



Government of India

MONTHLY AUDIT BULLETIN – JUNE, 2013

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CENTRAL EXCISE

- (1) **GIST OF THE OBJECTION** : Wrong classification of Seaweed Granules as organic manure under Chapter 31 instead of Plant growth regulator under Chapter 38.

COMMISSIONERATE : Central Excise **Commissionerate**, Ahmedabad – II
CONTRAVENTION OF PROVISION :

The assessee is engaged in manufacturing Pesticides falling under chapter 38 and 31. During the course of audit It was observed that during the months of July,2012 to Oct,2012 the assessee had cleared 'Sea Weed Graduals (Organic manure)' in bulk form in 25 Kg pack and classifying the same under SH 31010099 as Organic manure, exempted from duty. The clearances have been affected under the brand names, namely "Gold Coin GR". On being asked, the assessee informed that they have imported "Sea Weed Extract in bulk form and carryout Process of mixing and blending that it is an organic fertilizer, and exempted from duty.

The leaflet produced by the assessee had the following description, chemical composition and recommendation for use:

"Gold Coin GR is a eco-friendly organic nutrient formulation containing natural hydrolyzed proteins of vegetable origin, which provides excellent plant nutrition and growth promotion for cereals, pulses, sugarcane, vegetables, availability of amino acids, enzymes and micro nutrients optimum metabolite formulation, resulting in better germination of seeds and setts, strong and extensive root system, enhanced tolerance to stress and diseases, better retention of flowers, increased yields and enhancement of the size, colour, flavour of the plant. GOLD CO;N GR provide the plants balanced nutrition and growth enhancing activity. It is biodegradable and extremely safe.

Directions for use: - Broadcast 8 Kg. granule in I Acre field and mix through ploughing.

The description of both the tariff headings and the description of Plant Growth Regulator given in HSN are compared as follows:

Central Excise Tariff heading for fertilizer 3101: Animal or vegetable fertilizers, whether or not mixed together or chemically treated; fertilizers produced by the mixing or chemical treatment of animal or vegetable products. Central Excise Tariff definition of 38089340: Plant growth regulators are applied to alter the life processes of a plant so as to accelerate or retard growth, enhance yield, improve quality or facilitate harvesting, etc. Plant hormones (phytohormones) are one type of plant growth regulator (eg gibberellic acid). Synthetic Organic Chemicals are also used as plant-growth regulators.

HSN description 3808: Insecticides, Rodenticides, Fungicides, Herbicides, Anti-sprouting.

Products and Plant Growth Regulators, Disinfectants and similar products, put up in forms or packing for retail sale or as preparations or articles (for example, Sulphur treated bands, wicks and candles and Fly papers.

The products of heading 3808 can be divided into the following groups:

- (I) Insecticides ...
- (II) Fungicides ...
- (III) Herbicides, anti-sprouting products, plant growth regulators.

Plant growth regulators are applied to alter the life processes of a plant so as to accelerate or retard growth, enhance yield, improve quality or facilitate harvesting, etc. Plant hormones (phytohormones) are one type of plant growth regulator (e.g gibberellic acid). Synthetic Organic chemicals are also used as plant growth regulators.

The difference between the use of fertilizers and Plant growth regulators is reproduced below:

Fertilizers	Plant Growth Regulators
They are a source of nutrients like essential elements and minerals like Nitrogen, Phosphorus, Potassium, Zinc etc. for healthy and well balanced growth of Plants.	Plant Growth Regulators are actually Plant hormones that regulate cellular processes in targeted cells locally by determining the formation of flowers, stems and leaves, the development and ripening of fruits etc.
Necessary for healthy plant growth. But the metabolism of the plant is not altered.	Plant Growth regulators are effective by altering certain select metabolic functions of plants to bring about the desired effect.

Sea weeds are a rich source of Plant hormones. It is the presence of Plant Hormones in the Sea Weed Extract that is responsible for the desired benefits. Plant hormones, also called plant growth substance, are chemicals that regulate plant growth. These hormones regulate cellular processes in targeted cells locally by determining the formation of flowers, stems and leaves, the development and ripening of fruits etc. The Plant hormones shape the plant by affecting the seed growth, time of flowering, the sex of flowers, senescence of leaves and fruits. They affect which tissues grow upward and which grow downward, leaf formation and stem growth, fruit development and ripening, plant longevity and even plant death.

The different categories of plant hormones and their effect on plants are as follows:

- i) Auxins: Auxins are compounds that positively influence cell enlargement, bud formation and root initiation. They also promote the production of other hormones and in conjunction with cytokinins, control the growth of stems, roots and fruits, and convert stems into flowers.
- ii) Cytokinins: Cytokinins influence cell division and shoot formation. They also help delay senescence or the aging of tissues.
- iii) Gibberellin: Gibberellins increase inter-nodal length, promote flowering, cellular division.
- iv) Abscisic acid: Abscisic acid has anti-stress properties on plants.

The General Rules for Interpretation of the Schedule to the Tariff provides that where goods are prima facie classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. Going by the said Rules also, the product is correctly classifiable under

subheading No. 38089340, which is specific for Plant Growth Regulator. The product attracts duty @ 12.36%.

Actually, it is the plant promoting function of plant hormones present in Seaweed as detailed above that is responsible for the declared benefits and further, there is no separate classification for 'Plant Promoter' and the tariff sub heading 38089340 most accurately covers the product of the assessee. The Sea weed granule (organic manure) cleared without payment of duty from the period July, 2012 to Oct, 2012 amounts to Rs.67,94,775/-.

The assessee appears to have not paid Central Excise duty of Rs 8,39,834/- from July, 2012 to October, 2012 on the "Sea Weed Granules (Organic manure)" cleared by wrongly classifying the same under SH No. 31010099. The assessee did not agree with the objection. Hence para is pending.

Earlier also same issue was been noticed during the course of audit of one of its sister unit [GSP Crop Science Pvt. Ltd (UNIT-2)] in the last audit and SCN had been issued. But the said demand has been dropped by the adjudicating authority vide 010 No-03/ADC/2013/MRM dated, 29/01/2013. The issue is still under appeal period.

- (2) **GIST OF THE OBJECTION** : Non amortization of the value of Moulds received free of cost from the buyers of the final products- Rs.19.45 lakh+Int-Rs-7.53
- COMMISSIONERATE** : **Central Excise Commissionerate, Bangalore II**
- CONTRAVENTION OF PROVISION** :

The unit is engaged in the manufacture of components to automobile manufacturers like M/s Tata Toyoto Ltd and M/s Toyota Boshuko etc. The unit sometimes receives the moulds required for the manufacture of these components from their customers and at times the unit undertakes to procure/manufacture these moulds on behalf of their customers. These moulds are sometimes sold to their customers to realize the money value even though the same is retained by the unit for manufacture of components on behalf of their customers. The unit is generally amortizing the cost of these moulds received free of cost to the assessable value of the goods and duty is discharged on the same. However, in some of the cases they have failed to do so.

In the present case, the unit has sold off the moulds to their buyers while retaining the goods at their premises for manufacture of components on behalf of their customers. Such moulds are effectively received free of cost by the unit and the value of such moulds will have to be included in the cost of the components supplied by them to their customers as per the provisions of the rules stated above. But the assessee had failed to do so resulting in short payment of duty to the extent of value of the moulds not amortized to the components manufactured. The total duty on such non-amortized tooling cost for the period 10/2011 to 12/2012 works out to Rs.1945386/- and interest Rs.752502/-. On pointing out the assessee agreed and paid along with interest.

- (3) **GIST OF THE OBJECTION** : **Incorrect availment of Exemption Notification No. 65/1995 C.E and 67/1995 C.E on the TMT Bars used within the factory for the purposes other than the manufacture**
COMMISSIONERATE : **Central Excise Commissionerate, Chennai II**
CONTRAVENTION OF
PROVISION :

During the course of audit, during verification of the ER1 returns, it was noticed that the assessee availed notification No. 65/1995-C.E and 67/1995-C.E during the month of 04/2012, 07/2012, 11/2012 & 02/2013 totaling 44.31MT of TMT Bars used within the factory for the purposes other than manufacture . The benefit of exemption notification is not available on their captively consumed goods if the same are not used in further manufacture. The assessee has therefore incorrectly availed the benefits of the said notifications resulting in short payment of duty of Rs. 2,04,884/-. On being pointed out the assessee reversed the said amount of Rs. 2,04,884/-and also paid the interest amount of Rs.10,757/-

- (4) **GIST OF THE OBJECTION** : **Irregular availment of Cenvat Credit on outward transportation**
COMMISSIONERATE : **Central Excise Commissionerate, Hyderabad III**
CONTRAVENTION OF
PROVISION :

During the course of audit, the audit noticed that the assessee availed Cenvat Credit of service tax paid on transportation charges from factory gate to the buyer's premises

,i.e. M/s. IOCL,M/s. HPCL, M/s. BPCL for transport of new LPG cylinders manufactured by the assessee, during the period from September 2011 to August 2012.

The audit observed that in line with the agreement between the assessee and their customers, the assessee did not include the cost of outward transportation from then factory gate to the buyer's premises , in the assessable value for discharging Central Excise duty on the final products cleared by them In the invoices, transportation charges were shown separately. From the above, it appears that factory gate is the 'place of removal' . The audit pointed out that as per Rule 2 (1) of Service Tax Rules, 1994 the input service means any service used by the manufacturer, whether directly or indirectly in or in relation to the manufacture of final products and clearance of final products up to the place of removal. In terms of Board's circular No. 97/8/2007-ST dated 23.08.2007, the Cenvat Credit paid on outward transportation can be taken only when the freight charges were an integral part of price of goods.

The audit pointed out that the assessee is not entitled to take the credit of service tax paid on transportation charges from factory gate to the buyer's premises, i.e., beyond the place of removal and the assessee has to reverse the credit of Rs. 7.14 lakhs so taken wrongly, along with interest and penalty.

- (5) **GIST OF THE OBJECTION: Irregular availment of benefit of Notification No.67/95-CE dated 1.3.1995, on clinker used as input in the manufacture of cement cleared without payment of duty to a unit in Special Economic Zone**
COMMISSIONERATE : Central Excise Commissionerate, Hyderabad III
CONTRAVENTION OF PROVISION :

The assessee are manufacturers of PPC Cement, OPC Cement and Clinker. falling under Chapter sub-heading Nos. 25232930,25232910 and 25231000. During the course of audit it was observed that during the period from October 2011 to October 2012, the assessee cleared 2735 MTs of cement to M/s. Dr.Reddy's Lab, a unit in Special Economic Zone, without payment of Central Excise duty, under Rule 30 of SEZ Rules, 2006.Clinker used captively in the production of cement is exempted vide Notification No. 67/1995 dated 16.03.1995 subject to the condition that final product is not exempted. This condition is relaxed in respect of clearance of final product a 100% EOU, a unit in Software Technology Park, Electronic Hardware Technology Park and supplies made under Notification No.108/95 dated 28.08.1995 or by a manufacturer of dutiable and exempted final products after discharging the obligation in Rule 6 of Cenvat Rules, 2004. The audit pointed out that clearance of cement by the assessee to an SEZ is not covered under the aforesaid condition. Hence, Central Excise duty of

Rs. 7,04,352/- is payable on 2543.55 MTs of clinker used captively in the manufacture of cement cleared to a unit in an SEZ.

SERVICE TAX

- (6) **GIST OF THE OBJECTION : Non-payment of service tax on services received and consumed in India**
COMMISSIONERATE : Service Tax Commissionerate, Delhi
CONTRAVENTION OF PROVISION :

M/s American Express Banking Corp. (assessee) is engaged in providing services of 'Credit Card,Debit Card,Charge Card or other payment card service', 'Business auxiliary service' & Mailing List Compilation & Mailing Service. During the course of audit it was found that M/s American Express Banking Corp. (assessee) had made an agreement on 1.3.2008 and 1.11.2011 with M/s American Travel Related Services Co. of Rs.11987298/- .From the details

provided by the assessee in respect of service.i.e. Marketing&Back Office, provided for distribution of TCs in India during 2007-08to 2011-12 and relevant invoices it was observed that the assessee had not paid Service tax on value of Back Office service during the period 2007-08 to 2011-12,totally amounting to Rs.875559339/- The assessee did also not pay Service tax amounting to Rs. 264844618/- during 2009-10 to 2010-11. From the said agreement dated 1.03.2008 and 1.11.2011 it appeared that both the services i.e. Marketing & Back office, were provided and used in India. The activities made to provide the said services had been performed in India and used in India to provide the service in India in view of the terms of the said agreements. As such it is clear that these services are not covered under the category of export of service. The issue has been amply clarified by the Government of India, Ministry of Finance, Department of Revenue (Central Board of Excise & Customs) vides Circular No. 141/10/2011-TRU dated 13.5.2011. In the stated Circular it was clarified interalia that the words, “used outside India” should be interpreted to mean that “the benefit of the service should accrue outside India”. It is well known that services, being largely intangibles, are capable of being paid from one place and actually used at another place. Such arrangements commonly exist where the services are procured centrally. In view of the above facts it is clear that the service has been provided in India and used in the activities performed by the assessee in India. Therefore total Service Tax involved amounting Rs.119872981/-, as discussed above stands recoverable from the assessee along with interest in the instant case.

- (7) **GIST OF THE OBJECTION : Wrong availment of CEVAT Credit of Service tax against the Group Medi-claim Insurance policy/Tailor made floater Group Medi-claim Policy (Hospitalization Benefit Policy) during 2007-08 to 2011-12**
COMMISSIONERATE : Service Tax Commissionerate, Delhi
CONTRAVENTION OF PROVISION :

M/s. Ernst & Young Pvt. Ltd.(assessee) is engaged in providing services of Management or Business Consultancy .During the course of audit, it was observed by the audit group that the assessee has availed CENVAT credit amounting Rs. 1,04,19,009/- of Service Tax of Group Med-claim Insurance Policy/Tailor made floater Group Medi-claim Policy. From the said policies and its relevant invoices it was clearly evident that these Policies were made for medical benefits of the employees which covered the dependents of the employees also i.e. employees + spouse + dependant parents and as such it was evident that the said services have not been used by a provider of taxable service for providing an output service. The above services do not fall within the purview of input services defined under Rule 2(1) of CENVAT Credit Rules, 2004 as amended as the same have not been used for providing output service and therefore, CENVAT credit taken on the above referred services appears inadmissible and recoverable under Rule 14 of the CENVAT Credit Rule, 2004 as amended.

- (8) **GIST OF THE OBJECTION : Non payment of Service on excess baggage charges.**
COMMISSIONERATE : Service Tax Commissionerate, Delhi
CONTRAVENTION OF

PROVISION :

M/s. Lufthansa German Air lines (assessee) has been providing the services of transportation of passengers, goods, mails and livestock through the means of aircrafts in the International Traffic. Besides that they have also been engaged in providing Maintenance or Repair Service and Transport of goods by Road Services. During the course of audit, it was observed that the assessee was charging EBT from passengers of First class/ Business class and Economy class, the same is income from passengers. Normally charges for baggage up to a certain limit are included in ticket wherever PAX carries in excess of limit, EBT is charged by the assessee. Therefore, the same is to be included with the amount charged from PAX. Therefore, Service Tax including Cess amounting to Rs. 9,9172,865/- appears to be recoverable from the assessee along with interest.

- (10) **GIST OF THE OBJECTION: Service Tax not paid on import of service-“purchase of advertisement airtime” & “distribution charges” on reverse charge mechanism**
COMMISSIONERATE : Service Tax Commissionerate, Delhi

CONTRAVENTION OF PROVISION :

M/s Discovery communication India(assessee) is in the business of broadcasting services and engaged in dubbing, programming and production of content of M/s Discovery Asia inc, Singapore, During audit, it was found that in the year 2007-08, the assessee had imported services of “purchase of advertisement airtime” for Rs. 41,15,85,241/- and “distribution charges: of Rs. 17,01,37,800/- on which it did not deposit service tax. The import of those services squarely attracts service tax on reverse charge mechanism under the Taxation of Service (Provided from outside India and Received in India) Rules, 2006.

The section 66A (2) is reproduced as under:

“Where a person is carrying on a business through permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

Explanation 1/- A person is carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.

Explanation 2. Usual place of Residence, in a relation to a body corporate, means the place where it is incorporated or otherwise legally constituted”

Therefore, service tax liability on import of services under reverse charges, on above account, arrived amounting to Rs. 7,19,00,967/-.

- (11) **GIST OF THE OBJECTION: Non-payment of service tax on additional commercial**

consideration received free of cost i.e. diesel from the service recipient

COMMISSIONERATE : **Central Excise Commissionerate, Jaipur - II**
CONTRAVENTION OF
PROVISION :

The taxpayer is engaged in supply of Tangible Goods, CAB Operators, Event Management Service, Erection and Commissioning Installation services. During the course of audit it was noticed that the tax payer was engaged in providing supply of Tangible Services and on perusal of the 'Work Orders' of such recipient of service it revealed that the recipient had provided 'Diesel' free of cost on actual consumption basis but the values thereof were not included in the assessable value for the purpose of charging Service Tax, which resulted short levy of Service Tax.

Being an additional commercial consideration flowing directly from the recipient to the assessee in relation to services provided, the service tax on the value of free supplied materials is recoverable with interest in terms of the statutory provisions of Section 67 (1) (ii) of the Finance Act, 1994 and Rule 3 of the Service Tax (Determination of Value) Rules, 2006.

On being asked regarding the cost and quantity of diesel supplied free of cost, the tax payer assured to providing the same after obtaining from the same from the recipient. Para raised and quantification is pending.

(12) **GIST OF THE OBJECTION** : Non payment of Service Tax on labour charges collected from the manufacturer as reimbursement during the warranty period

COMMISSIONERATE : Central Excise Commissionerate, Vadodara-I
CONTRAVENTION OF
PROVISION :

The service provider is registered with the department for the services namely Maintenance and Repairs services and Business Auxiliary services and providing these services to their clients. During the course of audit, in respect of service on hand, the reimbursement against labour charges provided to the customers during warranty period received by the assessee from manufacturer for carrying out any service of any motor car, light motor vehicle manufactured by manufacturer, is required to be included in the value of taxable service. Generally, manufacturer provides two or three free services at the authorized service station. The names of the service stations and forms for obtaining free services are received along with the delivery of the vehicle. Only after getting the vehicle serviced, the owner has to sign the form. The reimbursement of the amount for the service rendered by the "authorized service station" is received from the manufacturer. Such amount is also includible in the value of taxable service. The department has also clarified this issue vide circular no. 96/7/2007-ST dated 23.08.2007; that service charges reimbursed by manufacturer for carrying out services during the warranty period are includible in the value of taxable service. In the instant case, assessee is a dealer having Authorized Service Station of manufacturer of cars. On scrutiny of the Books of Accounts viz. balance sheet, Profit & Loss Account and ledgers of the assessee, it was observed that the assessee had not paid Service Tax in respect of service (labour charges during warranty period) during the period 2007-08 to 2011-12.

On being pointed out, assessee agreed with the objection and paid service tax amount of Rs. 1,74,056/- along with interest of Rs. 73,587/- and penalty of Rs. 6,063/-.

- (13) **GIST OF THE OBJECTION: Short payment of service tax by irregularly adopting abated value for the period June 2011 to March 2012-Rs.186.24 lakh**
COMMISSIONERATE : Service Tax Commissionerate, Bangalore
CONTRAVENTION OF PROVISION :

The assessee is discharging service tax on Restaurant services, Rent-a-cab services, Mantap keeper service, accommodation services and Out door catering services. For the purpose of discharging service tax on the said services, the assessee is claiming abatement under Notification no. 01/2006 dated 01.03.2006 as amended by Notification no. 34/2011 dated 25.04.2011. The condition of Notification is that the assessee is eligible for abatement only in cases where he has not availed Cenvat credit on Input, Capital goods and Input services used in providing such taxable service. On verification of Cenvat credit records it is observed that the assessee has availed Cenvat credit on services such as Construction service, Erection and Commissioning, Interior Decorator service, Inputs, Works Contract service during preceding Financial Year which are attributable to services on which they are claiming abatement during current year. These input services are one time services required for construction, decoration installation of premises used for providing Mandap Keeper, Accommodation service, restaurant service and Rent a cab service. As such the assessee is not eligible to take abatement on services provided by him as he has taken Cenvat credit on input services, capital goods and Inputs. The differential service tax payable is Rs.186.24 lakhs.

- (14) **GIST OF THE OBJECTION: Non payment of service tax on Import of services**
COMMISSIONERATE : Service Tax Commissionerate, Bangalore
CONTRAVENTION OF PROVISION :

The assessee has entered into “Head-quarters service Agreement” dated 1.1.2011, “Distribution Agreement” dated 1.1.2011 and thirdly the “ Intercompany sales and Marketing Agreement” w.e.f.1.4.2012 which is modified version of distribution Agreement based on which they have received following services/products.

(i) Strategic Management Services, Information technology services, Marketing and Advertising services, Finance Accounting oversight, invoicing and hosting of accounting software services, oversight over all legal matters and human resources hiring and policy decision services from their holding company for a consideration as chalked out in the agreement.

(ii) API setup, API annual maintenance, First Look professional Report, Full view site analysis, full view site climate variability analysis, power sight seasonal forecast etc as specified in the annexure to the said distribution agreement as products, which in turn have been used by them in

provision of output services/products the assessee has paid a consideration calculated at 20.65% of their actual sale price of the said services/products to the end user customer in India.

The services/products procured by the assessee from their holding company are classifiable under category "Consulting Engineer's" services as defined under Section 65(105)(g) of Finance Act,1994 and these services are being consumed/used by the assessee in provision of taxable services in provision of taxable output services provided in India.

(iii) They have procured services/products from their holding company located outside India at a price equal to the price charged to the end use customers in India and the assessee is using these taxable services in provision of taxable output services.

As per the provisions of Import of service Rules 2006 and also provisions to Section 66A of Finance Act,1994, read with Rule 2(i) (d) (iv) of Service Tax Rules 1994, the liability towards payment of service tax in case(s) where the service provider is outside India and service receiver is in India and payment towards receipt of services is made in convertible foreign currency, the service receiver, i.e. the assessee in this case is liable to discharge service tax on such services received. In terms of Section 67(4)(c) of Finance Act,1994, read with Point of taxation Rules,2011 & Section 68 of Finance Act,1994, the assessee is liable to discharge service tax on the value of consideration paid or payable by them towards procurement of the services from their holding company. The assessee had not discharged service tax liability on amount paid by them on account of import of the above said taxable services accounted for in their books of accounts.

The service tax liability on the said transaction works out to Rs.83,61,737/- for the period 4/2009 to 9/2012. On being pointed out the assessee paid ST of Rs.83,61,737/-with interest of Rs.17,10,502/-.

(15) **GIST OF THE OBJECTION :** Non payment of service tax on Subvention fees received from ICICI Bank

COMMISSIONERATE : Central Excise Commissionerate, Chennai
CONTRAVENTION OF PROVISION :

The assessee is receiving subvention fees from ICICI Bank for referring customers to them for housing loans. ICICI Bank is paying 0.5% subvention fees on the loan amount sanctioned to the clients referred by the assessee and the assessee has not paid service tax on the same. The assessee informed that such fees is being paid from October 2012 onwards and till now, they have received Rs.2,63,719/- from ICICI bank as subvention fees. On pointing out that service tax is payable on the same, the assessee paid the due service tax of Rs.29,010/- along with interest of Rs.1219/-, totalling to Rs.30,229/- on 15/02/2013.

(16) **GIST OF THE OBJECTION:** Undervaluation of taxable service by not including the electricity charges collected

COMMISSIONERATE : Central Excise Commissionerate, Hyderabad III
CONTRAVENTION OF PROVISION :

During the course of audit, the audit verified the infrastructure support service agreements entered into by the tax payer with various cellular operators providing (i) Site Provisioning Services, (ii) Infrastructure Support services and (iii) Site Infrastructure Operation and Maintenance Services and found that the tax payer collected fees in the form of 'Infrastructure Support Service fee' and 'reimbursements of expenditure incurred towards electricity and diesel by raising debit notes but did not include the amounts incurred towards electricity, to arrive at the taxable value for payment of service tax thereon.

On being pointed out by the audit that expenditure incurred towards Electricity and Diesel has to be taken into consideration while determining the taxable value of services rendered, the tax payers argued that the reimbursements made by their service recipients were towards the expenditure incurred as 'pure agent'. They also stated that they traded in 'Electricity' which are goods.

The audit pointed out that the conditions specified in Rule 5 (2) of Service Tax (Determination of Value) Rules, 2006 to get exclusion for certain expenditure incurred as 'pure agent' were not satisfied and hence the said expenditure needs to be included in the taxable value and service tax of Rs.152.96 lakhs has to be paid thereon.

(17) **GIST OF THE OBJECTION: Short payment of Service Tax due to incorrect determination of abatement**
COMMISSIONERATE : Service Tax Commissionerate, Kolkata
CONTRAVENTION OF PROVISION :

The assessee being a provider of 'Restaurant Service' [Section 65(105)zzzzv of the Finance Act, 1994] used to charge & collect Service Tax from the customers on '**Accommodation Charges**' as per invoices raised by the assessee. In course of audit it has been observed by the auditors that the assessee had charged and collected less amount of Service Tax on '**Accommodation Charges**'. On raising audit query on that specific issue, the assessee replied that the accommodation charges collected from the customers were inclusive of breakfast and so far as the charging of service tax on breakfast was concerned, 70% abatement was availed being the service was taken under **Restaurant service** while the balance amount of accommodation charges excluding breakfast was taken as value of Short term Accommodation service on which 50% abatement was availed. But the breakfast which was included in the accommodation charges was treated as part of the Short term accommodation service as per provision of the letter **No. DOF 334/3/2011-TRU dated 25.04.2011** and therefore, the total value of breakfast included in the accommodation charges during 2011-12 shown as ₹. 3,57,93,058.05 on which 70% abatement was

availed by the assessee was actually eligible for abatement of 50% under the **Notification No. 34/2011-ST dated 25.04.2011** and hence, the assessee was required to pay Service Tax on differential 20% (70%-50%) of ₹ 3,57,93,058.05 i.e. on ₹ 7158612/- which comes to ₹. 7,37,337.00 including Edu Cess and Secondary & Higher Edu Cess.

(18) GIST OF THE OBJECTION: Non payment of Service Tax on Recovery Agency Services
COMMISSIONERATE : Service Tax Commissionerate, Kolkata
CONTRAVENTION OF
PROVISION :

Recovery Agent , as per definition and scope of taxable service under 65(105) (zzzl) of the Finance Act,1994 means any service provided or to be provided to a banking company or a financial institution including a non-banking financial company or any other body corporate or a firm, by any person, in relation to recovery of any sums due to such banking company or financial institution, including a non banking financial company, or any other body corporate or a firm, in any manner. In terms of Section 67 of the Finance Act,1994, where the provision of the service is for a consideration received wholly in money, the value of taxable service shall be gross amount charged by the service provider for the service provided or to be provided by him. The term “gross amount charged” shall include i) any amount received towards the service before, during and after provision of such service and ii) payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment.

In course of audit and on examination of records viz agreement copies for Assignment of Receivables, Appointment of Collection Agent etc. in respect of **a private bank** it appears that the said assessee have sold homogeneous pool of retail financial assets generated to the above mentioned banks and were entrusted to collect the EMI of the loan amount (including the principal amount and interest) from customers on behalf of the said banks. Out of the said collection, the principal amount of the EMI is passed on to the banks along with the fixed interest as agreed. The difference between the interest charged by the said assessee and the interest payable to the banks happens to be the net income earned by them over and above the support service charge i.e. collection /service fees charged earned . It also appears that the assessee have discharged Service Tax liability on Support Service Charge only and not paid any service tax on the net income which they have collected but retained without passing it on to the banks. As per Valuation Rules, the gross amount should be taken into consideration for the purpose of charging Service Tax. Thus, the said assessee acted as a recovery agent of the above mentioned banks and have not discharged service tax on **₹ 93,50,055.00** which comes to the tune of ₹ 9,63,056.00. It is pertinent to mention that the said assessee have not also taken registration for the above mention service. The assessee is therefore required to pay Service Tax of **₹ 9,63,056.00 (including EC &SHEC) along with interest.**

(19) **GIST OF THE OBJECTION : Non payment of Service Tax on Mining Service
COMMISSIONERATE : Service Tax Commissionerate, Kolkata
CONTRAVENTION OF
PROVISION :**

During the course of Service Tax audit for the auditing period 2009-10 to 2011-12, it was observed that the assessee was engaged in providing various services like (i) deployment of loaders, excavators, dozers for removal/evacuation of overburden, waste ash, spillage etc and also loading of raw coal, clean coal, secondary coal, rejects and ash etc. (ii) deployment of tippers and coal dumpers for transportation of coal, secondary coal, rejects, tailings and ash etc. (iii) transportation of raw coal from collieries pit head to power plant and crusher plant and there from to the washeries, railway siding, stock yard and such other destinations as specified by the receiver of taxable service and (iv) evacuation, loading and transportation of dolomite, within the respective areas under West Bokaro Mines, Chhattisgarh and Gomardih Dolomite Mines covered under the Mines Act, 1952 and therefore all the services provided by the assessee including all modes of transportation for movement of minerals inclusive of coal within the areas covered under the Mines Act, 1952 appear to come / fall under the scope and provision of service 'Mining of mineral, oil and gas'. Now, as is evident from the Final Accounts (Balance Sheets) for the years 2009-10 to 2010-11, the realization of Gross taxable values including Service Tax appear to stand at ₹ 54,81,06,922.00 and ₹ 41,66,89,693.00 respectively under 'Mining service', whereas as per ST-3 returns for the year 2009-10 to 2010-11, the gross taxable values received including Service Tax have been shown as ₹ 26,59,66,470.00 in 2009-10 and ₹ 24,32,91,514.00 in 2010-11 and thereby differential amount of ₹ 28,21,40,452.00 and ₹ 17,33,98,179.00 in 2009-10 and 2010-11 respectively including Service Tax of ₹ 2,63,46,751.00 in 2009-10 and ₹ 1,61,92,214.00 in 2010-11 which appear to be remained unpaid. However with the introduction of the Point of Taxation Rules, 2011 w.e.f. 01.04.2011, the payment of Service Tax has changed and shifted to accrual basis instead of receipt basis. Accordingly, the gross taxable value including Service Tax as per Annual Report 2011-12 appears to come as ₹ 73,63,82,012.00 under 'Mining service', whereas as per ST-3 returns, it is of ₹ 41,53,24,556.00 which results in a differential gross taxable value of ₹ 32,10,57,456.00 including Service Tax of ₹ 2,99,80,887.00 which remains unpaid.

Therefore Service Tax including E. Cess and S.H. E. Cess of ₹ 7,25,19,852.00 along with appropriate interest is recoverable from the assessee..