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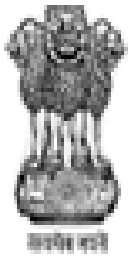

Government of India

MONTHLY AUDIT BULLETIN – JANUARY, 2013

Directorate General of Audit
Customs & Central Excise
Central Revenue Building,
I.P. Estate
New Delhi-110109

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CENTRAL EXCISE

(1) GIST OF THE OBJECTION : CENVAT Credit taken on the basis of Rebate sanctioned wherein credit was not allowed on the differential duty.

COMMISSIONERATE : Central ExciseCommissionerate, Surat-II
CONTROVENTION of PROVISIONS : Rule 5 of CENVAT Credit Rules, 2004

The assessee is engaged in manufacturing Organic Chemicals under Chapter 29. During the scrutiny of Cenvat documents of the assessee, it was observed that the assessee had taken CENVAT Credit at various instances with remarks like "Rebate / Refund Order". Hence, the sanction orders for rebate claims filed by the assessee before the Maritime Commissioner were further scrutinized and it was found that the Competent Authority, in their Order in Original, had sanctioned rebate of duty paid limited to FOB value mentioned in the export documents. The orders did not mention anything with respect to the differential duty which had not been sanctioned as rebate and had not allowed the differential portion of duty as CENVAT Credit. In the instant case, the assessee had taken CENVAT Credit of the differential duty which as per Rule 5 of CENVAT Credit Rules, 2004 was not sanctioned or allowed as CENVAT Credit in the above Rebate Orders to the tune of Rs.55,925/-. The objection was explained to the assessee who agreed to it and reversed the irregular credit and also paid the interest of Rs.14,730/- for the same.

(2) GIST OF THE OBJECTION: Non Reversal of input credit on invoices pertaining to MAFI projects at Bhatinda which is exempted under Notification No.25/2012 ST dated 20.06.2012

COMMISSIONERATE : Central ExciseCommissionerate, Bangalore I
CONTROVENTION of PROVISIONS : Notification No.25/2012-ST, dated 20.06.2012

During verification of the Service Tax input invoices, it was found that the assessee had availed credit on many invoices pertaining to the project – 'Modernisation of Air Field Infrastructure(MAFI)'. The credit availed was on the suppliers/assessees invoices for the sub contract given to them for modernisation work at Bhatinda, Punjab. As per Notification No. 25/2012 ST. dt. 20.06.2012 Service Tax Sl.No.12- services provided to the Govt., a local

authority or a Governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) A civil structure or any other original works meant pre dominantly for use other than for commerce, industry, or any other business or profession;

And at sl no: 14 – Services by way of construction, erection, commissioning, or installation of original works pertaining to;-

(a) An airport, port or railways including monorail or metro…. is exempted.

The modernisations of the airstrip in Bhatinda fall in the above categories at sl no. 12 and 14 and hence the services provided by the assessee are exempted as per the above notification. Hence all the credits availed have to be reversed with interest. On pointing out the assessee agreed and reversed the credit of Rs.1,17,53,582/- and paid interest of Rs.17,69,338/-

(3) GIST OF THE OBJECTION: Irregular utilisation of duty free HSD oil procured duty free as consumables for forklift and other material handling equipment as fuel for captive generating sets without fulfilling conditions set out in notfn.22/2003 dated 31.3.2003.

COMMISSIONERATE : Central Excise Commissionerate, Salem

CONTROVENTION of PROVISIONS : Notification No. 22/2203, dated 31.3.2003

During the period from January 2010 to July 2011 the assessee being a 100% EOU, has procured HSD from Indian Oil Corporation without payment of excise duty against form CT3 under notification 22/2203 dated 31.3.2003. However, as per the notification, HSD oil being notified in Sr.no. 5 of Annexure I of the notification as 'fuel for use in captive power generation plant' can be procured duty free only after duly getting approval from the jurisdictional Assistant Commissioner of Central excise. Even though they had got approval from the Development Commissioner for procuring the duty free HSD oil for use as consumable inside the factory in forklift and other material handling equipment used by them, they had used the same as fuel for running the captive generating set without obtaining the permission required from the jurisdictional Assistant Commissioner for such use of HSD oil under notification No.22/2203, dated 31.3.2003. As the assessee has not complied with the condition set out in the notification as mentioned supra, use of duty free HSD oil procured for other purpose, as fuel for the captive genset is not in order and the duty involved on the same is liable to be recovered from the assessee

. The duty involved on the HSD oil so procured for the said period works out to Rs.364000/- calculated at the effective rate of Rs.1.60/- per liter +p.e.cess & H.e.cess as per Sr.no.19 of Notification 4/2006 dated 1.3.2006 as amended.

(4) GIST OF THE OBJECTION : Non-Reversal of input credit availed on semifinished goods destroyed in Fire Accident

COMMISSIONERATE : LTU, Chennai

CONTROVENTION of PROVISIONS : Rule 3(5C) & Rule 12 A of the CENVAT Credit Rules, 2004 Rule 21 of Central Excise Rules, 2002

Assesse is engaged in the manufacture of Moulded Rubber Products (MRP) like 'O' Rings, Gaskets & Oil Seals and Reed Valve Assemblies falling under CETH 40169320, 40169330 & 76042100 respectively of CETA '85 and effect clearances to cater to the needs of the automobile sector. While clearances of OE / Spares to their customer are effected from their factory premises which are assessed to duty on Section 4 value, clearances to the replacement market are effected from their depot and assessed to duty on MRP basis. Their corporate office is a registered ISD and distributes credit to their various factory premises on turnover basis. Assessee is also engaged in trading of imported oil seals & gaskets and locally procured clutch dampers and rotor testing machines. Besides, they are also engaged in the activity of generation of power through their windmills, part of which is consumed in their manufacturing while the rest is wheeled to TNEB. On perusal of "Notes of Accounts" relating to "Events occurring after Balance Sheet date" as reported in Balance Sheet for the year 2012-13, it was noticed that an insurance claim had been filed for an amount of Rs. 1.86 Crores relating to the goods damaged/ destroyed during a fire accident in Unit –II in June 2012.On enquiry, the taxpayer informed that the goods destroyed in the fire accident were intermediate goods which were sent for jobwork on inter-unit transfer under Rule 12 A of CENVAT Credit Rules, 2004 from Unit IV to Unit-II under the cover of transfer challans. As per Rule 3 (5 C) of CENVAT Credit Rules, 2004, CENVAT Credit taken on inputs used in the manufacture or production of goods shall be reversed when payment of duty is ordered to be remitted under Rule 21 of Central Excise Rules, 2002. Though taxpayer has not applied for remission of duty under Rule 21 claim has been filed with the insurer for the goods destroyed. Hence the input credit relating to the goods destroyed in the fire accident is required to be reversed in terms of the said provisions. On being pointed out,

the taxpayer has agreed and reversed the CENVAT Credit relating to the above mentioned goods.

(5) GIST OF THE OBJECTION : Wrong availment of Small Scale Exemption on goods cleared using brand name of other person.

COMMISSIONERATE : Central Excise Commissionerate, Delhi-I

CONTROVENTION of PROVISIONS : Notification No. 8/2003-CE dated 01.03.2003

During the course of audit, it has been observed that assessee is manufacturing and clearing Water Storage Tanks with Brand name (s) i.e. "UNITEX", "DELTA", GEMINI & ANCHOR, while availing SSI Exemption under Notification No. 8/2003 dated 1.3.2003. The brands DELTA & ANCHOR were not registered brands in their own name but, registered by others. As per condition discussed at Sr. No. 4 under Notification No. 8/2003-CE dated 01.03.2003 "The exemption contained in said notification shall not apply to specified goods bearing a brand name or trade name, whether registered or not, of another person". The assessee is not maintaining separate records of each brand of goods being manufactured and cleared by them nor is issuing invoices indicating details of brand name being cleared. Even in the Chart showing valuation of closing stock at the end of financial year 2009, 2010 and 2011, the party has valued the same collectively by recording the same as D/A/G (to be interpreted as D-Delta, A-Anchor, G-Gemini). The value worked out on the basis of the goods cleared using brand name of other person as on 31.03.2009 is Rs. 6813500/-, as on 31.03.2010 is Rs. 4242511/- and as on 31.03.2011 is Rs. 3981772/-. Total duty liability on this issue appears to be of Rs. 27,93,724/- + interest as applicable to be calculated upto the date of deposit of the same. The amount due as duty payable and interest, stands recoverable from the assessee.

(6) GIST OF THE OBJECTION : Non-reversal of CENVAT Credit on clearances of coal fines

COMMISSIONERATE : Central Excise Commissionerate, Visakhapatnam I

CONTROVENTION of PROVISIONS : Rule 3 (5) of CENVAT Credit Rules, 2004

During Course of Audit, the audit studied the manufacturing process in the factory and noticed that the assessee purchased coal for use in his factory and availed CENVAT Credit

thereon. The assessee screened the coal before it was fed into the manufacturing process. The assessee separated some part of coal, termed as 'Coal fines' and cleared the same as such but did not reverse the credit as required under Rule 3 (5) of CENVAT Credit Rules, 2004. The audit pointed out that the coal fines cleared are nothing but coal as no new product came into being, resulting in manufacture and therefore, the assessee has to reverse CENVAT Credit along with interest, on 4937.98 MTs of Coal fines cleared as such during the period from June 2011 to December 2011. The assessee agreed and submitted a statement showing the amount of credit to be reversed as Rs.3,09,921/-. The audit observed that the assessee calculated the CENVAT Credit availed on the basis of quantity purchased during each month. As there cannot be a direct relation between coal purchased and coal sold by them, the average CENVAT Credit per tone (Rs.97.25 per MT) was taken and the amount of CENVAT Credit to be reversed was arrived at to be Rs.4,80,219/- .

(7) GIST OF THE OBJECTION : Undervaluation due to non- inclusion of VAT remission amount collected from the buyers

COMMISSIONERATE : Central Excise Commissionerate, Shillong

CONTROVENTION of PROVISIONS : Section 4 Sub sec 3(d) of Central Excise Act'44 Circular No. 880/18/2008-CX dated 22.12.2008 and F.No. 354/81/2000-TRU dated 30.6.2000

The auditee unit is a manufacturer of MS Ingot, MS Bar, End-cuttings falling under TSH 72141090, 72141091, 72141090 of the Central Excise Tariff Act, 1985. While scrutinizing the records during desk review it was noticed that the assessee has been availing VAT remission for their sales. Therefore, an issue on sales tax vis-à-vis valuation was included into the Audit Plan for detail verification during audit. On examination of records during audit it is seen that the assessee had charged and realised Meghalaya VAT @ 4% from buyers for sales within the state under Meghalaya Value Added Tax Rules, 2005. On further scrutiny, it is also seen that the assessee availed VAT remission of 99% under Meghalaya Industries (Tax Remission) Scheme, 2006. In other words, only 1% of the amount of VAT so collected from buyers is paid to state government and remaining 99% is retained by assessee as remission under Meghalaya Industries (Tax Remission) Scheme, 2006. As per Section 4 Sub sec 3(d) of Central Excise Act'44, the 'transaction value' excludes the amount of duty of excise, sales tax and other taxes, if any, actually paid or payable on such goods. Further, in terms of CBEC Circular No. 880/18/2008-CX

dated 22.12.2008 and F.No. 354/81/2000-TRU dated 30.6.2000, (issued in the context of J& K Govt. on similar issues) the amount of VAT collected from buyers and not paid to the state (remitted by state) is includible in the assessable value for the purpose of charging Excise Duty. Therefore, it has resulted in short payment of duty on the amount enjoyed as remission of VAT. During the period 2007-08 to 2010-11(upto September, 2010) the assessee have received Rs. 10588649/- as VAT remission and an amount of Rs. 1336124/- as duty is recoverable from them.

(8) GIST OF THE OBJECTION : Wrong availment of notification no. 01/2011 – CE, dated 01.3.2011 and 16/2012-CE dated 17.03.2012

COMMISSIONERATE : Central Excise Commissionerate, Shillong

CONTROVENTION of PROVISIONS : notification No.01/2011-CE, dated 01.3.2011 and 16/2012-CE dated 17.03.2012; notification No. 2/2011-CE, dated 01.03.2011; notification no. 19/2012 – CE, dated 17.03.2012.

The major products manufactured by the assessee are 'Paper & paper Board (writing & printing paper)' TSH- 48025510 and 'Paper & paper Board (writing & printing paper for printing of text books)' TSH- 48025590. On perusal of their returns during preliminary desk review it was noticed that the assessee availed the benefit under notification No.01/2011-CE, dated 01.3.2011 and 16/2012-CE dated 17.03.2012. On scrutiny of production/clearance records, CENVAT Credit records, invoices & ER-1, it is found that the assessee has made clearances of 'Paper & paper Board (writing & printing paper for printing of text books) falling under TSH- 48025590 on payment of duty @ 1% or 2% *ad valorem* availing benefits under notification no. 01/2011-CE dated 01.3.2011 and 16/2012-CE dated 17.03.2012, On scrutiny it was also noticed that they have availed CENVAT Credit on inputs & input services during the material period. The effective rate of duty for both the products during 2011-12 was 5% *ad valorem* w.e.f. 01.3.11 in terms of notification no. 2/2011-CE dated 01.03.2011 which was raised to 6 % *ad valorem w.e.f. 17.3.12* vide notification no. 19/2012-CE dated 17.03.2012. However, the said goods have been partially exempted vide notification 01/2011-CE dated 01.3.2011 and 16/2012-CE dated 17.03.2012 during 2011-12 and 2012-13 respectively subject to the condition that credit of duty on inputs or tax on input services has not been taken under the provisions of the CENVAT Credit Rules, 2004 by the aseessee. As the assessee was availing CENVAT Credit on inputs & input services, they are not eligible to avail the benefit of concession under the said notifications and

require to pay duty at the full rate. During the period from April'11 to Sept'12 the assessee cleared 1,46,13,796Kgs (valued Rs. 56,18,74,321/-) of 'Paper & paper Board (writing & printing paper for printing of text books)' TSH- 48025590 and paid duty Rs. 80,72,633/- (BED+EC+SHEC) @ 1% & 2% against the liability of Rs. 3,12,21,855/- (BED+EC+SHEC) @ 5% & 6%. This has resulted in short payment of duty of **Rs. 2,31,49,222/-** (BED: Rs. 2,24,74,973/-, EC: Rs 4,49,499/- & SHEC: Rs. 2,24,750/- .

(9) GIST OF THE OBJECTION : Wrong availment of inflated rate of abatement on the MRP

COMMISSIONERATE : Central Excise Commissionerate, Nashik

CONTROVENTION of PROVISIONS : Section-4A of the Central Excise Act ; Notification No.49/ 2008-CE (NT), dated 24.12.2008.

Assessee is engaged in the manufacture of excisable goods viz. 'Plant Growth Regulator' falling under Chapter heading No.38089340 of the CETA, 1985. During the course of audit, it was observed that the assessee's product was notified under Section-4A of the Central Excise Act, attracting levy on the basis of Retail Sale Price (MRP). As per relevant Notification No.49/2008-CE (NT), dated 24.12.2008, (Sl. No.47), an abatement of 25% of the Retail Sale Price of the said product is admissible. Accordingly, assessee is liable to pay duty on Central Excise of the remaining 75% of the declared Retail Sale Price of the said product. However, on scrutiny of the sale invoices, it was noticed that during the period from December, 2008 to October, 2012, assessee has wrongly claimed an abatement of 28% instead of 25% on the MRP value of the said product which has resulted in short-payment of Central Excise duty to the tune of Rs.13,43,102/- (BED Rs.13,03,736/- + Ex. Cess Rs.26,214/- & SHE Cess Rs.13,152/-). The differential duty of Rs.13,43,102/- is recoverable from the assessee. Assessee accepted the audit objection and paid the differential duty amount of Rs.13,43,102/- along with interest of Rs.3,22,089/- vide GAR-7 No.90089 dated 27.11.2012.

(10) GIST OF THE OBJECTION : Non reversal of CENVAT Credit availed on obsolete inputs

COMMISSIONERATE : Central Excise Commissionerate, Nashik

CONTROVENTION of PROVISIONS : Section (5B) of Rule 3 of the CENVAT Credit Rules, 2004

The assessee is engaged in the manufacture of 'Seat Frame, Seat Cover, Foam etc.' falling under Chapter 94012000 of the CETA, 1985. They are also availing facility of CENVAT Credit on Inputs, Capital Goods and Service Tax credit on Input Services under the provision of CENVAT Credit Rules, 2004. During verification of inventory and trial balance for the year 2011-12, it was observed that assessee had declared the inputs as obsolete and not being usable in future and have written off the cost of the Inputs in the books of accounts. As the materials are not being used in future, the CENVAT Credit involved in the obsolete inputs needed to be reversed under section (5B) of Rule 3 of the CENVAT Credit Rules, 2004. The CENVAT Credit worked out to Rs.12,88,428/-, Ed. Cess Rs.26,388/- S & H.S Ed. Cess Rs.12,884/-. The issue of reversal of CENVAT Credit on the obsolete material was discussed with the assessee and they accepted the lapse and accordingly reversed the Cenvat amounting to Rs.12,88,428/- Ed. Cess Rs.26,388/- S. & H.S. Ed. Cess Rs.12,884/- in the CENVAT Credit Account.

SERVICE TAX

(11) GIST OF THE OBJECTION : Non – payment of Service Tax on income received on job charges

COMMISSIONERATE : Central Excise Commissionerate, Rajkot

CONTROVENTION of PROVISIONS : Section 2(2)(b) of the Contract Labour (Regulation & Abolition) Act

The assessee is registered with Service Tax for providing Business Auxiliary Services for providing Manpower Supply to their clients. On verification of documents during the course of audit for the last five years, it was noticed that the assessee is principally engaged in supplying Manpower / Skilled and Unskilled labourers / Security Personnels etc. to a few clients and getting paid for specific jobs as per the labour contracts. On going through the Incomes head in the Balance Sheet of the assessee for the relevant years, it was observed that the assessee had not paid Service Tax since the year 2007-08 as the bills raised for Job-Work but they had started paying Service Tax on similar bills with effect from the year 2011-12. The same was also confirmed with the Income received as Job-Work Income for carrying out specific labour work done by the labourers supplied to the assessee's clients at fixed rate as per the terms and conditions put forth by the client in their labour contract. As per the contract, the assessee was required to provide labourers, supervisors, staff, etc to do labour work under the supervision of the client and in turn raise bills for job work charges. As per Section 2(2)(b) of the Contract Labour (Regulation & Abolition) Act, a 'Contract Labour' is a workman employed in or in relation to work of an establishment hired in connection with such work by or through a contractor, with or without knowledge of the principal employer. Hence a contractor means (a) a person who undertakes to produce a given result for the establishment through Contract Labour or (b)who supplies contract labour for any work of establishment. Hence, as per (b) above, the labour is supplied by the contractor who works under the control and supervision of the principal employer which is a taxable service under the head of 'Manpower Supply Service'. The amount of unpaid / short paid Service Tax since the year 2007-08 was ascertained at Rs.41,93,435/-. The assessee did not agree to the objection and have not paid the Service Tax which is recoverable with interest.

(12) GIST OF OBJECTION : Non- payment of service tax on fund received from an overseas non- profit organization

COMMISSIONERATE : Service Tax Commissionerate, Ahmedabad

CONTROVENTION of PROVISIONS : Section 65(105)(r) of the Finance Act, 1994 Section 68 of the Finance Act, 1994

The assessee is registered with the department for the services namely Franchisee Service, Management Consultancy Service. During the course of audit, it was noticed that the assessee is engaged in providing clean water in rural areas of Gujarat, Rajasthan and Madhya Pradesh at the nominal rate under 'SARVAJAL' scheme. An overseas non- profit organisation entered into an agreement with the assessee. As per the agreement, the purpose is to develop the prototype and/or service delivery methods for safe water transportation and/or storage products for the world's poorest people and to gather data to allow for commercialization of such prototypes/services as part of Ripple effect Project. The assessee has received Rs. 13,40,883/- from Acumen Fund Inc. for the above purpose. On verification of agreement, it was found that the kind of service provided by the assessee is appropriately classifiable under Management Consultant Service defined under Section 65(105)(r) of Finance Act, 1994. Therefore, the amount received for providing the said service is liable for Service Tax under Section 68 of Finance Act, 1994. However, the assessee had not paid any Service Tax on the said amount. On being pointed out, the assessee agreed with the objection and paid the Service Tax amount of Rs. 1,25,214/- along with interest.

(13) GIST OF THE OBJECTION : Non - payment of Service Tax on 'Online Information and Database Access and/or Retrieval Services.

COMMISSIONERATE : Central Excise Commissionerate, Vadodara-I

CONTROVENTION of PROVISIONS : Sub - section 65(75), sub - section 105 of the Finance Act, 1994, Section 66A of Finance Act, 1994 read withTaxation of Services (Provided From Outside India and Received in India) Rules, 2006

During the course of audit, it was observed that the assessee had incurred expenditure in foreign currency towards Books and Periodicals for the year 2010-11 for Rs. 9,71,676/- under the head 'Administration, General and Marketing Expenses' - Schedule '18(A)-Membership and subscription fees' of the Balance Sheet for the year 2010-11. Some of the

subscription shown under the head 'books and periodicals', relates to charges paid to foreign based entities for online data access, analysis report, consulting time and data requests. Sub-section 65(75) of the Finance Act, 1994 reads as under; The subscription paid for online data access thus would merit classification under "Computer Network Services" which is a taxable service defined under clause (zj) of sub-section 105 of Section 65 of the Finance Act, 1994. Similarly, analyses report/consulting time/data request will merit classification under "Scientific or Technical Consultancy Services". "Scientific or Technical Consultancy" means "any advice, consultancy or scientific or technical assistants rendered in any manner, either directly or indirectly, by a scientist or a technocrat or any science or technology institution or organization, a [to any other person], in one or more discipline of science or technology," On analysis/perusal of the documents provided in relation to subscription of books and periodicals, it was noticed that the assessee is required to discharge Service Tax liability on the above services being recipient of services from foreign based assessees in light of legal provisions contained in Section 66A of Finance Act, 1994 read with Taxation of Services (Provided From Outside India and Received in India) Rules, 2006. On being pointed out, the assessee agreed with the objection and made payment of Service Tax of Rs. 3,76,939/- along with interest of Rs. 1,56,2050/-.

(14) GIST OF THE OBJECTION : Non Inclusion of the consideration extended to Insurance Agents by way of incentives, gift or free travel expenses etc. in the taxable value, resulting in short payment of Service Tax

COMMISSIONERATE : Service Tax Commissionerate, Bangalore

CONTROVENTION of PROVISIONS : Section 67 of the Finance Act, 1994
Service Tax (Determination of Value) Rules, 2006

During the course of audit it was observed that the assessee has been extending/paying incentives to their insurance agents as and when the agents achieved certain milestone prescribed by the company. This incentive or freebies given to the insurance agents is over and above the commission paid by the company to the agents on a periodical basis. On further scrutiny it was noticed that the Company failed to include value of these incentive or freebies in the assessable value for the purpose of payment of Service Tax under Insurance Auxiliary Services. In view of Section 67 of Finance Act, 1994, read with Service Tax (Determination of Value) Rules, 2006, shall include commission, fee or any other sum received by the insurance agents from the

insurer. Hence it is appears that the incentives or freebies are includible in the assessable value for payment of Service Tax. The short payment in this regard works out to Rs.16,30,74,306/-.

(15) GIST OF THE OBJECTION : Wrong availment of CENVAT Credit on ineligible Re-Insurance Services

COMMISSIONERATE : Service Tax Commissionerate, Bangalore

CONTROVENTION of PROVISIONS : Rule 14 of the CENVAT Credit Rules, 2004

During the course of audit it is observed that the assessee have been procuring the services of overseas Insurance Companies for reinsurance purposes. It was also observed that they have been paying Service Tax on such reinsurance services imported and also taking the credit of such duty paid on the support of duty paid challans. On further verification and discussions with the personnel, it was felt that reinsurance is not an input service for providing their output service namely "Insurance" CENVAT Credit taken on the basis of duty paid challans/ invoices does not appear to be admissible as the "Re-Insurance" is not an input service used for providing output service namely "Insurance". Re-Insurance is being obtained by them for reducing their risk/liabilities only, the same is not essential for providing of output service at all. Further the re-insurance is obtained after providing/completing of output service, hence cannot be said to be an input service. The assessee have wrongly availed an amount of Rs.12,04,06,544/- in the name of re-insurance which needs to be reversed with appropriate interest, under Rule 14 of the CENVAT Credit Rules, 2004.

(16) GIST OF THE OBJECTION : Non-payment of Service Tax on Cargo Handling service

COMMISSIONERATE : Central Excise Commissionerate, Belgaum

CONTROVENTION of PROVISIONS : Section 68 of the Finance Act, 1994

The assessee is a provider of "Cargo Handling Service" and Manpower Supply service" to their customers. In addition, the assessee has received order for unloading and transportation of the coal, clinker etc., from their customers. The orders contain separate charges for unloading of goods from the Railway wagons and for transportation. The assessee is paying Service Tax on the portion of amount pertaining to unloading and not paying Service Tax on the transportation

cost as the same is liable to be paid by the receiver of service. The Service Tax not paid for 2012-11 and 2011-12 amounted to Rs.52,41,026/- and interest worked to Rs.4,19,857/-. The assessee agreed and paid the Service Tax with interest.

(17) GIST OF THE OBJECTION: Non – Payment of ST on Agency commission received from RBI towards crediting of the duty Draw Back amount sanctioned by Customs

COMMISSIONERATE : LTU, Chennai

CONTROVENTION of PROVISIONS : section 65(105)(zm) of the Finance Act, 2004

It was noticed that M/s. IOB are receiving agency commission for the services rendered towards crediting of the duty draw back amount sanctioned by customs department. The taxpayer is acting as an agency bank for the Reserve Bank of India (RBI) and is receiving agency commission at the rates notified by RBI, on transaction basis, in respect of receipts or payments made, on behalf of Government of India. Further the taxpayer is providing the services of dealing and accounting for all Government transaction, for which they are paid an agency commission by RBI. The said services provided by them to the RBI amounted to providing a taxable service under the Banking and Other Financial Services, viz., 'operation of bank accounts', which was specified as taxable service effective from 10.09.04. As per section 65(105)(zm) of Chapter V of the Finance Act, 2004 (herein after referred to as ' ACT') as amended by the Finance Bill, 2004, the definition of the term 'banking and other financial services' was expanded to include other financial services specified therein including operation of bank accounts among others, w.e.f., 10.09.04, The Taxpayer is not discharging payment of ST on the agency commission received in respect of drawback amount credited The Agency commission received in this regard for 2011-12 is Rs 1.09 Cores and the ST payable is Rs 10.19 Lakhs.

(18) GIST OF THE OBJECTION:Supression of income receipts towards provision of 'Mining Serices' at Granite quarries by way of ceating separate division maintaining separate set of accounts and transferring such income receipts through book adjustments.

COMMISSIONERATE :Central Excise Commissionerate, Salem

CONTROVENTION of PROVISIONS :section 65(105)(zzzy) & 68 of the Finance Act, 2004

Assessee a 100% EOU, are manufactures of cut and polished granite monuments, slabs and tiles. For the purpose of manufacture of the above final products their EOU Division require 'Rough Granite Blocks' which they purchase from the quarry owners/sellers. Mostly they procure the rough granite blocks by entering into 'Raising cum sale Agreement/Raising cum purchasing agreement' with the granite quarry owners. Apart from the EOU Division they have got a separate Quarrying and Trading Division permitted by MEPZ to have separate trading export business operations having separate accounting system. After the formation of the Q&T Division which is also handling the work of quarrying the granite block for the EOU Division, the ledgers of EOU Division show that a portion of fund for quarrying expenses is getting transferred to Q&T Division wherein the raising charges received from the quarry owners is accounted for and as a result, the ledgers of EOU Division do not reflect the income receipts of raising charges from the quarry owners. On perusal of the agreements between the assessee with the Quarry owners, it is found that, as per the terms of the agreement assessee would excavate, select and purchase the marketable granite blocks at the agreed price for a fixed period and move them to their place with their own arrangement of transportation after getting permit on payment of royalty to the Government. Since the assessee is involved in providing taxable services under section 65(105)(zzzy) of the Finance Act, 2004, is liable to pay Service Tax on income received from the quarry owners for the same under section 68 of the Finance Act, 1994. For this purpose, they bring and utilize their own man power and machinery to excavate the dimensional rough granite blocks and to follow all the legal procedures and regulations of the government. Assessee would bear the entire cost of raising the rough granite blocks at a fixed rate from the quarry and purchase them at the price mutually agreed between them and would realize the raising charges of the granite stone blocks either by way of book adjustment by issuing credit note or by way of deduction of the same from the amount payable at the time of their purchase of these blocks in the sale bill raised by the quarry owners. The raising of granite blocks carried out by the assessee in the quarry is nothing but mining service (i.e) horizontal and vertical drilling of rocks into dimensional granite rough blocks and excavation. The legal possession/ transfer of property of the said goods happen only after sale bill /invoice is raised for sale of rough granite blocks. The act of raising the rough block precedes the act of its sale but the payment for the service rendered by the assessee is made at the time of payment for the sale of the rough blocks. The two activities involved in this transaction (i.e) the act of raising (mining) the rough blocks and sale of such blocks are two independent commercial transactions having individual value. On verification of the contents of the agreement it is apparent that there is no commitment for the

assessee in this arrangement to purchase all the rough blocks raised by them in the site except for the commitment to meet a minimum targeted quantity of bocks to be excavated for the specified period. Even though both these activities were carried out by the assessee, it is obvious that these activities involving service and sale, they are both independent. The provider of service for excavation of the granite blocks in the quarry is the assessee and the recipient of service for the same is the quarry owners. So the activity of raising the rough block by quarrying the site attracts levy of Service Tax under the head 'mining service'. The Service Tax payable on this mining service rendered by the both Divisions during the period from 2008-09 to 2011-12 is Rs.7910925/-.

(19) GIST OF THE OBJECTION : Wrong availment of CENVAT Credit on Capital goods.

COMMISSIONERATE : Central Excise Commissionerate, Panchkula.

CONTROVENTION of PROVISIONS : section 73 of the Finance Act, 1994
Rule 2(a) of the CENVAT Credit Rules, 2004

During the course of audit, it was observed that assessee availed CENVAT Credit to the tune of Rs. 1,27,12,687/- of Central Excise Duty and Education cess paid by them on Tower falling under CETH 73082011 of CETA 1985 which they used for erection of cell sites/transmission towers at their different sites. It appeared that these items do not fall under the category of capital goods as per Rule 2(a) of the CENVAT Credit Rules, 2004 and as such CENVAT Credit of Rs. 1,27,12,687/- taken by the assessee was inadmissible to them and the same is recoverable under section 73 of the Finance Act, 1994. On being pointed out the party admitted their mistake and voluntarily reversed the amount of Rs. 1,27,12,687/-.

(20) GIST OF THE OBJECTION:Non-payment of Service Tax on certain elements of the invoice value claiming as 'export of service'

COMMISSIONERATE : Central Excise Commissionerate, Hyderabad II

CONTROVENTION of PROVISIONS : Rule 5 of the Service Tax (Determination of Value) Rules, 2006

The tax payer is a provider of 'Courier service', 'Business Auxiliary Service', ' Warehousing, GTA, RIS etc. During the course of audit on accounts of the tax payer, the audit studied the transactions undertaken by the assessees for both shipments going outside and for shipments received in India. The tax payers entered into a single contract with Indian parties and provided comprehensive service for delivery of goods from one place to other such as door-to-door, door-to-port and port-to port etc., as per the instructions of the customer. The services were provided to service receivers in India in most cases and the tax payers received payment in Indian currency only. The audit noticed that they did not pay Service Tax on certain amounts received by them and shown under courier service for the year 2011-12 and under BAS in previous years by erroneously claiming exemption as 'Export of service'. The audit noticed that the tax payers paid Service Tax on items such as Bill of Lading Charges, Inland haulages, Customs clearance agency fee, CMC charge etc., but did not pay Service Tax on items shown as freight, miscellaneous charges, customs charges, documentation charges, transportation / delivery charges etc. The audit pointed out that the tax payer has to pay Service Tax on the gross amount received by them for provision of service, except on amounts received as 'pure agent', as provided in Rule 5 of the Service Tax (Determination of Value) Rules, 2006. The audit pointed out that since the service is being provided in India and the consideration is being received in Indian currency, the service rendered cannot be treated as 'export of service'. The service rendered is rightly classifiable as 'courier service' and the tax payer is liable to pay Service Tax on the gross consideration received by them. Freight is an integral part of the expenditure incurred by the tax payer in the course of provision of courier service and they cannot claim exemption for the same. The audit pointed out that the tax payer did not pay Service Tax on an amount of Rs. 93.37 crores received by them during 2010-11 and 2011-12 , by irregularly claiming exemption as 'export of service' and is liable to pay Service Tax of Rs. 961.72 lakhs, along with applicable interest and penalty.

(21) GIST OF THE OBJECTION: Non - payment of Service Tax on fees/ charges paid against loans received from foreign financial institutions

COMMISSIONERATE : Central Excise Commissionerate, Haldia

CONTROVENTION of PROVISIONS : Section 65(12) of the Finance Act 1994; rule 2[d][i][iv] of the Service Tax Rules, 1994

The assessee had entered into various loan agreements with non- resident/ foreign financial Institutions (Overseas assessees) during the period from Feb, 2009 to July, 2012. During the

course of availment of these External Commercial Borrowing [ECB] loans, the assessee remitted various service charges like syndication fees, legal documentation fees, upfront fees etc in addition to periodical remittance of interest to the overseas assessees. As per the provisions of Service Tax law, these service charge remittances & interest thereon are liable to levy of Service Tax under the reverse charge mechanism under the service head of 'Banking and other Financial Services' as per the provisions of Section 65(12) of the Finance Act 1994. It has been observed by the auditors from the records and documents submitted by the assesseee during audit that the assessee did not comply with the provisions of Service Tax law as no Service Tax was paid in respect of foreign currency remittances accrued attributable to payment of service charges/interest/ expenses that was remitted for availment of ECB loans received from foreign financial institutions who do not have any office or establishment in India. In view of the fact that the foreign financial institutions do not have any office or establishment in India, the Service Tax is required to be paid by the assessee in respect of the above mentioned service charges/ interest paid for availing the facility of such foreign loan or fund, by virtue of being the recipient of services in terms of the 'Taxation of services (provided from outside India and received in India Rules 2006) read with rule 2[d][i][iv] of the Service Tax Rules, 1994(as amended). Such services provided by the foreign financial institutions to the assessee in respect of providing the facility of loan /raising fund appears to be classifiable under 'Banking and other Financial services" as defined under clause[12] of section 65 of chapter V of the Finance Act, 1994 as amended. The services received by the assessee becomes taxable under the provisions of sec.66 A of the Finance Act, 1994 read with Rule 2(1) (d) (iv) of the Service Tax Rules, 1994. But scrutiny of records revealed that the assessee did not pay Service Tax enumerated to the tune of ₹ 1,05,67,051/- in respect of service charges paid by them under "Banking and other financial services" as envisaged in clause 12 of section 65 of the Finance Act 1994 as amended.

(22) GIST OF THE OBJECTION: Non charging and non-payment of Service Tax in respect of cleaning activity services

COMMISSIONERATE : Central Excise Commissionerate, Ranchi
CONTROVENTION of PROVISIONS : Section 65 (24b) of the Finance Act, 1994

In course of desk review and on perusal of documents like Profit & Loss account, Trial Balance for the year 2008-09, 2009-10, 2010-11 & 2011-12,. it was observed by the

auditors that the main source of income earned by the assesse was from Contract Receipts. In this connection agreement between the assessee and their clients along with the corresponding Bills were also examined during audit. The assesse, as called for by the auditors, provided the break- up of the Contract Receipts for the year "2008-09, 2009-10, 2010-11 & 2011-12" which indicated that they had received Rs.19,10,45,134/- on account of "Evacuation of ash from different filled up ash ponds of thermal power plants and nuisance free transportation and disposal in defined area". On query, the assessee explained that their clients, as required for the operation of thermal power plant use coal for generation of electricity and fly-ash emerges as waste product which is collected in Ash-ponds. Disposal of Ash from Ash-pond is done by the assessee as per contract which indicates that the assessee rendered "cleaning activity services" as defined in Section 65 (24b) of the Finance Act, 1994 and is taxable w.e.f. 16.06.2005. But no Service Tax was paid by the assessee for rendering such services. The amount received by the assessee on account of such service for the period 2008-09 to 2011-12 is Rs.19,10,45,134/- and applicable Service Tax due on such receipt is Rs .**2,02,76,433.00** which is recoverable from the assessee.

(23) GIST OF THE OBJECTION : Non - Payment of Service Tax on 'Manpower Recruitment or Supply Agency's Services' along with interest.

COMMISSIONERATE : Central Excise Commissionerate, Guwahati

CONTROVENTION of PROVISIONS : Section 65(68) of the Finance Act,1994

In course of audit and on scrutiny of the various records, documents such as Bills, Ledgers, Balance Sheet, Bank Statement, ST-3 Returns, GAR-7 etc., it is observed that in addition to the Security Agency's Services, the assessee is also providing house keeping, placement services to their clients. Such services are also taxable services under the ambit of 'Manpower Recruitment or Supply Agency's Services' which under Section 65(68) of the Finance Act,1994, is defined as "any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to a service receiver." As such, amount received against 'providing such services are also taxable. It is further observed that while discharging their Service Tax liabilities, amount of TDS were not included with the taxable amount. All these resulted in short payment of

Service Tax to the tune of Rs.**15, 18,976/-.** The assessee is required to pay such short payment of Rs.15,18,976/- along with due interest. The assessee agreed and paid an amount of Rs.11,43,946/-.

(24) GIST OF THE OBJECTION : Non Payment of Service Tax on income shown towards Miscellaneous Income & Township Income

COMMISSIONERATE : Central Excise Commissionerate, Rajkot

CONTROVENTION of PROVISIONS : Sec.76 of the Finance Act, 2010

The assesseee is engaged in providing Renting of Immovable Property and Port Services.

On scrutiny of ledger heads, it was noticed that "Misc. Income" and "Township Income" was mentioned under the heads Testing House Receipts, Supervision Charges of laying of pipelines, Vehicle Hire charges, Permit & License, Weighment Charges, Stevedoring Income, Sundry Handling and Entry Permit. Further, "Township Income" was mentioned to be received under the heads Ground Rent for Non-Agricultural Land, Fees of Mortgage of Lease Hold, and Premium on Plots. It was also seen that all the above services were provided within the Port / in relation to Port Services falling within the purview of 'Port Services' since 01.07.2010 and would be inclusive in the gross amount of various services prior to that. The assessee was liable to pay Service Tax on part of the income from all the above services along with interest.

The misc. income and township income includes income of Renting of Vacant Land and Rent received from Residential Premises. The assessee stated that the reconciliation will be done in due course and they would then pay the Service Tax with interest if found necessary after quantification. The assessee contended that they are not required to pay Service Tax on income from renting of vacant land. However, as per the Budget changes 2010-11 and insertion w.e.f. 01.07.2010 vide Sec.76 of the Finance Act, 2010 (14 of 2010), "taxable service" means…..(v) vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce. Hence, the assessee is required to pay the Service Tax on such vacant land w.e.f. 01.07.2010.

The non-payment of Service Tax under Misc. Income under various heads / taxable services liable for Service Tax from 2007-08 to 2010-11 was determined at Rs.14,00,82,858/-

and for Township Income was Rs.2,37,17,146/- Totaling to Rs. 16,38,00,004/- along with Interest recoverable from the assessee.