Report of the Comptroller and Auditor General of India

for the year ended March 2014

Union Government
Department of Revenue
(Indirect Taxes – Service Tax)
Report No. 4 of 2015

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Preface

This Report for the year ended March 2014 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 compliance audit of the Central Board of Excise and Customs under Department of Revenue – Indirect Taxes (Service Tax) of the Union Government.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2013-14; as well as those which came to notice in earlier years but could not be reported in the previous Audit Reports; instances relating to the period subsequent to 2013-14 have also been included, wherever necessary.

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

Executive Summary

This Report has 178 audit observations on Service Tax, having financial implication of ₹ 772.08 crore. The Ministry/department had, till December 2014, accepted audit observations involving revenue of ₹ 477.22 crore and reported recovery of ₹ 130.29 crore. Significant audit findings are as follows:

Chapter I: Department of Revenue – Service Tax

- Indirect tax revenue as a percentage of Gross domestic product has increased from 3.79 per cent in FY 10 to 4.41 per cent in FY 14. During the same period, Service Tax revenues as a percentage of GDP rose from 0.9 per cent to 1.36 per cent.

(Paragraphs 1.4 and 1.5)

- Measures initiated by the department to improve recovery of arrears have not made any impact. Arrear collection in FY 14 has fallen drastically to 3.12 per cent compared to 11.40 per cent in FY 13.

(Paragraph 1.12)

- Over 89 per cent returns marked by ACES for review and correction were pending corrective action.

(Paragraph 1.14.1)

- Adjudication cases involving Service Tax implication of over ₹ 31,000 crore were pending finalisation as on 31 March 2014.

(Paragraph 1.15)

- Number of refund claims pending in FY 14 have increased to 8,154 compared to 7,906 of FY 13, however, amount pending in refund claims have fallen by ₹ 37,387 crore during the same period.

(Paragraph 1.16)

- More than 45 per cent of category 'A' Service Tax assessees who were due for mandatory audit by the Central Excise and Service Tax department remained unaudited during FY 14.

(Paragraph 1.18)

Chapter II: Service Tax liability in Insurance Sector

- Ambiguity in the circular issued by the Board resulted in non-payment of Service Tax of ₹ 252.40 crore.

(Paragraph 2.5.3)

- Non-payment of Service Tax of ₹ 7.05 crore under reverse charge on insurance auxiliary services was noticed.

(Paragraph 2.6.1)

Chapter III: Service Tax liability in Port sector

- Recovery proceedings were yet to be started in 43 cases involving revenue of ₹ 204.88 crore where stay was not granted by the appellate authority and where stay was granted more than 180 days had passed after grant of stay.

(Paragraph 3.5.4)

- Short payment of Service Tax of ₹ 33.85 crore on rental income in Port were noticed in two cases.

(Paragraph 3.6.1)

Chapter IV: Service Tax liability relating to Mandap Keeper's services

- Service Tax of ₹ 1.07 crore was collected but not deposited in one case

(Paragraph 4.4.2.6)

- Non-registration by local bodies have resulted in non-payment of Service Tax of ₹ 1.31 crore.

(Paragraph 4.4.3.1)

Chapter V: Scrutiny of Service Tax returns

- More than 40 per cent of due returns were not received in selected Commissionerates but no action was taken against the non-filers till pointed out by Audit.

(Paragraph No. 5.4.1(i))

- ACES did not list out returns for detailed scrutiny. Further, 121 returns which is only 0.1 per cent of the total returns received, were subjected to detailed scrutiny in selected Commissionerates.

(Paragraph No. 5.4.3)

Chapter VI: Non-compliance with rules and regulations

- Audit observed instances of non-payment/short-payment of Service Tax, incorrect availing/utilisation of Cenvat credit and non-payment of interest on delayed payments having financial implication of ₹ 128.25 crore.

(Paragraph 6.1)

Chapter VII: Effectiveness of internal controls

- Audit observed, deficiencies in scrutiny and internal audit carried out by departmental officers, delayed issue of show cause notice etc., having financial implication of ₹ 179.69 crore.

(Paragraph 7.2)

Chapter I
Department of Revenue – Service Tax

1.1 Resources of the Union Government

The Government of India's resources include all revenues received by the Union Government, all loans raised by issue of treasury bills, internal and external loans and all moneys received by the Government in repayment of loans. Tax revenue resources of the Union Government consist of revenue receipts from direct and Indirect Taxes. Table 1.1 depicts a summary of receipts of the Union Government, which amounted to ₹ 55,83,092 crore[1] for FY 14. Out of this, its own receipts were ₹ 15,36,024 crore including Gross Tax receipts of ₹ 11,38,996 crore.

Table 1.1: Resources of the Union Government

	(₹ in crore)
A. Total Revenue Receipts	15,36,024
i. Direct Tax Receipts	6,38,596
ii. Indirect Tax Receipts including other taxes	5,00,400
iii. Non-Tax Receipts including Grants-in-aid & contributions	3,97,028
B. Miscellaneous Capital Receipts	27,553
C. Recovery of Loans and Advances	24,549
D. Public Debt Receipts	39,94,966
Receipts of Government of India (A+B+C+D)	**55,83,092**
Note: Total Revenue Receipts include ₹ 3,18,230.00 crore, share of net proceeds of Direct and Indirect Taxes directly assigned to states.	

1.2 Nature of Indirect Taxes

Indirect Taxes attach themselves to the cost of the supply of goods/services and are, in this sense, transaction-specific rather than person-specific. The major Indirect Taxes/duties levied under Acts of Parliament are:

a) **Customs duty:** Customs duty is levied on import of goods into India and on export of certain goods out of India (Entry 83 of List 1 of the Seventh Schedule of the Constitution).

b) **Central Excise duty:** Central Excise duty is levied on manufacture or production of goods in India. Parliament has powers to levy excise duties on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics but including medicinal and

[1] Source: Union Finance Accounts of FY 14. The figures are provisional. Direct Tax Receipts and Indirect Tax Receipts including other taxes have been worked out from the Union Finance Accounts of FY 14.

toilet preparations containing alcohol, opium etc (Entry 84 of List 1 of the Seventh Schedule of the Constitution).

c) **Service Tax:** Service Tax is levied on services provided within the taxable territory (Entry 97 of List 1 of the Seventh Schedule of the Constitution). Service Tax is a tax on services rendered by one person to another. Section 66B of the Finance Act, 1994 envisages that there shall be a tax levied at the rate of 12 per cent on the value of all services, other than those specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.[2] 'Service' has been defined in section 65B (44) of the Finance Act, 1994 to mean any activity for consideration (other than the items excluded therein) carried out by a person for another and to include a declared service.[3]

This chapter discusses trends, composition and systemic issues in Service Tax using data from finance accounts, departmental accounts and relevant data available in public domain.

1.3 Organisational structure

The Department of Revenue (DoR) of Ministry of Finance (MOF) functions under the overall direction and control of the Secretary (Revenue) and coordinates matters relating to all the Direct and Indirect Union Taxes through two statutory Boards namely, the Central Board of Excise and Customs (CBEC) and the Central Board of Direct Taxes (CBDT) constituted under the Central Board of Revenue Act, 1963. Matters relating to the levy and collection of Service Tax are looked after by the CBEC.

One hundred and four field Commissionerates function under the respective Chief Commissioners of 23 Central Excise and Service Tax zones. Seventy seven among these Commissionerates (7 exclusive Service Tax Commissionerates, 66 integrated Central Excise and Service Tax Commissionerates and 4 Large Taxpayer Unit (LTU) Commissionerates) are involved in assessment and collection of Service Tax across the country. Besides, the Government has constituted the office of the Director General of Service Tax (DGST) as a subordinate office in 1997 to coordinate Service Tax related work.[4]

The overall sanctioned staff strength of the CBEC is 68,793 as on 31 March 2014. The organisational structure of CBEC is shown in **Appendix I**.

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[2] Section 66B was inserted by the Finance Act, 2012 with effect from 1 July 2012; section 66D lists the items the negative list comprises of.

[3] Section 66E of the Finance Act, 1994 lists the declared services.

[4] DGST operates from Mumbai currently.

1.4 Growth of Indirect Taxes - trends and composition

Table 1.2 depicts the relative growth of Indirect Taxes during FY 10 to FY 14.

Table 1.2: Growth of Indirect Taxes

(₹ in crore)

Year	Indirect Taxes	GDP	Indirect Taxes as % of GDP	Gross Tax revenue	Indirect Taxes as % of Gross Tax revenue
FY 10	2,45,373	64,77,827	3.79	6,24,527	39.29
FY 11	3,45,371	77,95,314	4.43	7,93,307	43.54
FY 12	3,92,674	90,09,722	4.36	8,89,118	44.16
FY 13	4,74,728	1,01,13,281	4.69	10,36,460	45.80
FY 14	5,00,400	1,13,55,073	4.41	11,38,996	43.93

Source: Finance Accounts.
Figures for FY 14 are provisional.

It is seen that Indirect Taxes collection as a ratio of GDP and Gross Tax revenue have fallen in FY 14 vis-à-vis FY 13 though it has increased in absolute terms.

1.5 Indirect Taxes – relative contribution

Table 1.3 depicts the trajectory of the various Indirect Tax components in GDP terms for the period FY 10 to FY 14. The relative revenue contribution of the major Indirect Taxes is depicted in **Chart 1.1**.

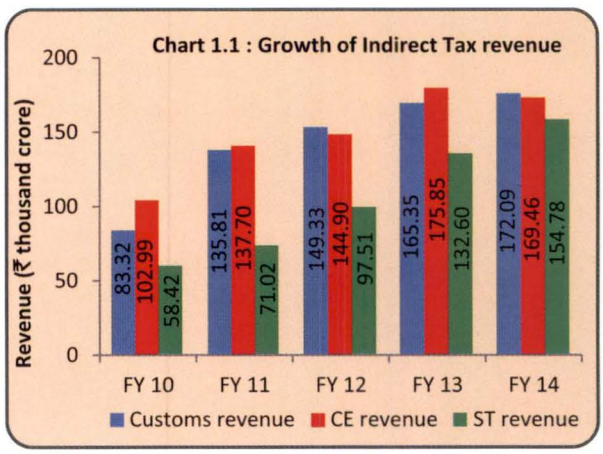


Table 1.3: Indirect Taxes - percentage of GDP

(₹ in crore)

Year	GDP	Customs revenue	Customs revenue as % of GDP	CE revenue	CE revenue as % of GDP	ST revenue	ST revenue as % of GDP
FY 10	64,77,827	83,324	1.29	1,02,991	1.59	58,422	0.90
FY 11	77,95,314	1,35,813	1.74	1,37,701	1.77	71,016	0.91
FY 12	90,09,722	1,49,328	1.66	1,44,901	1.61	97,509	1.08
FY13	101,13,281	1,65,346	1.63	1,75,845	1.74	1,32,601	1.31
FY14	113,55,073	1,72,085	1.52	1,69,455	1.49	1,54,780	1.36

Source: Figures of tax receipts are as per Union Finance Accounts of respective years.
Figures for FY 14 are provisional.

The share in respect of Central Excise and Customs revenue as a percentage of GDP has suffered decline whereas share of Service Tax as a percentage of GDP has increased during FY 14.

1.6 Growth of Service Tax - trends and composition

Table 1.4 depicts the growth trends of Service Tax in absolute and GDP terms during FY 10 to FY 14.

Table 1.4: Growth of Service Tax

(₹ in crore)

Year	GDP	Gross Tax revenue	Gross Indirect Taxes	Service Tax	Service Tax as % of GDP	Service Tax as % of Gross Tax revenue	Service Tax as % of Indirect Taxes
FY 10	64,77,827	6,24,527	2,45,373	58,422	0.90	9.35	23.81
FY 11	77,95,314	7,93,307	3,45,371	71,016	0.91	8.95	20.56
FY 12	90,09,722	8,89,118	3,92,674	97,509	1.08	10.97	24.83
FY 13	1,01,13,281	10,36,460	4,74,728	1,32,601	1.31	12.79	27.93
FY 14	1,13,55,073	11,38,996	5,00,400	1,54,780	1.36	13.59	30.93

Source: Finance Accounts.
FY 14 figures are provisional.

The Service Tax Revenue as a percentage of GDP has shown an increasing trend during the period. Service tax as a ratio of GDP has gone from 0.90 per cent to 1.36 per cent during last five years. Overall Service Tax has contributed 13.59 per cent of Gross Tax revenue during FY 14.

1.7 Service Tax from major service categories

Table 1.5 depicts Service Tax collected from top five category of services.

Table 1.5: Service Tax from major service categories

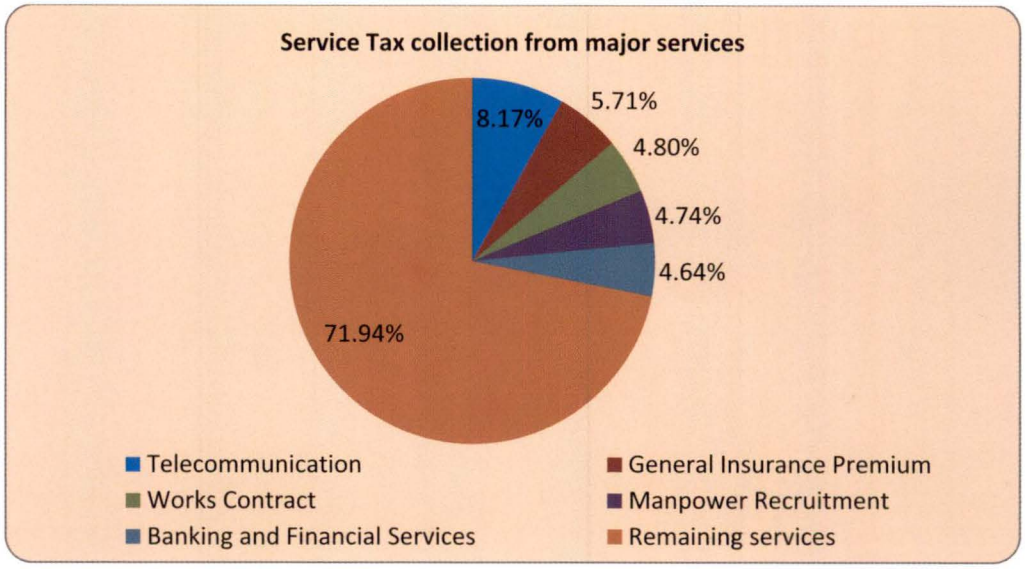
(₹ in crore)

Year	FY10	FY11	FY12	FY13	FY14
Telecommunication	2,885	3,902	5,402	7,538	12,643
General Insurance Premium	3,126	3,877	5,234	6,321	8,834
Works Contract	1,849	3,092	4,179	4,455	7,434
Manpower Recruitment	2,077	2,870	3,847	4,432	7,335
Banking and Financial Services	4,066	4,345	5,876	4,964	7,185

Source: Union Finance Accounts of respective years.
Figures of FY 14 are as per provisional Finance Accounts.

It is observed that Telecommunication and General Insurance Premium services continues to be on top for Service Tax collection.

The pie chart 1.2 depicts the overall contribution of the major services during the year FY 14.



It is observed that top five category of services contributed 28 per cent of the gross Service Tax collection.

1.8 Tax base

"Assessee" means any person who is liable to pay Service Tax and includes his agent as per definition in Section 65(7) of the Finance Act, 1994 (as amended). Table 1.6 depicts the data (pertaining to FY 10 to FY 14) of the number of persons registered with the Service Tax department under Section 69 of the Finance Act, 1994.

Table 1.6: Tax base in Service Tax

Year	No of taxable services	No. of ST registrations	% growth over previous year	No. of assessees who filed returns
FY10	109	13,39,812	9.27	55,405
FY11	117	14,94,449	11.54	1,79,344
FY12	119	16,76,105	12.16	7,06,535
FY13	All*	18,71,939	11.68	6,08,013
FY14	All*	12,76,861	(-)31.79	10,04,812

Source: Figures furnished by the Ministry.
*Other than negative list.

It is observed that though number of registered persons had decreased by about 32 per cent during FY 14, there is an increase in the number of assessees who filed returns compared to FY 13.

The Ministry needs to be commended for improvement in number of assessees who have filed return during FY 14 both in absolute terms over FY 13 as well as a percentage of number of Service Tax registration.

On one hand the number of assessees who have filed return during FY 14 have increased by 66 per cent compared to FY 13, however, on the other hand the Service Tax revenue has grown only by 17 per cent during the year which is even less than the growth of 36 per cent during FY 13 and FY 12 over respective previous years.

1.9 Budgeting issues in Service Tax

Table 1.7 depicts a comparision of the Budget Estimates and the corresponding actuals for service tax receipts.

Table 1.7: Budget, Revised estimates and Actual receipts

(₹ in crore)

Year	Budget estimates	Revised budget estimates	Actual receipts	Diff. between actuals and BE	%age variation between actuals and BE	%age variation between actuals and RE
FY 10	65,000	58,000	58,422	(-)6,578	(-)10.12	0.73
FY 11	68,000	69,400	71,016	3,016	4.44	2.33
FY 12	82,000	95,000	97,509	15,509	18.91	2.64
FY 13	1,24,000	1,32,697	1,32,601	8,601	6.94	(-)0.07
FY 14	1,80,141	1,64,927	1,54,780	(-)25,361	(-)14.08	(-)6.15

Source: Union Finance Accounts and receipt budget documents of respective years.
Figures of FY14 are as per provisional Finance Accounts.

It is observed that actual collection of Service Tax fell short by budget estimates by 14.08 per cent during FY 14.

1.10 Service Tax forgone under Finance Act, 1994

A perusal of the budget documents revealed that details of revenue foregone for Direct Taxes and other Indirect Taxes such as central excise and customs have been laid before Parliament each year during the respective budget commencing with the budget of 2006-07. However, the revenue foregone in respect of Service Tax is not available in the budget documents. In reply to the similar issue pointed out in paragraph No. 1.12 of Audit Report No. 6 of 2014 the Ministry replied that the data is not being maintained due to absence of adequate data.

The same issue was examined by the Tax Administration Reform Commission, in its third report and in the report it was mentioned that: -

> "In respect of Service Tax, it has been observed, from the CAG Report No. 6 of 2014, that revenue foregone figures are not available mainly due to absence of adequate data. This, as observed by the CAG, would imply that the department would not be in a position to do a gap analysis. In respect of central

excise, the approach of the department has been to extrapolate data from ACES (duty forgone due to area-based exemptions scheme has been obtained separately from the concerned Central Excise zones). Similarly, for Service Tax, the department should consider ways to estimate revenue foregone figures and do a gap analysis."

Consequent upon mandatory e-filing of Service Tax return with effect from October 2011, the department may consider preparation of revenue foregone statement in respect of Service Tax.

1.11 Trade facilitation

1.11.1 Creation of Large Taxpayer Units (LTUs)

For the trade facility LTUs have been set up by the Department. An LTU is self-contained tax office under the Department of Revenue acting as a single window clearance point for all matters relating to Central Excise, Service Tax, Income Tax and Corporate Tax. Eligible Tax Payers who opt for assessment in LTU shall be able to file their excise return, direct taxes returns and service tax return at such LTUs and for all practical purposes will be assessed to all these taxes there under. These units are being equipped with modern facilities and trained manpower to assist the tax payers in all matters relating direct and indirect tax/ duty payments, filing of documents and returns, claim of rebates/ refunds, settlement of disputes etc. For trade facilitation four LTUs have been established in Delhi, Mumbai, Bengaluru and Chennai.

1.11.2 Automation of Central Excise and Service Tax

Automation of Central Excise and Service Tax (ACES) is the e-governance initiative by Central Board of Excise and Customs (CBEC), Department of Revenue, Ministry of Finance. It is one of the Mission Mode Projects (MMP) of the Govt. of India under National e-Governance Plan (NeGP). It is a software application which aims at improving tax-payer services, transparency, accountability and efficiency in the Indirect Tax administration in India. This application is a web-based and workflow-based system that has automated all major procedures in Central Excise and Service Tax.

1.12 Arrears of Service Tax

The law provides for various methods of recovery of revenues raised but not realised. These include adjusting against amounts, if any, payable to the person from whom revenue is recoverable, recovery by attachment and sale of excisable goods and recovery through the district revenue authority.

Table 1.8 depicts the performance of the department in respect of recovery of revenue arrears.

Table 1.8: Arrears realisation – Service Tax

(₹ in crore)

Year	Amount in arrears at the commencement of the year	Collection during the year	Collection as % of arrears at the commencement of the year
FY12	14,340	1,669	11.40
FY13	20,361	2,322	11.40
FY14	39,537	1,232	3.12

Source: Figures furnished by the Ministry.

It is matter of concern that the collection as ratio of arrears during FY 14 has fallen drastically to 3.12 per cent compared to 11.40 per cent in FY 13. There is a need to strengthen the recovery mechanism of the department.

1.13 Additional revenue realised because of Anti evasion measures

Both DGCEI as well as the Central Excise and Service Tax Commissionerates have well-defined roles in the task of detection of cases of evasion of Service Tax. While the Commissionerates, with their extensive database about units in their jurisdiction and presence in the field are the first line of defense against duty evasion, DGCEI specialises in collecting specific intelligence about evasion of substantial revenue. The intelligence so collected is shared with the Commissionerates. Investigations are also undertaken by DGCEI in cases having all India ramifications.

Tables 1.9(a) depict the performance of DGCEI during last three years.

Table 1.9(a): Anti-evasion performance of DGCEI during last three years

(₹ in crore)

Year	Detections		Voluntary Payments during Investigation
	No. of cases	Amount	
FY12	452	4,919	434
FY13	835	5,131	880
FY14	1,191	8,032	1,489

Source: Figures furnished by the Ministry.

It is observed that the number of Service Tax cases and the amounts detected by DGCEI grew significantly during FY 14 compared FY 13 and FY 12.

Tables 1.9(b) depict the performance of Commissionerates during last three years.

Table 1.9(b): Anti-evasion performance of Commissionerates during last three years

(₹ in crore)

Year	Detections		Voluntary Payments during Investigation
	No. of cases	Amount	
FY12	3,403	6,748	823
FY13	5,875	7,827	2,819
FY14	8,024	6,810	3,614

Source: Figures furnished by the Ministry.

It is observed that number of cases and amount detected by Commissionerates have grown steadily during last three years.

Tax administration in Service Tax

1.14 Scrutiny of returns

CBEC introduced the concept of self-assessment in respect of Service Tax in 2001. With the introduction of self-assessment, the department also envisaged the provision of a strong compliance verification mechanism, inter alia, through scrutiny of returns. Even in the self-assessment era, the primary function of departmental officers continues to be assessment or confirmation of assessment as it is they who have a statutory liability to ensure correctness of tax payment.[5] This is undertaken through scrutiny of Service Tax returns, which in turn are to be selected on the basis of risk parameters. The Manual for Scrutiny of Service Tax Returns, 2009 envisages that scrutiny is to be carried out in two stages i.e. preliminary scrutiny of the return which is to be carried out by ACES application and detailed scrutiny of assessment which is to be carried out manually on the returns marked by ACES or otherwise.

1.14.1 Preliminary scrutiny of returns

The purpose of preliminary scrutiny is to ensure completeness of information, timely submission of the return, timely payment of duty, arithmetical accuracy of the amount computed as duty and identification of non-filers and stop-filers.[6]

[5] Manual for Scrutiny of Service Tax Returns, 2009, Para 1.2.1A.

[6] Manual for Scrutiny of Service Tax Returns, 2009 , Para 1.2.1 .

Table 1.10 depicts the performance of the department in carrying out preliminary scrutiny of returns.

Table 1.10: Preliminary scrutiny of Service Tax returns

Year	No of returns filed in ACES	No. of returns marked for R&C	% of returns marked for R&C	No. of returns cleared after R&C	No. of returns pending for R&C	% of marked returns pending correction
FY12	9,09,718	7,00,066	76.95	83,664	6,16,397	88.05
FY13	22,42,332	18,42,137	82.15	3,67,256	14,74,874	80.06
FY14	22,97,335	7,95,581	34.63	84,944	7,10,637	89.32

Source: Figures furnished by the Ministry.

It is observed that a very high percentage of cases, scrutinised by ACES each year is marked for review and correction (R&C). The percentage of returns marked for R&C by ACES have come down drastically to 34.63 per cent in FY 14 which is a healthy sign and indicate stablisation of ACES and it needs to be taken further.

It is also observed that 89.32 per cent of returns marked for R&C were pending as on 31 March 2014. One of the main intentions behind introducing preliminary scrutiny online was to release manpower for detailed manual scrutiny, which could then become the core function of the Range/Group;[7] the high figures of pendency for correction after R & C identification indicates that the same is far from being achieved.

The very high percentage of scrutinised returns being thrown up for R&C and resultant high number of returns pending corrective action are indicative of deficiencies in the ACES application which the department needs to address urgently. Completion of R&C of returns in ACES is the prerequisite for scrutiny of subsequent returns submitted by the assessees. Large number of returns were pending for scrutiny risking the correctness of Service Tax collection.

1.14.2 Detailed scrutiny of returns

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.[8] Unlike preliminary scrutiny, detailed scrutiny is to cover only certain selected

[7] Manual for Scrutiny of Service Tax Returns, 2009, Para 1.2B.

[8] Manual for Scrutiny of Service Tax Returns, 2009, Para 1.2.1.

returns, identified on the basis of risk parameters, developed from the information furnished in the returns submitted by the taxpayers.[9]

Table 1.11 depicts the performance of the department in carrying out detailed scrutiny of returns.

Table 1.11: Detailed Scrutiny of Service Tax returns

Year	No. of returns marked for detailed scrutiny	No. of returns where detailed scrutiny was carried out	No. of returns where detailed scrutiny was pending	Age-wise analysis of pendency		
				Between six month to one year	between one and two years	Over 2 years
FY12	11,425	3,380	8,045	5,667	1,959	419
FY13	23,838	2,743	21,095	19,791	934	370
FY14	44,045	16,201	27,844	12,974	5,174	17,636

Source: Figures furnished by the Ministry.

As per prescribed norms, only two per cent of returns need to be examined in detailed scrutiny.[10] Hence, the total number of returns to be scrutinised in a whole year would be very low in respect of any range as total number of pending cases were only 44,045 across all ranges (2,272) as on 31 March 2014.

It is cause of concern the large number (27,844) of returns marked for detailed scrutiny were pending as on 31 March 2014 as other than cases of fraud, there is no scope for issue of a demand notice to an assessee beyond 18 months from the date of filing of returns by assessee.[11] It is essential that the department takes steps to analyse the reasons for long pendency so as to ensure revenue due to the Government is adequately safeguarded. It was further observed that a huge number of returns were pending for more than two years for detailed scrutiny.

It also appears that the data of age wise analysis of pendency furnished by Ministry is not correct for FY 14.

1.15 Adjudication

Adjudication is the process through which departmental officers determine issues relating to tax liability of assessees. Such process may involve consideration of aspects relating to, inter alia, Cenvat credit, valuation, refund claims, provisional assessment etc. A decision of the adjudicatory

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[9] CBEC Circular 113/7/2009-ST dated 23 April 2009.

[10] Manual for Scrutiny of Service Tax Returns 2009, Para 4.2A.

[11] '18 months' in section 73(1) of the Finance Act substituted for '1 year' by Finance Act, 2012 with effect from 28 May 2012.

authority may be challenged in an appellate forum as per the prescribed procedures.

Table 1.12 depicts age-wise analysis of Service Tax adjudication.

Table 1.12: Cases pending for adjudication with departmental authorities

(₹ in crore)

Year	Cases pending as on 31 March		Age-wise breakup of cases					
			< 1 year		1-2 years		>2 years	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
FY12	17,182	68,509	12,735	51,193	3,054	15,770	1,393	1,546
FY13	22,690	64,599	18,212	48,157	3,382	14,724	1,096	1,718
FY14	19,925	31,790	15,512	21,868	3,625	8,856	758	1,062

Source: Figures furnished by Ministry.

It is observed that adjudications involving revenue implication of over ₹ 31,000 crore were pending finalisation as on 31 March 2014. It is also revealed that 758 cases were pending for more than two years.

1.16 Disposal of refund claims

Table 1.13(a) depicts the status of disposal of refund claims by the department. The delay depicted is in terms of time taken from the date of receipt of refund application along with all details required for processing the claims.

Table 1.13(a): Disposal of refund claims in Service Tax

(₹ in crore)

Year	OB plus claims received during the year	No of claims disposed during the year				Interest payments	
		Total number of disposals	Within 3 months and % of disposals	Claims disposed of with delay			
				< 1 year	> 1 year	No of cases	Interest paid
FY12	27,120	18,306	13,209 (72%)	1,705 (20 %)	3,392 (8%)	2	0.02
FY13	26,672	15,897	12,328 (77%)	1,880 (12%)	1,689 (11%)	1	0.12
FY14	23,145	13,979	11,445 (81.87%)	1,494 (10.69%)	1,040 (7.44%)	0	0

Source: Figures furnished by the Ministry.

It is observed that approximately 80 per cent of the Service Tax related refund claim disposals are carried out within the prescribed period of three months.[12] Despite the fact that there is a liability on department to pay interest on delayed refunds, department is not paying interest to the

[12] Section 11BB of the Central Excise Act made applicable to Service Tax by section 83 of the Finance Act 1994 (as amended).

assessees in most of the cases. Board may consider to issue instructions to its field formations to pay interest on delayed refunds suo-moto, similar to Direct Taxes.

Table 1.13(b) depicts an age-wise analysis of refund cases pending disposal during last three years.

Table 1.13(b): Age-wise pendency of Service Tax refund cases as on 31 March

(₹ in crore)

Year	OB plus claims received in the year	Total number of refund claims pending as on 31 March		Refund claims pending for			
				Less than one year		Over 1 year	
		Number	Amount	Number	Amount	Number	Amount
FY12	24,412	6,104	60,757	4,276	46,191	1,828	14,566
FY13	23,803	7,906	41,874	5,824	30,018	2,082	11,856
FY14	23,145	8,154	4,487	6,391	3,582	1,763	905

Source: Figures furnished by the Ministry.

It is observed that though total number of refund claims pending have been increased by 248 in FY 14 over FY 13 but the amount involved have reduced drastically by ₹ 37,387 crore which needs to be examined.

1.17 Cost of collection

Table 1.14 depicts the cost of collection vis-a-vis the revenue collection.

Table 1.14: Central Excise and Service Tax receipts and cost of collection

(₹ in crore)

Year	Receipts from Central Excise	Receipts from Service Tax	Total Receipts	Cost of collection	Cost of collection as % of total Receipts
FY10	1,02,991	58,422	1,61,413	2,127	1.32
FY11	1,37,901	71,016	2,08,917	2,072	0.99
FY12	1,44,540	97,356	2,41,896	2,227	0.92
FY13	1,75,845	1,32,601	3,08,446	2,439	0.79
FY14	1,69,455	1,54,780	3,24,235	2,635	0.81

Source: Union Finance Accounts of respective years.
Figures for FY 14 are provisional

It is observed that despite automation and extensive use of ICT, cost of collection continues to show a rising trend.

1.18 Internal Audit

Modernisation of Indirect Tax administration in India is based on the Canadian model. The new audit system EA 2000 has four distinct features: scientific selection after risk analysis, emphasis on pre-preparation, scrutinising of business records against statutory records and monitoring of audit points.

Audit processes include preliminary review, gathering and documenting systems' information, evaluating internal controls, analysing risks to revenue and trends, developing audit plan, actual audit, preparation of audit findings, reviewing the results with the assessee/Range Officer/Divisional Assistant Commissioner and finalisation of the report.

The Audit framework consists of three parts. Directorate General of Audit and the field Commissionerates share the responsibility of administration of Audit. While the Directorate is responsible for collection, compilation and analysis of audit results and its feedback to CBEC to improve tax compliance and to gauge levels of client satisfaction, audit parties from Commissionerates undertake audit in terms of EA 2000 audit protocol. In order to improve audit quality, CBEC took the assistance of Asian Development Bank in developing audit manuals, risk management manuals and manuals to train auditors in EA 2000 and CAATs, which prescribe detailed processes for conduct of audit. Table 1.15 (a) depicts details of Service Tax units due for audit during FY 14 by audit parties of the Commissionerates vis-à-vis units audited.

Table 1.15(a): Audits of assessees conducted during FY 14

Slab of annual duty (PLA+Cenvat)	Periodicity	Number of units due	Number of units planned	Number of units audited	Shortfall in audit (%)
Units paying ST > ₹ 3 crore (Category A)	Annual	4,417	2,649	2,354	46.71
Units paying ST between ₹ 1 and 3 crore (Category B)	Biennial	3,726	2,779	1,823	51.07
Units paying ST between ₹ 25 lakh and ₹ 1 crore (Category C)	Once in five years	5,322	4,389	2,704	49.19
Units paying ST < ₹ 25 lakh (Category D)	2 % every year	15,808	10,776	8,031	49.20

Source: Figures furnished by the Ministry.

It is observed that during FY 14, there was a huge shortfall in the Service Tax audits conducted, as compared with audits due, across all categories of units.

The results of the audit conducted by the department is tabulated in table 1.15 (b).

Table 1.15(b): Number of Nil inspection reports issued during the year

Year	Number of Audit Paragraphs issued during the year					
	Mandatory Units (Category A)			Non-Mandatory Units (Category B, C, D)		
	Total IRs Issued	Nil IRs issued	% of Nil IRs	Total IRs Issued	Nil IRs issued	% of Nil IRs
2011-12	1,411	179	12.69	9,419	1,478	15.69
2012-13	1,552	108	6.96	11,226	1,344	11.97
2013-14	1,871	110	5.88	11,171	1,341	12.00

Source: Figures furnished by the Ministry.

It is observed that number of nil inspection reports in Category A units are significantly lower than the non-mandatory units. The Ministry needs to ensure internal audit of all category A (mandatory) units.

1.19 Audit effort and Service Tax audit products - Compliance Audit Report

Compliance audit was managed as per the Comptroller and Auditor General's (CAG) Audit Quality Management Framework, 2009 employing professional auditing standards of the Auditing Standards, 2nd Edition, 2002.

1.20 Sources of information and the process of consultation

Data from the Union Finance Account, along with examination of basic Records/ documents in DoR, CBEC, and their field formations. MIS, MTRs of CBEC along with other stake holder reports were used. We have nine field offices headed by Director Generals (DGs)/Principal Directors (PDs) of Audit, who managed audit of 1,086 units (CX&ST) in FY 14.

1.21 Report overview

The current report has 178 paragraphs having financial implication of ₹ 772.08 crore. There were generally three kinds of observations: non-payment of Service Tax, short payment of Service Tax, irregular availing and utilisation of Cenvat credit etc. The department/Ministry has already taken rectificatory action involving money value of ₹ 477.22 crore in case of 171 paragraphs in the form of issue of show cause notices, adjudication of show cause notices and reported recovery of ₹ 130.29 crore.

1.22 Public Accounts Committee (PAC)

PAC has taken up performance audit report on Service Tax on Banking and other Financial Services (Report No. 15 of 2012-13) for detailed examination.

1.23 Performance Audit Report

Performance audit with the aim to seek an assurance that the systems and procedures were adequate and adhered to by the CBEC was conducted. This year we have covered Performance Audit on Administration of Prosecution and Penalties in Central Excise and Service Tax. This report was laid in the Parliament on 28 November 2014.

1.24 Response to CAG's audit, revenue impact/follow-up of Audit Reports

In the last five audit reports (including current year's report) we had included 874 audit paragraphs (Table 1.16) having financial implication of ₹ 1904.98 crore.

Table 1.16: Follow up of Audit Reports

(₹ in crore)

Year			FY 10	FY 11	FY 12	FY13	FY 14	**Total**
Paragraphs included		Number	194	199	152	151	178	**874**
		Amount	162.18	204.74	500.23	265.75	772.08	**1,904.98**
Paragraphs accepted	Pre printing	Number	175	184	150	147	171	**827**
		Amount	121.31	185.69	498.65	262.29	477.22	**1,545.16**
	Post printing	Number	9	11	1	6	--	**27**
		Amount	2.6	17.79	0.52	1.81	--	**22.72**
	Total	Number	184	195	151	153	171	**854**
		Amount	123.91	203.48	499.17	264.10	477.22	**1,567.88**
Recoveries effected	Pre printing	Number	112	122	88	95	92	**509**
		Amount	33.05	78.76	84.58	65.28	130.29	**391.96**
	Post printing	Number	9	9	4	6	--	**28**
		Amount	2.6	2.24	0.85	1.81	--	**7.5**
	Total	Number	121	131	92	101	92	**537**
		Amount	35.65	81.00	85.43	67.09	130.29	**399.46**

Source: CAG Audit Reports

It is observed that the Ministry had accepted audit observations in 854 audit paragraphs having financial implication of ₹ 1567.88 crore and had recovered ₹ 399.46 crore.

Chapter II

Service Tax liability in Insurance sector

2.1 Introduction

General Insurance Service was one of the three services first covered under the Service Tax net in 1994. Life Insurance Services and Insurance Auxiliary Services were also included in the list of taxable services subsequently. Along with other services such as Banking and other Financial Services, Telecom Services and Business Auxiliary Services, Insurance Services have been a major revenue contributing sector during the past two decades. Service Tax revenues from Insurance sector related services such as General Insurance service, Life Insurance Service, Insurance Auxiliary Services and Management of Investment under Unit Linked Insurance Plan was ₹ 11,034 crore (8.32 per cent of total Service Tax revenue) as per Finance Accounts of 2012-13.

2.2 Audit objectives

We examined the adequacy of the mechanisms in place to ensure that Service Tax due to the Government of India from insurance sector was in fact reaching the Government. Audit was conducted to assess:

i. the adequacy of rules, regulations, notifications, circulars/instructions/trade notices etc. issued from time to time in relation to levy, assessment and collection of Service Tax relating to services in insurance sector;

ii. whether the extant provisions of law are being complied with adequately;

iii. whether there was an adequate mechanism to identify and bring in potential service providers into tax net for levy of Service Tax; and

iv. whether there was an effective monitoring and internal control mechanism.

2.3 Audit coverage

While coverage of audit examination was generally limited to the period 2010-11 to 2012-13, we have also gone beyond this period in a few specific instances depending on the issues involved. We examined records pertaining to 39 registered insurers in Mumbai, Delhi and Chennai besides relevant records of 31 Insurance Intermediaries including Insurance Brokers, Consultants, Surveyors, Corporate Agents, Individual Agents, etc. Selected

records/returns were also examined in departmental units in the respective selected Commissionerates.

2.4 Audit findings

Scrutiny of assessee records in seven Commissionerates[13] revealed certain compliance-related as well other issues having financial implication of ₹ 352.55 crore. The Ministry/ department accepted (November 2014) the audit observations having financial implication of ₹ 80.87 crore and recovered ₹ 12.71 crore. The major findings are discussed below:

2.5 System issues

2.5.1 Registration

Section 69 of the Finance Act, 1994, read with rule 4 of the Service Tax Rules, 1994, provides that every person liable to pay Service Tax shall make an application for registration within a period of 30 days from the date on which Service Tax under section 66 of the Act above is levied or from the date of commencement of business of providing taxable service if such business is commenced after introduction of the levy under the Finance Act. Under the system of Automation of Central Excise and Service Tax (ACES), applications for registration or amendments to registrations are to be made online and registration number is also granted online. As per Board's Circular dated 17 September 2002, all temporary registration numbers allotted to the assessee would be converted to PAN based registration number.

We observed the following irregularities in this regard:

i) Non-conversion of temporary registration into PAN based permanent registration

Temporary registration numbers are allotted to those registrants who do not possess PAN number issued by the Income Tax department. Once the PAN is obtained, the Service Tax assessee should obtain the 15 digit PAN based Service Tax Registration number. Audit noticed that no time limit for conversion of temporary registration into PAN based permanent registration exist.

Test check through ACES in three Ranges of Service Tax Commissionerate, Delhi, revealed that in the case of following assessees, temporary registration numbers issued to the assessees had not been converted into PAN based permanent registration number (as on the date of audit). However, in the

[13] Delhi Service Tax Commissionerate, LTU Commissionerate at Delhi, Mumbai and Chennai, Service Tax I and II Mumbai Commissionerates and Pune III Commissionerate

absence of date of issue of temporary registration, the actual duration of the continuance of status of temporary registration could not be identified.

Table 2.1 : Status of ST registrations

Sl. No.	Name of Assessee	Temporary ST Regn. No.
1.	Jain Insurance Intermediaries Pvt. Ltd.	TMPRL9067OST001
2.	Amsston Insurance Corp.	TMPRL8326DST001
3.	ASL Insurance Brokers Pvt. Ltd.	TMPAQ7573OST001
4.	G.I. Insurance Services Ltd.	TMPRL8431OST001
5.	Insurance Engineer Corp.	TMPRL8323RST001
6.	4S Insurance	TMPRM3528LST001
7.	Kumra Insurance & Financial Solution	TMPAM7155EST001

When we pointed this out (November 2013) the Ministry intimated (November 2014) that efforts were underway to convert all temporary registration numbers into PAN-based permanent registration.

The reply indicates absence of an effective mechanism to review the status of registrations. In the absence of PAN number in temporary registration number, the department would not be able to link with the Income Tax records of the asseessee.

ii) Both temporary and permanent registration active in ACES

After conversion of temporary to permanent number, the temporary registration number should be automatically removed from ACES. Thus, no assessee can have both temporary registration and PAN based permanent registration number live at the same time.

Test check of insurance related service providers in three Ranges of Service Tax Commissionerate, Delhi, revealed that in at least 3 cases, the temporary registration was also shown active on ACES after issuance of permanent registration number to the assessees.

Table 2.2: Status of registration of assessees

Sl. No.	Name of assessee	Temporary ST Regn. No.	Permanent ST Regn. No.
1.	Agile Insurance Brokers Pvt. Ltd.	TMPAQ7265NST001	AAECA1449GST001
2.	Imperial Insurance Brokers (P) Ltd.	TMPRL9075JST001	AABCI0144FST001
3.	Kan Insurance Brokers Private Limited	TMPAH5028YST001	AABCV0952EST001

When we pointed this out (November 2013) the Ministry replied (November 2014) that there is no provision for automatic deletion of temporary registration in ACES. Instructions have been issued to field formations to stop issuing temporary registration and to convert existing temporary registration into PAN based permanent registration in three months.

Audit is of the view that earnest efforts should be made to allot PAN based Permanent registration number as soon as possible.

iii) More than one registration number issued to same assessee

During scrutiny of list of registered assessees obtained from the selected Ranges, we observed that M/s. RIA Insurance Brokers Pvt. Ltd., New Delhi, an Insurance Auxiliary Service provider in Service Tax Commissionerate, Delhi, having been issued PAN based registration number AAACP6072AST002 also had another registration number with a different PAN number i.e. AAACH2654JST001.

When we pointed this out (November 2013) the Ministry intimated (November 2014) that assessee was asked to clarify double registration, who informed that presently only one registration was active and second PAN belonged to some other person. Ministry also stated that double registration to single assessee was a system error and matter was being reviewed.

Audit observed that there is need for a mechanism, in ACES to ensure unique PAN based registration number for every assessee.

2.5.2 Non/delayed payment of Service Tax on reinsurance services

Point of taxation, as per Rule 2 of the Point of Taxation Rules 2011, means the point in time when a service shall be deemed to have been provided. Rule 3 of the Point of Taxation Rules, 2011, envisages, inter alia, that in a case, where the person providing the service, receives a payment before the issue of invoice/completion of service as the case may be, the time when he receives such payment, to the extent of such payment shall be the point of taxation. The explanation to the Rule also provides that wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

General Insurance Corporation of India (GIC Re) in Service Tax I Mumbai Commissionerate, being National Reinsurer providing general re-insurance services, was contractually bound with the domestic non-life insurers to accept by way of reinsurance an obligatory cession.[14] As per the reinsurance agreement on obligatory cessions, the liability of the reinsurer (GIC Re) shall commence obligatorily and simultaneously with that of the insurer company which means the service is deemed to be provided as a continuous supply of service when the original policy is issued. For providing this reinsurance

[14] Obligatory cession means every non-life insurer shall re-insure with Indian reinsurers such percentage of the sum assured on each policy (as may be specified by IRDA) issued by the non-life insurer to the original insured.

service, the insurer company pays premium as a consideration which is due to be advised to GIC Re in the form of Statement of Accounts (SOA) only within 45 days after the close of the quarter and paid to GIC only within 60 days after the close of the quarter. Hence, the books of accounts of GIC Re are kept open even 45 days after the end of each quarter and actual figures as advised by the insurer companies are booked thereafter. Thus, for the reinsurance risk assumed by GIC on policies issued earlier, being services provided, the receipt of reinsurance premium from the domestic insurers (date of payment for the services provided) and statement of accounts was only on periodical basis ranging from 45 to 60 days from the close of the quarter. Liability on accrual basis came into force from April 2011.

We observed from the ST-3 returns filed for the period April 2012 to March 2013 that GIC Re had depicted taxable services under re-insurance services valued at ₹ 221.11 crore. The amount related to premium amount on such policies issued by general insurance companies in the financial year 2011-12 and obligatorily ceded to GIC which was booked in the financial year 2012-13 for the reasons stated earlier. As the amount pertained to the year 2011-12 and tax was paid in 2012-13 resulting in delayed payment of Service Tax on which interest of ₹ 58.98 lakh was payable.

When we pointed this out (January 2014) the Ministry admitted the observation and intimated (November 2014) that GIC had paid ₹ 58.98 lakh as interest due on delayed payment.

2.5.3 *Non-taxability of charges relating to services on account of ambiguity in the amendment to the provision*

The service provided or to be provided to a policy holder, by an insurer carrying on life insurance business, in relation to the management of investment (commonly known as ULIP Scheme) defined under the erstwhile Section 65(105)(zzzzf) of the Finance Act, 1994, was made taxable with effect from 16 May 2008. The value of taxable service i.e. gross amount charged, was the difference between the total premium paid by the policy holder and the sum of the premium attributable to risk cover and the amount segregated for actual investment. Thus, the taxable value, inter alia, was also inclusive of charges levied on account of premium allocation, policy administration, switching, surrender charges etc. Assessees were paying tax on these items also accordingly.

This method of valuation was modified by amendment to Section 65(105)(zzzzf) of the Act, ibid, with effect from 1 July 2010 to provide that the gross amount charged shall be the maximum amount fixed by the Insurance Regulatory and Development Authority (IRDA) as fund management charges or

the actual amount charged by the Insurer, whichever is higher. The effect of this was that insurance companies no longer included (from 1 July 2010) the other elements such as policy administration charges, switching, surrender charges, premium allocation charges etc. in the taxable value.

However, we observed that vide Para 3.4 of Annexure B to the DO letter No. 334/1/2010-TRU dated 26 February 2010 to the field formations of the Department, the Ministry of Finance, in the course of explaining the changes proposed in the Service Tax law in Budget 2010-11, had informed, inter alia, that policy administration charges were chargeable to tax under insurance service. However, while taking advantage of the new definition of 'gross amount charged' in the ULIP context, assessees did not take cognizance of the fact that policy administration charges were chargeable to tax under insurance service; thus the same remained uncovered under both taxable services, viz. ULIP and Life insurance services notwithstanding the DO cited above. The stand taken by the assessees was that the definition of taxable service under section 65(105)(zx) of the Act, ibid, relating to Life insurance business covered only services provided in relation to the risk cover in life insurance until the statutory provision itself was amended with effect from 1 May 2011. The scope of Life Insurance Service was expanded from 1 May 2011 to cover both risk and management of investment components. Thus, the mismatch between the provisions of sections 65(105)(zx), 65(105)(zzzzf) of the Act, ibid, and TRU's DO letter dated 26 February 2010 resulted in loss of revenue during the period 1 July 2010 to April 2011. As amendment to section 65(105)(zzzzf) with effect from July 2010 had not been synchronised with the scope of coverage in section 65(105)(zx), certain elements got excluded from levy under either head of service resulting in loss of revenue.

(i) Audit observed from the records of 5 Life Insurers of Delhi and Mumbai Commissionerates, as given in table below, that during the period 2010-11, the assessees had excluded from the value of services under ULIP, the amount collected towards policy administration charges, allocation charges, front end load charges, miscellaneous charges, initial fees, policy fees and switch fees on account of the revised definition of taxable services of ULIP u/s 65(105)(zzzzf) of the Act. Service Tax liability on these charges remained uncovered during the period July 2010 to April 2011.

Table 2.3: Amounts excluded from value of taxable services

(₹ in crore)

Sl. No.	Name of the Insurer Co.	Commissionerate	Amount of charges	Service Tax
1.	M/s. Max Life Insurance Co. Ltd., Delhi	LTU Commissionerate, Delhi	520.43	77.67
2.	M/s. Aviva Life Insurance Co. India Ltd.	ST Commissionerate, Delhi	210.21	31.69
3.	M/s. Canara HSBC Oriental Bank of Commerce Life Insurance Co. Ltd.	ST Commissionerate, Delhi	125.69	18.76
4.	M/s. DLF Pramerica Life Insurance Co. Pvt. Ltd.	ST Commissionerate, Delhi	18.08	2.70
5.	M/s ICICI Prudential Life Insurance Co. Ltd.	ST-I Commissionerate, Mumbai	0.97	0.10
	Total		**875.38**	**130.92**

When we pointed this out (January 2014) the Ministry while in case of M/s Max Life Insurance Co. Ltd. stated (November 2014) issue being a policy matter clarification was being sought from higher formation. In respect of M/s Aviva Life Insurance Co. Ltd., SCN was issued to the assessee which was pending adjudication. In respect of M/s. Canara HSBC Oriental Bank of Commerce Life Insurance Co. Ltd. and M/s. DLF Pramerica Life Insurance Co. Pvt. Ltd. matter was under examination by DG (Audit). While in case of M/s. ICICI Prudential Life Insurance Co. Ltd. Ministry did not admit the observation stating that as clarified by Board's letter F. No.334/1/2010-TRU dated 26 February 2010, only fund management charge was chargeable for Service Tax. Thus, Ministry took different views on similar issues.

Ministry's contention is not acceptable as prior to 1 July 2010, all type of administration charges were taxable and para 3.4 (b) of Board's circular in respect of ULIP also stated that policy administration charges were chargeable to Service Tax under Insurance Service. Audit is of the view that ambiguity in the circular resulted in loss of revenue of ₹ 130.92 crore in the reported cases.

(ii) Similarly, during the scrutiny of records of three assesses, as detailed below, audit observed that Service Tax was not paid on the surrender charges during the period 2010-11 to 2012-13, due to ambiguity in Board's circular dated 16 April 2010 which resulted in non-payment of Service Tax of ₹ 121.48 crore including interest.

Table 2.4 : Non-payment of Service Tax on surrender charges

(₹ In lakh)

Commissio-nerate	Name of the Assessee	Amount of surrender charges	Service Tax	Interest*	Total amount
Delhi LTU	M/s. Max Life Insurance Co. Ltd., Delhi	26,205.57	2,728.28	1,082.92	3,811.20
Delhi ST	M/s. DLF Pramerica Life Insurance Co. Pvt. Ltd	127.44	12.40	2.76	15.16
Delhi ST	M/s. Aviva Life Insurance Co. India Ltd.	57,936.45	6,055.92	2,266.36	8,322.28
Total		84,269.46	8,796.60	3,352.04	12,148.64

*Interest is calculated at the rate of 18 per cent for delay of period ranging from 31 months to 6 months relating to 2010-11 to 2012-13 respectively upto the date of audit (September/October 2013).

When we pointed this out (October 2013) the Ministry intimated (November 2014) that the case of M/s. Max Life Insurance Co. Ltd. was already under investigation by DGCEI and SCN had been issued to the assessee for ₹ 62.82 crore. The reply of the Ministry is not acceptable as the SCN issued by the DGCEI did not cover the observation, pointed out by Audit. Case of M/s DLF Pramerica was under examination by DG (Audit) and SCN issued to M/s Aviva Life was pending adjudication.

2.5.4 Proportionate reversal of Cenvat credit on account of trading in securities

As per explanation to Rule 2(e) of Cenvat Credit Rules, 2004 (existed prior to 1 July 2012), exempted services includes "trading". Further, as per amended rule 2 (e) (2) of Cenvat Credit Rules, 2004 (with effect from 1 July 2012), 'exempted service' means a service on which no Service Tax is leviable under Section 66B of the Finance Act, 1994. Section 66D of the Finance Act, 1994 specified the services on which no Service Tax is leviable and include 'trading of goods'. Section 65B (25) of the Act, ibid, specifies that goods includes securities. Hence, Trading of securities is an exempted service.

We observed during the audit of M/s. Star Union Dai-ichi Life Insurance Company, under the jurisdiction of Service Tax II Mumbai Commissionerate that the assessee was considering trading in securities as exempted service for proportionate reversal under Rule 6(3A) of Cenvat Credit Rules, 2004, which aspect was also informed to the Department. However, during our detailed audit examination of records of other Insurance companies within the jurisdiction of Service Tax I Mumbai Commissionerate, we observed that none of the companies had disclosed any such calculation in order to effect proportionate reversal on this account. Assessees contended that

'investment' is one of their core activities and that trading done by them is not with any intention to earn any profit per se, but only to carry out their day-to-day business needs. However, the extant provision of Cenvat credit specifically requires such reversal if there is a trading activity in securities by the Insurance companies. The fact that at least one assessee has been carrying out reversals of Cenvat credit availed in respect of trading activities indicates the need for the department to examine the issue and provide clarification.

When we pointed this out (January 2014) the Ministry did not admit the audit observation (November 2014) stating that in endowment policies as well as in ULIP, the services provided by insurance companies with regard to investment of premium is subject to Service Tax. In the case of ULIP or endowment policy, the activity of investing the fund of the policy holder is neither exempted by a notification nor is non-taxable. Therefore, the services provided by the insurance companies does not fall in the definition of 'exempted services', hence the provisions of Rule 6(3) would not be applicable in the present case. It was further stated that the taxability of the service provided by the insurance company being in nature of composite/bundled service, is determined on the criterion that a single service (out of all the services forming part of the composite service) which gives the service its essential character would be treated as the main taxable service. The activity of investing is only an ancillary activity while the essential character is provided by the coverage of risk of life of the policy holder.

The reply is not acceptable as trading in securities is covered in negative list under section 66D of the Finance Act and as per amended definition of exempted service under sub-rule 2 (e) (ii) of Cenvat Credit Rules 2004, all services on which no tax is leviable under section 66B of the Act, are exempted. Hence, rule 6(3) is applicable in the present case and credit proportionate to the value of trading in securities is to be reversed.

However, on Audit recommendation (June 2014) that, CBEC may consider issuing a clarification on the correct treatment in respect of trading as part of investment activities carried out by insurance service providers, then Ministry admitted (November 2014) the issue stating that trading of security is exempted service and Cenvat credit is required to be reversed, which is contrary to the views expressed in reply of the para above. Audit re-iterates that Ministry should issue clarification to ensure consistency by departmental authorities and reversal of Cenvat credit may be ensured from all service providers as per the applicable provisions.

2.5.5 Incorrect finalisation of Provisional Assessment not pointed out in review

Section 65(55) of the Finance Act, 1994, (as applicable prior to 1 July 2012) defined 'Insurance Auxiliary service' as any service provided by an actuary, an intermediary or insurance intermediary or insurance agent in relation to general insurance business or life insurance business and includes risk assessment, claim settlement, survey and loss assessment.

Rule 6(4) of the Service Tax Rules, 1994, provides for option to pay Service Tax provisionally where an assessee is, for any reason, unable to correctly estimate on the date of deposit, the actual amount payable for any month or quarter as the case may be. Orders of final assessment shall be passed under Rule 7(3) of Central Excise Rules, 2002.

M/s United India Insurance Company Ltd, Chennai in LTU Commissionerate, Chennai had opted for provisional assessment for the financial years 2008-09 to 2010-11 as they could not finalise their tax liability before the due dates on account of data not reaching them on time from 1430 branches. We observed that the credit of entire Service Tax paid on agency commission under insurance auxiliary service on provisional basis was taken as input service credit every month. However, this fact was not taken into account during finalization of the said provisional assessments. Accordingly, the Orders-in-Original stated that the Service Tax and Cess amounts paid in excess, relating to agency commission may be utilised by the assessee in subsequent months. The assessee utilised the same for adjustment towards output Service Tax during the months of April 2009, April 2010 and April 2011 respectively. Since entire Service Tax/cess paid provisionally was taken as credit every month, the question of refund of excess paid Service Tax did not arise. This resulted in incorrect grant of refund of ₹ 10.31 crore. Appropriate interest was also recoverable.

When we pointed this out (September 2012) the Ministry stated (November 2014) that demand for excess amount claimed and refunded to service provider was confirmed with interest and equal penalty.

The fact remains that Orders-in-Original dated 26 May 2011 and 30 May 2012 were reviewed and had been accepted by the Commissioner. The error was not noticed in review also in two consecutive years, is indicative of the weakness of the systems in place in the Commissionerate.

Recommendation No. 1

The department may consider introduction of a checklist for finalisation of high value provisional assessment cases.

The Ministry stated (November 2014) that suggestion has been noted.

2.6 Compliance issues

CBEC introduced self-assessment in respect of Service Tax in 2001. With the introduction of self-assessment, the department also provided for a strong compliance verification mechanism through Scrutiny of Returns, internal audit and the anti-evasion/ preventive wing. Audit observed that notwithstanding the above, we came across certain cases during examination of assessee records which indicate the need for strengthening of the department's compliance verification mechanisms.

2.6.1 Non-payment of Service Tax under reverse charge for import of services

Rule 2 (1)(d)(iv) of the Service Tax Rules, 1994, stipulates that in respect of taxable service provided by a person, who is a non-resident or is from outside India and does not have an office in India, the person receiving the taxable service in India is liable to pay Service Tax under reverse charge mechanism.

Besides, Rule 9 of Place of Provision of Services Rules, 2012 provides that place of provision of services shall be the location of the service providers in the following cases: (a) services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders; (b) online information and database access or retrieval services; (c) Intermediary services; and (d) service consisting of hiring of means of transport. As per Rule 2 (f) of Place of Provision of Services Rules, 2012, "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates provision of service (main service) between two or more persons.

Audit scrutiny revealed that 5 assessees did not fulfill Service Tax liability amounting to ₹ 7.05 crore under reverse charge on insurance auxiliary services received from foreign service providers during the period covered by Audit.

Table 2.5 : Non-payment of Service Tax under reverse charge

(₹ in lakh)

Commissionerate	Assessee	Description of service	Value of services received/ expenditure incurred	Service Tax amount*
LTU Delhi	M/s. The Oriental Insurance Co. Ltd.	Reinsurance premium ceded to foreign reinsurers	4,227.78	566.10
ST, Delhi	M/s. Ace Insurance Brokers Pvt. Ltd.	Insurance Brokers located abroad	697.30	105.06
		Business promotion expenses	62.66	9.35
		Sponsorship expenses paid by the sponsor**	17.96	2.45
ST, Delhi	M/s. Corporate Warranties India Pvt. Ltd., Insurance Broker	Software subscription fee paid to above foreign party	136.06	19.21
ST, Delhi	M/s. Aviva Life Insurance Co. (India) Ltd.	Foreign payments for survey	8.15	1.00
ST, Delhi	M/s Bajaj Capital Insurance Broking Ltd.	Commission for reinsurance business	14.68	2.27
		Total	**5,164.59**	**705.44**

*inclusive of interest upto date of Audit

** vide circular dated 28 February, 2006, Service Tax is to be collected under reverse charge method from the service recipient viz. the sponsor - body corporate/firm.

When we pointed this out (December 2013) the Ministry intimated (November 2014) that in respect of Oriental Insurance Co. Ltd., the facts were under examination and SCN had been issued. M/s Corporate Warranties India Pvt. Ltd. and M/s Bajaj Capital Insurance Broking Ltd. had paid the Service Tax. SCN had been issued to M/s. Aviva Life Insurance Co. (India) Ltd. which was pending adjudication. In respect of M/s Ace Insurance Brokers Pvt. Ltd., Ministry intimated partial recovery of ₹ 4.67 lakh in respect of sponsorship expenses paid by the sponsor. Reply for the remaining two services was awaited.

2.6.2 Terrorism Premium

The Indian Market Terrorism Risk Insurance Pool was formed as an initiative by all the non-life insurance companies in India in April 2002. It functions as a multilateral reinsurance arrangement of terrorism risks insured by any of the Members with M/s General Insurance Corporation (GIC Re) and all other members as reinsurers, in agreed proportions. The Pool is administered by GIC and is applicable to all insurances of terrorism risk insured along with the insurances of property. The maximum limit of liability for insurance of terrorism risk shall be as decided by the Pool Underwriting Committee and as filed with the Insurance Regulatory and Development Authority from time to time. Presently, the Pool offers a capacity of ₹ 1000 crore per location. The

Pool itself is protected by an Excess of Loss (XOL) reinsurance cover to protect itself against claims beyond normal ranges/catastrophic losses. Any claims exceeding the underlying limit will be recovered from the Reinsurers. Pool Members interested in participating as Reinsurers on the XOL cover are given share on priority basis and balance is placed with Foreign Reinsurers (foreign cession).

2.6.2.1 Non-payment of Service Tax on retrocession premium relating to Terrorism Pool

Section 66 read with Section 65(105)(zx) of the Finance Act, 1994, (as applicable prior to 1 July 2012) envisage that any service provided or to be provided to a policy holder or any person, by an insurer including reinsurer carrying on life insurance business is a taxable service. In the case of foreign reinsurers, the liability was to be borne by the service recipient under reverse charge under the provision of Section 66A of Finance Act, 1994. With effect from 1 July 2012, all services other than those specified in the Negative List, provided or agreed to be provided will attract levy of Service Tax.

By virtue of the pooling agreement, GIC Re, the National Re-insurer, functions as Pool Manager. The total premium transferred to the Pool by all the members, within 45 days after the close of each quarter, is apportioned by GIC Re to each of the Pool members at the rate of their respective predetermined share percentages and informed to them at the end of the financial year, in the form of a matrix. Thus, retrocession which involves the transaction whereby a reinsurer cedes to another insurer or reinsurer all or part of the reinsurance it has previously assumed is carried out by this process. The own share premium is, however, not considered for retrocession. Thus, any amount insured for terrorism risks is reinsured in this manner through participation of all the pool members as reinsurers.

Since the activity described above is clearly in the nature of reinsurance, Service Tax liability would arise which is to be discharged by each reinsurer-member based on its respective apportioned shares. We observed that while Service Tax liability of GIC's share as reinsurer is discharged by GIC, Service Tax liability of each of the other members on their portion of the retroceded premium amounts is also worked out in the matrix and communicated by GIC. Each member company shall discharge their Service Tax liability on the amount of terrorism premium retroceded in their name.

However, we observed that the matrix for 2010-11 and 2011-12 was still under preparation at GIC while the matrix for 2012-13 was ready. As the members are yet to be informed of their share of the retroceded amounts by GIC for the years covered by CERA (2010-11 to 2012-13), the matrix for which

was ready as at the time of CERA examination, liability on the same has not been discharged. It is observed that there is a non-payment of Service Tax payment on account of the prolonged process of finalization of preparation of retrocession matrix due to the procedure laid down by IRDA. Service Tax provisions on accrual basis of valuation of services is not complied with the procedure/ mechanism adopted by the non-life insurance sector.

Audit scrutiny of the matrices[15] prepared by GIC Re revealed the non-payment of Service Tax liability amounting to ₹ 47.38 crore relating to all member non-Life Insurer companies other than GIC as depicted in the following table which needs to be recovered with interest.

Table 2.6 : ST liability on retroceded amounts

(₹ in lakh)

Particulars of Premium	Year	Total Service Tax payable	GIC Re's liability of Service Tax (already paid)	Service Tax to be recovered from Insurance Cos. other than GIC
Retrocession premium	2012-13	5,014.26	886.44	4,127.82
Retrocession premium (XOL)	2012-13	156.08	51.98	104.11
	2011-12	43.00	13.71	29.29
Retrocession premium (foreign cession)	2012-13	461.99	73.92	388.07
	2011-12	109.77	21.30	88.48
Total		5,785.10	1,047.35	4,737.77

When we pointed this out (January 2014) the Ministry stated (November 2014) that assessee under LTU-Delhi Commissionerate has been asked to deposit the Service Tax. In respect of LTU-Chennai Commissionerate, Ministry intimated that Matrix have been prepared and sent to member companies for discharging Service Tax liabilities. Two assessees under LTU Chennai Commissionerate had paid the Service Tax. In respect of Mumbai ST-I Commissionerate the ministry admitted the observation and stated that there was delay on part of GIC in submitting matrix due to various technical issues and the procedure has been streamlined now.

2.6.2.2 Non-payment of Service Tax on service charges received on managing specific insurance pool

i) Scrutiny of the terms of agreement on Indian Market Terrorism Risk Insurance Pool dated 25 July 2007 between M/s General Insurance

[15] Source document: Matrix on Retrocession premium on Retrocession Premium on domestic cession, Excess of Loss (XOL) premium and foreign cession of the Excess of Loss (XOL) premium for the year 2012-13 and 2011-12 to Pool Members prepared by GIC and Service Tax liability thereon obtained from GIC Re.

Corporation (GIC Re) i.e. Pool Manager and each of the non-life insurers named in the schedule to the agreement revealed the following facts:

The constituents of Indian Terrorism Pool (Pool) are all general insurance companies who write premium for policies of terrorism risks and the National Reinsurer, M/s General Insurance Corporation (GIC Re). Though GIC does not write direct premium, it is nevertheless, a member of the Pool with a definite share from the premium amounts transferred into the Pool by other member companies. The other member companies also have their respective shares in the Pool. GIC is the Pool Manager, as the management and administration of the Pool is vested with it and for this activity, it charges a fee called management commission at one per cent of the original premium for insurance of terrorism risk.

Audit scrutiny of the accounts of GIC Re and Terrorism Pool Quarterly Retro Account statement for revealed that GIC Re had charged fee at the rate of 1 per cent as service charges. However, scrutiny of ST-3 returns for the period 2011-12 and 2012-13 revealed that GIC Re was not paying Service Tax on service charges which form the value of taxable services. The Matrix for Retrocession Premium which is prepared by the GIC Re on the basis of Statement of Accounts received from the members of the Pool showed that the Pool received a total net premium of ₹ 145.52 crore and ₹ 448.24 crore for the years 2011-12 and 2012-13 respectively. GIC Re, being the Pool Manager received service charges as per the agreement at the rate of 1 per cent of the original premium aggregating to ₹ 6.60 crore on which they had not paid Service Tax of ₹ 78.21 lakh which was recoverable alongwith interest.

When we pointed this out (January 2014) the Ministry did not admit the objection (November 2014) stating that issue is clarified vide circular dated 16 April 2010. GIC Re is only sharing the expenses with other insurers and the activity will not attract Service Tax. As both the insurance company and re-insurer pay Service Tax as entire amount, question of charging Service Tax under any other service does not arise.

Ministry reply is not acceptable as Clauses 10 and 16 of the Terrorism Pool Agreement reveals that the fee due from other Pool members is a remuneration charged by the Pool Manager for management of the administration of the pooling arrangement. Thus, this is clearly a situation where service is provided by GIC Re as pool manager to the other members of the pool as service recipients and is not covered by CBEC's Circular cited above, as the circular speaks about sharing of expanses by the insurer with the re-insurer. In this case policy is not written by GIC and he had not incurred any expense which is needed to be recovered from other insurer. GIC is

managing the pool which is a separate service, other than re-insurance hence, and charging an amount from all members for this service. Therefore, Service Tax is leviable for consideration received to manage the pool.

ii) Non-payment of Service Tax on service charges on motor third party pool

GIC as national Reinsurer was entrusted with the management of Indian Motor Third Party Insurance Pool (IMTPIP) with effect from April 2007 exclusively for commercial vehicles on the directives of IRDA under a multilateral reinsurance arrangement among the underwriting non-life insurer companies and GIC Re.

Scrutiny of the accounts and annual reports of GIC Re revealed that the assessee earned administration fees/ service charges of ₹ 27.19 crore and ₹ 27.75 crore for the years 2010-11 and 2011-12 respectively which was netted off with the expenses relating to the Motor Pool/ included in other income. These amounts were to be included in the taxable value of services as they would from part of the 'gross amount charged' as per section 67 of the Finance Act. We observed that as these amounts were not included in the value of taxable services, Service Tax amounting to ₹ 2.80 crore and ₹ 2.86 crore for 2010-11 and 2011-12 respectively, is recoverable with interest.

When we pointed this out (January 2014) the Ministry did not admit (November 2014) the objection stating that circular dated 16 April 2010 was also applicable in the case.

Ministry reply is not acceptable as per section 67 of the Finance Act, 1994, the value of taxable service would be 'gross amount charged' by the service provider. Circular dated 16 April 2010 is not applicable in the instant case.

2.6.3 Short payment of Service Tax

Audit scrutiny exercised on the basis of reconciliation of the gross income reflected in the annual accounts (Balance Sheet and Trial Balance) with the taxable income reflected in the ST-3 returns revealed short payment of Service Tax of ₹ 14.73 crore in the following 4 cases:

Table 2.7: Short payment of Service Tax

(₹ in lakh)

Assessee (Period covered in observation)	Audit Observation	Service Tax	Interest (delay period worked upto the date of audit)	Short payment of Service Tax including interest
M/s Oriental Insurance Co. Ltd, LTU Commissionerate, Delhi (2011-12)	There was a difference of ₹ 105.39 crore in the premium income as per the reconciliation statement of gross premium income in the accounts and ST-3 returns.	1,085.49	325.65 (20 months from April 2012 to November 2013)	1,411.14
(2012-13)	Service Tax was paid on Insurance/rental services etc. at the rate of 10.3 per cent as against the enhanced rate of 12.36 per cent with effect from 1 April 2012	29.52	7.22 (delay by 18 to 12 months upto November 2013)	36.74
M/s Ace Insurance Brokers Ltd., ST Comissionerate, Delhi (2011-12)	Gross taxable income as per Balance Sheet was ₹ 31.56 crore whereas gross income as per the return was ₹ 30.31 resulting in undervaluation of ₹ 1.26 crore.	12.96	3.89 (delay of 20 months from April 2012 to Nov. 13)	16.85
M/s Sridhar Insurance Brokers, ST Commissionerate, Delhi. ((January 2013 to March 2013)	During the year 2012-13, out of the brokerage income of ₹ 9.31 crore, Service Tax was paid on ₹ 8.02 crore and ₹ 0.55 crore was declared under VCES, however, on the remaining ₹ 0.47 crore tax was not paid.	5.22	0.71 (9 months delay from April 2013 to December 2013)	5.93
M/s Hawk Vision Ltd., ST Commissionerate, Delhi. (2010-11 to 2012-13)	There was a difference of ₹ 18.42 lakh in the gross receipts shown in the TDS statement and that of ST-3 returns.	1.90	0.43 (delay by 32 to 8 months till November 2013)	2.33
			Total	**1,472.99**

When we pointed this out (December 2013) the Ministry intimated (November 2014) that M/s. Oriental paid the Service Tax of ₹ 10.85 crore and SCN had been issued for interest and penalty. Case of M/s. Ace Insurance Brokers Ltd. and M/s. Hawk Vision Ltd. are under investigation and SCN will be issue if demand arise. M/s. Sridhar Ltd. has also paid the Service Tax of ₹ 5.93 lakh.

2.6.4 Non-payment of interest on delayed payment of Service Tax

The assessee is liable to pay interest at the prescribed rate on the delayed payment of Service Tax as per section 75 of the Finance Act. The rate prescribed has been increased from 13 per cent to 18 per cent with effect from 1 April 2011.

We came across instances of delayed payment of Service Tax in 6 cases in ST Commissionerate, Delhi on which interest of ₹ 13.23 lakh was recoverable.

Table 2.8: Non-payment of interest due

(₹ in lakh)

Assessee	Interest due on delayed payment of Service Tax*
M/s Corporate Warranties Ltd.	10.69
M/s Bajaj Capital Insurance Broking Ltd.	1.74
M/s Almondz Insurance Brokers Pvt. Ltd.	0.34
M/s Unison Insurance Broking Services Ltd.	0.24
M/s Fair deal Insurance Brokers Ltd.	0.15
M/s DLF Pramerica Life Insurance Company Ltd.	0.07
Total	**13.23**

When we pointed this out (November 2013) the Ministry intimated (November 2014) that all the assessees had paid the interest.

2.6.5 Cenvat credit

2.6.5.1 Incorrect utilisation of Cenvat credit

Under the provisions of rule 3 of the Cenvat Credit Rules, 2004, a service provider is allowed to take credit of Service Tax paid on any 'input service' used in providing taxable output service. Credit availed on Education Cess and Secondary and Higher Education Cess cannot be utilised for the payment of basic Service Tax.

Scrutiny of returns for the period 2011-12 of M/s Bajaj Allianz General Insurance Co. Ltd. in Pune III Commissionerate revealed a discrepancy in carrying forward Cenvat credit of ₹ 14.30 lakh for the month of October 2011 which was on account of an incorrect adjustment of basic tax and Education Cess, inadmissible as per the Cenvat Credit Rules. This resulted in excess credit availed of ₹ 14.30 lakh and utilised subsequently in the following months which needs to be recovered.

When we pointed this out (September 2013) the Ministry intimated (November 2014) that assessee rectified the error and SCN had been issued for interest and penalty.

2.6.5.2 Cenvat credit on input services used in non-taxable/exempted output services

Under rule 3 of Cenvat Credit Rules, 2004, a service provider is allowed to take credit of Service Tax leviable under section 66/66A (section 66B with effect from 1 July 2012) of the Finance Act 1994, paid on any input service.

Section 64 of Chapter V of Finance Act, 1994 excludes the applicability of Service Tax to the State of Jammu and Kashmir. Hence, if Service Tax not due to be paid in respect of commission paid to insurance agents for sourcing business in Jammu and Kashmir has been paid under reverse charge, credit of the same should not be availed.

a) We observed the following instances where assessees had availed Cenvat credit of ₹ 64.26 lakh on commission paid to the insurance agents for sourcing business in Jammu and Kashmir (which are non-taxable services) which were inadmissible in view of the aforesaid provision and needs to be recovered with interest.

Table 2.9: Cenvat credit on input services used in non-taxable output services

(₹ in lakh)

Name of the assessee	Commissionerate	Service Tax paid on Commission paid to Insurance Agents
M/s Bajaj Allianz Life Insurance Co. Ltd.	Pune III	38.40
M/s HDFC ERGO General Insurance Co. Ltd.	ST- I, Mumbai	1.53
M/s Reliance Life Insurance Co. Ltd.	ST-II, Mumbai	24.33
	Total	**64.26**

When we pointed this out (January 2014) the Ministry in case of M/s. Bajaj Allianz Life Insurance and M/s Reliance Life Insurance Co. Ltd admitted (November 2014) the objection and intimated that M/s Bajaj Allianz had reversed Cenvat credit of ₹ 60.77 lakh alongwith interest of ₹ 14.23 lakh and SCN for penalty was being issued while case of M/s Reliance was being verified and SCN would be issued shortly. However, in case of M/s. HDFC Ergo Ministry did not admitted the objection and stated that as provision of Service Tax are not applicable in J&K, no tax is payable for such services and assessee first paid the tax and then availed Cenvat credit of the same and the exercise is revenue neutral.

Ministry has taken two different stands for similar issue. Ministry need to take a common stand for the issue and clarify the same to is field formations. However, contention of the Ministry in case of M/s HDFC Ergo is not acceptable because as per rule 3 of Cenvat Credit Rules, 2004, credit is admissible for Service Tax paid under section 66,66A or 66B and Service Tax

paid for J&K policies does not fall under the purview of any section of the Act. Further, though the exercise of paying Service Tax for J&K polices and then availing credit is revenue neutral, the tax paid on non-taxable policies, is passed on to J&K clients which is defying the intention of the legislation of not extending Service Tax to J&K.

b) We also observed that insurers did not maintain separate account for input services used in provision of taxable output services and non-taxable output services (relating to Jammu and Kashmir) on the lines of the requirement in Rule 6(3) of Cenvat Credit Rules, 2004 regarding taxable and exempted services. Prior to 1 July 2012, there was no requirement in the law or Rules for maintenance of such separate accounts. However, we note that absence of such requirement results in a vitiation of the logic behind the introduction of Cenvat since it means allowing the utilization of input services for provision of services not contributing to the revenues of the Central Government.

During examination of records of 3 assessees in Service Tax-1 Mumbai Commissionerate, Audit observed that the assessees did not maintain separate account for input services used in the provision of taxable and non-taxable services during the period covered in audit. If we applied the analogy of Rule 6(3) of Cenvat Credit Rules, 2004, the required reversal of Cenvat credit would work out to ₹ 2.31 crore.

Table 2.10 : Cenvat attributable to input services used for provision of Jammu and Kashmir related services

(₹ in lakh)

Commissi-onerate	Name of Assessee	Period	Cenvat attributable to input services used for provision of J & K related services
ST I Commissionerate, Mumbai	M/s HDFC Ergo General Insurance Co. Ltd.	2011-12	5.27
	M/s ICIC Prudential Life Insurance Co. Ltd.	2010-11	76.46
	M/s New India Assurance Co. Ltd.	2012-13	150.18
	Total		**231.91**

When we pointed this out (January 2014) the Ministry did not admit the objection (November 2014) stating that as provision of Service Tax are not applicable to J&K. Rule 6(3) of Cenvat Credit Rules, 2004 which require reversal of proportionate Cenvat credit, is also not applicable.

The reply is not acceptable as the issue is not related to leviability of Service Tax in J&K but availing of irregular Cenvat credit in taxable territory other than J&K, for services which are not taxable. Non-reversal of credit on services pertaining to J&K which are non-taxable would defy the basic logic of Cenvat Credit Scheme. The issue has also been decided in respect of Central

Excise by Supreme Court in case of Maruti Suzuki Ltd. where apex court held that credit is not eligible for the electricity, a non-dutiable product, to the extent it is not used in manufacturing of dutiable products. Suitable amendment/clarification may also be made, if required, in respect of Service Tax.

2.7 Other cases

In addition to the above, we noticed 4 other cases of non-compliance by the assessee involving tax effect of ₹ 9.04 lakh out of which ₹ 8.11 lakh had been recovered.

2.8 Conclusion

While services in insurance sector continue to contribute very significantly to the Service Tax revenues, at least some portion of the revenue due to reach the Government fails to reach the Government owing to various factors such as limitations in our compliance verification mechanisms and lacunae/ambiguity in provisions.

Chapter III

Service Tax liability in Port sector

3.1 Introduction

Service Tax on 'Port Services' provided by the major ports and their authorised persons was introduced with effect from 16 July 2001 and the same was extended to minor ports with effect from 1 July 2003. 'Port Services' as defined under Section 65(82) of the Finance Act, 1994 (with effect from 1 July 2010 and as applicable upto 30 June 2012) covered "any service rendered within a port or other port, in any manner".

Port Services sector is one of the major revenue earning service sectors netting revenue of over ₹ 1,670 crore in 2012-13. Ports render services in relation to vessels arriving at/ departing from the ports and in relation to cargo being imported and exported. The services include pilotage, tugging, berthing, mooring, remooring of the vessels, loading and unloading of the cargo, ship to ship transfer of cargo, weighing of cargo, transport of the cargo from wharf on tippers, storage, handling, and services like supply of water, electricity to vessels, bunkering, ship chandler services, ship repair services, railway haulage charges for rail-borne goods, local haulage and storage, manpower services etc.

The state of Andhra Pradesh with a coastline of 975 kilometres, which is the second longest in the country, has one major port – Visakhapatnam Port, and five minor ports, viz. Kakinada Deep Sea Port, Kakinada Anchorage Port, Gangavaram Port, Krishnapatnam Port and Rawa/South Yanam Port, in operation. The state of Odisha has coastline of 480 kilometre, with Paradeep Port as major port, and two minor ports, viz. Dhamra Port and Gopalpur Fair Weather Port.

3.2 Audit objectives

We examined the adequacy of the mechanisms in place in Andhra Pradesh and Odisha, to ensure that Service Tax due to the Government of India from port sector was in fact reaching the Government. Audit was conducted to assess:

i. the adequacy of rules, regulations, notifications, circulars/instructions/trade notices etc. issued from time to time in relation to levy, assessment and collection of Service Tax relating to services in ports' sector;

ii. whether the extant provisions of law are being complied with adequately;

iii. whether there was an adequate mechanism to identify and bring in potential service providers into tax net for levy of Service Tax; and

iv. whether there was an effective monitoring and internal control mechanism.

3.3 Audit coverage

We examined records at 5 Commissionerates, 6 Ports (Service Tax assessees) and 12 port service providing units in Andhra Pradesh and Odisha. The period covered was 2010-11 to 2012-13.

We reviewed the effectiveness of administration of the levy of Service Tax on 'port services' starting with the process of registration of assessees, monitoring of receipt of returns, scrutiny of returns, internal audit, etc. to identify instances of non compliance resulting in loss of revenue.

3.4 Audit findings

Scrutiny of assessee records in the audited units revealed system and compliance related issues having financial implication of ₹ 44.89 crore. The Ministry accepted (December2014) the audit observations having financial implication of ₹ 38.59 crore and recovered ₹ 29.70 crore. The major findings are discussed below in the following paragraphs:

3.5 System issues

3.5.1 Non-filing/late filing of returns

Section 70 of the Finance Act, 1994 provides that every person liable to pay the Service Tax shall himself assess the tax due on the services provided by him and shall submit the prescribed return. For delayed submission of return, the assessee shall pay late fee not exceeding ₹ 20,000/- The rates of late fee for delayed submission of return, depending on the number of days of delay, are prescribed in Rule 7C of Service Tax Rules, 1994.

Information furnished by the Visakhapatnam-I, Visakhapatnam-II, Guntur and Hyderabad-II Commissionerates indicated that in Andhra Pradesh during last three years, out of 693 Service Tax returns due from port service providers, 605 returns have been received in time, 44 returns were received belatedly and 44 returns were not received at all. In Bhubaneshwar I Commissionerate, out of 91 Service Tax returns due, 85 returns were received in time and 6 returns were not received at all.

There was no evidence of any action, in the nature of show cause notices/imposition of penalty under section 77(2) of the Finance Act, 1994 in respect of assessees who had failed to submit returns. Even late fee was not

deposited by assessees who filed returns belatedly. No action was taken by the department in such cases.

When we pointed this out (February 2014), the Ministry intimated (December 2014) recovery of ₹ 2.49 lakh in 43 cases from the non-filers/late filers in Visakhapatnam-I, II, Hyderabad-II Commissionerates and show cause notices were issued in three cases in Bhubaneswar-I Commissionerate.

3.5.2 Failure to conduct preliminary and detailed scrutiny

Under ACES, preliminary scrutiny of returns is carried out by the system and returns with discrepancies are identified by the system for review and correction. The returns marked for review are to be validated in consultation with the assessee and re-entered into the system. Further, as per Board's circular dated 11 May 2009, once ACES is implemented, returns would automatically be listed in descending order of risk and submitted to Commissioner for selection.

On verification of records, it was noticed that out of 82 Service Tax returns received from port service providers during the period 2010-11 to 2012-13 in Guntur and Hyderabad-II commissionerates in Andhra Pradesh, preliminary scrutiny was conducted in respect of 35 returns only.

In Odisha, out of 85 Service Tax returns received in Bhubaneshwar-I Commissionerate, preliminary scrutiny was conducted only in 73 cases. Thus, in 57 per cent of returns in Andhra Pradesh and 14 per cent of returns in Odisha, preliminary scrutiny was not conducted.

No detailed scrutiny of any ST-3 returns relating to services in port sector was conducted during these three years in, Guntur and Hyderabad II commissionerates.

In Bhubaneswar I commissionerate, detailed scrutiny in respect of only one return was conducted. We also observed that ACES functionality to list returns in the order of risk was also not operational and system was not selecting any return for detailed scrutiny.

When we pointed this out (February 2014), the Ministry admitted (December 2014) the fact that ACES module for identification of returns for detailed scrutiny was not functional. It further informed that in Hyderabad-II commissionerate, all the assessees registered under port services are Category A units who are subjected to annual audit hence, detailed scrutiny is not required. Audit is conducted every year on major service providers In Bhubaneswar-I commissionerate.

The Ministry reply is silent regarding non-completion of preliminary scrutiny pointed out in the para.

3.5.3 Shortfall in Internal Audit

As per Service Tax Audit Manual, 2011, Service Tax units paying tax (annual) more than ₹ three crore (Category A units) are to be mandatorily audited every year. Further, units paying Service Tax between ₹ one and three crore are to be audited once in two years (Category B).

(i) We observed that M/s KEI-RSOS Ltd. In Visakhapatnam-II Commissionerates was not audited after December 2011 though it is a Category A units.

(ii) On scrutiny of records of M/s Krishnapatnam Port Company Ltd. (KPCL) in Guntur commissionerate we observed that the assessee issued credit notes in May 2011 to importers for delay in loading/unloading the goods and adjusted the amounts payable against amounts charged for port services rendered. This arrangement led to amounts equivalent to those mentioned in the credit notes and totalling ₹ 2.88 crore not being included in the gross amount chargeable to Service Tax which resulted in short payment of Service Tax of ₹ 35.20 lakh including interest.

When we pointed this out (February 2014), the Ministry intimated (December 2014) recovery of ₹ 40.80 lakh including interest and penalty.

Though KPCL was a Category A unit, it had not been audited by Internal Audit in 2011-12 and 2012-13. The error in calculation of taxable value of services was not such which could have been detected through detailed scrutiny (as the ST-3 return format does not provide for inclusion of details such as credit notes adjusted etc).

Recommendation No. 2

- *We recommend that the details of credit notes issued and adjusted by the assessee may be included in ST-3 return to facilitate detection of the issue in scrutiny. Alternatively instructions for verifying the details of credit notes may be incorporated in the Manual for Scrutiny of Returns, 2009.*

3.5.4 Pending arrears of revenue

As per Board's circular dated 1 January 2013, in cases where appeal is filed with a stay application against an order in original with Commissioner (Appeal) or CESTAT, recovery is to be initiated 30 days after the filing of appeal, if no stay is granted or after the disposal of stay petition in accordance with the conditions of stay, if any, whichever is earlier.

As per sub-section 2A to section 35C of the Central Excise Act, 1944 where an order of stay is made in any proceeding relating to an appeal, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and

eighty days from the date of such order. If such appeal is not disposed of within one hundred and eighty days, the stay order shall, on expiry of that period, stand vacated.

However, Hon'ble Supreme Court in case of M/s Kumar Cotton Mills Pvt. Ltd. v/s CCE, Ahmedabad {2005 (180) E.L.T. 434 (SC)} held that the stay does not stand vacated automatically after one hundred and eighty days due to non-disposing off the appeal for the reasons beyond the control of the assessee and appellate tribunal can extend the stay in such cases. Punjab & Haryana High Court in the case of M/s PML Industries Ltd. vs. CCE {2013 (4) TMI 101 – P&H High Court} while relying on the decision held that the department can move an application for the vacation of stay after one hundred and eighty days on proof of the fact that delay in finalization of the case is attributable to the assessee.

We observed that as on 31 March 2013, there were 21 cases involving ₹ 45.21 crore pending as arrears in Visakhapatnam-I, II, Guntur and Hyderabad-II commissionerates where stay application is pending with Commissioner (Appeals) and CESTAT for more than 30 days. However, recovery procedure for these arrears has not yet been started by the department.

We also observed that in 22 cases in Visakhapatnam-I and II commissionerates involving revenue of ₹ 159.67 crore, CESTAT had stayed recovery of arrears. We observed that in all these cases, the period of 6 months had already expired. However, the department had not initiated review of these cases for filing applications for the vacation of stay in suitable cases.

When we pointed this out (February 2014), the Ministry intimated (December 2014) that in Visakhapatnam-II Commissionerate ₹ 1.78 crore was recovered and early hearing petition has been filed in suitable cases. Necessary action is being taken in Guntur Commissionerate to get the stay vacated. It further intimated that parties are under appeals in Hyderabad-II Commissionerate and stay has been granted by the CESTAT.

Recommendation No. 3

- *The Board may consider amending section 35C(2A) of the Central Excise Act, 1944 in view of Supreme Court decision in case of M/s Kumar Cotton Mills Pvt. Ltd. v/s CCE, Ahmedabad {2005 (180) E.L.T. 434 (SC)} regarding vacation of stay after one hundred and eighty days.*

3.6 Compliance issues

We conducted detailed examination of records relating to selected assessee ports and other port service providers. Certain issues of non-compliance with the statutory provisions, Cenvat related issues, incorrect availing of exemptions which we observed in the course of examination for records are highlighted below:

3.6.1 Non/short payment of Service Tax on upfront rental fee/concession fee of rental income

As per Section 68, every person providing taxable service to any person shall pay Service Tax at the rate specified in section 66B (or earlier section 66).

Prior to 1 July 2012, 'renting of immoveable property' as defined in Section 65(90a), included, *inter alia,* renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce subject to certain exceptions prescribed therein. With effect from 1 July 2012, 'renting of immovable properties' has been included under 'declared services' list specified in Section 66E of the Finance Act, 1994.

Board's circular dated 27 July 2005 clarifies that when advance payment is received for a service which is non-taxable at the time of receipt of payment but becomes taxable during the course of provision of service, such payments would have to be apportioned appropriately between the two periods and only that part of service provided on or after the service becomes taxable service, is liable for Service Tax.

Explanation 2 under section 65(90a) of Finance Act, 1994, clarifies that for the purpose of this clause, 'renting of immovable property' includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property. Further, Board clarified in its circular dated 10 February 2012 that in Build-Operate-Transfer (BOT) projects, the renting of immovable property by the Government is a service and Service Tax is payable by Government or its agency on the consideration received for the same.

(i) We observed that during 2008-09, M/s Visakhapatnam Port Trust (VPT) received an amount of ₹ 201.98 crore from M/s HPCL, Visakhapatnam and ₹ 7.64 crore from M/s Rashtriya Chemicals and Fertilizers Ltd. As upfront fee towards lease rent of 248.18 acres and 10 acres of land respectively.

These upfront fees were in nature of advance received from service receiver for services to be provided and attracted Service Tax from the time the activity became taxable viz. 1 July 2010. This resulted in non-payment of

Service Tax of ₹ 19.24 crore and ₹ 72.37 lakh in respect of these two transactions.

Further, VPT had leased out certain portions of port area on rent/lease for commercial use and received estate rental incomes. We observed that though on receipt of such amounts, VPT was paying Service Tax, it failed to discharge Service Tax liability of ₹ two crore in some instances. This resulted in short payment of Service Tax of ₹ two crore.

When we pointed this out (February 2014), the Ministry admitted (December 2014) the objection and recovered ₹ 26.27 crore.

(ii) Govt. of Andhra Pradesh and Krishnapatnam Port Company Limited (KPCL), Nellore, entered into a PPP agreement in 2004 for development of Krishnapatnam Port on Build, Operate and Transfer (BOT) basis. Govt. of Andhra Pradesh was the owner of specified land and water front within port limit. As per the agreement, KPCL had to pay annual lease charges calculated at the rate of 2 per cent of the fair market value of the land to the Govt. of Andhra Pradesh with an escalation of 6.5 per cent. With respect to submerged land and the water area, KPCL had to pay lease charges at the rate of ₹ 1 per annum per 1000 acres during the lease period. Additionally, the concessionaire (KPCL) had to pay concession fee, as a percentage of gross income to the Govt. of Andhra Pradesh for right to use or develop such land. Rate of concession fee was fixed at 2.6 per cent for the first 30 years. Thus, Govt. of Andhra Pradesh though liable to pay Service Tax on lease charges amounting to ₹ 3.69 lakh and concession fee amounting to ₹ 70.62 crore received from KPCL during the period from 2008-09 to 2012-13 failed to do so. This resulted in non-payment of Service Tax of ₹ 7.77 crore which is recoverable from the nodal agency of Govt. of Andhra Pradesh i.e. Port Officer, Machilipatnam.

When we pointed this out (February 2014), the Ministry intimated (December 2014) that show cause notice was issued for ₹ 7.58 crore to Port Officer, Machilipatnam.

3.6.2 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.

3.6.2.1 Non maintenance of separate account for taxable and exempted service

Rule 6(1) of Cenvat Credit Rules, 2004, envisages that Cenvat credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services.

In case the service provider fails to maintain separate accounts relating to taxable and exempted services, then as per rule 6(3), the assessee shall follow either of the following options, as applicable to him, namely:-

(i) the manufacturer of goods shall pay an amount equal to six per cent of value of the exempted goods or exempted services; or

(ii) the manufacturer of goods or the provider of output service shall pay an amount equivalent to the Cenvat credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services.

On scrutiny of records of M/s KPCL in Guntur Commissionerate, we observed that though the assessee had provided both taxable as well as exempted services in 2012-13, it had not maintained separate accounts. The assessee had provided exempted services for ₹ 47.84 crore during 2012-13 but had not paid either 6 per cent of value of exempted services i.e. ₹ 2.87 crore or complied with the other option available.

When we pointed this out (February 2014), the Ministry intimated (December 2014) that show cause notice is under process.

3.6.2.2 Irregular availing of Cenvat credit on capital goods

(i) Cenvat credit in respect of capital goods is not permissible in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer or provider of output service claims as depreciation (under Section 32 of the Income Tax Act, 1961) vide Rule 4(4) of the Cenvat Credit Rules, 2004. As per Rule 14, where Cenvat credit has been availed/utilised wrongly, the same along with interest shall be recovered.

M/s Zam Engg. and Logistics Pvt. Ltd. in Guntur Commissionerate, had imported capital goods, viz. Caterpillars during 2010-11 and availed the benefit of depreciation under the Income Tax Act, on the value including the countervailing duties. However, during 2011-12 and 2012-13, Cenvat credit of ₹ 93.05 lakh was wrongly availed and further utilised for payment of Service Tax. This resulted in irregular availing of Cenvat credit of ₹ 1.34 crore including interest ₹ 40.98 lakh on capital goods. Further, although internal audit had been conducted for the period, this lapse had not been detected.

When we pointed this out (February 2014), the Ministry intimated (December 2014) that show cause notice is under process.

Recommendation No. 4

- *Since the CVD is administered by CBEC, it is recommended that the CVD may be allowed to the asseessee as Cenvat credit only, Depreciation may be allowed only on the net value of the capital good (excluding CVD) to prevent recurrence of such instances.*

(ii) The expression "Capital goods" has been defined in Rule 2(a) of Cenvat Credit Rules, 2004. As per Board's circular dated 08 July 2010, the credit of input used for repair and maintenance of capital goods are not admissible and goods like cement and steel items used for laying 'foundation' and for building 'supporting structures' cannot be treated as either inputs for capital goods or as inputs in relation to the final products and therefore, no credit of duty paid on the same can be allowed under the Cenvat Credit Rules, 2004.

In the case of M/s Vikram Cements V/s CCE, Indore {2005 (187) ELT 145 (SC)}, it has been conclusively held by the Apex Court that the definition of capital goods is not inclusive and only the items covered under the definition and used in the factory of the manufacturer can be treated as capital goods.

On scrutiny of records of M/s VPT, we observed that the assessee had availed Cenvat credit on goods, viz. rail, rail sleeper, fishplates, MS bolts, plates, welding electrodes etc. treating them as capital goods. This resulted in irregular availing of Cenvat credit of ₹ 38.16 lakh.

When we pointed this out (February 2014), the Ministry admitted the objection and intimated (December 2014) that a show cause notice was issued for ₹ 17.27 lakh and for balance amount protective SCN is under preparation.

3.6.3 Irregular availing of Cenvat credit on ineligible services

As per Rule 2(v) of Cenvat Credit (Amendment) Rules, 2011 which came into force from 1 April 2011, 'input service' is defined as services used by a provider of taxable service for providing an output service and excludes such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee.

Further, 'input services' also exclude general insurance, authorised service station services, supply of tangible goods, insofar as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods. Cenvat Credit Rules, 2004, has stipulated list of services for which motor vehicle can be included under definition of Capital goods. Port services do not figure in that specified list. Board's circular dated 29 April 2011 specifically disallows Cenvat credit on 'Rent-a- cab' service'.

We observed in seven cases incorrect availing of Cenvat credit on ineligible services amounting to ₹ 1.69 crore. One of these cases is illustrated below:-

M/s KPCL in Guntur commissionerate had availed Cenvat credit on services in respect of motor vehicles, authorised service station services, general insurance services, supply of tangible goods, rent-a-cab, accommodation for short duration, helicopter hire charges etc. during 2011-12 and 2012-13. In terms of rules *ibid*, these services are inadmissible for Cenvat credit purposes. This resulted in irregular availing of Cenvat credit of ₹ 1.46 crore. Though KPCL was a Category A unit, it had not been audited by Internal Audit in 2011-12 and 2012-13.

When we pointed this out (February 2014), the Ministry intimated (December 2014) that show cause notice will be issued after verification of information furnished by the assessee.

3.6.4 Short payment of Service Tax on import of business auxiliary services

Rule 7 of Service Tax (Determination of Value) Rules, 2006 envisaged that the value of taxable service received under the provisions of section 66A, shall be such amount as is equal to the actual consideration charged for the services provided or to be provided.

On scrutiny of records of M/s KPCL in Guntur Commissionerate we observed that the Service Tax was paid on payment made in foreign exchange to service providers for services of business promotion, capital expenditure, other expenses, professional charges and travelling expenses. However, the Service Tax was calculated treating the amount paid as inclusive of Service Tax, instead of calculating on gross value of services at applicable rates. This resulted in short payment of Service Tax of ₹ 10.94 lakh including interest.

When we pointed this out (February 2014), the Ministry intimated (December 2014) that the assessee had paid ₹ 11.88 lakh including interest and penalty.

3.6.5 Non-payment of Service Tax under reverse charge mechanism

As per Section 68(2) of Finance Act, 1994, in respect of any taxable service notified by the Central Government, the Service Tax thereon shall be paid by such person in such manner as may be prescribed and all the provisions shall apply to such person as if he is the person liable for paying Service Tax in relation to such service. The Central Government had notified new partial reverse charge mechanism, under which liability of paying Service Tax in respect of certain services and as per the prescribed percentages, lies with service receiver vide notification No. 30/2012-ST dated 20 June 2012 effective from 1 July 2012.

We observed non-payment of Service Tax under reverse charge mechanism in the following cases:

3.6.5.1 On works contract

Board in its notification dated 20 June 2012, exempted services by way of construction, erection, commissioning or installation of original works pertaining to port. 'Original work' as defined in Rule 2(a) in Service Tax (Determination of Value) Rules, 2006, 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;

Hence, all construction related works contracts other than original works pertaining to port would be taxable with effect from 1 July 2012.

M/s VPT and M/s Visakha Container Terminal Pvt. Ltd., in Visakhapatnam-I Commissionerate had received services after 1 July 2012, for construction works other than original. However, Service Tax under reverse charge amounting to ₹ 52.18 lakh was not paid by them.

Further, we observed that although internal audit had been conducted in respect of M/s Visakha Container Terminal Pvt. Ltd., for the same period, this aspect had not been pointed out.

When we pointed this out (February 2014), the Ministry admitted the objection (December 2014) and intimated a recovery of ₹ 0.61 lakh from M/s Visakha Container Terminal Pvt. Limited and further informed that show cause notice will be issued to M/s Visakhapatnam Port Trust after examination of records.

3.6.5.2 On support services received from Government

The activity of providing employees on deputation by one organisation to another would be covered under the definition of 'support services' w.e.f. 1 July 2012 vide notification dated 20 June 2012.

On scrutiny of records of M.s VPT in Visakhapatnam-I commissionerate and Paradeep Port Trust (PPT) in Bhubaneswar-I commissionerate we observed that some officers/staff had served on deputation basis from Central/State Government. Value of such services received by both the assessees between July 2012 and August 2013 amounted to ₹ 1.13 crore. However, Service Tax liability on such service under reverse charge mechanism had not been discharged by them. This resulted in non-payment of Service Tax of ₹ 14.01 lakh.

When we pointed this out (February 2014), the Ministry admitted the objection and intimated (December 2014) that show cause notice was issued.

3.6.5.3 On renting of motor vehicle

As per Notification dated 20 June 2012, Service Tax under reverse charge mechanism has to be paid by service receiver in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not engaged in the similar line of business. Notification no. 26/2012 provides for abatement of 60 per cent on renting of motor vehicle, provided no Cenvat credit is availed on input, input services and capital goods. Irrespective of whether abatement has been claimed or not, the service recipient would be liable to bear Service Tax on 40 per cent of the value paid to service provider.

M/s VPT and M/s Bothra Shipping Services Ltd. in Visakhapatnam I commissionerate and M/s Kakinada Marine and Offshore Complex in Visakhapatnam II commissionerate, had received 'Renting of motor vehicle service' amounting to ₹ 2.22 crore from the individual private operators during the period between July 2012 to March 2013. However, Service Tax amounting to ₹ 10.96 lakh was not paid by them. This resulted in non-payment of Service Tax of ₹ 10.96 lakh.

When we pointed this out (February 2014), the Ministry admitted the objection and intimated a recovery of ₹ 0.50 lakh in one case and informed that show cause notice is under preparation in other case (December 2014).

3.6.6 Fulfilment of interest liability

As per Section 75 of the Finance Act, 1994, every person liable to pay Service Tax, who fails to credit it to the account of the Central Government, within the period prescribed, shall pay simple interest for the period by which such crediting is delayed.

As per Rule 3(a) of Point of Taxation Rules, 2011, Point of Taxation shall be the time when the invoice for the service provided or to be provided is issued provided where that the invoice is not issued within fourteen days of the completion of the provision of the service, the point of taxation shall be date of such completion.

On scrutiny of records of M/s South India Corporation Ltd., (SICL) in Visakhapatnam-I commissionerate we observed that in some cases, the assessee had not issued invoices within 30 days of completion of provision of service. Service Tax liability on such invoices was discharged taking issue of invoice as point of taxation which was not correct going by the Point of Taxation Rules, 2011. Hence, interest of ₹ 12.33 lakh was recoverable.

We also observed in three other cases in Visakhapatnam-I and Guntur commissionerates the assessees neither discharged their interest liability nor the department initiated any action to recover the interest. This resulted in non-payment of ₹ 31.91 lakh.

When we pointed this out (February 2014), the Ministry admitted the objection and intimated recovery of ₹ 20.11 lakh in three cases and in one case show cause notice is under preparation.

3.7 Other cases

Besides the instance discussed above, 39 other cases of involving non-payment of Service Tax, irregular availing of exemption, irregular availing/utilisation of Cenvat credit, non-payment of interest of ₹ 58.67 lakh were also noticed. Ministry accepted the observations in 33 cases and intimated the recovery of ₹ 53.91 lakh.

3.8 Conclusion

Audit is of the view that performance of the subordinate offices of CBEC in areas such as compliance verification through scrutiny and internal audit etc. needs to be strengthened in order that risk of revenue not reaching the Government may be minimised.

Chapter IV

Service Tax liability on Mandap Keeper's services

4.1 Introduction

Mandap keeper's services came under the Service Tax net with effect from 1 July 1997 through notification No. 19/1997-ST dated 26 June 1997. Section 65 (105)(m) of the Finance Act, 1994 (as applicable prior to 1 July 2012) defined 'taxable service' as any service provided or to be provided to any person, by a mandap keeper in relation to the use of mandap in any manner including the facilities provided or to be provided to such person in relation to such use and also the services, if any, provided or to be provided as a caterer.

With effect from July 2012, 'taxable service' means all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another, as per Section 66B of the Finance Act 1994.

4.2 Audit objectives

We examined the adequacy of the mechanisms in place in Gujarat and Rajasthan to ensure that Service Tax due to the Government of India from service providers providing mandap keeper services was in fact reaching the Government. Audit was conducted in this connection to assess

i. whether the extant provisions of law, rules and procedures prescribed were adequate and are being complied with; whether the compliance verification mechanism was adequate to monitor compliance by assessees;

ii. whether there was an adequate mechanism to identify and bring in potential service providers into the tax net for levy of Service Tax; and

iii. whether there was an effective monitoring and internal control mechanism.

4.3 Audit coverage

We examined relevant records available at the Ranges/Divisions and at assessee premises under Commissionerates in Gujarat and Rajasthan during the course of this audit.[16] While 6 Commissionerates were covered during the course of the study in detail, we have also included

[16] Records of 38 assessees in Ahmedabad ST, Rajkot, Vadodara-I, Surat-I, Jaipur-I and Jaipur-II Commissionerates were examined.

aspects that came to our notice in respect of other Commissionerates during the course of audit examination.

The period covered was 2010-11 to 2012-13. However, earlier period has also been covered in some instances, based on the significance of issue(s). We issued the draft report to the Ministry in July 2014.

4.4 Audit findings

We noticed cases of non-payment/short payment of Service Tax, irregular availing/utilisation of Cenvat credit, non-payment of interest etc. having financial implication of ₹ 9.17 crore. The department accepted (December 2014) the audit objections having financial implication of ₹ 6.82 crore and recovered ₹ 15.85 lakh. The major findings are discussed below:

A. Adequacy of provisions of law, rules, procedures and compliance therewith

4.4.1 Registration under mandap keeper's services - Non-compliance with penalty provisions

Every person liable to pay Service Tax shall make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within thirty days from the date on which Service Tax under the Finance Act, 1994 is levied, vide Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules 1994. If commencement of business is subsequent to the date of levy of Service Tax, then the application is to be made within thirty days from the date of commencement of business.

Any person who fails to take registration in accordance with the above provisions shall be liable to pay a penalty which may extend to ₹ 5,000 (₹ 10,000 from 8 April 2011) or ₹ 200 for every day during which such failure continues whichever is higher starting with the first day after the due date, till the date of actual compliance under Section 77(1)(a) of the Finance Act 1994.

We noticed that the Commissionerates tend to use this provision very sparingly. Even in cases where there was delay in registration, this provision is rarely resorted to, by Ranges. For instance, one service provider M/s Ksheer Sagar Developers Pvt. Ltd. in Jaipur-I Commissionerate made application for registration with a delay of 48 days. The Commissionerate did not initiate any penal action against belated registration.

When we pointed this out (November 2013), the Commissionerate admitted the audit observation (December 2013) and stated that penal action is under process.

Recommendation No. 5

- *The Ministry may consider introduction of a clause for late fee in cases of delay in registration along the lines of statutory provision in Section 70 of the Finance Act, relating to late fee for delayed filing of returns.*

4.4.2 Inadequacies in compliance verification mechanism

The Commissionerates and subordinate formations such as Divisions and Ranges are to follow the norms prescribed by the department for carrying out internal audit and for conduct of detailed scrutiny of returns. A strong compliance verification mechanism would be such as would detect evasions by assessees through one of the compliance verification mechanisms in place such as internal audit, scrutiny by ranges etc. We examined records of selected assessees in order to gain assurance that revenue due to the Government was in fact reaching the Government and to ensure that the systems in place were strong enough to bring to light lapses on the part of assessees. However, we observed in the following cases that the Commissionerates/ their subordinate offices had not detected either through internal audit process or through scrutiny, the following lapses on the part of assessees involving revenue implication.

4.4.2.1 Non-payment of Service Tax

During examination of records of Ahmedabad Municipal Corporation (AMC), a registered assessee in Ahmedabad ST Commissionerate, we observed from the financial records that the assessee did not pay Service Tax of ₹ 28.66 lakh on rental income of ₹ 2.59 crore received from 'picnic house' at Kankaria area for the period 2008-09 to 2012-13. Further, the assessee had also earned income of ₹ 44.04 lakh for giving its property (Sanskar Kendra museum, Paldi) for exhibitions and other mandap keeper services, on which Service Tax of ₹ 4.83 lakh was not paid. Total non-payment of Service Tax worked out to ₹ 33.49 lakh in this case which is recoverable with applicable interest and penalty.

When we pointed this out (September 2013), the Commissionerate stated (June 2014) that a show cause notice had been issued (October 2013) to the assessee demanding Service Tax of ₹ 33.49 lakh.

4.4.2.2 Non-payment of Service Tax on other services provided by mandap keepers

Scrutiny of financial records at assessee premises of M/s. Sindhu Sewa Samaj, a registered service provider in Ahmedabad ST Commissionerate, revealed that the assessee had entered into agreement with M/s. Bhagwati Banquets and Hotels Ltd. during the period October 2009 to December 2013. As per the

agreement, the former permitted M/s. Bhagwati Banquets to provide decoration and catering services to hirers for their functions to be organised in the premises of the assessee. The assessee collected fixed charges from M/s. Bhagwati Banquets and Hotels Ltd. as consideration and thus earned income of ₹ 1.50 crore during the period 2008-09 to 2012-13. Since this activity amounted to provision of 'business auxiliary services' as defined under Section 65(19) of the Finance Act, 1994, Service Tax liability was to be fulfilled. However, the assessee did not pay Service Tax of ₹ 16.83 lakh which is to be recovered with applicable interest and penalty.

When we pointed this out (September 2013), the Commissionerate issued (October 2013) a demand letter to the assessee for ₹ 35.68 lakh including interest and penalty. The assessee has made part-payment of ₹ 2.58 lakh.

4.4.2.3 Mismatch between figures declared in ST-3 returns and figures mentioned in the financial records

Examination of assessee records in 5 instances in Ahmedabad ST Commissionerate and 1 in Jaipur-II Commissionerate indicated that the taxable value of services reflected in financial records were much higher than in ST-3 returns. The position continued during the period since introduction of Point of Taxation Rules, 2011. The lower figures depicted in Service Tax returns indicate leakage of revenue attributable to inadequate compliance verification. We observed that these omissions were not detected either through internal audit or through scrutiny of assessee records.

For instance, we observed that though clearly Ahmedabad Municipal Corporation (AMC) was a major revenue contributor and had to be covered by internal audit annually or at least once in two years, no internal audit was conducted during the entire period covered by CERA.

When we pointed out (September 2013) these omissions, Ahmedabad ST Commissionerate issued (October 2013) show cause notice in all the cases demanding Service Tax. In respect of M/s. Swagat Caterers Pvt. Ltd., the Commissionerate informed that the assessee paid the differential Service Tax.

We await (December 2014) response from Jaipur-II Commissionerate.

We await the Ministry's reply (December 2014).

4.4.2.4 Short payment of Service Tax

CBEC vide Circular dated 24 September 1997 clarified that hotels and restaurants which let out their banquet halls along with rooms, gardens etc. for holding/organizing any marriage, conference, parties, shows, etc. would be covered under the definition of 'mandap keeper's services'. Notification

No. 1/2006 (ST) dated 1 March 2006 and subsequently Notification No. 26/2012 (ST) dated 20 June 2012 provided for abatement in respect of mandap keeper's service at the rate of 40 per cent upto 30 June 2012 and thereafter at the rate of 30 per cent of the gross amounts charged by the service provider. Section 65 (105)(m) of the Finance Act, 1994 defined 'taxable service' as any service provided or to be provided to any person, by a mandap keeper in relation to the use of mandap in any manner including the facilities provided or to be provided to such person in relation to such use and also the services, if any, provided or to be provided as a caterer.

Where facilities such as LCD, projectors, photography, video shooting, etc. are provided by a mandap keeper in relation to use of mandap and charges collected for providing these facilities, the value would be included in the value of taxable services and Service Tax would be leviable accordingly.

a) We noticed during the examination of ST-3 returns, books of accounts and Service Tax records of two mandap keepers in Jaipur-I Commissionerate and five mandap keepers in Jaipur-II Commissionerate that the assessees let out their banquet halls along with rooms and catering for particular dates but they did not pay Service Tax on gross amount charged for accommodation provided during the period 2010-11 and 2011-12. Service Tax on the gross amount charged i.e. ₹ 8.81 crore worked out to ₹ 63.62 lakh. This is to be recovered with interest and penalty as may be applicable.

When we pointed this out (November 2013), the Jaipur I Commissionerate admitted the audit observation in both cases (December 2013) and stated that action is being taken to recover the government revenue. We await the Jaipur II Commissionerate's response (December 2014).

We await the Ministry's reply (December 2014).

b) Similarly in respect of four mandap keepers in Jaipur-I Commissionerate, we noticed that the assessees let out their banquet hall along with accommodation in rooms, claimed abatement of 50 per cent (instead of at 40 per cent) for the period 2011-12 and at 40 per cent (instead of at 30 per cent) during the period 2012-13 resulting in short payment of Service Tax of ₹12.86 lakh. This is to be recovered with interest and penalty as may be applicable.

When we pointed this out (November 2013), the Jaipur I Commissionerate admitted the audit observation in all cases (December 2013) and stated that action is being taken to recover the government revenue alongwith applicable interest and penalty.

c) We observed that M/s Hotel Leela Venture Palace in Jaipur-II Commissionerate let out banquet/ conference hall along with other facilities such as photograph, video shoot, LCD, projector, Kalbelia programme,

lawajama arrival performance, dance etc. for a consideration. It collected charges for such services amounting to ₹ 1.32 crore during the period from 2010-11 to 2012-13 and paid Service Tax on ₹ 2.35 lakh only. Service Tax of ₹ 14.34 lakh was not paid on the remaining amount as shown below:

Table 4.1

(₹ in lakh)

Year	Gross amount charged	Amount on which ST paid	Amount on which ST not paid	Short payment of ST
2010-11	32.10	1.93	30.17	3.11
2011-12	53.03	0.14	52.89	5.45
2012-13	47.07	0.28	46.79	5.78
Total	**132.20**	**2.35**	**129.85**	**14.34**

We await the Ministry/Commissionerate's response (December 2014).

4.4.2.5 Short payment of an amount equivalent to Cenvat credit attributable to the exempted services

Rule 6(3) of the Cenvat Credit Rules, 2004 provides that a service provider opting not to maintain separate accounts shall follow either of the following payment options (i) the service provider of output services shall pay an amount equal to six per cent of value of the exempted services or (ii) shall pay an amount equivalent to the Cenvat credit attributable to input services used in or in relation to provision of exempted services subject to the conditions and procedures specified in sub-rule (3A).

During the scrutiny of returns of M/s Marudhar Hotels Pvt. Ltd. and M/s Indian Hotels Co. Ltd. in Jaipur-II Commissionerate, we noticed that the assessees opted option (ii) above and did not pay the amount of Cenvat credit attributable to exempted services correctly, resulting in short payment of ₹ 75.95 lakh. This is to be recovered with interest and penalty as may be applicable.

We await the Ministry/Commissionerate's response (December 2014).

4.4.2.6 Service Tax collected but not deposited

As per Rule 6 of the Service Tax Rules, 1994 read with provisions of Section 66 and 68 of the Finance Act, 1994, an assessee shall pay Service Tax on monthly basis by 5th/ 6th of the month following the calendar month in which service is deemed to have been provided.

Scrutiny of accounting records of Ahmedabad Municipal Corporation in Ahmedabad ST Commissionerate revealed that the collection of Service Tax under various categories including mandap keeper's service, sale of space for advertisement and renting of immovable properties for the period

from 2008-09 to 2012-13 worked out to ₹ 9.43 crore. However, remittance of Service Tax corresponding to the same period was shown as ₹ 8.36 crore. Thus, ₹ 1.07 crore was collected from the customers but not paid to Government account.

When we pointed this out, the Commissionerate replied (October 2013) that show cause notice had been issued (October 2013) to the assessee.

4.4.2.7 Other cases

Apart from the above, we also came across 18 cases of irregularities related to non/short payment of Service Tax, irregular availing of Cenvat credit, abatement and non/short payment of interest on delayed payment of service etc. involving revenue of ₹ 39.19 lakh. The department had accepted the audit observations in 11 cases involving revenue of ₹ 26.03 lakh and had recovered ₹ 13.26 lakh. We await the department's response in the remaining cases (December 2014).

We await the Ministry's reply (December 2014).

B. Adequacy of mechanism to identify potential service providers

4.4.3 Creation of special cell for broadening of tax base and identification of stop-filers

Broadening of tax base is necessary to ensure growth of revenue. With increasing reliance on voluntary compliance, it becomes important for the department to put in place an effective mechanism for collecting information from various sources to identify persons who are liable to pay tax but had avoided payment so as to bring them into the tax net thereby broadening the tax base. CBEC issued instructions in November 2011 to create a special cell in each Commissionerate to identify potential assessees and to identify stop-filers. DGST's Action Plan circulated to Chief Commissionerates in May 2003 also stressed on collection of information from various sources such as yellow pages, service providers' associations, newspaper advertisements, regional registration authorities, websites, banks, municipal corporations and major assessees including PSUs and private sector organisations etc.

We noticed non-registration of services by some Municipalities and Nagar Palikas involving ₹ 1.31 crore. We also came across deficiencies in identification of stop-filers by the Commissionerates. These are discussed in the following paragraphs.

4.4.3.1 Non-registration by service providers and consequent non-payment of Service Tax

Renting of immovable property became taxable under the Finance Act, 1994 vide Section 65(105)(zzzz) with effect from 01 June 2007, pandal and shamiana vide Section 65(105)(zzw) with effect from 10 September 2004 and mandap keeper's services vide Section 65(105)(m) with effect from 1 July 1997.

We verified the records of Local Bodies available with the Office of the Accountant General (General and Social Sector Audit), Rajkot and found that 13 local self-Government institutions such as Municipality and Nagar Palika had received income on taxable services relating to immoveable properties which would be taxable under one or more of the above mentioned service categories. However, they had not taken registration with the Service Tax authorities and had not discharged their Service Tax liability. Service Tax involved in these cases, worked out to approximately ₹ 1.31 crore.

Four cases have been confirmed by the Commissionerates as unregistered service providers. We await (November 2014) response in respect of the remaining cases.

The observation indicates that action being taken by Commissionerates in Gujarat needs to be intensified to ensure that potential assessees are covered in Service Tax net.

We await the Ministry's reply (December 2014).

4.4.3.2 Identification of stop filers and non-filers

From the information collected from the selected Commissionerates, we observed that as of October 2013,

i) No special cell was created in Vadodara-I Commissionerate.

ii) Rajkot Commissionerate intimated that surveys were carried out by Survey Section and a team had been created for identification of stop filers and non-filers. The Commissionerate did not give any specific information regarding creation of special cell. The Commissionerate had identified 877 late filers, 12,669 stop filers and 19,404 non-filers. A team of three officers was created which issued 2,167 emails to various stop filers/non filers during 2012-13 and 5,906 notices were issued up to September 2013. Out of these, only 720 stop filers/non filers responded.

Rajkot Commissionerate also stated that there were errors in the database. Further, some of the parties to whom the department issued notices submitted evidence that they had filed returns. Furthermore, hundreds of contractors

take registration before bidding and on failure to get bid, they simply leave the city/become untraceable.

iii) From the information furnished by Surat-I Commissionerate, we observed that 35,753 returns were due for the period 2010-11 to 2012-13. Out of which only 8,971 returns were received and 21,402 returns i.e. 60 per cent of the returns due were not received at all. Action taken by the Commissionerate concerning non-filers/stop filers was not made available to Audit.

iv) Similarly, we noticed that special cell was created in Commissionerates Jaipur-I and II in August 2011 and in June 2012 respectively only to deal with the matters of stop filers/ non-filers of Service Tax returns. No surveys were conducted during the period of audit. As on 31 March 2013, 26,801 assessees in Jaipur-I Commissionerate and 10,877 assessees in Jaipur II Commissionerate had been identified as stop filers. 448 assessees in Jaipur-I and 457 assessees in Jaipur-II had surrendered their registration. While Jaipur-I Commissionerate furnished information concerning issue of 4,593 letters to stop filers asking the reasons for non-filing of ST-3 returns, based on the information furnished by DG (Systems), we were not provided such details by Jaipur-II Commissionerate.

v) In Ahmedabad Service Tax Commissionerate, a special cell has been created and surveys have been carried out. The Commissionerate identified 6,214 stop filers to whom written intimations were made and they were responding. The Commissionerate also identified 1,112 non-filers and handed over the list to planning cell of Audit Section for special audit.

C. Inadequate monitoring by Commissionerates

4.4.4 Rules have been prescribed under Section 94 of the Finance Act, 1994 (as amended) for the purpose of carrying out the provisions of Chapter V. Unless compliance with the same is monitored, their purpose is likely to be defeated. We observed the following instances which reveal the need for strengthening of monitoring by the Commissionerates in the respective areas:

4.4.4.1 Non-monitoring of timely receipt of ST returns

Rule 7 of the Service Tax Rules, 1994 provides that ST-3 return is to be filed by 25 October and 25 April for the six-monthly period of April-September and October-March respectively. Non-filing / delay in filing of return attracts late fee under Section 70 of the Finance Act, 1994 read with Rule 7C *ibid.* Delayed submission of ST-3 returns is to pointed out by Range Officers as part of the checks in preliminary scrutiny.

During examination of assessee records, we observed 16 instances in Ahmedabad, Rajkot, Vadodara, Jaipur-I and Jaipur-II Commissionerates where the assessee filed ST-3 return belatedly during 2010-11 to 2012-13. However, no action was initiated by the respective Ranges to ensure submission of returns along with late fees under Section 70 of the Finance Act or to impose penalty under Section 77.

Rajkot Commissionerate replied (April 2014) that one assessee deposited (April 2014) the late fee subsequently. We await (December 2014) the Commissionerates' responses in respect of the other cases.

We observe that there was no system whereby the Commissionerate/division monitored the action taken by subordinate formations in this regard. Even the introduction of ACES and online filing of returns by assessees did not ensure ranges follow-up quickly in cases of non-compliance with the Rules or in ensuring better monitoring by Commissionerates/Divisions.

We await the Ministry's reply (December 2014).

4.4.4.2 Non-payment of tax dues through electronic medium

Where an assessee has paid total Service Tax of ₹ 10 lakh or more, in the preceding financial year, he shall deposit the Service Tax liable to be paid electronically, through internet banking. The threshold limit has been lowered to ₹ 1 lakh with effect from 1 January 2014.

As per Section 77(1)(d) of the Finance Act, 1994, any person who is required to pay tax electronically, fails to do so, shall be liable to a penalty upto ₹ 5,000 (upto 07 April 2011) which has been further raised to ₹ 10,000 with effect from 8 April 2011.

We observed (November 2013) seven instances where assessees under four Commissionerates Ahmedabad, Rajkot, Surat-I and Vadodara-I did not comply with the provisions requiring electronic payment of tax dues. The ranges had not initiated any action either to impose penalty or to issue any letter to the assessees encouraging e-payment of Service Tax as of November 2013.

The Commissionerates replied (April-June 2014) that three assessees had paid the penalty subsequently and another had agreed to pay. Besides, a show cause notice dated 17 October 2013 had been issued in one case and was under process in another case. We await (December 2014) the response in respect of one case.

We also observe that there was nothing on record to indicate that the Commissionerates were monitoring action taken by ranges to encourage compliance.

We await the Ministry's reply (December 2014).

4.5 Conclusion

Audit is of the view that the extant compliance verification systems need to be strengthened in areas including conduct of internal audit and scrutiny of returns to minimise evasion. A more proactive approach needs to be taken as regards broadening of Service Tax base.

Chapter V

Scrutiny of Service Tax returns

5.1 Introduction

CBEC introduced self-assessment in respect of Service Tax in 2001. With the introduction of self-assessment, the department also provided for a strong compliance verification mechanism with Scrutiny of Returns. As assessment is now the responsibility of the assessee, the main function of the department is to scrutinize the tax return submitted by the assessee to ensure the correctness of duty assessed in terms of the effective rate of duty claimed, the taxable value declared, and the Cenvat credit availed. E-filing of returns through ACES was made mandatory with effect from October 2011. Scrutiny is done in two stages i.e. preliminary scrutiny by ACES and detailed scrutiny, which is carried out manually on the returns marked by ACES or otherwise.

5.2 Audit objective

The objective of the audit examination was to assess the effectiveness of preliminary and detailed scrutiny systems in place, as tools for compliance verification.

5.3 Audit coverage

We conducted test-check of Service Tax returns filed in 2011-12 and 2012-13 in 129 Ranges in 26 Commissionerates. However, depending upon the issues involved, we have included observations pertaining to earlier periods, wherever deemed necessary.

5.4 Audit findings

Scrutiny of assessee records in the audited units revealed certain compliance related as well as other issues having financial implication of ₹ 57.53 crore. The Ministry/Department accepted (December 2014) the audit observations having financial implication of ₹ 44.96 crore and recovered ₹ 3.67 crore. The major findings are illustrated in the following paragraphs:

A. Preliminary scrutiny

Rule 7 of the Service Tax Rules, 1994 envisages that every person liable to pay Service Tax has to submit half-yearly return in Form ST-3 within 25 days of the end of the half-year. Filing of returns by the assessees as well as preliminary scrutiny of returns by Range Officers is carried out online through ACES since 2009-10.

We discuss below our audit findings relating to preliminary scrutiny as seen during the course of examination in selected ranges.

5.4.1 Submission of returns

i) We observed that out of 2,45,240 returns receivable during 2011-12 and 2012-13 only 1,39,349 (57 per cent) returns were received in the selected Commissionerates. Out of the total returns received, 8091 (6 per cent) returns were received belatedly and 1,05,891 (43 per cent) returns were not received at all. Identification of non-filers/ stop-filers has also been listed as one of the purposes of Preliminary scrutiny in Para 1.2.1 of the Manual for Scrutiny of Service Tax Returns, 2009. However, the department did not identify non-filers/ stop-filers. We also observed that no action was taken by the department in cases of delayed filing of return.

When we pointed this out (August 2014), the Ministry (December 2014) intimated that action has been initiated against the non-filers/ stop-filers.

ii) Conduct of scrutiny

Time frame for completion of preliminary scrutiny has not been prescribed for scrutiny of Service Tax returns unlike in the case of scrutiny of Central Excise returns where the Manual for Scrutiny of Central Excise Returns, 2008 prescribes a norm of 3 months for completion of both preliminary and detailed scrutiny.

Applying the same norm of 3 months as a good practice, we tabulated the position of completion of scrutiny of returns as obtained from different Commissionerates. We observed that only 38,936 (28 per cent) of returns received in selected ranges were scrutinised within three months. 2,37,913 (seventy per cent) of returns were scrutinised belatedly. Out of 34,478 returns marked for review and correction, 26,863 (78 per cent) in the selected ranges remained pending for 'review and correction' for a period exceeding 3 months.

When we pointed this out (August 2014), the Ministry intimated that pendency in scrutiny cases is due to problems in ACES. Efforts are being made to reduce the pendency.

Recommendation No. 6

- *It is recommended to prescribe a time-frame for completion of scrutiny of Service Tax returns including corrective action in respect of 'review and correction' cases.*

5.4.2 Non-payment of late fee for delayed filing

Rule 7 C of Service Tax Rules, 1994, prescribes manner of filing of returns and also mandates that such return is to be filed by 25th of the month following the particular half yearly period to which returns relates. It further provides that if the return is not filed by the prescribed due date, the assessee is required to submit the return with late fee for the period of delay. As per Section 70 (1) of the Finance Act, 1994 such late fee may not exceed ₹ 20,000.

We observed that out of 1,39,349 returns, 8,091 returns were filed belatedly in the audited units during 2011-12 and 2012-13. A test check of 865 returns received belatedly revealed that ₹ 31.65 lakh was due to the Government as late fee.

When we pointed this out (August 2014), the Ministry/Department intimated (December 2014) a recovery of ₹ 24.02 lakh in 14 cases.

B. Detailed scrutiny of assessment

The purpose of the detailed scrutiny is to ascertain the correct reason for abnormal trends exhibited for the risk parameters identified in the Board's guidelines. Besides establishing the validity of the information furnished in the tax return, the other major purpose of detailed scrutiny is to establish the correctness of self-assessment by ensuring correctness of valuation, dutiability in respect of services which may have escaped assessment, correctness of Cenvat availing etc.

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.

5.4.3 During our audit examination at the selected ranges, we observed as follows:-

a) ACES system did not list out returns for detailed scrutiny.

b) Out of 1,39,349 returns received in 2011-12 and 2012-13 only 121 returns were scrutinised by the selected Commissionerates which is less than 0.1 per cent of the total returns received.

When we pointed this out (September 2013), the Ministry intimated (December 2014) that action has been initiated to conduct the detailed scrutiny.

5.5 Non-compliance by assessees

We attempted scrutiny of a few returns where the department had conducted the detailed scrutiny and also where the department had not

conducted the detailed scrutiny to assess the efficiency of the scrutiny process and to curtail revenue leakage.

We observed that in several instances, there were lapses in self-assessment by assessees involving revenue implication. The non-compliance by assessee was not detected until CERA pointed out the same. A few of these lapses that escaped the compliance verification mechanism of the department, but observed during our examination of the assessee returns and other records, are illustrated:

5.5.1 Non/short payment of Service Tax

We observed non/short payment of Service Tax and interest of ₹ 41.03 crore in respect of 56 cases. Ministry/Department accepted the observation in 19 cases and recovered ₹ 1.07 crore. Three cases are illustrated:-

i) As per Section 65(105)(zzm) of the Finance Act, 1994, service provided or to be provided to any person by airports authority or by any other person in any airport is chargeable to Service Tax.

M/s Mihan India Ltd. (MIL) in Nagpur Commissionerate, a joint venture of Maharashtra Airport Development Co. Ltd. and Airports Authority of India (AAI), has been recovering license fee from clients for use of facilities in Dr. Babasaheb Ambedkar International Airport, Nagpur. It was noticed that the license fee from Reliance Industries was collected by AAI and in-turn it was passed to MIL.

We observed that neither the assessee nor AAI paid Service Tax on airport services in respect of license fee collected from Reliance Industries Ltd. during the period from March 2010 to March 2013. This resulted in short payment of Service Tax of ₹ 4.57 crore.

When we pointed this out (December 2013), the Ministry admitted the observation and intimated (December 2014) that SCN is under process for issue.

ii) As per Section 65(105)(zzzzj) of the Finance Act, 1994, service in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right to possession and effective control of such machinery, equipment and appliances is a taxable service.

We observed that M/s Transafe Services Ltd. (TSL), in Kolkata Service Tax Commissionerate received rental income of ₹ 27.72 crore for supply of freight container/equipment in 2011-12. The contract/lease agreement entered into with clients revealed that such transactions were operating leases only and not a sale. The only right acquired by lessees was a right to permissive custody and use of the leased container. Thus, such transactions of allowing

use of the freight container to different parties, without giving legal right to possession and effective control, not being treated as deemed sale of goods, was covered under 'supply of tangible goods service' for use. However, Service Tax on the amount received towards rental income was not received which resulted in non-payment of Service Tax of ₹ 2.85 crore.

When we pointed this out (May 2013), the Ministry admitted the observation intimated (December 2014) that demand of ₹ 15.32 crore had been confirmed alongwith equivalent penalty and applicable interest.

iii) Section 66A of the Finance Act, 1994 (as applicable prior to 1 July 2012) read with Taxation of Services (Provided from outside India and received in India) Rules, 2006 provided that import of services is taxable in the hands of service recipient in India. Further, as per Rule 3 (4)(e) of Cenvat Credit Rules, 2004 read with Rule 5 of Taxation of Services (Provided from outside India and received in India) Rules 2006, Service Tax on such service can be paid only through cash and not by utilizing the Cenvat credit of tax paid on input services.

M/s Tutor Vista Global Pvt. Ltd. in Bangalore Service Tax Commissionerate imported services worth ₹ 7.43 crore during 2011-12. The assessee paid Service Tax on such imported services through Cenvat credit, which was irregular. It resulted in non-payment of Service Tax of ₹ 76.55 lakh which is recoverable alongwith interest.

When we pointed this out (July 2013), the Ministry admitted the observation intimated (December 2014) that SCN was issued to the assessee for an amount of ₹ 76.55 lakh.

5.5.2 Incorrect valuation of services

We observed incorrect valuation of the value of services provided resulting in short payment of Service Tax of ₹ 28.37 lakh in respect of two cases which are illustrated:-

i) M/s. Maitri Advertising Works Pvt. Ltd. in Cochin Commissionerate had centralised registration and raised invoices from their offices located in Kochi and Chennai. However, while paying Service Tax, the assessee did not reckon the Service Tax invoices raised from Chennai office which resulted in short payment of Service Tax of ₹ 12.66 lakh during the period from April 2012 to September 2012.

When we pointed this out (September 2013), the Ministry intimated (December 2014) that the assessee had paid the amount along with interest of ₹ 1.78 lakh.

ii) M/s. Ganesh Benzoplast Ltd. in Cochin Commissionerate, issued invoices for ₹ 1.92 crore during the period 2011-12 but declared the value of service as ₹ 56.40 lakh in the return and paid Service Tax thereon. This resulted in suppression of value of service of ₹ 1.35 crore. It resulted in short payment of Service Tax of ₹ 13.93 lakh.

When we pointed this out (August 2013), the Ministry intimated (December 2014) the recovery of ₹ 13.93 lakh.

5.5.3 Incorrect availing of exemption

We observed that exemption from Service Tax of ₹ 6.58 crore was incorrectly allowed to different assessees in respect of five cases. One case is illustrated:-

Notification 1/2006 (Sl. No.10) dated 01 March 2006, provided for abatement of 67 per cent on value of taxable services in respect of construction of complex service subject to the condition that no Cenvat credit is taken on inputs, capital goods or input services used for providing such taxable services.

M/s. Larsen and Toubro Ltd., ECC Division in Mumbai ST-II Commissionerate, paid Service Tax on construction of residential complex service after availing benefit of abatement under the said notification. However, the assessee also availed credit of Service Tax paid on input services used for such construction which contravened the conditions specified in the notification. This resulted in incorrect availing of abatement of ₹ 29.36 crore during the year 2011-12. It resulted in short levy of Service Tax of ₹ 3.02 crore.

When we pointed this out (July 2013), the Ministry replied (December 2014) that that the assessee has not utilised any Cenvat credit for works contract service.

The Ministry's reply is not acceptable as the benefit of the abatement is not available if the Cenvat credit has been availed on the input service irrespective of fact whether the credit has been utilised for this service or any other taxable services.

5.5.4 Incorrect availing of Cenvat credit

We observed that Cenvat credit of ₹ 6 .97 crore was incorrectly availed by different assessees in 35 cases. Ministry/Department accepted the observation in 12 cases and recovered ₹ 84.94 lakh. Three cases are illustrated:-

i) Rule 6(1) of Cenvat Credit Rules, 2004 envisages that Cenvat credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services.

In case the service provider fails to maintain separate accounts relating to taxable and exempted services, then as per rule 6(3), the assessee shall follow either of the following options, as applicable to him, namely:-

(i) the manufacturer of goods shall pay an amount equal to five per cent of value of the exempted goods or exempted services till 31 March 2011 and six per cent thereafter of value of exempted goods or exempted services; or

(ii) the manufacturer of goods or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services.

Notification dated 1 March 2011 further clarifies that exempted services include trading.

As per Rule 3D(c) of Cenvat Credit Rule, 2004, value for the purpose of Rule 6 of the rules ibid, in case of trading, shall be the difference between sale price and cost of goods sold or 10 per cent of the cost of goods sold, whichever is higher.

M/s Gupta Global Resources Pvt. Ltd. in Nagpur Commissionerate provided business auxiliary services (washing of coal) and paid Service Tax accordingly through cash as well as through Cenvat credit account. However, the assessee was also engaged in trading activity and traded coal during 2011-12 and 2012-13. Since trading is an exempted service, the assessee ought to have maintained separate accounts as per Rule 6(2) of the Cenvat Credit Rule, 2004, which was not done. Therefore, the assessee was liable to reverse Cenvat credit of ₹ 4.92 crore.

When we pointed this out (December 2013), the Ministry admitted the observation and intimated (December 2014) that SCN will be issued in due course.

ii) As per Rule 3 of Cenvat Credit Rules, 2004, a provider of taxable services is allowed to take Cenvat credit of Central Excise duty or service sax paid on inputs/capital goods/input services received by him.

M/s Blues in Kolkata Service Tax Commissionerate, availed Cenvat credit of ₹ 50 lakh on input services and utilised the same for the payment of Service Tax during the year 2011-12 though Cenvat credit available to the assessee during the period was only ₹ 18.35 lakh. This resulted in excess availing of Cenvat credit of ₹ 31.65 lakh which was irregular and recoverable with interest and penalty.

When we pointed this out (June 2013), the Ministry intimated (December 2014) the recovery of ₹ 31.65 lakh. Further action in respect of interest is still awaited.

iii) As per notification number 30/2012-ST dated 01 July 2012 (as amended by notification number 45/2012-ST) in case of the service of supply of manpower services and security services recipient will pay 75 per cent of Service Tax and provider will pay 25 per cent of the Service Tax. Therefore, where service receiver has not discharged his liability, Cenvat credit will not be available to that extent.

M/s Kejriwal Casting Ltd., in Haldia Commissionerate, had availed input service credit of 100 per cent Service Tax charged on bills raised by various service providers (contractual labour suppliers) during July 2012 to July 2013. However, the assessee did not discharge his Service Tax liability under reverse charge mechanism as per the notification cited above and wrongly availed full credit of the said input services. This resulted in irregular availing of Cenvat credit of ₹ 37.70 lakh which is recoverable with interest.

When we pointed this out (September 2013), the Ministry intimated (December 2014) that the assessee had reversed the Cenvat credit of ₹ 37.70 lakh. Ministry further intimated that the assessee had paid Service Tax of ₹ 53.09 lakh alongwith interest of ₹ 12.48 lakh.

5.6 Other cases

Besides the cases discussed above, we also observed 87 cases of short payment/ non-payment of Service Tax, failure to pay tax electronically etc. involving revenue of ₹ 2.35 crore. The Ministry/Department accepted observations in 52 cases and recovered ₹ 1.23 crore.

5.7 Conclusion

Though CBEC's expectation was that with the introduction of online automated scrutiny of returns, efficiency would increase and manpower would be released for detailed scrutiny which would become the core function of the ranges, the actual situation in field leaves much to be desired. A lot more needs to be done before scrutiny of assessments can claim its place as the core function of the Ranges.

Chapter VI
Non-compliance with rules and regulations

6.1 Introduction

We examined the records maintained by assessees in relation to the payment of Service Tax and checked the correctness of tax payment and availing of Cenvat credit. We noticed cases of irregular availing and utilisation of Cenvat credit, non/short payment of Service Tax etc. having financial implication of ₹ 128.25 crore. We communicated these observations to the Ministry through 80 draft audit paragraphs. The Ministry/Department accepted (December 2014) the audit observations in 78 draft audit paragraphs having financial implication of ₹ 127.33 crore of which ₹ 26.93 crore had been recovered. Out of above 78 paras in 73 paras the Ministry/Department initiated/completed corrective action having financial implication of ₹ 108.21 crore. We have furnished the details of these paragraphs in Appendix II. The objections are covered under four major headings:

Non-payment of Service Tax

Short-payment of Service Tax

Cenvat Credit

Non-payment of Interest

6.2 Non-payment of Service Tax

6.2.1 Non- payment of Service Tax under tour operator service

Notification dated 1 March 2006 as amended by Notification dated 23 August 2007 prescribes exemption to tour operator services by allowing abatement of 75 and 90 per cent of gross amount charged in relation to services of package tour and booking of accommodation respectively subject to certain conditions. This notification is not applicable when Cenvat credit of duty on inputs or capital goods or the Cenvat credit of Service Tax on input services used for providing such taxable services, has been availed under the Cenvat Credit Rules, 2004.

M/s Trade Wings Limited, in Mumbai ST I Commissionerate, was paying Service Tax on abated value claiming exemption under notification dated 23 August 2007 on account of tour operator services. Audit noticed that the assessee did not pay Service Tax on gross amount of commission received in Indian currency against outbound tour services amounting to ₹ 95.65 lakh and ₹ 4.63 crore during the period 2009-10 and 2010-11 respectively claiming it as export of services. Since the commission amount was not received in

convertible foreign exchange, Audit contended that services provided cannot be treated as export of services. Further, the assessee had availed input Service Tax credit and utilised the same thereby contravening the provisions contained in the aforesaid notification. The assessee was liable to pay Service Tax of ₹ 45 lakh on the net consideration of commission received (excluding the forex purchased) of ₹ 66.19 lakh and ₹ 3.71 crore in 2009-10 and 2010-11 respectively.

When we pointed this out (July 2012), the Commissionerate reported recovery of Service Tax of ₹ 7.65 lakh alongwith interest and penalty of ₹ 4.57 lakh in August 2012 and March 2013. This was after taking abatement into consideration. Further, the Commissionerate informed that the assessee reversed Cenvat credit availed on input services amounting to ₹ 1.31 lakh and ₹ 3.71 lakh for the years 2009-10 and 2010-11 respectively. Thus, a total recovery of ₹ 17.24 lakh was made at the instance of Audit. Further on Audit contention that the assessee was not eligible for abatement and was liable to pay Service Tax at full rate, the Commissionerate issued show cause notice (February 2014) demanding Service Tax of ₹ 57.59 lakh on the gross value of commission received amounting to ₹ 95.65 lakh and ₹ 4.63 crore against outbound tour services for the financial years 2009-10 and 2010-11 respectively.

The reply of the Ministry is awaited (December 2014).

6.2.2 Works contract Service

Section 65(105)(zzzza)(i) and (ii) (c) of chapter V of Finance Act, 1994, defines works contract as a contract wherein transfer of goods involved in the execution of such contract is leviable to tax as sale of goods, and such contract is for carrying out construction of a new residential complex or a part thereof. As per Section 65(91a) of the Act, 'residential complex' means any complex comprising of a building or buildings having more than twelve residential units, a common area and any one or more services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises.

Board in its circular dated 29 January 2009, clarified vide para no. 3 that, when the initial agreement between the promoters/ builders/developers and the ultimate owner is in the nature of "agreement to sell", any service provided by such seller in connection with the construction of residential complex till the execution of such sale deed, would be in the nature of self service and consequently would not attract Service Tax.

According to explanation inserted with effect from 1 July 2010 under Section 65(105)(zzzh) of the Act ibid, for the purposes of this sub-clause, construction

of a complex which is intended for sale, wholly or partly, by a builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder before the grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force), shall be deemed to be service provided by the builder to the buyer.

M/s Chathamkulam Projects and Developers Pvt. Ltd., a Service Tax assessee in Calicut Commissionerate, providing works contract service, filed 'Nil' returns for the period up to September 2010 based on Board's circular dated 29 January 2009. The assessee intimated the Commissionerate that they were not providing any taxable service since they were constructing only independent villas for self occupation of customers. The assessee applied for surrender of registration and the surrender was allowed by the Department. The assessee again took Service Tax registration under "Construction of Complex services" on 8 August 2011 and started paying Service Tax.

Cross verification of VAT records of the assessee with Commercial Taxes Department, Palakkad showed that they have paid works contract tax at compounded rate of 3 per cent for turnover amounting to ₹ 2.81 crore and ₹ 6.65 crore for the years 2009-10 and 2010-11 respectively. As per the annual return on VAT in Form 10B and advertisements made in websites, the assessee completed various flats and villa projects having common facilities like security personnel, recreation/health clubs, play area, garden etc. The assessee also received advance amounts of ₹ 92.52 lakh and ₹ 15.71 lakh respectively for construction of villas and flats as per the balance sheet as at 31 March 2010. Since the Board's circular dated 29 January 2009 was about applicability of Service Tax to builders engaged in providing construction of residential complex service and in no way dealt with works contract service, the assessee was liable to pay Service Tax for works contract services provided during the years 2009-10 and 2010-11. The assessee, however, did not pay Service Tax of ₹ 39.04 lakh (based on the gross income shown in the VAT return) for the years 2009-10 and 2010-11, filed Nil returns up to September 2010 and then surrendered their registration. The Commissionerate failed to ensure taxability of the service provided by the assessee, as provided under rule 4(7) and (8) of Service Tax Rules, 1994, before granting the surrender of registration.

When we pointed this out (October 2011), the Commissionerate replied (September 2012, August 2013 and March 2014) that these contracts were undertaken by the assessee under individual construction contracts for construction of residential units whose ownership was already with the customers/service recipient and customers themselves had obtained the

building permits in their names. It was also stated that there was no common area or common facilities within the premises and as such, the activity of the assessee did not fall within the ambit of the taxable service of "Construction of Residential Complex Service". The Commissionerate further stated that the assessee had filed 'nil' ST-3 returns for the period up to September 2010 on the strength of Board's circular dated 29 January 2009. It was also replied that even in cases where VAT was payable under works contract, the service will be taxable only if it falls under the definition of "Construction of Residential Complex Service". The Commissionerate also stated that show cause notice dated 1 October 2013 had been issued to the assessee demanding Service Tax amounting to ₹ 39.04 lakh.

The reply of the Commissionerate is not acceptable since construction of residential units under works contract attracts Service Tax under works contract services by virtue of clause (c) of section 65(105) (zzzza) of Finance Act, 1994. As per advance ruling dated 7 April 2008, issued in the case of Harekrishna Developers by Advance Ruling Authority, New Delhi "when the buyer of the sub plot enters into a works contract, such a contract is not for the construction of an isolated house, but for one which will make available to the buyer, all the facilities such as a club house etc, provided for by the residential complex. Individual houses built through the works contract, therefore, have to be viewed as parts of a residential complex rather than a stand alone house. Thus the expression "or a part there of" occurring in clause (c) of (zzzza) of section 65(105) squarely applies". Further, as per the advertisements made by the assessee they were providing common facilities such as parking, play area, garden, security etc., to their customers and moreover, as per the sales deed of land, there was provision for right to use of common road in the name of the assessee. Moreover, the assessee also collected Corpus fund for meeting expenses for routine maintenance, from the buyers and as per a sale deed dated 24 June 2009, the builder obtained permission from Revenue Divisional Officer for filling the property with soil and obtained building permit from Kannadi Panchayat. Further, Board's circular dated 29 January 2009 was about applicability of Service Tax to builders engaged in providing construction of residential complex service and in no way dealt with works contract service.

The reply of the Ministry is awaited (December 2014).

6.2.3 Management, Maintenance or Repair Service

Management, Maintenance or Repair service (as applicable prior to 1 July 2012), means any service provided by any person under a contract or an agreement; or a manufacturer or any person authorised by him, in relation to management of properties, whether immovable or not; maintenance or repair of properties, whether immovable or not; or maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle.

M/s Grauer and Weil (India) Ltd. in Mumbai II Commissionerate, engaged in providing services of maintenance and repairs revealed that the assessee provided services to M/s HPCL through their sub-contractors on works relating to maintenance and repairs of huge tanks, painting of tanks to prevent corrosion etc. Audit scrutiny of ST-3 returns revealed that the assessee had discharged the Service Tax liability towards such services under the category of Maintenance and Repairs for the period upto 2009-10. However for the period April 2010 to March 2011, the assessee did not pay Service Tax of ₹ 24.65 lakh, payable on value of services rendered to M/s HPCL amounting to ₹ 2.39 crore. This resulted in non payment of Service Tax which was to be recovered alongwith interest.

When we pointed this out (June 2011), the assessee paid the amount of ₹ 24.65 lakh through Cenvat credit and paid interest of ₹ 0.68 lakh (June 2011). However, the interest payable worked out to ₹ 2.89 lakh and thus short payment of interest of ₹ 2.21 lakh was recoverable.

The Commissionerate intimated (September 2011) that the matter had been referred to Service Tax II, Mumbai Commissionerate for further pursuance. Further reply is awaited (December 2014).

The reply of the Ministry is awaited (December 2014).

6.3 Short payment of Service Tax

6.3.1 Service Tax under import of service

Explanation to Rule 6(1) of the Service Tax Rules, 1994 read with Rule 7 of Point of Taxation Rules, 2011 stipulates that as regards associated enterprises, Service Tax is leviable from the person liable to such tax even if the amount is not actually received but the same is debited or credited in the books of accounts of the service provider. Any payment received towards the value of taxable service shall include any payment debited or credited to any account whether called suspense account or any other name in the books of accounts of the service provider.

M/s Emerson Climate Technologies (India) Ltd, in Kolhapur Commissionerate, engaged in providing Business Support Services, Supply of Tangible Goods Services, Business Auxiliary Services etc. During detailed scrutiny, including reconciliation of ST-3 return vis-à-vis financial records it was noticed that the assessee had incurred huge expenditure in foreign currency on account of agency commission, advisory and other service charges, design and consultancy charges etc. of ₹ 26.38 crore during the period 2009-10 to 2010-11. However, only an amount of ₹ 11.74 crore was taken as the value of taxable service for payment of Service Tax as recipient of service under various categories viz. Technical Inspection, BAS etc. Since these transactions were with associated enterprises, Service Tax is payable on gross amount as and when the same is reflected in the books of accounts under the provisions mentioned above. Non-adherence to above provisions resulted in short payment of Service Tax of ₹ 1.51 crore which was recoverable alongwith interest.

When we pointed this out (May 2013), the Commissionerate accepted the audit observation and reported (February 2014) that a SCN for ₹ 1.56 crore for the period from 2009-10 to 2012-13 is under issue. The Commissionerate also reported (May 2014) that an amount of ₹ 21.42 lakh was recovered towards delayed payment of Service Tax.

The reply of the Ministry is awaited (December 2014).

6.4 Cenvat credit

6.4.1 Irregular availing of Cenvat credit on ineligible invoices

Rule 7 of Central Excise Rules, 2002 as amended vide Notification dated 17 March 2012 envisages that the input service distributor (ISD) may distribute the Cenvat credit in respect of the Service Tax paid on the input service to its manufacturing units or units providing output services subject to the condition that the credit of Service Tax attributable to service used in more than one unit shall be distributed pro rata on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period.

M/s Rieter India Pvt. Ltd., In Kolhapur Commissionerate, is engaged in providing Erection Commissioning and Installation, Commercial Training and Coaching, Business Auxiliary services etc. and had centralised registration for payment of Service Tax at Coimbatore. The assessee availed Cenvat credit of input service on the basis of invoices that were issued to its other unit located at Koregoan, Pune. It was noticed that neither was the Pune unit registered as ISD nor was the procedure prescribed for distribution of Cenvat credit was followed by the head office unit at Coimbatore. This resulted in

irregular availing of Cenvat credit amounting to ₹ 1.77 crore for the period November 2012 to January 2013.

When we pointed this out (May 2013), the Commissionerate stated (June 2014) that the paragraph appears to be acceptable and draft show cause notice proposing disallowance of Cenvat credit for the period November 2012 to April 2014 amounting to ₹ 4.77 crore along with interest and penalty is under issue.

The reply of the Ministry is awaited (December 2014).

6.5 Non payment of Interest

6.5.1 Incorrect availing of Cenvat credit on capital goods

As per Rule 4 (2) of Cenvat Credit Rules, 2004, Cenvat credit in respect of capital goods received in a factory or in the premises of the provider of output service at any point of time in a given financial year shall be taken only for an amount not exceeding 50 per cent of the duty paid on such capital goods in the same financial year. The balance of Cenvat credit may be taken in any financial year subsequent to the financial year in which the capital goods were received.

During the examination of records of M/s Dish TV India Ltd. Noida, in Noida Commissionerate, it was noticed (September 2011) that the assessee had availed 100 per cent Cenvat credit on capital goods such as set top boxes, dish antennas', LNB, viewing cards, RCA cables etc. received during the period 2008-09, 2009-10 and 2010-11, against admissibility of 50 per cent as per Rule 4 (2) ibid. This resulted in excess availing of Cenvat credit to the tune of ₹ 89.87 crore upto March 2011, on which the assessee was liable to pay interest amounting to ₹ 11.68 crore as per Rule 14 of Cenvat Credit Rules, 2004.

When we pointed this out (February 2012), the Commissionerate stated (July 2013) that a show cause notice demanding interest amounting to ₹ 12.29 crore for the period from October 2007 to March 2011 has been issued during March 2013. Further progress is awaited (December 2014).

The reply of the Ministry is awaited (December 2014).

6.5.2 Interest on delayed payment of Service Tax

Section 75 of the Finance Act, 1994 provides that every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of Central Government within the period prescribed, shall pay simple interest at such rate not below ten per cent and not exceeding 36 per cent per annum,

as is for the time being fixed by the Central Government by which such crediting of the tax or any part thereof is delayed.

Rule 3 of the Point of Taxation Rules, 2011, provides inter alia, that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994, the point of taxation shall be date of completion of provision of the service. Rule 3 also provides that in case of continuous supply of service, where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to the 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.

Rule 4A of the Service Tax Rules, 1994, provides that every person providing taxable service shall, not later than thirty days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorised by him in respect of taxable service provided or agreed to be provided.

The rule also provides that in case of continuous supply of service, every person providing such taxable service shall issue an invoice, bill or challan, as the case may be, within thirty days of the date when each event specified in the contract, which requires the service receiver to make any payment to service provider, is completed.

A telecom service provider (Service Tax assessee) in Jaipur-I Commissionerate had provided Interconnect usage charges services relating to SMS termination (roaming) to other telecom service providers between April 2011 and September 2012 on which owing to certain dispute between telecom operators, the billing was to kept suspended under "bill and keep" mode. The assessee subsequently got a favourable decision from TDSAT on 30 August 2012. Since the other party chose to file appeal before the Supreme Court, issue of invoice was delayed until the Apex Court passed order in October 2012 rejecting any interim relief to the other party. The assessee issued invoices at this stage and deposited Service Tax on interconnect usage charges (IUC) on SMS during December 2012 and January 2013. The Service Tax amount paid was ₹ 2.35 crore for the period April 2011 to September 2012.

We observed that as the service provided was a continuous supply of service under Rule 2 (C) of the Point of Taxation Rules, 2011, the point of taxation was to be determined according to Rule 3 (similar provision in Rule 6 covered the period prior to 1 April 2012).

Invoices had not been issued within 30 days from the date when each event, i.e., provision of service of interconnect usage relating to SMS termination for the billing period, was completed, though required by Rule 4A of the Service Tax Rules, 1994. Hence, as per Rule 3 of the Point of Taxation Rules, 2011, the 'point of taxation' would be the date of completion of provision of service which in this case would, by the proviso, be the date of completion of provision of service pertaining to each billing period (monthly/bimonthly etc.). Hence, the assessee was liable, as per the extant provisions to pay interest of ₹ 35 lakh.

When we pointed this out (November 2013), the Commissionerate replied (March 2014) that for the period post 1 July 2011, the point of taxation had not arisen as date of completion or the issue of invoice, whichever was earlier, would determine the point of taxation. The Commissionerate also stated that no amount had been collected from the service receiver.

The reply of the Commissionerate is not acceptable since rule 6 (or Rule 3) of the Point of Taxation Rules, 2011, Service Tax liability would arise in this case of continuous supply of services (where no invoice had been issued), on the completion of provision of IUC services pertaining to each billing period.

The reply of the Ministry is awaited (December 2014).

Chapter VII

Effectiveness of internal controls

7.1 Introduction

Internal control is an integral process that is effected by an entity's management and personnel and is designed to address risks and to provide reasonable assurance that in pursuit of the entity's mission, the following general objectives are being achieved:

- executing orderly, ethical, economical, efficient and effective operations;
- fulfilling accountability obligations ;
- complying with applicable laws and regulations ;
- safeguarding resources against loss, misuse and damage.[17]

7.2 Result of Audit

During the course of examination of records, we came across several instances in areas such as internal audit, scrutiny, deficiencies in the prescribed Manual which suggest that the department should look into the adequacy of extant systems and procedures. We communicated these observations to the Ministry through 94 draft audit paragraphs having financial implication of ₹ 179.69 crore. The Ministry/Department accepted (December 2014) the audit observations in 93 draft audit paragraphs having financial implication of ₹ 178.65 crore of which ₹ 57.12 crore had been recovered. Out of above 93 paras in 75 paras the Ministry/Department initiated/completed corrective action having financial implication of ₹ 145.43 crore. We have furnished the details of these paragraphs in Appendix III. The objections are covered under three major headings:

Scrutiny of returns

Internal audit of assessees

Other Issues

7.3 Inadequate scrutiny of returns

We came across six instances while examining ST-3 returns at ranges where we observed that liability to pay tax escaped the notice of the authorities due to inadequate scrutiny of returns.

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[17] INTOSAI GOV 9100 – Guidelines for Internal Control Standards for the Public Sector

7.3.1 Service Tax collected but not deposited into Government Account

Section 68 of the Finance Act, 1994, provides that every person providing any taxable service shall pay Service Tax at the rate prescribed. Rule 6 of the Service Tax Rules, 1994, stipulates that Service Tax shall be paid to the credit of the Central Government by the 6th day of the month, if the duty is deposited through internet banking or by the 5th day of the month in any other case, immediately following the calendar month in which the payments are received. If the assessee fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, he shall pay simple interest at prescribed rates under Section 75 of the Finance Act, 1994.

During the scrutiny of ST-3 returns in Central Excise and Service Tax Range, Behror in Jaipur-I Commissionerate on ACES system and cross verification from the records of service receivers, CERA noticed that five service providers had provided service of manpower supply and collected Service Tax amounting ₹ 71.66 lakh from two service receivers during 2011-12 and 2012-13. These five service providers either did not file ST-3 returns for the relevant period or filed nil return. Therefore, Service Tax of ₹ 71.66 lakh needs to be recovered from these service providers alongwith interest chargeable under Section 75 and penalty under Section 76 and 77 of the Finance Act, 1994.

When we pointed this out (February 2014), the Commissionerate replied (May 2014) that these five service providers had made partial Service Tax payment for ₹ 40.71 lakh and action for recovery of the differential outstanding dues of Service Tax was being initiated by issuing demand-cum-show cause notices against all the defaulters. The Commissionerate further stated that two assessees could not file ST-3 return for 2011-12 and 2012-13 as their registration numbers are shown as surrendered on ACES.

The Commissionerate's reply indicates the need to set in place a mechanism to cross-check data relating to surrendered registrations with remittances reaching the Government Account.

We await the Ministry's response (December 2014).

7.3.2 Non-detection of assessee's non-compliance with Cenvat Credit Rules, 2004

As per Para 1.2.1.1 of Manual for Scrutiny of Service Tax Returns, 2009, the purpose of preliminary scrutiny is to ensure inter alia timely submission of return, timely payment of dues. As per Para 1.2B of the Service Tax Return Scrutiny Manual, preliminary scrutiny is to be conducted in respect of all returns. Annexure 2.1 enumerates the checklist for preliminary scrutiny of returns which inter alia specifies at Sr. 14(a) that the department is expected to verify whether the conditions of Rule 6(3) of Cenvat Credit Rules, 2004 are prima facie satisfied.

Rule 6(3) of Cenvat Credit Rules, 2004, provides that the provider of output service, opting not to maintain separate accounts shall follow either of the following options, (i) the provider of output service shall pay an amount equal to 5 per cent (with effect from April 2011 to March 2012) and 6 per cent (with effect from April 2012) of the value of exempted services; or (ii) pay an amount equivalent to the Cenvat credit attributable to inputs and input services used in or in relation to the manufacture of exempted goods or for provision of exempted services.

Scrutiny of ST-3 Returns of Division III under Service Tax-I, Mumbai Commissionerate revealed that M/s National Securities Depository Ltd. (NSDL) provided taxable as well as exempted services during the period October 2011 to March 2012. The assessee had not exercised any option in contravention of the provisions of Rule 6 ibid. The value of exempted services for the aforesaid period amounted to ₹ 68.93 lakh on which the assessee did not reverse attributable Cenvat credit which was recoverable alongwith interest. It was observed that preliminary scrutiny of these returns was not conducted by the range.

When we pointed this out (February 2013), the Ministry stated (November 2014) that the assessee had discharged total tax liability by reversing the Cenvat credit of ₹ 14.62 lakh along with interest of ₹ 6.76 lakh for the period from April 2010 to June 2012. The reply of the Ministry is silent on the failure of the range to carry out the preliminary scrutiny of the returns.

7.4 Internal Audit of assessees

The three important prongs of the compliance verification system adopted by the department comprise returns' scrutiny, audit, and anti-evasion. Compliance verification through audit entails conduct of audit at assessee premises by following prescribed procedures including selection of assessee units based on risk parameters and scrutiny of records of the assessee to ascertain the level of compliance with the prescribed rules and regulations.

Internal Audit is empowered under the Service Tax Rules, 1994, to access the records of the assessees at their registered premises. Every Commissionerate has, within its Internal Audit section, an Audit cell, manned by an Assistant/Deputy Commissioner and Auditors and headed by an Additional/Joint Commissioner. The Audit cell is responsible for planning, monitoring and evaluating the audits conducted. Audit parties consisting of Superintendents and Inspectors carry out the audit at assessee premises in accordance with the Audit Plan and as per the procedures outlined in the Service Tax Audit Manual, 2011.

We attempted to check the adequacy of coverage of assessees as well as the quality of audits undertaken by the internal audit parties by auditing a sample of assessees falling under one of the following two categories a) already audited by a departmental audit party and b) due for audit but not covered by departmental audit at the time of audit by CERA. We noticed cases involving Service Tax implication of ₹ 32.70 crore which are discussed in the following paragraphs. We communicated these observations to the Ministry through 16 draft audit paragraphs, the Ministry accepted the audit objection to the extent of revenue involved in four cases and we are awaiting the Ministry's response in remaining cases.

7.4.1 During the course of CERA's examination of records in selected assessee premises already covered by internal audit, we came across certain instances where audit parties of the Commissionerate had omitted to point out certain significant cases of non-compliance by assessees.

7.4.1.1 Non-payment of Service Tax

As per clause 31 of Section 65 of the Finance Act, 1994, (as applicable prior to 1 July 2012), "Consulting Engineer" means any professionally qualified engineer or engineering firm who either directly or indirectly renders any advice, consultancy on technical matter in any manner to a client in any one or more disciplines of engineering but not in the discipline of computer hardware engineering or computer software work.

Further, the CBEC vide its Circular dated 4 July 1997 has clarified the scope of the service of a consultant, which shall include the service of construction, supervision and project management. CBEC also clarified vide its Circular dated 6 May 2011 that services of architect and consulting engineer hired in relation to construction of roads, tunnels and bridges etc. will not be exempted from levy of Service Tax.

M/s National Hydro-electric Power Corporation (NHPC) Ltd., in Patna Commissionerate, was entrusted with the work of construction, supervision and project management of road projects in Bihar under the Prime Minister

Gram Sadak Yojna (PMGSY) and for this work, the assessee was to be paid consultancy fee at the rate of 10 per cent of the total project cost. As the work of construction, supervision and project management is covered under the definition of consulting engineering services, the service provided by the assessee was a taxable service. The assessee received ₹ 96.89 crore during 2008-09 to 2011-12 as consultation fees, but Service Tax amounting to ₹ 10.31 crore was not paid.

Internal audit, though carried out for the period upto 2009-10, had not pointed out the lapse which was subsequently detected by CERA.

When we pointed this out (January 2013), the Ministry stated (November 2014) that the show cause notice issued was adjudicated vide order-in-original dated 13 June 2014 confirming the demand of ₹ 10.31 crore. The assessee had paid the Service Tax amount alongwith interest of ₹ 5.35 crore and penalty of ₹ 2.58 crore. The reply of the Ministry is silent on the failure of internal audit party to detect the lapse.

7.4.1.2 Non-payment of Service Tax

Rule 6 (1A) of the Service Tax Rules, 1994, provides that every person liable to pay Service Tax, may, on his own volition, pay an amount as Service Tax in advance, to the credit of the Central Government and adjust the amount so paid against the Service Tax which he is liable to pay for the subsequent period.

Provided that the assessee shall,-

(i) intimate the details of the amount of Service Tax paid in advance, to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such payment; and

(ii) indicate the details of the advance payment made, and its adjustment, if any in the subsequent return to be filed under Section 70 of the Act.

Gujarat Pipavav Port Ltd. in Bhavnagar Commissionerate, was liable to pay Service Tax of ₹ 3.67 crore for dredging service rendered during the month of July 2009. As seen from ST3 return for July 2009, the assessee paid ₹ 60.87 lakh through PLA and balance amount of ₹ 3.07 crore was stated to have been adjusted against advance Service Tax paid in earlier period. However, we did not find any advance payment in ST-3 returns for the period from April 2007 to June 2009. Further, no intimation or proof of advance payment of Service Tax was made available to Audit. Thus, the assessee failed to pay Service Tax of ₹ 3.07 crore.

When we pointed this out (March 2013), the Commissionerate accepted the audit observation (January 2014) and intimated that issuance of show cause notice was under process. Further development is awaited (May 2014).

We await the Ministry's response (December 2014).

7.4.1.3 Non-payment of interest on belated payment of Service Tax

As per Section 75 of the Finance Act, 1994, every person liable to pay Service Tax should pay simple interest at the prescribed percentage, in case the Service Tax payable was paid belatedly into the Government account. The rate of interest was 13 per cent per annum upto 31 March 2011 and at 18 per cent per annum thereafter, as per Notifications dated 10 September 2004 and 1 March 2011.

M/s Prestige Estates Projects Ltd., Bengaluru, in Bengaluru Service Tax Commissionerate, had paid Service Tax for the period from October 2010 to March 2012 with delay ranging from 1 day to 38 days. However, the assessee did not pay interest on any of these delayed payments of Service Tax. The interest payable worked out to ₹ 14.28 lakh for the period referred above.

Though the unit was visited by the Internal Audit Party of the Commissionerate during 2012-13, the non-payment of interest was not detected by them and this was also not pointed out in the preliminary scrutiny either. This resulted in this lapse remaining undetected until pointed out by CERA.

When we pointed this out (September 2013), the Ministry replied (September 2014) that the assessee paid (December 2013) ₹ 27.84 lakh towards interest for the period from July 2010 to March 2013. The reply of the Ministry was silent on the failure of the departmental parties to detect the non-payment of interest by the assessee.

7.4.1.4 Non-payment of Service Tax

Rule 3 (b) of the Point of Taxation Rules, 2011 provides that where the person providing the service, receives a payment before the time specified in clause (a) of Rule 3, the point of taxation shall be the time when he receives such payment, to the extent of such payment. The explanation to Rule 3 also states that wherever any advance by whatever name known is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

M/s. Gujarat Pipavav Port Ltd, in Bhavnagar Commissionerate, provided Port services valued ₹ 317.52 crore against which it received an advance payment of ₹ 103.32 crore between July 2011 and March 2012. Thus, the assessee was liable to pay Service Tax of ₹ 33.77 crore on accrual basis during the

period July 2011 to March 2012. However, the assessee paid Service Tax of ₹ 32.13 crore on receipt basis. This resulted in short payment of Service Tax of ₹ 1.64 crore which is recoverable with applicable interest.

When we pointed this out (March 2013), the Commissionerate (January 2014) accepted the audit objection and stated that SCN is under issue. Further progress is awaited (December 2014).

We await the Ministry's response (December 2014).

7.4.1.5 Short levy of Service Tax due to misclassification

Section 65 of the Finance Act, 1994 (as applicable prior to 1 July 2012), defines 'Erection Commissioning or installation' service to mean any service provided by a commissioning and installation agency, in relation to erection, commissioning or installation of plant, machinery, equipment or structures whether prefabricated or otherwise etc. The service is taxable with effect from 10 September 2004.

Works Contract Service has come under the Service Tax net with effect from 1 June 2007 and 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 work as specified under sub-clause (zzzza) of Section 65 of the Finance Act, 1994.

Again as per Service Tax (Determination of Value) Rules, 2006, the value of the taxable service is the 'gross amount' charged for providing such services except value of items as mentioned under rule 6 of the said Rules.

Further, Section 75 of the Act, envisages that, interest at prescribed rate is payable on delayed payment of Service tax.

Thus from the above it follows that if the specified contract is 'works contract' on which VAT/sales tax is payable, the service will be taxable under Works Contract Service. If the contract is a simple service contract (i.e. either no material is involved or even if some material is involved, VAT/sales tax is not payable), the service will be classifiable under respective heads of taxable service.

M/s Steel Products Ltd. (U-II) in Kolkata Service Tax Commissionerate, entered into an agreement with HG Power Transmission SDN-BMD, Selangor, Malaysia for erection of 400 KV D/C Akola-Aurangabad Transmission Line. The scope of the work included erection of towers, testing and commissioning of erected 400 KV D/C transmission line etc. The assessee issued bills to HG Power Transmission for such services and paid Service Tax at the rate of 2 per cent or 4 per cent (as applicable) under works contract service. As the service did not involve transfer of property and no sales tax

was payable or paid on such work, the assessee should have paid Service Tax at the rate of 12 per cent (or as amended) under 'Erection Commissioning or Installation Service'. Thus, misclassification of service resulted in short levy of Service Tax to the tune of ₹ 65.10 lakh during the period October 2007 to March 2009 which was recoverable along with applicable interest.

When we pointed this out (October 2009), the Commissionerate accepted the objection (February 2013). Further, the Commissionerate provided (April 2013) copy of the Show Cause Notice for Service Tax of ₹ 82.93 lakh covering the period from October 2007 to March 2012 along with applicable interest and equal amount of penalty.

The reply of the Ministry is awaited (December 2014).

7.4.1.6 Other cases

We noticed in five other cases, the instances of non-payment/short-payment of Service Tax, irregular availing of Cenvat credit etc. by the assessees involving revenue of ₹ 88.21 lakh which were not pointed out by the internal audit parties of the department. The Commissionerates accepted the audit observation in all the cases.

We await the Ministry's response (December 2014).

We observe that though internal audit was carried out by the Internal Audit Party of the Commissionerate in all the above cases, the lapse remained undetected until pointed out by CERA.

7.4.2 Inadequacy of Service Tax Audit Manual provisions

As per the Director General of Service Tax's Action Plan circulated to Chief Commissioners on 26 May 2003, field formations were required to obtain information from major assessees including PSUs and private sector organisations regarding various services being availed by them and to obtain details of such services providers including their addresses. Further, every range officer had to obtain information from major assessees including PSUs regarding various services being availed by them and to obtain details of such service providers to broaden the tax base. However, there was no such corresponding provision in the Service Tax Audit Manual, 2011, which made it obligatory for the Service Tax Audit parties to collect (during audits at assessee premises) and forward similar details to Internal Audit Cell of Commissionerate/Division/Range concerned.

M/s Tarapore and Company Ltd. in Jamshedpur Commissionerate, engaged in providing mainly telecommunication service etc., paid a sum of ₹ 5.68 crore to 22 Manpower Recruitment agencies during the period from April 2010 to

March 2011, but Service Tax of ₹ 58.50 lakh at the rate 10.30 per cent was not paid by these service providers.

We observed that an internal audit team had conducted audit in M/s Tarapore and Company Ltd. in December 2010 and January 2012 but it had failed to communicate any details about non-fulfilment of liability/provision of service by these service providers to the Commissionerate or the concerned subordinate functionaries which would have facilitated initiation of action against the defaulting service providers.

When we pointed this out (September 2011), the Ministry while accepting the objection reported (December 2014) that in 19 cases show cause notices had been issued and in three cases the assessees deposited Service Tax along with interest. The Ministry further stated that desired changes have been made in the Service Tax Audit Manual, 2011 through insertion of Para No. 7.6.7 in the Manual in November 2014. **Audit is of the view that similar provision should be inserted in Central Excise Audit Manual, 2008 as big manufacturers also availed input services from many service providers who also charged Service Tax from them.**

7.4.3 Inadequate compliance with norms for coverage of mandatory units by internal audit

Para 5.1.2 of the Service Tax Audit Manual, 2011 envisages that service providers paying Service Tax of ₹ 3 crore or more (cash + Cenvat) in a year are to be audited every year mandatorily.

7.4.3.1 Non-payment of Service Tax on JNNURM projects

Service Tax on Construction of Complex service is leviable under sub-section 105(zzzh) of Section 65 of the Finance Act, 1994 (as applicable prior to 1 July 2012) with effect from 16 June 2005 vide notification dated 7 June 2005. Section 65(30a) defines construction of a complex as including construction of a new residential complex or a part thereof, completion and finishing services in relation to residential complex and repair, alteration, renovation or restoration of similar services.

Further, 'residential complex' means any complex comprising of a building or buildings, having more than twelve residential units, a common area and facilities or services such as park, lift parking space etc. vide Section 65(91a) of the Act.

Notification dated 22 June 2010 exempted the services provided to Jawaharlal Nehru National Urban Renewal Mission (JNNURM) and Rajiv Awas Yojana with effect from 1 July 2010.

M/s M.V. Omni Project (I) Ltd. in Ahmedabad Service Tax Commissionerate, was engaged in providing construction of complex service to Ahmedabad Municipal Corporation (AMC), Vadodara Mahanagar Seva Sadan (VMSS-BAP) and Vadodara Mahanagar Seva Sadan-Kisanwadi under JNNURM projects during the year 2007-08 to 2010-11.

During examination of records, we noticed that assessee provided services for construction of housing blocks having more than 12 residential units in each block and received ₹ 70.14 crore (including TDS) for the three projects between October 2007 and May 2010. After abatement of ₹ 41.74 crore, the assessee was liable to pay Service Tax of ₹ 1.86 crore, however the assessee did not pay any Service Tax. This resulted in non-payment of Service Tax of ₹ 1.86 crore on the abated value.

When we pointed this out (June 2011), the Commissionerate intimated (July 2013) that show cause notice issued in this matter (October 2011) was adjudicated (February 2013) confirming the demand of ₹ 1.86 crore.

We await the Ministry's response (December 2014).

7.4.3.2 Non compliance with Point of Taxation Rules

Rule 3 of the Point of Taxation Rules, 2011, as amended vide notification dated 31 March 2011 read with notification dated 27 June 2011 provides that unless otherwise provided, 'point of taxation' with effect from 1 July 2011 shall be the time when the invoice for the service provided or to be provided is issued. Further Section 75 of the Finance Act, 1994, provides that every person who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed shall pay simple interest at such rate as is for the time fixed by the Central Government.

M/s. Emirates in Division I of Mumbai ST-I Commissionerate, is registered under the category of Transport of passengers embarking on domestic/international journey by air services, Cargo Handling Services, Transport of Goods by air services etc. Audit scrutiny revealed that the assessee was selling tickets through IATA (International Air Transport Association) accredited agents and was receiving the sales report through IATA Billing Settlement Plan (BSP). As per BSP, the assessee was receiving sales report on fortnightly basis i.e. sales report for the first fortnight of a month was received in the last week of the same month and for the second fortnight, it was received in the first week of the next month. Thus, the amount was credited to the assessee's account in the month following the sales month. Further, scrutiny of details for working of Service Tax and ST-3 Return from July 2011 to March 2012 revealed that the assessee was paying Service Tax on receipt basis i.e. only after receiving the amount from its

agents, without adhering to the provisions of Point of Taxation Rules, 2011 which resulted in delayed payment of Service Tax on which interest amounting to ₹ 1.59 crore needs to be recovered.

When we pointed this out (March 2013), the Commissionerate intimated (April 2013) that the objection is prima-facie admitted. The Commissionerate stated that they are aware of such issues and the internal audit wing of the Commissionerate was conducting the audit of the said assessee during April 2013.

We observe that though the issue was in the knowledge of the Commissionerate, it had not pointed out the same through any of the compliance verification methods such as scrutiny or internal audit (though the assessee was a Category A unit) until CERA pointed out the objection. No Show Cause Notice was issued to the assessee as required under Section 73 of the Finance Act, 1994 (as amended). The Commissionerate did not take any action to recover the interest amount until Audit pointed out the lapse.

We await the Ministry's response (December 2014).

7.4.3.3 Short Payment of Service Tax due to undervaluation

As per Para 14.5 of CBEC's Circular F. No. B1/6/2005-TRU, dated 27 July 2005, if a contract for construction of commercial complex is a single contract and the construction of roads is not recognised as a separate activity as per the contract, then Service Tax would be leviable on the gross amount charged for construction including the value of construction of road.

Again, as per Para 14.6 of the above cited Circular, when services provided under a contract consist of a number of different elements, a view has to be taken on the basis of the facts and circumstances of each case as to whether the service provider has made a single overall supply or a supply of different services which are to be treated differently.

Further, Section 75 of the Finance Act, 1994, envisages that interest at prescribed rate is payable on delayed payment of Service Tax.

M/s Subhash Project & Marketing Ltd. (SPML) in Kolkata Service Tax Commissionerate, was engaged in providing different taxable services like 'Construction Services', 'Erection, Commissioning and Installation Services' and 'Maintenance and Repair Services'. We observed that The West Bengal Power Development Corporation Ltd. (WBPDCL) had awarded a contract for turnkey package for Erection and Services of Raw Water make-up system from Panchet Dam reservoir to Santaldih TPS (OC-125) to M/s SPML. The contract price for construction of such project was ₹ 33.13 crore. Scrutiny of the price break-up of the agreement revealed that the civil part of the

contract was bifurcated into separate units, such as residential quarters, road crossing and pipe bridge, service road etc. We further noticed that the assessee treated the above services as exempted and did not pay Service Tax on the amount received through RA Bills. Further scrutiny of the Billing and Collection details revealed that the assessee had received the amount of ₹ 5.33 crore for the year 2007-08 and 2008-09 for the said services. As the above contract was a single contract, the construction of road, bridges etc. are not recognizable as a separate activity. Therefore, as per the above mentioned provisions, Service Tax was leviable on the gross amount charged for the contract including the value of the construction of road, bridges etc. by the assessee under the above contract. This resulted in short payment of Service Tax to the tune of ₹ 65.87 lakh including cess due to undervaluation to the extent of ₹ 5.33 crore during 2007-08 and 2008-09.

When we pointed this out (March 2010), the Commissionerate accepted the issue and reported (April 2014) that demand has been confirmed along with applicable interest and penalty.

We await the Ministry's response (December 2014).

7.4.3.4 Non-deposit of Service Tax

Rule 6 (1) (i) of Service Tax Rules, 1994 provides that Service Tax shall be paid to the credit of the Central Government account by the 6th day of the succeeding month, if the duty is deposited electronically through internet banking and by 5th day of the succeeding month in any other case. Further, as per Section 73A of Finance Act, 1994, as amended, any person who is liable to pay Service Tax and has collected any amount in any manner as representing Service Tax, such person shall forthwith pay the amount so collected to the credit of the Central Government.

We noticed that M/s Ores India Private Ltd, Manoharpur, West Singhbhum, in Jamshedpur Commissionerate, realised an amount of ₹ 86.10 lakh as Service Tax during the period October 2010 to March 2011 from M/s IISCO. The assessee adjusted a sum of ₹ 33.68 lakh as input credit, but did not deposit ₹ 52.43 lakh against the amount realised during the period October 2010 to March 2011 as required under provisions of Finance Act and rule 6(1) ibid.

When we pointed this out (October 2011), the Ministry accepted the audit observation and stated (September 2014) that the assessee has deposited Service Tax of ₹ 61.54 lakh including interest of ₹ 8.50 lakh (during November 2011 to January 2012). Reply of the Ministry was silent on non conducting of Internal Audit of the assessee.

7.4.3.5 Non levy of interest on delayed payment of Service Tax

Rule 7 of Point of Taxation Rules, 2011 as amended with effect from 1 April 2011 provides that point of taxation when Service Tax is payable under reverse charge mechanism shall be the date on which payment is made to service provider, if the payment for such service is made within six months from date of invoice. However, if the payment for such service is not made within six months from date of invoice, the point of taxation will be determined as if Rule 7 does not exist and will be determined under Rule 3, 4, 5, 8 or 8A as applicable. Interest will also be applicable in this case.

Further, Rule 3 (a) of Point of Taxation Rules ibid, provides that the point of taxation shall be the time when the invoice is issued if invoice is issued within 30 days from the date of completion of service.

Again, Rule 6 (1) of Service Tax Rules, as amended provides that Service Tax shall be paid to the credit of Government by 5th /6th of the month/quarter immediately following the month/quarter in which service is deemed to be provided. Failure to pay Service Tax by the due date attracts interest at the rate of 18 per cent per annum for delayed payment.

M/s Jamshedpur Continuous Annealing and Processing Company Pvt. Ltd. in Jamshedpur Commissionerate made an agreement for license and technology transfer for continuous annealing and processing line of joint venture with M/s Nippon Steel Corporation, Japan and hired its services on payment of ₹ 31.62 crore on which, the assessee was liable to pay Service Tax under reverse charge mechanism as per Rule 2(1) (d) (iv) of Service Tax Rules, 1994. It was further noticed that the bills were raised by the foreign-service provider in May and August 2012 after the completion of work (within the prescribed period) but payment of Service Tax was made in March 2013 after six months of raising the invoice. Thus, the assessee was liable to pay interest of ₹ 40.02 lakh for delayed payment of Service Tax under Rule 3 (a) of Point of Taxation Rules as point of taxation arose when invoices were issued.

When we pointed this out (July 2013), the Commissionerate accepted the audit observation and stated (January 2014) that the assessee has deposited the interest of ₹ 40.02 lakh.

We await the Ministry's response (December 2014).

Although, the unit was to be audited annually by the Internal Audit wing of the department as per prescribed norms in all the cases, no internal audit was conducted. This resulted in this lapse remaining undetected until pointed out by CERA.

7.5 Other Issue

Periodical show cause notice not issued

As per Section 73 of Finance Act, 1994, in normal course show cause notice is to be issued within one year (with effect from 28th May 2012, '18 months') and in case of fraud, Collusion, Wilful misstatement, suppression of facts etc. with intent to evade duty, within a period of five years from the relevant date. Further as per Section 73(6)(b) of the Act, relevant date inter alia means where no periodical returns as aforesaid filed, the last date on which such returns to be filed under the said rules. The Supreme Court in the case M/s Nizam Sugar Ltd. Vs Commissioner of Central Excise – 2006 (197) ELT 465 (SC) has held that the extended period of five years was not available to the department for the subsequent show cause notice which was issued based on the same set of facts of the earlier show cause notice as the full facts were known to the Department and hence suppression cannot be alleged.

Audit of SCN and adjudication records maintained in Raigad Commissionerate revealed that the Commissionerate had issued a show cause notice to the assessee M/s Hanil Era Textiles Ltd, an EOU, in October 2010 demanding ₹ 3.82 crore due to non payment of Service Tax under reverse charge basis, for the period 2005-06 to 2008-09 for service categories viz. Business Auxiliary Services, Storage and Warehousing Services and Goods Transport Services. The show cause notice was adjudicated vide Order In Original dated 30th March 2012.

However, the Commissionerate had neither covered the period of 2009-10 in the first show cause notice nor had issued a periodical show cause notice for the period 2009-10 within the stipulated period of one year.

When we pointed this out (July 2012), the Commissionerate (December 2013) stated that a draft show cause cum demand notice amounting ₹ 63.13 lakh for non-payment of Service Tax for the period of April 2009 to March 2011 was submitted to the Adjudication Section in June 2013 for issue. The last date for issuance of SCN was stated to be 24 October 2014.

However, the process of issuance of periodic show cause notice for 2009-11 period applying provisions for extended period after a lapse of four years is irregular in view of the above mentioned decision of Supreme Court in the case of M/s Nizam Sugar Ltd. Vs Commissioner of Central Excise, Andhra Pradesh. Thus, an amount of ₹ 63.13 lakh has got time-barred due to improper monitoring of the need for issue of periodic show cause notices

with respect to ongoing adjudication cases. Even going by Section 73 (6) (b), where no periodical returns are filed, relevant date would be the last date on which such returns were to be filed, hence the prescribed period had lapsed in this case.

We await the Ministry's response (December 2014).

New Delhi
Dated: 20 March 2015

(SANJEEV GOYAL)
Principal Director (Central Excise)

Countersigned

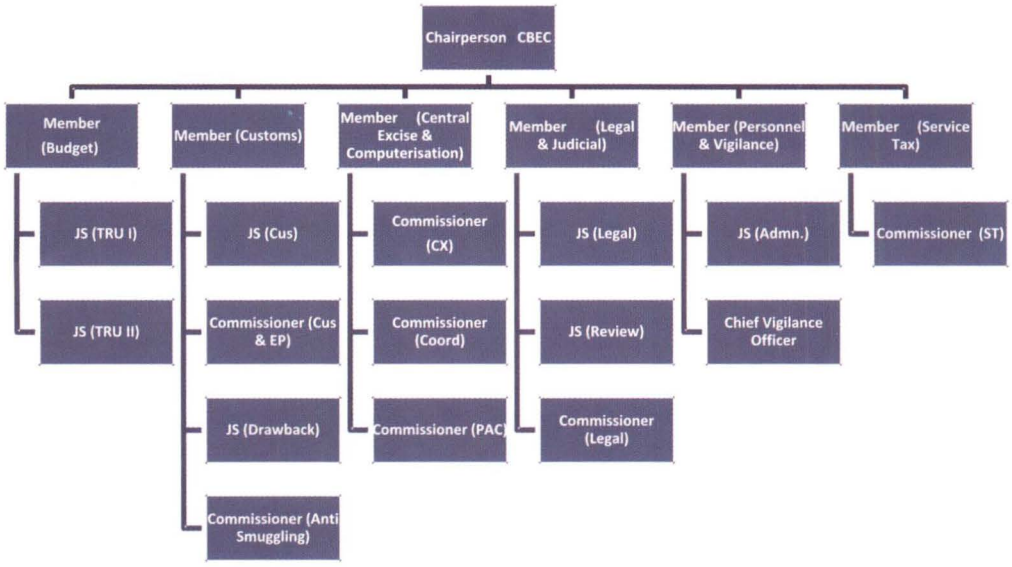
New Delhi
Dated: 21 March 2015

(SHASHI KANT SHARMA)
Comptroller and Auditor General of India

APPENDICES

Appendix I

Organisational Chart of Central Board of Excise and Customs



Appendix II

(Reference: Paragraph 6.1)

(₹ in Crore)

Sl. No.	DAP No.	Brief Subject	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
1.	1B	Non-payment of Service Tax	0.35	0.35	0.35	Jaipur I
2.	2B	Non-payment of Service Tax	0.12	0.12	0.12	Patna
3.	3B	Non-payment of Service Tax	0.12	0.12	0.12	Delhi ST
4.	5B	Non-payment of Service Tax	0.57	0.57	0.57	Hyderabad III
5.	6B	Non-payment of Service Tax	0.22	0.22		Visakhapatnam
6.	11B	Non-payment of Service Tax	0.45	0.45	0.45	Ahmedabad III
7.	13B	Non-payment of Service Tax	1.76	1.76	1.76	Raigad
8.	17B	Non-payment of Service Tax	27.25	27.25		Mumbai ST I
9.	19B	Non-payment of Service Tax	1.03	1.03	1.03	Trivandrum
10.	20B	Non-payment of Service Tax	0.16	0.16		Ahmedabad ST
11.	23B	Non-payment of Service Tax	0.93	0.93	0.93	Bengaluru ST
12.	24B	Non-payment of Service Tax	0.26	0.26		Rohtak
13.	27B	Non-payment of Service Tax	0.26	0.26		Trivandrum
14.	28B	Non-payment of Service Tax	0.56	0.56		Visakhapatnam
15.	29B	Non-payment of Service Tax	0.26	0.26		Hyderabad III
16.	34B	Non-payment of Service Tax	0.46	0.46		Hyderabad III
17.	37B	Non-payment of Service Tax	0.43	0.43		Patna
18.	39B	Non-payment of Service Tax	0.32	0.32		Guwahati
19.	41B	Non-payment of Service Tax	3.44	3.44		Chennai ST

Sl. No.	DAP No.	Brief Subject	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
20.	1A	Non-payment of Service Tax	0.11	0.11		Chennai III
21.	2A	Non-payment of Service Tax	0.14	0.14		Kanpur
22.	4A	Non-payment of Service Tax	0.48	0.48		Ahmedabad III
23.	5A	Non-payment of Service Tax	0.77	0.63		Kanpur
24.	7A	Non-payment of Service Tax	1.30	1.30		Hyderabad II
25.	8A	Non-payment of Service Tax	0.40	0.40		Hyderabad IV
26.	9A	Non-payment of Service Tax	0.18	0.18	0.18	Hyderabad IV
27.	16A	Non-payment of Service Tax	0.33	0.33		Mumbai ST I
28.	23A	Non-payment of Service Tax	0.43	0.43	0.43	Chennai ST
29.	28A	Non-payment of Service Tax	0.30	0.30	0.30	Bengaluru ST
30.	31A	Non-payment of Service Tax	0.10	0.10	0.10	Raipur
31.	32A	Non-payment of Service Tax	0.15	0.11		Delhi ST
32.	33A	Non-payment of Service Tax	0.13	0.13		Vadodara I
33.	35A	Non-payment of Service Tax	0.40	0.40	0.40	Hyderabad IV
34.	36A/2012-13	Non-payment of Service Tax	0.37	0.37	0.37	Mumbai ST I
35.	8B	Short payment of Service Tax	1.71	1.71	1.71	Hyderabad II
36.	9B	Short payment of Service Tax	0.11	0.11	0.11	Delhi III
37.	15B	Short payment of Service Tax	0.16	0.16	0.16	Mumbai ST II
38.	30B	Short payment of Service Tax	0.58	0.58	0.58	Hyderabad II
39.	35B	Short payment of Service Tax	0.46	0.46		Jamshedpur
40.	47B	Short payment of Service Tax	0.17	0.17	0.17	Jamshedpur

Sl. No.	DAP No.	Brief Subject	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
41.	48B	Short payment of Service Tax	2.37	2.37	2.08	Ghaziabad
42.	12A	Short payment of Service Tax	0.11	0.11		Patna
43.	13A	Short payment of Service Tax	0.25	0.25	0.25	Delhi ST
44.	17A	Short payment of Service Tax	5.32	5.32		Mumbai ST II
45.	22A	Short payment of Service Tax	0.20	0.20		Chennai ST
46.	24A	Irregular availing/utilisation of Cenvat credit	1.12	1.12		Salem
47.	4B	Irregular availing/utilisation of Cenvat credit	0.16	0.16	0.16	Delhi ST
48.	7B	Irregular availing/utilisation of Cenvat credit	0.09	0.09	0.09	Hyderabad II
49.	18B	Irregular availing/utilisation of Cenvat credit	0.34	0.34		Kolkata ST
50.	21B	Irregular availing/utilisation of Cenvat credit	13.34	13.34		Bhubaneshwar II
51.	26B	Irregular availing/utilisation of Cenvat credit	0.16	0.16	0.16	Delhi ST
52.	31B	Irregular availing/utilisation of Cenvat credit	5.10	5.10		Hyderabad IV
53.	32B	Irregular availing/utilisation of Cenvat credit	0.38	0.38	0.38	Hyderabad I
54.	33B	Irregular availing/utilisation of Cenvat credit	0.16	0.16	0.16	Delhi ST
55.	36B	Irregular availing/utilisation of Cenvat credit	3.67	3.67		Kanpur
56.	38B	Irregular availing/utilisation of Cenvat credit	1.66	1.66	1.66	Mumbai ST II
57.	43B	Irregular availing/utilisation of Cenvat credit	0.32	0.32		Ahmedabad ST
58.	44B	Irregular availing/utilisation of Cenvat credit	0.35	0.35	0.35	Mumbai II

Sl. No.	DAP No.	Brief Subject	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
59.	45B	Irregular availing/utilisation of Cenvat credit	5.72	5.72		Mumbai ST I
60.	6A	Irregular availing/utilisation of Cenvat credit	2.80	2.80		Calicut
61.	10A	Irregular availing/utilisation of Cenvat credit	0.10	0.10	0.10	Delhi ST
62.	11A	Irregular availing/utilisation of Cenvat credit	0.13	0.13	0.13	Delhi ST
63.	14A	Irregular availing/utilisation of Cenvat credit	1.09	1.09		Delhi ST
64.	19A	Irregular availing/utilisation of Cenvat credit	1.04	1.04	1.04	Mumbai ST I
65.	27A	Irregular availing/utilisation of Cenvat credit	0.27	0.27		Mangalore
66.	12B	Non-payment of Interest	2.27	2.27		Kolkata ST
67.	14B	Non-payment of Interest	0.73	0.73	0.73	Pune III
68.	25B	Non-payment of Interest	0.18	0.18	0.18	Chandigarh I
69.	40B	Non-payment of Interest	0.78	0.78		Kolkata ST
70.	42B	Non-payment of Interest	0.61	0.61	0.60	Calicut
71.	46B	Non-payment of Interest	0.11	0.11	0.11	Delhi ST
72.	16B	Incorrect availing of exemption	0.35	0.35	0.35	Goa
73.	22B	Incorrect availing of exemption	0.23	0.23		Mangalore
74.		Small money value observations which were accepted by the Department and rectificatory action taken but not converted into Draft Audit Paragraphs	8.97	8.97	7.89	
		Total	**108.21**	**108.03**	**26.26**	

Appendix III

(Reference: Paragraph 7.2)

(₹ in Crore)

Sl. No.	DAP No.	Brief Subject	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
1.	1D	Internal Audit Party did not detect the lapse	5.17	5.17	5.17	Cochin
2.	2D	Internal Audit Party did not detect the lapse	0.68	0.68		Rajkot
3.	4D	Internal Audit Party did not detect the lapse	0.14	0.14	0.14	Bengaluru ST
4.	5D	Internal Audit Party did not detect the lapse	0.12	0.12	0.12	Chennai ST
5.	6D	Internal Audit Party did not detect the lapse	0.11	0.11	0.11	Chennai III
6.	7D	Internal Audit Party did not detect the lapse	1.98	1.98		Salem
7.	8D	Internal Audit Party did not detect the lapse	0.17	0.17	0.17	Tiruchirapalli
8.	9D	Internal Audit Party did not detect the lapse	0.74	0.74	0.23	Bolpur
9.	12D	Internal Audit Party did not detect the lapse	18.99	18.99	18.99	Hyderabad IV
10.	13D	Internal Audit Party did not detect the lapse	17.96	17.96		Ahmedabad III
11.	14D	Internal Audit Party did not detect the lapse	0.18	0.18		Surat II
12.	15D	Internal Audit Party did not detect the lapse	0.21	0.21		Jamshedpur
13.	16D	Internal Audit Party did not detect the lapse	0.18	0.18		Patna
14.	17D	Internal Audit Party did not detect the lapse	0.14	0.14		Chennai ST
15.	24D	Internal Audit Party did not detect the lapse	4.03	4.03		Delhi ST

Sl. No.	DAP No.	Brief Subject	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
16.	25D	Internal Audit Party did not detect the lapse	9.54	9.54		Kolkata ST
17.	29D	Internal Audit Party did not detect the lapse	0.3	0.3	0.3	Bolpur
18.	32D	Internal Audit Party did not detect the lapse	0.19	0.19	0.19	Vapi
19.	33D	Internal Audit Party did not detect the lapse	0.66	0.66	0.66	Cochin
20.	35D	Internal Audit Party did not detect the lapse	2.02	2.02		Delhi ST
21.	50D	Internal Audit Party did not detect the lapse	2.39	2.09		Delhi ST
22.	54D	Internal Audit Party did not detect the lapse	0.1	0.1	0.1	Delhi ST
23.	55D	Internal Audit Party did not detect the lapse	0.37	0.37	0.37	Delhi ST
24.	60D	Internal Audit Party did not detect the lapse	0.29	0.29	0.29	Jaipur I
25.	61D	Internal Audit Party did not detect the lapse	0.12	0.12		Jaipur I
26.	63D	Internal Audit Party did not detect the lapse	13.63	13.63		Delhi ST
27.	64D	Internal Audit Party did not detect the lapse	0.15	0.15	0.15	Bengaluru ST
28.	67D	Internal Audit Party did not detect the lapse	1.14	1.14		Delhi ST
29.	69D	Internal Audit Party did not detect the lapse	0.18	0.18	0.18	Hyderabad II
30.	76D	Internal Audit Party did not detect the lapse	1.39	1.39	1.14	Kolkata ST
31.	77D	Internal Audit Party did not detect the lapse	0.12	0.12	0.12	Bolpur
32.	79D	Internal Audit Party did not detect the lapse	0.24	0.24		Kolkata ST

Sl. No.	DAP No.	Brief Subject	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
33.	80D	Internal Audit Party did not detect the lapse	18.07	18.07		Kolkata ST
34.	82D	Internal Audit Party did not detect the lapse	0.15	0.15	0.15	Chennai III
35.	84D	Internal Audit Party did not detect the lapse	0.13	0.13	0.13	Calicut
36.	89D	Internal Audit Party did not detect the lapse	0.56	0.45		Ahmedabad III
37.	93D	Internal Audit Party did not detect the lapse	0.21	0.21	0.21	Delhi ST
38.	95D	Internal Audit Party did not detect the lapse	0.83	0.83	0.39	Surat II
39.	10D	Internal Audit not conducted	1.85	1.85		Bolpur
40.	11D	Internal Audit not conducted	0.19	0.19	0.19	Kolkata ST
41.	20D	Internal Audit not conducted	9.43	9.43		Kolkata ST
42.	26D	Internal Audit not conducted	0.19	0.19	0.19	Jaipur I
43.	27D	Internal Audit not conducted	0.12	0.12	0.12	Bengaluru LTU
44.	34D	Internal Audit not conducted	0.56	0.56	0.56	Noida
45.	36D	Internal Audit not conducted	0.13	0.13	0.13	Delhi ST
46.	43D	Internal Audit not conducted	0.61	0.61		Kolkata ST
47.	44D	Internal Audit not conducted	0.43	0.43	0.1	Kolkata ST
48.	45D	Internal Audit not conducted	3.79	3.79		Kolkata ST
49.	47D	Internal Audit not conducted	0.16	0.16	0.16	Kolkata ST
50.	48D	Internal Audit not conducted	0.26	0.26		Kolkata ST
51.	49D	Internal Audit not conducted	0.61	0.61		Bhubaneswar I
52.	51D	Internal Audit not conducted	0.12	0.12	0.12	Delhi ST

Sl. No.	DAP No.	Brief Subject	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
53.	52D	Internal Audit not conducted	0.13	0.13	0.13	Delhi ST
54.	53D	Internal Audit not conducted	0.13	0.13	0.13	Delhi ST
55.	56D	Internal Audit not conducted	0.25	0.25	0.25	Delhi ST
56.	57D	Internal Audit not conducted	0.2	0.2	0.2	Delhi ST
57.	68D	Internal Audit not conducted	3.56	3.56		Delhi ST
58.	71D	Internal Audit not conducted	1.35	1.35		Delhi ST
59.	74D	Internal Audit not conducted	0.41	0.41	0.41	Mumbai ST I
60.	78D	Internal Audit not conducted	0.36	0.36		Kolkata ST
61.	81D	Internal Audit not conducted	0.48	0.48		Kolkata ST
62.	88D	Internal Audit not conducted	0.53	0.53	0.53	Bengaluru ST
63.	94D	Internal Audit not conducted	1.41	1.41	1.41	Delhi ST
64.	18D	Broadening of Service Tax Base	10.93	10.93		Chennai ST
65.	37D	Broadening of Service Tax Base	0.11	0.11	0.11	Hyderabad I
66.	38D	Broadening of Service Tax Base	0.1	0.1	0.1	Hyderabad I
67.	39D	Broadening of Service Tax Base	0.09	0.09	0.09	Hyderabad II
68.	41D	Broadening of Service Tax Base	0.76	0.76	0.21	Raigad
69.	23D	Failure of Preliminary Scrutiny of Return	1.26	1.26	1.26	Hyderabad II
70.	28D	Failure of Preliminary Scrutiny of Return	0.19	0.19	0.19	Kolhapur
71.	75D	Failure of Preliminary Scrutiny of Return	0.34	0.34	0.34	Mumbai ST I
72.	83D	Failure of Preliminary Scrutiny of Return	0.33	0.33	0.23	Chennai III
73.	90D	Failure of Preliminary Scrutiny of Return	0.1	0.1		Ahmedabad III

Sl. No.	DAP No.	Brief Subject	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
74.	19D	Incorrect payment of Service Tax	0.27	0.27	0.27	Hyderabad IV
75.	92D	Irregular closure of Anti-evasion case	0.11	0.11		Mumbai ST II
		Total	**145.43**	**145.02**	**36.74**	

Glossary

ACES	Automation of Central Excise and Service Tax
BE	Budget Estimate
Board	Central Board of Excise & Customs (CBEC)
CAAT	Computer Aided Audit Technique
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise & Customs
Cenvat	Central value added tax
CERA	Central Excise Receipt Audit
CESTAT	Customs, Excise and Service Tax Appellate Tribunal
CVD	Countervailing Duty
CX	Central Excise
DG	Director General
DGCEI	Director General of Central Excise (Intelligence)
DGST	Director General of Service Tax
DGICCE	Director General of Inspection Customs & Central Excise
DoR	Department of Revenue
EA	Excise Audit
FY	Financial Year
GDP	Gross Domestic Product
GTA	Goods Transport Agency
GIC	General Insurance Company
HDFC	Housing Development Finance Corporation
ICT	Information & Communication Technology
INTOSAI	International Organization of Supreme Audit Institutions
INTOSAI GOV	INTOSAI Guidance for Good Governance

IR	Inspection Report
IRDA	Insurance Regulatory and Development Authority
LTU	Large Taxpayer Unit
Ministry / Department	Ministry of Finance (Department of Revenue)
MIS	Management Information System
MTR	Monthly Technical Report
PAN	Permanent Account Number
PD	Principal Director
PLA	Personal Ledger Account
PSU	Public sector undertaking
R & C	Review and Correction
RA Bill	Running Account Bill
RE	Revised Estimate
SCN	Show Cause Notice
ST	Service Tax
TRU	Tax Research Unit
VAT	Value Added Tax
VCES	Voluntary Compliance Encouragement Scheme