

Chapter II

Service Tax on Commercial Training or Coaching Service

2.1 Introduction

Coaching centres exist almost in every small and big/metro city and every year this number is increasing. The Service Tax revenue generated from this service has increased from ₹ 880.09 crore in FY13 to ₹ 1,950.08 crore in FY16 proving that the business of coaching centres is expanding day by day. The average annual growth rate of Service Tax of this service over last three years is only around 21 per cent while the business of private coaching centres was expected to grow at 35 per cent during the same period.¹⁶ Since, this activity is cash-based business, there is always a possibility of leakage of Government's Service Tax revenue.

2.1.1 *Service Tax provisions relating to Commercial Training or Coaching Service*

Section 65(26) of the Finance Act, 1994, as amended from time to time, defines "**Commercial Training or Coaching (CTC)**" as any training or coaching provided by a CTC centre. Further, as per section 65(27) of this Act, "**CTC Centre**" means any institute or establishment providing CTC for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes.

Section 65(105)(zcc) of the Act further provides that taxable service means any service provided or to be provided to any person, by a CTC centre in relation to CTC which inter-alia includes any centre or institute, by whatever name called, where training or coaching is imparted for consideration.

With effect from 1 July 2012, all services were brought into Service Tax net barring those which are in the negative list (Section 66D of the Finance Act, 1994) or have been exempted by way of exemption notifications. Section 66B of Finance Act, 1994, states that Service Tax shall be charged at the rate notified by the Government from time to time on value of all taxable services i.e. other than those specified in the negative list or exempted services, which are provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed. Under negative list, a list of services relating to education sector were inserted with effect from 1 July 2012 which comprises of services by way of – (i) pre-school education and education up to higher secondary school or equivalent; (ii)

¹⁶ <http://assocharm.org./newsdetail.php?id=4050>

education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force and (iii) education as a part of an approved vocational education course.

Thus the services relating to education, not included in negative list, as illustrated below attract Service Tax:

- i. Private tuitions
- ii. Education as a part of prescribed curriculum for obtaining qualification recognized by law of a foreign country
- iii. Placement services
- iv. Other services provided by educational Institutes like Campus recruitments by prospective employers like corporate houses/MNCs for which a fee is charged by the educational institutes.

Vide notification No. 25/2012-ST dated 20 June 2012 applicable with effect from 1 July 2012; the following taxable services are exempt from the whole of the Service Tax leviable under section 66B of the Finance Act, 1994 amended from time to time:

- (i) Services by way of training or coaching in recreational activities relating to arts, culture or sports.
- (ii) Services provided to or by an educational institution in respect of education exempted from Service Tax, by way of, - (a) auxiliary educational services; or (b) renting of immovable property.

Auxiliary Educational Services – means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge-enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution.

With effect from 11 July 2014 vide notification No. 6/2014-ST dated 11 July 2014, the following services were exempted from levy of Service Tax

- i. Services provided by an educational institution to its students, faculty and staff and
- ii. Services provided to an educational institution, by way of
 - a. transportation of students, faculty and staff;

- b. catering, including any mid-day meals scheme sponsored by the Government;
- c. security or cleaning or house-keeping services performed in such educational institution;
- d. services relating to admission to, or conduct of examination by such institution.

2.2 Audit objectives

The objective of this audit was to derive assurance on whether:

- (i) instructions issued by the department to broaden the tax base and detect tax evasion have been complied with.
- (ii) procedures and the compliance verification mechanisms in place in the department are adequate to ensure the payment of Service Tax on taxable services and availment of input credit.

2.3 Scope and sample of Audit

There were 83 composite executive Commissionerates that deal with both Central Excise and Service Tax and 22 exclusive Service Tax executive Commissionerates in the Country. For the purpose of this Audit, we selected 18 Commissionerates and 18 Divisions and 40 Ranges falling under the selected Commissionerates. In addition, we have also included findings on this subject noticed during our regular compliance audit as per annual audit plan 2016-17 and pilot study to report all observation on this subject at one place.

We sought information/records based on which role of departmental officers with reference to dissemination of Board's instructions on broadening of tax base, functioning of special cell, efforts taken for identifying unregistered service providers, scrutiny of returns etc. could be examined by Audit. But some of the information was not furnished by all the selected Commissionerates, which curtailed the scope of audit examination to that extent.

During audit, we requisitioned records of 789 assesseees for detailed scrutiny/detailed examination but received records in respect of 549 assesseees only. Thus, records pertaining to 30 per cent of assesseees could not be examined by Audit.

2.4 Audit findings

In the course of audit, we noticed shortcomings in functioning of department with reference to tax base broadening and scrutiny of returns. We also detected 1,005 number of unregistered assessees out of which in 250 cases, where we were able to quantify the income of the assessees, the Service Tax liability worked out to ₹ 6.11 crore. Further, we detected 179 cases of non/short payment of Service Tax, irregular availing of CENVAT credit, non/short payment of interest etc. by registered assessees involving revenue of ₹ 88.26 crore.

In 1,056 cases out of 1,184 cases¹⁷ pointed out by us, the Ministry stated that efforts were being made to locate the jurisdiction of the assessees in view of restructuring due to implementation of GST. The Ministry should formulate a time-bound action plan to locate the jurisdiction and examine these cases so as to ensure safeguarding of revenue before the demands relating to these cases become time-barred.

The detailed audit findings are discussed under the following three broad categories:

- Broadening of Service Tax base
- Scrutiny of Returns by department
- Detailed examination of records of selected assessees by CAG audit

2.5 Broadening of Service Tax base

There had been explosive growth of service providers in CTC sector without corresponding growth in Service Tax from this sector as already pointed out in para 2.1. Hence, we looked specifically into the compliance to directions issued (November 2011) by Board for broadening the tax base such as creation of special cell and using information from other sources like Income Tax, Ministry of Corporate Affairs (MCA) etc. to identify unregistered assessees. The detailed instructions of Board in this regard and the results of audit examination of the same had been discussed below:

2.5.1 *Dissemination of Board's instructions to field formations of the department*

We sought (November 2016 to December 2017) the records relating to the instructions/directions received from the Board relating to Broadening of Service Tax base and action thereon taken by the lower formations. We did not find evidence of dissemination of Board's instructions which showed that

¹⁷ 1005 (unregistered assessees) + 179 (non-payment/short payment etc.)

the instructions of Board relating to broadening of Service Tax base did not percolate to the field formations as detailed below:

- Eight Commissionerates¹⁸ informed that neither any instructions/directions were received from Chief Commissioner/Board nor forwarded to the lower formations regarding broadening of Service Tax base relating to CTC Service providers.
- While Chandigarh-II Commissionerate replied that various instructions/directions were issued by the Commissioner and Chief Commissioner towards broadening of assessee base from time to time, selected Divisions and Ranges intimated that no such instructions were received by them.
- Chief Commissioners, Delhi, Kolkata and Chennai and ST Commissionerates of Cochin, Hyderabad-IV and Hyderabad did not provide any records relating to instructions/directions issued for broadening of tax base. Chief Commissioner Delhi attributed it to formation of Service Tax Delhi Zone in October 2014.

The Ministry in its response (October 2017) forwarded the replies of Bengaluru West (erstwhile Bangalore ST-I), Udaipur and Delhi East (erstwhile Delhi ST-III) Commissionerates. The Delhi East Commissionerate informed that neither any instructions/directions were received from Chief Commissioner/Board nor forwarded to the lower formations. The replies given by Bengaluru West and Udaipur Commissionerate did not pertain to audit observation on dissemination of instructions received from Board. The reply of the Ministry was silent on other Commissionerates.

2.5.2 Functioning of special cell

As per the Board's instructions, a Special Cell should be created in each Commissionerate mandated with the task of identifying potential assessees. This cell should collect list of service providers from the various service provider's associations, yellow pages, local publications, advertisements in the newspapers, regional registration authorities, websites, regulatory bodies, State Government departments, Income Tax departments, RBI etc. and identify unregistered service providers and get them registered. Also surveys in the local markets, malls may be carried out if deemed necessary. Every Commissionerate is given target of revenue generation in every financial year.

¹⁸ Ahmedabad ST, Delhi ST-II, Chandigarh I, Lucknow, Mumbai ST-VII, Pune ST, Bangalore ST-II and Noida ST

We enquired (between November 2016 and February 2017) in the selected Commissionerates whether Special Cell was created in compliance with the instructions of the Board. Bangalore ST-I and Delhi ST-III Commissionerates did not furnish their reply. All other Commissionerates stated (January to February 2017) that special cell was not created in the Commissionerate. However, most of them added that Anti-evasion unit was looking after this aspect, without giving any supporting records. Broadening of tax base is an important method to increase the revenue collection and meet the targets. Hence, we tried to examine targets set for selected commissionerates. However, none of the Commissionerates furnished any information regarding targets for tax base broadening fixed by the higher authorities.

The Ministry in its reply (October 2017) forwarded the replies of Bengaluru West (erstwhile Bangalore ST-I) and Delhi East (erstwhile Delhi ST-III) Commissionerates. Bengaluru West Commissionerate informed that, in place of Special Cell, a Data Management Cell was constituted, which looked into third party data received from CBDT. Delhi East Commissionerate informed that Special Cell was not created due to shortage of staff. The Ministry's reply was silent on non-furnishing of information on targets fixed.

Thus the special cells, as envisaged by the Board, were non-existent or non-functional.

2.5.3 Using Income Tax data for tax base broadening

CBEC entrusted to Director General of Service Tax (DGST) (now DG GST) the responsibility of calling for the information from Income Tax Authorities on persons providing one or other type of services and having income of above ₹ 10 lakh in a year and to check whether they were registered with the department or filing their returns or declaring true value in their returns. All the defaulting cases were to be forwarded to jurisdictional Service Tax authorities for further action in the matter.

We sought from the selected Commissionerates, the details of defaulting cases received from DGST based on information of the Income Tax Department. In response, six Commissionerates¹⁹ replied that no such information/data was received from DGST during the period of audit. Eight Commissionerates²⁰ informed (January to February 2017) that the data received from Income Tax Department was forwarded to lower formations for taking necessary action and that no assessee relating to CTC had been noticed.

¹⁹ Ahmedabad ST, Cochin, Delhi ST-II, Lucknow, Chandigarh II and Noida ST

²⁰ Chandigarh I, Udaipur, Mumbai ST-VII, Chennai ST-II, Hyderabad IV, Hyderabad ST, Bangalore ST II and Pune ST

The Ministry in its reply (October 2017) forwarded the replies of Bengaluru West (erstwhile Bangalore ST-I), Delhi East (erstwhile Delhi ST-III) and Kolkata ST-I and II Commissionerates. Bengaluru West Commissionerate reported that the assistance of Income Tax department would be taken to obtain the data for broadening the tax base. Kolkata ST-I and II Commissionerate stated suitable instructions were issued to use Income Tax data for broadening tax base. Delhi East Commissionerate reported that no information/data of Income Tax assessee having service related income above ₹ 10 lakh in a year was received from DGST.

The Ministry simply forwarded different responses of field formations without giving their own response to this critical issue reported by CAG audit.

2.5.4 Identification of unregistered service providers by Internal Audit cell/Commissionerate

As per para no. 6.11.12 of Central Excise and Service Tax Audit Manual 2015, the internal audit party (IAP), during course of audit of the assessee selected for internal audit, had to collect the records of all the service providers who had provided taxable service of more than ₹ 10 lakh to the selected assessee but did not charge Service Tax and furnish the same to the Internal Audit Cell/Audit Commissionerate which in turn forward it to the concerned Commissionerate.

We enquired from the selected Commissionerates whether Internal Audit Wing of the erstwhile Commissionerate or Audit Commissionerates had ever forwarded information relating to the unregistered service providers identified by them during the course of audit of the registered assessee. In response, 13 Commissionerates²¹ replied that no information relating to CTC service providers was forwarded to the executive Commissionerates. Further, Chandigarh-II Commissionerate stated that it received a list of four assessee from Internal Audit Cell, who were made to take registration. However, Audit did not find these four assessee in the Service Tax assessee data base provided to Audit by the department. Four Commissionerates²² did not furnish their reply.

The Ministry in its reply (October 2017) forwarded replies of Kolkata ST-I and ST-II, Bengaluru ST-I (erstwhile Bangalore ST-I) and Delhi East (erstwhile Delhi ST-III) Commissionerates. Delhi East and Bengaluru West Commissionerates stated that no information relating to CTC service providers was forwarded to

²¹ Ahmedabad ST, Bangalore ST-II, Chandigarh-I, Chennai ST-II, Cochin, Delhi ST-II, Hyderabad-IV, Hyderabad ST, Lucknow, Mumbai ST-VII, Noida ST, Pune ST and Udaipur

²² Bangalore ST-I, Delhi ST-III and Kolkata ST-I & II

the executive Commissionerates. Kolkata ST-I and II Commissionerates stated that this matter pertained to Audit Commissionerate.

Thus the Ministry simply forwarded replies received from the Commissionerates without taking a view on the systemic lapse pointed out by Audit.

2.5.5 Independent verification by CAG Audit

In view of nil/negligible efforts made by the department to identify the unregistered assesseees of CTC sector using Income Tax data/records of assesseees verified in Internal Audit, we tried to independently verify unregistered service providers from various databases as discussed below:

2.5.5.1 Data of Ministry of Corporate Affairs (MCA)

We downloaded the data of companies/Limited Liabilities Partnership (LLP) available on website of MCA and the Permanent Account Numbers (PAN) from Income Tax site. Using these PAN numbers, we verified from data base of the department as to whether the concerned company/LLP had obtained Service Tax registration or not. During this exercise, we noticed that **613** service providers involved in CTC services though registered with MCA did not register themselves as assesseees with Service Tax Department.

We sought data in respect of CTC centres from Income Tax Department to assess how many of these unregistered companies had income above threshold limit of ₹ 10 lakh per annum, but the same was not provided. Hence we could not assess the Service Tax liability in all these cases.

Out of these 613 unregistered service providers, in case of 23 service providers, we collected data from the Registrar of Companies (RoC), Ahmedabad and Jaipur for the period FY14 to FY16, who had shown revenue of ₹ 154.59 crore in their financial statement during FY14 to FY16, suggesting possibility of Service Tax liability (**Appendix II**). But in the absence of detailed information, we could not compute their Service Tax liability.

When we pointed this out (between November 2016 and March 2017) in 570 cases including 12 cases in which data of RoC, Ahmedabad was provided, the Ministry (October 2017) asked for information like current address of the service provider. Further, in 42 cases²³ the Ministry stated that the matter was under examination or the assessee was not traceable and in one case stated that the assessee had taken registration.

Instead of gathering further information from MCA to enable verification of whether these units were liable to register with the department or not, the

²³ including seven cases in which data was obtained from RoC, Jaipur by CAG Audit

Ministry was seeking further details from us. It was evident that the efforts of widening tax net through using MCA and Income Tax Department databases under the same Ministry were not effectively exploited. This non/delayed action on part of the department might result in revenue loss due to demands becoming time barred.

2.5.5.2 Other third party sources

As per the Board's instructions, the department had to collect list of service providers from the various service provider's associations, from yellow pages, local publications, advertisements appearing in the newspapers, regional registration authorities, websites, regulatory bodies, State Government departments, Income Tax departments, RBI etc. and identify unregistered service providers and get them registered. Also surveys in the local markets, malls may be carried out if deemed necessary.

We obtained information relating to CTC centers from other sources viz. advertisements (print media), internet, websites, UGC, AICTE and RBI etc. We cross checked the same with the Pan-India database of registered assessee provided by the Service Tax Department and found that 120 service providers²⁴ engaged in CTC services had not got themselves registered with Service Tax Department.

In absence of Special Cells and consequent non-availability of records relating to efforts taken by the department to explore these sources for identifying unregistered assessee, Audit could not comment if such sources were examined by the department as part of their tax base broadening efforts.

When we pointed this out (November 2016 to March 2017) the Ministry did not give a final reply in 115 cases stating (October 2017) that due to restructuring of the Commissionerates post GST, the jurisdiction of assessee had changed and that field formations were trying to locate the correct jurisdiction and in five cases, stated that issue was under examination.

The Ministry's further response was awaited (October 2017).

2.5.5.3 From the records of assessee examined

During the scrutiny of Service Tax records of selected assessee, we noticed that 23 assessee under five Commissionerates²⁵, received services from 272 service providers who did not get themselves registered with Service Tax Department even after crossing the threshold limit of rupees nine lakh in a financial year. Out of these, in 250 cases where income identified from the records of audited assessee crossed threshold limit for payment of Service

²⁴ Ahmedabad ST, Chandigarh-I, Chennai ST II, Delhi-III

²⁵ Bangalore ST-I & II, Delhi ST-II & III, Mumbai ST-VII

Tax i.e. ₹ ten lakh, the Service Tax evaded worked out to ₹ 6.11 crore. In case of remaining 22 service providers whose income from transactions with the audited assessee alone crossed ₹ nine lakh but is less than ₹ ten lakh (threshold for payment of Service Tax), the possibility of Service Tax liability on their overall income could not be ruled out, which the department was required to examine.

Further all these cases were pointed out by Audit in the five Commissionerates which either which stated that no inputs were forwarded by Internal Audit pertained to CCT or did not respond to audit's query on receipt of inputs regarding unregistered assessees from Internal Audit (Para 2.5.4 refers).

This clearly established non-adherence to the existing instructions of identifying service providers from the records of assessees scrutinised by Internal Audit and the consequent risk of revenue loss.

When we pointed this out (November 2016 to February 2017) Delhi ST-II and III Commissionerates informed (March 2017) that 17 service providers (out of 112 pointed out by Audit) had taken Service Tax registration and deposited Government dues of ₹ 43 lakh.

The Ministry (October 2017) asked for further information in all the cases for locating the current jurisdiction of the service providers. Instead of expecting us to carry out executive functions, the Ministry was expected to instruct its field formations to gather further information from those assessees to verify whether the service providers were liable to register with the department or not, besides ensuring that field formations adhere to its directions relating to identification of service providers from assessee records. Further, Delhi ST II and III commissionerates reported recovery based on inputs given by us.

2.6 Analysis of the department's performance in respect of scrutiny of returns

After introduction of Automation of Central Excise and Service Tax (ACES), preliminary scrutiny of returns was being done by the system itself. The purpose of the preliminary scrutiny was to ensure completeness of information, timely submission of returns, timely payment of duty, arithmetical accuracy of the amount computed as duty, closing and opening balance of CENVAT credit etc. The Range superintendent was required to verify the returns marked by the system for Review and Correction (R&C) and rectify the errors, if any, in the returns in consultation with the assessee concerned.

2.6.1 Non-initiation of action against non/stop filers

We sought (October 2016 to February 2017) the details of non/stop filers and action taken against the defaulters from the selected ranges of 18 Commissionerates. No response was received from eight commissionerates²⁶ and 10 Commissionerates²⁷ replied that 5,821 (46.30 per cent) returns out of 12,571 returns due were not filed by the assesseees relating to this sector during FY13 to FY16. Out of these, only five Commissionerates (Cochin, Delhi ST-II, Kolkata ST-I & II and Udaipur) initiated action on the defaulting assesseees. Further, in Pune ST Commissionerate, we checked from ACES data that 14,163 (57.37 per cent) out of 24,688 returns due were not filed by the assesseees for all the services but no action was initiated on these non-filers.

The Ministry in its reply (October 2017) forwarded the response of five Commissionerates. The Pr. Commissioner, Cochin stated that Range Officers had been directed to initiate action against non/stop filers. Bangalore ST-I and II Commissionerate stated that issue was under examination. Delhi East (erstwhile Delhi ST-III Commissionerate) stated that action had been initiated against defaulting assesseees. Mumbai ST-VII stated that due to restructuring of the Commissionerates post GST, the jurisdiction of assesseees changed and attempt was being made to locate the correct jurisdiction. The reply of the Ministry was silent on other Commissionerates.

2.6.2 Non-levy of late fee on delayed filing of returns

Rule 7C of Service Tax Rules, 1994 prescribes that in case a return is filed after the due date, the person liable to furnish the said return shall pay late fee, to the credit of the Central Government, subject to a maximum limit specified in section 70 of the Act, which had been fixed at ₹ 20,000/-.

We requested (October 2016) the selected ranges of 18 Commissionerates to provide the details of those assesseees who filed their returns after due date and action taken against late filing. In response, 12 Commissionerates²⁸ replied (March 2017) that of the 37,079 ST-3 returns which were due during FY13 to FY16, 1,138 returns were filed after due date. Out of these, only six Commissionerates²⁹ initiated action to levy late fee on the defaulting assesseees. No response was received from six Commissionerates.³⁰

²⁶ Cochin, Delhi ST-III, Mumbai ST-VII, Pune ST, Noida ST, Ahmedabad ST and Bangalore ST-I & II.

²⁷ Chandigarh -I & II, Chennai ST-II, Delhi ST-II, Hyderabad-IV, Hyderabad ST, Kolkata ST-I & II, Lucknow and Udaipur

²⁸ Ahmedabad ST, Chandigarh -I, Chennai ST-II, Delhi ST-II, Hyderabad-IV, Hyderabad ST, Kolkata ST-I & II, Lucknow, Mumbai ST-VII, Pune ST and Udaipur

²⁹ Ahmedabad ST, Delhi ST-II, Kolkata ST-I & II, Pune ST and Udaipur

³⁰ Chandigarh II, Delhi ST-III, Noida ST, Cochin, Bangalore ST-I & II

The Ministry in its reply (October 2017) forwarded the replies of five Commissionerates (Bangalore ST-I & II, Chandigarh-II, Cochin and Delhi ST-III) which stated that action was being taken against late filers based on CAG's information. The Ministry's reply was silent on other Commissionerates.

Thus only in one-third of the test checked Commissionerates, suo moto action was taken to levy late fee on defaulting assesseees.

2.6.3 Non-initiation of action on the returns marked for Review and Correction (R&C)

In ACES, once the returns are uploaded, software checks them for correctness of information such as registration number³¹, classification, notification, rate of duty, challans used for duty payment etc. Any discrepancy that has not been resolved by the system is sent to Reviewing Officer's screen for R&C. The returns pass through risk parameters, based on instructions issued by the Board from time to time and marked as risky or not. The AC/DC may decide on further course of action like subjecting the unit to audit or anti-evasion process, etc.

We asked (between October 2016 and February 2017) the 18 selected commissionerates to provide the details of returns marked for R&C by ACES and action taken by the Ranges on these returns. Four Commissionerates³² informed that 3,908 returns were marked for R&C, of which, the department took action only on 84 returns. Thus 3,824 returns representing 98 per cent of those marked were pending. Remaining Commissionerates did not furnish the required information.

The Ministry in its reply (October 2017) forwarded response of Chennai ST-II, Delhi ST-II, Lucknow and Pune ST Commissionerates. Chennai ST-II and Delhi ST-II Commissionerate had stated that due to implementation of GST, the new jurisdiction was still being worked out and that suitable action would be taken. Pune ST Commissionerate, admitting the facts, attributed the pendency to poor infrastructure of ACES. Lucknow Commissionerate sought specific details in respect of ST-3 returns for FY14 to FY16 from the CAG audit team. The reply of the Ministry was silent on other Commissionerates.

Thus the Ministry did not take a view on the failure of the critical R&C mechanism and simply forwarded responses received from a few commissionerates.

³¹ only for the returns which are filed through off-line utility

³² Chennai ST-II, Delhi ST-II, Pune ST and Lucknow

2.6.4 Detailed scrutiny of returns

The Board vide its circular no. 185/4/2015 – Service Tax, dated 30 June 2015 issued guidelines relating to selection of units for detailed scrutiny, procedure for conducting detailed scrutiny and reporting the results thereof etc.

Out of 18 Commissionerates selected for audit, 11 Commissionerates³³ did not furnish information on detailed scrutiny of returns for the period FY13 to FY16. We noticed in seven Commissionerates³⁴ that provided required information on detailed scrutiny, out of a total 1,409 returns selected for detailed scrutiny during audit period, the detailed scrutiny was conducted by the department in respect of only 473 assesseees (34 per cent). We further noticed that of 43 returns of CTC Services marked for detailed scrutiny, the scrutiny was carried out in 17 cases (40 per cent) only.

When we pointed this out (between November 2016 and February 2017) Udaipur Commissionerate stated that there was no such mechanism to conduct detailed scrutiny up to September 2015 and the selected ranges of Delhi ST-II Commissionerate replied that the detailed scrutiny was not undertaken due to shortage of staff.

The Ministry in its reply (October 2017) forwarded replies of eight Commissionerates reporting that action was initiated/would be initiated in five commissionerates³⁵ and attributing non-conduct of detailed scrutiny to staff shortage or non-allotment of units in three commissionerates³⁶. Reply was awaited in respect of the remaining Commissionerates.

2.7 Detailed examination of records of selected assesseees by CAG Audit

The findings noticed during examination of records of assesseees as enumerated in the succeeding paragraphs indicate the impact of non-conduct of detailed scrutiny of assesseees in this sector by the department:

2.7.1 Non-payment of Service Tax by service providers

During detailed examination of the records of the assesseees, we noticed 52 instances of non/short payment of Service Tax due to irregular availing of exemption, undervaluation of taxable service etc. involving revenue of ₹ 24.96 crore which was required to be recovered with applicable interest. The Ministry accepted the audit objection in 11 cases, and stated that the

³³ Ahmedabad ST, Bangalore ST-I & II, Chandigarh-II, Cochin, Delhi ST-II & III, Lucknow, Mumbai ST-VII, Noida ST and Pune ST

³⁴ Chandigarh-I, Chennai ST-II, Hyderabad-IV, Hyderabad ST, Kolkata ST-I & II and Udaipur

³⁵ Chandigarh I & II, Cochin, Bangalore ST-I & II

³⁶ Delhi ST-II & III and Pune ST

matter was under examination in 41 cases. A recovery of ₹ 21.49 lakh had also been reported so far.

A few cases are narrated below:

2.7.1.1 Non-payment of Service Tax on grants, directly affecting value of service

As per Rule 6(2)(vii) of the Service Tax (Determination of Value) Rules, 2006, the value of taxable service does not include the amount of subsidies and grant disbursed by the Government, not *directly affecting* the value of service.

M/s M.T. Educare Ltd., in Mumbai ST-VII Commissionerate, received grants from different States Governments, Municipal Corporations as well as different departments/organisations of Central government for providing training for Entrance Tests/special coaching to students of tribal communities, minorities appearing for different examinations like engineering, medical, UPSC, KPSC, computer courses etc. As grants were released by Government/Government agencies on reaching milestones like registration of students, part completion or full completion of course or as a reimbursement of fee per student, the grants had a direct bearing on value of training/coaching service provided and hence attracted Service Tax. Total grants received for providing training or coaching services during FY14 to FY16 was ₹ 40.46 crore. Reconciliation of ST-3 returns with financial records revealed that the assessee did not pay Service Tax amounting to ₹ 7.40 crore, including interest, on the grants received.

When we pointed this out (March 2017) the Ministry stated (October 2017) that due to restructuring in view of GST, the jurisdiction of the assessee had been changed and efforts were being made to locate the correct jurisdiction.

2.7.1.2 Non-consideration of all services provided to arrive at Service Tax liability

As per Rule 3(a) of Service Tax (Determination of Value) Rules, 2006, valuation shall be on the basis of gross amount charged by service provider for similar services. Rule 3(b) of the Service Tax (Determination of Value) Rules, 2006, prescribes that if value cannot be determined on the basis of Rule 3(a), valuation shall be on the basis of equivalent money value of such consideration, which shall not be less than cost of provision of such services.

During detailed scrutiny of M/s Innovative Technological Learning Service Pvt. Ltd., (ITLS) in Mumbai ST-VII Commissionerate, it was observed that M/s Universita Commerciale “Luigi Bocconi”, a company of Italy made an arrangement to provide foreign degree courses in India and for this a trust

namely 'Knowledge Revival and Expansion Trust' (KRT) was formed in Mumbai. Further, to provide services to KRT, a company namely 'Innovative Technological Learning Service Pvt. Ltd., (ITLS) was established in the same premises. ITLS entered (October 2012) into an agreement with KRT for providing services like teaching services, preparation of teaching videos/e-learning tools, marketing and communication, recruitment and guidance, admission etc. The agreement further provided that ITLS would invoice KRT on monthly basis for services provided to KRT and that in case ST is payable, the same should be charged to KRT separately. However, it was noticed in audit that ITLS charged KRT only for faculty fee and offered Service Tax on the same. ITLS was not charging any amount from KRT for providing other services like brand promotion, marketing, advertisement, business support services, business auxiliary services, security services, housekeeping services, legal and professional services, chartered accountant service etc. ITLS was formed to provide services to the Trust only and the company was actually doing the same as seen from annual accounts. Thus, the entire expenses booked in the company during the years FY14 to FY16 was to be considered as value of services provided to the Trust and not only the faculty fees. Omission to consider the entire cost as consideration has resulted in short levy of Service Tax of ₹ 4.94 crore including interest.

When we pointed this out (March 2017) the Ministry stated (October 2017) that due to restructuring in view of GST, the jurisdiction of the assessee had been changed and efforts were being made to locate the correct jurisdiction.

2.7.1.3 Non-adoption of gross value for payment of Service Tax

As per section 67(1) of the Finance Act, 1994, the value of taxable service shall be the gross amount charged by the service provider.

During the examination of records of M/s. Motion Education Pvt. Ltd., in Udaipur Commissionerate, it was noticed that the assessee was paying Service Tax on the net amount of fee collected from the students, after adjusting scholarship/discount/fee concession instead of gross amount of fee. This resulted in short payment of Service Tax amounting to ₹ 72.45 lakh on ₹ 5.17 crore adjusted towards scholarship/discount/fee concession during FY16. The short payment of Service Tax for FY14 and FY15 could not be quantified as the details were not made available to us. The short paid Service Tax is recoverable with interest.

When we pointed this out (January 2017) the Ministry intimated (October 2017) that the SCN would be issued shortly.

2.7.2 Non-payment of Service Tax under reverse charge/partial reverse charge

During detailed examination of the records of the assessees, we noticed 21 instances of non-payment of Service Tax under reverse charge/partial reverse charge mechanism involving revenue of ₹ 3.69 crore which was recoverable with applicable interest. The Ministry accepted audit objections in six cases, did not accept audit objection in two cases and stated that the issue was under examination in the remaining 13 cases. A recovery of ₹ 61.23 lakh had been reported so far.

A few cases on such non-payment on import of services are narrated below:

Section 66B of the Finance Act, 1994 read with Rule 2(1)(d)(G) of Service Tax Rules, 1994 and Notification No.30/2012-ST dated 20 June 2012 stipulates that the recipient of services shall be liable to pay Service Tax on any taxable services received by a person in taxable territory from a person located in non-taxable territory.

2.7.2.1 M/s Seed Infotech Pvt. Ltd., in Pune ST Commissionerate, had not paid Service Tax on a portion of import of services like professional service, membership and subscription, exam fee, website service etc., resulting in short payment of Service Tax of ₹ 86.46 lakh which was recoverable with applicable interest.

When we pointed this out (February 2017) the Commissionerate stated (April 2017) that in pursuance of CAG audit objection, the assessee had paid ₹ 24.50 lakh (March 2017) towards the outstanding Service Tax and remaining dues would be paid shortly.

The Ministry replied (October 2017) that the Commissionerate had not accepted the audit objection, which was not the case as the Commissionerate not only accepted the audit objection, but initiated action for recovery as well.

2.7.2.2 M/s Mercuri Goldmann (India) Pvt. Ltd., in Bangalore ST-II Commissionerate, providing CTC Services, also availed services of their collaborators/associate enterprises/Group Companies in the form of assistance in development of course material, consultancy for furtherance of business, usage of IPR, Usage of Licence etc. It was noticed that the assessee incurred expenditure in foreign currency towards travel, payment of licence fee, sales commission, getting course material developed/customised for the courses provided by the assessee. Since the services received by the assessee are of taxable nature and received in taxable territory provided from non-taxable territory, the same is chargeable to Service Tax in the hand of the

assessee under reverse charge. The total Service Tax liability worked out to ₹ 13.40 lakh.

When we pointed this out (December 2016) the Ministry stated (October 2017) that issue was under examination.

2.7.2.3 While examining the Annual Accounts and other relevant records of five assesseees in Delhi ST-II Commissionerate, we observed that these assesseees incurred expenditure in foreign currency in lieu of services received from the service providers located outside India. As these assesseees were located in India, these assessee were required to pay Service Tax on the expenditure incurred on the services received from outside India (Import of services), however, the Service Tax of ₹ 1.24 crore was not paid by these assesseees.

When we pointed this out (between November 2016 and February 2017) three assesseees accepted the audit observation and deposited Service Tax of ₹ 21.40 lakh including interest. The Ministry accepted the audit objection (October 2017) in one case and stated that matter was under examination in four cases.

2.7.2.4 M/s Wilhelmsen Ship Management Pvt. Ltd., in Mumbai ST-V Commissionerate, had made payment of ₹ 1.51 crore in foreign currency for import of services like Course Administration cost, Connectivity and Communication Charges, Training expenses and Membership and Subscription Charges. However, as seen from ST-3 returns, the assessee had not paid any Service Tax under reverse charge mechanism for these import of services. Omission to do so has resulted in short levy/non-payment of Service Tax of ₹ 16.75 lakh including interest.

When we pointed this out (April 2017³⁷) the Ministry did not accept the audit objection and stated (October 2017) that these services were received outside India and hence were not liable to Service Tax.

The reply of the Ministry was acceptable for all services except 'Connectivity and Communication charges' towards which assessee spent ₹ 1.14 crore. This amount represented the portion charged to the assessee out of the total cost paid by Wilhelmsen Group as subscription fee for procurement related software used for maritime operations. Thus the amount paid by the assessee represented cost of services consumed by it. Hence these services were received by the assessee in India only and attracted Service Tax.

³⁷ Audit extended to April 2017 due to delay in production of records

2.7.3 Irregular availing/utilisation of CENVAT credit

As per Rule 6(3) of CENVAT Credit Rules, 2004, service provider, having both taxable and exempted services has to maintain separate accounts for receipt and use of inputs/services. A service provider opting not to maintain separate accounts, has an option to take full CENVAT credit on all inputs/input services, irrespective of whether they pertain to taxable or exempted output service and then proportionately reverse CENVAT credit pertaining to exempted output services. Assessee should intimate his intension to exercise such option to the jurisdiction Superintendent. Rule 6(3A) (b) contemplates provisional reversal of CENVAT credit availed in respect of exempt goods and services on monthly basis and final reversal on annual basis. The provisional reversal is to be done on the basis of preceding financial year's figure.

During detailed examination of the records of the assessee, we noticed 47 instances of incorrect availing of CENVAT credit, non-payment of amount under rule 6(3) of CENVAT Credit Rules, 2004 etc., involving revenue of ₹ 10.55 crore which was recoverable with applicable interest. The Ministry had accepted the audit objections in 10 cases and stated that the issue was under examination in 37 cases. A recovery of ₹ 1.30 crore was reported so far.

A few cases are narrated below:

2.7.3.1 Scrutiny of ST-3 Returns of M/s Tata Projects Ltd., in Hyderabad ST Commissionerate, revealed that for the period from FY15 to FY16, the assessee had opted for paying an amount equivalent to CENVAT Credit attributable to inputs and input services used in or in relation to provision of exempted services. Accordingly, the amount liable for reversal was furnished in ST-3 returns, but the amount was not debited from CENVAT Register. This resulted into non/short payment of amount of ₹ 3.90 crore.

When we pointed this out (March 2017) the Ministry stated (October 2017) that due to restructuring in view of GST, the jurisdiction of the assessee had been changed and efforts were being made to locate the correct jurisdiction.

2.7.3.2 M/s Whistling woods International Ltd., in Mumbai ST-VI Commissionerate, was registered for providing commercial training in the field of entertainment sector, which were taxable, besides providing training to students on behalf of recognized universities viz. TISS (Tata Institute of Social Science), an exempted service. The assessee availed CENVAT credit on common services viz. professional fee, security services etc. and utilised the credit so availed in discharging the Service Tax liability. Since the assessee was providing both taxable and exempted services and no separate accounts

were maintained, proportionate CENVAT credit amounting to ₹ 91.26 lakh including interest for the years FY14 to FY 16 was required to be reversed.

When we pointed this out (February 2017) the assessee had paid a sum of ₹ 12.82 lakh in cash and balance amount of ₹ 78.44 lakh was yet to be reversed/recovered. The Ministry stated (October 2017) that due to restructuring in view of GST, the jurisdiction of the assessee had been changed and efforts were being made to locate the correct jurisdiction.

2.7.3.3 As per exclusion clause (C) of Rule 2(l) of the CENVAT Credit Rules, 2004, outdoor catering, if consumed primarily by a person or an employee is not an input service.

We noticed in Ahmedabad ST Commissionerate that, M/s. Indian Institute of Management, Ahmedabad availed CENVAT credit of ₹ 74.89 lakh during FY16 on outdoor catering which were consumed by its students, employees and other guests. This wrongly availed CENVAT credit was required to be recovered along with interest.

When we pointed this out (February 2017) the Ministry stated (October 2017) that SCN would be issued shortly.

2.7.4 Non/Short payment of Service Tax on other services by CTC assesses

During detailed examination of the records of the assessee engaged in commercial coaching and training centres, we noticed 45 instances of non-payment of Service Tax under different taxable services (other than CTC) involving revenue of ₹ 48.24 crore which was recoverable with applicable interest. The Ministry accepted the audit objection in two cases, did not accept audit objection in nine cases and stated that the issue was under examination in remaining 34 cases. A recovery of ₹ 6.56 lakh was reported so far.

A few cases are narrated below:

2.7.4.1 Non-payment of Service Tax on grants received for IT projects

As per Rule 6(2)(vii) of the Service Tax (Determination of Value) Rules, 2006, the value of taxable service does not include the amount subsidies and grant disbursed by the Government, not directly affecting the value of service. Thus, it can be concluded that if the subsidies and grant received from the Government directly affects the value of service then, it will be subject to Service Tax.

M/s Centre for Development of Advance Computing (C-DAC) in Pune ST Commissionerate, had entered into an agreement with Department of

Information Technology (DeitY) for execution of different projects/works like development of software programmes, awareness programmes on Information Technology and intellectual property etc. for which grants were released by DeitY. Since the grants given were directly linked to services provided by C-DAC, they attract Service Tax as per rule quoted above. But Audit noticed that against the grants of ₹ 241.42 crore received by the assessee during FY14 to FY16, the Service Tax amounting to ₹ 45.65 crore including interest was not levied.

When we pointed this out (February 2017) the Ministry did not accept the audit objection and stated (October 2017) that grants from the Government for implementation of welfare scheme for various section of society was not taxable service and hence not liable to Service Tax.

The reply of the Ministry was not tenable as the rule did not provide for making any distinction based on the purpose of service.

2.7.4.2 Non-payment of Service Tax on declared service

Agreeing to an obligation to refrain from an act, or to tolerate an act or a situation, or to do an act has been specifically listed as a declared service under section 66E of the Finance Act, 1994 as amended.

We noticed in Ahmedabad ST Commissionerate that the assessee M/s. Ahmedabad University (AU) promoted by Ahmedabad Education Society (AES), established as State private university,³⁸ awards degrees, diplomas and certificates recognised by law.

AU and AES entered into a Memorandum of Understanding (MOU) with M/s. Unichem Laboratories Ltd., (ULL) as per which ULL would pay ₹ 15 crore in phases subject to AU and AES conferring rights to ULL such as appointment of additional members and involving ULL representative in selection of Dean. The agreement also placed an obligation on AU to name the School of Management as suggested by donor, publish his name in all programs/activities/statutory publicity materials etc. During FY14 to FY16, assessee received sum of ₹ seven crore from ULL. As this transaction involved obligation to do certain acts as explained above, this would be covered under the ambit of declared services, on which Service Tax of ₹ 90.80 lakh was recoverable with applicable interest.

Further, AU and Centre for Design Research (CDR) at Stanford University agreed to set up a centre called Venture Studio for innovative business design at Ahmedabad. To meet the annual recurring cost of Venture Studio, AU

³⁸ registered under Section 8 of the Gujarat Private University Act, 2009

entered into MOU with four Mumbai based donors³⁹ by which these parties collectively expressed their intent to donate ₹ 10.60 crore divided equally among them over a period of five years from the commencement of the Venture Studio. In consideration to above donation, the MOU obligated AU/Venture Studio to (a) appropriately recognise the names of donors in annual reports and publications of the Venture Studio, (b) Provide 33.33 per cent Capital Share of Equity Capital of the Venture on Commercial launch of products or services to the donors in equal proportions as sweat equity (i.e. without making any fresh monetary payment) and (c) Give donors the right to nominate two members in the advisory Board and Management Committee. Audit noticed that during FY14 to FY16, assessee received sum of ₹ 5.62 crore from donors, a declared service under section 66E, on which Service Tax of ₹ 73.04 lakh was recoverable with applicable interest.

When we pointed this out (January 2017) the Ministry stated (October 2017) that SCN would be issued shortly.

2.7.4.3 Non-payment of Service Tax on commission received for provision of intermediary services

According to Rule 9(c), of “Place of Provision of Services Rules, 2012”, the place of provision of service for Intermediary services shall be the location of the service provider. Further, as per Rule 2(f) of said Rules, “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (the main service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account. Moreover, as per Rule 14 of said Rules, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.

M/s. Career Mosaic Pvt. Ltd., in Ahmedabad ST Commissionerate, was registered as ‘official counselling person’ with foreign universities. The assessee received commission from respective University as per their agreement, if any student got enrolled for the admission and studied in the University for minimum one term. It was noticed that the assessee availed the export benefits on such commission received from foreign universities considering it as ‘Export of Service’. This service was actually ‘Intermediary Service’ for which the place of provision of services was the location of the service provider i.e. assessee as prescribed under Rule 9(c) above and was

³⁹ M/s. J.M. Financial Group, M/s. ENAM Group, M/s. AsitKoticka Foundation & M/s. Daman Estate and Finance Pvt. Ltd.

taxable. Therefore, this service was Intermediary services on which assessee was liable to pay Service Tax of ₹ 89.32 lakh on income of ₹ 7.45 crore earned as Commission from foreign universities during FY14 to FY16.

When we pointed this out (January 2017) the Ministry stated (October 2017) that SCN would be issued shortly.

2.7.4.4 Non-payment of Service Tax on consultancy services

As per Section 65(92) of the Finance Act 1994, 'scientific or technical consultancy' means any advice, consultancy or scientific or technical assistance rendered in any manner, either directly or indirectly, by a scientist or a technocrat or any science or technology institution or organization, to any person, in one or more disciplines of science or technology.

M/s Indian Institute of Technology, Madras (IIT-M), in Chennai ST-III Commissionerate, was providing consultancy services, placement services, guest house services besides educational services. IIT-M received grants both from Government Departments and private industries for undertaking various projects during the period from FY14 to FY16. The Institute grouped these projects under two categories viz. (i) consultancy projects and (ii) sponsored projects. The IIT-M was paying Service Tax on income relating to the projects grouped under 'consultancy projects', which were funded by private industries and corporates. However, they did not pay Service Tax on the projects funded by Government Departments and Government agencies, which were called as 'sponsored projects'.

We test checked the projects categorized as 'sponsored projects', on which no tax was paid by the IIT-M, to ascertain taxability or otherwise of these projects. On examination of the records viz. agreements, letters of acceptance, etc., relating to 12 sponsored projects, it was observed that by executing these projects, IIT-M provided services either to the funding agency or to third parties. As per terms and conditions, the above funding programmes entailed consideration and transfer of rights over the result of the projects or technical knowhow either to the sponsors or third parties. Thus, these funding programmes qualified as 'service'. Hence, these 12 projects were liable to Service Tax.

The Institute was in receipt of service income amounting to ₹ 23.86 crore towards these projects during the period from FY14 to FY16, which involved Service Tax liability (inclusive of cess, etc.) of ₹ 2.87 crore which is recoverable with applicable interest.

When we pointed this out (January 2017) the Ministry stated (October 2017) that due to restructuring in view of GST, the jurisdiction of the assessee changed and efforts were being made to locate the correct jurisdiction.

2.7.4.5 Non levy/payment of Service Tax on reimbursement of expenditure

The Board clarified through Finance Act, 2015, by substituting explanation for clause (a) of section 67 in the Finance Act, 1994, that 'consideration' includes any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed. The substitution of explanation under section 67 of the Finance Act, 1994 is nothing, but a clarification of the provision already existing in the Act.

M/s Wilhelmsen Ship Management Pvt. Ltd., in Mumbai ST-V Commissionerate, had received reimbursement of expenses amounting to ₹ 18.56 crore in FY14 to FY16 from its related parties for providing HSEQ (Health, Safety, Environment and Quality), global support, training, crew mining and other services. Since, reimbursement of expenses was nothing but reimbursement of cost incurred for rendering the services, Service Tax was to be levied. However, the same was not levied. Omission to levy and pay Service Tax on above reimbursement of expenses has resulted in short payment of Service Tax of ₹ 3.61 crore including interest (approximately). Exact tax effect could not be worked out in absence of details of reimbursement.

When we pointed this out (April 2017⁴⁰) the Ministry did not accept the audit objection and stated (October 2017) that the amount pertained to services provided outside India and hence not liable to Service Tax.

The reply of the Ministry was acceptable in respect of all services except 'Crew Mining Service' towards which the assessee received ₹ 15.15 crore. These services include assistance provided in selection and recruitment/hiring of crew including conducting pre-job interviews and reference checks, ensuring medical examination has been passed, maintenance of records of crew etc., which clearly fall under the ambit of manpower recruitment service/business support service and provided in India only.

2.7.4.6 Non-adherence to Place of Provision of Services Rules

As per Rule 9 (b) of "Place of provision of Services Rules, 2012", the place of provision of service in case of 'Online information and database access or retrieval services' shall be the location of the service provider. As per section 67(2) of the Finance Act, 1994, where the gross amount charged by a service

⁴⁰ Audit extended to April 2017 due to delay in production of records

provider, for the service provided or to be provided is inclusive of Service Tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged. Further, a service provider had to fulfil a set of eight conditions prescribed in Rule 5(2) of Service Tax (Determination of Value) Rules, 2006 to be considered as pure agent and to exclude expenditure incurred as pure agent from the taxable value.

M/s Seed Infotech Pvt. Ltd., in Pune ST Commissionerate, had entered into an agreement with Prometric Inc., Maryland based in Australia to use their Testing System Software, used to conduct exams, for the sole purpose of operating an approved Authorised Prometric Testing Centre. The assessee would collect the fee from students/candidates for the services. The assessee had two type of clients i.e., corporate clients and individual students. Assessee levied Service Tax on bill raised to corporate clients only whereas raised invoices to the students without levying Service Tax treating itself as pure agent. Assessee had taken two different views on the same issue i.e., one for corporate clients and other for regular individual students. As Service Tax was not charged separately in bill to this category of individual students, it could be concluded that the receipts of ₹ 6.32 crore for FY14 to FY16 were including Service Tax and assessee was liable for payment of Service Tax of ₹ 1.19 crore including interest.

When we pointed this out (February 2017) the Ministry did not accept the audit objection and stated (October 2017) that the assessee provided services to its corporate clients as pure agents for promoting their services in India as they conducted examination for and on behalf of Prometric and collected fee on behalf of Prometric and remitted it to Prometric. Hence they were not liable to pay Service Tax on fee received from Indian students as well as corporate clients but they inadvertently paid Service Tax on bills raised on corporate clients.

The assessee was not fulfilling all the conditions prescribed in the Rule 5 (2), quoted *ibid* as there was no payment made to third parties on behalf of the service recipient and on the contrary the service provider is collecting payments from third parties i.e. fee from students on behalf of the service recipient. No services had been received from third parties on behalf of the service recipient. No separate indication had been made in the invoices issued for the payments made to third parties nor was the assessee recovering any actual cost incurred from the service recipient for availing services from the third parties. Hence, the service provider was not acting as pure agent of the service recipient. Thus, the Ministry's contention that the assessee acted as pure agent could not be accepted. Further, the Ministry's

reply regarding payment of Service Tax inadvertently on corporate clients was not acceptable as the assessee had been paying Service Tax on these receipts.

2.7.5 Non/short payment of interest

Section 75 of the Finance Act, 1994 (as amended) states that every person, liable to pay the tax in accordance with the provisions of Section 68 of the said Act, or rules made there under, who fails to credit the tax or any part thereof to the account of Central Government within the period prescribed, shall pay simple interest at prescribed rate (at the rate of 18 per cent up to six months, at the rate of 24 per cent from six months and up to one year, and at the rate of 30 per cent for more than one year) for the period by which such credit of the tax or any part thereof is delayed.

During detailed examination of the records of the assessees, we noticed 14 instances of Non/short payment of interest on delayed payment of Service Tax having money value of ₹ 82 lakh. Three assessees paid ₹ 8.18 lakh based on audit objection. The Ministry had stated (October 2017) that issue was under examination.

A case is narrated below:

We noticed in Ahmedabad ST Commissionerate that, M/s. Endeavor Careers Pvt. Ltd., had short paid interest by ₹ 42.85 lakh on delayed payment of Service Tax.

When we pointed this out (December 2016) the Ministry stated (October 2017) that due to restructuring in view of GST, the jurisdiction of the assessee had been changed and efforts were being made to locate the correct jurisdiction.

2.8 Conclusion

The CTC sector had been expanding rapidly but as seen during audit, the department's efforts in respect of broadening the tax base were inadequate. This had implications of revenue loss as evidenced by independent verification conducted by Audit. The department's performance in respect of scrutiny of return was also found to be deficient. There was no clear demarcation between taxable and exempted services, leaving scope for wrongful claim of exemptions, irregular utilisation of CENVAT credit and escapement of Service Tax on taxable services as seen during examination of the records of the assessees. Non-payment of Service Tax under reverse charge mechanism was also noticed in case of import of services.