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MONTHLY AUDIT BULLETIN – MAY, 2012

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**CENTRAL EXCISE**

**(1) GIST OF THE OBJECTION : Undervaluation of CRCA tubes/GP Tubes cleared to related unit.**

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

The assessee is a subsidiary company of a limited concern, [Holding Company] registered with Department as a dealer. The Holding Company has majority shares of around 70% and controls the activities of the assessee. The assessee was making substantial clearances of CRCA tubes and GP tubes to the holding company at a price much lower than the price charged to other independent customers. Managing Director and Director of the holding company were also Directors of the assessee company. The entire activities relating to procurement of raw materials including payment to raw material suppliers, planning of production at the factory, dispatch of materials and determination of the sale price of the assessee were controlled by the holding company. Further, for the purposes of cash credit of the assessee, corporate guarantee limited to ₹15 Crores was also furnished by the holding company. The aforesaid two directors also stood personal guarantee to the assessee for the over draft facility availed from Bank which was utilised for purchase of raw materials and working capital. The holding company was transferring funds to the bankers of the assessee which were utilised for payment to vendors and such payments were periodically adjusted against the purchases of tubes from the assessee. Thus, the holding company and the subsidiary company were mutually interested in the business of each other in all matters since the incidence of procurement of raw material to the sale of finished goods.

In case of sales to related buyers valuation is to be adopted under the residuary Rule 11 read with Rule 9 or Rule 10 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (CVR,2000). The CRCA tubes/GP tubes manufactured by the assessee and cleared to the holding company are of different varieties depending upon the thickness, gauge, size and lengths. The said goods were later sold by the holding company in retail at different prices depending upon the fluctuating steel prices in the market. The said holding company was also purchasing such tubes from other manufacturers and also selling the same under the common stock to different customers. As per balance sheets for the year 2010-11 the holding company had made a net profit of around 2%. The total assessable value of the tubes of different

variety cleared to the holding company for the audit period from October 2010 to November 2011 as furnished by the assessee during audit was around ₹66,92,83,741/-. Since the said value determined by the assessee was not in accordance with the valuation rules, it appeared that the price at which the holding company sold the goods in retail, which was on a higher average inclusive of 2% profit, needed to be adopted as an assessable value for payment of duty on such related sales. The assessable value thus worked out to ₹68,26,69,416/- and the assessee had to pay a differential duty amounting to ₹13,78,724/- with interest. The assessee informed that the holding company had taken over the assessee company from 01.08.2010 onwards and the details of clearances to the holding company were not furnished.

On being pointed out the assessee accepted the relationship with the holding company and stated that the prices of the goods were fluctuating based on the raw material value prevailing in the market. As regards, the application of CVR, 2000 regarding related parties and the liability identified by the audit, they stated that the issue would be examined in terms of legal parlance prevailing in the trade.

**(2) GIST OF THE OBJECTION : Non –payment of duty on the use of common input used in the manufacture of dutiable goods as well as non-dutiable goods viz., ‘railway Wagon’ etc**

**COMMISSIONERATE : Central Excise Commissionerate, Kolkata-IV**

During the course of conducting preliminary Desk Review of the assessee’s records like Annual Report, Form 3CD, VAT Return, ER-1 returns for the FY 2010-11, it was observed that the assessee manufactured both dutiable as well as exempted goods namely Railway Wagons falling under TSH No.8606 9290 of the Schedule to the Central Excise Tariff Act, 1985.

Further scrutiny revealed that the assessee used common inputs and input services for the manufacture of both dutiable goods as well as exempted goods viz., ‘Railway Wagon’ and had removed goods of assessable value of ₹55,66,08,335/- during the FY 2010-11 availing full exemption vide notification No.06/2006-CE, dated 01.03.2006.

Even on request by the auditors the assessee did not submit the separate account of common inputs and input service for examination. Subsequently, the assessee declared that they did not take CENVAT Credit on the input goods, like Welding Electrodes, Bearings, Steel Bogies, Paints, Cables, Oxygen Gas, Brush, Tubes & Pipes, Plates, Brake Equipment, Gear Box

etc. However, in their CENVAT Credit Register CENVAT Credit had been availed against all these goods. These inputs were evidently, used both in dutiable products as well as exempted products. Apart from above, the assessee availed the CENVAT Credit of Service Tax paid on the taxable service used in the manufacture of the exempted goods. He did not maintain separate accounts for the taxable service used in the manufacture of exempted goods. A couple of examples are: (i) Taxable service provided by the consulting firms; (ii) Taxable service provided by the Security Service Agencies (The security service providers deployed their personnel at the premises where the exempted goods were manufactured and such deployments were recorded in registers maintained by them); (iii) Taxable Service received in connection with 132 KV Sub-station, (power from this sub-station was used in that portion of the premises where the exempted goods also are manufactured); (iv) Survey work etc for 'DELUX' floor; (v) Radiography service for BOGIE WELL TYPE WAGON - BROAD GAUGE [BWTB] Wagons; (vi) Taxable Service in connection with Labour Charges for dismantling of shades where such exempted goods were manufactured; (vii) Taxable service in connection with maintenance of water treatment plant and contract thereof; (viii) Taxable service in connection with air compressors (such compressed air is distributed through an integrated pipeline and used in whole of factory including that portion of factory where the exempted goods are manufactured); and (ix) Taxable service in connection with fabrication, supply and fixing of Aluminium Windows, etc.

Under the circumstances, the assessee is required to pay an amount equal to 5% of ₹55,66,08,335/- i.e. value of the exempted goods, along with interest.

**(3) GIST OF OBJECTION : Non-Payment of Duty on Provisions taken for Partial write off of Machinery spares**

**COMMISSIONERATE : Central Excise Commissionerate, Jamshedpur**

On scrutiny of Annual Report and Trial Balance of the assessee during Desk Review, it was noticed that the assessee had made a provision to write off the value of raw materials. The Trial balance prepared on 10.04.2011 also showed provision of write off ₹16.09 Crores with respect to raw materials. As per the provisions under Rule 3(5B) of the CENVAT Credit Rules, 2004, if the value of any, Cenvat availed inputs, or capital goods before being put to use is written off fully or provision to write off fully has been made in the books of account, then the manufacturer shall pay an amount equivalent to the CENVAT Credit taken in respect of the said

inputs or capital goods. Thus, verification of reversal of CENVAT Credit on such written off items was an issue in the Audit Plan.

On scrutiny of reversal it was found that the assessee had reversed an amount of ₹3.3 Crores at the rate of 16.24% of the value proposed for write off.

On reconciling the Cenvat reversal amount with that of provision made for write off, it was not found to match the duty payment particulars. On further scrutiny it was noticed that the assessee had also made provision for write off of machinery spares. But again, it also did not match with the duty payment particulars. On being asked the assessee gave two separate calculation charts in support of their claim of correct reversal.

However, on further reconciling both particulars it was found that the reversal amount did not tally with the amount provisioned for writing off. Again on detailed analysis, it was found that the assessee had not reversed duty on provisions made for partial write off on some machinery spares. The discrepancy was that the assessee was following J, K, and L Pattern for write off. In this case, if the goods are considered as non-moving or could not be used for more than 3 years, they were depreciating the value as well as writing off the value by 30% in the 4th year, 10% in the 5th year and further 10% in the 6th year. In other words, the partial provision of writing off was taken continuously for three years.

From the data submitted, it was noticed that in the year 2010-11, assessee had taken provision of partial write off for ₹3,47,88,528/- with respect to machinery spares in the following manner:-

Machinery Spares (J Cat)	-	₹1,83,97,462/- (written off by 30%)
Machinery Spares (K Cat)	-	₹98,66,608/- (written off by 10%)
Machinery Spares (L Cat)	-	₹65,24,458/- (written off by 10%)

The provision of write off had been taken in the year 2010-2011 for all the above three categories. However, duty had been reversed only on J category goods where as no duty was paid on the other two categories. As the provision for write off had been taken for all the three categories the duty reversal was required to be made on the entire value, inclusive of J and K. Duty involved in instant case is ₹4,11,4,933/- and interest of ₹5,25,584/-.

**(4) GIST OF OBJECTION : Irregular availment of CENVAT Credit on inputs not used in their factory.**  
**COMMISSIONERATE : Central Excise Commissionerate, Kolkata - III**

During the course of audit and on scrutiny of Cenvat Documents, it was observed by the auditors that the assessee have taken credit against some Bills of entry for import of inputs to the tune of ₹53,60,875/- at the factory premises for manufacture of finished goods.

As per rule 3(5) of the CENVAT Credit Rules, 2004 (CCR 2004) when inputs or capital goods on which CENVAT Credit has been taken are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such inputs.

Scrutiny by the auditors revealed that the entire quantity of inputs had been diverted to their second unit without debiting the credit availed. Thus, assessee had violated the provisions of Rule 3(5) of CCR 2004 and is required to debit the quantum of credit taken to the tune of ₹53,60,875/- along with interest @ 13% per annum.

**(5) GIST OF THE OBJECTION : Ineligible Service Tax Credit availed on “Business Auxiliary Service.”**

**COMMISSIONERATE : Central Excise Commissionerate, Chennai - I**

During the Course of Audit, it was noticed that Input Service Tax credit was availed by assessee on invoices/debit notes issued by their Joint Partner Company (JPC), for the ‘Business Auxiliary Service’ (BAS) rendered by them. On enquiry it was found that effluent water is produced during the course of manufacture of finished goods.

As there is no Effluent Treatment Plant (ETP) in the assessee’s factory the sewage water was sent to JPC for treatment in their ETP plant and the treated water was let into sea. The service charges for ‘Effluent water management process’ was collected by JPC under the ‘Business Auxiliary Service’ category and the Service Tax credit was taken on such services.

As per Rule 2(l) of the CENVAT Credit Rules 2004, "input service" means any service, (i) used by a provider of taxable service for providing an output service; or (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal.



The service, of, “processing of waste water”, classifiable under BAS has been rendered by the JPC which took place after the manufacture of final products and had no relation to the manufacture and thus did not qualify for being an ‘Input Service’. In view of the above, the Service Tax credit availed on such ineligible service is liable for reversal. During the period from Jan’2011 to Jan’2012 the assessee availed ineligible Service Tax credit of ₹60,61,438/-. On pointing out the facts, the assessee reversed the credit under protest.

**(6) GIST OF THE OBJECTION : Non-inclusion of Nutrient subsidy in the assessable value on the fertilizers cleared.**

**COMMISSIONERATE : Central Excise Commissionerate, Chennai - I**

Assessee is engaged in the manufacture of Fertilizers falling under the CETH 3105 2000 and 3102 1000. While Carbon-di-oxide falling under the CETH 2811 2100 is produced as a by-product and captively consumed in the manufacture of Fertilizes and cleared on payment of duty.

During the course of audit it was noticed that Urea was manufactured and cleared by the assessee on payment of 1% duty. The assessee was selling Urea @ ₹5,130/- per MT and was in receipt of nutrient based subsidy from the Government of India. As per Government of India, Ministry of Agriculture notification, the assessee was to fix the retail price and the rest of the cost of production was given as subsidy. The subsidy was periodically revised by the Ministry and was based on the quantity of fertilizer received at the retailer end. The assessee received ₹27,150/- per MT in March 2011, ₹34,190/- per MT from April’11 to June’11 and ₹33,292/- from July to December’11, as subsidy.

The subsidy received by the assessee is clearly an additional consideration and should form part of the Assessable Value in terms of Section 4(3)(d) of the Central Excise Act, 1944. During the period from March 2011 to December 2011 assessee cleared 458292.3 MT of Urea and received ₹15,03,89,66,278/-. The duty payable on subsidy received is ascertained as ₹15.49 Crores (approx.).

**(7) GIST OF THE OBJECTION : Non payment of duty on Scrap generated at job workers end.**

**COMMISSIONERATE : Central Excise Commissionerate, Chennai – IV**

On Scrutiny of the job work documents and other related documents, it was noticed that the assessee had not paid duty in respect of Scrap accrued at the Job workers end on the inputs sent for processing. The total value of such scrap worked out to ₹33,85,1,235/-. The total duty payable on such sales worked out to ₹34.87 Lakhs and interest of ₹3.42 Lakhs. On being pointed out, the assessee agreed with the same and paid duty amount involved with interest.

**(8) GIST OF THE OBJECTION : Non-compliance of amending notification No.11/2011-CE (NT) dated 24/3/2011.**

**COMMISSIONERATE : Central Excise Commissionerate, Daman**

The assessee is engaged in the manufacture of various products like Baygon (insect killer) Zorrik, WD-40, Acry Foam, Colour Spray, Cycle Carb Clean, Moov Allopathic, Moov Ayurvedic, Rustolene falling under various Tariff Heading No.3808 9191, 3403 1900, 3508 2030, 3213 9000, 3402 9092, 3004 9011, 3004 9066 and 2710 1990.

During the course of audit it was noticed that the assessee was engaged in the manufacturing of Moov Cream (Allopathic & Ayurvedic) for certain pharmaceutical company. The unit had cleared their product i.e. Moov (Allopathic) on MRP based assessment under Sec 4A of the Central Excise Act, 1994 availing notification No.49/2008-CE(NT), dated 24/12/2008. The assessee had also cleared Moov (Ayurvedic) on the basis of normal transaction value as it was not covered under the above notification. The said Notification was amended vide notification No.11/2011-CE(NT), dated 24/03/2011 (S.No.125) and the product Moov (Ayurvedic) was also covered under the MRP based assessment. Hence, the unit was required to pay duty on MRP based assessment as per section 4A. However, on scrutiny of the invoices/ER-1 returns, it was noticed that the unit had cleared their product Moov (Ayurvedic) on normal transaction value even after 24/03/2011 instead of MRP based assessment.

In view of the above, the assessee is required to pay the differential Central Excise duty amounting to ₹13,12,863/- for the period from 24/3/2011 to Dec 2011.

**(9) GIST OF THE OBJECTION : Wrong availment of CENVAT Credit on raw materials received under notification No.44/2001-CE(NT), dated 26/06/2001 without payment of duty**

**COMMISSIONERATE : Central Excise Commissionerate, Daman**

The assessee is engaged in the manufacture of Metal Furniture, Parts of Metal Furniture, Plastic Furniture, Parts of Plastic Furniture and Plastic containers falling under Tariff Heading No.9403 2010, 9403 7000, 9403 9000 and 3923 1090.

During the course of audit it was noticed that the assessee had procured 10 MT PP H350FG from a supplier under notification No.44/2001-CE(NT), dated 26/06/2001, as amended, without payment of duty for the purpose of use in the manufacture of plastic containers and their export out of India vide Invoice No.250034 dated 20/5/2011. On scrutiny of records of the assessee it was revealed that they had taken CENVAT Credit to the tune of ₹1,23,287/- on the strength of the said invoice, even though the consignment was received without payment of duty. Hence, the assessee had taken CENVAT Credit wrongly which was required to be recovered along with interest under Rule 14 of the CENVAT Credit Rules, 2004. On being pointed out the assessee agreed with the objection and debited ₹1,23,287/- along with interest of ₹14,794/-.

**(10) GIST OF THE OBJECTION : Irregular availment of SSI exemption Notification**

**COMMISSIONERATE : Central Excise Commissionerate, Hyderabad – I**

Assessee are manufacturers of Patent or Propriety (P or P) medicaments and were availing the SSI exemption under notification No.8/2003-CE, dated 01.03.2003 as amended. During the course of audit verification, the auditors studied the Annual Report of the assessee for the year 2010-11 and noticed that the assessee had taken over and amalgamated a unit, that was, manufacturing APIs and showed the same as Unit 2 in the columns of Balance Sheet. It was also noticed that the sales of the Unit II was included from 01.10.2011 onwards.

The audit observed that the assessee availed SSI exemption during the year 2010-11 and started paying duty from 22.12.2010 onwards, after crossing the limit of ₹1.5 Crores.

The assessee had not included the sales of Unit 2 in the value of clearances for the year 2010-11. By taking the sales of Unit 2 into consideration, the assessee crossed the limit of ₹1.5 Crores on 14.10.2010 itself and hence they have to pay Central excise duty of ₹1.88 Lakhs on clearances affected during the period wef 14.10.2010 up to 21.12.2010.

Further the assessee treating the value of clearances during the earlier year as below ₹4 Crores, had availed SSI exemption during the year 2011-12. However, the audit noticed from the Annual Report for 2010-11 that the value of clearances was ₹35 Crores and hence it was

irregular to avail the benefit of SSI exemption for the year 2011-12. It was pointed out that the assessee has to pay central excise duty of ₹7.5 Lakhs for the year 2011-12.

## SERVICE TAX

**(11) GIST OF OBJECTION: Short payment of Service Tax on “Works Contract Service” violating the notification No.32/2007–ST, dated 22.05.2007.**

**COMMISSIONERATE : Central Excise Commissionerate, Bolpur**

The assessee is a service provider under works contract [Sec.65(105)(zzzza) of the Finance Act, 1994]. During the preliminary desk review of the records, returns, documents financial statements etc. it was observed that the assessee had opted for paying Service Tax at the rate specified in section 66, under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, under notification No.32/2007-ST, dated 22.5.2007. As the Notification is a conditional one, the fulfillment of conditions stipulated there under require to be ensured for correct discharge of taxes. Further, perusal of the Trial Balance indicated about certain receipt of advances. Based on the findings in the working papers the above issue was a point for detailed verification during actual audit and has included into the audit plan.

On scrutiny, it was found that the assessee had received advances for the execution of works contract of their client but those advances were not included in the value of taxable services on which they had discharged taxes. The above findings were also confirmed by the representative of the assessee.

Trial Balance and other related documents like bills and register of the assessee showed that they had received ₹82,90,831/- and ₹71,08,016/- as Material Advance during the Financial Years 2009-10 and 2010-10 respectively which was neither included in their taxable income nor did they pay Service Tax, even though they had opted to discharge Service Tax liability under composite Works Contract Scheme.

Therefore, assessee is liable to pay ₹6,28,273/- towards Service Tax along with appropriate interest in instant case.

**(12) GIST OF OBJECTION : Wrong availment of Input Service Credit.**

**COMMISSIONERATE : Central Excise Commissionerate, Jamshedpur**

The assessee runs various Religious institutions, Schools, Institutions engaged in social activities, Stadium etc. apart from their manufacturing activity. The services rendered on

immovable property given on rent to the above said categories are excluded from the purview of Service Tax.

In view of above facts, issue of availment of CENVAT Credit was included in Audit Plan for verification.

Scrutiny of input service invoices revealed that the assessee had taken input service credit on maintenance, repair of residential buildings as well as commercial buildings given on rent and lease. As renting of residential buildings for social activities, sports activities are excluded from the purview of Service Tax the credit availed on these services was not correct. The assessee agreed with the view of Audit, and assured to reverse the input service credit taken on those services, which do not fall in the definition of business activities.

Accordingly, assessee reversed input service credit of ₹.21,43,947/- and also paid interest of ₹8,12,243/- for the said irregular availment of input service credit.

**(13) GIST OF OBJECTION : Non-payment of Service Tax by a subcontractor on erection, commissioning or installation services**

**COMMISSIONERATE : Central Excise Commissionerate, Jamshedpur**

The assessee is a provider of erection, commissioning or installation services [Section 65(105)(zzd) of the Finance Act, 1994]. During audit it was observed that the assessee had provided erection, commissioning or installation services to their client in connection with a Power Project in the capacity of a sub-contractor on which they did not discharge their Service Tax liability amounting to ₹10,88,604/- including Cess.

Perusal of documents revealed that a contract was awarded by a public sector power generating company (PGC) to another public sector Engineering company (EC) for erection and commissioning (including civil structure works) of Coal Handling System for 1x500 MW power generating plant. A part of the job was sub-contracted by EC to a Public Limited Company (PLC) who in turn sub-contracted a part of the said job to the assessee. It was observed that the assessee, on their part of erection & commissioning services rendered during the years 2007-08 and 2008-09 received ₹46,77,637/- and ₹41,33,440/- respectively from the said Public Limited Company. However, they did not discharge their Service Tax liability.

On being pointed out by the auditors, the assessee replied that the PLC i.e. the contractor had not paid any Service Tax amount to them on the ground that Service Tax was not leviable on the said sub-contracted part of the job, as the main contractor EC was paying Service Tax on the whole package of contract awarded by the PGC.

The PLC also produced a copy of certificate which certified that the EC was paying Service Tax on entire package of work awarded by PGC and neither the PLC claimed any reimbursement of Service Tax nor the EC reimbursed any Service Tax to the PLC, and that EC also did not avail any CENVAT Credit on this account.

The said assessee was informed by the audit that the issue of payment of Service Tax by a sub-contractor on his part of taxable services rendered, was a well clarified issue and every sub-contractor was required to pay Service Tax on his part of the taxable service rendered.

CBEC has also clarified this issue vide Circular No.96/7/2007-ST, dated 23rd August, 2007 [Reference Code 999.03 / 23.08.07]. The said assessee was therefore required to pay Service Tax on the part of taxable service rendered by them, whether or not the PLC had claimed reimbursement of Service Tax or whether or not EC had reimbursed any Service Tax or had availed any CENVAT Credit. These did not alter the issue of levy of Service Tax. When taxable service had been rendered by the assessee in the capacity of a sub-contractor, they are required to pay Service Tax on their part of services rendered.

The amount of Service Tax not paid by the assessee on the taxable service so rendered in the capacity of a sub-contractor, was calculated by the audit and accordingly, the assessee is required to pay Service Tax of ₹10,88,604/-.

**(14) GIST OF THE OBJECTION : Non payment of Service Tax on Maintenance and Repair Service.**

**COMMISSIONERATE : Central Excise Commissionerate, Cochin**

Assessee is undertaking operational and administrative assistance to a leading paints manufactures (PM) under their scheme named "Home solutions", and providing quality painting service under PM's guidance and supervision. The assessee has got trained personnel as per the requirement of PM for doing this work. The assessee entered into painting contract with the client on the basis of quotation as per the guidelines fixed by PM. The basis of the contract is total area to be painted inclusive of material and labour. The consideration received from the

client was passed on to PM after deducting the expenses involved, and the net income was shared between the *assessee and* PM in the ratio 10:90. Apart from the above, the company paid to the assessee a fixed administrative charge every month during the term of their agreement. Service Tax on these two incomes received from PM was discharged by the assessee under the categories of *Business Auxiliary Service* and *Business Support Service* respectively. Apart from the above, Service Tax on the incomes received from clients in respect of painting contracts for commercial buildings space was discharged under the category of 'Works Contract' ( 4% under composition scheme), However in the case of individual residential houses and flats, Service Tax was not discharged by the assessee.

The activity of painting undertaken in commercial buildings and houses/residential units is an activity in the nature of Management, maintenance or repair of immovable property. Circular F.No.B1/6/2005-TRU, dated 27.07.2005 issued by Board has clarified-

*".. since 26.6.2005 services relating to maintenance or management of immovable property(such as roads, airports, railways, buildings, parks, electrical installations and the like) have also been covered under the purview of Service Tax. And such service would be taxable when provided under a contract or agreement by any person. Maintenance is to keep a machine, building etc. in a good condition by periodically checking and servicing and repairing."*

In view of above, Service Tax is payable on the painting contracts undertaken by the assessee covered under the category of management, maintenance or repair services. The differential Service Tax payable works out to ₹78,75,346/-

**(15) GIST OF OBJECTION : Non-payment of Service Tax on Income received under the category Port Services**

**COMMISSIONERATE : Central Excise Commissionerate, Cochin**

A leading Cement Manufacturer (CM) entered into a contract with the assessee whereby CM was bound to pay to the assessee minimum wharfage in respect of 3 Lakhs tonnes of cement per year irrespective of the fact whether the said quantity was cleared or not. Any clearances in excess of the same attract applicable rates. It was seen that during the year 2010-11 the assessee was in receipt of an amount of ₹17,062,228/- from CM which they have attributed to Minimum



Guarantee and for which amount they had not paid any Service Tax. As the said amount represented Handling & Storage Charges of General Cargo, the assessee was required to assess and pay Service Tax on the same. Also, it was seen that under the same major income head the assessee was in receipt of an amount of ₹15,02,255/- received as auction proceeds on which Service Tax had neither been assessed nor paid. The Assessee in their reply agreed to the contention of Audit and informed that the Service Tax would be remitted on receipt of payment from CM and that in respect of auction sale proceeds Service Tax would be remitted after deducting the customs duty paid on the above sale.

**(16) GIST OF THE OBJECTION: Non-inclusion of certain receipts in taxable value.**

**COMMISSIONERATE : Service Tax Commissionerate, Bangalore**

The assessee is providing CHA Services. On verification of financial records and invoices of the assessee, it was noticed that the assessee had collected Service Tax from the customers on Agency charges only. In terms of Section 67 of the Finance Act, 1994, read with the Service Tax (Determination of Value) Rules, 2006, [STDVR 2006] *"where the provision of service is for a consideration in money, the value of taxable service shall be the gross amount charged by the service provider for the services provided or to be provided"*. In the instant case, in respect of other charges, viz, Freight, CTR charges, THC, IHC, Airport handling Charges, etc. Service Tax was not paid. These charges were collected from the manufacturer/importer/exporter along with mark-up. Circular No.119/12/2009-ST, dated 21-12-2009, has clarified in a similar issue that *"In case the CHA includes any markup or profit margin on any service, then the entire charge (and not the mark-up alone) shall be included in the taxable value"*. Hence Service Tax has to be paid on Gross receipts (excluding transport). Gross receipts of the assessee (excluding first ₹10 Lakhs) excluding transportation charges, were as shown below:

(In Rupees)					
<u>S.No.</u>	<u>Year</u>	<u>Gross receipts</u>	<u>ST Liability</u>	<u>ST Paid</u>	<u>Diff. Service Tax</u>
(1)	(2)	(3)	(4)	(5)	(6)
1.	2009-10	12560070	1293687	35669	1258018
2.	2010-11	59310391	6294318	818600	5475718
3.	2011-12 (upto 6/11)	20348543	2095900	352229	1743671
4.	2011-12	17813116	1834751	266988	1567763
<b>TOTAL</b>					<b>10045170</b>

**(17) GIST OF THE OBJECTION : Non-payment of Service Tax on services imported by**

**Electronic means**

**COMMISSIONERATE : Service Tax Commissionerate, Bangalore**

During the course of verification of the records, it was observed that the assessee was engaged in providing the services related to Research and Development to their various group companies situated across the world. For the purpose of Research and Development activities they were also procuring various services from local service providers and also importing input services from other companies located outside India. Since these services were used by their company for specific purposes in R&D activity, they were liable to pay Service Tax on such imported input services received for the year 2006-07 to 15.05.2008 under Section 66A of the Finance Act, 1994. Hence, the assessee is liable to pay the Service Tax of ₹2,09,25,780/- along with the applicable interest from 2006-07 to 2008-09 (upto 15.05.2008).

**(18) GIST OF THE OBJECTION : Non payment of Service Tax on services received from outside India for use in Commerce or Industry.**

**COMMISSIONERATE : Service Tax Commissionerate, Kolkata**

The assessee is a provider of Telecommunication Services [Section 65(105)(zzzx) of the Finance Act, 1994]. During Audit, on examination of various records/ documents, it was found that the service provider had made huge payments to some foreign telecom operators for receiving telecommunication services.

From the records, it was found that the service provider had paid ₹9,56,93,271/- to various foreign operators in foreign currency during 2008-09 for receiving services from outside India for use in commerce or industry. However, Service Tax amounting to ₹1,18,27,689/- payable on this amount had not been paid. As such the same is recoverable from the assessee.

**(19) GIST OF THE OBJECTION: Short payment of Service Tax due to misclassification of services**

**COMMISSIONERATE : Service Tax Commissionerate, Chennai**

Assessee had entered into an agreement with their customers for Residential Complex Projects. Assessee had undertaken to provide the following development activities in relation to the internal and external development of complex.

- Connection charges for electricity

- Connection charges for water and drainage
- Charges incidental to construction
- Legal & documentation charges
- Infrastructure and amenities charges (impact fee)

All these activities were undertaken after completion of the construction of the residential complexes but before handing over physical possession to the customer. Separate charges have been included for the above activity over and above the construction cost as evidenced by their Construction agreement with the customers. The builder has accounted for the receipt of the above charges in the last installments of the amount receivable from the customers as per the contract agreement.

Section 65(105)(zzzzu) of the Finance Act, 1994, as amended by the Finance Act, 2010 with effect from 01.07.2010, provides that,

*“any service provided or to be provided, to a buyer, by a builder of a residential complex, or a commercial complex, or any other person authorized by such builder, for providing preferential location or development of such complex but does not include services covered under sub clauses (zzg),(zzq), (zzzh) and in relation to parking place, is a taxable service. Further Board’s letter F.No.334/1/2010-TRU dated 26/02/2010 has clarified that,-*

*in addition to these activities, the builders of residential or commercial complexes provide other facilities and charge separately for them and these charges do not form part of the taxable value for charging tax under construction. These facilities interlia include (b) internal and external development charges which are collected for developing /maintaining of parks, laying of sewerage and water pipelines, providing access roads and common lighting etc; Since these charges are in the nature of service provided by the builder to the buyer of the property over and above the construction service, such charges are being brought under the new service. Development charges, to the extent they are paid to State Government or local bodies, will be excluded from the taxable value of the levy.*

As per Section 66 of the Finance Act, 1994, the rate of tax on the value of this taxable service in relation to the above activity is 10% plus applicable cess. Whereas, the builder has included the charges collected for all the above activities in the cost of construction and paid

Service Tax @10% after availing abatement of 67% on the gross receipt (as per notification No.01/2006-ST, dated 01/03/2006). As the above activities performed after the completion of the construction has been specifically categorized as “development charges” vide definition at Section 65(105)(zzzzu) read with the Board’s letter dated 26.02.2010 classifying the same as construction service and availing the abatement of 67% which was specifically provided to the construction service as per notification No.01/2006, dated 01/03/2006 was not in order.

The total amount collected from the customers for the project on account of the above activities amounted to ₹6,96,89,758/-. The Service Tax in respect of the amount received viz., ₹6,96,89,758/- and receivable viz. ₹3,80,57,780/- (totaling ₹9,89,47,538/-) towards the above activities became due for payment in the quarter ending 31.12.2011 on which date the assessee paid Service Tax only on the amount realized from the customers after availing the abatement of 67% as stated above.

The differential duty on account of misclassification and nonpayment of duty on receivables as stated above works out to ₹67,53,749/- which is required to be paid by the assessee.

**(20) GIST OF THE OBJECTION: Non-payment of Service Tax on Commission, Interest & bank Charges & Charges in Other Matters paid in foreign currency.**

**COMMISSIONERATE : Central Excise Commissionerate, Thane – I**

On perusal of Schedule 20, i.e. Notes forming part of the Account, in respect of balance Sheet as on 31<sup>st</sup> March, 2011, it was noticed that at Sr.No.6(b)(i)(ii)(iii), the Expenditure in Foreign currency under the various Headings for FY 2010-11 was shown as under :

<u>S.No.</u>	<u>Item</u>	<u>Amount (in ₹ Lakhs)</u>
(1)	(2)	(3)
i)	Commission	3415.13
ii)	Interest & bank Charges	215.37
iii)	Other Matters	28.74
Total		589.24

The assessee was requested to submit the detailed information with regard to the above payments, but they did not furnish proper information in this regard. It appears that Commission, interest & bank Charges and charges in Other Matters paid by the assessee in foreign currency was in respect of taxable services provided from outside India and received by the assessee in India.

As per Rule 4 of the Taxation of Service (Provided from Outside India & Received in India) Rules, 2006, the recipient of taxable services provided from outside India & received in India, shall make an application for registration and for this purpose, the provisions of Section 69 of the Act & the Rule made there under shall apply.

In view of the above, the assessee was liable to pay Service Tax of ₹60,69,172/- on total amount of ₹589.24 Lakhs paid by them in foreign currency.

**(21) GIST OF THE OBJECTION : Non-payment of Service Tax on franchisor remitted amount**  
**COMMISSIONERATE : LTU Commissionerate, Mumbai**

During the course of Audit it was observed from assessee's profit and loss account for 2008-09 and 2009-10, that income is accrued to assessee on account of "Franchise services" as defined under section 65(105)(z) of the Finance Act, 1994. The franchisee was remitting certain amounts (Profit) to the assessee for using the brand name of assessee. An amount of ₹12,65,77,871/- was received by assessee from their franchisee(s) in the FY 2010-11 on which no Service Tax was paid by them. The Service Tax to the tune of ₹1,30,37,521/- on the said service is recoverable from the assessee.

**(22) GIST OF THE OBJECTION: Non-payment of Service Tax on insurance expenses on reverse charge basis.**  
**COMMISSIONERATE : Service Tax Commissionerate, Mumbai – II**

Assessee is holding Service Tax Registration for providing Dredging Service, Banking & other Financial Services, Air Travel Agent Service, Technical Inspection & Certification Services, Intellectual Property Services, Management Consultant Services, Business Support Service, General Insurance Services etc. On perusal of profit and loss account, it was seen that

during the years 2009-10 and 2010-11 the assessee had spent ₹7.07 Crores and ₹9.95 Crores respectively on account of Insurance Expenses which had been paid to their overseas parent company. The same was taxable under reverse charge in accordance with the provisions of Section 66A of the Finance Act, 1994 read with rule 2(1)(d)(iv) of the Service Tax Rules, 1994. The payable Service Tax along with Interest worked out to ₹1.88 Crores. On pointing out by the Audit the assessee agreed with the objection and paid the Service Tax along with the interest amounting to ₹1.88 Crores.

**(23) GIST OF THE OBJECTION: Under valuation of Service charges by not including cost of Items consumed while rendering service.**

**COMMISSIONERATE : Service Tax Commissionerate, Delhi**

During the course of audit, it was observed that the assessee used bits imported by them while providing service to their clients and did not include their cost in the assessable value to calculate Service Tax, but received the value of the bits from their clients through debit notes. The amount received on this account during 2008-09 is ₹2,19,10,631/- and in 2009-10 ₹5,00,83,994/-. The Service Tax on this on reverse calculation basis, for 2008-09 was ₹21,85,389/- and for 2009-10 was ₹45,83,527/- totaling ₹67,68,916/-. On being pointed out by audit, the Service Tax involved was paid by the assessee through Cenvat account. The interest amounting to ₹8,59,059/- for 2008-09 and ₹11,05,758/- for 2009-10 totaling to ₹19,64,817/- due on short payment was paid by the assessee in cash. A total amount of ₹87,33,733/- have been recovered in instant case.

**(24) GIST OF THE OBJECTION: Short payment of Service Tax by not including full value of service and the amount of ESI, PF, etc.**

**COMMISSIONERATE : Central Excise Commissionerate, Jaipur – I**

The assessee is registered for providing Man Power Recruitment & Supply Service, Business Auxiliary Services. During the course of audit of the assessee, it was noticed that they have not paid Service Tax on gross receipt of value of taxable service but arrived at assessable value by deducting the amount of ESI, PF Contribution etc and also by not including full value of taxable service received during June 2005 to March 2011. It was also noticed that the assessee had not paid Service Tax on reimbursement of incentive and expenses etc. As per the provisions of Section 67, the assessee was liable to pay Service Tax on gross amount charged for the taxable

service from their customers. On reconciliation of Gross value received as per Ledger with relevant ST-3 Returns for the period June 2005 to March 2011, it appeared that the assessee had made short payment of Service Tax amounting to ₹12,84,547/- which is recoverable from them with interest.

**(25) GIST OF THE OBJECTION: Short payment of Service Tax on Business Auxiliary service**  
**COMMISSIONERATE : Central Excise Commissionerate, Visakhapatnam – II**

During the course of audit on the accounts of the tax payer, the audit verified the ST.3 returns, Annual Returns and relevant ledgers for the period from 01.10.2008 to 30.09.2011 and observed that that the tax payer received commission from various Insurance Companies but did not discharge the Service Tax on the said commission, under 'Business Auxiliary Service' under Section 65(105)(zzb) of the Finance Act,1994.The tax payer received commission of ₹130.67 Lakhs during the period from 01.10.2008 to 30.09.2011. On being pointed out by the audit, the assessee agreed to the objection and paid Service Tax of ₹12.33 Lakhs. Interest under Section 75 and penalty under Section 73(4A) ibid has to be recovered.

**(26) GIST OF THE OBJECTION: Short payment of Service Tax on Port Services**  
**COMMISSIONERATE : Central Excise Commissionerate, Guntur**

During the course of audit on the accounts of assessee who is providing port services, the audit verified the ST.3 challans with Bank realisation statements, e-payment challans and TDS paid by their only customer which is a Port Company and found no variance in respect of both realisation and payment of Service Tax. Later the audit verified the Provisional Annual Report, ledgers maintained in Tally software for the year 2010-11 with ST.3 returns and found that there was a difference in taxable value as certain amounts were credited by way of raising credit notes, on which no Service Tax was paid. The said credit notes were raised against the expenditure borne by the Port, on behalf of the assessee and adjusted towards the dues against the services provided by the assessee. The above short payment of Service Tax occurred due to the adjustment against the receipt by way of credit notes. Therefore, the assessee is liable to pay Service Tax of ₹6.17 Lakhs. On being pointed out by the audit, the tax payer agreed to the objection and paid the tax along with interest.

**(27) GIST OF THE OBJECTION:Short payment of Service Tax on Business Auxiliary Services payable under the reverse charge mechanism**

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

The tax payer is a provider of Man Power Recruitment Agency services. The audit verified the Ledger accounts of the tax payer for services rendered for the years 2009-10 and 2010-11 and noticed that the tax payer incurred an expenditure of ₹11.40 Crores in foreign currency towards various services received from abroad and on which the tax payer, as service receiver, is liable to discharge Service Tax liability under Section 66A of the Finance Act, 1994. The audit observed that the tax payer did not pay Service Tax of ₹117.43 Lakhs payable thereon, along with interest and penalty. On being pointed out, the tax payer agreed to the objection and paid Service Tax of ₹92.86 Lakhs along with interest of ₹20.88 Lakhs. Balance due amount is to be recovered from the assessee.



## Customs – OSPCA

(28) **GIST OF THE OBJECTION: Non-payment of Paper Cess on import of Newsprint.**

**COMMISSIONERATE : Central Excise Commissionerate, Cochin**

The assessee, imports newsprint through Cochin, JNPT Mumbai and Chennai ports. During conduct of onsite post clearance audit (OSPCA), it was observed that in respect of import of Newsprint and Glazed paper they had not paid Paper Cess leviable in terms of Order No.S.O 862(E), dated 27th October 1980 as amended by Order No.S.O.83(E) dated 3rd February 1981, under the Industries (Development and Regulation) Act, 1951. The above said S.O. states that "Paper and paper boards all sorts (including Newsprint) shall be subjected to Paper Cess" and the rate of paper cess payable is 1/8 % *ad valorem*.

During the period wef 01.04.2011 upto 12.03.2012, the assessee imported 64,481.167 MTs of Newsprint valued at ₹23,155 Lakhs, through the ports of Cochin, JNPT Mumbai and Chennai. Paper Cess payable thereon worked out to ₹28,94,379/- (Cochin ₹28,32,795/-, JNPT Mumbai- ₹47,811/- and Chennai- ₹13,772/-) which stands recoverable from the assessee.

(29) **GIST OF THE OBJECTION: Wrong utilization of scrip obtained as per "Served From India Scheme" under the Foreign Trade Policy for payment of Customs duty on import of Art Paper**

**COMMISSIONERATE : Central Excise Commissionerate, Cochin**

The assessee had obtained authorization under the "Served From India Scheme" as per para 3.12 of the Foreign Trade Policy (FTP) 2009-14. During on site post clearance audit (OSPCA), it was observed that they have utilised this scrip for payment of import duties and Paper Cess on import of Art Paper falling under CTH 48101320, claiming exemption under notification No.91/2009-Cus, dated 11.9.2009. As per this notification, capital goods including 'spares'; office equipment, professional equipment, office furniture and consumables related to service sector business are exempted from payment of customs duty and additional duty of customs when imported into India against a Served From India scrip subject to the conditions specified therein. Art Paper imported by assessee was not an item allowed for import as per this notification, viz; 'Capital goods including spares, office equipment, professional equipment,

office furniture and consumables'. Para 9.15 of the FTP 2009-2014 defines "consumables as any item, which participates in or is required for a manufacturing process, but does not necessarily form part of end product. Items, which are substantially or totally consumed during the manufacturing process, will be deemed to be consumables". As per explanation given by the assessee, imported Art paper was used for printing cover pages of their periodical. Art paper is not substantially or totally consumed during the process of printing of periodicals. Therefore, the exemption claimed under the above notification by debit of duties by utilizing the SFIS scrip was not in order.

During the period from 01.04.2011 to 29.02.2012, assessee had imported 224.20 Metric tonnes of Art paper valued at ₹1,03,78,073/- through Cochin Port and the total duty and cess recoverable thereon works out to ₹21,71,886/-.

**Disclaimer**

The compilation is based upon the audit reports approved in the monthly Monitoring Committee Meetings (MCM) sent through the zonal Additional Directors General (Audit). In case of any doubts about the Audit Objections reported herein, the concerned Commissionerate may be contacted.