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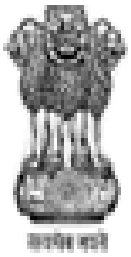

Government of India

MONTHLY AUDIT BULLETIN – JULY, 2012

Directorate General of Audit
Customs, Central Excise & Service Tax
Central Revenue Building
New Delhi

INDEX

MONTHLY AUDIT BULLETIN – JULY, 2012

CENTRAL EXCISE

(1) GIST OF THE OBJECTION : Short reversal of Central Excise Duty under Sub Rule (2) of Rule 16 of Central Excise Rules, 2002

COMMISSIONERATE : Central Excise Commissionerate, Ahmedabad–I

The assessee is engaged in the manufacture of Spare parts of Submersible Pumps i.e. ROTOR falling under Chapter No.81439210 of CETA, 1985. During the course of audit it was noticed that the assessee had sold their finished goods i.e. ROTOR to their Inter Divisional Unit [Unit 1] and [Unit 4] after paying appropriate duty during the F.Y. 2009-10 and 2010-11 on total clearance value was Rs.2,00,30,379/- and Rs.1,89,10,254/- rest. The said ROTORs were rejected by both their Inter Divisional Units and received back by the assessee and credit of duty was taken by the assessee. Subsequently, without any process, they have cleared the said ROTOR as scrap vide various invoices and paid the duty at existing rate i.e. on value of scrap. As per sub rule 2 of Rule 16 of Central Excise Rules, 2002 the said assessee was required to pay the duty at the rate on which they have initially cleared the goods. The total credit availed by the said assessee on these defective ROTOR was Rs.16,63,619/- and Rs.19,47,756/- during the F.Y. 2009-10 and 2010-11 respectively.

As per Sub Rule 2 of Rule 16 of Central Excise Rules, 2002 "if the process to which the goods are subjected before being removed does not amount to manufacture, an amount equal to the CENVAT Credit taken under sub rule (1) and in any other case the manufacture shall pay duty on goods received under sub rule (1) at the rate applicable on the date of removal and on the value determined under Sub Section (2) of Section 3 or Section 4 or Section 4A of the Act, as the case may be.

On being pointed out, the assessee agreed with the objection and reversed the differential credit of Rs. 33,15,070/- from their CENVAT credit account and paid interest of Rs.9,09,970/- through challans.

(2) GIST OF THE OBJECTION : Irregular availment of CENVAT Credit on structural/ support items treating them as inputs

COMMISSIONERATE : Central Excise Commissionerate, Bhubaneswar-I

An assessee manufactured Calcined Alumina falling under Ch. 28182010. The audit verified the CENVAT credit documents relating to Capital goods / inputs for the year 2010-11 and noticed that the assessee availed CENVAT credit amounting to Rs.26.34 lakhs (50% balance credit) on structural / support items falling under Ch.72/73/84 of CETA,1985 treating them as capital goods, which were received by them during the year 2009-10. The assessee also availed CENVAT credit of Rs.1.75 lakhs on structural / support items falling under Ch.S.H.No.73089090 of CETA treating the same as inputs. Both of the above goods are claimed to be parts of 'Settler Washer Tank', (Capital goods). The audit observed that the goods in question were neither capital goods nor inputs, as defined in Rule 2 of CENVAT Credit Rules, 2004, since the same were items for structural support and hence the assessee was asked to reverse the credit of Rs. 28.08 lakhs and Rs.26.34 lakhs taken irregularly during the years 2009-20 and 2010-11 respectively.

(3) GIST OF OBJECTION : Non-payment of amount under Rule 6 of the CENVAT Credit Rules, 2004

COMMISSIONERATE : Central Excise Commissionerate, Panchkula

During the course of audit and scrutiny of the records of the party, an EOU, it was found that the party was exporting rice of length exceeding 6.61mm to various overseas markets. They were also selling the Basmati Rice, Broken Rice and Rice Bran in DTA market at nil rate of duty under Ch. 1006.3020.

However, Broken Rice is classifiable under Ch. 1006.4000 of Central Excise Tariff Act, 1986. Similarly, Rice Bran is classifiable under Ch. Heading 2302.4000 of said Act and attracts nil rate of Central Excise duty under the Act. However, Basic Custom duty is leviable @ 80% ad valorem on Broken Rice (as per Customs tariff) and 15% ad valorem on Rice Bran. As per Central excise Notification 23/203-CE(NT) dated 31.03.2003 "all the goods produced or manufactured wholly from the raw materials produced or manufactured in India shall be liable to duty equal to 30% of the duty payable under Section 3 of the Central Excise Act, 1944". The assessee had not paid any duties and felt that no duty was leviable on DTA sale as they were

exempt and were using paddy procured indigenously and Basmati Rice being exempt from payment of Central Excise duty. The party was explained that duty @ 30% ADV of the effective rate of Customs duty was leviable on DTA clearance of Broken Rice and Rice Bran. Total Central Excise duty of Rs. 74,03,510/- is thus recoverable from party in respect of broken rice sold in DTA including interest and penalty u/s 11A(6) of Central Excise Act 1944.

On being pointed out by Audit, the party voluntarily deposited Rs. 1,37,34,985/- inclusive of interest and penalty under Section11A(6) vide E-receipt for Central Excise Tax payment No. 00172, 00174, 00175 all dated 14.06.2012 and E-receipt for Central Excise Tax payment No. 00107 dated 25.06.2012.

(4) GIST OF OBJECTION : Non fulfillment of conditions of Notification No.97/2009 dated 11.09:2009 - claiming of CENVAT credit of duty paid through DEPB and claiming Drawback of export goods : Rs. 378.90 lakh

COMMISSIONERATE : Central Excise Commissionerate, Bangalore-I

The assessee is engaged in the manufacture of Harness/Connectors falling under Chapter 85369090 of Central Excise Tariff Act, for domestic clearance and export clearance. On scrutiny of CENVAT documents pertaining to the Audit Period, it was observed that the assessee has taken CENVAT credit on inputs procured locally and on imported inputs [90% of total credit]. Further on verification of Bill of Entry on which credit was taken, it was observed that the assessee has availed exemption from payment of customs duties on import of inputs by availing the benefit under DEPB Scheme.

On perusal of the DEPB Licence of the assessee, it was observed that DEPB Credit has been given to the Unit I for export of Connectors and the same has been adjusted / debited towards the import duties applicable on inputs meant for Unit II who have taken CENVAT credit of duty debited in DEPB Licence and utilized the same towards payment of excise duty on finished goods cleared.

Further, on scrutiny of export documents of finished goods exported, it was observed that the assessee clear the goods for export on payment of excise duty in CENVAT Credit Account under claim of Rebate and Drawback of All Industrial Rate. From the above, it can be observed that the assessee has availed the following benefits.

(i) Exemption from payment of customs duties on Import of raw materials by availing the facility of the DEBP Scheme [under DEPB license of Unit I for export of goods manufactured at Unit I]

(ii) Unit II availed the benefit of CENVAT credit of duty adjusted in DEPB License.

(iii) Unit II claims drawback of All Industry Rate from Customs Dept on Export Goods cleared.

(iv) Unit II claims Rebate of excise duty paid on goods cleared for export on payment of excise duty in CENVAT Credit Account.

As per notification No.97/2009-Cus, dated 11.09.2009 as amended, it is provided that the importer shall be entitled to avail the drawback or CENVAT credit of additional duties leviable under Section 3 of the Customs Tariff Act. In view of the above, it appears that the assessee has wrongly claimed double benefit of Drawback and CENVAT credit of duty on imports under DEPB Scheme. This apart the assessee has also claimed Rebate of excise duty paid on exports. The CENVAT credit availed under DEPB Scheme works out to Rs. 2,50,43,817/-(CENVAT), Rs.5,00,876/-(Edu. Cess), Rs.2,50,438/- (SHE Cess), Rs. 10,21,739/-(Customs Cess) and Rs.1, 10,73,897/-(SAD) Total Rs.3,78,90,767/-.

(5) GIST OF THE OBJECTION : Non fulfillment of conditions of Notification No. 01/2011 CE dated 01.03.2011 resulting in short payment of excise duty Rs. 496.22 lakh

COMMISSIONERATE : Central Excise Commissionerate, Bangalore-I

The assessee is engaged in the manufacture of excisable goods both dutiable and exempted goods. Dutiable goods are Ready to Drink Badam Milk, Other / Vegetables & Mixture of Vegetables, Instant mixes, Ready to Eat food products, Macaroni, Soups, Rasam and Sambar Mix. The exempted goods are Spices & Masala, Vermicelli, Sweetmeats & Namkins etc.

The assessee has facility of in-house packaging unit engaged in the manufacture of Plastic Film Rolls and Plastic Pouches which are used for packing of their finished products both dutiable and exempted. Whereas during the course of audit it was observed that the assessee has cleared excisable goods viz. Ready to Eat Food Products, Other Vegetables & Mixture of Vegetables, Instant Food Mixes, Macaroni, Soups, Rasam, Sambar Mix, Fruit Sauce and Ice Cream and paid excise duty @ 1% as per Notification No. 1/2011-CE dated 01.03.2011 for the period March, 2011 onwards. The said Notification provides exemption from so much of the

duty of excise leviable thereon under the Central Excise Act as is in excess of the amount calculated at the rate of 1% ad valorem, provided that no credit of duty on inputs or tax on input services has been taken under the provisions of the CENVAT Credit Rules, 2004.

It was observed that the assessee has taken CENVAT credit of duty paid on inputs viz. Plain Plastic Polyethylene Film Rolls, Metalized Polyester Film Rolls, Aluminium Foil Rolls, Printing Ink, Adhesives and Solvents which are used in the manufacture of Plastic Laminated Plastic Rolls and Printed Laminated Plastic Pouches meant for packing of their finished goods manufactured and cleared. Thus it appears that the assessee has wrongly claimed the exemption provided under Notification No.1/2011-CE dated 01.03.2011 in as much as they have not fulfilled the conditions of the said notification, since they claimed the benefit of CENVAT credit of duty paid on the inputs. Therefore, the assessee should have paid excise duty @ 5% as per Notification No.2/2011-CE dated 01.03.2011 on the clearance of products viz. Ready to Eat Food Products, as per Tariff Rate of 5% and thereby they have short paid excise duty amounting to Rs. 4,96,22,609/- on the value of goods cleared during the period from 03/2011 to 02/2012.

(6) GIST OF THE OBJECTION : Shortage of raw material during the period 2010-11 and 2011-12. CENVAT credit availed on the shortage quantity of inputs (Bulk Scouring Powder and Detergent Washing Powder) to be reversed

COMMISSIONERATE : Central Excise Commissionerate, Salem

The assessee were procuring Scouring Powder and Detergent Washing Powder in bulk from its subsidiary unit which manufactures the said powder and supplies the same in 40 Kgs bags. The said supplier unit is situated at the next door of the assessee's factory building. The bulk powders procured in HDPE sacks are repacked in unit containers of smaller packages in a day or two on their receipt and cleared to depots under Stock Transfer. As per Chapter Notes No.6 of Chapter 34, repacking of products figured in this Chapter from bulk packs to retail packs shall amount to 'manufacture'. Hence the duty is paid on the basis of retail sale price (MRP) under Section 4A, of Central Excise Act, 1944 after taking abatement of 30%. Scrutiny of the ER1 returns and Purchase register for the period from April, 2011 to March, 2012, revealed that they have consumed 22569.799 MT of Scouring Powder in bulk but repacked only 21570.37 MT of powder. Taking into account, the opening stock and closing stock of the product, a shortage of 999.43 MT of Scouring Powder was noticed. CENVAT credit involved on the said shortage

works out to Rs.5,55,882/- Similarly a quantity of 4439.92 MT of Detergent washing powder was consumed in bulk during the same period, but the quantity repacked was only 3796.27 MT resulting in a shortage of 643.65 MT of detergent washing powder. CENVAT credit availed on the shortage works out to Rs.11,93,323/-. The total CENVAT credit on both the shortages worked out to Rs.17,48,845/-.

Similarly on scrutiny of the ER4 return dated 31-11-2011 filed for the year 2010-11 it showed that a quantity of 22782.93 MT of Scouring powder in bulk has been consumed and a quantity of 21915.98 MT of scouring has been packed. A shortage of 866.95 MT of scouring powder was noticed and no explanation has been furnished for the shortage. The CENVAT credit involved on this shortage worked out to Rs.4,82,198/-.

(7) GIST OF THE OBJECTION : Non payment of proportionate CENVAT credit involved in CENVAT availed input/ input services used in generation of electricity sold outside the factory.

COMMISSIONERATE : Central Excise Commissionerate, Chennai-II

It was noticed that the assessee who manufacture **"Met Coke**" out of the **CENVAT availed "Coking Coal"** are also engaged in generation of electricity through waste heat recovery boilers and turbo generator, **utilizing the coke oven off gas** produced as bye product during the course of the above said manufacture. Out of the total electricity generated the assessee sells more than 90% to outsiders. The remaining quantity of electricity is captively consumed by the assessee. They have received **Rs. 33,35,809/-, Rs. 13,84,75,249/- and Rs.1,71,91,007/-** towards the sale of electricity for the period March 2011, April 2011 to March 2012 and April 2012 respectively. Electricity is an exempted product and the same is sold by the assessee to outsiders. Hence the assessee have to expunge the proportionate credit involved in the CENVAT availed raw material/input services used in the electricity generated and sold, as per rule 6 of CENVAT Credit Rules, 2004. In this connection reliance is placed upon the Hon'ble Supreme Court judgment in the case of "**Maruti Suzuki Ltd., Vs. Commissioner of Central Excise, Delhi III" 2009 (240) ELT.641(S.C.).** The assessee is liable to expunge the proportionate CENVAT credit from 03/2011 to 04/2012, which works out to Rs. 49,15,482/- + Ed Cess Rs. 98,310/- and S& H Ed Cess Rs. 49,155/-. Thus the assessee are required to reverse the total credit of Rs. 50,62,947/-, alongwith applicable interest.

(8) GIST OF THE OBJECTION: Irregular availment of CENVAT Credit on Input Services

COMMISSIONERATE : Central Excise Commissionerate, Kolkata-I

The assessee is a manufacturer of Red Lead, Litharge & Lead Sub- Oxide falling under Chapter Sub Heading No. 28242000, 28241010 & 38249090 of the Central Excise Tariff Act, 1985 respectively. During the course of audit while examining their records and documents, it was observed that the assessee had availed CENVAT credit of input Service of₹.3,25,576/- + Education Cess ₹.6512/- in the month of December'2010 and CENVAT Credit of ₹.6,87,085/- + Education Cess ₹13,742/- + SHE Cess ₹.6871/- in the month of January'2011 on input service viz,"Banking & Other Financial Service". The auditors sought detailed information on the taxable input service from the assessee.

In reply to query, the assessee had stated that in case of sale of goods to some selective buyer, they usually received Letter of Credit(LC) from the said buyers and raised bills against the buyer through State Bank of India(SBI).The Bank made payment against LC to them after deducting Commission, negotiable interest etc. They had further stated that service tax was payable on the amounts deducted by SBI.

On being enquired about the documents against which they had availed of credit, they submitted copies of statement of accounts showing discounting of bills through SBI. It was observed by the auditors that they had on their own calculated Service Tax payable on "Banking & Other Financial Service" [Section 65(105)(zm) of the Finance Act,1994] and had availed CENVAT credit. The documents furnished by the assessee did not have any certificate from the SBI/any statement of Accounts generated from Bank's computer showing payment of service tax on "Negotiable Interest". For availing credit on input service, the documents evidencing payment of service tax are prescribed under Rule-9(1)(f) of CENVAT Credit Rules'04. It thus follows that the assessee had not availed credit on the basis of any invoice or challan or bill issued by SBI evidencing payment of service tax. But, they availed Credit of Rs.10,39,786/- on the basis of documents which are not prescribed documents for taking credit. Therefore, the credit is irregular and they were required to reverse the same along with interest payable.

Moreover, it was observed that SBI collected interest from them against LC for making advance payment against bills. Interest income is not taxable under "Banking & other Financial Service". Interest income is excludible from taxable value vide notification no. 29/2004-ST, dated 22.09.04. Service Tax is paid by the Banks only on the Commission/processing charge collected from receiver of service. The assesse had on their own shown payment of service tax

on interest income of the Bank without any confirmation from SBI. There was no evidence of payment of service tax on interest income.

Thus, the CENVAT credit on Input Service of Rs.10,39,786/- availed in December'2010 & January'2011 is irregular simply on the ground that the documents on the basis of which credit was availed are invalid documents and as such the credit is recoverable from the assessee.

SERVICE TAX

(9) GIST OF OBJECTION: Non payment of Service tax "Intellectual Property Services"

COMMISSIONERATE: Central Excise Commissionerate, Ahmedabad-III

During the course of audit it was observed that the assessee is paying the royalty to their Directors for the use of their intellectual property namely "injectable preparation of diclofenac & its pharmaceutically acceptable salts". However, on being asked it was noticed that the said intellectual property owners have not obtained service tax registration for payment of service tax.

As per the definition of Intellectual Property service which means that

(a) Transferring temporarily; or

(b) Permitting the use or enjoyment of any intellectual property right

The owner of the intellectual property right, whether registered or unregistered has a right to sell the right for consideration. The definition of "intellectual property services" also provides that besides transferring temporarily, permitting the use of such right or enjoyment of such intellectual property right is also liable for service tax. Thus the amount received for use or enjoyment of the intellectual property right is liable for levy of service tax.

As per clause (b) of the above definition it is clear that permitting the use or enjoyment of any intellectual property right attracts service tax. As stated by the assessee mere transferring the unlimited rights for use of intellectual property does not mean that there has been permanent transfer of property. Such transaction has to be proved by assessee by way of sale-purchase transaction for one fixed price indicating the payment of VAT which is not there in the agreement. A minimum of Rs. three lakh payment per month as royalty or 6% payment of sale proceed, whichever is higher clearly indicates that there is no fixed price of property and accordingly, the assessee is making the payment after deduction of TDS. Further, the validity of the agreement up to 31.03.2012 is subjected to review and parties may review the amount of sum payable and decide mutually clearly express that there is scope of disagreement and, accordingly, the owner of the property is still holding the ownership right. Therefore, the right transferred by property owner appears to be temporary in nature.

As regard royalty in the form of deferred payment the reliance placed by the assessee in the case of Modi Mundipharma Pvt. Ltd. is not applicable in the facts of the case since in the

present case the assessee has received the services from service provider after introduction of tax on IPR service with effect from 10.09.2004.

The payment of royalty made to the intellectual property owners in the year 2009-10 and 2010-11 comes to Rs. 251.62 lakh on which service tax amount of Rs. 25.92 lakh is required to be recovered.

(10) GIST OF OBJECTION : Wrong availment of CENVAT Credit on input services used at Windmills situated far away from the factory premises

COMMISSIONERATE : Central Excise Commissionerate, Bhavnagar

The assessee is engaged in manufacture of Soda Ash, Soda bicarb, Ammonium Carb, Detergent falling under Chapter 28 & 34. During the course of audit, it was noticed that the assessee was having windmills at Sipla (Rajasthan) and Porbandar (Gujarat). On verification during the audit, it was seen that the assessee had availed CENVAT Credit on various input services viz. Rent-a-cab, Catering for employees, Hotel / Memberships, Repairs & Maintenance of vehicles, etc. received at residential colony as well as guest house located at the above referred windmills. As per definition given in Rule 2(1) of the CENVAT Credit Rules, 2004, as the input services were used at the windmills far away from the manufacturing premises of the assessee and had no connection with the manufacturing of finished goods directly or indirectly; such CENVAT credit is not admissible.

On calculation of total CENVAT credit taken on inadmissible input services taken at the windmills, by the assessee, an amount of Rs. 88,77,728/- is recoverable from the assessee.

(11) GIST OF OBJECTION : Short payment of Service Tax on Security Agency Service for 2010-11

COMMISSIONERAT : Central Excise Commissionerate, Guntur

During the course of audit on the accounts of the tax payer, the audit observed that the tax payer provided security services through 14 branches located in different parts of the country and they had centralised registration with the Service Tax Department. They issued bills / invoices at branch level and were maintaining their accounts in Tally ERP and paying service tax of all the branches from centralised premises. They were maintaining branch-wise accounts at their

centralised premises but consolidated accounts for the entire transactions were not maintained. The audit tried to reconcile the values shown in the Annual Reports with those shown in ST.3 returns along with Service Tax payment challans for the year 2010-11 and found that the taxable value shown in the ST-3 return was less than that shown in the Annual Reports. The difference between the two assessees was to the tune of Rs. 1604.16 lakhs and it appears that they did not pay service tax thereon. The audit pointed out that the assessee has to pay differential service tax of Rs.165.23 lakhs. The assessee agreed and has paid service tax of Rs.65.73 lakhs.

(12) GIST OF THE OBJECTION: Non-payment of Service Tax on Interest earned on Collateralized Borrowing & Lending Obligation (CBLO)Rs. 25.68 lakh

COMMISSIONERATE : LTU Commissionerate, Bangalore

Collateralized Borrowing and Lending Obligations (CBLO), is a discounted instrument and used in electronic book entry form with maturity period ranging from one day to one year. The borrowers can deposit securities (Central Government securities, including Treasury Bills, with a residual maturity period of more than six months) with the Clearing Corporation of India Ltd., (CCIL), which acts as a Central Counterpart (intermediary) for both borrowers and lenders. Both the borrowers and lenders indicate their requirement which includes the amount, the maturity and the rate at which they want to lend or the offer rate that is proposed by the borrower and the bid rate proposed by the lender. The lender and the borrower independently enter their requirements into the online trading system. The best offer is the highest rate at which the borrower is willing to borrow and the best bid at which the lender is willing to lend. The lenders place their bids directly on the auction windows. CCIL accepts the borrowing requests on specified auction windows. CCIL assumes the role of the central counter party and guarantees the settlement of transactions. The CCIL collects Initial Margin Money from the members, which is released on settlement of the deal.

The CCIL issues bonds discounted on face value which are purchased by the lender at discounted value. On the date of maturity, the borrower deposits the face value with CCIL and the lender gets the same amount. Thus, the lender receives the consideration in the form of 'discount'.

It is seen that the intermediary (CCIL) gets guarantee from the borrower through deposited securities and provides guarantee of payment to the lender. Thus, this instrument is not a direct loan arrangement between two parties. The lender i.e., the L T receives the discounted amount as an income.

Notification No.29/2004 ST dated 22.09.2004 exempts the discount on account of discounting of bills. The income, i.e., the discounted amount received in respect of CBLO transactions, is not covered under the notification ibid, and is thus, liable to service tax.

The Large Taxpayer has not paid the Service Tax of Rs.24,93,324/-, Ed Cess Rs.49,866/, SHE Cess Rs.24,933/- **(Total Rs.25,68,123/-)** as required under Section 66 and 68 of the Finance Act,1994. The L T is also liable to pay interest on the same in terms of Section 75 of Finance Tax Act, 1994.

(13) GIST OF THE OBJECTION : Non Payment of service tax on certain services rendered to Metro Rail Projects:Rs.609.96 lakh

COMMISSIONERATE : Service Tax Commissionerate, Bangalore

During the course of test check of works contract copies it is observed that the assessee is engaged in rendering construction services to Bangalore Metro Rail Projects and has entered into contracts with Bangalore Metro Rail Corporation Limited involving the following works:

1. Architectural Works
2. Structural works
3. PHE & Fire Fighting Works
4. Electrical Works
5. HVAC works
6. M & P works
7. General & Miscellaneous works

From the foregoing details it is apparent that the services rendered to Metro Rail comprise of not only works contract service but other services like Architecture service, Miscellaneous works, Fire fighting works, Site Development work, Horticultural works etc. As

per the definition under section, 65(105) (zzzza) of the Finance Act, Taxable service means any service provided or to be provided to any person by any other person in relation to the execution of a Works contract excluding works contract in respect of Roads, Airports, Railways, Transport Terminals Bridges, Tunnels and Dams.

As seen from the contract entered into with the Bangalore Metro Rail Corporation the assessee has been rendering various services which are separately specified under different heads has detailed in the aforesaid works contract. Accordingly the classification has to be made under different heads specified under section 65(105) of the Finance Act, 1994 based on the nature of service rendered and also specifically mentioned in the works contract entered into with M/s. Bangalore Metro Rail Corporation Limited. In this regard Board's circular No. 138/07/2011 – Service Tax dated 15.05.2011 clarifies similar issue and is applicable in this case.

These services are specifically covered under Architect service, Site Formation service, Engineering service, Maintenance and repair services as defined under section 65(105) of Finance Act, 1994. Accordingly the assessee is liable to pay service tax in respect of these services.

(14) GIST OF THE OBJECTION : Wrong availment of CENVAT credit on service tax charged during warranty period by other service centers on the assessee for vehicles sold by the assessee

COMMISSIONERATE : Central Excise Commissionerate, Coimbatore

An assessee has registered themselves with Service Tax for providing taxable service under the category of "Authorised Service Station for Service or Repair of Motor vehicle".

The said service has been defined under **Section 65(9) read with Section 65(105)(zo) of Finance Act, 1994**. They are availing CENVAT credit of tax paid on input services. They are filing ST3 returns through ACES.

They are running service center as well as Sales center from the same premises. They have taken CENVAT credit of tax paid on inputs services and utilized the same towards payment of service tax on taxable output service i.e. servicing of motor vehicles.

On verification of input service bills, it was found that the assessee had taken credit of tax paid on the bills raised by the other service centers against the assessee. On further verification it was found that the bills are pertaining to servicing of motor vehicles during the warranty period by the other service centers for vehicles sold by the assessee. The said service is not an input service since the same is not used for providing output service by the assessee.

The assessees are not eligible to take credit of service tax paid on the said bills. Hence, they are liable to reverse the credit of Rs.16,744/- (including cess) along with interest.

On being pointed out, they have admitted the objection and paid Rs.16,744/- as service tax and Rs.1,869/- as the interest on 30.03.12.

(15) GIST OF THE OBJECTION: Wrong availment of CENVAT Credit on ineligible input service viz. Commercial or Industrial Construction Service

COMMISSIONERATE : Central Excise Commissionerate, Trichy

Commercial or Industrial Construction service specified in sub-clause (zzq) of clause (105) of Section 65 of the Finance Act has been excluded from input service in so far as they are used for a) Construction of a building or civil structure or a part there of; or b) Laying of foundation or making of structures for support of Capital Goods with effect from 1.4.2011 in terms of rule 2(l)(ii)(A)(a) of CENVAT credit rules 2004.

The assessee being manufacturer of Cement is squarely covered by the above definition towards exclusion of Commercial or Industrial construction as input Service in as much as they have utilized the same towards Construction work in the factory. A scrutiny of the CENVAT Credit documents (Input Services), revealed that the assessee has taken CENVAT Credit of Rs.56,15,456/- on Commercial Or Industrial Construction Service for the period from April 2011 to March 2012 on the invoices raised by one supplier towards Construction Work in the factory which is an ineligible input service for the assessee for reasons adduced above.

Accordingly the assessee is liable to reverse the ineligible credit of Rs.56,15,456/- taken on Commercial Or Industrial Construction service towards Construction Work in the factory for the period April 2011 to March 2012 along with interest, which works out to Rs.5,83,452/- for the said period.

The assessee has accepted the contention of the Audit regarding the ineligibility of the input service credit on Commercial Or Industrial Construction Service towards construction work in the factory for the period from April 2011 to March 2012 and has reversed Rs. 56,15,456/-. The assessee has also paid the interest of Rs. 5,83,452/- involved on the above ineligible input Service credit.

(16) GIST OF THE OBJECTION : Non –payment of service tax on business support services

COMMISSIONERATE : Service Tax Commissionerate, Kolkata

The assessee is providing certain specialized services like processing for payment of maturity value to the Certificate Holders and related jobs, as required from time to time apart from services for processing proposal form, quality check, data entry, claims processing services etc for Life Insurance and General Insurance business to their client.

On going through the contracts/agreements executed between the assessee and service receiver and certain other documents during audit it is noticed, the assessee charged/collected sums on monthly basis or otherwise to/from their client and maintained 'Support Service Charges A/c' sub-ledger as reflected in their Trial Balance of 08-09' for providing specialized services for the process of payment of maturity value to the Certificate Holders and all related jobs, as required from time to time and also providing services for processing proposal form, quality check, data entry, claims processing services etc for Life Insurance and General Insurance business of their client.

On scrutiny of the said ledger account it was noticed that the assessee received Rs.27,02,141/ (inclusive of Rs. 50,141/ towards service charges) during 2006-07, Rs.36,38,847/- (inclusive of service charges received of Rs.38,847/-) during 2007-08, Rs.1,51,74,129/- during 2008-09, Rs.60,78,750/- during 2009-10 and Rs.40,80,000/- during 2010-11 from one of their client. While payment of service tax on the said services were reconciled with that declared in their ST-3 return it was noticed that they have paid service tax only on the amount of service charges received, whereas no tax is paid on the other charges received for providing various specialized services.

When enquired from their representative, it was stated they paid Service Tax on the value of service charges alone under the category of 'Business Auxiliary Service'[Section 65(105)(zzzb) of the Finance Act,1994] as rest of the services do not fall under the said category.

On analysis it was found that both the services for which service tax has been paid and the other various services squarely fall under the category of Business Support Service and not under Business Auxiliary Service as held by them.

In view of the above, they were required to pay service tax on the entire taxable value as stated above.

The assessee, thus, is required to take Service Tax Registration under the category of 'Business Support Service'[Section 65(105)(zzzq) of the Finance Act,1994] and discharge Service Tax liabilities of Rs.37,02,376/-.

(17) GIST OF THE OBJECTION : Non payment of Service Tax on Banking & Financial services

COMMISSIONERATE : Service Tax Commissionerate, Kolkata

The assessee is a provider of Banking & Financial services [Section 65(105)(zm) of the Finance Act,1994]. During course of audit and on scrutiny of Profit & Loss A/C of the assessee for different financial years it was noticed that huge amount had been earned by them and the same had been reflected under the head "Foreign Exchange Remuneration", but no tax was found to have been paid on it. The assessee was asked by the auditors to clarify the nature of the activity in relation to the aforesaid income and they replied that their income was the proceeds towards the sale & purchase of foreign currency. They further declared that they did so mainly for their customers of import & export of goods & services. Therefore their activity is actually foreign exchange brokering which is liable to Service Tax under Banking & Financial services. On calculation, it was found that the Service Tax payment liability amounted to Rs. **5,61,47,000 /-** which is recoverable from the assessee along with Interest**.**

(18) GIST OF THE OBJECTION : Short Payment of Service Tax on amount collected by assessee as 'Marketing Margin' from the customers

COMMISSIONERATE : Service Tax I Commissionerate, Mumbai

On perusal of the assessee's Financial Records, it was noticed that the assessee had booked income under the head viz. 'Import-Export Charges' and 'Income from Back Office operation' in relation to Cargo handling, which are taxable under Cargo Handling Services, but failed to discharge the Service Tax liability on it. The income received in respect of above activities/services are taxable as per the provision of Section 65 (105) (zr) of Finance Act, 1994 under the head "Cargo Handling Services". Therefore, the assessee was requested to discharge the Service Tax liability on the above income shown by them under the category of "Cargo Handling Services" immediately, along with interest under intimation to this office.

Accordingly, the assessee paid the Service Tax liability alongwith interest.

Amount detected & Spot recovery :- Rs. 42,15,814/- (S.T.) + Rs. 30,83,273/- (Interest) Total Rs. 72,99,087/-

Assessee paid the amount of Rs. 42,15,814/- (S.Tax + Edu. Cess) along with interest of Rs. 30,83,273/-.

(19) GIST OF THE OBJECTION : Non payment of tax on Hosting Fees

COMMISSIONERATE : Service Tax I Commissionerate, Mumbai

During the course of Audit, the scrutiny of the Balance Sheet of the year 2010-11, revealed that M/s. BCCI have received an income of Rs. 66,97,50,000/- from M/s International Cricket Council (ICC) for providing clean stadium for hosting of the Matches of the ICC World Cup 2011. M/s. BCCI have hosted 29 Matches on behalf of ICC during ICC World Cup 2011. Out of these 8 Matches were hosted on behalf of Pakistan, for which the hosting fees has been paid by M/s. ICC to Pakistan Cricket Board as per the decision of the Central Organizing Committee of the ICC. Accordingly, M/s. BCCI has received Hosting Fees of USD 1,50,00,000/- equivalent to INR Rs.66,97,50,000/- towards 20 Matches that were conducted in India during the year 2010-11. The Hosting fees for the Balance one Match was received in the financial year 2011-12 since the Match was held on 2nd April 2011.

M/s. BCCI have received the said amount as Hosting Fees and has decided that the said amount would be paid to the Hosting State Cricket Associations and accordingly M/s. BCCI have accounted for the same as Hosting Fees Payable to Associations.

In view of above facts, it is observed that M/s. BCCI have received Rs.66,97,50,000/- Gross amount from M/s. ICC for conducting the matches at various states in India on behalf of M/s ICC. The Section 67 of Finance Act 1994 (Valuation of taxable services for charging Service tax) states that, (1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall,—
(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

Therefore M/s. BCCI has to discharge service tax liability on the Gross amount received before distributing the whole amount to various Cricket Associations in India. To conduct a Cricket Match is an event correctly classified under Category of service "Event Management Service". This service is effective from 16.08.2002.

Definition and scope of service:

(i) "Event Management" means any service provided in relation to planning, promotion, organizing or presentation of any arts, entertainment, business, sports, marriage or any other event and includes any consultation provided in this regard; (Section 65(40) of the Finance Act, 1994)

(ii) "Event Manager" means any person who is engaged in providing any service in relation to event management in any manner;

(Section 65(41) of the Finance Act, 1994)

"Taxable Service" means any service provided or to be provided, [to any person], by an event manager in relation to event management.

(Section 65 (105) (zu) of the Finance Act, 1994)

On scrutiny of the Host Agreement it is observed that all the aspects of the Event Management i.e. planning, promotion, organizing or presentation of the events are required to be delivered by M/s. BCCI as per the terms and conditions of the said agreement.

The relevant terms and conditions of the agreements are mentioned below:

Clause 6: General Event Management and Facilities

Clause 7: Stadia

Clause 8 : Additional Staging Requirements

Clause 9: Event Format

Clause 17: Commercial Rights.

Clause 19: Ownership Use and Protection of Intellectual Property and Commercial Rights.

"Hosting Fee" means the fee set out in Schedule 1 Part I of the said Agreement payable by ICC to the Host(Ms. BCCI) at the times and in the amounts set out in Schedule 1 Part I.

Therefore, M/s. BCCI is liable to pay service tax amounting to Rs.6,89,84,250/- along with Interest. They were

Disclaimer

The compilation is based upon the audit reports approved in the monthly Monitoring Committee Meetings (MCM) sent through the zonal Additional Directors General (Audit). In case of any doubts about the Audit Objections reported herein, the concerned Commissionerate may be contacted.