



Government of India

MONTHLY AUDIT BULLETIN – DECEMBER, 2013

**Directorate General of Audit**

**Customs & Central Excise**

**Central Revenue Building,**

**I.P. Estate**

**New Delhi-110109**

**MONTHLY AUDIT BULLETIN – DECEMBER, 2013**

**CENTRAL EXCISE**

- (1) **GIST OF THE OBJECTION :Short payment of Central Excise duty on the clearance made.**  
**COMMISSIONERATE :Central Excise Commissionerate, Rajkot**  
**CONTRAVENTION**  
**OF PROVISION :rule 8(3) of the Central Excise Rules, 2002**

The assessee is engaged in the manufacture of Ceramic vitrified tiles and broken tiles under Chapter Sub heading no. 69071010 of CETA, 1985. On verification of records viz clearance value and duty levied in the DSA with the excise duty payment particulars, it was noticed that the assessee cleared excisable goods and issued excisable invoices accordingly, but had short paid the Central Excise duty to the tune of Rs. 1,65,94,917/- for the clearances made during the period from April, 2013 to August, 2013. Therefore, the assessee default in payment of duty as specified in rule 8(3) of the Central Excise Rules, 2002 for the period from April-2013 to August-2013 and is required to pay the same consignment wise. It is also noticed that during the last financial year the assessee had failed to pay C.Ex. duty.

On being pointed out, the assessee agreed to pay the outstanding govt. dues.

- (2) **GIST OF THE OBJECTION: Non-payment of amount in lieu of compliance with rule 6(3) of the CCR 2004 for utilizing common input/input services in the manufacture of dutiable as well as exempted goods and not maintaining separate records as prescribed in rule 6(3) of the said Rules**  
**COMMISSIONERATE : Central Excise Commissionerate, Rajkot**  
**CONTRAVENTION**  
**OF PROVISION : rule 6(3) of the CENVAT Credit Rules, 2004**

The assessee is engaged in the manufacture of Aluminium Phosphide/Celphos, Aluminium Phosphide Tech and Imida seed classified under Chapter Sub heading no. 38089199, Zinc Phosphide/Commando classified under Chapter Sub heading no. 38089990 and Sulfex gold classified under Chapter Sub heading no. 38082090 of CETA, 1985. During the course of audit, it was observed that the assessee had manufactured and cleared the exempted product i.e. “Nutri S90” and Sulphur 80% WDG (Sulfex Gold), a dutiable product for which Sulphur Powder and Borresperse NA are common input used. Since the assessee is availing CENVAT Credit on inputs and input services and the said input/input services have been used in the excisable goods as well

as exempted goods, the assessee was required to follow the procedure laid down in rule 6(3) of the CENVAT Credit Rules, 2004. On being asked the assessee produced a copy of letter No. ECCL/GJD/EXCISE/2012-13 dated 29-01-2013 wherein they have filed option under the provisions of Rule 6 (3) of the CENVAT Credit Rules, 2004. On verification it is found that they have not fulfilled the statutory provisions of Rule 6 (3) of CENVAT Credit Rules, 2004 viz. they have not maintained separate accounts for receipt, consumption and inventory of inputs. The assessee vide their letter dated 09-08-2013 intimated to the audit that he is maintaining separate incoming invoices files for the inputs and packing materials month wise, year wise and not availing CENVAT Credit at the time of receipt of material; on completion of month he is taking CENVAT Credit for inputs used in the manufacture of dutiable goods and not availing CENVAT Credit for inputs used in the manufacture of exempted goods; the assessee is maintaining month wise statement, however, copies of such statement are not filed with the office of the superintendent of Central Excise, Range-I, Bhuj. The assessee filed option before the Jurisdiction Range Superintendent as laid down under rule 6(3) of the said rules only on 29-01-2013 i.e. not at the time of beginning of Financial year or effecting first clearance. The assessee has also not filed intimation as required under the provisions of Rule 6(3). Therefore, the assessee is required to reverse 6% of value of exempted goods and exempted services. The assessee had cleared the said exempted goods (Nutri S90) to the tune of Rs.14,92,05,510/- during the F.Y.2012-13 as reported by assessee. Hence, Rs.89,52,331/- i.e. an amount equal to 6% of the value of exempted goods is required to be recovered from the assessee along with interest. However, the assessee had not taken CENVAT Credit of Rs.14,55,391/- on Sulphur & Rs.3,06,693/- (Rs.2,71,496/- Basic duty + Rs.35,198/- Additional duty) on input Borresperse used in clearance of Nutri S-90 for the year 2012-13.

Therefore, the assessee is still required to pay Rs.71,90,247/- along with interest as applicable.

- (3) **GIST OF THE OBJECTION: Wrong availment of CENVAT Credit of Input Services viz. Sales Commission in the guise of “Subvention Charges”**  
**COMMISSIONERATE : Central Excise Commissionerate, Rajkot**  
**CONTRAVENTION OF PROVISION : Rule 3 of the CENVAT Credit Rules, 2004**

The assessee is engaged in the manufacture of pneumatic items classified under chapter 84 of Central Excise Tariff Act, 1985. On scrutiny of Expenditure Ledgers, Credit/Debit

Notes and CENVAT Credit Register, it was observed that the assessee had paid commission to two entities viz. one bank and one finance company during the year 2012-13 for finance facility extended to the customers of assessee and charged and recovered the commission thereof from the assessee under the guise of “Subvention Charges” to the tune of Rs. 1,97,36,167/. These two entities viz. one bank and one finance company have extended their said service under the category of “Banking & Financial Services” and recovered Service Tax at the appropriate rate on the said amount aggregating to Rs. 22,14,499/- from The assessee. Subsequently, The assessee availed CENVAT Credit to the tune of Rs. **22,14,499/-** in respect of the Service Tax on sales commission charged by those entities under the head of “Banking & Financial Services”.

It is seen that the services availed by The assessee has no relation directly or indirectly with regard to the manufacture of their final product. The assessee had availed the said service after clearance of their final product from the factory on a post manufacture activity which is selling of their goods.

It can be seen from the marketing pattern of the said assessee that their final product is cleared from the factory gate and after the sales, the said product reaches its dealer network spread across the whole country. The services availed by The assessee from both the above mentioned entities i.e. providing ‘loan’ to his customers commences from his dealers’ offices, which is very well defined as after sales activity and the said entities recover the commission for their service from The assessee under the guise of “Subvention Charges”.

It can also be seen from the agreements made between The assessee and the said two entities viz. the bank and the finance company are carrying out their business of banking and are licensed and governed under the Banking Regulations Act and are governed by the rules and regulations of the Reserve Bank of India, and are performing their role of providing commercial banking facility, or providing financial assistance in form of various loan products.

Thus, it is crystal clear that these entities are interested in promoting their own business of banking and in no way the business of The assessee or any other companies.

It is seen from the provisions of Rule 3 of the CENVAT Credit Rules, 2004 that only input or input services received by the manufacturer for use in, or in relation to manufacture of the final product can be treated as eligible input or input service for availment of CENVAT Credit. Hence as discussed above, the Service Tax credit availed by the assessee during the audit period to the

tune of **Rs. 22,14,499/- (as per Annexure )** is required to be recovered from the assessee along with interest.

- (4) **GIST OF THE OBJECTION : Short payment of C. Ex. Duty in guise of effective rate of duty under Notification No. 12/2012-CE**  
**COMMISSIONERATE : Central Excise Commissionerate, Rajkot.**  
**CONTRAVENTION OF PROVISION : The Central Excise Tariff Act, 1985; Notification No. 12/2012-CE, dated 17.03.2012**

The assessee is engaged in manufacturing of Cement and Clinker falling under Central Excise Tariff Chapter Sub heading no. 25232910 and 25231000 of CETA, 1985 respectively. The duty is leviable on Cement (CETSH 25232910) at the Tariff Rate of Rs. 900/- PMT read with Notification, if any. They are clearing Cement with/without affixing Maximum Retail Price in packaged form of 50 Kg. and also in bulk (loose) by availing exemption under Notification No. 12/2012-CE, dated 17.03.2012. During the course of Audit, it was observed that the assessee has cleared the final product i.e. Cement, at effective rate of duty as provided at Sr. No. 51 & 52 of the table of Notification No. 12/2012-CE, dated 17.03.2012 as amended. For the goods cleared in packaged form of 50 Kgs. bag with affixing of Maximum Retail Sale Price they have paid duty @ 12%+Rs. 120 PMT as provided under Sr. No. 51 of the said Notification, by availing MRP based abatement under Notification No. 49/2008-CE (NT) dated 24.12.2008 as amended. Whereas, for the goods cleared in packaged form of 50 Kgs. bag without affixing MRP, they have paid duty @ 12% *ad velorem* as provided under Sr. No. 52 of the said Notification in guise of industrial or institutional consumer in terms of the Legal Metrology (Packaged Commodities) Rules, 2011.

It is observed that as provided under Sr. No. 52 of the said Notification, a unit can clear Cement other than those cleared in packaged form, falling under CETSH 252329, at the concessional/effective rate of duty @ 12% *ad velorem*, instead of tariff rate of Rs. 900/- PMT. Such concession was available for goods cleared, even in packaged form, where retail sale price is not required to be declared under the **Legal Metrology (Packaged Commodities) Rules, 2011**, as specified at the said Sr. No. of the Notification that *“provided that where the retail sale price of the goods are not required to be declared under the Legal Metrology (Packaged Commodities) Rules, 2011 and thus not declared, the duty shall be determined as in the case of goods cleared in other than packaged form”*. Thus, for the purpose of determining applicability of the said

Notification, one has to take into consideration the provisions of the Legal Metrology (Packaged Commodities) Rules, 2011.

The exclusions for the purpose of declaring retail sale price are provided under Rule 3 of Chapter II of Legal Metrology (Packaged Commodities) Rules, 2011 as under.

*“The provisions of this chapter shall not apply to,-*

- (a) The packages of commodities containing quantity of more than 25 Kg or 25 litre excluding Cement and Fertilizer sold in bags upto 50 Kg; and*
- (b) Packaged commodities meant for industrial consumers or institutional consumers.*

*Explanation:- For the purpose of this rule,-*

- (i) “institutional consumer” means the institutional consumer like transportation, Airways, Railways, Hotels, Hospitals or any other service institutions who buy packaged commodities directly from the manufacturer for use by that institution;*
- (ii) “industrial consumer” means the industrial consumer who buy packaged commodities directly from the manufacturer for use by that industry.*

From the above provisions, it is observed that exclusions for the purpose of declaring MRP as per Rule 3 of Chapter II of Legal Metrology (Packaged Commodities) Rules, 2011 are applicable only if above two conditions are fulfilled i.e. (a) The packaged commodities contain quantity of more than 25 Kg or 25 litre excluding Cement and Fertilizer sold in bags upto 50 Kg; and (b) packaged commodities meant for industrial consumers or institutional consumers.

In the instant case, it is observed that the assessee has cleared the Cement bags weighed upto 50 Kgs and not more than 50 Kgs and were therefore, not exempt from declaration of Retail Sale Price as per Rule 3 (a) of Chapter II of Legal Metrology (Packaged Commodities) Rules, 2011. Therefore, it appears that the exemption availed is not available to the assessee, even though the condition stipulated in Rule 3 (b) i.e. packaged commodities meant for industrial consumers or institutional consumers, was satisfied.

Even otherwise, in the case of clearances made by the assessee in guise of industrial or institutional consumer, it is also observed that such clearances are made to categories i.e. individuals, builders, developers, contractors, construction firms and manufacturers where it appears that the buyers do not fall within the definition of industrial or institutional consumer and

hence, not exempted from declaration of Retail Sale Price under Legal Metrology Act, 2009 and Rules made there under.

In view of above, the assessee is required to pay duty at Tariff Rate i.e. Rs. 900/- PMT instead of duty @12% *ad velorem*.

During 2012-13 and 2013-14 (Up to Aug. 13) assessee cleared a total quantity of 206640.85 MT and 80740 M.T. of cement (Without MRP in 50 Kg. Bags) respectively on which the differential amount of duty to be paid comes out to be Rs. 9,62,44,938/- and Rs.4,18,24,990/- respectively.

Therefore, the assessee is liable to pay differential amount of duty to the tune of Rs. 13,80,69,928/-.

**(5) GIST OF THE OBJECTION: Short payment of duty due to difference in the production & sales of Sugar respectively**

**COMMISSIONERATE** : Central Excise Commissionerate, Trichy  
**CONTRAVENTION**  
**OF PROVISION** : Rule 6 of the Central Excise Rules, 2002

During the course of audit of assessee, it was noticed that there was a short payment of Central Excise Duty of Rs.1,56,21,850/- during the period 2010-11 & 2011-12 due to the difference in the production of Sugar shown in the ER-1 and in the Annual Report and there was a short payment of excise duty of Rs.75,60,967/- during the period 2011-12 due to the difference in the Sales of Sugar shown in the ER1 and in the Income Tax Return.

The assessee failed to furnish the reasons for such discrepancy. Short payment of duty worked out to Rs.2,31,82,817/- which is recoverable along with interest.

**(6) GIST OF THE OBJECTION: Non payment of duty on plastic goods manufactured by job workers**

**COMMISSIONERATE** : Central Excise Commissionerate, Trichy  
**CONTRAVENTION**  
**OF PROVISION** : Rule 4(5)(a) of the CENVAT Credit Rules, 2004;  
Notification No.214/86 dated 01.03.1986

The assessee was engaged in manufacture of goods falling under Chapter 20. It is observed that apart from manufacturing the said goods, the assessee also gets manufactured PP Covers, PP boxes, PP Trays, PP lids, yellow caps for bottles etc through various job workers. The raw materials for the same viz. PP Granules/PVC film were supplied by the assessee to the job workers. No further manufacture is carried out by the assessee on the finished goods received from the job worker as the goods received from the job worker are in the nature of finished goods. The procedure as set out either in Notification No.214/86 dated 01.03.1986 or under Rule 4(5)(a) of the CENVAT Credit Rules, 2004 has not been followed by the assessee. The incidence of manufacture takes place at the manufacturing premises of the job worker wherein the actual manufacture of PP Covers falling under CSH 39232100 has taken place.

In the case of Kerala Electricity Board Vs Collector of Central Excise [1990(47) ELT62 (Tribunal)] in the CEGAT special bench New Delhi, it was observed that the agreement between the board and the contractors was on principal to principal basis and it has been held that the contractors are the actual manufacturer who has actually manufactured the goods. The decision of the tribunal has been confirmed by the Supreme Court.

Accordingly, it is inferred that the job worker fits into the definition of a “Manufacturer” who has manufactured PP Covers Yellow Handle Cap PP container boxes, lid falling under CSH 39232100 and goods manufactured by him are liable to duty. Towards obtaining the value of the final product the valuation procedure as set out in Rule 10A of Central Excise (Valuation) Rules has to be adopted. The cost of raw material received by the assessee is to be added with the job charges of the job worker towards arriving at the value of the final product manufactured by the job workers

It is seen that various job workers of the assessee have manufactured the final product viz. PP Covers, Container Box and Lid, Yellow Handle Cap falling under CSH 39232100 for the financial years 2008-2009, 2009-2010, 2010-2011, 2011-2012&2012-2013 on which a total duty of Rs.1,78,36,429/- stands to be paid along with interest.

**(7) GIST OF THE OBJECTION: Wrong availment of CENVAT Credit on inputs on the basis ineligible document**  
**COMMISSIONERATE : Central Excise Commissionerate, Trichy**  
**CONTRAVENTION**



**OF PROVISION : Rule 9 of CENVAT Credit Rules 2004**

During the course of audit it is noticed that the assessee has availed CENVAT Credit based on Calculation sheet titled “DNS Captive” (which calculates proportionate use of Raw material i.e Molasses in the dutiable product) which is not an eligible document vide Rule 9 of CENVAT Credit Rules 2004 for taking Credit. CENVAT Credit taken in this manner for the period 2011-12 and 2012-13 works out to Rs.1,11,52,127/-. On pointing out this lapse assessee has accepted and reversed the wrongly taken Credit and also agreed to pay the interest shortly.

- (8) **GIST OF THE OBJECTION : Irregular availment of duty exemption**  
**COMMISSIONERATE : Central Excise Commissionerate, Visakhapatnam II**  
**CONTRAVENTION**  
**OF PROVISION : Notification No. 06/2006-CE as amended by 12/2012-CE, dated 17.03.2012.**

The assessee is manufacturer of GI cable trays, accessories & supports classifiable under Chapter Heading 73089090. The assessee cleared the finished goods without payment of duty, by availing exemption under Notification No. 06/2006-CE, dated 01.03.2006 (S. No. 91, Condition 19) and 12/2012-CE dated 17.03.2012 (S. No. 336, Condition 41). The goods were cleared at NIL rate were supplied by the assessee as sub-contractors to the main contractors who were awarded the works pertaining to setting up of Mega power projects. As per the above referred notifications, all goods supplied against ICB are exempted from CE duty, subject to condition that the goods are exempted from Customs duties and SAD under Notification No. 21/2002-Cus, dated 01.03.2002. The audit observed that the assessee has neither participated directly in the ICB nor have supplied the goods directly to the ICB project and hence not eligible for the duty exemption claimed on the goods, viz. GI Cable Trays and accessories cleared to power projects. Total duty worked out to be Rs. 225.44 lakhs.

## SERVICE TAX

- (9) **GIST OF THE OBJECTION :** **Wrong availment of CENVAT Credit of Service Tax on services used exclusively for generation of electricity, which is not liable to Central Excise Duty**  
**COMMISSIONERATE :** **Central Excise Commissionerate, Jaipur-I**  
**CONTRAVENTION OF PROVISION :** **Rule 3 read with Rule 6 of CENVAT Credit Rules, 2004**

The assessee is a provider of Business auxiliary Service. During the course of audit, it was observed that the assessee has wrongly availed CENVAT Credit amounting to Rs.1,00,87,030/- from 2008-09 to 2013-14 (up to June'13) in respect of Input Services used exclusively for generation of "Electrical Energy" falling under Chapter Sub Heading No. 27160000 & the same is not liable to any Central Excise Duty. Hence, the CENVAT Credit of Central Excise Duty paid on any input as well as Service Tax paid on any Input Service, used in manufacturing of "Electrical Energy" is not admissible to the Manufacturer or assessee. The assessee is interalia engaged in manufacturing of "Electrical Energy" at his various power plants located in Rajasthan.

In view of above, CENVAT Credit of Rs. 1,00,87,030/- in respect of Input services used exclusively for generation of "Electrical Energy" is not admissible to the assessee and required to be recovered from him.

- (10) **GIST OF OBJECTION :** **Non-payment of Service Tax on construction service rendered to land owners**  
**COMMISSIONERATE :** **Service Tax Commissionerate, Bangalore**  
**CONTRAVENTION OF PROVISION :** **Rule 3(b) of the Service Tax (Determination of Value) Rules,2006 read with Section 67 of the Finance Act, 1994**

Construction Services were brought under the Service Tax net by the Finance (No.2) Act, 2004 w.e.f.10.09.2004, and the same was renamed as 'Commercial or Industrial construction service' w.e.f. 16.6.2005 and thereafter from 1.7.2010 the word service is omitted and renamed as 'Commercial and Industrial Construction'. Further, the Finance Act, 2010 w.e.f. 01.07.2010 has also amended the law to provide that unless the entire consideration for the property is paid after the completion of the construction, the activity of construction would deem to be taxable service provided by the builder/promoter/developer to the prospective buyer. In the instant case the assessee has entered into two separate JDAs dated 31.1.2007 and 24.01.2008 with two different land owners, for construction of commercial building. The contract/understanding in both the

agreements is that the land owner is providing the land for construction by the builder at the sole responsibility for all the expenses and risks by the builder and after construction of the commercial building, the land owner is entitled to a share of 45% and 50% respectively, without any liability /risk by the land owner. The construction services provided by the assessee to the land owner is a taxable services as defined under Section 65 (105) (zzq) of the Finance Act, 1994. As per Section 67 of the Finance Act, 1994 read with the Service Tax (Determination of Value) Rules, 2006, the value of taxable services in relation to commercial or industrial construction services provided or to be provided by any person to any other person shall be the gross amount charged from any person in relation to construction service. But, where the consideration received for provision of service is partly or wholly not consisting of money, the Service Tax in such cases shall be charged on the basis of the gross amount charged by the service provider for providing similar service to any other person. If the value of similar services is not available, then the service provider on his own shall determine the total money value of the consideration and pay the Service Tax accordingly. The value of the service so determined by the service provider should not be less than the cost of provision of such service. In the instant case, the assessee has not received the consideration in the form of money from the land owners, but in the form of developmental rights to construct and after the construction is over a portion/share of the developed property is delivered to the land owner in lieu of the developmental rights received. The assessee has also not sold the property after construction to any individual buyers to adopt the gross amount received for a similar service to any other person. Therefore, the assessee has to determine the value as stipulated under Rule 3(b) of Service Tax (Determination of Value) Rules, 2006. The assessee has recognized the cost of the land in his books as an asset of the company and that the building constructed will be exchanged for ownership in the land. Accordingly, the cost of land represents the cost of building, plant & machinery transferred to the land owner on completion of the construction. Hence, the amount recognized by the assessee towards land cost represents the amount of consideration received from the land owners, for whom the agreed share of property is delivered on completion, as per Rule 3(b) of Service Tax (Determination of Value) Rules, 2006 read with Section 67 of the Finance Act, 1994. The cost of land in respect of both the JDAs recognized in the assessee's books representing as cost of service provided to the land owners, and the ST payable on Construction Service provided to land owners is Rs.2,68,42,572/-.

**(11) GIST OF OBJECTION: Non-payment of Service Tax on Sponsorship service rendered**

**COMMISSIONERATE: LTU Commissionerate, Bangalore**

**CONTRAVENTION  
OF PROVISION : Section 66 read with 68(2) of the Finance Act, 1994**

On perusal of the records of assessee it is seen that the assessee has not paid Service Tax on sponsorship service on the payments made by the assessee for sponsoring the programme during the period from 2009-10 to 2011-12. On perusal of sample copies of sponsorship agreement produced by the assessee for the period from 2009-2012, it is seen that the sponsorship provided by the assessee to the organizer of programme as per the terms and conditions of the sponsorship agreement which clearly speaks about promoting the name and logo of the assessee which should appear prominently on all pre-programme promotion materials, press releases, advertising leaflets, bill boards, brochures and signages of the event/ programmer organizer. This is nothing but sponsorship service and the assessee is required to pay Service Tax **on reverse charge basis** on the amounts paid as sponsor to the event organisers abroad. The value of such sponsor amount for the period 2009-11 to 31.3.2012 is Rs.12,46,34,639/- on which the assessee is required to pay Service Tax of Rs.1,28,37,368/- along with interest and penalty.

**(12) GIST OF OBJECTION: Non – payment of Service Tax on Business Auxiliary Service on account of income earned as consideration on hiring of vehicles from various transporters**

**COMMISSIONERAT : Central Excise Commissionerate, Trichy**

**CONTRAVENTION  
OF PROVISION : Section 67 of the Finance Act, 1994**

The assessee is providing GTA services to his associate Company for which the assessee is using his own vehicles and also vehicles hired from other transporters. Since the associate company of the assessee is coming under one of the 8 categories as specified person under GTA, and is paying Service Tax for GTA services with respect to various transporters including the service rendered by the assessee in connection with transport of materials.

During the course of audit of assessee and on verification of P & L Account, it is seen that the assessee is showing the income received from the associate company for the freight charges separately for their own vehicle and for hired vehicles from market (out sourced) and termed the same as “Market freight”. The assessee is raising periodical invoices towards the freight indicating destination, the quantity of Cement/Raw Material transport and freight charges.

From the P & L Account, it is seen that there is a huge variation on income earned and expenditure incurred with respect to Market freight for the hired vehicles. On inquiry, the

assessee said that they are retaining a part of the amount as consideration while making payment to the various transporters from whom the vehicles are hired. The Commission earned on providing hired vehicle from other transporters to the assessee, attracts Service Tax under Business Auxiliary Service.

Since the assessee is retaining a part of the amount as consideration while making payment to the transporters from whom the vehicles are hired, and the huge variation, towards the income earned and Expenditure incurred with respect to Market freight for such hired vehicles as shown in the P & L Account appears to be the consideration earned, which is taxable under the Business Auxiliary Service. The Service Tax due on the income earned in this regard for the period 2008-09 to 2013-14 (upto August 2013) works out to Rs.1,06,39,574/-.

- (13) **GIST OF OBJECTION : Non payment of Service Tax on the total bill amount and interest on the belated payment of Service Tax**  
**COMMISSIONERAT : Service Tax Commissionerate, Chennai III**  
**CONTRAVENTION OF PROVISION : The point of Taxation rule, 2011**

The assessee is providing Man Power Recruitment Agency Service and Security Agency Service to the companies.

During the course of audit, it was noticed that the assessee has been paying Service Tax randomly and not on the bill amount / amount received by them. The audit period covered on the assessee is from 01.07.2011 as the last audit was covered up to the period 30-06-2011. The point of Taxation rule came into force from 01-04-2011. Hence the entire audit period covered under point of taxation rules. As per the said Rule the requirement for payment of Service Tax has been linked with the invoice and deemed date of completion of service, and has been totally delinked from the payment actually received. Hence the assessee has to pay Service Tax on the bill value even if they have not received the amount. On pointing out the assessee paid duty amounting to Rs.1,00,88,776/-. Interest amount it yet to be paid.

- (14) **GIST OF OBJECTION: Improper assessment for payment of Service Tax under reverse charge mechanism in respect of WCS under Notification. No. 30/2012-ST, dated 20.06.2012**  
**COMMISSIONERAT : Service Tax Commissionerate, Hyderabad – III**  
**CONTRAVENTION**

**OF PROVISION : Rule 2A of the Service Tax (Determination of Value) Second amendment Rules, 2012**

The assessee is providing WCS, Rent-a-Cab, GTA services. On verification of assessee's records, the audit noticed that the assessee have improperly assessed and paid Service Tax under reverse charge mechanism in respect of services received from individual firms. The assessee entered into an agreement with an individual to execute different items of work from Kaleswaram to KTPP at Chelpur under works contract for an amount of Rs. 173,96,20,096.51. The assessee is required to pay Service Tax on 50% of service portion (WCS) as per Notification No. 30/2012 ST dated 20.06.2012 from 01.07.2012 onwards. The agreement is of lumpsum nature and the service provider submits claims on running meter basis. Based on the running account bills, the audit observed that the service provider arbitrarily paid Service Tax under reverse charge mechanism without following the procedure laid down under Rule 2A of Service Tax (Determination of Value) Second amendment Rules, 2012. The value of material and services cannot be vivisected and it falls under Original works as per explanation of Rule 2A (ii) read with Rule 2A (ii) (A) and payment of Service Tax shall not be on the labour portion and the value of the materials involved in the agreement is also required to be included for assessment. As per Running Accounts bills issued by the individual contractor from 20.12.2012 to 28.01.2013, value of gross work done is 42,22,95,492/- and Gross taken for Service Tax calculation of in respect of the said running accounts is Rs. 1,40,36,324/- and thereby differential amount of Service Tax payable worked out to be Rs. 95,71,705/-. Other issues like non-inclusion of value of goods supplied free of cost, short payment of Service Tax on services received from some other contractors etc. involve revenue of Rs.51,149/- + 74,955/-. Total amount worked out to be Rs. 96,97,809/-.

- (15) **GIST OF OBJECTION: Non-payment of amount equal to 50% of CENVAT Credit availed on input services as per Rule 6 (3B) of CENVAT Credit Rules, 2004**  
**COMMISSIONERAT : Service Tax Commissionerate, Hyderabad III**  
**CONTRAVENTION**  
**OF PROVISION : Rule 6(3B) of CENVAT Credit Rules, 2004 a/a by Notification No. 03/2011-CE, dated 01.03.2011**

The assessee is provider of Banking and Financial services. During the course of audit, it was noticed that the assessee did not pay an amount equal to 50% of CENVAT Credit availed on the Input services in violation of Rule 6(3B) of CENVAT Credit Rules, 2004 a/a by Notification No. 03/2011-CE, dated 01.03.2011. Wrongly availed credit worked out to be Rs. 2,34,18,624/- for

the period from March, 2012 to August, 2013. On pointing out the assessee paid the entire amount and informed that he had applied for VCES for waiver of interest and penalty.

- (16) GIST OF OBJECTION: Nonpayment of Service Tax on commission received from Foreign client**  
**COMMISSIONERATE: Service Tax-I Commissionerate , Mumbai**  
**CONTRAVENTION**  
**OF PROVISION : Section 66 of the Finance Act, 1994**

During the course of audit of the assessee for the period 2007-08 (from October, 2007 to March 2008) to 2009-10 and on going through ST-3 returns and the Trial Balance, it was noticed that the assessee has not paid the Service Tax on Commission received from their Foreign clients for the period from October, 2007 to February, 2010. The service provided by the assessee, as a 'Commission Agent' is covered under the category of "Business Auxiliary Service". Such services do not qualify as export as these services are provided from India, delivered outside India and used in India. The said assessee has failed to make payment of Service Tax amounting to Rs. 5, 93, 20,143/-. The assessee has not applied for amendment of his existing registration to add "Business Auxiliary Service". Assessee is required to pay Service Tax to the tune of Rs.5, 93, 20,143/- along with interest.

- (17) GIST OF OBJECTION: Short payment of Service Tax under reverse charge mechanism on Foreign currency remittance made by the assessee towards royalty fees under "Intellectual Property Services"**  
**COMMISSIONERATE : LTU Commissionerate, Mumbai**  
**CONTRAVENTION**  
**OF PROVISION : Section 66A of the Finance Act, 1994 read with Rule 7 of Service Tax (Determination of Value) Rules, 2006**

During the course of audit, it was observed that the assessee has short paid Service Tax under reverse charge mechanism on foreign currency remittance. As per Section 66A of the Finance Act, 1994, inserted with effect from 18.04.2006, provides that where any taxable service is provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and is received by a person who has his place of business, fixed establishment, permanent address or usual place of residence, in India,

such service shall be taxable service. The recipient of service shall be liable to pay tax if the provider of service does not have any establishment business or a fixed establishment in India.

As per Rule 7 of Service Tax (Determination of Value) Rules, 2006, the value of taxable service under the provisions of Section 66A, shall be such amount as is equal to the actual consideration charged for the services provided or to be provided. During the course of audit it is observed that assessee has paid Service Tax under reverse charge mechanism on 'royalty fees' paid in foreign currency to foreign entity on net payment without considering TDS in taxable value.

On being pointed out, assessee has paid Service Tax amounting to Rs.53,09,488/- including interest and penalty.

- (18) GIST OF OBJECTION: Short payment of Service Tax on the amount recovered against exempted service**  
**COMMISSIONERAT : Central Excise Commissionerate, Ludhiana**  
**CONTRAVENTION**  
**OF PROVISION : section 66 read with section 67 of the Finance Act, 1994**

The assessee is engaged in providing Renting of Immovable Property Service, GTA, Cargo Handling Service and Warehousing Service. During the course of audit, it was observed that the assessee had been collecting excess amount against providing of exempted service i.e cargo handling service for export cargo than the actual charges paid to HTC as shown in his records. The assessee during the year 2008-09 to 2012-13 (up to June 2012) had received Rs. 1099.76 lakhs and paid Rs.768.76 Lakhs to HTSC. The assessee did not pay Service Tax on the amount retained with them under BAS. Since the assessee did not discharge the duty liability on the income of Rs. 331 lakhs earned in the guise of providing of exempted service, therefore the Service Tax stands recoverable on the gross amount of Rs. 10,99,76,319/- which comes to Rs. 1,18,97,314/-

- (19) GIST OF OBJECTION: Short Payment of Service Tax due to Non inclusion of value of inputs & Business Auxiliary Service**  
**COMMISSIONERAT : Central Excise Commissionerate, Lucknow**  
**CONTRAVENTION**  
**OF PROVISION : section 67 of the Finance Act, 1994 read with Circular No. 96/7/2007, dated 23.08.2007**



During the course of audit, it was observed that while providing service of Authorized Service Centre', the assessee was paying Service Tax only on the value of labour charges and was not including value of oil/ Lubricant, Spares used during servicing of cars, while in terms of Circular No. 96/7/2007, dated 23.08.2007, taxable value would include cost of material used in provision of service. The assessee informed that Coolant, lubricants & spares had been used during servicing of cars, which is evident in bills/invoices. The Circular has mentioned vide reference code no. 036.03 that:-

*“Any goods used in the course of providing service to be treated as ‘inputs’ used for providing service and accordingly cost of such ‘inputs’ form an integral part of the value of taxable service.”*

Furthermore, the assessee was paying Service Tax on the income received from Anti Rust Treatment and Teflon Coating after deducting the cost of material used in the process, thus not paying Service Tax on the full amount.

On being pointed out, the assessee stated that he had charged Service Tax on account of labour charge only and on sale of material, Vat on effective rate is being charged.

Furthermore, during the course of Audit, the assessee was found to have received certain income under 'extended warranty'. It was gathered that the customer has the option to purchase the extended warranty from some other entity. All extended warranty is sold by the said entity through the assessee.

As such, the assessee was providing the 'Business Auxiliary Service' to the said entity by way of promoting sale of Extended Warranty to the customers and providing warranty services arising out of it and receiving consideration in return and thus is liable to pay Service Tax on the same.

Thus, the assessee stands liable to pay Service Tax amounting to Rs. 78,42,787/- along with interest and penalty.