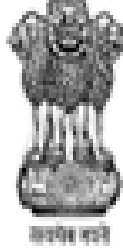


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Government of India

MONTHLY AUDIT BULLETIN – APRIL 2012

**Directorate General of Audit  
Customs & Central Excise  
Central Revenue Building,  
I.P. Estate  
New Delhi-110109**

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**MONTHLY AUDIT BULLETIN – APRIL 2012**

**CENTRAL EXCISE**

- (1) **GIST OF THE OBJECTION : Proportionate reversal of CENVAT Credit availed on Furnace Oil used for Common Steam generating plant.**

**COMMISSIONERATE : Central Excise Commissionerate, Mangalore**

During the walk through of a factory's DTA unit, it was noticed that there was a sister unit (100% EOU) of the assessee located in the same premises. Both units were engaged in manufacture of Bulk drugs. During the manufacturing process, both the DTA unit as well as the EOU were using Steam to dry the Bulk drug. The assessee had setup a steam generating plant inside the factory that was supplying Steam to both the units by using Furnace Oil to generate steam on which CENVAT Credit was availed and utilized for the payment of Central Excise duty. Since the steam generated by the steam generating plant had been used by both the DTA unit as well as EOU, the manufacturer had to reverse proportionate credit on Furnace oil used in generating steam shared by sister concern EOU. Based on the quantum of production, the proportionate CENVAT Credit was quantified for last Five years at ₹19,26,483/- and Interest of ₹5,86,985/-. On pointing out, the manufacturer agreed with audit contention and reversed the proportionate credit.

- (2) **GIST OF THE OBJECTION : Availment of CENVAT Credit contrary to the provisions of Rule 15 of the PMPM (CDCD) Rules, 2008**

**COMMISSIONERATE : Central Excise Commissionerate, Belgaum**

The assessee is engaged in the manufacture of Pan Masala containing Tobacco (SH 2403 9990) and Pan Masala not containing Tobacco (SH 21069020). The subject goods were levied to duty based on the Annual Capacity of Production under Section 3A of the Central Excise Act, 1944 read with Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008. [PMPM(CDCD) Rules, 2008]. The assessee was paying the duty in accordance of the PMPM (CDCD) Rules, 2008, under protest. Rule 15 of the PMPM (CDCD) Rules, 2008, specifically restricts availment of CENVAT Credit of duty paid on any inputs, capital goods or input services (used in or in relation to manufacture) of the notified goods. During the course of audit, it was observed that the assessee was availing the CENVAT Credit on inputs and reflecting the same in the monthly ER-1 returns filed by them. The assessee had availed the

CENVAT Credit of ₹66,58,203/- during the audit period covering December-2010 to November-2011. The assessee had a total balance of ₹1,68,94,430/- in his Cenvat account as per the ER-1 return filed for the month of November-2011. Since, the assessee was working under PMPM (CDCD) Rules, 2008 and the availment of CENVAT Credit was specifically barred vide Rule 15 of the PMPM (CDCD) Rules, 2008, assessee was not eligible for availing CENVAT Credit. The CENVAT Credit irregularly availed and lying in balance as on 30.11.2011 amounting to ₹1,68,94,430/- was required to be reversed along with interest. On pointing out, the assessee accepted the contention of the audit and informed vide letter dated 06.02.2012 that they have reversed the entire credit accrued up to Jan. 2012 "Under Protest".

**(3) GIST OF THE OBJECTION: Non amortization of the value of Moulds received free of cost from the buyers of the final products BED ₹33.65 Lakhs**

**COMMISSIONERATE : Central Excise Commissionerate, Bangalore-II**

The assessee is engaged in the manufacture of components for automobile manufacturers. The assessee sometimes receives the moulds required for the manufacture of these components from his customers and at times the unit undertakes procurement/manufacture of these moulds on behalf of his customers. These moulds were sometimes sold to his customers to realize the money value even though the same is retained by the assessee for manufacture of components on behalf of his customers. Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 states that "where the excisable goods are sold in the circumstances specified in clause (a) of sub section (1) of section 4 of the Act except the circumstance where the price is not the sole consideration for sale, the value of such goods shall be deemed to be the aggregate of such transaction value and amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee. Explanation I to the rule states that for the removal of doubts, it is hereby clarified that the value, apportioned and appropriated, of the following goods and services, whether supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale of such goods, to the extent that such value has not been included in the price actually paid or payable, shall be treated to be the amount of money value of additional consideration flowing directly or indirectly from the buyer to the assessee in relation to sale of the goods being valued and aggregated accordingly namely:

i) \*\*\*\*\*;

ii) Value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods.”

In the present case, the assessee had sold off the moulds to his buyers while retaining the same at his premises itself for manufacture of components on behalf of customers. Such moulds were effectively received free of cost by the assessee and the value of such moulds will have to be included in the cost of the components supplied to his customers as per the provisions of the rules stated above. But the assessee failed to do so resulting in short payment of duty to the extent of value of the moulds not amortized to the components manufactured. The total duty on such non-amortised tooling cost for the period 6/2009to9/2011 worked out to BED ₹30,68,829/-, EC ₹61,337/-, SHEC ₹30,688/- and interest ₹2,04,388/-. On pointing out, the assessee paid the duty and interest.

**(4) GIST OF OBJECTION : Irregular availment of notification No.08/2003-CE, dated 01.03.2003.  
COMMISSIONERATE : Central Excise Commissionerate, Patna**

The assessee is a manufacturer of ‘Wrist Watches’ falling under Sub-Heading Nos. 9101 & 9102 of the Central Excise Tariff Act, 1985 having different models of retail sale price (RSP) exceeding ₹500/- (Except Model-A-104 of RSP ₹439/- & Model T/L of RSP- ₹399). The assessee was availing Small Scale Industries (SSI) exemption during the period 2009-10, 2010-11 & 2011-12. During desk review, the auditors examined ER-1 return vis-à-vis GAR-7 challans as well as Copy of Agreement executed between the said assessee & his buyers [Canteen Stores Department, Ministry of Defence and Central Police Canteen (MHA), New Delhi] for the period 2009-10 to 2011-12 (Upto Dec.2011). In this regard the auditors carefully examined S.No.5(1) of notification No.08/2003-CE, dated 01.03.2003, and notification No.28/2011-CE, dated-24.03.2011, wherein it had been stipulated that watches of RSP not exceeding ₹500/- per piece and parts thereof falling under Sub-Heading No.-9101 & 9102 were only entitled to avail the benefit of SSI exemption. Therefore, the invoices and commercial bills showing clearance of watches of RSP exceeding ₹500/- per piece and parts thereof were selected for scrutiny at the time of audit. It was ascertained that the assessee had not paid Central Excise duty on wrist watches of RSP exceeding ₹500/- per piece and parts thereof amounting to ₹10,82,622/- for the

period 2009-10. Short paid duty for the period 2010-11 & 2011-12 (upto Dec,2011) was ascertained as ₹15,42,823/- & ₹15,36,426/- respectively. Accordingly the assessee is required to pay total Central Excise duty of ₹41,61,871/- along with interest.

**(5) GIST OF OBJECTION : Erroneous claim of refund under notification No. 32/99-CE of duty on goods short supplied and for which no payments were received from customers**

**COMMISSIONERATE : Central Excise Commissionerate, Guwahati**

At the time of conducting preliminary Desk Review and on scrutiny of the Schedule 10 to 19 of the Balance Sheet and Profit & Loss Account for the FY 2010-2011, it was observed by auditors that an amount of ₹2,19,38,529/- had been shown under the heading “Shortage & deduction”. During the course of audit, the issue of “Shortage & deduction” was taken up for discussion with the assessee and it was clarified by the assessee that this amount was actually short paid/deducted by the buyers due to short receipt of finished goods by them. But the fact remains that the assessee had already taken refund in terms of notification No.32/99-CE, dated 08.07.1999 as amended, on the proportionate amount of Central Excise duty on the finished goods cleared. This refund on the short supply/non-clearance of finished goods is against the terms & conditions as laid down in the aforesaid exemption notification No.32/99-CE. The assessee was, therefore, liable to pay back the differential amount of duty taken as refund against short/non-clearance of finished goods to the buyers as calculated below along with due interest.

The Cum-duty price plus 2% CST of the shortage goods = ₹2,19,38,529/-

The assessable value of the goods = ₹1,87,97,729/-

Basic Central Excise Duty @ 14% on assessable value = ₹26,31,682/-

Excess refund taken on the Basic Excise Duty = ₹9,47,406/-

The assessee is, therefore, required to pay back the aforesaid amount of ₹9,47,406/- of excess refund taken along with due interest.

**(6) GIST OF OBJECTION : Non amortization of tool cost in the assessable value received free from his customers.**

**COMMISSIONERATE : Central Excise Commissionerate, Chennai IV**

During the course of audit, it was noticed that the assessee had manufactured and cleared automobile parts to his OE (Original Equipment) customer, out of the moulds supplied free of cost by them. On perusal of the invoices pertaining to the clearances of the said items, it was noticed that the assessee had not amortized the cost of mould supplied by the buyer in the assessable value of the goods for the period from Feb 2010 to Dec 2011. The non amortization of the mould cost has resulted in short payment of duty. In terms of Rule 6 of the Central Excise Valuation Rules, 2000 where the excisable goods are sold in the circumstances specified in clause (a) of sub section (1) of section 4 of the Act, where the price is not the sole consideration of the sale, the value of such goods shall be deemed to be the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee. Therefore, in the instant case, the value of mould supplied by the buyer is required to be included in the cost of the goods manufactured by the assessee. On being pointed out, the assessee admitted his mistake and paid the Excise duty of ₹19,26,281/-

**(7) GIST OF OBJECTION : Non reversal of Additional duty of Customs on “as such” Clearances of cenvat availed imported inputs.**

**COMMISSIONERATE : Central Excise Commissionerate, Chennai-IV**

Assessee is manufacturers of Copper parts of Air conditioning machines falling under Sub Heading No.84159000 of CETA 1985. They availed CENVAT Credit on inputs and capital goods. During the course of audit, it was observed that the assessee had cleared “as such” imported goods on which CENVAT Credit had been availed. On further verification of his “as such” clearance invoices it was found that the assessee had not debited the Additional duty of Customs availed on the said imported goods. The additional duty of customs to be reversed worked out to ₹3,15,956/-. On being pointed out the assessee accepted the objection and paid the said duty amount.

**(8) GIST OF OBJECTION : Short payment of duty due to non-application of Cost data for arriving at assessable value of the final product.**

**COMMISSIONERATE : Central Excise Commissionerate, Tirupathi**

During the course of audit of accounts of assessee it was noticed that the assessee was clearing “Silicon Carbide” to his other units located at Nagpur, Mora and Bangalore on stock transfer basis for further manufacturing of goods, viz., Grinding wheels and Emery Paper. Since the goods were cleared to his other units for further manufacturing, the value of the products had



to be arrived at by Cost construction method, in terms of Rule 8 of the Central Excise Valuation Rules, 2000 read with Rule 9 ibid. The cost construction method was not adopted since July 2010. The assessee agreed to the objection. On being pointed out by the audit, the assessee arrived at the differential duty and paid Central excise duty of ₹66.04 Lakhs and interest of ₹8.95 Lakhs.

**(9) GIST OF THE OBJECTION : CENVAT Credit wrongly taken on capital goods against which depreciation claimed under the Income Tax Act, 1961.**

**COMMISSIONERATE : Central Excise Commissionerate, Belapur**

During the course of audit of the assessee, on examination of the Balance Sheet for the year 2010-11, it was noticed that the assessee had taken CENVAT Credit on Capital Goods and also claimed depreciation of the amount representing Central Excise Duty under Section 32 of the Income Tax Act, 1961 for the period 2010-11. As per Sub rule 4 of Rule 4 of the CENVAT Credit Rules, 2004 the CENVAT Credit in respect of Capital Goods shall not be allowed in respect of that part of value of capital goods, which the manufacturer or provider of output service claims depreciation under Section 32 of the Income Tax Act, 1961. On being pointed out, the assessee agreed with the objection raised and reversed the duty amounting to ₹30,02,947/- alongwith interest of ₹7,54,602/-.

**(10) GIST OF THE OBJECTION : Wrong availment of notification No.8/2003-CE, dated 01.03.2003**

**COMMISSIONERATE : Central Excise Commissionerate, Jaipur - II**

During the course of audit of the records of the assessee for the period 2006 to September 2011, it was observed that the assessee was engaged in the manufacture of Marble slabs and Tiles falling under chapter 25 of the CETA, 1985 and also engaged in manufacturing the goods on job work basis for his customers. The assessee was availing the benefit of exemption provided under notification No.08/2003-CE, dated 01.03.2003 as amended. As per condition No.2(vii) of the above notification, it is provided that the aggregate value of clearances of all excisable goods for home consumption by a manufacturer from one or more factories, or from a factory by one or more manufacturers, shall not exceed Rs.4Crore in the preceding financial year. For computing

the aggregate value of clearance of all excisable goods for home consumption, the CBEC has clarified this aspect in Circular No.733/49/2003-CX, dated 06.08.2003 as follows:-

*“Your attention is invited to explanatory notes to the Finance Bill 2003, contained in Budget Bulletin 2003, under the Small Scale Industry Exemption Scheme. It has been clarified that value of exempted goods will be included (excluding exports) for calculating the eligibility limit of ₹3Crore for eligibility under SSI Exemption w.e.f. 1.4.2003. Further, for bringing into effect this change, the notifications No.8/2003-CE and No.9/2003-CE dated 1.3.2003 have been issued and these notifications have been made effective from 1.4.2003. Your attention is also invited to JS(TRU) D.O.F.No.334/1/2003-TRU, dated 28th February, 2003 wherein para 8.2 of the letter states that the value of exempted goods will be included (excluding exports) for calculating the eligibility limit of ₹3Crore for eligibility under SSI Exemption w.e.f. 01.04.2003.”*

The assessee was engaged in the manufacture of Marble and Sand stone slabs on job work basis also. This activity of the assessee comes under the purview of manufacture as defined under section 2(f) of the Central Excise Act, 1944. While computing the value of clearance of ₹4 Crores, the assessee had taken into consideration only the job charges without taking into account the cost of raw material supplied by the Principal to the assessee. Due to this reason, the value of clearance computed by the assessee exceeds the limit of ₹4 Crores during the financial year 2009-10 and 2010-11. As a result of incorrect valuation of job work goods the assessee became ineligible for the benefit of exemption in the financial years 2010-11 and 2011-12 and cleared the goods by incorrect availment of exemption of ₹150 Lakhs. On being pointed out, assessee agreed with the objection and deposited an amount of ₹17,74,265/- against Central Excise Duty for the year 2010-11 and an amount of ₹16,91,436/- for the clearance effected upto 30.09.2011 for the year 2011-12 along with interest ₹39,852/- and ₹1,63,399/- respectively.

**(11) GIST OF THE OBJECTION : Central Excise duty on additional consideration received as raw material rate difference.**

**COMMISSIONERATE : Central Excise Commissionerate, Bhavnagar**

The assessee is engaged in manufacture of Sugar Confectionery, Chocolates and other food products, Throat Lozenges falling under Chapters 17, 18 & 30 of CETA, 1985. On verification of the 'Other Income' of the said assessee in the Balance Sheet, the income of 'Rate Difference in Raw Material' was noticed. The assessee was manufacturing excisable goods of other brand name who ordered them to manufacture and sell them from the assessee's premises at fixed prices. The profit or loss was to be borne by the brand name owner. The assessee was purchasing raw material and clearing goods on payment of duty and getting the conversion charges as net income. However, in some cases, it was observed that the price of raw material purchased was more than the selling price which the assessee recovered from the brand name owner. An amount of ₹252.98 Lakhs was recovered by the assessee from the year 2008-09 to April'2011 as difference between the raw material price and the selling price. The same was shown as 'other income'. Since the goods were sold from the premises of the assessee, such amount received had to be added in the assessable value for payment of duty. The assessee on being pointed out, agreed to the objection and paid the total amount of ₹21,90,031/- including interest.

## SERVICE TAX

- (12) **GIST OF THE OBJECTION : Short payment of Service Tax on certain services under Work Contract Service ₹19.94 Lakhs**  
**COMMISSIONERATE : Central Excise Commissionerate, Bangalore-II**

During the course of verification of financial records, it was observed that the assessee was showing income towards construction/development of Layout. The assessee had paid Service Tax on the construction works like culverts, external underground drainage works / masonry drains rendered on such projects. On scrutiny of contract schedule, it was noticed that the Service Tax was not paid on works like construction of Over head Tank, ground level service reservoir, external water supply works, bore wells, raising water mains from ground level reservoir to OH Tanks etc, which is classifiable under Work Contract Service and is a taxable service under Sec. 65(105)(zzzza) of the Finance Act, 1994 and the assessee is liable to pay the Service Tax on such services also. On being pointed out, the assessee agreed with the audit's contention and paid ₹5,88,550/- ST + ₹11,771/-EC + ₹5,886/-SHE through CENVAT Credit and agreed to pay ₹13,86,772/-(including cess) with Interest of ₹1,93,531/- in PLA.

- (13) **GIST OF OBJECTION : Non-payment of Service Tax under the category 'Supply of Tangible Goods'.**

**COMMISSIONERATE : Central Excise Commissionerate, Jamshedpur.**

The assessee is a provider of 'Supply of Tangible Goods Services' which is a taxable service with effect from 16.05.2008, defined in section 65(105)(zzzzj) as follows-

*"Taxable Service means any services provided or to be provided, to any person by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring the right of possession & effective control of such machinery, equipment and appliances."*

During course of audit and scrutiny of records, it was observed that the assessee had supplied 'Mobile Screen/Crusher Plant' to its customers on rent basis during the period 2008-09 to 2010-11. From the above definition, it was quite clear that services provided by them fall under the category 'Supply of tangible goods services'. But it was found that the assessee did not

charge Service Tax separately in bills nor paid Service Tax out of the gross realized amount. The Service Tax liability on the said Services for the period 16.05.2008 to 31.3.2011 was worked out taking into consideration the sundry debtors which were of ₹ 20,44,107/-. The assessee agreed with audit point of view and paid Service Tax and Interest.

**(14) GIST OF THE OBJECTION: Non-payment of Service Tax on the crane rental bills raised towards services provided to the contractors of SEZ units.**

**COMMISSIONERATE : Central Excise Commissionerate, Visakhapatnam II**

During the course of audit of the accounts of assessee, provider of “Supply of Tangible Goods services”, the audit observed that the assessee supplied cranes to contractors of SEZ units. The assessee received certain rental income thereon, during the period from 2009-10 to 2011-12 (up to Jan, 2012), but did not pay Service Tax thereon, claiming the benefit of exemption from Service Tax, vide notification No.9/2009-ST, dated 03.03.2009. The audit further verified the bills and concerned work orders and noticed that they provided services to the contractors of SEZ units in the capacity of a sub-contractor and the notification referred to above provided exemption from Service Tax to units of SEZ by way of refund and hence the notification was not relevant for the assessee. The audit pointed out that the assessee, therefore, has to pay Service Tax of ₹10.35 Lakhs along with interest. The amount of ₹10.35 Lakhs short paid by the assessee was recovered on the spot alongwith interest due.

**(15) GIST OF THE OBJECTION : Non inclusion of TDS amount in taxable value of resulting in short payment of Service Tax on Business Auxiliary Services**

**COMMISSIONERATE : Central Excise Commissionerate, Bhubaneswar II**

The assessee is a provider of Business Auxiliary services (BAS). The audit verified the Ledger accounts of the assessee for BAS for the year 2010-11 and noticed that the value of taxable service was determined by excluding the TDS amount from the gross taxable value which resulted in undervaluation of taxable service provided and short payment of Service Tax to the tune of ₹5.20 Lakhs. The audit team, conducting the verification during August 2011, found that out of Service Tax of ₹30.17 Lakhs payable for the Month of March, 2011, the

assessee paid tax to the tune of ₹24.72 Lakhs, partly during June, 2011 and in August, 2011. However interest of ₹1.33 Lakhs on the aforesaid delayed payment was yet to be paid as on date of audit. The audit also pointed out that the assessee had to pay Service Tax of ₹5.45 Lakhs, short paid for March, 2011 along with interest. Recovery of ₹6.22 Lakhs alongwith interest of ₹1.81 Lakhs was made in instant case.

**(16) GIST OF THE OBJECTION : Non deposit/payment of Service Tax collected from the customers.**

**COMMISSIONERATE : Service Tax Commissionerate, Delhi**

The assessee is a partnership company and engaged in the business of Renting of Immovable Property. During the course of audit it was noticed that the assessee was claiming abatement of house tax paid under notification No.24/207-ST, dated 22.05.2007 from the gross amount for purposes of payment of Service Tax whereas assessee had charged & collected Service Tax from his tenants on the abatement amount. Thus, he had charged and collected Service Tax on this abatement from his tenants leading to excess collection of Service Tax. It appeared that the assessee had collected certain amount as Service Tax in excess of his Service Tax liability and he was required to pay this amount to the credit of Central Government in terms of Section 73A(2) and interest thereon in terms of Section 73B of the Finance Act, 1994. After being pointed out, the assessee agreed and deposited the said amount so collected to the tune of ₹ 39,00,259/- and interest thereon.

**(17) GIST OF THE OBJECTION : Payment of Service Tax on import of Service through cenvat which is not permissible.**

**COMMISSIONERATE : Central Excise Commissionerate, Noida**

On perusal of balance sheet and ST-3 returns, it appeared that the assessee had made payment to foreign based companies having no office in India on account of AMC, License Fee and Repair Maintenance to the tune of ₹7,59,62,219/- during the period October, 2006 to September, 2011. The assessee had paid Service Tax under reference through CENVAT Credit, while as per Rule 3(4) of the CENVAT Credit Rules 2004, credit can be utilized on any output service but not in case of input service. The assessee is required to pay Service Tax through cash

only under the reverse charge mechanism. As per above assessee is required to pay Service Tax amounting to ₹87,87,351/- for the above said period.

**(18) GIST OF THE OBJECTION: Detection of payments received in Indian Rupee against Services rendered to customer outside India from verification with Foreign Inward Remittance Certification (FIRC)**

**COMMISSIONERATE : Service Tax Commissionerate, Delhi**

The assessee is engaged in providing services of Management Consultancy. During audit it was observed that assessee had not paid Service Tax on reimbursements and advances recoverable/other receivables as shown in Notes to accounts under related assessee transaction. On being asked about its nature, assessee submitted that the same was export relating to management and legal consultancy provided to group companies abroad. However, when checked from FIRC, it was found that payment for the same is received in Indian Rupee (INR) and thus the same did not qualify for exports. Thus the assessee had contravened the Sections 68 and 66 of the Finance Act, 1994 and the amount of Service Tax short paid is to be recovered under section 73 along with interest under section 75 of the Finance Act, 1994 which amounts to ₹1,83,37,532/-.

**(19) GIST OF THE OBJECTION: Non payment of Service Tax on amounts received as reimbursement.**

**COMMISSIONERATE : Service Tax Commissionerate, Delhi**

During audit it was observed that while rendering the Custom House Agent's (CHA) services, for import or export of goods, apart from the service of CHA the assessee incurred certain expenses on services like port services, cargo handling service, etc. It was noticed that the service providers raised the bills to the assessee for payments. CHA availed the CENVAT Credit on these invoices and in turn got these charges reimbursed from the assessee. Further on examination of the trial balance of the assessee, it was observed that these reimbursable expenses did not pass through the profit and loss account but only the margin under these reimbursable heads were taken into the income account. Therefore the Service Tax was not paid on the value of such reimbursable charges received. In terms of Section 67 of the Finance Act, 1994 read with Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 and CBEC Circular No.

119/13/2009-ST, dated 21.12.08, the amount of reimbursable charges received from the importer/ exporter by the assessee should form the part of the gross value of the service provided. The assessee did not pay Service Tax on the gross value of the service provided. Therefore, assessee is liable to pay the amount of Service Tax of ₹3,83,36,737/- under Section 68 of the Finance Act, 1994 and the same is recoverable under Section 73(3) ibid.

**(20) GIST OF THE OBJECTION : Non payment of Service Tax on the income booked Under the head 'Import-Export Charges' mentioned in P/L statement.**

**COMMISSIONERATE : Service Tax Commissionerate, Mumbai - I**

On perusal of financial records, it was noticed that the assessee had booked income under the heads. 'Import-Export Charges' and 'Income from Back Office operation' in relation to Cargo handling, which were taxable under the Cargo Handling Services, but failed to discharge the Service Tax liability on it. The income received in respect of above activities/services were taxable under section 65(105) (zr) of the Finance Act, 1994 as "Cargo Handling Services". Therefore, the assessee was requested to discharge the Service Tax liability on the above income shown under the category of "Cargo Handling Services" along with interest. The assessee paid the amount of ₹42,15,814/- (S.Tax + Edu. Cess) along with interest of ₹ 30,83,273/-.

**(21) GIST OF THE OBJECTION: Short reversal of Service Tax at the time of exit from SEZ, on services procured tax free.**

**COMMISSIONERATE : Central Excise Commissionerate, Surat – I**

The assessee is engaged in providing Transport of Goods by Road, Consulting Engineer, Business Auxiliary, Testing, Inspection and Certification and Banking & Financial services. During the course of audit it was noticed that the assessee was granted LOA on 26/10/2006 to operate as Special Economic Zone (SEZ) unit in the SEZ Zone under the SEZ Rules, 2006. It was also seen that the assessee requested Development Commissioner, SEZ for exit from the SEZ and the permission for exit was granted on 28/09/2010. The exit of units from Special Economic Zone is governed vide Rule 74 of the SEZ Rules, 2006. As per the said rule, the assessee is deemed to be a unit, till the date of final exit from Special Economic Zone. The relevant provisions allow the exit, subject to certain conditions. The condition relevant to the



present case is – reversal of Service Tax applicable on services availed by the assessee tax free while enjoying SEZ status and also applicable interest from the date of exit from Special Economic Zone. It was also seen that before exit the assessee reversed an amount of ₹1,47,04,82,666/- and due intimation was given to the respective authorities. On scrutiny of the book of accounts, it was noticed that the amount of Service Tax reversed by the assessee at the time of exit from SEZ did not tally with the amount required to be reversed, in respect of services Consulting Engineer and Intellectual Property Services other than Copyright which were procured tax free. The short payment worked out to ₹1,13,91,915/-. On being pointed out, the assessee agreed with the audit and paid the same through challan along with interest of ₹20,88,593/-.

**PERFORMANCE OF COMMISSIONERATE FOR THE PERIOD APRIL, 2011 TO DECEMBER, 2011**

S.No.	Commissionerate	No. of Units Audited			Detection (Rs. In Lakhs)			Recovery (Rs. In Lakhs)		
		01/04/2010 to 31/12/2010	01/04/2011 to 31/12/2011	% Change	01/04/2010 to 31/12/2010	01/04/2011 to 31/12/2011	% Change	01/04/2010 to 31/12/2010	01/04/2011 to 31/12/2011	% Change
	<u>Ahmedabad Zone</u>									
1	Ahmedabad ST	133	114	-14	12061	3836	-68	816	927	14
2	Ahmedabad-I	125	107	-14	174	444	155	173	342	98
3	Ahmedabad-II	180	101	-44	746	438	-41	285	411	44
4	Ahmedabad-III	297	258	-13	2064	2176	5	1009	961	-5
5	Rajkot	300	496	65	20124	7342	-64	895	2426	171
6	Bhavnagar	90	127	41	167	1807	983	70	951	1265
	<u>Vadodara Zone</u>									
7	Vadodara-I	279	302	8	4736	2048	-57	2419	1434	-41
8	Vadodara-II	267	220	-18	4528	6455	43	736	1638	122
9	Surat-I	102	283	177	2186	1948	-11	600	992	65
10	Surat-II	156	174	12	1554	854	-45	462	643	39
11	Daman	412	352	-15	3878	2788	-28	1155	1350	17
12	Vapi	502	341	-32	2522	4410	75	1007	839	-17
	<u>Jaipur Zone</u>									
13	Jaipur-I	765	719	-6	11693	4172	-64	2943	1434	-51
14	Jaipur-II	271	241	-11	2263	1731	-23	399	808	102
	<u>Bangalore Zone</u>									
15	Bangalore ST	190	253	33	16320	49325	202	9242	9218	-0.3
16	Bangalore-I	262	282	8	1849	2705	46	1378	1609	17
17	Bangalore-II	269	154	-43	2806	2918	4	709	1145	61
18	Bangalore-III	198	243	23	1036	1000	-3	700	784	12
	<u>Mysore Zone</u>									
19	Mysore	300	142	-53	601	350	-42	487	229	-53
20	Mangalore	230	140	-39	2115	4572	116	398	646	62
21	Belgaum	236	230	-3	28440	4691	-84	3712	1562	-58
	<u>Cochin Zone</u>									
22	Cochin	241	269	12	6079	3120	-49	716	1686	136
23	Calicut	163	242	48	582	2087	259	261	418	60
24	Trivandrum	134	105	-22	925	953	3	315	432	37

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	<u>Chennai Zone</u>									
25	Chennai ST	754	769	2	26621	17872	-33	4930	5655	15
26	Chennai I	130	69	-47	474	2416	410	88	104	18
27	Chennai-II	248	236	-5	1674	1031	-38	341	378	11
28	Chennai-III	312	178	-43	2409	2197	-9	607	1379	127
29	Chennai-IV	235	330	40	1691	2304	36	630	2158	242
30	Pondicherry	186	195	5	5049	7731	53	2122	649	-69
	<u>Coimbatore Zone</u>									
31	Coimbatore	411	489	19	2449	2680	9	1322	1137	-14
32	Madurai	278	202	-27	3365	1256	-63	429	294	-31
33	Salem	430	231	-46	2276	5221	129	649	441	-32
34	Tiruchirappalli	168	177	5	2224	4753	114	563	663	18
35	Tirunelveli	211	164	-22	1478	565	-62	474	321	-32
	<u>Meerut Zone</u>									
36	Meerut-I	226	190	-16	4455	4187	-6	682	1289	89
37	Meerut-II	368	462	26	4562	1559	-66	883	462	-48
38	Ghaziabad	362	277	-23	1681	2272	35	636	1031	62
39	Noida	424	431	2	11866	15701	32	3354	2912	-13
	<u>Lucknow Zone</u>									
40	Allahabad	126	158	25	1391	806	-42	297	839	183
41	Kanpur	313	346	11	770	164736	21293	210	254	21
42	Lucknow	176	170	-3	797	6188	676	5194	904	-83
	<u>Delhi Zone</u>									
43	Delhi ST	357	343	-4	259426	231787	-11	14971	15597	4
44	Delhi-I	262	231	-12	420	1086	158	267	525	97
45	Delhi-II	171	236	38	224	399	78	154	325	111
46	Delhi-III	361	489	35	7468	8685	16	1197	3495	192
47	Delhi-IV	284	312	10	7370	1645	-78	1024	1152	13
48	Rohtak	409	409	0	1049	3678	251	504	522	4
49	Panchkula	189	151	-20	669	332	-50	193	155	-20
	<u>Chandigarh Zone</u>									
50	Chandigarh -I	490	402	-18	13944	3996	-71	972	543	-44
51	Jalandhar	153	179	17	5248	1763	-66	527	554	5
52	Ludhiana	351	300	-15	2115	3374	60	427	706	65
53	Jammu & Kashmir	252	174	-31	1878	1731	-8	336	247	-26

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	<u>Hyderabad Zone</u>									
54	Hyderabad-I	239	205	-14	3734	3985	7	1816	1663	-8
55	Hyderabad-II	259	245	-5	7944	20929	163	1898	1731	-9
56	Hyderabad-III	165	229	39	4643	10263	121	560	1160	107
57	Hyderabad-IV	337	281	-17	2255	4090	81	772	832	8
	<u>Visakhapatnam Zone</u>									
58	Guntur	105	127	21	2073	3597	74	431	1973	358
59	Tirupathi	158	172	9	834	3039	264	440	322	-27
60	Visakhapatnam - I	144	127	-12	1798	1299	-28	556	474	-15
61	Visakhapatnam - II	86	135	57	725	2056	183	230	516	125
	<u>Bhubaneswar Zone</u>									
62	Bhubaneswar- I	205	290	41	11844	7259	-39	5880	311	-95
63	Bhubaneswar- II	153	118	-23	9467	1738	-82	457	796	74
	<u>Kolkata Zone</u>									
64	Kolkata-ST	95	99	4	7747	6243	-19	956	334	-65
65	Kolkata-I	39	28	-28	67	178	164	81	14	-82
66	Kolkata-II	160	146	-9	616	310	-50	146	67	-54
67	Kolkata-III	74	91	23	72	3826	5195	67	181	171
68	Kolkata-IV	85	64	-25	3962	1079	-73	111	67	-40
69	Kolkata-V	89	92	3	542	819	51	95	104	9
70	Kolkata-VI	9	17	89	570	2516	341	9	26	192
71	Kolkata-VII	38	41	8	647	210	-68	23	113	382
72	Haldia	183	177	-3	1941	4037	108	218.8	218.6	-0.1
73	Bolpur	172	133	-23	1666	5590	236	282	383	36
74	Siliguri	88	86	-2	228	778	242	93	95	2
	<u>Ranchi Zone</u>									
75	Ranchi	152	189	24	3281	4703	43	456	552	21
76	Patna	193	309	60	14963	1017	-93	168	273	62
77	Jamshedpur	99	112	13	968	1806	87	127	491	288
	<u>Shillong Zone</u>									
78	Dibrugarh	105	97	-8	6788	11172	65	62	107	72

79	Gauwahati	175	141	<b>-19</b>	302	600	<b>99</b>	100	211	<b>112</b>
80	Shillong	31	98	<b>216</b>	719	545	<b>-24</b>	6	52	<b>836</b>
S.No.	Commissionerate	No. of Units Audited			Detection (Rs. In Lakhs)			Recovery (Rs. In Lakhs)		
		01/04/2010 to 31/12/2010	01/04/2011 to 31/12/2011	% Change	01/04/2010 to 31/12/2010	01/04/2011 to 31/12/2011	% Change	01/04/2010 to 31/12/2010	01/04/2011 to 31/12/2011	% Change
	<u>Mumbai Zone-I</u>									
81	Mumbai ST I	230	147	<b>-36</b>	69672	56315	<b>-19</b>	6604	19886	<b>201</b>
82	Mumbai ST II	66	98	<b>48</b>	2905	2419	<b>-17</b>	1154	891	<b>-23</b>
83	Mumbai-I	56	76	<b>36</b>	66	1958	<b>2872</b>	59	28	<b>-52</b>
84	Mumbai-V	91	159	<b>75</b>	194	394	<b>103</b>	129	192	<b>48</b>
85	THANE-I	194	136	<b>-30</b>	39247	3428	<b>-91</b>	437	341	<b>-22</b>
86	THANE-II	307	357	<b>16</b>	1635	1619	<b>-1</b>	599	1025	<b>71</b>
	<u>Mumbai Zone-II</u>									
87	Mumbai-II	69	70	<b>1</b>	2523	6670	<b>164</b>	647	525	<b>-19</b>
88	Mumbai-III	108	89	<b>-18</b>	1310	2390	<b>82</b>	252	91	<b>-64</b>
89	Belapur	140	91	<b>-35</b>	7090	6913	<b>-2</b>	612	1015	<b>66</b>
90	Raigad	209	176	<b>-16</b>	4972	2297	<b>-54</b>	691	471	<b>-32</b>
	<u>Bhopal Zone</u>									
91	Indore	273	359	<b>32</b>	2691	1712	<b>-36</b>	551	757	<b>37</b>
92	Bhopal	170	124	<b>-27</b>	9337	1563	<b>-83</b>	414	504	<b>22</b>
93	Raipur	235	308	<b>31</b>	6353	11925	<b>88</b>	681	1087	<b>60</b>
	<u>Nagpur Zone</u>									
94	Nagpur	206	154	<b>-25</b>	10975	1262	<b>-88</b>	218	256	<b>17</b>
95	Nasik	379	615	<b>62</b>	1371	1492	<b>9</b>	473	1181	<b>150</b>
96	Aurangabad	431	575	<b>33</b>	1932	3371	<b>75</b>	924	767	<b>-17</b>
	<u>Pune Zone</u>									
97	Pune-I	352	423	<b>20</b>	5767	3030	<b>-47</b>	1861	1442	<b>-23</b>
98	Kolhapur	163	230	<b>41</b>	1969	2479	<b>26</b>	501	668	<b>33</b>
99	Pune-III	130	146	<b>12</b>	11250	4874	<b>-57</b>	3425	2282	<b>-33</b>
100	Goa	64	157	<b>145</b>	1774	1289	<b>-27</b>	578	303	<b>-48</b>

[Source - Data provided by Commissionerate for Quarterly Audit Report]