

Press release

**CAG Report on Indirect Taxes –Service Tax for the year ended
March 2017 presented in Parliament**

**Audit reveals certain inadequacies in the extant provisions as well
as systemic deficiencies relating to the levy and collection of
service tax on Entertainment Sector**

Report of the Comptroller and Auditor General of India on Indirect Taxes –Service Tax (No.31 of 2017) for the year ended March 2017 was presented in Parliament today. The Report contains a performance audit on issues relating to “Levy and collection of Service Tax on Entertainment Sector”.

The Performance Audit on levy and collection of Service Tax on Entertainment Sector was conducted to seek an assurance that adequacy of the rules, regulations, notifications, circulars / instructions / trade notices etc., issued from time to time in relation to levy, collection and assessment of service tax relating to entertainment sector and compliance with the same, the efficiency and effectiveness of departmental administration in implementing and ensuring compliance with the Rules and regulation as laid down in the Finance Act, Service Tax Rules and other related Rules and the extent to which the service providers liable to pay service tax, relating to the subject under study, are included / excluded from tax net. The Performance Audit was conducted in 17 selected Commissionerates, including one Division and range in each commissionerate and examination of records relating to 307 assessees.

The audit revealed certain inadequacies in the extant provisions as well as systemic deficiencies relating to the levy and collection of service tax on Entertainment Sector, the summary of which is given below:-

- a. Taxable commercial activities escaped taxation due to clubbing of theatrical rights that are exempted with taxable non-theatrical rights / other activities by way of an agreement treating the entire consideration only towards theatrical rights.
- b. Copyrights transferred with limitations were treated as transferred in perpetuity resulting the escapement of revenue.
- c. There were instances of artists / producers entering into agreements with foreign entities to establish a service recipient(s) and place of provision in the non-taxable territory and thereby consideration for the portion of service provided outside India was treated as exports.

- d. Wrong availment of Cenvat credit of ₹ 14.71 crore under sponsorship services.
- e. Cross verification of Service Tax Data obtained from the department with other databases like Income Tax, Ministry of Corporate Affairs (MCA), etc. revealed cases of non-registration of assessees engaged in taxable services, which included assessees providing taxable services exceeding ₹ 10 lakh (the threshold limit for service Tax) and also cases of under reporting of income under Service Tax.
- f. There were instances of shortcomings in monitoring of filing of returns, Efficacy of scrutiny of returns, deficiencies in the internal audit systems and problems in the process of show cause notices and adjudication.
- g. There were 156 cases of non-compliance to prescribed rules / provisions resulting in non / short payment of service tax / interest / Swachh Bharat Cess, incorrect / excess availing of cenvat credit and incorrect claim of benefits of export of services involving revenue of ₹ 48.13 crore.
 - One observation of non-compliance pertains to the cost of services used by the actors relating to travel, lodging and boarding, make-up artists, hair stylist etc. which are arranged by the producers as part of the agreement, not being included in the consideration of the artist for service tax purpose.

Summary of Recommendations

1. Since the assessees are exploiting the ambiguity in the terms 'theatrical' and 'non-theatrical' while drafting of agreements for transfer of rights, there is a need to bring legislative clarity for these terms.
2. Place of Provision of Services Rules need to be directly linked to service specific issues to avoid undue benefit of the interpretations and to safeguard the intent of legislation in giving export benefits.
3. Existing ambiguity in the available provisions for Cenvat Credit under Sponsorship Services in the entertainment sector needs to be clarified through relevant amendment to the Rules.
4. The department needs to activate the special cell and evolve a system of using the third party data as well as details from the records of filers to identify potential non-registrants as well as defaulters.
5. The Board may consider automation of the process of identifying and issuing notices for levy of penalty/late fee on non/belated filing of returns.

6. The Board needs to strengthen its Tax 360 programme to ensure that data already available is utilised optimally and also should identify sector specific data sets and correlate the same in Tax 360 programme.
7. The Board should consider revising the system through which automated check lists for preliminary scrutiny in ACES are drawn.

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