

Chapter 3: Levy of Service Tax

Section 67 of the Finance Act, 1994, envisages that where the provision of service is for a consideration in money, value of taxable service shall be the gross amount charged for such service.

During the course of this performance audit we observed 145 cases of non/short-payment of service tax of ₹ 44.74 crore. Out of this, an amount of ₹ 1.92 crore has been recovered in 23 cases.

A few illustrative cases are given below:-

3.1 Service tax not paid

3.1.1 As per Section 65 (105) (zzzza) of the Finance Act, 1994, taxable service means "any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams and includes such contract carried out for the purpose of erection, commissioning or installation of machinery, equipment etc., whether pre-fabricated or otherwise.

During the examination of records of **M/s. HEC Ltd.**, in Ranchi Commissionerate, we observed that they had supplied machinery/equipment to customers against supply order and also provided services such as erection and commissioning of equipment, testing etc. between April 2011 and March 2014. The assessee received ₹ 44.71 crore on account of erection and commissioning, testing, etc. of the equipment supplied but did not pay service tax on this amount. This resulted in non-levy of service tax of ₹ 2.21 crore.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

3.1.2 Similarly in eight other cases in Ranchi and Jamshedpur Commissionerates we observed that they had supplied machinery/equipment to customers against supply order and also provided services such as erection and commissioning of equipment, testing etc. between April 2011 and March 2014. The assessee received ₹ 98.15 crore on account of erection and commissioning, testing, etc. of the equipment

supplied but did not pay service tax on this amount. This resulted in non-levy of service tax of ₹ 4.81 crore.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

3.1.3 During the examination of records of M/s. Patel Engineering Ltd., in Chandigarh-I Commissionerate, we observed that the assessee was engaged in the construction of Sawara Kuddu Hydro Electric Project at Sawra Kuddu in District Shimla during 2013-14 involving a contract value of ₹ 80.88 crore. However, the assessee did not pay service tax of ₹ four crore for execution of the above work.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

3.1.4 During the examination of records of **M/s. Indu Projects Ltd.**, in Hyderabad IV Commissionerate, we observed that the assessee was providing many services including WCS. The service tax liable to be paid by the assessee worked out to ₹ 14.30 crore for the period from April 2013 to March 2014. However, the assessee paid service tax of ₹ 10.43 crore. This resulted in short payment of service tax of ₹ 3.87 crore.

We pointed this out (October 2014), the reply of the Department/Ministry is still awaited (June 2015).

3.1.5 During the examination of records of **M/s. Ramky Infrastructure Ltd.**, in Hyderabad (ST) Commissionerate, we observed that the assessee was providing many services including WCS. The service tax liable to be paid by the assessee worked out to ₹ 4.96 crore for the period from April 2013 to March 2014. However, the assessee paid service tax of ₹ 1.03 crore. This resulted in short payment of service tax of ₹ 3.93 crore.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

3.1.6 During the examination of records of **M/s. Rajendra Mittal Construction Company Pvt. Ltd.**, in Jaipur-I Commissionerate, we observed that the assessee received an amount of ₹ 19.02 crore in respect of construction of a new building or a civil structure or a part thereof for the purpose of commerce and industry to its customers namely, **Shree Cement Ltd., Wonder Cement Ltd. and Powergrid Corporation of India Ltd.**, during

the years 2011-12 and 2012-13. However, the assessee did not pay the service tax of ₹ 85.93 lakh.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

3.1.7 During the examination of records of **M/s. Navyuga Engineering Co. Ltd.**, in Patna Commissionerate, we observed that the assessee received an amount of ₹ 18.12 crore from **M/s NTPC**, Barh, during October 2013 to March 2014 for WCS. However, the assessee did not pay the service tax of ₹ 80.85 lakh.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

3.1.8 During the examination of records of **M/s. Mangalam Build Developers Ltd.**, in Jaipur Commissionerate, we observed that the assessee received WCS from a proprietary firm (M/s. Devi Construction Company) during 2013-14 for a value of ₹ 31.65 crore in respect of road construction in residential projects but did not pay service tax of ₹ 78.25 lakh being 50 per cent service tax payable.

We pointed this out (October 2014), the reply of the Department/Ministry is still awaited (June 2015).

3.2 Non-inclusion of value of free supply

As per rule 2A(ii)(A) of the Service Tax (Determination of Value) Rules, 2006, in case of works contracts entered into for execution of original works, service tax shall be payable on 40 per cent of the total amount charged for the works contract. As per explanation (b) thereunder, for the purpose of determination of value of works contract "total amount" shall include sum total of the gross amount charged for the works contract and the fair market value of all the goods and services supplied in or in relation to the execution of the works contract, whether for consideration or otherwise, in a case where the value of service portion cannot be determined under Rule 2A(i).

3.2.1 During the examination of records of **M/s. Mytrah Energy (I) Ltd.**, and **M/s. Bindu Urja Infrastructure Ltd.**, in Hyderabad-IV Commissionerate, we observed that the assessee discharged service tax without adding the value of free material viz. steel, unit transformers, units of electrical work involved in the execution of works contract of supply of unit transformer, electrical

line items, part of renewable devices, installation of units transformer, etc. during 2013-14 which is incorrect. The value of free supply material worked out to ₹ 113.11 crore. Non-inclusion of actual value of free supply material resulted in short payment of service tax of ₹ 3.37 crore.

We pointed this out (December 2014), the reply of the Department/Ministry is still awaited (June 2015).

3.2.2 During the examination of records of **M/s. Hilite Projects**, in Calicut Commissionerate, we observed that the assessee discharged service tax for original work on 60 per cent of the total receipt (value was arrived at by adding 20 per cent to total receipt due to non-availability of value of supply of cement and steel at free of cost), instead of paying service tax on 40 per cent of gross amount charged during 2012-13 and 2013-14 which is incorrect. There is no such provision in the rule which permits adoption of incorrect percentage in lieu of adoption of correct value of free supply material. We ascertained from the assessee that the exact value of free supply material worked out to ₹ 20.06 crore. Non-inclusion of actual value of free supply material resulted in short payment of service tax of ₹ 40.28 lakh.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

3.2.3 During the examination of records of **M/s. Progressive Endeavors Pvt. Ltd.**, in Haldia Commissionerate, we observed that the assessee paid service tax in respect of works contracts entered into with **M/s. Godrej Agrovet Ltd.**, but did not include the value of cement and steel supplied free of cost of ₹ 4.34 crore which led to undervaluation of the service which resulted in short payment of service tax of ₹ 21.47 lakh during 2011-12 to 2013-14.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

3.3 Incorrect application of Point of Taxation Rules

As per rule 3(b)(i) of Point of Taxation Rules, 2011 'continuous supply of service' means where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of contract which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

During the examination of records of **M/s. Pratibha Industries Ltd.**, Mumbai-II (ST) Commissionerate, we observed that the assessee provided WCS as the Main Contractor to developers such as **Rustomjee Realty Pvt. Ltd.**, **Tata Housing Projects** and discharged service tax liability on 40 per cent of value of the total amount charged, the payments for which were certified by the Developers as per the contractual agreement. However, the assessee excluded an amount of ₹ 59.41 crore from the total amount during 2013-14, being the uncertified amount for bills raised upto 31 March 2014. Since the WCS being a continuous supply of service, the submission or processing of bills as 'Tax Invoice' to the Developer on the completion of works executed was the point of taxation as against the date of certification of bills. Hence, non-inclusion of the above amount resulted short levy of service tax of ₹ 2.93 crore for the year 2013-14.

On being pointed out (November 2014), the department intimated (April 2015) that a show cause notice for ₹ 2.93 crore was issued in March 2015.

The reply of the Ministry is still awaited (June 2015).

3.4 Non-payment of service tax on time

As per Section 65 (105) read with Section 67 of the Finance Act, 1994, the service tax shall be payable on receipt of advance payments irrespective of the fact when the services are provided in respect of which advance payment has been received.

Further, as per rule 6 of the Service Tax Rules, 2005 with effect from 1 April 2005, the service tax shall be paid to the credit of the Central Government by the 5th/6th of the month immediately following the calendar month in which the payments are received, towards the value of taxable services, except for the quarter ending in March, the payment of which shall be paid to the credit of Central Government by the 31st March of the calendar year.

During the Test check of ST-3 return and Running Account bill of **M/s. Cinda Engineering & Construction Pvt. Ltd.**, in Delhi (ST) Commissionerate, during the period 2010-11 to 2013-14 we observed that the assessee had received advance of ₹ 31.97 crore (for goods and services) against the civil construction work for **M/s. China Steel Corporation India Pvt. Ltd.**, in the month of February 2013. However, the assessee had made the service tax payments on the dates of running account bill instead of receipt date of advance received (between 7 February 2013 to 2 July 2014). Further, there

was an outstanding mobilisation balance of ₹ 17.68 crore after 2 July 2014 on which service tax was not paid by the assessee. This resulted in non-payment of service tax of ₹ 2.19 crore and interest of ₹ 1.05 crore till February 2015.

We pointed this out (February 2015), the reply of the Department/Ministry is still awaited (June 2015).