सत्यमेव जयते

# Report of the Comptroller and Auditor General of India for the year ended March 2013

The Report has been laid on the table of the Parliament house on 18-07-2014

## Union Government
## Department of Revenue
## (Indirect Taxes - Service Tax)
### Report No. 6 of 2014

# Report of the

# Comptroller and Auditor General of India

**for the year ended March 2013**

**Union Government**
**Department of Revenue**
**(Indirect Taxes - Service Tax)**
**Report No. 6 of 2014**

Laid on the table of Lok Sabha and Rajya Sabha on .....

## Table of Contents


| | Contents | Page |
|---|---|---|
| | Preface | i |
| | Executive Summary | iii |
| **Chapter I** | Service Tax Administration | 1 |
| **Chapter II** | Non-compliance with Rules and Regulations | 26 |
| **Chapter III** | Effectiveness of Internal Controls | 31 |
| **Appendix I** | | 51 |
| **Appendix II** | | 52 |
| **Glossary** | | 60 |

## Preface

The Audit Report for the year ended March 2013 has been prepared for submission to the President of India under Article 151(1) of the Constitution of India.

Audit of Revenue Receipts - Indirect Taxes of the Union Government is conducted under section 16 of the Comptroller and Auditor General of India's (Duties, Powers and Conditions of Service) Act, 1971.

The Report presents the results of audit of receipts of Service Tax.

The observations included in this Report cover the findings of test checks conducted during 2012-13, as well as those which came to notice in earlier years but were not included in previous Reports.

## Executive Summary

This Report contains 151 audit observations pertaining to Service Tax, having revenue implication totalling ₹ 265.75 crore. The Ministry/department had, till February 2014, accepted 147 audit observations involving revenue of ₹ 262.29 crore and reported recovery of ₹ 65.28 crore. Significant findings are as follows:

**Chapter I: Service Tax Administration**

- Indirect tax revenues as a percentage of Gross domestic product decreased from 4.80 per cent in FY09 to 4.69 per cent in FY13. During the same period, Service Tax revenues as a percentage of GDP rose to 1.31 from 1.08. Service Tax revenues grew by 36 per cent to ₹ 1,32,601 crore in FY13.

(Paragraphs 1.6 and 1.7)

- The number of Service Tax registrations under section 69 of the Finance Act grew by over 50 per cent from 12.26 lakh in FY09 to 18.71 lakh in FY13.

(Paragraph 1.13)

- Over 75 per cent of e-filed returns were marked by ACES for review and correction in each of the past three years. As on 31 March 2013, 14.74 lakh returns (80 per cent of returns marked for review and correction) were pending corrective action.

(Paragraph 1.17)

- Nearly 50 per cent of Service Tax assessees paying revenue over ₹ 1 crore annually which were due for audit by the Central Excise and Service Tax department remained unaudited during 2012-13.

(Paragraph 1.19)

- Delay in disposal of over 10 per cent of refund claims in FY13 exceeded one year. Besides, over 2000 claims involving ₹ 11,000 crore were pending disposal for over 1 year as of March 2013.

(Paragraph 1.24)

- Adjudication cases involving Service Tax implication of over ₹ 64,599.24 crore were pending finalisation as on 31 March 2013.

(Paragraph 1.26)

- Cases involving Service Tax of ₹ 1,37,950.40 crore were pending before appellate forums as on 31 March 2013.

(Paragraph 1.28)

- Measures initiated by the department to improve recovery of arrears have not made significant impact. Recovery during FY13 viz. ₹ 2,321.69 crore, continued to be at below 12 per cent of the arrears at the commencement of the year.

(Paragraph 1.29)

- 851 audit paragraphs involving Service Tax totalling ₹ 1,508.45 crore were reported during the last 5 years (including the current year's report). The Government had accepted audit observations in 815 audit paragraphs involving ₹ 1,398.90 crore and had recovered ₹ 395.09 crore.

(Paragraph 1.31)

**Chapter II: Non-compliance with Rules and Regulations**

- We observed instances of incorrect availing/utilisation of cenvat credit, non-payment/ short payment of tax and non-payment of interest on delayed payments involving Service Tax implication of ₹ 237.17 crore.

(Paragraph 2.1)

**Chapter III: Effectiveness of Internal Control**

- We observed, inter alia, instances of delayed issue of show cause notice, deficiencies in scrutiny and internal audit carried out by departmental officers. Service Tax involved in these observations was ₹ 28.58 crore.

(Paragraph 3.2)

# Chapter I

## Service Tax Administration

### Resources of the Union Government

**1.1** The Government of India's resources include all revenues received by the Union Government, all loans raised by issue of treasury bills, internal and external loans and all moneys received by the Government in repayment of loans. Tax revenue resources of the Union Government consist of revenue receipts from direct and indirect taxes. **Table 1.1** presents a summary of receipts of the Union Government, which amounted to ₹ 53,67,988.99 crore[1] for FY 2012-13. Out of this, the Government of India's own receipts were ₹ 13,99,951.05 crore including gross tax receipts of ₹ 10,36,460.45 crore.

**Table 1.1: Resources of the Union Government**

| | Cr. ₹ |
|---|---|
| A. Total Revenue Receipts | 13,47,437.62 |
| i. Direct Tax Receipts | 5,58,989.47 |
| ii. Indirect Tax Receipts including other taxes | 4,77,470.98 |
| iii. Non-Tax Receipts including Grants-in-aid & contributions | 3,10,977.17 |
| B. Miscellaneous Capital Receipts | 25,889.80 |
| C. Recovery of Loan & Advances | 26,623.63 |
| D. Public Debt Receipts | 39,68,037.94 |
| Receipts of Government of India (A+B+C+D) | **53,67,988.99** |

Note: Total Revenue Receipts include ₹ 2,91,546.61 crore, share of net proceeds of direct and indirect taxes directly assigned to states.

The Consolidated Fund of India formed under Article 266 of the Constitution of India consists, *inter alia,* of all revenues received by the Government of India. The Union of India's revenue receipts arise from both tax and non-tax sources. Tax revenues comprise chiefly of proceeds of taxes/duties levied by the Union Government *viz*. taxes on income (other than agricultural income) and on wealth, corporation tax, duties of customs duties, Union excise duties, taxes on services etc., which are covered by entries under List 1 of the Seventh Schedule of the Constitution.

Taxes are broadly classified as direct and indirect taxes. Generally, taxes paid directly to the Government by the persons on whom the tax is imposed/ levied are referred to as direct taxes. These include income tax, corporation tax, wealth tax etc.[2] On the other hand, indirect taxes are those in which the levy of tax is on one entity while the burden of tax falls on another entity.

[1] Source: Union Finance Accounts of FY 2012-13 (Provisional).

[2] Note below Table 3.4, Page 61, Economic Survey 2012-13 indicates that besides personal income tax and corporation tax, direct taxes include taxes pertaining to expenditure, interest, wealth, gift, and estate duty.

**Nature of Indirect Taxes**

**1.2** Indirect taxes attach themselves to the cost of the supply of goods/services and are, in this sense, transaction-specific rather than person-specific. The major indirect taxes/duties levied under Acts of Parliament are listed below;

a) **Central Excise duty:** Duty is levied on manufacture or production of goods in India. Parliament has powers to levy excise duties on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics but including medicinal and toilet preparations containing alcohol, opium etc (Entry 84 of List 1 of the Seventh Schedule of the Constitution).

b) **Customs duty:** Duty is levied on import of goods into India and on export of certain goods out of India (Entry 83 of List 1 of the Seventh Schedule of the Constitution).

c) **Taxes on Services:** Service Tax is levied on services provided within the taxable territory (Entry 97 of List 1 of the Seventh Schedule of the Constitution).[3]

**Service Tax**

**1.3** Service Tax is a tax on services rendered by one person to another.[4] Section 66B of the Finance Act envisages that there shall be a tax levied at the rate of 12 per cent on the value of all services, other than those specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.[5] 'Service' has been defined in section 65B (44) of the Finance Act to mean any activity for consideration (other than the items excluded therein) carried out by a person for another and to include a declared service.[6]

**Organisational structure**

**1.4** The Department of Revenue (DoR) under the Ministry of Finance exercises control in matters relating to indirect taxes through a statutory Board, constituted under the Central Boards of Revenue Act, 1963, namely the Central Board of Excise and Customs (CBEC). CBEC looks after the levy and collection of indirect taxes including Customs, Central Excise duties and Service Tax. The overall sanctioned staff strength of the Central Excise, Customs and Service Tax department is 73,814.[7] **Appendix 1** depicts the organizational structure of CBEC.

---

3 The Constitution (Eighty-eighth Amendment) Act, 2003, which received the assent of the President on 15 January 2004 was introduced to provide for the insertion of Article 268A, amendment of Art 270 and insertion of Entry 92C, 'tax on services', in List 1 of the Seventh Schedule. However, the Act is yet to come into force.

4 All India Federation of Tax Practitioners v Union of India 2007 (7) STR 625(SC); Tamil Nadu Kalyana Mandapam Association v Union of India 2006 (3) STR 260(SC).

5 Section 66B was inserted by the Finance Act 2012 wef 1 July 2012; section 66D lists the items the negative list comprises of.

6 Section 66E of the Finance Act lists the declared services.

7 Figures furnished by the Ministry as on 31 March 2013.

**1.5** 104 field Commissionerates function under the respective Chief Commissioners of 23 Central Excise and Service Tax zones. 77 among these Commissionerates (7 exclusive Service Tax Commissionerates, 66 integrated Central Excise and Service Tax Commissionerates and 4 Large Taxpayer Unit Commissionerates) are involved in assessment and collection of Service Tax across the country. Besides, the Government has constituted the office of the Director General of Service Tax (DGST) as a subordinate office in 1997 to coordinate Service Tax related work.[8]

**Growth of Indirect Tax Revenues**

**1.6** During 2012-13, Gross tax revenues of the Union Government crossed the ₹ 1 million crore threshold. **Table 1.2(a)** depicts indirect tax revenues as a percentage of both GDP and of gross tax revenues for the period FY09 to FY13.[9] The share of indirect taxes as a percentage of GDP in 2012-13 was 4.69. Thus, the trend observed in recent years, of the share of indirect taxes being less than 5 per cent in terms of GDP figures continues. GDP grew from ₹ 56.30 lakh crore in FY09 to ₹ 101.13 lakh crore in FY13 whereas indirect taxes increased from ₹ 2.70 lakh crore in FY09 to ₹ 4.74 lakh crore in FY13.

Share of indirect taxes in Gross tax revenues ranged between 39.29 per cent in FY10 and 45.80 per cent in FY13.

**Table 1.2 (a): Revenue receipts**

Cr. ₹

| Year | Gross Tax Revenue (GTR) | Indirect Tax Revenue* | GDP | Indirect Tax revenue as % of GTR | Indirect Tax revenue as % of GDP |
|---|---|---|---|---|---|
| FY09 | 6,05,298 | 2,69,988 | 56,30,063 | 44.60 | 4.8 |
| FY10 | 6,24,527 | 2,45,373 | 64,77,827 | 39.29 | 3.79 |
| FY11 | 7,93,307 | 3,45,371 | 77,95,314 | 43.54 | 4.43 |
| FY12 | 8,89,118 | 3,92,674 | 90,09,722 | 44.16 | 4.36 |
| FY13 | 10,36,460 | 4,74,728 | 101,13,281 | 45.80 | 4.69 |

Source: Figures of tax receipts are as per Union Finance Accounts of respective years; figures for 2012-13 are provisional.
*Figures of major indirect taxes such as Customs, Central Excise and Service Tax are included here.

**Growth of Service Tax - Trends and Composition**

**1.7** **Table 1.2(b)** depicts Service Tax (ST) revenues as a percentage of GDP and Gross tax revenues for the period FY09 to FY13. The share of Service Tax in gross tax revenues increased from 10.07 per cent to 12.79 per cent during the period. During FY13, Service Tax revenues grew by close to 36 per cent (based on provisional figures for 2012-13). Budget 2012-13 had envisaged a growth of 30.5 per cent in the revenue from Service Tax vis-à-vis 2011-12 (RE). This was based on the increase in the tax rate from the existing 10 per cent to

[8] DGST operates from Mumbai currently.

[9] Press note of PIB, Central Statistical Organisation (CSO), Ministry of Statistics. Press note dated 7 February 2014 indicates that figures of GDP at current price/market price for the year 2011-12 are 2nd revised estimates and for the year 2012-13 are 1st revised estimates with base year 2004-05. Figures are continually being revised by CSO and the data is meant for an indicative comparison of fiscal performance with macro economic performance.

12 per cent and a change in the tax base. As against the usual practice of expanding the list of services, the Budget for 2012-13 introduced a 'negative list' approach effective from 1 July 2012.[10] With the introduction of the negative list from July 2012, all services, except those specified in the negative list, are subject to taxation.

Service tax revenues expressed as a percentage of GDP touched a high of 1.31 per cent in 2012-13.

**Table 1.2(b): Growth of Service Tax revenue**

Cr. ₹

| Year | ST | % growth over previous year | GDP | ST as % of GDP | Gross Tax Revenues | ST as % of Gross Tax Revenue |
|---|---|---|---|---|---|---|
| FY09 | 60,941 | - | 56,30,063 | 1.08 | 6,05,298 | 10.07 |
| FY10 | 58,422 | (-)4.13 | 64,77,827 | 0.90 | 6,24,527 | 9.35 |
| FY11 | 71,016 | 21.56 | 77,95,313 | 0.91 | 7,93,307 | 8.95 |
| FY12 | 97,509 | 37.31 | 90,09,722 | 1.08 | 8,89,118 | 10.97 |
| FY13 | 1,32,601 | 35.99 | 101,13,281 | 1.31 | 10,36,460 | 12.79 |

Source: Figures of tax receipts are as per Union Finance Accounts of respective years; figures for 2012-13 are provisional.

### Indirect taxes – Relative Contribution

**1.8** **Table 1.3** depicts the growth trajectory of the various indirect tax components in GDP terms for the period FY09 to FY13. The share in respect of Central Excise and Customs revenue as a percentage of GDP has suffered an overall decline over the five year period. However, the percentage share of Central Excise in terms of GDP has registered a strong growth during FY13 in the wake of the budget changes (2012-13). The share of Service Tax as a percentage of GDP has been showing a rising trend since FY11. The relative revenue contribution of the major indirect taxes is depicted in **Chart 1.1**.

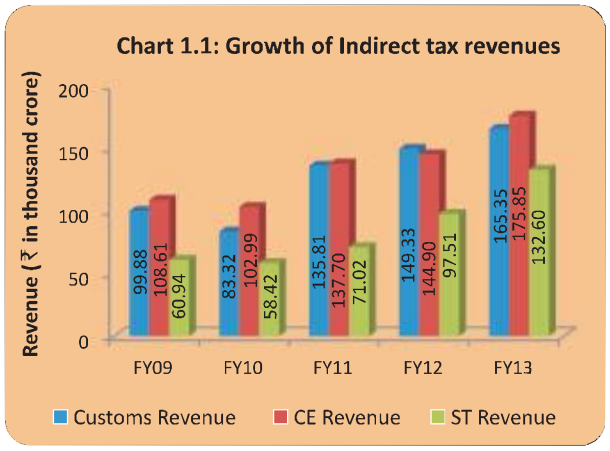



**Table 1.3: Indirect Taxes - percentage of GDP**

Cr. ₹

| Year | GDP | Customs revenue | Customs revenue as % of GDP | CE revenue | CE revenue as % of GDP | ST | ST revenue as % of GDP |
|---|---|---|---|---|---|---|---|
| FY 09 | 56,30,063 | 99,879 | 1.77 | 1,08,613 | 1.93 | 60,941 | 1.08 |
| FY 10 | 64,77,827 | 83,324 | 1.29 | 1,02,991 | 1.59 | 58,422 | 0.90 |
| FY 11 | 77,95,313 | 1,35,813 | 1.74 | 1,37,701 | 1.77 | 71,016 | 0.91 |
| FY 12 | 90,09,722 | 1,49,328 | 1.66 | 1,44,901 | 1.61 | 97,509 | 1.08 |
| FY13 | 101,13,281 | 1,65,346 | 1.63 | 1,75,845 | 1.74 | 1,32,601 | 1.31 |

Source: Figures of tax receipts are as per Union Finance Accounts of respective years; figures for 2012-13 are provisional.

[10] Para 3.21,Economic Survey 2012-13.

**Service Tax revenues from major contributing service categories**

**1.9** **Table 1.4** depicts Service Tax collected from major service categories. Besides the top revenue earners (banking and financial services, telecommunication, business auxiliary services, tax on General insurance premium), Service Tax categories introduced in the recent past such as renting of immovable property and works contract services are some of the major performing categories. Besides the service categories listed in the table below, services such as construction of residential complex, information technology software and consulting engineer services contributed significantly to Service Tax collections in the past few years.

**Table 1.4: Service Tax from major service categories**

Cr. ₹

| Year | Banking and Financial Services | Telecommn | Business Auxiliary Services | Tax on General Insurance Premia | Business Support Services | Renting of Immovable property | Works Contract | Manpower Recruitment | Maintenance and Repairs | Goods Transport by road |
|---|---|---|---|---|---|---|---|---|---|---|
| FY09 | 3,925.59 | 3,123.61 | 4,147.93 | 3,279.16 | 1,604.35 | 2,577.93 | 1,306.23 | 2,101.02 | 2,280.98 | 3,225.65 |
| FY10 | 4,066.05 | 2,884.94 | 3,646.54 | 3,125.54 | 1,934.92 | 2,015.24 | 1,848.87 | 2,077.41 | 2,221.14 | 2,644.01 |
| FY11 | 4,345.23 | 3,902.31 | 3,916.81 | 3,876.57 | 2,688.86 | 2,829.24 | 3,092.08 | 2,869.87 | 2,522.38 | 3,040.13 |
| FY12 | 5,875.91 | 5,402.45 | 5,255.64 | 5,233.57 | 4,344.88 | 4,339.77 | 4,179.00 | 3,847.14 | 3,494.98 | 3,407.24 |
| FY13 | 4,964.37 | 7,538.34 | 5,030.51 | 6,320.91 | 4,368.45 | 4,773.62 | 4,454.87 | 4,431.84 | 2,998.57 | 3,429.34 |

Source: Union Finance Accounts of respective years. Figures of FY13 are as per provisional Finance Accounts.

The Accounts pertaining to FY13 currently depict revenue receipts against 120 heads (one new accounting code 00441480 with description 'Other taxable services', besides the earlier 119 category-wise codes). However, it is noted that subsequent to the introduction of the negative list effective from July 2012, and until the issue of CBEC Circular no.165/16/2012 dated 20 November 2012, there were no specific service categories for accounting purposes. All accounting for the purpose of payment of Service Tax under the Negative List approach was under the head "All Taxable Services"- 00441089. [11] Hence, the figures under the respective Service category heads would need to be adjusted to arrive at the actual contribution from the respective categories for FY13.

**Service Tax receipts vis-à-vis cenvat credit utilized**

**1.10** One of the major changes in the evolution of Service Tax was the introduction of the facility to avail and utilise cenvat credit.[12] Subsequent changes in law resulted in expansion

[11] prescribed vide Circular 161/12/2012 dated 6th July, 2012 .

[12] through the Service Tax Credit Rules 2002, later replaced by the Cenvat Credit Rules, 2004.

in scope in due course to cover cross-utilization among goods and services, which in effect would be a step towards harmonization of the two taxes, Service Tax and Central Excise.

A service provider can avail credit of Service Tax paid on input services related to his service activities and Central Excise duties paid on inputs and /or capital goods and can utilize credit so availed in payment of Service Tax. We have depicted a comparative statement showing the details of Service Tax paid in cash through personal ledger account (PLA) and through cenvat credit account during the last five years in **Table 1.5.**

**Table 1.5: Service Tax: PLA and Cenvat utilisation**

Cr. ₹

| Year | ST paid through PLA | | ST paid through cenvat credit* | | ST paid from cenvat credit as % of PLA payment |
|---|---|---|---|---|---|
| | Amount | % increase from previous year | Amount | % increase from previous year | |
| FY09 | 60,941 | 18.79 | 18,457 | 72.30 | 30.29 |
| FY10 | 58,422 | (-)4.13 | 25,880 | 40.22 | 44.30 |
| FY11 | 71,016 | 21.56 | 29,418 | 13.67 | 41.42 |
| FY12 | 97,509 | 37.31 | 13,536 | (-)53.99 | 13.88 |
| FY13 | 1,32,601 | 35.99 | 5,507 | (-)59.32 | 4.15 |

Source: Figures furnished by the Ministry[13]; figures for 2012-13 are provisional.

**Table 1.5** shows that percentage of Service Tax paid through cenvat credit to PLA (cash) has been declining over the past two years (however, final figures are yet to be received for FY13).

### Budgeting issues in Service Tax

**1.11** **Table 1.6** presents a comparison between the Budget Estimates, Revised Estimates and the corresponding actual revenue receipts in respect of Service Tax.

**Table 1.6: Service Tax - Budget Estimates, Revised Estimates and Actual receipts**

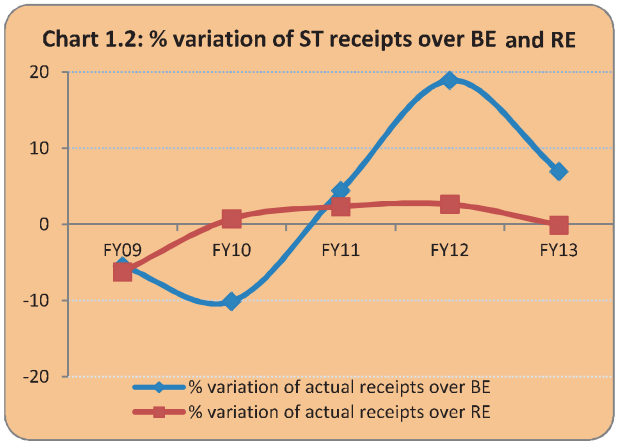
Cr. ₹

| Year | Budget estimates(BE) | Revised estimates(RE) | Actual receipts(AR) | Difference between AR and BE | Difference as per cent of BE | Difference between AR and RE | Difference as per cent of RE |
|---|---|---|---|---|---|---|---|
| FY09 | 64,460 | 65,000 | 60,941 | (-)3,519 | (-)5.46 | (-)4,059 | (-)6.24 |
| FY10 | 65,000 | 58,000 | 58,422 | (-)6,578 | (-)10.12 | 422 | 0.73 |
| FY11 | 68,000 | 69,400 | 71,016 | 3,016 | 4.44 | 1,616 | 2.33 |
| FY12 | 82,000 | 95,000 | 97,509 | 15,509 | 18.91 | 2,509 | 2.64 |
| FY13 | 1,24,000 | 1,32,697 | 1,32,601 | 8,601 | 6.94 | (-)96 | (-)0.07 |

Source: Union Finance Accounts and receipt budget documents of respective years. Figures of FY13 are as per provisional Finance Accounts.

[13] vide Ministry's letter dated 9 January 2014; final figures for FY13 are awaited.

**Table 1.6** indicates that actual receipts were lower than the budget estimates during FY09 and FY10. Service Tax revenues pertaining to FY10 fell short of the budget estimates by 10.12 per cent. The reduction in the rate of Service Tax from 12 per cent to 10 per cent and the overall economic recession contributed to the negative growth of around 5 per cent in comparison to the revenue collected in FY09. During the last three years (FY11, FY12 and FY13), the collections have again shown a rising trend. The collections in FY13 exceeded the budget estimates by over 6.93 per cent. Based on figures for recent years, we have plotted in **Chart 1.2,** the difference between actual receipts and budget estimates/revised estimates expressed as a percentage of budget estimates/revised estimates. As the chart indicates, the variation of actual receipts from the revised estimates was relatively low during the past few years. The variation was below 1 per cent during FY10 and FY13.




**Systemic issues in Service Tax administration**

**1.12** We sought data from CBEC concerning Service Tax revenue forgone on account of exemptions etc.[14] The corresponding revenue forgone details for direct taxes and other indirect taxes such as Central Excise and Customs have been laid before Parliament each year during the respective budgets commencing with the budget of 2006-07. CBEC replied that the data in respect of Service Tax is not being maintained due to the following limitations:[15]

a) "Until 30 June 2012, specific services were only liable to be taxed. Other services were technically not liable to be taxed and could not be said to be leading to any revenue forgone. After 1 July 2012, all services are liable to be taxed other than the Negative list. Many of the services in the Negative list related to such entries that do not fall within the powers of the Union in the Constitution or cannot be taxed for administrative reasons (as it is not possible to ascertain the value of such services e.g. finance services). Thus, the revenue included in these services cannot be said to be revenue forgone.

b) At present, all services are taxed uniformly at the rate of 12 per cent. Some of the abatements that are given through exemption notifications are necessary to capture the service portion in composite contracts involving rate of both goods and services in accordance with the Constitution (eg. Works contract, food and

[14] Data sought for the period FY04 to FY13.
[15] CBEC's letter dated 7 January 2014.

catering). Much other abatement has been given for administrative simplicity in order to provide for the cost inputs in the case of transportation sector. Thus, these cannot be treated as revenue forgone.

c) In the case of service, there are serious limitations of data availability of the contribution of services in respect of areas where some exemptions have been granted."

We observe that besides the fact that the reply indicates the Ministry's acceptance of non-maintenance of revenue forgone figures for Service Tax in the absence of adequate data, it may also imply that the Ministry is not in a position to do a tax gap analysis. The Ministry would need to consider ways to estimate revenue forgone figures of Service tax. In respect of Central Excise, its approach has been to extrapolate data from ACES (duty forgone due to the operation of area based exemptions scheme has been obtained separately from the concerned Central Excise Zones and added).[16]

**Assessee base**

**1.13** "Assessee" means any person who is liable to pay Service Tax and includes his agent as per definition in Section 65(7) of the Finance Act, 1994 (as amended).

**Table 1.7** depicts the data (pertaining to FY09 to FY13) of the number of persons registered with the Service Tax department under section 69 of the Finance Act. The figures shown here are as furnished by the Ministry in October 2013.

**Table 1.7: Tax base in Service Tax**

| Year | No of taxable services | No. of ST registrations | % growth over previous year | No. of assessees who filed returns |
|---|---|---|---|---|
| FY09 | 106 | 12,26,100 | - | 7,641 |
| FY10 | 109 | 13,39,812 | 9.27 | 55,405 |
| FY11 | 117 | 14,94,449 | 11.54 | 1,79,344 |
| FY12 | 119 | 16,76,105 | 12.16 | 7,06,535 |
| FY13 | * | 18,71,939 | 11.68 | 6,08,013 |

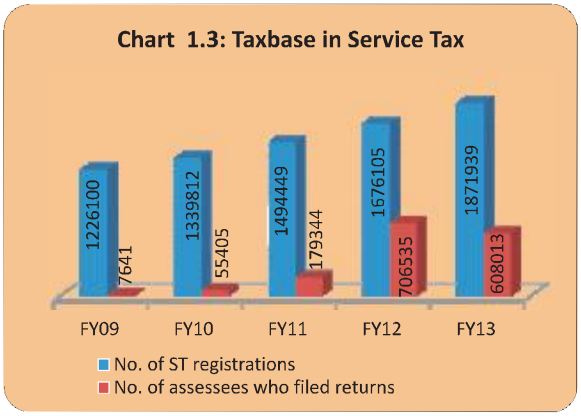
Source: Figures furnished by the Ministry.[17]
*wef 01.07.2012, most activities involving consideration with a few exclusions/exceptions are liable to ST.

**Table 1.7** indicates that the number of registered persons had increased by about 50 per cent from FY09 to FY13. The figures suggest that the number of registered persons filing statutory returns had been rising steadily upto FY2012. However, there was a decline in FY13 when the number of assessees who filed returns fell short of the previous year's

[16] Annexure 12 of Receipts Budget and "Statement of Revenue Forgone" for the year 2012-13 presented to Parliament during Budget 2013-14.

[17] vide CBEC's letter dated 11 October 2013. Reconciliation of figures with figures provided for AR no.17 of 2013 is awaited.

figures by approximately 1 lakh. Further, only 33 per cent of registered persons filed returns in FY13. **Chart 1.3** depicts the position based on the data furnished by the Ministry.




The Ministry needs to analyse the reasons for the low percentage of registered persons filing returns. The sharp fall in the number of assessees who filed returns during FY13 is a matter of specific concern.

Further, the Ministry needs to consider means to arrive at/estimate the number of assessees as defined in Section 65(7) of the Finance Act rather than just the number of persons who have taken registration under section 69 or the number of persons who have filed returns under Section 70.

**Broadening of Service Tax Base - Creation of Special Cells in Commissionerates**

**1.14** Broadening of tax base is necessary to ensure growth of revenue. With increasing reliance on voluntary compliance, it becomes important for the department to put in place an effective mechanism for collecting information from various sources to identify persons who were liable to pay tax but had avoided payment so as to bring them into the tax net thereby broadening the tax base.

Director General of Service Tax prepared and circulated a plan of action to the Chief Commissioners on 26 May 2003. The Plan required the field formations to obtain information on unregistered service providers from different sources such as yellow pages, newspaper advertisements, regional registration authorities and websites, information from municipal corporations and major assessees including PSUs and private sector organisations regarding various services being availed by them etc. Subsequently, CBEC issued instructions to create a special cell in each Commissionerate to identify potential assessees.[18] **Table 1.8** depicts the status of creation of special cells in the Commissionerates.

**Table 1.8: Status of creation of Special Cells in Commissionerates**

| No. of special cells formed as on 31 March 2014 | No. of new ST registrants since formation of special cells | Registrations out of Column (2) based on initial identification by special cells |
|---|---|---|
| Col (1) | Col (2) | Col (3) |
| 96 | 61,163 | 8,401 |

Source: Figures furnished by the Ministry.[19]

[18] vide CBEC's instruction dated 23 November 2011.
[19] vide CBEC's letter dated 7 January 2014.

It is observed that although special cells have been created in all Commissionerates carrying out Service Tax functions, registration of a relatively small number of persons is attributable to the role of the special cells.

**Tax Administration in Service Tax**

**Finalisation of Strategic Plan**

**1.15** CBEC set for itself a target date (15 December 2013) for finalisation of its Strategic Plan for the next 5 years.[20] The Strategic Plan is yet to be approved. As the Strategic Plan would guide the progress of CBEC (and subordinate formations) in fulfilment of its Mission as well as its stated Vision, concerted efforts need to be made in this direction.

**Scrutiny of Returns**

**1.16** CBEC introduced the concept of self-assessment in respect of Service Tax in 2001. With the introduction of self-assessment, the department also envisaged the provision of a strong compliance verification mechanism, *inter alia,* through scrutiny of returns. Even in the self-assessment era, the primary function of departmental officers continues to be assessment or confirmation of assessment as it is they who have a statutory liability to ensure correctness of tax payment.[21] This is undertaken through scrutiny of Service Tax returns, which in turn are to be selected on the basis of risk parameters. The Manual for Scrutiny of Service Tax Returns, 2009 envisages that scrutiny is to be carried out in two stages i.e. preliminary scrutiny of the return which is to be carried out by ACES (Automation of Central Excise and Service Tax) application and detailed scrutiny of assessment which is to be carried out manually on the returns marked by ACES or otherwise.

**Preliminary Scrutiny of Returns**

**1.17** The purpose of preliminary scrutiny is to ensure completeness of information, timely submission of the return, timely payment of duty, arithmetical accuracy of the amount computed as duty and identification of non-filers and stop-filers.[22] Based on data furnished by CBEC, we have depicted the performance of the department in carrying out preliminary scrutiny of returns in **Table 1.9.**

**Table 1.9: Preliminary Scrutiny of Service Tax Returns**

| Year | No of returns filed in ACES* | No. of returns marked for R&C | % of returns marked for R&C | No. of returns cleared after R&C | No. of returns pending for R&C | % of marked returns pending correction |
|---|---|---|---|---|---|---|
| FY11 | 1,39,431 | 1,12,302 | 80.54 | 22 | 1,12,280 | 99.9 |
| FY12 | 9,09,718 | 7,00,066 | 76.95 | 83,664 | 6,16,397 | 88 |
| FY13 | 22,42,332 | 18,42,137 | 82.15 | 3,67,256 | 14,74,874 | 80 |

*As on 31 March of respective year.

[20] RFD for 2012-13, Section 2 and 3.
[21] Manual for Scrutiny of Service Tax Returns, 2009, Para 1.2.1A.
[22] Manual for Scrutiny of Service Tax Returns, 2009 , Para 1.2.1.

We observed that a very high percentage of cases, scrutinized by ACES each year is marked for review and correction; the percentage ranged between 75 and 83 per cent during FY11 to FY13 period. Further, the number of marked returns still pending for review and correction process as on 31 March each year has been showing a sharply rising trend; this is not a healthy sign considering the fact that mandatory electronic filing of Service Tax returns had been introduced with effect from 1 October 2011 and hence returns scrutiny through ACES should have stabilized at least by 2012-13.[23] One of the main intentions behind introducing preliminary scrutiny online was to release manpower for detailed manual scrutiny, which could then become the core function of the Range/Group;[24] the high figures of pendency for correction after R & C identification indicates that the same is far from being achieved.

The very high percentage of scrutinized returns being thrown up for review and correction (R & C) and resultant high number of returns pending corrective action are indicative of deficiencies in the ACES application which the department needs to address urgently.

**Detailed Scrutiny of Service Tax Returns**

**1.18** The purpose of detailed scrutiny is to establish the validity of information furnished in the tax return and to ensure correctness of valuation, availing of cenvat credit, classification and effective rate of tax applied after taking into consideration the admissibility of exemption notification availed etc.[25] Unlike preliminary scrutiny, detailed scrutiny is to cover only certain selected returns, identified on the basis of risk parameters, developed from the information furnished in the returns submitted by the taxpayers.[26]

Based on data furnished by CBEC, we have depicted the performance of the department in carrying out detailed scrutiny of returns in **Table 1.10.**

**Table 1.10: Detailed Scrutiny of Service Tax Returns**

| Year | Returns marked and pending for detailed scrutiny upto 31 March | Returns pending detailed scrutiny for over 6 months as on 31 March | Age-wise analysis of pendency | | |
|---|---|---|---|---|---|
| | | | 6 month to 1 year | between 1-2 years | > 2 years |
| FY11 | 6,232 | 4,046 | 3,550 | 351 | 145 |
| FY12 | 11,425 | 8,045 | 5,667 | 1,959 | 419 |
| FY13 | 23,838 | 21,095 | 19,791 | 934 | 370 |

Source: Figures furnished by the Ministry.

**Table 1.10** shows the pendency position in respect of detailed scrutiny. As per prescribed norms, only 2 per cent of returns need to be examined in detailed scrutiny.[27]

[23] vide Government of India, Ministry of Finance, Dept of Revenue notification no.43/2011- ST dated 25.8.2011.
[24] Manual for Scrutiny of Service Tax Returns, 2009, Para 1.2B.
[25] Manual for Scrutiny of Service Tax Returns, 2009, Para 1.2.1.
[26] CBEC Circular 113/7/2009-ST dated 23 April 2009.
[27] Manual for Scrutiny of Service Tax Returns 2009, Para 4.2A.

Hence, the total number of returns to be scrutinised in a whole year would be very low in respect of any range (the total number pending across all ranges in the country was only 23,838 as on 31 March 2013). It is a cause for concern that there are several selected returns pending scrutiny for periods even exceeding 2 years. Other than in certain types of cases such as those involving fraud, there is no scope for issue of a demand notice to an assessee beyond 18 months from the date of filing of returns by assessee.[28] It is essential that the department takes steps to analyse the reasons for long pendency so as to ensure revenue due to the Government is adequately safeguarded.

We also observed that the format prescribed at Annexure XII-B of Monthly Technical Report (MTR) being forwarded by field Commissionerates to DGST, Mumbai is only of 'Scrutiny of Returns' and not of preliminary and detailed scrutiny separately. The format of MTR Annexure on scrutiny of returns needs to be revised so as to facilitate any meaningful monitoring by DGST of this crucial element of compliance verification. The format of the relevant MTR Annexure and the non-availability of consolidated data with one authority in respect of detailed scrutiny may point to a tendency within the department of blurring of the distinction between preliminary scrutiny and detailed scrutiny in respect of Service Tax. It is to be noted that in April 2009, CBEC while circulating the Returns Scrutiny Manual for Service Tax had specifically introduced the bifurcation of scrutiny into two parts, preliminary scrutiny and detailed scrutiny. CBEC felt that facilitating preliminary scrutiny online would enhance efficiency and release manpower for detailed manual scrutiny, which could then become the core function of the Range/Group.[29]

We also reiterate our concern pointed out in Para 1.88 of the last Audit Report that the low percentage of returns currently examined in detailed scrutiny coupled with the huge shortfall in coverage of high revenue units (refer Para 1.19, 3.7 and 3.8 of this Report) may be grossly inadequate to ensure a robust compliance verification mechanism.[30]

**Audit of assessees by department**

**1.19** Modernisation of indirect tax administration in India is based on the Canadian model. The new audit system EA 2000 has four distinct features: scientific selection after risk analysis, emphasis on pre-preparation, scrutinising of business records against statutory records and monitoring of audit points. Audit processes include preliminary review, gathering and documenting systems' information, evaluating internal controls, analysing risks to revenue and trends, developing audit plan, actual audit, preparation of audit findings, reviewing the results with the assessee/range officer/Divisional Assistant Commissioner and finalisation of the report.

---

[28] '18 months' in section 73(1) of the Finance Act substituted for '1 year' by Finance Act 2012 w.e.f 28.5.2012.

[29] Manual for Scrutiny of Service Tax Returns, 2009, Para 1.2B.

[30] AR no 17 of 2013, Para no 1.88, Page 27.

The Audit Framework consists of three parts. Directorate General of Audit and the field Commissionerates share the responsibility of administration of Audit. While the Directorate is responsible for collection, compilation and analysis of audit results and its feedback to CBEC to improve tax compliance and to gauge levels of client satisfaction, audit parties from Commissionerates undertake audit in terms of EA 2000 audit protocol. In order to improve audit quality, CBEC took the assistance of Asian Development Bank in developing audit manuals, risk management manuals and manuals to train auditors in EA 2000 and CAATs, which prescribe detailed processes for conduct of audit. We tabulated (**Table 1.11**) details of Service Tax units due for audit (during FY13) by audit parties of the Commissionerates vis-à-vis units audited.

**Table 1.11: Audits of assessees conducted during FY13– Service Tax**

| Slab of annual duty (PLA+CENVAT) | Number of units due | Number of units planned | Number of units audited | Shortfall in audit (%)* |
|---|---|---|---|---|
| Units paying ST > ₹ 3 crore (Category A) | 3,553 | 2,561 | 1,797 | 49 |
| Units paying ST between ₹ 1 and 3 crore (Category B) | 3,098 | 2,625 | 1,560 | 50 |
| Units paying ST between ₹ 25 lakh and ₹ 1 crore (Category C) | 4,968 | 3,592 | 2,574 | 48 |
| Units paying ST < ₹ 25 lakh (Category D) | 71,946 | 10,346 | 8,007 | 89 |

Source: Figures furnished by the Ministry. * Shortfall in audit is arrived at by comparing units audited with number of audits due.

The above table indicates that during FY13, there was a huge shortfall in the Service Tax audits conducted, as compared with audits due, across all categories of units. Shortfall was nearly 50 per cent of category A units (mandatory units) and category B units (high revenue non-mandatory units) in FY13. Thus, the position has not improved since the previous year.[31] Department audited 8,007 category D units while leaving unaudited 1,756 and 1,538 category A and B units respectively. The wide gap between the units planned and audited (27 per cent shortfall in respect of all categories put together) is a matter of concern since it is indicative of poor planning.

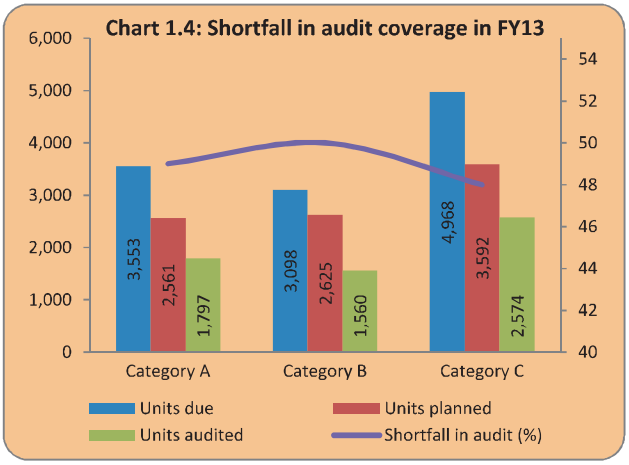



**Chart 1.4** depicts the position of audits due, planned and conducted in

[31] AR no 17 of 2013, Para 1.83, Page 26.

FY13. The huge shortfall (49 per cent) in the number of category A units audited during the year implies that with regard to performance in respect of audits of Service Tax units, CBEC's performance falls even below the lowest target/ criteria value in its RFD document for 2012-13 (achievement of 60 per cent is taken as poor).[32]

The Ministry stated vide ATN to Para 1.82 of CAG's Audit Report AR no. 17 of 2013 that the Board has issued directions to Chief Commissioners vide letter dated 16 March 2012 for curtailing the practice of auditing large number of non-mandatory units at the cost of mandatory units.

**Delay in finalization of cases of provisional assessment**

**1.20** Rule 6(4) of Service Tax Rules, 1994 provides that where an assessee is unable to correctly estimate, on the date of deposit, the actual amount payable towards Service Tax, he may request the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, to permit payment of Service Tax on provisional basis. The provisions of the Central Excise Rules relating to provisional assessment would, except so far as they relate to execution of bond, apply to such cases of assessment.

**Table 1.12** depicts the details of pendency of provisional assessment cases during the last three years.

**Table 1.12: Pendency of cases of provisional assessment**

Cr. ₹

| Year | Cases pending at the end of year | Revenue involved | Age-wise break up of pendency | | | |
|---|---|---|---|---|---|---|
| | | | Below 6 months | 6 - 12 months | 1 - 5 years | Over 5 years |
| FY11 | 33 | 2338.89 | 3 | 2 | 18 | 10 |
| FY12 | 24 | 2346.75 | 1 | 2 | 11 | 10 |
| FY13 | 26 | 2032.54 | 2 | 5 | 10 | 9 |

Source : Figures furnished by the Ministry.

The data furnished by the Ministry indicates that only 26 provisional assessment cases in Service Tax were pending finalization as of 31 March 2013. However, it is a matter of concern that the number of cases pending for over 5 years constitutes 34.6 per cent of the total number. Further, there has not been any significant decline over the past three years in the number of cases falling under this category. This is notwithstanding the fact that the general rule is that all cases of provisional assessment are to be finalised within a maximum period of 6 months.[33] The proviso to the rule however enables extension by Commissioner/ Chief Commissioner respectively for upto one year/ such further time as may be deemed fit, on sufficient cause being shown and with reasons to be recorded in writing.

[32] CBEC's RFD for 2012-13, Section 2, Page 5.
[33] Rule 7 of the Central Excise Rules 2002.

**Anti-evasion**

**1.21** Both DGCEI as well as the Central Excise and Service Tax Commissionerates have well-defined roles in the task of detection of cases of evasion of Service Tax. While the Commissionerates, with their extensive database about units in their jurisdiction and presence in the field are the first line of defense against duty evasion, DGCEI specializes in collecting specific intelligence about evasion of substantial revenue. The intelligence so collected is shared with the Commissionerates. Investigations are also undertaken by DGCEI in cases having all India ramifications.

**Tables 1.13(a)** and **1.13(b)** depict the performance of DGCEI and the Commissionerates pertaining to the past three years. We have also indicated the corresponding figures in respect of cases of Central Excise detections.

**Table 1.13(a): Anti-evasion performance of DGCEI**

Cr. ₹

| Year | Detections | | | | Voluntary Payments during Investigation | |
|---|---|---|---|---|---|---|
| | Central Excise | | Service Tax | | Central Excise | Service Tax |
| | No. | Amount | No. | Amount | Amount | Amount |
| FY11 | 732 | 1,355.65 | 458 | 4,352.12 | 137.19 | 293.94 |
| FY12 | 450 | 1,139.63 | 452 | 4,919.03 | 255.23 | 433.84 |
| FY13 | 458 | 2,940.22 | 835 | 5,131.23 | 1,018.96 | 880.08 |

Source: Figures furnished by the Ministry.

**Table 1.13(b): Anti-evasion performance of Commissionerates**

Cr. ₹

| Year | Detections | | | | Voluntary Payments during Investigation | |
|---|---|---|---|---|---|---|
| | Central Excise | | Service Tax | | Central Excise | Service Tax |
| | No. | Amount | No. | Amount | Amount | Amount |
| FY11 | 2,854 | 5,564.47 | 2,959 | 4,200.03 | 711.31 | 894.36 |
| FY12 | 2,877 | 2,787.98 | 3,403 | 6,747.63 | 965.17 | 823.23 |
| FY13 | 2,150 | 3,415.29 | 5,875 | 7,826.61 | 482.48 | 2,818.71 |

Source : Figures furnished by the Ministry.

The number of Service Tax cases and the amounts detected by DGCEI including its zonal offices grew significantly during 2012-13 when compared to the number of cases detected in 2011-12 and 2010-11. The amount detected in respect of Service Tax evasions was more than double of that detected in Central Excise during 2012-13.

At the Commissionerates also, the position was similar as there was a steady growth in detection of Service Tax evasions during the three year period. The amounts detected in Service Tax were more than double the corresponding figures in Central Excise in 2012-13 and 2011-12.

DGCEI's detections of Central Excise and Service Tax evasions taken together maintained a steady rise in terms of amounts detected over the 3-year period (₹5,707.77 crore, ₹ 6,058.66 crore and ₹ 8,071.45 crore during the years 2010-11, 2011-12 and 2012-13

respectively); the number of detections also increased to 1,293 in 2012-13 from 902 in 2011-12 after going through a decline in 2011-12 when compared to 1,190 in 2010-11.

Comparing the Central Excise and Service Tax detections by Commissionerates similarly, we observe that the number of cases detected rose steadily over the three year period. The amounts detected in Central Excise and Service Tax also grew in 2012-13 to ₹ 11,242 crore.

### Cost of collection

**1.22** We have depicted the expenditure incurred during the last three years in collecting Central Excise duty and Service Tax along with the corresponding figures of total collection in **Table 1.14**. The Ministry could not provide split-up of figures of cost of collection in respect of Central Excise and Service Tax.

**Table 1.14: Cost of collection**

Cr. ₹

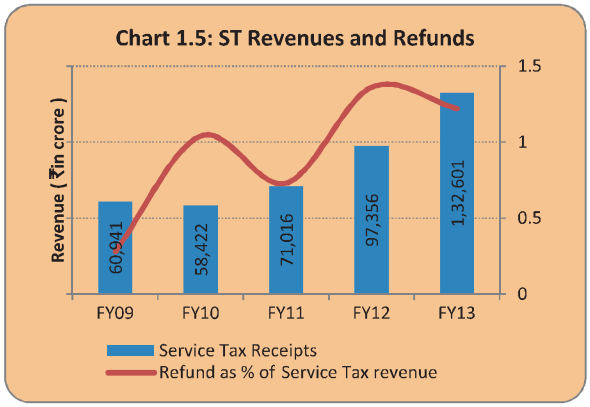
| Year | Receipts from Central Excise | Receipts from Service Tax | Total receipts | Cost of collection | Cost of collection as % of receipts |
|---|---|---|---|---|---|
| FY11 | 1,37,901 | 71,016 | 2,08,917 | 2,072 | 0.99 |
| FY12 | 1,44,540 | 97,356 | 2,41,896 | 2,262 | 0.94 |
| FY13 | 1,75,845 | 1,32,601 | 3,08,446 | 2,446 | 0.79 |

Source: Figures for Receipts are from Union Finance Accounts of respective years; FY13 data is based on provisional figures; Cost of collection figures are from the Ministry.

Notwithstanding automation and extensive use of ICT, cost of collection showed a rising trend in absolute terms. Expressed in terms of percentage of receipts however, cost of collection which used to be approximately 1 percent (figures for FY11 and FY 12) fell to 0.79 in 2012-13. The cost of collection in percentage terms for 2012-13 is comparable with the cost of collection figures for direct taxes which has generally been below 0.75 percent.[34]

### Refunds

**1.23** Refund of taxes paid on services exported and taxes paid on input services used in export became possible through provisions introduced in FY05. Subsequent amendments resulted in expansion of scope to cover refund of taxes paid on inputs on export of services (FY06) as also reimbursement of taxes paid on input services used in export of goods. We tabulated the refunds disbursed by the




[34] C & AG's Audit Report no 27 of 2011-12,Para 1.5.4, Page 15.

department during the period FY09 to FY13 in **Table 1.15(a)**.[35]

**Table 1.15(a): Receipts and Refunds in Service Tax**

Cr. ₹

| Year | Service Tax Receipts | Refund | Refunds as % of Service Tax revenue |
|---|---|---|---|
| FY09 | 60,941 | 169.04 | 0.28 |
| FY10 | 58,422 | 606.56 | 1.04 |
| FY11 | 71,016 | 520.12 | 0.73 |
| FY12 | 97,356 | 1,327.56 | 1.36 |
| FY13 | 1,32,601 | 1,615.52 | 1.22 |

*Source: ST receipts from Union Finance Accounts; FY13 figures based on provisional data.
Figures for Refunds are from Pr.CCA, CBEC.

The table shows that during the period depicted (FY09 to FY13), the total refunds each year was within 2 per cent of Service Tax receipts. **Chart 1.5** also depicts the same position graphically.

### Disposal of Refund claims

**1.24** **Table 1.15(b)** depicts the status of disposal of refund claims by the department. The delay depicted is in terms of time taken from the date of receipt of refund application along with all details required for processing the claims.

**Table 1.15(b): Disposal of refund claims in Service Tax**

Cr. ₹

| Year | OB plus claims received during the year | No of claims disposed during the year | | | | | | Interest payments | |
|---|---|---|---|---|---|---|---|---|---|
| | | Total number of disposals | within 3 months and % of disposals | Claims disposed of with delay | | | | | |
| | | | | < 3 months | 3 to 6 months | 6 months to 1 year | > 1 year | No of cases | Interest paid |
| FY11 | 27,156 | 17,477 | 13,440 (77%) | 762 | 784 | 772 | 1,719(10%) | 0 | 0 |
| FY12 | 27,120 | 18,306 | 13,209 (72%) | 672 | 465 | 568 | 3,392 (8%) | 2 | 0.02 |
| FY13 | 26,672 | 15,897 | 12,328 (77%) | 855 | 717 | 308 | 1,689 (11%) | 1 | 0.12 |

Source: Figures furnished by the Ministry.

The data indicates that approximately 75 per cent of the Service Tax related refund claim disposals are carried out within the prescribed period of 3 months.[36] We observed that interest, amounting to ₹ 0.12 crore, was paid only in respect of one case in FY13 (total interest paid in FY12 was ₹ 0.02 crore in respect of 2 claims). However, that the department has been taking over 3 months to dispose of nearly 25 per cent of refunds applications (with delay exceeding 1 year in respect at least 10 per cent of the cases) does not reflect well on

[35] Refunds are shown in the Finance Accounts under the subhead (c) - Deduct Refunds under the minor head opened under 0044 for each service category.

[36] Section 11BB of the Central Excise Act made applicable to Service Tax by section 83 of the Finance Act 1994 (as amended).

its performance as regards taxpayer services. As time-bound disposal of refund claims is among the actions identified by CBEC in its RFD for 2012-13 towards fulfilling one of its major objectives, viz, improving taxpayer services, it is essential that the Board analyses the reasons for delay subsequent to receipt of all required documents essential for processing refund claims.

Based on the data furnished by the Ministry, we have depicted an age-wise analysis of refund cases pending disposal for more than 3 months as on 31 March of FY11, FY12 and FY13 in **Table 1.15(c)**.

**Table 1.15 (c): Age-wise pendency of ST refund cases as on 31 March**

Cr. ₹

| Year | OB plus claims received in the year* | Refund claims pending beyond 3 months as on 31 March | | Refund claims pending for | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | between 3 months and 180 days | | between 180 days and 1 year | | over 1 year | |
| | | Number | Amount | Number | Amount | Number | Amount | Number | Amount |
| FY11 | 24,385 | 6,908 (28%) | 30,941.21 | 2,675 | 7,729.55 | 1,186 | 10,162.60 | 3,047 | 13,049.06 |
| FY12 | 24,412 | 6,104 (25%) | 60,756.81 | 2,889 | 25,907.33 | 1,387 | 20,283.33 | 1,828 | 14,566.15 |
| FY13 | 23,803 | 7,906 (33%) | 41,874.26 | 3,970 | 19,259.61 | 1,854 | 10,758.42 | 2,082 | 11,856.23 |

*Claims pending for upto 3 months (as on 31 March) excluded.

The data indicates that refund claims pending disposal for over 3 months (as of 31 March) rose in 2013. However, though the claims pending rose across all categories of delay periods, the amounts corresponding to the pending claims fell in respect of all categories; this could be indicative of higher priority being afforded by departmental officers towards the disposal of higher value claims.

### Accounting of interest on Refunds

**1.25** We had observed in our previous Audit Report that interest paid on belated refund disbursements was incorrectly depicted in the Accounts as a reduction in revenue.[37] The Ministry acknowledged (March 2013) that the matter of interest payable on refunds should be indicated as expenditure and should be reported to Parliament to bring transparency. It added that the matter was under discussion with CBDT and both Boards would take a uniform view. Subsequently, vide its ATN dated 11 February 2014, the Ministry submitted that interest paid on refund is a statutory obligation which is non-discretionary in nature and does not qualify to be called expenditure for the purpose of grants or appropriation to which Article 114 of the Constitution applies.[38]

However, we observe that the Parliamentary Accounts Committee (2013-14) in its Ninety-sixth Report (Fifteenth Lok Sabha) on 'Contravention of Constitutional Provisions by

[37] AR no 17 of 2013, Para 1.16, Page 19.
[38] ATN dated 11 February 2014 to Chapter 1 of AR no 17 of 2013.

Ministry of Finance: Expenditure incurred on Interest on Refunds without Parliamentary Approval' based on the action taken replies submitted by the Government on the Recommendations contained in the 66th Report, reiterated its earlier recommendation that the Ministry of Finance devise a procedure in conformity with the Constitutional provisions and the Financial Rules so that interest payments on tax refunds are shown in the Annual Financial Statement and Demand for Grants and receive Parliamentary approval as ordained by the Constitution.[39] The PAC added that the Department of Revenue has no option but to seek ex ante or ex post facto Parliamentary approval for interest payments of tax refunds.[40]

**Adjudication**

**1.26** Adjudication is the process through which departmental officers determine issues relating to tax liability of assessees. Such process may involve consideration of aspects relating to, *inter alia*, cenvat credit, valuation, refund claims, provisional assessment etc. A decision of the adjudicatory authority may be challenged in an appellate forum as per the prescribed procedures.

We have depicted in **Table 1.16(a)** an age-wise analysis of Service Tax adjudications; the position shown is of cases yet to be adjudicated as on 31 March of FY11, FY12 and FY13.

**Table 1.16(a): Pendency of adjudications in Service Tax**

Cr. ₹

| Year | Adjudications pending as on 31 March | | Adjudications pending for | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | < 1 year | | 1-2 years | | >2 years | |
| | No. | Amount | No. | Amount | No. | Amount | No. | Amount |
| FY11 | 18,834 | 61,770.73 | 14,496 | 54,143.55 | 2,897 | 7,238.06 | 1,441 | 389.12 |
| FY12 | 17,182 | 68,509.11 | 12,735 | 51,192.88 | 3,054 | 15,770.15 | 1,393 | 1,546.07 |
| FY13 | 22,690 | 64,599.24 | 18,212 | 48,156.56 | 3,382 | 14,723.70 | 1,096 | 1,718.98 |

Source: Figures furnished by Ministry.[41]

The data indicates that adjudications involving revenue implication of over ₹ 64,000 crore were pending finalisation as on 31 March 2013. The pendency in terms of numbers of adjudications crossed 22,000 in FY13. Over one thousand cases involving revenue of ₹ 1,718.98 crore were pending adjudication in March 2013 for periods exceeding two years.

**Table 1.16(b)** depicts the major categories of pending Show Cause Notices/unconfirmed demands.

[39] Ninety-sixth Report of PAC (2013-14) , Part II , Page 28.
[40] Ninety-sixth Report of PAC (2013-14) , Part II , Page 34.
[41] vide CBEC's letter dated 29 January 2014; reconciliation with figures furnished for AR no 17 of 2013 awaited.

**Table 1.16(b): SCNs pending and amount involved**

Cr. ₹

| Year | Failure to take registration | | Late filing of ST-3 Returns | | Delayed payment of ST | | Failure to pay ST | | Suppression of value of taxable services | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Nos. | Amt. | Nos. | Amt. | Nos. | Amt. | Nos. | Amt. | Nos. | Amt. |
| FY11 | 478 | 42.39 | 6,486 | 1.61 | 893 | 23.42 | 8,950 | 4,768.84 | 6,311 | 10,752.99 |
| FY12 | 408 | 59.94 | 1,434 | 0.07 | 650 | 7.89 | 7,815 | 12,615.23 | 5,037 | 12,626.62 |
| FY13 | 293 | 55.01 | 1,710 | 0.25 | 517 | 189.86 | 9,803 | 22,685.36 | 6,100 | 24,836.28 |

Source: Figures provided by the Ministry.[42]

In its ATN to para no. 1.72 of CAG's Audit Report AR no. 17 of 2013, the Ministry had stated that time and again the Board has stressed the need for disposal of pending unconfirmed demands. In the Annual Action Plan for the year 2012-13, the Board had directed all Chief Commissioners that disposal of pending unconfirmed demands may be done systematically so that at the end of the year there are no cases pending for more than 1 year.

The gravity of the situation is indicated by the fact that as of March 2013, an amount (₹ 64,599.24 crore) exceeding 45 per cent of Service Tax revenue collections for 2012-13 is under various stages of adjudication; this highlights the pressing need for the department to ensure speedy finalisation of adjudications. The need for a time frame for completion of adjudications in Service Tax pointed out in our previous Report is reiterated.[43]

**Pendency of Call book cases**

**1.27** Extant circulars on the subject envisage that cases that cannot be adjudicated due to certain reasons such as the department having gone in appeal, injunction from courts, contesting of CERA audit objections etc may be entered into the call book. Member (CX), vide D.O. F. No. 101/2/2003-CX-3 dated 03.01.2005, had emphasized that call book cases should be reviewed every month. Director General of Inspection (Customs and Central Excise) has reiterated the need for monthly review in his letter dated 29 December 2005 stating that review of call book cases may result in substantial reduction in the number of unconfirmed demands in call book.

We tabulated the data relating to performance of the department in respect of clearance of call book cases in Service Tax during recent years and observed that the pendency of call book cases continues to be very high. **Table 1.17** depicts the position of entries in call book pending removal.

[42] vide CBEC's letter dated 11 October 2013.
[43] AR no.17 of 2013, Para 1.73, Page 22.

**Table 1.17: Call book cases pending on 31 March**

Cr. ₹

| Year | Cases | Revenue involved | Age-wise pendency | | | |
|---|---|---|---|---|---|---|
| | | | < 1 year | 1-2 years | 2-5 years | > 5 years |
| FY11 | 6,430 | 15,667.47 | 3,003 | 2,065 | 1,135 | 227 |
| FY12 | 8,350 | 20,273.45 | 2,736 | 3,157 | 2,162 | 295 |
| FY13 | 8,637 | 21,339.85 | 3,203 | 2,451 | 2,673 | 310 |

Source: Figures furnished by the Ministry.[44]

The number of call book cases as well as the revenue involved rose during FY13, indicating the need for close monitoring including that of monitoring the efficacy of the monthly review process.

### Pendency of cases at various appellate forums

**1.28** Besides the adjudicating authorities, there are several other authorities including departmental appellate authorities, courts of law etc where issues of law, interpretations etc. are considered. Besides, the department also resorts to coercive recovery measures in many instances. Huge amounts of revenue thus remain outside the Consolidated Fund of India for substantial periods of time. Based on data furnished by CBEC, we have tabulated the pendency of cases at various forums in **Table 1.18**.

**Table 1.18: Pendency of cases at various appellate forums**

Cr. ₹

| Year | Number of cases pending with/for | | | | | Total no. of cases | Total revenue | Revenue pending for > 2 yrs |
|---|---|---|---|---|---|---|---|---|
| | Appellate Commissioners | CBEC/ Govt | CESTAT | Judiciary | Coercive recovery | | | |
| FY11 | 8,046 | 13 | 6,146 | 1,750 | 20,730 | 36,685 | 54,741.87 | 15,501.57 |
| FY12 | 11,235 | 2 | 8,456 | 1,551 | 22,426 | 43,670 | 80,095.89 | 15,611.29 |
| FY13 | 13,587 | 0 | 13,154 | 1,890 | 20,995 | 49,626 | 1,37,950.4 | 54,959.69 |

Source: Figures furnished by the Ministry.[45]

The number of cases (and the revenues involved) before appellate forums are on the rise as the data indicates. Cases involving revenue of more than ₹ 1 lakh crore were held up in appeals in FY13. As no effective action can be taken to recover arrears of revenue so long as an appeal is pending, particularly where a stay has been granted, locking up of such huge amounts of revenue becomes a matter of concern.

National Litigation Policy introduced in June 2010 is based on the recognition that Government and its various agencies are the predominant litigants in courts and tribunals in the country. Its aim is to transform Government into an efficient and responsible litigant. The budget speech for FY12 informed that steps had been initiated in FY11 for reducing

[44] vide CBEC's letter dated 29 January 2014; reconciliation with data furnished for AR no 17 of 2013 awaited.
[45] vide CBEC's letter dated 29 January 2014, reconciliation with figures furnished for AR no 17 of 2013 awaited.

litigation and focusing attention on high revenue cases. Instructions have been issued raising limit of tax effects below which tax disputes will not be pursued by Government in higher Courts of Appeal. These measures would enhance productivity of resources employed in raising revenue.

The Ministry had reported in its ATN to para no. 1.76 of audit report no. 17 of 2013, the no. of proposals received by it to file appeal in the Hon'ble Supreme Court was much higher than the number of cases where the appeals were actually filed. The Ministry had also intimated in March 2013 that a number of measures had been taken to expedite the disposal of appeals which include legislative amendments to enhance powers of Single Member benches, redistribution of the workload of Commissioner (Appeals) to achieve quicker disposal of pending appeals, extension of the facility of settlement of cases by Settlement Commission to Service Tax matters etc. However, the data (FY11 to FY13) indicates that pendency of appeals is still increasing.

The data of appeals pending for over 2 years as on 31 March 2013 is depicted below in **Table 1.19.**

**Table 1.19: Pendency of appeal cases as of 31 March 2013**

**Cr. ₹**

| Forum | Details of cases based on period of pendency | | | |
|---|---|---|---|---|
| | 2-5 years | | >5 years | |
| | No. | Amount | No. | Amount |
| Comm (Appeals) | 2,708 | 622.67 | 192 | 314.88 |
| CESTAT | 5,727 | 32,733.77 | 1,039 | 2,481.25 |
| High Court | 1,013 | 1105.85 | 377 | 450.18 |
| Supreme Court | 69 | 74.58 | 18 | 23.56 |

Source: Figures provided by the Ministry.

## Arrears of Tax

**1.29** The law provides for various methods of recovery of revenues raised but not realised. These include adjusting against amounts, if any, payable to the person from whom revenue is recoverable, recovery by attachment and sale of excisable goods and recovery through the district revenue authority.

**Table 1.20** depicts the performance of the department in respect of recovery of revenue arrears.

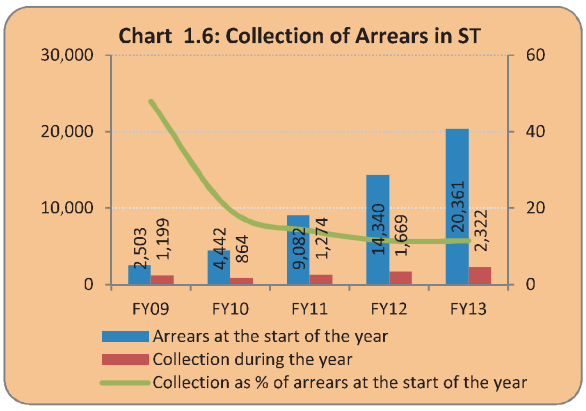
**Table 1.20: Revenue realization – Service Tax**

Cr. ₹

| Year | Amount in arrears at the commencement of the year | Collection during the year | Collection as % of arrears at the commencement of the year |
|---|---|---|---|
| FY09 | 2,503.09 | 1,198.68 | 47.89 |
| FY10 | 4,441.61 | 864.30 | 19.46 |
| FY11 | 9,081.73 | 1,273.65 | 14.02 |
| FY12 | 14,340.28 | 1,669.45 | 11.40 |
| FY13 | 20,361.46 | 2,321.69 | 11.40 |

Source: Figures furnished by the Ministry.[46]

The Ministry had reported various measures undertaken to boost tax arrears recovery such as intensifying efforts in the courts in the case of high money value cases, active follow-up of matters pending before BIFR etc., speedy implementation of favourable decisions, creation of computerized database on arrears of revenue and regular updation and review of the same, regular inspection of arrears of revenue of different formations and creation of dedicated team of officers for recovery of arrears. Besides, a "Handbook on recovery of arrears of revenue of Customs, Excise and Service Tax" had been compiled and circulated to all field formations to provide first-hand information to field formations for recovery of arrears.[47]




However, we observe from **Chart 1.6** that there has not been any significant change in the overall declining trend in realisation of arrears.

**Monitoring mechanism in Service Tax**

**1.30** We have compiled this chapter based on data mainly obtained through CBEC. CBEC provided data for the 3-year period FY11, FY12 and FY13 relating to various performance parameters such as preliminary and detailed scrutiny, refunds, arrears realisation, pendency of call book cases etc in August 2013. However, we observed that in some instances, data furnished did not tally with information furnished for the last Audit Report AR no 17 of 2013 and would need reconciliation by the department.[48] There is an urgent need to improve the quality of data and of monitoring aspects in respect of Service Tax. Authorities such as

[46] vide CBECs letter dated 29 January 2014; reconciliation with figures provided for AR no 17 of 2013 awaited.
[47] vide ATN to Para no. 1.51 of CAG's AR 17 of 2013.
[48] Refer Tables 1.7, 1.9(b), 1.15(a), 1.16, 1.17 and 1.18 in this Chapter.

Directorate General of Service Tax, Mumbai, Directorate General of Inspection, Customs and Central Excise, New Delhi, Directorate General of Central Excise (Intelligence), New Delhi etc. should ensure maintenance of reliable data for use, *inter alia*, by Audit. Review of the formats of Monthly Technical Report Annexures in Service Tax to ensure that important items such as conduct of detailed scrutiny are not lost sight of, is vital. There is no periodic return in the department which monitors the number of cases and amount of interest paid in respect of refunds. In the current scenario where there is no distinct accounting head for accounting interest on refunds, it is not clear how accurate and reliable the figures provided are. Analysis of data in respect of Service Tax similar to that carried out for Customs and Central Excise by the Directorate of Data Management needs to be carried out on regular basis.

Given the pace at which Service Tax revenues are growing (RE figure for Service Tax for FY14 is ₹ 1,64,927 crore as against actual collection of ₹ 1,32,601 crore in FY13), it is essential that CBEC reviews the adequacy of the extant systems for monitoring performance of its subordinate/field offices.[49]

**Impact of Audit Reports**

**1.31** Through our Audit Reports, we have been bringing to the notice of our stakeholders the significant audit observations raised during the course of audit. The audit observations featured in recent Audit Reports (including this Report) have been depicted category-wise in **Table 1.21.**

**Table 1.21: Observations on non-compliance in Service Tax**

Cr. ₹

| Year | Cenvat | Exemption | Interest | Non/ Short | Valuation | Miscellaneous | Total |
|---|---|---|---|---|---|---|---|
| FY09 | - | 24.93 | 1.86 | 330.91 | 8.12 | 9.73 | 375.55 |
| FY10 | 18.63 | 8.77 | 1.59 | 128.29 | 0.16 | 4.92 | 162.18 |
| FY11 | 33.15 | 9.81 | 0.50 | 140.02 | 13.08 | 8.18 | 204.74 |
| FY12 | 178.80 | - | 2.68 | 318.20 | - | 0.55 | 500.23 |
| FY13 | 48.82 | - | 4.55 | 211.76 | - | 0.62 | 265.75 |

During this period, we reported 851 audit paragraphs involving Service Tax totalling ₹ 1508.45 crore. The Government accepted audit observations in 815 audit paragraphs involving revenue of ₹ 1398.90 crore and recovered ₹ 395.09 crore. We have furnished the details in **Table 1.22.**

[49] Figures for FY13 are based on provisional accounts. RE figures for FY14 are from Receipt Budget 2014-15 (February 2014).

**Table 1.22: Objections featured in recent compliance Audit Reports –Service Tax**

Cr. ₹

| Year of AR | Paragraphs included | | Paragraphs accepted and /or rectificatory action taken | | | | | | Recoveries effected | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Pre printing | | Post printing | | Total | | Pre printing | | Post printing | | Total | |
| | No. | Amt | No. | Amt | No. | Amt | No. | Amt | No. | Amt | No. | Amt | No. | Amt |
| FY09 | 155 | 375.55 | 130 | 305.13 | 8 | 4.92 | 138 | 310.05 | 90 | 127.49 | 1 | 0.24 | 91 | 127.73 |
| FY10 | 194 | 162.18 | 175 | 121.31 | 9 | 2.60 | 184 | 123.91 | 112 | 33.05 | 9 | 2.60 | 121 | 35.65 |
| FY11 | 199 | 204.74 | 184 | 185.69 | 11 | 17.79 | 195 | 203.48 | 122 | 78.76 | 9 | 2.24 | 131 | 81.00 |
| FY12 | 152 | 500.23 | 150* | 498.65 | 1 | 0.52 | 151 | 499.17 | 88 | 84.58 | 4 | 0.85 | 92 | 85.43 |
| FY13 | 151 | 265.75 | 147* | 262.29 | - | - | 147 | 262.29 | 95 | 65.28 | - | - | 95 | 65.28 |
| **Total** | **851** | **1508.45** | **786** | **1373.07** | **29** | **25.83** | **815** | **1398.90** | **507** | **389.16** | **23** | **5.93** | **530** | **395.09** |

*includes cases where revenue implication was accepted though departmental lapse not accepted.

The observations discussed in the current Report also indicate the scope for further improvement in the department's performance on the revenue assessment and collection front.

This Report contains 151 audit observations having a total revenue implication totalling ₹ 265.75 crore. The Ministry/department had, as of February 2014, accepted 147 audit observations involving revenue of ₹ 262.29 crore and had reported recovery of ₹ 65.28 crore.[50] The Report includes 20 observations highlighting departmental lapses.

**Follow-up on Audit Reports**

**1.32** Public Accounts Committee, in their Ninth Report (Eleventh Lok Sabha) desired submission of remedial/corrective Action Taken Notes on all paragraphs of the Reports of the Comptroller and Auditor General of India, duly vetted by us, within a period of four months from the date of the laying of the Audit Report in Parliament.

Review of outstanding action taken notes on paragraphs relating to Service Tax contained in earlier Audit Reports on indirect taxes indicated that there is no pendency in submission of remedial Action Taken Notes.

[50] 147 cases include cases where revenue implication was accepted though departmental lapse has not been accepted.

# Chapter II

## Non Compliance with Rules and Regulations

**2.1** We examined the records maintained by assessees in relation to the payment of Service Tax and checked the correctness of tax payment and availing of Cenvat credit. We noticed cases of irregular availing and utilisation of Cenvat credit, non/short payment of Service Tax etc. involving revenue of ₹ 237.17 crore. We communicated these observations to the Ministry through 131 draft audit paragraphs. The Ministry/Commissionerate accepted (February 2014) the audit observations in 127 draft audit paragraphs and initiated/completed corrective action in all these cases involving revenue of ₹ 233.95 crore. We have furnished the details of these paragraphs in **Appendix II**. The Ministry contested three draft audit paragraphs and is yet to respond to one draft audit paragraph (February 2014).

### 2.2 Non-payment of Service Tax

### 2.2.1 Service Tax on Foreclosure charges

As per the erstwhile Section 65(12) of the Finance Act, 1994 (as amended), "banking and other financial services" *inter alia* includes lending. Ministry of Finance vide letter F. No. 345/6/2008-TRU dated 11-06-2008 clarified that pre-closure/foreclosure charges collected for early payment of loans, are leviable to Service Tax.

M/s Bajaj Auto Finance Ltd in Pune I Commissionerate collected ₹ 12.38 crore on account of foreclosure charges of loans during April 2007 to March 2011, on which Service Tax amounting to ₹ 1.41 crore was not paid which was recoverable along with interest. We observed that though the Commissionerate's audit party audited the assessee in August 2009 and September 2010, it failed to detect the non-payment of Service Tax.

The Commissionerate intimated (February 2013) that it had issued show cause cum demand Notice for ₹ 1.49 crore along with interest and penalty covering the period from 2007-08 to 2011-12. *However, the Ministry contested (November 2013) the audit observation on the ground that the foreclosure charges are treated as loss of interest. As interest is excluded from the levy of Service Tax, this does not amount to service as per the provisions of the Finance Act 1994. The Ministry further added that CESTAT New Delhi had taken the same view in the case of SIDBI vs CCE Chandigarh (January 2011).*

We observed that the Ministry's reply is silent about TRU's clarificatory letter cited above according to which foreclosure charges collected for early payment of loans are leviable to Service Tax. Further, in the case of HUDCO vs Commissioner of Service Tax

Ahmedabad, CESTAT, Ahmedabad (November 2011) had held that Service Tax is leviable on the reset charges and pre-payment charges paid by the customers.[51]

**Recommendation:** CBEC may issue a clarification concerning the applicability of TRU letter F. No. 345/6/2008-TRU dated 11 June 2008 keeping in view the various CESTAT decisions on the subject.

### 2.2.2 Non-payment of Service Tax under Import of Services

Section 65(55b) of the Finance Act, 1994 defines intellectual property service to mean transferring temporarily or permitting the use of any intellectual property right.[52] Further, intellectual property right under section 65(55a) of Finance Act, 1994 means any right to intangible property viz. trademarks, designs, patents or any other similar intangible property under any law for the time being in force but does not includes copyright.[53] Intellectual property service is taxable with effect from September 2004. Rule 2(i)(d) of Service Tax Rules, 1994 envisages, *inter alia*, that the person receiving taxable service in India is liable for payment of Service Tax on services provided by person who is non resident or is from outside India or does not have any office in India.

M/s Mark Exhaust Systems Ltd, Gurgaon, entered into an agreement with Futaba Industrial Co. Ltd. Japan and Sankai Giken Kagyo Co. Ltd. Japan for getting technical assistance. As per the agreement, the service receiver was liable to pay 3 per cent of the aggregate "Net Saleable Price" for use of intellectual property right and technical information to Futaba Industrial Co. Ltd., Japan and Sankai Giken Kagyo Co. Ltd., Japan on six-monthly basis in March and September of each year. Test-check of records indicated royalty payment of ₹ 428.47 lakh to Futaba Industrial Co. Ltd., and Sankai Giken Kagyo Co. Ltd. pertaining to the year 2010-11. As this service was chargeable to Service Tax in India, the assessee was required to pay tax of ₹ 44.13 lakh under reserve charge method. However, the assessee did not pay the same.

When we pointed out the non-payment of Service Tax and interest (December 2011), the Commissionerate informed (August 2012) that the assessee had deposited Service Tax of ₹ 53.38 lakh including R & D Cess of ₹ 22.26 lakh against the actually paid royalty amounting to ₹ 518.37 lakh for the year 2010-11. Recovery of interest was still pending (June 2013).

*However, the Ministry contested the audit observation in its reply (February 2014) stating that as the services were rendered in 2010-11, Service Tax was applicable only on payment basis. As the payment for the services received during 2010-11 was made to service providers on 20 June 2011 and 29 December 2011 against which the Service Tax was*

[51] 2011-IST-671-CESTAT-Ahm.
[52] as applicable before 1 July 2012.
[53] as applicable before 1 July 2012.

*deposited by the assessee on 15 June 2011 and 23 December 2011 respectively, there was no delay in payment of tax.*

The reply of the Ministry is not acceptable in view of notification No. 19/2008 (ST) dated 10 May 2008 (introducing explanation below proviso (3) to Rule 6(1) of Service Tax Rules, 1994) to the effect that where transaction of taxable service is with any associated enterprise, any payment received towards the value of taxable service, shall include any amount credited or debited, in the books of account of a person liable to pay Service Tax. As per section 65(7b) of the Finance Act, 1994 (as applicable prior to 1 July 2012) read with clause (g) of section 92A (1) of the Income Tax Act, 1961, there exists a relationship of associate enterprise between the assessee and the service provider. The technical collaboration agreement signed between the assessee and the Japanese companies indicates clearly that the assessee was wholly dependent on the use of their certain intellectual property rights. Therefore, the assessee was liable to pay Service Tax on accrual basis in respect of the services received.

## 2.3 Short payment of Service Tax

### 2.3.1 Irregular suo motu adjustment of Service Tax

Rules 6(4A) and 6(4B) of the Service Tax Rules, 1994 envisage that where an assessee has paid any amount in excess of the amount required to be paid towards Service Tax liability for a month, he may adjust such excess amount against his Service Tax liability for the succeeding month subject to the following conditions viz. (i) excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification, (ii) excess amount paid by an assessee having centralized registration, on account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit, (iii) in other cases, the excess amount paid may be adjusted with a monetary limit of one lakh rupees for the relevant month and (iv) the details and reasons for such adjustment shall be intimated to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such adjustment.[54] Further, as per section 83 of the Finance Act, 1994, read with Section 11B of the Central Excise Act, 1944, any person claiming refund of Service Tax and interest, if any, paid on such Service Tax may make an application, for refund of such duty and interest, to the Assistant Commissioner or Deputy Commissioner of Central Excise, before the expiry of one year from the relevant date.

M/s ICICI Securities Ltd., in ST I Mumbai Commissionerate, registered service provider under the category of Stock Broking service, filed ST-3 return on 26 October 2009 for the period April 2009 to September 2009 and declared ₹ 35.11 crore towards the value of taxable services rendered during this period. The assessee paid ₹ 3.56 crore as against

[54] Rules as applicable during the period covered by CERA.

Service Tax liability of ₹ 3.62 crore. On scrutiny of the reconciliation statement provided by the assessee, we observed that the gross receipt of services rendered was ₹ 37.83 crore but the assessee had declared it as ₹ 35.11 crore in the ST-3 return after considering a reduction of taxable services valued at ₹ 2.72 crore. The differential amount had been returned to various clients and related to transactions pertaining to the months of January, February and March 2009; this was meant to be a benefit under a promotional scheme wherein the rates of brokerage were reduced with retrospective effect. Thus, the assessee adjusted Service Tax of ₹ 33.64 lakh suo motu. We observed that the adjustment pertained to the valuation of services which had in fact been fully rendered. Moreover, though the assessee was centrally registered, the adjustment was not on account of delayed receipt of details of payments towards taxable services. Further, the amount adjusted was also more than one lakh rupees. In view of the above, the suo motu adjustment done by the assessee was not possible under Rules 6(4A) and (4B). The assessee should have applied for refund of the said amount. This resulted in short payment of Service Tax of ₹ 33.64 lakh which was recoverable with interest and penalty.

When we pointed this out (March 2008), the Commissionerate intimated (March 2013) that demand of ₹ 33.64 lakh had been confirmed against the assessee with interest at applicable rate and penalty of ₹ 33.69 lakh.

*However, the Ministry contested (February 2014) the audit observation stating that adjustment of Service Tax was on account of refund of brokerage received and was done in accordance with Rule 6(3) of the Service Tax Rules, 1994. The Ministry added that though the assessee did not show the adjustment in its ST-3 return in the manner required, this was only a procedural lapse involving no revenue loss.*

We observe, however, that the prerequisite for Rule 6(3) of the Service Tax Rules, 1994 to apply viz. the non-provision, either wholly or partially for any reason, of the service to be provided, is not satisfied in this case. Here, the service had been provided fully to the clients. Later, the clients were given the benefit of a promotional scheme through reduction in the rates of brokerage with retrospective effect. The claim of excess tax amount paid was accordingly, purely on account of reasons involving valuation. 'Valuation' is specifically mentioned in Rule 6(4B) as one of the reasons not permissible for making tax adjustments under Rule 6(4A). Besides, the amount adjusted was in excess of the amount permissible, viz. ₹ one lakh for the relevant month. The assessee had also not complied with the requirement under Rule 6(4B) of intimating the department within 15 days from the date of adjustment. Thus, the assessee could not take the benefit of either Rule 6(3) or of Rule 6(4A) read along with Rule 6(4B).

Moreover, we observe that the audit observation and the Ministry's reply, which was contrary to the Commissionerate's reply and the Order-in-Original, also highlight a lacuna in the then extant rules viz. that they did not cover the aspect of the date relevant

for determining the value of a taxable service and whether the value of taxable services could be lowered retrospectively in a manner detrimental to Revenue. This is not explicitly covered in the Point of Taxation Rules, 2011 either.

## 2.4 Availing/utilisation of Cenvat Credit

### 2.4.1 Wrong utilization of Cenvat credit for payment of tax on input service.

Cenvat credit can be utilized for payment of Service Tax on output services.[55] However, by virtue of omission of "explanation" below the definition of "output service" with effect from 19 April 2006, only such taxable services as are provided by a service provider shall be considered as output service.[56] CBEC Circular No. 97/8/2007 dated 23 August 2007 clarified that service provided by a goods transport agent for which the consignor or consignee is made liable to pay Service Tax does not become an 'output service' for such consignor or consignee and that the payment of such Service Tax cannot be made through credit accumulated by such consignor or consignee. Moreover, GTA services have been specifically excluded from the purview of output services with effect from 1 March 2008.[57]

M/s Neo Carbons Pvt. Ltd., Barauni in Patna Commissionerate utilized Cenvat credit of ₹ 12.11 lakh during April 2006 to March 2009 for payment of Service Tax towards the GTA services received by them. As these services were input services, the utilization of Cenvat credit of ₹ 12.11 lakh for these input services was irregular, which was recoverable along with interest.

When we pointed this out (July 2009), the Commissionerate stated (November 2012) that it had issued a demand-cum show cause notice dated 19 April 2012 for ₹ 10.99 lakh covering the period February 2007 to March 2009. The Commissionerate did not intimate reasons for not covering the period April 2006 to January 2007 in the show cause notice.

We await the Ministry's response (February 2014).

---

55 as per rule 3(4)(e) of the Cenvat Credit Rules, 2004.

56 by Finance Act, 2006 and notification No. 08/2006/CE dated 19 April 2006.

57 By Cenvat Credit (Amendment) Rules, 2008 w.e.f 1.3.2008.

# Chapter III

## Effectiveness of Internal Controls

**3.1** Internal control is an integral process that is effected by an entity's management and personnel and is designed to address risks and to provide reasonable assurance that in pursuit of the entity's mission, the following general objectives are being achieved:

- executing orderly, ethical, economical, efficient and effective operations;
- fulfilling accountability obligations;
- complying with applicable laws and regulations;
- safeguarding resources against loss, misuse and damage.[58]

**3.2** During the course of examination of records, we came across several instances in areas such as internal audit, scrutiny and deficiencies in the prescribed Manual which suggest that the department should look into the adequacy of extant systems and procedures.[59] We communicated these observations to the Ministry through 20 draft audit paragraphs, the revenue implication of which was ₹ 28.58 crore. The Ministry admitted the audit observations in all the draft paragraphs to the extent of revenue involved. We have discussed in detail some significant issues of non-compliance by the department in the following paragraphs:

**Internal Audit of assessees**

**3.3** The three important prongs of the compliance verification system adopted by the department comprise returns' scrutiny, audit, and anti-evasion. Compliance verification through audit entails conduct of audit at assessee premises by following prescribed procedures including selection of assessee units based on risk parameters and scrutiny of records of the assessee to ascertain the level of compliance with the prescribed rules and regulations. Audit is empowered under the Service Tax Rules, 1994 to access the records of the assessees at their registered premises. Every Commissionerate has, within its Internal Audit section, an Audit cell, manned by an Assistant/Deputy Commissioner and auditors and headed by an Additional/Joint Commissioner. The Audit cell is responsible for planning, monitoring and evaluating the audits conducted. Audit parties consisting of Superintendents and Inspectors carry out the audit at assessee premises in accordance with the Audit Plan and as per the procedures outlined in the Service Tax Audit Manual, 2011.

**3.4** We attempted to check the adequacy of coverage of assessees as well as the quality of audits undertaken by the internal audit parties by auditing a sample of assessees falling under one of the following two categories i.e. a) due for audit but not covered by departmental audit at the time of audit by CERA and b) already audited by a departmental

[58] INTOSAI GOV 9100- Guidelines for Internal Control Standards for the Public Sector.
[59] Service Tax Audit Manual, 2011.

audit party. We noticed cases involving Service Tax implication of ₹ 26.02 crore which are discussed in the following paragraphs. We communicated these observations to the Ministry through 17 draft audit paragraphs; the Ministry accepted the audit objection to the extent of revenue involved in all the cases.

**3.5** During the course of CERA's examination of records in selected assessee premises already covered by internal audit, we came across certain instances where audit parties of the Commissionerate had omitted to point out certain significant cases of non-compliance by assessees.

### 3.5.1 Non-detection of incorrect computation of taxable value of services

Rule 5(1) of the Service Tax (Determination of Values) Rules, 2006 provides that 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 and shall be included in the value for the purpose of charging Service Tax on the said service.

M/s Linfox Logistics (India) Pvt. Ltd., an assessee engaged in providing services under the category of "clearing and forwarding agency service", was centrally registered as a service provider in Ludhiana Commissionerate. While paying Service Tax on the amount received from M/s Hindustan Unilever Ltd. in respect of such services, the assessee excluded the reimbursement of expenses towards electricity, diesel genset, mobile charges, I.T. equipment expenses, load charges and multi-drop charges etc. in contravention of the rule cited above. Non-inclusion of these charges in the gross amount resulted in short payment of Service Tax amounting to ₹ 17.64 lakh for the period August 2009 to April 2011.

*When we pointed this out (June 2011), the Ministry accepted the audit objection (February 2014) and reported that the assessee had deposited ₹ 17.64 lakh along with interest of ₹ 2.82 lakh. The Ministry further reported that the coverage by CERA was of the period 2010-11 whereas Internal Audit covered the period April 2007 to March 2010. This may have led to different result/outcomes.*

The reply of the Ministry is not acceptable. The lapse on the part of the assessee, having commenced as early as August 2009, it should have been detected by Internal Audit during its audit in November 2010.

### 3.5.2 Non-detection of short payment under reverse charge

Section 66A of the Finance Act, 1994 (as applicable before 1 July 2012) read with Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 envisage that where a service is received by a person who has office in India from a service provider not having office in India, Service Tax is payable by the recipient of such service. Notification number 19/2008-ST dated 10 May 2008 provides that in case of transaction of taxable service with any associated enterprise,

any payment received towards the value of taxable service shall include any amount credited or debited, as the case may be, to any account, whether called 'suspense account' or by any other name, in the books of account of a person liable to pay Service Tax. Further, Chapter 8 (Para 11 of Annexure E) of the Service Tax Audit Manual, 2003 envisaged that in cases of reverse charge mechanism, the audit party was to ensure that no inadmissible exclusion towards elements like technical assistance or consultancy or a part of taxable events was carried out by the assessee.

M/s Landis+Gyr in Kolkata Service Tax Commissionerate, engaged in manufacture of electric meters, entered into an agreement with its holding company in Switzerland for receiving technical know-how which amounts to coverage under the Service Tax category of 'intellectual property service'. The assessee paid royalty of ₹ 1055.23 lakh from October 2004 to December 2009. The assessee was liable to pay Service Tax of ₹ 122.87 lakh out of which it paid ₹ 21.44 lakh only. Hence, an amount of ₹ 101.43 lakh was recoverable from the assessee along with interest.

When we pointed this out (August 2010), the Commissionerate admitted the observation and intimated (December 2012) that show cause notice of ₹ 130.28 lakh for the period from October 2004 to December 2010 issued to the assessee had been confirmed with interest and equal amount of penalty.

The internal audit party had audited the unit in March 2010. However, it failed to detect the short-payment of Service Tax.

*The Ministry while accepting the audit observation replied (February 2014) that the officers of the internal audit party of the jurisdictional Central Excise Commissionerate and not of the Service Tax Commissionerate, Kolkata had conducted the audit of the unit in March 2010. Besides, the total number of assessees in Service Tax Commissionerate, Kolkata is very high and the number of officers posted in internal audit is not adequate. However, the officers of the Internal Audit Branch have been sensitized to make all efforts and conduct audit in accordance with the prescribed norms and guidelines.*

The reply of the Ministry substantiates the need for optimal utilisation of manpower resources of the department. Even the Central Excise Audit Manual provisions require that in case action is required to be taken by officers of other Commissionerates, the Audit Group will be responsible for sending the communication to the concerned Commissionerate through their Commissioner.[60] Hence, the internal audit party of the Central Excise Commissionerate should have covered the Service Tax related aspects also during the audit at the assessee premises.

[60] Central Excise Audit Manual, 2008, Para 12.2.2.

### 3.5.3 Non-detection of non-inclusion of mobilisation advance in value of taxable services

Section 67(3) of the Finance Act, 1994, as amended, provides that gross amount charged for a taxable service shall include any amount received towards the taxable service, before, during or after provision of such service. The desk review related provisions of the Service Tax Audit Manual envisage that the auditor is responsible to check whether the assessee has received service charges in advance and has provided the services but has raised the bill at a later date to have financial accommodation and to defer the payment of Service Tax.

M/s Technoskill Aluminium Centre, an assessee in Calicut commissionerate, providing commercial or industrial construction service received a mobilization advance of ₹ 1.79 crore in April 2009, being 20 per cent of contract value of a work executed for Larsen and Toubro, Chennai. Subsequent stage payments were made to the assessee after deducting the mobilization advance on pro-rata basis and the advance was fully adjusted by April 2010. The assessee did not pay Service Tax for the advance portion adjusted on pro-rata basis from stage payments even while paying tax for the amount received after adjusting mobilization advance from the bill amount. The resultant non-payment of Service Tax amounted to ₹ 18.45 lakh. Even though Internal Audit had conducted audit of the assessee (December 2010), it failed to detect that Service Tax had not been paid for the advance portion adjusted on pro-rata basis from stage payments.

*When we pointed this out (January 2012), the Ministry admitted the audit objection (February 2014) and stated that a show cause notice had been issued to the assessee. The Ministry further reported that the concerned officers, who had conducted the audit of the said unit, have been directed to explain the reasons for the lapse. Further, all the Internal Audit Parties have been directed to make earnest efforts during audit to unearth discrepancies so as not to give occasion for other agencies to point out such lapses.*

### 3.5.4 Non-detection of short payment of Service Tax

As per Section 67(2) of the Finance Act, 1994 as amended, where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of Service Tax payable, the value of such taxable service shall be such amount as with addition of tax payable, is equal to the gross amount charged. CBEC clarified vide Circular dated 23 August 2007 that all service providers including Central/State Government Organizations and Public Sector Undertakings rendering taxable services are liable to pay Service Tax unless the services of such authorities are mandatory or statutory under the provisions of any law. Director General of Works, Central Public Works Department (CPWD) clarified in January 2009 that Service Tax was to be paid by the contractor, to the concerned Department on demand; the Engineer-in-charge would reimburse it after satisfying that it has been actually and genuinely paid by the contractor.[61]

[61] vide OM No.DGW/CON/241 dated 28 January 2009.

M/s Technoskill Aluminium Centre, a Service Tax assessee in Calicut Commissionerate, provides commercial construction services and works contract services. The assessee did not pay Service Tax of ₹ 18.21 lakh on ₹ 555.43 lakh received from CPWD. The payment was received for execution of a deposit work of CPWD viz. 'providing and fixing spider glazing facade and glass partition' in the newly constructed buildings of Spices Trading Corporation Ltd (STCL Ltd) and State Trading Corporation of India Ltd (STCIL) at Bangalore. Further, the assessee did not pay Service Tax amounting to ₹ 12.78 lakh during the period 2009-10 to 2010-11 for payments received from M/s L&T Technical Centre-III, Chennai, M/s L&T Medical equipment Building, Mysore, M/s. Apollo Build-Tec India Pvt. Ltd., Kozhikode and M/s Shoppers Shop Showroom, Hyderabad for commercial construction services provided.

Since M/s. STCL and M/s. STCIL were Public Sector Undertakings engaged in commercial operations and CPWD was providing services under deposit work, the services provided were neither mandatory nor statutory under the provisions of any law and therefore would attract Service Tax. However, the assessee did not pay Service Tax as stipulated in the Office Memorandum issued by Director General of Works, CPWD.

*When we pointed this out (January 2012), the Ministry admitted the audit objection (February 2014) and stated that a show cause notice had been issued to the assessee. The Ministry further reported that the concerned officers, who had conducted the audit of the said unit, have been directed to explain the reasons for the lapse. Further, all the Internal Audit Parties have been directed to make earnest efforts during audit to unearth discrepancies so as not to give occasion for other agencies to point out such lapses.*

### 3.5.5 Non-detection of irregular availing of Cenvat Credit

As per Rule 6(1) of the Cenvat Credit Rules, 2004, Cenvat credit shall not be allowed on such quantity of input, which is used for provision of exempted services. According to Section 65(25b) of the Finance Act, 1994 (as applicable before 1.7.2012), commercial or industrial construction service does not include services provided in respect of airports and thus these would be exempted services. Further, Customs duty is not one of the enlisted duties on which Cenvat credit could be availed vide Rule 3. Moreover, as per proviso to Rule 3(vii)(a) of the Cenvat Credit Rules, 2004, a provider of taxable services shall not take credit of additional duty leviable under section 3(5) of the Customs Tariff Act.

M/s Technoskill Aluminium Centre, Perinthalmanna, a Service Tax assessee in Calicut Commissionerate took ineligible credit of Customs Duty, Education Cess and Secondary and Higher Education Cess on Customs Duty and Additional Duty amounting to ₹ 8.97 lakh during the period 2008-10. The assessee also availed Cenvat credit of ₹ 11.04 lakh in respect of inputs wholly used for exempted work relating to construction of building for Cochin International Airport. The availing of credit totalling ₹ 20.01 lakh was against the provisions cited supra.

*When we pointed this out (January 2012), the Ministry admitted the audit objection (February 2014) and stated that a show cause notice had been issued to the assessee. The Ministry further reported that the concerned officers, who had conducted the audit of the said unit, have been directed to explain the reasons for the lapse. Further, all the Internal Audit Parties have been directed to make earnest efforts during audit to unearth discrepancies so as not to give occasion for other agencies to point out such lapses.*

### 3.5.6 Non-detection of irregular availing of input service credit

Rule 2(l) of the Cenvat Credit Rules, 2004, defines 'input service' as any service,

(i) used by the provider of taxable service for providing of output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal.

and includes activities relating to business such as accounting, financing, credit rating, share registry, security and inward transportation of inputs etc. for manufacture of goods.

CESTAT had held, *inter alia,* in Metro Shoes Pvt. Ltd. vs. Commissioner of Central Excise, Mumbai-I and Orion Appliances Limited vs. Commissioner of Service Tax, Ahmedabad that the credit of input services which are directly attributable or related to the trading activity should not be taken.[62] Further, Section 75 of the Finance Act, 1994 envisages that where any Service Tax or part thereof has not been paid within prescribed period, the person liable to pay the tax shall pay interest at notified rate.

M/s. Rawmet Commodities Private Limited, in Kolkata Service Tax Commissionerate providing business auxiliary service and port services was also engaged in trading activity of iron ore fines. The assessee paid Service Tax under Goods Transport Agency service as recipient of service for transportation of their traded goods (iron ores fines). Later, the assessee took credit of Service Tax so paid and utilised it for discharging their Service Tax liability for output services in contravention of statutory provisions and case laws cited supra. Therefore, irregular credit of ₹ 223.88 lakh (including Cess) taken during the period from April 2007 to March 2010 was recoverable along with interest as applicable.

When we pointed this out (October 2010), the Commissionerate accepted the audit observation (December 2011). The Commissionerate intimated subsequently (August 2012) that it had issued show cause notice for ₹ 265.97 lakh (including Cess) along with applicable interest and penalty covering the period April 2007 to March 2011.

[62] 2008 (10) S.T.R. 382 (Tri. - Mumbai) and 2010 (19) S.T.R. 205 (Tri.-Ahmd.) respectively.

Although internal audit conducted audit of the assessee records in November 2009, it did not point out the irregular availing of Cenvat credit. This resulted in the similar lapse persisting upto March 2011.

*The Ministry while admitting the audit observation stated (February 2014) that Service Tax audit of the unit was conducted in addition to the Central Excise audit in November 2009 by officers of the Internal Audit Party of the jurisdictional Central Excise Commissionerate. In order to prevent recurrence of this type of failure in future, Audit observation has been circulated to the authorised Branch of the Commissionerate and others have also been sensitized suitably.*

### 3.5.7 Non-detection of non-payment of Service Tax under reverse charge

Section 66A of the Finance Act, 1994 (as applicable before 1.7.2012) read with Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 envisaged that Service Tax was liable to be paid on services received in India (and provided from outside India) by the recipient of service under reverse charge mechanism. Explanation below Rule 6(I) of the Service Tax Rules, 1994 provides that where the transaction is with the associated enterprises, any payment received towards the value of taxable service, in such case shall include any amount credited or debited, as the case may be, to any account, whether called 'suspense account' or by any other name, in the books of account of a person liable to pay Service Tax.[63]

M/s Flakt (India) Limited, in Kolkata Service Tax Commissionerate providing consulting engineer's services, management consultant's services, intellectual property rights and trademark services, had received the said services from its associated enterprises situated outside India. Audit scrutiny further revealed that the assessee booked ₹ 97.43 lakh as trademark fees, ₹ 137.42 lakh as intellectual property fees and ₹ 193.19 lakh as management fees under the head 'other expenses' in their accounts against services received from their associated enterprises for the periods 2008-09 and 2009-10. Hence, the assessee ought to have paid Service Tax on the amount so booked in their accounts as recipient of services in terms of the statutory provisions cited above. Failure to do so thus resulted in non payment of Service Tax to the tune of ₹ 44.08 lakh (including Cess) for the period 2008-09 and 2009-10 which was recoverable along with interest, as applicable.

When we pointed this out (February 2011), the Commissionerate accepted the audit observation (April 2012). The Commissionerate intimated (May 2012) that an amount of ₹ 204.44 lakh was recovered on account of Service Tax (including Cess) along with interest for the period from 2007-08 to 2010-11.

Although an internal audit team conducted audit in January 2010, this mistake was not detected. This resulted in such lapses persisting upto April 2011.

---

[63] inserted vide notification No. 19/2008-ST dated 10 May 2008.

*The Ministry while admitting the audit observation stated (February 2014) that as regards the failure of internal audit, though the unit was allotted to Group IV of Audit of Service Tax Commissionerate in 2011-12, owing to heavy pressure in the groups and manpower shortage, the audit could not be conducted in stipulated time. The unit would be audited shortly by the Service Tax audit team.*

We observed that the reply of the Ministry was silent on the aspect of conduct of internal audit in January 2010.

### 3.5.8 Non-detection of short payment of Service Tax under Cable Operator Services

"Taxable service" vide Section 65(105)(zs) of the Finance Act, 1994, as applicable before 1.7.2012, means any service provided or to be provided to any person by a cable operator, including a multi-system operator in relation to cable services. Further, Section 67 of the Act ibid provides that value of taxable services for charging Service Tax will be the gross amount charged for the taxable services by cable operators and shall include any amount received towards the taxable service before, during or after provision of such service.

Under sub-rule 4A of rule 6 of the Service Tax Rules, 1994, where an assessee has paid excess amount of Service Tax, he can adjust such excess payment against his subsequent liability. However, such adjustment is allowed subject to condition as stated in sub-rule 4B.

M/s Indian Cable Net Company Ltd in Kolkata Service Tax Commissionerate engaged in providing cable operators' service had made self-adjustment of ₹ 433.83 lakh during 2009-10 from value of taxable service on which Service Tax had already been credited to the Government account previously without satisfaction of prescribed conditions. This led to undervaluation of taxable service due to irregular adjustment and consequent short payment of Service Tax of ₹ 44.68 lakh (including Cess) during the period 2009-2010 which was recoverable from the assessee along with applicable interest.

*When we pointed this out (October 2010), the Ministry admitted (February 2014) the audit objection and reported that demand along with interest and penalty had been confirmed in adjudication. The Ministry further reported that in order to prevent recurrence, the audit observation had been circulated to all the three divisions, audit branch etc. and officers had been sensitized suitably.*

## 3.6 Inadequacy of Service Tax Audit Manual provisions

As per the Director General of Service Tax's Action Plan circulated to Chief Commissioners on 26 May 2003, field formations were required to obtain information from major assessees including PSUs and private sector organisations regarding various services being availed by them and to obtain details of such services providers including their

addresses. Further, every range officer had to obtain information from major assessees including PSUs regarding various services being availed by them and to obtain details of such service providers to broaden the tax base. However, there was no such corresponding provision in the Service Tax Audit Manual, 2011 which made it obligatory for the Service Tax Audit parties to collect (during audits at assessee premises) and forward similar details to the Internal Audit Cell of Commissionerate/Division/Range concerned. The following two instances we came across during examination of records at assessee premises highlight this lacuna.

**3.6.1** During audit at M/s PowerGrid Corporation of India Ltd. in Patna Commissionerate, we observed that the assessee availed services relating to construction of boundary wall, construction of staff quarters, site levelling and slope protection work at different power substations in Bihar from six service providers registered in Service Tax under Patna Commissionerate and paid ₹ 794.53 lakh during the period 2005-06 to 2010-11 (upto November 2010). These services were taxable services under the category of site formation service, construction of residential complex service or works contract service. On verification, we noticed that the six service providers did not pay Service Tax and Education Cess to the tune of ₹ 43.18 lakh on the taxable value as either no return or 'nil' return was found filed by these service providers during the period.

We observed that though internal audit had conducted audit in June 2010, it had not communicated the details about non-fulfilment of liability/provision of services by the six service providers to the internal audit section of the Commissionerate/Division/Range concerned.

*When we pointed this out (December 2010), the Ministry admitted the audit objection (February 2012) and intimated that show cause notices in respect of all six service providers had been issued for ₹ 56.18 lakh. The Ministry also informed that audit recommendation regarding incorporation of provisions in the Service Tax Audit Manual, 2011 is under consideration. It added that there is no specified space in periodical returns to mention the details of services received from service providers. Hence, it was not possible to detect the lapse by normal scrutiny of returns also.*

**3.6.2** Similarly, Service Tax has been levied on 'manpower recruitment or supply agency's service' with effect from 7 July 1997. The scope of the service was expanded from 16 June 2005 to cover any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person. Thus, even a contract for supply of labour is covered under Service Tax and contractors providing labour are to pay Service Tax with effect from 16 June 2005.

During the examination of Service Tax related records of two assessees M/s Neo Carbons Pvt. Ltd. and M/s Kanishka Carbons Pvt. Ltd. in Patna Commissionerate, we observed that the assessees were availing manpower recruitment or supply agency services

from three service providers. The two assessees paid ₹ 1.31 crore to these service providers during the period 2007-08 to 2011-12. None of the service providers was found registered with the department. The Commissionerate failed to comply with DGST instructions to identify unregistered service providers which resulted in the three service providers not paying Service Tax of ₹ 13.99 lakh which was recoverable along with interest and penalty.

When we pointed this out (July 2009 and March 2012), the Commissionerate stated (March 2013 and April 2013) that one service provider had deposited ₹ 2.16 lakh. Further, demand-cum-show cause notice for ₹ 12.10 lakh plus interest and penalty have been issued to the three service providers.

We observed that an internal audit team had conducted audit in M/s Kanishka Carbons Pvt. Ltd in October 2011 but it had failed to communicate any details about non-fulfilment of liability/provision of service by the three service providers to the Commissionerate or the concerned subordinate functionaries which would have facilitated initiation of action against the defaulting service providers.

We also observed that the Service Tax Audit Manual, 2011 does not have a provision requiring the internal audit party to intimate the Commissionerate/Division/Range about the list of such service providers; inclusion of such provision would facilitate monitoring of registration of service providers and ensuring payment of Service Tax by them.

*The Ministry while admitting the audit objection (February 2014) informed that audit recommendation regarding incorporation of provisions in the Service Tax Audit Manual, 2011 is under consideration. It added that there is no specified space in periodical returns to mention the details of services received from service providers. Hence, it was not possible to detect the lapse by normal scrutiny of returns also.*

**Recommendation:** Suitable provision may be incorporated in the Service Tax Audit Manual, 2011 requiring internal audit parties to intimate the Commissionerate/Division/Range about the list of such service providers providing services to the (audited) assessees as inclusion of such provision would facilitate broadening of Service Tax base and further the cause of revenue protection. Further, the Ministry needs to consider feasibility of providing space in ST 3 return calling for information on details of services received from service providers along with appropriate penal clause for non-compliance therewith; this would facilitate broadening of Service Tax base to a significant extent.

### 3.7 Inadequate compliance with norms for coverage of mandatory units

Para 5.1.2 of the Service Tax Audit Manual, 2011 envisages that service providers paying Service Tax of ₹ 3 crore or more (cash + Cenvat) in a year are to be audited every year mandatorily. The corresponding provision in the earlier Manual of 2003 read with instructions of Central Board of Excise and Customs mandated that service providers paying Service Tax of ₹ 50 lakh or more (cash + Cenvat) in a year were to be audited every year

mandatorily.[64] However, during the course of our examination of Service Tax records at assessee premises, we could detect several instances of non-payment/short payment of Service Tax which, though required to be mandatorily audited as per departmental norms had not been covered by internal audit. These are discussed below:

**3.7.1** Internal audit parties from ST I Commissionerate, Mumbai covered 239 units (85 category A units, 93 category B units, 52 category C units and 9 category D units) during audit in 2011-12. Only 85 out of 700 mandatory units were covered in audit as against 154 non-mandatory units covered in the course of the year. The risk of Service Tax and /or interest dues not reaching the Consolidated Fund is illustrated by the following instance which came to light during the course of CERA's examination of records at assessee premises.

During CERA's examination of ST-3 returns and other records at one such mandatory unit M/s Essar Investment Ltd. in Service Tax Commissionerate Mumbai I, we observed that the assessee had made delayed payment of Service Tax in various months during the year 2011-12. While the total interest payable for the delayed payment of Service Tax was ₹ 1.40 crore, the assessee had paid interest of only ₹ 1.02 crore. Balance amount of ₹ 37.92 lakh was required to be recovered from the assessee. Though the unit came under the 'mandatorily to be audited every year' category, it had not been audited by Internal Audit for the period post-2008.

*When we pointed this out (March 2013), the Ministry intimated (January 2014) that the assessee had deposited an amount of ₹ 37.92 lakh in May 2013. Further, the Ministry added that the Mumbai ST I Commissionerate is the largest in the country both in respect of number of assessees and as well as the revenue collected. With the available staff, it is not possible to fulfil the mandatory requirements as prescribed in the Manuals. During actual conduct of audit, generally 5 years' data of assessee is covered.*

**3.7.2** We examined records relating to selection of asssessees for audit by Nagpur Commissionerate and observed that for the year 2010-11, the Commissionerate audited non-mandatory units leaving a significant number of mandatory units unaudited as tabulated below:

| Slab of annual duty (PLA + Cenvat) | Number of assessee units | Number of units due for audit as per the frequency prescribed | Units planned | Units audited |
|---|---|---|---|---|
| More than ₹ 50 lakh | 102 | 102 | 52 | 10 |
| Between ₹ 25 lakh to ₹ 50 lakh | 60 | 30 | 10 | 6 |
| Between ₹ 10 lakh to ₹ 25 lakh | 88 | 17 | 32 | 30 |
| Less than ₹ 10 lakh | 2261 | 44 | 27 | 14 |

[64] vide letter F.No. 381/145/2005 dated 6 June 2006 (applicable upto 31 March 2011).

The table indicates that only 10 mandatory units were audited while non-mandatory units audited were 50. The risk in programming non-mandatory units at the cost of mandatory units is indicated by the following instance observed by CERA.

During examination of records in 2011 of a mandatory unit M/s. Gondwana Engineers Pvt. Ltd., in Nagpur Commissionerate which had not been audited by internal audit, we observed that the assessee entered into an agreement with M/s Ion Exchange (India) Ltd, Mumbai for a lumpsum turnkey contract of providing services of design, engineering, civil construction and supply of material in relation to Sea Water desalinization Project for CPCL, Chennai. The assessee received consideration of ₹ 654.98 lakh during the period from June 2007 to March 2010 but did not pay Service Tax of ₹ 18.13 lakh which was recoverable along with interest.

*When we pointed this out (November 2011), the Ministry accepted the audit observation (January 2014) and stated that a show cause notice had been issued to the assessee for ₹ 21.10 lakh. The Ministry further informed that during FY10 and FY11, complete data in respect of all Service Tax assessees had not been available in the Internal Audit branch of the Commissionerate. Therefore, all mandatory units could not be identified. Sincere efforts were being made to cover all mandatory and major service tax providers in the ambit of internal audit.*

### 3.7.3 Delay in receipt of revenue due to non-conducting of Internal Audit

Section 67(3) of the Finance Act, 1994 provides that the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service. Section 75 of the Act envisages that where any Service Tax or part thereof has not been paid within the stipulated period, the person liable to pay the tax shall pay interest at the prescribed rate.

M/s Siemens VAI Metals Technologies Ltd in Kolkata Service Tax Commissionerate received advances from clients for rendering different services under several contracts during 2008-09 to 2010-11. Scrutiny further revealed that the amounts of advances so received were adjusted later through Running Account (RA) bills and Service Tax was paid at the time of realization of RA bills instead of paying at the time of receiving the advance. Besides, there were other advances which were pending for adjustment and in respect of which Service Tax though due, was yet to be paid. Failure to pay Service Tax on receipt of the advance resulted in non-payment of Service Tax of ₹ 159.51 lakh on the total unadjusted amount; the same was to be recovered from the assessee along with interest of ₹ 51.85 lakh**.** The assessee was also liable to pay interest of ₹ 6.72 lakh for delayed payment of Service Tax on the adjusted amount.

As per the norms for selection of units for audit (applicable during the period covered), units paying more than ₹ 50.00 lakh (cash plus Cenvat) towards Service Tax were

to be audited every year. We observed that the amounts of Service Tax paid by the assessee during 2008-09, 2009-10 and 2010-11 were ₹ 4.08 crore, ₹ 2.55 crore and ₹ 8.20 crore respectively. However, the unit was not audited during any of the said years. Not adhering to the norms prescribed for internal audit resulted in significant revenue due to the Government remaining outside Government account for considerable period.

*The Ministry while admitting the audit objection (February 2014) and intimating recovery (including interest) of ₹ 226.55 lakh stated that the total number of assessees in Service Tax Commissionerate, Kolkata was very high and the number of officers posted in Internal Audit Wing was inadequate. However, internal audit was undertaken in May 2013 covering the period 2008-09 to 2011-12.*

### 3.7.4 Non payment of Service Tax on erection, commissioning or Installation services

According to Rule 6 of the Service Tax Rules, 1994 read with Section 68 of the Finance Act, 1994, as amended, Service Tax shall be paid to the credit of Central Government by 6th day of the month, if duty is deposited electronically and 5th of the month, in any other cases, immediately following the calendar month in which payments are received. As per section 73, where any Service Tax has not been levied or paid or has been short levied or short paid, the Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the Service Tax which has not been levied or paid or which has been short levied or short paid, requiring him to show cause why he should not pay the amount specified in the notice.[65]

M/s Well Erectors of New Engineering, a Service Tax assessee in Calicut Commissionerate, did not pay Service Tax of ₹ 3.36 crore on ₹ 36.26 crore (including tax) collected during the period 1 January 2009 to 31 December 2011. Interest (upto 31 March 2012) on the Service Tax payable amounted to ₹ 99.94 lakh. Since the assessee availed credit of duty paid on inputs, it was not eligible for abatement of 67 per cent from value of taxable service. During the period, the assessee did not file returns also. The division/range did not initiate any action against the assessee under section 73 of the Finance Act, 1994.

When we pointed this out (March 2012), the Commissionerate stated (April 2013) that since the assessee had not disclosed details of one bank account to CERA, there was an increase of ₹ 58.17 lakh in the taxable value. The Commissionerate had reworked the Service Tax liability accordingly and stated that out of total Service Tax liability for the period January 2009 to September 2012, the assessee paid ₹ 109.28 lakh for the period 1 January 2009 to 30 September 2009. Out of this, ₹ 10.51 lakh was paid prior to CERA's examination of records. The Comissionerate also added that show cause notice was being issued for the undischarged Service Tax liability of ₹ 2.48 crore on a taxable value of ₹ 24.02 crore collected during the period October 2009 to September 2012.

---

[65] "one year" substituted by "eighteen months" w.e.f 28.5.2012 by Finance Act, 2012.

We observed that as per frequency norms for internal Audit, this unit falls under mandatory category for the year 2009-10 and was to be audited annually by internal Audit. However, no internal audit of the unit had not been conducted which resulted in non-detection of this evasion until pointed out by CERA.

*The Ministry admitted (March 2014) the audit objection stating that show cause notice dated 8 March 2014 has been issued for ₹ 4.11 crore covering the period 1 January 2009 to 30 September 2013. However, the response was silent on the reason for not undertaking internal audit of the assessee, as per the prescribed norms.*

### 3.7.5 Short payment of Service Tax under Dredging Service

As per Section 65(105)(zzzb) of the Finance Act, 1994 (as applicable prior to 1.7.2012), any service provided or to be provided to any person, by any other person, in relation to dredging is taxable service.

Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, stipulates that Service Tax is to be paid by 6$^{th}$/ 5$^{th}$, as the case may be, of the following month, in which the payments are received towards the value of taxable services.

Further, as per Section 75 of the Finance Act, 1994, every person, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at the specified rate for the period by which such crediting of the tax or any part thereof is delayed.

M/s Mackintosh Burn Limited in Kolkata Service Tax Commissionerate, providing dredging service had received ₹ 2457.18 lakh during the period August 2010 to March 2011 on account of 'desilting of river Ichamati for better drainage and flood management'. The service provided under this head was classifiable under dredging service and the assessee was liable to pay Service Tax of ₹ 253.09 lakh (including Cess) on the gross receipts of ₹ 2457.18 lakh during the above period. However, the assessee had discharged Service Tax liability of ₹ 31.77 lakh (including Cess) only. This resulted in short payment of ₹ 221.32 lakh (Service Tax including Cess) for the period 2010-11 which was recoverable from the assessee along with applicable interest.

*When we pointed this out (October 2011), the Ministry informed (January 2014) that the demand raised had been confirmed in adjudication along with interest and penalty and Commissionerate had already appropriated ₹ 31.77 lakh (including cess) which was paid by the assessee. The Ministry further added that the total number of assessees in the Commissionerate is very high. Besides, officers of Internal Audit Branch are required to conduct simultaneous/ co-ordinated service tax audit of multi-location service providers selected by various zonal officers of Directorate General of Audit and are also required to conduct audit of LTU assessees as per authorization from the respective LTU Commissionerate. It added that due to aforesaid reasons, the existing manpower of Internal*

*Audit Branch is not adequate to conduct all Category A audits required as per the norms prescribed in the Service Tax Audit Manual, 2011.*

### 3.7.6 Non-payment of Service Tax under Business Support Service

Audit of M/s Bharat Heavy Electricals Ltd., Power Sector Eastern Region, in Kolkata Service Tax Commissionerate, engaged in providing works contract services, commercial or industrial construction services, erection, commissioning and installation service etc. revealed that the assessee had collected ₹ 126.53 lakh during 2010-11 under the heads 'service charges to sister units', 'overhead charges on steel diversion to sister units', 'tender cost', 'guest house charges' etc. for providing services to support the business and commerce of their clients. Though such activities are covered under business support services, the assessee did not pay Service Tax of ₹ 13.03 lakh relating to business support services on these items. The assessee was also liable to pay applicable interest under section 75 of the said Act for such non-payment of Service Tax.

*When we pointed this out (July 2011), the Ministry informed (January 2014) that the demand raised had been confirmed in adjudication along with interest and penalty. The Ministry further added that the total number of assessees in the Commissionerate is very high. Besides, officers of Internal Audit Branch are required to conduct simultaneous/ co-ordinated service tax audit of multi-location service providers selected by various zonal officers of Directorate General of Audit and are also required to conduct audit of LTU assessees as per authorization from the respective LTU Commissionerate. It added that the existing manpower of Internal Audit Branch is not adequate to conduct all Category A audits required as per the norms prescribed in the Service Tax Audit Manual, 2011.*

### 3.7.7 Non-reversal of Cenvat Credit on Capital goods

Rule 3(5) of the Cenvat Credit Rules, 2004 provides, *inter alia,* that when capital goods, on which Cenvat credit has been taken, are removed as such from the premises of the provider of output service, the provider of output service shall pay an amount equal to the credit availed in respect of such capital goods. Further, Cenvat Credit availed irregularly is recoverable along with interest under Rule 14 of the Cenvat Credit Rules, 2004.[66]

M/s Vodafone Essar South Limited in Kolkata Service Tax Commissionerate, engaged in providing telecommunication, business auxiliary services, intellectual property services etc. sold capital goods valued at ₹ 1282.99 lakh during period 2009-10 to M/s Vodafone Essar South Limited, Mumbai. The assessee had earlier taken Cenvat credit on the same. However, the assessee, did not pay the amount equal to the Cenvat credit of ₹ 167.26 lakh (including Cess) in respect of the sold goods though required as per the statutory provision cited supra. Non-reversed Cenvat credit of ₹ 167.26 lakh (including Cess) was recoverable along with interest.

[66] Position prior to Rule 14 of the Cenvat Credit Rules being amended wef 17.3.2012.

*When we pointed this out (June 2011), the Ministry accepted the audit objection (January 2014) and reported confirmation of the demand of ₹ 167.26 lakh (including Cess) besides interest and equal amount of penalty. The Ministry further added that due to shortage of manpower in comparison to the total number of assessees, it is not possible to audit all the mandatory units.*

We observe that the audit observations under Para 3.7 and the Ministry's responses substantiate the audit comment in Para 1.18 and 1.19 of this Report that the huge shortfall in coverage of high revenue units coupled with low percentage of detailed scrutiny is inadequate to ensure a robust compliance verification mechanism.[67]

**3.8 Inadequate scrutiny of returns:** We came across one instance while examining ST-3 returns at ranges where we observed that liability to pay tax escaped the notice of the authorities due to inadequate scrutiny of returns.

### 3.8.1 Short payment of Service Tax

The Manual for Scrutiny of Service Tax Returns, 2009, lays down procedures for preliminary and detailed scrutiny of Service Tax returns. Checks for preliminary scrutiny of ST returns are given in Chapter 2 of the Manual which, *inter alia,* include checking the arithmetic accuracy of the return to find out any differences in tax payable and tax paid. As per Rule 6(1) of the Service Tax Rules, 1994, Service Tax shall be paid to the credit of the Central Government by the 6$^{th}$ day of the month, if the duty is deposited electronically and by the 5$^{th}$ day of the month, in any other case, immediately following the calendar month in which service is deemed to be provided. As per Section 73(1) of the Finance Act, 1994, if the assessee has fully disclosed all material facts, a notice has to be served within eighteen months from the 'relevant date'. In case of suppression of facts, wilful misstatement, fraud or collusion, show cause notice should be issued within five years from the 'relevant date'.

Scrutiny of Service Tax records of Itanagar Range in Itanagar Service Tax Division of Guwahati Commissionerate revealed that a total of ₹ 134.40 lakh was receivable towards Service Tax from three assessees viz. M/s Arunachal Carbon Industries, M/s J. K. Associates and M/s Satyam Ispat North East Limited for the period April 2011 to March 2012. However, only ₹ 4.69 lakh was paid. Thus, an amount of ₹ 134.40 lakh remained unpaid which is recoverable with interest. When we pointed this out (September 2012), the Commissionerate intimated (January 2014) the recovery of ₹ 138.65 lakh relating to the three cases. However, recovery of interest in respect of M/s Arunachal Carbon Industries and M/s Satyam Ispat NE Ltd. is still pending.

We also observed that though the authorities at the range manually scrutinized the returns, they failed to detect the short payment of Service Tax. Due to improper scrutiny of the returns, short payment of Service Tax escaped the notice of the officers. We observed

[67] Issue earlier raised in AR no 17 of 2013, Para no 1.88, Page 27.

that these returns were ACES returns and as per the extant instructions, once ACES module becomes operational, all the returns are to be scrutinized (preliminary) through ACES. In these cases, we observed that apart from the lapses in manual scrutiny, even ACES has either failed to point out the deficiencies in the returns filed or though these have been marked out by ACES for review and correction, no action was taken by the range on the basis of the same.

*The Ministry while admitting the audit objection (February 2014) informed that ₹30.79 lakh had been recovered towards interest in addition to the Service Tax recovered. The Ministry also reported that as Itanagar Division does not have ACES facility installed, ST returns are verified manually. Necessary instructions have been issued to the Range Officers to scrutinise the returns properly.*

### 3.9 Other Issues

#### 3.9.1 Inordinate delay in issuing show cause notice

According to Section 73(1) of the Finance Act, 1994 (as amended), where any Service Tax has not been levied or paid, the Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the Service Tax, requiring him to show cause why he should not pay the amount specified in the notice. Where any Service Tax has not been paid by reason of fraud, the provisions of this sub-section shall have effect, as if, for the words "one year", the words "five years" had been substituted.[68]

Section 70 of the Finance Act read with Rules 7(1) and 7(c) of the Service Tax Rules, 1994 envisage that every person liable to pay the Service Tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise a half yearly return in form ST 3 by 25$^{th}$ of the month following the particular half year. In case of delayed furnishing of returns, late fee not exceeding twenty thousand rupees is to be paid.

The Manual for Scrutiny of Service Tax Returns, 2009 prescribes conduct of preliminary scrutiny of all returns (Clause 1.2B) by the Range Officer. As per clause 1.2.1(e), one of the purposes of this scrutiny is identification of stop-filers and non-filers of returns.

M/s Hindustan Machine Tools (HMT) Ltd, Kalamassery, a Central Excise assessee in Cochin Commissionerate, took Cenvat credit amounting to ₹ 14.62 lakh during the year 2008-09 on payments of ₹ 118.28 lakh made to two contractors, viz. M/s J & S Constructions, Kalamassery and Shri M.K. Shanavas, Vattekunnam. On verification at Central Excise Range, Kalamassery, it was known that registration number furnished in invoices by M/s J & S Constructions was not traceable and that Shri M.K. Shanavas had not filed returns since the year 2006-07. We observed (July 2012) during examination of records at Central

[68] "one year" substituted by "eighteen months" w.e.f 28.5.2012 by the Finance Act, 2012.

Excise Range, Kalamassery that no demands were issued by the Commissionerate to the two contractors for non-payment of service tax of ₹ 14.62 lakh collected from M/s HMT during the year 2008-09. Subsequent audit of M/s HMT conducted in July 2012 revealed that the assessee had availed and utilized Cenvat credit of ₹ 39.64 lakh on payments of tax made to the two contractors during the period 2009-10 to 2011-12.

We had pointed this out thrice (once in March 2010 and twice in July 2012) but no tangible remedial action was reported by the Commissionerate. Even though non-payment of ₹ 14.62 lakh collected as Service Tax from M/s HMT Ltd during the year 2008-09 was pointed out to the Commissionerate in March 2010, no show cause notices were issued. Since one contractor stopped filing returns since 2006-07 and the registration details of the other was not traceable, the issue may have existed during earlier periods also. Inaction on the part of the range and insufficient monitoring by higher authorities resulted in rendering of demands prior to 2007 becoming time-barred. The lapse had also led to collection of a further amount of ₹ 39.64 lakh during the period 2009-10 to 2011-12 from M/s HMT as Service Tax and retention of the same by the contractors, without payment to Government Account.

*It is only when we raised this point again in December 2012 that the Ministry replied (February 2014) that Shri Shanavas has paid ₹28.89 lakh including interest and penalty for the period 2007-08 to 2011-12 and that it had issued show cause notice for the balance amount of ₹2.66 lakh. The Ministry also informed that M/s J & S Constructions had neither paid Service Tax nor filed returns and that it had been issued show cause notice demanding ₹40.44 lakh as Service Tax for the period 2007-08 to 2011-12. The Ministry further stated that the delay in issuance of show cause notices was due to non-receipt of required documents/records from the contractors. Thereafter, action was initiated to collect details from M/s HMT Ltd.*

The reply of the Ministry is not acceptable. The division/range should have pursued the collection of details through M/s HMT Ltd. at the earliest when it saw that no response was forthcoming in response to its letter dated 22 June 2010 addressed to the two contractors. The contractors had been providing services to M/s HMT on regular basis during the period 2008-09 to 2011-12. Further, the Commissionerate did not take resort to the powers vested in it under section 87(b)(i) of the Finance Act, 1994 (as amended) to recover from M/s HMT the amount payable by the two contractors to the credit of the Government account. The delay in issuing show cause notice has also rendered raising of any demand prior to the year 2007-08, time-barred.

### 3.9.2 Non-recovery of Service Tax due to premature closure of Internal Audit Para

During test check of internal audit records of the Commissionerate of Service Tax, Delhi for the period 2008-09, we observed that Internal Audit had conducted the audit of an assessee, M/s Today Hotels Pvt Ltd located at Gurgaon, for the period from 2005-06 to

2007-08 in December 2008. As internal audit noticed short payment of Service Tax of ₹ 87.16 lakh under business support service and Intellectual property service, the same was included in the Internal Audit Report (IAR) for follow-up of recovery of short-paid Service Tax. The Commissionerate recovered ₹ 73.22 lakh upto 30 June 2009 and the Internal Audit Report was closed on 14 July 2009 without recovery of the balance ₹ 13.94 lakh after recording that no action was pending on the file.

*When we pointed this out (September 2011), the Ministry replied (January 2014) that the balance amount had been recovered along with interest of ₹14.57 lakh. The reply of the Ministry was silent on the aspect of closure of Internal Audit Report without ensuring complete recovery.*

**New Delhi**
**Dated: 9 April 2014**

**(ANIM CHERIAN)**
**Principal Director (Service Tax)**

**Countersigned**

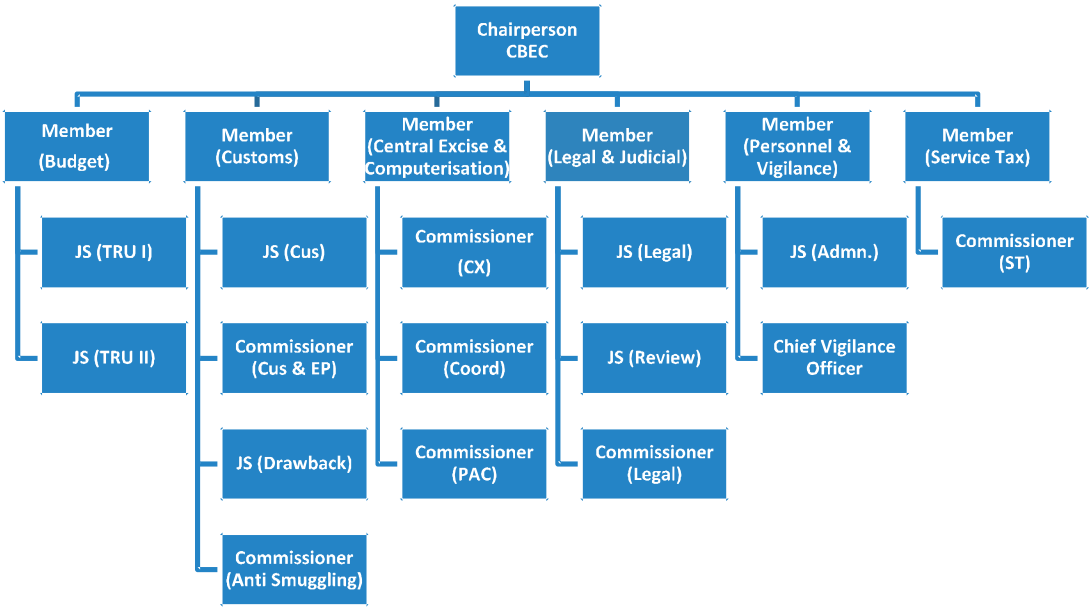
**New Delhi**
**Dated: 9 April 2014**

**(SHASHI KANT SHARMA)**
**Comptroller and Auditor General of India**

# APPENDICES

# Appendix I

## Organisational Chart of Central Board of Excise and Customs



# Appendix II

## (Reference: Paragraph 2.1)

Lakh ₹

| Sl. No. | DAP No. | Brief Subject | Amount Objected | Amount Accepted | Amount Recovered | Name of Commissionerate |
|---|---|---|---|---|---|---|
| **1.** | **1B** | Non payment of Service Tax on Transport of goods by Road service | 14.50 | 14.50 | 14.50 | **Chandigarh I** |
| **2.** | **2B** | Non payment of Service Tax on Construction services | 11.28 | 11.28 | 11.28 | **Delhi IV** |
| **3.** | **4B** | Non payment of Service Tax on Import of services | 75.96 | 75.96 | 75.96 | **Thiruvananthapuram** |
| **4.** | **10B** | Non payment of Service Tax on Technical Inspection and Certification services | 12.42 | 12.42 | 12.42 | **Chennai ST** |
| **5.** | **16B** | Non payment of Service Tax on Technical Inspection and Certification services | 56.58 | 56.58 | 46.79 | **Hyderabad II** |
| **6.** | **23B** | Non payment of Service Tax on Business Exhibition and Mandap Keeper services | 205.64 | 205.64 | - | **Hyderabad II** |
| **7.** | **25B** | Non payment of Service Tax on Commercial or Industrial construction service | 405.50 | 405.50 | - | **Chandigarh I** |
| **8.** | **26B** | Non payment of Service Tax on Management, Maintenance or Repair services | 53.31 | 53.31 | 53.31 | **Surat II** |
| **9.** | **39B** | Non payment of Service Tax on import of services | 14.28 | 14.28 | 14.28 | **Bengaluru ST** |
| **10.** | **42B** | Non payment of Service Tax on Port services | 403.07 | 403.07 | - | **Kolkata ST** |
| **11.** | **44B** | Non payment of Service Tax on Business Auxiliary services | 34.67 | 34.67 | 27.09 | **Haldia** |
| **12.** | **45B** | Non payment of Service Tax on Transport of goods by Road service | 9.72 | 9.72 | 7.31 | **Chennai ST** |

| Sl. No. | DAP No. | Brief Subject | Amount Objected | Amount Accepted | Amount Recovered | Name of Commissionerate |
|---|---|---|---|---|---|---|
| **13.** | **47B** | Non payment of amount in respect of exempted services | 36.61 | 36.61 | 19.21 | **Jaipur I** |
| **14.** | **50B** | Non payment of Service Tax on Business Support services | 20.51 | 20.51 | 20.51 | **Mumbai ST II** |
| **15.** | **18B** | Non payment of service Tax on Renting of Immovable property service | 11.50 | 11.50 | 11.50 | **Ahmedabad ST** |
| **16.** | **52B** | Non payment of Service Tax on Advance Received | 33.92 | 33.92 | 33.92 | **Kolkata ST** |
| **17.** | **55B** | Non payment of Service Tax on Management, Maintenance or repair services | 94.88 | 94.88 | - | **Hyderabad II** |
| **18.** | **76B** | Non payment of Service Tax on Renting of Immovable services | 63.74 | 63.74 | - | **Ludhiana** |
| **19.** | **77B** | Non payment of Service Tax on Advance received | 109.20 | 109.20 | 74.60 | **Cochin** |
| **20.** | **81B** | Non payment of Service Tax on Renting of Immovable services | 10.20 | 10.20 | 10.20 | **Goa** |
| **21.** | **92B** | Non payment of Service Tax on Manpower Recruitment & Supply Agency Services | 12.55 | 12.55 | 12.55 | **Thane I** |
| **22.** | **1A** | Non payment of Service Tax on Works Contract Services | 95.84 | 95.84 | - | **Salem** |
| **23.** | **3A** | Non payment of Service Tax on Manpower Recruitment & Supply Agency Services | 83.73 | 83.73 | - | **Visakhapatnam I** |
| **24.** | **4A** | Non payment of Service Tax on Renting of Immovable Properties | 42.78 | 42.78 | 25.53 | **Hyderabad II & Hyderabad IV** |
| **25.** | **8A** | Non payment of Service Tax on Supply of Tangible Goods Service | 29.18 | 27.01 | - | **Bengaluru ST** |

| Sl. No. | DAP No. | Brief Subject | Amount Objected | Amount Accepted | Amount Recovered | Name of Commissionerate |
|---|---|---|---|---|---|---|
| **26.** | **10A** | Non payment of Service Tax on Manpower Recruitment and Supply Agency Services | 4,390.54 | 4,390.54 | - | **Delhi ST** |
| **27.** | **12A** | Non payment of Service Tax on Transportation of Goods by Road Service | 22.15 | 22.15 | - | **Bolpur** |
| **28.** | **13A** | Non payment of Service Tax on Renting of Immovable Property Service | 19.60 | 19.60 | - | **Calicut** |
| **29.** | **17A** | Non payment of Service Tax on Construction of Complex Service | 16.52 | 16.52 | - | **Calicut** |
| **30.** | **24A** | Non payment of Service Tax on Construction Services | 21.76 | 21.76 | - | **Jaipur I** |
| **31.** | **35A** | Non payment of Service Tax on Renting of Immovable Property Service | 34.07 | 34.07 | 31.23 | **Mumbai LTU** |
| **32.** | **21A** | Non payment of Service Tax on import of Services | 174.00 | 174.00 | - | **Delhi ST** |
| **33.** | **15A** | Non payment of Service Tax on Import of Services | 19.03 | 19.03 | - | **Chennai ST** |
| **34.** | **84B** | Non payment of Service Tax on Import of services | 23.88 | 23.88 | 23.88 | **Delhi ST** |
| **35.** | **19B** | Non payment of Service Tax on import of services | 29.57 | 29.57 | 29.57 | **Surat I** |
| **36.** | **68B** | Non payment of Service Tax on Import of services | 16.70 | 16.70 | 16.70 | **Daman** |
| **37.** | **71B** | Non payment of Service Tax on Import of services | 10.65 | 10.65 | 10.65 | **Surat II** |
| **38.** | **73B** | Non payment of Service Tax on Import of services | 193.98 | 193.98 | - | **Kolkata ST** |
| **39.** | **29B** | Non payment of Service Tax on import of services | 161.17 | 161.17 | 161.17 | **Delhi ST** |
| **40.** | **59B** | Non payment of Service Tax on Import of services | 14.83 | 14.83 | 14.83 | **Chennai III** |

| Sl. No. | DAP No. | Brief Subject | Amount Objected | Amount Accepted | Amount Recovered | Name of Commissionerate |
|---|---|---|---|---|---|---|
| **41.** | **63B** | Non payment of Service Tax on Import of services | 11.75 | 11.75 | 11.75 | **Delhi ST** |
| **42.** | **31A** | Non payment of Service Tax on Import of Services | 60.86 | 60.86 | - | **Hyderabad II** |
| **43.** | **19A** | Non payment of Service Tax on Import of Services | 24.4 | 24.4 | - | **Delhi ST** |
| **44.** | **34A** | Non payment of Service Tax on Import of Services | 21.14 | 21.14 | - | **Delhi ST** |
| **45.** | **40A** | Non payment of Service Tax on Works Contract Service | 223.00 | 223.00 | - | **Hyderabad II** |
| **46.** | **41A** | Non payment of Service Tax on Import of Services | 22.46 | 22.46 | 22.46 | **Hyderabad IV** |
| **47.** | **5B** | Non payment of Service Tax on import of Services | 22.89 | 22.89 | 22.89 | **Chennai ST** |
| **48.** | **8B** | Non payment of Service Tax on import of Services | 21.52 | 21.52 | - | **Chennai ST** |
| **49.** | **9B** | Non payment of Service Tax on import of Services | 63.00 | 63.00 | 63.00 | **Chennai ST** |
| **50.** | **46B** | Non payment of Service Tax on import of Services | 171.40 | 171.40 | - | **Jaipur I** |
| **51.** | **48B** | Non payment of Service Tax on import of Services | 11.02 | 11.02 | 11.02 | **Mumbai ST I** |
| **52.** | **49B** | Non payment of Service Tax on import of Services | 44.60 | 44.60 | 44.60 | **Belapur** |
| **53.** | **56B** | Non payment of Service Tax on import of Services | 11.07 | 11.07 | 11.07 | **Jaipur I** |
| **54.** | **65B** | Non payment of Service Tax on import of Services | 10.74 | 10.74 | 10.74 | **Delhi ST** |
| **55.** | **75B** | Non payment of Service Tax on import of Services | 34.01 | 34.01 | 34.01 | **Kolkata ST** |
| **56.** | **88B** | Non payment of Service Tax on import of Services | 38.44 | 38.44 | 38.44 | **Mumbai ST II** |
| **57.** | **51B** | Short payment of Service Tax | 134.85 | 134.85 | 134.85 | **Patna** |

| Sl. No. | DAP No. | Brief Subject | Amount Objected | Amount Accepted | Amount Recovered | Name of Commissionerate |
|---|---|---|---|---|---|---|
| **58.** | **11B** | Short payment of Service Tax | 468.00 | 468.00 | 468.00 | **Hyderabad II** |
| **59.** | **12B** | Short payment of Service Tax | 324.00 | 324.00 | 324.00 | **Hyderabad II** |
| **60.** | **14B** | Short payment of Service Tax | 73.48 | 73.48 | 18.11 | **Hyderbad II** |
| **61.** | **17B** | Short payment of Service Tax | 12.34 | 12.34 | 12.34 | **Ahmedabad ST** |
| **62.** | **20B** | Short payment of Service Tax | 696.00 | 696.00 | - | **Rajkot** |
| **63.** | **74B** | Short payment of Service Tax | 228.36 | 228.36 | - | **Jamshedpur** |
| **64.** | **26A** | Short payment of Service Tax | 8.68 | 8.68 | 8.68 | **Daman** |
| **65.** | **30A** | Short payment of Service Tax | 73.81 | 73.81 | - | **Hyderabad II** |
| **66.** | **21B** | Short payment of Service Tax | 40.96 | 40.96 | 40.96 | **Vapi** |
| **67.** | **24B** | Short payment of Service Tax | 18.26 | 18.26 | 18.26 | **Visakhapatnam II** |
| **68.** | **28B** | Short payment of Service Tax | 278.42 | 278.42 | 139.20 | **Bengaluru LTU** |
| **69.** | **30B** | Short payment of Service Tax | 25.00 | 25.00 | 25.00 | **Delhi ST** |
| **70.** | **32B** | Short payment of Service Tax | 239.00 | 239.00 | 239.00 | **Delhi ST** |
| **71.** | **35B** | Short payment of Service Tax | 1,345.00 | 1,345.00 | 1,345.00 | **Delhi ST** |
| **72.** | **37B** | Short payment of Service Tax | 20.56 | 20.56 | 20.56 | **Delhi ST** |
| **73.** | **40B** | Short payment of Service Tax | 31.98 | 31.98 | - | **Bengaluru ST** |
| **74.** | **41B** | Short payment of Service Tax | 4,238.64 | 4,238.64 | - | **Kolkata ST** |
| **75.** | **43B** | Short payment of Service Tax | 289.98 | 289.98 | - | **Kolkata ST** |
| **76.** | **53B** | Short payment of Service Tax | 89.88 | 89.88 | 45.75 | **Kolkata ST** |
| **77.** | **58B** | Short payment of Service Tax | 16.48 | 16.48 | 16.48 | **Chennai ST** |
| **78.** | **60B** | Short payment of Service Tax | 19.48 | 19.48 | 19.48 | **Puducherry** |

| Sl. No. | DAP No. | Brief Subject | Amount Objected | Amount Accepted | Amount Recovered | Name of Commissionerate |
|---|---|---|---|---|---|---|
| **79.** | **62B** | Short payment of Service Tax | 73.63 | 73.63 | 73.63 | **Delhi ST** |
| **80.** | **64B** | Short payment of Service Tax | 15.47 | 15.47 | 15.47 | **Delhi ST** |
| **81.** | **66B** | Short payment of Service Tax | 16.64 | 16.64 | 16.64 | **Ahmedabad III** |
| **82.** | **67B** | Short payment of Service Tax | 11.37 | 11.37 | 11.37 | **Vadodara II** |
| **83.** | **70B** | Short payment of Service Tax | 10.77 | 10.77 | 10.77 | **Ahmedabad ST** |
| **84.** | **80B** | Short payment of Service Tax | 21.43 | 21.43 | 21.43 | **Mumbai ST I** |
| **85.** | **82B** | Short payment of Service Tax | 21.15 | 21.15 | - | **Mangalore** |
| **86.** | **91B** | Short payment of Service Tax | 34.91 | 34.91 | 34.91 | **Hyderabad IV** |
| **87.** | **93B** | Short payment of Service Tax | 92.57 | 92.57 | 92.57 | **Pune I** |
| **88.** | **11A** | Short payment of Service Tax | 209.00 | 209.00 | - | **Delhi ST** |
| **89.** | **14A** | Short payment of Service Tax | 871.60 | 871.60 | - | **Coimbatore** |
| **90.** | **16A** | Short payment of Service Tax | 11.49 | 11.49 | - | **Calicut** |
| **91.** | **23A** | Short payment of Service Tax | 107.49 | 107.49 | - | **Bengaluru ST** |
| **92.** | **25A** | Short payment of Service Tax | 13.18 | 13.18 | 13.18 | **Daman** |
| **93.** | **29A** | Short payment of Service Tax | 59.19 | 49.22 | - | **Hyderabad IV** |
| **94.** | **32A** | Short payment of Service Tax | 12.45 | 12.45 | 12.45 | **Hyderabad II** |
| **95.** | **38A** | Short payment of service tax | 66.45 | 66.45 | 1.13 | **Ranchi** |
| **96.** | **16D** | Short payment of Service Tax | 21.27 | 21.27 | - | **Mangalore** |
| **97.** | **21D** | Short payment of Service Tax | 10.61 | 10.61 | 10.61 | **Mumbai ST I** |
| **98.** | **6B** | Non payment of interest | 36.18 | 36.18 | 36.18 | **Puducherry** |
| **99.** | **15B** | Non payment of interest | 23.66 | 23.66 | 23.50 | **Hyderabad IV** |
| **100.** | **33B** | Short payment of interest | 10.09 | 10.09 | 10.09 | **Delhi ST** |

| Sl. No. | DAP No. | Brief Subject | Amount Objected | Amount Accepted | Amount Recovered | Name of Commissionerate |
|---|---|---|---|---|---|---|
| **101.** | **69B** | Non payment of interest | 28.92 | 28.92 | 28.92 | **Daman** |
| **102.** | **79B** | Non payment of interest | 98.67 | 98.67 | 98.67 | **Mumbai ST I** |
| **103.** | **83B** | Non payment of interest | 91.93 | 91.93 | 91.93 | **Jaipur I** |
| **104.** | **90B** | Non payment of interest | 16.34 | 16.34 | 16.34 | **Mumbai I** |
| **105.** | **18A** | Non payment of interest | 23.93 | 23.93 | 23.93 | **Delhi ST** |
| **106.** | **20A** | Non payment of interest | 19.02 | 19.02 | 19.02 | **Delhi LTU** |
| **107.** | **39A** | Non payment of interest | 35.04 | 35.04 | - | **Mumbai ST I** |
| **108.** | **42A** | Non payment of interest | 33.14 | 33.14 | - | **Noida** |
| **109.** | **7B** | Incorrect payment of Service Tax | 42.69 | 42.69 | 42.69 | **Chennai ST** |
| **110.** | **13B** | Availing of cenvat credit on ineligible capital goods | 161.03 | 161.03 | - | **Visakhapatnam II** |
| **111.** | **27B** | Irregular availing of cenvat credit | 30.17 | 30.17 | 30.17 | **Bengaluru I** |
| **112.** | **31B** | Non reversal of cenvat credit | 12.25 | 12.25 | 12.25 | **Delhi ST** |
| **113.** | **34B** | Irregular availing and utilisation of cenvat credit | 25.09 | 25.09 | 25.09 | **Delhi ST** |
| **114.** | **36B** | Excess availing of cenvat credit | 18.29 | 18.29 | 18.29 | **Delhi ST** |
| **115.** | **38B** | Excess availing of cenvat credit | 28.21 | 28.21 | 28.21 | **Bengaluru ST** |
| **116.** | **57B** | Cenvat credit availed on the input service used for providing exempted output service | 10.74 | 10.74 | 10.74 | **Mumbai ST II** |
| **117.** | **61B** | Separate account not maintained for taxable and exempted services | 13.59 | 13.59 | 13.59 | **Delhi ST** |
| **118.** | **72B** | Irregular availing of cenvat credit | 2,533.96 | 2,533.96 | - | **Kolkata ST** |
| **119.** | **78B** | Irregular availing of cenvat credit | 24.76 | 24.76 | 24.76 | **Mumbai LTU** |
| **120.** | **86B** | Irregular availing of cenvat credit | 55.96 | 55.96 | - | **Kolkata ST** |

| Sl. No. | DAP No. | Brief Subject | Amount Objected | Amount Accepted | Amount Recovered | Name of Commissionerate |
|---|---|---|---|---|---|---|
| **121.** | **94B** | Irregular availing of cenvat credit | 11.10 | 11.10 | 11.10 | **Pune III** |
| **122.** | **95B** | Incorrect availing of cenvat credit of additional duty of Customs | 108.77 | 108.77 | 108.77 | **Ranchi** |
| **123.** | **5A** | Incorrect availing of cenvat credit | 39.27 | 39.27 | - | **Vapi** |
| **124.** | **6A** | Incorrect availing of cenvat credit on ineligible services | 795.34 | 795.34 | - | **Bhubaneswar II** |
| **125.** | **9A** | Irregular availing of cenvat credit | 24.83 | 24.83 | - | **Bengaluru ST** |
| **126.** | **33A** | Non reversal of cenvat credit in respect of services used in providing exempted services | 28.91 | 28.91 | - | **Surat II** |
| **127.** | **11D** | Incorrect availing of cenvat credit on inputs | 216.65 | 216.65 | 216.65 | **Chennai ST** |
| **128.** | | Small money value observations accepted by the Department and rectificatory action taken but not converted into Draft Audit Paragraphs | 572.93 | 572.93 | 520.20 | |
| | | **Total** | **23407.61** | **23395.47** | **5629.89** | |

## Glossary

| | |
|---|---|
| ACES | Automation of Central Excise and Service Tax |
| AR | Audit Report |
| BE | Budget Estimates |
| BIFR | Board for Industrial and Financial Reconstruction |
| CAATs | Computer Aided Audit Techniques |
| CBEC | Central Board of Excise and Customs |
| CCE | Commissioner of Central Excise |
| CENVAT | Central Value Added Tax |
| CERA | Central Excise Receipt Audit |
| CESTAT | Customs, Excise and Service Tax Appellate Tribunal |
| Comm (Appeals) | Commissioner (Appeals) |
| Commissionerate | Office of the Commissioner of Central Excise/ Service Tax |
| CPWD | Central Public Works Department |
| CX | Central Excise |
| DGCEI | Directorate General of Central Excise (Intelligence) |
| DGST | Directorate General of Service Tax |
| DGICCE | Directorate General of Inspection, Customs and Central Excise |
| DoR | Department of Revenue |
| FY | Financial Year |
| GDP | Gross Domestic Product |
| GTA | Goods Transport Agency |
| GTR | Gross Tax Revenue |
| HUDCO | Housing and Urban Development Corporation |
| IAR | Internal Audit Report |

| | |
|---|---|
| ICT | Information and Communication Technology |
| INTOSAI | International Organization of Supreme Audit Institutions |
| INTOSAI GOV | INTOSAI Guidance for Good Governance |
| LTU | Large Taxpayer Unit |
| Ministry / Department | Ministry of Finance/ Department of Revenue |
| MTR | Monthly Technical Report |
| PLA | Personal Ledger Account |
| PSU | Public Sector Undertaking |
| RA Bill | Running Account Bill |
| RE | Revised Estimates |
| RFD | Result Framework Document |
| SCN | Show Cause Notice |
| SIDBI | Small Industries Development Bank of India |
| ST | Service Tax |
| TRU | Tax Research Unit |

© COMPTROLLER AND
AUDITOR GENERAL OF INDIA
www.cag.gov.in