MONTHLY AUDIT BULLETIN – FEBRUARY, 2013

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Customs & Central Excise
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New Delhi-110109
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CENTRAL EXCISE

(1) GIST OF THE OBJECTION : Irregular availment of CENVAT Credit on Catalogue DVD of Electronic Parts
COMMISSIONERATE : LTU, Chennai
CONTRAVENTION OF PROVISION : Section 4A of the Central Excise Act, 1944

The assessee procures DVDs from an overseas company. The goods have been imported through courier, classifying the goods under Tariff Item No.85234090 of the Central Excise Tariff Act, 1985 and paying customs duty, CVD, SAD etc. No retail sale price was declared to Customs and CVD has been paid normally (and not under Section 4A). The assessee has availed the credit of CVD paid on the imports. From the website of DVD provider from whom the said DVDs were procured it is seen that the DVD is for use by the dealers and service agents of Hyundai cars for procurement of correct parts for maintenance of the cars already sold by HMIL in India. It appears that the product is a software readable only with a Dongle and is basically a Catalogue of Electronic Parts of the OEM. This would enable the Service Station for VIN based identification of Vehicle coming for the Service and zero in on the part no. requiring replacement and order for the same from the genuine parts supplier. The said DVD provider from whom procurement was made also supports Hyundai Vehicles of India. Such DVD is updated every month. From the sales invoices, it appears that the DVDs imported by the assessee had been sold to the Service Stations of Hyundai Cars under MRP on payment of excise duty under Section 4A, classifying the same as “MV Parts” under CSH 87089900. On verification of the CENVAT Credit Register, it was noticed that the assessee has availed the credit of CVD paid on the imports. It appears from the product profile that the goods sold by the assessee under MRP are not MV Parts classifiable under 87089900 and the activity done is nothing but trading. Hence, the assessee is not entitled to any CENVAT Credit of duty paid on import of such goods. The CENVAT Credit availed on such imports works out to roughly Rs. 17 lakhs for the period from 2009-10 which needs to be reversed.

(2) GIST OF THE OBJECTION : Misuse of CENVAT Credit on ‘Molasses’ cleared from sister concern while exemption on molasses used in captive consumption had already been denied.
COMMISSIONERATE : LTU, Chennai
CONTRAVENTION OF PROVISION : Rule 6(3)(i) & Rule 14 of the CENVAT Credit Rules, 2004
Assessee is manufacturing Rectified Spirit (RS), Extra Natural Alcohol (ENA), Anhydrous Alcohol (AA) and Impure Spirit (IS) – all basically Ethyl Alcohol - from Molasses, received from their sister units in Pudukottai, Nellikuppam and Pugalur. After storage of these alcohols in storage tanks, the unit converts the products – RS, ENA, AA or IS – into Denatured Spirit (DNS) by adding certain chemicals as per the requirement of their customers. While Denatured Spirit (DNS) is excisable under CSH 22072000 the other goods RS, ENA, AA and IS are considered to be non-excisable since they do not find a place in the Central Excise Tariff after the eight digit amendment in 2005. On this reasoning, the exemption of duty under Notification no. 67/95 CE has been denied to Molasses captively used in the manufacture of Rectified Spirit. Two Show Cause Notices were issued by the Commissioner and the Orders-in-Original were passed confirming the demand of Rs. 1,53,49,065 & Rs. 4,10,75,868. Another SCN had been issued for a further period demanding Rs. 1,54,91,449 which is pending adjudication. The assessee has been availing CENVAT Credit of the duty paid on Molasses cleared from their sister units. At the time of clearance of Denatured Spirit (DNS) the assessee pays duty under CSH 22072000 and while clearing RS, ENA or AA they pay duty @ 5% of the value of these goods under Rule 6(3)(i) of CENVAT Credit Rules, 2004. These provisions are applicable only when the manufacturer avails CENVAT Credit in respect of any inputs and manufactures such final products which are chargeable to duty as well as exempted goods. In this case, since the goods manufactured by the assessee are non-excisable, the provisions of Rule 6(3)(i) of the CENVAT Credit Rules, 2004 do not apply. The non-availability of the provisions of Rule 6(3)(i) resulted in the situation that the assessee has wrongly taken CENVAT Credit on Molasses, which is used in the manufacture & clearance of RS etc and therefore, should be recovered under Rule 14 of the CENVAT Credit Rules, 2004.

(3) GIST OF THE OBJECTION: Misuse of CENVAT Credit as availment was prior to taxability of capital goods

COMMISSIONERATE: Central Excise Commissionerate, Haldia
CONTRAVENTION OF PROVISION: Rule 14 of the CENVAT Credit Rules, 2004

The assessee has availed of a large amount of CENVAT Credit on capital goods. Scrutiny of the CENVAT Credit register vis-a-vis the cenvat invoices reveal that the assessee had availed CENVAT Credit amounting to Rs.3,26,86,700.00(Cenvat), Rs.6,53,734.00(E. Cess) & Rs. 3,26,867.00(SHE Cess) on Coke Oven Plant against credit documents for the period from 2007 to Dec, 2010. The product ‘Coke’ had become dutiable with effect from March 2011, whereas the
Coke Oven Plant received by them and commissioned is well before “coke” became dutiable. During the material time when the said plant was procured and commissioned the final product i.e., coke attracted ‘NIL’ rate of duty. Thus, CENVAT Credit of Rs.3,26,86,700.00 (Cenvat), Rs.6,53,734.00(E. Cess) & Rs.3,26,867.00(SHE Cess) availed by the assessee is irregular and is required to be reversed/recovered along with appropriate interest.

(4) GIST OF THE OBJECTION : Short payment arising out of Undervaluation of GOLD Bars.
COMMISSIONERATE : Central Excise Commissionerate, Belgaum

The assessee is involved in the manufacturer of gold bars by way of processing the Gold Ore. They have been availing the benefit of notification No.5/2011, dated 01.03.2011 and discharging excise duty correctly up to 16.01.2012 on the total weight of the gold bars cleared (i.e. Rs.200/10 gms)

With effect from 16.01.2012, vide notification No.2/2012, dated 16.01.2012, duty on gold bars changed to 1.5% on the sale value. Again it was revised to 3% vide notification No.12/2012 dated 17.3.2012.

After the change of rate of duty i.e. to 1.5% on sale value, the assessee, instead of paying duty on the total weight of the gold bars started paying duty on the value of gold content (by weight) in the gold bar and on value of silver content (by weight) in the gold bars. Further, the assessee did not discharge duty on impurities content (by weight) in the gold bars.

Whereas, in the gold bars cleared by the assessee, gold predominates by weight over other metals and the assessee should have discharged duty on the total weight of the gold bars. Further, the assessee has been clearing gold bars under Central Excise Tariff heading 71081300 and no silver bars are manufactured or cleared.

The assessee undervalued and short paid duty of Rs.71,87,350/-.

(5) GIST OF THE OBJECTION: Non-payment of duty on the additional consideration received during 2010-11
COMMISSIONERATE : Central Excise Commissionerate, Hyderabad-I
CONTRAVENTION OF PROVISION: Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000

The assessee received an amount of Rs.67.99 lakhs towards expenses incurred for the construction of sheds/buildings during the year 2010-11. The said amount was received as an advance from their customers. However, the said amount did not find place under the head ‘current liabilities’ in the Balance Sheet. Therefore, the amount so received was an additional consideration in terms of Section 4 of the Central Excise Act 1944, read with Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The assessee paid the duty of Rs.7,00,257/- along with interest of Rs. 1.85 lakhs.

(6) GIST OF THE OBJECTION: Irregular availing of CENVAT Credit of Service Tax paid on bank charges for opening and retreat of Letter of Credit of goods sold on High Sea Sales basis

COMMISSIONERATE: Central Excise Commissionerate, Visakhapatnam I
CONTRAVENTION OF PROVISION: Rule 2(1) & 2(k) of the CENVAT Credit Rules, 2004

The assessee sold imported inputs, viz., Gurjan round logs and Eucalyptus logs on High Sea Sales Basis. They took credit of Service Tax of Rs. 87,201/- paid on input services, namely, bank charges for opening and retreat of Letter of Credit. These inputs never reached the factory of the assessee nor were they used in or in relation to the manufacture of final products and hence do not qualify as ‘inputs’ as defined in Rule 2(k) of the CENVAT Credit Rules, 2004. Consequently, the services relating to procurement of those goods also do not qualify as ‘input services’ as defined in Rule 2 (l) of the CENVAT Credit Rules, 2004. The credit so availed on the said bank charges is irregular and is liable to be recovered along with interest and penalty, as per Rule 14 ibid.

(7) GIST OF THE OBJECTION: Reduction of assessable value by way of payment of duty before the process of cutting and slitting

COMMISSIONERATE: Central Excise Commissionerate, Meerut-I.
CONTRAVENTION OF PROVISION: Section 11A of the Central Excise Act, 1944

The assessee has been clearing the goods i.e, Reams of Paper & Paper Board from the factory after payment of duty to the cutting centres after paying duty on reams/rolls. Thereafter, the
assessee was subjecting the goods i.e., Reams of Paper to further processes of cutting & slitting at these centres and clearing the sheets of paper to the buyers at the rate fixed by the management from time to time. Thus, the assessee had decreased the assessable value of the goods i.e., sheets cleared from these cutting centres to the buyers as the duty was paid by the unit on reams/rolls at the time of their clearance from the factory. The scrap generated in the process of cutting or slitting at these centres has also not been accounted for by the unit. The per metric ton rates of sheets are always higher than those of the reams or rolls of the same quality paper cleared from the factory. But the unit has adopted a modus-operandi of clearing the reams/rolls of paper to these cutting/slitting centres after paying duty on reams/rolls and selling the sheets from these centres or after transferring the same to their depots. The unit’s plea that cutting & slitting does not amount to manufacture does not hold good in these circumstances in as-much as the title of the goods i.e, reams/rolls and the processed goods i.e. sheets remained with the unit till the actual sale of sheets to the buyers. The duty, as discussed above, short paid was ascertained as Rs.1132678/-. The differential duty stands recoverable from the assessee.

GIST OF THE OBJECTION: Suppression of assessable value by not including Processing Charges.

COMMISSIONERATE: Central Excise Commissionerate, Lucknow
CONTRAVENTION OF PROVISION: Section 11A of the Central Excise Act, 1944

Under an agreement dated 01.06.10 with a company located in Hyderabad, the assessee received chemicals namely Monomethy Acetoacetamide (MMAAA) and Trimethy Phosphate (TMP) from two other units. These goods were consigned to assessee and accounted as sales by consignor. The agreement was to process and convert the received chemicals into Monocrotophos Technical with 71%-72% purity.

Assessee on arrival of inputs took credit of the goods and after manufacturing/processing dispatched the goods by issuing cenvatable invoice at another rate. At the time of dispatch of Monochrotophos 71%-72%, assessee also issued an invoice of Job Work incorporating processing charges and cost of materials involved on Job Work at their end. The transportation cost was borne in both the situations as per the agreement by the consignor. The cost of raw material was Rs. 130/- per Litre and that for raw material supplied by second unit was Rs. 138/- per Litre exclusive of Central Excise duty. Assessee dispatched Monochrotophos @ Rs. 193/- per Litre exclusive of duty and for processing charged Rs. 122/- per Kg., inclusive of material used in
processing/manufacturing, that is 193+122=315/-. The duty was paid on assessable value of Rs.193/- only i.e. no duty was paid on processing charges recovered.

The transaction between two parties was on principal to principal basis therefore the proper mechanism would be to charge central excise duty on the basis of Section 4 of the Central Excise Act, 1944. With that in view, it appears that during the year 2011-12 assessee cleared Monochrotophos 71%-72% suppressing value of Rs. 122 per Kg. on a quantity of 117805 Kg amounting to Rs.14,80,337.63/- excise duty.
SERVICE TAX

GIST OF OBJECTION: Non-payment of Service Tax on External Development Charges which is covered under taxable service namely “Preferential Location” or External/Internal development of complexes

COMMISSIONERATE: Central Excise Commissionerate, Jaipur-I

CONTRAVENTION OF PROVISION: Section 65(105)(zzzu) of the Finance Act, 1994

The assessee is engaged in providing Construction of Commercial or Industrial buildings and Civil structures, Construction of Residential Complexes and Preferential Location or External/Internal Development of Complexes.

The assessee received Rs.1,72,64,420/- from July 2010 to March, 2012 against External Development Charges (EDC). Since the charges in question were recovered for development of Complex, the EDC is covered under taxable service namely ‘Preferential Location or external/Internal development of complexes’ as defined under Section 65(105)(zzzu) of the Finance Act, 1994, which is reproduced as below:

"taxable service" means any service provided or to be provided to a buyer, by a builder of a residential complex, or a commercial complex, or any other person authorized by such builder, for providing preferential location or development of such complex but does not include services covered under sub-clauses (zzg),(zzq),(zzzh) and in relation to parking place.

Explanation.-For the purposes of this sub-clause, "preferential location" means any location having extra advantage which attracts extra payment over and above the basic sale price.

Hence, the assessee is liable to pay Service Tax in terms of Rule 6 of Service Tax Rules, 1994 read with Section 68 of Finance Act, 1994, but the assessee failed to discharge Service Tax liability towards External Development Charges received /charged by them.

Further, the amount received /charged against provision of exempted service has also to be disclosed in ST-3 return. However, the assessee suppressed the fact regarding receipt/charging of EDC by not disclosing the same in ST-3 returns filed by them.

Therefore, Service Tax amounting to Rs. 17,78,235/- payable on the above services is recoverable from the assessee along with interest.
GIST OF THE OBJECTION: Non-payment of Service Tax on Import of Services

COMMISSIONERATE: Service Tax Commissionerate, Ahmedabad

CONTRAVENTION OF PROVISION: Rule 66A of the Finance Act, 1994 and Taxation of Services (provided from outside India and received in India) Rules, 2006 read with Rule 2(1)(d)(iv) of the Service Tax Rules, 1994

The service provider is registered with the department for the Port Services. The assessee had paid/incurred expenditure in foreign currency on account of services received from outside India for the year 2008-09 to 2011-12. As per Rule 66A of Finance Act 1994 and Taxation of Services (provided from outside India and received in India) Rules, 2006 read with Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 in relation to any taxable service provided or to be provided by any person from a country other than India and received by any person in India, the recipient of such service is liable to pay Service Tax as recipient. The assessee was required to pay Service Tax liability on Trainee Fee, Sky Wave Terminal Activation, Credit Card facility, Premium on Loans, reimbursement of FAT visits, paid in foreign currency towards service received from abroad. On being pointed out service provider has paid Service Tax along with interest amounting to Rs.52,55,460.

GIST OF THE OBJECTION: Non-payment of Service Tax on Income under “other charges” received from Airport Authority of India presuming them to be “Government Levies”

COMMISSIONERATE: Central Excise Commissionerate, Cochin

CONTRAVENTION OF PROVISION: Rule 6(2)(v) of the Service Tax (Determination of Value) Rules, 2006; Notification No.26/2010-S.T., dated 22.06.2010

The assessee is paying Service Tax on Air Transport of passenger service in respect of passengers embarking in India for domestic or international journey and paying Service Tax in terms of notification No.26/2010-S.T., dated 22.06.2010 in respect of passengers travelling in economy class for international journey and for passengers travelling in any class within India. This Notification does not apply in the case of passengers embarking in India for an international journey by aircraft in a class other than economy class. In such cases the assessee is liable to pay Service Tax on the gross amount received excluding the taxes levied by any Government on any passenger travelling by air as provided in Rule 6(2)(v) of Service Tax (Determination of Value) Rules, 2006.

The assessee has been receiving charges under various abbreviated heads, depending on the
destination of the passengers. These charges includes “Passenger Service Charge”, User Development Fee(Airport), Aviation levy, International safety & Security charges etc. in addition to YQ(fuel surcharge) & YR(insurance charges). These charges except YQ & YR, as above are not being included in the value of taxable services in respect of those passengers embarking in India for an International journey by aircraft in a class other than economy class. The assessee seems to have taken a stand that since these amounts are collected purely as agents of the airport authorities and do not constitute an income, these amounts are not to be considered in the determination of taxable value of service.

Since charges collected and paid to Airport Authorities cannot be construed as taxes levied by any Government, these charges are liable to be included in the value of taxable service, by virtue of the provisions of Rule 5(1) of the Service Tax (Determination of Value) Rules 2006. Moreover, these amounts cannot be excluded from the value of taxable service under Rule 5(2) of the said Rules since all the conditions mentioned therein are not satisfied. In this case the clarificatory letter F.No.341/52/2006-TRU dt.18.09.2007 confirms that YQ and YR charges are integral part of the consideration received for the services provided and form part of taxable value, and this does not imply that the amounts collected under various other heads do not form part of taxable value, it is to be noted that this letter further clarifies that ‘vivisecting may not be of any relevance as long as the amount is in the nature of consideration paid for the services paid.

During the financial year2011-12, the assessee had received taxable income under various heads amounts to Rs.4,82,73,314/- and the taxable income comes to Rs.4,37,65,471/- on which the Service Tax payable including cesstotaling to Rs.45,07,843/-. The assessee are liable to pay appropriate interest and penalty on the same.

(12) GIST OF THE OBJECTION: Non-payment of Service Tax under the Works Contract service on construction of Residential Complexes provided to Military Engineer Services

COMMISSIONERATE: Central Excise Commissionerate, Visakhapatnam I
CONTRAVENTION OF PROVISION: Rule 2 A of the Service Tax (Determination of value )Rules, 2006; the Works Contract (Composition Scheme) Rules, 2007; Section 67 of the Finance Act,1994

The assessee undertook the following works for Indian Navy through the Military Engineering Services:
1) Construction of accommodation for 120 Junior sailors in-living complex at INS Dega, Visakhapatnam
2) Provision of In-living accommodation for 120 Junior Sailors and DSC Personnel at INS Dega, Visakhapatnam and

3) Construction of one block of married accommodation for Type-V quarters in three storied construction at Armament Estate Pashan, Pune. The assessee received the taxable value of Rs. 615.70 crores during the period from 2009-10 to 2011-12 but did not pay Service Tax of Rs. 63.42 lakhs payable thereon. The audit studied the contracts and observed that the construction services provided by the contractor to the Navy through the execution agency called the MES, fall under the definition of ‘residential complex’ and do not qualify for exclusion given therein, as the following conditions, laid down for the purpose, were not satisfied: a) The person owning the complex does not engage a service provider for the construction activity but does the same by himself, and b) the complex intended for personal use. As the premises are for the intended use of naval personnel and the work of construction was entrusted to the contractor through the agency called MES, the above conditions were not satisfied. In terms of the CBEC’s circulars No. 96/7/207-ST, dated 23.08.2007 and No. 108/2/2009-ST dated, 29.01.2009, the audit observed that MES is the builder, the assessee is contractor and Navy is the owner of the residential complex meant for their own personnel and hence, the contractor- assessee is liable to pay Service Tax on the gross amounts received for the services rendered. The argument put forth by the MES that Service Tax is not applicable for contracts as they are government contracts for buildings and not for commercial use was not acceptable. Government contracts having no commercial nature has no relevance as the present services are classifiable under “Works Contract Service”, more specifically regarding construction of residential complex which does not have a bearing on the commercial or non-commercial usage of the building. The audit pointed out that since the assessee did not either declare the details required for determination of taxable value under Rule 2 A of Service Tax (Determination of value )Rules, 2006 nor opted to pay Service Tax in accordance with the Works Contract (Composition Scheme) Rules, 2007, the gross amount received by the assessee is taken as taxable value under Section 67 of the Finance Act,1994 and the assessee has to pay Service Tax of Rs. 63.42 lakhs.

(13) GIST OF THE OBJECTION: Non payment of Service Tax on ‘Erection & Commissioning’ Service

COMMISSIONERATE: Central Excise Commissionerate, Nasik
The Assessee is engaged in the manufacturing of excisable goods viz. Industrial Robots falling under Chapter heading No. 84795000.

During the course of audit and on scrutiny of the Balance Sheet. The assessee has provided the Services of ‘Errection & Commissioning’ of the finished goods for which they have raised separate bills for providing of such services to their customers. The assessee is also registered with Service Tax for above services and has also paid the Service Tax on the amount received against the services provided. However they have not paid the Service Tax on the bills raised against the services rendered but not yet realized. Prior to the Union Budget 2011-12, the Service Tax was payable on the amount actually received for providing the services. In the Finance Budget 2011-12, Rule-6 of the Service Tax Rules, 1994 has been amended vide notification No.3/2011- S.T., dated 01.03.2011 wherein the taxation has been changed from realization basis to the Services provided/bills raised. The assessee is therefore required to pay the Service Tax in the succeeding month to which bills for providing the services have been raised. The assessee was explained the relevant provisions and requested to pay the Service Tax. The assessee agreed to audit objection and paid the Service Tax amounting to Rs.9.12 Lakhs alongwith interest.

GIST OF THE OBJECTION : Wrong utilisation of CENVAT Credit from the duty paid as a result of excess availing in the previous years

COMMISSIONERATE : Central Excise Commissionerate, Raigad
CONTRAVENTION OF PROVISION : Rule 6 (2) & 6(3)(c) of the CENVAT Credit Rules, 2004

During the month of February, 2012, the assessee had availed credit of an amount of Rs. 36,83,632/-, which the assessee informed was in pursuance to O-in-O no. Raigad/ADC/146/11-12 dated 20.12.11 passed by for Additional Commissioner, Raigad Comm’te, they have paid an amount of Rs. 36,83,632/- confirmed by the said order and they have taken credit of excess credit utilized for payment of Service Tax during the financial year 2005-06, 2006-07 & 2007-08.

On examination of the impugned O-I-O, it was seen that the case was booked against the assessee by the Directorate General of Central Excise Intelligence (DGCEI) and Show cause notice was issued alleging that the assessee had been engaged in provision of exempted as well as
taxable services and had not maintained separate account of input and input services as mandated in terms of Rule 6 (2) of the CENVAT Credit Rules, 2004. Thus, according to provisions of Rule 6 (3)(c) ibid, the assessee was required to utilize the credit to the extent of an amount not exceeding twenty percent of the amount of Service Tax payable on taxable output service. However, the assessee failed to adhere to the provisions of said sub-rule and hence the demand of Rs. 36,83,632/- of Service Tax was made on the assessee. In pursuance to the said SCN, the Additional Commissioner had confirmed the demand on the assessee and the assessee had paid the said entire amount of Service Tax vide e-challan dated 18.02.12. It was contended by the assessee that since they have paid the entire amount of Service Tax arising out of the said O-I-O they are entitled to restore the credit of Rs. 36,83,632/- paid through CENVAT Credit account in excess of twenty percent and they have paid the tax twice and had taken credit of the said amount on 18.02.2012 suomoto, without intimating the concerned Service Tax authorities. Moreover, such credit raised in the CENVAT Credit account is also not under any valid document as prescribed under Rule 9 of the CENVAT Credit Rules, 2004.

In case of *CST Vs. Hind Lamps* – (2008) 17 VST 250 (SC), the Hon’ble Supreme Court held that if excess tax is paid, the assessee cannot adjust excess tax paid against subsequent payment of tax. In case of *BDH Industries Ltd. Vs. CCE* – 2008 (229) ELT 364 (Tri) and *Shyam Forging Vs. CCE* – 2009 (240) ELT 385, it was also held that assessee cannot take suomoto credit in Cenvat or refund in PLA without the sanction from the proper officer. In light of the above fact, the assessee is not entitled to such suomoto credit and the CENVAT Credit is liable to be reversed alongwith applicable interest. (Revenue Implication: Rs. 3683632/-)

(15) **GIST OF THE OBJECTION:** **Non inclusion of TDS amount deducted from the Taxable value of services rendered to Overseas client**

**COMMISSIONERATE:** Service Tax Commissionerate, Chennai  
**CONTRAVENION OF PROVISION:** Rule 2(1)(d)(iv) of the Service Tax Rules, 1994

The assessee has received service and paid commission to an overseas client at Singapore. However while paying Service Tax on the import of services on reverse charge basis the assessee had deducted the TDS amount from the taxable value to the extent of Rs. 86,61,500/-. On pointing out the assessee agreed and paid the Service Tax amount of Rs.8,92,135/- and the interest amount of Rs.4,21,259/- totalling Rs.13,13,393/-.
(16)  **GIST OF THE OBJECTION:** Non payment of Service Tax on income from services provided to Borrowers/lenders in CBLO

**COMMISSIONERATE:** Service Tax – I Commissionerate, Mumbai

**CONTRAVENTION OF PROVISION:** Notification No.29/2004-ST, dated 22/9/2004

The assessee has earned an income by participating in CBLO market related activity. In this case the lending and borrowing is done through CCIL which acts as intermediary. The intermediary gets guarantee from the borrower through deposited securities and provides guarantee of payment to the lender. Therefore, this instrument is not a direct loan arrangement between two parties. It is relevant to mention that the discount on account of discounting of bills is a similar kind of transaction and was specifically exempted vide notification No.29/2004-ST, dated 22/9/2004. Thus the discount received on CBLO is liable to Service Tax unless specifically exempted. CBLO discount is nothing but an income and not interest on loan as defended by the assessee.

The Board has issued instructions in respect of CBLO under F.No.238/05/2011-CX-7 that CBLO discount is nothing but interest. Amount Involved - Rs.128,85,300/-.

(17)  **GIST OF THE OBJECTION:** Short payment of Service Tax arising out of Simultaneous Availment of two abatements

**COMMISSIONERATE:** Service Tax Commissionerate, Kolkata

**CONTRAVENTION OF PROVISION:** Section 65(105) zzd of the Finance Act, 1994; notification No. 29/2004 - ST, dated 22/9/2004; notification No.1/2006 - ST, dated 01.3.2006

The assessee is a provider of Erection, Commissioning or Installation Service and paid Service Tax in respect of non-civil works under Erection, Commissioning or Installation Service (hereinafter referred as the ECIS) as defined under Section 65(105) zzd of the Finance Act, 1994 at full rate on the gross amount charged and thereby availing the benefit of notification No.12/2003-ST, dated 20.6.2003. Accordingly, the assessee availed CENVAT Credit on input services only. It is further noticed that the assessee paid Service Tax and 33% of the value (i.e. on abated value) of civil works in terms of notification No.1/2006-ST, dated 01.3.2006 that was performed during the course of the said ECIS as a composite package. In view of explanation contained in CBEC’s Circular No.80/10/2004-ST, dated 17.09.2004 (F.No. 241/01/2004-Cx-4) the aforesaid civil works fall under the category of the said ECIS as the civil works were performed under composite
package. Therefore, the assessee availed benefits under both the said notifications for providing same service i.e., ECIS which is irregular as they failed to comply the conditions let down in notification No.1/2006-ST ibid by virtue of which they availed abatement in respect of civil works. In view of the above, the benefit of abatement of value in respect of civil works is incorrect and Service Tax on civil works were required to be paid at full rate on the gross amount charged on non-civil works in terms of Section 67 of the Finance Act, 1994 read with the said CBEC Circular. In view of short-payment of Service Tax amounting to Rs.1,42,20,648/- (Rupees one crore forty two lakhs twenty thousand six hundred and forty eight only) during the period 2005-06 to 2009-10 the assessee is required to pay Service Tax along with appropriate interest and penalty.

The assessee have paid the above said entire amount along with interest of Rs.51,68,846/-.  

(18) **GIST OF THE OBJECTION:** Non payment of Service Tax on ‘Construction Services’ pertaining to land lord’s share  
**COMMISSIONERATE:** Central Excise Commissionerate, Patna  
**CONTRAVENTION OF PROVISION:** Circular No.151/2/2012-ST, dated 10.02.2012; Circular No.108/02/2009-ST dated 29.01.2009

The assessee is a provider of taxable services on construction services and receives a consideration for the construction service provided by him, from the service receivers: i.e. landowner in the form of land/development rights. In this connection, CBEC vide circular No.151/2/2012-ST, dated 10.02.2012 clarified the taxability of construction services in the light of above business model in the following manner:

(i) For the period prior to 01/07/2010: construction service provided by the builder/developer will not be taxable, in terms of Board’s Circular No.108/02/2009-ST dated 29.01.2009.

(ii) For the period after 01/07/2010, construction service provided by the builder/developer is taxable in case any part of the payment/development rights of the land was received by the builder/ developer before the issuance of completion certificate and the Service Tax would be required to be paid by builder/developers even for the flats given to the land owner.

The assessee did not pay Service Tax on flats/houses agreed to be given by builder/developer to the land owner towards the land /development rights after 01.07.2010. It thus
follows that there is non-payment of Service Tax for the above taxable service which is required to be paid by the assessee. The Service Tax liability upon the assessee comes to Rs.34,74,385/- along with interest and penalty. Out of which the assessee paid Rs.1,76,107.00. The rest amount is to be recovered.

(19) **GIST OF THE OBJECTION:** Non inclusion of cost of items used in assessable value while rendering service

**COMMISSIONERATE:** Central Excise Commissionerate, Meerut  
**CONTRAVENTION OF PROVISION:** Section 68 of the Finance Act, 1994; Circular No.96/07/2007-ST, dated 23.08.07

The assessee is undertaking repairs & maintenance of electrical transformers. During the course of repair & maintenance of the transformers of the customers certain manufactured & other items i.e. leg coils, oils etc. were being used but the assessee was paying Service Tax only on the labour charges shown in the invoices and not paying Service Tax on the value of other items used in it. As per master Circular No.96/07/2007-ST, dated 23.08.07 the assessee was required to pay Service Tax on the gross amount charged in the invoices issued by them. The cost of material utilized while providing service was ascertained and it was observed that assessee had short paid Service Tax of Rs. 74.96 lac on this account. The Service Tax short paid stands recoverable from the assessee alongwith interest.

(20) **GIST OF THE OBJECTION:** Avoidance of payment of Service Tax by State Transport Corporation by way of not obtaining registration for services rendered under BAS

**COMMISSIONERATE:** Central Excise Commissionerate, Lucknow  
**CONTRAVENTION OF PROVISION:** Section 68 & 69 of the Finance Act, 1994

A State Roadways Transport Corporation, had been receiving income as parking fees on account of fees realized from the buses of other depots using their space. The assessee is also having income from Road Side Dhabas for promoting dhaba’s business by parking their on route buses at these dhabas. They were also showing income from Parking fees from buses of other depos, dhaba and receiving for promoting business of selected road side dhabas, sale of MST forms, renting of space/advertisement/BTS Towers. All these services fall under Business Auxiliary Services.
However, the State Roadways transport corporation was not registered for such services which are taxable under BAS. The assessee is liable to pay the tax involved along with interest and penalty. Total amount of Rs.37.99 lacs along with interest and penalty stands recoverable from the assessee on this account.
OSPCA AUDIT

(21) GIST OF THE OBJECTION: Non-Payment of customs duty on raw material scrapped by incorrectly availing benefit of exemption notification No.52/2003-Cus, dated 31.03.2003

COMMISSIONERATE: Central Excise Commissionerate, Bangalore-II
CONTRAVENTION OF PROVISION: notification No.52/2003-Cus. dated 31.03.2003

The assessee was importing semi-finished lenses without payment of duty under exemption notification No.52/2003-Cus, dated 31.03.2003 for manufacture of customized lenses. The semi-finished lenses are taken up for various process i.e. customization as required by the customer and in some instances the customers have cancelled the orders and on receipt of order cancellation message, the assessee pulls out the lenses from further production. The partially processed lenses are put back in the store and are eventually scrapped. The said lenses would have undergone various manufacturing processes such as surfacing, tinting, hard coating and multi coating. The assessee has recovered the cost of the semi-finished lenses plus the value addition in respect of cancelled orders from the customers.

In the instant case the assessee has not used the imported semi-finished lenses for the purpose for which they are intended but has scrapped the same due to cancellation of orders from customers. Thus the condition set out in the exemption notification has not been fulfilled and assessee has violated the terms of the said notification. Therefore, the assessee is not eligible for duty free import of the scrapped quantity of semi finished lenses. Furthermore, the assessee has also recovered the cost of semi-finished lenses plus value addition from the customer in respect of such cancelled orders through debit notes. The assessee is liable to pay the import duty on the quantity of goods intentionally scrapped due to cancellation of orders. The duty foregone works out to Rs.10,26,562/- for the period June,2009 to March,2012 and the same is recoverable with applicable interest.