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**CENTRAL EXCISE**

**1) GIST OF THE OBJECTION : - Irregular availment of cenvat credit on Input services both in ER-1 return and ST-3 return of Centralised Registration.**

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

**CONTRAVENTION OF**

**PROVISION : Rule 14 of Cenvat Credit Rules, 2004**

**Section 11A, 11AA of the Central Excise Act, 1944**

**AUDIT CODE : IR023**

During the verification of the records for the above period, it is noticed that assessee has availed Cenvat credit on input services in ER-2 returns and have claimed the Refund on quarterly basis upto the quarter ending June 2011. During the review of the records, it is noticed that the credit on the input services has been taken upto November 2011 for which no refund claims have been filed by them. It is also noticed that they have taken Centralised Registration Certification for payment of Service Tax at their Registered Office on 27.03.2008. During cross- verification of the credits availed in ER-2(EOU) with the ST-3 returns filed for the period from April 2011 to November 2011, it is noticed that the credit availed in ER-2 returns have once again been availed in ST-3 returns, which had resulted in availment of credit twice on the same documents. Thereby, assessee has availed credit wrongly and the credit so availed wrongly/irregularly is required to be reversed along with interest in terms of the provisions of Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11A, 11AA of the Central Excise Act, 1944. They are also liable to pay penalty at the rate of 1% percent permonth in terms of the provisions of Section 11A (6) of the Central Excise Act, 1944, in respect of wrongly availed credit after 01.4.2011. The wrong credit availed works out to Cenvat of Rs. 58,39,771/-, EC of Rs. 1,16,795/-, SHEC of Rs.58,398/- total of Rs.60,14,964/-.

On pointing out the assessee stated that in view of the amendment to Rule 14 of the Cenvat Credit Rules, 2004 (with effect from 01.04.2012), as the Cenvat credit of Service Tax available in their ER-2 as on 01.04.2012 was more than Rs.71.05 lakhs and the same is Rs. 98.06 lakhs as on 31.03.2014 and the Cenvat Credit of service tax available in their ST-3 returns for Centralized Registration as on 01.04.2012 was Rs. 97.05 lakhs and the same stood at Rs. 315.21 lakhs as on 31.03.2014, they requested not to impose interest for the period when sufficient balance is available in their Cenvat account.

In view of Rule 14 of the Cenvat Credit Rules, 2004 existing upto 31.03.2012 and in view of the judgment of the Hon'ble Supreme Court of India in the case of UOI VsInd Swift judgment delivered on 21.02.2011, they are required to pay interest when the credit is availed irrespective of the fact whether it is utilized or not they are liable to pay interest. Hence assessee was advised reverse the irregular credit of Rs.60,14,964/- along with interest of Rs.1,35,396/- and penalty of Rs.55,715/-. On being pointed out, the assessee has agreed to the audit objection and paid the amount of Rs.60,14,964/- vide debit Entry SI.No.28.05.2014. They also paid the interest & penalty of Rs.1,91,112/- vide challan No.00231 dated 30.05.2014.

**2) GIST OF THE OBJECTION : - Clearance of Excisable Goods falling as Non-Excisable item.**

**COMMISSIONERATE : Central Excise Commissionerate, Bhavnagar**  
**CONTRAVENTION OF PROVISION : Section XV chapter 73 of Central Excise Tariff Act, 1985**  
**AUDIT CODE : CR050**

The assessee is engaged in the activities of Ship Breaking at Alang and selling of Excisable Goods viz. Piston and Tai Rods, obtained during ship breaking, as Non Excisable Goods under tax invoice paying only VAT on them and not paying central Excise duty. Since, Piston and Tai rods fall under the Section XV chapter 73 (CETSH No.7326 9080) of Central Excise Tariff Act, 1985, the assessee is liable to pay Central Excise duty on such clearance of Rs.37,52,921/-

Accordingly, assessee is required to pay Central Excise Duty to the tune of Rs.4,63,861/- along with interest and penalty.

**3) GIST OF THE OBJECTION : - Irregular availment of Cenvat Credit.**

**COMMISSIONERATE : Central Excise Commissionerate, Kolkata –III**  
**CONTRAVENTION OF PROVISION : Rule 2 (I) (ii) C of CENVAT Credit Rule, 2004**  
**AUDIT CODE : IR 022**

On scrutiny of input service bills and other records during EA-2000 audit at their unit, it was observed that, they had availed CENVAT credit on input service towards E.P.F and E.S.I payments made to their manpower recruitment agency which was irregular as per exclusion clause in the definition of input service under Rule 2 (I) (ii) C of CENVAT credit Rule 2004 the relevant portion of which reads as under:

“ but excludes certain services in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee”.

Hence, the aforementioned services extended to the contract labours were excluded from the definition of “input service” and no credit on such service should be available to them. So they were requested to pay/reverse the CENVAT credit amounting to Rs.53,28,030.00 availed and utilized on such service during the period from 2012-13 and 2013-14.

**4) GIST OF THE OBJECTION : - Availment of Cenvat Credit on invoices issued by  
100% EOU, in excess of limit prescribed under  
Rule 3 (7A)**

**COMMISSIONERATE : Central Excise Commissionerate, Hyderabad - III**

**CONTRAVENTION OF**

**PROVISION : Rule 3(7A) of Cenvat Credit Rules, 2004**

**AUDIT CODE : IR99**

The assessee are manufacturers of Vibrating Screen, Apron Conveyor/belt etc. During the course of audit, it was noticed that, during the period from July 2013 to Mar 2014, the assessee availed credit on certain invoices issued in excess of the limit of credit, as laid down in Rule 3(7A) of Cenvat Credit Rules, 2004. The audit pointed out that the assessee has to reverse excess credit of Rs.54,241/-,availed. On being pointed out, the assessee agreed to the objection and reversed the credit along with payment of interest and penalty.

**5) GIST OF THE OBJECTION : - Non-payment of Excise Duty on tooling advances received.**

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

**CONTRAVENTION OF**

**PROVISION : Section 11 of Central Excise Salt Act, 1944**

**AUDIT CODE : VR070**

During the verification of balance sheet/T.B. it was observed that the assessee had received advances from another assessee, the customer, for purchasing certain tools. Since the advances are received in cash Excise duty has to be charged on the advances which are nothing but advance consideration of the transaction/assessable value as held by CESTAT vide 2012 (286) ELT 558 (Tri. Mum.) in the case of Lear Automotive India Ltd., and accordingly assessee has been asked to pay the duty on the advance with interest under intimation to this office. Assessee is of the view that since they are adding amortized tool cost in the assessable value of all the automotive parts sold to Ford, they are not liable to pay on the advance received. The

tooling advance received for the FY 2012-13 amounts to Rs.50,42,11,839/- and for FY 2013-14 amounts to Rs.28,45,06,333/- .

### SERVICE TAX

(6)

**GIST OF THE OBJECTION : Non Payment of Service Tax on ‘ Construction of Residential Complex Service’ .**

**COMMISSIONERATE : Central Excise Commissionerate, Bhopal**

**CONTRAVENTION OF**

**PROVISION : Section 66 a of Finance Act, 1994**

**AUDIT CODE : CSR01**

The assessee is providing taxable services of Construction of Residential Complex Service’ in respect of various projects which are under construction and covered under single Service Tax Registration. They did not file any ST-3 Return for the period from January, 2013 to March, 2014, but stated that they paid some service tax towards ‘Construction of Residential Complex Service’. In the absence of ST-3 Return, they were asked to produce the financial documents viz. ledgers pertaining to receipt of income in respect of all projects of residential complex for the period January, 2013 to March, 2014. On perusal of ledgers furnished by the party , it was noticed that an amount of Rs. 27,62,30,847/- (for the period January, 2013 to March, 2013) and Rs. 85,14,92,618/-(for the period April, 2013 to March, 2014)- total **Rs. 112,77,23,465/-** had been received by them for taxable service of ‘Construction of Residential Complex Service’ provided to various clients. Service Tax amounting to Rs. **3,48,46,655/-**(for the period January, 2013 to March, 2014) was payable on abated (25%) value of Rs. 28,19,30,866/- The party has not collected Service Tax separately from the buyers but the gross amount charged and received is inclusive of Service Tax. When asked about payment of Service Tax to the credit of Central Govt., they produced Challans for total Service Tax amounting to Rs. 37,98,048/-as paid by them on 21.01.2014 against Construction of Residential Complex Service as against Service Tax liability of Rs. 3,48,46,655/- during the period January, 2013 to March, 2014. Service Tax amounting to Rs. 3,10,48,608/- was not paid by them. On being asked to pay, the assessee replied that they would make the payment of Service Tax shortly.

**7) GIST OF THE OBJECTION : Incorrect transfer of CENVAT credit from ISD (Input Service Distributor) resulting in wrong availment of CENVAT credit.**

**COMMISSIONERATE : Service Tax Commissionerate, Delhi**

**CONTRAVENTION OF**

**PROVISION : Cenvat Credit Rules, 2004**

**AUDIT CODE : SSR07**

The assessee is a manufacturer and trader of electronic goods and along with that they also provide repair and maintenance service to its clients for the goods sold by them. On scrutiny of CENVAT credit documents, it was found that the assessee, during the audit period, has transferred CENVAT credit amounting to Rs.91,73,126/- from the registration of input service distributor (ISD) to their concern, which has to be done according to the ratio of turnover of the all the units but they have not followed any process and transferred the total amount to their concern which is not allowed as per law. On further scrutiny, it was found that amount of Rs. 23,93,284/- (related to CENVAT credit on the rent paid and maintenance and repair service received by the assessee) which already pertains to the assessee, was taken in ISD registration and then transferred to the assessee. Herein it can be concluded that this has happened because of lack of knowledge on the assessee's part and there was no intention to evade any tax for which penalty under Section 77 of Finance Act, 1994 is also imposed on the assessee for ignorance of law. But the balance amount of Rs. 67,79,842/- is recoverable from the assessee on account of wrong availment and utilization of CENVAT credit.

This issue has been informed to, and discussed with, the assessee to which they agreed and deposited Rs. 67,79,842/- for wrong availment of CENVAT Credit along with interest of Rs. 14,97,927/- total amounting to Rs. 82,77,769/-. The assessee has asked for some time to deposit the penalty amounting to Rs.10,000/- imposed on them under Section 77 of Finance Act, 1994.

**8) GIST OF THE OBJECTION : Non-payment of Service Tax on Cargo Handling Services**

**COMMISSIONERATE : Service Tax Commissionerate, Visakhapatnam II**

**CONTRAVENTION OF**

**PROVISION : Section 65 (B) 5 of the Finance Act, 1994**

**Notification No.10/2012-ST dated 01.08.2002**

**AUDIT CODE : OSR03**

The tax payers are providers of Steamer Agency Services, Cargo Handling Services etc. The service providers were appointed as a handling agent of 'Broken White Rice' being exported. During the period from 02/2012 to 12/2013 the service providers handled various consignments of Broken Rice involving activities like warehousing, loading/unloading, stitching, fumigation, hiring / towing of Barge, payment of port dues and other miscellaneous works. The service providers claimed exemption from payment of service tax on the above services on the ground that the goods are meant for export and the service recipient is located abroad and the services utilized for the said ex[port are also exempt from payment of duty as it amounts to export of service.

The audit observed that the service providers only dealt with the goods from warehouses to vessels and are not involved in procurement or export of the goods and no part of the service in question is rendered outside India. The audit pointed out that the services rendered by the service provider in the present case can not be treated as 'Export of Service'.

The audit further pointed out that 'Rice' is an 'agricultural produce' w.e.f 16.08.2002 as per the Department of Revenue's Order No.1/2002-S.Tax dated 01.08.2002[Service Tax (Removal of Difficulty) Order,2002], till 30.06.2012. Definition of 'Agricultural produce' was inserted under Section 65(B)(5) of the Finance Act,1994, w.e.f.30.06.2012 and 'Rice' is not covered under the said definition.

As per Notification No. 10/2012-ST dated 01.08.2002, the services provided by a Cargo Handling Agency in relation to 'agricultural produce' are exempted from payment of service tax. Thus handling of rice by the service providers was exempted till 30.06.2012. The exemption from payment of service tax on handling, loading, unloading, packing, storage and warehousing of Rice was again allowed vide Notification No. 4/2014-ST dated 17.02.2014. **The audit pointed out that services of handling of Rice were taxable during the period from 01.07.2012 to 16.02.2014** and the service providers are liable to pay service tax of Rs. 47.49 lakhs on services rendered to M/s. Capezzana Shipping and Trading S.A., during the aforesaid period. The service providers agreed to the objection and paid the amount. Interest and Penalty are to be recovered.



**9) GIST OF THE OBJECTION : Non-payment of service tax on “Commercial Training and Coaching Services” provided towards Govt. grants received**

**COMMISSIONERATE : Service Tax Commissionerate, Bangalore**

**CONTRAVENTION OF**

**PROVISION : Section 65 (B) (44) of the Finance Act  
Rule 3 of the Point of Taxation Rules, 2011**

**AUDIT CODE : OSR 02**

During the scrutiny of assessee records it is noticed that the assessee has received Grants from the Govt. of India towards up gradation of IT skills and Computer operation skills, in North Eastern State Youth, women/SC/ST/Economically weaker section youth, Weaker section youth in Goa state and Karnataka state etc, and also received Grants from the Govt. of Karnataka, towards skill up gradation courses for back ward areas of Karnataka state etc,. After receipt of the grants, assessee identifies the vendor who will give training to the targeted community at given place. Since the service provided by the assessee towards the grant amount is squarely classifiable under “Commercial Training and coaching service ” as per Section 105 (105) (zxc) of the Act, for the period up to 30-06-2012 and as per Section 65 (B) (44) of the Finance Act, for the period from 1-7-2012 onwards which attracts service tax. There is no specific exemption available for the grants given by the Govt towards taxable services under “Commercial Training and Coaching service”. Hence, assessee liable for payment of service tax of Rs.91,66,469/- on the grants received from October’2008 to March, 2013. However, assessee started to pay service tax on the grants amount spent from July’2012 onwards.

Further, assessee received the grant amount first and later on provided the service. As per Rule 3 of the Point of Taxation Rules, 2011, assessee liable to pay service tax as soon as he received the advance amount towards the taxable service to be provided later. Hence they are liable to pay service tax as soon as they receive the grant amount towards taxable service.As such the assessee is liable for payment of service tax of Rs. 91,66,469/- in terms of Section 68 of the Finance Act along with interest as per Section 75 of the Finance Act, 1994.

**10) GIST OF THE OBJECTION : Short Payment of Service Tax.**  
**COMMISSIONERATE : Service Tax Commissionerate, Kolkata**

**CONTRAVENTION OF**

**PROVISION : Rule 6 of Service Tax Rules, 1994**  
**Notification No.13/2012-ST dated 17.03.2012,**  
**Notification No.26/2012-ST dated 20.06.2012.**

**AUDIT CODE : CSN99**

The assessee is a provider of “Commercial or Industrial Construction Service”. In course of audit, it is revealed from the records of the assessee that they had charged an extra amount of Rs.2,40,15,554/- in the year 2012-13 for ‘height escalation’ in addition to the basic construction price from their customers. They had paid Service Tax after availing 75% abatement on gross value of taxable service. On scrutiny of records, it has been observed by the audit that these types of services are liable for payment of Service Tax under ‘Special services provided y a builder etc’. to the prospective buyers such as providing preferential location or external or internal development of complexes on extra charges (Section 65 (105) (zzzzu)). Floor escalation charges cannot be naturally bundled with construction service, as basic construction price is generally realized from the buyers irrespective of the floor. The floor escalation charges are additionally realized from the customers for providing the additional advantage of higher floors. Therefore, the services provided for this type of additional realization should not fall under “Commercial or Industrial Construction Service” and these services are not eligible for abatement of 75% of value as per notification no.13/2012-ST dated 17.03.2012, as amended by notification no.26/2012-ST dated 20.06.2012. Thus, the assessee had contravened the provisions of Rule 6 of Service Tax Rules, 1994 and Service Tax amounting to Rs.22,26,242/- (including Cess) for the year 2012-13 is recoverable from them along with appropriate Interest as per the provisions of Section 73 and Section 75 of the Finance Act, 1994.