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CENTRAL EXCISE

- (1) **GIST OF THE OBJECTION : Wrong utilization of input credit**
COMMISSIONERATE : Central Excise Commissionerate, Kanpur
CONTRAVENTION
OF PROVISION : Rule 3 of the CENVAT Credit Rules, 2004

The assessee is mainly engaged in the manufacture of “Rubber Sole”, “Leather Sole” and “Finished Cut Sole” (“Footwear Components & Parts thereof) falling under CSH No. 64062000 of Central Excise Tariff which they got manufactured on job work basis from another unit. The assessee was availing the facility of CENVAT Credit on various inputs, capital goods and input services.

On scrutiny of the records of Excise and E.R.1s for the period from October, 2010, to march, 2013, it was noticed that in addition to manufacture and sale of their own products assessee was also engaged in doing the “job work” of molding PU Soles and had availed and utilized CENVAT Credit on input services on “Royalty on article designs, IPR” and “Rent paid for hiring of moulds” for manufacture of Molded PU Soles. On being asked about the same assessee stated that he is doing only the job work of molding of PU Soles under Notification No.214/86 for his other unit situated at Kanpur and PU Soles is not his own product. All the inputs were being supplied to assessee by his other Unit on job- Work challans and moulded PU Soles were returned for further finishing and clearance. As such, it appears that input credit involves on Service Tax paid by assessee’s registered office situated in Kanpur on “Royalty on article designs IPR” and “Rent Paid for hiring of moulds” to assessee’s foreign supplier located in Italy and availed and utilized by the “job worker” i.e. assessee, is not admissible as the assessee is job worker. Further, neither assessee could produce any lessee agreement entered into between the said registered office situated in Kanpur with said foreign supplier located in Italy, nor he had taken registration under the category of “Input credit distributor”. Assessee had also not produced any specified documents/ invoice in respect of distribution of such inadmissible CENVAT Credit.

Rule 3(i) makes it ample clear that credit of duties and Service Tax different specified duties as mentioned therein, can only be availed by the manufacturer or producer or output service provider, and such duty shall be paid on input or capital goods input service received by the manufacturer of final product or by the provider of output service and even if such duty, or cess

paid on input or input service, used in the manufacture of intermediate product by a job-worker availing exemption under Notification no. 214/86 dated 25th March 1986 and received by the manufacturer for use in, in relation to, manufacture of final products.

Thus Rule 3 of the CENVAT Credit Rules, 2004 allows the credit of duty paid on inputs used by a job worker only to the principle manufacture who ultimately clears the final product on payment of duty. In terms of said Notification No.214/86, dated 25/03/1986, the intention of legislative is to allow the credit to the principle manufacturer who ultimately bears the burden of duty therefore the credit is admissible only to the principle manufacturer and not to the job worker as the goods manufactured by the job worker are exempted from payment of duty under Notification No. 214/86.

In this case, the assessee was merely doing job work of molding of PU Soles for his other unit, under Notification No.214/86 and is not eligible for taking CENVAT Credit on input services as per the Rule 3 of CENVAT Credit Rules, 2004 as neither he had discharged any duty on the goods manufactured on job work basis nor had provided any Output Service relating to moulds.

- (2) **GIST OF THE OBJECTION : Non adoption of CAS-4 valuation as per Rule 8 of Central Excise Valuation Rules**
COMMISSIONERATE : Central Excise Commissionerate, Bangalore I
CONTRAVENTION : Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods), 2000 read with CBEC Circular No. 692/08/2003-CX, dated 13th February, 2003 issued from F.No.6/29/2002-CX.I
OF PROVISION

During the verification of invoices for the audit period it was found that the assessee had made several clearances to his sister units in India. This has to be made as per Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods), 2000 i.e 110% of the Cost of production of such goods. The assessee was adopting historical cost and accrual due to inflation is being added as cost of production and 10% is added to this value and duty is paid. The assessee should have prepared a CAS4 cost sheet as prescribed for items cleared to the sister unit and also the CAS 4 cost sheets should have been prepared on a quarterly basis as per **Notes on Application of Cost Accounting Standards-4**. The basic purpose of CAS-4 is to calculate

deemed transaction value of the goods captively consumed in the same unit or transferred to the other unit of the same manufacturer. The valuation is required at the time of removal of the goods.

Normally the costing will be for the future dispatches/period. It could be either for the existing product or in respect of a new product yet to be manufactured. In case of costing for the existing product, it is worked out based on the actual cost for the previous quarter. In case of costing for a new product, it is calculated at projected cost, keeping in view projected cost, projected normalized production and other cost parameters”

The differential duty for the year 2012-13 amounting to Rs.30,62,146/- in total, has been paid by the assessee.

- (3) **GIST OF THE OBJECTION: Ineligible credit availed on Furnace Oil used by EOU unit located in the same premises as the registered unit**
COMMISSIONERATE : Central Excise Commissionerate, Bangalore I
CONTRAVENTION OF PROVISION : Rule 3 read with Rule 6 of the CENVAT Credit Rules, 2004

During the course of verification it was noticed that the assessee is procuring Furnace Oil for the purpose of use in the chiller plant located in the registered premises. It was also noticed that there is an EOU with separate registration in the same premises. Only one chiller plant is located in the common premises of the DTA and EOU unit. On verification of the Cenvat availed data it was observed that the CENVAT Credit of the entire quantity of Furnace Oil procured is availed in the books of the DTA unit and no proportionate reversal of duty is being made for the portion of the furnace oil used in the manufacture of goods pertaining to the EOU unit. It was seen that the credit pertaining to Furnace Oil availed for the period from Sep 2012 amounts to Rs.1,89,81,204/-. The ratio of turnover of the EOU unit and the manufacturing unit comes out to be 78:22. Accordingly, the proportion of ineligible credit pertaining to DTA unit amounts to Rs.1,48,11,033/- in total. The assessee agreed and reversed the ineligible credit.

- (4) **GIST OF THE OBJECTION: Short Payment of duty on goods cleared to DTA**
COMMISSIONERATE : Central Excise Commissionerate, Bangalore I
CONTRAVENTION OF PROVISION : Notification no.23/2003-CE dated 31.03.2003

During the course of audit it was observed that the assessee is a 100% EOU unit and was

involved in sales in DTA. On verification it is noticed that the assessee was paying only 12.36% as against 17.58% of duty. As per Notification No.23/2003-CE, dated 31.03.2003 read with condition 3(i), if the goods cleared by a 100% EOU in DTA are manufactured wholly from the raw materials manufactured in India it will be liable to pay duty equal to excise duty leviable under Section 3 of Central Excise Act, 1944 and in case the unit uses the imported raw materials, excise duty equal to aggregate of duties of customs is payable. Since the raw material is imported, assessee is liable to discharge duty under Sl.No.2 of the said Notification. Hence the Customs cess and BCD becomes payable and the liabilities works out to Rs.60,76,196/-. The assessee has paid the differential duty.

- (5) **GIST OF THE OBJECTION : Wrong availment of CENVAT Credit on Capital goods**
COMMISSIONERATE : Central Excise Commissionerate, Ranchi
CONTRAVENTION OF PROVISION : Rule 3 read with Rule 2 of CENVAT Credit Rules, 2002

The assessee had taken CENVAT Credit on various items such as Fixture of Flood Light Luminaire, High Mast, AL 400SV Electric Lamp etc. (chap.9405), Railway or Tramway Track construction material (ch 7302). Parts of Rly Locomotives(chap 8607), Rly track fixture and fittings(8608), Rly maintenance or Service Vehicle(Ch.8604), Pre-fabricated structure such as beam, bridge (ch 7308), various articles of cement(ch. 6810), various article of stone or other mineral substances(including carbon fibre, articles of carbon fibres& articles of Peat)(ch 6815), Round /plate(ch 7312), Billets(ch 7207), Bars and Rods, Flats of various types and Bypass Roll/Protection Cap/ Safety guards / Air Handling.

As per Rule 2 of the CENVAT Credit Rules, 2002 these items cannot be treated as Capital goods as explained below:-

1. Fixture of Flood Lights Luminaire, High Mast, AL 400 SV, Electric Lamp etc. (Ch. 9405) — These are used for lighting the area other than the plant such as offices, colonies & roads etc.
2. Railway or Tramway track construction material (Ch. 7302), Parts of Railway Locomotives (Ch. 8607), Railway Track Fixtures & Fittings (Ch. 8608), Railway Maintenance or Service Vehicle (Ch.8604) — The credit of articles of Chapter heading 73 is not admissible because RST Sleeper, Railway Fish Plate etc. falling under chapter 73 is not a specified chapter of capital goods. The above goods are also not spare parts and components of capital goods mentioned under Rule 2 (a) of CenvatCredit Rules, 2004.
3. Pre-fabricated structures such as beam, bridge (Ch. 7308) — These are not specified in the

definition of capital goods nor they are spare parts/components of the capital goods mentioned under Rule 2(a) of CENVAT Credit Rules, 2004.

4. Various articles of cement such as Concrete Sleeper (Ch.6810), Various article of Stone or other mineral substances (including Carbon fibres, Articles of Carbon Fibres and Articles of peat (Ch. 68159100)- CENVAT Credit on these items cannot be admissible on these goods because in the definition of Capital goods under above rules, heading no. 6805, Grinding Wheels and the like and parts thereof falling under heading no. 6804 are only mentioned.
5. Round/Plate (Ch73121010), Billet (Ch. 72071290), Bars and Rods (7213,7214,7221), Flats (Ch.7219,7211,7214,7208,7212). These items cannot be treated as Capital Goods as they do not fall under the respective chapters of 82, 84,85,90,6805,6804. They are neither pollution control Equipment nor moulds and dies, jigs and fixtures, refractory materials, tubes pipes fittings or storage tanks. They are also not components, spares and accessories of the goods falling under chap 82, 84, 85, 90, 6805, and pollution control equipment.
6. Bypass Roll/Protection Cap/Safety Guards/Air Handling (Ch.99999999)-On examination of Tariff, it was noticed that Chapter 99 is not mentioned anywhere in the Tariff. Hence, they cannot be regarded as Capital Goods.

Thus the assessee had wrongly availed CENVAT Credit amounting to Rs.5,36,85,788/- for the period from January2012 to February, 2013 which is recoverable along with interest.

- (6) **GIST OF THE OBJECTION:Non inclusion of Bazaar Fee (MADA) in the assessable value and non paymentof Central Excise duty**
COMMISSIONERATE :Central Excise Commissionerate, Ranchi
CONTRAVENTION
OF PROVISION : Section 4 (3)(d) of Central Excise Act, 1944

On examination of the Sales invoices and details received from the assessee for the year 2010-11, 2011-12 & 2012-13, it was found that the assessee had charged 1% Bazar Fee(MADA)Tax on invoices and realized an amount of Rs. 1707111/- for 2010-11, Rs. 24555677/- for 2011-12 and Rs. 23992240/- for 2012-13 totaling to Rs. 50255028/- but had not included this amount in the assessable value for calculation of Central Excise duty. Bazar Tax is levied under the Bihar Coal Mining Area Development Authority Act 1986 and Jharkhand Mineral Area Development Authority (Amendment and Adoption) Act 2001, by a Gazette Notification on 18.01.2006,

collected by Mining Area Development Authority (MADA) for any sale of coal and other notified non-agricultural commodities in the area notified under the Mining Area Development Authority and deposited in the treasury. It is shared between the Government and Mining Area Development Authority. It is a compulsory levy with statutory backing and no direct quid pro quo. Like the various charges namely royalty, stowing Excise Duty, Transit fee, Entry tax etc, Bazar tax is also not considered as taxes but is required to be included in the assessable value of the goods for paying Central Excise duty.

In view of Section 4 (3)(d) of Central Excise Act, 1944 the Audit is of the view that the said Bazar Fee is not a tax or Duty and as such cannot be deducted from the assessable value. Central Excise duty is required to be paid on the amount received by the assessee as Bazar Fee.

The said assessee thus have short paid duty to the tune of Rs. 28,35,255/- during the year 2010-11 , 2011-12 and 2012-13 on account of non inclusion of Bazar Fee (MADA FEE) in the Transaction value. On being pointed out, the assessee informed that he is collecting Bazar Fee but not paying any Central Excise duty on this amount. However, the assessee also informed that the amount so realized has not yet been paid to the Authority concerned.

The Central Excise duty during 2010-11, 2011-12 and 2012-13 amounts to Rs.2835255/- which is recoverable from the assessee with interest.

- (7) **GIST OF THE OBJECTION: Non-reversal of amount as required under Rule 6(3)(i) - Trading - Exempted Service**
COMMISSIONERATE :Central Excise Commissionerate, Pune-I
CONTRAVENTION
OF PROVISION : Rule 6(3)(i) of CENVAT Credit Rules, 2004

The assessee had certain consignments delivered to the customers, directly from the supplier as a part of their business. For this, the assessee neither availed CENVAT Credit, nor paid duty on the value of such goods. Such goods were however billed for by the assessee as traded goods.

As per explanation to Rule 6 of CENVAT Credit Rules, 2004, trading has been defined to be "exempted service". The value of exempted service is also defined as difference between sale value and purchase cost of such goods subject to minimum of 10%.

The assessee had not maintained separate account of input services used in such activity. The assessee has, by reversing an amount of 5% in respect of exempted goods cleared by availing Notification No.10/97-CE, conclusively opted to follow Rule 6(3)(i) of CENVAT Credit Rules, 2004. Therefore the assessee is also required to follow Rule 6(3)(i) in case of trading activity. The assessee contended that they have choice to follow any one of the options prescribed under Rule 6(3) of CENVAT Credit Rules, 2004.

However, provisions of Rule 6(3)(ii) and Rule 6(3)(iii) require the assessee to follow the procedure prescribed under Rule 6(3A) of CENVAT Credit Rules, 2004. Rule 6(3A)(a) prescribes requirement to exercise option and submit the same to the Range Superintendent along with the date from which such selected option is to be exercised. In this case, the assessee has not filed any option under Rule 6(3A) but has, as mentioned earlier, by reversing an amount of 5% in respect of exempted goods cleared by availing Notification No.10/97-CE, conclusively opted to follow Rule 6(3)(i) of CENVAT Credit Rules, 2004. Therefore, the assessee is required to pay the amount as calculated above.

The assessee accepted the contention of audit and reversed amount of Rs. 48,65,141/- along with interest and penalty of Rs. 987501/- + Rs. 642476/- respectively.

- (8) **GIST OF THE OBJECTION: Undervaluation of excisable goods cleared, in violation Rule 10A(iii) of Valuation Rules, 2000**
COMMISSIONERATE : Central Excise Commissionerate, Pune-I
CONTRAVENTION OF PROVISION : Section 4 of the Central Excise Act, 1944 read with Rule 10A(iii), read with Rule 8 of Valuation Rules,2000

The assessee is engaged in the manufacture of motor vehicle parts for exclusive supply to another unit located at Pimpri. It was observed that coils of sheet- metals (Chapter Heading No. 72) were supplied by sister concern located at Pune of the said another unit (located at Pimpri), to the factory of the assessee **free of cost**, which are, in turn, used as input raw materials towards manufacture of the final product, M.V. Parts. The said manufacture is undertaken by the assessee

in accordance with the design, specification and technical supervision given by said another unit. However, the assessee has been availing credit of Cenvat Duty paid on the said coils of sheet metal. No sale-purchase transaction is involved here in this case. Goods manufactured by the assessee are delivered to the said another unit on payment of duty.

It is noticed that the assessee has been receiving only job-charge for the activity of manufacture of parts undertaken by the assessee. The valuation adopted for the purpose of payment of central excise duty in relation to the goods (M.V.Parts) manufactured by the assessee is given below.

Assessible value= Cost of raw materials+ Die cost (furnished by said another unit)+Job-charges(received by the assessee).

In view of above, valuation adopted by the assessee, as above, appears to be not consistent with Section 4 of the Central Excise Act, 1944 on the following grounds:-

- (1) That the assessee is a job worker of said another unit located at Pimpri, under- taking manufacture of M.V. Parts within the meaning and scope of the explanation to Rule 10A of Central Excise Valuation Rules, 2000.
- (2) Since, the assessee is a job worker, the valuation of excisable goods manufactured by the assessee is required to be made in accordance with the provisions of Rules 10A(iii) of Valuation Rules,2000, as the provisions of said Rule 10A has specifically dealt with valuation of excisable goods manufactured on job work, out of input goods supplied by the principal, and the said manufacture are being undertaken as per design and specifications provided by sister concern located at Pune of the said another unit (located at Pimpri).
- (3) Clause (iii) of Rule 10A of Valuation Rules is the appropriate provisions for the purpose of determination of value , as the goods received by the principal i.e sister concern located at Pune of the said another unit (located at Pimpri), are consumed captively in factory of the principal. The said clause (iii) has provided that where the provisions of clause (i) & (ii) cannot be made applicable, the provisions of foregoing Rules (i.e. Rule 3 to Rule 10) are to be applied for determination of value.
- (4) In terms of clarification given by the Board in Circular F.6/15/2009/-CX.1 dated 31-05-2010,value of goods in such cases would be determined in accordance with Rule 10A(iii), read with Rule 8 of Valuation Rules,2000,
- (5) It appears that Rule 8 is the appropriate Rule for the purpose of determination of value under 10A(iii) of the Valuation Rules,2000. In terms of Rule 8, 110% of the cost of production of

goods shall be the assessable value of the goods for this purpose. The cost of production of goods is therefore required to be arrived at on the basis of certificate issued by Cost Accountant.

- (6) The revenue impact for the period April,10 to December,12 is about Rs.1,05,34,834/-.
- (7) The case laws of **Indian Extrusions Vs CCE, Mumbai, 2012(283)ELT 209(T-Mum), Rolstar Pvt. Ltd. Vs CCE, Daman, 2012 (276) ELT 87(T-Ahm)**, and **Advance Surfactant Vs CCE, Mangalore; 2011(274) ELT 261 (T-Bang)** have held that valuation of such goods is to be made in accordance with Rule 10A(iii), read with Rule 11 of Valuation Rules,2000,
- (8) In this connection, it appears that applicability of Rule 11 is barred in such cases because the provisions of Rule 10A(iii) has specifically stated that “ **in a case not covered under clause (i) or(ii), the provisions offoregoing rules, wherever applicable, shall mutatis mutandis apply for determination of the valueof the excisable goods**” (emphasis supplied)

Therefore, the provisions of Rule 11 of the Valuation Rules, 2000, (not being foregoing rules) are not applicable. In other words, it appears that Rule 8 is the appropriate rule for determination of value.

- (9) **GIST OF THE OBJECTION: Non reversal of input CENVAT Credit on the provision made for non- moving / obsolete goods in accounts**
COMMISSIONERATE : Central Excise Commissionerate, Chennai IV
CONTRAVENTION
OF PROVISION : Rule 3(5B) of the CENVAT Credit Rules, 2004

The assessee had made provision for non / slow moving / obsolete items to the tune of Rs.20,00,064/- in his financial accounts during the period 2010-11 & 2011-12. It was observed that the goods, the value of which were written-off, were cenvat availed inputs. However, they have not paid the amount, equivalent to the CENVAT Credit availed on such inputs, as required under Rule 3(5B) of the CENVAT Credit Rules, 2004 when the value of the goods were written-off. The CENVAT Credit so taken worked out Rs. 2,40,072/-.

On pointing this out, the assessee paid the amount of Rs2,40,072/- from CENVAT Credit account along with the interest of Rs.1,00,162/-.

(10) GIST OF THE OBJECTION:Improper availment of exemption for the services rendered to SEZ
COMMISSIONERATE :Central Excise Commissionerate, Chennai IV
CONTRAVENTION
OF PROVISION : Notification Nos.17/2011-ST, dated 01.03.2011 and 40/2012 ST, dated 20.06.2012

The assessee is engaged in the manufacture of Weighing System and Parts, falling under Chapter headings of 84238900 and 84239020 of the schedule to the Central Excise Tariff Act, 1985. The assessee was availing CENVAT Credit on inputs, Capital goods and Service Tax.

During the course of audit, it was noticed that the assessee had provided services to SEZ units and have availed exemption under Notification Nos.17/2011-ST, dated 01.03.2011 and 40/2012-ST, dated 20.06.2012. As per the notifications, the SEZ units/developer has to issue declaration in form A-1, certified by the specified officer of the SEZ, to service providers to avail the exemption. On verification of the records, there were no such declarations available with the assessee and on enquiry the assessee have also admitted that he had not obtained such declarations from the SEZ units and was simply providing the services without charging Service Tax. Therefore, the exemption availed by the assessee is incorrect and he is liable to pay the Service Tax with appropriate interest.

The assessee accepted the objection and paid the Service Tax of Rs.1,39,441/- along with an interest of Rs.35,542/-.

SERVICE TAX

- (11) **GIST OF THE OBJECTION :** **Non- payment of Service Tax on income retained from contractual doctors on which Service Tax is leviable under ‘Business Support Service’**
COMMISSIONERATE : **Service Tax Commissionerate, Delhi**
CONTRAVENTION OF PROVISION : **Section 66 of the Finance Act, 1994**

The assessee is engaged in providing/ receiving Management or Business Consultant Services, Commercial Service and Cosmetic and Plastic Surgery Service under reverse charge mechanism. During the course of audit, it was observed that the assessee had agreement with contractual doctors for OPD/ IPD patients.

From the perusal of agreements it was observed that the assessee retains a portion of amount earned by contractual doctors from OPD/ IPD patients. It, hence, appears that the assessee has been providing ‘support services of business or commerce’ as defined under Section 65(104c) read with Section 65(105)(zzzq) in as much as the assessee has been providing support services to visiting doctors/ consultants by providing them with the facilities and administrative support. The agreements entered into with the doctors further supports this in as much as the agreements clearly stipulate that the portion retained by the assessee out of the consultants’ fee is towards the facilities and the administrative support provided by the establishment.

Thus the assessee is liable to pay Service Tax on the amount retained out of doctor’s fee charged by the assessee from the patients or income received by them for infrastructure and administrative support which appears to fall under the taxable category of “Business Support Service”. Therefore the assessee stands liable to pay ST amount of Rs. 4,07,67,734.

- (12) **GIST OF OBJECTION :** **Non payment of S. Tax under import of services**
COMMISSIONERATE : **Service Tax Commissionerate, Delhi**
CONTRAVENTION OF PROVISION : **Section 66 A of the Finance Act, 1994**

The assessee is 100% subsidiary of their parent company located in Netherland and is engaged in the business of financing and leasing of motor vehicles across span of India. They were entering into two types of Lease agreements i.e. Finance Lease and Operating Lease.

The assessee had shown expenses in foreign currency in r/o Corporate guarantee, Group cost sharing (reimbursements of expenses), Marketing cost (LPI MC cost), software license cost, and Staff expenses/ expat salary but did not pay Service Tax under reverse charge mechanism.

Service Tax liability of Rs. 1,94,95,457/- was calculated which stands recoverable from them along with appropriate interest.

- (13) **GIST OF OBJECTION: Irregular availment of input service credit on certain ineligible services**
COMMISSIONERATE: Service Tax Commissionerate, Bangalore
CONTRAVENTION
OF PROVISION : Rule 3 read with Rule 2(K) of CENVAT Credit Rules, 2004

On random verification of Cenvat records, it is noticed that, the assessee had availed credit on many services like car insurance premium, employees health premium, outdoor catering services, testing of food at cafeteria, etc. which are neither used for providing output services nor covered under the definition of “input service” in terms of Rule 2(l) of CENVAT Credit Rules, 2004. Since the credit availed on the above services are not used in providing output service, the total of such credit availed amounting to Rs.6,14,32,470/- has to be disallowed. The assessee agreed and reversed Rs.27,76,61/- (partially).

- (14) **GIST OF OBJECTION: Wrong availment of Notification no.1/2006-ST, dated 01.03.2006**
COMMISSIONERAT : Service Tax Commissionerate, Bangalore
CONTRAVENTION
OF PROVISION : Notification no.1/2006-STdated 1.03.2006 as amended

For the period 2010-11, the assessee had availed the exemption under Notification No.12/2003-ST, with respect to the cost of parts or other material sold to the customer during the provision of the service. On perusal of records, it is noticed that the assessee has not shown the material value and service value separately item wise in their Bills/ Invoices and arrived lumpsum material value and service value. It is also noticed that the assessee has availed CENVAT Credit on the Inputs and capital goods in the returns filed for the period 2010-11. As per the said Notification, “no credit of duty on such goods and materials sold, has been taken under the provisions of the CENVAT Credit Rules 2004”.Hence, assessee would became in-eligible to avail the exemption under Notification No. 12/2003-St for the period 2011-12.

For the period 2008-09, 2009-10, 2011-12 and 2012-13 the assessee has availed the benefit of Notification No.1/2006 -NT and also availed the CENVAT Credit on input services.

Assessee has availed CENVAT Credit on the input services used in the course of providing output service which does not satisfies the condition No.(a) of the Notification 1/2006-ST.

Since, the assessee opted to avail the benefit of Notification No.1/2006-ST and No.12/2003 -ST, but failed to follow the conditions, he would become in-eligible to avail the benefit under the said notifications and hence is liable for payment of Service Tax on the entire assessable value during the relevant periods. In view of above, the assessee is liable for payment Service Tax of Rs.1,28,25,897/-.

- (15) **GIST OF OBJECTION : Wrong availment of CENVAT Credit on input services used for providing exempted services**
COMMISSIONERAT : LTU Commissionerate, Bangalore
CONTRAVENTION
OF PROVISION : Rule 3 read with Rule 6 of CENVAT Credit Rules, 2004

During the course of verification of the documents on which CENVAT Credit have been availed by the assessee it was observed that the assessee had availed credit of various services such as maintenance or repair services, business auxiliary services, erection & commissioning services etc, during the period July, 2012 to Sept., 2012 and indicated the same in their returns. However, these services were utilized for providing exempted services such as trading and other exempted services in terms of Rule 2(e) of the CENVAT Credit Rules, 2004. Since these services were utilized for providing exempted services, the assessee is not eligible to avail any credit on the same services. The irregular credit so availed by the assessee works out to Rs.7,94,71,513/-. On being pointing out the observation, the assessee agreed and reversed the entire amount.

- (16) **GIST OF OBJECTION: Non-payment of Service Tax on income shown as Logistic charges**
COMMISSIONERATE: Service Tax Commissionerate, Kolkata
CONTRAVENTION
OF PROVISION : Section 66 of Chapter V of the Finance Act ,1994

The assessee is a provider of taxable services viz. Authorized Service Stations for Motor Vehicles Servicing or Repairs Services (under Section 65(105) zo of the Finance Act, 1994). On scrutiny of the Balance Sheet, Profit & Loss account, Debit Notes issued to the customers, ST-3

returns for the period from 2008-09 to 2011-12, it was observed that the assessee had received 'Logistic Charges' from some of the customers by way of issuance of Debit Note along with invoice and such income was shown in their Balance Sheet income as well as Profit & Loss account mentioning 'Logistic Charges'.

On scrutiny of the income reconciliation chart as submitted by the assessee and comparing with ST-3 returns, it was observed that income from logistic charges had not been shown in their ST-3 returns in any occasions and the assessee had not paid Service Tax for providing such service to his customers. On verbal query, the assessee reported that sometimes while providing services like delivery of vehicles, registration fees etc. to the customers he had not paid any Service Tax on such income. Therefore, the assessee is providing Logistic support to his customers under BAS service on Section 65(105)zzb of the Finance Act, 1994. The assessee by providing such services had collected total amount of Rs.53,26,200/- from his customers, for the period from 2008-09 to 2011-12, as reflected in their income side on year wise Balance Sheet. The assessee paid an amount of **Rs. 5,57,628.00** along with interest of **Rs. 2,89,698.00** at the **instance of audit.**

- (17) **GIST OF OBJECTION: Non-payment of Service Tax on cleaning Services**
COMMISSIONERAT : Service Tax Commissionerate, Kolkata
CONTRAVENTION
OF PROVISION : Section 66 read with 65(105)(zzzd) and Section 65(24b) of the
Finance Act 1994

The assessee is a provider of cleaning Services. During audit and on reconciliation the amount shown in ST-3 returns for the period from 2008-09 to 2011-12, it has been observed that the assessee had not discharged Service Tax while providing cleaning services to a private school and technological Institution. As per Section 65(105)(zzzd) and Section 65(24b) of the Finance Act, 1994, cleaning service is taxable if provided to (a) Commercial or Industrial Building and premises thereof or (b) factory, plant or machinery, tank or reservoir, of such commercial or industrial buildings and premises thereof, but does not include such services in relation to agriculture, horticulture, animal husbandry or dairying [Section 65(24b) of the Act] .

It appears from the website of the said private School that the school charges huge fees to its students. The Technological Institute is also charging hefty fees to its students. Hence neither the said private school nor the Technological Institute be considered a 'Non-commercial concern'.

More over the documents submitted by the assessee also does not show that ‘the private School’ and ‘Technological Institute’ are non- commercial institute.

Therefore assessee is liable to pay Service Tax of Rs. 36,62,315/- along with appropriate interest and penalty.

(18) GIST OF OBJECTION: Non - payment of Service Tax on Business Support Service Management, Maintenance or Repair services
COMMISSIONERAT : Service Tax Commissionerate, Kolkata
CONTRAVENTION
OF PROVISION : Section 66 read with Sec 65 (105) (zzzq) of Chapter V of the Finance Act, 1994

During Audit and on perusal of agreement between Govt. of Sikkim and the assessee, it has been observed that the assessee would provide operation & maintenance services along with other services like security etc. to aerial ropeway from Deorali Bazar to Secretariat (Tashiling) at Gangtok, owner of which is Govt. of Sikkim. In return, the assessee would be free to mobilize / collect revenue that can be generated through ticket sale (as per agreed price) and all other activities from the ropeway set up, building etc. It is further mentioned in the agreement that the assessee would have to give Sikkim Govt. yearly license fee of Rs. 3,00,000/- substantiating the fact that owner of ropeway is Govt. of Sikkim. The rest amount would be appropriated by the assessee. Thus this collected balance amount is nothing but a consideration given by Sikkim Govt. to the assessee for operation and maintenance services for the said ropeway system and therefore it attracts Service Tax for ‘operation’ part under the head “Business Support Services” [Sec 65(105)(zzzq) of the Act]. In this connection, CBEC vide Instruction letter under F. No. 334/3/2011-TRU, dated 28.02.2011 has clarified that the scope of the Business Support Service has been expanded to include operational or administrative assistance of any kind. The scope will cover all support activities for others on a contract or fee, that are ongoing business support functions that businesses and organizations commonly do for themselves but sometimes find it economical or otherwise worthwhile to outsource. Therefore, the Service as referred to above falls under the category of Business Support Service. For ‘Maintenance’ part, the services provided by the assessee fall under “Management, Maintenance or Repair services” [Sec 65 (105) (zzg) of the Act]. The amount collected by the assessee is Rs. 1,19,00,380/- , Rs. 1,09,57,525/-, Rs. 1,07,17,590/- & Rs. 1,17,34,780/- less- Rs. 3,00,000/- each for each year and, as such, Taxable value comes to Rs. 1,16,00,380/-, Rs. 1,06,57,525/-, Rs/ 1,04,17,590/- & Rs. 1,14,34,780/-

respectively for 2008-09 to 2011-12.. The assessee is therefore required to pay Service Tax of Rs. **47,82,326/-** along with Interest & penalty as applicable.

(19) GIST OF OBJECTION: Wrong availment of CENVAT Credit on deposit Insurance premium
COMMISSIONERATE: Service Tax-I Commissionerate , Mumbai
CONTRAVENTION
OF PROVISION : Sub rule (2) of Rule 4 A of the Service Tax Rules, 1994 read with Rule 7 of CENVAT Credit Rules 2004

The assessee (a bank) which has his headquarter division at New Delhi is registered as an Input Service Distributor and used to make payments of insurance premium to Deposit Insurance and Credit Guarantee Corporation (DICGC) on account of deposits of the Bank for all the branches situated across India. The Deposit Insurance and Credit Guarantee Corporation (DICGC) is a wholly owned Subsidiary of Reserve Bank of India. To check whether the assessee is following the correct procedures for availing CENVAT Credit and debiting 50 % as per Rules 6 (3 c), preliminary examination was done.

As per R.B.I guidelines it is mandatory to insure the cash deposit of all the branches situated in India with DIGGC situated in India. It is observed that the assessee's Circle office , Mumbai have taken CENVAT Credit on such premium paid including Service Tax on three invoices by the DICGC whereas he should have availed credit on invoices issued by ISD.

However it is observed that the CENVAT Credit availed and utilized is incorrect for the following reasons:-

- (i) It is observed the entire credit referred to above has been availed by assessee's Circle office , Mumbai though the INSURANCE PREMIUM paid is in respect in respect of all branches of India and the input invoices are raised in the name of assessee's head quarter at New Delhi (Registered as ISD)
- (ii) However, no Input Service Distributer invoices have been issued by Headquarters PNB, New Delhi for distribution of said credit.
- (iii) As per sub rule (2) of Rule 4 A of the Service Tax Rules ,1994 every input service distributor distributing credit of taxable service shall, in respect of credit distributed shall issue an invoice , bill or as the case may be a challan which is signed serially number and shall contain the following namely

- a) name address and registration number of the person providing the input services and the serial number and date of invoices , bill or as the case may be
 - b) the name and address of the said service distributor address of registered person
 - c) the name and address of the recipient of the credit distributed
 - d) the amount of the credit distributed .
- (iv) Rule 7 of CENVAT Credit Rules 2004- Manner of Distribution of credit –authorise the ISD to distribute the Service Tax credit to its units subject to certain conditions-
From 01.04.2012 As per Rule 7(d) ‘ Credit of tax attributable to service used in more than one unit shall be distributed pro rata on the basis of the turnover during the relevant period on the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period
Explanation :- The relevant period shall be the month previous to the month during which the CENVAT Credit is distributed .
- (v) From the above it is clear that for distributing the CENVAT Credit to Mumbai Circle office of assessee, the Headquarter New Delhi ISD Unit has not issued any invoice which entitle the assessee to take the CENVAT Credit. Hence it is apparently clear that assessee’s Mumbai office have wrongly availed the CENVAT Credit in r/o Service Tax charged by DICGC in their invoices raised on Headquarters N.Delhi office .
- (vi) Further there is no evidence that the said invoice credit was not again distributed to other branches outside Mumbai by the ISD i.e. assessee’s Head Quarter , New Delhi.

Since,HO has neither distributed the CENVAT Credit on this basis nor furnished the branch-wise turnover in terms of Rule 7(d) supra, the credit so distributed is against the provision of CENVAT Credit Rules and not at all eligible and should be reversed. Assessee is required to pay Service Tax along with interest as detailed immediately.

- (20) **GIST OF OBJECTION: Non payment of Service Tax for services provided in India to the persons located abroad.**
COMMISSIONERATE: Service Tax Commissionerate, Chennai
CONTRAVENTION
OF PROVISION : sec. 66 of the Finance Act, 1994 read with export of services rules, 2005 read with rule 4 and 5 of Place of provision of services Rules 2012

During the course of audit profit and loss a/c of the assessee for the year 2011-12 and 2012-13 indicated that the assessee has accounted certain amounts as milestone receipts which is accounted as income. The details of payments received by the assessee from the persons abroad for the services performed in India amounted to Rs.41.92 Crores and Service Tax payable worked out to Rs. 6.04 Crore.

It was verified from the records that the assessee is not paying Service Tax for these services for the reason that these services are provided to foreign companies and therefore they are export of services and are not liable to Service Tax. On perusal of agreements entered with the persons referred above, it is seen that the assessee is undertaking testing and analysis of the active pharmaceutical ingredients of the drugs and chemicals for the clients and development of products. The payments received pertain to these services provided.

Section 65(105)(zzh) of the Finance Act, 1994 defines the taxable service as service to any person, by a technical testing and analysis agency, in relation to technical testing and analysis. The description of taxable service is provided in section 65(107) of Finance Act 1994 which reads “technical testing and analysis agency” means any agency or person engaged in providing service in relation to technical testing and analysis.

For the services rendered prior to 1-7-12, the relevant provisions relating to export of services are provided in the Export of Services Rules, 2005. As per the provisions of these rules these services were considered as exports when these services are actually performed outside India. As per the agreement and analysis report these services are actually performed in the laboratory of the service provider located in India.

Position after 01-07-12 In the negative list regime-

The service is provided by the assessee for consideration and is liable to Service Tax in terms of section 66B of the Finance Act, 1994. Export service is defined as per rule 6 A of Service Tax rules, 1994.

Hence, the above services were provided during the negative service regime will qualify as export of services provided all the above conditions of above rule is fulfilled.

One of the conditions is that the place of provision of the service is outside India, from the agreement and lab reports it is seen that the assessee has provided these services from India in their laboratory located in Irungatukottai near Chennai. Any claim by the assessee that these

services are provided from outside is not correct as they do not have an establishment or laboratory outside India and the bills are raised from India.

Therefore during both negative service regime and before the services provided by the assessee do not qualify as export service and assessee is liable to pay Service Tax for the above payments received towards provision of service. As per rule 4 and 5 of Place of provision of services Rules 2012 the place of provision of services shall be the location where the services are actually performed. Hence Rs.6.04 Crores as Service Tax is recoverable from the assessee along with interest.

**(21) GIST OF OBJECTION : Non-Payment of Service Tax on Water Service charges collected
COMMISSIONERATE : Service Tax Commissionerate, Chennai
CONTRAVENTION
OF PROVISION : Section 66 read with Section 65(105) (zzzg) of the Finance Act, 1994**

The assessee is registered for payment of Maintenance or Repair Service and Renting Services. During the course of audit, the invoices of the assessee indicated that he is collecting Water supply charges. The assessee maintains and operates the water supply facilities to the entire lease holders of vacant land. For the period from 2008-09 to 31-03-2013 assessee had collected an amount of Rs.6,88,34,270/- as water supply charges from their customers in DTA. The Service Tax amount workout to Rs.74,89,712/- . The assessee had not paid any Service Tax on such water supply charges collected.

“Business Support Service” was brought into Service Tax net with effect from 01-05-2006. Section 65(105) (zzzg) reads ‘taxable service’ as any service provided or to be provided to any person, by any other person, in relation to support services of business or commerce, in any manner.

Further Section 65(104c) defines ‘Support of Business or Commerce’ as services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation – For the purposes of this clause, the expression “infrastructural support services” includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities.

Hence it appears that the water charges collected by the assessee are chargeable to Service Tax under the category of infrastructure, under Business Support Service. Hence the assessee is required to remit Rs.74.90 Lakhs as Service Tax along with interest.

**(22) GIST OF OBJECTION: Non-adoption of rate of exchange as per sec. 67a for payment of Service Tax under reverse charge basis
COMMISSIONERAT : LTU Commissionerate, Chennai
CONTRAVENTION
OF PROVISION : Sec. 67A of the Finance Act, 1994**

The assessee is paying Service Tax on reverse charge mechanism as per Sl. No. 10 of Notification No. 30/2012-ST, dated 20.06.2012 read with Sec. 68 of the Finance Act, 1994, in respect of foreign exchange payments made towards Consulting Engineer services received.

As per Sec. 67A of the Finance Act, 1994, which was inserted with effect from 28.05.2012, the ‘rate of exchange’ means the rate of exchange referred to in the Explanation to Sec. 14 of the Customs Act, 1962, which explains that the ‘rate of exchange’ means the rate of exchange determined by the Board or ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency.

It was noticed that the assessee had paid Service Tax by adopting the ‘rate of exchange’ as indicated by the banks on the date of payment in foreign exchange to the service providers which is less than the exchange rate determined by the Board as per the periodical notifications issued in this regard. This has resulted in short-payment of Service Tax Rs. 24,94,158/-, Education Cess Rs. 49,883/- and SHE Cess Rs. 24,942/-. When pointed out, the assessee has paid the same along with interest Rs. 2,28,395/- The assessee is liable to pay penalty amount as per Sec. 73(4A) of the Finance Act, 1994.

(23) GIST OF OBJECTION: Irregular utilization of CENVAT Credit beyond the stipulated ratio of Cenvat under Rule 6 of CENVAT Credit Rules, 2004

COMMISSIONERAT : Central Excise Commissionerate, Tirupati
CONTRAVENTION
OF PROVISION : Rule 6 (3B) of the CENVAT Credit Rules, 2004

The assessee is providers of Banking and Financial Services. On verification of CENVAT Credit documents for the period from 2009-10 to 2012-13 (up to Sep 2012), it was noticed that assessee has taken and utilized 100% of credit on the input services, contravening the provisions of Rule 6 (3B) of the CENVAT Credit Rules, 2004, wherein it was stipulated that a banking company and a financial institution, including non-banking financial company, shall pay for every month, an amount equal to 50% of the Cenvat credit availed on inputs and input services in that month. The audit pointed out that the assessee irregularly utilized CENVAT Credit to the tune of Rs.45.97 lakhs during the said period, which has to be recovered along with interest and penalty. The assessee agreed to the objection and paid the tax amount. Interest and penalty have to be recovered.

- (24) **GIST OF OBJECTION: Irregular availment of CENVAT Credit on input services pertaining to other unit**
COMMISSIONERAT : Central Excise Commissionerate, Hyderabad-III
CONTRAVENTION
OF PROVISION : Section 66 of the Finance Act, 1994 read with Notification No. 24/ 2009-ST as amended by Notification No. 54/2010 dated 21.12.2010

The assessee is a provider of Works Contract services. During the course of audit, it was noticed that the assessee provided services of ‘laying Railway tracks for a joint venture of two companies other than assessee and is not a part of Indian Railway. Assessee was claiming exemption under Notification No. 24/ 2009-ST as amended by Notification No. 54/2010, dated 21.12.2010. The notification exempts ‘management, maintenance or repair’ services referred to in sub clause (zzg) of clause (105) of Section 65 of the Finance Act, 1994 provided to any person by any other person in relation to roads, bridges, tunnels, dams, airports, railways and transport terminals from the whole of Service Tax leviable thereon under section.

The audit pointed out that as per the Railways Act,1989, “Railway” means a Railway, or any portion of Railway for the public carriage of passengers or goods and the services provided by the assessee do not fall under ‘Railways’ as the Railways maintained by the assessee is not for the purpose of public carriage of passengers or goods. As the railways maintained by the

assessee are for private purposes ,the aforesaid exemption is not available to the assessee and for the years 2011-12 and 2012-13 (up to December 2012), they are liable to pay Service Tax of Rs. 149.98 lakhs along with interest and penalty. Since the said notification was rescinded consequent on introduction of 'negative list' the assessee paid Service Tax of Rs. 75.37 lakhs for the period from July 2012 to January 2013.

OSPCA

- (24) GIST OF OBJECTION: Inclusion of services/ value of the services in the Bills of Entry in the guise of goods in order to avail the benefit of exemption available to the import of goods under Customs Notification No.39/36**
- COMMISSIONERAT : LTU Commissionerate, Bangalore**
- CONTRAVENTION**
- OF PROVISION : Section 66 A of Chapter V of the Finance Act, 1994**

During the course of OSPCA for the period 2011-12, it is observed that in some of the Bills of Entry the assessee has declared the services imported as goods and has availed the benefit of exemption under Customs Notification No. 39/96-Cus dated 23.07.96 as amended. It is observed that in several cases, at the time of placing the purchase orders as well as while declaring the description of the goods upon import of Bills of Entry the services procured is mentioned as goods like Manuals, Compact Discs, Software etc. The issue could be noticed on calling upon the contracts entered into which were referred to in the purchase orders placed on the overseas supplier. The exemption Notification No. 39/96-Cus dated 23.07.96 as amended is available to the goods imported subject to fulfillment of the conditions specified therein and not for the services imported. The assessee has not discharged the Service Tax on the services imported in the guise of goods without payment of customs duty under Notification No. 39/96-Cus dated 23.07.96 as amended. The Service Tax liability amounts to Rs.10,82,01,856/- along with interest and penalty.

