Compliance Audit Observations relating to Public Sector Undertakings (other than power sector)

CHAPTER VI

Compliance Audit Observations Relating To Public Sector Undertakings (other than power sector)

Important audit findings emerging from test check during the audit of the PSUs (other than power sector) are included in this Section.

Assam Electronics Development Corporation Limited

6.1 Undue benefit to private contractor

The Company extended undue benefit to a private contractor by procuring the scanners at ₹0.90 crore in violation of agreement conditions.

The Board of Secondary Education Assam (SEBA) offered (December 2012) Assam Electronics Development Corporation Limited (Company) to carry out pre and post examination activities for 3,84,585 students and requested to quote the rate for the work offered. The Company accordingly obtained rate quotation of ₹ 31 per student from Exxon Automation Private Limited (EAPL) and submitted (December 2012) the same to SEBA.

The Company entered (4 March 2013) into an agreement with EAPL to execute the works relating to pre and post examination activities of SEBA at a rate of ₹ 34 *per* student as finally agreed to at the time of entering into the agreement. As per the agreement conditions, EAPL was to utilize its own infrastructure and equipment (including the scanners) to execute the work within the agreed rate of ₹ 34 *per* student. EAPL completed (15 March 2013) the work and billed an amount of ₹ 1.26 crore[1] to the Company. The Company received (June 2014) the entire amount from SEBA against the work executed. Meanwhile, the Company in anticipation of allotment of similar work assignment by SEBA for subsequent four years (2014 to 2017), procured (11 March 2013) 61 high-end scanners from EAPL at a cost of ₹ 0.90 crore at its own cost for utilizing the same by EAPL for execution of the above works.

Audit observed that:

[1] Although EAPL submitted bills amounting to ₹ 1.31 crore (3,84,709 x ₹ 34), it later offered a discount of ₹ 0.05 crore.

- The Company before procuring the scanners had not obtained any commitment from EAPL regarding reimbursement of the cost of the scanners or appropriate adjustment in the agreed rate (₹ 34 *per* student) of the work. Further, the Company also did not pursue the matter in this regard with EAPL even after completion of the work.

- The Company also did not obtain any commitment from SEBA regarding any future work assignment before procuring the scanners so as to recover the cost of the scanners out of the expected future work assignments.

As a result, the Company could neither claim the cost of scanners from EAPL nor any further work assignment was entrusted to the Company by SEBA. Since the Company did not have any specific job for utilization of such scanners in future, it requested (June 2014) EAPL to buyback the scanners at a negotiable price, which however, did not materialize. As such the expenditure (₹ 0.90 crore) incurred by the Company on purchase of the scanners remained blocked.

Thus, the Company by procuring scanners at ₹ 0.90 crore for utilising by EAPL in violation of agreement terms extended an undue benefit to EAPL at its own cost.

The Company in its reply (October 2018) stated that the Company procured high-end scanners as those were not readily available in the market on hire basis and also in anticipation that SEBA would offer the scanning works in the consecutive year after 2013. The Government while forwarding (January 2019) the reply of the Company stated that the Company had decided to deduct an amount of ₹ 0.46 crore from EAPL.

The replies of the Government/Company were not tenable in view of the fact that as per the work agreement, EAPL was required to utilize its own infrastructure/equipment for execution of work assignment. As such, procurement of scanners by the Company for utilization by EAPL was irregular. Moreover, the Company was required to recover the entire cost (₹ 0.90 crore) of scanners from EAPL, which was still not recovered. Further, procurement of high-end scanners on the basis of mere anticipation, without having any firm commitment from Government/SEBA was also unjustified.

Assam Fisheries Development Corporation Limited

6.2 Loss of revenue

The Company suffered loss of potential revenue of ₹0.31 crore due to injudicious decisions in allotment of its fishery.

The guidelines approved (14 September 2001) by the Board of Directors of Assam Fisheries Development Corporation Limited (Company) relating to leasing of fisheries provided that a minimum revenue should be fixed for every fishery and the leasing arrangements should be settled through a tendering system to the highest bidder.

Audit observed that:

The Company issued (June 2013) Notice Inviting Tender for leasing out the 'Sibasthan Potta Kollong' fishery for the period 2013-14 to 2019-20 with a base price of ₹ 0.09 crore *per* annum and accordingly received five bids. The fishery was allotted (13 August 2013) to the second highest bidder (H^2 bidder[2]) at ₹ 0.28 crore per annum citing incorrect mention of the date of the bid (₹ 0.33 crore per annum) of the highest bidder (H^1 bidder). This contention was overruled (27 August 2013) by the Guwahati High Court (Court) on an appeal of the H^1 bidder[3] and the allotment of the fishery to the H^2 bidder was cancelled (12 September 2013).

The Company accordingly allotted (8 November 2013) the fishery to the H^1 bidder at his quoted lease rent of ₹ 0.33 crore per annum for the period 2013-20. The Company allowed the H^1 bidder to remit the proportionate lease rent of ₹ 0.13 crore for the period of 88 days from the date of allotment of fishery to H^2 bidder (13 August 2013) to the date of re-allotment of fishery (8 November 2013) to the H^1 bidder as per Court's verdict. Thus, due to its injudicious decision to allot the fishery at the first instance to the H^2 bidder, the Company sustained a loss of potential revenue (₹ 0.13 crore) for the idle period.

The lease agreement of H^1 bidder was cancelled (4 February 2015) by the Company due to non-payment of lease rent amounting to ₹ 0.22 crore. On an appeal made by the H^1 bidder, the Court directed (11 February 2015) the Company to suspend the cancellation of the lease subject to the H^1 bidder

[2] Sri. Manik Chandra Das
[3] Sri Tapan Barman

depositing an amount of ₹ 0.22 crore within two weeks from the date of passing of the order (*i.e.* by 25 February 2015).

Though the H^1 bidder did not pay the outstanding rental dues (₹ 0.22 crore), the Company did not invite fresh tender for re-allotment of the fishery through competitive bidding. The Company after being pointed out (17 November 2015) by the Fishery Manager about the illegal fishing in the fishery, allotted (20 November 2015) it again to the H^2 bidder for the period from 20 November 2015 to 31 March 2016 at a lump sum amount of ₹ 0.04 crore. Due to unreasonable delay in re-allotment of the fishery after cancellation of the lease agreement of defaulting H^1 bidder, the fishing activities remained suspended for another 267 days (26 February to 19 November 2015). This led to a further loss of revenue of ₹ 0.18 crore[4] as this delay was not justified because the fishery was awarded to the same H^2 bidder without inviting the fresh tender.

Thus, the significant lapses in the case were as under:

- Allotment of the fishery to H^2 bidder instead of H^1 bidder at first instance, which led to cancellation of allotment based on Court's verdict and loss of potential revenue of ₹ 0.13 crore;

- Unreasonable delay of 267 days in re-allotment (20 November 2015) of the fishery after expiry of deadline (25 February 2015) fixed by the Court for clearing the lease dues by the defaulting H^1 bidder; and

- Re-allotment (20 November 2015) of the fishery to H^2 bidder without inviting fresh tenders through competitive bidding.

The Company and the Government in their reply during a meeting held (12 November 2018) with Audit stated that the delay of 267 days (26 February 2015 to 19 November 2015) in allotment of fishery was because of the representations received from H^1 bidder against cancellation of his allotment and the resultant extra time taken by the Company to take decision in the matter. As regards re-allotment of fishery to H^2 bidder without inviting fresh tenders, the Company in its formal reply (27 November 2018) stated that the fishery was re-allotted to H^2 bidder from 20 November 2015 to 31 March 2016

[4] ₹ 25.20 lakh ÷ 365 days × 267 days = ₹ 18.43 lakh (Audit considered the amount of ₹ 25.20 lakh per annum being the awarded value of the fishery after invitation of fresh tender to a new lessee from April 2016 for a period of 7 years).

considering the fact that the bidder was the group leader of the fishermen community.

The reply was not acceptable as the action of the Company to re-allot the fishery to H^2 bidder without inviting fresh tenders was in violation of the procedure prescribed under Assam Fishery (Amendment) Rule 2005 for allotment of fisheries. Further, the reasons given by the Company/Government during the meeting with Audit (12 November 2018) to justify the delay of 267 days in re-allotment of the fishery was also not tenable in absence of any documentary evidence in support of their claim.

Assam Tea Corporation Limited

6.3 Non-collection of service tax

The Company extended undue benefit of ₹0.27 crore to the Lessee with corresponding loss to the Government exchequer by not incorporating the necessary clause in the lease agreement for recovery of the service tax.

The Finance Act, 1994 (Act) enacted by the Government of India (GoI) included the renting of immovable property services under the scope of Service Tax with effect from 1 June 2007. As per the provisions of the Act, read with Service Tax Rules, 1994, notified by the GoI:

A. Every person liable to pay service tax (assessee) was required to assess the tax due on the services provided by him. The assessee was also required to furnish a return to the Superintendent of Central Excise in such form and in such manner and at such frequency as prescribed. (Section 70)

B. The assessee was required to pay the service tax to the credit of the GoI by the 6th day of the month immediately following the calendar month in which the service takes place. (Rule 6)

C. Every person, who fails to credit the tax or any part thereof to the account of the GoI within the period prescribed shall pay simple interest. The said interest would be at such rate not below 10 *per cent* and not exceeding 36 *per cent* per annum. (Section 75)

Assam Tea Corporation Limited (Company) leased (since April 2012) its factory at Longai Tea Estate to Jayshree Tea & Industries Limited (Lessee) for 'processing of green tea leaves into black tea for commercial purposes'. The rent was fixed based on per kilogram of tea produced in the above factory.

Audit observed that although the renting of factory falls under the scope of service tax provisions, the Company while entering into the lease agreement did not incorporate the enabling clause in the lease agreement to recover the service tax component from the Lessee. As such, the Company could neither collect the service tax component on the factory rent from the Lessee nor deposit the same with the service tax authorities. The total service tax liability for the period from April 2012 to June 2017[5] worked out to ₹ 0.27 crore[6] on the factory rent (₹ 2.05 crore) paid by the Lessee.

Thus, due to non-inclusion of enabling clause in the lease agreement for recovery of the service tax, the Company was liable to bear the service tax liability (₹ 0.27 crore). This tantamount to extension of undue benefit of ₹ 0.27 crore to the Lessee with corresponding loss to the Government exchequer. The Company may also have to pay the penal interest for default in payment of service tax (Section 75 of the Act).

The Company and the Government stated (July 2018) that as per section 66D of the Act, the services related to 'agricultural produce' by way of renting or leasing of agro machinery with or without structure were not subject to service tax.

The reply was not acceptable in view of the fact that as per section 65B of the Act, 'agricultural produce' means any produce of agriculture on which no further processing was done. Further, as had been seen in different Court verdicts[7], while the cultivation of tea was considered an agricultural process,

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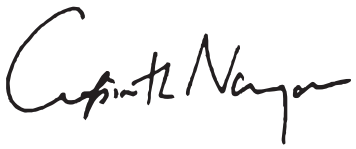
[5] From July 2017, service tax came under the ambit of Goods and Services Tax, Act and the Company had been collecting the same from the lessee.

[6] Calculated at applicable rates of 12.36 *per cent* (April 2012 to May 2015), at 14 *per cent* (June to November 2015), at 14.50 *per cent* (December 2015 to May 2016) and 15 *per cent* (June 2016 to June 2017)

[7] CA No. 9178 of 2012 (Union of India vs Tata Tea Co. Ltd.; CA No. 9179 of 2012 (Union of India vs George Williamson) and CA No. 9180 of 2012 (Union of India vs Apeejay Surrendra Corporate Service Ltd.)

the processing of tea in the factory was an industrial process. Besides, Audit also observed that Tripura Tea Development Corporation Limited, a Government of Tripura owned company, had collected the service tax component from the Lessee as per the applicable rates on similar activities. The facts stated above substantiate the Audit contention.



GUWAHATI
THE 05 August 2019

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Accountant General (Audit), Assam

Countersigned

NEW DELHI
THE 07 August 2019

(RAJIV MEHRISHI)
Comptroller and Auditor General of India