

**MONTHLY AUDIT BULLETIN – MAY, 2013**  
**CENTRAL EXCISE**

- (1) **GIST OF THE OBJECTION : Non inclusion of storage charges in the transaction value.**  
**COMMISSIONERATE : Central Excise Commissionerate, Chennai I**  
**CONTRAVENTION OF PROVISION : Section 4 of the Central Excise Act, 1944**

The assessee is engaged in the manufacture of Bitumen Modifier falling under heading 4004 of the Central Excise Tariff had been clearing Bitumen modifier to a certain customer @ Rs.24/- per kg. A Work Order of the said customer revealed that he had entrusted the assessee the job of plant operation and maintenance of 'CRMB Production Facilities at customer's premises and Operation of the plant for 5 years (from 6.7.2009 to 5.7.2014). As per the Terms and Conditions of the work order the said customer was paying the assessee a charge of Rs.110/- per month towards the plant operation and maintenance.

It was ascertained that in terms of said Work Order, the assessee maintained a storage facility at customer's premises for storage of the Bitumen Modifier supplied by them. In the above storage facility the assessee undertook the process of mixing Bitumen modifier (supplied by assessee) with the bitumen/asphalt provided by the customer.

As per Section 4 of the Central Excise Act, 1944 the charges of plant operation and maintenance received by the assessee @ Rs.110/- is includible in the value of Bitumen Modifier cleared. The total evasion of duty amounted to Rs.1,58,497/-.

- (2) **GIST OF THE OBJECTION : Declaration of different MRP for the goods cleared to Army**  
**resulting in to short payment of duty.**  
**COMMISSIONERATE : Central Excise Commissionerate, Vapi**  
**CONTRAVENTION OF PROVISION : Section 4A of the Central Excise Act, 1944**

The assessee is engaged in manufacturing Mosquito Repellent Cream, Air Freshener, Toilet Cleaner falling under Chapter 33, 38 and 34. During the test check of records of the assessee it was noticed that the assessee had cleared the product 'Mosquito repellent Cream' to

the Army at the MRP other than the MRP supplied in open market during the period from 12.04.2008 to 31.12.2012.

The supply was made to the Army against the competitive bid. Further the Army was supplying this product to the Jawans free of cost. The MRP printed on the package for army cannot be accepted in as much as;

- a) Value cannot be termed as MRP, as it is contractual value.
- b) Unlike consumer packet wherein manufacturer decides MRP in the instant case MRP was marked at the instance of buyer.
- c) If at all it was for free distribution then there was no point to mention the MRP on packages.
- d) There can be different MRP for different regions and that too on account of factor like VAT, local taxation, freight etc. which has the effect on price, whereas there was no such apparent factor to mentioning MRP below the MRP fixed for open market sale .
- e) There can be different MRP for different class of buyer but such MRP can't be lesser than the MRP for open market.

For the reasons stated above different MRP for Army supply has to be valued based on MRP for open market. The short paid duty of Rs.4,32,96,781/- stands recoverable from assessee along with interest.

- (3) **GIST OF THE OBJECTION : Irregular availment of CENVAT Credit on inputs used for generation of electricity which is not used in or in relation to the manufacture of Central Excise Commissionerate, Bhubaneswar II**
- COMMISSIONERATE : Central Excise Commissionerate, Bhubaneswar II**
- CONTRAVENTION OF : the CENVAT Credit Rules, 2004**
- PROVISION**

The assessee is engaged in manufacture of 'Sponge Iron', 'M.S.Billets' falling under Chapter sub-heading No. 72031000, 72071920 of the CETA 1985, had availed CENVAT Credit of Rs. 11.77 lakhs irregularly on inputs which were used for generation of electricity or steam sold to GRIDCO/WESCO and were not utilized in or in relation to the manufacture of final product. On being pointed out the assessee reversed the objection amount under protest.

**(4) GIST OF THE OBJECTION: Availment of CENVAT Credit on inputs and Input Services**

**COMMISSIONERATE** : **without undertaking any manufacturing process**  
**CONTRAVENTION OF** : **Central Excise Commissionerate, Kolkata-II**  
**PROVISION** : **the CENVAT Credit Rules, 2004**

The assessee is a manufacturer of industrial aromatic solvents of different grades which are being sold under assessee's brand names. The assessee availed input and input service credit for the inputs/input services used for the manufacture of said final products. Further the assessee had also availed CENVAT Credit on the inputs like Aromatic Solvents falling under TSH 27079900 of different concentration and Mineral Oil under TSH No.27101990 received from the sister units. Following records/ physical verification of manufacturing/ processing activities of the assessee proved that no manufacturing or processing activity were undertaken at the factory:-

- (i) There was hardly any facility for manufacturing and the existing available facility was defunct for a long time.
- (ii) Ingredients like Caustic Soda (NAOH) [which is added to the inputs to remove sulphur], Sulphuric Acid [which is added for absorption of moisture and increase of clarity of the finished products] had not been purchased at all.
- (iii) Trial Balance for the year 2009-10, 2010-11 & 2011-12, revealed that assessee had not purchased and consumed caustic soda, Sulphuric Acid or any other mixing materials for the said period.
- (iv) The assessee had incurred meagre amount of Rs.17,060/-, Rs. 21,118/- & Rs. 16,360/- towards electric charges for the year 2009-10,2010-11 & 2011-12 respectively.

The above lead to the conclusion that the assessee had procured the Aromatic Solvent and sold the said goods as such without any processing. In view of the above, Cenvat availed on inputs and input services are irregular. The assessee have taken input credit amounting to Rs. 2,92,64,697/- and input service credit of Rs. 1,42,497/- during 2009-10 to 2011-12. The said amount along with interest is recoverable from them.

**(5) GIST OF THE OBJECTION : Wrong availment of CENVAT Credit on ineligible inputs**

**(Structural items)**

**COMMISSIONERATE : Central Excise Commissionerate, Jamshedpur**  
**CONTRAVENTION OF PROVISION : Rule 2(k) of the CENVAT Credit Rules, 2004**

For the period 2011-12 & 2012-13 (up to Oct'12), the assessee had taken CENVAT Credit of duty paid on items as 'Input' which were not used as input in manufacture of excisable goods rather it was used in (a) construction of Civil structure or a part thereof, and (b) laying foundation or making structure for support of capital goods, which is not admissible as per provisions of Rule 2(k) of the CENVAT Credit Rules, 2004. Therefore, CENVAT Credit on such items is not admissible.

The CENVAT Credit taken on these items during the period 2011-12 & 2012-13 (up to Oct'12) was ascertained as Rs.2,344,262/-, Ed Cess Rs.46,886/- & S & HE Cess Rs.23,440/-. The same is required to be recovered /got reversed from assessee along with interest.

**(6) GIST OF THE OBJECTION : Non – payment of Central Excise duty on the clearances of**

**excisable goods in the guise of trading**

**COMMISSIONERATE : Central Excise Commissionerate, Kolkata –I**  
**CONTRAVENTION OF PROVISION : Sec. 2 f (iii) of Central Excise Act, 1944 read with Chapter Note (Point No.12) of Chapter 61 of Central Excise Tariff Act, 1985**

The assessee was clearing Dhوتي and Pyjamas falling under Chapter 61 of the Central Excise Tariff Act, 1985 as non-excisable product in the guise of trading without payment of

Central Excise duty. It was also observed that after receipt of the said products in the premises, they were packed in plastic covers and labels bearing MRP were affixed on them. In terms of Sec. 2f(iii) of the Central Excise Act, 1944 read with Chapter Note (Point No.12) of Chapter 61 of Central Excise Tariff Act, 1985 the process of labelling and display of MRP on the label of the products, amounts to manufacture. Labels affixed to the said products also indicated (i) the MRP and Bar Code with Seven Digit Code along with Item No., Colour, Quantity, Date of Manufacture and Size, (ii) the Contact details of Manufacturer and Consumer complains. On scrutiny of above records, it was revealed that the company name along with address was registered with Director of Legal Metrology, Consumer Affairs Department, Govt. of West Bengal in terms of Rule 35 of the Standards of Weights & Measures (Packaged Commodities) Rules, 1977. Further, the information mentioned above also indicated that the above products were manufactured by the assessee and since the assessee had mentioned the company name with detailed address, the words which is their registered brand name and e-mail address on labels affixed to the said products, the same amounts to branding, in terms of Chapter Note 11 of Chapter 61 of the said Tariff Act. Hence, branding followed by manufacturing of the said products falling under Chapter 61 of Central Excise Tariff Act, 1985, made the products liable for payment of Central Excise duty at appropriate rate, on prescribed abated value, in terms of Rule 4, 6 & 8 of Central Excise Rules, 2002. However, on scrutiny of records/documents, it revealed that assessee had not discharged Central Excise duty of **Rs.22,56,988/-** on the said products. Accordingly, they were requested to pay **Rs.22,56,988.00** as Central Excise duty on the excisable goods cleared in the guise of trading. On being pointed out by the auditors the assessee paid the entire amount along applicable interest and penalty.

- (7) **GIST OF THE OBJECTION : Non-payment of Central Excise duty on Debit Note raised for clearances made during 2011-12**  
**COMMISSIONERATE : Central Excise Commissionerate, Hyderabad-I**  
**CONTRAVENTION OF PROVISION : Section 4 of the Central Excise Act, 1944**

The assessee cleared 193.165 MTs of MS Tubes to a company located at Coimbatore, during 2011-12 and raised a Debit Note No.1 dated 2.1.2012 against the said company for an

amount of Rs. 5.37 lakhs towards price differential, in connection with the aforesaid sale of goods. Since the debit note was raised in connection with sale of excisable goods, differential duty has to be paid thereon. The assessee agreed and paid the duty along with interest.

## SERVICE TAX

- (1) **GIST OF THE OBJECTION: Non - payment of Service Tax on Ocean / Air freight, in**
- COMMISSIONERATE** : **contravention of Sec.67 of the Finance Act, 1994**  
**CONTRAVENTION OF** : **Service Tax Commissionerate, Chennai**  
**PROVISION** : **Section 67 of the Finance Act, 1994, read with the**  
**Service** **Tax (Determination of Value) Rules, 2006**

The assessee had been charging and collecting Service Tax only on D.O. charges, documentation, etc. and no Service Tax has been charged or paid on air/ sea freight claiming that the same was not taxable under the Finance Act, 1994. The assessee also claimed of collecting freight from its customers as 'Pure Agent' and paid the freight to third parties and hence, same was not liable to Service Tax in terms of Rule 5(2) of the Service Tax Valuation Rules, 1994. Sample verification revealed that the freight invoices have been raised on the assessee and not on the service provider. The assessee has also earned mark up on the freight. Hence, it appears that the amount collected from their customers would not qualify for exemption in terms of Rule 5(2) ibid.

Further, as per provisions of Section 67 of the Finance Act read with Valuation Rules, Service Tax is payable on the gross amount charged. The assessee is providing logistics service, classifiable under Business Support Service. Hence, the gross amount charged should have been reckoned as taxable value whereas the assessee has not paid Service Tax on freight charges, thereby resulting in short payment of Service Tax of Rs. 6,20,05,322/- during the period from April, 2008 to Nov. 2012. The same is recoverable along with interest.

- (9) **GIST OF THE OBJECTION: Non payment of Service Tax on Software Activation income.**
- COMMISSIONERATE** : **Central Excise Commissionerate, Ahmedabad-III**  
**CONTRAVENTION OF**  
**PROVISION** : **Section 67 of the Finance Act, 1994**

The assessee is in the business of supplying Definity System of EPABX purchased from a supplier outside India. The EPABX system has two types of software, first a Basic System Software and another Feature Related Software. The basic software is a pre-requisite for the functioning of the system whereas the feature related system can be installed as per requirement. Both these software are loaded on the Definity Control Card of the EPABX system. However, the use of the Feature Related Software is possible on activation of it on receipt of separate charges for the activation of the said software. The said activation process is technically known as Right to Use (RTU) basis. The RTU is exercised by a remote activation done by the supplier outside India as per the customer's choice of selective features. The supplier from outside India raises an invoice for such activation and the assessee in turn also raises invoice separately for such activation on their customers. It was verified that the assessee had issued separate purchase orders for such activation charges on their customers also. Whenever the customers needed additional features at a later stage after the purchase of the EPABX, the assessee had raised fresh invoices / contracts for the said service. Hence, there is no dispute as regards to the provision of software activation service provided by the assessee to their customers which is a separate arrangement after the sale of their equipment.

On explanation, the assessee contended that such activation is a sale of 'Right to Use' which is basically a sale under which additional features are allowed to a customer. They also informed that this being a case of 'sale' they had charged and paid Sales Tax on such transactions and hence, as it is not considered a service by them, such software activation service does not attract Service Tax. The assessee's contention is not tenable that the Service Tax cannot be levied on the value of impugned goods, once the Sales Tax is already paid on the same goods in light of judgement in case of M/s Idea Mobile Communication Ltd. V/S CCE Cochin wherein it has been held that simply payment of Sales Tax will not absolve from Service Tax liability even if Sales Tax is wrongly paid. It was also held by the Supreme Court that the telecom operators will be required to pay Service Tax on the gross amount received from the subscribers for activation including the value of the SIM Card supplied to the subscriber. Hence as per the SC Judgement the dominant use of SIM Card is towards activation and provision of telecom services and not as separate sale of goods.



The amount of Service Tax not paid on the above Services, classifiable under the definition of Business Auxilliary Service vide clause 65(19) of the Finance Act, 1994, was ascertained as Rs.6,03,987/- for the period from 2007-08 to 2011-12. The same stands recoverable from the assessee.

- (10) **GIST OF THE OBJECTION : Non payment of Service Tax on the amount of Commission and**  
**Indian**  
**COMMISSIONERATE**  
**CONTRAVENTION OF**  
**PROVISION**
- FX received against inward remittance paid to**  
**customers as money transfer services. Treating those as**  
**Export of Service**  
**: Central Excise Commissionerate, Jaipur - I**  
**: clause (vi) of clause 19 of section 65, Section 66, Section**  
**(105)**  
**(zxb) of the Finance Act 1994; Rule 3(1) (iii) & 4 of Export**  
**of**  
**Services Rules, 2005**

The assessee is engaged in providing Banking and Finance Service. The service of money transfer is provided to nominated recipient in India. The assessee has provided this service on behalf of the foreign based parent company to persons located in India and had been paying inward remittance to their Indian Customers. The assessee being the representative of a parent company based at United States of America has received consideration in the form of Commission and FX. Provision of service on behalf of the client is covered as taxable service under sub clause (vi) of clause 19 of section 65 of the Act. The Parent Company is under contractual obligation to deliver the money to the nominated person in India and this work is undertaken through the assessee. The assessee is also required to promote and advertise the said business of money transfer in India to develop the market for money transfer services and create public interest. All these activities are taxable under Business Auxiliary Service in terms of Section (105) (zxb) of the Act. The assessee however did not pay any Service Tax on the amount of Commission and FX received by them treating as export of services under Rule 4 of Export of Services Rules, 2005.

. Since the recipients of said services are located in India and the service has been consumed in India the services provided by the assessee would not qualify as export of services in terms of Rule 3(1) (iii) of Export of Services Rules, 2005. Hence, Service Tax amounting to Rs. 9,60,53,151/- is payable for the period from April, 2008 to June, 2012 on the amount of Commission and FX so received.

- (11) **GIST OF THE OBJECTION : Non-payment of Service Tax on forfeiture income received from clients during 2011-12**  
**COMMISSIONERATE : Central Excise Commissionerate, Hyderabad IV**  
**CONTRAVENTION OF PROVISION : Sections 66 and 67 of the Finance Act, 1994**

The assessee is providers of 'Renting of Immovable Property services'. In the Profit and Loss account for the year 2011-12, the assessee had shown an amount of Rs. 24.93 lakhs of 'forfeiture income' received from the clients, under the head – 'Other Income'. As per the lease deed between the assessee and the clients, the client is required to pay the 'rent for the unexpired lock in period' to the assessee, on termination of the lease deed by the client itself, within the lock-in-period of two or three years. Such amounts received were shown as 'Forfeiture Income' in the 'Miscellaneous Income' but the said amount was not included in the gross value for payment of Service Tax and Service Tax of Rs. 2.57 lakhs has to be paid along with interest.

- (12) **GIST OF THE OBJECTION : Short payment of Service Tax by non-inclusion of certain amounts collected through debit notes.**  
**COMMISSIONERATE : Central Excise Commissionerate, Visakhapatnam I**  
**CONTRAVENTION OF PROVISION : Section 67 of the Finance Act, 1994, read with Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006**

The assessee is provider of Storage and Warehousing of LPG to oil marketing companies. The assessee provided office at Varun Towers along with office utilities and undertook the activities of maintenance of HPCL pipeline, their pumps and operational assistance like survey and security etc through different service providers and charging the amounts from customers by raising Debit notes.

While providing storage and warehousing services, the assessee did not pay Service Tax on the above amounts collected and claimed the same as reimbursement and not the part of the collections towards provision of service. As per Section 67 of the Finance Act, 1994, read with Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of payment of Service Tax. The assessee collected an amount of Rs. 111.46 lakhs through debit notes and is required to pay Service Tax of Rs. 12.01 lakhs thereon under 'Storage and Warehousing services' for the period from 2011-12 and 2012-13 (up to June 12) along with interest and penalty.

- (13) **GIST OF THE OBJECTION :** **Short payment of Service Tax due to undervaluation**  
**COMMISSIONERATE :** **Service Tax Commissionerate, Kolkata**  
**CONTRAVENTION OF**  
**PROVISION :** **Section 67(1)(ii) of the Finance Act, 1994 read with**  
**Rule**  
**5(1) of the Service Tax (Determination of Value) Rules,**  
**2006**

Assessee is 'Industrial Security Force' under Govt of India for providing security services to their organization. During the period 01.04.2009 to 30.06.2012, the said security force was liable to pay Service Tax on the gross amount received from the Service Receivers for providing security service. In terms of Section 67(1)(ii) of the Finance Act, 1994 read with Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, 'gross amount' includes both monetary consideration, non-monetary consideration, any expenditures and cost incurred by the service provider in course of providing taxable service. The assessee received non-monetary considerations like "petrol for Motor Cycle, General Store, Stationary, Hospital & Medicine,

Transport, Printing & Stationary, License Fee for walkie-talkie, Telephone Bill, Dog Squad bill etc.” other than Salary and Allowances from the Service receivers which was ascertained as Rs.4,05,21,779.00 for the period 2009-2010 to 2012-2013 (up to 30/06/2012). The same is includible in the gross taxable value under the provisions of section 67(1) of the Finance Act 1994, as amended, read with Rule 5(1) of the Service Tax (Determination of Value) Rules 2006 and chargeable to Service Tax and hence the assessee is liable to pay Service Tax amounting to Rs.28,54,528.00 (including cess) along with interest and penalty as per provision of the Finance Act, 1994 read with the Service Tax Rules, 1994

**(14) GIST OF THE OBJECTION: Irregular availment of CENVAT Credit of Service Tax paid on**

**COMMISSIONERATE : outward freight paid from factory to the buyer’s premises  
CONTRAVENTION OF : Central Excise Commissionerate, Kolkata III  
PROVISION : Rule 14 of CENVAT Credit Rules 2004**

The assessee took CENVAT Credit of Service Tax paid on Carriage outward for freight paid on removal of finished goods from factory to the buyer's place as ‘Input Service Credit. Rule-2(I) of CENVAT Credit Rules, 2004 has defined ‘Input Service’, which interalia includes "outward transportation up to the place of removal", i.e. outward transportation beyond the place of removal is not covered under the definition of ‘Input Service’. The assessee, as learnt, is neither having any Depot nor any Consignment Agent, hence factory is the "place of removal".

In view of the above the assessee is not eligible for CENVAT Credit of Service Tax paid on outward freight beyond factory gate. The assessee was therefore requested to reverse the CENVAT Credit taken on Service Tax paid on outward freight from factory to the buyers premises in terms of Rule 14 of CENVAT Credit Rules 2004 along with interest in terms of Section 75 of the Finance Act, 1994.

**(15) GIST OF THE OBJECTION : Non payment of Service Tax on Royalty under the category of**

**“Intellectual Property Service” for service rendered by**

**non-**

**import**

**resident from outside India and received in India, as**

**of service**

**COMMISSIONERATE  
CONTRAVENTION OF  
PROVISION**

**: Central Excise Commissionerate, Belapur**

**: Sec. 66A of the Finance Act, 1994 read with Rule 2(1)(d)(iv)  
of Service Tax Rules, 2004.**

For the year 2009-10 to 2011-12 the assessee has paid ‘**Royalty**’ in foreign currency to Holding Company in USA.

Royalty falls under the category of “Intellectual Property Service”. If the service rendered by non-resident from outside India and received in India, as import of service, it attracts Service Tax in terms of Sec. 66A of Finance Act, 1994 read with Rule 2(1)(d)(iv) of Service Tax Rules, 2004.

On being pointed out, assessee agreed and paid Service Tax along with interest.

- (16) **GIST OF THE OBJECTION: Wrong availment of CENVAT Credit on input services viz., supply of tangible services of hire of motor launch**
- COMMISSIONERATE : Central Excise Commissionerate, Raigad**
- CONTRAVENTION OF**
- PROVISION : CENVAT Credit Rules,2004**

The assessee had been availing CENVAT Credit of Service Tax paid on invoices issued from one service provider located at Mumbai. The said service provider was discharging the Service Tax under service category of supply of tangible goods. The assessee hired a motor launch from the said service provider and the same was utilized for providing passenger launch services to its employees free of cost. The income generated through such services are recorded on the balance sheet of the assessee as ‘income from launch passes’. The assessee further contended that passenger transportation services is not covered under the ambit of Service Tax as the Finance Act, 1994 (effective upto June, 2012) does not contemplate levy of Service Tax on services of transport of passengers by sea and also the said service is not coming fully under the port limit as it is being provided from JNPT port to Mumbai & Back and hence not fall under the “Port Services”.

Thus, in terms of Rule 2 (e) of CENVAT Credit Rules, 2004, the said services qualifies as 'exempted services'.

In terms of provisions of sub-rule (1) of Rule 6 of the CENVAT Credit Rules, 2004, the input service credit will not available to the assessee as the assessee was using the input services viz. supply of tangible goods provided by the Service Provider, exclusively for the provision of exempted services via. passengers launch services. Thus the CENVAT Credit availed to the tune of Rs. 50,83,343/- stands recoverable from assessee along with interest

- (17) **GIST OF THE OBJECTION: Wrong availment of abatement on charges recovered by the Developer for the services provided, other than construction services.**  
**COMMISSIONERATE : Central Excise Commissionerate, Noida**  
**CONTRAVENTION OF PROVISION : Section 67(1) of the Finance Act, 1994 read with Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006**

The assessee was providing services regarding construction of residential complex. The assessee had claimed/recovered Internal Development Charges (IDC), external Development Charges (EDC) & Electric Sub-Station charges while providing construction service to their customers and availed abatement of 75% and paid Service Tax on 25% of the gross amount (cost of land included in the gross amount). These are allied charges and are in the nature of service provided by the builder to their client over and above the construction service. These charges were collected for developing & maintaining parks laying of sewage, water pipe lines providing access road common lighting, power backup and fire fighting etc. and in the said case, the party had levied charges separately under the above diverse heads. As such this particular service is liable to pay Service Tax without any abatement as the abatement of 75% of the gross amount is available on construction service only where the cost of the land & material etc. are included in the gross amount and hence in respect of the said charges recovered, the assessee is liable to pay Service Tax on the total amount claimed separately from their clients. The assessee agreed with the objection and paid Service Tax of 483 lac out of total involved Service Tax of Rs.2052 lac.

**(18) GIST OF THE OBJECTION: Non - payment of Service Tax against the Business Support**

**COMMISSIONERATE** : **Service provided to its subsidiary companies**  
**CONTRAVENTION OF** : **Large Tax payer Unit, Delhi**  
**PROVISION** : **Section 65(105)(ZZZQ) of the Finance Act, 1994**

During the period 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12 the assessee has received amounts of Rs. 8,73,04,526/- and Rs. 5,30,39,875/- respectively from their subsidiary companies under the description 'Establishment Expenses' and 'Administrative Expenses' provided by them to its subsidiary companies. The assessee has neither charged nor paid the Service Tax on such service provided by them.

As per Section 65(105)(ZZZQ) of the Finance Act, 1994, Business Support Service means any service provided or to be provided in relation to support service of business or commerce in any manner and includes infrastructure support service such as providing office along with office utilities, reception with competent personnel to handle message, secretarial services, internet and telecom facilities, pantry and security and chargeable to Service Tax w.e.f. 01.05.2006.

The assessee agreed with the contention of the audit and paid amount involved of Rs1.63 crores along with interest of Rs.67.42 lac.

**(19) GIST OF THE OBJECTION: Non-payment of Service Tax on gross value of bills raised for**

**COMMISSIONERATE** : **Repairing of Vehicles**  
**CONTRAVENTION OF** : **Central excise Commissionerate, Lucknow**  
**PROVISION** : **Section 67 of the Finance Act, 1994**

The assessee was paying Service Tax only on the service charge received from the customers whereas they were also recovering cost of parts replaced/consumed during the repairs, from the customers. Since the customers are entering into agreement for AMC/Repairing etc. through AMC coupons sold to the them, primary intention of the service provider as well as the service recipient appears to be of Maintenance & Repair. Therefore, Service Tax appears to be payable on the gross value received by the assessee i.e. service charges including cost of parts replaced/consumed. The assessee has already paid Service Tax on service charges thus they are liable to Service Tax on the

remaining value of parts replaced/consumed. The total Service Tax involved of Rs. 1.84 crores stands recoverable from the assessee in instant case.