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Report of the Comptroller and Auditor General of India

Levy and collection of Service Tax on Entertainment Sector

Union Government
Department of Revenue
Indirect Taxes – Service Tax
Report No. 31 of 2017

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Comptroller and Auditor General
of India

for the year ended March 2017

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Laid on the table of Lok Sabha/Rajya Sabha _____

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Preface

This Report has been prepared for submission to the President of India under Article 151 of the Constitution of India.

The Report contains significant results of the performance audit on Levy and collection of Service Tax on Entertainment Sector and covers the period from 2013-14 to 2015-16. Matters relating to subsequent periods have also been included, wherever necessary.

The instances mentioned in this Report are those which came to notice in the course of test audit conducted during the period 2016-17.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

Audit wishes to acknowledge the cooperation received from the Department of Revenue, Central Board of Excise and Customs and its field formations at each stage of the audit process.

Executive summary

We conducted a Performance Audit on levy and collection of Service Tax on Entertainment Sector, to seek an assurance regarding adequacy of Service Tax rules and regulations relating to entertainment sector and systems in place to ensure compliance to the same. The audit was conducted in 17 selected Commissionerates, including one division and one range in each Commissionerates and examination of records relating to 307 assessees. The audit covered the three years period from 2013-14 to 2015-16.

The audit revealed certain inadequacies in the extant provisions as well as systemic deficiencies relating to the levy and collection of service tax on Entertainment Sector, the summary of which is given below:-

a. Taxable commercial activities escaped taxation due to clubbing of theatrical rights that are exempted with taxable non-theatrical rights/other activities by way of an agreement treating the entire consideration only towards theatrical rights.

(Paragraph 2.3)

b. Copyrights transferred with limitations were treated as transferred in perpetuity resulting the escapement of revenue.

(Paragraph 2.5.1)

c. There were instances of artists/producers entering into agreements with foreign entities to establish a service recipient(s) and place of provision in the non-taxable territory and thereby consideration for the portion of service provided outside India was treated as exports.

(Paragraph 2.6.1)

d. Wrong availment of Cenvat credit of ₹ 14.71 crore under sponsorship services.

(Paragraph 2.7)

e. Cross verification of Service Tax Data obtained from the department with other databases like Income Tax, Ministry of Corporate Affairs (MCA), etc. revealed cases of non-registration of assessees engaged in taxable services, which included assessees providing taxable services exceeding ₹ 10 lakh (the threshold limit for service Tax) and also cases of under reporting of income under Service Tax.

(Paragraph 3.1)

f. There were instances of shortcomings in monitoring of filing of returns, efficacy of scrutiny of returns, deficiencies in the internal audit systems and problems in the process of show cause notices and adjudication.

(Chapter 3)

g. There were 156 cases of non-compliance to prescribed rules / provisions resulting in non / short payment of service tax / interest / Swachh Bharat Cess, incorrect / excess availaing of cenvat credit and incorrect claim of benefits of export of services involving revenue of ₹ 48.13 crore.

(Chapter 4)

Summary of Recommendations

1. Since the assessees are exploiting the ambiguity in the terms 'theatrical' and 'non-theatrical' while drafting of agreements for transfer of rights, there is a need to bring legislative clarity for these terms.

2. Place of Provision of Services Rules need to be directly linked to service specific issues to avoid undue benefit of the interpretations and to safeguard the intent of legislation in giving export benefits.

3. Existing ambiguity in the available provisions for Cenvat Credit under Sponsorship Services in the entertainment sector needs to be clarified through relevant amendment to the Rules.

   Ministry stated (May 2017) that any amendment in the present rules of Service Tax would constitute a futile exercise since "Goods and Service Tax" is to be implemented with effect from 1 July 2017 and that the recommendations are, however, noted for future compliance.

   As the recommendations are relevant in GST regime also, to ensure clarity in the new legislations, the recommendations made by audit should be examined by GST policy wing of CBEC.

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.

With reference to the above recommendations No.4 to 7 the 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).

Chapter 1: Introduction

1.1. About the sector

Entertainment sector consists of different segments such as television and film industry with its sub segments like film production, copyrights, services of professionals ranging from actors to supporting services like choreographers and hair stylists, talent casting agencies, news agency, live shows and event coverage, celebrity management and brand endorsement, radio, sound recording, animation, gaming and visual effects. Brand Promotion and sponsorship services are intricately linked with this sector.

Entertainment industry has registered an explosive growth in last two decades making it one of the fastest growing industries in India. Globally, India is the fifth largest media and entertainment market. India is also the second largest television market in the world and has the world's largest film industry in terms of tickets sold and number of films made.

1.2. Services relating to Entertainment Sector

The following nine services relating to entertainment sector (ES), having been assigned separate Account Codes under Service Tax and are specifically identifiable:

(i) Broadcasting services,

(ii) Copyright service – transfer temporarily / permit use or enjoyment,

(iii) Event Management,

(iv) Sound recording studio or agency services,

(v) Services by a programme producer,

(vi) Service of promotion or marketing of brand of goods / services / events,

(vii) Sponsorship services provided to body corporate or firm including sports sponsorship,

(viii) Video production agency / video tape production service and

(ix) Cable operators.

In addition to the above nine services, there are many services not covered under negative list and hence taxable with effect from 1 July 2012 like those of professionals, artists etc., that are included in the omnibus head 'other taxable services' and not distinctly identifiable.

1.2.1. Significance of these Services[1]

The broadcast industry in India has around 800 satellite television channels, 242 FM channels and 100 operational community radios and grew at a rate of 12 per cent during 2010-14. There was a spurt in number of television channels and apparent increase in demand for programme production services to cater to the needs of the expanding televisions channels. In 2015, India produced 1,827 digital feature films, according to the report by the Central Board for Film Certification (CBFC). India maintained its position as a top film producer. Animation, Visual Effects (VFX) and Production segment is the newly emerging area in India which offers opportunities in both domestic and foreign markets. The organized event management industry in India was poised to grow at least by 25 per cent annually and estimated to reach ₹ 5,500 crore by 2014-15.

1.2.2. Trends of revenue from the entertainment sector

The total service tax collection through Personal Ledger Account (PLA) and Cenvat from the entertainment sector has been increasing over last three years at an average growth rate of 9.9 per cent, with copyrights growing at a rate of 94 per cent, followed by promotion of 'brand' of goods, services, events, business entity etc. (32 per cent) and sponsorship service (18 per cent).

The total service tax collection from Personal Ledger Account (PLA) from the entertainment sector during the last four year has increased by 43 per cent whereas during the same period Cenvat utilisation has increased by 88 per cent.

The trends of revenue (PLA and Cenvat) and tax base from this sector during the period from 2012-13 to 2014-15 is depicted in following tables: -

[1] Data taken from http://www.makeinindia.com/article/-/v/sector-survey-media-and-entertainment

Table No.1 : Service Tax Revenue from Entertainment Sector

(Amount in crore of ₹)

Year / Service	2012-13		2013-14		2014-15		Average annual growth rate	
	PLA	Cenvat	PLA	Cenvat	PLA	Cenvat	Of total ST revenue	Of Cenvat as a percentage of Cenvat and PLA
Broadcasting service	1,770.77	3,061.68	1,680.01	3,169.60	2,012.63	3,240.80	1.85	4.34
	4,832.45		4,849.61		5,253.43			
Copyright on cinematographic films and sound recording service	113.06	115.87	280.13	318.91	314.50	443.73	54.76	94.12
	228.93		599.04		758.23			
Event management service	351.00	181.85	374.71	219.43	432.84	268.76	7.68	14.79
	532.85		594.14		701.59			
Promotion of 'brand' of goods, services, events, business entity etc.	67.69	13.87	80.73	25.96	107.64	34.48	11.41	32.02
	81.56		106.69		142.13			
Sound recording service	19.92	3.09	20.18	3.55	20.78	3.17	0.20	2.02
	23.01		23.73		23.95			
Sponsorship service	150.36	52.97	159.62	54.19	203.79	77.47	5.74	18.35
	203.33		213.81		281.26			
TV or radio programme production	223.74	109.06	208.66	138.47	222.61	147.82	5.76	5.51
	332.80		347.13		370.43			
Video tape production	97.44	40.56	102.66	68.63	108.19	49.21	4.50	8.01
	137.99		171.29		157.40			
Cable Operator Services	143.57	500.17	119.65	597.14	172.06	613.46	8.67	10.47
	643.74		716.78		785.53			
Total	**2,937.55**	**4,079.12**	**3,026.35**	**4,595.88**	**3,595.04**	**4,878.90**	**5.54**	**9.90**
	7,016.67		**7,622.23**		**8,473.94**			

Source: ACES data provided by DG (Systems)

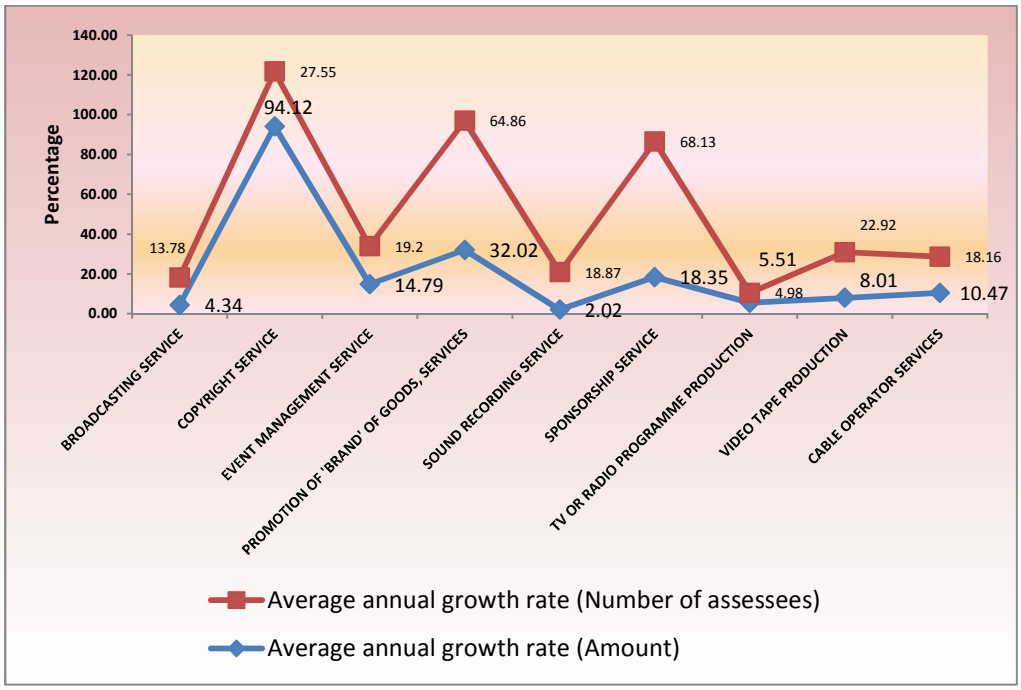
1.2.3. Tax base in entertainment sector

Table No.2

Year / Service	Number of assessees			Average annual growth rate
	2012-13	2013-14	2014-15	
Broadcasting service	1,145	1,377	1,554	13.78
Copyright on cinematographic films and sound recording service	555	742	885	27.55
Event management service	7,849	10,024	11,752	19.20
Promotion of 'brand' of goods, services, events, business entity etc.	1,172	2,175	3,224	64.86
Sound recording service	737	954	1,127	18.87
Sponsorship service	4,011	5,205	5,951	68.13
TV or radio programme production	2,160	2,216	2,398	4.98
Video tape production	1,942	2,630	3,179	22.92
Cable operator services	3,959	4,954	6,243	18.16
Grand Total	**23,530**	**30,277**	**36,313**	**24.08**

Source: ACES data provided by DG (Systems)

Chart No.1



- The number of assessees have increased by 24 per cent during the last three years. However, corresponding revenue increase is only 9.90 per cent (PLA and Cenvat).

1.3. Why we chose this topic

- Revenue from services like Broadcasting services, Event management, TV and Radio programme production, Sponsorship services, Video tape production, Promotion of Brand and Sponsorship services has been registering steep growth over three year period ending 2014-15.
- There are inter-linkages amongst these services with impact on tax calculation.
- Growth of service tax revenue from services like TV and Radio Programme production, Event Management were not commensurate with industry growth rate witnessed/projected for these sectors.
- There were certain key judicial pronouncements and changes in law impacting taxability of this sector in recent times.
- No comprehensive audit was conducted for this sector so far.

1.4. Audit Objectives

The audit was conducted to assess:

(i) the adequacy of rules, regulations, notifications, circulars/ instructions/trade notices etc., issued from time to time in relation to

levy, collection and assessment of service tax relating to entertainment sector and whether provisions of law are being complied with adequately;

(ii) the efficiency and effectiveness of departmental administration in implementing and ensuring compliance with the Rules and regulation as laid down in the Finance Act, Service Tax Rules and other related Rules; and

(iii) the extent to which the service providers liable to pay service tax, relating to the subject under study, are included/excluded from tax net.

1.5. Scope of Audit and coverage

During the audit, we selected and covered 17 Commissionerates[2] (exclusive ST as well as integrated Central Excise and Service Tax), which represented 33 per cent of all India revenue for the year 2015-16 pertaining to the nine services identified for coverage in this audit. We also audited one Division and one Range in each selected commissionerate and undertook detailed examination of the records of 307 assessees in the jurisdiction of the selected Commissionerates. The period of examination for this audit was 2013-14 to 2015-16.

1.6. Acknowledgement

We acknowledge the co-operation extended by Central Board of Excise and Customs (CBEC) and its subordinate formations, in providing the necessary records for the conduct of this audit.

We discussed the audit objectives and scope of the audit in an entry conference with CBEC officers on 22 August 2016 and the audit findings and recommendations were discussed in the exit conference held on 31 May 2017. The Ministry furnished the reply in May 2017 which was included in the report.

[2] Ahmedabad ST, Bengaluru ST-I, Bhubaneshwar-I, Chandigarh-I, Chennai ST-II, Cochin, Delhi ST-I, Delhi ST-II, Delhi ST-III, Hyderabad ST, Jaipur, Kolkatta ST-II, Mumbai ST-III, Mumbai ST-IV, Mumbai ST-VI, Mumbai ST-VII and Noida ST.

Chapter 2: Policy Issues

The audit focussed on some key concepts specific to the entertainment industry and attempted to analyse the impact of methods adopted by the industry, on the taxability of the services in this sector. The aim was also to check if ambiguities in the provisions left scope for interpretation in a way that led to ingenious drafting of contractual agreements leading to escapement of revenue.

In an industry like Media and Entertainment (M & E) driven by branding, creativity and knowledge, copyrights hold significant relevance from valuation as well as business structuring perspective. The provisions regarding taxability of copyright services, types of copyright assignments in the film industry and analysis of taxability of its components have been given below:-

2.1. Taxability of Copyright Services

Copyright as defined in Section 13 of Copyright Act, 1957 subsists in (a) Original literary, dramatic, musical and artistic works; (b) Cinematograph films; and (c) Sound recordings. The provisions regarding taxability of copyright services are discussed below:-

The term "service" was defined[3] from 1 July 2012 for the first time after the introduction of service tax and every activity, except those covered under the negative list, was classified as a service and was made taxable[4]. Further, certain relaxations by way of exemptions were provided vide notification No.25 / 2012-ST dated 20 June 2012.

Analysis of the term "service" is very important to decide taxability of any activity. "Service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include an activity which constitutes merely,-

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) a transaction in money or actionable claim;

[3] Section 65B(44) of the Finance Act, 1994
[4] Section 66B of the Finance Act, 1994

Section 18 of Copyright Act, 1957 deals with Assignment of copyright i.e., the owner of copyright in an existing work or the prospective owner of the copyright in the future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole of the copyright or any part thereof.

The act of temporary transfer or permitting the use or enjoyment of copyright of cinematographic films and sound recording service are taxable under Copyright service as defined under Section 65(105)(zzzzt) from 1 July 2010.

During 1 July 2012 to 31 March 2013, taxability was limited to sound recordings only. All other rights in cinematographic films were exempted vide Notification No.25/2012-ST, dated 20 June 2012.

With effect from 1 April 2013, service tax is leviable[5] on copyright services except for those relating to original literary, dramatic, musical or artistic works and cinematographic films for exhibition in a Cinema Hall and Cinema Theatre.

2.2. Types of copyright assignments in the film industry

The copyrights for exhibition of cinematographic films are preceded by a series of activities which involve services that are not exempted from ST as per provisions quoted ibid. The supply chain in the industry starts with producer, then distributor and Exhibitor/Theatre owners and ends with the Consumers. Films produced by the producer are commercially exploited by assignment/licensing of copyrights of cinematographic films and/ or sound recordings in the films to distributors, typically termed as 'Theatrical' or 'Non-theatrical' rights through film distribution agreements. Under theatrical rights of copyrights, the right to distribute, sub-license, market, advertise, publicise, and exhibit the film in theatres are listed. Copyrights in films are also exploited by assignment of satellite rights, music rights; radio rights, video (DVD) rights, etc., termed as non-theatrical rights.

Such agreements provide for mutual consideration towards copyright service against the grant of the said theatrical rights on a revenue sharing basis with following general arrangements.

- Distributor, as a recipient of service, pays a Minimum Guarantee or the primary consideration to the producer towards assigned rights
- Producer pays commission to distributor for sub-licensing of assigned copyrights of the film to any third party (i.e., sub-distributors/exhibitors)

[5] Vide Notification No.3/2013-ST, dated 1 March 2013

for all major/sub-territories within the assigned territory and the distribution revenue from sub-licensing generated prior to the date of release of the film would be shared between the producer and distributor.

- The agreement also makes it obligatory on the distributor to promote the film by incurring publicity, marketing and advertisement expenses on behalf of the producer within the specified limit. These services are also in the nature of provision of Business Auxiliary Services to the producer.
- The revenue from the release and exhibition of the film is netted to retain the share of the distributor towards the minimum guarantee paid to the producer and the distribution and publicity expenses. The net revenue is then termed as 'Overflow' which is the consideration flowing only from the exhibition revenue shared between the producer and distributor in a pre-set ratio as per the terms of the transfer agreement.
- Where profit-sharing arrangements are made, the distributor provides upfront advance to the producer (to be adjusted) in some cases. Further, the distributor earns a specific percentage of the realisation from the distribution and exhibition arrangements.

The activities provided by the distributor are in the nature of services in relation to promotion or marketing of goods (copyright in this case) produced or provided by or belonging to the client (producer in this case); provision of service on behalf of the client and services incidental or auxiliary to such activity. Thus, they fall under the ambit of 'Business Auxiliary Service' as defined in clauses (i), (vi) and (vii) of Section 65(19) of Finance Act, 1994.

Thus exploitation of the theatrical rights include a series of activities of distribution, sub-licensing, advertisement, etc., which fall under the ambit of taxable services. It is only the copyright services for the culminating activity of theatrical exhibition of the films in the respective territories for the assigned period which is exempted from service tax by the intent of law. This view is also supported by judicial pronouncements as detailed below:

- In the case of M/s. AGS Entertainment Pvt., Ltd., the Madras High Court held (June 2013) that the variant modes of business transactions between the producer and distributor, distributor and sub-distributor or area distributor or exhibitor (theatre owner) are not sale of goods. From the production of cinematograph film till it is exhibited, there are host of commercial activities and service tax is the value added tax which applies to the business transactions for consideration involving commercial activities.

- In the case of M/s. Media one Global Entertainment Ltd., the Madras High Court held (June 2013) that the variant modes of transaction between the distributor/sub-distributors of films and exhibitors of movie and the revenue sharing arrangement between them are neither in the 'Negative List Services' nor exempted.

On examination of distribution agreements, we observed that the modus operandi in the Film industry for commercial exploitation of copyrights of cinematographic films was by including all activities under the term 'assignment of theatrical rights' to connote the revenue earned therefrom and claim exemption from payment of service tax under the benefit of Notification No.3/2013-ST dated 1 March 2013. The intent of legislation, however, was to exempt service income from exhibition of the cinematographic films in cinema hall or theatre, whereas agreements comprised mutual consideration towards host of other activities which are not exempted from tax. It was evident from the agreements that the income generated prior to the date of release and incidental to the sub-licensing, distribution expenses, publicity and promotion are all included under 'consideration from the transfer of theatrical rights'. These are wholly being treated as exempted and thereby escaping taxation as discussed below:

2.3. Clubbing of non-theatrical rights/other activities with theatrical rights

We noticed two cases where taxable commercial activities escaped taxation due to clubbing of theatrical rights with non-theatrical rights / other production activities. The revenue involved could not be worked out in these cases for want of required details. The cases are illustrated below:-

During examination of records of M/s Eros International Media in Mumbai ST-VI Commissionerate, we noticed that M/s. Sohail Khan Productions and M/s Salman Khan Ventures Pvt. Ltd., in Mumbai ST-IV Commissionerate, the producers of Hindi film titled "Jai Ho" and "Bajrangi Bhaijaan" respectively had claimed exemption from payment of service tax by treating the entire consideration as revenue/earnings from assignment of theatrical rights. As per the agreement, initiated during 2013-14 the licensed rights comprised of both theatrical as well as non-theatrical rights. The assessees claimed exemption from payment of service tax treating the entire consideration towards license fee of theatrical rights. Thus, the way the agreement is drafted treating the entire consideration only towards the theatrical rights, to take undue benefit of the exemption, led to escapement of revenue towards commercial activities of non-theatrical rights and the activities preceding the exhibition of the film. The consideration that escaped taxation could not be

determined in the absence of bifurcation of theatrical and non-theatrical rights.

We pointed this out (December 2016), the Ministry stated (May 2017) that due to typographical error, the term "Non-Theatrical Rights" got mentioned under the major heading of "Theatrical Rights" under Sr. No.1 of Annexure-2 of the said agreement. They further stated that they examined the ledger copy of M/s. Eros International Media Ltd., copy of invoices of M/s. Salman Khan Ventures Pvt. Ltd. and M/s. Sohil Khan Production Pvt. Ltd. and that the said consideration indeed pertained to Theatrical Rights alone.

The reply of the Ministry is not acceptable since verification of ledger and invoices by Audit revealed that "theatrical rights as per license agreement" was the term used in ledger and invoice. This does not substantiate that non-theatrical rights are not included in the ledger/invoices as the definition of theatrical rights as per agreement included non-theatricals rights also and in both invoices and ledger the term "theatrical rights as per license agreement" was used. Further, the Department has not shown any valid evidence to prove that it was only a typographical error.

2.4. Inclusion of distribution income under theatrical rights

Apart from the consideration paid to the producer for acquiring the distribution rights of films, the distributor/Music Production Company spends on behalf of the producer a specified sum to promote the film/musical work of the film on print, publicity and advertising which could be recouped from the overflow or exhibition revenue. This amount is nothing but a consideration flowing to the distributor for providing service taxable under the category 'Business Auxiliary service' which escaped taxation under the guise of 'Theatrical Rights'. Since the activity is done by the distributor before the release and exhibition of the film and also such service is not listed in Section 66D of Chapter V of Finance Act, 1994 to treat it as exempted; the service tax was liable to be recovered on such activities.

During examination of records of M/s. Arbaaz Khan Production Pvt. Ltd., M/s. Red Chillies Entertainment Pvt. Ltd., in Mumbai ST-IV Commissionerate and M/s. Eros International Media Pvt. Ltd., in Mumbai ST-VI Commissionerate, we noticed that the distributors[6] realised distribution income relating to publicity and distribution expenses of ₹ 50.56 crore during 2012-13 to 2014-15. But service tax amounting to ₹ 6.21 crore on the distribution income was not paid as the parties claimed exemption of the consideration or revenue treating the same as assignment of theatrical rights.

[6] M/s. Super Cassettee Industries Ltd., M/s. UTV Software Communication Ltd., M/s. Stellar Films Pvt. Ltd., M/s. Eros International Media Ltd., and M/s. Red Chillies Entertainment Pvt. Ltd.

We pointed this out (December 2016), the Ministry stated (May 2017) that distribution expenses publicity expenses etc., are integral part of the theatrical rights.

The reply of the Ministry is not acceptable since these services are independent services and cannot be considered as theatrical rights. As already quoted in para 2.3 (in case of M/s. AGS Entertainment Pvt., Ltd.), the Madras High Court held (June 2013) that, from the production of cinematograph film till it is exhibited, there are host of commercial activities and Service tax is the value added tax which applies to the business transactions for consideration involving commercial activities.

Drafting of agreement treating the whole consideration as theatrical rights resulted in overlooking the taxability aspect of the consideration towards the activities like Business Auxiliary Services and non-theatrical rights.

2.5. Treating copyrights transferred with limitations as transferred perpetually

To consider a transaction as sale of goods warrants the fulfilment of transfer of ownership, transfer of right of possession and transfer of right to use. Some judicial pronouncements[7] also held that so long as the producer does not fully relinquish his right over the copyright held by him, transfer of the right to use is purely temporary transfer of copyright or permits its use by another person for a consideration, and in those cases, levy of service tax for such transfer of copyright would apply.

We noticed agreements which stated that copyrights were assigned for perpetuity. But, certain features of the terms/covenants in these agreement, were in fact indicative of the fact that the distributor was being given only restrictive rights and the producer continued to have control over the copyrights.

Thus the nature of transfer of rights was conditional or restrictive and not outright sale. We noticed three cases, in which, though the rights were given with a lot of conditions, the same was treated as transfer of right for perpetual period which led to escapement of revenue from service tax. The cases have been described below:-

[7] The Supreme Court decision of B.S.N.L. Vs. Union of India, {(2006) 3 SCC 1}, and Madras High Court in AGS Entertainment Private Ltd. Vs Union of India {(2013) 32 STR 219}

2.5.1. During the examination of records of M/s. Arbaaz Khan Production Pvt. Ltd. and M/s. Red Chillies Entertainment Pvt. Ltd., in Mumbai ST-IV Commissionerate, it was noticed that the assessees assigned copyrights of the music/sound recordings of their respective films Chennai Express and Dabangg 2 to M/s. Super Cassette Industries Ltd., a Music Company for a perpetual period on consideration of ₹ six crore and ₹ nine crore during 2012-13 and 2013-14 respectively. In both instances, the assessees did not pay service tax treating the rights as granted for perpetual period. However, we noticed that the assessees did not relinquish their rights and imposed conditions on the Music Company to promote the music in film and to receive royalty share from further exploitation of the assigned rights over and above the agreed consideration. Thus, the assignment is a temporary transfer of rights, on which a service tax of ₹ 1.85 crore becomes leviable.

We pointed this out (December 2016), the Ministry stated (May 2017) that the perpetual nature of copyright transfer cannot be altered/changed based on retention or non-retention of any right or control and that the Assignors merely transferred the right of exploitation of the music to the extent as mentioned in the agreements. They also stated that such right to exploitation is different from the right owned by Assignor in the original music and that such exploitation right having been granted/assigned for an exclusive term for the entire world for perpetual period, no service tax is leviable on such transfer of copyright service.

Supreme Court of India in BSNL Vs. Union of India (2006) case laid down attributes to consider a transaction as the transfer of the right to use the goods. One such attribute is that for the period during which the transferee has such legal right, it has to be exclusion to the transferor. In the agreements assigning copyrights, certain restrictions were placed by the assignor in the clauses of the agreements. For instance in the agreement between M/s. Red Chillies Entertainments Pvt. Ltd., (assignor) and M/s. Super Cassettes Industries Ltd., (assignee) though copyright in the sound recordings and musical works was assigned to assignee, as per clause 9(f), the assignor has complete and uninterrupted rights to insert audio and/or video clip of all the songs of any duration in any programmes or future films created/produced by the assignor or by its subsidiary or sister companies for commercial or non-commercial exploitation. Hence as the condition of exclusivity was not fulfilled, the reply of the Ministry is not acceptable.

2.5.2. M/s. Arbaaz Khan Production Pvt. Ltd., in Mumbai ST-IV Commissionerate received consideration of ₹ 33 crore as refundable and non-refundable advances under pre-production agreements from different distributors viz. M/s. Stellar films, M/s. Red Sun Enterprise, M/s. Aum Movies,

M/s. Ankit Movies etc., for film Dabangg 2 released in the month December 2012. We noticed that the assessee claimed exemption from service tax on these advances by considering the same as the assignment of theatrical rights to the distributors on perpetuity during the period (i.e., July 2010 to June 2012) when 'temporary' transfer attracted service tax. However, post the release of the film (December 2012), the assessee revised the agreements with the same distributors and assigned the theatrical rights for temporary transfer adjusting the consideration received as advances. Thus different stands were adopted with the same distributor regarding the nature of transfer (viz., permanent/temporary) during the taxability period and non-taxability period of copyright services, resulting in escapement of revenue from taxation.

We pointed this out (December 2016), the Ministry stated (May 2017) that it is upon the sweet will of the contracting parties to decide the terms and conditions of an agreement entered into by them as long as the same is otherwise permitted by law.

Audit reiterates that Ministry must ensure that the intention of the Government behind granting the exemption and the purpose with which exemptions are granted to the specified service are not defeated.

The agreements regarding transfer of copyrights have contradictory provisions. On one hand it is termed as transfer in perpetuity but on the other hand there are specific provisions in the agreement which are indicative of the opposite as right to use the content of the copyright continued to vest with the producer / Assignor

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2.6. Avoidance of tax by treating the services as exports

As per Rule 6A(1) of Service Tax Rules, 1994, the benefit of exemption from payment of service tax would be available only if all the prescribed conditions are satisfied. While determining location of service recipient under Rule 2(i)(b)(iii)of Place of Provision of Services Rules, 2012, where services are used at more than one establishment, the establishment most directly concerned with the use of service would be the place of provision.

We noticed instances of artists/producers entering into agreements with foreign entities to establish a service recipient(s) and place of provision in the non-taxable territory and thereby consideration for the portion of service

provided outside India was treated as exports, leading to avoidance of tax. Three such instances are illustrated below:

2.6.1. We noticed two instances where for the same film shot in India and abroad, the payment to artist for the portion shot abroad was arranged from foreign companies, thereby the service was made to look as export of service with no tax liability.

a) In Mumbai ST-IV Commissionerate, Mr. Ranbir Kapoor, acted in the Hindi movie titled 'Ae Dil Hai Mushkil' produced by M/s. Dharma Productions Pvt. Ltd., shot both in India and New York. He received a consideration of ₹ 6.75 crore from a foreign company, M/s ADHM Films Ltd., (UK) based in London for film shot in UK and did not pay service tax of ₹ 83.43 lakh treating the same as export of services.

Web-based information gathered from an UK Govt. official site (*https://beta.companieshouse.gov.uk/company/*), revealed that the foreign based company M/s. ADHM Films Limited (UK) was incorporated in December 2014 on the launch of the production of the movie in November 2014 at the registered address (Suite 303, 50 Eastcastle Street, London W1W 8EA) under the directorship of a foreign national (Brian Brake/Heiman Osker and two directors of Indian origin Viz., Mr. Anil Kundan Thadani and Mr. Aashish Rajiv Mehrotra). Incidentally, as seen from the website, with the same address and with same foreign national viz., Mr. Brian Brake, three firms (Bombay Film Company Ltd., Galani Entertainments Ltd., Virgo Entertainment Ltd.,) were floated with a different Indian director viz., Kohli Kunal Galani, Vijaykumar Ramdas and Vashu Lilaram Bhagnani respectively.

b) Similarly, during the examination of records of Mr. Nandamuri Taraka Rama Rao, a Cine Artiste in Hyderabad ST Commissionerate, we noticed that under an agreement (July 2015) with producer M/s. Vibrant Visuals Ltd., London, U.K, the artiste received an amount of ₹ 7.33 crore for acting in the Telugu movie titled 'Nannaku Prematho' and claimed exemption from payment of service tax of ₹ 1.10 crore treating it as export of services.

We pointed these out (December 2016), in case of Mr. Ranbir Kapoor, the ministry in its reply stated (May 2017) that the services (acting services) are provided at more than one location and not used at more than one establishment. Since the film was shot at multiple locations and the location where the greatest proportion of the service provided is outside India, hence the said service is not taxable. However, in case of Mr. Nandamuri Taraka

Rama Rao, the ministry while admitting the objection stated (May 2017) that an SCN was being issued for ₹ 1.10 crore and that all jurisdictional officers were instructed to verify if any similar exemptions were availed by any assessee in the sector.

The reply of the Ministry is not acceptable since this service (acting service) is an integral part of the movie being produced in India by M/s. Dharma Productions. Hence to hold that it was not used by the establishment in India is not right. Moreover, similar observation was accepted by the Ministry in case of Mr Nandamuri Taraka Rama Rao. Further, there is a need to examine the complete loop of transactions between all the parties (viz., M/s. Dharma Productions, M/s. ADHM Films Ltd. (UK) and Mr. Ranbir Kapoor) to verify if due service tax has been levied in this case or not.

2.6.2. During examination of records of M/s. Prime Focus Ltd., (PFL) in Mumbai ST-IV Commissionerate, we noticed that M/s. PFL is providing conversion business (visual effect, editing, etc.,)[8] in India to Indian production houses on behalf of Prime Focus World located in Netherlands.

The assessee entered into service level agreements with its overseas subsidiaries (M/s. Prime Focus International Ltd., UK) in non-taxable territory for billing the invoices in respect of the conversion business provided to the Indian Production Companies. This led to escapement of service tax of ₹ 1.34 crore during the period 2015-16.

We pointed this out (December 2016), the Ministry intimated (May 2017) that they filed an appeal in October 2016 to deny the benefit of export provisions to assessee in the earlier SCNs from 2012 to 2015 contending that performance of services are in India under Rule 4(a) of the Place of Provision of Service Rules, 2012. Further it was stated that periodical SCN for the year 2015-16 was also issued.

These instances suggest that there may be many such assessees in this sector evading taxes by providing a portion of taxable service in the non-taxable territory to take the undue benefit of provision of Place of Provision of Services Rules, 2012.

2.7. Wrongful availment of Cenvat credit under Sponsorship services

Rule 3 of the Cenvat Credit Rules, 2004, allows credit of duty on input services used by a service provider for rendering of any taxable output

[8] The software programme entitled view which is a proprietary system for the conversion of 2D audiovisual/moving images to stereo 3D audiovisual/moving images

service. As per Rule 2(p) 'Output service' excludes services, where the whole of service tax is liable to be paid by the recipient of service.

By virtue of entry 3 of Notification No. 30/2012–ST dated 29 June 2012, in case of Sponsorship services received from a body corporate, the sponsors who are the service recipients are liable to pay service tax. Hence sponsorship service cannot be considered as output service in the hands of service providers who organise the events.

During the examination of records of M/s. Royal Challengers Sports Pvt. Ltd., M/s. Entertainment Network India Pvt., Ltd. (Mumbai ST-III), M/s. Knight Riders Sports Pvt., Ltd. (Mumbai ST-IV) and M/s Wizcraft International Entertainment Ltd. (Mumbai ST-VI), we observed that the assessees are engaged in Event Management, Programme Producer Service, Sponsorship Services, etc., during 2012-13 to 2015-16. They earned revenue of ₹ 246.63 crore under sponsorship services from body corporate towards organizing several events on which service tax liability was paid by sponsors (i.e., body corporate) under reverse charge.

In all the above cases since tax liability is borne by the sponsor, being the, service recipient, the service provided by the assessee (service provider) is not an output service to the assessee in terms of rule 2(p) quoted ibid. Hence the Cenvat credit amounting to ₹ 14.71 crore availed by the assessee on input services relating to such output services is in contravention to the Rule 3.

We pointed these out (between September and December 2016), the Ministry stated (May 2017) that the exemption notifications are issued under the power vested by Section 93 of the Finance Act, 1994 and that the notification dated 29 June 2012 was not an exemption notification issued under Section 93 of Finance Act, 1994. Hence, Ministry held that sponsorship service cannot be equated to 'exempted services' on which reversal under rule 6 of the Cenvat Credit Rules, 2004 is warranted.

The reply of the Ministry is not acceptable since it is not relevant to the issue pointed out by Audit and the reply is also silent regarding rule 2(p) i.e., 'output service' which excludes services, where the whole of service tax is liable to be paid by the recipient of service.

In the case of M/s. Wizcraft International Entertainment Ltd., we further observed from the agreements entered between the assessee and their sponsors that for the subsequent period 2014-15 to 2015-16, the income earned from Sponsorship Services provided were being accounted under Promotion and Marketing services of Brand/Events. It appears that this was done due to ineligibility of availment of Cenvat credit otherwise under

Sponsorship Services as it is the liability of the Sponsors under reverse charge as recipient of service. Thus it is evident that assessee has used a different classification of service in the latter period for the benefit of Cenvat credit. Absence of the definition of Sponsorship service and promotion and marketing services of Brand/Events in the service tax statute enabled the assessee to take undue benefit of Cenvat credit.

We pointed this out (December 2016), the Ministry while admitting the objection stated (May 2017) that an SCN was being issued.

Recommendations

1. Since the assessees are exploiting the ambiguity in the terms 'theatrical' and 'non-theatrical' while drafting of agreements for transfer of rights, there is a need to bring legislative clarity for these terms.
2. Place of Provision of Services Rules need to be directly linked to service specific issues to avoid undue benefit of the interpretations and to safeguard the intent of legislation in giving export benefits.
3. Existing ambiguity in the available provisions for Cenvat Credit under Sponsorship Services in the entertainment sector needs to be clarified through relevant amendment to the Rules.

Ministry stated (May 2017) that any amendment in the present rules of Service Tax would constitute a futile exercise since "Goods and Service Tax" (GST) is to be implemented with effect from 1 July 2017 and that the recommendations were, however, noted for future compliance.

As the recommendations are relevant in GST regime also, to ensure clarity in the new legislations the recommendations made by audit should be examined by GST policy wing of CBEC.

Chapter 3 : Systems and procedures

The Service tax department is assigned with the responsibility of identification of assessees 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 assessees. 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 assessees 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 assessees. Eight Commissionerates[9], informed (September 2016 to November 2016) that no special cells were created to identify potential assessees. 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 Phonograpic 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 assessees. 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 360^0 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, 360^0 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 360^o 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^{o} 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^{o} 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 assessees 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^{0} 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 Jersy, 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 assessees 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 assessees[10] 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 assessees[11] 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 assessees 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 assessees were filing ST returns.

Table No.3

(Amount in crore of ₹)

Sl. No.	Name of the assesse (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 Commissionerates[12] 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 Commissionerates[13] 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 Commissionerates[14] 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.

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[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 Commissionerates[15], we observed 841 instances of belated filing of returns in the case of 485 assessees 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 Commissionerates[16]and noticed that in 637 instances of belated filing of returns in the case of 368 assessees 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 assessees 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 assessees 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 assessees.

3.2.3. Non-monitoring post-VCES compliance

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

[15] Ahmedabad ST, Bengaluru ST-I, Bhubaneshwar-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 assessees 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 report[17] 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 assessees 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 assessees 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 assessees out of these 171 assessees. On its examination, we noticed that 12 assessees 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 assessees and is a complementary process to internal audit of assessees 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 assessees 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 assessees 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, assessees 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 assessees which were either audited or were under preventive action were selected. Further we observed that the selection list contained 21 assessees 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 assessees 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 assessees 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 assessees 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 assessees, 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 assessees. It is pertinent to mention here that all these assessees 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 Manual[18].

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 confirmed[19] (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).

Chapter 4 : Compliance issues

During the course of this audit, we observed 156 cases of non-compliance to prescribed rules / provisions resulting in non / short payment of service tax / interest / Swachh Bharat Cess, incorrect / excess availaing of Cenvat credit and incorrect claim of benefits of export of services involving revenue of ₹ 48.13 crore. Out of this, an amount of ₹ 7.95 lakh has been recovered in 69 cases so far.

4.1. Non-remittance of service tax

As per Section 73A of Finance Act, 1994, as amended, any person who is liable to pay Service Tax and has collected any amount in any manner as representing Service Tax, shall forthwith pay the amount so collected to the credit of the Central Government.

During the examination of records of M/s. Impresario Event Management Pvt., Ltd. and M/s. Jeevan Telecasting Corporation in Cochin Commissionerate and M/s. Saksham Events in Jaipur Commissionerate, we observed that all these assessees did not deposit with government the service tax amounting to ₹ 1.17 crore collected by them during 2015-16.

We pointed these out (between September and November 2016), the Ministry intimated (May 2017) recovery of ₹ 12.25 lakh alongwith interest of ₹ 0.99 lakh in respect of M/s. Saksham Events and stated in respect of M/s. Impresario Event Management Pvt. Ltd., that they directed the assessee to pay the amount immediately and in respect of M/s. Jeevan Telecasting Corporation, that DGCEI unit has booked a case against the assessee.

4.2. Non-inclusion of value of additional consideration

As per Section 67(1)(ii) of the Finance Act, 1994, where service tax is chargeable on any taxable service with reference to its value and where the provision of service is for a consideration not wholly or partly consisting of money, then the value of such taxable service will be inclusive of money value equivalent of such consideration.

We observed additional consideration like expenses paid to the staff of the service provider borne by the service recipient, free duty credit script value used for procurement of restaurant service and free air time for promotional activities was not included in the taxable value. This resulted in non-payment of service tax of ₹ 4.10 crore by 11 assessees in six Commissionerates.

We pointed these out (between November and December 2016), the Ministry reported (May 2017) recovery of ₹ 6.17 lakh including interest in two cases viz., M/s. C Square Promos and Events and M/s. Aura Integrated Solutions Pvt. Ltd., while intimated that SCN was being issued in two cases (viz., Mr. Vishal (Ajay) Devgan and Mr. Arjun Rampal) and in one case viz Mr. Ritesh Vilasrao Deshmukh, the SCN was issued. Replies in the remaining cases are awaited.

A few cases are illustrated below:

During the examination of records of Mr. Salman Khan, Mr. Arjun Rampal in Mumbai ST-IV Commissionerate, Mr. Ritesh Vilasrao Deshmukh in Mumbai ST-III Commissionerate and Mr. Vishal (Ajay) Devgan in Mumbai ST-VI Commissionerate, we observed from the agreements between producer and actors that the producers, being service recipients, agreed to provide for and bear expenses relating to arrangement of the services for travel, lodging and boarding of the make-up artist, hair stylist and spot boy. Though these fall in the ambit of additional consideration directly and inextricably linked to the services provided by the assessees to the said service recipients, the value of this additional consideration was not included in taxable value of the assessees. Non-inclusion of the additional consideration during 2013-14 to 2015-16 resulted to non-payment of service tax of ₹ 3.47 crore.

We pointed this out (between November and December 2016), the Ministry reported (May 2017) issue of SCN in case of Mr. Ritesh Vilasrao Deshmukh and stated that SCN was being issued in the case of Mr. Vishal (Ajay) Devgan and Mr. Arjun Rampal. Reply in the case of Mr. Salman Khan was awaited.

4.3. Non-payment/short payment of service tax

In 14 Commissionerates, we observed 45 cases of non/short payment of service tax of ₹ 12.56 crore due to non-compliance with applicable ST provisions and rules.

We pointed these out (between October and December 2016), the Ministry while admitting the objection involving amount of ₹ 5.93 crore in 28 cases and intimated the recovery of ₹ 4.58 crore in 22 cases. Reply of the Ministry in the remaining cases is awaited (May 2017).

A few cases are illustrated below:

4.3.1. During the examination of records of M/s. Prasar Bharati Broadcasting Corporation in Delhi ST-I Commissionerate, we observed that the assessee raised invoices in respect of advance license fee for Gyan Vani Channel of

IGNOU amounting to ₹ 10.43 crore during the period 2014-15 and 2015-16. However, the assessee had not charged the service tax of ₹ 1.38 crore on the invoices raised to M/s. IGNOU. This resulted in non-payment of service tax of ₹ 1.38 crore.

We pointed this out (December 2016), the Ministry while admitting the objection stated (May 2017) that the assessee deposited the entire amount.

4.3.2. M/s. Noida Software Technology Park Limited in Delhi ST-III Commissionerate is providing the services under broadcasting service, scientific and consultancy service, legal service, rent-a-cab service etc. On analysis of records of the assessee, we noticed short payment of service tax on account of difference in service tax payments as indicated in ledger vis-a-vis service tax paid through Cenvat and Cash of ₹ 63.41 lakh relating to the period 2014-15 and 2015-16.

We pointed this out (November 2016), Ministry stated (May 2017) that the assessee would deposit their service tax liability at the earliest and further progress was awaited.

4.3.3. Similarly, short payment of service tax on account of difference in service tax payments as indicated in ledger vis-a-vis service tax paid through Cenvat and Cash of ₹ 66.05 lakh for the period 2013-14 and 2015-16 was noticed in case of M/s. Celebration Events Pvt., Ltd., in Delhi ST-I Commissionerate, providing event management services.

We pointed this out (August 2016), the Ministry while admitting the objection stated (May 2017) that the assessee deposited the entire amount.

4.4. Non-payment of service tax under Reverse charge mechanism

Section 68(2) of Finance Act 1994, envisages that the service recipient is liable to pay service tax on specified categories of services.

We noticed issues of non-payment of service tax under reverse charge on the services related to rent-a-cab, legal services, manpower recruitment agency services, import of services, etc. by the service providers of entertainment sector in 16 cases involving revenue implication of ₹ 1.01 crore.

We pointed this out (between August 2016 and December 2016), the Ministry while admitting the objection involving amount of ₹ 98.83 lakh in 12 cases and intimated the recovery of ₹ 92.19 lakh in 11 cases. Reply of the Ministry in the remaining four cases was awaited (May 2017).

A few cases are illustrated below: -

4.4.1. During the examination of records of M/s. Information TV India Pvt. Ltd., in Delhi ST-II Commissionerate providing broadcasting services besides other services, it was observed that the assessee had not paid service tax of ₹ 22.16 lakh pertaining to legal consultancy, renting of motor vehicle and detective services under the reverse charge mechanism for the period 2015-16.

We pointed this out (August 2016), the Ministry intimated (May 2017) the recovery of entire amount.

4.4.2. During the examination of records of M/s. Sahara India TV Networks in Noida ST Commissionerate providing broadcasting services, alongwith other services, it was observed that the assessee had not paid service tax of ₹ 13.05 lakh pertaining to legal services, import of services, manpower and renting of motor vehicle services under the reverse charge mechanism for the period 2015-16.

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

4.5. Incorrect / Excess availing of Cenvat credit

4.5.1. Ineligible credit on input services

Rule 2(l) of Cenvat Credit Rules, 2004, defines input service, inter alia, as any service used by a provider of output service for providing an output service, and included service such as modernisation, renovation or repairs of factory, etc. but excludes services provided by way of renting of motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods, services provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or Home Travel Concession, when such service are used primarily for personal use or consumption of any employee.

During examination of records, in seven Commissionerates, we observed 12 cases that the assessees irregularly availed Cenvat credit of ₹ 1.02 crore on ineligible input services during the period 2013-14 to 2015-16.

We pointed this out (between August 2016 and December 2016), the Ministry while admitting the objection involving amount of ₹ 36.64 lakh in four cases, intimated the recovery of ₹ 15.68 lakh in three cases. In six cases

involving amount of ₹ 61.28 lakh while the field formations intimated the recovery of ₹ 41.65 lakh in four cases, no confirmation was received from the Ministry. Reply of the Ministry in the remaining two cases was awaited (May 2017).

A few cases are illustrated below:

4.5.1.1. During the examination of records of M/s. Whatson India Media Pvt., Ltd., in Mumbai ST-III Commissionerate, we observed that the assesse had planned to sell the company for which an agency M/s. Virus Techno Innovation Pvt., Ltd., was engaged to search for potential investor interested in purchase of the company. The assesse paid ₹ 2.80 crore including service tax of ₹ 30.90 lakh to the agency and also availed the credit of ₹ 30.90 lakh. The credit availed by the assesse did not qualify under rule 2(l) of Cenvat Credit Rules, 2004 as this service was not used for providing output service. This resulted in irregular availment of Cenvat credit of ₹ 30.90 lakh.

We pointed this out (November 2016) the Ministry intimated (May 2017) the recovery of ₹ 32.42 lakh including interest.

4.5.1.2. During the examination of records of M/s. Polymer Media Pvt. Ltd. in Chennai ST-II Commissionerate engaged in providing broadcasting services besides other services, it was observed that the assessee availed the input service credit of ₹ 17.87 lakh during the period 2013-14 to 2015-16 on services relating to vehicle hire charges. The motor vehicle hired by the assesse did not fall under the definition of capital goods and hence ineligible for availing input credit. This resulted in irregular availment of Cenvat credit of ₹ 17.87 lakh.

We pointed this out (August 2016), while admitting the objection stated (May 2017) that the SCN was under issue.

4.5.2. Excess availment of Cenvat credit

A service provider can avail credit of service tax paid on input services related to his service activities and duties paid on inputs and/or capital goods and can utilize credit so availed in payment of service tax.

During examination of records, in eight Commissionerates, we observed 11 cases of excess availing of Cenvat credit amounting to ₹ 73.00 lakh during the period 2013-14 to 2015-16.

We pointed these out (between September and December 2016), the Ministry/department, while admitting the objection involving amount of ₹ 17.74 lakh in five cases, intimated the recovery of ₹ 10.84 lakh in three

cases. Reply of the Ministry / department in the remaining six cases was awaited (May 2017).

4.5.3. Cenvat credit taken on ineligible documents

Rule 9 of Cenvat Credit Rules, 2004, specifies the documents on the basis of which a manufacturer / service provider is allowed Cenvat credit of duty / service tax paid on input / capital goods or input services.

During examination of records, we observed six cases in four Commissionerates where Cenvat credit was availed on the basis of ineligible documents. This resulted in irregular availing of Cenvat credit of ₹ 1.25 crore during 2013-14 to 2015-16.

We pointed these out (between August and December 2016), the Ministry admitted the objection involving amount of ₹ 3.43 lakh in two cases and intimated the recovery of ₹ 1.91 lakh in one of these two cases. Reply of the Ministry in the remaining four cases was awaited (May 2017).

One case is illustrated below:

During the examination of records of M/s. Lamhas Satellite Services Ltd., in Mumbai ST–VII Commissionerate, we observed that the assesse availed credit of ₹ 58.15 lakh during 2013-14 to 2015-16 on the basis of proforma invoices, which resulted in incorrect availment of Cenvat credit of ₹ 58.15 lakh.

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

4.5.4. Non-reversal of Cenvat credit

As per rule 6(2) of Cenvat Credit Rules, 2004, where an assesse deals with both dutiable and exempted service, he shall maintain separate account of receipt, consumption and inventory of input/input services intended for use in dutiable service and those intended for use in exempted service and take credit of only the former portion. Further, the provider of output services, opting not to maintain separate accounts, shall pay an amount equal to six per cent of the value of the exempted good and exempted services or pay an amount as determined under sub-rule 3A[20] of Cenvat Credit Rules, 2004. As per Rule 2(e), 'exempted services' means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on

[20] Assessee can provisionally pay an amount of ineligible credit every month based on the previous year figures, and at the close of the year arrive at the actual ineligible credits based on the actual value of clearances and pay the difference if any along with interest

which no service tax is leviable under section 66B of the Finance Act. Further as per Section 66D (e) of Finance Act, 1994, trading of goods is an item in the negative list.

We observed 15 cases, in nine Comissionerates, where the assessees had either not reversed or short reversed the amount of ₹ 18.73 crore payable under rule 6 of the Cenvat Credit Rules, 2004, during the period of review.

We pointed these out (between August and December 2016), the Ministry admitted the objection involving amount of ₹ 60.03 lakh in seven cases and intimated the recovery of ₹ 47.95 lakh in five cases. In one case Ministry did not accept the objection which is discussed below. Reply of the Ministry in the remaining cases is awaited (May 2017).

A few cases are illustrated below: -

4.5.4.1. During examination of records of M/s Prime Focus Limited (PFL) in Mumbai ST-IV Commissionerate, we observed that assessee transferred the Conversion business at Chandigarh and Mumbai together with all assets along with assumed obligations, and employees, as an ongoing concern to M/s. Prime Focus World Creative Services Pvt., Ltd., under a Business Transfer Agreement. The assessee received a consideration of ₹ 229.70 crore towards this transfer during 2013-14 and 2014-15. The business transfer of an ongoing concern is exempted service and the assessee was also not maintaining separate account. Hence the assessee was required to reverse cenvat credit, calculated at 6 per cent of value of exempted service, amounting to ₹ 13.78 crore on inputs relating to this exempted service.

We pointed this out (December 2016), the Ministry stated (May 2017) that the transfer of business includes transfer of various assets and business liabilities as a whole and therefore, does not qualify as "service" as defined under Section 65(44) of the Finance Act, 1944. Hence no reversal of Cenvat credit is required.

The reply of the Ministry is not acceptable since the transfer of assets included movable and immovable assets as per Business Transfer agreement. Hence it qualifies as "service" as defined under Section 65(44) of the Finance Act, 1944 and the assessee was required to reverse cenvat credit, calculated at 6 per cent of value of exempted service.

4.5.4.2. During the examination of records of M/s. Jagran Prakashan Ltd., in Delhi ST-II Commissionerate, we observed that the assesse had provided both taxable and exempted services and did not maintain separate accounts for input services used in the provision of taxable and exempted services in

respect of all administrative services i.e., renting, courier, legal etc. Hence the assesse is liable to pay an amount of ₹ 1.75 crore at the rate of six per cent of exempted services of ₹ 29.24 crore during 2013-14 to 2015-16.

We pointed this out (September 2016), the Ministry stated (May 2017) the SCN is being issued.

4.5.5. Cenvat credit on old invoices

Rule 4 of the Cenvat Credit Rules, 2004, was amended with effect from 1 September 2014 to provide inter alia that Cenvat credit shall not be allowed after six months of the date of documents issued under rule 9 ibid. The time limit of six months was enhanced to one year with effect from 1 March 2015.

During the examination of records of M/s. Den Enjoy Cable Pvt., Ltd. and M/s. M.H. One TV Network Ltd. in Delhi ST-III Commissionerate and M/s. Executive Events in Cochin Commissionerate, we observed that the assessees availed credit of duty paid on the basis invoices which were older than six months/one year during the period 2013-14 to 2015-16. This resulted in irregular availing of Cenvat credit of ₹ 33.32 lakh.

We pointed this out (between September and November 2016), the Ministry while admitting the objection in two cases, intimated (May 2017) the recovery of ₹ 0.87 lakh in the case of M/s. Den Enjoy Cable Pvt., Ltd. Reply in the case of M/s. Executive Events is awaited.

4.5.6. Availing of Cenvat credit without making payment

Sub-rule 7 of rule 4 of Cenvat Credit Rules, 2004 stipulates that the Cenvat credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received. Further, proviso to the said rule provides that in case the payment of the value of input service and service tax paid or payable as indicated in the invoice/bill is not paid within three months of the date of the invoice/bill, the service provider who has taken credit on such input service shall pay an amount equivalent to the Cenvat credit availed on such input service.

Further, this rule provides that if any payment or part thereof, made towards an input service is refunded or credit note is received by the manufacturer or the service provider who has taken credit on such input services, he shall pay an amount equal to the Cenvat credit availed in respect of the amount so refunded or credited.

During examination of records we observed six cases in five Commissionerates where the service providers availed Cenvat credit on input services in violation of above rules either by not making payment for value of input service along with service tax payable thereon within the prescribed time limit of three months. This resulted in irregular availing of Cenvat credit of ₹ 4.93 crore.

We pointed these out (between August and December 2016), the Ministry while admitting the objection involving amount of ₹ 28.20 lakh in four cases, intimated the recovery of ₹ 6.62 lakh in two cases. Reply of the Ministry in the remaining cases is awaited (May 2017).

One case is illustrated below:-

Scrutiny of records of M/s. Sahara India TV Network in Noida ST Commissionerate, revealed that the assessee had availed and utilised Cenvat credit of ₹ 4.56 crore on input services in respect of which the assessee had not paid the value of input service till the date of audit (November 2016). This resulted in irregular availing of Cenvat credit of ₹ 4.56 crore during the period 2013-14 to 2015-16.

We pointed this out (November 2016), while the reply of the Ministry was awaited (May 2017), the assessee reversed (December 2016) the credit of ₹ 4.56 crore.

4.5.7. Non-reversal of proportionate Cenvat credit on the capital goods sold

As per rule 3(5A)(a)(ii) of the Cenvat Credit Rules, 2004, if the capital goods on which Cenvat credit has been taken are removed after being used, the provider of output service shall pay an amount equal to the Cenvat credit taken on the said capital goods reduced by the percentage points calculated by straight line method at the rate of 2.5 per cent for each quarter of a year or part thereof from the date of taking Cenvat credit.

During the examination of records of M/s. Saravanan Video Centre, in Chennai ST-II Commissionerate and M/s. Kerala Communications Cable Ltd., in Cochin Commissionerate, we observed that the assessee had sold the imported capital goods (on which they had already availed Cenvat credit) but omitted to reverse the equivalent Cenvat credit during 2013-14 to 2015-16. It resulted non-reversal of Cenvat credit of ₹ 27.44 lakh.

We pointed these out (between September and December 2016), the Ministry intimated (May 2017) the recovery of ₹ 9.12 lakh in respect of

M/s. Saravanan Video Centre and stated that an SCN was being issued to M/s. Kerala Communications Cable Ltd.

4.6. Non / short payment of Swachh Bharat Cess

Section 119 of the Finance Act, 2015 contains provisions for levy and collection of Swachh Bharat Cess (SBC) at the rate of 0.5 per cent on all taxable services effective from 15 November 2015.

During examination of records in four Commissionerates, we observed non-payment of Swachh Bharat Cess amounting to ₹ 56.99 lakh by six assessees. We pointed this out (between August and November 2016), the Ministry while admitting the objection in all the cases, intimated (May 2017) the recovery of ₹ 56.27 lakh.

4.7. Non / short payment of interest

Section 75 of the Finance Act, 1994, envisages that every person, liable to pay the tax in accordance with the provisions of Section 68 or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay interest for the periods by which such crediting of the tax or any part thereof is delayed.

During examination of records, we observed the non / short payment of interest of ₹ 1.45 crore on delayed payment of service tax in 19 cases in nine Commissionerates.

We pointed these out (between August and December 2016), the Ministry admitted the objection involving amount of ₹ 97.75 lakh in 12 cases and intimated the recovery of ₹ 35.82 lakh in seven cases. Reply of the Ministry in the remaining seven cases was awaited (May 2017).

Two case are illustrated below:-

4.7.1. During the examination of records of M/s. Impresario Event Management India Ltd., in Cochin Commissionerate, engaged in providing Event Management Services, we observed that they delayed the payment of service tax of ₹ 70.07 lakh and ₹ 56.32 lakh for the years 2013-14 and 2014-15 respectively, with delay ranging from 250 days to 544 days. But the applicable interest of ₹ 28.41 lakh was neither paid by the assessee nor demanded by the department.

We pointed this out (October 2016), the Ministry stated (May 2017) that they directed the assessee to pay the amount.

4.7.2. During the examination of records of M/s. MYSTIC An Entertainment Company in Mumbai ST-VI Commissionerate engaged in providing programme producer service, we observed that the assessee short paid the interest of ₹ 21.04 lakh during 2013-14 to 2015-16 on which no action was initiated by the department.

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

The instances of non-adherence to taxation rules by assessees drive home the need to put in place a more automated compliance verification mechanism, based on technology and data analytics, to make non-compliance difficult.

New Delhi **(HIMABINDU MUDUMBAI)**
Dated: 11 July 2017 **Principal Director (Service Tax)**

Countersigned

New Delhi **(SHASHI KANT SHARMA)**
Dated: 11 July 2017 **Comptroller and Auditor General of India**

Abbreviations

Abbreviations

ACES	Automation of Central Excise and Service Tax
ATN	Action taken note
AWDR	Assessee-Wise Detailed Report
CAG	Comptroller and Auditor General of India
CBEC	Central Board of Excise and Customs
CGST	Central Goods Service Tax
Cenvat	Central Value Added Tax
CESTAM	Central Excise and Service Tax Audit Manual
DG	Director General
DGCEI	Directorate General of Central Excise Intelligence
GST	Goods and Service Tax
GSTN	Goods and Service Tax Network
IGNOU	Indira Gandhi National Open University
Ltd.	Limited
PLA	Personal Ledger Account
Pvt.	Private
SCN	Show Cause Notice
ST	Service Tax
VCES	Voluntary Compliance Encouragement Scheme, 2013