

Chapter IV

Service Tax liability on Mandap Keeper's services

4.1 Introduction

Mandap keeper's services came under the Service Tax net with effect from 1 July 1997 through notification No. 19/1997-ST dated 26 June 1997. Section 65 (105)(m) of the Finance Act, 1994 (as applicable prior to 1 July 2012) defined 'taxable service' as any service provided or to be provided to any person, by a mandap keeper in relation to the use of mandap in any manner including the facilities provided or to be provided to such person in relation to such use and also the services, if any, provided or to be provided as a caterer.

With effect from July 2012, 'taxable service' means all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another, as per Section 66B of the Finance Act 1994.

4.2 Audit objectives

We examined the adequacy of the mechanisms in place in Gujarat and Rajasthan to ensure that Service Tax due to the Government of India from service providers providing mandap keeper services was in fact reaching the Government. Audit was conducted in this connection to assess

- i. whether the extant provisions of law, rules and procedures prescribed were adequate and are being complied with; whether the compliance verification mechanism was adequate to monitor compliance by assesseees;
- ii. whether there was an adequate mechanism to identify and bring in potential service providers into the tax net for levy of Service Tax; and
- iii. whether there was an effective monitoring and internal control mechanism.

4.3 Audit coverage

We examined relevant records available at the Ranges/Divisions and at assessee premises under Commissionerates in Gujarat and Rajasthan during the course of this audit.¹⁶ While 6 Commissionerates were covered during the course of the study in detail, we have also included

¹⁶ Records of 38 assesseees in Ahmedabad ST, Rajkot, Vadodara-I, Surat-I, Jaipur-I and Jaipur-II Commissionerates were examined.

aspects that came to our notice in respect of other Commissionerates during the course of audit examination.

The period covered was 2010-11 to 2012-13. However, earlier period has also been covered in some instances, based on the significance of issue(s). We issued the draft report to the Ministry in July 2014.

4.4 Audit findings

We noticed cases of non-payment/short payment of Service Tax, irregular availing/utilisation of Cenvat credit, non-payment of interest etc. having financial implication of ₹ 9.17 crore. The department accepted (December 2014) the audit objections having financial implication of ₹ 6.82 crore and recovered ₹ 15.85 lakh. The major findings are discussed below:

A. Adequacy of provisions of law, rules, procedures and compliance therewith

4.4.1 Registration under mandap keeper's services - Non-compliance with penalty provisions

Every person liable to pay Service Tax shall make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within thirty days from the date on which Service Tax under the Finance Act, 1994 is levied, vide Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules 1994. If commencement of business is subsequent to the date of levy of Service Tax, then the application is to be made within thirty days from the date of commencement of business.

Any person who fails to take registration in accordance with the above provisions shall be liable to pay a penalty which may extend to ₹ 5,000 (₹ 10,000 from 8 April 2011) or ₹ 200 for every day during which such failure continues whichever is higher starting with the first day after the due date, till the date of actual compliance under Section 77(1)(a) of the Finance Act 1994.

We noticed that the Commissionerates tend to use this provision very sparingly. Even in cases where there was delay in registration, this provision is rarely resorted to, by Ranges. For instance, one service provider M/s Ksheer Sagar Developers Pvt. Ltd. in Jaipur-I Commissionerate made application for registration with a delay of 48 days. The Commissionerate did not initiate any penal action against belated registration.

When we pointed this out (November 2013), the Commissionerate admitted the audit observation (December 2013) and stated that penal action is under process.

Recommendation No. 5

- *The Ministry may consider introduction of a clause for late fee in cases of delay in registration along the lines of statutory provision in Section 70 of the Finance Act, relating to late fee for delayed filing of returns.*

4.4.2 Inadequacies in compliance verification mechanism

The Commissionerates and subordinate formations such as Divisions and Ranges are to follow the norms prescribed by the department for carrying out internal audit and for conduct of detailed scrutiny of returns. A strong compliance verification mechanism would be such as would detect evasions by assesseees through one of the compliance verification mechanisms in place such as internal audit, scrutiny by ranges etc. We examined records of selected assesseees in order to gain assurance that revenue due to the Government was in fact reaching the Government and to ensure that the systems in place were strong enough to bring to light lapses on the part of assesseees. However, we observed in the following cases that the Commissionerates/ their subordinate offices had not detected either through internal audit process or through scrutiny, the following lapses on the part of assesseees involving revenue implication.

4.4.2.1 Non-payment of Service Tax

During examination of records of Ahmedabad Municipal Corporation (AMC), a registered assessee in Ahmedabad ST Commissionerate, we observed from the financial records that the assessee did not pay Service Tax of ₹ 28.66 lakh on rental income of ₹ 2.59 crore received from 'picnic house' at Kankaria area for the period 2008-09 to 2012-13. Further, the assessee had also earned income of ₹ 44.04 lakh for giving its property (Sanskar Kendra museum, Paldi) for exhibitions and other mandap keeper services, on which Service Tax of ₹ 4.83 lakh was not paid. Total non-payment of Service Tax worked out to ₹ 33.49 lakh in this case which is recoverable with applicable interest and penalty.

When we pointed this out (September 2013), the Commissionerate stated (June 2014) that a show cause notice had been issued (October 2013) to the assessee demanding Service Tax of ₹ 33.49 lakh.

4.4.2.2 Non-payment of Service Tax on other services provided by mandap keepers

Scrutiny of financial records at assessee premises of M/s. Sindhu Sewa Samaj, a registered service provider in Ahmedabad ST Commissionerate, revealed that the assessee had entered into agreement with M/s. Bhagwati Banquets and Hotels Ltd. during the period October 2009 to December 2013. As per the

agreement, the former permitted M/s. Bhagwati Banquets to provide decoration and catering services to hirers for their functions to be organised in the premises of the assessee. The assessee collected fixed charges from M/s. Bhagwati Banquets and Hotels Ltd. as consideration and thus earned income of ₹ 1.50 crore during the period 2008-09 to 2012-13. Since this activity amounted to provision of 'business auxiliary services' as defined under Section 65(19) of the Finance Act, 1994, Service Tax liability was to be fulfilled. However, the assessee did not pay Service Tax of ₹ 16.83 lakh which is to be recovered with applicable interest and penalty.

When we pointed this out (September 2013), the Commissionerate issued (October 2013) a demand letter to the assessee for ₹ 35.68 lakh including interest and penalty. The assessee has made part-payment of ₹ 2.58 lakh.

4.4.2.3 Mismatch between figures declared in ST-3 returns and figures mentioned in the financial records

Examination of assessee records in 5 instances in Ahmedabad ST Commissionerate and 1 in Jaipur-II Commissionerate indicated that the taxable value of services reflected in financial records were much higher than in ST-3 returns. The position continued during the period since introduction of Point of Taxation Rules, 2011. The lower figures depicted in Service Tax returns indicate leakage of revenue attributable to inadequate compliance verification. We observed that these omissions were not detected either through internal audit or through scrutiny of assessee records.

For instance, we observed that though clearly Ahmedabad Municipal Corporation (AMC) was a major revenue contributor and had to be covered by internal audit annually or at least once in two years, no internal audit was conducted during the entire period covered by CERA.

When we pointed out (September 2013) these omissions, Ahmedabad ST Commissionerate issued (October 2013) show cause notice in all the cases demanding Service Tax. In respect of M/s. Swagat Caterers Pvt. Ltd., the Commissionerate informed that the assessee paid the differential Service Tax.

We await (December 2014) response from Jaipur-II Commissionerate.

We await the Ministry's reply (December 2014).

4.4.2.4 Short payment of Service Tax

CBEC vide Circular dated 24 September 1997 clarified that hotels and restaurants which let out their banquet halls along with rooms, gardens etc. for holding/organizing any marriage, conference, parties, shows, etc. would be covered under the definition of 'mandap keeper's services'. Notification

No. 1/2006 (ST) dated 1 March 2006 and subsequently Notification No. 26/2012 (ST) dated 20 June 2012 provided for abatement in respect of mandap keeper's service at the rate of 40 per cent upto 30 June 2012 and thereafter at the rate of 30 per cent of the gross amounts charged by the service provider. Section 65 (105)(m) of the Finance Act, 1994 defined 'taxable service' as any service provided or to be provided to any person, by a mandap keeper in relation to the use of mandap in any manner including the facilities provided or to be provided to such person in relation to such use and also the services, if any, provided or to be provided as a caterer.

Where facilities such as LCD, projectors, photography, video shooting, etc. are provided by a mandap keeper in relation to use of mandap and charges collected for providing these facilities, the value would be included in the value of taxable services and Service Tax would be leviable accordingly.

a) We noticed during the examination of ST-3 returns, books of accounts and Service Tax records of two mandap keepers in Jaipur-I Commissionerate and five mandap keepers in Jaipur-II Commissionerate that the assessee let out their banquet halls along with rooms and catering for particular dates but they did not pay Service Tax on gross amount charged for accommodation provided during the period 2010-11 and 2011-12. Service Tax on the gross amount charged i.e. ₹ 8.81 crore worked out to ₹ 63.62 lakh. This is to be recovered with interest and penalty as may be applicable.

When we pointed this out (November 2013), the Jaipur I Commissionerate admitted the audit observation in both cases (December 2013) and stated that action is being taken to recover the government revenue. We await the Jaipur II Commissionerate's response (December 2014).

We await the Ministry's reply (December 2014).

b) Similarly in respect of four mandap keepers in Jaipur-I Commissionerate, we noticed that the assessee let out their banquet hall along with accommodation in rooms, claimed abatement of 50 per cent (instead of at 40 per cent) for the period 2011-12 and at 40 per cent (instead of at 30 per cent) during the period 2012-13 resulting in short payment of Service Tax of ₹12.86 lakh. This is to be recovered with interest and penalty as may be applicable.

When we pointed this out (November 2013), the Jaipur I Commissionerate admitted the audit observation in all cases (December 2013) and stated that action is being taken to recover the government revenue along with applicable interest and penalty.

c) We observed that M/s Hotel Leela Venture Palace in Jaipur-II Commissionerate let out banquet/ conference hall along with other facilities such as photograph, video shoot, LCD, projector, Kalbelia programme,

lawajama arrival performance, dance etc. for a consideration. It collected charges for such services amounting to ₹ 1.32 crore during the period from 2010-11 to 2012-13 and paid Service Tax on ₹ 2.35 lakh only. Service Tax of ₹ 14.34 lakh was not paid on the remaining amount as shown below:

Table 4.1

(₹ in lakh)				
Year	Gross amount charged	Amount on which ST paid	Amount on which ST not paid	Short payment of ST
2010-11	32.10	1.93	30.17	3.11
2011-12	53.03	0.14	52.89	5.45
2012-13	47.07	0.28	46.79	5.78
Total	132.20	2.35	129.85	14.34

We await the Ministry/Commissionerate's response (December 2014).

4.4.2.5 Short payment of an amount equivalent to Cenvat credit attributable to the exempted services

Rule 6(3) of the Cenvat Credit Rules, 2004 provides that a service provider opting not to maintain separate accounts shall follow either of the following payment options (i) the service provider of output services shall pay an amount equal to six per cent of value of the exempted services or (ii) shall pay an amount equivalent to the Cenvat credit attributable to input services used in or in relation to provision of exempted services subject to the conditions and procedures specified in sub-rule (3A).

During the scrutiny of returns of M/s Marudhar Hotels Pvt. Ltd. and M/s Indian Hotels Co. Ltd. in Jaipur-II Commissionerate, we noticed that the assessee opted option (ii) above and did not pay the amount of Cenvat credit attributable to exempted services correctly, resulting in short payment of ₹ 75.95 lakh. This is to be recovered with interest and penalty as may be applicable.

We await the Ministry/Commissionerate's response (December 2014).

4.4.2.6 Service Tax collected but not deposited

As per Rule 6 of the Service Tax Rules, 1994 read with provisions of Section 66 and 68 of the Finance Act, 1994, an assessee shall pay Service Tax on monthly basis by 5th/ 6th of the month following the calendar month in which service is deemed to have been provided.

Scrutiny of accounting records of Ahmedabad Municipal Corporation in Ahmedabad ST Commissionerate revealed that the collection of Service Tax under various categories including mandap keeper's service, sale of space for advertisement and renting of immovable properties for the period

from 2008-09 to 2012-13 worked out to ₹ 9.43 crore. However, remittance of Service Tax corresponding to the same period was shown as ₹ 8.36 crore. Thus, ₹ 1.07 crore was collected from the customers but not paid to Government account.

When we pointed this out, the Commissionerate replied (October 2013) that show cause notice had been issued (October 2013) to the assessee.

4.4.2.7 Other cases

Apart from the above, we also came across 18 cases of irregularities related to non/short payment of Service Tax, irregular availing of Cenvat credit, abatement and non/short payment of interest on delayed payment of service etc. involving revenue of ₹ 39.19 lakh. The department had accepted the audit observations in 11 cases involving revenue of ₹ 26.03 lakh and had recovered ₹ 13.26 lakh. We await the department's response in the remaining cases (December 2014).

We await the Ministry's reply (December 2014).

B. Adequacy of mechanism to identify potential service providers

4.4.3 Creation of special cell for broadening of tax base and identification of stop-filers

Broadening of tax base is necessary to ensure growth of revenue. With increasing reliance on voluntary compliance, it becomes important for the department to put in place an effective mechanism for collecting information from various sources to identify persons who are liable to pay tax but had avoided payment so as to bring them into the tax net thereby broadening the tax base. CBEC issued instructions in November 2011 to create a special cell in each Commissionerate to identify potential assesseees and to identify stop-filers. DGST's Action Plan circulated to Chief Commissionerates in May 2003 also stressed on collection of information from various sources such as yellow pages, service providers' associations, newspaper advertisements, regional registration authorities, websites, banks, municipal corporations and major assesseees including PSUs and private sector organisations etc.

We noticed non-registration of services by some Municipalities and Nagar Palikas involving ₹ 1.31 crore. We also came across deficiencies in identification of stop-filers by the Commissionerates. These are discussed in the following paragraphs.

4.4.3.1 Non-registration by service providers and consequent non-payment of Service Tax

Renting of immovable property became taxable under the Finance Act, 1994 vide Section 65(105)(zzzz) with effect from 01 June 2007, pandal and shamiana vide Section 65(105)(zzw) with effect from 10 September 2004 and mandap keeper's services vide Section 65(105)(m) with effect from 1 July 1997.

We verified the records of Local Bodies available with the Office of the Accountant General (General and Social Sector Audit), Rajkot and found that 13 local self-Government institutions such as Municipality and Nagar Palika had received income on taxable services relating to immovable properties which would be taxable under one or more of the above mentioned service categories. However, they had not taken registration with the Service Tax authorities and had not discharged their Service Tax liability. Service Tax involved in these cases, worked out to approximately ₹ 1.31 crore.

Four cases have been confirmed by the Commissionerates as unregistered service providers. We await (November 2014) response in respect of the remaining cases.

The observation indicates that action being taken by Commissionerates in Gujarat needs to be intensified to ensure that potential assesseees are covered in Service Tax net.

We await the Ministry's reply (December 2014).

4.4.3.2 Identification of stop filers and non-filers

From the information collected from the selected Commissionerates, we observed that as of October 2013,

- i) No special cell was created in Vadodara-I Commissionerate.
- ii) Rajkot Commissionerate intimated that surveys were carried out by Survey Section and a team had been created for identification of stop filers and non-filers. The Commissionerate did not give any specific information regarding creation of special cell. The Commissionerate had identified 877 late filers, 12,669 stop filers and 19,404 non-filers. A team of three officers was created which issued 2,167 emails to various stop filers/non filers during 2012-13 and 5,906 notices were issued up to September 2013. Out of these, only 720 stop filers/non filers responded.

Rajkot Commissionerate also stated that there were errors in the database. Further, some of the parties to whom the department issued notices submitted evidence that they had filed returns. Furthermore, hundreds of contractors

take registration before bidding and on failure to get bid, they simply leave the city/become untraceable.

iii) From the information furnished by Surat-I Commissionerate, we observed that 35,753 returns were due for the period 2010-11 to 2012-13. Out of which only 8,971 returns were received and 21,402 returns i.e. 60 per cent of the returns due were not received at all. Action taken by the Commissionerate concerning non-filers/stop filers was not made available to Audit.

iv) Similarly, we noticed that special cell was created in Commissionerates Jaipur-I and II in August 2011 and in June 2012 respectively only to deal with the matters of stop filers/ non-filers of Service Tax returns. No surveys were conducted during the period of audit. As on 31 March 2013, 26,801 assesseees in Jaipur-I Commissionerate and 10,877 assesseees in Jaipur II Commissionerate had been identified as stop filers. 448 assesseees in Jaipur-I and 457 assesseees in Jaipur-II had surrendered their registration. While Jaipur-I Commissionerate furnished information concerning issue of 4,593 letters to stop filers asking the reasons for non-filing of ST-3 returns, based on the information furnished by DG (Systems), we were not provided such details by Jaipur-II Commissionerate.

v) In Ahmedabad Service Tax Commissionerate, a special cell has been created and surveys have been carried out. The Commissionerate identified 6,214 stop filers to whom written intimations were made and they were responding. The Commissionerate also identified 1,112 non-filers and handed over the list to planning cell of Audit Section for special audit.

C. Inadequate monitoring by Commissionerates

4.4.4 Rules have been prescribed under Section 94 of the Finance Act, 1994 (as amended) for the purpose of carrying out the provisions of Chapter V. Unless compliance with the same is monitored, their purpose is likely to be defeated. We observed the following instances which reveal the need for strengthening of monitoring by the Commissionerates in the respective areas:

4.4.4.1 Non-monitoring of timely receipt of ST returns

Rule 7 of the Service Tax Rules, 1994 provides that ST-3 return is to be filed by 25 October and 25 April for the six-monthly period of April-September and October-March respectively. Non-filing / delay in filing of return attracts late fee under Section 70 of the Finance Act, 1994 read with Rule 7C *ibid*. Delayed submission of ST-3 returns is to pointed out by Range Officers as part of the checks in preliminary scrutiny.

During examination of assessee records, we observed 16 instances in Ahmedabad, Rajkot, Vadodara, Jaipur-I and Jaipur-II Commissionerates where the assessee filed ST-3 return belatedly during 2010-11 to 2012-13. However, no action was initiated by the respective Ranges to ensure submission of returns along with late fees under Section 70 of the Finance Act or to impose penalty under Section 77.

Rajkot Commissionerate replied (April 2014) that one assessee deposited (April 2014) the late fee subsequently. We await (December 2014) the Commissionerates' responses in respect of the other cases.

We observe that there was no system whereby the Commissionerate/division monitored the action taken by subordinate formations in this regard. Even the introduction of ACES and online filing of returns by assesseees did not ensure ranges follow-up quickly in cases of non-compliance with the Rules or in ensuring better monitoring by Commissionerates/Divisions.

We await the Ministry's reply (December 2014).

4.4.4.2 Non-payment of tax dues through electronic medium

Where an assessee has paid total Service Tax of ₹ 10 lakh or more, in the preceding financial year, he shall deposit the Service Tax liable to be paid electronically, through internet banking. The threshold limit has been lowered to ₹ 1 lakh with effect from 1 January 2014.

As per Section 77(1)(d) of the Finance Act, 1994, any person who is required to pay tax electronically, fails to do so, shall be liable to a penalty upto ₹ 5,000 (upto 07 April 2011) which has been further raised to ₹ 10,000 with effect from 8 April 2011.

We observed (November 2013) seven instances where assesseees under four Commissionerates Ahmedabad, Rajkot, Surat-I and Vadodara-I did not comply with the provisions requiring electronic payment of tax dues. The ranges had not initiated any action either to impose penalty or to issue any letter to the assesseees encouraging e-payment of Service Tax as of November 2013.

The Commissionerates replied (April-June 2014) that three assesseees had paid the penalty subsequently and another had agreed to pay. Besides, a show cause notice dated 17 October 2013 had been issued in one case and was under process in another case. We await (December 2014) the response in respect of one case.

We also observe that there was nothing on record to indicate that the Commissionerates were monitoring action taken by ranges to encourage compliance.

We await the Ministry's reply (December 2014).

4.5 Conclusion

Audit is of the view that the extant compliance verification systems need to be strengthened in areas including conduct of internal audit and scrutiny of returns to minimise evasion. A more proactive approach needs to be taken as regards broadening of Service Tax base.