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Government of India

## MONTHLY AUDIT BULLETIN – MARCH 2012

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New Delhi-110109**

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**CENTRAL EXCISE**

- (1) **GIST OF THE OBJECTION : Undervaluation of goods resorting to collection of money in name of freight charges more than actual expenditure.**

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

During the course of audit of an assessee the ledgers for Freight outward expenses and Actual collections towards freight from their customers were scrutinized. It was noticed that the assessee had actually incurred an expenditure of ₹13.51 Lakhs towards freight but they collected ₹21.44 Lakhs towards freight from their customers. Thus the assessee collected an excess amount of ₹7.93 Lakhs in the guise of freight from his customers but did not include the same in the assessable value of the goods cleared. The audit pointed out that as per Section 4(3)(d) of the Central Excise Act, 1944, read with Rule 5 of the Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000 only the actual cost of transportation is eligible as abatement in arriving at the transaction value and hence, the assessee has to pay excise duty of ₹81,729/- on the excess amount of ₹7,93,488/- collected towards freight in excess of actual cost of transportation.

- (2) **GIST OF THE OBJECTION: Non-payment of duty on amounts collected towards transit insurance for the period from 2008-09 to 2011-12 (up to Oct 2011)**

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

During the course of audit of accounts of the assessee, the auditors verified the Balance sheets and noticed that certain amount was shown as 'Misc. receipts' under indirect income. On enquiry it was found that the 'Misc. receipts' are 'Transit Insurance' amounts collected on FOR clearances. The audit observed that as per the policy of National Insurance Company, the assessee is responsible for the goods up to delivery of the same to the customer and as per the Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000, the transit insurance collected should be included in the assessable value for payment of Central Excise duty. On being pointed out the assessee agreed to the objection and paid the duty along with interest. Duty of ₹79,866/- involved along with interest of ₹22,267/- was recovered from the assessee in instant case.

- (3) **GIST OF THE OBJECTION : Availment of CENVAT Credit on full value invoiced**

**though price was got reduced from supplier due to poor quality of material received.**

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

During the course of audit, the audit team verified the 'Other Income' ledger of the assessee and noticed that the assessee had received an amount of ₹4,74,876/- from supplier, towards "Raw Material norms difference". On enquiry, it was found by audit that, as per norms fixed between supplier and the assessee, the assessee collected the amount towards loss occurred due to consumption of raw material in excess of quoted norms. Because of the poor quality of raw material, they reduced the cost of raw material to that extent and collected it from the supplier. The audit observed that the assessee had availed CENVAT Credit on 100% value, whereas they collected back ₹4.75 Lakhs towards 'Raw Material Norms difference'. Hence, the credit availed on this amount was irregular and needed to be reversed along with interest. On being pointed out, the assessee submitted that they had only raised a debit note to compensate the loss of ₹4.75 lakhs but had neither collected nor received the amount from the supplier. The assessee also submitted that as and when they received the payment from them they would reverse/pay CENVAT Credit on the said amount. Hence CENVAT Credit of ₹48,912/- involved needs to be reversed by the assessee.

- (4) GIST OF THE OBJECTION : Non payment of interest on duty paid at the time of issue of supplementary invoices at later stage to recover differential price**

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

The assessee is engaged in manufacturing Transformers falling under Chapter 85. During the audit, it was observed that the assessee had cleared goods to various customers at negotiated prices subject to Indian Electrical and Electronics Manufacturers Association (IEEMA) formula variation. In some of the cases, the prices prescribed by the IEEMA were higher than the negotiated price at which the goods had been cleared. The assessee was liable to pay differential duty which he had paid as supplementary invoices which were issued at later stage, but, had not paid interest on such late payment of differential duty. The assessee also paid such differential duty for the month of

December, 2011 which was pending along with interest. A total duty of ₹15,41,705/- with interest of ₹4,83,136/- altogether was recovered in the instant case.

- (5) **GIST OF THE OBJECTION : Non reversal of CENVAT Credit against the amount recovered from job worker for rejection and transit loss of input/semi-processed goods**

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

The assessee is engaged in the manufacture of Valves, Gears, Structuralis falling under Tariff Items 8409, 8483. During the course of audit it was observed that the assessee is sending inputs/semi-finished goods to job workers for further processing. The assessee had recovered certain amount from the job worker on the excess rejections of inputs/semi-finished goods and loss in transit. The assessee had taken CENVAT Credit on the inputs/semi-finished goods sent to job worker for further processing. During the period from April, 2010 to March, 2011 the assessee had recovered a sum of ₹10,92,342/- as value of the inputs, which were wasted in excess of the normal prescribed wastage and also recovered the loss of goods in transit, which could not be used in the manufacturing of the finished goods, by the job worker. The CENVAT Credit taken on these inputs amounting to ₹1,12,511/- stands recoverable from the assessee with interest and penalty.

- (6) **GIST OF THE OBJECTION : Wrong availment of CENVAT Credit on additional duty paid by the supplier manufacturer initially not paid by reason of fraud, suppression of facts etc.**

**COMMISSIONERATE : Central Excise Commissionerate, Pondicherry**

On scrutiny of the input invoices on which CENVAT Credit was availed, it was observed that assessee had taken CENVAT Credit on 28-12-2010 to the extent of ₹59,12,362/- based on four Supplementary invoices issued by their supplier manufacturer. On enquiry, it was learnt that an offence case had been registered by the Department for non payment of SAD on the removal of inputs as such by the said supplier manufacturer and the said inputs were supplied to the assesseees. The supplier paid the SAD in pursuance of the

offence case and also passed the same through Supplementary Invoices to the assesseees. Penalty proceedings were initiated against the supplier and during adjudication the short payment of duty (SAD) was confirmed and penalty was imposed, for suppression of facts with intention to evade duty.

As per the provisions of Rule 9(b) of the CENVAT Credit Rules, 2004, CENVAT Credit can not be availed on the amount of additional duty paid by the supplier manufacturer under the provisions of Section 3 of the Customs Tariff Act, 1975 on the inputs on account of short levy by reason of fraud, collusion or willful misstatement. Since the CENVAT Credit could not be taken on such payments of differential duty, the availment of CENVAT Credit on the same is not in order. Hence, the CENVAT Credit of ₹59,12,362/- taken by the assesseees is liable to be recovered along with interest.

**(7) GIST OF THE OBJECTION : Non reversal of Additional Duty of credit on 'as such Clearances'**

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

The assessee is engaged in the manufacture of Assembly of Geared Motors & Electric Motors, Drives/Invertors of Electric Motors. They availed CENVAT Credit for Stators, Brakes, Gear Housing, Rotors, Wheels, Brake Rectifiers and Service Tax credits for the services of Maintenance or Repair Service and Transport of Goods by Road also. On verification of input invoices, it was noticed that the assessee was importing raw materials such as Stators, Oil Seals etc for assembling at their factory and availed CENVAT Credit of CVD, Education Cess, SHEC and Additional Duty (Imports) at 4%. The said goods were removed as such to their sister units and also to some customers without reversal of Additional duty (Imports) at 4%. On being pointed out, the assessee agreed and reversed Additional Duty (Imports) to the extent of ₹16,00,332/-availed during the period from December, 2010 to November, 2011 and also paid the interest of ₹1,93,758/-

**(8) GIST OF THE OBJECTION : Incorrect Valuation of goods- Non inclusion of cost**

**of motors supplied free of charge by the customers  
in the assessable value as per Rule 6 of the Central  
Excise Valuation (Determination of Price of  
Excisable goods) Rules, 2000**

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

Assessee is engaged in the manufacture of Industrial fans / Blowers falling under Tariff Item 8414 59 30. The unit is supplying goods to various customers based on purchase orders which indicated the specification of the product, usage, etc. and were based on specific drawing. The price was negotiated with the customer based on various aspects such as commissioning at site, payment of freight charges, warranty and whether the motors are supplied by the customer or by the assessee. The assessee availed CENVAT Credit for various inputs as well as Service Tax for the manufacture of Industrial fans/Blowers. On scrutiny of their records, it was noticed that in certain cases the customers supplied the motors to be fitted in their industrial fan/blower. These motors were supplied through invoices/ delivery challans/ job work challans. The same were issued for production by materials issue slips maintained at the stores with indication as 'customer motor'. It was also noticed that instructions were given to the production department to fix the customer motor to the Industrial fans/Blowers before being dispatched by way of internal communication issued from the planning department. The motors were fitted to the blower/Industrial fans and cleared to the customers after testing. This was evident from the packing slips. They had also executed certain contracts by availing notification No.64/95-CE, dated 16-03-1995 (supplied to coast guard) and paid an amount equal to 5% of the value of the exempted goods as provided for under Rule 6(3)(i) of the CENVAT Credit Rules, 2004. In such cases, while arriving at the value of the exempted goods cost of such motors supplied free of charge should have been taken for paying an amount of 5% of the value as provided under Rule 6 of the Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000. The differential duty liability worked out to ₹7.09Lakhs with interest of ₹1.11Lakhs. On being pointed out, the assessee agreed and paid the duty liability along with interest.



**(9) GIST OF THE OBJECTION : Irregular availment of CENVAT Credit on Capital goods not available in Factory**

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

During course of audit and on scrutiny of records like Incoming Invoices of Raw material & Capital Goods, Capital goods Challans and RG23 C Pt. I & II, it was observed by the auditors that the assessee had purchased Hydra Crane, Crawler mounted crane from manufacturers in cities A and B, vide invoices dt. 30.06.2010 and dt. 31.01.2010 and received the said capital goods at their factory on 13.07.2010 and 19.02.2010 respectively for loading and unloading of raw materials and finished goods at their factory premises in city B. Proper entries were made in RG23 C Pt.I on 13.07.2010 and 19.02.2010 and they took credit of ₹1,08,150/- and ₹10,46,460/- in RG 23C Pt.II. During Audit, the assessee could not show the above said Capital goods physically as those had been sent to their job site at cities C and D. In this respect, they made Capital Goods Challans dt. 09.03.2010, dt. 20.07.2010 and dt. 10.09.2010. However they never issued any Central Excise invoice and neither debited Central Excise duty on the said goods nor debit entry was made in RG 23C Pt. I & II Register. Thus, CENVAT Credit of ₹11,54,000/- availed by the assessee on said goods was irregular and was required to be reversed by the assessee along with interest. On being pointed out by the auditors, the assessee agreed to reverse the credit.

**(10) GIST OF THE OBJECTION : Non adoption of 110% valuation on goods cleared to sister concern and related units**

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

During verification of records, it was observed that the assessee has stock transferred finished goods (capacitor Cell and Enclosures) from Unit I to Unit-II under cover of Central Excise invoice with excise duty duly paid by mentioning "Stock transfer" in the invoices. The said clearances have to be valued in terms of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000 by adding 10% of cost of production. However, the assessee had not added 10% of cost of production in respect of the above transactions. The total value of stock transferred was

₹4,36,93,650/- and the Central Excise duty @ 10% of it worked out to ₹45,00,446/- (BED ₹43,69,365/-, EC ₹87,387/-, SHE ₹43,694/-). On being pointed out by the audit, the assessee agreed to the audit contention and paid BED of ₹43,69,365/- in their Cenvat account and debited Cess of ₹1,31,081/- in PLA and paid Interest of ₹4,38,113/- through e-payment.

**(11) GIST OF THE OBJECTION: Wrong availment of CENVAT Credit**

**COMMISSIONERATE : Central Excise Commissionerate, Belapur**

Assessee is availing CENVAT Credit. As per Rule 3(5B) of the CENVAT Credit Rules, 2004, if value of any inputs or capital goods before being put to use, on which CENVAT Credit has been taken is written off fully or where any provision to write off fully has been made in the books of account, then the manufacturer is required to pay an amount equivalent to the CENVAT Credit taken in respect of the said input or capital goods. The assessee informed that for accounting purpose he had written off the Stores and Spares and Raw Material inventory from the books of accounts on March 31, 2011. Immediately upon pointing out by the audit party, assessee made the reversal of CENVAT Credit @ 10.3% amounting ₹25,39,874/-, on total write off amounting to ₹2,46,58,971/-, alongwith interest amounting ₹3,15,640/-.

**(12) GIST OF THE OBJECTION : Wrong availment of Credit on services without receipt of involved inputs in factory**

**COMMISSIONERATE : Central Excise Commissionerate, Meerut-I**

Irregular CENVAT Credit of Service Tax was observed to have been taken on the strength of storage bills of the service provider raised for the storage of imported raw sugar at the port. The said bills had been raised by service provider on regular basis pertaining to continued storage of 15,750 MT and 19270.019 MT of raw sugar at the port of import during April, 2010 to 5<sup>th</sup> November, 2010. Records of receipt of raw sugar at factory revealed that the party did not receive any raw sugar at the factory from port after September, 2010. It meant that 15,750 MT and 19,270.019 MT of raw sugar which continuously remained stored at port of import since April, 2010 to 5<sup>th</sup> November, 2010

was never transported to factory at from port. Therefore, the credit of Service Tax paid on such storage of said quantity of raw sugar, which never came to factory, did not appear admissible to the party. Total amount of CENVAT Credit of ₹17.45 Lakhs involved was recovered in instant case.

### **SERVICE TAX**

- (13) **GIST OF THE OBJECTION: Short payment of Service Tax on fabrication work covered under ‘Erection, Commissioning and Installation services’**

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

During the course of audit of the accounts of the assessee, the audit verified the bank statements and TDS certificates furnished by the assessee and noticed that the assessee had received certain payments from certain customer during the period from 2008-09 to 2010-11. However, the assessee did not include the said amounts in the value of taxable service due to the impression that fabrication works were not liable for Service Tax and also due to the fact that the customer had not paid the tax amount. On being pointed out by the audit that the service rendered to said customer were covered under “Erection, Commissioning and Installation” services and Service Tax has to be paid along with interest, the assessee agreed to the objection and paid Service Tax of ₹17,32,830/- along with interest of ₹4,64,981/-.

- (14) **GIST OF THE OBJECTION: Detection of Non-payment of Service Tax on ‘Testing Charges’ paid in Foreign currency by scrutiny of ledgers**

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

The assessee is a provider of Man Power Recruitment Services, GTA and other services. The audit verified the Ledger accounts of the assessee for Testing Charges paid for the years 2009-10 and 2010-11 and observed that the assessee had paid certain amount in foreign currency to Netherlands towards charges for testing transformers. The audit

pointed out that Service Tax is liable to be paid under the reverse charge mechanism, in terms of Section 68(2) of the Chapter V of the Finance Act, 1994 on the expenditure so incurred. The assessee agreed to the objection and paid the tax amount of ₹33.44 Lakhs.

**(15) GIST OF THE OBJECTION: Non payment of Service Tax on Intellectual Property Service**

**COMMISSIONERATE : Central Excise Commissionerate, Vadodara-I**

The assessee is engaged in manufacturing Air Duct, Central Ceiling, Light Unit and Side Ceiling falling under Chapter 86. On verification of records of the assessee, it was observed that the assessee had not paid Service Tax on providing services of Intellectual Property Services. As per Sections 65(55a)/ 65(55b), 65(105)(zr) of the Finance Act, 1994, services like Designs, Use of Trade Marks, Patents, Permitting use of intellectual property rights, Right to Intangible property, Technology Sale, Transfer of know-how, etc, are covered under Intellectual Property Services. Further, the transfer or use of IPR, attracts a Cess at 5% on all payments made towards the import of technology under R&D Cess Act, 1986 and rules made there under. On going through the financial records of the assessee, it was observed that the assessee had not paid the Service Tax on IPR services for the years 2008-09 to 2010-11. The total amount of unpaid Service Tax on IPR services, as well as R&D Cess plus interest thereof for the years 2008-09 to 2010-11 was calculated at ₹1,05,32,469/-. On being pointed out the assessee agreed to the objection and paid the entire amount.

**(16) GIST OF THE OBJECTION : Non-payment of Service Tax payable on the Erection, Installation and Commissioning Service charges collected.**

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

On verification of Balance sheet, Profit & Loss Account and Trial Balance of the assessee, it was found out that the assessee was engaged in providing Erection, Installation and Commissioning services to their clients by entering into

contract with them. They were also supplying the materials required for the purpose. The total amount received for those contracts attracts Service Tax under the said Services. But the assessee failed to pay Service Tax on the entire value of service received. The total amount of charges collected for the period June, 2010 to March, 2011 was worked out to ₹11,91,09,313/-. The total Service Tax payable after allowing 67% abatement on the total value under notification No.1/06-ST, dated 01.03.06 worked out to ₹38,62,690/-. On being pointed out the assessee unit admitted their liability, but paid ₹34,07,398/- only.

The assessee self-apportioned the entire contract amount under two heads viz. partly under 'erection charges' and partly under 'transportation charges' of materials to the site. The assessee worked out the ST liability on erection charges after taking 67% abatement and on the so apportioned transportation charges also after taking 75% abatement and have thus short paid Service Tax to the tune of ₹4,55,292/- as a result of differential tax of 0.824 %. The assessee is not a Goods Transport Operator and the contract amount cannot be segregated into two or more components while rendering Erection, Commissioning & Installation service. The entire amount or the composite value as agreed upon in the contract has to be taken as a whole and only on that total value 67% abatement is permissible and no other abatement can be claimed for any other expenditure incurred to carry out the contract work. Hence the assessee was liable to pay the balance Service Tax also along with appropriate interest. On being pointed out, the assessee admitted their liability and paid part amount of Service Tax of ₹34,07,398/- and interest of ₹3,58,460/- The assessee is liable to pay the balance Service Tax short paid of ₹4,55,292/- with the applicable interest.

**(17) GIST OF THE OBJECTION : Detection of non payment of Service Tax through CAAP Audit**

**COMMISSIONERATE : Central Excise Commissionerate, Salem**

Assessee is provider of Commercial Construction services, Works Contract services, Business Auxiliary services, Site formation services and Goods Transport Agency

services for which they have taken Service Tax registration. During the course of the CAAP audit conducted, details of receipts shown in the Income-expenditure accounts for the year 2011-12 (up to June 2011) were retrieved electronically. It was observed that Service Tax was not paid towards all the amounts which were received from their customers towards various services provided by the assessee. On comparison of the paid challans, a difference in value of ₹1,49,12,225/- involving Service Tax of ₹15,35,959/- was found. On being pointed out, the assessee paid the same along with interest of ₹21,296/-

**(18) GIST OF THE OBJECTION : Non payment of Service Tax on 'transport of goods through pipeline' services**

**COMMISSIONERATE : Central Excise Commissionerate, Patna**

The assessee is registered for providing services under the category of Transport of Goods by Road with effect from 26.02.2008. The assessee supplied oil in tank /lorry and paid Service Tax under the head of GTA. On examination of records at the time of audit, it was observed by the auditors that the assessee had supplied Oil through pipe line also to a Petroleum Company. But the assessee had not taken registration under the provisions of Service Tax for providing such service.

Further, the following records maintained by the assessee were scrutinised:

- i) Tank Dip Memo before receipt (opening Dip)
- ii) Supply Memo after receipt.
- iii) Delivery Challan for supply through pipeline.
- iv) Joint certificate summary.
- v) Letter Ref. No. PAT/TERM/EXCISE dated 01.02.2012.

It was observed by the auditors that the assessee had been supplying Oil to the petroleum Company and charging Inventory carrying cost involved in pipe line supply to them since July'2008 as declared by them through their letter dated 01.02.2012. This Inventory carrying cost involved in pipe line supply was nothing but the part of transportation

through Pipeline Services. But the assessee had not paid any Service Tax on such receipt of Inventory carrying cost involved in pipe line supply of oil to the Petroleum Company. The details of such charges received were as under:-

Year	Amount (in Rs.)	Service Tax (in Rs.)
[1]	[2]	[3]
2008-09 (July to March)	14379313.00	1777283.00 (@ 12.36%)
2009-10	20358862.00	2096962.00 (@ 10.3%)
2010-11	34345126.00	3537548.00 (@ 10.3%)
Total		74,11,793.00

Thus, the assessee is required to obtain Service Tax Registration for providing such services under the category of 'transport of goods through pipeline services' and to pay Service Tax amounting to ₹74,11,793/- with appropriate interest.

**(19) GIST OF THE OBJECTION: Short/non payment of service tax under C&F Agent service**

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

The assessee is registered under Service Tax for providing taxable service of 'Clearing & Forwarding Agent Services' to their various clients. During the course of audit of records of the unit, it was found that the assessee in addition to commission being received from their clients, also received an amount on account of reimbursement of various expenses viz. telephone, electricity, water, courier charges, handling, loading/unloading, labour charges, salary to staff etc incurred by them for providing the taxable service. However, the assessee had not included the re-imbursement of various expenses received from their clients in the taxable value and did not pay Service Tax on the said amount. Further, it was observed that they have not included the C&F remuneration/commission amount received from some of the clients in the taxable value and have not paid Service Tax on the said income. As per Section 67 of the Finance Act, 1994, the assessable value, where

the entire amount received is in money, is the gross amount charged. Under Rule 5 of the Service Tax (Determination of Value) Rules, 2006, where any expenditure or costs are incurred by the service provider in course of providing taxable service, such expenditure or cost shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value of the service for the purpose of charging tax unless such costs or expenditure have been incurred by the service provider as a “pure agent” as defined in this Rule. Under Rule 6 of the Service Tax (Determination of Value) Rules, 2006, the value of taxable service in case of the services provided by C&F Agent shall assessable value, in addition to remuneration or commission, would also include all the expenditure or costs incurred in the course of providing the service which were reimbursed by the service recipients. Thus, the assessee had not included the total value of taxable service and has not shown the correct taxable value in the ST-3 returns for payment of Service Tax under C&F Agent service due to not including in the taxable value, the amount received on account of reimbursement of various expenses viz. telephone, electricity, water, courier charges, handling, loading/unloading, labour charges, salary to staff etc. and also the C&F commission in some cases which resulted in short payment of Service Tax amounting to ₹14,69,707/- during the period October, 2006 to March, 2011. The amount of service tax payable was worked out on the basis of the details and records provided by the assessee. While calculating the gross value of taxable service, the amount of freight/transportation charges were excluded when the same had been shown separately in the bill wise details/charts provided by the assessee. The Service Tax amounting to ₹14,69,707/- not paid/short paid by the assessee is recoverable from the assessee along with interest under the provisions of Section 73(1) and Section 75 of the Finance Act, 1994. On being pointed out, the assessee deposited the Service Tax amounting to ₹4,73,563/- along with interest of ₹2,17,734/-.

- (20) **GIST OF THE OBJECTION :**            **Non inclusion of cost of material used in taxable value**
- COMMISSIONERATE**            **:**            **Service Tax Commissionerate, Kolkata**

The assessee is a provider of ‘Execution of Works Contract services’ defined under



Section-65(105)(zzzza) of the Finance Act 1994. During course of audit and on scrutiny of records it is evident that assessee provided under contract 'Construction of Residential Complex Services', to his client from 2007-08 onwards and opted for the composite scheme under the Works Contract (Composition scheme for Payment of Service Tax) Rules, 2007 vide notification No.32/2007-ST, dated 22.05.07 effective from 01.06.2007. It was revealed from P&L account, reconciliation statement and ST-3 returns that Service Tax liability have not been discharged properly resulting short payment of ₹61,80,751/- on differential taxable value of ₹15,00,18,219/- for the period from 2007-08 to 2009-10. Vide notification No.23/2009-ST, dated 07.07.2009 an amendment was made to the Works Contract (Composition scheme for Payment of Service Tax) Rules, 2007. In Rule 3(1) it has been provided that the value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise should be included in taxable value in Works contract on & after 07.07.2009 and so the value of ₹1,93,88,310/- for free supply material (Cement & Iron rod) provided under works contract on and after 07.07.2009 to the said client is includible in taxable value of service in 2009-10. In view of above discussed facts of the case, the assessee is liable to pay ₹61,80,751/- as Service Tax with Cess along with an Interest under Section-75 of the Finance Act, 1994 in instant case.

**(21) GIST OF THE OBJECTION : Non payment of Service Tax on Import of services  
COMMISSIONERATE : Central Excise Commissionerate, Mumbai -II**

During the course of audit of a 100% EOU, it was observed from 'Schedule-16, Notes to the account' for the year 2008-09 of Balance Sheet that the assessee has paid/incurred expenditure in foreign currency on account of various services received from outside India. As per section 66A of the Finance Act, 1994 and Taxation of Service (Provided from Outside India and Received in India) Rules, 2006, read with Rule 2(1)(d)(iv) of the Service Tax Rules, 1994, in relation to any taxable service provided or to be provided by any person from a country other than India and received by any person in India under section 66A of the Act, the recipient of such service is liable to pay the Service Tax as a recipient. Accordingly, the assessee was required to pay the Service Tax liability of Rs 3,21,49,266/- along with interest on amounts paid in foreign currency as detailed below :-

(amount in Rupees)

<b>Amount paid in Foreign Currency</b>	<b>Category of Service</b>	<b>2007-08</b>	<b>2008-09</b>	<b>Total</b>
Marketing Fees	Business Auxiliary service	10755427	62643482	73398909
Technology Cost	Intellectual Property Right	8790394	26185855	34976249
Outsourcing Charges	Business Support service	0	91216904	91216904
Professional & Consultancy Charges	Management & Business Consultancy	6175442	0	6175442
Others	Business Auxiliary service	43998033	10341792	54339825
Total		69719296	190388033	260107329
<b>Service Tax liability</b>		<b>8617305</b>	<b>23531960</b>	<b>3,21,49,266</b>

It was also observed from Note '19 of Schedule-16, Note to Accounts' of Balance Sheet for the year 2008-09 that the company had availed Manpower Support Services and Technology Services from its group subsidiary company, aggregating to ₹12,91,04,736/-. The payment towards these liabilities was settled directly by the parent company and disclosed the same as dues to holding company under current liabilities (Schedule 9). The company was in the process of seeking approval from the Reserve Bank of India. On enquiry, assessee vide letter dated 17.11.2010 stated that they used technology service from group subsidiary company to provide service to assessee's client for ₹1,17,01,977/- (2007-08) and ₹2,61,85,855/- (2008-09) and entered into an agreement with group subsidiary company for providing manpower service in USA for ₹9,12,16,904/- (2008-09) totally amounting to ₹12,91,04,736/-. The said amount (mentioned at S.No. 2 & 3 of table above) was directly paid by assessee. Therefore, the assessee was required to pay Service Tax under Rule 3(iii) of the Taxation of services (provided from outside India and received in India) Rules, 2006. Similarly other charges of ₹4,39,98,033/- (2007-08) and ₹1,03,41,792/- (mentioned at S.No. 5 of the table above) shown in schedule 16 notes to accounts for the year 2008-09, the assessee vide letter dated 17.11.10 stated that they had sought manpower support from group subsidiary company for servicing their client

locally in USA. This expense is incurred by group subsidiary company on behalf of the assessee. Therefore, the assessee is required to pay Service Tax under Rule 3(iii) of the Taxation of Services (Provided from outside India and received in India) Rules, 2006.

### **Audit Performance Index**

**(22) Audit Performance Index (API) of the Central Excise Commissionerates for the Q.E. December, 2011**

Sr.No	Commissionerate	Detection per Audit (Rs. In Lakhs)	Recovery per Audit (Rs. In Lakhs)	No of MCMs during the Quarter	Audit Performance index of Comm'te	Relative Ranking
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Pune-III	15.01	17.96	3	57.35	1
2	Chennai-IV	7.72	7.55	3	56.45	2

3	Belapur	59.77	13.53	3	42.41	3
4	Hyderabad-I	8.93	7.11	3	41.73	4
5	Delhi-III	22.71	11.04	3	41.68	5
6	Hyderabad-III	3.74	4.32	3	39.50	6
7	Raigad	8.64	7.99	2	38.29	7
8	Vadodara-II	6.59	5.45	3	37.91	8
9	Vadodara-I	10.39	8.24	3	37.88	9
10	Bhopal	22.45	11.29	3	37.82	10
11	Surat-II	1.65	2.19	3	36.80	11
12	Ahmedabad-I	4.06	2.95	2	36.60	12
13	Hyderabad-IV	0.17	1.41	3	35.15	13
14	Bangalore-I	10.34	5.23	3	34.35	14
15	Mumbai-II	70.33	13.47	3	34.29	15
16	Bangalore-III	3.32	2.75	3	34.25	16
17	Bhubaneswar- II	6.62	5.26	3	33.95	17
18	Nasik	2.70	2.54	3	33.81	18
<b>Sr.No.</b>	<b>Commissioner ate</b>	<b>Detection per Audit (Rs. In Lakhs)</b>	<b>Recovery per Audit (Rs. In Lakhs)</b>	<b>No of MCMs during the Quarter</b>	<b>Audit Performance index of Comm'te</b>	<b>Relative Ranking</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>	<b>(6)</b>	<b>(7)</b>
19	Visakhapatnam - II	10.53	6.24	3	33.80	19
20	Dibrugarh	1051.72	0.16	3	33.11	20
21	Noida	4.17	3.08	3	32.57	21
22	Rajkot	11.12	6.63	3	32.51	22

23	Coimbatore	1.01	0.92	3	31.37	23
24	Hyderabad-II	1.56	1.49	3	31.23	24
25	Bangalore-II	18.40	7.96	3	31.15	25
26	Siliguri	0.43	0.43	3	30.80	26
27	Chennai-II	3.62	2.42	3	30.43	27
28	Delhi-IV	6.11	3.57	3	30.37	28
29	Daman	4.05	2.41	3	30.23	29
30	Jalandhar	4.78	2.79	3	28.93	30
31	Meerut-II	3.14	2.04	3	28.91	31
32	Ranchi	23.81	7.10	3	27.57	32
33	Vapi	4.16	2.26	3	26.63	33
34	Ghaziabad	6.35	3.39	3	26.56	34
35	Jaipur-I	2.25	1.34	3	25.73	35
36	Ahmedabad-II	7.49	3.49	3	25.21	36
37	Delhi-II	1.55	0.97	3	25.06	37
38	Ludhiana	3.62	1.70	3	24.95	38
39	Goa	6.08	2.68	3	24.64	39
<b>Sr.No.</b>	<b>Commissioner ate</b>	<b>Detection per Audit (Rs. In Lakhs)</b>	<b>Recovery per Audit (Rs. In Lakhs)</b>	<b>No of MCMs during the Quarter</b>	<b>Audit Performance index of Comm'te</b>	<b>Relative Ranking</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>	<b>(6)</b>	<b>(7)</b>
40	Chennai I	71.26	1.82	2	24.17	40
41	Ahmedabad-III	1.74	1.22	2	24.023	41
42	THANE-I	38.07	2.72	3	24.016	42

43	Cochin	2.06	1.25	3	23.91	43
44	Allahabad	0.74	0.49	3	23.83	44
45	Kolhapur	2.49	1.65	2	23.61	45
46	THANE-II	2.45	1.52	2	23.52	46
47	Pune-I	0.08	0.05	3	23.46	47
48	Tiruchirappalli	88.96	5.17	3	23.22	48
49	Mangalore	2.87	1.56	3	23.10	49
50	Mysore	9.80	3.52	3	22.79	50
51	Delhi-I	7.43	2.18	3	21.96	51
52	Panchkula	1.03	0.53	3	21.38	52
53	Mumbai-V	2.85	1.07	3	21.04	53
54	Calicut	2.24	1.31	2	20.82	54
55	Bhavnagar	20.89	4.64	2	20.74	55
56	Belgaum	37.59	4.45	3	20.12	56
57	Pondicherry	12.96	2.22	3	19.86	57
58	Rohtak	5.45	1.85	3	19.70	58
59	Surat-I	10.00	3.31	2	19.24	59
60	Trivandrum	3.32	0.85	4	19.17	60
<b>Sr.No.</b>	<b>Commissioner ate</b>	<b>Detection per Audit (Rs. In Lakhs)</b>	<b>Recovery per Audit (Rs. In Lakhs)</b>	<b>No of MCMs during the Quarter</b>	<b>Audit Performance index of Comm'te</b>	<b>Relative Ranking</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>	<b>(6)</b>	<b>(7)</b>
61	Chennai-III	10.07	2.46	3	19.14	61
62	Raipur	18.33	3.16	3	18.82	62

63	Nagpur	1.99	0.74	3	18.73	63
64	Tirunelveli	1.66	1.07	1	18.63	64
65	Visakhapatnam - I	5.25	1.61	3	18.58	65
66	Kolkata-VII	1.47	0.52	3	18.28	66
67	Jaipur-II	3.95	1.21	3	18.062	67
68	Shillong	1.25	0.46	3	18.059	68
69	Jammu & Kashmir	15.62	0.42	3	17.80	69
70	Lucknow	46.20	3.67	3	17.71	70
71	Kolkata-V	4.16	0.95	3	17.69	71
72	Guntur	19.68	1.99	3	16.88	72
73	Aurangabad	5.11	0.94	3	16.32	73
74	Patna	6.05	1.30	3	16.27	74
75	Kolkata-III	17.14	1.12	3	16.08	75
76	Kolkata-I	14.63	0.96	3	15.94	76
77	Gauwahati	1.69	0.41	3	15.57	77
78	Chandigarh -I	0.65	0.15	3	15.48	78
79	Mumbai-III	1.82	0.64	2	15.23	79
80	Tirupathi	27.49	1.49	3	14.82	80
81	Bolpur	24.91	3.01	2	14.78	81
<b>Sr.No.</b>	<b>Commissioner ate</b>	<b>Detection per Audit (Rs. In Lakhs)</b>	<b>Recovery per Audit (Rs. In Lakhs)</b>	<b>No of MCMs during the Quarter</b>	<b>Audit Performance index of Comm'te</b>	<b>Relative Ranking</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>	<b>(6)</b>	<b>(7)</b>

82	Kolkata-II	3.75	0.43	3	14.40	82
83	Meerut-I	10.22	1.88	2	13.47	83
84	Salem	17.68	0.52	3	13.23	84
85	Haldia	2.30	0.62	2	12.99	85
86	Mumbai-I	4.82	0.42	3	12.46	86
87	Bhubaneswar- I	1.25	0.13	3	12.38	87
88	Indore	6.09	0.81	2	11.21	88
89	Jamshedpur	15.89	0.29	3	11.13	89
90	Kolkata-VI	2.86	0.09	3	10.79	90
91	Kanpur	0.84	0.28	1	10.60	91
92	Kolkata-IV	29.04	0.60	2	10.08	92
93	Madurai	3.75	0.67	1	8.73	93

**(23) Audit Performance Index (API gradings-Service Tax only) of the exclusive Service Tax Commissionerates and Composite Central Excise Commissionerates (Central Excise + Service Tax) for the Q.E. December, 2011**



Sr.No.	Commissione rate	Detection per Audit (Rs. In Lakhs)	Recovery per Audit (Rs. In Lakhs)	No of MCMs during the Quarter	Audit Performance index of Comm'te	Relative Ranking
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Mumbai ST I	483.04	289.80	3	61.31	1
2	Guntur	64.77	80.77	3	54.39	2
3	Hyderabad-I	42.73	72.29	3	42.10	3
4	Allahabad	10.93	9.97	3	37.80	4
5	Delhi ST	784.83	41.61	3	36.45	5
6	Hyderabad-IV	9.35	31.14	3	36.26	6
7	Meerut-I	28.92	28.14	2	35.53	7
8	Bangalore ST	288.75	91.56	3	34.96	8
9	Hyderabad-II	34.00	2.56	3	34.38	9
10	Surat-II	8.19	18.85	3	34.19	10
11	Vadodara-I	6.67	6.75	3	33.15	11
12	Visakhapatna m - I	5.55	6.05	3	31.64	12
13	Daman	5.04	5.04	3	31.55	13
14	Rohtak	1.72	1.67	3	30.57	14
15	Vadodara-II	1.58	1.55	3	30.19	15
16	Vapi	2.18	1.89	3	27.88	16
17	Surat-I	5.13	4.59	2	27.02	17
18	Mumbai ST II	16.61	12.60	3	26.87	18
19	Nasik	4.70	3.21	3	26.73	19

Sr.No.	Commissione rate	Detection per Audit (Rs. In Lakhs)	Recovery per Audit (Rs. In Lakhs)	No of MCMs during the Quarter	Audit Performance index of Comm'te	Relative Ranking
(1)	(2)	(3)	(4)	(5)	(6)	(7)
20	Noida	191.84	16.15	3	26.67	20
21	Goa	2.36	1.77	3	25.37	21
22	Tirupathi	2.18	1.52	3	25.34	22
23	Indore	0.97	0.86	2	24.76	23
24	Jaipur-II	6.77	4.19	3	24.13	24
25	Mangalore	172.95	17.48	3	23.67	25
26	Coimbatore	11.36	5.33	3	23.14	26
27	Pune-III	134.21	33.60	3	21.93	27
28	Raigad	3.79	2.76	2	21.89	28
29	Chennai-III	37.77	14.36	3	21.66	29
30	Mysore	2.66	1.30	3	21.29	30
31	Dibrugarh	3.36	1.66	3	21.04	31
32	Jamshedpur	14.42	6.17	3	20.84	32
33	Meerut-II	2.49	0.92	3	20.70	33
34	Tiruchirappalli	3.68	1.84	3	20.567	34
35	Trivandrum	21.80	8.40	4	20.565	35
36	Gauwahati	2.57	1.18	3	19.85	36
37	Panchkula	3.58	1.56	3	19.71	37
38	Ahmedabad-III	263.16	34.50	2	19.47	38
39	Ahmedabad-ST	54.89	14.53	3	19.38	39

40	Jaipur-I	5.65	2.21	3	19.29	40
<b>Sr.No.</b>	<b>Commissione rate</b>	<b>Detection per Audit (Rs. In Lakhs)</b>	<b>Recovery per Audit (Rs. In Lakhs)</b>	<b>No of MCMs during the Quarter</b>	<b>Audit Performance index of Comm'te</b>	<b>Relative Ranking</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>	<b>(6)</b>	<b>(7)</b>
41	Visakhapatnam - II	28.30	7.38	3	19.24	41
42	Chennai ST	24.22	7.23	3	18.82	42
43	Calicut	3.43	1.89	2	18.80	43
44	Salem	77.77	3.38	3	18.76	44
45	Ghaziabad	13.80	4.01	3	18.28	45
46	Aurangabad	9.91	2.61	3	18.02	46
47	Patna	2.20	0.79	3	17.97	47
48	Ludhiana	229.82	3.88	3	17.89	48
49	Pondicherry	49.13	8.32	3	17.51	49
50	Raipur	169.86	6.28	3	17.37	50
51	Lucknow	78.60	7.23	3	17.27	51
52	Bhavnagar	3.35	1.63	2	17.12	52
53	Cochin	19.04	3.85	3	16.20	53
54	Kolhapur	92.98	7.67	2	15.49	54
55	Siliguri	3.67	0.73	3	14.90	55
56	Jalandhar	2.39	0.55	3	14.88	56
57	Bhubaneswar-I	12.94	2.41	3	14.84	57
58	Nagpur	8.87	1.77	3	14.77	58

59	Bolpur	44.46	7.76	2	14.29	59
60	Chandigarh -I	10.17	1.34	3	13.38	60
61	Belgaum	14.83	1.44	3	13.13	61
<b>Sr.No.</b>	<b>Commissione rate</b>	<b>Detection per Audit (Rs. In Lakhs)</b>	<b>Recovery per Audit (Rs. In Lakhs)</b>	<b>No of MCMs during the Quarter</b>	<b>Audit Performance index of Comm'te</b>	<b>Relative Ranking</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>	<b>(6)</b>	<b>(7)</b>
62	Rajkot	27.66	2.05	3	12.90	62
63	Pune-I	35.30	1.96	3	12.66	63
64	Ranchi	56.83	0.09	3	12.08	64
65	Bhubaneswar-II	20.05	1.06	3	11.91	65
66	Kolkata-ST	12.67	2.75	2	11.61	66
67	Shillong	7.78	0.19	3	10.99	67
68	Tirunelveli	6.40	1.32	1	8.42	68
69	Madurai	6.26	0.98	1	7.88	69
70	Haldia	15.88	0.32	2	7.78	70
71	Kanpur	12.67	1.36	1	6.46	71

*[Note:- (i) As the % age of Recovery to Detection in Col. No. 11 against S.Nos. 2, 3, 6, 10, 11 and 12 is more than 100%, their respective performances in col. No.12 have been restricted to maximum of the 0 to 20 percentile.]*

*(ii) Hyderabad-III and Bhopal Commissionerate did not conduct any audit of Service Tax assesseees in this quarter. Hence no API ranking could be generated for them.*

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