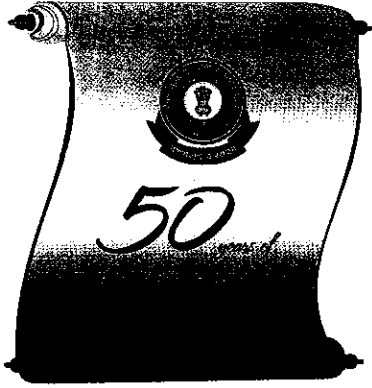


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Monthly Audit Bulletin

February 2012

**Directorate General of Audit
Central Board of Excise & Customs
Department of Revenue, Ministry of Finance
Government of India**

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Government of India

MONTHLY AUDIT BULLETIN – FEBRUARY, 2012

**Directorate General of Audit
Customs, Central Excise & Service Tax
Central Revenue Building
New Delhi**

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MONTHLY AUDIT BULLETIN – FEBRUARY 2012

CENTRAL EXCISE

- (1) **GIST OF THE OBJECTION** : **Misclassification of product – ‘Playing Cards’ as sports good to avail the benefit of notification No.2/2011-CE, dated 01/03/2011**

COMMISSIONERATE : **Central Excise Commissionerate, Daman**

The assessee is engaged in the manufacture of Playing Cards falling under Tariff Heading No.9504 40 00. During the course of audit it was noticed that the assessee had claimed partial exemption under notification No.2/2011-CE, dated 01/03/2011 treating the product playing card as ‘Sports Goods’. Assessee informed that since Playing Cards are used for playing Bridge which is internationally accepted as Sports, various sports bodies and clubs also consider it as ‘Sports Goods’. Hence he was entitled to pay duty @5% *ad valorem* under the said notification. Assessee was directed by the Department vide letter dated 28/03/2011 to clear the goods at the appropriate rate of duty without availing the benefit of notification No.2/2011-CE, as the notification gives benefit of concessional rate of duty to Sports Goods other than articles and equipment for general physical exercise of Chapter 95, as mentioned at S.No.75 of the Table annexed to the said notification. The term ‘sports goods’ used in the notification does not cover ‘Playing Cards’ and therefore concessional rate of duty of 5% as claimed by the assessee under said notification would not be applicable in this case. Assessee preferred an appeal against letter dated 28/03/2011 with Commissioner (Appeals). Thereafter, assessee surrendered his registration and obtained new registration under new name, and continued to avail benefit of notification No.2/2011-CE, dated 01/03/2011. Since assessee had wrongly availed the benefit of the said notification and short paid duty of ₹43,38,532/-, it stands recoverable from assessee along with interest.

- (2) **GIST OF THE OBJECTION** : **Non-payment of Central Excise Duty on additional consideration received through Debit Notes**

COMMISSIONERATE : **Central Excise Commissionerate, Daman**

The assessee is engaged in the manufacture of Co-Extruded Flexible Film falling under Tariff Item No.3920 10 99. During the course of audit it was observed that the assessee

had received extra consideration from his buyers in the form of "printing block making charges" by way of issuing Debit Notes. From the definition of 'Transaction Value' it appears that any additional amount charged which the buyer is liable to pay, will be included in the transaction value. It is also mentioned that the money value of additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with sale of such goods shall be included in the assessable value. In the instant case "printing block making charges" recovered separately by the assessee from his customers shall form part of "transaction value" and are includible in the assessable value as additional consideration for the purpose of levy of Central Excise Duty. During the period from 2008-09 to 2010-11, the assessee had recovered additional consideration in the form of printing block making charges to the tune of ₹18,56,294/- from his customers and was required to pay ₹1,97,978/- as Central Excise Duty. On being pointed out, the assessee agreed with the objection and paid the amount of ₹1,97,978/-, alongwith interest of ₹39,639/-.

- (3) **GIST OF THE OBJECTION : Non-payment of Central Excise Duty on goods procured duty free for use in manufacture of export goods, but used for manufacture of goods for home consumption**
COMMISSIONERATE : Central Excise Commissionerate, Bhavnagar

The assessee is engaged in manufacturing Ships, Tugs, Boats, Floating Structures etc. falling under Chapter 89. During audit, it was noticed that the assessee had procured duty free goods such as Steel Plates (ABS grade) of various sizes under notification No. 43/2001-CE(NT), dated 26.06.2001 for use in the manufacture of Ships for export. As per the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, duty amounting to ₹98,58,336/- was foregone in the year 2007 on such procured goods. However, on further scrutiny, it was found that out of the total procurement of the steel plates, 1233 MT plates were not used in the manufacture of ships for export but were used for home consumption. The details regarding usage of another quantity of 760.60 MT of plates involving a duty amount of ₹38,37,617/- was also called from the assessee for explanation. The assessee, after discussions, agreed and paid ₹1,25,83,070/- (₹60,20,717/- as duty which was earlier foregone with interest of ₹65,62,353/-).

(4) GIST OF THE OBJECTION : Non payment of duty on differential value collected while effecting sales from Depot

COMMISSIONERATE : Central Excise Commissionerate, Raigad

During the course of Audit of assessee, it was observed that during the period 2009-10 & 2010-11, the assessee had cleared the final product from factory to his depot on lesser value as compared to price at which the said goods were sold from the depot to the buyer. Thus, assessee was liable to pay differential duty as per Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 read with Section 4 of the Central Excise Act, 1944. On scrutiny of records, it was observed that the assessee had paid the differential duty for the period 2009-10 of ₹9,00,000/-, but no interest was paid by the assessee at that time for the period 2009-10. For the period 2010-11, the assessee had not paid the differential duty and interest. On being pointed out, the assessee agreed and paid the interest of ₹58,559/- vide e-payment for the period 2009-2010 and paid the differential duty totally amounting to ₹16,99,199/- alongwith interest of ₹2,66,135/- vide e-payment for the period 2010-11.

(5) GIST OF THE OBJECTION : Under valuation of the captively consumed goods

COMMISSIONERATE : Central Excise Commissionerate, Chandigarh-II

The assessee is engaged in the manufacture of Zinc Ingots & Zinc Ash (Residue) out of Zinc skimming. The Zinc Ash is being cleared for captive consumption for the manufacture of Zinc Sulphate, which is exempted from payment of Central Excise duty vide notification No.4/2006-CE, dated 01.03.2006, as amended. The assessee submitted the statement of cost of production (CAS-4 certificate) for goods i.e. Zinc Ash captively consumed, which was calculated at ₹36.41 per kg of Zinc Ash. The value shall be one hundred and ten percent of the cost of production or manufacture of such goods in terms of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, which was ascertained as ₹40.051 per kg but assessee was discharging duty on the goods captively consumed on the lower value. The assessee, during the year 2009-10 & 2010-11, had captively consumed Zinc Ash weighing 975.677 MT at lower rates than that of ₹40,051/MT, resulting into under valuation to the tune of ₹1,12,25,131/-, on which duty short paid comes to ₹11,56,189/-, which is recoverable from the assessee along with interest.

(6) **GIST OF THE OBJECTION: Under valuation of goods by suppressing differential value collected through depot**

COMMISSIONERATE : Central Excise Commissionerate, Chandigarh-II

Assessee was awarded contract for supply of 2,423 Number of 'three Seater Chairs' for Airport terminals by Airport Authority of India at the Rate of ₹31,242/- per unit which was Free on Road (FOR) destination, all inclusive. The assessee manufactured the said goods at his factory in Derabassi and cleared the same to his Depot at Chandigarh. The unit assessable value taken for payment of duty from factory at Derabassi was taken as ₹9,600/- on which duty was discharged. The said goods were subsequently cleared to M/s Airport Authority of India on invoice issued by assessee's depot. The value adopted for clearance of the said goods from the depot was taken as ₹31,242/- per unit but no separate details of payment of duties / taxes was reflected in the said Depot invoice. Perusal of the invoices issued from the factory and the depot revealed that Central Excise Registration No, ECC No. etc. printed on them was the same. It was further observed that the entire consignment as received from the factory was further cleared from the depot on the same date. As per the provisions of Section 4 of the Central Excise Act, 1944 read with Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Para 3.2(ii) of Part-III of Chapter 3 of Central Excise Manual of Supplementary Instructions, the assessee ought to have discharged duty on the value at which the goods were cleared from his depot. During the period 2007-08 the assessee had cleared goods valued ₹6,64,75,500/- from his depot on which duty liability comes to ₹94,05,187/-. The assessee discharged duty of ₹38,33,380/- on value of ₹2,32,60,800/- at the factory. Thus, differential duty of ₹55,71,808/- on differential value of ₹3,93,81,320/- is recoverable from the assessee. The assessee had resorted to suppression of facts of clearances from the depot at higher rates, from the Department with an intention to evade payment of duty. Hence, the amount is recoverable from them under provisio to Section 11A(1) of the Act along with interest, besides penalty is leviable under Section 11AC of the Act.

(7) **GIST OF THE OBJECTION : Irregular availment of capital goods credit on angles, Channels etc.**

COMMISSIONERATE : Central Excise Commissionerate, Pondicherry

The assessee is manufacturing Sugar falling under Sub heading No.1701 11 90 and molasses falling under Sub heading no.1703 10 00 of the Schedule to Central Excise Tariff Act, 1985. The inputs used are Raw sugar, Sugar cane, Lime, Sulphur, Caustic soda, Phosphoric acid etc. The assessee started construction in September 2008 and availed huge capital goods credit in respect of machineries procured locally and imported. In respect of capital goods received from September 2008 to February 2010 the assessee initially availed 50% of the CENVAT Credit there on. The credit availed materials included angles, channels, beams, joists etc, falling under Chapter Heading 72 & 73 etc. As the Range Officer concerned pointed out that credit is not eligible for angles, channels, beams etc, the assessee reversed the credit to the extent of ₹71,74,675/- in March 2010. However in April 2010 while taking 50% credit on all capital goods, the assessee again took credit of the amount reversed in March 2010 claiming that the reversal earlier was wrong. The total capital goods credit availed by them on goods falling under Chapter 72 & 73 was of ₹1,43,69,156/-. On verification of the documents relating to credit availed on the goods pertaining to Chapter 72 & 73 it was found that credit was availed on tubes, pipes and fittings thereof to the extent of ₹90,47,072/-. The balance credit of ₹53,22,084/- pertained to angles, channels, beams, HR coils which were used either to fabricate structural support to the building or capital goods. Tubes, fittings, storage tanks are eligible capital goods and goods used for fabricating capital goods within factory are treatable as inputs used in or in relation to manufacture. But the credit availed on angles, shapes, channels, beams, sheets, coils which are neither capital goods nor inputs, is not admissible. CBEC, vide its circular F.No.267/11/2010-CX8, dated 08/07/2010 by citing the Hon'ble CESTAT (LB) decision in the Vandana Global Ltd., VS CCE, Raipur [2010-TIOL-624-CESTAT-DEL-LB] has clarified that amendment to Explanation 2 to Rule 2(k) of CENVAT Credit Rules, 2004 inserted vide notification No.16/2009-CE(NT), dated 07.07.09, is clarificatory in nature and has retrospective effect. The circular has further clarified that credit on inputs used in the manufacture of capital goods, which are further used in the factory of the manufacturer is admissible but credit on items like cement, angles, channels, CTD or TMT bars and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods is inadmissible. In view of said circular it is clear that capital goods credit is not available on angles, channels, beams etc, falling under Chapter Heading 73 & 72. On being pointed out, the assessee reversed the credit of ₹15,66,002/- vide his cenvat account and agreed to reverse the balance credit involved.

- (8) **GIST OF THE OBJECTION** : **Assessment of goods based on Retail Sale Price – Incorrect adoption of assessable value lower than abated MRP meant for distributors, resulting in short payment of duty**

COMMISSIONERATE : **Central Excise Commissionerate, Coimbatore**

The assessee is manufacturer of Automotive, Tubular and Stationery Battery falling under Tariff Sub heading 8506 80 90 of the Schedule to Central Excise Tariff Act, 1985. The assessee commenced commercial production from October 2009 availing SSI exemption under notification No.08/2003 for the FY 2009-10 and was filing Quarterly ER-1 returns. For the FY 2010-11, the assessee availed SSI exemption and on crossing the value of clearances of ₹1.5 Crores on 24/06/2010 started paying the Central Excise Duty and availed CENVAT Credit on various inputs, Input Services and Capital Goods. Batteries manufactured by the assessee are notified under Section 4A of the Central Excise Act, 1944 attracting levy on the basis of Retail Sale Price (MRP). The notification No.49/2008-CE(NT), dated 24/12/2008 (S.No.81) provides for an abatement of 35% on the Retail Sale Price. Accordingly the assessee was liable to pay duty on the 65% of the declared Retail Sale Price. The Batteries manufactured by the assessee were sold through various distributors appointed by the company. Perusal of the Central Excise records revealed that the assessee had been issuing Price List from time to time to the distributors indicating the MRP in respect of all types of Batteries sold. Scrutiny of the sale invoices indicated that the assessee was not paying Central Excise duty on the abated value of MRP declared in the price list, but was paying duty on a value lower than the abated MRP meant for the distributors, which resulted in short-payment of duty during the period from July 2010 to October 2011, amounting to ₹4,17,086/-. This issue was discussed in detail with the Managing Director of the company. The assessee accepted the contention of the audit and paid the entire amount of duty short paid along with interest.

- (9) **GIST OF THE OBJECTION** : **Short payment of duty due to undervaluation/ excess clearance**

COMMISSIONERATE : **Central Excise Commissionerate, Kolkata-III**

The assessee is a manufacturer of industrial valves, bearings etc. These items are used by large industrial undertakings and it is essential to test them before use for safety reasons. While studying the returns and other documents during Desk Review no indication of

payment of duty on samples or on any replacement was noticed. As the items are spares in nature, frequent replacement is essential to keep the machines in working condition and to avoid any accident. In view of the nature of items an audit point on above line was included for detail verification during actual conduct of audit. While scrutinizing the tax invoices during the course of audit, it was found that the assessee was recovering an amount towards "bond testing charges" from his buyers. It was also noticed that the assessee was recovering an amount 'other charges' over and above the sale value of the goods. Besides, the said two values for the purpose of payment of duty of excise were not included by the assessee. On query, the assessee clarified that the "bond testing charges" are recovered towards testing cost of the bush and valves. And the 'other charges' were against the clearance value of additional numbers of valves and bushes cleared over and above the numbers indicated in the invoice to his customers. On verification of the records, it was found that the assessee had realized an amount of ₹10,79,000/- during the FYs 2009-10 & 2010-11 under the heads of 'Bond Test Charges' and 'other charges' from their customers. Such charges were includible into the assessable value in terms Section 4 of the Central Excise Act, 1944. The duty liability on the above works out to ₹1,05,369 /-.

(10) GIST OF THE OBJECTION : Reversal of credit on the value under provision for write off of inputs

COMMISSIONERATE : Central Excise Commissionerate, Chennai III

The assessee had made a provision to write-off the value of inputs for an amount of ₹1,11,31,884/-. As per Rule 3(5B) of the CENVAT Credit Rules, 2004, if the value of any input on which CENVAT Credit has been taken is written off fully, or when any provision to write off fully has been made in the books of accounts, then the manufacturer or service provider shall pay an amount equivalent to the CENVAT Credit taken in respect of the said inputs or capital goods. On being pointed out, the assessee paid an amount of ₹7,46,712/- along with interest of ₹74,017/-. The balance amount of ₹3,99,871/- along with interest is to be recovered from the assessee.

SERVICE TAX

- (11) **GIST OF THE OBJECTION** : Non-payment of Service Tax on Port Services
COMMISSIONERATE : Central Excise Commissionerate, Guntur

The assessee is a provider of Port Services and is maintaining the accounts in Tally software. The audit party verified the Tally data of actual realizations of the services provided during the FYs 2009-10 & 2010-11, with the figures shown in ST-3 returns. However, when these figures were compared with the Gross Realization based on the Annual Reports, a difference between taxable values shown in the ST-3 returns with that of Annual reports was noticed revealing short payment of tax. The total short payment for the years 2009-10 & 2010-11 was ₹116.76 Lakhs.

- (12) **GIST OF THE OBJECTION** : Short payment of Service Tax on the Services received from outside India
COMMISSIONERATE : Central Excise Commissionerate, Guntur

On verification of the accounts and Annual Reports for the period 2008-09 to 2010-11, it was observed that the assessee had paid certain amounts in Foreign Currency to some agencies abroad under the head "Foreign Currency Outgo". The actual details of these transactions were not recorded in the Tally accounts maintained at Port. The assessee informed that his Corporate Office located in another city was dealing with foreign transactions. The concerned invoices and other details were obtained from their Corporate Office. It was noticed that the amounts were paid in foreign currency to procure certain services such as Professional Services, Business Promotion Services, Repairs and Maintenance Services, Processing of loans abroad. These Services fall under different categories of taxable services under various sub-sections of Section 65(105) of the Finance Act, 1994. It was also observed from the bills/invoices that raw materials/consumables/capital goods were procured and some pertain to procuring of services. Some invoices were for procuring materials as well as service charges for repair and maintenance of various cranes/aircraft etc. As the assessee received the services in India from abroad, the assessee was liable to pay Service Tax on the said amount in the capacity of recipient of taxable services under Section 66A of the Act ibid read with Rule 2(1)(d)(iv) of the Service Tax Rules, 1994. The part of the value of the services received

from abroad and paid in foreign currency was ascertained from various invoices and Service Tax liability was calculated. Total amount of ₹58.36 Lakhs including interest was paid by the assessee on detection of non payment.

- (13) **GIST OF THE OBJECTION** : **Wrong availment of CENVAT Credit on services used for trading activities**

COMMISSIONERATE : **Central Excise Commissionerate, Jaipur – I**

The assessee is registered for providing services of Authorised Service Station (servicing of motor vehicles) and Business Auxiliary Services (BAS). During the course of audit it was noticed that the assessee is mainly engaged in trading of vehicles. The assessee availed CENVAT Credit of Services Tax in respect of services which are mainly used in trading of vehicles on which no Service Tax is payable. The services like telephone, advertisement, insurance, banking services etc. on which Service Tax credit has been taken by the assessee are used in trading activities, and therefore, not covered in the definition of input service. Thus entire Service Tax credit amounting to ₹5,59,480/- taken by the assessee was not admissible. On being pointed out, the assessee agreed with the objection and paid the amount of ₹5,59,480/- alongwith interest of ₹2,38,396/-.

- (14) **GIST OF THE OBJECTION** : **Detection and recovery of non-payment of Service Tax by Service Provider during the course of Audit of Service recipient**

COMMISSIONERATE : **Central Excise Commissionerate, Daman**

The assessee is manufacturer of MG Kraft Paper falling under the Tariff Heading No.4804 31 00. During the scrutiny of sales invoices issued by the assessee it was noticed that they had cleared finished goods directly to various customers but the buyer's name was shown as an altogether different entity. Scrutiny of Balance sheet, under the head of "Selling and Distribution Expenses", revealed that assessee had paid sales commission of ₹16,70,590/- and ₹26,32,873/- during the FYs 2009-10 and 2010-11 respectively to the said entity. This entity was registered with the Department as a Service Provider of "Business Auxiliary Services" during FY 2011-12, however, they had not paid the Service Tax on the Sales Commission received from the assessee, thereby suppressing

the facts from the Department with intent to evade Service Tax. On being pointed out, the entity paid the Service Tax amounting to ₹1,73,086/- (including cess) for the FY 2009-10 with interest of ₹16,471/- and also paid Service Tax amounting to ₹2,86,167/- (including cess) along with interest of ₹38,734/- vide e-payment for the year 2010-11.

(15) GIST OF THE OBJECTION : Non payment of Service Tax under pretext of non receipt of tax from the Service Recipient

COMMISSIONERATE : Central Excise Commissionerate, Allahabad

The assessee is registered for payment of Service Tax on "Renting of Immovable Property" services based on the consideration received against such renting. The scrutiny of the assessee's records revealed that he had not paid Service Tax to the tune of ₹1,30,13,837/-. The assessee's Trial Balance Sheets for FYs 2009-10 and 2010-11 clearly showed ₹84,32,901/- and ₹45,80,936/- respectively as liability for Service Tax payment. The assessee on being probed asserted that he paid Service Tax only when his tenants paid their rents along with Service Tax leviable thereon. If the tenants paid rents only, without Service Tax leviable thereon, the assessee did not pay Service Tax. Total amount of ₹130.13 Lakhs stands recoverable from the assessee on this account.

(16) GIST OF THE OBJECTION : Irregular availment of Credit

COMMISSIONERATE : Central Excise Commissionerate, Chennai III

Assessee is a manufacturer of Crushers and Screening machines. These machines are high value items used in mining and mineral industries. Vide ISD invoice S.No.01 dated 31.03.2009, assessee had transferred an ISD credit of ₹3,16,43,613/- to their factory. Scrutiny of the list of services enclosed thereto points to availment of Service Tax credit on the rent paid to individuals and HUF. These services are not relatable to the manufacturing of excisable goods at their factory. The assessee, by including this Service Tax paid on the rental of immovable property and distributing the same to the factory, had willfully misdeclared that the Service Tax paid for the immovable property taken on rent elsewhere other than the factory of manufacture and clearance. Therefore the credit of Service Tax of ₹11,33,759/- is liable to be recovered with interest.

- (17) **GIST OF THE OBJECTION** : **Short payment of Service Tax on Renting of Immovable Property Service by resorting to show higher rate of Municipal Taxes than actually paid**

COMMISSIONERATE : **Service Tax Commissionerate, Kolkata**

The assessee is a provider of Renting of Immovable Property Service, as defined under Section 65(105)(zzzz) of the Finance Act, 1994. During detailed scrutiny during audit, the bills raised upon the recipient of service were taken up for verification. From the rental value of the bills the assessee deducted the amount of Municipal Taxes. On verification of the municipal bills, it was observed that the assessee had raised & realized Service Tax on rental value after allowing higher rate of Municipal Tax than he had actually paid to the Municipality thereby, resulting short levy of Service Tax. During the period from 01/06/2007 to 31/03/2010 there was a short payment of Service Tax of ₹3,10,180/-.

- (18) **GIST OF THE OBJECTION** : **Non Payment of Service Tax on commission received on services rendered in connection with manufacturing of tea treating it as agricultural product**

COMMISSIONERATE : **Central Excise Commissionerate, Guwahati**

On verification of the Trial Balances/P&L account for the period 2006-07 to 2011-12 (upto Sept/11) during the course of audit, it was observed that the assessee had earned brokerage/ commission from different sellers/buyers on private sale of Tea. Such sale of tea on behalf of the sellers is a taxable service under the 'Business Auxiliary Services' [Section 65(105)(zzb) of the Finance Act, 1994]. It was found that no Service Tax has been paid while providing such service. Further the company collected service charges from the tea warehouses towards warehousing of tea stored on account of the sellers. This act also is a taxable service and falls under the 'Business Auxiliary Services' and Service Tax is required to be paid thereon. Calculation of taxable value constituting brokerage/commission and service charges mentioned above showed that an amount of ₹23,54,615/- is payable towards Service Tax. The assessee pointed out that in terms of notification No.13/2003-ST, dated 20.06.2003 as amended, Business Auxiliary Service provided by a commission agent in relation to sale or purchase of agricultural produce is exempt from payment of Service Tax, as tea amongst other goods, has been defined as agricultural produce. On being pointed out that **manufactured tea** does not appear to be

covered under the said definition of agricultural produce in view of the exclusion clause mentioned in the said notification regarding manufactured products, the assessee admitted that tea is a manufactured product in industrial & commercial parlance. The assessee, on receiving the audit observation, paid the entire amount of Service Tax of ₹23,54,615/- (Inclusive of Cess) along with interest, both for commission/brokerage earned on sale/purchase of tea and service charges collected from the tea warehouses.

(19) GIST OF THE OBJECTION : Non Payment of Service Tax on import of services from associate company

COMMISSIONERATE : Central Excise Commissionerate, Bangalore-I

Assessee, is a subsidiary company of a multinational foreign company located in Germany which is providing Roofing Solutions. During the audit, it was noticed that the assessee had received four invoices issued by another group company situated in Malaysia, claiming the amounts towards operational Headquarters service fee to the extent of ₹5,18,03,025/-. The assessee had entered into a Management Service Agreement with the said group company. As per Agreement, the assessee received services such as Business advisory services; Coaching and operational support services in the fields of finance, legal, human resources, communications, research and development services; Information technology services and includes licenses for the use of technology, trademarks, software or telecommunication charges. Against the services so rendered, the Malaysian company had issued invoices for an amount of ₹5,18,03,025/- which transactions are recorded in assessee's annual balance sheets and also in the trial balance sheet produced before audit. As per the provisions of section 65(105) of the Finance Act, 1994 the aforementioned services fall under the categories of Business Auxiliary services(zzb); Business support services (zzzq); Scientific or Technical Consultancy services (za); Management or Business Consultant Services (r). As per section 66A of the Finance Act, 1994 read with rule 2(1)(d)(iv) of the Service Tax Rules, 1994 the recipient of taxable services located in India is required to pay Service Tax on such services received by him out of India under reverse mechanism. Hence the assessee is liable to pay Service Tax of ₹53,35,712/- along with the interest of ₹8,30,676/- on services received. On being pointed out the assessee has agreed to the audit contention and sought time to pay the amount.

(20) **GIST OF THE OBJECTION : Non payment of Service Tax on Business Auxiliary Services**

COMMISSIONERATE : Central Excise Commissionerate, Bolpur

The assessee is a provider of Motor Vehicle Repair and Related Service under the category of 'Authorized Service Station for Motor Vehicle Servicing and Repairs' [Section 65(105)(zo) of the Finance Act,1994].

On scrutiny of 'Financial Records' i.e. P&L Account of unit for the year 2009-10, it was observed that the assessee received Income from registration of ₹3,37,540/- and Finance commission of ₹204122/-. The Trial Balance of 2010-11, shows that they received Income from registration of ₹8,86,999/-, and Commission from extended warranty of ₹20,515/- and Finance commission of ₹64,870/-. The auditors observed that calculation of taxable service has not been enumerated as per guidelines given under para 4 of Circular No.87/05/2006-ST, dated 06.11.2006 , which stipulates as under:

Para 4 of the Circular : *"In some cases, the automobile dealers help the buyers of the vehicles for arranging the finances. For this, they have a tie-up with Banks / Non-banking Finance Companies. The customers are advised by the dealers to approach such financial companies for taking loans. The automobile dealers get commission from such financial companies for directing the customers to the latter. By this activity, the automobile dealers promote or market the services provided by their customer (i.e., the financial institution), and are therefore covered under 'taxable service', namely, the "Business auxiliary service". The tax is payable on the gross commission received by the automobile dealer. In some cases, the dealers share part of their commission with their customers to attract them. However, this is an independent transaction between the automobile dealer and the purchaser of the vehicle, and does not involve the service rendered by the automobile dealer to the finance company. Therefore, the tax payable by the dealer would be on the gross amount received from the financial company and not on the balance amount, i.e., after excluding the amount that he passes on to the customer'.*

Therefore , Service tax payable by the assessee would be on the gross amount received from the financial company and not on the balance amount i.e. after calculating the amount that he passes on to the customer. Further, the income from registration is also covered under the 'Business Auxiliary Service for which the assessee has no registration.

Hence the assessee is required to pay Service Tax on gross taxable value of ₹15,14,046/- involving service tax of ₹1,55,947/-

(21) **GIST OF THE OBJECTION : Wrong availment of CENVAT Credit on input services exclusively used in construction services**

COMMISSIONERATE : Service Tax Commissionerate, Bangalore

On verification of input invoices on which CENVAT Credit was availed by the assessee, it was noticed that the assessee was in receipt of the construction works contract services defined under section 65(105)(zzq) and 65(105)(zzzza) of the Act from various clients. On perusal of the agreement dated 20.04.2010 made between assessee it was noticed that the assessee had leased building to "the lessee" for a fixed period of time. For which "The lessee" has to pay rent to assessee as per the above agreement. The assessee had entered into similar agreements with various other clients and receiving rent for providing such services. Right to use renting of immovable property is leviable to Service Tax. The assessee has been paying Service Tax on such receipts under the taxable service 'renting of immovable property' defined under Section 65(90a) of the Act. The assessee has been availing the input services credit paid on construction services. The same has been utilized for discharging Service Tax liability. The assessee had not disputed this fact of availing input services credit on construction services and utilizing the same for payment of Service Tax on output services. In the instant case, the output of the construction activity is an immovable property. Once the construction services were finished immovable property i.e. building came into existence which is an output as a result of the input services used namely construction services. The said immovable property is neither 'goods' nor 'service' chargeable under either central excise Act or Service Tax Act. Immovable property is neither subjected to central excise duty or Service Tax. Input credit of Service Tax can be taken only if the output is a 'service' liable to Service Tax or a 'goods' liable to excise duty. Hence, it appeared that the credit attributable to input services/inputs connected to construction services cannot be taken for the purpose of payment of duty. As a result all the credits availed in respect of construction services appeared to be ineligible. As per the CENVAT Credit Rules, 2004 input credit/input services can be taken on input/input services related to manufacture/production of a taxable excisable goods or an output service which is taxable. As per rule 6(1) of the CENVAT Credit Rules, 2004 "The CENVAT Credit shall not be allowed on such

quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services...". Further, CBEC vide Circular No.98/01/2008-ST, dated 04.01.2008 had clarified that input credit of construction services cannot be taken. The circular reads as follows:

"Right to use immovable property is leviable to Service Tax under renting of immovable property service. Commercial or industrial construction service or works contract service is an input service for the output namely immovable property. Immovable property is neither subjected to central excise duty nor to Service Tax. Input credit of Service Tax can be taken only if the output is a 'service' liable to Service Tax or a 'goods' liable to excise duty. Since immovable property is neither 'service' nor 'goods' as referred to above, input credit cannot be taken".

Therefore, the input credit availed/ utilized on construction services is not correct and need to be recovered from the assessee. The credit availed on such input services wherein construction services are involved amounts to ₹2,61,51,765/-.



**Directorate of Publicity and Public Relations
Customs & Central Excise
C.R. Building, I.P. Estate, New Delhi-110109**