CENTRAL EXCISE

1)

Gist of Objection: **Short payment of duty due to under valuation on account of sales through related Persons.**

Commissionerate: **Central Excise Commissionerate, Bangalore III**

Contravention of Provision: **Rule 6 and 8 of the Central Excise Rules, 2002**

During the course of audit it is noticed that the assessee has not correctly arrived at the assessable value of their finished goods cleared to their Bhiwandi unit for payment of duties by not following the Rule 9 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 read with Section 4 of Central Excise Act, 1944. In terms of Rule 9 when the assessee so arranges that the excisable goods are not sold by an assessee except to or through a person who is related in the manner specified in either of sub-clause (ii), (iii) or (iv) of clause (b) of sub-section (3) of Section 4 of the Act, the value of the goods shall be the normal transaction value at which, these are sold by the related person at the time of removal, to buyers (not being related person). Hence, the assessee has to adopt the price at which the said goods sold by the related person at the same time to the un-related buyer. Thereby the proper value has not been declared resulting in contravention of the provisions of Rule 6 and 8 of the Central Excise Rules, 2002. In this connection, the total duty short paid worked out to Rs.12, 29,439/-. The assessee has agreed and paid the said amount.

2)

Gist of Objection: **Non-payment of Cenvat credit involved on the provision for stock of Non-moving raw material for the year 2012-13**

Commissionerate: **Central Excise Commissionerate, Bangalore I**

Contravention of Provision: **Rule 14 of Cenvat credit Rules, 2004**

During the verification of the Trial Balance Sheet for the year 2012-13, it is noticed that the assessee has created provision for stock of non-moving raw materials for the year 2012-13 valued at Rs.44,56,168/-. In terms of provision of sub-rule(5B) of Rule 3 of Cenvat credit Rules,2004, when the provision is made to write off inputs/obsolescence of the raw materials or capital goods fully or partially, the

manufacturer is required to pay an amount equivalent to the Cenvat credit taken in respect of the said inputs or capital goods. The Cenvat involved on the said goods works out to Rs.11,51,668/-. In view of Rule 14 of Cenvat credit Rules,2004, existing upto 31.03.2012 and the Hon'ble Supreme Court judgment in the case of UOI Vs Ind Swift delivered on 21.02.2011, they are required to pay interest when the credit is availed irrespective of the fact whether it is utilized or not. However, Rule 14 of Cenvat credit Rules,2004 has been amended with effect from 01.04.2012, which provides that the interest is required to be paid when the wrong credit availed is also utilized. As the Cenvat credit available in their books of accounts as on 01.04.2012 is more than Rs.53,24,909/- they are liable to pay interest upto 31.03.2012.On being pointed out the assessee agreed and paid the whole amount.

3)

Gist of objection: **Non Payment of C. Ex. Duty on freight realised.**

Commissionerate: **Central Excise Commissionerate, Haldia**

Contravention of Provision: **Rule 4, 6 and 8 of the Central Excise Rule,2002**

On going through the sales Invoices for the year 2011-12, it has been observed that the assessee had charged/realised freight to the tune of Rs. 15,33,85,850/-in their invoices separately from their buyers, but the said value of freight had not been included in their assessable value.

On sample analysis/verification of purchase order in respect of delivery of goods to one buyer Mumbai, it has been observed by the auditors that the terms and condition for the rate was shown as F.O.R at Kungaon, Kalyan, Maharashtra, and the rate includes freight and is for free delivery at site and buyer will only bear unloading charges and octroi. As the sale was F.O.R destination basis inclusive of freight , the said freight charges raised and realized separately in the invoices is required to be included in the assessable value for the purpose of payment of proper C.Ex. duty as per Section 4 of Central Excise Act, 1944 read with Central Excise Valuation Rule,2000 and thereby it appears that the assessee was liable to pay Central Excise duty amounting to Rs. 98,05,314.00 on the total Freight Charges so realized separately along with applicable Education Cess and Sec. & Higher Education Cess as per Section 11A of the Central Excise Act,1944 and applicable interest as per Section 11AB of the said Act. On being pointed out by the audit, the assessee paid C. Ex. duty of Rs. 98,05,314.00 40, along with interest of Rs. 27,63,061.00

4)

Gist of objection: **Short- payment of duty by excluding cost of "Design and Drawing" for automobile manufacturing.**

Commissionerate: **Central Excise Commissionerate, Jamshedpur**

Contravention of Provision: **Rule 4, 6 and 8 of the Central Excise Rule,2002**

During the course of audit it has been observed that the assessee had engaged in the manufacture Automobiles parts and Machinery parts as per "drawing and design" provided by one Automobile manufacturer, free of cost. Further, it was also found that the said automobiles manufacturer was providing "drawing and design" online as well as in hard copy to the assessee. On further examination it was found that the cost of drawing and design provided by the said automobile manufacture free of cost was not being included in the assessable value of the goods in terms of Rule 6 (ii) of the Central Excise Valuation (determination of price of excisable goods) of excisable goods) Rules,2000. Further, it is also well settled by Hon'ble CESTAT, Kolkata in the case of M/s TML, JSR vs. CCE,JSR that drawing and design cost @ 0.085% on the value of goods is to be included in the assessable value in case of free supply of drawing and design by the manufacturer. The assessee were also manufacturing their goods as per the drawing and design provided free of cost by the said automobiles manufacturer but not including cost of drawing and design in the assessable value of the goods as per above provisions. It was also found that the assessee was raising Supplementary invoices from time to time for price escalation and paying duty as per rules but they were not paying duty on the escalated cost of "Drawing and Design" due to upward revision of prices.

In view of the above the assessee were requested to pay duty on the cost of drawing and design for the last five years along with interest and to submit quantification chart vide spot memo dated 12.09.13. The assessee agreed and paid Rs. 53,966.00 (including cess) and interest for Rs. 20,000/ for the period 2008-09 to August'2013.

5)

Gist of Objection: **Wrong availment of Cenvat Credit on Input Services like land development, house-keeping, gardening etc. which are covered under the heading "Maintenance Service".**

Commissionerate: **Central Excise Commissionerate, Vapi**

Contravention of Provision: **Rule 2(1) of Cenvat Credit Rules, 2004**

The assessee is a manufacturer of L. T. Cables, Bar Copper Conductor, Bare Aluminium Conductors falling under subheading no. 85446020, 85446090 and 74081190.During the course of scrutiny of the documents related to Input services, it was noticed that the assessee had wrongly taken Cenvat credit of service tax for input services to the tune of Rs. 16,13,151/- for land development, house-keeping and gardening etc. (Maintenance Services) during the period from April 2012 to September 2013.

In terms of the provisions contained under Rule 2(1) of Cenvat Credit Rules, 2004, the above services are neither related to manufacturing activities nor related to clearance of final product. Therefore, the same is not admissible to the assessee and required to be reversed/recovered along with interest and penalty.

6)

Gist of objection: **Short payment of C. Ex. duty by clearing the goods at higher rate than goods cleared from factory.**

Commissionerate: **Central Excise Commissionerate, Dibrugarh**

Contravention of Provision: **Rule 4, 6 and 8 of the Central Excise Rule, 2002**

During the course of audit, it was observed that the assessee was a manufacturer of excisable goods i.e. Plywood under Chapter/Sub-Heading No. 44089090, 44182010 and 44129400 The Assessee had sold their excisable goods through depots located in different parts of India with higher rate in comparison to the rate cleared from their factory. Thereby, they were liable to pay differential duty on the higher amount of assessable value received from depot sale. It is revealed from their statement of goods sold through depot and the Central Excise Invoice issued from their factory for the months of October and November, 2013 that they were liable to pay differential duty of Cenvat Rs. 5,54,138.00, Education Cess Rs. 11,082.00 and Secondary and Higher Education Cess Rs. . 5,541.00 along with interest thereof.

On being pointed out, the assessee agreed with the objection and paid the differential duty of Central Excise Duty of Rs. 5,54,138.00, Education Cess Rs. 11,082.00 and Secondary and Higher Education Cess Rs. 5,541.00 along with Interest thereon amounting to Rs. 5,409.00.

7)

Gist of objection: **Non-payment of Central Excise duty on unaccounted readymade garments.**

Commissionerate: **Central Excise Commissionerate, Kolkata I**

Contravention of Provision: **Sec.11A(6) read with Sec.11A of CEA 44**

On scrutiny of the purchase bills/challan/ledger of packing materials, stock statement of packing materials(forming part of balance sheet) and the assessee's submission dated 13.12.13, it is found that the assessee had consumed excess MRP stickers to the tune of 2887 for the year 2011-12 & 18433 for the year 2012-13 after allowing 1% of wastage as declared. In view of above excess consumption of MRP sticker, it appears that there was an unaccounted production of Ready Made Garment and the assessee had contravened the provisions of Rules 4,6 & 8 of CER 2002 by not paying CE duty on production & clearance of 2887 pcs & 18433 pcs of finished goods for the aforesaid periods respectively. Accordingly, the assessee was asked to pay Central Excise duty of Rs. 2,47,875/-, E. Cess of Rs. 4,957/- and S&HE Cess of Rs. 2,479/- along with appropriate interest & penalty on such excess manufacture & clearance thereof. The said assessee agreed and paid Rs. 2,55,311/-+41,669/-(I)+ Rs. 27,779/-(Penalty) under Sec.11A(6) read with Sec.11A of CEA 44

8)

Gist of objection: **Irregular availment of Cenvat Credit on rejected goods.**

Commissionerate **Central Excise Commissionerate, Chennai IV**

Contravention of Provision: **Rule 16 of Central Excise Rules, 2002**

Assessee is manufacturers of Steering Wheel, Console, Trim & Clutch Assembly Parts falling under 87089400 of CETA, 1985. During the course of verification of input documents, it was observed that the assesee had availed credit on the goods rejected by their customers. After availment of credit the goods were subjected to quality check, during which it was observed and recorded that in majority of the cases, no goods could be salvaged. Hence, all the goods have been scrapped. In as much as the goods have not been re-

processed the assesee are not eligible to avail input credit on such goods as envisaged under Rule 16 of Central Excise Rules, 2002.

On being pointed out the lapse the asseessee have agreed and reversed the incorrectly availed credit to the tune of Rs.12,28,419/- (ED) Rs.24,568/- (Edu Cess) Rs.12,284/- (SHE Cess).

9)

Gist of objection: **Non Payment of Excise Duty on "Special Packing Charges"**

Commissionerate **Central Excise Commissionerate, Chennai IV**

Contravention of Provision: **Rule 6 of Central Excise Valuation**

Assessee is the manufacturers of Steering Wheel, Console, Trim & Clutch Assembly Parts falling under 87089400 of CETA, 1985. During the course of verification, it was observed that the assesee are collecting certain amount from a company, in the guise of transportation service. It was ascertained from the asseessee that they are not rendering any transportation service to that company, but are only doing certain special packing for goods and such charges are being collected as transportation charges. Any charges recovered for packing are obviously charges recovered in relation to the sale of the goods under assessment and will form part of the transaction value of the goods as per Rule 6 of Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000. The liability arises from April 2012 to November 2013.

On being pointed out the lapse, the asseessee have agreed and paid the differential duty to the tune of Rs.8,62,164/- (ED) Rs.17,243/- (Edu Cess) Rs.8,622/- (SHE Cess) along with interest of Rs.1,39,077/- .

10)

Gist of the objection: **Non Payment of Central Excise duty on Scrap**

COMMISSIONERATE: **Central Excise Commissionerate, Allahabad**

Contravention of Provision: **Section 2 subsection (d) of Central Excise Act, 1944**

On scrutiny of Trial Statement & Profit & Loss Account of Assessee for the year 2011-12 & 2012-13 as submitted by the assessee it was found that assessee sold Scrap. On further being asked Assessee stated that such sale of Scrap was without payment of Central Excise Duty and in support they submitted Ledger for such sale for the year 2012-13. Sale of Scrap attracts Central Excise Duty through an insertion made in Section 2 subsection (d) of Central Excise Act, 1944 wherein it has been mentioned that "excisable goods" means goods specified in {the First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986)} as being subject to a duty of excise and includes salt; [Explanation – For the purposes of this clause, "goods" include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.]. In the year 2011-12 assessee has sold Scrap having a value of Rs. 2,12,70,441.00 and in the year 2012-13 they sold Scrap having a value of Rs. 2,98,62,044.00 (Total value Rs. 51132485.00) on which Central Excise Duty @ 10% was payable and amounts to Rs. 51,13,249.00 + Ed. Cess Rs. 1,02,265.00 + S&H Ed. Cess Rs. 51,133.00 (Total Rs. 52,66,647.00).

11)

Gist of the objection: **Wrong availment of input service credit on Supplementary Invoices issued prior to 01.04.2011**

Commissionerate: **Central Excise Commissionerate, Bhubaneswar- I**

Contravention of Provision:Rule 9 of the Cenvat Credit Rules, 2004

The assessees are manufacturers of Pig Iron, Pig Iron Scrap etc. During the course of audit verification, input service invoices,/ bills/ challans and the input service credit register for the year 2010-11, it was noticed that they availed and utilized Cenvat Credit of input services on the supplementary invoices issued by the Input Service provider in pursuance to the demand / detection made by the departmental officers as mentioned in the body of the invoices / bills which are not admissible in terms of the provisions of Rule 9 of the Cenvat Credit Rules, 2004. The audit pointed out that up to the financial year 2010-11, as per Rule 9 of the Cenvat Credit Rules, 2004, there was no provision to allow input service credit on supplementary invoices issued by the input service provider till such provision was made under sub-clause (bb) to the explanation to Rule 9(1) of the said rules w.e.f 01.04.2011. Hence the credit of Rs. 28.92 lakhs availed on those supplementary invoices was irregular and has to be recovered under Rule 14 of Cenvat Credit Rules, 2004, along with appropriate interest.

SERVICE TAX

1)

Gist of Objection: **Wrong availment of Cenvat Credit on Common Input Services used for trading activities (exempted service).**

Commissionerate: **Central Excise Commissionerate, Rajkot.**

Contravention of Provision: **Rule 6(3)(i) of the Cenvat Credit Rules, 2004**

The assessee is engaged in providing taxable services of Authorized Service Station for four wheelers and two wheelers as well as engaged in sale of trucks, cars and two wheelers. On verification of the balance sheets for the period 2008-2012, it was revealed that there was an income earned on account of trading activity aggregating to Rs. 13,21,55,51,672/- from the sale of Trucks, cars and two wheelers. Vide the explanation to the Rule 2 of the Cenvat Credit Rules, 2004, it has been specifically clarified that "exempted services" include trading.

Further during the scrutiny of the Cenvat record of the assessee it was found that they were availing Cenvat credit on common input services such as Advertisement, Security service, Courier service, Housekeeping service, Insurance Service , Event Management, Telephone & mobile services, Banking services, etc. Moreover, it was observed that they had availed credit on the various invoices as input services, Art work, Consumable, Decoration, Photography, Travelling etc. which were not related to the service provided by them under the category of Authorized Service station and the said service were utilized for sale of the vehicles such as Maruti cars and Hero Honda motor cycles as well as Commercial vehicles such as trucks etc.

It is also important to note that maximum part of such services were used for exempted activity and not for providing any taxable output service, which is the basic condition for the service defined as "input service" as defined under Rule 2(I) of the Cenvat Credit Rules, 2004.

In this case since the selling of Vehicle is exempted activity for the service provider, such credit on various invoices is not available to them.

As the assessee failed to comply with the provision of rule 6(2) of CCR, 2004 for non-maintenance of separate accounts as envisaged therein, they were left with no option other than to comply with either of the provision of rule 6(3) of CCR, 2004.

In view thereof the assessee was liable to pay total amount of Rs. 3,63,69,142/- along with interest, in compliance with rule 6(3)(i) of CCR, 2004. On being pointed out the assessee did not agree with the audit views, without giving any specific reasons.

2)

Gist of Objection: **Short payment of Service Tax under the taxable category of Clearing and forwarding agent services**

Commissionerate: **Central Excise Commissionerate, Rajkot**

Contravention of Provision: Rule 3(4) of the Cenvat Credit Rules,2004

The assessee is engaged in providing taxable service of Clearing & forwarding Agents Services/Cargo Handling Services/Transport of Goods by Road Services. The assessee being a partnership concern is liable to pay service tax on 5th of the month following the relevant quarter. During the course of audit it was noticed that the assessee has not filed ST-3 Return for the period of April, 2013 to September, 2013. On being asked about payment of Service Tax on the value of services provided or agreed to be provided during the said period, the assessee disclosed that since they could not finalize and discharge the tax liability timely for the said period, they have not filed the ST-3 return yet. Their Service tax liability for the said period (Quarter ending 30th September 2013) comes to Rs. 2,96,27,760/- according to their ledger.

On further verification /scrutiny of their Cenvat documents/records, it was noticed that they had Cenvat Credit of Rs. 2,45,60,755/- at the end of the relevant quarter end. They have also paid Rs. 9,59,903/- through GAR-7 challan dated 23.09.2013 which brings the total Cenvat Credit to Rs. 2,55,20,658/-. So, after adjusting the Cenvat credit in terms of Rule 3(4) of the Cenvat Credit Rules,2004, the total Service Tax liability which was still required to be recovered along with interest, came out to be Rs.41,07,102/-.

It was also observed that against their Service Tax liability for the quarter ending 30th June 2013, the assessee had made late payment of Service tax, which amounted to Rs. 48,90,097/-, on

13.09.2013/23.09.2013 instead of 5th July 2013, which attracts interest in terms of section 75 of Finance Act, 1994. However, no payment of interest for such late payment was made which amounts to Rs. 1, 73,199/-.

On being pointed out, the assessee made the payment of such outstanding Service Tax along with interest, totally amounting to Rs. 44,30,961/-.

3)

Gist of objection: **Wrong availment of Cenvat Credit on input services credit distributed by assessee's Tamil Nadu Regional Office without obtaining Input Service Distributor RC.**

Commissionerate: **Central Excise Commissionerate, Salem**

Contravention of Provision: **Rule 2 (m) of Cenvat Credit Rules, 2004 and Rule 3 (1)of Service Tax (Registration of special category of persons) Rules, 2005.**

Assessee is providing services of GTA, Mandap Keeper Service and Renting of Immovable Property Service. During the course of audit of accounts, it was found that the assessee is availing Cenvat Credit of Service Tax paid on the Input Services in terms of Cenvat Credit Rules, 2004 based on the invoices / bills / challans issued by their Tamil Nadu Regional office, Chennai. During the course of verification of their accounts for the period 20012-13 and 2013-14 (up to November 2013) it was noticed that they have availed Service Tax Credit to the tune of Rs.1,94,48,383/- based on the Invoices issued by their Regional office (Tamil Nadu). But the regional office has not registered as input service Distributor as per Rule 3 of Service Tax (Registration of special category of persons) Rules, 2005. It is ascertained from the invoices that they have mentioned the Input service Distribution Registration of their corporate office in the invoices issued from Chennai. Thus the credit of Rs.1,94,48,383/- taken on the basis of the invoices issued by their Tamil Nadu Regional Office is recoverable under rule 14 of Cenvat credit Rules, 2004 for contravention of Rule 2 (m) of Cenvat Credit Rules, 2004 and Rule 3 (1)of Service Tax(Registration of special category of persons) Rules, 2005.

4)

Gist of Objection: **Non-payment of S.Tax under Rule 6(3) of Cenvat Credit Rules on common service credits utilized for exempted and dutiable/taxable goods and services**

Commissionerate: **LTU Bangalore**

Contravention of Provision:Rule 6(3)(i) of the Cenvat Credit Rules, 2004

During the course of verification of their exempted clearances, it was observed that the assessee has manufactured and cleared goods which are both dutiable and exempted, such as oxygen and medical oxygen, etc. The assessee was also providing services which are taxable and exempted, such as Installation Services and Trading Services. Trading services are common services such as security services, auditors services, maintenance services, repair services, erection services, courier services, transportation services etc., received by them in their factories and offices premises. Such common credits are being utilized in relation to their final products which fall under both dutiable and exempted categories, as well as taxable and exempted services, as mentioned above. Hence, the assessee is liable to pay an amount under Rule 6(3)(i) of the Cenvat Credit Rules, 2004, in respect of such common credits availed. The amount thus payable works out to Rs.21,72,14,296/- . The LTU assessee is liable to pay the said amount along with applicable thereon.

On being pointed out, the assessee has agreed with the issue. However, the assessee has not agreed to the liability quantified and have stated that they would be reversing proportionate credits. This appears to be incorrect since they have not submitted any declarations/intimations to the Department indicating that they were availing common Service Tax credits and hence would be opting for Rule 6(3A) reversals of proportionate credits. The assessee has also not considered all the common services on which credits have been availed and all the exempted services such as trading services, while arriving at their liability. Further, the assessee's liability has been arrived at correctly by audit, at the rate of 5/6% as applicable, on the value of their exempted clearances and their trading turnover, which constitute their exempted turnover. In respect of the other exempted clearances/services such as freight, facility charges, cylinder charges, lease rental charges, etc., the Department has already issued Show Cause Notices, claiming that the said clearances/services are dutiable/taxable and hence the assessee is liable to pay their liabilities accordingly. Therefore, it appears that the contention of the assessee is wrong and hence, the assessee is liable to pay the liability quantified as above.

5)

Gist of objection: **Non- payment of Service Tax on "Construction Service"**

Commissionerate: **Service Tax Commissionerate, Kolkata**

Contravention of Provision : Rule 3(3) of Works Contract (Composition Scheme for payment of service tax) Rules, 2007

In course of audit it had been observed by the auditors that the assessee are providers of Works Contract Services and availing themselves of Composition Scheme for payment of service tax. In service tax, applicability of Composition Scheme, the material fact would be whether such a contract satisfies Rule 3(3) of Works Contract (Composition Scheme for payment of service tax) Rules, 2007. This provision casts an obligation for exercising an option to choose the scheme prior to payment of service tax in respect of a particular works contract. Once such an option is made, it is applicable for entire contract and cannot be altered. So, in case a contract where provision of service commenced prior to 01.06.2007 and any payment of service tax was made under the respective taxable service before 01.06.2007, the said condition under Rule 3(3) was not satisfied and thus no portion of that would be eligible for composition scheme.

The auditors on careful examination of the agreement had observed that the service provided by the asssessee falls under the Commercial or Industrial Construction prior to 01.06.2007. On scrutiny of payment receipt particulars as submitted by the assessee it appears that the assessee received payment prior to 01.06.2007 and thus not eligible for payment of service tax under the composite Scheme of works contract. Moreover it appears that the works done in different turnkey projects can be vivisected and it is apparent that taxable service elements like Commercial or Industrial Construction service, Erection, Commissioning or Installation, etc. are involved in the turnkey projects for which service tax is required to be paid from 16.06.2005 under category erection, commissioning & installation service and thereafter under Commercial or Industrial construction service. So the assessee had irregularly paid service tax under the Composite Scheme. Thus the assessee evaded payment of differential service tax to the tune of ₹ 21,07,22,135/- during the period 01.10.2007 to 31.03.2008 and 01.04.2008 to 31.03.2012 which is recoverable from the assessee.

6)

Gist of Objection: **Short payment of Service Tax under the taxable category of "Site formation and Excavation Service"**

Commissionerate: **Central Excise Commissionerate, Rajkot**

Contravention of Provision: **Section 65(105)(a) of the Act read together with the new Section 65B(44) of Finance Act**

The assessee is engaged in providing taxable service of Construction which include commercial/industrial buildings or civil structures, and Work Contract Service. During the course of audit it was observed that the assessee had filed ST-3 Returns under different taxable service categories viz. Commercial Construction service, Works contract service and Site formation & Excavation Service covered for the current audit period. As per the ST-3 Returns, the assessee has shown payment of Service Tax under the Works Contract Service by availing benefit either under composite scheme or abetment under notification no. 24/2012-ST, whereas they have shown payment of Service Tax on the full value of taxable service under the rest of the categories.

Going through the agreements made by the assessee with their clients, it was observed that the assessee had been mainly awarded composite earthwork job of metal spreading by supplying of Rubble stone& toe wall formation. The charges for the said single and composite work were specified in two parts, one for metal spreading & toe wall and other for labour work for spreading the metal. Similarly they had charged separately for GSB work and compaction. Service tax on metal spreading & toe wall formation and GSB were charged and paid @ 4% on the value of charges except for charges under "transportation", whereas Service Tax on labour work charges were paid at full rate of the value of service provided.

On being asked about the separate rate of ST, the assessee stated that though the work being undertaken were composite in nature, work portion of supply/transportation of metal/GSB being levied to Service Tax have been treated as 'Works Contract' and therefore, they have paid the ST @ 4% whereas ST on labour charges was paid at full rate as it was treated as 'Construction service' and 'Site formation service' in the ST-3 Returns.

Since the assessee has discharged his tax liability under three taxable service categories, classification and taxability of services provided by them are required to be examined in terms of the relevant provisions. According to Section 65 ibid, the classification would be done under the head, which is more specific and hence, vivisecting of a composite service under different taxable categories is not allowed/permitted. Further in terms of the provisions of Section 67 of the Act read with the Service Tax (Determination of value) Rules, 2006, in the present context the value for the purpose of charging Service Tax should be the gross amount received as consideration for the purpose of service. It is irrelevant that various charges are separately indicated in the invoices or separate invoice are issued for charging services under different heads by the service provider to his client. The entire amount received by the assessee in this context is rightly treatable as single consideration and chargeable to Service Tax. Also according to Section 65(105)(a) of the Act read together with the new Section 65B(44) the services provided by the assessee is classified under taxable category of 'Site formation and clearance and earth moving and demolition service' and thus the assessee is not entitled to get the benefit availed by them in lieu of Works Contract Service and therefore the assessee is required to pay the differential amount/short paid service tax on the amount received, along with interest, at appropriate rate.

From their balance sheets and ST-3 returns for the F.Ys 2009-12, it was observed that the assessee has not made payment of Service Tax to the tune of Rs. 2,23,76,366/-, which is required to be recovered from them.

7)

Gist of Objection: **Non-payment of service tax on income earned on Securitisation of Loans.**

Commissionerate: **Service Tax Commissionerate, Bangalore**

Contravention of Provision:Section 78 of Finance Act,1994.

On verification of the records it was observed by the audit team that during the period from April 2011 to September 2012 certain amounts have been shown as income on securitization in the balance sheet and ledgers. On enquiries with the assessee it was understood that the pools of individual loans or receivable to the assessee was transferred to some well-known banks/investors in the form of securities. The servicing of such loans/receivables received in the form of EMIs or repayments in regular or irregular intervals would be collected by the assessee and remitted to the Banks/Investors who have allowed such receivables to be securitized with them. In return for the services of this act of collection and remittance a part of such

remittance is permitted to be retained by the assessee, by such banks/investors. It was understood on further revelations by the assessee that securitization was a process of taking an illiquid asset, or group of assets, and thorough financial engineering, transforming them into a security and that in their context this act of securitization was a device of structured financing where an entity seeks to pool together its interest in identifiable cash flows over time, assign the same to investors either with or without the support of further collateral, and thereby achieve the purpose of financing. In view of this understanding arrived on discussions with the assessee, it appears that this activity of securitization for a consideration from the persons/institutions/banks, is a service as per the provisions of Finance Act,1994 and hence such consideration is chargeable to service tax under the category Business Auxiliary Service. The income received by way of securitization loans is nothing but in the nature of commission received for providing services of collection and remittance for client. The income so received amounts to Rs.4,01,55,673/- for the period from 2011-12 to 9/12 and the service tax works to Rs.42,26,041/-.The assessee did not agree to the audit point contending that the income received was interest income and no service tax was leviable on the same. SCN dated 26.12.2013 demanding Rs.42,26,041/- has been issued invoking Section 78 of Finance Act,1994.

8)

Gist of objection: **Non-payment of Service Tax on "Supply of Manpower Services"**

Commissionerate: **Service Tax Commissionerate, Kolkata**

Contravention of Provision:**Section 65(105)(k) of the Finance Act,1994**

In course of audit and on scrutiny of records, it has been observed by the auditors that the assessee had received an amount of ₹.3,48,07,842.73.00 shown as income in the Balance Sheet as well as Trial Balance of 2011-12 as 'Cost Reimbursement' from Port Authority against deployment of their workers/employees to different branches of Port Authority. The activities of deployment of workers/employees would amount to 'Supply of Manpower' and attracts the meaning and scope of taxable service under Section 65(105)(k) of the Finance Act,1994 as 'Manpower Recruitment and Supply Agency service. Service Tax @ 10.3% on Rs.3,48,07,842.73/- amounting to Rs.35,85,208.00, not paid by the assessee is therefore recoverable from them.

9)

Gist of objection: **Misuse of Cenvat facility and contravention of Rule 3(7)(b) of CCR 2004 by interchanging E. Cess/ SH Cess for Service Tax payment**

Commissionerate: **Central Excise Commissionerate, Tirunelveli**

Contravention of Provision:Rule 3(7)(b) of Cenvat Credit Rules 2004

On verification of the credit availment particulars of Cenvat for the financial years 2011-12, 12-13 & 13-14 upto September 2013, it was observed that the service provider was maintaining zero balance in their Cenvat account every month but a variation was observed in the ratio of Service tax credit to E. Cess/ SHE Cess. It was also noted that the service provider was under obligation to reverse an "amount" equal to 50% of the input /input service credit availed under Rule 6(3)b of CCR`2004. Since the provisions of the rule stipulates payment of said amount by cash or debiting the Service tax credit account, the ratio of credit balances of S. Tax to E. Cess/ SHE Cess was bound to vary but the said explanation was found wanting in the case of Cenvat credit availed. A detailed scrutiny of the credit availed established the fact that the service provider has adopted the *modus operandi* of bunching the Service Tax, E. Cess and SHE Cess into one head and crediting the total amount in the Service tax head while leaving the E. Cess and SHE Cess in a deficit to that extent. It was also ascertained that the said bunching was carried out only to the extent needed for wiping of the deficit appearing in the Cenvat account (Service Tax Head) due to the excessive debit on account of liability to discharge the amount calculated under Rule 6(3)(b).

The method adopted by assessee amounts to contravention of Rule 3(7)(b) of CCR and the duty liability thereon amounts to Rs.26,53,494/-. The unit is also liable for payment of interest and applicable penalty.

10)

Gist of objection: **Payment of Service Tax on incorrect rate on Erection & Commissioning and installation Service.**

Commissionerate: **Central Excise Commissionerate, Tirunelveli**

Contravention of Provision: **Section 73 4(A) Finance Acts 1994**

The assessee is providing services such as Erection Commissioning and installation Services and Business Auxiliary Service. The accounts of the assessee have been subjected to Internal Audit. During Audit, it was found that the assessee was paying service tax under the category of Erection and Commissioning Services @ 12.36% prior to 1.7.2012. But the assessee has paid service tax @ 3.09% and @ 6.18% for the same type of Erection Commissioning and installation Service and on the same type invoices. On enquiry, the assessee said that as they are providing Man power Recruitment Agency service and Works Contract Service respectively, they have paid 25% & 50% of the full rate of 12.36%. The service provided by them do not qualify for Manpower Recruitment Agency as well as Works Contract service because neither sale of goods is involved nor supply of man power is involved. Their service shall be classified as Erection Commissioning and installation Services as they are providing services using free supply materials such cement and steel bars in constructing foundation for erection of Electrical Transmission Towers. In the course of providing service like this, they are using their own materials such as sand and gravels. Hence, the assessee is providing Erection Commissioning and installation Service only in this case. The assessee is liable to pay service tax at the full rate of 12.36% only and not @ 3.09% and @ 6.18% as has been done now. Differential Service Tax to be payable is Rs.1,47,98,156/-. They have to discharge liability of Service Tax along with interest and penalty under Section 73 4(A) Finance Acts 1994.

11)

Gist of objection: **Non- payment of Service Tax on "Construction and Installation of Passenger Lift"**

Commissionerate: **Service Tax Commissionerate, Kolkata**

Contravention of Provision: **Section 73 & Section 75 of the Finance Act, 1994**

In the course of audit and on scrutiny of the balance sheet, contracts, invoices raised by the service provider in relation to sale, supply and erection of lifts during the year 2011-12, it is seen that the subject of the proposals mentioned in the contract that the assignment is not merely to supply the materials concerned, but commissioning and installation of the passenger elevator at the site address is an inseparable portion of the transaction. The drawings / designs of the passenger elevator as well as civil works necessary for

installation of the same are also done by the service provider. These facts establish that services in relation to erection, commissioning and installation of the passenger elevators sold by the service provider are integral part of the 'sale of new lifts' and the same is classifiable under 'Works Contract Service' as envisaged under Section 65(105)(zzzza) of the Finance Act, 1994. The assessee did not discharge any Service Tax liability on the bills issued in respect of such 'sale of new lifts' and accordingly, Service Tax amounting to ₹.68,15,056/- (including Cess) alongwith appropriate interest is recoverable from them for the year 2011-12 as per the provisions of Section 73 & Section 75 of the Finance Act, 1994.

12)

Gist of the objection: **Wrong availment of input service credit towards service tax paid on ineligible foreign consultancy service.**

Commissionerate: **Central Excise Commissionerate, Bhubaneswar II**

Contravention of Provision: **Notfication No. 30/2012-ST dated 01.07.2012**

The assessee are providers of Mining Service, Cargo Handling Service etc. During the course of audit, the copies of agreement, invoices / proforma bills of the service providers located outside were verified and the audit noticed that the tax payer received consultancy services towards purchase of an aircraft and aviation training etc., from service providers located outside India and paid the service tax on the foreign consultancy charges under reverse charge mechanism vide notfication No. 30/2012-ST dated 01.07.2012. The audit pointed out that since Aircraft has no use for providing Mining and Cargo Handling services, the aforesaid consultancy service shall not constitute an eligible 'input service' and credit taken thereof is irregular and not admissible. The assessee agreed to the objection and paid the amount.

13)

Gist of the objection: **Wrong availment of Cenvat Credit on Common Inputs and under undervaluation of Gross Taxable Value**

Commissionerate : **Service Tax, Mumbai I**

Contravention of Provision: Rule 6(3) of Cenvat Credit Rules, 2004.

On verification of ST-3 returns filed by the assessee it was observed that they claimed exemption from payment of service tax on 'Transport of Goods by Air' and on Transport of passengers by air under Economy class upto 30th June-2010. In this regard, on further verification of Cenvat account it was observed that they had not maintained separate account in respect of receipts and consumption of input services used in taxable services and exempted services provided by them, as required under Rule 6(2) of Cenvat Credit Rules,2004. Hence, the assessee were under the obligation to fulfil the conditions of Rule 6(3) of Cenvat Credit Rules,2004 and to pay an amount equal to the amount of Cenvat credit attributed towards the total value of the exempted services during the financial years 2008-09 to 2012-2013, alongwith interest thereon. Further on going through the value of exempted service i. e. Transport of Goods by Air it was observed that the assessee had paid the commission which was not included by the assessee in the gross value of service while declaring value in the ST-3 return. This has resulted in wrong calculation of ratio for the reversal of Cenvat credit attributable towards exempted services. The same is now taken into consideration for arriving at the ratio for reversal of Cenvat credit .From the records it is seen that for the years 2009-10, 2010-11, 2012-13 the assessee are under the obligation to pay the total amount of Rs. 1,68,05,375/- under Rule 6(3) of CCR,2004.

14)

Gist of the objection: **Wrong availment of Cenvat credit of Service Tax on Passenger Services Fee, User Development Fee collected from passengers and remitted to AAI.**

Commissionerate : **Service Tax, Mumbai I**

Contravention of Provision: Rule 2 (l) of Cenvat credit Rules, 2004

On scrutiny of Cenvat credit details and sample copies of documents produced by the assessee, it has been observed that the assessee had availed Cenvat credit of Service Tax paid on Passenger Service Fees (PSF) and User Development Fees (UDF) on the invoices issued by MIAL, DIAL etc. In this connection it was brought to their notice that PSF was levied under Rule 88 of the Indian Aircraft Rules, 1937 read with Section 22 of the Airports Authority of India Act, which empowers to collect these fees for amenities given to passenger at airport and UDF is levied under Rule 89 of the Indian Aircraft Rules. In this regard Airline

Company is only an intermediary for collecting these levies/charges from passengers, as logistically, it is not possible for AAI's to charge and collect these fees directly from the passengers. Therefore, they had authorized the assessee to recover the amount from each passenger travelling through their airline and remit the same to the respective Airport Authorities. Further, it may be stated here that even though the invoices are raised by various airport authorities on the assessee for collection of the aforesaid fees, there is no element of service which has been or is being provided to the assessee by these Airport authorities. Therefore, PSF & UDF are not the input services for the assessee as defined under Rule 2 (l) of Cenvat credit Rules, 2004. In the circumstances, the Cenvat credit so availed by the assessee on PSF & UDF is not proper and correct, therefore, inadmissible to the assessee. On going through the invoice-wise statement of Cenvat credit provided by the assessee, it appears that the assessee have availed Cenvat credit on PSF & UDF during the period 2009-10 to 2012-13.

The assessee are therefore required to pay/reverse the inadmissible Cenvat credit amounting to **Rs.1,51,25,774/-** on PSF & UDF alongwith interest which is arrived at after considering the proportionate reversal already made by the assessee towards exempted services during the year 2011-12.

15)

Gist of the objection: **Non-payment of service tax at the actual renting rate prevailing in the surrounding area resulting in short payment of service tax.**

Commissionerate : **Service Tax, Mumbai I**

Contravention of Provision: **Rule 4 of Service Tax Rules, 2006**

It was observed that the assessee rented first floor and some portion of ground floor of their Mumbai office building and compound owned by them at 1207, Veer Savarkar Marg, Prabhadevi, Dadar (West), Mumbai-400028 to their sister concern. As per the lease agreement dated 04.02.2000 entered into between assessee and the said party as a lessor and lessee respectively for comprising of a total area admeasuring to 11,924 Sq. Feet exclusive (first floor & Ground floor) and 1538 Sq. feet area RCC roof common comprising of stair cases and passages i.e. totally 13,462 Sq. feet, on an annual lease rent of Rs.1000/- per annum as per various agreed terms and conditions mentioned in the said agreement. As per clause 1(b) of the said agreement sister concern (a lessee) had deposited Rs. 10,15,44,000/- with the lesssor viz assessee as a security deposit on the conditions amongst others that the said total deposit shall not bear any interest; that the

lease will be renewed after a period of 20 year; the lessor agree that while the period of lease is for 20 years the conditions of lease including revision of security deposit will be mutually discussed and settled at the end of every 15 years. In this regard it appears that the assessee has manipulated the taxable value of the renting service provided by them for the purpose of payment of service tax by mutually agreeing vide the said agreement, merely a lease rate of Rs.1000/- per annum only from their Associate Enterprises i.e. lessee. As assessee have received interest free deposit amount of Rs.10,15,44,000/- from lessee and it has become source of income for assessee. Thus in this case, income is flowing directly from the sister concern to assessee and assessee is being compensated for the paltry sum of rent charged at very low rate. The assessee was required to take into consideration the prevailing rate of rent in the area for determining the taxable value and pay the service tax accordingly as per section 67 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994. It is important to note the provisions of the Rule 4 of Service Tax (Determination of Value) Rules, 2006, which inter alia reads as, "Rejection of value-(2) where the Central Excise officer is satisfied that the value so determined by the service provider is not in accordance with the provisions of the Act or these Rules, he shall issue a notice to such service provider to show cause why the value of such taxable service for the purpose of charging service tax should not be fixed at the amount specified in the notice". The total detection is Rs. 135 lakhs+ int.