सत्यमेव जयते

Report of the Comptroller and Auditor General of India for the year ended March 2012



Union Government
(Indirect Taxes - Central Excise and Service Tax)
(Compliance Audit)
No. 17 of 2013

Table of Contents

	Contents	Page
	Preface	i
	Executive Summary	iii
Chapter I	Central Excise and Service Tax Revenues	1
Chapter II	Non-compliance with Rules and Regulations	32
Chapter III	Effectiveness of Internal Controls	35
Appendix I		59
Appendix II		60
Appendix III		61
Appendix IV		67
Appendix V		76
Appendix VI		77
Glossary		79

Preface

The Audit Report for the year ended March 2012 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 Central Excise duties and Service Tax.

The observations included in this Report cover the findings of test checks conducted during 2011-12, as well as those which came to notice in earlier years but were not included in previous Reports.

Executive Summary

This Report contains 239 audit observations pertaining to Central Excise duties and Service Tax, having a total revenue implication totalling ₹ 569.55 crore. The Ministry/department had, till May 2013, accepted audit observations involving revenue of ₹ 565.72 crore and reported recovery of ₹ 109.30 crore. Significant findings are as follows;

Chapter I: Central Excise and Service Tax Revenues

- Indirect tax revenues as a percentage of Gross domestic product decreased from 5.24 per cent in FY03 to 4.38 per cent in FY12. During the same period, Central Excise revenues (PLA) as a percentage of GDP declined from 3.25 in FY03 to 1.61 in FY12 and Service Tax revenues as a percentage of GDP rose to 1.09 from 0.16.

(Paragraphs 1.6, 1.8 and 1.11)

- Revenues foregone on account of Central Excise exemptions continued during FY12. Exemptions under section 5A(1) of the Central Excise Act amounted to ₹ 1,95,590 crore (₹ 1,79,453 crore in general exemptions and ₹ 16,137 crore in area based exemptions) i.e. 135 per cent of the revenues from Central Excise.

(Paragraph 1.40)

- Cases involving Central Excise duty of ₹ 54,172.65 crore were pending as on 31 March 2012 with different authorities for adjudication/final decision ; the figure in respect of Service Tax was even higher at ₹ 73,274.74 crore.

(Paragraphs 1.70 and 1.72)

- Nearly 50 per cent of Service Tax assessees paying revenue over ₹ 1 crore annually and due for audit by the Central Excise and Service Tax department remained unaudited during 2011-12.

(Paragraph 1.87)

- 634 audit paragraphs involving Central Excise duty totalling ₹ 1,429.42 crore were reported during the last 5 years (including the current year's report). The Government had accepted audit observations in 502 audit paragraphs involving ₹ 533.08 crore and had recovered ₹185.09 crore.

(Paragraph 1.96)

- 858 audit paragraphs involving Service Tax totalling ₹ 1,519.42 crore were reported during the last 5 years (including the current year's report). The Government had accepted audit observations in 793 audit paragraphs involving ₹ 1,208.26 crore and had recovered ₹ 353.85 crore.

(Paragraph 1.97)

Chapter II: Non-compliance with Rules and Regulations

- We observed instances of incorrect availing/utilisation of cenvat credit, short payment of duty/tax and non-payment of interest on delayed payments involving revenue implication of ₹ 61.44 crore and ₹ 478.04 crore in Central Excise and Service Tax respectively.

(Paragraphs 2.1 and 2.13)

Chapter III: Effectiveness of Internal Control

- We observed, inter alia, instances of deficiencies, in scrutiny and internal audit process, ineffective call book review, and non-recovery of Government dues by departmental officers. Duty/tax involved was ₹ 30.07 crore.

(Paragraphs 3.2 and 3.21)

Chapter I

Central Excise and Service Tax Revenues

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 money 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 total receipts (FY12) of the Union Government, which amounted to ₹ 52,83,774 crore. Union Government's own receipts were ₹ 12,20,597 crore, constituting only 23.10 per cent of the total receipts. The remaining 76.90 per cent comprised of borrowings. Out of its own receipts, ₹ 8,89,118 crore (72.84 per cent) were gross tax receipts.

Table 1.1: Resources of the Union Government

	Cr . ₹
A. Total Revenue receipts	11,65,691
i. Direct Tax Receipts	4,93,987
Ii. Indirect Tax Receipts	3,92,674
iii. Other Tax Receipts	2,457
iv. Non-Tax receipts including grant-in-aid and contribution	2,76,573
B. Miscellaneous Capital receipts	18,088
C. Recovery of Loans and Advances	36,818
D. Debt Receipts	40,63,177
Total Receipts (A+B+C+D)	52,83,774

Note: a) Figures from Union Finance Accounts of FY12
b)Tax receipts include ₹ 2,55,414 crore as share of net proceeds of direct and indirect taxes directly assigned to States.

Revenue Receipts: Movement of Major Aggregates

1.2 Revenue receipts come from both tax and non-tax sources. Tax revenue comprises proceeds of taxes and duties levied by the Union Government, *viz*. taxes on income and expenditure, customs, union excise duties, tax on services, etc.

1.3 The Department of Revenue (DoR) under the Ministry of Finance exercises control in matters relating to all taxes of Union Government through two statutory Boards, constituted under the Central Board of Revenue Act, 1963, namely the Central Board of Excise and Customs (CBEC) and the Central Board of Direct Taxes (CBDT). Appendix 1 depicts the organizational chart of DoR.

1.4 CBEC looks after 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 **73,806**. Appendix 2 shows the organizational structure of CBEC.

1.5 The Report contains 239 audit observations having a total revenue implication totalling ₹ 569.55 crore. The Ministry/department had, as of May 2013, accepted 235 audit observations involving revenue of ₹ 565.72 crore and had reported recovery of ₹ 109.30 crore[1]. This Chapter discusses trends, composition and systemic issues in indirect taxes (Central Excise and Service Tax) using data from the Union Finance Accounts, departmental accounts, data available in public domain, departmental MIS and compliance/performance audit findings in the last decade.

Indirect Tax Revenues

1.6 Table 1.2 depicts collections of indirect tax as a percentage of GDP for the period FY03 to FY12[2]. The percentage share of indirect taxes to GDP decreased from 5.24 per cent in FY03 to 4.38 per cent in FY12 though during the years FY05 to FY07, the percentage share showed an increasing pattern. Share of indirect taxes in the gross tax revenues also fell from 61 per cent (FY03) to 44 per cent (FY12). GDP increased from ₹ 25.31 lakh crore in FY03 to ₹ 89.75 lakh crore in FY12 whereas indirect taxes increased from ₹ 1.33 lakh crore in FY03 to ₹ 3.93 lakh crore in FY12.

Table 1.2: Revenue receipts

Cr. ₹

Year	Gross Tax Revenue (GTR)	Indirect Tax Revenues	GDP	GTR as % of GDP	Indirect Tax revenue as % of GDP
FY03	2,16,266	1,32,542	25,30,663	8.55	5.24
FY04	2,54,348	1,48,534	28,37,900	8.96	5.23
FY05	3,04,958	1,71,273	32,42,209	9.41	5.28
FY06	3,66,152	1,99,702	36,93,369	9.91	5.41
FY07	4,73,512	2,41,906	42,94,706	11.03	5.63
FY08	5,93,147	2,79,497	49,87,090	11.89	5.60
FY09	6,05,298	2,69,988	56,30,063	10.75	4.80
FY10	6,24,527	2,45,373	64,77,827	9.64	3.79
FY11	7,93,307	3,45,371	77,95,314	10.18	4.43
FY12	8,89,118	3,92,674	89,74,947	9.91	4.38

Note: Figures of tax receipts are as per Union Finance Accounts of respective years

1.7 *The Ministry stated (March 2013) that analytical parameters such as the tax-GDP ratio are most often an outcome of direction in the form of policy interventions, given to the overall economy, which operates in a scenario of internal and external factors. Unstable oil prices, global economic meltdown and fiscal stimulus packages including*

[1] 235 cases include cases where revenue was recovered/rectificatory action initiated though departmental lapse has not been accepted.

[2] GDP is based on current market prices with base year as 2004-05. Figures as provided by Central Statistics Office as of January 2013 and as depicted in Economic Survey 2012-13, are used in this Report.

measures such as reduction in rates of duties and taxes, providing of incentives as well as withdrawal of exemptions, introduced by the Government to moderate the Indian economy from the global economic recession, influenced the direction of indirect tax policy and administration.

Growth of Central Excise and Service Tax - Trends and Composition

1.8 Table 1.3 traces the growth of Central Excise collections during FY03 to FY12. During FY12, Central Excise collections grew by 5.23 per cent over the previous year. However, we observed that the share of Central Excise in gross tax revenues has decreased from 38.06 per cent (FY03) to 16.30 per cent (FY12) during the period i.e. the share has become less than half of what it used to be a decade ago. The table further indicates that Central Excise revenues expressed as a percentage of GDP has suffered a similar decline.

Table 1.3: Growth of Central Excise collections through PLA*

Cr.₹

Year	CE(PLA)	% growth over previous year	GDP	CE as % of GDP	Gross Tax Revenues	CE as % of Gross Tax Revenue
FY03	82,310	-	25,30,663	3.25	2,16,266	38.06
FY04	90,774	10.28	28,37,900	3.20	2,54,348	35.69
FY05	99,125	9.20	32,42,209	3.06	3,04,958	32.50
FY06	1,11,226	12.21	36,93,369	3.01	3,66,152	30.38
FY07	1,17,613	5.74	42,94,706	2.74	4,73,512	24.84
FY08	1,23,611	5.10	49,87,090	2.48	5,93,147	20.84
FY09	1,08,613	(-)12.13	56,30,063	1.93	6,05,298	17.94
FY10	1,02,991	(-)5.18	64,77,827	1.59	6,24,527	16.49
FY11	1,37,701	33.70	77,95,313	1.77	7,93,307	17.36
FY12	1,44,901	5.23	89,74,947	1.61	8,89,118	16.30

Source: Union Finance Accounts of respective years

* Payments through PLA refer to payments by cash, cheque etc i.e. other than through cenvat account.

1.9 *The Ministry stated (March 2013) that cumulative of PLA and cenvat credit utilisation shows increasing trend after 2009-10 vis-à-vis GDP and gross tax revenues during the same period and that payments through cenvat credit need to be factored in.*

1.10 The Ministry's contention is not acceptable. Under the cenvat credit system, credit is given at each stage for duty paid at earlier stage. The Union budget considers only PLA collection as tax receipts. Even the Economic Survey 2012-13 uses only PLA collections in calculation of tax to GDP ratios.[3]

1.11 Table 1.4 depicts the Service Tax revenues as percentage of GDP and gross tax revenues for the period FY03 to FY12. We observed that the share of Service Tax to gross tax revenues increased from 1.91 per cent to 10.97 per cent during the period. During FY12, Service Tax collections grew by 37.31 per cent. The buoyancy is due to

[3] Economic Survey 2012-13, Chapter 3, Table 3.4, Page 61

gradual increase in the number of taxable services and increase in tax rates during the period. In FY03, total number of taxable services was 52; however, in FY12, 119 services were taxable. Besides a number of policy measures to rationalize penal provisions and improve compliance, rates of Service Tax have also varied between 8 per cent and 12 per cent in the intervening years.

Table 1.4: Growth of Service Tax

Cr.₹.

Year	ST	% growth over previous year	GDP	ST as % of GDP	Gross Tax Revenues	ST as % of Gross Tax Revenue
FY03	4,122	-	25,30,663	0.16	2,16,266	1.91
FY04	7,891	91.44	28,37,900	0.28	2,54,348	3.10
FY05	14,200	79.95	32,42,209	0.44	3,04,958	4.66
FY06	23,055	62.36	36,93,369	0.62	3,66,152	6.30
FY07	37,598	63.08	42,94,706	0.88	4,73,512	7.94
FY08	51,302	36.45	49,87,090	1.03	5,93,147	8.65
FY09	60,941	18.79	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	89,74,947	1.09	8,89,118	10.97

Source: Union Finance Accounts of respective years

Comparison of data on revenue collections

1.12 Table 1.5 indicates that there is discrepancy in revenue figures reported in the Union Finance Accounts and in the Monthly Revenue Reports(MRR) of the department. Audit observed that in FY12, the difference between the two sets of figures in respect of service tax was over ₹ 1300 crore.

Table 1.5: Discrepancy in figures

Cr. ₹

Year	Central Excise		Service Tax	
	Figures as per Finance Accounts	Figures as per departmental MRR	Figures as per Finance Accounts	Figures as per departmental MRR
FY08	1,23,611	1,22,938	51,302	50,381
FY09	1,08,613	1,04,701	60,941	63,565
FY10	1,02,991	1,02,858	58,422	59,450
FY11	1,37,701	1,36,463	71,016	71,782
FY12	1,44,901	1,42,673	97,509	96,124

1.13 *The Ministry stated (March 2013) that statistical data on revenue collected by various authorities from various sources show differences on the basis of point at which data is collected. However, final data on annual basis as reconciled by the Principal CCA with Controller General of Accounts, Department of Expenditure and reflected in the Receipt budget documents of the Ministry of Finance is relied upon as standard.*

1.14 The figures reported by Principal CCA are of actual collections and the ones reported through MRRs are based on the returns filed. The significant difference

between the two sets of figures is a matter of concern as both relate to the same transactions reported. Hence, there is a need for better reconciliation mechanism.

Indirect Tax components - Relative performance

1.15 Table 1.6 depicts the growth trajectory of the various indirect tax components in GDP terms for the period FY03 to FY12. While in respect of both Customs and Central Excise, there was an overall decline during the decade, the same was more pronounced in Central Excise.

Table 1.6: Indirect Taxes - percentage of GDP

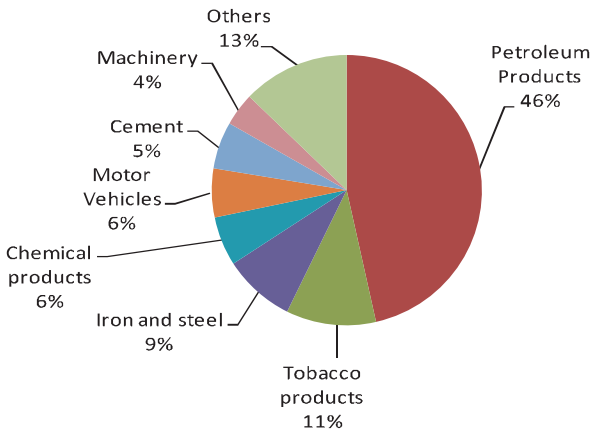
Year	Customs	Central Excise	Service Tax
FY 03	1.77	3.25	0.16
FY 04	1.71	3.20	0.28
FY 05	1.78	3.06	0.44
FY 06	1.76	3.01	0.62
FY 07	2.01	2.74	0.88
FY 08	2.09	2.48	1.03
FY 09	1.77	1.93	1.08
FY 10	1.29	1.59	0.90
FY 11	1.74	1.77	0.91
FY 12	1.66	1.61	1.09
A: Avg (FY 03-05)	1.75	3.17	0.29
B: Avg (FY 10-12)	1.56	1.66	0.97
C = B-A	-0.19	(-)1.51	0.67

Source: Union Finance Accounts of respective years

Top Revenue yielding commodities

1.16 Chart 1.1 depicts the share of commodity groups in the overall Central Excise revenues (FY12). Petroleum (46 per cent), tobacco (11 per cent), Iron and Steel (9 per cent), motor vehicles (6 per cent), chemicals (6 per cent), cement (5 per cent) and machinery (4 per cent) were the seven highest earners and together, contributed 88 per cent to the total Central Excise revenue in FY12.

Chart 1.1 : Revenue share of major commodities



Source: CBECDDM

Service Tax revenues from major contributing service categories

1.17 Table 1.7 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 premia), 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 these service categories listed in the table, 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 1.7: Service Tax from major service categories

Cr. ₹

Year	Banking and Financial Services	Tele communication	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/GTO
FY08	3,743.74	2,665.51	3,864.06	2,788.70	2,223.16	946.47	230.04	1,582.20	1,812.36	2,941.11
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

Source: Union Finance Accounts of respective years

Revenue from Petroleum and Non-Petroleum products

1.18 Petroleum products are the largest contributors to Central Excise duties. The Central Excise revenues from petroleum and non-petroleum products during recent years are depicted in Table 1.8:

Table 1.8: Collection from petroleum and non-petroleum products

Cr. ₹

Year	Petroleum related revenue	Other CE revenue	Share of petroleum products in CE revenue (%)	Share of non-petroleum products in CE revenue (%)
FY06	51,753	66,544	44	56
FY07	57,884	70,233	45	55
FY08	60,231	78,508	43	57
FY09	59,383	64,839	48	52
FY10	64,012	53,489	54	46
FY11	76,546	74,859	51	49
FY12	74,829	89,518	46	54

Source: Figures provided by the Ministry

1.19 Central Excise contribution from petroleum sector was around 50 per cent. The predominant share of Central Excise collections from a single group of commodity points to narrow tax base and /or low tax rate structure as well as high tax expenditures.

Contribution from main non-petroleum commodities

1.20 We have depicted the contribution from all other non-petroleum product groups to Central Excise revenues during the last decade in Table 1.9.

Table 1.9: Collection from non-petroleum commodities

Cr. ₹

Year	Cigarettes	Iron and steel	Cement	Motors Cars	Machinery	Plastics	Articles of Iron & steel	Organic chemicals	Electrical Machinery	Pharmaceutical	Other Commodities	Total
FY04	5,495	7,330	4,220	2,067	2,960	2,152	1,137	1,722	1,663	1,434	25,416	55,596
FY05	5,995	7,663	4,523	2,653	3,628	2,531	2,107	2,171	1,921	1,616	26,595	61,402
FY06	6,989	10,723	4,739	3,472	4,086	2,477	2,089	2,026	1,903	2,265	25,775	66,544
FY07	7,701	12,685	5,149	2,958	4,810	2,396	2,433	2,044	1,900	2,007	26,149	70,233
FY08	8,152	15,940	6,991	2,716	5,349	2,537	2,530	1,871	2,173	1,739	28,510	78,509
FY09	9,310	14,112	6,486	2,420	2,822	2,076	1,753	1,165	1,516	523	22,686	64,869
FY10	9,556	8,479	5,185	3,958	2,382	1,355	1,307	825	1,077	353	19,023	53,499
FY11	11,175	12,634	7,458	5,001	3,680	2,368	1,847	1,521	1,456	376	27,435	74,950
FY12	**12,133**	**11,840**	**8,952**	**4,834**	**4,519**	**2,934**	**2,001**	**1,943**	**1,695**	**693**	**34,529**	**86,074**

Source: CBECDDM

1.21 Growth in Central Excise revenues from cigarettes relegated iron and steel products, the largest contributors amongst the non-petroleum group, to second position in FY12. Other commodity groups retained their respective position during the last four years.

Cenvat credit

Central Excise receipts vis-à-vis cenvat credit utilised

1.22 A manufacturer can avail credit of duty of Central Excise paid on inputs or capital goods as well as Service Tax paid on input services related to his manufacturing activity and can utilize credit so availed in payment of Central Excise duty. Table 1.10 shows growth of Central Excise collections through cash (PLA) and cenvat credit during FY03 to FY12.

Table 1.10: Central Excise Receipts: PLA and Cenvat utilisation

Cr. ₹

Year	CE duty paid through PLA		CE duty paid through cenvat credit*		CE duty paid from cenvat credit as % of PLA payments
	Amount	% increase from previous year	Amount	% increase from previous year	
FY03	82,310	-	53,039	-	64.44
FY04	90,774	10.28	66,576	25.52	73.34
FY05	99,125	9.20	76,665	15.17	77.34
FY06	1,11,226	12.21	96,050	25.29	86.36
FY07	1,17,613	5.74	1,28,698	33.99	109.42
FY08	1,23,611	5.10	1,52,210	18.27	123.14
FY09	1,08,613	(-)12.13	1,50,361	(-)1.21	138.44
FY10	1,02,991	(-)5.18	1,19,982	(-)20.20	116.50
FY11	1,37,701	33.70	1,70,058	41.74	123.50
FY12	1,44,901	5.23	2,15,849	26.93	148.96

Source: *Figures furnished by the Ministry

1.23 Until FY06, duty payment through PLA (cash) was more than payment from cenvat credit. Afterwards, duty payment from cenvat credit increased and rose to almost 149 per cent of PLA, in FY12. The data indicates that while the Central Excise receipts (in cash) had gone up by 76 per cent during the period, duty payment through cenvat during the same period had increased by 307 per cent. In general, the utilisation of cenvat credit has increased at a faster pace than actual receipts through PLA. We have included in the current report, 48 instances involving ₹ 31.79 crore on cenvat related issues such as incorrect/availing utilization of cenvat credit observed by Audit during compliance audits at field.

1.24 Table 1.11 depicts data on commodity wise availing of cenvat credit in recent years. While there is increase in cenvat utilization across all commodities, two commodities i.e. petroleum products and iron and steel, registered a decline in PLA collections during the year. Increase in cenvat credit utilisation is attributable, inter alia to factors such as increase in export clearances and availability of accumulated cenvat credit relating to capital goods on expansion of manufacturing units, cross-utilisation of Service Tax related credit etc.

Table 1.11 : Main commodities utilising cenvat credit

Cr. ₹

Sl. No.	Commodity Group	FY11		FY12		% growth in FY12 over FY11	
		PLA	Cenvat	PLA	Cenvat	PLA	Cenvat
1	Petroleum products	76,546.17	7,511.87	74,709.33	9,757.08	(-)2.40	29.89
2	Tobacco products	15,518.54	486.38	17,414.68	646.72	12.22	32.97
3	Iron and steel	14,480.84	34,692.29	13,813.83	45,344.95	(-)4.61	30.71
4	Chemical products	7,541.51	27,995.79	9,236.43	33,324.82	22.47	19.04
5	Motor Vehicles	8,667.61	30,359.04	9,331.17	38,173.05	7.66	25.74
6	Cement	7,458.16	4,352.76	8,952.39	5,001.48	20.03	14.90
7	Machinery	5,372.05	20,636.50	6,407.16	24,497.50	19.27	18.71

Source: Figures furnished by the Ministry

1.25 Fall in utilisation of PLA in respect of petroleum products and iron and steel was attributable to a combination of factors. Rise in cenvat utilisation in petroleum was attributed by Chennai zone for example, in the monthly revenue performance report (March 2012) to factors such as increase in cost of major inputs namely, base oil and additives and stagnant sale price resulting in accumulation of cenvat credit. The zone reported that the shortfall in PLA payment from the zone was due to the excess utilization of this credit. Certain other zones attributed the introduction of CE notification no. 33/2011 dated 25 June 2011 abolishing basic duty of Rs. 2.60 per litre on unbranded R. D. oil as resulting in reduction in PLA collections. Coimbatore zone cited linkage of increased utilisation in iron and steel industry to imposition of countervailing duty on imported coal since March 2012 based on which assessees could avail huge credit on CVD on imported coal. Vadodara zone attributed decrease in PLA in 2012 figures vis-à-vis comparable figures of March 2011 to increase in cenvat due to additional availability of cenvat credit of Rs. 319 crore as on 01.04.2011 on account of de-notification of M/s. Essar SEZ and merger of the 3 sister concern units of M/s. Essar Steel Ltd.

Service Tax receipts vis-à-vis cenvat credit utilized

1.26 One of the major statutory changes in the evolution of Service Tax was the recognition in law (2002) of the availing and utilization of cenvat on services. Subsequent changes in law resulted in expansion 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.

1.27 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 Table1.12.

Table 1.12: 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	
FY08	51,302	-	10,712	-	20.88
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

Source: *Figures furnished by the Ministry

1.28 Table 1.12 shows that percentage of Service Tax paid through cenvat credit to PLA (cash) showed increasing trend up to FY11. Utilisation dipped to 13.88 per cent in FY12.

1.29 We observed a significant number of cases (24 instances involving ₹ 172.23 crore on cenvat related issues such as incorrect availing and utilization of cenvat credit), which we have included in this Report. We also pointed out similar instances in previous Audit Reports (C & AG's Audit Report no 28 and no 29 of 2011-12). Persistent deficiencies are clearly indicative of the need to strengthen the department's compliance verification mechanisms such as scrutiny, audit and anti-evasion.

1.30 The department in its Annual Performance Report (Service Tax) for 2009-10 also noted that cenvat verification during scrutiny of returns is almost negligible. Director General of Service Tax (DGST) while bringing out the Report hoped that the situation would improve with the publication of the Service Tax Scrutiny Manual in 2009[4]. Wrongful utilisation of cenvat credit is also one of the three modus operandi identified by the department[5]. DGST highlighted the need to launch an Action Plan involving Audit and Anti-Evasion wings which should work in close coordination at the apex and Commissionerate levels to detect cases of evasion.

1.31 *The Ministry attributed (March 2013) the rising trend of cases relating to misuse of cenvat credit scheme to the fraudulent availing of credit without receipt of goods. In*

[4] DGST, an attached office of CBEC, is responsible for monitoring the collection and assessment of Service Tax

[5] DGST's letter dated 25 August 2011 to all Chief Commissioners

addition, despite the department placing increased reliance on audit and anti-evasion measures, shortage of staff continued to hamper these efforts. However, Audit observed that even the latest Action Plan (2013-14) laid no emphasis on close coordination between the Audit and Anti-evasion wings which would aid detection of cases of evasion.

Budgeting issues in Central Excise and Service Tax

1.32 Table 1.13 presents a comparison of the Budget Estimates and the corresponding actuals for Central Excise.

Table 1.13: Central Excise- Budget Estimates and Actual receipts

Cr. ₹

Year	Budget estimates	Revised estimates	Actual receipts	Difference between actual receipts and budget estimates	Difference as per cent of Budget estimates
FY03	91,433	87,383	82,310	(-)9,123	(-)9.98
FY04	96,791	92,379	90,774	(-)6,017	(-)6.22
FY05	1,09,199	1,00,720	99,125	(-)10,074	(-)9.23
FY06	1,21,533	1,12,000	1,11,226	(-)10,307	(-)8.50
FY07	1,19,000	1,17,266	1,17,613	(-)1,387	(-)1.17
FY08	1,30,220	1,27,947	1,23,611	(-)6,609	(-)5.08
FY09	1,37,874	1,08,359	1,08,613	(-)29,261	(-)21.22
FY10	1,06,477	1,02,000	1,02,991	(-)3,486	(-)3.27
FY11	1,32,000	1,37,778	1,37,701	5,701	4.32
FY12	1,64,116	1,50696	1,44,901	(-)19,215	(-)11.71

Source: Union Finance Accounts and receipt budget documents of respective years

1.33 The actual receipts were lower than the budget estimates except in FY11. In FY09, the variation between the actual collections and budget estimates was significantly higher at 21 per cent. In FY07, the variation came down to 1.17 per cent. In FY11, the collection exceeded the budget estimates by 4.32 per cent.

1.34 Table 1.14 presents a comparison between the Budget Estimates and the corresponding actuals in respect of Service Tax.

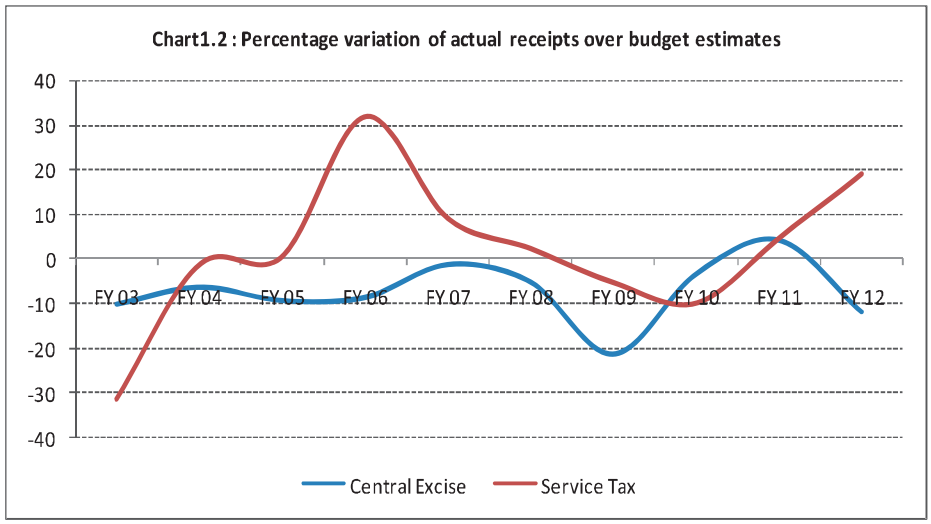
Table 1.14: Service Tax - Budget Estimates and Actual receipts

Cr. ₹

Year	Budget estimates	Revised estimates	Actual receipts	Difference between actual receipts and budget estimates	Difference as per cent of Budget estimates
FY03	6,026	5,000	4,122	(-)1,904	(-)31.60
FY04	8,000	8,300	7,891	(-)109	(-)1.36
FY05	14,150	14,150	14,200	50	0.35
FY06	17,500	23,000	23,055	5,555	31.74
FY07	34,500	38,169	37,598	3,098	8.98
FY08	50,200	50,603	51,302	1,102	2.20
FY09	64,460	65,000	60,941	(-)3,519	(-)5.46
FY10	65,000	58,000	58,422	(-)6,578	(-)10.12
FY11	68,000	69,400	71,016	3,016	4.44
FY12	82,000	95,000	97,509	15,509	18.91

Source: Union Finance Accounts and receipt budget documents of respective years

1.35 Table 1.14 indicate that actual receipts were lower than the budget estimates during the years FY03 and FY04. Subsequently, collections exceeded budget estimates barring the years FY09 and FY10. Actual receipts of FY06 exceeded budget estimates by 31.74 per cent. This was attributable to the introduction of 9 new services (with effect from 16.05.2005) and expansion in the scope of 12 existing services. As against this, the collections pertaining to FY10 indicated a steep decline, falling below 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 with the revenue collected in FY09. During the last two years (FY11 and FY12), the collections have again indicated a rising trend. The collections in FY12 exceeded the budget estimates by around 19 per cent. Based on figures for recent years, we have plotted in Chart 1.2, the difference between actual receipts and budget estimates expressed as percentage of budget estimates (Central Excise and Service Tax).



Systemic issues in Central Excise and Service Tax administration

Tax expenditure issues

1.36 Taxation is the primary source of revenue generation for any Government to fund its expenditures. Collective tax base and effective rate of tax largely determine the amount of revenue raised. Special tax rates, exemptions, deductions, rebates, deferrals and credits are some of the measures that determine the collective tax base and the effective tax rate, and are called "tax preferences". Tax preferences may be viewed as subsidy payments to preferred taxpayers. Such implicit payments referred to as "tax expenditures" are spending programmes embedded in the tax statute.

1.37 In recent years, the Government has been laying the tax expenditure or revenue foregone statement before the Parliament which seeks to list the revenue impact of tax incentives. These estimates of the tax expenditures, as indicated therein, have been made on the basis of the following assumptions.

a) The estimates and projections are intended to indicate the potential revenue gain that would be realised by removing exemptions, deductions, weighted deductions and similar measures. The estimates are based on a short-term impact analysis. They are developed assuming that the underlying tax base would not be affected by removal of such measures. As the behaviour of economic agents, overall economic activity or other Government policies could change along with the elimination of the specific tax preference, the revenue implications could be different to that extent.

b) The cost of each tax concession is determined separately, assuming that all other tax provisions remain unchanged. Many of the tax concessions do, however, interact with each other. Therefore, the interactive impact of tax incentives could turn out to be different from the revenue foregone calculated by adding up the estimates and projections for each provision.

1.38 Levy of Excise duty is as per the tariff rates specified in the First and Second Schedules to the Central Excise Tariff Act 1985. Central Government can under Section 5A(1) of the Central Excise Act 1944 issue exemption notifications in public interest so as to prescribe duty rates lower than the tariff rates prescribed in the Schedules called **"effective rates"**. Difference between duty that would have been payable but for the issue of an exemption notification and the actual duty paid in terms of the relevant notification is projected as "revenue foregone" in the budget documents.

1.39 Besides the powers to issue general exemption notifications under Section 5A(1) ibid, the Central Government also has the powers to issue special orders for granting Excise duty exemption on a case to case basis under circumstances of an exceptional nature vide Section 5A(2) of the Central Excise Act. The duty foregone figures in the revenue foregone statement do not include estimates of revenue foregone in respect of duty not collected on account of issue of special exemption orders. Revenue foregone figures do not indicate reason for non-inclusion of estimates of revenue foregone on account of Service Tax exemptions.

1.40 Table 1.15 shows figures of Central Excise related tax expenditures in recent years as reported in budget documents of the Union Government. The tax expenditure for FY12 in respect of Excise duties (revised figures) was ₹ 1,95,590 crore (₹ 1,79,453 crore as general exemptions and ₹ 16,137 crore as area based exemptions) which is almost 135 per cent of revenues from Central Excise.

Table 1.15: Tax Expenditures (Central Excise)

Cr. ₹

Year	*Total Tax expenditure (TE)	TE as % of GDP	TE as % of Central Excise	TE as % of Gross tax receipts
FY05	30,449	0.94	30.72	9.98
FY06	66,760	1.81	60.02	18.23
FY07	75,475	1.76	64.17	15.94
FY08	87,468	1.75	70.76	14.75
FY09	1,35,496	2.41	124.75	22.38
FY10	1,69,121	2.61	164.21	27.08
FY11	1,92,227	2.47	139.60	24.23
FY12	1,95,590	2.18	134.98	21.99

*Source: Budget Documents

1.41 *The Ministry stated (March 2013) that exemptions are issued in public interest for the fulfilment of the various policy objectives, such as protection of the small-scale sector, industrial development of backward areas, encouragement of value addition, regulation of prices of essential commodities, regulation of prices of essential commodities, implementation of bilateral/multilateral agreements and promotion of exports, etc.*

Administration of Tax expenditure

1.42 We have been reporting regularly on tax expenditure issues in our Compliance Audit Reports where we had pointed out exemptions availed by ineligible assessees, incorrect exemptions resulting in short levy and loss of revenue, etc. We have also reviewed special schemes like small scale industries and area based exemptions.

1.43 In respect of Himachal Pradesh and Uttaranchal area based exemption schemes, we had pointed out instances of assessees availing exemptions they were not entitled to[6]. As a result, the department modified the scheme in 2008 and restricted the benefit of Central Excise duty exemption to substantial manufacturing activity done and through exclusion of peripheral activities such as packing, repacking, labelling, relabeling, sorting, etc. from Excise duty benefit.

Effectiveness of Tax expenditure

1.44 PAC had observed in its report on 'Concessions meant for small scale industries being availed of by large scale manufacturers' that extension of any incentive or concession should be followed up with a detailed evaluation to enable the Department to assess the efficacy in terms of growth of the targeted sector. It added that the DoR should undertake a comprehensive study/review to ascertain the benefits, pitfalls, shortcomings and instances of misuse noticed in the working of the small scale exemption scheme with a view to ensuring that the policy of the Government sub-serves its purpose.[7] Economic Survey FY13 too remarked that "There is merit in limiting the exemptions or their grandfathering on a case-by-case basis so as to realize fuller tax potential through a wider tax base."[8]

1.45 The Ministry while reporting the revenue foregone as a "targeted subsidy" does not disclose findings from evaluation reports if any, on the desired results of the tax expenditures. We feel that the Government should endeavour to analyse the outcome of policy level general exemptions including abatements as well as specific exemptions aimed at promoting any special cause within a reasonable period of time. Such analysis must be made available as a part of the budget documents or as special reports which should be on the public domain.

1.46 *The Ministry stated (March 2013) that all exemptions are reviewed from time to time, particularly during the annual budgetary exercise and exemptions that no longer serve the intended objectives are removed / rescinded after a proper evaluation. The Ministry added that exemptions in respect of Uttaranchal, Himachal Pradesh and the North East are not open ended and have been given for a specific period.*

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[6] C & AG's Audit Report no 7 of 2006

[7] Para 7 at page 3 of the 68th report of PAC (2007-2008),(14th Lok Sabha)

[8] Economic Survey 2012-13 , Page 68

1.47 Audit reiterates that considering the magnitude of tax expenditures, the Government may consider periodic review of all tax exemptions, documentation of results of such reviews and reporting of the outcomes, preferably as part of budget documents. Such a system would enable transparency and informed public debate on the need for continuation of regular/ad hoc tax concessions. Audit also points out the observation of the Karnataka High Court in its judgement dated 12 Jun 2013 in M/s Mindtree Ltd vs Union of India that it is the settled position of law that every tax exemption and incentive shall have a sunset clause[9].

Assessee base

1.48 "Assessee" means any person who is liable for payment of duty assessed or a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored and includes an authorized agent of such person. A single legal entity (company or individual) can have multiple assessee identities depending upon location of manufacturing units. Table 1.16 gives the number of Central Excise assessees during the last ten years:

Table 1.16: No. of assessees in Central Excise

Year	No. of assessees	% growth over previous year
FY03	1,26,618	-
FY04	1,86,001	46.90
FY05	2,10,141	12.98
FY06	2,31,830	10.32
FY07	2,55,605	10.26
FY08	2,77,480	8.56
FY09	2,98,425	7.55
FY10	3,05,622	2.41
FY11	2,99,357	(-)2.05
FY12	3,17,005	5.90

Source: Figures furnished by the Ministry

1.49 The top 100 assessees (in terms of revenue contribution) comprising of oil sector companies, tobacco products, automobile, cement, steel and tyre manufacturers contribute 70 per cent of Central Excise revenues.

1.50 Table 1.17 depicts the growth in number of Service Tax assessees during the last ten years.

[9] WP no 16896/2012 in the High Court of Karnataka at Bangalore

Table 1.17: Tax base in Service Tax

Year	No of taxable services	No. of assessees	% growth over previous year
FY03	52	2,32,048	-
FY04	62	4,03,856	74.04
FY05	75	7,74,988	91.90
FY06	84	8,46,155	9.18
FY07	99	9,40,641	11.17
FY08	100	10,73,075	14.08
FY09	106	12,04,570	12.25
FY10	109	13,07,286	8.53
FY11	117	13,72,274	4.97
FY12	119*	15,35,570	11.90

Source: For FY03 to FY10 - DGST, for FY11 and FY 12 – the Ministry
*wef 01.07.2012, most activities involving consideration with a few exclusions/exceptions are liable to ST.

Arrears of Tax

1.51 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. Arrears realized as percentage to tax arrears outstanding in respect of Service Tax, show a declining trend (Table 1.18) reflecting on the performance of the department.

Table 1.18: 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
FY08	1,547.96	583.11	37.67
FY09	2,503.09	1,198.68	47.89
FY10	4,441.61	864.30	19.46
FY11	8,874.93	1,642.01	18.50
FY12	14,107.19	1,591.40	11.28

Source: Figures furnished by the Ministry

1.52 *The Ministry stated (March 2013) that the area of tax arrears recovery is proposed to be suitably strengthened during cadre restructuring.*

1.53 Audit reiterates the need for strengthening tax recovery mechanism and for optimising the utilisation of available resources even while awaiting clearance of cadre restructuring proposals.

Tax Administration in Central Excise and Service Tax

1.54 CBEC introduced self-assessment in respect of Central Excise and Service Tax in 1996 and 2001 respectively. With the introduction of self-assessment, the department

also provided for a strong compliance verification mechanism with Scrutiny of Returns. Assessment is the primary function of Central Excise Officers who are to scrutinize the Central Excise and Service Tax returns to ensure correctness of duty payment. As per the manuals for the scrutiny of Central Excise and Service Tax returns, a monthly report is to be submitted by the Range Officer to the jurisdictional Assistant/Deputy Commissioner of the Division regarding the number of returns received and scrutinized. Scrutiny is done in two stages i.e. preliminary scrutiny by ACES and detailed scrutiny which is carried out manually on the returns marked by ACES or otherwise.

Scrutiny of Returns

1.55 Tables 1.19 and 1.20 depict the department's performance in respect of scrutiny of Central Excise and Service Tax returns during the last five years.

Table 1.19: Scrutiny of Central Excise Returns

Year	No. of cases				Age-wise break up				
	Opening balance	Receipts	Disposals	Closing balance	< 3 months	3 – 6 months	6 – 12 months	1 – 3 years	3 years & above
FY08	86,943	78,383	80,386	84,940	75,255	6,990	2,268	354	73
FY09	94,499	80,820	81,489	93,830	82,871	9,080	1,559	245	75
FY10	1,01,911	83,413	85,811	99,513	88,219	9,422	1,348	432	92
FY11	1,53,833	74,719	69,422	1,59,130	1,18,514	28,272	11,296	960	88
FY12	3,08,734	89,713	1,03,898	2,94,549	1,71,259	68,765	38,082	16,388	55

Source: Figures furnished by the Ministry

Table 1.20: Scrutiny of Service Tax Returns

Year	Receipts during the year	Disposals during the year	Shortage/ Excess	Shortage/ Excess (%)
FY10	7,83,706	7,38,309	(-)45,397	(-)5.79
FY11	8,08,760	8,34,532	25,772	3.19
FY12	9,55,996	7,21,123	(-)2,34,873	(-)24.57

Source: Figures furnished by the Ministry

1.56 *The Ministry stated (March 2013) that with the increase in the assessee base and mandatory electronic filing since October 2011, the number of returns for scrutiny has also increased. Owing to staff shortages, completion of detailed scrutiny of returns has not been possible.*

1.57 After introduction of self-assessment, scrutiny of returns (and of assessments) and internal audit are the main mechanisms available to the department to ensure correctness of duty payable. The Manual for Scrutiny of Service Tax Returns prescribes detailed scrutiny of only 2 per cent of Service Tax returns (Para 4.2A). Similarly, the norm in respect of Central Excise returns is only 5 per cent. This implies that a very small proportion of assessments are required to be scrutinised in detail; hence, the Ministry's response that completion of detailed scrutiny of returns has not been possible owing to

staff shortage is not acceptable. Neglect of detailed scrutiny of assessments could imply a serious threat to revenue collection.

Refunds

1.58 Table 1.21 shows the details of amounts sanctioned as refunds from Central Excise revenues during the last ten years.

Table 1.21: Refunds in respect of Central Excise during the last ten years

Cr. ₹

Year	CE Receipts	*Refunds	Refunds as %of CE revenues
FY03	82,310	5,182	6.30
FY04	90,774	5,216	5.75
FY05	99,125	5,902	5.95
FY06	1,11,226	6,930	6.23
FY07	1,17,613	6,183	5.26
FY08	1,23,611	12,736	10.30
FY09	1,08,613	16,881	15.54
FY10	1,02,991	14,988	14.55
FY11	1,37,701	12,102	8.79
FY12	1,44,901	16,748	11.56

*Source: Pr. CCA

1.59 If there is a delay in sanctioning/disbursing refunds, interest is payable at prescribed rates. Such interest payment being a charge on the Consolidated Fund of India ought to be through proper budgetary mechanism.

1.60 We observed that the treatment in the Accounts of the interest paid on belated refunds was as a reduction in revenue[10]. There was no prior sanction from Parliament for this expenditure. Our Audit Reports on Union Accounts as well as on direct tax administration have commented on this issue in the past also. The Public Accounts Committee after examining the issue reported to Parliament that the Attorney General concurred with the views of the C & AG and had informed the Committee that the proper procedure would be to clearly indicate the tax collection as a receipt and estimate the interest payable on refund of taxes as expenditure[11]. PAC concluded that reporting of interest liability to Parliament would bring greater transparency in financial administration of the country, upholding of the Constitution, reducing interest burden and bringing efficiency in tax administration.

1.61 *The Ministry acknowledged (March 2013) that the matter of interest payable on refund should be indicated as expenditure and should be reported to Parliament to bring*

[10]The refunds of Union Excise duties sanctioned are shown in the Finance Accounts as 'Deduct Refunds' distinctly as a sub-head under the respective minor heads under the duty Sub- major head.

[11] PAC 2012-13, Sixty-sixth Report (15th Lok Sabha)

transparency. The matter is under discussion with CBDT and both Boards would take a uniform view.

1.62 Table 1.22 depicts the payment of interest on refunds during the last four years. However, the difference between refund figures provided by the Ministry and the Principal Chief Controller of Accounts indicates the need for reconciliation.

Table 1.22: Refunds and interest paid – Central Excise

Cr. ₹

Year	Refund	Interest	Interest (as %) of refund
FY09	2,284.30	15.94	0.70
FY10	2,107.58	1.56	0.07
FY11	1,064.00	8.46	0.80
FY12	1,263.43	6.91	0.55

Source: Figures furnished by the Ministry

Refund of Service Tax

1.63 Refund of taxes paid on services exported and taxes paid on input services used in export became possible through provisions introduced in FY05. Subsequently, 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. The Government vide notification of September 2007 provided for refund of Service Tax paid by exporters on a few taxable services, which though not in the nature of "input services" concerned export goods. These included Port Services/other port services provided for export and service of transport of goods by road/by rail from ICD to port of export provided by Goods Transport Agency.

1.64 We have tabulated the refunds sanctioned by the department during the last five years in Table 1.23[12].

Table 1.23: Receipts and Refunds in Service Tax

Cr. ₹

Year	Service Tax Receipts	*Refund	Refund as % of net Service Tax revenue
FY08	51,301	17.64	0.03
FY09	60,941	169.04	0.28
FY10	58,422	606.56	1.04
FY11	71,016	520.12	0.73
FY12	97,356	1,326.87	1.36

*Source: O/o the Pr. CCA

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

1.65 The above table shows that during the five-year period depicted (FY08 to FY12), the total amount sanctioned as refunds each year was within 2 per cent of Service Tax receipts.

1.66 However, Service Tax refunds rose from ₹ 18 crore to ₹ 1,327 crore between FY08 and FY12. Thus, while the tax collections grew by less than 100 per cent, refunds grew exponentially in the same five year period. Refunds, therefore, need to be monitored closely by the department. Where for instance, any refund of Service Tax paid on specified services used for export of said goods has been paid to an exporter but the sale proceeds in respect of the said goods have not been realised within the period allowed under the Foreign Exchange Management Act, 1999, such Service Tax refunded shall be recoverable under the law.

1.67 Audit observed that Commissionerates conduct post-audit of refunds. Lapses could occur in implementation of post-audit orders. Audit observed an interesting case from Kolkata which is discussed in Para 3.94 of this Report.

Adjudication

1.68 Adjudication is the process of deciding an issue relating to Central Excise matters through departmental authorities empowered to determine issues relating to classification, valuation, refund claims, tax/duty payable etc. The department raises demands by way of 'show cause notices' (SCNs) to the assessees when irregularities are observed.

Outstanding cases pending for adjudication/recovery – Central Excise

1.69 We have depicted the amounts involved in demands for Excise duty outstanding for adjudication/recovery during the last ten years in Table 1.24.

Table 1.24: Demands pending at various authorities – Central Excise

Cr. ₹

Year	Adjudicating Officers	Commissioners (Appeals)	CBEC and Govt	Judiciary	Pending for coercive recovery measures	Total
FY03	15,031.68	3,378.92	15.03	10,945.41	1,272.59	30,643.63
FY04	11,529.87	1,914.36	11.80	8,821.93	1,433.12	23,711.07
FY05	11,043.23	1,403.97	64.26	11,815.39	2,734.34	27,061.19
FY06	2615.10	400.04	5.49	4,657.21	1,443.86	9,121.70
FY07	5,634.77	1,152.17	114.54	20,011.35	4,868.07	31,780.90
FY08	11,377.69	932.19	53.50	12,169.01	5,890.44	30,422.83
FY09	11,844.59	1,988.17	171.68	23,702.94	13,183.73	50,891.11
FY10	12,654.51	3,434.61	62.88	1,18,612.50	5,361.06	14,0125.56
FY11	12,409.33	1,878.53	41.85	33,521.91	4,609.29	52,460.91
FY12	15,663.69	2,493.48	28.54	28,677.73	7,309.21	54,172.65

Source: Figures furnished by the Ministry

1.70 Table 1.24 indicates that cases involving duty of ₹ 54,172.65 crore were pending as on 31 March 2012 with different authorities, of which cases involving revenue of

₹ 15663.69 crore (29 per cent) were with the adjudicating officers of the department. Cases involving revenue of ₹ 28677.73 crore (53 per cent) were pending with the judiciary.

Outstanding cases pending for adjudication/recovery – Service Tax

1.71 The amounts involved in demands for Service Tax outstanding for adjudication/recovery during last ten years is depicted in Table 1.25.

Table 1.25 : Demands pending at various authorities – Service Tax

Cr. ₹

Year	Adjudicating officers	Appellate Commissioners	CBEC and Government	With Judiciary	Pending for coercive recovery measures	Total
FY03	351.34	48.53	0.72	97.12	4.25	501.96
FY04	702.56	85.48	0.12	112.48	38.55	939.19
FY05	1,238.34	759.72	2.19	438.77	64.65	2,503.67
FY06	358.46	82.46	1.05	80.31	53.40	575.68
FY07	1,946.76	173.04	2.58	978.87	299.75	3,401.00
FY08	4,093.22	302.99	0.75	1,499.23	467.83	6,364.02
FY09	11,622.6	1,160.49	10.12	2,793.64	6,846.06	22,432.91
FY10	16,219.12	491.14	5.44	36,389.39	1,443.34	54,548.43
FY11	30,266.05	4,794.43	10.13	11,883.84	1,304.23	48,258.68
FY12	49,091.42	1,365.68	0.00	20,593.47	2,224.18	73,274.74

Source: Figures furnished by the Ministry

1.72 Table 1.25 shows that during the last three years, the number of pending demands at various levels grew significantly. Total revenue outstanding crossed ₹ 70,000 crore. Cases involving tax implication of ₹ 73,274.74 crore were pending at the end of FY12 with different authorities, of which cases involving ₹ 49,091 crore (67 per cent) were pending with adjudicating officers of the department.

1.73 One of the reasons for increased pendency at adjudication stage is the absence of any prescribed time frame for finalization of Service tax related adjudications. The Ministry had linked such possibility in service tax to cadre restructuring on Audit raising the issue in an earlier Audit Report.[13]

1.74 The 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 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

[13] C & AG's Audit Report No 25 of 2010-11

by Government in higher Courts of Appeal. These measures would enhance productivity of resources employed in raising revenue.

1.75 The High Court of Bombay in its order dated 21.06.2010 in the case of CCE Vs Techno Economic Services Pvt. Ltd. had desired that CBEC consider issuing a circular, on the lines of circulars issued by the CBDT, so as to reduce litigations arising out of indirect tax litigations[14]. Accordingly, CBEC laid down certain guidelines[15]. CBEC also introduced (May 2011) monthly returns (MTR annexures) to be furnished to the Directorate of Legal Affairs.

1.76 *Concerning the pendency of appeals, the Ministry stated (March 2013) that the following steps have been taken in the last year to expedite disposal of cases.*

(i) A proposal for creation of additional benches of CESTAT is under consideration of the Ministry of Finance, Department of Revenue.

(ii) The vacant posts of Members/ President in CESTAT have been filled up.

(iii) Legislative amendments have been introduced to enhance the powers of the single Member Bench to hear/dispose of case up to ₹ 50 lakh in place of the existing limit of ₹ 10 lakh. This is expected to ensure quick disposal by equitable distribution of pending cases between the single Member Benches and the Division Benches.

(iv) Extension of the facility of settlement of cases by Settlement Commission to Service Tax matters also.

(v) The Finance Bill 2013 proposes to expand the scope of Authority for Advance rulings to cover existing importers/exporters, producers and manufacturers, and also to extend the Advance Ruling provisions to the admissibility of credit on Services paid or deemed to have been paid on input Service Tax used in the manufacture of excisable goods. Further, "resident public limited company" is now eligible for seeking Advance Ruling in Central Excise and Service Tax matters on the lines of similar provisions on the Customs side.

(vi) Redistribution of the workload of Commissioner (Appeals) to achieve quicker disposal of pending appeals.

(vii) *There has been continuous effort on the part of the department to curtail frivolous appeals, in order to reduce litigation, which is evident from the table given below:*

[14] 2010(255) ELT 526 (Bombay)

[15] CBEC's instructions dated 20 October 2010

Table 1.26: Number of appeals filed by the department in the Supreme Court

Year	No. of proposals received	No. of appeals filed*
FY 11	800	418
FY 12	612	365
FY 13 (up to 15.03.2013)	233	102

Source : Figure furnished by the Ministry vide reply dated 26.03.2013
*This includes both SLPs and Civil Appeals

Call book

1.77 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 his 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 had also pointed out certain instances in our performance audit Report on the Working of Commissionerates, divisions and ranges along the same lines[16].

1.78 We tabulated (Tables 1.27 and 1.28) the performance of the department in respect of call book clearance in Central Excise and Service Tax during recent years and noted that the pendency of call book cases is still very high indicating the need for close monitoring of the process of review of call book items. During FY 2011-12, the number of call book cases pending for over one year has crossed 20000 in respect of Central Excise alone. The need for strengthening monitoring and review is also brought out through our observations raised during the course of compliance audit (refer Para 3.19 of this Report).

Table 1.27: Call book cases pending - Central Excise

Cr. ₹

Year	Disposal during the year	Closing balance at the end of year	Revenue involved	Age-wise break up of pendency			
				< 3 months	3 – 6 months	6 – 12 months	over 1 Year
FY08	7,963	24,354	23,101	3,173	2,072	2,372	16,737
FY09	8,110	23,072	24,101	2,980	1,497	2,245	16,350
FY10	5,942	24,451	32,020	3,499	1,795	2,764	16,393
FY11	4,479	27,337	41,253	3,093	2,198	2,880	19,166
FY12	4,867	30,542	46,586	3,264	2,438	2,874	21,966

Source : Figures furnished by the Ministry

[16] C & AG's Audit Report no 25 of 2011-12, Para 6.3

Table 1.28: Call book cases pending - Service Tax

Cr. ₹

Year	Cases pending		Age-wise breakup of pendency					
			Up to 1 Years Old		Up to 1 to 2 Years Old		More than 2 Years Old	
	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.
FY12	9,587	16,605.14	2,488	5,033.53	3,322	7,119.00	3,780	4,456.81

Source: Figures provided by the Ministry

Audit of assessees by department

1.79 Modernisation of indirect tax administration in India is based on the Canadian model. The new audit system EA 2000 had four distinct features: scientific selection after risk analysis, emphasis on pre-preparation, scrutinising of business records against statutory records and monitoring of audit points.

1.80 Audit processes include preliminary review, gathering and documenting systems' information, touring the plant, 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. Creative use of computer assisted audit tools - especially in the audit of large assessee units, is a part of the audit process.

1.81 The Audit Framework consists of three parts. Directorate General of Audit and the 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, the Commissionerates conduct actual audit in terms of EA 2000 audit protocol. Technical framework comprises of basic books of law, manuals, circulars, journals etc. relating to Central Excise law. 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. The infrastructural framework consists of enablers and motivators to produce quality audit reports.

Audit of assessees by department - Central Excise

1.82 We had earlier recommended that the reduction in audit coverage due to staff shortages may be distributed evenly across mandatory and non-mandatory units[17]. The Board had then informed Audit that DG (Audit) had addressed a letter dated 22 November 2011 to Chief Commissioners drawing their attention to the prescribed norms for audit of mandatory and non-mandatory units as well as to the observations of the Audit and similar findings in the Department's Quality Assurance Review of

[17]C & AG's Audit Report no 25 of 2011-12 on "Working of Commissionerates, divisions and ranges", Recommendation no. 12

Commissionerates for the year 2010-11. The Chief Commissioners should ensure that the audit of such type of units is as per prescribed norms.

1.83 We tabulated (Table 1.29) details of Central Excise units due for audit (during FY12) by audit parties of the Commissionerates vis-à-vis units audited.

Table 1.29: Audits of assessees conducted during 2011-12 - Central Excise

Slab of annual duty (PLA+CENVAT)	Number of units due	Number of units planned	Number of units audited	Shortfall in audit (%)
Units paying annual duty over ₹ 3 crore (Category A)	8,559	8,512	7,586	11
Units paying annual duty between ₹ 1 crore and ₹ 3 crore (Category B)	5,137	5,504	4,880	5
Units paying annual duty between ₹ 50 lakh and ₹ 1 crore (Category C)	2,094	2,727	2,205	(-)5
Units paying annual duty < ₹ 50 lakh (Category D)	7,250	7,672	6,111	16

Source: Figures furnished by the Ministry.

1.84 The above table indicates that there was shortfall in coverage of 'category A' units (mandatory units) and 'category B' units (high revenue non-mandatory units). On the other hand, the department planned and covered 'category C' units (low revenue non-mandatory units) in excess of norms. In respect of Category 'D' also, the department planned for audit of assessees in excess of the norms prescribed.

1.85 *Acknowledging the excess coverage of non-mandatory units, the Ministry stated however that there has been substantial improvement in curbing this tendency of exceeding the norms in undertaking audit of Category C units and that there has been a reduction of such coverage from 150 percent to 110 percent within one year of its corrective efforts.*

Audit of assessees by department – Service Tax

1.86 We tabulated (Table 1.30) details of Service Tax units due for audit (during FY12) by audit parties of the Commissionerates vis-à-vis units audited.

Table 1.30: Audits of assessees conducted during 2011-12 – 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)	2,727	2,615	1,368	50
Units paying ST between ₹ 1 and 3 crore (Category B)	2,414	2,332	1,237	49
Units paying ST between ₹ 25 lakh and ₹ 1 crore (Category C)	5,355	6,728	1,799	66
Units paying ST < ₹ 25 lakh (Category D)	16,228	74,005	6,581	59

Figures furnished by the Ministry.

1.87 The above table indicates that there was shortfall in the audit of 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 FY12. Department audited 6581 category D units while leaving unaudited 1359 and 1177 category A and B units respectively. We observed that shortfall in audit was extremely severe in Mumbai ST-I Commissionerate which reports the highest revenue in the country. Analysis of the Quarterly Reports submitted by the Chief Commissioner of Central Excise and Service Tax, Mumbai Zone-I to the Director General of Audit (CBEC) revealed that during FY12, the Commissionerate showed 2213 units (including 700 mandatory units) out of 33385 units as "to be audited" during the year. During the previous two years however, only 312 units and 407 units could be audited with the available Audit groups. Though the Commissionerate stated that optimized utilisation of manpower was being carried out, the fact is that scrutiny and internal audit are two major compliance verification mechanisms of the department in the current scenario of self-assessment. Detailed scrutiny is required to be conducted only for 2 per cent of the Service Tax returns as per the norms prescribed in the Manual for Scrutiny of Service Tax Returns. The Ministry has also indicated that it is unable to complete detailed scrutiny given the limitation of staff resources. In the light of the continuing shortfall in completion of audit of mandatory units as well as the non-completion of detailed scrutiny notwithstanding the low norms prescribed, Audit considers that there is a need to review the adequacy of these two compliance verification mechanisms in fulfilling their intended roles in ensuring protection of revenue due to the Government.

1.88 Assuming 9,00,000 ST-3 returns are filed every 12 months (Table 1.20), this would imply only 18,000 assessments of returns to be scrutinised in detail. We, however, observed non-conduct of detailed scrutiny in certain ranges (Chapter III of this Report). In such a scenario, the inadequacy of the compliance verification system in Service Tax is a cause for concern.

1.89 *The Ministry intimated (March 2013) that the total number of taxpayers increased from 6,02,094 in 2010-11 to 8,45,727 in 2011-12 as a result of efforts of the department. The department was, however, short of staff required to undertake audit of the taxpayers.*

1.90 Increase in tax base need not necessarily justify increase in the staff administering the tax. While the Ministry pointed out shortage of staff as a major area of concern, we feel that after automation of filing of returns and introduction of e-payment of tax, the department can still make a difference with its existing staff through better risk assessment and careful planning of internal audit.

Quality of internal audit

1.91 We had earlier observed non-adherence to prescribed norms as regards desk review, verifications and coverage of mandatory units[18]. During the recent compliance audit, we also observed that even where internal audit had conducted audit in assessee premises, there were omissions (non-detection of short payment of Service Tax dues and cases of non-reversal) as pointed out in paragraph 3.86 of this Report.

1.92 *The Ministry stated (March 2013) that the adherence to audit processes is evaluated during the Quality Assurance Review (QAR) of the Commissionerates every year. Further, the department has taken concrete steps to improve the audit processes and is considering a proposal to streamline and monitor adherence to audit prescribed procedures and to make the Commissionerates more accountable.*

Cost of collection

1.93 We have depicted the expenditure incurred during the last ten years in collecting Central Excise duty and Service Tax along with the corresponding figures of total collection in Table 1.31.

Table 1.31: Central Excise and Service Tax receipts and cost of collection

Cr. ₹

Year	Receipts from Central Excise	Receipts from Service Tax	Total receipts	Cost of collection	Cost of collection as % of receipts
FY03	82,310	4,122	86,432	703	0.81
FY04	90,774	7,891	98,664	751	0.76
FY05	99,125	14,200	1,13,324	826	0.73
FY06	1,11,226	23,055	1,34,281	895	0.67
FY07	1,17,613	37,598	1,55,211	975	0.63
FY08	1,23,611	51,302	1,74,912	1,107	0.63
FY09	1,08,613	60,941	1,69,554	1,650	0.97
FY10	1,02,991	58,422	1,61,413	2,127	1.32
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

Source: Union Finance Accounts of respective years;

1.94 Notwithstanding automation and extensive use of ICT, cost of collection continues to show a rising trend. Expressed in terms of percentage of receipts, cost of collection was in the range of approximately 1 percent (FY11 and FY 12). This appears to be on the higher side for when compared with the cost of collection for direct taxes which has constantly been below 0.75 percent[19].

[18] C & AG's Audit Report no.25 of 2011-12 on 'Working of Commissionerates, divisions and ranges'
[19] C & AG's Audit Report no 27 of 2011-12,Para 1.5.4, Page 15

Impact of Audit Reports

Major irregularities reported in Compliance Audit Reports during the last ten years

1.95 During the last ten years, we reported several audit observations as shown in Tables 1.32 and 1.33.

Table 1.32: Major Irregularities pointed out in CAG's Audit– Central Excise

Cr. ₹

Year	Cess not levied	Demand not raised	Non/ short Levy of duty	Non levy of interest and penalty	Exemption	Valuation of excisable goods	Cenvat Credit	Classification of excisable goods	Topic of special Importance	Misc	Total
FY03	2.32	14.26	23.09	2.37	47.01	39.01	310.67	3.87	945.87	41.36	1,429.83
FY04	15.26	164.34	81.24	485.84	34.18	67.68	307.53	-	707.80	19.83	1,883.70
FY05	3.52	6.09	12.15	7.58	177.17	315.22	355.90	5.69	6,795.61	7.05	7,685.98
FY06	3.63	-	15.40	17.73	37.18	51.37	55.17	1,199.56	-	8.24	1,388.28
FY07	4.06	-	16.93	4.24	98.23	19.12	109.24	936.11	-	-	1,187.93
FY08	4.25	49.18	292.32	1.47	135.94	39.28	180.62	-	-	-	703.06
FY09	1.84	-	12.95	12.64	80.26	12.12	-	-	-	22.58	142.39
FY10	-	-	13.55	6.74	4.12	114.56	120.75	-	-	50.23	309.95
FY11	-	-	-	8.48	-	22.06	92.39	-	-	5.26	128.19
Total	34.88	233.87	467.63	547.09	614.09	680.42	1,532.27	2,145.23	8,449.28	154.55	14,859.31

Table 1.33: Major irregularities pointed out in CAG's Audit– Service Tax

Cr. ₹

Year	Cenvat	Exemption	Incorrect assessment of Service Tax	Interest	Non/ Short levy of ST	Valuation	Miscellaneous	Total
FY03	-	-	-	-	41.72	-	-	41.72
FY04	-	-	-	-	17.94	-	-	17.94
FY05	-	-	-	-	86.30	-	-	86.30
FY06	233.54	-	-	-	23.94	-	13.02	270.50
FY07	28.68	-	48.63	-	-	-	-	77.31
FY08	177.56	-	-	-	79.29	-	17.90	274.75
FY09	-	24.93	-	1.86	328.16	8.12	9.73	372.80
FY10	18.63	8.77	-	1.59	128.09	0.16	4.92	162.16
FY11	33.15	9.81	-	0.50	140.02	13.08	8.18	204.74
Total	491.56	43.51	48.63	3.95	845.46	21.36	53.75	1,508.22

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.

Revenue impact - Central Excise

1.96 During the last five years (including the current year's report), we reported 634 audit paragraphs involving Central Excise duty totalling ₹ 1429.42 crore. Of these, the Government had accepted audit observations in 502 audit paragraphs involving ₹ 533.08 crore and had recovered ₹ 185.09 crore. We have furnished the details in Table 1.34.

Table 1.34: Objections featured in last five years' compliance Audit Reports – Central Excise

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.	Amount (Amt)	No.	Amt	No.	Amt	No.	Amt	No.	Amt	No.	Amt	No.	Amt
FY08	163	717.49	104	156.27	21	37.02	125	193.29	41	43.13	8	4.24	49	47.37
FY09	75	156.84	41	48.30	6	2.15	47	50.45	24	27.59	3	2.00	27	29.59
FY10	150	327.77	91	62.07	6	7.80	97	69.87	55	29.12	6	7.50	61	36.62
FY11	159	158.00	133	117.64	15	34.76	148	152.40	67	46.60	3	0.19	70	46.79
FY12	87	69.32	85*	67.07	-	-	85	67.07	48	24.72	-	-	48	24.72
Total	**634**	**1,429.42**	**454**	**451.35**	**48**	**81.73**	**502**	**533.08**	**235**	**171.16**	**20**	**13.93**	**255**	**185.09**

*includes cases where revenue was recovered /rectificatory action initiated though departmental lapse not accepted.

Revenue impact – Service Tax

1.97 During the last five years (including this report), we reported 858 audit paragraphs involving Service Tax totalling ₹ 1519.42 crore. Of these, the Government had accepted audit observations in 793 audit paragraphs involving revenue of ₹ 1208.26 crore and had recovered ₹ 353.85 crore. We have furnished the details in Table 1.35.

Table 1.35: Objections featured in last five years' 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
FY08	158	276.72	112	47.43	14	24.74	126	72.17	57	23.22	11	1.67	68	24.89
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	-	-	150	498.65	88	84.58	-	-	88	84.58
Total	**858**	**1,519.42**	**751**	**1,158.21**	**42**	**50.05**	**793**	**1,208.26**	**469**	**347.10**	**30**	**6.75**	**499**	**353.85**

*includes cases where revenue was recovered /rectificatory action initiated though departmental lapse not accepted.

Follow-up on Audit Reports

1.98 Public Accounts Committee, in their Ninth Report (Eleventh Lok Sabha) desired submission of remedial/corrective Action Taken Notes (ATNs) 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.

1.99 Review of outstanding action taken notes on paragraphs relating to Central Excise and Service Tax contained in earlier Audit Reports on indirect taxes indicated that pendency in submission of remedial Action Taken Notes (ATNs) in respect of Ministry of Finance, Ministry of Textiles and Ministry of Commerce and Industry is negligible. We have tabulated the position of outstanding action taken notes in Table 1.36.

Table 1.36: Position of pending ATNs

No. of ATNs pending	Related audit paragraph and Audit Report	Name of the Ministry
1	4.3 (DAP 1C) of C &AG's Audit Report no. 28 of 2011-12	Ministry of Commerce and Industry

Chapter II

Non Compliance with Rules and Regulations

Central Excise

2.1 We examined the records maintained by the assessees in relation to the payment of Central Excise duty and checked the correctness of duty payment and availing of cenvat credit. We noticed cases of incorrect grant of cenvat credit, non/short payment of Central Excise duty and non-payment of interest involving revenue of ₹ 61.44 crore. We communicated these observations to the Ministry through 78 draft audit paragraphs. The Ministry/Commissionerate accepted (May 2013) the audit observations in 76 draft audit paragraphs and initiated/completed corrective action in all these cases involving revenue of ₹ 60.74 crore. We have furnished the details of these paragraphs in Appendix III. The Ministry admitted one draft audit paragraph but did not report any corrective action. The Ministry is yet to respond to one draft audit paragraph (May 2013).

Non reversal of cenvat credit in respect of inputs and input service used in generation of electricity not used in manufacture

2.2 Rule 6 (1) of the Cenvat Credit Rules 2004 stipulates that no credit of specified duty shall be allowed on inputs/input services used in the manufacture of final products which are exempt or chargeable to "nil" rate of duty.

2.3 Further, Rule 6(3) provides that if cenvat credit is availed on common inputs/ input services which are used in manufacture of exempted goods as well as in dutiable goods and separate accounts of their use are not maintained, then the manufacturer shall either pay an amount equal to ten per cent of value of the exempted goods or pay an amount equivalent to the cenvat credit attributable to inputs and input services used in or in relation to the manufacture of exempted goods or provision of exempted services, subject to the conditions and procedure specified therein.

2.4 M/s Neelachal Ispat Nigam Ltd. in Bhubaneswar I Commissionerate, engaged in manufacture of pig iron availed cenvat credit on inputs like power oil, transformer oil, oil and lubricants, boric powder, LPG gas etc. and common input services like GTA, courier service etc. The assessee generated electricity part of which, valuing ₹ 17.89 crore, was sold to M/s GRIDCO during FY08. As the assessee did not maintain separate accounts of inputs/ input services, he was liable to pay either an amount of ₹ 1.79 crore being ten per cent of the value of electricity sold or an amount equivalent to cenvat credit involved in generation of electricity sold to M/s GRIDCO.

2.5 *When we pointed this out (August 2008), the Ministry stated (December 2012) that electricity is not an excisable product, hence provision of rule 6 of Cenvat Credit*

Rules 2004 would not apply to the case. However, in view of the decision of Supreme Court in the case of M/s Maruti Suzuki Ltd. cited in 2009 (240) ELT 641 (SC), the assessee was not eligible to avail credit on inputs and input services used in the generation of electricity sold to M/s GRIDCO. We await further progress (May 2013).

Short payment of duty on petroleum products sold to oil companies

2.6 According to section 4(3)(d) of Central Excise Act, 1944, 'transaction value' means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to or on behalf of the assessee, by reason of, or in connection with sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter, but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or payable on such goods.

2.7 M/s. Bharat Petroleum Corporation Ltd. (BPCL) Kochi Refinery, in Cochin Commissionerate, engaged in manufacture of petroleum products, cleared petroleum products to oil companies through pipeline transfer at Refinery Gate Price (RGP), fixed fortnightly, based on the quantity computed at 15^0 C. The assessee prepared excise invoices for the transaction for each consignment and paid duty on the value indicated in the excise invoice. Payments from oil companies was on the basis of fortnightly-raised commercial invoices on the basis of a document viz. joint certificate indicating quantity cleared from the refinery during the fortnight as confirmed by recipient oil companies. The assessee accounted for an amount of ₹ 6.28 crore as transit gain during the year FY10, being the net difference between the commercial invoice and excise invoice, for which it did not however pay duty.

2.8 When we pointed this out (November 2010), the Commissionerate stated (April 2012) that removal is the crucial stage for payment of duty and condition of goods at the time of removal is relevant and the law does not provide for tracking buyers premises to determine actual duty liability with reference to receipt quantity. The Commissionerate further stated that there was no manufacturing activity taking place in the case of transit gain and levy of duty on differential value involved in transit gain is against section 3 of Central Excise Act, 1944. However protective SCN for ₹ 17.04 crore was issued to the assessee.

2.9 The reply of the Commissionerate is not acceptable. The explanation to section 4(1) and the definition of transaction value as defined in section 4(3)(d) show clearly that any amount the buyer is liable to pay to the assessee, in connection with the sale, whether or not payable at the time of sale, is to be considered in the computation of transaction value.

2.10 The difference between figures recorded in the commercial and excise invoices, was attributable to goods manufactured and cleared at the time of removal and hence any further consideration received would be part of the transaction value.

2.11 Further, Board in para 2(i) of Circular No. 804/2005 dated 4 January 2005 clarified that duty shall be paid on any differential quantity between the quantity cleared and actually received by the end user.

2.12 The reply of the Ministry remains to be received (May 2013).

Service Tax

2.13 We examined the records maintained by the assessees in relation to the payment of Service Tax and checked the correctness of Service Tax payment and availing of cenvat credit. We noticed cases of incorrect grant of cenvat credit, non/short payment of Service Tax and non-payment of interest involving revenue of ₹ 478.04 crore. We communicated these observations to the Ministry through 124 draft audit paragraphs. The Ministry/Commissionerate had accepted the audit observation in 123 draft audit paragraphs and had initiated/completed corrective action in all these cases involving revenue of ₹ 476.62 crore. Details of these paragraphs are available in Appendix IV. In respect of one draft audit paragraph, though the Ministry admitted the audit objection, it is yet to communicate completion of rectificatory action.

Manpower recruitment and supply agency services

2.14 As per section 65(68) of the Finance Act 1994 'manpower recruitment or supply agency' means 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.

2.15 M/s SAIL Refractories, Unit IFFICO, Ramgarh in Ranchi Commissionerate, paid ₹ 6.28 crore to six Manpower Recruitment Agencies during the period April 2008 to March 2011, on which Service Tax of ₹ 78.67 lakh leviable from the agencies was not paid. This resulted in non-realisation of Service Tax of ₹ 78.67 lakh.

2.16 *When we pointed this out (May 2011), the Ministry accepted (January 2013) Audit's contention and confirmed issue of show cause notice to one service provider. The other show cause notices are under issue.*

Chapter III

Effectiveness of Internal Controls

Central Excise

3.1 Internal control is an integral process carried out by an entity's management and personnel. It addresses risks and provides reasonable assurance that in pursuit of the entity's mission, the entity is achieving the following general objectives:

a) executing orderly, ethical, economical, efficient and effective operations;

b) fulfilling accountability obligations;

c) complying with applicable laws and regulations;

d) safeguarding resources against loss, misuse and damage.

3.2 We noticed that due processes were not followed by departmental officers in certain cases involving revenue of ₹ 7.88 crore. We communicated these observations to the Ministry through nine draft audit paragraphs. The Ministry/Commissionerate had accepted the audit observation in five draft audit paragraphs and had initiated/completed corrective action in all these cases involving revenue of ₹ 41.79 lakh. Details of these paragraphs are available in Appendix V. In three draft audit paragraphs, the Ministry admitted the audit objection to the extent of revenue involved. In one draft audit paragraph, the Ministry is yet to respond (May 2013).

Scrutiny of returns

3.3 CBEC introduced self-assessment of Central Excise duties payable in 1996 and for Service Tax in 2001. With the introduction of self-assessment, the department also provided for a strong compliance verification mechanism through scrutiny of returns/ assessments, internal audit and anti-evasion. The crucial role of scrutiny of assessments as highlighted in the Report of the Task force on Indirect Taxes 2002 states "It is the view that assessment should be the primary function of the Central Excise Officers. Self-assessment on the part of the taxpayer is only a facility and cannot and must not be treated as a dilution of the statutory responsibility of the Central Excise Officers in ensuring correctness of duty payment. No doubt audit and anti-evasion have their roles to play, but assessment or confirmation of assessment should remain the primary responsibility of the Central Excise Officers".

Non-conduct of preliminary/detailed scrutiny resulting in non-recovery of duty and interest

3.4 As per para 2.1A(8) of the Manual of Scrutiny of Central Excise Returns, 2008 read with CBEC Circular issued vide F.N.224/37/2005-CX.6 dated 24 December 2008

(Serial No. 2.4), the ranges are to maintain a scrutiny register for scrutiny of assessment (Annexure 2.3 of the manual) in the Range Office. Further, as per para 2.1A(9) of the manual, each Range Superintendent is to submit a monthly report to the jurisdictional Assistant/Deputy Commissioner of the Division by the 15th of the next month regarding the number of returns received and scrutinized in the prescribed proforma (Annexure 2.4). Paras 1.1.2B and 2.1A(6) of the Manual for the Scrutiny of Central Excise Returns and para 4.2A of the Manual of Scrutiny of Central Excise Returns provide that ranges/groups are to carry out detailed scrutiny (as per checklist provided in Annexure 4.1 of the manual) of a small proportion of the returns, not exceeding five per cent of the total returns filed during a quarter/ month in case of Central Excise returns and not exceeding two per cent of the total per cent of the total returns filed in case of Service Tax returns. Risk parameters applied on all the returns (manually as per checklists provided in respective manuals) is to form the basis of selection of returns.

3.5 Audit observed in 8 ranges of Aurangabad Commissionerate that for the period between FY 08 and FY11, there was partial maintenance/non-maintenance of scrutiny register. We came across instances of non-submission of report on status of scrutiny of returns (both stages) in the prescribed format etc. to the Divisional Officer. The Commissionerate did not ensure the proper maintenance of the scrutiny register and timeliness of the prescribed report. The returns were not subject to prescribed risk assessments. Consequently, the authorities did not select any returns for detailed scrutiny though envisaged in the Manual.

3.6 A test check conducted by random scrutiny of returns along with some of the financial documents in Aurangabad Commissionerate revealed discrepancies indicating that detailed scrutiny was a neglected area. The following are illustrative examples of non-detection of irregularities in the absence of proper scrutiny and are indicative of the risk involved in not giving due attention to such an important function.

a) M/s Natural Sugar and Allied Industries Ltd in Aurangabad Commissionerate sold scrap of ₹ 90.47 lakh, ₹ 10.08 lakh and ₹ 0.22 lakh for the period 2008-09, 2009-10 and 2010-11 respectively, but did not record the duty payable on such clearances on the ER1 returns filed.

b) M/s Lombardini India Pvt ltd, did not reverse the cenvat credit in respect of obsolete inventory written off in the books of accounts amounting to ₹ 6.46 crore during 2007-08, 2009-10 and 2010-11.

3.7 *When we pointed this out (November 2011 and January 2012), the Ministry admitted (February 2013) the audit objection to the extent of non-recovery of dues, and non-reversal of credit. In the first case, the Ministry reported recovery of duty of ₹15.30 lakh through cenvat account and interest of ₹6.22 lakh thereon. In the latter case, the Ministry reported that the assessee had already paid ₹1.03 crore on the obsolete*

inventory written off. The Ministry further stated that without access to financial and other records of the assessee, these discrepancies could not have been detected and going by para 4.4 (vi) of the Manual for Scrutiny of Central Excise Returns 2008, the task falls under the domain of internal audit and not Scrutiny of returns.

3.8 We made these observations by a simple cross-verification of the financial records of the assessee with the ST-3 and ER-1 returns filed by him. The provision of calling for the financial records of the assessee is available in the Manual for Scrutiny of Service Tax Returns, 2009 for detailed scrutiny of ST-3 Returns; however, such provision is absent in the Manual for Scrutiny of Central Excise Returns, 2008. The Ministry may accordingly attempt to synchronise the best practices available within itself in the interest of Revenue. There is a pressing need to review the adequacy of and compliance with the existing manual provisions relating to detailed scrutiny and of the extant systems to monitor compliance keeping in view the fact that assessment is the primary function of the department and that it is the statutory responsibility of the Central Excise officer to ensure correctness of duty payment

Failure to forfeit the facility to pay duty on monthly basis

3.9 As per guidelines contained in para 2.1.1 A(19) of the Manual for the Scrutiny of Central Excise Returns, the departmental officer scrutinizing Central Excise returns, is to take action in cases where assessee has not paid duty beyond thirty days from the due date. Rule 8(3A) of the Central Excise Rules 2002, stipulates that if an assessee defaults in payment of duty beyond thirty days from the due date, then he shall pay Central Excise duty for each consignment at the time of removal, without utilizing the cenvat credit till the date he pays off the outstanding amount including interest thereon. In the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in the rules shall follow.

3.10 During the audit of Central Excise range Phulwarishariff, under Patna Commissionerate, we noticed from ER-1 of an assessee M/s Gangotri Electrocastings Ltd., Phulwarishariff, that the assessee assessed his duty liability as ₹ 77.10 lakh for June 2008. However, the assessee paid only ₹ 44.40 lakh utilizing cenvat credit, leaving ₹ 32.70 lakh unpaid. On 06 August 2008, 32 days after the due date for payment (05 July 2008), the assessee paid an amount of₹ 27.21 lakh through GAR 7 challans; ₹ 5.49 lakh was left unpaid. The assessee paid duty of outstanding amount with interest on 05 December 2008, i.e. 162 days after the due date for payment.

3.11 Thus, the assessee contravened Rule 8(3A) of Central Excise Rules, 2002 during the period 05 August upto 04 December 2008. The assessee should have paid duty on consignment basis without utilizing cenvat credit. Instead it utilized cenvat credit of ₹154.33 lakh during the period; this being irregular, the goods cleared after 04 August

2008 are deemed to have been cleared without payment of duty and the cenvat utilized was recoverable along with interest and penalty.

3.12 On scrutinizing the returns of the assessee for the period 2008-09 to 2009-10, the Superintendent wrote to the assessee, marking a copy to the divisional officer, about the outstanding amount of June 2008 drawing attention to the provision of the rule 8 (3A). However, he did not issue any order forfeiting the facility of payment of duty on monthly basis.

3.13 We pointed this out in May 2012. We await the reply from the Commissionerate and the Ministry (May 2013).

Non-appointment of auctioneer to recover Government dues

3.14 Section 11 of the Central Excise Act 1944 stipulates that in respect of duty and any other sums payable to the Central Government under any of the provisions of the Act or the rules made thereunder, the officer empowered to levy such duty may recover the amount by attachment and sale of excisable goods belonging to such person.

3.15 The Commissioner has to monitor the compliance with rules and procedures for effective administration of duty/tax to combat evasion of duty/tax by registered assessees.

3.16 Audit of records maintained in Ahmedabad-II Commissionerate, revealed that the department vide Order In Original dated 23 July 1999, confiscated assets such as land, building, plant and machinery of M/s Mini Textiles, Naroda, Ahmedabad, for recovery of sum of ₹ 3.58 crore. The unit stopped functioning in 2000. The Special Recovery Officer appointed by the Government of Gujarat on behalf of Co-operative Bank of Ahmedabad vide orders dated 21 December 2000 and 04 June 2001 took over the assets of the assessee. The department, after obtaining legal opinion, filed a civil suit in the Civil Court. The Civil Court while dismissing the suit stated that the Central Excise department has powers to recover its dues under Section 11 of the Central Excise Act 1944. Thereafter, several correspondences since October 2008, seeking to appoint an auctioneer through involvement of Commissioner, Ahmedabad-I, for disposal of the assets of the assessee did not yield any result. This resulted in non-recovery of Government revenue of ₹ 3.58 crore even after a lapse of four years.

3.17 *When we pointed this out (May 2011), the Ministry accepted (February 2013) the facts mentioned in the audit observation and reported the steps taken by the Commissionerate to appoint the auctioneer.* The reply of the Ministry confirmed non-appointment of auctioneer even after the passage of over four years.

Ineffective review of call book

3.18 As per CBEC Circular No.162/73/95-CX dated 14 December 1995, cases which have reached a stage where no action can or need be taken to expedite their disposal for at least 6 months may be transferred to the call book with the approval of the competent authority. Cases in which the department has gone in appeal, cases where injunction has been issued by Supreme Court/High Court/Tribunal etc., cases where audit objections are contested and cases where the Board has specifically ordered the same to be kept pending may be entered into the call book. Further extant instructions to the Commissionerates require monthly review of pending call book items.

3.19 Review of the cases pending in the call book at the Mangalore Commissionerate revealed some of the cases pending in the call book as being either wrongly transferred to call book or as being overdue for removal from call book -

a) The concerned officer in Mangalore Commissionerate issued SCN No.IV/9/27/104/2006 dated 20 September 2006 to M/s Mangalore Refinery and Petrochemicals Ltd (MRPL), Mangalore, demanding interest of ₹ 35.68 lakh on differential duty of ₹ 1,169.00 lakh paid voluntarily on account of price revision on petroleum products. The Commissionerate transferred the case to the call book on the grounds that the decision pertaining to liability of interest and penalty when the duty was paid before issue of SCN, was pending before the Apex Court in the case of M/s Krishna Pipe Industries. However, we observed that the question of payment of interest under Section 11AB on differential duty had already been decided by the Apex court in the case of Commissioner vs. SKF India Ltd. [2009-TIOL-82-SC-CX], in July 2009. Similarly, the court had decided the question of quantum of penalty to be levied when duty was paid before issue of SCN in Union of India vs. Dharmendra Textile Processors 2008 (231) E.L.T. 3 (S.C.) in August 2008. Retention of SCN dated 20 September 2006 in the call book indicates inadequacies in the mechanism for review of call book items.

b) The Commissionerate issued eight periodical SCNs to M/s MRPL, Mangalore during the period January 2007 to October 2008. These involved a total of ₹ 73.22 lakh on non-reversal of cenvat credit on common inputs and input services which were used for the manufacture of both dutiable and exempted final products under Rule 6(3) of Cenvat Credit Rules for the period from December 2005 to March 2008. The concerned officers transferred the matters to the call book on the grounds that the department's appeal regarding duty liability on LSHS in respect of the same assessee was pending before the High Court of Karnataka. However, the issue involved in these cases was not identical. The cases remained in the call book until the time of audit by CERA in January 2012.

3.20 *When we pointed this out (February 2012) the Commissionerate stated (July 2012) that the cases had since been taken out of the call book for adjudication. However the Ministry's reply differed from the Commissionerate's reply. The Ministry's reply (May 2013) accepts the fact of incorrect entry in respect of item SCN No. IV/9/27/104/2006 dated 20 September 2006, but it adds that the case was taken out of the call book vide Commissioner's order dated 3 February 2012 after a thorough review of the call book in the meeting of the CC-Mysore zone with the Commissioners on 1 November 2011.* However, Audit observes that this substantiates the fact that monitoring in respect of call book cases was inadequate as a) transfer to call book was incorrect, b) if a system of monthly review of call book items as envisaged in instruction from Member (CX) vide his D.O.F. No. 101/2/2003-CX-3 dated 03.01.2005 and Director General of Inspection (Customs and Central Excise) letter dated 29 December 2005 was being complied with, the item would have been removed from the call book at least two years earlier. *In connection with 4 SCNs relating to final product electricity, the Ministry's reply (May 2013) was to the effect that retention in the call book was owing to dispute regarding excisibility of intermediate product LSHS pending in the Supreme Court. It added that the issue became irrelevant in view of the retrospective amendment to Rule 6 of the Cenvat Credit Rules permitting reversal of proportionate cenvat credit in all cases involving common inputs for manufacturing dutiable and exempted final products.* Audit observes that this change in the Rules came into effect from 1 March 2011. However, the zone conducted and discussed the issue only in November 2011; even after this, these items remained in the call book at the time of CERA audit and issue of audit enquiry dated 1 February 2012.

Service Tax

3.21 We noticed that departmental officers did not comply with extant provisions in certain cases involving revenue implication of ₹ 22.19 crore. We communicated these observations to the Ministry through 28 draft audit paragraphs. The Ministry/Commissionerate accepted the audit observation in 12 draft audit paragraphs and initiated/completed corrective action in all these cases involving revenue of ₹ 2.66 crore. Details of these paragraphs are available in Appendix VI. In 14 draft audit paragraphs, the Ministry admitted the audit objection to the extent of revenue involved. We await the Ministry's reply in respect of the remaining two draft audit paragraphs (May 2013).

Broadening of Tax base

3.22 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.

3.23 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

(a) on unregistered service providers from yellow pages, service providers' associations, newspaper advertisements, regional registration authorities and websites like Indiamart.com.

(b) from banks about property which may be covered under architectural/consulting engineer services.

(c) from Municipal corporations and major assessees including PSUs and private sector organizations regarding various services being availed by them and to obtain details of such services providers including their addresses.

(d) from major hotels, auditorium, banquet halls, conference hall about convention services and event management service providers.

(e) by making discrete market enquiries.

(f) by collecting intelligence and conducting field surveys.

3.24 CBEC issued instructions to create a special cell in each Commissionerate to identify potential assessees vide its letter dated 23 November 2011.

3.25 We noticed non-registration of services by local bodies and state owned companies/boards and non-payment of Service Tax involving ₹ 12.86 crore which are described in the following paragraphs. We communicated these observations to the Ministry through three draft audit paragraphs.

Non-registration and consequent non-payment of Service Tax

3.26 Renting of immoveable property became taxable under the Finance Act 2010 (with retrospective effect from 1 June 2007).

3.27 During the audit of Calicut Commissionerate, we observed that certain local self Government institution (LSGIs) like Municipalities and Grama Panchayats (GP) had leased out commercial complexes and other immovable properties. However, they had not taken registration with the Service Tax authorities and had not discharged their Service Tax liability.

3.28 Scrutiny of financial accounts of LSGIs falling under Kannur and Kozhikode Central Excise Divisions of Calicut Commissionerate, for the years FY 09-11 revealed that 25 units had not registered with the Service Tax Department. Preventive Unit of the

Commissionerate had booked cases in respect of four LSGIs. Cheruvathur GP took registration during FY11 and ST paid was only ₹ 0.16 lakh. Thus, the remaining 23 units of LSGIs were liable to pay Service Tax of ₹ 94.64 lakh during the period FY 09-11, for rendering the said service.

3.29 *When we pointed this out (October 2011), the Ministry stated (February 2013) that in five cases, the assessee's income was below the exemption limit and in five cases, the Commissionerate had initiated action before Audit intervention; in nine cases the assessee took registration. In seven cases, show cause amounting to ₹ 56.70 lakh had been issued. In respect of the others, the Commissionerate is taking action to bring the assessees under the Service Tax net. Further, in four out of five cases where assessee's income was under the exemption limit, the assessees are to register themselves with the department. In six cases, the assessees paid the amount of ₹ 25.78 lakh based on our audit objection.*

Non-payment of Service Tax by unregistered service providers

3.30 Commercial or Industrial Construction Services/Construction of Residential Complex Service/Works Contract Services are taxable under Section 65(105)(zzq), Section 65(105) (zzzh) and Section 65(105) (zzzza) of the Finance Act, 1994 respectively.

3.31 Haryana Tourism Corporation (HTC) and Housing Board Haryana (HBH) had paid ₹ 2505.91 lakh during FY 09-11 to nineteen service providers under the jurisdiction of Panchkula Commissionerate for rendering taxable service under 'Commercial or Industrial Construction Services, Construction of Residential Complex Services and Works Contract Services'. Cross-linking/examination of said information/payment details with Service Tax records of Service Tax range further revealed that these service providers did not register themselves with the Commissionerate under the said service and did not discharge the liability of Service Tax. Service Tax of ₹ 91.68 lakh (cess included) was recoverable along with interest and penalty under sections 73, 75 and 76 of the Finance Act, 1994.

3.32 *When we pointed this out (January 2012), the Ministry accepted the audit observation (February 2013) and reported that Service Tax is payable in 14 cases. One assessee had deposited ₹ 3.47 lakh as Service Tax and penalty. In 10 cases, show cause notices amounting to ₹ 11.70 crore had been issued.* We are awaiting further progress.

Improper payment of Service Tax without verification of Registration

3.33 Test check of contingent bills in Aurangabad Commissionerate revealed that the Commissionerate had extended the previous labour and housekeeping contract by another year from 1 December 2008 on the same terms including the payment of Service Tax by the Commissionerate on the monthly-billed amount. The initial bill, the

tender form, the agreement and the bill subsequently issued did not mention the Service Tax registration number. M/s Siddhartha Services charged and collected Service Tax of ₹ 1.67 lakh (calculated at the rate of ₹ 13,958 per month as paid for April 2009) from the Commissionerate for the services rendered. The value of services rendered worked out to ₹ 16.26 lakh (calculated at the rate of ₹ 1.35 lakh per month paid for April 2009), for the period December 2008 to November 2009 which was more than the threshold limit prescribed for registration.

3.34 Even though the contractor had charged the amount separately in the invoice, the Commissionerate did not ensure the fact of Service Tax registration under Manpower Supply Services. Further, it did not ensure the remittance of tax into Government account.

3.35 *When we pointed this out (August 2011), the Ministry (February 2013) reported that the service provider was registered with the department but did not file ST-3 returns during the year 2008-09 and 2009-10 and hence this is a case of suppression of facts. The Commissionerate issued a show cause notice to the assessee.*

3.36 The reply of the Ministry indicates the inadequacies in the system in ensuring that there is adequate protection of revenue due to the Government. The statutory responsibility is on the departmental officers to ensure that duty/tax is correctly paid. While extending the contract, the Commissionerate should have exercised due care to ensure that the assessee had remitted into the Government account, the amount given by the Commissionerate earlier.

Scrutiny of returns

3.37 CBEC introduced self-assessment in respect of Central Excise in 1996 and in respect of Service Tax in 2001. With the introduction of self-assessment, the department also provided for a strong compliance verification mechanism with three important prongs - Scrutiny of Returns/ Assessments, Audit and Anti-Evasion. The Report of the Task force on Indirect Taxes, 2002 highlighted the crucial role of scrutiny of assessments.

3.38 In the exercise of powers conferred under Rule 12(3) of Central Excise Rules, 2002 and Rule 5A of the Service Tax Rules, 1994, the Board has laid down detailed guidelines for scrutiny of returns as contained in the Central Excise and Service Tax return scrutiny manuals. The scrutiny of returns is in two stages. The purpose of preliminary scrutiny of returns is to ensure arithmetic accuracy of duty computation, completeness (permanent account number, description of the item, registration details of the unit etc.), timeliness (timely submission of the return and timely payment of duty) and identification of stop filers and non-filers. Detailed scrutiny of assessment based on

risk parameters ensures the correctness of assessment (correctness of classification, valuation and cenvat credit).

Preliminary Scrutiny

Short payment of Service Tax owing to non-compliance with Manual provisions

3.39 As per Para 1.2.1.1 of Manual for Scrutiny of Service Tax Returns, 2009,the purpose of preliminary scrutiny is to ensure inter alia timely submission of return, timely payment of dues and arithmetical accuracy of the amount computed. As per Para 1.2B of the Service Tax Scrutiny Manual, preliminary scrutiny is to be conducted in respect of all returns. Board's Circular No. 818/15/2005-CX dated 15-07-2005 stipulates completion of preliminary scrutiny within 3 months of the date of receipt of return. Further, the time prescribed for issue of SCN is one year from the relevant date as per section 73 of the Finance Act 1994 other than in cases involving fraud, collusion, wilful misstatement, suppression of fact etc.

3.40 Section 68 of Finance Act, 1994, read with rule 6(1) of Service Tax Rules 1994, provides that every person providing taxable service to any person shall pay Service Tax at the rate specified in such manner and within the prescribed period. Further, Section 75 of Finance Act, 1994 requires the assessee to pay interest for any delayed payment of Service Tax.

3.41 Scrutiny of ST-3 Returns under Range-XVII of Division-II under Kolkata Service Tax Commissionerate, revealed that M/s R.S. Ispat Ltd. had short paid Service Tax amounting to ₹ 11.40 lakh (including cess) for the period December 2010 to February 2011. As the range did not undertake scrutiny of returns as prescribed in the Act, it did not detect the lapse. *When we pointed this out (February 2012), the Ministry accepted the audit objection (February 2013) and reported issuance of SCN to the assessee for ₹14.78 lakh.*

Detailed scrutiny

3.42 Ranges are to carry out detailed scrutiny of assessment for returns selected based on risk parameters to ensure the correctness of assessment (correctness of classification, valuation and availing of cenvat credit). Board's circular dated 11 May 2009 envisages that under the ACES setup, the system would automatically list returns in descending order of risk for submission to Commissioner for selection. As per Para 4.3.3 A of the Service Tax Scrutiny Manual and Para 4.1B of the Central Excise Scrutiny Manual, it is the responsibility of the jurisdictional Joint Commissioner/Additional Commissioner to finalize list of returns to be scrutinized by the Range Officers. However, until ACES is implemented, the range has to select returns manually for detailed scrutiny

manually (Para 2.3A and Annexure 2.2 of Service Tax Scrutiny Manual and Para 2.1 and Annexure 2.2 of Central Excise Scrutiny Manual).

3.43 We observed that subordinate offices in some Commissionerates did not conduct/document detailed scrutiny as envisaged in the Scrutiny Manual. However, we attempted to conduct detailed scrutiny and noticed the following irregularities in the subordinate offices under these Commissionerates.

Incorrect availing of exemption

3.44 Notification no. 01/2006/ST dated 01 March 2006 prescribes exemption of certain percentage of Service Tax leviable on various services with certain conditions. This notification is not applicable when cenvat credit of duty on inputs or capital goods or the cenvat credit of Service Tax on input services used for providing such taxable services, has been availed under the Cenvat Credit Rules 2004.

3.45 We observed that M/s Shivniwas Palace, City Palace, Udaipur, an assessee of Service Tax Range, Udaipur registered for providing services of mandap keeper, convention services, cable operator services and event management services etc., availing benefit of notification 1/2006-ST dated 01.03.2006 paid Service Tax at reduced rate. The assessee, however, had also been utilizing cenvat credit of input services for providing these services; therefore, it was not eligible for abatement of Service Tax. Short payment of Service Tax during the period from FY 08-10 amounted to ₹ 26.10 lakh.

3.46 *When we pointed this out (September 2011), the Ministry accepted (December 2012) the audit observation and stated that a show cause notice for ₹ 35.10 lakh had been issued to the assessee and the assessee, had reversed the entire cenvat credit amounting to ₹ 24.77 lakh. The Ministry said that e-filing of the Service Tax returns by assessees on ACES had become mandatory. Assessees file returns online through ACES and departmental officers' conduct online scrutiny only. Therefore, it becomes impractical to compare the figures of one return with that of the previous return to ascertain risk parameters.* The reply of the Ministry is not acceptable as the returns under consideration belong to the period prior to ACES.

3.47 Further, Audit observes as follows:

3.48 Though filing of returns through ACES has become mandatory since October 2011, ACES currently does not automatically list out returns in descending order of risk for submission to the Commissionerate for selection for returns for detailed scrutiny as was envisaged in the Manual. However, the department's extant instructions in the Manual are that until ACES is implemented, returns have to be selected manually based

on risk parameters such as comparison with previous years' figures in the return (Para 2.3 of the Scrutiny Manual and Annexure 2.2).

3.49 Pending the incorporation of such facility in ACES and since the Ministry itself feels that comparison between returns filed in adjacent years is impractical, the department may clarify to all field formations the parameters to be taken into consideration for selection of returns for detailed scrutiny in the interim period. This is essential so as not to dilute the purpose intended to be served through the key task of scrutiny and assessment.

Non/Short payment of Service Tax

3.50 Section 65(105)(zzzzj) of the Finance Act, 1994, defines 'Supply of tangible goods service' as any service provided or to be provided to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use without transferring right of possession and effective control of such machinery, equipment and appliances.

3.51 M/s IOT Anwesha Engineering and Construction Ltd., in Range-VIII under the Service Tax Division (Division-III) of Vadodara-I Commissionerate had shown an income of ₹ 3.25 crore from hire charges of equipment in FY11. Audit noticed from Sl. No. 10(b) of Notes on Account to Schedule 19 of the audited accounts that the assessee lent the equipment the holding company M/s IOT Infrastructure and Energy Services Ltd., without transferring the right of possession and control. The assessee was thus liable to get himself registered under the service "supply of tangible goods" and was liable to pay Service Tax to the tune of ₹ 33.49 lakh.

3.52 *When we pointed this out (November 2011), the Ministry accepted the audit observation and stated (December 2012) that the assessee had paid the Service Tax of ₹ 33.49 lakh and interest of ₹5.74 lakh before issuance of SCN. The Ministry further stated that the Commissionerate carries out detailed scrutiny of ST-3 returns and local audit on selective basis as per the Board's guidelines.* The reply of the Ministry is not acceptable as Audit observed that the range did not carry out detailed scrutiny through selection of returns and documentation as envisaged in the Manual.

3.53 Where a person liable to pay Service Tax, fails to pay the tax or any part thereof within the prescribed time, he is liable to pay the amount short-paid, along with interest at the prescribed rate per annum for the period of default under section 75 of the Act.

3.54 M/s Ario Infrastructure Pvt. Ltd. in Range-VIII under the Service Tax Division (Division-III) of Vadodara-I Commissionerate had depicted gross business income (sales income) to the tune of ₹ 27.50 crore in the Profit and Loss account in FY11. The actual sales income net of sundry debtors and taxes worked out to ₹ 21.05 crore. However, in

ST-3 returns pertaining to FY11, the income was shown as ₹ 18.18 crore only. Thus, the assessee had shown less income of ₹ 2.87 crore, on which Service Tax payable was ₹ 11.83 lakh which was recoverable along with interest.

3.55 Further, the assessee was in receipt of mobilization advances of ₹ 2.64 crore as on 31 March 2009 and ₹ 3.07 crore as on 26 November 2009 towards works contract. The assessee had paid the Service Tax at the time of preparation of R.A. bill and not at the time of receipt of advance. Thus, the assessee was liable to pay interest of ₹ 2.33 lakh.

3.56 *When we pointed this out (November 2011), the Ministry accepted the audit observation (December 2012) and stated that the assessee had paid the Service Tax of ₹11.83 lakh and interest of ₹4.02 lakh before issuance of SCN. The Ministry further stated that the Commissionerate carries out detailed scrutiny of ST-3 returns and local audit on selective basis as per the Board's guidelines.* The reply of the Ministry is not acceptable as Audit observed that the range did not carry out detailed scrutiny through selection of returns and documentation as envisaged in the Manual.

Non-payment of Service Tax in respect of import of services

3.57 Rule 2(1)(d)(iv) of the Service Tax Rules, 1994, stipulates that in respect of taxable service, provided by a person, who is a non-resident or is from outside India and does not have an office in India, the person receiving the taxable service in India is liable to pay Service Tax.

3.58 Scrutiny of ER-1 and ST-3 returns of M/s MCT Cards and Technology Pvt. Ltd., Manipal in Udupi range of Mangalore Commissionerate, revealed that the assessee had paid an amount of ₹ 61.71 lakh to M/s Robert BurkleGmbh, Germany towards technical service and installation charges in FY09. However, the assessee did not pay the required Service Tax and Cess of ₹ 7.63 lakh thereon.

3.59 *When we pointed this out (October 2011), the Ministry partly accepted the audit observation (December 2012) and stated that the assessee had paid Service Tax and Cess of ₹7.63 lakh along with interest of ₹2.93 lakh. The Ministry further stated that as per the Board's Circular No. 113/07/2009-ST dated 23 April 2009, M/s. MCT Cards Technologies Ltd., Manipal would not come under the detailed scrutiny of the ST-3 returns, since their total Service Tax revenue for the relevant period is lesser than the prescribed limit.* However, as the range had conducted no detailed scrutiny as envisaged in the Manual, the reply is not acceptable.

3.60 In Aurangabad Commissionerate, we observed for the period between 2008 and 2011 that the subordinate ranges did not select returns and carry out detailed scrutiny as envisaged in the Manual. We test checked returns along with the financial documents

in Service Tax Division and Jalna Range (Nanded Division) and observed irregularities indicating that detailed scrutiny was a neglected area. The observations revealed the risk involved in not giving due attention and priority to such an important function. We found 12 instances of non-compliance pertaining to seven assessees which could have been detected had detailed scrutiny been conducted. There was a recovery of ₹ 13.90 lakh including the following two illustrative examples:

a) M/s Lombardini India Pvt. Ltd., under the jurisdiction of ST Division, had made provision of ₹ 1.17 crore and ₹ 3.64 crore for the period ending 31st March 2010 and 31st December 2010 respectively towards royalty payment to the parent company under IPR services. In respect of the first case, the assessee paid no Service Tax. In the second instance, there was delay in payment of Service Tax (March 2011). The non-levy of Service Tax/ interest on delayed payment of Service Tax was recoverable in view of provision of Section 75 of Finance Act, 1994 read with Notification No. 19/2008 ST dated 10 May 2008.

b) M/s Storewell Construction and Engineers, under Jalna Range, received transportation services in FY 09-11 and was liable to pay Service Tax on GTA services vide Notification 35/2004 dated 3 December 2004, which stipulates that the consignor/consignee making payment towards freight was liable to pay tax. However, the assessee neither registered itself as required by the Rules nor did it paid the Service Tax amount due.

3.61 *When we pointed this out (October 2011 to January 2012), the Ministry accepted the audit observation (December 2012) and reported recovery of Service Tax of ₹12.07 lakh and ₹7.56 lakh towards interest in the first case. The department effected recovery of ₹4.38 lakh and interest of ₹1.68 lakh in respect of the second service provider It also issued show cause notice to the assessee for the balance amount of Service Tax and interest. On the issue of non-conduct of detailed scrutiny, the Ministry replied that both are cases of suppression of facts; the ST-3 returns had not indicated the amounts. Detailed scrutiny is on the facts declared in the ST-3/ER-1 returns. Since the assessee had suppressed these facts, detailed scrutiny may not reveal such observations. Nonetheless, the department/Commissionerate had suitably directed the field formations as well as had issued instructions in this regard.* The reply of the Ministry is not acceptable because as per checklist for detailed manual scrutiny of ST-3 return's Sl. No. B2, it had to be determined whether duty liability in terms of Section 66A of Finance Act, 1994 under reverse charge method has been discharged in respect of services received from the service provider located outside India.

Premature availing and utilization of cenvat credit

3.62 As per proviso of rule 3(4) of Cenvat Credit Rules 2004, cenvat credit may be utilised for payment of Service Tax on any output services. However, such utilization is permissible to the extent of availability of credit on the last day of the month or quarter, as the case may be.

3.63 During the scrutiny of records of Service Tax Range Udaipur under Jaipur-II Commissionerate, we observed that M/s UN Automobiles Pvt. Ltd. Udaipur filed its Service Tax returns for the half years ending September 2006, March 2007, September 2007 and March 2008 belatedly. We further observed that though the assessee did not have sufficient balance in the cenvat credit account on the last day of the month (during FY07 and FY08), the assessee utilized the cenvat credit accumulated subsequently for fulfilling the Service Tax liability. The assessee utilized cenvat credit of ₹ 14.80 lakh (including Cess) irregularly which needs to be recovered along with interest.

3.64 *When we pointed this out (September 2011) the Ministry partly admitted the audit observation (February 2013) for ₹ 8.68 lakh on the grounds that cenvat credit of ₹ 6.13 lakh was earned by the assessee during the period November 2006 to March 2008 so the assessee was entitled to utilised this credit. The Ministry further reported that the assessee had also deposited Service Tax amounting to ₹ 1.54 lakh along with interest of ₹ 1.19 lakh.* The reply of the Ministry in regard to cenvat credit related to the period November 2006 to March 2008 is not acceptable in audit, as the objection is not related to entitlement of cenvat credit for utilisation but premature availing and utilisation of cenvat credit for payment of Service Tax resulting in short payment of Service Tax. Further, Rule 7 B of Service Tax Rules 1994 provides for filing of revised return to correct a mistake or omission within a period of 90 days from the date of filing of the original return but the assessee did not avail this facility. There is no provision to adjust the cenvat credit suo motu without submission of revised return within the prescribed time limit. Thus the cenvat credit amounting to ₹ 14.80 lakh was utilised irregularly; SCN should be issued for ₹ 14.80 lakh along with interest.

Non-maintenance of separate account for dutiable and exempted products

3.65 Rule 6 (3) of the Cenvat Credit Rules, 2004 provides that a manufacturer, opting not to maintain separate accounts, shall follow either of the following options, (i) the manufacturer of goods shall pay an amount equal to ten per cent/five per cent (with effect from 7 July 2009) of value of the exempted goods; or (ii) the manufacturer of goods shall pay an amount equivalent to the Cenvat credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services subject to the conditions and procedure specified in sub-rule(3A).

3.66 Detailed scrutiny of ER-1 returns of M/s Jai Balaji Industries Ltd., Durg, under the jurisdiction of Range Durg, Division II, Bhilai in Raipur Commissionerate engaged in the manufacture/production of sponge iron under Chapter 72 and energy under Chapter 27, revealed that the assessee used energy partially (i.e. 24 per cent) for the manufacture of their final products. The assessee sold the remaining (i.e. 76 per cent) to Chattisgarh State Electricity Board (CSEB) at nil rate of duty for ₹ 8.24 crore and ₹ 1.24 crore respectively during 2009-10 and 2010-11. The assessee availed credit of both duty and Service Tax in respect of input and input services received. Scrutiny of cenvat account records revealed that the assessee reversed proportionate credit of duty input availed on input received but did not reverse proportionate credit of Service Tax availed on input services received. During the above period, the assessee availed credit of Service Tax on input services (i.e. repair and maintenance, cleaning service, housekeeping and cargo handling) received in power division to the extent of ₹ 4.72 lakh and ₹ 5.88 lakh respectively. Audit observed non-reversal of Service Tax credit, against the sale of power to CSEB at nil rate of duty. This was to an extent of ₹ 8.05 lakh (equivalent to 76 per cent of the total credit availed on input services received and used in power division during the above period) which was recoverable along with interest of ₹ 1.02 lakh.

3.67 *When we pointed this out (May 2011), the Ministry accepted the audit observation (December 2012) and stated that a Show Cause Notice had been issued to the assessee demanding Service Tax of ₹ 1.48 crore along with interest and penalty. Regarding the non-conduct of detailed scrutiny of returns, the Ministry confirmed issue of directions to all officers to follow the instructions on detailed scrutiny scrupulously to avoid lapses.*

3.68 Non-conduct of detailed scrutiny in these Commissionerates resulted in weakening of this important prong of the compliance verification system. This was not in consonance with what the Board had envisaged while extending the facility of self-assessment to assessees.

3.69 Audit also observed that had there been a mechanism in the Commissionerate to monitor/ensure

a) selection of returns by the Additional Commissioner/Joint Commissioner or otherwise as envisaged in the Scrutiny Manual and

b) actual conduct of scrutiny of assessment by the ranges to be documented in accordance with prescribed format (**Annexure 4.3** of Scrutiny Manual including Para 4.3.2), such deficiencies in safeguarding Government revenue could have been avoided.

3.70 It is also observed that automatic selection of returns by ACES for detailed scrutiny of returns not having become effective till date, Director General of Systems, New Delhi's clarification to all Commissionerates (March 2011) that until automatic

selection becomes operational, assessment of mini risk parameters would continue to remain manual, is applicable as on date.

3.71 In view of the inadequacies in the system of preliminary/detailed scrutiny, the department may consider introducing a mechanism of percentage review by Commissionerate/division to monitor the compliance.

3.72 In order to ensure optimal utilization of available resources, CBEC may consider the introduction of provisions in the Scrutiny Manual making it mandatory that during detailed scrutiny, ranges also look into aspects such as services provided by other service providers to the assessee (Appendix VI, Sl no 7 and 10).

Internal Audit

3.73 One of the main compliance verification mechanisms in the department, internal audit carries out 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. Internal audit is empowered under Central Excise and Service Tax Rules, to access the records of the assessees at their registered premises. The Directorate General of Audit with its seven zonal units at Ahmedabad, Mumbai, Delhi, Bangalore, Kolkata, Chennai and Hyderabad is to provide a focal link between the Commissionerates (who actually run the audit process) and the Board on all audit-related matters. On the one hand, it aids and advises the Board in policy formulation and on the other, it guides and provides functional direction in planning, co-ordination, supervision and conduct of audits at the local level. Every Commissionerate has an Audit cell, manned by an Assistant/Deputy Commissioner and auditors and headed by an Additional/Joint Commissioner and this cell prepares, co-ordinates and monitors the audit plan. Internal audit parties consisting of Superintendents and Inspectors carry out this audit.

3.74 We attempted to check the efficiency of the selection process of assessees by internal audit cell of the department and actual audit done by the internal audit parties by auditing some assessees already audited by the internal audit parties or those assessees, which though due for audit had not been audited by internal audit. We noticed some cases involving Service Tax of ₹ 3.24 crore which are illustrated in the following paragraphs. We communicated these observations to the Ministry through three draft audit paragraphs.

Non-reversal of cenvat credit relating to exempted services

3.75 As per the provisions of Central Excise Audit Manual, 2008 related to desk review and preparation of Audit Plan, internal audit is to point out the undervaluation of goods and resultant short levy of Central Excise duty. Further, Para 10.4.13 read with

Annexure C of the said Manual envisages that the internal auditor is to carry out scrutiny of sales shown in the Profit and Loss Account to determine whether cenvat credit has been availed on trading of goods. Internal audit is to carry out detailed verification as stipulated in Annexure M for comparative analysis of ER-4 returns with figures of the Profit and Loss Account to ensure that information provided in the ER-4 Return matches with financial records.

3.76 Rule 6 of the Cenvat Credit Rules, 2004 stipulates that cenvat credit is not permissible on such quantity of input or input service, which is used in the manufacture of exempted goods or for provision of exempted services. As per Rule 2(e), 'exempted services' means 'taxable services exempt from the whole of the Service Tax leviable thereon, and includes services on which no Service Tax is leviable under Section 66 of the Finance Act, 1994'. Notification No.3/2011 Central Excise (NT) dated 01 April 2011 further clarifies that 'exempted services' include trading. As per Circular No.943/04/2011-CX dated 29 April 2011, the Board has clarified that trading activity is an exempted service and hence, credit of any input or input service used exclusively in trading activity cannot be availed. Further, prior to 1 April 2008, credit of common inputs and input services could be availed subject to restriction of utilization of credit upto 20 per cent of the total liability as provided for in extant Rules.

3.77 M/s Skoda Auto India Pvt. Ltd., in Aurangabad Commissionerate engaged in the manufacture of excisable goods falling under chapter 87 of CETA paid Excise duty more than ₹ 3 crore in FY11. Internal audit conducted audit in February 2011. However, internal audit did not detect that the assessee was not eligible to avail 100 per cent of the cenvat credit of Service Tax paid on various common input services as it had engaged in trading activities also. The assessee had not reversed the proportionate cenvat credit attributable to trading activities amounting to ₹ 2.47 crore calculated based on proportion of trading turnover for the period FY 09-11. Hence, the same was recoverable with interest.

3.78 *When we pointed this out (August 2011), the Ministry accepted the audit observation (December 2012) and reported that a show cause notice had been issued to M/s Skoda Auto India Pvt. Ltd. amounting to ₹ 2.47 crore. Regarding non-detection by internal audit team, it added that it was a case of suppression of facts. Moreover, the clarification was issued by CBEC vide Circular No. 743/04/2011 dated 29 April 2011 whereas audits were undertaken prior to April 2011. Therefore, this clarification was not in the knowledge of audit teams. Since the issue is in the nature of interpretation, the internal audit team was not at fault.* The reply is not acceptable as the Rules envisage utilisation of cenvat credit only for those input services, used for providing taxable output service, or taxable goods whereas trading of goods was never a taxable service. Since exempted services includes services on which no Service Tax is leviable under section 66 of the Finance Act, 'trading' always was covered by the definition of

exempted services under the Cenvat Credit Rules. The Rule position had not changed by the issue of the cited Circular.

Non-reversal of cenvat credit relating to exempted services

3.79 As per para 7.2.4.3(B) of the Service Tax Audit Manual, 2003, during desk review, the internal auditor should check the data provided by the tax payer for reconciliation with other documents such as trial balance, annual accounts, ledgers etc. and carry out a preliminary reconciliation for the purpose of identifying any amount that might have escaped Service Tax. As per Para 7.2.3.2, when verifying credit utilization by the tax - payer, the internal auditor may examine documents relating to the receipts/procurement of major input services. Check of use of input services in provision of exempted services is one of the items specifically listed in Annexure D of Chapter 7. The checklist for conduct of Service Tax audit (Annexure E) emphasizes that checks should be exercised whether input credit is taken only in respect of services and goods actually used in relation to taxable output service or also towards those that are fully exempted or are non-taxable. This provision in the Manual is on the lines of Rule 6 of Cenvat Credit Rules, 2004 to the effect that cenvat credit is not permissible on such quantity of input or input service used in the manufacture of exempted goods or for provision of exempted services as defined in Rule 2(e).

3.80 In Mumbai Service Tax I Commissionerate, we audited 7 mandatorily auditable units, which were among those audited by internal audit teams in FY11. M/s. B. J. Services Company Middle East Ltd., engaged in providing dutiable as well as exempted services of mining of mineral, oil or gas, was a mandatory unit to be audited annually as it was paying Service Tax of more than ₹ 50 lakh every year. The assessee provided mining services in the area other than the designated area i.e. the continental shelf and exclusive economic zone of India referred to in Notification No.1/2002-ST dated 01/03/02. The assessee did not pay Service Tax on services provided to M/s. Reliance Industries Ltd. in the designated area. However, it irregularly availed the input Service Tax credit of ₹ 18.24 lakh for the period June 2008 to April 2010 on services received and used in providing the exempted services contravening the provisions of Rule 6 of Cenvat Credit Rules, 2004. Further, the assessee had irregularly availed/utilized cenvat credit on input services of goods transport agency amounting to ₹ 4.83 lakh attributable to trading activity during the period FY 10-11 violating provisions contained in Rule 3(4) of Cenvat Credit Rules 2004, and Notification 3/2011 dated 1.3.2011.

3.81 We observed that though internal audit of the unit had been conducted (upto 31 March 2009) in FY11, it had not detected these issues during desk review or in actual audit despite the fact that this aspect was part of the standard checks prescribed.

3.82 *When we pointed this out (September 2011), the Ministry accepted the audit observation (December 2012) and reported that the assessee had reversed ₹14.72 lakh, being the actual amount attributable to exempted clearances and paid interest of ₹4.53 lakh. It had also reversed cenvat amount of ₹4.83 lakh and paid interest of ₹0.93 lakh attributable to trading activity. The Ministry stated that said issue pertains to the period FY 10-11. Internal audit had not covered this period in audit.* However, Audit observed that the issue related to period starting from 2008-09.

Failure to detect non-payment of Service Tax

3.83 As per para 10.4.1 to para 10.4.5 of the Central Excise Audit Manual, 2008, desk review is the first phase of the audit programme done in the office. A good desk review under the supervision of the senior officers is critical to the drawing up of a good audit plan. Further an illustrative list of the important areas to be scrutinized in desk review is given at Annexure C wherein annual reports, profit and loss account, balance sheet, notes to accounts, cost audit report etc. are required to be reviewed. Annexure E elaborates various points for verification from cost audit report. As regards royalty and technical knowhow charges, the auditor may go through the product wise source documents about the scope of work and terms of payment to assess the tax compliance aspect of Service Tax on royalty and technical know-how.

3.84 Explanation to Rule 6(1) of Service Tax Rules, 1994 stipulates that as regards associated enterprises, Service Tax is leviable from the person liable to such tax even if the amount is not actually received but the same is debited or credited in the books of accounts of the service provider. Any payment received towards the value of taxable service shall include any payment debited or credited to any account whether called suspense account or any other name in the books of accounts of the service provider. Section 66A of the Finance Act stipulates that the recipient of the taxable service from outside India is liable to pay Service Tax under Rule 2(1)(d)(iv) of Service Tax Rules 1994.

3.85 We observed in Aurangabad Commissionerate that internal audit conducted audit of M/s Skoda Auto India Pvt. Ltd in February 2011. It however did not detect short/non-payment of Service Tax on royalty payments either during desk review or at the time of actual audit despite the fact that checking of this aspect was part of the standard checks prescribed vide above-mentioned provisions of the Manual.

3.86 M/s Skoda Auto India Pvt. Ltd. in Aurangabad Commissionerate paid royalty to its holding company M/s Skoda a.s., Czech Republic in view of Technology Transfer and Trademark License Agreement to manufacture, assemble, distribute and sell passenger cars and parts/components thereof. The records indicated that the assessee had paid Service Tax on royalty for FY08 and FY10 in the respective consecutive years. We observed that the assessee had not included TDS for arriving at the Service Tax liability.

This resulted in short payment of Service Tax of ₹ 17.77 lakh and ₹ 5.79 lakh pertaining to the two years. There was delay in payment of Service Tax in FY10 on which interest of ₹ 2.30 lakh was recoverable under section 75 of the Finance Act 1994. For the year 2008-09, the assessee did not pay Service Tax of ₹ 25.87 lakh on the royalty until the date of audit (August 2011). Internal audit did not detect these deficiencies indicating non-compliance with a standard audit check to be applied.

3.87 When we pointed this out (August 2011), the Divisional office accepted the objection (August 2011) regarding non-payment of Service Tax for FY09 and stated that SCN would be prepared after recording statement of the authorized person and due scrutiny of relevant records. In respect of interest on delayed payment for FY10, it stated (June 2012) that M/s Skoda Auto a.s. (i.e. the service provider) had issued invoice on 16 December 2010 and the assessee had debited the amount in their account on 03 January 2011.Therefore, due date for payment of Service Tax was 06 February 2011. The assessee had paid the Service Tax on 31 December 2010 well in advance and interest was not recoverable. It further reported issuance of SCN demanding interest of ₹ 2.30 lakh on the delayed payment.

3.88 The above reply in respect of interest on delayed payment of Service Tax for FY10 is not acceptable as various provisions mentioned above stipulate that the liability for payment of Service Tax arises as and when the amount is booked in the accounts of the 'person liable to pay Service Tax'. M/s SAIPL had depicted the same amount of royalty (along with the amount of TDS and R and D Cess payable thereon) in the balance sheet as on 31 March 2010 which was signed on 14 September 2010. As the assessee had already credited / debited the above amount in his books of account for the year ended 31 March 2010, it should have paid Service Tax by March 2010 vide section 75 of the Finance Act. Hence, the liability to pay interest also exists.

3.89 Non-detection of the above irregularities by internal audit also indicates the need for strengthening the system meant for assessing the quality of output of internal audit parties(item 3 under Para 6.4.2 of the Central Excise Audit Manual and Para 10.4.2.(C) of the Service Tax Audit Manual).

3.90 The Ministry is yet to furnish its reply (May 2013).

Miscellaneous topics of interest

3.91 Apart from the cases reported in the foregoing sections, we came across a few other interesting cases during the course of audit; their Service Tax implication of ₹ 48 lakh. We communicated these observations to the Ministry through two draft audit paragraphs.

Absence of system to ensure execution of post-audit orders resulting in loss of Government revenue

3.92 Section 73(1) of the Finance Act 1994 stipulates that the Central Excise Officer may within one year (eighteen months with effect from 28 May 2012) from the relevant date, serve notice on the person to whom tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice. The Central Excise Officer may also serve, subsequent to any notice a statement, containing the details of Service Tax erroneously refunded, for the subsequent period on the person chargeable to Service Tax. This would be deemed as service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are the same. The Central Excise Officer shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of Service Tax erroneously refunded to such person.

3.93 Notification No. 17/2009-ST dated 07 July 2009 envisages exemption claimed by the exporter to be provided by way of refund of Service Tax on the specified service used for export of the said goods. Further, the department should not subject the claim to pre-audit irrespective of the amount of claim.

3.94 The sanctioning authority in Division-I of Kolkata Service Tax Commissionerate sanctioned refunds of ₹ 42.11 lakh to M/s Presidency Exports and Industries Ltd. in April 2010. On post-audit, Deputy Commissioner of Service Tax (Audit), Kolkata held all the refund claims inadmissible because 'cargo handling service' was not a specified service covered under the cited notification. Consequently, the division was to initiate action to safeguard Government revenue. Audit observed that the division did not issue any show cause notice for effecting recovery of inadmissible refund sanctioned nor was any other action initiated to protect Government revenue. This resulted in loss of Government revenue to the tune of ₹ 42.12 lakh.

3.95 When we pointed this out (January 2012), the division stated (28 March 2012) that though the Deputy Commissioner (Audit) Service Tax, Kolkata passed orders in post-audit mentioning that all the refund claims were wholly or partially inadmissible, no order of review for filing appeal against those Order-in-Originals was received. In such a situation, the divisional office was not in a position to initiate recovery proceedings on its own.

3.96 The division's reply is not acceptable to Audit as the refund was incorrect. Clearly, the division ought to have initiated action for safeguarding Government revenue. The lapse indicates the absence of a monitoring mechanism in the Commissionerate to ensure that revenue was being safeguarded through timely execution of all post-audit orders.

3.97 The Ministry is yet to reply (May 2013). Audit opines that the Board may issue an instruction/ clarification on the issue of initiation of recovery action relating to implementation of post-audit orders.

Non- detection of incorrect utilization of cenvat credit

3.98 As per Section 84 (1) of Finance Act, 1994, the Commissioner may examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any order for the purpose of satisfying himself as to the legality or propriety of any such order. He may direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals) for the determination of such points arising out of the decision or order as may be specified in his order. He should issue such order within three months from the date of communication of the order of the adjudicating authority.

3.99 Rule 3(4) of the Cenvat Credit Rules, 2004, read with Rule 5 of the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 envisages that cenvat credit cannot be utilized for the payment of Service Tax on import of service. Further, Section 75 of the Finance Act, 1994, provides for the recovery of interest on delayed payment of Service Tax.

3.100 Audit of assessee M/s Crompton Greaves Ltd. in Aurangabad Commissionerate in November 2008 revealed non-payment of Service Tax on import of services from M/s Kema High Voltage Laboratory, Netherlands in FY07. However, on this being pointed out, the assessee paid (December 2008) ₹ 4.27 lakh as Service Tax through cenvat credit and interest of ₹ 1.34 lakh through cash on the same. Rule 3 (4) of the Cenvat Credit Rules, 2004, read with Rule 5 of the Taxation of Services (provided from outside India and received in India) Rules, 2006 requires that the assessee should not have utilized cenvat credit for the payment of Service Tax on import of service. The assessee ought to have paid the Service Tax in cash only. We observed (August 2011) that department had issued an SCN (August 2009) and adjudicated the same (March 2010) appropriating the Service Tax of ₹ 4.27 lakh paid by the assessee through cenvat and interest of ₹ 1.34 lakh. The adjudication order did not cover the aspect of the legality / propriety of the payment of Service Tax through cenvat credit. Until CERA pointed out the issue (August 2011), no departmental process/authority had questioned the utilisation of cenvat credit for the purpose.

3.101 *When we pointed this out, the Ministry accepted the audit observation and intimated (January 2013) that the assessee had paid ₹4.27 lakh towards Service Tax and interest of ₹1.60 lakh in cash. As regards the review of records of the proceedings of the adjudication in the matter, it is stated that the show cause notice dated 3 August 2009 had proposed to appropriate the amount of ₹4.27 lakh already paid by the assessee. The*

adjudicating order appropriated the same; review of the said adjudication order also accepted the same. Neither the adjudicating authority nor the reviewing authority can go beyond the SCN. Hence, when the SCN itself has proposed to appropriate the amount of Service Tax paid already through cenvat credit account, the reviewing authority could not have travelled beyond the scope of the show cause notice.

3.102 The reply of the Ministry is not acceptable. Incorrect mode of payment of Service Tax was in the knowledge of the department, yet show cause notice was not rectified at any stage. The department did not take any action to recover the Service Tax amount in cash until Audit pointed out the lapse. The lapse (also refer Appendix VI, item no.12) indicates the need to review the adequacy of the mechanism in place for ensuring correctness of content in show cause notices .

C. Nedunchezhian

New Delhi (C. NEDUNCHEZHIAN)

Dated: 5 August, 2013 Principal Director (Central Excise)

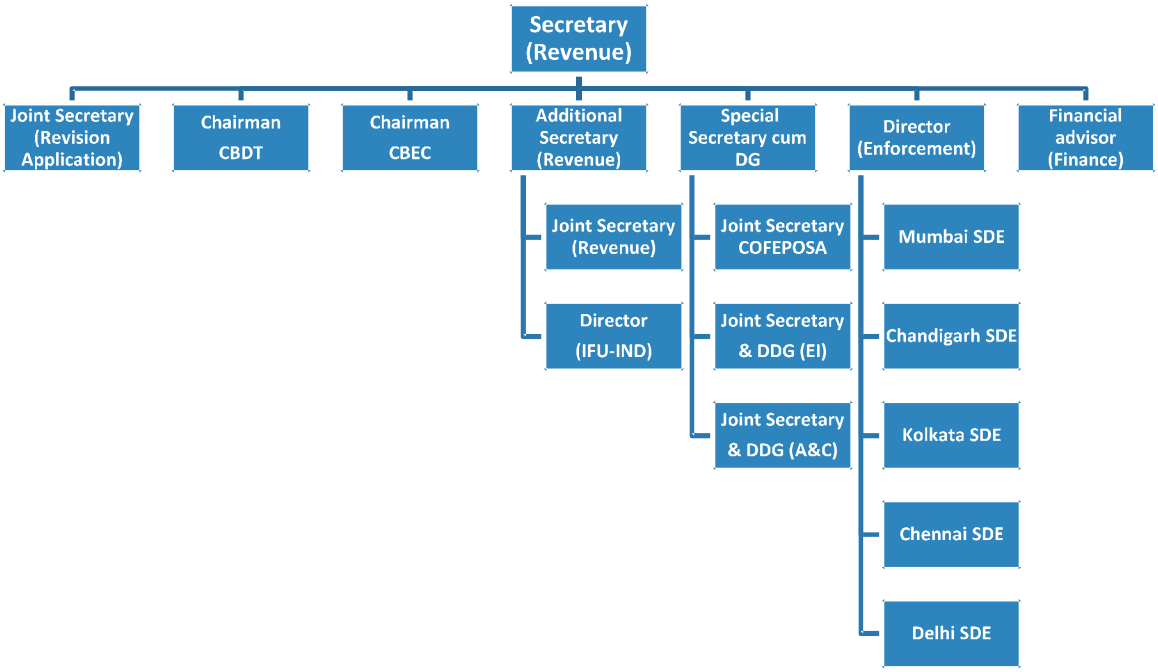
Countersigned

New Delhi (SHASHI KANT SHARMA)

Dated: 5 August, 2013 Comptroller and Auditor General of India

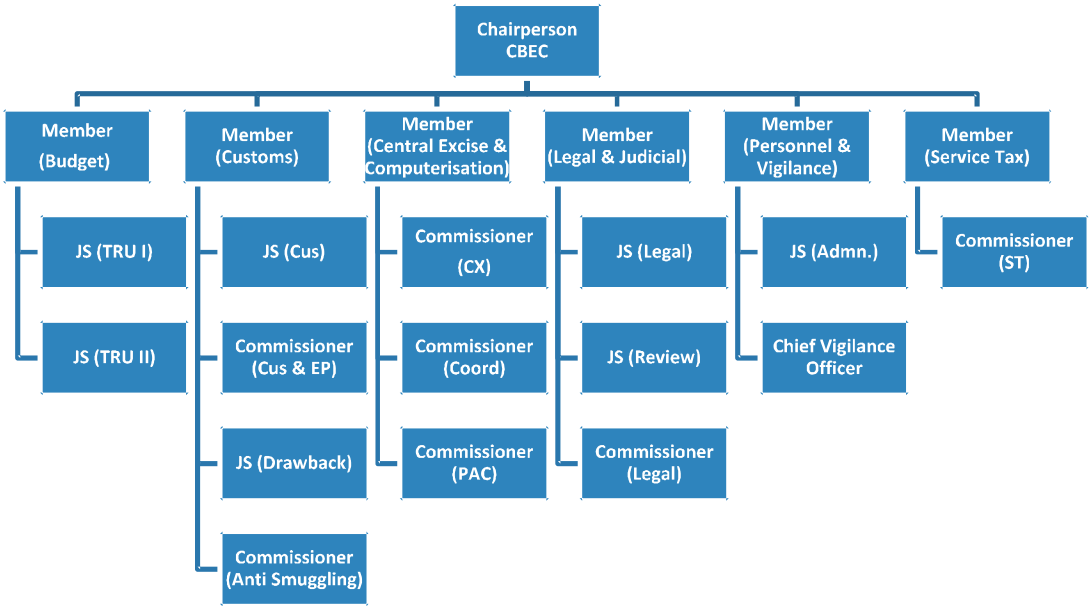
Appendix I

Organisational Chart of Department of Revenue



Appendix II

Organisational Chart of Central Board of Excise and Customs



Appendix III

(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 duty by suppression of production	43.69	43.69	-	Chandigarh II
2	24B	Non-levy of Excise duty on goods cleared as waste and scraps	30.44	30.44	-	Delhi III
3	26B	Non-payment of duty due to diversion of export goods to domestic market.	24.44	24.44	-	Belgaum
4	42B	Non levy of duty on goods found short	229.01	229.01	-	Kolkata VI
5	53B	Non-payment of duty	41.03	41.03	41.03	Mumbai V
6	56B	Non-payment of duty on consignment basis	238.88	238.88	238.88	Calicut
7	16A	Non-payment of duty	22.21	22.21	-	Raipur
8	17A	Non-payment of duty on excisable goods found short	14.85	14.85	-	Raipur
9	10B	Incorrect determination of cost of excisable goods	35.68	35.68	-	Kolhapur
10	14B	Short payment of duty due to undervaluation of goods	17.01	17.01	11.46	Nagpur
11	17B	Short levy of Central Excise duty	29.59	29.59	29.59	Haldia
12	21B	Short payment of duty due to non-inclusion of other consideration in transaction value	16.51	16.51	-	Vapi
13	23B	Short levy of duty due to under valuation	13.69	13.69	13.69	Bengaluru I
14	43B	Short payment of duty on price variation and non-payment of interest	12.74	7.19	-	Calicut

Sl No	DAP no.	Brief subject	Amount objected	Amount accepted	Amount recovered	Name of Commissionerate
15	45B	Short levy of Central Excise duty	38.21	38.21	-	Haldia
16	47B	Short payment of duty on inputs cleared as such.	15.03	15.03	15.03	Jaipur I
17	49B	Short levy of duty due to suppression of production	27.48	27.48	-	Jamshedpur
18	55B	Short-payment of differential duty due to incorrect application of rate of duty	19.2	19.2	19.2	Puducherry
19	57B	Undervaluation on account of incorrect determination of cost of excisable goods	17.65	17.65	17.65	Pune I
20	58B	Short levy of Differential duty and Interest thereon	42.12	42.12	33.9	Vishakhapatnam I
21	5B	Non-payment of interest on differential duty	12.34	12.34	12.34	Delhi III
22	6B	Non-payment of interest	25.33	25.33	14.83	Rohtak
23	22B	Non-payment/Non-recovery of interest	11.12	11.12	-	Rajkot
24	54B	Non levy of interest on differential duty paid	35.88	35.88	35.88	Hyderabad I
25	20A	Non-payment of interest on differential duty paid due to price escalation	23.84	23.84	-	Kolkata IV
26	22A	Non- payment of interest on differential duty	27.12	27.12	27.12	Cochin
27	24A	Non-payment of interest on differential duty	41.84	41.84	41.84	Chennai IV
28	25A	Non-payment of interest on delayed payment of differential duty	736.36	736.36	-	Haldia
29	21A	Non-payment of interest on differential duty paid due to price escalation	18.2	18.2	-	Indore

Sl No	DAP no.	Brief subject	Amount objected	Amount accepted	Amount recovered	Name of Commissionerate
30	3B	Cenvat credit availed on ineligible capital goods	10.5	9.75	9.75	Chandigarh I
31	4B	Cenvat credit availed on ineligible capital goods	498.43	498.43	5.64	Chandigarh II
32	16B	Irregular availing of cenvat credit on ineligible Capital goods	48.5	48.5	-	Nagpur
33	18B	Capital goods cleared without reversing credit or paying duty	17.33	17.33	4.1	Ludhiana
34	20B	Availing of cenvat credit on ineligible capital goods	42.82	42.82	-	Vapi, Ahmedabad I
35	29B	Irregular availing of cenvat credit	11.29	11.29	11.29	Chennai III
36	35B	Ineligible availing of cenvat credit on capital goods.	11.08	11.08	11.08	Calicut
37	37B	Irregular availing of cenvat credit	12.04	12.04	12.04	Chennai II and Salem
38	44B	Cenvat credit on capital goods availed in excess of permissible limit	16.21	15.24	-	Bhubaneswar II
39	51B	Irregular availing of Cenvat credit	21.79	21.79	21.79	Calicut
40	30A	Irregular availing of Cenvat credit on ineligible capital goods	16.92	16.92	-	Bhubaneswar II
41	27A	Incorrect availing of cenvat credit on capital goods	293.64	293.64	13.58	Patna
42	7B	Inadmissible input service credit	80.81	80.81	80.81	Tirunelveli
43	11B	Non reversal of cenvat credit in respect of inputs written off	13.55	13.55	13.55	Pune I
44	28B	Irregular availing of cenvat credit on input services	34.04	34.04	18.26	Bengaluru II
45	30B	Excess availing of cenvat credit on inputs	18.12	18.12	18.12	Chennai III

Sl No	DAP no.	Brief subject	Amount objected	Amount accepted	Amount recovered	Name of Commissionerate
46	31B	Excess and irregular availing of cenvat credit.	15.69	15.69	-	Haldia
47	32B	Non-reversal of cenvat credit.	126.73	126.73	126.73	Haldia
48	33B	Incorrect availing of cenvat credit	25.44	25.44	-	Bengaluru II
49	38B	Inadmissible cenvat credit on inputs	12.82	12.82	12.82	Ludhiana
50	39B	Irregular availing of cenvat credit	19.72	19.72	-	Cochin
51	40B	Non-payment of amount equivalent to cenvat credit taken on raw materials and components written off	27.27	27.27	2.66	Kolkata VI
52	41B	Non-reversal of cenvat credit on inputs destroyed in fire	17.04	17.04	17.04	Kolkata III
53	3A	Non reversal of cenvat credit on goods not received from job worker	11.75	11.75	11.75	Belapur
54	4A	Irregular availing and utilization of cenvat credit on ineligible services	22.62	22.62	22.62	Nagpur
55	8A	Non-reversal of cenvat credit on stock written off	110.99	110.99	44.23	Vadodara I
56	12A	Non-reversal of cenvat credit	21.15	21.15	-	Kolkata VII
57	14A	Irregular availing of cenvat credit	46.46	46.46	46.46	Bengaluru II
58	15A	Non-reversal of cenvat credit	47.07	47.07	47.07	Thane I
59	8B	Non-payment of amount/duty due to non-maintenance of separate account	130	130	-	Raigad
60	9B	Non reversal of cenvat credit of input services used in non-manufacturing activity	16.12	16.12	16.12	Belapur

Sl No	DAP no.	Brief subject	Amount objected	Amount accepted	Amount recovered	Name of Commissionerate
61	34B	Short Reversal of cenvat credit	132.75	132.75	115.82	Cochin
62	36B	Non reversal of cenvat credit of input services used in non-manufacturing activity.	57.51	57.51	-	Pune III
63	48B	Separate account for common inputs used in dutiable/exempted goods not maintained	142.18	142.18	-	Rohtak
64	52B	Non reversal of cenvat credit in respect of inputs and input service used in generation of electricity not used in manufacture	41.18	41.18	41.18	Raipur
65	5A	Non-reversal of cenvat credit not related to manufacturing process	35.39	35.39	35.39	Raigad
66	18A	Non reversal of cenvat credit in respect of inputs and input service used in generation of electricity not used in manufacture	131.9	131.9	-	Raipur
67	19A	Non-payment of an amount equivalent to the cenvat credit attributable to the common input services used in, or in relation to, the manufacture of exempted goods	35.76	35.76	35.76	Raipur
68	2B	Wrong availing of cenvat credit	13.44	13.44	13.44	Ludhiana
69	15B	Irregular availing of cenvat credit on job worker's invoices	30.53	30.53	-	Nagpur
70	19B	Incorrect adjustment of cenvat credit	45.7	45.7	-	Rajkot
71	27B	Non-reversal of cenvat credit	102.07	102.07	102.07	Mysore
72	46B	Short reversal of cenvat credit	12.83	12.83	12.83	Kolkata II

Sl No	DAP no.	Brief subject	Amount objected	Amount accepted	Amount recovered	Name of Commissionerate
73	59B	Non reversal of cenvat credit on conversion of DTA unit to EOU unit	135	135	-	Pune II
74	9A	Irregular availing of cenvat credit	19.94	19.94	-	Nasik
75	13A	Simultaneous availing of credit under cenvat scheme and depreciation under Income Tax Act	166.04	166.04	-	Patna
76	6A	Non reversal of cenvat credit	100.2	100.2	-	Shillong
77	-	Small money value observations which were accepted by the Department and rectificatory action taken but not converted into Draft Audit Paragraphs	1,040.83	1,040.83	833.52	
		Total	**5,902.68**	**5,895.41**	**2,309.96**	

Appendix IV

(Reference: Paragraph 2.13)

(Lakh ₹)

Sl. No.	DAP no.	Brief subject	Amount objected	Amount Accepted	Amount Recovered	Name of Commissionerate
1	2B	Non-payment of Service Tax	19.96	19.96	19.96	Rohtak
2	3B	Non-payment of Service Tax on business support services	530	530	-	Ahmedabad ST
3	4B	Non-payment of Service Tax on renting of immovable property service	14.33	14.33	14.33	Ahmedabad III
4	14B	Non-levy of Service Tax under banking and other financial services	14.51	14.51	-	Coimbatore
5	18B	Non-payment of Service Tax	31.82	31.82	-	Ludhiana
6	21B	Non-payment of Service Tax	178	178	178	Mumbai ST II
7	23B	Non-payment of Service Tax under supply of tangible goods service.	177.26	177.26	177.26	Kolkata ST
8	24B	Non-payment of Service Tax under renting of immovable property services	75.94	75.94	-	Kolkata ST
9	25B	Service tax not paid on Rent-a-cab service	191.86	191.86	-	Kolkata ST
10	26B	Non-payment of Service Tax	44.63	44.63	44.63	Kolkata ST
11	38B	Non-payment of Service Tax	67.02	67.02	-	Chandigarh II
12	43B	Non-payment of Service Tax under manpower recruitment or supply service	30.33	30.33	30.33	Chennai III
13	44B	Non-payment of Service Tax	11.3	11.3	11.3	Bengaluru ST
14	46B	Non-payment of Service Tax	9.99	9.99	9.99	Cochin

Sl. No.	DAP no.	Brief subject	Amount objected	Amount Accepted	Amount Recovered	Name of Commissionerate
15	49B	Non-payment of Service Tax on renting of immovable property service	94.14	94.14	94.14	Delhi ST
16	50B	Non-payment of Service Tax	105.28	105.28	105.28	Delhi ST
17	51B	Non-payment of Service Tax on Intellectual Property Services	13.37	13.37	13.37	Bengaluru ST
18	53B	Non-payment of Service Tax on advance receipts	15.41	15.41	15.41	Chennai ST
19	54B	Non-payment of Service Tax under renting of immovable property service	131.32	131.32	-	Chennai III
20	56B	Non-payment of Service Tax under Cargo handling service	216.28	216.28	-	Kolkata ST
21	57B	Non-payment of Service Tax on Goods Transport Agency service	29.38	29.38	-	Kolkata ST
22	60B	Non-payment of Service Tax and interest	15.98	15.98	15.98	Kolkata ST
23	61B	Non-payment of Service Tax	279.64	279.64	279.64	Bengaluru ST
24	66B	Non-payment of Service Tax	32.35	32.35	32.35	Chennai ST
25	70B	Non-payment of Service Tax on renting of immovable property service	664	664	-	Mumbai ST I
26	72B	Non-payment of Service Tax	13.36	13.36	13.36	Mumbai ST I
27	78B	Non-payment of Service Tax	14.67	14.67	14.67	Surat I
28	84B	Non-payment of Service Tax	13.06	13.06	13.06	Delhi ST
29	86B	Non-payment of Service Tax under commercial or industrial construction service	10.27	10.27	-	Chennai ST
30	87 B	Non-payment of Service Tax by service provider	13.54	13.54	13.54	Cochin

Sl. No.	DAP no.	Brief subject	Amount objected	Amount Accepted	Amount Recovered	Name of Commissionerate
31	3A	Non-payment of Service Tax on advance received	150.08	150.08	48	Mumbai ST II
32	4A	Non-payment of Service Tax under renting of immovable property services	72.04	72.04	72.04	Kolkata ST
33	8A	Non-Payment of Service Tax and interest on delayed payment of Service Tax on Mobilization Advance	112.54	112.54	112.54	Delhi ST
34	9A	Non-Payment of Service Tax on Goods Transport Agency Services	15.48	15.48	15.48	Delhi ST
35	12A	Non-levy of Service Tax under General insurance business service	9,984	9,984	-	Kolkata ST
36	14A	Non-payment of Service Tax	71.56	71.52	60.8	Bengaluru ST
37	17A	Non-payment of Service Tax on services provided to ISRO, DMRC etc.	7,717	7,717	-	Delhi ST
38	19A	Non-payment of Service Tax on renting of immovable property	23.54	23.54	23.54	Delhi ST
39	22A	Non-payment of Service Tax by Manpower Supply Agencies	72.46	72.46	-	Chandigarh II
40	24A	Non-payment of Service Tax under renting of immovable property service	197.09	197.09	-	Tirunelveli
41	26A	Non-Payment of Service Tax on mobilisation advances	1,996	1,996	1,996	Delhi ST
42	31A	Non-payment of Service Tax	64.72	59.98	-	Mumbai ST II
43	34A	Service Tax collected but not deposited	41.45	41.45	-	Patna

Sl. No.	DAP no.	Brief subject	Amount objected	Amount Accepted	Amount Recovered	Name of Commissionerate
44	39A	Non-payment of Service Tax by contractor	18.01	18.01	-	Trivandrum
45	40 A	Non-levy of Service Tax on renting of immovable property	94.85	94.85	-	Cochin
46	41A	Non-Payment of Service Tax	662	662	662	Delhi ST
47	43A	Non-payment of Service Tax on Mining Service	44.67	29.47	-	Jamshedpur
48	58B	Non-payment of Service Tax on Import of Services	19.35	19.35	19.35	Kolkata ST
49	1B	Non-payment of Service Tax on Import of Services	24.85	24.85	24.85	Delhi III
50	5B	Non-payment of Service Tax on Import of Services	19.29	19.29	19.29	Daman
51	7B	Non-payment of Service Tax on Import of Services	426	426	426	Ahmedabad ST
52	9B	Non-payment of Service Tax on Import of Services	13.97	13.97	13.97	Hyderabad I
53	10B	Non-payment of Service Tax on Import of Services	619	619	619	Mumbai ST I
54	11B	Non-payment of Service Tax on Import of Services	69.58	69.58	69.58	Mumbai ST I
55	12B	Non-payment of Service Tax on Import of Services	199.5	199.5	199.5	Nagpur
56	13B	Non-payment of Service Tax on Import of Services	38.61	38.61	38.61	Chennai III
57	17B	Non-payment of Service Tax on Import of Services	49.85	49.85	47.05	Delhi ST
58	22B	Non-payment of Service Tax on Import of Services	10.07	10.07	10.07	Mumbai ST I

Sl. No.	DAP no.	Brief subject	Amount objected	Amount Accepted	Amount Recovered	Name of Commissionerate
59	28B	Non-payment of Service Tax on Import of Services	119.87	119.87	119.87	Kolkata ST
60	33B	Non-payment of Service Tax on Import of Services	82.14	82.14	-	Kolkata ST
61	35B	Non-payment of Service Tax on Import of Services	84.8	84.8	-	Kolkata III
62	36B	Non-payment of Service Tax on Import of Services	18.09	18.09	-	Kolkata ST
63	37B	Non-payment of Service Tax on Import of Services	25.29	22.59	22.59	Kolkata ST
64	39B	Non-payment of Service Tax on Import of Services	355.05	355.05	-	Ahmedabad ST
65	42B	Non-payment of Service Tax on Import of Services	11.03	11.03	11.03	Salem
66	47B	Non-payment of Service Tax on Import of Services	33.48	33.48	33.48	Calicut
67	52B	Non-payment of Service Tax on Import of Services	16.15	16.15	16.15	Chennai ST
68	69B	Non-payment of Service Tax on Import of Services	53.64	53.64	-	Mumbai ST II
69	71B	Non-payment of Service Tax on Import of Services	21.04	21.04	-	Mumbai ST II
70	79B	Non-payment of Service Tax on Import of Services	18.84	18.84	18.84	Vapi
71	80B	Non-payment of Service Tax on Import of Services	11.55	11.55	11.55	Vadodara I
72	45B	Short remittance of Service Tax collected	35.11	35.11	35.11	Cochin
73	15B	Non/Short Payment of Service Tax	14.92	14.92	14.92	Chennai ST
74	16B	Short-payment of Service Tax on depository services"	10.94	10.94	-	Delhi ST

Sl. No.	DAP no.	Brief subject	Amount objected	Amount Accepted	Amount Recovered	Name of Commissionerate
75	27B	Short payment of Service Tax	38.72	38.72	38.72	Kolkata ST
76	29B	Short payment of Service Tax due to undervaluation by service provider	994.29	994.29	-	Nagpur
77	31B	Short payment of Service Tax	106.12	106.12	-	Kolkata ST
78	34B	Short payment of Service Tax under management consultant services	19.86	19.86	19.86	Kolkata ST
79	48B	Non-payment of Service Tax and interest	317.5	317.5	317.5	Delhi ST
80	55B	Short payment of Service Tax on Renting of immovable property service	19.81	19.81	-	Haldia
81	59B	Short-Payment of Service Tax	54.72	54.72	54.72	Kolkata ST
82	62B	Short payment of Service Tax under Banking and other financial service	22.31	22.31	-	Chennai ST
83	64B	Short payment of Service Tax on Business Auxiliary and testing service	9.37	9.37	9.37	Bhopal
84	65B	Short payment of Service Tax and interest	12.38	12.38	12.38	Jaipur I
85	67B	Short-payment of Service Tax	20.72	20.72	16.52	Mangalore
86	68B	Non-payment of Service Tax	47.63	47.63	47.63	Mumbai ST I
87	76B	Short payment of Service Tax on Import of Services	31.13	31.13	31.13	Vadodara I
88	81B	Short payment of Service Tax	48.32	48.32	-	Chandigarh II
89	5A	Short payment of Service Tax	666	666	-	Delhi ST
90	15A	Short payment of Service Tax on supply of tangible goods	66.75	60.89	60.89	Delhi ST

Sl. No.	DAP no.	Brief subject	Amount objected	Amount Accepted	Amount Recovered	Name of Commissionerate
91	18A	Short/Non-payment of Service Tax collected but not paid to Government	78.23	78.23	-	Delhi ST
92	8B	Non levy of Interest	32.26	32.26	-	Hyderabad II
93	20B	Non-levy of interest on belated payment of Service Tax	10.81	10.81	10.81	Hyderabad III
94	30B	Non-payment of interest on delayed payment of Service Tax	43.29	43.29	43.29	Kolkata ST
95	77B	Non-payment of interest	21.12	21.12	21.12	Rajkot
96	6A	Non-payment of Interest	119	119	119	Delhi ST
97	7A	Non-payment of interest on delayed payment of Service Tax on reverse charge	12.18	12.18	12.18	Delhi ST
98	10A	Non-payment of Interest on belated payment of Service Tax	16.6	16.6	-	Bengaluru ST
99	23A	Non-payment of interest	13.03	13.03	13.03	Chennai ST
100	19B	Availing of cenvat credit on ineligible input services	15.04	15.04	-	Hyderabad II
101	32B	Irregular availing of cenvat credit on Service Tax	797.28	797.28	-	Kolkata ST
102	40B	Irregular availing of cenvat credit of duty paid on capital goods	13.01	13.01	13.01	Raipur
103	63B	Excess availing of cenvat credit	47.51	47.51	47.51	Delhi ST
104	73B	Cenvat credit availed on inadmissible input services	30.56	30.56	27.84	Jaipur II

Sl. No.	DAP no.	Brief subject	Amount objected	Amount Accepted	Amount Recovered	Name of Commissionerate
105	74B	Incorrect availing of cenvat credit of input services	31.86	31.86	-	Raigad
106	82B	Premature availing of cenvat credit	50.49	50.49	-	Bhubaneswar II
107	83B	Irregular availing of cenvat credit	28.28	28.28	19.26	Delhi III
108	88B	Cenvat credit on capital goods availed in excess of permissible goods	13.54	13.54	-	Cochin
109	89B	Cenvat credit availed on inadmissible input services	24.9	24.9	-	Bhubaneswar I
110	2A	Short payment of Service Tax through PLA due to excess utilization of cenvat credit	24.27	24.27	-	Ahmedabad ST
111	20A	Short levy of Service Tax due to irregular claiming of abatement	43.47	43.47	-	Cochin
112	21A	Excess availing of cenvat credit on input services	55.86	55.86	-	Delhi ST
113	25A	Incorrect availing of cenvat credit	2,215.61	2,215.61	-	Kolkata ST
114	27A	Wrong availing of Service Tax credit paid on civil construction	53.71	43.6	-	Raipur
115	33A	Irregular availing of cenvat credit and interest thereon	102.24	78.24	-	Hyderabad IV
116	35A	Excess utilisation of cenvat credit	698.26	698.26	-	Bengaluru ST
117	38A	Irregular availing of cenvat credit	11,977.79	11,977.79	-	Kolkata ST
118	6B	Short reversal of cenvat credit	27.92	27.92	-	Ahmedabad ST

Sl. No.	DAP no.	Brief subject	Amount objected	Amount Accepted	Amount Recovered	Name of Commissionerate
119	41B	Irregular availing of cenvat credit of Service Tax	17.3	17.3	17.3	Raipur
120	75B	Excess utilisation of cenvat credit	13.9	13.9	-	Mumbai ST I
121	16A	"Non-reversal of cenvat credit availed on exempted services"	51.42	51.34	51.34	Delhi ST
122	28A	Irregular utilization of cenvat credit	153.96	153.96	-	Mumbai ST I
123	32A	Irregular availing of cenvat credit on common input services related to manufacturing and trading	734.76	734.76	367.38	Kolkata III
124	-	Small money value observations which were accepted by the Department and rectificatory action taken but not converted into Draft Audit Paragraphs	881.1	881.1	813.5	
		Total	**47,724.69**	**47,661.96**	**8,043.1**	

Appendix V

(Reference: Paragraph 3.2)

(Lakh ₹)

Sl No.	DAP no.	Brief subject	Amount objected	Amount accepted	Amount Recovered	Name of Commissionerate
1	3D	Non detection of non-payment of National Calamity Contingent Duty (NCCD) by internal audit	7	7	7	Pune I
2	7D	Non - scrutiny of Central Excise returns resulting in non-recovery of duty and interest	6.82	6.82	6.82	Rajkot
3	8D	Non-scrutiny of Central Excise Return leading to non-detection of irregular availing of cenvat credit	4.44	4.44	4.44	Ahmedabad II
4	11D	Non-reversal of cenvat credit on opting for SSI exemption	19.3	19.3	19.3	Calicut
5	15D	Availing of cenvat credit on ineligible capital goods	4.23	4.23	-	Rajkot
		Total	**41.79**	**41.79**	**37.56**	

Annexure VI

(Reference: Paragraph 3.21)

(Lakh ₹)

Sl. No.	DAP no.	Brief subject	Amount objected	Amount Accepted	Amount Recovered	Name of Commissionerate
1	2D	Non detection by Internal Audit Party of non-payment of Service Tax	10.13	10.13	10.13	Pune I
2	3D	Non detection by Internal Audit Party of Non-payment of Service Tax	10.3	10.3	10.3	Thane II
3	4D	Non detection by Internal Audit Party of short payment of Service Tax	11.44	11.44	11.44	Mumbai ST II
4	23 D	Inadequate audit coverage of mandatory units resulting in non-detection of irregular availing of cenvat credit	184	184	184	Mumbai ST I
5	29 D	Non detection of Non-payment of Service Tax on Rent paid on Immovable Property by Internal Audit Party	10.07	10.07	10.07	Mumbai ST I
6	1D	Non detection of irregular suo motu adjustment of Service Tax paid earlier	8.73	8.73	-	Pune I
7	15 D	Non-payment of Service Tax by service providers	12.11	12.11	-	Raipur
8	16 D	Irregular utilization of cenvat credit against payment of Service Tax on GTA.	2.42	2.42	2.42	Raipur
9	17 D	Non/Short payment of Service Tax and interest	5.18	5.18	4.77	Raipur

Sl. No.	DAP no.	Brief subject	Amount objected	Amount Accepted	Amount Recovered	Name of Commissionerate
10	22 D	Non-payment of Service Tax by unregistered service providers	3.95	3.21	-	Raipur
11	28 D	Irregularity noticed in detailed scrutiny	4.84	4.84	2.69	Rajkot
12	27 D	Incorrect computation of short payment of Service Tax in Show cause Notice	3.04	3.04	-	Trivandrum
		Total	**266.21**	**265.47**	**235.82**	

Glossary

ACES	Automation of Central Excise and Service Tax.
ADB	Asian Development Bank
CAAT	Computer Aided Audit Technique
CAO	Chief Accounts Officer
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise and Customs
CBECDDM	CBEC-Directorate of Data Management
CEGAT	Customs, Excise and Gold (Control) Appellate Tribunal
CENVAT	Central Value Added Tax
CESTAT	Customs, Excise and Service Tax Appellate Tribunal
CETA	Central Excise Tariff Act
DGCEI	Director General of Central Excise Intelligence
DGST	Director General of Service Tax
DoR	Department of Revenue
EA 2000	Excise Audit 2000
EASIEST	Electronic Accounting System in Excise and Service Tax
GDP	Gross Domestic Product
GTA	Goods Transport Agency
ICD	Inland Container Depot
IDEA	Interactive Data Extraction and Analysis – A CAAT software
ISP	Internet Service Provider
LTU	Large Taxpayer Unit
Modvat	Modified Value Added Tax
MRR	Monthly Revenue Report
MTR	Monthly Technical Report
NACEN	National Academy of Customs, Excise and Narcotics
PAC	Public Accounts Committee
PAO	Pay and Accounts office

PLA	Personal Ledger Account
POL	Petroleum, Oil and Lubricants
Pr. CCA	Principal Chief Controller of Accounts
PSU	Public sector undertaking
SCN	Show Cause Notice
TDS	Tax deducted at source