

Chapter 3 : Systems and procedures

The Service tax department is assigned with the responsibility of identification of assesseees who are providing services, ensuring that they get themselves registered with the department, pay the applicable service tax to the Government account in time and comply with the extant provisions and instructions pertaining to service tax. In the era of self-assessment based on trust and self-policing and explosive growth of service providers, there is a need for strong compliance verification systems which make effective use of Information Technology.

The entertainment sector covers a plethora of services, the inter linkages among which have implications for levy of service tax. Nine of these services, being listed services, are distinctly identifiable in ACES. The other services are merged under the omnibus head "Other than listed services". There is a scope to identify non-registrants, non-filers etc. by correlating the data of ST registrations and tax payments available under ACES with other databases like Income Tax and Ministry of Corporate Affairs (MCA), registration details of certain service providers like broadcasters with regulatory bodies and data maintained by professional bodies or associations.

We examined whether the systems in place for broadening of tax base and compliance verification are adequate and efficient to tackle entertainment industry which is growing and expanding year by year. The results of our examination of the systems in place in the department with specific reference to entertainment sector are discussed under five broad headings:

- Broadening of tax base
- Monitoring of Filing of returns
- Scrutiny of returns
- Internal audit
- Other issues

3.1. Broadening of tax base

Director General of Service Tax (DGST) issued instructions in May 2003 to the field formations to obtain information on unregistered service providers from various sources such as yellow pages, regional registration authorities and through inter-governmental and inter-departmental co-ordination especially with Income Tax, State Sales Tax departments through Regional Economic Intelligence Committee (REIC) meetings. CBEC directed its field formations in November 2011 that a special cell be created in each Commissionerate to

focus on widening of tax base by bringing in potential assesseees. Further, the department is required to use inputs from 360° analysis of data done centrally by DG Systems and intelligence inputs from DGCEI etc.

We examined the department's efforts to identify non-registrants and non-filers relating to entertainment sector through use of inputs from various sources. Our observations are discussed below:-

3.1.1. Non-existence of special cell to bring potential assesseees into tax net

We enquired from selected 17 Commissionerates regarding the creation of special cell to focus on widening of tax base by bringing in potential assesseees. Eight Commissionerates⁹, informed (September 2016 to November 2016) that no special cells were created to identify potential assesseees. Cochin Commissionerate intimated (December 2016) that 'Service Tax (Anti-Evasion) Team' constituted in June 2015 held meetings to chalk out plans to broaden the tax base, and that no formal minutes were recorded thereon. No reply was received from the remaining eight Commissionerates.

We pointed this out (between September and November 2016), the Ministry (May 2017) admitted the objection in respect of Mumbai ST-VII Commissionerate and regarding Jaipur and Bengaluru ST-I Commissionerates, stated that efforts were being made to identify new tax payers from many varied sources and that analysis of data received from third party by the Data Management Cell had been useful in widening of tax base. However, reply of the Ministry was silent regarding the non-existence of special cell in respect of these two Commissionerates and the reply was awaited in respect of the remaining 14 Commissionerates.

The Board's instruction regarding formation of special cell, the basic step to ensure widening of tax base, was not adhered to.

3.1.2. Cross verification with third party data sources by Audit

In absence of special cell, we could not assess the extent to which available third party data sources relating to entertainment sector were tapped by the department to broaden the tax base. Hence we attempted to independently correlate third party data sources relating to entertainment sector with the registrations details of ACES. The results of our examination are discussed below:

⁹ Ahmedabad ST, Bengaluru ST-I, Chandigarh-I, Delhi ST-I, Delhi ST-II, Delhi ST-III, Kolkata ST-II, and Mumbai ST-VII

3.1.2.1. The Ministry of Corporate Affairs (MCA) maintains data of Company Identification Number (CIN), PAN, status of the Company (viz active, dormant, under liquidation) and income relating to Companies. We obtained the MCA data pertaining to activity codes which cover services relating to entertainment sector. We cross verified the MCA data with the ST data received from DG (Systems) and observed that 1,312 corporates providing services relating to entertainment sector who are active in MCA data base and have income exceeding the threshold limit of ₹ 10 lakh, prescribed to pay service tax, had prima facie not obtained service tax registration.

We pointed this out (between November and December 2016), the Ministry stated (May 2017) that the Mumbai ST-VII Commissionerate forwarded the data received from audit on entertainment sector to their Division office for initiating necessary action and that Ahmedabad ST Commissionerate initiated the action against all the non registered units. However, the Ministry had not given any reply on systemic lapse pointed out by audit.

3.1.2.2. A cross-verification of website (justdial.com) information in Bengaluru ST Commissionerate revealed that 114 service providers under categories of entertainment sector were not registered with the department.

3.1.2.3. An attempt was also made to link the information of the Local Cable Operators available on the website of TRAI with that of Cable operators of service tax data of the Bengaluru ST Commissionerate. This revealed that out of 550 cable operators registered with various Multi System Operators, only 37 cable operators had obtained service tax registration. Thus, 513 cable operators had prima facie not obtained service tax registration.

We pointed this out (November 2016), the Ministry stated (May 2017) that as the data furnished by audit related to entire zone and being raw data, without the threshold limit, there was a possibility of ST registration in some other name and centralised registration taken elsewhere in India and that the necessary verification was in progress.

3.1.2.4. Cross-verification of data in respect of Kannada Film Producers (Karnataka Film Chamber of Commerce) with Service Tax/CBDT data revealed that 199 Kannada film producers were not registered with service tax department.

We pointed this out (December 2016), the Ministry stated (May 2017) that the investigation was in progress.

3.1.3. Identification of defaulters from input service records of the assessees

The big assessees in the entertainment industry, especially film production houses and even management agencies, utilised the services of multiple agencies and individual professionals. One source to identify non-registrants or non-payment/short-payment of service tax by small players and professionals is the records of the assessees selected for audit. We attempted to examine feasibility of using this source by collating details of service providers from whom selected assessees received services and correlating these details with registration and returns details on ACES. The results of such examination are detailed below:

3.1.3.1. From the records of the nine assessees in Chennai ST-II Commissionerate, the details of service providers who had rendered input services to the assessees were culled out and cross verified with ACES data. It was found that 58 input service providers had under reported the taxable value of services in their returns involving non / short payment of service tax of ₹ 6.78 crore.

We pointed this out (November 2016), the Ministry intimated (May 2017) the recovery of ₹ 43.29 lakh in two cases and stated that the action was in progress in the remaining cases.

3.1.3.2. During the examination of records of M/s. Central Advertising Agency and M/s. MM TV Ltd., in Cochin Commissionerate, we noticed that three input service providers provided their services to these assessees. On cross verification of department data of these three input service providers, we observed that they had either not remitted or had short remitted the service tax of ₹ 1.20 crore collected from the above two assessees.

We pointed this out (November 2016), the Ministry stated (May 2017) that they were investigating the case.

3.1.3.3. In Mumbai ST-VI Commissionerate, we examined the records of M/s Phonographic Performance Ltd., a non-profit making organization which administered issuing and granting licenses of sound recording under Section 13(1)(c) of the Copyright Act to its members. On collating the data of its members, it was observed that 64 registered members located in the same Commissionerate had prima facie not obtained service tax registration.

We pointed this out (December 2016), the Ministry stated (May 2017) that the report would follow.

3.1.3.4. In Cochin Commissionerate, during examination of records of seven assessees engaged in providing event management, distribution services etc.,

we identified 50 input service providers and other personnel from film industry who provided services to these assesseees. Further it was also noticed that though all those service providers had income above the threshold limit of ₹ 10 lakh, all the above service providers were not registered with the department.

We pointed this out (between August and November 2016), the Ministry stated (May 2017) the report would follow.

3.1.3.5. During the examination of records of M/s Team Rustic Pvt., Ltd., in Mumbai ST-VII Commissionerate engaged in providing Event Management service, we observed that the two Directors (Shri Vinod Janardhan/AAIPJ7789D and Ms. Maya Janardhan/AAIPJ7790E) had received rental income. However, they neither obtained registration nor discharged any service tax in this regard. Service tax of ₹ 14.71 lakh for the FYs 2013-14 to 2015-16 was recoverable from both the Directors on their above rental income.

We pointed this out (November 2016), the Ministry intimated (May 2017) the recovery of ₹ 14.71 lakh alongwith interest of ₹ 6.36 lakh.

3.1.4. Efficacy of Tax 360 program

CBEC has embarked on a pilot implementation called Tax 360, to optimally use its own data and integrate data from external systems such as Income Tax, Directorate General of Foreign Trade, Ministry of Corporate Affairs and State VAT data. The leads emerging from this 360⁰ analysis are to be shared with the field formations concerned for further investigations. The report of High Powered Committee (October 2014) which laid out IT strategy for CBEC recognized the need to expand this initiative further.

The use of IT and data analytics play a significant role in enabling effective functioning of tax administration in a non-intrusive manner with minimum physical interface. For a sector like Entertainment sector with numerous small players and covering lot of newer / emerging services and given the multiple sources of data available, 360⁰ analysis is an effective tool for broadening tax base. We examined the efficacy of Tax 360 Program with reference to Entertainment sector.

3.1.4.1. Dissemination of inputs from Tax 360 program

We enquired (between September and December 2016) whether 360⁰ analysis report have been received from Board and if yes the action taken by the Commissionertes regarding data sharing from various authorities from selected 17 Commissionerates. Ahmedabad ST, Chennai ST-II, Mumbai VII and Noida ST Commissionerates stated that no such report has been received

by them from the Board. Cochin Commissionerate stated (November 2016) that 360° analysis received from the Board of 20 top services, but none of these pertained to Entertainment sector. In Delhi ST-I, Delhi ST-II and Delhi ST-III Commissionerates, no records / files were found regarding 360° analysis. Reply was awaited from remaining nine Commissionerates (January 2017).

Ministry while admitting the objection in respect of Mumbai ST-VII Commissionerate stated (May 2017) that the necessary action was initiated. Reply in respect of remaining 16 Commissionerates was awaited.

3.1.4.2. Non-utilisation of Income Tax Data in Tax 360 program

The Income Tax Rules require that Income tax assesseees who deduct tax on payment to non-residents file quarterly TDS returns in Form 27A. The Department also receives from the authorized dealers, a copy of Form 15CA and Form 15CB (certification by Chartered Accountant and undertaking by remitter furnished to the authorized dealer as a prerequisite for remittance abroad) in respect of each remitter which include details about nature / purpose of remittance (satellite services, franchises services etc.). Remitters are to upload details of foreign remittances in Form 15CA. Further Form 26AS contains the details of TDS to ensure correct reflection of TDS amount deposited by the assessee.

To study the efficacy of Tax 360 program in the context of Entertainment sector, we used specific Income Tax data relevant to Entertainment sector and correlated the same with ACES. We did a detailed examination in Cochin Commissionerate which stated that none of the inputs received from 360° analysis pertained to entertainment sector. We noticed the following instances, where the specific details available in the Income Tax database were not utilised to detect leads pointing to non-filing of returns and non / short payment of service tax, indicating shortcomings in Tax 360 Program:

- a) M/s. Friday Film House in Cochin Commissionerate produced a film 'Peruchazhi' which was shot in locations in India as well as United States of America (USA). For the production of the film at USA, assessee utilized the services of a production company located at USA (non-taxable territory), Eternal Rainbows Inc, New Jersey, USA. Accordingly, the assessee paid ₹ 1.74 crore during the period of May 2014 to October 2014 for the services received from M/s Eternal Rainbows Inc. For remitting the money to USA, the assessee was required to fill in the details in Form 15CA and submit it to Income Tax authorities. The details of remittance should have been linked with ACES under Tax 360 programme. However, we noticed that the

assessee did not discharge the service tax of ₹ 21.49 lakh and the same remained undetected.

We pointed this out (November 2016), Ministry stated (May 2017) the report would follow.

- b) M/s Jeevan Telecasting Corporation Ltd., in Cochin Commissionerate received taxable service of channel carriage from Emirates Cable TV and Multimedia LLC (E-Vision), Dubai, since December 2008. We observed that the assessee paid (December 2013 and December 2014) service tax of ₹ 1.99 lakh, as service receiver, only for the period of October 2011 to March 2012, under VCES. For remitting the money to abroad assessee was required to fill in the details in Form 15CA and submit it to Income Tax authorities. The details of remittance should have been linked with ACES details under Tax 360 programme. But the non payment of service tax amounting to ₹ 14.07 lakh by the assessee on the Channel carriage fees of ₹ 1.29 crore during April 2013 to December 2015 remained undetected.

We pointed this out (November 2016), the Ministry stated (May 2017) that a case has been booked by Survey, Intelligence and Verification Unit and an SCN was being issued.

- c) In respect of 21 stop filers/non-filers in Cochin Commissionerate, we collected the income details under 26 AS/assessment orders from the Income Tax Department. On cross checking the Income Tax data with the returns and challan statements, we observed that the status of return filing/tax payment of the assesseees have not been verified by the Department by resorting to the method of collecting third party information. However, on our analysis, we observed the following:-
- Three assesseees¹⁰ who were non-filers under ACES had income of ₹ 15.51 crore during the relevant period as per Form 26AS / Income Tax Assessment Order.
 - Three assesseees¹¹ stopped filing returns in 2015-16. Audit found difference between the income as per Form 26AS / Income Tax Assessment Order and the value of services reported in ST-3 returns for the period 2012-13 to 2014-15 amounting to ₹ 2.74 crore. Further for the years 2015-16 for which assessee did not file ST

¹⁰ Varnalaya Visuals Pvt. Ltd., Ordinary Films and M/s Handmade Films

¹¹ Sri. Dulquer Salmaan, Ernakulam Cable Communicators Pvt. Ltd. And Megamedia Films and Studio Pvt. Ltd.

returns, the assessee reported an income of ₹ 39.20 lakh under income tax.

We pointed this out (December 2016) the Ministry stated (May 2017) that they initiated the action in all the above cases.

- d) A cross-verification of Income tax data with Service tax returns in Chennai ST-II Commissionerate revealed non-reporting or short reporting of taxable value of services amounting to ₹ 3.43 crore during the period 2013-14 to 2015-16 in four cases where assessee were filing ST returns.

Table No.3

(Amount in crore of ₹)

| Sl. No. | Name of the assessee (M/s.)/STC No. | Non/Short reporting of taxable value in ST-3 return |
|---------|-------------------------------------|---|
| 1. | Hamsa Theatres Pvt. Ltd | 0.44 |
| 2. | Goods News Channel Pvt. Ltd | 1.57 |
| 3. | Manobala | 0.25 |
| 4. | Sundar C | 1.17 |

We pointed this out (December 2016); the Ministry while admitting the objection stated (May 2017) that the action was initiated in all the above cases.

The instances of non-filing of returns and non / short payment of service tax identified by audit using Income Tax data, indicate that the department did not exploit full potential of Income Tax data under Tax 360 Program.

3.2. Monitoring of filing of returns

Section 70 of the Finance Act, 1994, provides that every person liable to pay the Service Tax shall himself assess the tax due on the services provided by him and shall submit the prescribed return. Rule 7C of the Service Tax Rules, 1994, envisages levy of late fee for delay in furnishing of returns.

Section 77(2) of the Finance Act, 1994, provides that where any person contravenes any of the provision of the Service Tax Rules, 1994, for which no penalty is separately provided, he shall be liable to a penalty which may extend to ₹ 10,000.

The Directorate General of Systems and Data Management has created a report utility in ACES {Assessee-Wise Detailed Report (AWDR)} for identifying stop filers/non-filers/late filers which can be viewed by the field officers.

We enquired about the details of non-filing of returns and delayed filing of returns along with consequent levy of late fee from the selected 17 Commissionerates. While eight Commissionerates¹² provided the details completely, two Commissionerates (Hyderabad ST and Mumbai ST-III) provided only details of non-filing and other two Commissionerates (Chennai ST-II and Jaipur) provided only details of late filing. Remaining five Commissionerates either did not provide the details or provided incomplete details. Our observations on analysis of the details provided are given below:

3.2.1. Non-filing of returns

We enquired from the selected Commissionerates regarding the details of returns due and received for the assessees under entertainment sector. From the information furnished by the department it was observed that against 43,502 returns due in 10 Commissionerates¹³ during the audit period, only 31,599 returns were filed. Thus non-filing of returns was as high as 27.36 per cent (11,903 returns).

Test check by Audit of the information provided regarding non-filing with ACES revealed that 743 assessees in six Commissionerates¹⁴ had not filed 2,022 returns during the period between 2013-14 and 2015-16. These assessees were liable to pay a penalty of ₹ 2.02 crore and a late fee of ₹ 4.04 crore.

We pointed this out (between September and December 2016), the Ministry in respect of Ahmedabad ST, Delhi ST-I, and Hyderabad ST Commissionerates stated (May 2017) that the letters were regularly written to the stop filer assessees persuading them to file the returns. Further, it also stated that after receipt of ST3 returns the action for recovery of late fee would be initiated. Reply in the remaining seven Commissionerates was awaited.

In addition to the above, in three Commissionerates which did not provide the details viz., Mumbai ST-VI, Mumbai ST-VII and Noida ST, Audit generated details from ACES and noticed that 4,440 assessees had not filed 21,376 returns on which ₹ 21.38 crore of penalty and a late fee of ₹ 42.75 crore was leviable.

¹² Ahmedabad ST, Bengaluru ST-I, Bubhaneswar-I, Cochin, Delhi ST-I, Delhi ST-II, Delhi ST-III and Mumbai ST-IV

¹³ Ahmedabad ST, Bengaluru ST-I, Bhubaneshwar-I, Cochin, Delhi ST-I, Delhi ST-II, Delhi ST-III, Hyderabad ST, Mumbai ST-III and Mumbai ST-IV

¹⁴ Chennai ST-II, Delhi ST-I, Delhi ST-II, Delhi ST-III, Mumbai ST-III and Mumbai ST-IV

We pointed this out (between September and December 2016) the Ministry while admitting the objection in respect of Mumbai ST-VII Commissionerate stated (May 2017) that they initiated the action to recover the penalty amount for non-filing of ST3 returns. Reply was awaited in the remaining cases.

3.2.2. Late filing of returns

From the information on late filing of returns furnished by the selected 12 Commissionerates¹⁵, we observed 841 instances of belated filing of returns in the case of 485 assesseees during the audit period on which the late fee of ₹ 74.71 lakh was leviable, which was not levied by the department.

Audit test checked data through ACES in eight Commissionerates¹⁶ and noticed that in 637 instances of belated filing of returns in the case of 368 assesseees during the audit period, a late fee of ₹ 48.54 lakh was leviable, which was not levied by the department.

In addition to this, in three Commissionerates viz., Mumbai ST-III, Mumbai ST-VI and Mumbai ST-VII, who had not furnish this information to audit, we observed from details generated from ACES that there were 30 instances of belated filing of returns in the case of 14 assesseees during the audit period on which the late fee of ₹ 3.27 lakh was leviable.

We pointed this out (between September and December 2016); the Ministry while admitting the objection intimated (May 2017) the recovery of ₹ 9.50 lakh in 106 cases and stated that the action was initiated in the remaining cases.

The high incidence of non-filing or late filing of returns by the assesseees and lack of proper follow up action on the same by the departmental officials indicate that the existing features of ACES are not being exploited to address the issue of non / late filing of returns by the assesseees.

3.2.3. Non-monitoring post-VCES compliance

In Budget 2013 speech the Finance Minister disclosed that while there were nearly 17 lakh registered assesseees under service tax, only about seven lakh filed returns. He therefore proposed to introduce voluntary compliance

¹⁵ Ahmedabad ST, Bengaluru ST-I, Bhubaneswar-I, Chennai ST-II, Cochin, Delhi ST-I, Delhi ST-II, Delhi ST-III, Jaipur, Kolkatta ST-II, Mumbai ST-IV, and Noida ST.

¹⁶ Ahmedabad ST, Bengaluru ST-I, Delhi ST-I, Delhi ST-II, Delhi ST-III, Jaipur, Kolkatta ST-II and Noida ST

encouragement scheme 2013 (VCES) in order to motivate the registered assesseees who had stopped filing the return, to file return and pay tax dues.

An amnesty scheme like VCES would be called a success only when the beneficiaries of such schemes pay the declared tax dues and continue to pay taxes and comply with other statutory duties during the period subsequent to the period covered under the scheme.

The failure of department to initiate stringent action against stop filers / non-filers, who had enjoyed the immunity provisions under VCES and again reverted back to the habit of non-filing of returns, was already pointed out (during October and December 2015) to the department in the course of Performance Audit on VCES 2013 and CAG report¹⁷ on the same was already tabled (August 2016) in the Parliament. In ATN furnished (December 2016) on this report, the Ministry assured that action was taken / suitable instructions were issued regarding post-VCES monitoring. But still we found that post-VCES monitoring was lacking in the Commissionerates test checked during the current audit (December 2016).

Our observations on failure of department in monitoring compliance by VCES declarants in post VCES period are detailed below:

3.2.3.1. Non-filing of returns by VCES declarants rendering taxable services in post VCES period as per income tax returns

The Mumbai Service Tax Zone has the highest concentration of assesseees pertaining to entertainment sector. We examined department's monitoring of post-VCES compliance in case of VCES declarants from entertainment sector in the selected four Commissionerates of Mumbai ST Zone. We noticed that 171 assesseees who had availed of the benefit of VCES were not filing the service tax returns and there was no follow-up by the department to ensure that those who availed of benefits under VCES scheme continue to remain under service tax net.

In order to correlate the data of VCES declarants who turned non-filers with their Income Tax Returns (ITRs), we sought details in respect of ITRs filed by these non-filers from the Income Tax Department. We received the ITRs of 58 assesseees out of these 171 assesseees. On its examination, we noticed that 12 assesseees in Mumbai ST-III, Mumbai ST-IV and Mumbai ST-VII Commissionerates were rendering the taxable services having service income ranging from ₹ 15.39 lakh to ₹ 34.67 crore. However, they neither paid the service tax nor filed ST-3 returns even after taking benefit of VCES scheme. One such case is illustrated below: -

¹⁷ CAG's Report No. 22 of 2016 on VCES 2013 and Para 4.3.1 contains a comment on post-VCES monitoring

M/s. Perks Links & Services Pvt. Ltd. in Mumbai ST-VII Commissionerate had availed the benefit of VCES, 2013. After availing the benefit of VCES, the assessee had stopped filing the ST-3 return during the period 2014-15 and 2015-16. On analysis of income tax return of the assessee, it is observed that the assessee had disclosed taxable service income of ₹ 34.67 crore during the same period.

We pointed this out (December 2016), the Ministry stated that (May 2017) the report would follow after due verification.

3.2.3.2. Non-filing by VCES declarants identified from ACES

In Chennai ST-II Commissionerate, cross-verification of VCES Data with ACES data revealed non-filing of ST-3 returns in respect of two cases, out of 19 VCES declarants relating to the entertainment sector.

We pointed this out (December 2016), the Ministry stated that (May 2017) the report would follow regarding the recovery of dues.

3.3. Efficacy of Scrutiny of returns

3.3.1. Detailed Scrutiny of returns

The purpose of detailed scrutiny of returns is to ensure correctness of assessments made by assesseees and is a complementary process to internal audit of assesseees carried out by the department.

Board vide circular dated 30 June 2015 revised the guidelines for detailed scrutiny of ST-3 returns with effect from 1 August 2015, as per which the Return Scrutiny Cell shall maintain the records of the assesseees and the returns which are selected for detailed scrutiny and also the results thereof. The list of returns to be taken up for detailed scrutiny would be finalized by the Additional / Joint Commissioner in-charge of Division based on the risk scores calculated centrally. The list of the assesseees selected will be sent to the respective Divisions. The scrutiny process of an assessee should be completed in a period not exceeding three months.

Further, as per Para 4.3.6 of the Circular, assesseees selected for audit or audited recently (in the past three years) should not be taken up for detailed scrutiny. In no event should an assessee be subjected to both audit and detailed manual scrutiny. To begin with, the returns for the financial year 2013-14 should be taken up for detailed scrutiny.

We noticed non-adherence to Board's instruction regarding detailed scrutiny of returns in selected Commissionerate / Division / Range as detailed:-

3.3.1.1. In Cochin Commissionerate during the period from September 2015 to March 2016, 585 returns were selected for detailed scrutiny. However, 202 returns were still pending for detailed scrutiny as of March 2016. We observed that 46 assesseees which were either audited or were under preventive action were selected. Further we observed that the selection list contained 21 assesseees who had registered subsequent to 2013-14. This shows erroneous selection of units for detailed scrutiny.

We pointed this out (August 2016), the Ministry stated (May 2017) that the reply would follow.

3.3.1.2. Scrutiny of the information furnished by the Jaipur Commissionerate, revealed that none of the Ranges in Jaipur Commissionerate conducted detailed scrutiny of any ST-3 return during 2013-14 and 2014-15. Reasons for non-conducting of detailed scrutiny were not furnished. We further noticed that during 2015-16, out of 241 service tax returns selected, detailed scrutiny of only 106 returns was conducted. In case of remaining 135 returns detailed scrutiny was not conducted, which included 41 assesseees already audited or newly registered. This shows lack of coordination between the Audit Commissionerate (internal audit) and jurisdictional Commissionerate. Detailed scrutiny in respect of remaining 94 assesseees is pending for more than three months till date of audit.

We pointed this out (November 2016), the Ministry stated (May 2017) that in the first phase, returns for the year 2013-14 were taken up for detailed scrutiny by the field formation and being scrutinized as per CBEC guidelines dated 30 June 2015. However, the reply was silent regarding short coverage of returns in detailed scrutiny during 2015-16 subsequent to issue of revised guidelines by Board in June 2015 and lack of coordination between audit and jurisdictional Commissionerates.

3.4. Internal Audit

The Audit Commissionerates carry out Internal Audit of selected assesseees to verify their compliance with rules and regulations relating to Service Tax. The Central Excise Service Tax Audit Manual, 2015 laid down a detailed check list for internal audit teams. The internal audit reports are reviewed and finalised in Monitoring Committee Meetings (MCM) convened by Audit Commissionerate, where Executive Commissionerates are also represented. The evaluation in MCMs is aimed at assessing quality of audit.

3.4.1. Non-detection of discrepancies in internal audit

During the course of examination of records of selected assesseees, we came across two instance in Mumbai ST-VII Commissionerate involving tax effect of ₹ 32.89 lakh where prescribed compliance with rules and regulations

relating to Service Tax was not adhered to be the assessee. It is pertinent to mention here that all these assessee were audited by the internal audit wing of the Department but it failed to detect the lapse pointed out by audit. The cases are illustrated below: -

3.4.1.1. As per Rule 6 of the Cenvat Credit Rules, 2004, Cenvat credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted service. As per Explanation of Rule 6(3), the assessee who avails any one of the options under this sub-rule, shall exercise such option for all exempted services provided by him. Further, the assessee who opts for the option under sub-rule (3A) shall intimate his option in writing to the jurisdictional Superintendent; and shall for every month determine provisionally and pay the amount of Cenvat credit attributable as per the formula prescribed under Rule 6(3A) based on the figures of preceding financial year. Further, sub-rule (3A) (b), (c) and (d) provided that the difference between the amount paid provisionally and finally determined shall be paid on or before 30 June of the succeeding financial year. Also sub-rule (3A)(e) provides that any amount which is short paid in this regard shall be recovered with interest at the rate of twenty-four per cent per annum.

During the scrutiny of records of M/s UBM India Pvt. Limited in Mumbai ST-VII Commissionerate, it was observed that the assessee was providing both taxable services (sponsorship service) as well as exempted services (Business exhibition service) and had opted to follow Rule 6(3) (ii) read with Rule 6(3A). During 2014-15, the assessee had calculated and reversed Service Tax credit attributable to exempted output services on provisional basis @ 10.0058 per cent for each month based on the figures of preceding year 2013-14. However, the final attributable Service Tax credit for the year 2014-15 worked out to 12.77 per cent. The assessee failed to determine the final attributable service tax credit for the whole year and pay the same on or before 30 June 2015, in contravention of Rule cited above. Accordingly, the assessee was liable to pay an amount of ₹ 28.64 lakh on short short-reversal of credit on exempted services.

It was observed that internal audit was conducted in May 2015 for the period 2010-11 to 2014-15 but this omission/lapse had not been pointed out by them.

We pointed this out (December 2016), the Ministry stated (May 2017) that the internal audit was conducted for the period from 2010-11 to 2013-14. The reply of the Ministry was silent on the aspect of non-coverage of period

of up to March 2015 in the audit conducted in May 2015, as stipulated in Department's Audit Manual¹⁸.

3.4.2 Non-conducting of internal audit of mandatory units

As per para 5.1.2 of the Service Tax Audit Manual 2011, tax payers whose annual service tax payment (including cash and Cenvat) was ₹ three crore or more in the preceding financial year may be subjected to mandatory audit each year. A revised Central Excise and Service Tax Audit Manual 2015 effective from October 2015 prescribes the selection of assessees and tax payers would be done based on the risk evaluation method prescribed by the DG (Audit).

During examination of records of M/s. Raj Television Network Ltd., and M/s. Tamilnadu Arasu Cable TV Corporation Ltd., in Chennai ST-II Commissionerate, we observed that though these assessees are mandatory units, internal audit was not conducted during 2013-14 and 2014-15.

During examination of records of M/s. MM TV Ltd., and M/s. Malayala Manorama Ltd., in Cochin Commissionerate, we observed that though these assessees are mandatory units, internal audit was not conducted during 2014-15. In the case M/s. Federal Bank Ltd., the audit was conducted with a delay of two years.

We pointed this out (December 2016), the Ministry stated (May 2017) that due to non-availability of officer and non-availability of records from the assessees, the audit was planned between September 2016 and January 2017 on the above cases.

3.5. SCN and Adjudication

As per the CBEC's Adjudication Manual, the amount demanded must be indicated in the show-cause-cum-demand notice (SCN). If SCN is based on one ground, demand cannot be confirmed on other ground and the adjudication order cannot travel beyond the SCN.

Quantification of demand and basis on which it has been worked out should be explained in the SCN. Any document such as bill of entry, shipping bill etc., which may form basis for calculation of duty / tax demanded should be included in the list of relied upon documents in the SCN.

3.5.1. Issue of faulty SCN

During the examination of records of M/s Mukta Arts Ltd., an exhibitor, in Mumbai ST-VI Commissionerate, we noticed that the assessee was served an SCN for ₹ 2.22 crore on 15 October 2015 covering the period from 2011-12 to

¹⁸ per para 4.3 of Service Tax Audit Manual, 2011 and para 4.2.4 of CESTAM, 2015

2013-14 wherein service tax for providing 'Business Support Service' was demanded. However, at the time of issue of SCN, the department considered the gross collection from Box-office instead of considering only revenue retained by the exhibitor after deducting the share of the distributors due as per agreement. Since the share of distributors will fall under 'temporary transfer of copyright of cinematographic film,' inclusion of this amount in the SCN is not correct thereby rendering the notice as faulty in law.

Further it was also noticed that an amount of ₹ 4.26 crore was also not paid by the assessee in respect of revenue retained while providing business support service for the period from 2013-14 to 2015-16. Audit noticed in the same Commissionerate, the department had issued an SCN dated 14 October 2014 on similar issue to M/s Reliance Media Works Ltd., which was confirmed¹⁹ (November 2015) by the adjudicating authority.

We pointed this out (December 2016), the Ministry stated (May 2017) the report would follow.

3.5.2. Short quantification of demand

During examination of records of M/s. SPI Cinemas Pvt., Ltd., in Chennai ST-II Commissionerate, we noticed that an SCN demanding an amount of ₹ 2.09 crore due to non-payment of service tax on the income received towards Theatre Management Charges, Counter Booking Delivery Charges, 3D Glass charges, etc. was issued on 4 September 2015 for the period from 2012-13 and 2013-14. An analysis of the Annexure to the SCN revealed that there was short quantification of service tax demand of ₹ 25.81 lakh due to incorrect adoption of rate of tax.

We pointed this out (September 2016), the Ministry stated (May 2017) that the value adopted in the show cause notice was cum-tax value as there was no evidence to indicate that the assessee had collected service tax separately. Hence, the benefit was given suo moto by the department.

The reply of the department is not acceptable since such benefit was not extended at the time of raising demand in April 2016 for the period 2014-15. The adoption of two different stands while issuing SCNs relating to two years is incorrect. Further, it is for the assessee to request for granting cum-tax benefit (by producing evidences that he had not collected service tax separately) and such benefit cannot be granted suo motto by the department.

¹⁹ vide Commissioner's Order-in-Original No.05/ST-VI/RK/2015 dated 30 November 2015

Recommendations

4. The department needs to activate the special cell and evolve a system of using the third party data as well as details from the records of filers to identify potential non-registrants as well as defaulters.
5. The Board may consider automation of the process of identifying and issuing notices for levy of penalty/late fee on non/belated filing of returns.
6. The Board needs to strengthen its Tax 360 programme to ensure that data already available is utilised optimally and also should identify sector specific data sets and correlate the same in Tax 360 programme.
7. The Board should consider revising the system through which automated check lists for preliminary scrutiny in ACES are drawn.

Ministry stated (May 2017) that under CBEC-GST Application the above provisions is being incorporated as per the CGST Law and would be managed by the common portal namely GSTN portal.

Ministry was requested to share specific details of CBEC-GST application which would address recommendations made by audit and details are awaited (June 2017).

