



MONTHLY AUDIT BULLETIN – OCTOBER, 2013

Directorate General of Audit

Customs & Central Excise

Central Revenue Building,

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New Delhi-110109

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CENTRAL EXCISE

(1) GIST OF THE OBJECTION : Short payment of Central Excise duty due to differential rate of duty

COMMISSIONERATE : Central Excise Commissionerate, Hyderabad III

CONTRAVENTION

OF PROVISION : Notification No. 4/2006-CE as amended by 4/2007-CE and 4/2001 –CE

The assessee is the manufacturer of Cement, clearing goods to individual customers as well as industrial / institutional customers. In terms of Notification No. 4/2006-CE as amended by 4/2007-CE and 4/2001 –CE, where the retail sale price of the goods is not required to be printed in terms of Standard of Weights and Measures (Packaged Commodities) Rules, 1977, and presently, the provisions of Legal Metrology (Packaged Commodities) Rules, 2011, the rate of duty applicable is 10% Adv., on the transaction value. If the MRP is required to be printed, the rate of duty applicable is 10% of RSP plus Rs.80/- or Rs.160/- per MT as the case may be, depending on the RSP per bag for the period up to 16.03.2012. In terms of sub-rule (b) of Rule 3 of the Legal Metrology (Packaged Commodities) Rules, 2011, the provisions of MRP shall not apply to packaged commodities meant for industrial / institutional consumers. As per the explanation given there under, for the purpose of this rule, (i) “institutional consumer” means the institutional consumers like transportation, airways, railways, hotels, hospitals, or any other service institutions who buy packaged commodities directly from the manufacturer for use by that institution,(ii) “industrial consumer” means the industrial consumer who buys packaged commodities directly from the manufacturer by that industry. As seen from the explanation, any industry or institution only are eligible for the non-fulfillment of requirement of RSP printing.

Out of all clearances, the contractors, builders, colleges, Government supplies, manufacturers etc., which are either industry or institution were excluded and the quantity of cement supplied to consumer for his own use (i.e., other than as builder or contractor), temples, welfare associations was arrived at and exemption is not available for non- printing of MRP and accordingly also for exemption of Central Excise duty. During the period from July 2011 to 16.03.2012, the assessee has cleared a quantity of of 1720.5 MTs of cement to individual consumers, 896.5 MTs of cement to temples and 2540 MTs of cement to welfare associations and based on the highest MRP applicable for the clearances in the respective area and applying the specific rate of duty of Rs. 160/-PMT (in addition to 10% adv) an amount of Rs. 8.42 is payable as differential duty along with interest and penalty. The assessee agreed to the objection and paid the amount with interest and penalty.

- (2) **GIST OF THE OBJECTION : Non-payment of duty on clearances of Steam Coal**
COMMISSIONERATE : Central Excise Commissionerate, Hyderabad IV
CONTRAVENTION
OF PROVISION : Rule 18 of the Central Excise Rules, 2002

The assesseees are manufacturers of compressors and condensing units. The audit verified the debit notes and outward remittance of foreign exchange records of the assessee and observed that they gave a discount of 94589.55 US Dollars amounting to Rs. 56.21 lakhs to against debit note dated 31.12.2012, raised by the consignee. Prior to that the assessee claimed the rebate of duty paid, Drawback and FPS benefits on export of the goods during the period from April 2012 to September 2012. Subsequently, discount was given to the consignee. The audit pointed out that the assessee is liable to pay back the export benefits already claimed from the Government. On being pointed out, the assessee agreed to the objection and paid an amount of Rs. 11.39 lakhs towards excess rebate claimed, drawback and FPS benefits along with interest.

- (3) **GIST OF THE OBJECTION : Non-reversal of credit in full on removal of goods brought under Rule 16(1) of Central Excise Rules, 2002**
- COMMISSIONERATE : Central Excise Commissionerate, Bhubaneswar I**
- CONTRAVENTION**
- OF PROVISION : Rule 16(1) of Central Excise Rules, 2002**

The assessee is a manufacturer of High Carbon Ferro Chrome. The audit verified the Trial Balance of the assessee for the year 2010-11 and noticed that the assessee purchased High Carbon Ferro Chrome valued at Rs. 1.72 crores and took credit of duty of Rs. 17.72 lakhs during the month of May 2010. The audit pointed out that the said product, being manufactured by them cannot be an input and hence credit so taken has to be reversed. The assessee replied that they brought the goods under Rule 16(1) of Central Excise Rules, 2002 and took credit of Rs.17.72 lakhs on receipt of goods and reversed the credit of Rs.15.46 lakhs later at the time of removal of goods. The assessee further paid the differential duty of 2.26 lakhs in Nov 2012.

- (4) **GIST OF THE OBJECTION: Short Payment of duty due to under valuation**
- COMMISSIONERATE : Central Excise Commissionerate, Haldia**
- CONTRAVENTION**
- OF PROVISION : Rule 6(1) of Central Excise Valuation Rules, 2000**

In the course of audit and on scrutiny of assessee's records of sales of finished goods and purchase of raw materials, it has been observed by the auditors that the assessee had received Cold Rolled Close Annealed (CRCA) sheet from their buyer of finished goods, free of cost and getting Rs.3.90 per barrel as payment along with incentives at the end of the year for producing extra numbers of Barrels using the specified quantity of steel sheet. Sale price (assessable value) of an empty barrel is being fixed on the basis of Cost of Raw materials at

buyer's end along with Job charges (in absence of element wise fabrication cost details as per Cost- accountants declaration at the time of valuation Audit) and incentives rendered to them by the buyer. This value is being added to money value of additional consideration that is being received by them in the form of retaining the Value of Waste & Scrap arising in the process of manufacture as extra consideration to job charges. In this way they are clearing their finished goods at a lower valuation in violation of rule 6(1) of Central Excise Valuation Rules, 2000 and paying less duty in clearance of their finished goods.

Goods manufactured by a unit on 'Job Work' basis are to be assessed to duty on the basis of the principles laid down by the Apex Court in the "Ujagar Prints" Case excepting when it is conclusively shown that 1) The supplier of the raw materials is a related person and some money consideration has flowed back to the job worker, and 2) the manufacturing cost of the job worker has been manipulated and artificially depressed. The price of such goods is determined on the cost of raw material, manufacturing expenses and profits as provided in sub-rule 6(1) of Central Excise Valuation Rules, 2000. In effect, this is the price that is held to be applicable by the Hon'ble Supreme Court in the Ujagar Prints case. The freight for transportation of raw materials to the job worker's factory is required to be added to the assessable value of the final product manufactured and cleared from the job worker's premises in as much as the same contributes to the landed cost of the materials in job worker's factory.

Cost of Production of empty Bitumen Drums for the period 2011-12 was calculated on the basis of costing principles and undervaluation of goods was calculated as ₹ 6,51,79,111/- with duty involvement to the tune of ₹ 67,87,574/- along with interest chargeable at the appropriate rate.

The assessee have paid the differential duty of ₹ 6787574/- , but no interest was paid.

(5) GIST OF THE OBJECTION: Non Payment of central excise duty under Rule(6)(3) of the CENVAT Credit Rules 2004

COMMISSIONERATE : Central Excise Commissionerate, Jamshedpur

CONTRAVENTION

OF PROVISION : Rule 6(1) and 6(2) of the CENVAT Credit Rule 2004

In the course of audit and on examination of the records of the assessee it was observed that they had cleared excisable goods to the service providers without payment of Central Excise duty under Serve From India Scheme by availing exemption under Notification No 34/2006-C.E. dated 14.06.2006, as amended. Simultaneously, they had also availed CENVAT Credit on the inputs used for manufacture of excisable goods which were subsequently cleared without payment of duty under exemption notification No.34/2006 –C.E. dated 14.06.2006, as amended. Thus by taking CENVAT Credit on inputs used in the manufacture of exempted goods, they had violated Rule 6(1) and 6(2) of the CENVAT Credit Rule 2004.

Therefore, the assessee are required to pay an amount of . 60,65,000.00 as per Rule 6(3)(i) of the CENVAT Credit Rules 2004 on the total clearance value of . 12,13,00,000/- made without payment of Central Excise duty to the service providers under serve from India scheme. Further interest amount of Rs.21, 22,041/-(calculated upto31.05.2013) be also deposited.

- (6) **GIST OF THE OBJECTION: Irregular availment of CENVAT Credit on goods directly exported without bringing into factory premises**

COMMISSIONERATE : Central Excise Commissionerate, Kolkata III

CONTRAVENTION

OF PROVISION : Rule 3 of the CENVAT Credit Rules, 2004

In the course of audit and on scrutiny of records, it has been observed by the auditors that they had taken Cenvat credit on inputs viz. various steel rolling mill equipments and parts amounting to Rs. 10,50,600/-. The auditors performed a walk thorough to ascertain as to whether the inputs had actually entered in their factory or not. On through scrutiny of records viz. transport documents , consignment notes, supplier invoices along with packing lists, export invoice and ARE-1 , the auditors came to the conclusion that these inputs, sourced from Bangalore had been directly exported to Bangladesh without bringing the same into the factory premises and without subjecting those to any further manufacturing process. Hence, availment of CENVAT Credit amounting to Rs.10,50,600/- in violation of Rule 3 of the CENVAT Credit Rules, 2004, is irregular. Interest is also chargeable at the appropriate rate. On being pointed out by the auditors, the assessee reversed CENVAT Credit of 10,50,600/- and paid Interest of 59,064/-.

(7) **GIST OF THE OBJECTION :** Irregular Credit availed on Pre-fabricated Building
COMMISSIONERATE : Central Excise Commissionerate, Bangalore I
CONTRAVENTION
OF PROVISION : Rule 2 (k) read with Rule 3 of the CENVAT Credit Rules, 2004

The assessee availed credit on Pre-Fabricated steel building classified under CSH 9406 00 99. As per the definition under Rule 2(k) of CENVAT Credit Rules, 2004 the CENVAT Credit on this Pre-Fabricated Steel Building is not eligible for availment of CENVAT Credit. The Pre-Fabricated Steel Building is a structure which can be considered as an asset to the assessee and does not qualify as an input for the manufacture of excisable goods. The assessee is required to pay the entire amount of Rs.73,43,624/- irregularly availed. On pointing out, the assessee has agreed and paid the entire amount.

(8)

GIST OF THE OBJECTION :Wrong availment of CENVAT Credit on imports of consumables made and the credit being utilized for payment of duty on clearance from hydraulic division and other final products

COMMISSIONERATE : Central Excise Commissionerate, Bangalore II

CONTRAVENTION

OF PROVISION : Rule 2(k) of CENVAT Credit Rules, 2004; Circular No.943/04/2011-CX dated 29.04.2011

During the course of verification of records of assessee, it was noticed that the assessee undertakes job work for an overseas company. The principle buyer sends raw materials and components for processing and assembly of Flap Track Beams. The said raw materials and components are imported under Notification No.32/97 Customs dated 01.04.1997. Exemption to goods imported for execution of an export order for jobbing. After completion of job work the said assembled as civil aircraft parts are exported to the buyer under the same notification. For assembly of the said parts the assessee imports certain consumables viz. bostic, cleaning solvent, semkit and interfay solvent on payment of duty and avails the CENVAT Credit on the same. This CENVAT Credit is utilized for payment of duty of their product Hydraulics Pumps. On further study of manufacture process of Hydraulics Pumps or any other final products manufacture in the factory, it is very clear that these consumables are not used in the manufacture of the said final products. The assessee also imported jigs, tools, fixtures and moulds on payment of duty and availed CENVAT Credit. But the said jigs, tools, fixtures and moulds are not used in the manufacture of Hydraulic pumps or any other final products manufactured in the factory. The assessee certifies in their ARE-1s that they do not avail CENVAT Credit, however they avail CENVAT Credit on inputs and capital goods and also on Service Tax. The verification of ER 1 states that they export under Notification No.42/2001 dated 01.03.2001 instead of 32/97 Customs dated 01.04.1997 and use the said export proceeds to fulfill the export obligation on the machinery imported under EPCG scheme. As per Rule 2(k) of CENVAT Credit Rules, 2004, goods which have no relationship whatsoever with the manufacture of a final product are excluded from availing credit. Further as per Circular No.943/04/2011-CX dated 29.04.2011 wherein it was clarified that credit of goods used in the factory but having

absolutely no relationship with the manufacture of final product is not allowed. Therefore, the assessee is not eligible to availed the CENVAT Credit amounting to Rs.73,90,597/- which was availed on capital goods.

(9)

**GIST OF THE OBJECTION: Non-payment of Central Excise
Duty on personalized Smart Cards**

COMMISSIONERATE : Central Excise Commissionerate, Noida

CONTRAVENTION

OF PROVISION : Section 3 of the Central Excise Act, 1944

On perusal of the trial balance sheets of the assessee for the year 2012-13 it was observed that assessee had received Rs. 14249241/- as subcontract personalized charge. When asked from the assessee, they informed that they are engaged in trading of personalized smart cards. They import impersonalized smart cards and get them personalized for different banks through their job workers located at Mumbai and sell the same after personalization to different banks. Personalization of smart cards amount to manufacture and liable for payment of Central Excise duty amounting to Rs.1694262/- along with interest of Rs. 283635/- On being pointed out by the Audit the assessee deposited the amount.

SERVICE TAX

(10) **GIST OF THE OBJECTION : Short- payment of Service Tax on flex printing cost incurred**

COMMISSIONERATE : Service Tax Commissionerate, Kolkata **CONTRAVENTION**

OF PROVISION : Section 66 read with Section 67 of the Finance Act, 1994

In the course of audit and on reconciliation between ST-3 and Debtor's ledgers it has been observed by the auditors that some extra amount had been realized on which no Service Tax was paid and the same was also not shown in ST-3 Returns. The assessee replied that this

difference arose due to material cost i.e. flex on which they had paid VAT at the rate of 4% as well as @ 12.5% & other specified rates and therefore Service Tax should not be imposed. But the contention of the assessee does not hold good because as per Section 67 of the Finance Act, *“the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such services”* Therefore, Service Tax should be imposed on the differential Taxable Value. Thus the total liability comes to Rs.13,79,778/- + Interest & Penalty as applicable which should be realized from the assessee.

It has been observed by the auditors that the assessee charged (i) Service Tax on the Space for sale of advertisement & installation charges, but did not pay Service Tax on the “Flex Printing” part in few invoices, (ii) in other invoices the only portion “Flex Printing” is there on which the assessee did not pay the Service Tax. Only VAT is being paid on the “Flex Printing” part being treated the same as material value.

But, it appears that blank Flex is purchased from the market and thereafter certain processes like printing, writing, graphics, designing, inscribing etc. and other innovative ideas are done on the said Flex by the assessee as per the requirement of the client to represent the advertising matter of the client. The original form of Flex is changed to an advertising material i.e. ‘Flex Printing’. These activities are squarely covered under the Advertising Services. Also, Under Section 67 of the Finance Act and Rules made there under, where any expenditure or cost is incurred by the service provider in the course of providing services, such expenditure or cost is required to be included in the Taxable Value. So, the expenditure made in relation to Flex Printing is nothing but the cost for provisioning the desired services as per Valuation Rules, 2006.

The Taxable Value so calculated on which tax was not paid comes to Rs. 1,01,80,549/- & Rs.24,95,607/- respectively for 2008-09 to 2011-12 and revenue implication comes to Rs.13,79,778/-+ Interest & penalty as applicable.

(11) GIST OF THE OBJECTION : Short - payment of Service Tax due to short valued billing

COMMISSIONERATE : Service Tax Commissionerate, Kolkata CONTRAVENTION
OF PROVISION : Section 66 read with Section 67 of the Finance Act, 1994

Scrutiny of Trial Balance for the years 2010-11 and 2011-12 reveals that in course of providing of taxable services namely, maintenance or repair service, erection and commission service etc., the assessee has shown 'damage paid for low performance' in the head 'Indirect expense' amounting to Rs.2,94,92,893/- and Rs.2,94,80,626/- for the years 2010-11 and 2011-12 respectively. It is observed that the service recipients/clients paid amounts less than that billed to them on account of low performance of service. The assessee has deducted the amount shown as 'damage paid for low performance' from the gross bill raised while computing taxable value. As per CBEC Instruction Letter File No. B11/1/98-TRU, dated 07.10.1998, where the amount received is less than the gross amount charged/billed to the client the Service Tax assessee should be required to amend the bills, either by rectifying the existing bill or by issuing a revised bill and by properly endorsing such change in the bill amount. In case an assessee does not do so, his liability to pay Service Tax shall be on the amount billed by him to the client for the services rendered. Since, the assessee has failed to comply with the above CBEC Instruction; the assessee is liable to pay Service Tax on amount shown as 'damage paid for low performance'.

Service Tax liability comes to Rs.30,37,768/- (Incl. cess) and Rs.30,36,505/- (Incl. cess) for the years 2010-11 and 2011-12 respectively. Hence the assessee is liable to pay Service Tax of Rs.60,74,273/- alongwith interest as mentioned above.

(12) GIST OF THE OBJECTION : Short- payment of Service Tax on Cargo Handling Service

COMMISSIONERATE : Service Tax Commissionerate, Kolkata CONTRAVENTION
OF PROVISION : Section 66 read with Section 67 of the Finance Act, 1994

The assessee is a provider of "Works Contract Service". During the scrutiny of the financial records for 2011-12, it was seen that the assessee had undertaken the work of "Evacuation of settled ash from the Ash Pond in operation, transportation and disposal in eco-friendly manner from a Thermal Power Project allotted to them by the Competent Authority.. In the financial records income from such activity was reflected as "Sale of other construction services" and no Service Tax was paid by the assessee. According to Audit the activity of loading and unloading of cargo conforms to 'Cargo Handling Service' on which the assessee is liable to pay Service Tax. The taxable value involves on this issue is Rs.1,95,21,739/- with Service Tax

liability to the tune of Rs.20,10,739/- .along with applicable interest. The assessee has accepted the contention of the department and paid Rs.20,10,739/-.

(13) GIST OF OBJECTION : Non- payment of Service Tax on Manpower Recruitment or Supply Agency's Services under reverse charge Mechanism

COMMISSIONERATE : Central Excise Commissionerate, Bangalore I

CONTRAVENTION

OF PROVISION : Section 66A of Finance Act, 1944, read with Rule 3(iii) of the Taxation of Services (Provided from outside India and received in India) Rules, 2006

During the verification of the records it is observed that the assessee has availed the services of employees of their parent company , an overseas company, on deputation basis. Part of their remuneration has been paid in convertible foreign currency by way of book adjustment through their parent company. In this case, the employees of foreign country are not sent to other branches of the same company but to a different entity and there exists a service provider, service recipient and consideration for the activity. The sharing of the personnel on deputation to other concerns belonging to their group for a particular period or specific work is covered under Manpower Recruitment or Supply Agency's services and the same is taxable service under Section 65 (105) (K) of the Finance Act, 1994. Section 66A of the Finance Act, 2006 provides for charge of Service Tax on services received from outside India with effect from 18.04.2006 in case the service provider does not have office in India. Rule 2(1) (d) (iv) of the Service Tax Rules, 1994, provides for payment of Service Tax by the receiver of service in case of provider does not have office in India and hence, they are required to pay the Service Tax as a receiver of services as per Section 66A of Finance Act, 1944, read with Rule 3(iii) of the Taxation of Services (Provided from outside India and received in India) Rules, 2006.

In terms of proviso to Rule 7 of the Point of Taxation Rules, 2011, effective from 01.04.2011, the point of taxation in respect of services received from the associated enterprises shall be the date of credit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

During further verification of the records, it is noticed that they have not discharged the Service Tax liability in respect of the above service. Hence they are liable to pay Service Tax amounting to Rs. 2,30,30,986/- on the above transactions.

(14) GIST OF OBJECTION : Credit availed on Service Tax paid on 'Surrender charges' which is an output service for the assessee

COMMISSIONERATE : Large Tax Payer Unit, Bangalore

CONTRAVENTION

OF PROVISION : Rule 3 of the CENVAT Credit Rules, 2004

During verification of Cenvat registers, it was observed that the credit of Service Tax paid on surrender charges was availed as input credit. Surrender charges are charges collected by the assessee from their customers on surrender of policies by them, on which Service Tax is payable. On enquiry, it was stated by the assessee that the Service Tax on surrender charges came into force from 1.5.2011 and since their system was not programmed to capture this entity for calculation of Service Tax, they discharged Service Tax on surrender charges through challans when their system is updated they have taken credit of the Service Tax paid vide challans. Since surrender charges are charges collected by the assessee in connection with their output service, credit availed on the Service Tax paid on such charges is ineligible. Credit availed by assessee amounts to Rs.51,83,146/-. On pointing out the assessee has claimed that during the period between May to July 2011 their system was not programmed for collecting Service Tax on surrender charges, hence they have paid Service Tax on surrender charges and subsequently when their system got updated, they have taken credit of the Service Tax paid.

When the assessee was asked to furnish the details of such double payment if any, they have failed to show any document substantiating their claim. Hence this is irregular credit and the said amount is required to be recovered along with interest and penalty.

(15) GIST OF OBJECTION : Non- payment of Service Tax on BA Management Fees and IPR services fees paid to their associate units

COMMISSIONERATE : Large Tax Payer Unit, Bangalore I

CONTRAVENTION

OF PROVISION : Section 66 A of Chapter V of the Finance Act, 1994

The LTU has entered into an agreement with their associated enterprise, for receipt of various services in relation to conducting all their business activities on the terms and conditions stipulated for all the companies of associated enterprise group, all over the world. Under this agreement, the LTU pays the agreed upon amounts under the headings "BA Management Fees/CHAMS Fees" in their books of accounts, the amount being paid in respect of other locations in India. It was observed that the said services are aptly classifiable under Business Support Services/Management or Business Consultants Services but the LTU had not paid Service Tax on the said taxable services received by them from their associated company situated abroad. Thereby the LTU has not paid Service Tax amounting to Rs.59,33,121/-for the period 1/09 to 4/09. On pointing out the observation, the LTU has agreed to the point and have claimed to have paid Rs.59,33,121/- towards Service Tax and Rs.37,04,916/- towards interest.

(16) GIST OF OBJECTION : Non- payment of Service Tax on Accommodation, Restaurant and Spa services provided

COMMISSIONERATE : Central Excise Commissionerate, Mysore

CONTRAVENTION

OF PROVISION : Section 66 of Chapter V of the Finance Act, 1994

On perusal of assessee's financial records and returns filed, it is observed that the assessee has not discharged the Service Tax liability for the period from May, 2012 to February, 2013. The service providers have to pay Service Tax as per the provisions of Point of Taxation Rules 2011 w.e.f.01.07.2011. It has been observed that, the assessee has not followed the above said provisions from May, 2012 to February, 2013. The Service Tax so payable works out to Rs.74,85,109/- and interest to Rs.5,93,318/-. The assessee agreed and paid dues for the months of May and June, 2012 amounting to Rs.15,99,207/- along with interest of Rs.1,48,566/-.

(17) GIST OF OBJECTION : Wrong availment of CENVAT Credit on common inputs

COMMISSIONERATE : Service Tax-I Commissionerate, Mumbai

CONTRAVENTION

OF PROVISION : Rule 6(3)(ii) and Rule-6 (3A) of CENVAT Credit Rule-2004

On scrutiny of the Balance sheets for the financial year 2008-09 to 2011-2012, it was observed that the club had undertaken sales of products such as playing card, tennis ball, shuttle cock and also sale from your consumer stores, beer sales, etc. and had earned an income to the extent of value of sale of such products as shown hereunder:-

Year	Value of sale of products (in Rs)
2008-2009	49610459
2009-2010	56288565
2010-2011	65338543
2001-2012	73896038

In this regard, Rule 2(e) of CENVAT Credit Rules, 2004 stipulates as under:

“exempted services” means taxable services which are exempt from the whole of the Service Tax leviable thereon, and includes services on which no Service Tax is leviable under section 66

of the Finance Act and taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken.

Explanation.- For the removal of doubts, it is hereby clarified that “exempted services” includes trading;

Hence, value of the sale of products during the respective financial year has to be construed as “exempted services” during the respective financial year.

"Value" for the purpose of sub-rules (3) and (3A)-

In case of trading shall be the difference between the sale price and the purchase price of the goods traded”, the words “shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten per cent of the cost of goods sold, whichever is more”

Further it is also observed that the Club has Excellency Bar, Princess Restaurant, Air-conditioned Restaurant where liquor is served. The said service has come in to effect only after 01.05.2011. Income from these air-conditioned restaurants was non-taxable during the period 2008-09 to May, 2011.

In this regard, on further verification of CENVAT Credit Account maintained by the Club, it was observed that they had availed CENVAT Credit on input services viz. Communication services, Courier Service, Security Service, Housekeeping Service, Repair & Maintenance Service, etc. and not maintained separate account in respect of receipts and consumption of input services used in taxable services and exempted services provided by them, as required under Rule 6(2) of CCR, 2004. They have neither reversed the CENVAT Credit monthly on proportionate basis nor they had exercised the option as required under Rule 6(3)(ii) and Rule-6 (3A) of CENVAT Credit Rule-2004. They are therefore, required to reverse the CENVAT Credit amount along with the interest.

(18) GIST OF OBJECTION : Non fulfilment of condition of Rule3(2)(a) under Export of Service rules, 2005 for claiming Export as per Notifn. No. 2/2007 ST Dt. 1-3-2007

COMMISSIONERATE: Service Tax-I Commissionerate, Mumbai

CONTRAVENTION

OF PROVISION : Rule3(2)(a) under Export of Service rules, 2005

During the time of audit, it was observed that the assessee have made Representation Agreement with the foreign Principal for marketing of their hi- tech instruments in India. They are negotiating/ Quoting the price on behalf of the foreign principal, Singapore and obtaining the purchase order on their behalf for supplying of Analytical and Laboratory instruments and offering full time sales support service for maintenance, repairs spare parts or application. For the services rendered, the assessee are getting sales commission in foreign currency from foreign Principals and not paying Service Tax on the sales commission received claiming it as Export of service. The above services of sales commission are provided to foreign Principal for selling/ marketing of their goods (Analytical /Laboratory instruments) to be used in India. Hence, it is clear that the services are delivered to be used in India as their services were ultimately utilised for testing of the products by the Analytical/ Laboratory instruments sold by foreign seller in India. Therefore, it appears that the benefit of the service that is claimed to have been exported has not accrued outside India.

As per Notification No.2/2007-ST, dt. 1-3-2007 the provision of any taxable service under Rule 3(2) shall be treated as Export of Service when the following conditions are satisfied namely:

- a) Such service is provided from India and used outside India and
- b) Payment for such service provided outside India is received by the service provider in convertible foreign exchange.

Hence as per Rule 3(2)(a) of the Export of service Rule, 2005 prior to 01-03-2007, a condition to qualify as export is that :-

“Such service is delivered outside India and used outside India.”

Further from 1-3-2007, the following condition was prescribed,.

“Such service provided from India and used outside India.”

From the above it is seen that the condition of Rule 3(2) (a) of Export of Service Rule 2005, is NOT satisfied in the instant case, since the services provided were delivered/used within India, thus do not qualify as Export. Hence the services are not entitled to get the benefit of Export. In fact the effective use of such services say sales commission were meant for marketing/selling of their products in Indian companies only, and these services were used within India.

CBEC vide circular No. 141/10/2011 TRU dated 13-5-2011 has also clarified the same issue, stating that the scope of the term used outside India would not cover the situation where service used in respect of a project or activity is in India. Hence in this case also, as sales commission were meant for marketing/selling of their products in Indian companies only, these would not be covered under export.

During the period 1-4-2008 to 26-2-2010, the assessee have provided sales commission service having taxable value of Rs. 27,58,44,019/- on which the Service Tax works out to Rs.3,11,44,043/-.

(19) GIST OF OBJECTION: Non payment of Service Tax on the testing charges paid to the foreign collaborator for testing “Spacer Damper” under reverse charge mechanism

COMMISSIONERAT : Central Excise Commissionerate, Chennai – IV

CONTRAVENTION

OF PROVISION : Section 66A of Finance Act, 1944

During the course of audit, on perusal of Balance sheet for 2012-2013, it was noticed that the assessee have paid Rs.58,93,470/- as “Technical Assistance Fee” to a foreign company towards the Testing charges of “Spacer Damper” manufactured and sold by them. However they failed to pay Service Tax under reverse charge mechanism. On being pointed out they paid the Service Tax of Rs.7,28,433/- with Cess Rs.14,569/- and Hr. Cess Rs.7,284/- with Interest Rs.1,86,112/- on 23.08.2013.

(20) GIST OF OBJECTION : Wrong availment of CENVAT Credit on Set Top Boxes

COMMISSIONERAT : Service Tax Commissionerate, Delhi

CONTRAVENTION

OF PROVISION : Rule 2(A) read with Rule 3 of the CENVAT Credit Rules, 2004

The assessee is providing Cable Operator, MMR, BAS, Supply of Tangible goods and Broadcasting Service.

The assessee had imported STBs during the financial year 2008-09 under its decentralized Service Tax registration at Mumbai. The books of accounts of the Delhi office, on being audited, did not indicate import of STBs during the said period. However, after obtaining centralized registration, the assessee availed 50% of the CENVAT Credit in Delhi on the capital goods imported during the said period in Mumbai. Accordingly, the documentation and other records were maintained at Mumbai. The returns filed at Delhi didn't disclose the CENVAT Credit on capital goods separately. After requisitioning the documents from Mumbai, the invoices, bills of entry and other documents were examined. It was observed that the assessee had paid CVD on import of STBs from different countries. The STBs were thereafter issued to the cable operators for further issuance to the customers. In terms of the guidelines issued by TRAI in this regard, the assessee charges a rent from the customers for a period of 5 years. After the said period, the STB stands transferred to the customers. The assessee had taken a position that STBs are integral to provision of services by the assessee. Without STBs, its services cannot be provided. They further stated that Service Tax had been paid on subscription income and carriage income by assessee which would have not been possible without such STBs. The assessee had also stated that STBs remains the property of the assessee and had been treated as capital goods of the assessee in its books of accounts. Thus only a constructive possession is transferred to the subscribers. Accordingly, it is eligible to avail CENVAT Credit of the CVD paid on import thereon. The assessee had also stated that such activity amounts to 'transfer of the right to use goods' and hence chargeable to VAT. The assessee had also submitted returns filed in Delhi and Mumbai evidencing payment of vat on such rentals.

As per the Credit Rules, CENVAT Credit on Capital goods can be availed only when capital goods have been used by a service provider for output services. In the present case, the

STBs (capital goods) are sold by the assessee to the customers on payment of VAT. Clearly the assessee is not using the STBs for providing taxable service. Moreover the STBs are no longer in the possession and registered premises of the assessee.

Assessee can claim the CENVAT Credit for the same only if used in the provision of output service and Service Tax is paid on the rental income from these STBs. But assessee had treated this transaction as deemed sale and paid VAT in respect of the STBs provided on rent. Since Service Tax had not been paid on the rental receipts, the assessee cannot claim CVD on these STB for payment of Service Tax. The assessee is liable to reverse credit on STB's. The amount of CENVAT Credit claimed by the assessee during each of the financial years 2008-09 and 2009-10 amounts to Rs. 106.82 lacs.

Accordingly, the assessee is liable to reverse CENVAT Credit amounting to Rs. 213.64 lacs along with interest thereon.

During the financial year 2011-12 as well, the assessee had imported STBs and availed CVD credit amounting to Rs. 206.98 lacs on such imported STBs. However, out of the total STBs imported by the assessee, the assessee sold the STBs pertaining to CVD amounted to Rs. 105.83 lacs on payment of VAT. Accordingly the assessee had reversed the CENVAT Credit of Rs 105.83 lacs. However, the assessee had utilized CENVAT Credit of Rs. 50.57 lacs (50% of Rs. 101.15 lacs) during the year 2011-12 on the ground that these STBs are utilized in the provision of service.

As stated above, the assessee can claim the CENVAT Credit for the same only if used in the provision of output service and the Service Tax is paid on the rental income from these STBs. But assessee had treated this transaction as deemed sale and paid VAT in respect of the STBs provided on rent. Since Service Tax had not been paid on the rental receipts , the assessee cannot claim CVD on these STB for payment of Service Tax. The amount of CENVAT Credit claimed by the assessee during the financial year 2011-12 amounts to Rs. 50.57 lacs.

Accordingly, the assessee is liable to reverse CENVAT Credit amounting to Rs. 50.57 lacs along with interest thereon.

Total in-admissible CENVAT Credit comes to Rs. 264.21 lacs which stands recoverable from the assessee along with interest.

OSPCA

(21) GIST OF OBJECTION: Non payment of appropriate duties on revision of MRPs/ RSPs declared to the Customs Department

COMMISSIONERAT : LTU Commissionerate, Bangalore

CONTRAVENTION

OF PROVISION : Section 4A of the Central Excise Act, 1944

During the course of verification of records during audit, it was observed that the LTU were importing certain goods which were assessable on the basis of their MRPs/RSPs. The respective MRPs/RSPs were being declared by the LTU and appropriate duties were being paid by them at the time of import and the said goods were being brought into National Parts Centre situated in their premises. From this National Parts Centre the said goods were removed on the basis of requirements of the dealers or their Regional Parts Centres. The labels declaring the MRPs/RSPs were not affixed on the unit packing at the time of import but the same were affixed only at the time of clearances to the dealers. However, in certain cases where there have been upward revisions of MRPs/RSPs of the said goods, it was observed that the LTU was affixing the revised MRPs/RSPs on the said imported goods, available in their stock, and then removing the same with the revised MRPs/RSPs. Thus, the LTU has declared lesser MRPs/RSPs to the Department while importing, but had sold/removed the said imported goods at higher MRPs/RSPs. The LTU is liable to pay an amount of Rs.1,18,01,659/- towards the differential duty payable on such goods imported during the period 01-04-2011 to 31.03.2013.

(22) GIST OF OBJECTION : Non payment of anti-dumping duty

COMMISSIONERAT : Central Excise Commissionerate, Mysore

CONTRAVENTION

OF PROVISION : Section 9A(1) read with Section 9A (5) of the Customs Tariff Act 1975

Notification 96/2007 Cus dated 29.08.2007 issued under Section 9A(1) read with Section 9A (5) of the Customs Tariff Act 1975 provides for imposition of defensive Anti-dumping duty on importation of Sodium Persulphate which is assessee's essential imported input/consumable required for manufacture of PCBs. From the verification of the records of the importer such as Bills of Entry during the period 2011 to 2013 it is noticed that some cases the importer has imported Sodium Persulphate from China. It is also noticed from the respective

Bills of Entry that the said Sodium Persulphate is originated from China and exported from China. Therefore, it appears that in terms of Notification No. 96/2007 Cus dated 29.08.2007. the said Sodium Persulphate imported from China by the importer is liable for antidumping duty @ Rs.34.91/- per Kg. From the records of the importer as well as details of importation provided by the importer vide their letter dated 19.04.2013 it is noticed that the importer has imported a total quantity of 2,38,000 Kgs of Sodium Persulphate valued at Rs.1,68,59,214.70 from China during the period from Dec 2010 to March 2013. Further it appears that in terms of Notification No. 96/2007 Cus dated 29.08.2007 read with Section 9A(1) of the Customs Tariff Act 1975 antidumping duty so leviable works out to Rs.83,08,580/-. The importer accepted the audit contention and paid the antidumping duty of Rs.57,25,240/- pertaining to the period from March 2012 to March 2013 along with interest of Rs.6,40,139/-.

