Service Tax and Cess of ₹ 84.41 lakh on the same.

When we pointed this out (January 2013), the Ministry stated (October 2015) that an SCN was issued (April 2013) demanding Service Tax and Cess of ₹ 2.70 crore on amount received from outside India for the period from FY08 to FY12. The Ministry further stated that the department issued another SCN (April 2012) demanding Service Tax of ₹ 5.95 crore covering the period FY07 to FY11 to the assessee and therefore, it was incorrect to say that the SCN was issued only after we pointed out the issue in January 2013. Hence, they held that the charge made against the department for lack of action resulting in loss of revenue was unacceptable.

The Ministry's reply revealed that there was inordinate delay on the part of Bangalore Service Tax Commissionerate as the first letter seeking the value of services received from outside India was issued only in November 2009, after a lapse of 22 months from completion of audit and 16 months from the issue of audit note. The Service Tax Commissionerate continued to issue such letters up to December 2011 without initiating any concrete action to protect revenue even though the demand for FY07 was in risk of getting time-barred. The summons were issued to the assessee only in March 2012. Thus, there was delay of 50 months from the completion of audit and 44 months from

issue of Audit Note on the part of Bangalore Service Tax Commissionerate in issuing SCN. This delay risks the demands being issued declared time-barred in adjudication.

Further, the Ministry needs to look into the reasons for failure of internal controls in the Commissionerate resulting in issue of two SCNs on same issue for overlapping period.

#### **4.6.2 Non-imposition of penalty under section 73(4A) of Finance Act 1994**

According to Section 73(4A) of Finance Act 1994 effective from 8 April 2011, where during the course of any audit, investigation or verification, it is found that any Service Tax has not been levied or paid or has been short levied or short paid but the true and complete details of transactions are available in the specified records, the person chargeable to Service Tax may pay the Service Tax in full or in part, as he may accept to be the amount of tax chargeable along with interest payable and penalty equal to one percent of such tax for each month, for the period during which the default continues, up to a maximum of 25 percent of the tax amount, before service of notice on him.

Internal audit Wing of Calicut Commissionerate, closed audit paras, raised after April 2011, without imposing penalty as per section 73(4A), when the assessee paid amount of Service Tax pointed out in the paras. Non-payment of penalty in respect of 25 assessee units test checked amounted to ₹ 31.64 lakh.

When we pointed this out (May 2013), the Ministry replied (December 2015) that out of the 25 cases pointed out by Audit, 15 assesseees paid the penalty amounting to ₹ 12.76 lakh. The Ministry contested the imposition of penalty under Section 73(4A) inserted on 8 April 2011, stating under this provision, penalty was leviable in cases where there was intentional evasion of tax, that too on cases starting after this date. They stated that the same was reiterated in para 4.11 of CBEC Budget letter DOF NO. 334/3/2011-TRU dated 28 February 2011.

The reply is not acceptable as the Act amended in April 2011 was applicable to all cases, whether of fraud, suppression etc. or otherwise irrespective of the contents of letter of February 2011. It was only after amendment in May 2012 that the section was made applicable only to cases of intentional evasion. Thus invoking of penalty under section 73(4A) as pointed out by us is justifiable.

New Delhi  
Dated: 10 February 2016

  
(HIMABINDU MUDUMBAI)  
Principal Director (Service Tax)

Countersigned

New Delhi  
Dated: 10 February 2016

  
(SHASHI KANT SHARMA)  
Comptroller and Auditor General of India

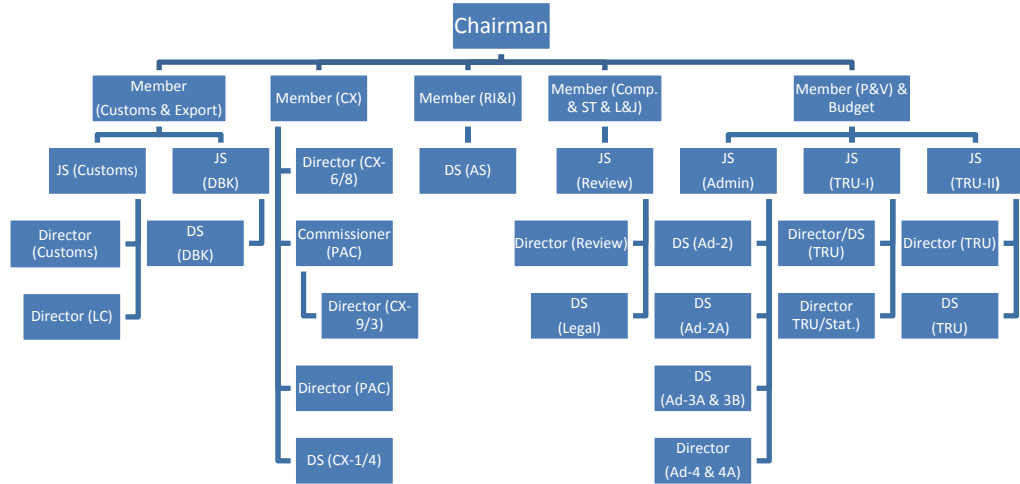
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# APPENDICES

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## Appendix I

### Organisational Chart of Central Board of Excise and Customs





**Appendix II**  
**(Reference: Paragraph 3.1)**

(₹ in crore)

Sl. No.	DAP No.	Brief Subject	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
1.	39A	Non payment of Service Tax	77.40	77.40		Mumbai ST II
2.	38A	Non payment of Service Tax	28.62	28.62		Mumbai ST II
3.	1A	Non payment of Service Tax	2.52	2.52		Anand
4.	9B	Non payment of Service Tax	2.49	2.49		Chennai III
5.	22B	Non payment of Service Tax	2.03	2.03	2.03	Pune II
6.	27A	Non payment of Service Tax	1.90	1.90	0.17	Chandigarh I
7.	20B	Non payment of Service Tax	1.66	1.66	1.66	Raigad
8.	13A	Non payment of Service Tax	1.63	1.63	0.04	Patna
9.	14B	Non payment of Service Tax	1.55	1.55	1.55	Nasik
10.	25A	Non payment of Service Tax	1.22	1.22		Rourkela
11.	42B	Non payment of Service Tax	1.00	1.00	1.00	Chandigarh I
12.	44A	Non payment of Service Tax	0.92	0.92	0.92	Mumbai ST VI
13.	37A	Non payment of Service Tax	0.82	0.82		Lucknow
14.	18B	Non payment of Service Tax	0.78	0.78		Patna

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<b>Sl. No.</b>	<b>DAP No.</b>	<b>Brief Subject</b>	<b>Amount Objected</b>	<b>Amount Accepted</b>	<b>Amount Recovered</b>	<b>Name of Commissionerate</b>
15.	19A	Non payment of Service Tax	0.70	0.70	0.68	Pune ST I
16.	43A	Non payment of Service Tax	0.70	0.70		Kohlapur
17.	34D	Non payment of Service Tax	0.66	0.66	0.39	Allahabad
18.	42D	Non payment of Service Tax	0.65	0.65		Pune I
19.	20D	Non payment of Service Tax	0.56	0.56	0.56	Haldia
20.	26A	Non payment of Service Tax	0.50	0.50		Anand
21.	31B	Non payment of Service Tax	0.47	0.47	0.47	Hyderabad II
22.	39B	Non payment of Service Tax	0.34	0.34	0.04	Vododara I
23.	48B	Non payment of Service Tax	0.31	0.31	0.31	Chandigarh I
24.	10A	Non payment of Service Tax	0.30	0.18		Delhi ST IV
25.	32A	Non payment of Service Tax	0.27	0.27	0.23	Bangalore ST II
26.	2A	Non payment of Service Tax	0.25	0.25		Vadodara II
27.	8B	Non payment of Service Tax	0.18	0.19	0.19	Rohtak
28.	36B	Non payment of Service Tax	0.18	0.18	0.18	Agra
29.	8A	Non payment of Service Tax	0.16	0.16		Chennai III
30.	12B	Non payment of Service Tax	0.16	0.16	0.16	Hyderabad IV

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Sl. No.	DAP No.	Brief Subject	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
31.	7A	Non payment of Service Tax	0.15	0.15		Chennai ST II
32.	9A	Non payment of Service Tax	0.14	0.14	0.14	Chennai III
33.	19B	Non payment of Service Tax	0.14	0.14	0.14	Mumbai LTU
34.	40B	Non payment of Service Tax	0.13	0.13	0.13	Vododara I
35.	2B	Non payment of Service Tax	0.12	0.12	0.12	Ahmedabad III
36.	6B	Non payment of Service Tax	0.12	0.12	0.12	Ahmedabad ST
37.	44B	Non payment of Service Tax	0.12	0.12	0.12	Mumbai ST VII
38.	4B	Non payment of Service Tax	0.11	0.11	0.11	Ahmedabad I
39.	13B	Non payment of Service Tax	0.11	0.11	0.11	Hyderabad II
40.	3A	Non payment of Service Tax	0.10	0.10		Ahmedabad I
41.	16A	Non payment of Service Tax	0.10	0.10	0.04	Lucknow
42.	3B	Non payment of Service Tax	0.10	0.10	0.10	Ahmedabad ST
43.	18A	Short payment of Service Tax	1.15	1.15	0.40	Hyderabad II
44.	45B	Short payment of Service Tax	0.91	0.91	0.91	Ahmedabad ST
45.	41B	Short payment of Service Tax	0.71	0.71		Bangalore ST II
46.	35A	Short payment of Service Tax	0.58	0.58	0.58	Mumbai ST I

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<b>Sl. No.</b>	<b>DAP No.</b>	<b>Brief Subject</b>	<b>Amount Objected</b>	<b>Amount Accepted</b>	<b>Amount Recovered</b>	<b>Name of Commissionerate</b>
47.	12A	Short payment of Service Tax	0.38	0.38	0.38	Hyderabad II
48.	32B	Short payment of Service Tax	0.35	0.35	0.35	Chennai ST III
49.	33B	Short payment of Service Tax	0.33	0.33	0.33	Hyderabad II
50.	46B	Short payment of Service Tax	0.25	0.25		Salem
51.	47B	Short payment of Service Tax	0.24	0.24	0.24	Bangalore LTU
52.	40D	Short payment of Service Tax	0.23	0.23	0.23	Dibrugarh
53.	11A	Short payment of Service Tax	0.20	0.20	0.18	Hyderabad II
54.	28A	Short payment of Service Tax	0.18	0.18	0.18	Chandigarh I
55.	49B	Short payment of Service Tax	0.15	0.15	0.13	Pune III
56.	38D	Short payment of Service Tax	0.15	0.15	0.15	Pune ST I
57.	33A	Short payment of Service Tax	0.14	0.14	0.10	Mumbai ST V
58.	5A	Short payment of Service Tax	0.13	0.13	0.09	Udaipur
59.	11B	Short payment of Service Tax	0.11	0.11	0.11	Trivandrum
60.	10B	Short payment of Service Tax	0.10	0.10	0.10	Chennai ST II
61.	43B	Short payment of Service Tax	0.10	0.10	0.10	Chennai III
62.	17A	Irregular availing/ utilisation of CENVAT Credit	3.03	3.03		Dhanbad

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Sl. No.	DAP No.	Brief Subject	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
63.	24A and 41A	Irregular availing/ utilisation of CENVAT Credit	1.45	1.45		Mumbai ST II
64.	31A	Irregular availing/ utilisation of CENVAT Credit	0.91	0.91		Thane II
65.	26B	Irregular availing/ utilisation of CENVAT Credit	0.88	0.88	0.88	Mumbai CX II
66.	37B	Irregular availing/ utilisation of CENVAT Credit	0.40	0.40		Coimbatore
67.	16B	Irregular availing/ utilisation of CENVAT Credit	0.39	0.39	0.39	Mumbai ST III
68.	34B	Irregular availing/ utilisation of CENVAT Credit	0.36	0.36		Raigad
69.	22A	Irregular availing/ utilisation of CENVAT Credit	0.35	0.35	0.35	Mumbai ST II
70.	29A	Irregular availing/ utilisation of CENVAT Credit	0.32	0.32	0.32	Delhi ST II
71.	20A	Irregular availing/ utilisation of CENVAT Credit	0.27	0.27	0.27	Thane II
72.	15A	Irregular availing/ utilisation of CENVAT Credit	0.23	0.23	0.23	Mumbai ST VI
73.	27B	Irregular availing/ utilisation of CENVAT Credit	0.23	0.23	0.23	Aurangabad
74.	23A	Irregular availing/ utilisation of CENVAT Credit	0.20	0.20		Mumbai LTU

Sl. No.	DAP No.	Brief Subject	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
75.	30A	Irregular availing/ utilisation of CENVAT Credit	0.17	0.17	0.17	Delhi ST III
76.	24B	Irregular availing/ utilisation of CENVAT Credit	0.15	0.15	0.15	Belapur
77.	35B	Irregular availing/ utilisation of CENVAT Credit	0.15	0.15	0.06	Belapur
78.	38B	Irregular availing/ utilisation of CENVAT Credit	0.14	0.14	0.14	Delhi ST II
79.	1B	Irregular availing/ utilisation of CENVAT Credit	0.12	0.12	0.12	Ahmedabad I
80.	15B	Irregular availing/ utilisation of CENVAT Credit	0.12	0.12	0.07	Kohlapur
81.	25B	Irregular availing/ utilisation of CENVAT Credit	0.12	0.12		Mumbai ST VII
82.	36A	Non payment of Interest	3.16	3.16	3.16	Mumbai ST I
83.	32D	Non payment of Interest	0.29	0.29	0.29	Dhanbad
84.	7B	Non payment of Interest	0.27	0.27	0.27	Chandigarh I
85.	30B	Non payment of Interest	0.17	0.17	0.17	Bangalore ST II
86.	35D	Non payment of Interest	0.14	0.14	0.14	Jamshedpur
87.	21B	Non payment of Interest	0.13	0.13	0.13	Mumbai ST II

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Sl. No.	DAP No.	Brief Subject	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
88.	28B	Non payment of Interest	0.13	0.13	0.13	Mumbai ST V
89.	14A	Non payment of Interest	0.11	0.11	0.11	Mumbai ST I
90.	5B	Non payment of Interest	0.10	0.10	0.10	Ahmedabad ST
91.	29B	Non payment of Interest	0.10	0.10	0.10	Aurangabad
92.	42A	Non payment of Interest	0.10	0.10	0.10	Delhi ST III
93.	17B	Non disclosure of taxable income	0.27	0.27	0.27	Mumbai ST VI
94.	4A	Non levy of late fee and penalty	0.17	0.17	0.06	Udaipur
95.		Small money value observations which were accepted by the Department and rectificatory action taken but not converted into Draft Audit Paragraphs	8.76	8.76	8.52	
		<b>Total</b>	<b>162.65</b>	<b>162.54</b>	<b>33.20</b>	

## Appendix III

(Reference: Paragraph 4.2)

(₹ in crore)

Sl. No.	DAP No.	Brief Subject	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
1.	62D	Broadening of Tax Base	0.34	0.34	0.34	Calicut
2.	29D	Failure of Scrutiny of return	0.89	0.89		Hyderabad II
3.	7D	Failure of Scrutiny of return	0.21	0.21	0.10	Jodhpur
4.	67D	Failure of Scrutiny of return	0.17	0.17	0.17	Belgaum
5.	54D	Failure of Scrutiny of return	0.16	0.16	0.03	Bilaspur
6.	41D	Failure of Scrutiny of return	0.42	0.42	0.42	Pune II
7.	53D	Failure of Scrutiny of return	0.25	0.25	0.25	Indore
8.	14D	Failure of Scrutiny of return	0.22	0.22	0.22	Ludhiana
9.	39D	Failure of Scrutiny of return	0.22	0.22	0.22	Kolkata ST
10.	61D	Failure of Scrutiny of return	0.15	0.15	0.05	Cochin
11.	4D	Failure of Scrutiny of return	0.14	0.14	0.14	Ahmedabad ST
12.	63D	Internal Audit not conducted	28.00	28.00		Trivandrum
13.	78D	Internal Audit not conducted	9.80	9.80		Bhubaneswar I
14.	65D	Internal Audit not conducted	7.63	7.63		Delhi ST II



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Sl. No.	DAP No.	Brief Subject	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
15.	25D	Internal Audit not conducted	6.18	6.18		Delhi ST II
16.	72D	Internal Audit not conducted	5.29	5.29		Delhi ST IV
17.	23D	Internal Audit not conducted	4.01	4.01		Delhi ST
18.	26D	Internal Audit not conducted	3.63	3.63	2.08	Delhi ST II
19.	21D	Internal Audit not conducted	2.68	2.68	0.02	Kolkata ST
20.	52D	Internal Audit not conducted	2.18	2.18	2.18	Hyderabad ST
21.	11D	Internal Audit not conducted	1.17	1.17		Bangalore ST II
22.	28D	Internal Audit not conducted	1.14	1.14		Delhi ST II
23.	70D	Internal Audit not conducted	0.69	0.69	0.58	Delhi ST III
24.	27D	Internal Audit not conducted	0.58	0.58		Delhi ST III
25.	66D	Internal Audit not conducted	0.42	0.31	0.25	Jaipur
26.	1D	Internal Audit not conducted	0.41	0.41	0.41	Ahmedabad ST
27.	22D	Internal Audit not conducted	0.41	0.41		Kolkata II
28.	17D	Internal Audit not conducted	0.35	0.35		Cochin
29.	76D	Internal Audit not conducted	0.31	0.31	0.31	Bolpur
30.	77D	Internal Audit not conducted	0.29	0.29	0.29	Kolkata ST II

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<b>Sl. No.</b>	<b>DAP No.</b>	<b>Brief Subject</b>	<b>Amount Objected</b>	<b>Amount Accepted</b>	<b>Amount Recovered</b>	<b>Name of Commissionerate</b>
31.	47D	Internal Audit not conducted	0.19	0.19	0.19	Delhi ST
32.	24D	Internal Audit not conducted	0.17	0.17	0.17	Delhi ST III
33.	46D	Internal Audit not conducted	0.14	0.14	0.14	Delhi ST I
34.	59D	Internal Audit not conducted	0.12	0.12	0.12	Delhi ST I
35.	48D	Internal Audit not conducted	0.10	0.10	0.10	Delhi ST II
36.	2D	Internal Audit did not detect the lapse	41.94	41.94		Ahmedabad ST
37.	10D	Internal Audit did not detect the lapse	10.76	10.76		Mangalore
38.	81D	Internal Audit did not detect the lapse	4.87	4.87	4.87	Hyderabad III
39.	31D	Internal Audit did not detect the lapse	2.66	2.66		Mumbai ST II
40.	64D	Internal Audit did not detect the lapse	2.40	2.40	2.40	Delhi ST
41.	45D	Internal Audit did not detect the lapse	2.18	2.18		Coimbatore
42.	50D	Internal Audit did not detect the lapse	1.08	1.08	1.08	Delhi ST III
43.	74D	Internal Audit did not detect the lapse	0.70	0.70		Patna
44.	6D	Internal Audit did not detect the lapse	0.36	0.36	0.36	Udaipur
45.	79D	Internal Audit did not detect the lapse	0.17	0.17	0.17	Mumbai ST VII
46.	9D	Internal Audit did not detect the lapse	0.13	0.13		Udaipur

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Sl. No.	DAP No.	Brief Subject	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
47.	18D	Internal Audit did not detect the lapse	0.12	0.12		Trivandrum
48.	49D	Internal Audit did not detect the lapse	0.11	0.11	0.11	Delhi ST III
49.	80D	Internal Audit did not detect the lapse	0.11	0.11	0.11	Cochin
50.	5D	Internal Audit did not detect the lapse	0.07	0.07	0.07	Udaipur
		<b>Total</b>	<b>146.72</b>	<b>146.61</b>	<b>17.95</b>	

## Glossary

ACES	Automation of Central Excise and Service Tax
AICTE	All India Council for Technical Education
BE	Budget Estimate
Board	Central Board of Excise and Customs (CBEC)
BSNL	Bharat Sanchar Nigam Limited
CAAT	Computer Aided Audit Technique
CB	Closing Balance
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise and Customs
CENVAT	Central value added tax
CERA	Central Excise Receipt Audit
CESTAT	Customs, Excise and Service Tax Appellate Tribunal
CX	Central Excise
DAP	Draft Audit Paragraph
DG	Director General
DGCEI	Director General of Central Excise (Intelligence)
DGST	Director General of Service Tax
DGICCE	Director General of Inspection Customs and Central Excise
DoR	Department of Revenue
EA	Excise Audit
FY	Financial Year
GDP	Gross Domestic Product
HPCL	Hindustan Petroleum Corporation Limited
IAP	Internal Audit Party
INTOSAI	International Organization of Supreme Audit Institutions
INTOSAI GOV	INTOSAI Guidance for Good Governance

ITR	Income Tax Return
L and T	Larsen and Toubro
LTU	Large Taxpayer Unit
Ministry / Department	Ministry of Finance (Department of Revenue)
MTR	Monthly Technical Report
OB	Opening Balance
OIO	Order in Original
ONGC	Oil and Natural Gas Corporation
PD	Principal Director
PLA	Personal Ledger Account
PSU	Public sector undertaking
R & C	Review and Correction
RA Bill	Running Account Bill
RE	Revised Estimate
SCN	Show Cause Notice
SOF	Statement of Facts
ST	Service Tax
TDS	Tax Deducted at Source
TRU	Tax Research Unit
VCES	Voluntary Compliance Encouragement Scheme

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