

**Report of the
Comptroller and Auditor General
of India**

for the year ended March 2015

**Levy and Collection of Service Tax
on
Works Contract**

**Union Government
Department of Revenue
Indirect Taxes – Service Tax
Report No. 26 of 2015**

Laid on the table of Lok Sabha/Rajya Sabha _____

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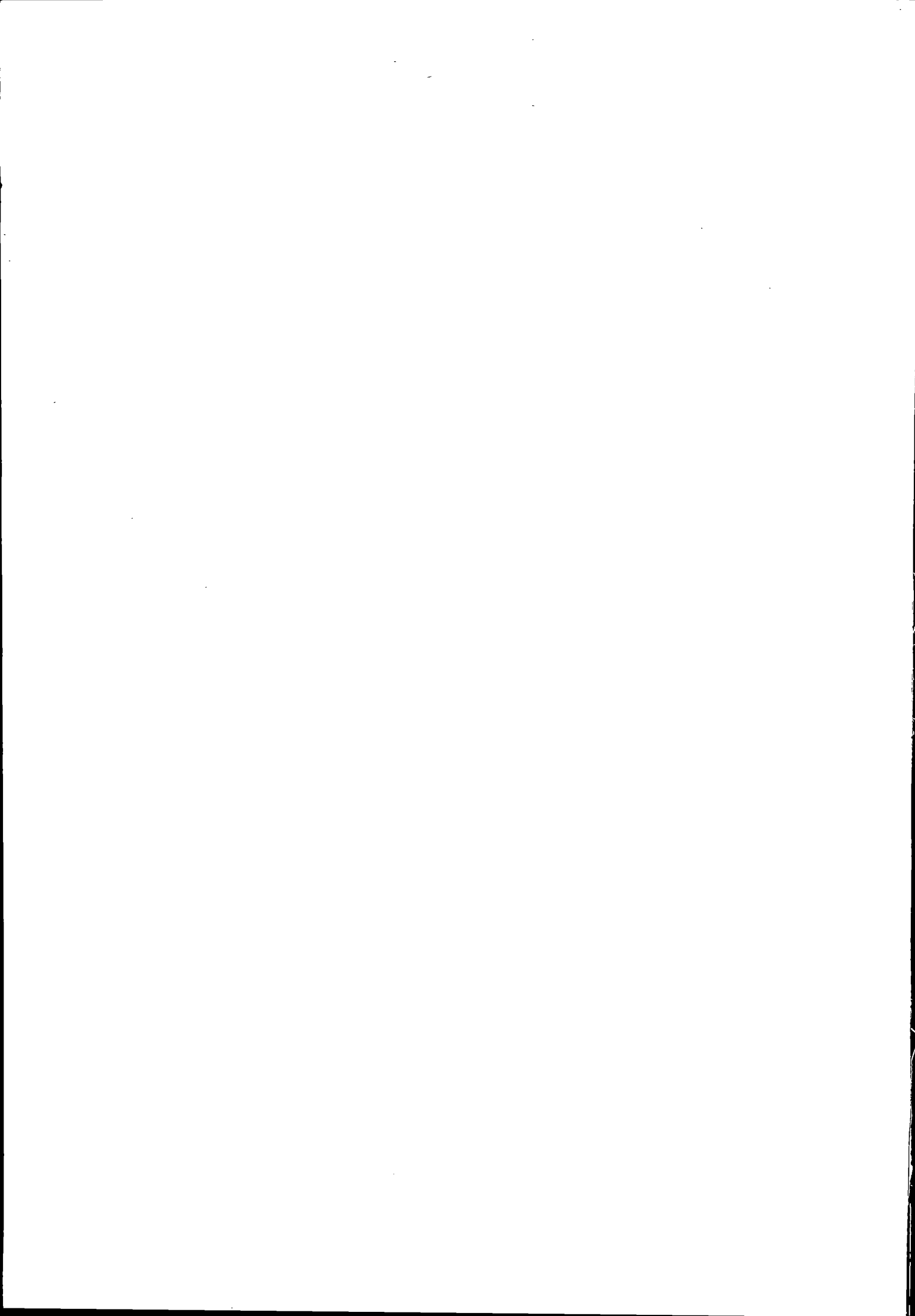
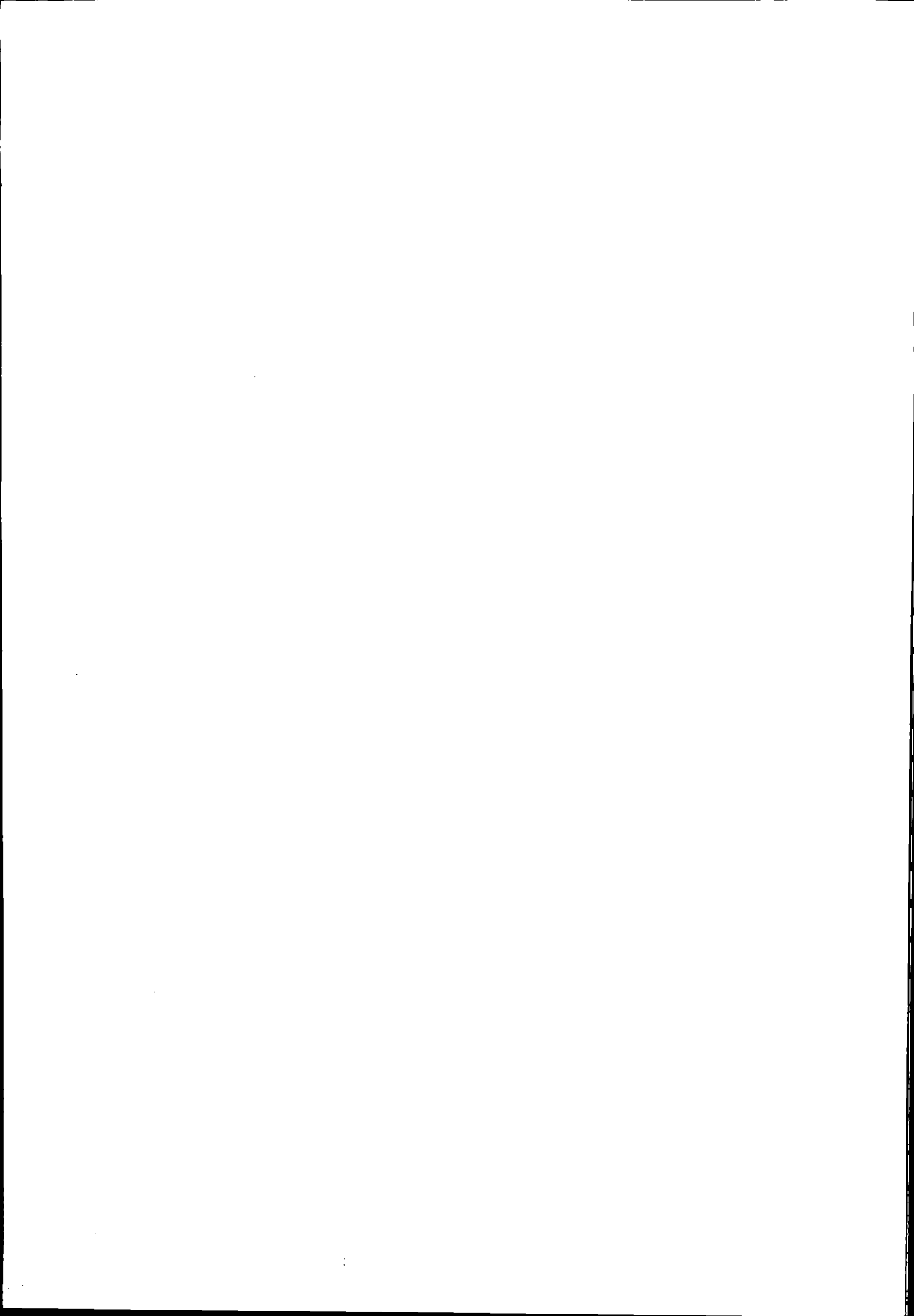


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Preface

This Report has been prepared for submission to the President of India under Article 151 of the Constitution of India.

The Report contains significant results of the performance audit on Levy and Collection of Service Tax on Works Contract and covers the period 2010-11 to 2013-14. Matters relating to subsequent or earlier periods have also been included, wherever necessary.

The instances mentioned in this Report are those which came to notice in the course of test audit conducted during the period 2014-15.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

Audit wishes to acknowledge the cooperation received from the Department of Revenue, Central Board of Excise and Customs and its field formations at each stage of the audit process.



Executive summary

We conducted the Performance Audit on assessees providing Works Contract Services, to seek an assurance that the indirect tax administration is adequately placed to safeguard the interests of revenue. We examined that, the Rules and extant instructions in ensuring proper assessment and collection of revenues, identification of defaulters, monitoring of exemptions etc. were adequate and adhered by the department. The Performance Audit was conducted in 33 selected Commissionerates including examination of records relating to 237 assessees.

The Performance Audit revealed certain inadequacies in the extant provisions, both of system as well as compliance issues relating to the assessment and collection of tax from the Works Contract Service.

- a. On examination of records from data/dump-data relating to works contractors gathered from various sources, we identified 425 works contractors who had executed works contracts, had neither registered with the department nor paid service tax of ₹ 447.76 crore.

(Paragraph 2.2.1)

- b. In 1857 cases under 17 Commissionerates, we observed delays in submission of returns ranging upto 49 months involving late fee of ₹ 1.70 crore.

(Paragraph 2.5.1)

- c. We observed 145 cases of non/short-payment of service tax of ₹ 44.74 crore.

(Chapter 3)

- d. We observed 34 cases of irregular availing/utilisation of Cenvat credit involving an amount of ₹ 22.59 crore.

(Chapter 4)

- e. We observed 14 cases of incorrect availing of exemptions involving an amount of ₹ 17.81 crore.

(Chapter 5)

- f. We observed 44 cases, of incorrect application of rate of service tax and non/short payment of interest of ₹ 8.84 crore.

(Chapter 6)

Summary of Recommendations

1. Inter departmental co-ordination should be made obligatory mainly with Commercial Tax Department for identification of unregistered service providers and broadening of tax base in particular with VAT records through the Regional Economic Intelligence Committee meetings. The result of this exercise should be reflected in periodical report such as Monthly Technical Reports (MTRs).

Central Board of Excise and Customs (CBEC) of in its reply (June 2015) stated that Tax 360⁰ program has been started within Department of Revenue wherein data is shared between CBEC, Central Board of Direct Taxes (CBDT), Ministry of Corporate Affairs (MCA-21) and six VAT departments viz., Maharashtra, Gujarat, Kerala, Tamil Nadu, Andhra Pradesh and West Bengal. The Directorate General of Systems and Data Management is the nodal agency for CBEC which compiles the data and shares it with the respective field formations. It further stated that Section 15A and Section 15B of the Central Excise Act, 1944 were inserted vide the Finance Act, 2014 which have been made applicable to like matters in service tax vide Section 83 of the Finance Act, 1994 which make it obligatory for certain specified categories of persons to furnish information returns to the department. This includes any authority under the State Government, Electricity department, etc.

While the steps taken by the Ministry are in the right direction for achieving inter departmental co-ordination, the Ministry may ensure that the results of the same is reflected in the MTRs.

2. CBEC may consider to design a tool to co-relate service tax payments from the ST-3 return filed either by service provider or service recipient involving service tax liability under reverse charge mechanism.

CBEC in its reply (June 2015) stated that Guidelines are being issued to the field formations for conducting detailed scrutiny of returns in which the aspect of matching payment of service tax by the service provider and recipient under reverse charge would be taken care of. The returns would be selected on the basis of risk parameters including local risk factors. As such, in the ST-3 returns filed by the service provider and recipient, individual transactions are not recorded. Thus, this aspect can be looked into only when audit, anti-evasion inquiry or detailed manual scrutiny of returns is taken up.

CBEC in its letter dated 16 March 2012 while introducing the reverse charge on WCS stated that "it has been noticed that a number of registrants collect the tax but do not pay the same to the Department. This is a serious loss of the revenue even though the compliant section at the recipient end is often not benefitted. To ensure proper collection, while not inconveniencing small business, a new scheme is proposed to be introduced". So the intention behind introduction of reverse charge is to ensure that the due service tax to the Government is to be paid by both service provider and service receiver. Though no individual transactions are recorded in ST-3 return, the audit opines that in the era of Information Technology, the Board may consider introduction of a mechanism, so that this issue is taken care of.

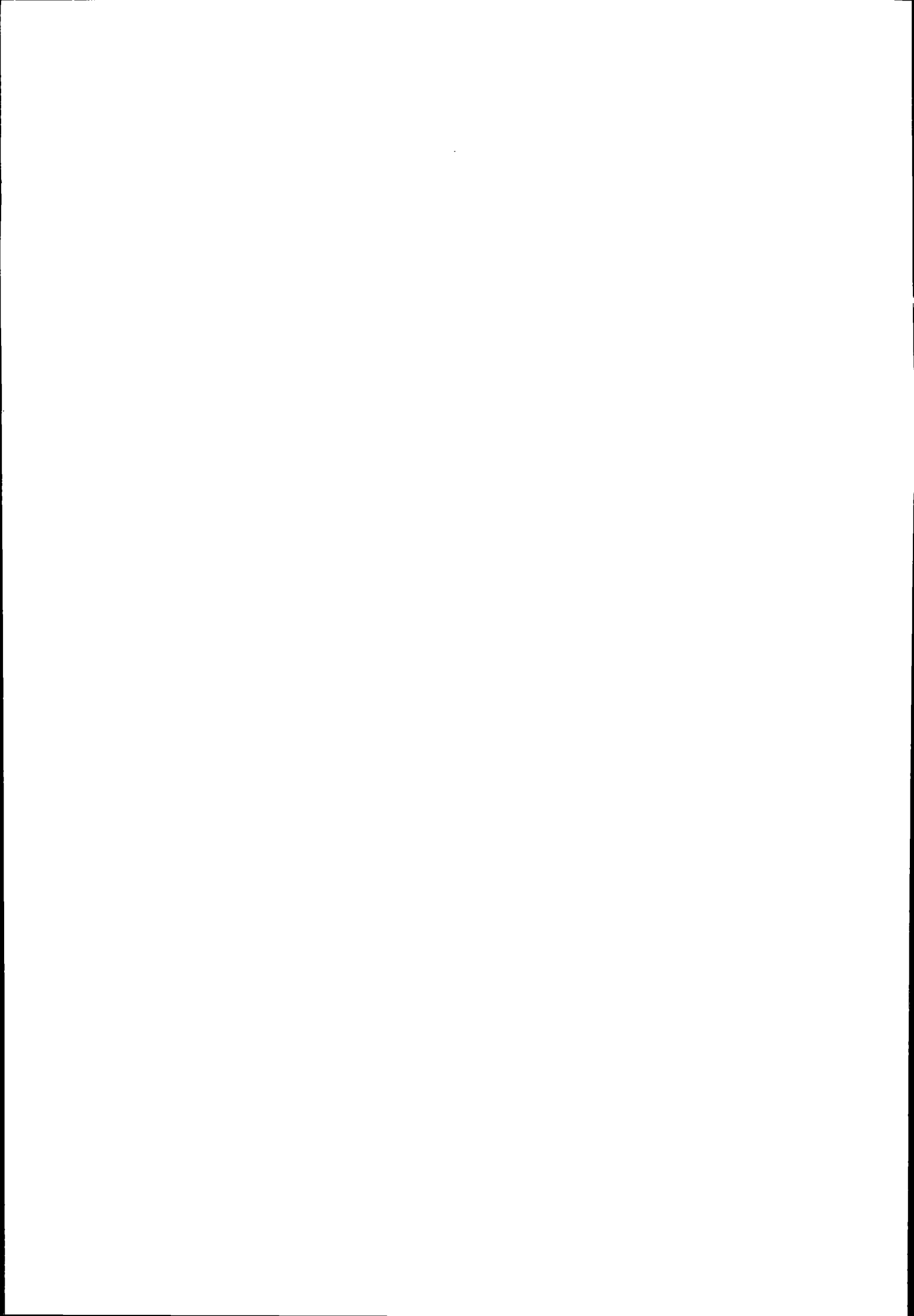
3. Monitoring mechanism to watch non/late filers should be strengthened keeping in view of determination of service tax payments through self assessment.

CBEC in its reply (June 2015) stated that the Directorate General of Systems and Data Management has created a report utility in ACES (Assessee-Wise Detailed Report (AWDR)) for identifying stop filers/non-filers/late filers which can be viewed by the field officers for further necessary action at their end.

During test check audit observed that no action was taken at Commissionerate level. Audit further suggests that in the automated environment of ACES the CBEC may consider automatic levy of late fee on belated filing of returns.

4. CBEC may review the requirement of submission of records and to ensure that the rule may be adhered to strictly or else the provision may be revised accordingly.

Ministry in its reply (June 2015) admitted the recommendation for compliance.



Chapter 1: Introduction

1.1 Background

Service Tax was introduced through Chapter V of Finance Act, 1994 in the year 1994.

There has been steady rise in service tax collection from ₹ 410 crore during 1994-95 to ₹ 1,54,780 crore during 2013-14. The increase in service tax is mainly due to addition of number of taxable services, which have increased from 3 in 1994 to all the services, except those specified in the negative list after the introduction of negative list approach with effect from 1 July 2012. The increase in service tax is also due to the overall increase in the economy.

Works contract service (WCS) was added to list of taxable services with effect from 1 June 2007. The scope of this service has been expanded from time to time through changes/amendments in the Finance Acts.

WCS is among top ten contributors to service tax collections and during 2013-14, ₹ 7,434 crore which is 4.80 per cent of overall service tax collection were contributed by WCS. The works contract seeks to tax those services wherein transfer of property in goods is involved during the execution of works contract. The tax would be on the services involved in execution of works contract.

Usually liability of service tax is affixed either on the service provider or on the service recipient. With effect from 1 July 2012 a new method of taxation was brought into effect whereby the liability of payment of service tax falls on both i.e., the service provider as well as service receiver in case of certain selected services. In case of WCS the service tax in respect of services provided by individual, Hindu Undivided Family, proprietary firm or partnership firm including association of persons located in the taxable territory to a business entity registered as a body corporate, located in the taxable territory is partially payable (50 per cent) by recipient of service and remaining 50 per cent by service provider.

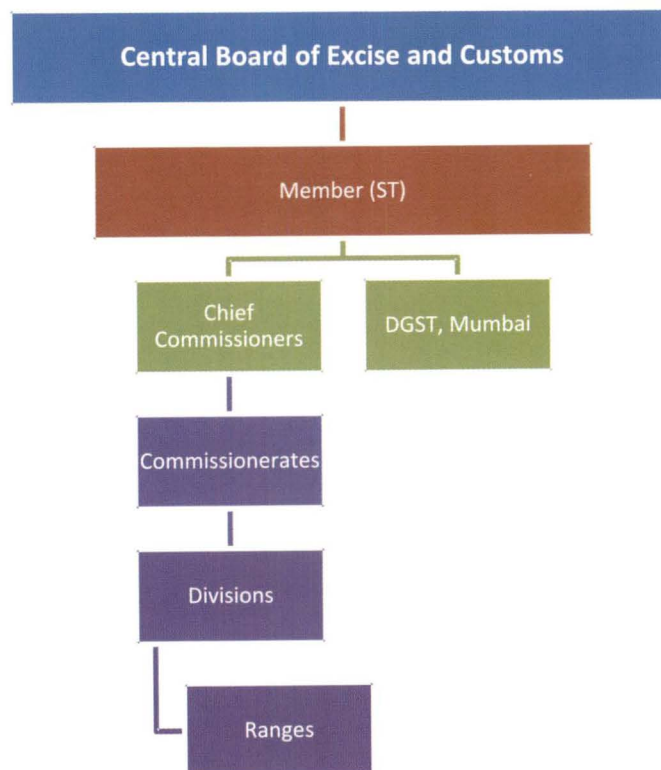
1.2 Organisational set-up

Central Board of Excise and Customs (CBEC) set up under the Central Boards of Revenue Act, 1963 is a part of the Department of Revenue under the Ministry of Finance, Government of India. It deals with the tasks of formulation of policy concerning levy and collection of Customs, Central Excise duties and Service Tax, prevention of smuggling and administration of

matters relating to Customs, Central Excise, Service Tax and Narcotics. The Board is the administrative authority for its subordinate organisations, including Custom Houses, Central Excise and Service Tax Commissionerates and the Central Revenues Control Laboratory. Member (Service Tax) in the CBEC have the overall charge of the matters relating to Service Tax. They are assisted by Chief Commissioners/Commissioners.

Chart 1.1 depicts the organisational structure under CBEC, concerned with the collection of service tax revenues and the monitoring of the same.

Chart 1.1: Organogram of CBEC



1.3 Legal provisions

1.3.1 Taxable services

1.3.1.1 Between 1 June 2007 and 30 June 2012

‘Works contract service’ in Section 65(105)(zzza) of the Finance Act, 1994 means,

“Any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

For the purposes of this sub-clause, “works contract” means a contract where,

- i. transfer of property in goods involved in execution of such contract is leviable to tax as a sale of goods, and
- ii. such contract is for the purposes of carrying out:-
 - a. erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or
 - b. construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
 - c. construction of a new residential complex or part thereof; or
 - d. completion and finishing services, repairs, alteration, renovation or restoration of, or similar services in relation to (b) and (c); or
 - e. turnkey projects¹ including engineering procurement and construction or commissioning (EPC) projects.”

1.3.1.2 From 1 July 2012

Section 65(44) defines "service" to mean any activity carried out by a person for another for consideration, and includes a declared service while excluding a few activities such as an activity which constitutes merely a transfer of title in goods or immovable property, by way of sale, gift or in any other manner.

The service portion in the execution of a works contract is a declared service as per Section 66E(h) of the Act (with effect from 1 July 2012).

Section 65B (introduced with effect from 1 July 2012) of the Finance Act, 1994, deals with "Interpretations". Clause (54) of Section 65B reads,

Works contract means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying

¹ The word 'turnkey project/contract' have been defined in the Black's Law Dictionary as "Engineering procurement and construction contract – a fixed price, schedule-intensive construction contract – typically used in the construction of single purpose project in which the contractor agrees to a wide variety of responsibilities, including the duties to provide for the design, engineering, procurement and construction of the facility to prepare start up procedures, to conduct performance test, to create operation manuals and to train people to operate the facility".

out any other similar activity or a part thereof in relation to such property. However, services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a road, bridge, tunnel or terminal for road transportation for use by general public were exempted vide notification dated 20 June 2012.

1.3.2 Valuation of taxable service

Under Section 67 of the Act, the value of taxable service is required to be computed in the following manner:

- a. Where the provision of service is for a consideration received wholly in money, the value shall be the gross amount charged by the service provider for provision of service.
- b. Where the provision of service is for a consideration which is not wholly or partly consisting of money, the value shall be such amount in money as, with the addition of service tax charged, is equivalent to the consideration.
- c. Where the provision of service is for a consideration which is not ascertainable, the value shall be the amount as may be determined in the manner prescribed in the Valuation Rules.

Further, the Section provides that

- a. Where the gross amount charged is inclusive of service tax payable, the value shall be such amount, as with addition of tax payable, is equal to the gross amount charged.
- b. 'Consideration' includes any amount payable for the service provided or to be provided.
- c. The term 'gross amount charged' shall include payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense Account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprises.

1.3.2.1 Rules applicable between 1 June 2007 and 30 June 2012

Provisions relating to determination of value of service portion in the execution of a works contract are contained in the Service Tax (Determination of Value) Rules, 2006 which came into force with effect from 1 June 2007 vide notification dated 19 April 2006.

Rule 2A of the Service Tax (Determination of Value) Rules, 2006, provides that the value of taxable service in relation to services involved in the

execution of a works contract shall be determined by the service provider in the following manner:

(i) Value of works contract service determined shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.

a. However, gross amount charged for the works contract shall not include VAT or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution or the said works contract;

b. value of works contract service shall include-

i. labour charges for execution of the works;

ii. amount paid to a sub-contractor for labour and services;

iii. charges for planning, designing and architects' fees;

iv. charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

v. cost of consumables such as water, electricity, fuel, used in the execution of the works contract;

vi. cost of establishment of the contractor relating to supply of labour and services;

vii. other similar expenses relating to supply of labour and services; and

viii. profit earned by the service provider relating to supply of labour and services;

c. Where VAT or sales tax has been paid on the actual value of transfer of property in goods involved in the execution of works contract, then such value adopted for the purposes of payment of VAT or sales tax, as the case may be, shall be taken as the value of transfer of property in goods involved in the execution of the said works contract for determining the value of works contract service.

Works contract is a composite contract (i.e. service plus material component involved) and hence specific provisions have been made in respect of valuation. Broadly, two options are available to service provider.

a. Calculate value of service as per rule 2A of the Service Tax (Determination of Value) Rules, 2006 and pay service tax at 10.30 per cent (upto March 2012) or 12.36 per cent as the case may be, inclusive

of education cess and secondary and higher education cess on such value. In such case, assessee can not avail Cenvat credit of inputs. Thus the assessee can avail Cenvat credit of input services and capital goods.

- b. Pay service tax as per rule 3(1) of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, at 4.8 per cent (from 1 April 2012 and upto 1 July 2012) (exclusive of education cess and secondary and higher secondary cess) of gross amount charged for works contract. This was as per the provisions of the erstwhile Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. As per rule 3(2) of Composition scheme, the assessee cannot avail Cenvat credit of inputs. Thus, the assessee can avail Cenvat credit of input services and capital goods.

The rate under the composition scheme as introduced in 2007 was two per cent which was subsequently raised to four per cent from 1 March 2008. This rate was further enhanced to 4.8 per cent from 1 April 2012.

In both the cases VAT/sales tax will not be included in the value for the purpose of calculating service tax.

Assessee could treat each 'works contract' separately and choose either option (a) or (b) above, in each case. There was no compulsion that he had to follow the same option in respect of all works contracts executed by him.

1.3.2.2 Rules applicable from 1 July 2012

With effect from 1 July 2012 position related to valuation has been inserted in rule 2A (ii) of Service Tax (Determination of Value) Rules, 2006 as follows:-

- (ii) Where the value has not been determined as under clause (i), mentioned in paragraph no. 1.2.2.1 above, the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-
 - a. in case of works contracts entered into for execution of original works, service tax shall be payable on 40 per cent of the total amount charged for the works contract;
 - b. in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on 70 per cent of the total amount charged for the works contract;
 - c. in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services

such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property, service tax shall be payable on 60 per cent of the total amount charged for the works contract;

Explanation 1 : For the purpose of this rule

- a. "Original works" means-
 - i. all new constructions;
 - ii. all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
 - iii. erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;
- b. "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-
 - i. the amount charged for such goods or services, if any; and
 - ii. the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2 - For the removal of doubts, it is clarified that the provider of taxable service shall not take Cenvat credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of Cenvat Credit Rules, 2004.

1.4 Why we choose this topic

WCS is one of the top ten revenue contributing services, with revenue collection of ₹ 3,092 crore, ₹ 4,179 crore, ₹ 4,455 crore and ₹ 7,434 crore during 2010-11, 2011-12, 2012-13 and 2013-14 respectively. There are several distinctive provisions in the rules relating to works contract which also make this an area worth our examination; such provisions include the erstwhile composition scheme in respect of works contract, the newly introduced partial reverse charge mechanism and the provision of valuation under rule 2A of the Service Tax (Determination of Value) Rules, 2006.

1.5 Audit objectives

Through examination of departmental and assessee records, we sought to ensure:-

- a. the adequacy of rules, regulations, notifications, circulars/ instructions/trade notices etc., issued from time to time in relation to levy, collection and assessment of service tax relating to works contract services;
- b. whether the extant provisions of law are being complied with adequately;
- c. whether there was an adequate mechanism to identify and bring in potential service providers into tax net for levy of service tax; and
- d. whether there was an effective monitoring and internal control mechanism.

1.6 Scope of audit and coverage

We selected 30 per cent of the Commissionerates/ Divisions/ Ranges. While doing so the Commissionerates/ Divisions/ Ranges with maximum number of assessees as well as high revenue collected during 2010-11 to 2013-14 under WCS had been selected with the minimum of two Divisions and two Ranges. Besides at least five assessees paying service tax over ₹ three crore per year, through Cenvat plus PLA and at least two assessees paying service tax over ₹ one crore but less than ₹ three crore per year, through Cenvat plus PLA from each selected Commissionerate had been covered.

We carried out examination of records at 33 selected Commissionerates, 66 Divisions and 116 Ranges (exclusive ST, integrated CE and ST CDRs and LTUs) and 237 assessees for conducting the performance audit on WCS. The period of examination of this performance audit is from 2010-11 to 2013-14.

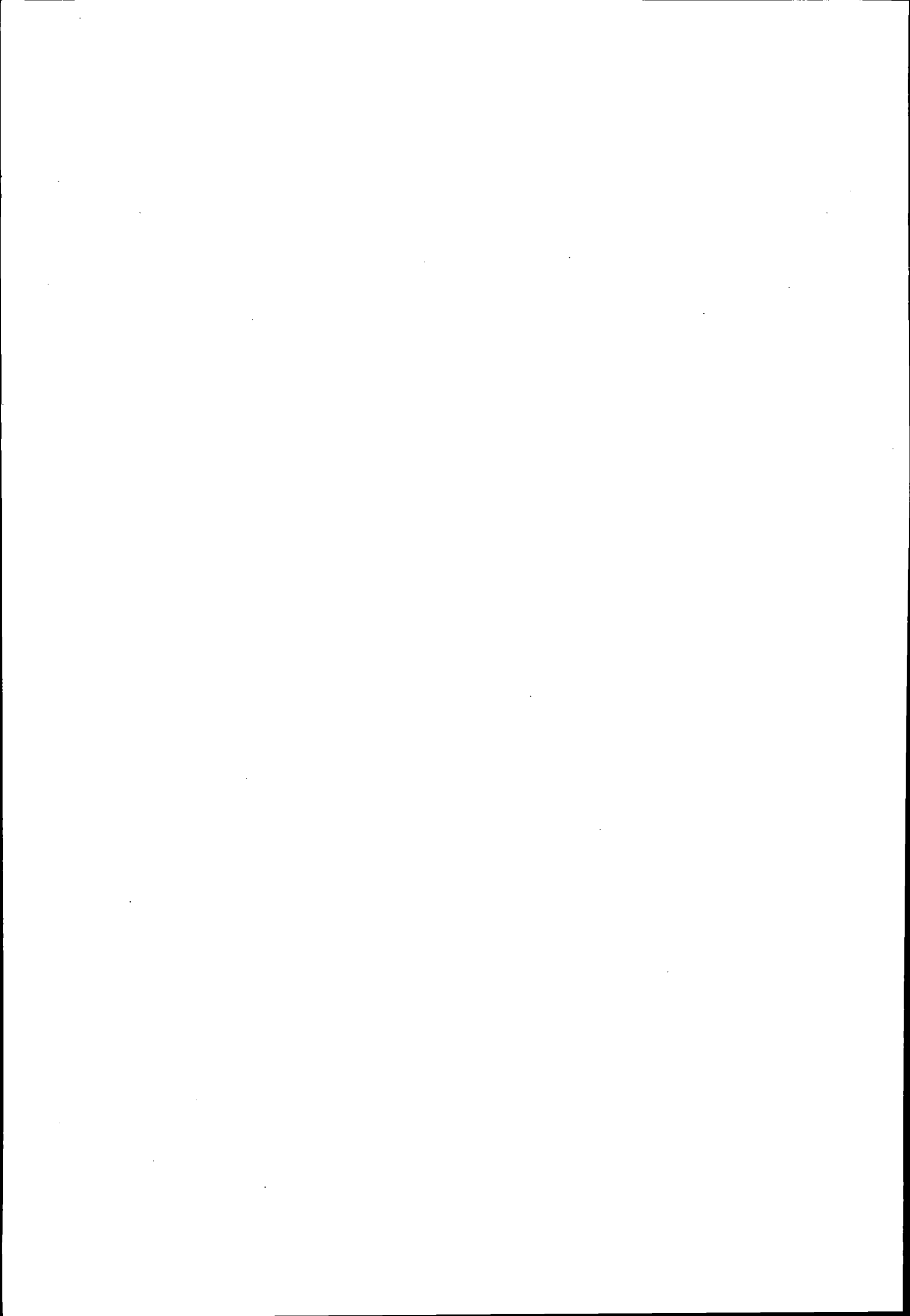
1.7 Audit findings

The service tax collected by the selected Commissionerates for the year 2013-14 is ₹ 5,164 crore. We noticed system and compliance issues viz., non-registration, non/short payment of service tax, incorrect availing and utilisation of Cenvat credit, incorrect exemption etc., involving financial implication of ₹ 543.46 crore. The department intimated the recovery of ₹ 3.92 crore.

1.8 Acknowledgement

We acknowledge the co-operation extended by Central Board of Excise and Customs (CBEC) and its field formations, in providing the necessary records for the conduct of this audit.

We discussed the audit objectives and scope of the Performance Audit in an entry conference with CBEC on 14 August 2014 and exit conference was held on 18 June 2015. The Ministry furnished the reply to the recommendations in June 2015 which are included in this report.



Chapter 2: Existing Systems and Procedures

2.1 Identification of works contract service providers by department

Director General of Service Tax (DGST) issued instructions in May 2003 to the field formations to obtain information on unregistered service providers from various sources such as yellow pages, regional registration authorities and through inter-governmental and inter-departmental co-ordination especially with Income Tax and State Sales Tax departments through Regional Economic Intelligence Committee (REIC) meetings. Further, CBEC directed its field formations in November 2011 that a special cell be created in each Commissionerate to focus on widening of tax base by bringing in potential assesseees.

2.1.1 We enquired from the selected Commissionerates² regarding the details of registration made through departmental initiative i.e., through anti-evasion wing, Director General of Central Excise Intelligence (DGCEI), survey, any other sources etc. From the data received it is observed that only in 26 cases in Bhopal (2), Coimbatore (1) and Jamshedpur (23) Commissionerates, the registration was made through departmental initiatives as mentioned above under WCS. We observed that between 2010-11 and 2013-14 total number of registrations under WCS for the above three Commissionerates were 1606, 489 and 958 respectively. On comparison it is observed that the percentage of registrations due to departmental initiatives was 0.12, 0.20 and 2.40 per cent respectively which is negligible. Remaining 30 Commissionerates did not provide the information.

We pointed this out (between December 2014 and January 2015), the reply of the Department/Ministry is still awaited (June 2015).

2.1.2 Prevention of tax evasion and widening of tax base are two important functions of tax administration for optimum tax realisation. With increasing reliance on voluntary compliance by tax payers at large, it becomes increasingly important for department to put in place an effective mechanism for collecting information from various sources in order to bring unscrupulous assesseees into tax net.

We enquired from the selected Commissionerates regarding the details of surveys conducted by the department. The data received from the four

² Ahmedabad (ST), Ahmedabad-III, Bengaluru-I (ST), Bengaluru-II (ST), Bengaluru-V, Bhopal, Bhubaneswar-I, Bilaspur, Calicut, Chandigarh-I, Chennai (LTU), Chennai (ST), Coimbatore, Delhi-I (ST), Durgapur (ST), Ghaziabad, Haldia (ST), Hyderabad-II, Hyderabad-IV, Jabalpur, Jaipur-I, Jamshedpur, Kolkata (ST), Lucknow, Ludhiana, Mumbai-I (ST), Mumbai-II (ST), Nagpur, Patna, Pune-III, Raipur, Ranchi and Salem

Commissionerates³ depicted that 297 surveys were conducted in the selected ranges of above four Commissionerates. We further noticed that eight Commissionerates⁴ did not conduct any survey. Remaining 21 Commissionerates did not provide data regarding the quantum of surveys undertaken by them.

During the course of audit 425 unregistered assesseees were found as detailed in para 2.2.1. Though survey is an important tool to identify the unregistered service providers to bring them into tax net, it appears that the department is not using this tool effectively.

We pointed this out (between December 2014 and January 2015), the reply of the Department/Ministry is still awaited (June 2015).

2.2 Non registration of assesseees

Section 67 of the Finance Act, 1994, envisages that where the provision of service is for a consideration in money, value of taxable service shall be the gross amount charged for such service. As per rule 6 of Service Tax Rules, 1994, of the above said rules read with Section 68 of the Finance Act, 1994, the service tax shall be paid by the prescribed due dates, i.e., 6th day of the next month (except for March).

As per notification dated 20 June 2012, the service tax in respect of services provided by individual, Hindu Undivided Family, proprietary firm or partnership firm including association of persons located in the taxable territory to a business entity registered as a body corporate, located in the taxable territory is partially payable (50 per cent) by recipient of service and remaining 50 per cent by service provider.

2.2.1 On examination of records from data/dump-data relating to works contractors gathered from various sources such as state VAT returns, income tax returns and from the records of some registered service providers, we found that 425 works contractors, had neither registered with the department nor paid service tax. The service tax revenue involved is ₹ 447.76 crore. Information of non-registered assesseees are tabulated in Table 2.1.

³ Coimbatore, Jabalpur, Jamshedpur and Salem

⁴ Ahmedabad-III, Ahmedabad (ST), Bhopal, Bhubaneswar-I, Chandigarh-I, Hyderabad-IV, Jaipur-I, and Ludhiana

Table 2.1: Non-registered assessees

			(Crore of ₹)
Name of the assessee (M/s.)	Taxable value	Service tax liability	
1. SPL and GDC Joint Venture	1,798.41	86.50	
2. Archon Engicon Limited	1,668.15	76.87	
3. Dineshkumar B.Patel	541.23	25.22	
4. J.S. Designs	389.03	19.09	
5. Ravi Construction	211.77	10.47	
6. Maruti Construction Company	195.20	9.63	
7. Aishwarya Infrastructure & Developers	166.38	7.08	
8. M. Venkatarama Reddy	142.75	6.46	
9. Balaji Builders	137.31	6.30	
10. S. R. Ravi Shankar	121.98	5.64	
11. Others (415 assesseees)	4,262.90	194.49	
Total (425 assesseees)	9635.11	447.76	

We pointed this out (between October 2014 and January 2015), the reply of the Department/Ministry is still awaited (June 2015).

A few illustrative cases are given below:-

2.2.1.1 From the records of Commercial Tax Department, Ahmedabad, we noticed that six assesseees (Sl.No.1 to 6 of above table) in Ahmedabad provided WCS during 2010-11 to 2013-14 involving taxable value of ₹ 4,803.79 crore. However, they had neither registered with the department nor paid service tax. The service tax revenue involved is ₹ 227.78 crore.

We pointed this out (December 2014), the reply of the Department/Ministry is still awaited (June 2015).

2.2.1.2 From the records of Commercial Tax Department, Bengaluru, we noticed that four assesseees (Sl.No.7 to 10 of above table) in Bengaluru provided WCS during 2010-11 to 2013-14 involving taxable value of ₹ 568.42 crore. However, they had neither registered with the department nor paid service tax. The service tax revenue involved is ₹ 25.48 crore.

We pointed this out (December 2014), the reply of the Department/Ministry is still awaited (June 2015).

2.2.1.3 From the records of Commercial Tax Department, Bengaluru, we noticed that **M/s. CEC –SOMA-CC JV** and **M/s. Krishi Infratech** in Bengaluru provided WCS during 2010-11 to 2013-14 involving taxable value of ₹ 216.11 crore. However, they had neither registered with the department nor paid service tax. The service tax revenue involved is ₹ 9.97 crore.

We pointed this out (December 2014), the reply of the Department/Ministry is still awaited (June 2015).

2.2.1.4 From the records of Income Tax and Commercial Tax Department, Hyderabad, we noticed that **M/s. Siddhardha Constructions**, Hyderabad provided WCS during 2013-14 involving taxable value of ₹ 56 crore. However, they had neither registered with the department nor paid service tax. The service tax revenue involved is ₹ 2.77 crore.

We pointed this out (December 2014), the reply of the Department/Ministry is still awaited (June 2015).

2.2.1.5 From the records of **M/s. Mangalam Build Developers Ltd.**, Jaipur, we noticed that **M/s. Devi Construction Company** (proprietary firm) provided WCS in respect of construction of road for residential complex during 2013-14 involving taxable value of ₹ 31.65 crore. However, they had neither registered with the department nor paid service tax. The service tax revenue involved is ₹ 78.25 lakh being 50 per cent of service tax liability.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

2.2.1.6 From the records of Tamil Nadu Value Added Tax (TNVAT) dump data as well as records of **M/s. Sreevatasa Real Estate (P) Ltd.**, Coimbatore, we noticed that **M/s. Varsha Colour World**, Salem provided WCS during 2010-11 to 2013-14 involving taxable value of ₹ 2.45 crore. However, they had neither registered with the department nor paid service tax. The service tax revenue involved is ₹ 11.12 lakh.

We pointed this out (January 2015), the department intimated (March 2015) that **M/s. Varsha Colour World** had obtained the registration consequent to CERA audit.

The reply of the Ministry is still awaited (June 2015).

Recommendation No.1

Inter departmental co-ordination should be made obligatory mainly with Commercial Tax Department for identification of unregistered service providers and broadening of tax base in particular with VAT records through the Regional Economic Intelligence Committee meetings. The result of this exercise should be reflected in periodical report such as Monthly Technical Reports (MTRs).

CBEC in its reply (June 2015) stated that Tax 360⁰ program has been started within Department of Revenue wherein data is shared between CBEC, Central Board of Direct Taxes (CBDT), Ministry of Corporate Affairs (MCA-21) and six VAT departments viz., Maharashtra, Gujarat, Kerala, Tamil Nadu, Andhra Pradesh and West Bengal. The Directorate General of Systems and Data

Management is the nodal agency for CBEC which compiles the data and shares it with the respective field formations. It further stated that Section 15A and Section 15B of the Central Excise Act, 1944 were inserted vide the Finance Act, 2014 which have been made applicable to like matters in service tax vide Section 83 of the Finance Act, 1994 which make it obligatory for certain specified categories of persons to furnish information returns to the department. This includes any authority under the State Government, Electricity department, etc.

While the steps taken by the Ministry are in the right direction for establishing inter department co-ordination, however, the Ministry may ensure that the results of the same is reflected in the MTRs.

Recommendation No.2

CBEC may consider to design a tool to co-relate service tax payments from the ST-3 return filed either by service provider or service recipient involving service tax liability under reverse charge mechanism.

CBEC in its reply (June 2015) stated that guidelines are being issued to the field formations for conducting detailed scrutiny of returns in which the aspect of matching payment of service tax by the service provider and recipient under reverse charge would be taken care of. The returns would be selected on the basis of risk parameters including local risk factors. As such, in the ST-3 returns filed by the service provider and recipient, individual transactions are not recorded. Thus, this aspect can be looked into only when audit, anti-evasion inquiry or detailed manual scrutiny of returns is taken up.

CBEC in its letter dated 16 March 2012 while introducing the reverse charge on WCS stated that "it has been noticed that a number of registrants collect the tax but do not pay the same to the Department. This is a serious loss of the revenue even though the compliant section at the recipient end is often not benefitted. To ensure proper collection, while not inconveniencing small business, a new scheme is proposed to be introduced". So the intention behind introduction of reverse charge is to ensure that the due service tax to the Government is to be paid by both service provider and service receiver. Though no individual transactions are recorded in ST-3 return, the audit opines that in the era of Information Technology, CBEC may consider introduction of a mechanism, so that this issue is taken care of.

2.3 Delay in registration

As per rule 4 of the Service Tax Rules, 1994, read with Section 69 of the Finance Act, 1994, every person liable for paying service tax shall make an

application in Form ST-1 for registration within a period of thirty days from the date on which the service tax is levied or within a period of thirty days from the date of commencement of business, as the case may be. In case of failure to register within the stipulated time limit he shall be liable to a penalty which may extend to ₹ 10,000 as per Section 77 (1)(a) of the Finance Act, 1994.

We enquired from the selected Commissionerates regarding the amount of penalty levied in case of belated registrations. Only Patna and Jaipur-I Commissionerates supplied the information. We noticed, 17 cases of belated registrations ranging from 27 to 30 months and the department did not impose any penalty in these cases. This resulted in non-levy of penalty of ₹ 1.7 lakh. Remaining selected 31 Commissionerates did not provide this data.

We pointed this out (December 2014), the reply of the Department/Ministry is still awaited (June 2015).

2.4 Non-filing of returns

Rule 7 of the Service Tax Rules, 1994, read with Section 70 (1) of the Finance Act, 1994, stipulates that every person liable to pay service tax shall himself assess the tax due on the services provided by him and furnish to the Superintendent of Central Excise a half yearly return in form ST-3 by the 25th of the month following the particular half year.

2.4.1 We enquired from the selected Commissionerates regarding the details of returns received and scrutinised. From the data received from Ahmedabad (ST), Bhubaneswar-I, Calicut, Chandigarh-I, Ludhiana and Salem Commissionerates, it was observed that 37 per cent of returns i.e., 21,386 returns were not filed out of 57,907 due. Remaining 27 Commissionerates either did not provide the details or provided incomplete details.

A few illustrative cases are given below:-

2.4.1.1 During the examination of records of M/s. Alliance Projects, in Chennai (ST) Commissionerate, we observed that the assessee was engaged in the WCS from January 2006. Though the assessee earned gross income of ₹ 197.74 crore for the years 2005-06 to 2010-11 and paid service tax, they did not file ST-3 returns till May 2014.

We pointed this out (September 2014), the department stated (October 2014) that the internal audit had covered the period from April 2007 to September 2012 and noticed that the service provider either filed belatedly

or not filed ST-3 returns for the period from 2005-06 to 2011-12 and recovered late fee of ₹ 0.77 lakh.

The reply of the department is not acceptable since the assessee did not file ST-3 returns till date as noticed from the assessee's letter dated 2 May 2014, despite recovery of late fee. Moreover, the assessee in its letter stated that the system was not accepting the belated return. It indicates that the monitoring mechanism to watch submission of returns is weak and lacks follow up by the department.

The reply of the Ministry is still awaited (June 2015).

2.4.1.2 Although details of non-submission of returns were not furnished by Mumbai-I (ST) and Mumbai-II (ST) Commissionerates, it was noticed from the examination of records at ranges that **M/s. Hubtown Ltd.** and **M/s. ACE Pipeline Contracts Pvt. Ltd.**, in above Commissionerates respectively had not filed ST-3 returns during the period between 2012-13 and 2013-14.

We pointed this out (between September 2014 and January 2015), the department while admitting the objection intimated (between February and March 2015) the recovery of ₹ 1.07 lakh from both the assessees.

The reply of the Ministry is still awaited (June 2015).

2.4.1.3 Further, though details of non-submission of returns were not furnished by the Ghaziabad Commissionerate, we observed from the records available at department that 180 registered WCS providers, had not filed their returns for the period 2013-14.

We pointed this out (January 2015), the department stated (February 2015) that show cause notice have been issued in 74 cases and in other 106 cases the issue of show cause notice is under process.

The reply of the Ministry is still awaited (June 2015).

2.5 Non-levy of late fee on belated filing of returns

Rule 7C of the Service Tax Rules, 1994, envisages late fee for delay in furnishing of returns as detailed below:-

- a. fifteen days from the date prescribed for submission of such return an amount of ₹ 500;
- b. beyond 15 days but not later than 30 days from the date prescribed for submission of such return an amount of ₹ 1,000; and
- c. beyond 30 days from the date prescribed for submission of such return, an amount of ₹ 1,000 plus ₹ 100 for every day from the 31st day till the date of furnishing the said return is leviable.

However, the maximum late fee leviable should not exceed ₹ 2,000 upto 7 April 2011 and thereafter ₹ 20,000 per return as prescribed in Section 70(1) of the Finance Act, 1994.

2.5.1 We enquired from the selected Commissionerates regarding the details of returns received belatedly and consequent levy of late fee. From the data received from 17 Commissionerates, we noticed belated filing of returns during 2010-11 to 2013-14 in 1,857 cases with delay ranging upto 49 months involving late fee of ₹ 1.70 crore. Remaining 16 Commissionerates did not provide the details.

We pointed this out (between December 2014 and January 2015), the reply of the Department/Ministry is still awaited (June 2015).

An illustrative case is given below:-

2.5.1.1 We observed 833 instances of belated filing of ST-3 returns in Bhubaneswar-I Commissionerate during 2010-11 to 2013-14 with delay ranging upto 49 months on which late fee leviable is ₹ 82.58 lakh which was not levied.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

Audit is of the opinion that non-filing of ST-3 returns may lead to non-assessment of value of service on which service tax was paid. Further, the correctness of exemption, Cenvat, abatement claimed, etc. cannot be verified in the absence of returns. The delayed filing of returns may lead to piling of work of scrutiny, time bar of cases, increase in work load of the department viz., issuance of SCNs, calculation and collection of late fee from delayed filers etc.

Recommendation No.3

Monitoring mechanism to watch non/late filers should be strengthened keeping in view of determination of service tax payments through self assessment.

CBEC in its reply (June 2015) stated that the Directorate General of Systems and Data Management has created a report utility in ACES (Assessee-Wise Detailed Report (AWDR)) for identifying stop filers/non-filers/late filers which can be viewed by the field officers for further necessary action at their end.

During test check audit observed that no action was taken at Commissionerate level. Audit further suggests that in the automated environment of ACES, the CBEC may consider automatic levy of late fee on belated filing of returns.

2.6 Scrutiny of returns

2.6.1 Review and correction

The department use the Review and Correction (R & C) mechanism to rectify the defects of returns. Board vide letter dated 1 June 2012 directed that every Range Officer is required to undertake R & C within 30 days to rectify the anomalies.

We enquired from the selected Commissionerates about the quantum of returns marked for R & C and its disposal. From the data received from six Commissionerates, we noticed that 13,293 ST-3 returns were marked for R & C out of 21,846 returns filed during 2010-11 to 2013-14. Out of the above 13,293 returns, 7,740 returns were pending as on 31 August 2014. We also noticed that out of 5,553, returns only in 13 cases penalty of ₹ 0.99 lakh was demanded by the department. The remaining 27 Commissionerates either did not provide the details or provided incomplete details.

We pointed this out (between December 2014 and January 2015), the reply of the Department/Ministry is still awaited (June 2015).

From the above, it is evident that this vital tool for scrutiny of returns has not been put into effective use. It was also observed that the delay in undertaking R & C work involved the risk of loss of revenue.

2.6.2 Detailed scrutiny

The purpose of detailed scrutiny is to establish the validity of information furnished in the tax return and to ensure correctness of valuation, availing of Cenvat credit, classification and effective rate of tax applied after taking into consideration the admissibility of exemption notification availed etc. Unlike preliminary scrutiny, detailed scrutiny is to cover only certain selected returns, identified on the basis of risk parameters, developed from the information furnished in the returns submitted by the taxpayers.

Chapter 4 of the Manual for Scrutiny of Service Tax Returns, 2009 envisages that not more than two per cent of the total returns are to be selected on the basis of identified risk parameters for detailed scrutiny.

As per CBEC's circular dated 11 May 2009, once ACES is implemented, returns would be automatically listed in descending order of risk and submitted to Commissioner for selection. As per Board's letter dated 1 June 2012, the Ranges will do the detailed manual scrutiny till such time as the process of selection of returns for detailed scrutiny is automated in ACES.

We enquired from the selected Commissionerates about the data of detailed scrutiny done by department during the period 2010-11 to 2012-13. In

response to our query, 32 Commissionerates intimated that they have not undertaken any detailed scrutiny under WCS. Only Hyderabad IV Commissionerate had carried out detailed scrutiny in respect of two returns during the period 2010-11 to 2012-13.

It was observed that during 2011-12 and 2012-13 only 121 returns were scrutinised by the 26 selected Commissionerates which is less than 0.1 per cent of the total returns received pertaining to all services as brought out in CAG's Report No.4 of 2015.

2.7 Non-verification of remittance details

With effect from 1 April 2010, as per proviso to rule 6(2) of Service Tax Rules, 1994, where an assessee has paid a total service tax of ₹ 10 lakh or more including the amount paid by utilisation of Cenvat credit, in the preceding financial year, he shall deposit the service tax liable to be paid by him electronically, through internet banking. The provision was further amended and electronic payment of service tax has been made mandatory for all service providers who paid more than ₹ one lakh with effect from 1 January 2013.

During the examination of records in Coimbatore Commissionerate, we observed that eight assessees remitted the service tax through manual challan although they are liable to make the payment electronically.

We further noticed that in respect of 27 cases in five Commissionerates, the service tax payments depicted in the ST-3 return did not match with the amount of remittance shown in Electronic Accounting System in Excise and Service Tax (EASIEST). This needs further verification by the department.

We pointed this out (between December 2014 and January 2015), the reply of the Department/Ministry is still awaited (June 2015).

2.8 Internal control

2.8.1 Monitoring of submission of list of records

As per rule 5(2) of the Service Tax Rules, 1994, every assessee shall furnish to the Superintendent of Central Excise at the time of filing returns for the first time a list in duplicate of all records prepared or maintained by them.

We enquired from the selected Commissionerates regarding the details of submission of list of books furnished by assessees with their first return. To our enquiry only six Commissionerates responded. The data received from them depicts that 498 assessees did not furnish the list of books of accounts.

It is evident that the department did not monitor the filing of above records. The remaining 27 Commissionerates did not provide the data.

We pointed this out (between December 2014 and January 2015), the reply of the Department/Ministry is still awaited (June 2015).

Recommendation No.4

CBEC may review the requirement of submission of records and to ensure that the rule may be adhered to strictly or else the provision may be revised accordingly.

The Ministry in its reply (June 2015) admitted the recommendation for compliance.

2.8.2 Non-issuance of show cause notice for further period

As per section 73(1A), of Finance Act, 1994, the Central Excise Officer may serve, subsequent to any notice or notices served, a statement, containing the details of service tax not levied or paid or short levied/short paid or erroneously refunded for the subsequent period on the person chargeable to service tax, then, service of such statement shall be deemed to be service of the notice on such person subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.

2.8.2.1 During the examination of records of **M/s. Aparna Construction and Estates Pvt. Ltd.**, in Hyderabad-II Commissionerate, we noticed that the department issued a show cause notice demanding service tax of ₹ 6.13 crore for the period from 2010-11 to 2011-12 on 22 September 2014. However, it was noticed that no subsequent statement/show cause notice was issued for further period from April 2012 to October 2014. This resulted in non-levy of service tax of ₹ 6.43 crore.

We pointed this out (October 2014), the department stated (November 2015) that the issue would be examined and compliance reported.

The reply of the Ministry is still awaited (June 2015).

2.8.2.2 Similarly, in the case of **M/s. Palada Constructions Pvt. Ltd.**, in Coimbatore Commissionerate the department issued a show cause notice demanding service tax of ₹ 4.59 crore for the period 2008-09 to 2011-12 on 17 October 2013. However, no subsequent statement/show cause notice was issued for further period from April to June 2012 till November 2014. This resulted in non-levy of service tax of ₹ 14.83 lakh.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

2.9 Selection of mandatory units for audit

Internal audit is one of the main compliance verification mechanism in the department, which involves selection of assessee units on the basis of risk parameters and scrutiny of records of the assessee to ascertain the level of compliance with the prescribed rules and regulations. Every Commissionerate has an audit cell, manned by an Assistant/Deputy Commissioner and auditors and headed by an Additional/Joint Commissioner and this cell prepares co-ordinates and monitors the audit plan.

As per paragraph 5.1.2 of Service Tax Audit Manual, 2011 tax payer whose annual service tax payment (including Cash and Cenvat) was ₹ three crore or more in the preceding financial year would be subjected to mandatory audit each year and those paying service tax between ₹ one and ₹ three crore to be audited once in every two years.

2.9.1 In Ahmedabad (ST) Commissionerate we noticed that two WCS providers viz., **M/s. S. Khurana Engg. Pvt. Ltd.** and **M/s. HPCL** paid service tax exceeding ₹ three crore, during 2010-11 to 2013-14 were to be mandatorily covered by internal audit every year. However, internal audit was not conducted in these two cases.

Five⁵ other WCS providers in Bengaluru (ST) Commissionerate paid service tax exceeding ₹ three crore, during 2010-11 to 2013-14 which are required to be mandatorily covered by internal audit every year which was not done.

We pointed this out (December 2014), the reply of the Department/Ministry is still awaited (June 2015).

⁵ M/s. Synergy Property Development Services Pvt. Ltd., M/s. Eureka Forbes Ltd., M/s. L & W Construction Pvt. Ltd., M/s. Salarpuria Properties Pvt. Ltd. and M/s. Provident Housing Ltd.

Chapter 3: Levy of Service Tax

Section 67 of the Finance Act, 1994, envisages that where the provision of service is for a consideration in money, value of taxable service shall be the gross amount charged for such service.

During the course of this performance audit we observed 145 cases of non/short-payment of service tax of ₹ 44.74 crore. Out of this, an amount of ₹ 1.92 crore has been recovered in 23 cases.

A few illustrative cases are given below:-

3.1 Service tax not paid

3.1.1 As per Section 65 (105) (zzzza) of the Finance Act, 1994, taxable service means "any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams and includes such contract carried out for the purpose of erection, commissioning or installation of machinery, equipment etc., whether pre-fabricated or otherwise.

During the examination of records of **M/s. HEC Ltd.**, in Ranchi Commissionerate, we observed that they had supplied machinery/equipment to customers against supply order and also provided services such as erection and commissioning of equipment, testing etc. between April 2011 and March 2014. The assessee received ₹ 44.71 crore on account of erection and commissioning, testing, etc. of the equipment supplied but did not pay service tax on this amount. This resulted in non-levy of service tax of ₹ 2.21 crore.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

3.1.2 Similarly in eight other cases in Ranchi and Jamshedpur Commissionerates we observed that they had supplied machinery/equipment to customers against supply order and also provided services such as erection and commissioning of equipment, testing etc. between April 2011 and March 2014. The assessee received ₹ 98.15 crore on account of erection and commissioning, testing, etc. of the equipment supplied but did not pay service tax on this amount. This resulted in non-levy of service tax of ₹ 4.81 crore.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

3.1.3 During the examination of records of M/s. Patel Engineering Ltd., in Chandigarh-I Commissionerate, we observed that the assessee was engaged in the construction of Sawara Kuddu Hydro Electric Project at Sawra Kuddu in District Shimla during 2013-14 involving a contract value of ₹ 80.88 crore. However, the assessee did not pay service tax of ₹ four crore for execution of the above work.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

3.1.4 During the examination of records of M/s. Indu Projects Ltd., in Hyderabad IV Commissionerate, we observed that the assessee was providing many services including WCS. The service tax liable to be paid by the assessee worked out to ₹ 14.30 crore for the period from April 2013 to March 2014. However, the assessee paid service tax of ₹ 10.43 crore. This resulted in short payment of service tax of ₹ 3.87 crore.

We pointed this out (October 2014), the reply of the Department/Ministry is still awaited (June 2015).

3.1.5 During the examination of records of M/s. Ramky Infrastructure Ltd., in Hyderabad (ST) Commissionerate, we observed that the assessee was providing many services including WCS. The service tax liable to be paid by the assessee worked out to ₹ 4.96 crore for the period from April 2013 to March 2014. However, the assessee paid service tax of ₹ 1.03 crore. This resulted in short payment of service tax of ₹ 3.93 crore.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

3.1.6 During the examination of records of M/s. Rajendra Mittal Construction Company Pvt. Ltd., in Jaipur-I Commissionerate, we observed that the assessee received an amount of ₹ 19.02 crore in respect of construction of a new building or a civil structure or a part thereof for the purpose of commerce and industry to its customers namely, **Shree Cement Ltd., Wonder Cement Ltd. and Powergrid Corporation of India Ltd.**, during the years 2011-12 and 2012-13. However, the assessee did not pay the service tax of ₹ 85.93 lakh.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

3.1.7 During the examination of records of **M/s. Navyuga Engineering Co. Ltd.**, in Patna Commissionerate, we observed that the assessee received an amount of ₹ 18.12 crore from **M/s NTPC**, Barh, during October 2013 to March 2014 for WCS. However, the assessee did not pay the service tax of ₹ 80.85 lakh.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

3.1.8 During the examination of records of **M/s. Mangalam Build Developers Ltd.**, in Jaipur Commissionerate, we observed that the assessee received WCS from a proprietary firm (M/s. Devi Construction Company) during 2013-14 for a value of ₹ 31.65 crore in respect of road construction in residential projects but did not pay service tax of ₹ 78.25 lakh being 50 per cent service tax payable.

We pointed this out (October 2014), the reply of the Department/Ministry is still awaited (June 2015).

3.2 Non-inclusion of value of free supply

As per rule 2A(ii)(A) of the Service Tax (Determination of Value) Rules, 2006, in case of works contracts entered into for execution of original works, service tax shall be payable on 40 per cent of the total amount charged for the works contract. As per explanation (b) thereunder, for the purpose of determination of value of works contract "total amount" shall include sum total of the gross amount charged for the works contract and the fair market value of all the goods and services supplied in or in relation to the execution of the works contract, whether for consideration or otherwise, in a case where the value of service portion cannot be determined under Rule 2A(i).

3.2.1 During the examination of records of **M/s. Mytrah Energy (I) Ltd.**, and **M/s. Bindu Urja Infrastructure Ltd.**, in Hyderabad-IV Commissionerate, we observed that the assessee discharged service tax without adding the value of free material viz. steel, unit transformers, units of electrical work involved in the execution of works contract of supply of unit transformer, electrical line items, part of renewable devices, installation of units transformer, etc. during 2013-14 which is incorrect. The value of free supply material worked

out to ₹ 113.11 crore. Non-inclusion of actual value of free supply material resulted in short-payment of service tax of ₹ 3.37 crore.

We pointed this out (December 2014), the reply of the Department/Ministry is still awaited (June 2015).

3.2.2 During the examination of records of **M/s. Hilite Projects**, in Calicut Commissionerate, we observed that the assessee discharged service tax for original work on 60 per cent of the total receipt (value was arrived at by adding 20 per cent to total receipt due to non-availability of value of supply of cement and steel at free of cost), instead of paying service tax on 40 per cent of gross amount charged during 2012-13 and 2013-14 which is incorrect. There is no such provision in the rule which permits adoption of incorrect percentage in lieu of adoption of correct value of free supply material. We ascertained from the assessee that the exact value of free supply material worked out to ₹ 20.06 crore. Non-inclusion of actual value of free supply material resulted in short payment of service tax of ₹ 40.28 lakh.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

3.2.3 During the examination of records of **M/s. Progressive Endeavors Pvt. Ltd.**, in Haldia Commissionerate, we observed that the assessee paid service tax in respect of works contracts entered into with **M/s. Godrej Agrovet Ltd.**, but did not include the value of cement and steel supplied free of cost of ₹ 4.34 crore which led to undervaluation of the service which resulted in short payment of service tax of ₹ 21.47 lakh during 2011-12 to 2013-14.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

3.3 Incorrect application of Point of Taxation Rules

As per rule 3(b)(i) of Point of Taxation Rules, 2011 'continuous supply of service' means where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of contract which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

During the examination of records of **M/s. Pratibha Industries Ltd.**, Mumbai-II (ST) Commissionerate, we observed that the assessee provided WCS as the

Main Contractor to developers such as **Rustomjee Realty Pvt. Ltd., Tata Housing Projects** and discharged service tax liability on 40 per cent of value of the total amount charged, the payments for which were certified by the Developers as per the contractual agreement. However, the assessee excluded an amount of ₹ 59.41 crore from the total amount during 2013-14, being the uncertified amount for bills raised upto 31 March 2014. Since the WCS being a continuous supply of service, the submission or processing of bills as 'Tax Invoice' to the Developer on the completion of works executed was the point of taxation as against the date of certification of bills. Hence, non-inclusion of the above amount resulted short levy of service tax of ₹ 2.93 crore for the year 2013-14.

On being pointed out (November 2014), the department intimated (April 2015) that a show cause notice for ₹ 2.93 crore was issued in March 2015.

The reply of the Ministry is still awaited (June 2015).

3.4 Non-payment of service tax on time

As per Section 65 (105) read with Section 67 of the Finance Act, 1994, the service tax shall be payable on receipt of advance payments irrespective of the fact when the services are provided in respect of which advance payment has been received.

Further, as per rule 6 of the Service Tax Rules, 2005 with effect from 1 April 2005, the service tax shall be paid to the credit of the Central Government by the 5th/6th of the month immediately following the calendar month in which the payments are received, towards the value of taxable services, except for the quarter ending in March, the payment of which shall be paid to the credit of Central Government by the 31st March of the calendar year.

During the Test check of ST-3 return and Running Account bill of **M/s. Cinda Engineering & Construction Pvt. Ltd.**, in Delhi (ST) Commissionerate, during the period 2010-11 to 2013-14 we observed that the assessee had received advance of ₹ 31.97 crore (for goods and services) against the civil construction work for **M/s. China Steel Corporation India Pvt. Ltd.**, in the month of February 2013. However, the assessee had made the service tax payments on the dates of running account bill instead of receipt date of advance received (between 7 February 2013 to 2 July 2014). Further, there was an outstanding mobilisation balance of ₹ 17.68 crore after 2 July 2014 on

which service tax was not paid by the assessee. This resulted in non-payment of service tax of ₹ 2.19 crore and interest of ₹ 1.05 crore till February 2015.

We pointed this out (February 2015), the reply of the Department/Ministry is still awaited (June 2015).

Chapter 4: Availment/Utilisation of Cenvat Credit

A provider of taxable services can, in terms of rule 4 of the Cenvat Credit Rules, 2004 avail credit of excise duty paid on inputs and capital goods and service tax paid on any input service. The credit can be utilised towards payment of service tax subject to the fulfilment of certain conditions.

During the course of this performance audit we observed 34 cases of irregular availing/utilisation of Cenvat credit involving an amount of ₹ 22.59 crore, out of which ₹ 1.09 crore has been recovered in 13 cases.

A few illustrative cases are given below:-

4.1 Ineligible credit of input services

As per rule 2 (I) (A) of the Cenvat Credit Rules, 2004, input service excludes service portion in the execution of a works contract and construction services used for construction or execution of works contract of a building or a civil structure, except for provision of WCS.

During the examination of records of **M/s. South Eastern Coalfields Ltd.**, in Bilaspur Commissionerate, we observed that the assessee took input service credit of ₹ 9.03 crore on WCS which is specifically excluded in the definition of input service. This resulted in irregular availment and utilisation of Cenvat credit of ₹ 9.03 crore, which is recoverable.

We pointed this out (December 2014), the reply of the Department/Ministry is still awaited (June 2015).

4.2 Inputs for both dutiable and exempted final products

As per rule 6(3) of Cenvat Credit Rules, 2004, any provider of output service opting not to maintain separate accounts shall have option either to pay an amount equal to six per cent of the value of exempted service or reverse Cenvat credit attributable to input services used in or in relation to the provision of exempted services under rules 6(3) (i) or 6(3) (ii) respectively, after exercising option under rule 6(3A).

As per notification dated 20 June 2012 service tax is exempted when the residential complexes are sold after the issuance of Completion Certificate by the competent authority.

4.2.1 During the examination of records of **M/s. Hill County Properties Ltd.**, in Hyderabad-IV Commissionerate, we observed that the assessee availed exemption under WCS for sale of 45 flats for ₹ 44.57 crore upto March 2014,

after obtaining the completion certificate issued by the competent authority. However, since the assessee did not maintain separate set of accounts in respect of input service credit of taxable and exempted service, the assessee is required to pay service tax of ₹ 2.67 crore.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

4.2.2 During the examination of records of **M/s. Johnson Lifts Pvt. Ltd.**, in Chennai (LTU) Commissionerate, we observed that the assessee availed Cenvat credit on common input services of both dutiable and exempted WCS during 2011-12 to 2013-14. Since the value of exempted service is coming to ₹ 3.67 crore, the assessee is required to pay service tax of ₹ 20.81 lakh.

We pointed this out (December 2014), the department reported (February 2015) recovery of ₹ 20.81 lakh.

The reply of the Ministry is still awaited (June 2015).

4.2.3 Scrutiny of ST-3 returns of **M/s. Windsor Realty Pvt. Ltd.**, in Mumbai-I (ST) Commissionerate, revealed that the assessee had shown an amount of ₹ 1.18 crore as amount payable under rule 6(3) through Cenvat credit for the period July 2012 to March 2013. However, against the column for payment made (I3.1.3.7) this amount was not shown. Hence, it is evident that the above amount was not actually discharged by the assessee which need to be recovered.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

4.2.4 During the examination of records of **M/s. VA Tech Wabag Ltd.**, in Chennai (ST) Commissionerate, we observed that the assessee provided exempted and taxable services between July 2012 and March 2014 but did not maintain separate accounts on input services. They availed Cenvat credit on common input services viz., consultancy, audit fee, advertisement etc., amounting to ₹ 30.09 lakh during 2012-13 and 2013-14 on both exempted and taxable services which is recoverable.

We pointed this out (October 2014), the reply of the Department/Ministry is still awaited (June 2015). However, the assessee reversed the amount of ₹ 30.09 lakh.

4.3 Excess availment of Cenvat credit

A service provider can avail credit of service tax paid on input services related to his service activities and central excise duties paid on inputs and/or capital goods and can utilise credit so availed in payment of service tax.

4.3.1 During the examination of records of **M/s. Patel Realty (India) Ltd.**, in Mumbai-II (ST) Commissionerate, we observed from ST-3 returns that there was a difference between closing and opening balance of Cenvat credit of ₹ 3.51 crore as reflected in returns during September and October 2013. This resulted in excess availment of Cenvat credit.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

4.3.2 Similarly, in another case viz., **M/s. Wadhwa Group Holdings Pvt. Ltd.**, in Mumbai-I (ST) Commissionerate, we observed from ST-3 returns that there was a difference between closing and opening balance of Cenvat credit of ₹ 1.38 crore as reflected in returns during September and October 2012. This resulted in excess availment of Cenvat credit.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

4.3.3 As per Cenvat Credit Rules, 2004, a service provider is allowed to take Cenvat credit of duty paid on inputs, capital goods and input services received for providing output services. Further, rule 3(4) of the rule, *ibid*, stated that Cenvat credit shall be utilised only to the extent such credit is available on the last day of the month for payment of tax relating to that month.

During the examination of records of **M/s. Emersion Network Power (India) Ltd.**, in Kolkata (ST) Commissionerate, we observed that the assessee availed and utilised excess Cenvat credit during 2011-12 and 2012-13 of ₹ 57.29 lakh.

We pointed this out (November 2014), the department admitted the observation (March 2015).

The reply of the Ministry is still awaited (June 2015).

4.4 Ineligible Cenvat credit of inputs

As per rule 2(k) of Cenvat Credit Rules, 2004, defines 'inputs' and the same excludes vide (B) any goods used for (a) construction or execution or execution of works contract of a building or a civil structure or a part thereof or (b) laying of foundation or making of structure for support of capital goods except for provision of service provision in the execution of works contract or construction services. Further, rule 2A of Service Tax (Determination of Value) Rules, 2006, provides that the assessee under rule 2A(ii) shall not be eligible to take the Cenvat credit of excise duties and cess paid on 'inputs' used in or in relation to the execution of such works contract.

During the examination of records of **M/s. Adarsh Noble Corporation Ltd.**, Bhubaneswar-I Commissionerate, we observed that the assessee availed and utilised the Cenvat credit of ₹ 61.71 lakh on inputs viz., electrodes, angle, channel etc. during the period 2012-13 and 2013-14 which is irregular.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

Chapter 5: Availment of Exemptions

Under section 93 of Finance Act, 1994, the Government is empowered to exempt generally or subject to such conditions as may be specified in the notification, taxable service of any specified description from the whole or any part of the service tax leviable thereon.

During the course of this performance audit we observed 14 cases of incorrect availing of exemptions involving an amount of ₹ 17.81 crore.

A few illustrative cases are given below:-

5.1 Incorrect availing of exemption

5.1.1 As per Sl.No.13 (a) of notification dated 20 June 2012, construction of a road, bridge, tunnel or terminal for road transportation for use by general public are exempt from service tax.

During the examination of records of **M/s. L & W Construction Pvt. Ltd.**, in Bengaluru-I (ST) Commissionerate, we observed that the assessee has entered into agreements with **M/s. Apricot Realtors Pvt. Ltd.**, Kancheepuram, Chennai to carry out the design and build works for bridges, overhead tanks and reservoirs in the proposed industrial town ship hub at Chennai for a consideration of ₹ 131.57 crore during 2013-14. The assessee claiming the exemption did not discharge the service tax on this amount. Since the work done by the assessee were not for road transportation for use by general public but to industrial hub the availment of exemption is incorrect. This resulted non-levy of service tax of ₹ 6.50 crore.

We pointed this out (December 2014), the reply of the Department/Ministry is still awaited (June 2015).

5.1.2 During the examination of records of **M/s. Indian Oil Corporation Ltd.**, in Bhubaneswar-I Commissionerate, we observed that the assessee awarded the work to **M/s. Gangadhar Jena, M/s. Nirmal Ku Swain, M/s. Niranjan Khuntia** and **M/s. RKD Constructions Pvt. Ltd.**, for construction of road within IOC Pradeep Oil refinery at Paradeep for an amount of ₹ 23.72 crore during 2010-11 and 2011-12. Since the work done by the above four assesseees were not for road transportation for use by general public, service tax of ₹ 93.19 lakh was liable to be paid. This resulted in non-levy of service tax of ₹ 93.19 lakh.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

5.1.3 During the examination of records of **M/s. Sreevatsa Real Estates Pvt. Ltd.**, in Coimbatore Commissionerate, we observed that the assessee awarded the work to **M/s. P.A. Constructions**, for construction of road at Srivatsa Sankara Residential Apartment Complex at Kalapatti for an amount of ₹ 5.60 crore during 2012-13 and 2013-14. Since the work done by **M/s. P.A. Constructions** was not for road transportation for use by general public service tax of ₹ 27.69 lakh was liable to be paid. We further noticed that **M/s. P.A. Constructions** was also not registered with the department. This resulted in non-levy of service tax of ₹ 27.69 lakh.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

5.2 Irregular availing of exemption

As per Section 65(105)(zzzza) of the Finance Act, 1994, (prior to 1 July 2012), taxable service in respect of works contract means 'service provided to any person, by another person in relation to the execution of works contract, excluding works contract in respect of road, airports, railways, transport terminals, bridges, tunnels and dams.

As per S.No.12 (a) of Notification dated 20 June 2012 services provided to the Government, a local authority or a governmental authority by way of construction or any other original works meant predominantly for use other than for commerce is exempted from levy of service tax.

5.2.1 During the examination of records of **M/s. Tata Projects Ltd.**, in Hyderabad-II Commissionerate, we observed that the assessee received an amount of ₹ 29.92 crore towards provision of services from **M/s. GMR** for construction of private railway sidings for their power plants but did not discharge service tax liability of ₹ 3.70 crore on the pretext that the work related to railways. Since the construction was done for a private company for its power plant and not for railways, the availing of exemption was incorrect. This resulted in non-levy of service tax of ₹ 3.70 crore.

We pointed this out (October 2014), the reply of the Department/Ministry is still awaited (June 2015).

5.2.2 During the examination of records of **M/s. Ramalingam Constructions (P) Ltd.**, in Salem Commissionerate, we observed that the assessee constructed corporate office building for **M/s. Tamil Nadu Small Industries Development Corporation Ltd., Chennai (TANSIDCO)** and received ₹ 33.44 crore between 2010-11 and 2013-14. However, the assessee did not discharge the service tax on this amount. However, we noticed that **M/s. TANSIDCO** was engaged in development and maintenance of industrial

estates, including private lands for nominal service charge. They are also engaged in supply/sale of raw materials under marketing assistance scheme besides undertaking outright sale of developed land, hire purchase, lease rental scheme and collected processing fee. Since **M/s. TANSIDCO** has undertaken commercial activity, availing of the exemption by the assessee is incorrect. This resulted in non-levy of service tax of ₹ 1.50 crore for the period 2010-11 to 2013-14.

On being pointed out (December 2014), the department while admitting the objection stated (March 2015) that action is being initiated.

The reply of the Ministry is still awaited (June 2015).

5.3 Other cases

As per Sl. No.12 (c) of notification dated 20 June 2012, services provided to the Government, a local authority or a governmental authority by way of construction of a structure meant predominantly for use as an educational institution is exempted from levy of service tax.

5.3.1 During the examination of records of **M/s. KMV Projects Pvt. Ltd.** and **M/s. IVRCL Infrastructure and Projects Ltd.**, in Hyderabad-II Commissionerate, we observed that these assessees incorrectly availed exemption on the construction services provided to the private educational institutions of ₹ 39.61 crore during 2012-13 and 2013-14 and did not pay service tax. This resulted in non-levy of service tax of ₹ 1.96 crore.

We pointed this out (between November 2014 and January 2015), the reply of the Department/Ministry is still awaited (June 2015).

5.3.2 During the examination of records of **M/s. Bhayana Builders (P) Ltd.**, in Delhi-II Commissionerate, we observed that the assessee incorrectly availed exemption on the construction services provided to the private educational institutions of ₹ 9.25 crore during July 2012 to March 2013 and did not pay service tax. This resulted in non-levy of service tax of ₹ 45.72 lakh.

We pointed this out (May 2014), the reply of the Department/Ministry is still awaited (June 2015).

5.3.3 Section 65(105)(zzza) of the Finance Act, 1994, (Prior to 1 July 2012) defines taxable service in respect of works contract as "Service provided to any person, by another person in relation to the execution of works contract, excluding works contract in respect of road, airports, railways, transport terminals, bridges, tunnels and dams. "Residential Complex" as defined in

Section 65 (91a) of Finance Act, 1994 means any complex comprising of a building or buildings, having more than 12 residential units.

During the examination of records of **M/s. R.R. Thulasi Builders (I) Pvt. Ltd.**, in Salem Commissionerate, we observed that the assessee constructed 30 residential quarters for the Central University of Tamilnadu, Tiruvarur and 48 residential quarters for National Institute of Technology, Trichy during 2010-11 and 2011-12 under works contract category for ₹ 25.34 crore and claimed exemption from payment of service tax. Since the number of residential units constructed was more than 12, the availing of exemption was incorrect. This resulted in non-levy of service tax of ₹ one crore.

We pointed this out (January 2015), the department stated (March 2015) that as per circular dated 29 January 2009 exemption is available if construction is made for personal use,

The reply of the department is not acceptable since the above exemption is available only when the number of units involved in the construction is less than 12.

The reply of the Ministry is still awaited (June 2015).

Chapter 6: Other Compliance Issues

During the course of this performance audit we observed 44 cases of incorrect application of rate of service tax and non/short payment of interest involving ₹ 8.84 crore.

6.1 Incorrect application of rate of service tax

As per Finance Act, 1994, service tax on commercial or industrial construction service under section 65 (zzq) was leviable with effect from 10 September 2004 while service tax on works contract under Section 65 (zzzza) was leviable with effect from 1 June 2007. As per Board's circular dated 4 January 2008, changing classification of service rendered for construction of a project from commercial or industrial construction service to WCS is not permissible.

We observed from the examination of records of **M/s. Shapoorji Pallonji & Company Ltd.**, in Ahmedabad (ST) Commissionerate that they provided construction service towards two projects viz. **Tata Motors Ltd. (TML)** and **Bhavnagar Energy Company Ltd. (BECL)** started from October 2008 and July 2010 respectively classifying the same as Commercial or Industrial Construction Service. The assessee was availing Cenvat credit of inputs, capital goods and input services and did not avail abatement under notification dated 1 March 2006 and discharged service tax at the normal rate of 12.36 per cent under Commercial or Industrial Construction service. We noticed that they changed the classification of the above said projects to WCS from July 2012 to March 2013 and paid service tax on taxable value of ₹ 71.31 crore after availing abatement of 60 per cent which is incorrect. Further, as they availed input credit, service tax is required to be paid on 100 per cent of taxable value without any abatement. This resulted in short levy of service tax of ₹ 4.46 crore.

We pointed this out (February 2014), the department while accepting the objection stated (February 2014) that draft show cause notice is being issued.

The reply of the Ministry is still awaited (June 2015).

6.2 Non/short payment of interest

Section 75 of the Finance Act, 1994, envisages that every person, liable to pay the tax in accordance with the provisions of Section 68 or rules made thereunder, fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay interest for the period by which such crediting of the tax or any part thereof is delayed.

A few illustrative cases are given below:

6.2.1 M/s. Jaihind Projects Ltd., in Ahmedabad-ST Commissionerate, engaged in providing WCS paid service tax of ₹ 27.03 crore belatedly during the period 2010-11 to 2013-14. From the details furnished by assessee we noticed that the interest payable for belated payment of service tax was ₹ 2.60 crore. However, the assessee discharged interest liability of ₹ 1.02 crore. This resulted in short levy of interest of ₹ 1.58 crore.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

6.2.2 M/s. Adarsh Noble Corporation Ltd., in Bhubaneswar-I Commissionerate, engaged in providing WCS paid service tax of ₹ 6.85 crore belatedly during the period 2012-13 and 2013-14. However, the assessee did not discharge interest liability of ₹ 65.48 lakh. This resulted in non-payment of interest of ₹ 65.48 lakh.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

6.2.3 M/s. Sri Avantika Contractors (I) Ltd., in Patna Commissionerate, engaged in providing WCS paid service tax of ₹ 1.08 crore belatedly during the period 2010-11 and 2012-13. However, the assessee did not discharge interest liability of ₹ 35.27 lakh. This resulted in non-payment of interest of ₹ 35.27 lakh.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

6.2.4 M/s. Gannon Dunkerley and Co. Ltd., in Kolkata (ST) Commissionerate paid service tax of ₹ 2.41 crore of in respect of WCS belatedly during the period 2013-14, but did not pay interest for delayed payment of service tax. This resulted in non-payment of interest of ₹ 24.71 lakh.

We pointed this out (May 2014), the assessee paid the interest of ₹ 24.71 lakh in June 2014. However, the reply from the Department/Ministry is still awaited (June 2015).

6.2.5 During the examination of records at Mumbai-I (ST) Commissionerate, we observed that **M/s. RNA Universal** made delayed payment of service tax of ₹ 3.24 crore during October 2011 to March 2014 but did not pay interest for delayed payment of service tax. This resulted in non-payment of interest of ₹ 19.98 lakh.

We pointed this out (December 2014), the department intimated (May 2015) the recovery of ₹ 9.98 lakh and further stated that the details of balance amount of recovery will be intimated soon.

6.2.6 During the examination of records of **M/s. Jaycon Infrastructure Ltd.**, in Chandigarh Commissionerate, we observed that the assessee paid interest amount of ₹ 12.72 lakh on delayed payment of service tax against liability of ₹ 34.93 lakh for the period October 2012 to September 2013. This resulted in short payment of interest of ₹ 22.21 lakh.

We pointed this out (May 2014), the reply of the Department/Ministry is still awaited (June 2015). However, the assessee paid the differential interest of ₹ 22.21 lakh.

6.2.7 During the examination of records at Nagpur Commissionerate, we observed that **M/s. Sandesh Infrastructure Ltd.**, paid interest amount of ₹ 4.18 lakh on delayed payment of service tax against liability of ₹ 26.43 lakh for the period 2011-12 to 2013-14. This resulted in short payment of interest of ₹ 22.25 lakh.

On being pointed out (January 2015), the department intimated (April 2015) the recovery of ₹ ten lakh and further stated that the details of balance amount of recovery will be intimated soon.

The reply of the Ministry is still awaited (June 2015).

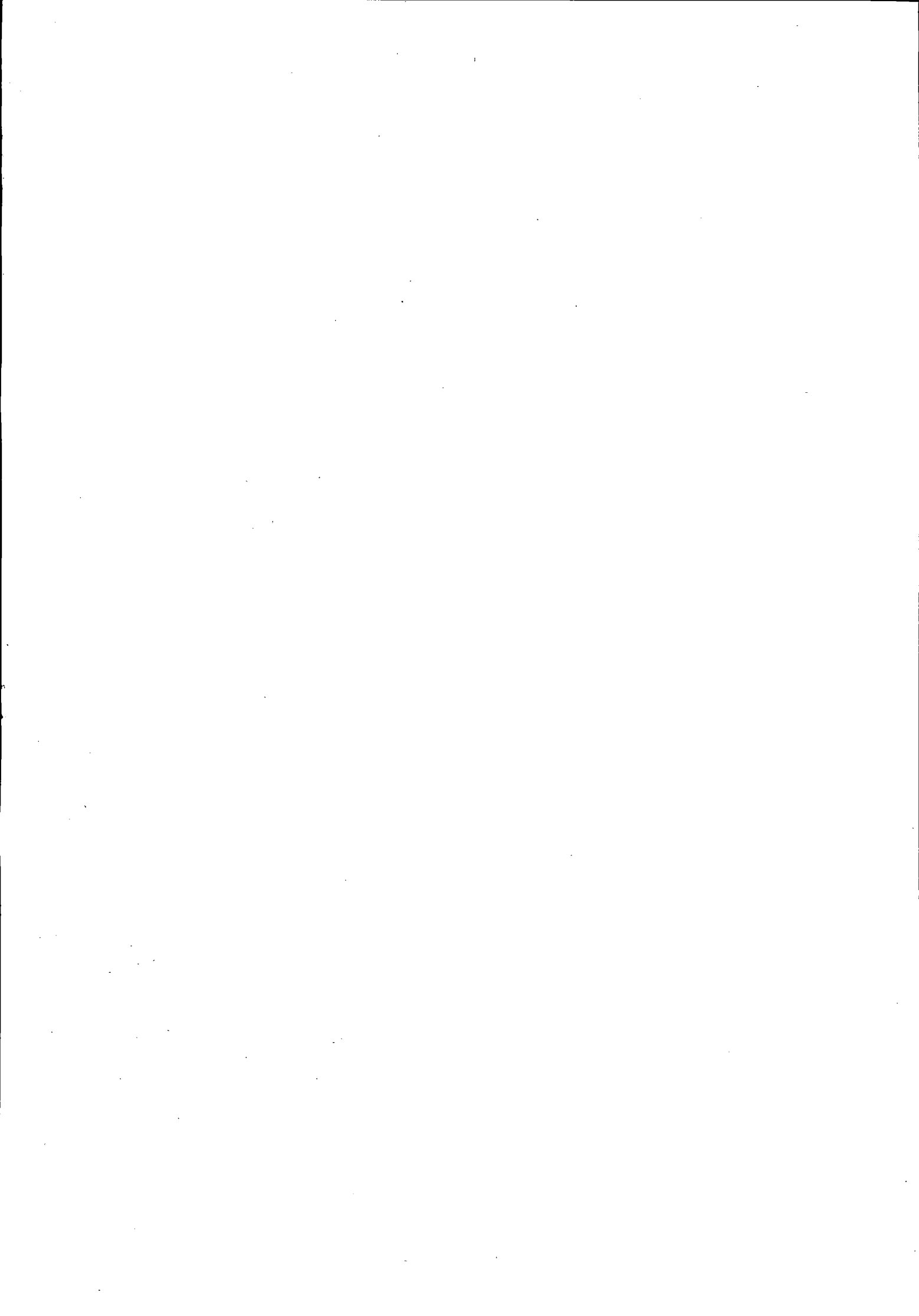
New Delhi
Dated: 27 July 2015


(M. HIMABINDU)
Principal Director (Service Tax)

Countersigned

New Delhi
Dated: 27 July 2015


(SHASHI KANT SHARMA)
Comptroller and Auditor General of India



Abbreviations

ACES	Automation of Central Excise and Service Tax
AWDR	Assessee-wise detailed report
CBEC	Central Board of Excise and Customs
CBDT	Central Board of Direct Taxes
CDR	Commissionerate, division and range
CENVAT	Central Excise Value Added Tax
CERA	Central Excise Receipt Audit
CX	Central Excise
DGST	Director General of Service Tax
DGCEI	Directorate General of Central Excise Intelligence
EASIEST	Electronic Accounting System in Excise and Service Tax
EPC	Engineering procurement and construction contract
Ltd.	Limited
LTU	Large taxpayer unit
MCA	Ministry of Corporate Affairs
MTR	Monthly Technical Report
PLA	Personal Ledger Account
Pvt.	Private
R&C	Review and Correction
REIC	Regional Economic Intelligence Committee
SCN	Show Cause Notice
ST	Service Tax
TNVAT	Tamil Nadu Value Added Tax
VAT	Value Added Tax
WCS	Works Contract Service

