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MONTHLY AUDIT BULLETIN – JANUARY, 2014

**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 : Non-reversal of credit on non-moving/obsolete items during the period 2012-13**  
**COMMISSIONERATE : Central Excise Commissionerate, Mysore**  
**CONTRAVENTION : Rule 3(5B) of the CENVAT Credit Rules, 2004**  
**OF PROVISION**

During the course of audit, it was noticed that the raw materials on which CENVAT Credit had been availed were not utilised in the manufacture of goods for certain period. The assessee had made 'Provisions of obsolete/surplus' for the said material in his accounts as on 31.03.2013 and did not reverse the CENVAT Credit availed in terms of Rule 3(5B) of the CENVAT Credit Rules, 2004. On pointing out, the assessee agreed and reversed involved amount of Rs.48,74,889/- through Cenvat account.

- (2) **GIST OF THE OBJECTION : Incorrect CENVAT Credit taken on the basis of documents showing description of inputs different from the description of the inputs actually received**

**COMMISSIONERATE : Central Excise Commissionerate, Chennai – II**  
**CONTRAVENTION : Rule 9 of the CENVAT Credit Rules, 2004**  
**OF PROVISION**

The assessee is the manufacturer of Bushings and Washers of Iron/Steel/Copper. Copper is one of the raw materials for the manufacture of the final products. The assessee prepared Goods Inward Note (GIN) on receipt of the raw materials in the factory. During the course of perusal of GINs prepared for period from 04/2012 to 10/2013, it was noticed that the GIN was issued for the receipt of 5000 kg of Copper Wire Rod. On perusal of related Invoice pertaining to this receipt, issued by the Central Excise dealer, it was noticed that the description of the goods

supplied was mentioned as Copper Ingots. It was evident that the description of inputs shown in the CENVAT document (Copper Ingots) was different from the description of inputs actually received (Copper Wire Rod).

The production in charge of the assessee explained that Copper Ingots were not being used in the manufacture of Copper Alloy in the factory as the same may damage/break the furnace. It was contended that the supplier mentioned Ingots wrongly in the invoices even though the goods actually supplied were Copper Scrap, Copper Wire Rod, etc. The assessee requires pure Copper (above 99%) for the manufacture of Alloy Powder. Copper Alloy or Copper Alloy Ingots may not suit the requirement. It is evident that the description of inputs shown in the CENVAT document was different from the description of inputs actually received. The invoices so issued are fraudulent and incorrect and CENVAT Credit taken on the basis of such invoices by the assessee is incorrect and in contravention of the provisions of Rule 9 of the CENVAT Credit Rules, 2004. The total incorrect CENVAT Credit taken by the assessee, works out to Rs.64,14,868/-.

**(3) GIST OF THE OBJECTION : Non-payment of Central Excise duty  
COMMISSIONERATE : Central Excise Commissionerate, Kolkata-I  
CONTRAVENTION : Section 3 of the Central excise Act , 1944 read with Rules  
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OF PROVISION and 8 of the Central Excise Rules 2002**

During the period 2008-09 to 2012-13, the assessee has been manufacturing printed packaging material i.e., cover of MP3/DVD/VCD/CD and selling the same to one well known Music records manufacturing Company. It was observed that the assessee procured paper/ paper board (raw material) from the said Company and performed printing and lamination work, using his own inputs like ink and laminates. The assessee also performed processes like cutting, folding, application of glue/ adhesive etc, which result in taking the shape of printed and laminated CD cover, open on one end and closed on the other sides. These processes on the said packing materials are tantamount to manufacture in terms of Section 2(f) of the Central Excise Act, 1944 and the said packing materials are classifiable under S.H. No. 4819. The assessee did not agree to the contention of audit team. The assessee submitted that the responsibility of

discharging duty is on the supplier of raw material in terms of Notification No.214/86-CE, dated 25.03.1986. However, it has been informed by the jurisdictional Asstt Commissioner that no undertaking under Notification No.214/86-CE, dated 25.03.1986 has been filed by the said Company for the above period. The assessee over the period cleared the said packing materials without payment of Central Excise duty. Thus, he is required to pay Central Excise duty amounting to Rs.28,12,250/-, Edu. Cess of Rs.56,245/-and SHE Cess of Rs.28,123/-, totaling in all to Rs.28,96,618/-, during the said years, alongwith applicable interest and penalty in terms of the Section 11AC of the Central Excise Act, 1944.

**(4) GIST OF THE OBJECTION: Short reversal of credit on inputs in process and contained in**

**finished products**  
**COMMISSIONERATE : Central Excise Commissionerate, Kolkata -I**  
**CONTRAVENTION : Rule 11(3)(ii) of the CENVAT Credit Rules , 2004**  
**OF PROVISION**

The assessee is a manufacturer of Ready Made Garments. CE duty on garments has been exempted w.e.f 01.03.2013 vide Notification No. 11/2013-CE dated 01.03.2013. In course of audit , it was observed by the auditors that the assessee had **reversed** Rs.4,31,119/- which is equivalent to CENVAT Credit taken on input lying in stock, in process and contained in the final products on the opening balance as on 01.03.2013 under Rule 11(3)(ii) of the CENVAT Credit Rules, 2004. But it has been observed by the auditors that 1804.21 M.T of Acrylic Propylene Yarn (A.P.Yarn), on which CENVAT Credit was availed, was lying with Job Worker as on 01.03.2013 (opening Balance) and 2,29,969 pcs of plastic packages (on which credit was taken) contained in the final products as 01.03.2013 (Opening Balance) had not been considered for reversal of credit under Rule 11(3)(ii) of the CENVAT Credit Rules, 2004. The assessee is therefore required to pay CE Duty of Rs.72,481/-. The assessee agreed with the contention of audit and paid CE duty as aforementioned.

**(5) GIST OF THE OBJECTION : Non Amortization of Die Cost in the transaction value**  
**COMMISSIONERATE : Central Excise Commissionerate, Pune I**  
**CONTRAVENTION : Section 4 of the Central Excise Act, 1944 read**  
**OF PROVISION with Valuation ( Determination of price of excisable goods ) Rules, 2000**

During the course of audit and on verification of sales invoices, ER-1 returns, it was observed that the assessee had not amortized the cost of dies, received free from the supplier, while clearing the finished goods during the period April, 2010 to Sept., 2013. The total amount of duty payable on such clearances worked out to Rs.4543785/-(Duty), Rs.90876/- (Ed.Cess), Rs.45438/- (SHE Cess) (Total: Rs.4680099/-). On pointing out, the assessee agreed to the objection and paid the duty amount of Rs.46,80,099/-, Interest of Rs.1090148/- and penalty Rs.713360/-.

- (6) **GIST OF THE OBJECTION : Non inclusion of cost of Free of Cost materials**  
**COMMISSIONERATE : Central Excise Commissionerate, Nashik**  
**CONTRAVENTION : Section 4 of the Central Excise Act 1944 read with**  
**Valuation**  
**OF PROVISION (Determination of price of excisable goods) Rules, 2000**

The assessee is engaged in manufacture of Electrical parts, parts of Road Roller, Pressing Tools and Parts thereof falling under Chapter 85381010, 84314910 & 82073000 of the Central Excise Tariff Act, 1985. The assessee is availing the Cenvat facility on inputs, input services and capital goods. During the course of Audit, on going through the records, it was noticed that the assessee manufactured Platform (part of Road Roller) and paid duty on the same as per the transaction value. However on going through the details, it was noticed that the assessee received parts and accessories under cover of Job work challan from another company and assembled those with the platform. The said assembly of the parts, accessories and platform is then named as Platform assembly and thereafter was cleared by paying duty only on the Platform and not on the total cost of the platform assembly. The assessee is required to pay duty on the total platform assembly i.e Cost of platform + Free of Cost materials received under cover of Job work Challan + Job Charges.

The total differential duty on above account was worked out to Rs.23,99,499.00 + 47,990.00 (Edu.Cess) + 23,995.00 (H.Edu. Cess) Total Rs. 24,71,484.00

On pointing out, the assessee accepted the lapse and paid the differential duty of Rs.23,99,499.00 + 47,990.00 (Edu.Cess) + 23,995.00 (H.Edu. Cess) along with interest of Rs. 1,88,658.00 vide E Payment Challans dated 30.11.2013.

**(7) GIST OF THE OBJECTION : Short payment of the duty in respect of the clearances to**

<b>COMMISSIONERATE CONTRAVENTION OF PROVISION</b>	<b>Sister Concern : Central Excise Commissionerate, Nashik : Rule 8 of the Valuation (Determination of price of excisable goods) Rules, 2000 read with Board's circular no. 692/8/2003 dated 13.2.03</b>
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The assessee is engaged in manufacture of M.V.Parts falling under Chapter 87089900 of the Central Excise Tariff Act, 1985. The assessee is availing the Cenvat facility on inputs, input services and capital goods. During the course of Audit it was noticed that the assessee had removed their semi finished/Intermediate goods to their own units at different locations. The assessee paid the duty for the period from April 2012 to Sept. 2013 on the basis of **CAS 4** certificate for the financial year 2011-2012. On enquiry with the assessee it was learnt that the assessee have not done the valuation of his goods removed to his own unit under CAS 4 as required under Board's circular no. 692/8/2003, dated 13.02.03 for the above period on the basis of CAS 4 for 2012-13. As such the assessee had short paid the duty in respect of the clearances to his sister concern. The total differential duty as per the CAS 4 certificate for the period 2012-13 and 2013-14 (Upto Sept. 2013) was worked out to Rs.26,70,864/- + 53,417/- (Edu.Cess) + 26,709/- ( H.Edu. Cess) Total Rs. 27,50,990/-.

On pointing out, the assessee has accepted the lapse and paid the differential duty of Rs.26,70,864/- + 53,417/- (Edu.Cess) + 26,709/- (H.Edu. Cess) along with interest of Rs.2,79,486/- vide E Payment challans dated 16.11.2013.

(8) **GIST OF THE OBJECTION: Sale of Billet to Related Units - Undervaluation amount involved**

**COMMISSIONERATE : Central Excise Commissionerate, Raipur**  
**CONTRAVENTION : Rule 9 read with Rule 8 of the Valuation (Determination of**  
**OF PROVISION price of excisable goods) Rules, 2000**

During the course of Audit it is observed that the assessee is indulge in Manufacturing of Excisable Goods i.e. Billet/Bloom and selling the final products, i.e, Iron & Steel, Billet/ Blooms to his related units, who in turn are consuming the same in their factory for manufacturing of Rolled products..

As per the proviso to Rule 9 of the Valuation (Determination of price of excisable goods) Rules, 2000, the transaction value in the instant case is required to be computed on the basis of CAS-4 in terms of Rule 8 of the said Rules. Accordingly, the differential value was computed to be Rs.10,88,04,776/- and differential duty to be Rs. 1,34,48,270/- (including Cess) which was admitted and paid by the party along with interest of Rs.23,13,875/- vide Challan No.0200529211120130013 dated 21.11.2013.

### SERVICE TAX

(9) **GIST OF THE OBJECTION:Short - payment of Service Tax on the activities carried out under Commercial or Industrial Construction Service**

**COMMISSIONERATE :Service Tax Commissionerate, Ahmedabad**  
**CONTRAVENTION :Section 66 read with Section 68 of the Finance Act, 1994**  
**OF PROVISION read with Rules 6 and 7 of Service Tax Rules,1994 and**  
**Section 70 of the Finance Act,1994**

The Assessee is registered with the department for providing Commercial or Industrial Construction Service Taxable under Section 65(105)(zzq) taxable with effect from 10.09.2004, Site preparation service which is taxable with effect from 16.05.2005 under section 65(105)

(zzza) and Mining service which is taxable with effect from 01.06.2007 under section 65(105) (zzzy) of the Finance Act,1994..

The assessee was providing their service of construction of canal, Bridges, Roads, etc. to government or governmental authorities. The same being excluded from the definition of Commercial or Industrial Construction Service, they were not discharging Service Tax on such service. Further, they were also rendering site formation/ mining services to certain private agencies. The services rendered to these entities were taxable and assessee was paying Service Tax on the same.

Scrutiny of various activities related to construction carried out on behalf of Sabarmati River Front Development Corporation under various purchase order, revealed that the assessee had carried out activities such as “Constructing of RCC overflow chamber on junction of SWD and Sewer Diversion pipe line including P/L of R.C.C. NP-4 class Sewer Pipe line and C.I. Sluice gates on West Bank of Sabarmati River from Sabarmati Power station to Sardar Bridge on River Sabarmati, Constructing General Earth Fill for the Embankment Construction behind R.C.C. retaining Wall for the length of 575 mt on East Bank from Subhash Bridge to 575 mt Downstream on River Sabarmati for Sabarmati River Front Development Corporation, Ahmedabad.” etc.

The aforesaid activities are related to construction and the same are classifiable under “Commercial or Industrial Construction Service as defined under section 64(25b) of the Finance Act, 1994. The said service is taxable under section 65(105)(zzq) of the Finance Act,1994.

Scrutiny of the record revealed that the assessee had not declared the taxable value charged from SRFDC in the ST-3 return, not paid Service Tax on the taxable value under their belief that such activities were not covered in the definition of “Commercial or Industrial Construction Service”. Assessee had not included the said service in the ST-2 registration.

From the details given by the assessee the year wise Service Tax liabilities is ascertained as Rs. 8,57,95,771/- on the taxable value of Rs. 79,20,84,453/- for the year 2008 to 2011-12.



The aforesaid amount of Service Tax is required to be recovered along with Interest under the proviso to section 73(1) of the Finance Act, 1994.

- (10) **GIST OF OBJECTION : Non-payment of Service Tax on the value of spares/parts used during servicing of vehicles**  
**COMMISSIONERATE : Central Excise Commissionerate, Jaipur-I**  
**CONTRAVENTION : Section 67 of the Finance Act, 1994 read with Board's circular**  
**OF PROVISION : No. 96/07/2007-ST dated 23.08.2007**

The Assessee is registered with the department for the services namely "Services of Motor Vehicle" and "Business Auxiliary Service".

During the course of audit, it was observed that the assessee during the course of servicing of vehicles had used spare parts. However, no Service Tax had been paid on the value of such spare parts so used. The Board vide circular No. 96/07/2007-ST dated 23.08.2007 (reference code 036.03/23.08.2007) has already clarified that any goods used in the course of providing service are to be treated as inputs used for providing the service and accordingly, cost of such inputs form integral part of the value of the taxable service. Where spare parts are used by a service station for servicing of vehicles, Service Tax should be levied on the entire bill, including the value of the spare parts, raised by the assessee, namely, service stations.

During the period April 2010 to March 2013, Service Tax payable on the value of spare parts used was ascertained as Rs. 24,57,148/-, which is required to be recovered along with interest.

- (11) **GIST OF OBJECTION : Non - payment of Service Tax on commission on sales paid to foreign agents under the category of Bussiness Auxillary Service under reverse charge mechanism**  
**COMMISSIONERATE : Central Excise Commissionerate, Mangalore**  
**CONTRAVENTION : Section 66A read with Section 68(2) of Finance Act, 1994**  
**OF PROVISION**

During the verification of Profit & Loss account for the year 2012-13 it was observed that the assessee had incurred expenditure of Rs.8,53,42,078/- towards payment of commission of sales. Further on verification of the concerned ledger account and bills/invoices it was observed

that the assessee had paid commission to foreign agents towards sale of ships. In terms of Section 68(2) of Finance Act, 1994, the assessee was liable to pay Service Tax on the above amount under the category of 'Business Auxiliary Service' on reverse charge basis as the **services provider** was located outside India. The Service Tax payable worked out to Rs.1,06,16,505/- and interest payable as Rs.25,75,677/-(upto 30.11.2013).

**(12) GIST OF OBJECTION: Non-payment of Service Tax on reimbursement of expenditure incurred**  
**COMMISSIONERAT : Central Excise Commissionerate, Belgaum**  
**CONTRAVENTION : Section 67 of Finance Act, 1994**  
**OF PROVISION**

The assessee had entered into contract with certain company for operation and maintenance of packing plant including loading the cement in trucks/railway wagons. The said services are classifiable under (1) Management, Maintenance or repair service (2) Business auxiliary services and (3) Cleaning activity services. During the course of audit it was noticed that the assessee had incurred expenditure on the items namely Bonus, Leave with wages, paid holiday, PF and ESI, Tractor Bill, Idle Wages, Adhoc Payment, LTA payment, Transportation and Festival Advance receipts. Further, the assessee had claimed and received the reimbursement of these expenses. But while discharging Service Tax on the services rendered to the said certain company, the assessee had paid Service Tax only on the bags handling, cleaning receipts, O&M receipts and seal man receipts only. i.e. the assessee had not taken the gross amount charged by him to the said company for the services provided. In terms of Section 67(1) of Finance Act, 1994, where Service Tax is chargeable on any taxable with reference to its value, then such value shall be the gross amount charged. As per Section 67(3) the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service. Further, as per Rule 5 of the Service Tax Rules, 2006 where any expenditure of costs are incurred by the assessee in the course of providing taxable service, all such expenditure of costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging Service Tax on the said service. The assessee had clearly failed by not including the above expenditure in the taxable amount and also failed to pay Service Tax on gross amount charged by him to the client. The total Service Tax payable worked out to Rs.87,33,928/-

- (13) **GIST OF OBJECTION : Wrong availment of CENVAT Credit on inputs used for providing partially exempted Works Contract Services**  
**COMMISSIONERATE : LTU Commissionerate, Bangalore**  
**CONTRAVENTION : Rule 2A(ii)(B) of the Service Tax (Determination of Value) Rules, 2006**  
**OF PROVISION**

During the course of verification of ST3 returns of the assessee, it was observed that the assessee had availed an amount of Rs.1,49,08,820/- as CENVAT Credit on inputs. On verification of the same, it was observed that the assessee had availed the said credit on spares used for providing warranty services. On further verification, it was also observed that the assessee had availed benefit of Rule 2A(ii)(B) of the Service Tax (Determination of Value) Rules, 2006 and paid Service Tax at the abated value of 70% of gross value. The benefit of this rule is available only if CENVAT Credit on input is not availed. Since the assessee had availed CENVAT Credit on inputs as well as availed benefit of the said Rule, it appears that the credit availed was wrong and liable to be reversed. On pointing out the assessee agreed and reversed the full amount of Rs.1,49,08,820/-.

- (14) **GIST OF OBJECTION : Non payment of Service Tax on Ocean and Air freight collected with Mark-up**  
**COMMISSIONERATE : Service Tax Commissionerate, Chennai**  
**CONTRAVENTION : Section 67 of the Finance Act, 1994 read with Service Tax**  
**OF PROVISION (Determination of Value) Rules, 2006**

The Assessee is registered with the department for providing Business Auxiliary Services, Transport of Goods by Road and Business Support Services. During the course of audit, it was noticed that the assessee had collected sums over and above the actual freight charges under Business support services for the period from December 2008. This amount collected from the customers would not qualify for exclusion in terms of Rule 5(2) of Service Tax (Determination of Value) Rules, 2006. Further, as per provisions of Section 67 of the

Finance Act read with Service Tax (Determination of Value) Rules, 2006, Service Tax is payable on the gross amount charged. The assessee is providing logistics service, classifiable under Business Support Service. Hence, the gross amount charged should have been reckoned as taxable value whereas the assessee did not paid Service Tax on freight charges. The Service Tax payable on the freight charges not considered for payment of Service Tax worked out to Rs.3,83,68,127/- for the period from December 2008 to August 2013.

**(15) GIST OF OBJECTION : Wrong availment of CENVAT Credit on the Service Tax paid on repair and maintenance charges**  
**COMMISSIONERAT : Service Tax Commissionerate, Chennai**  
**CONTRAVENTION : Rule 2 (I)(ii) of CENVAT Credit Rules, 2004**  
**OF PROVISION**

The assessee is registered for Maintenance and Repair Service, Erection Commissioning & Installation Service and Goods Transport Agency Service. Assessee received the batteries from his factories situated at different cities and stored those.

During the verification of the records of the company, it was noticed that the assessee was undertaking repair and maintenance service using outside contractors at the premises of the retail dealers and paid Service Tax to such a contractors.

As per Rule 2 (I)(ii) of CCR, Input service should be used for providing output service (or) used by the manufacturer, whether directly or indirectly in the relation to the manufacture of final product and clearance of final product upto place of removal.

The assessee engaged contractors to carry out Repair & Maintenance service on behalf of the company and the contractors paid Service Tax on such repair and maintenance. The assessee availed credit of Service Tax paid by the contractors and passed on that to the factories as ISD. As per Rule, any input service eligible for credit is available only up to the place of removal. Service rendered beyond the place of removal like “after sales service & Repair & maintenance service” which the assessee was doing under repair & maintenance by engaging contractors was not eligible for credit. The assessee had so far availed the credit of Rs.1.33 crores for the period from April 2009 to August 2013. This amount availed as credit wrongly should be reversed/paid.

**(16) GIST OF OBJECTION : Non payment of Service Tax during October 2008 to June, 2012**

**Financial**

**on activities /transactions covered under Banking and**

**services**

**COMMISSIONERATE : CENTRAL EXCISE COMMISSIONERATE , GUNTUR**

**CONTRAVENTION : SECTION 66 OF THE FINANCE Act , 1994 read with Board's  
OF PROVISION Circular No.97/7/2007 dated 23.08.2007**

The assessee runs chit funds and was providing the services of Cash Management in the form of Chits to his customers /subscribers from 1988 onwards. The audit verified the annual reports /ledgers and noticed that assessee collected commission on Chits from his customers / subscribers at the time of auctioning of chits in relation to the management of chits, which was nothing but Cash Management. The audit pointed out that from Part a(v) of sub-section 12 of Section 65 of the Finance Act, 1994, Cash Management service was covered under "Banking and Other Financial services". The CBEC has clarified vide Circular No.97/7/2007, dated 23.08.2007 that consideration/ commission received on account of the management of the Chit Fund is leviable to Service Tax under "Banking and other Financial Services". The assessee, however, did not collect and pay the Service Tax on those charges. The Service Tax liability thereon worked out to be Rs.84.18 lakhs for the period from October 2008 to June 2012.

**(17) GIST OF OBJECTION: Short payment of Service Tax resorting to dividing the actual service rendered into different/ separate activities and paying Service Tax only on portion of service**

**COMMISSIONERATE: Central Excise Commissionerate, Hyderabad IV**

**CONTRAVENTION : Section 67 of the Finance Act, 1994 read with Service Tax OF  
PROVISION (Determination of Value) Rules, 2006**

The assessee is provider of R& D Services. During the course of verification, the audit studied the Master Services Agreement dated 19.04.2007, the assessee entered into with certain company located in USA to perform R&D services and support services in respect of drug development. The audit noticed that the assessee had no other activity and was undertaking said

activities, exclusively for the said certain company. The services were agreed to be performed on the basis of actual costs with a markup of 20% for R&D and 5% for support services.

The audit noticed that the assessee started paying Service Tax on the services rendered on R&D services, w.e.f 01.07.2012, as per the 'Place of Provision of Service Rules, 2012, effected vide Notification No. 28/2012-ST, dated 20.06.2012. The audit verified the invoices and work sheets raised by the assessee and noted that instead of a single invoice being issued previously covering all the R&D activity, assessee started raising two invoices for the same activity and discharged Service Tax liability only on a portion of the services rendered by dividing the R&D services in to ten different items grouped as under:

- (a) Research, Bio-analytical services: R&D service with 20% mark up- Service Tax paid
- (b) Process Chemistry, Drug Product: R&D service with 20% mark up - Service Tax not paid
- (c) Quality assurance, Facilities: R&D service with 20% mark up- taken as consumed in (a) and (b) and distributed on ratio of costs
- (d) Administration, Human Resources, EH&S: Support service with 5% mark up-taken as consumed in (a) and (b) and distributed on ratio of costs.

The audit studied the new drug development process and pre-clinical development process flow and observed that process chemistry and product development are integral part of the Research and Development activity undertaken by the assessee by testing on animals, under one single Master Services agreement mentioning all those services as "R&D services". The audit pointed out that the assessee was liable to pay Service Tax on the gross amount charged for the services including process chemistry and product development. The tax liability for the period July 2012 to March 2013 worked out to be Rs. 214.44 lakhs along with interest and penalty. The assessee agreed to the audit objection and paid Service Tax of Rs. 103.63 lakhs and informed that the remaining amount was adjusted against excess payment made for the period from October 2007 to March 2011. The audit pointed out that present liability can not be adjusted against the past excess payment and the remaining tax along with interest and penalty has to be recovered.

**(18) GIST OF OBJECTION : Irregular availment of CENVAT Credit against input services not**

**related to output service**

**COMMISSIONERATE : Central Excise Commissionerate, Hyderabad-II**

**CONTRAVENTION : Rule 3 of CENVAT Credit Rules, 2004**

**OF PROVISION**

The assessee is provider of 'Renting of Immovable property' and 'Maintenance and Repair' services. During the course of audit, it was noticed that the assessee was paying Service Tax in Cash and CENVAT Credit for all the services except for 'Banking and Financial Services' as the income earned in this category was only interest, which was claimed as exempted. It was noticed that the assessee had availed CENVAT Credit on input services under the category of "Banking and Other Financial Services" and utilized the same for payment of Service Tax in respect of "Renting of Immovable Property Services" and " Management, Maintenance and Repair Service" for the years 2010-11,2011-12, and 2012-13. The audit pointed out that since Service Tax was not paid in respect of "Banking and Other Financial Services", credit availed against input services under the said services was irregular and need to be reversed.

**(19) GIST OF OBJECTION: Non payment of Service Tax on income from Ore handling-  
classifiable under Port Services**

**COMMISSIONERAT : Central Excise Commissionerate, Goa**

**CONTRAVENTION : Sec. 66 of the Finance Act, 1994**

**OF PROVISION**

During the course of audit it was noticed that in the F.Y 2010-11 & 2011-12 the assessee earned income of Rs.10,31,24,261 and Rs. 7,21,93,212 /- respectively, under the heading "Ore Handling Income", however it was noticed that no Service Tax was paid on the said income. The "Ore Handling" activity was undertaken by the assessee in pursuance to the agreement with certain company on 16/03/2010. As per the said agreement assessee had a plot and a loading jetty at Maina, Vill.- Navelim under survey no. 141/2, 139 of Navelim village in Bicholim Taluka. The jetty and the plot are jointly referred to as the "Maina Plot". This jetty also happens to be on the banks of the river Mandovi.

The above mentioned certain company was in need of Services/Infrastructure for pre shipment operations viz. stacking of iron ore, handling of the same at the plot, loading of the Barges at the jetty. Vide the said agreement assessee agreed to provide one time handling within the plot & jetty, high piling and loading the stacked ore at Maina plot into the barges. Assessee also permitted the said certain company to use the weigh bridge free of charge for weighment of Iron ore being brought into the plot for stacking or for loading directly into the barges. In pursuance of the said agreement, assessee handled the ore and loaded the ore into the barges at the Maina jetty and for services rendered, the said other company paid the assessee Rs.10,31,24,261/- in F.Y.2010-11 and Rs, 7,21,93,212 /- during the F.Y. 2011-12.

From 01/04/2010 “Port Service” as defined in Section 65(105) (zn) read as: “to any person, by any other person in relation to port service in a port, in any manner, provided that the provisions of Section 65A shall not apply to any Service when the same is rendered wholly within the port”; consequently any Service undertaken within the port area will be classified as “Port Service”.

Vide Notification I&L/V/118/67/2891 issued by the then Lt. Governor of Goa, Daman & Diu and in exercise of the powers conferred by Section 4 of the Indian Port Act, 1908, the limits of Panaji Port to the east are as follows “All the waters of the river Mandovi, Mapusa, Naror (including Cumburjua Canal) and the waters of the river Zuari eastward of the Agacaim-Cortalim ferry”. Therefore the jurisdiction of the Panaji Port extends to the whole of the river Mandovi among others. As the jetty owned by the assessee is on the banks of the river Mandovi and they have provided the service of ore handling i.e stacking and loading into the barges, and have received a consideration for the same, the assessee is liable to pay Service Tax under the category of “Port Service”, even though they have handled the ore in relation to export of goods.

Therefore assessee is required to pay the Service Tax of Rs. 1,80,57,700 /- for providing Port Services alongwith interest.

**(20) GIST OF OBJECTION : Non payment of Service Tax on services received from foreign subsidiary Companies and wrong claim of exemption under Notification No.9/2009-ST, dated 03-03-2009 as amended**



**COMMISSIONERATE : Service Tax Commissionerate Mumbai I**  
**CONTRAVENTION OF PROVISION : Section 66A of Chapter V of the Finance Act 1994 read with Rule 2(1)(d)(iv) of the Service Tax Rules, 1994.**

Scrutiny of expenditure incurred in foreign currency revealed that during the year 2008-09 and 2009-10, amounts of Rs.5,82,17,370/- and Rs.1,24,38,348/- incurred on account of payment to overseas companies i.e. mainly to subsidiary companies of assessee had not taken into consideration by the assessee for the purpose of payment of Service Tax under reverse charge mechanism. Further scrutiny revealed that the main service availed against said payments was marketing Service from their foreign subsidiaries.

The said foreign expenditure was related to service obtained from the overseas subsidiaries for assessee's unit situated at SEZ and payment of Service Tax (under reverse charge mechanism) was assumed to be exempted vide Notification No. 04/2004-ST, dated 31-03-2004 and Notification No.9/2009-ST, dated 03-03-2009 as amended by Notification No.15/2009-ST dated 20-05-2009. During the year 2008-09 upto 02-03-2009, as per relevant Notification No.4/2004-ST, dated 31-03-2004 taxable service provided to a unit of SEZ by any provider for **consumption of the services within such Special Economic Zone** was exempted from whole of Service Tax leviable thereon **under Section 66 of the Finance Act, 1994**. The exemption was inter alia based on the condition that the unit of a SEZ shall maintain proper account of receipt and utilisation of the said taxable services.

During the period 03-03-2009 to 19-05-2009, as per relevant Notification No.9/2009-ST, dated 03-03-2009, taxable service provided to a unit of SEZ by any assessee in relation to the authorised operations, was exempted from whole of Service Tax leviable thereon **under Section 66 of the Finance Act, 1994**, whether or not the said taxable services are provided inside the SEZ. The exemption was to be claimed by units of SEZ by way of refund. The exemption was inter alia based on the condition that the unit of a SEZ shall get the list of services approved from Approval committee. During the period there was no provision of upfront exemption.

During the further period from 20-05-2009 to 31-03-2010 (in the year 2009-10) Notification No.9/2009-ST, dated 03-03-2009 was amended by Notification No.15/2009-ST, dated 20-05-2009. As per the said amendment services **consumed wholly within the SEZ became directly exempted from payment of Service Tax**. In respect of services consumed

wholly or partially outside the SEZ in relation to the authorised operations in SEZ, **the assessee was required to pay Service Tax and unit in SEZ needed to claim refund.**

From the text of both the Notifications, it is very clear that the exemption during the relevant period was in respect of taxable services provided to a unit of the SEZ by any provider for **consumption of the services within such Special Economic Zone** from whole of Service Tax leviable thereon (except for the period 03-03-2009 to 19-05-2009 when there was no direct exemption at all) **under Section 66 of the Finance Act, 1994. There was no exemption in respect of Service Tax on taxable services received from outside India (reverse charge mechanism) under Section 66A during the relevant period.**

In fact the exemption for Service Tax chargeable under **Section 66 and 66A** received by unit in a SEZ was provided in subsequent Notification No.17/2011-ST w.e.f. 01-03-2011 and was not available prior to that period.

Further from the nature of service received i.e. Marketing Service received (performed outside India) from overseas companies for marketing in foreign countries, it cannot be said that **consumption of such marketing services was within Special Economic Zone in Pune.** Secondly assessee did not maintain proper account of receipt utilisation of the said taxable services. The allocation of proportionate quantum to unit in SEZ cannot be treated as proper account of receipt and utilisation. The assessee did not obtain the list of services approved from Approval committee as required under Notification No.9/2009-ST, dated 03-03-2009 as amended by Notification No.15/2009-ST, dated 20-05-2009. Therefore none of the conditions of Notification No.4/2004-ST, dated 31-03-2004 and Notification No.9/2009-ST, dated 03-03-2009 as amended by Notification No.15/2009-ST, dated 20-05-2009, on the strength of which the assessee have claimed the exemption from payment of Service Tax, were fulfilled. Therefore Service Tax is payable on the said foreign expenditure amounting to Rs.7,06,55,718/- in terms of Section 66A of Chapter V of the Finance Act 1994 read with Rule 2(1)(d)(iv) of the Service Tax Rules, 1994.



