

CENTRAL EXCISE

1)

GIST OF THE OBJECTION : Non-payment of duty on moulds cleared for captive consumption
COMMISSIONERATE : Central Excise, Hyderabad I
CONTRAVENTION OF : Rule 3(5A) of Cenvat Credit Rules, 2004
PROVISION

The assessee is a manufacturer of Iron and Steel. During the course of audit, it was noticed that they cleared 'moulds' for captive consumption under Notification No. 67/95 after being converted into scrap. The audit pointed out that since cenvat credit was availed on the 'moulds' as capital goods, the assessee has to pay the duty on the depreciated value under Rule 3(5A) of Cenvat Credit Rules, 2004. The assessee agreed to the objection and paid the amount along with interest.

2)

GIST OF THE OBJECTION : Non Payment of amount in terms of Rule 6(3) of Cenvat Credit Rules, 2004
COMMISSIONERATE :Central Excise, Kolkata-III
CONTRAVENTION OF : Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A & PROVISION 11AA of the Central Excise Act, 1944

Scrutiny of the records / documents maintained by the assessee in respect of availment of input credit and finished products revealed that they were availing credit on the input materials of Linear Alkyl Benzene (LAB) and Sulphuric Acid. Out of those inputs Acid Slurry (TSH 34209011) and spent Sulphuric Acid (TSH 28070010) are manufactured.

From the records, it was observed that "Spent Sulphuric Acid" was cleared at 'NIL' rate of duty in terms of Notification No. 12/2012-CE dated 17.03.2012 to some buyers. It was also observed that they were not maintaining separate accounts of raw materials of LAB and Sulphuric Acid used for manufacture of "Spent Sulphuric Acid" (exempted product) falling under Tariff, item 28070010 as laid down under Rule 6(3)(3) of Cenvat Credit Rules, 2004. As

they were not maintaining separate accounts of as mentioned above, they were liable to pay an amount @ 6% on the value of the goods cleared at NIL rate of duty in terms of provision under said Rule. Accordingly they had not paid Rs. 30,53,954.00 for the period from October, 2012 to September, 2013, in contravention to the provision under Rule 6(3) of Cenvat Credit Rules, 2004. The assessee were, therefore, liable to reverse / pay the said amount of Rs. 30,53,954/- along with appropriate interest as per the provisions under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A & 11AA of the Central Excise Act, 1944.

3)

GIST OF THE OBJECTION : Availment of excess Cenvat credit by availing the credit more than once based on the same document.

COMMISSIONERATE : Bangalore LTU

On scrutiny of the Cenvat credit availed documents, it is observed that in few cases, the assessee has availed the Cenvat Credit based on the same document more than once resulting in excess availment of Cenvat Credit. The total excess Credit availed on this count works out to Rs. 59,41,580/-. The same is required to be paid along with interest and appropriate penalty. On being pointed out the assessee agreed to the audit observation and have informed that they have reversed the Cenvat credit of Rs. 54,97,096/- in their Cenvat during July-2013.

4)

GIST OF THE OBJECTION : Wrong availment of Cenvat credit of Customs Ed. Cess and Customs SHE Cess on imported inputs and inputs purchased from 100% EOU

COMMISSIONERATE : Central Excise, Belgaum

During the course of audit of the records of the assessee it was observed that the assessee had availed Cenvat credit of Customs Education Cess and Customs Secondary & Higher Secondary Cess on Imported inputs and inputs purchased from 100% EOU for the period from March 2012 to November 2013 to the tune of Rs.20,85,898/-. The assessee has wrongly availed Cenvat credit of Customs Education Cess and Customs Secondary & Higher Secondary Cess to the extent of Rs.20,85,898/-. On being pointed out the assessee agreed to pay.

SERVICE TAX

1)

GIST OF THE OBJECTION : Non payment of Service Tax on YQ Charges (Fuel surcharge)

COMMISSIONERATE : Service Tax Commissionerate, Delhi.

CONTRAVENTION OF : Rule 6(7) of the Service Tax Rules, 1944

PROVISION

During the course of audit it was observed that the assessee, had been discharging service tax liability on Air Travel Agent Service being rendered by them by exercising option specified under Rule 6(7) of the Service Tax Rules, 1994. On enquiry from the assessee and also on perusal of the sample copy of the fortnightly IATA BSP Agent Billing Statement provided by the assessee which was received by them from BSP India, it was also observed that some of the airlines had been paying commission to the assessee on the amount comprising basic fare and fuel surcharge. However, the assessee had not included fuel surcharge in gross value for the purpose of charging service tax in respect of Air Travel Agent Service being provided by them.

The relevant provision of “Rule 6(7) of the Service Tax Rules, 1994 provide as under:
“ The person liable for paying the service tax in relation to the services provided by an air travel agent, shall have the option, to pay an amount calculated at the rate of 0.6% of the basic fare in the case of domestic bookings, and at the rate of 1.2% of the basic fare in the case of international bookings, of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Chapter V of the Act and the option, once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances.

Explanation.—For the purposes of this sub-rule, the expression “basic fare” means that part of the air fare on which commission is normally paid to the air travel agent by the airline.”

Therefore, as clarified under the explanation to Rule 6(7) of the Service Tax Rules, 1944, where the Air Travel Agents get commission on both these elements of air fare i.e. Basic Fare and Fuel Surcharge, the Air Travel Agent had to uniformly pay service tax @ 0.6% (on Domestic air tickets) and @1.2% (on International air tickets) of Basic Fare + Fuel surcharge inasmuch as Rule 6(7) of the Service Tax Rules, 1994 provides for calculation of the service tax liability with reference to the amount on which the commission is paid by the airlines. Thus, it appeared that the assessee short paid service tax to the extent service tax is attributable to the element of fuel surcharge.

As per details provided by the assessee, the YQ/YR(fuel surcharge) amount in respect of the cases where they had received commission from various airlines on the amount of Basic fare of air ticket plus Fuel surcharge, the amount of fuel surcharge and the service tax liability on this service came as per details given below –

Domestic Tickets booking

Year	Value of YQ charges	Service Tax payable @ 0.612%
2010-11	20,65,40,534/-	12,76,421/-
2011-12	82,87,81,821/-	51,21,872/-
TOTAL	1,03,53,22,355/-	63,98,292/-

International Tickets booking

Year	Value of YR charges	Service Tax payable @ 1.236%
2010-11	17,35,65,313/-	21,45,267/-
2011-12	36,68,94,049/-	45,34,810/-
TOTAL	54,04,59,362/-	66,80,077/-

Thus Service Tax Rs. 1,30,78,369/-(Rs. 63,98,292/-+Rs. 66,80,077/-) as detailed above, stands recoverable from the party along with interest.

2)

GIST OF THE OBJECTION : Non Payment of Service Tax on “International Roaming”, ST Payable as per [Place of Provision Rules, 2012] on services provided in the Taxable Territory

COMMISSIONERATE : Central Excise, Coimbatore

CONTRAVENTION OF PROVISION : Rule2 & 3 of Service Tax Rules

Assessee is registered for providing Telecommunication Services. During the course of verification of their accounts for the period from 2012-13 & 2013-14 (upto Sep.2013), the Audit came across receipt of an amount totaling to Rs.18,77,74,424.40/- as International Roaming charges, during the period from July, 2012 till September, 2013 for which no ST was found to have been discharged by them. The assessee’s interpretation of POPS Rules is that services are provided to their international network operators located abroad and payments against the bill raised are through foreign exchange and hence they are not liable for ST. The Audit is of the opinion that these payments are related to various foreign network’s clients from overseas utilising the International Roaming facility while inside Indian Taxable Territory. As per Rule 2(dd) of Service Tax Rules, the place shall be as determined by Place of Provision of Services Rules, 2012. As per Rule 3, ‘the place of provision of service shall be the location of service receiver’; that is the location of the customer of foreign network is inside the Indian taxable territory.

In this case assessee has charged this amount of International Roaming’ from their partner foreign network operators (for their clients while roaming in the Taxable Territory (India) and the same is realized from them. Therefore, Audit is of the opinion that since these services were provided in India, assessee is liable to pay ST on such services as per ST Rules read with POP Rules, 2012.

The tax payer has not agreed with Audits observation on the ground that since the service charges were realized from the overseas network operators through foreign exchange, they are

not liable to discharge ST on this service. It is pertinent to note that the foreign based customers of an overseas network are actually taken over temporarily by assessee for providing uninterrupted connectivity while they are roaming inside the Indian taxable territory as per mutually agreed terms. The ultimate beneficiary or the customer is inside the taxable territory during the provision of the service.

3)

GIST OF THE OBJECTION : Nonpayment of service tax on cars leased out to employees

COMMISSIONERATE : LTU Chennai

It was seen from the Annual Report that a sizeable number of cars have been capitalized by the Taxpayer and on enquiry it was found that the cars have been capitalized after payment of appropriate excise duty and that such cars are, inter-alia, given to their senior executives for use by them for payment of a monthly amount and that it is open to them to own the same after certain period of time. In order to study the issue further, a sample copy of contract entered into by them with their employees was called for. The taxpayer informed that such documents are confidential and did not part with it. It was however informed by them that during the period 1.7.2012 to 1.5.2013, they have recovered an amount of Rs.1,52,36,733/- from their employees towards 'car lease'. The TRU sought to clarify vide its draft circular dated 27-7-2012 that "services of telephone and motorcar for personal use will be covered by the service tax". As such, it appears that the taxpayer is liable to pay service tax on the car lease income amounting to Rs.18,83,260/- along with interest for the period from 1.7.2012 to 1.6.2013.

4)

GIST OF THE OBJECTION : Non-payment of Service Tax on construction of Rail Over Bridge
Within the premises.

COMMISSIONERATE : Central Excise, Tirupati

CONTRAVENTION OF : Notification No. 25/2012-ST dated 20.06.2012

PROVISION

The tax payers are providers of Works Contract services. During the course of audit, the ST.3 returns, Balance Sheet and Sales ledger and noticed that they provided services of construction of a Rail Over Bridge (ROB) within the steel plant of M/s. Rashtriya Ispat Nigam Ltd., Visakhapatnam but did not pay service tax on the same.

The work order placed by CPWD, Visakhapatnam was studied and it was noticed that the said bridge was for the exclusive commercial usage of the steel plant and not a road for usage of general public. The audit pointed out that as per Sl.No.13(a) of Notification No. 25/2012-ST dated 20.06.2012, a road or bridge etc., used for road transportation for use by general public is exempted from payment of service tax. Whereas the ROB in question is not used for road transportation for use by general public but for using as a passage by the employees / workers of steel plant within the premises. The audit also observed that the said ROB was constructed in a business premises for commerce or industry purpose and hence the exemption available under Sl.No.12 (a) of the aforesaid exemption notification is also not applicable.

On being pointed out by the audit that they are liable to pay service tax on the said services provided to M/s. RINL, Visakhapatnam along with interest and penalty, the tax payer agreed to the objection and paid the amount of Rs.30.28 lakhs.

5)

GIST OF THE OBJECTION : Non-payment of Service Tax on the surrender charges and
discontinuance charges on ULIP (Unit Linked Insurance Policy)
COMMISSIONERATE : Central Excise, Hyderabad II
CONTRAVENTION OF : Rule 6(x) of the Service Tax (Determination of Value) Rules,
PROVISION 2006

The tax payers are providers of Life Insurance Service, Insurance Auxiliary service etc. During the course of audit, it was noticed that in respect of ULIP policies, the tax payers are receiving certain amounts towards specific charges and paying service tax on specific charges like premium allocation charges, policy administration charges, mortality charges, fund management charges and rider premium charges @ 12.36 % but not paying service tax on

surrender charges and discontinuance charges. The audit pointed out that the tax payer is liable to pay service tax on the gross amount charged from the policy holder for the service provided, equivalent to the maximum amount fixed by the IRDA as Fund Management charges for ULIP or the actual amount charged for the said purpose by the insurer from the policy holder, whichever is higher. The IRDA fixed 1.35% of the premium amount as Fund Management charges, whereas the tax payer collected the charges over and above the same.

The audit pointed out that as per Rule 6(x) of the Service Tax (Determination of Value) Rules, 2006, Valuation Rules that all receipts / payments form the value of service as per Section 67 of the Finance Act, 1994 and are liable to Service Tax. The tax payable was worked out to be Rs.462.62 lakhs.

6)

GIST OF THE OBJECTION : Availment of inadmissible Cenvat Credit on Commission on sale

COMMISSIONERATE : Central Excise, Nasik

CONTRAVENTION OF : Rule 2(1) of Cenvat Credit Rules, 2004

PROVISION

The assessee is engaged in the manufacture of various types of Hand Tools falling under chapter 82034010, 82041120 etc and effected clearances through dealers. They also have appointed one Indenting Agent and made agreement with them on 28.9.2012. Conditions of the agreement were as under-

Appointed for procuring orders and act as indenting agents for the sale of their product. The said agents make its best endeavors to effect maximum sale of the products. The Principals shall pay or allow to the said indenting agents, 7% commission on sales of the product to customers in India and 7.5% on the sale of the products in and /or for export market.

On perusal of service tax invoices issued by the above agent and service tax credit taken register for the period from 1.4.2012 to 31.3.2014, it was noticed that assessee had availed

service tax credit of Rs 49,49,891/- in the year 12-13 and Rs 31,44,044/ from 1.4.2013 to 31.1.2014 total Service tax credit taken of Rs 80,93,935 /-.

Issue involved in this case is that Tax payer availed Cenvat credit of service tax paid by the Commission Agent is not eligible for credit of service tax as per provisions of Rule 2(1) of Cenvat Credit Rules, 2004.

On perusal of agreement dated 28.9.2012, it was noticed that activity of Commission agent are related to “sale” not to sale promotion”. Therefore it neither falls in the main part of the definition of input service nor the inclusive part of declaration of the input service. Sales promotion is any activity which aim to increase the sale by targeting all and a large no. of customers .Therefore, activity of Commission agents is not in the nature of sales promotion. It cannot be considered as included in the inclusive portion of definition of input service in Rule 2(1) of Cenvat Credit Rules , 2004.

Further, it was not used directly or indirectly in or in relation to manufacture of final products or clearance of final product from place of removal .It was not analogous to illustrative activities mentioned in the Rule 2(1) viz accounting, auditing etc. and therefore do not fall within ambit of activities relating to business.

In view of the above reasons Service tax credit taken service tax paid on commission of Rs.80,93,935/-is not eligible.

7)

GIST OF THE OBJECTION : Non -payment of service tax on construction of road constructed
in the factory under work contract service.

COMMISSIONERATE : Central Excise, Bhopal

CONTRAVENTION OF : Notification No. 80/10/2004-ST dated 17.9.2004

PROVISION

During the course of audit it was noticed that assessee had provided service to the assessee by way of construction of road situated within the factory premises, however, service tax leviable on such service was not paid by the service provider on the premise that the service receiver was of the view that construction of road was exempted from service tax and accordingly service tax charged by the service provider on invoices was not reimbursed by the assessee. Thus it appears the service provider was of the opinion that activity carried out are liable for service tax but not paid by them due to non reimbursement by the service receiver . In this regard it is mentioned that prior to 30.6.2012 activity of construction of road used solely for commercial or industrial purpose of industries were liable to service tax under the category of commercial or industrial construction service. Further, the Central Board of Excise & Customs, in para no 13.4 of Circular No. 80/10/2004-ST dated 17.9.2004 clarified that the definition of service specifically excludes construction of roads, airports, railway, transport terminals, bridge, tunnel, long distance pipelines and dams. In this regard it was clarified that any pipeline other than those running within an industrial and commercial establishment such as a factory, refinery and similar industrial establishments are long distance pipelines. Thus, construction of pipeline running within such an industrial and commercial establishment is within the scope of the levy. From this it is very clear that service tax on construction of road is leviable from 10.9.2004. When the objection was raised the assessee partially agreed and got deposited service tax of Rs.18,96,046/- from the service provider in respect of service rendered from 1.7.2012. However as per the records made available to the audit, the service tax liability upon the service provider worked to the tune of Rs.26,56,663/-

8)

GIST OF THE OBJECTION : Non payment of service tax under the head “Maintenance Management or Repair Service”

COMMISSIONERATE : Central Excise, Belgaum

CONTRAVENTION OF : Section 65(105)(22G)of the Finance Act,1994

PROVISION

On perusal of records of the assessee from 06/2009 to 11/2012, it is noticed that a society was formed by the employees and/or representative of three Cement Factories. It is observed that

the assessee is registered under 'Business Auxillary Services'. On perusal of the contract between M/s Karnataka Power Corporation Ltd. and the assessee it is found that the assessee in addition to issue of fly ash in dry form to all the three cement companies, also performs repair/maintenance work for which the assessee should have to register under Maintenance, Management or repair service as the said activity is taxable under Section 65(105)(22G)of the Finance Act,1994. The said service is effective from 01.07.2003 by virtue of notification no.7/2003-STdated 20.06.2003. The service tax liability worked out during 2010-11 to 2013-14 works out to Rs.1,07,68,139/-.

9)

GIST OF THE OBJECTION : Non-payment of service tax on construction of residential complex pertaining to land owner's share.

COMMISSIONERATE : Service Tax Commissionerate, Bangalore

CONTRAVENTION OF : Section 65(105)(22G)of the Finance Act,1994

PROVISION

It is observed that assessee entered into Joint Development Agreement(s) with the land owners, wherein M/s SMR Builders Private Limited, Bangalore had agreed and undertaken to develop entirely the property of land as detailed in Schedule of the said Joint Development Agreement, by constructing multi-storeyed residential building(s) in the portion of Schedule property. As per the Joint Development Agreement, assessee had to deliver to the land owners, certain percentage(as mutually agreed upon) of the residential apartment. Accordingly, assessee had delivered certain numbers of the residential flats to the landowner(s). It may be noted that in lieu of the consideration towards the construction activities provided to the land owners, the development rights of the lands were transferred to assessee before commencement of such construction work. It is observed that assessee had not discharged the service tax liability on construction of residential flats given to the land owners. The service tax liability on construction of such residential flats given to the land owner(s) in respect of Vinay Endeavour (27 flats given to Smt Nirmala G Reddy, 24 flats given to Shri Rajaram Reddy, 14flats given to Smt Veena and 10 flats to Shri Rajnarayan Reddy), by taking the average construction cost of Rs.1082/- per Sqft, from initial 30 bookings made by the customers, works out to Rs.67,27,148/- (inclusive of cess).On being pointed out by the Audit team, the taxpayer agreed and paid an amount

of Rs. 33,63,574/- (inclusive of cess) being 50% of the service tax liability vide challans dated 30.12.2013 and 31.12.2013 under VCES.

10)

GIST OF THE OBJECTION : Non payment of service tax on fabrication works.

COMMISSIONERATE : Central Excise, Surat-I.

CONTRAVENTION OF : Notification No. 8/2005-ST dated 01.03.2005

PROVISION

The assessee is registered with the department for Erection, Commissioning and Installation Service. During the course of audit, on scrutiny of records/documents, it was observed that the Service provider had received Work Order from M/s. Neo Structo Construction Ltd. For fabrication and assembly of NOCL Coke Drums at their L&T, Hazira site as detailed in work order dated 27.10.2010. Para 4.5 of the said contract is reproduced below:-

Para 4.5 Taxes, duties and rates:

- (a) The rates are inclusive of all taxes and duties except Service Tax
- (b) service tax shall be paid as extra, as per prevailing rates against documentary evidences, relevant registration certificates for service tax and submission of proper tax invoice.
- (c) you are requested to submit/send us the copy of PAN, registration certificates along with the acceptance of this order, which are required for or record, without which your payment shall not be processed.

In view of the above, it appeared that service tax shall be paid as extra, as per prevailing rates against documentary evidences, relevant registration certificates for service tax and submission of proper tax invoice.

The assessee had provided letter dated 19.12.2009 issued by M/s. Larsen & Toubro Ltd. Under which M/s. L & T, the recipient had claimed that the fabrication of structure for setting up a plant/project at site amounts to manufacture & exempted from Service Tax under Notification

No. 8/2005-ST dated 01.03.2005. In turn, the said assessee had not claimed & paid service tax for rendering these services. But there were not available any documents in support of this contention. Neither any statutory provisions of such exemptions are mentioned in the relevant RA bills.

As regards Notification No. 8/2005-ST dated 01.03.2005, the same prescribes that job work done on intermediate goods is exempted from payment of Service Tax subject to removal of finished goods so manufactured on payment of Central Excise duty. In the instant case, there is neither any job work nor removal of final products on payment of duty, hence, benefit of Notification No. 8/2205-ST is not available.

Accordingly, an amount of Rs. 23,15,679/- is required to be recovered from the assessee along with interest.