Chapter VI: Effectiveness of Tax administration and Internal Controls (Central Excise and Service Tax)

6.1 Audit of Central Excise and Service Tax

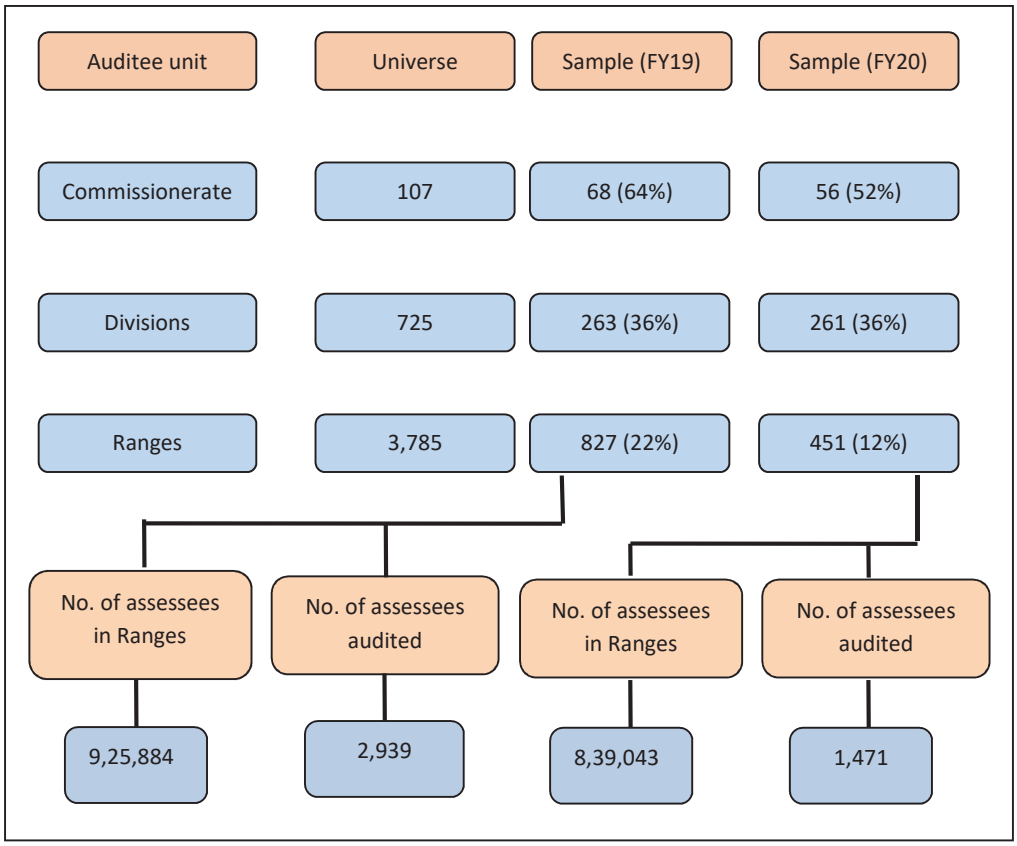
This chapter includes audit findings related to legacy indirect taxes viz. Central Excise and Service Tax. Indian Central Excise and Service Tax administration was a self-assessment system in which the tax payers prepared their own tax returns and submitted them to the Department. This system was guided by the fiscal laws including the Central Excise Act, 1944 and Finance Act, 1994. The tax Department scrutinized the returns by way of preliminary scrutiny and detailed scrutiny, and carried out internal audit to ensure the correctness of the tax so deposited by the tax payer.

We examined the records related to the returns submitted by the assessees along with the records of various field formations and functional wings of the Board.

6.2 Audit Sample

The Ranges are the departmental units where the assessees are registered and submit returns. Ranges are, therefore, responsible for verification of the registrations, scrutiny of returns, monitoring of revenue collection etc. Divisions and Commissionerates are the monitoring units supervising the functions of Ranges and Divisions, respectively. During FY19 and FY20, in order to examine the efficacy of the system and procedures put in place for administration of revenue collection in respect of Central Excise and Service Tax, we selected sample units of Commissionerates, Divisions and Ranges as depicted below:

Chart 6.1: Audit Universe and Sample



During FY19, in 827 selected Ranges, we selected records of 2,939 assessees for detailed examination with respect to assessment and payment of Central Excise duty and Service Tax. During FY20, in 451 selected Ranges, we selected records of 1,471 assessees for detailed examination. Audit was conducted by our nine field offices headed by Directors General (DsG)/Principal Directors (PDs) of Audit, as per Regulations on Audit and Accounts (Amendments) 2020, and in conformity with the Auditing Standards, issued by the Comptroller and Auditor General of India.

6.3 Overview of audit observations

Out of total 4,410 assessees, records of which were audited during FY19 and FY20, we noticed non-compliance of tax laws and rules in respect of 1,562 assessees (35.42 *per cent*). We raised 2,712 audit observations having monetary impact of ₹ 1,036.35 crore. In 494 observations, having monetary impact of ₹ 1,011.77 crore, money value was ₹ 10 lakh or more in each case.

Out of 2,712 audit observations, Department furnished replies in respect of 1,669 observations (61.54 *per cent*) of which 1,141 observations (68.36 *per cent*) were admitted by the Department. In 841 observations (50.39 *per cent*), action was taken by the Department by way of issuing of SCNs or recovering the amount.

Out of 4,410 assessees, records of which were examined by us, 1,244 assessees had already been audited by Internal Audit wing of the Department. We observed that Internal Audit had failed to detect lapses in 1,104 instances pertaining to 594 assessees (47.75 *per cent*), having monetary impact of ₹ 420.39 crore.

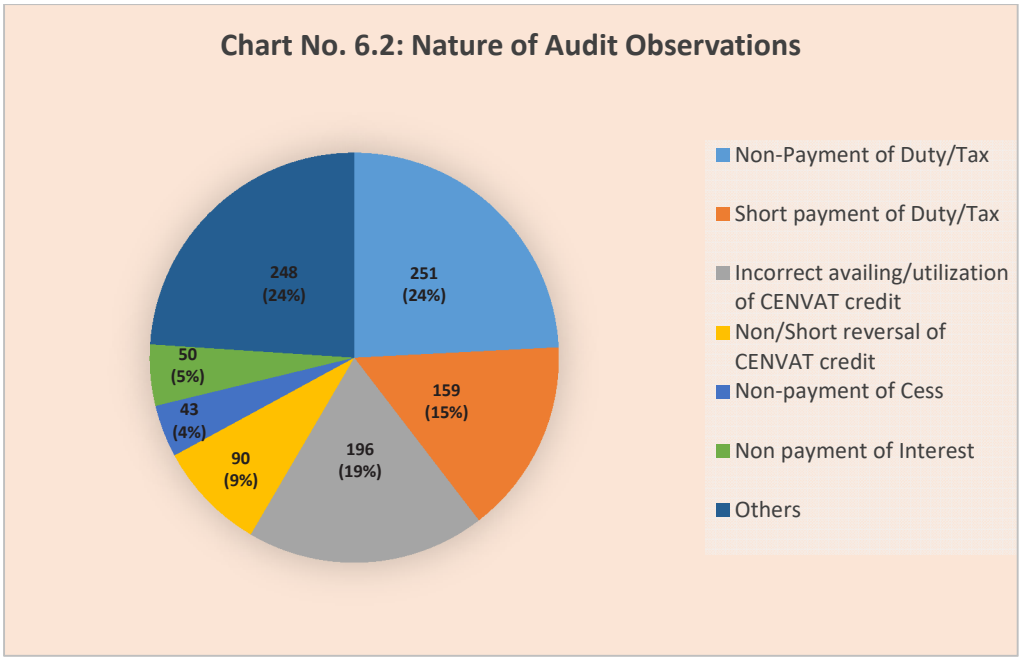
Out of the remaining 3,166 assessees, which were not subject to Internal Audit, we noticed 1,608 observations pertaining to 968 assessees (30.57 *per cent*), having monetary impact of ₹ 615.96 crore.

Issue wise summary of audit observations is tabulated below:

Table No. 6.1: Audit Observations detected during FY19 and FY20

Category of observations	Sub-category of observations	Total No. of observations	Amount (in crore)	No. of observations having monetary impact of ₹ 10 lakh or more	Amount (in ₹ crore)
Non-Payment of Duty/Tax	Incorrect exemption	49	57.01	16	56.39
	Reverse Charge Mechanism	155	15.43	23	14.08
	Others	401	178.22	86	173.72
Short payment of Duty/Tax	Incorrect assessable value	65	73.39	23	72.72
	Reverse Charge Mechanism	96	12.64	17	11.71
	Incorrect exemption	25	6.98	12	6.54
	Related party transaction	11	3.86	2	3.81
	Others	321	62.63	72	58.79
Incorrect availing/utilization of CENVAT credit		499	195.54	101	190.10
Non/Short reversal of CENVAT credit	Non-maintaining of separate accounts for dutiable and exempted goods	60	54.19	20	53.23
	Others	81	35.35	13	34.73
Non-payment of Cess		57	42.82	10	42.52
Non-payment of Interest		236	49.99	42	48.14
Others		656	248.30	57	245.29
	Total	**2,712**	**1,036.35**	**494**	**1,011.77**

The nature of audit observations and their proportion in terms of monetary value is depicted in chart 6.2



During FY19 and FY20, non/short payment of tax accounted for 39 *per cent* of the total monetary value of audit objections. Incorrect availing/utilization and non/short reversal of CENVAT credit accounted for 28 *per cent* of the total monetary value of the audit objections.

We issued 146 significant[95] observations having monetary impact of ₹ 472.30 crore to Ministry for comments, as detailed in Table 6.2. The details of observations are given in **Appendix-VIII**.

Table No.6.2: Significant observations issued to the Ministry

Duty/Tax	Observations issued		Observations accepted		Amount recovered	
	No.	Amount (₹ in crore)	No.	Amount (₹ in crore)	No.	Amount (₹ in crore)
Central Excise	42	93.80	23	15.17	9	6.74
Service Tax	104	378.50	66	280.61	50	19.01
Total	**146**	**472.30**	**89**	**295.78**	**59**	**25.75**

The Ministry admitted 76 observations having monetary impact of ₹ 288.45 crore. Out of these 76 observations, in 74 cases, the Ministry had initiated/completed rectificatory action by way of issuing/confirmation of SCNs or recovery of amount. In two cases, rectificatory action is yet to be initiated. In 13 observations having monitory impact of ₹ 7.33 crore, Ministry admitted revenue implication but did not admit departmental lapse. The Ministry did not admit 10 observations having monitory impact of ₹ 8.82 crore. In 47 observations having monitory impact of ₹ 167.70 crore, reply from the Ministry was awaited (December 2020).

[95] The observations issued to the Ministry involved systemic issues or high monetary value.

Some of the audit observations are discussed in the subsequent paragraphs-

6.4 Lapses of assessees that remained undetected despite Internal Audit by the Department

Internal Audit helps to measure the level of compliance by the assessees in light of the provisions of the Central Excise and Service Tax laws, and rules made thereunder. The Board had issued detailed procedure of Internal Audit in the form of Central Excise and Service Tax Audit Manual, 2015 (CESTAM, 2015).

After restructuring of the Department in October 2014, the auditable units have been re-organized into three categories i.e. large, medium and small units based on centralized risk assessment carried out by Director General (Audit). The manpower available with the Audit Commissionerate is allocated in the ratio 40:25:15 among large, medium and small units, respectively, and remaining 20 *per cent* manpower is utilized for planning, coordination and follow up.

As pointed out in para 6.3, out of 4,410 assessees, records of which were examined by us, 1,244 assessees had already been audited by Internal Audit wing of the Department. We observed that Internal Audit had failed to detect lapses in 1,104 instances pertaining to 594 assessees (47.75 *per cent*), having monetary impact of ₹ 420.39 crore.

We issued 30 draft paragraphs to the Ministry involving revenue of ₹ 255.32 crore where due to inadequacies in the system of internal audit, non-compliance by the taxpayers was not detected, as detailed below:

Table No.6.3: Lapses of assessees remained undetected despite internal audit by the Department

Category of observations	Total No. of observations	Amount (in ₹ crore)
Non-Payment of duty/Tax	9	16.21
Short payment of duty/Tax	8	11.18
Incorrect availing/utilization of CENVAT credit	6	190.25
Non/Short reversal of CENVAT credit	5	37.15
Non-payment of interest	2	0.53
Total	**30**	**255.32**

A few illustrative cases are given below:

6.4.1 Non-payment of Service Tax on Declared Services – not detected by Internal Audit

Section 66E(e) of the Finance Act, 1994 stipulated that 'agreeing to the obligation to tolerate an act or situation' is a taxable service. A person agreeing to the said obligation for a consideration is liable to pay Service Tax under Section 66B.

During test check of Service Tax and financial records of assessees falling under Hospet 'C' Range of Belagavi Commissionerate, we noticed non-payment of Service Tax by an assessee. The assessee (job worker) had entered into an agreement for carrying out job work for its customer (the Principal manufacturer). As per the terms of the agreement, the Principal manufacturer agreed to send inputs in sufficient quantity to utilise the full capacity of the job worker. Whenever the Principal manufacturer failed to send inputs in sufficient quantity as agreed, the job worker charged compensation as prescribed in the agreement. This compensation is in the nature of consideration for tolerating the situation where the job worker is not able to utilise the full capacity for job work and this has to be treated as taxable service. However, it was noticed that the assessee did not pay Service Tax of ₹ 4.22 crore during FY16 and FY17 on such compensation collected from the Principal manufacturer.

Internal audit carried out (July 2019) by the department on the records of the assessee failed to detect this non-payment of Service Tax, resulting in error remaining undetected until pointed out by CAG audit.

When we pointed this out (February 2020), the Commissionerate contested (July 2020) the audit observation on the grounds that the amount paid was purely compensatory in nature and not a consideration for any service in the nature of forbearance or tolerating an act. The department cited the Apex Court's decision in the case of Bhayana Builders (P) Ltd. in which the Apex Court had held that there has to be a nexus between the amount charged and the service provided. Any amount charged which has no nexus with the taxable service does not become part of the value which is taxable under section 67 of the Finance Act, 1994. The Commissionerate further stated that the CESTAT (Kolkata Bench), in the case of Amit Metaliks Ltd. & Others, had held that the compensation amount of compensation or liquidated damages received for default on the sale of goods cannot be treated as service under section 66E(e) of the Finance Act, 1994.

The reply of the Commissionerate is not acceptable as the agreement for job work had a specific clause for collecting the amount whenever the principal failed to supply sufficient quantity of inputs. Thus, the agreement stipulated a

consideration for tolerating the said situation. Hence, there is an inherent nexus between the service and the consideration, as stipulated in the decision of the Apex Court in the case of Bhayana Builders (P) Ltd. Further, the decision in the case of Amit Metaliks Ltd. & Others by CESTAT (Kolkata Bench) is not applicable in the present case as that case was related to compensation for default on the sale of goods whereas in the present case, the compensation clause is prefixed in the agreement.

The reply of the Ministry is awaited (December 2020).

6.4.2 Non-payment of Excise duty on sale of capital goods – not detected by Internal Audit

As per sub-rule (5A) (a) (ii) under Rule 3 of CENVAT Credit Rules, 2004, if the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output service shall pay an amount equal to the CENVAT credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified for each quarter of a year or part thereof from the date of taking the CENVAT credit. Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

During test check of Central Excise and financial records of assessees falling under Range IV of Chennai South Commissionerate, we noticed non-payment of Central Excise duty by an assessee. The assessee had sold imported cinema projectors and their accessories during the period FY15 to FY18 valuing ₹ 6.03 crore. The assessee had availed CENVAT credit on countervailing duty (CVD) paid on the imports on these goods but did not pay applicable Central Excise duty of ₹ 75.27 lakh on the sale of these goods, which was required to be recovered alongwith interest as applicable.

The department conducted internal audit of the assessee in April 2016 for the period from FY15 to FY16 but it did not detect the lapse.

When we pointed this out (April 2018), the Ministry admitted the observation and stated (March 2020) that the amount liable to pay/reverse was calculated as ₹ 76.19 lakh. The assessee paid the amount alongwith interest of ₹ 25.77 lakh. The Ministry further stated that explanation was being called for from the concerned officers.

6.4.3 Short-payment of Service Tax on advances received – not detected by Internal Audit

Rule 3 of Point of Taxation Rules, 2011 stipulates that the point of taxation for taxable services shall be the time when invoices are issued for the services provided or to be provided. In case an advance is received for the services before issue of invoices, the point of taxation shall be the time when such advances are received.

During test check of Service Tax and financial records of assessees falling under DED-1 Range of Bengaluru East Commissionerate, we noticed short-payment of Service Tax by an assessee. The assessee, a service provider engaged in construction activities, received advances from its customers of the project but short-declared the value of advances received in its ST-3 Returns. This resulted in short-payment of Service Tax of ₹ 1.13 crore for the period from April 2014 to June 2017.

The department conducted internal audit (August-September 2015) of the assessee covering the period upto March 2015 but it did not detect this lapse.

When we pointed this out (March 2019), Ministry admitted the observation (October 2020) and stated that an SCN demanding Service Tax of ₹ 1.13 crore had been issued.

6.4.4 Short payment of duty due to non-inclusion of freight amount in transaction value – Not detected by Internal Audit

Explanation-II below Rule 5 of the Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000, clarified that if the factory is not the place of removal, the cost of transportation from the factory to the place of removal such as depot, consignment agent's premises etc cannot be excluded for the purpose of determining the value of the excisable goods. Board's circular No.988/12/2014-CX dated 20 October 2014 also stipulated that, 'the place where sale has taken place or when the property in goods passes from the seller to buyer is the relevant consideration to determine the place of removal'.

During test check of Central Excise and financial records of assessees falling under Range III of Daman Commissionerate, we noticed short-payment of Central Excise duty by an assessee. The assessee had recovered (April 2013 to June 2017) freight charges of ₹ 51.51 crore from its customers which was not included in transaction value for the purpose of determining the value of the excisable goods. The terms and conditions of the contract documents of a buyer of the assessee indicated that the assessee had the responsibility for delivery of goods to the buyer's store. Thus, the buyer's store was the place of removal in this case and the freight charges were to be included for

determining the value of excisable goods. The assessee did not include freight charges in assessable value which resulted in short payment of Central Excise duty of ₹ 7.29 crore which was recoverable alongwith applicable interest.

Internal Audit of the assessee was conducted by the department in February-March 2016 for the period up to September 2015 but it did not detect the lapse.

When we pointed this out (October 2018), the Department accepted (April 2019) the audit observation and informed that SCN for ₹ 6.83 crore for the period from January 2014 to June 2017 had been issued to the assessee. Reply on failure of Internal Audit and exclusion of the period from April 2013 to December 2013 in the SCN was awaited (October 2020).

The reply of the Ministry is awaited (December 2020).

6.4.5 Irregular availing of CENVAT credit on Service Tax paid on non-taxable service – not detected by Internal Audit

As per Section 65B (51) of the Finance Act, 1994, "taxable service" means any service on which Service Tax is leviable under Section 66B. As per Section 65B (44) of the Act ibid, definition of "Service" means any activity carried out by a person for another for consideration and includes a declared service.

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

During the examination of Service Tax and financial records of assessees falling under Paradeep-I Range of Bhubaneswar Commissionerate, we noticed irregular availing of CENVAT credit by an assessee. The assessee, engaged in the manufacture of High speed diesel oil, motor spirit, Liquefied petroleum gas and Superior kerosene oil, had availed CENVAT credit on invoices issued by one of its service providers amounting to ₹ 129.51 crore during FY16 and FY17. As per the agreement between the assessee and the service provider, payments were made in respect of three components (i) monthly fixed charges towards return on fixed capital investment for complete tankages facilities (ii) monthly charges towards operation of complete tankages facilities and (iii) monthly charges towards maintenance of complete tankages facilities. The service provider was charging Service Tax on all these components. As per the rules ibid, the credit of ₹ 123.21 crore availed on monthly fixed charges towards return on fixed capital investment was irregular, as it was a return on fixed capital investments and not a service.

Similarly, the assessee during FY16 and FY17 availed input service credit on invoices issued by another service provider amounting to ₹ 400.01 crore for payments made in respect of (i) monthly fixed charges towards return on capital for transportation of water from intake structure in Mahanadi river to Paradeep, and (ii) monthly charges for transportation of water through pipeline. The credit of ₹ 32.50 crore availed on monthly fixed charges towards return on capital was irregular This resulted in irregular availing of CENVAT credit on Service Tax paid on non-taxable service amounting to ₹ 155.71 crore.

Internal audit of the assessee was conducted for the period upto FY16 by the department, but it did not detect these lapses.

When we pointed this out (February 2019), the Ministry accepted the observation (November 2020) and stated that a show cause notice for ₹ 183.37 crore upto the period June 2017 was issued in June 2020.

6.4.6 Irregular availing of CENVAT credit – not detected by Internal Audit

As per Rule 2(l) of CENVAT Credit Rules, 'Input service' means any service, used by a provider of output service for providing an output service; or used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to the place of removal. Further, Rule 7 of CENVAT Credit Rules, 2004 prescribes the manner of distribution of credit by Input Service Distributor (ISD), as per sub-rule (c) of which "credit of Service Tax attributable to service, used wholly by a unit, shall be distributed only to that unit**".**

During test check of Central Excise and financial records of assessees falling under Range III of Daman Commissionerate, we noticed irregular availing of CENVAT credit by an assessee. The assessee, a manufacturer of products falling under chapter tariff heading (CTH) 27101990 (viz., light liquid paraffin, white oil, transformer oil) had availed CENVAT credit of ₹ 6.06 crore (including cess) on intellectual property services (i.e. royalty), distributed by its head office, an input service distributor (ISD) situated at Mumbai during the period FY14 to FY18. We observed that the ISD had paid royalty to various auto sector companies for selling lubricants (falling under CTH 27101980), manufactured by its units other than the assessee, under their brand names. The ISD availed credit of Service Tax paid on this royalty and distributed the same among its units, including the aforementioned assessee not involved in manufacturing of lubricant, in the ratio of their turnover. Since the assesse was not engaged in the manufacture of lubricating oil, credit of ₹ 6.06 crore availed by the assessee for services related to lubricants was incorrect in view of the above provisions, and this amount was required to be recovered alongwith applicable interest.

Internal Audit of the assessee was conducted by the Department in February-March 2016 for the period up to September 2015 but it did not detect the lapse.

When we pointed this out (October 2018), the Department accepted (April 2019) the audit observation and informed that SCN was being issued to the assessee. Reply on lapse of internal audit was awaited (August 2019).

Reply of the Ministry is awaited (December 2020).

6.4.7 Failure of internal audit in detecting short reversal of CENVAT credit and not taking timely action on audit observation resulted in part demand becoming time barred – not detected by Internal Audit

Trading is a non-taxable service by virtue of its inclusion in the negative list of services under Section 66D(e) read with Section 66B of the Finance Act 1994 and qualifies as an 'exempted service' under Rule 2(e) of CENVAT Credit Rules, 2004. The provider of output service, opting not to maintain separate accounts for receipt and use of inputs/input services for provision of both taxable and exempted services, has to reverse the portion of CENVAT credit pertaining to the input services utilised for provision of exempted services by opting any one of the methods under Rule 6(3) or 6(3A) of CENVAT Credit Rules, 2004.

Further, Section 11A of the Central Excise Act, 1944 prescribes issue of Show Cause Notice (SCN) within two years from the relevant date in normal case and within five years in case of fraud, collusion, wilful mis-statement or suppression of facts.

During test check of Central Excise and financial records of assessees falling under Range AND-1 of Bengaluru North Commissionerate, we noticed short reversal of CENVAT credit by an assessee. The assessee, a manufacturer of various goods and a provider of various taxable services, was also engaged in trading of goods, which is an exempted service. The assessee availed CENVAT credit on input services commonly utilised for provision of exempted services, provision of taxable services and manufacturing of excisable goods. Verification of the CENVAT credit records of the assessee revealed that even though the assessee opted for payment of amount under Rule 6(3A) of CENVAT Credit Rules, 2004 for not maintaining separate accounts, the assessee short-reversed CENVAT credit of ₹ 34.84 crore during the period from FY14 to FY16.

Internal audit of the assesse was conducted (September 2017) by the department, covering the period upto FY16, but it did not detect this lapse.

When we pointed this out (April 2018), the department issued (October 2019) an SCN to the assessee demanding ₹ 28.13 crore for FY15 to FY17, but did not include the demand for ₹ 6.71 crore in respect of FY14.

Despite the observation being pointed out by CAG Audit in April 2018, the department took one and half years in issuing the SCN. By the time of issue of the SCN, the demand for FY14 had become time-barred. Hence, the amount short-paid in FY14 appears to be irrecoverable. Had the department issued SCN in time on receipt of the audit observation, the amount pertaining to FY14 would have been included in the SCN. Thus, lack of timely action by the department on the audit observation resulted in loss of revenue of ₹ 6.71 crore.

Reply of the Ministry is awaited (December 2020).

6.4.8 Non-payment of interest – not detected by Internal Audit

As per Rule 7 of Point of Taxation Rules, 2011, the 'point of taxation' in respect of the persons required to pay tax as recipients of service, shall be the date on which payment is made. Where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months. Further, Rule 6 of Service Tax Rules, 1994, stipulates that Service Tax is to be paid by 6th of the month following the month in which the service is deemed to be provided. In case of payment for the month of March, the due date for the payment is 31st of the same month. Section 75 of the Finance Act, 1994 prescribes payment of interest on belated payment of Service Tax.

During test check of Service Tax and financial records of assessees falling under AED-5 Range of Bengaluru East Commissionerate, we noticed non-payment of interest on late payment of Service Tax by two assessees. First assessee had paid Service Tax belatedly on services received from outside India under Reverse Charge Mechanism for the period from April 2013 to June 2017 under rule 7 of Point of Taxation Rules, 2011. The assessee, however, did not pay interest of ₹ 28.46 lakh on these belated Service Tax payments.

The second assessee did not pay interest of ₹ 28.77 lakh for belated payment of Service Tax under Rule 6 of Service Tax Rules, 1994, for the period from April 2015 to June 2017. The total short-payment of interest by these two assessees amounted to ₹ 57.23 lakh.

Internal Audit of first assessee was carried out (May 2014) by the department covering the period upto March 2014, but it did not detect this lapse. Reply of the Commissionerate on the failure of IAP had not been received (June 2020).

We have requested for the details of internal audit of second assessee, but the same have not been furnished by the department.

When we pointed this out (December 2018), the Ministry admitted the observation (October 2020) and stated that the total amount recoverable was ₹ 42.15 lakh. The Commissionerate recovered (March 2019 to December 2019) ₹ 27.11 lakh from these assessees and for the balance amount, the first assessee filed application under SVLDRS scheme which was accepted by the Department.

6.5 Lapses of assessees not covered by Internal Audit wing of the Department

We issued 88 draft audit paragraphs involving revenue of ₹ 136.76 crore pertaining to assessees not covered by Internal Audit wing of the Department, as detailed below.

Table No. 6.4: Audit observations pertaining to assessees not covered by Internal Audit

Category of observations	Total No. of observations	Amount (in ₹ crore)
Non-Payment of Duty/Tax	29	33.00
Short payment of Duty/Tax	19	48.73
Incorrect availing/utilization of CENVAT credit	14	11.66
Non/Short reversal of CENVAT credit	11	34.99
Non/Short payment of Cess	1	0.31
Non/Short payment of interest	14	8.07
Total	**88**	**136.76**

A few illustrative cases are given below:

6.5.1 Non-payment of Service Tax

Section 65(44) of the Finance Act, 1994 defines service as any activity carried out by one person for another person for a consideration and includes declared service but excludes such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of Clause 29A of Article 366 of the Constitution. Transfer of goods by way of hiring, leasing, licensing or in any manner without transfer of right to use such goods is declared as a service under Section 66E(f) of the Act.

During test check of Service Tax and financial records of assessees falling under AND-8 Range of Bengaluru North Commissionerate, we noticed non-payment of Service Tax by an assessee. The assessee, engaged in provision of flight courses/training services and other related services to individuals and airline companies, did not pay Service Tax on 'Dry Training' services provided on the ground that the same amounted to 'transfer of right to use'. 'Dry training' involved providing license to each airlines for using the simulator and other infrastructure for hands-on training on hourly basis without the instructors.

Perusal of the general terms of training agreements revealed that the assessee retained effective control and possession of the simulator and was responsible for daily operation, maintenance and support of the equipment during 'dry training'. The assessee used the same simulators for providing training at different hour durations to other clients during the same period and thus, never transferred the right to use to their customers. Hence, the activity amounted to Declared Service and was taxable under Service Tax. The assessee collected ₹ 31.60 crore for FY16 to FY18 (upto June 2017), however, did not pay Service Tax of ₹ 4.59 crore.

When we pointed this out (May 2019), the Ministry admitted the observation (October 2020) and stated that a Show Cause Notice demanding ₹ 5.93 crore, on dry training services provided by the assessee, had been issued for FY15 to FY18 (upto June 2017).

6.5.2 Short payment of Service Tax due to irregular availing of exemption

Clause 12(f) of notification No. 25/2014 dated 20 June 2012 provides for exemption to the services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting, repair, renovation or alteration of an residential complex predominantly meant for self-use or the use of their employees or other persons specified in the explanation 1 to clause 44 of section 65B of the said Act.

Further, clause (h) of Serial No. 29 of notification ibid, provides exemption to the sub-contractors of contractors of the above work.

During examination of Service Tax and financial records of assessees falling under Range IV of Division V of the Mumbai East Commissionerate for the period April 2015 to March 2017, we noticed short payment of Service Tax by an assessee. The assessee had incorrectly claimed exemption under serial no. 29(h) of the notification ibid, in respect of various civil construction projects by private developers approved by the Slum Rehabilitation Authority (SRA) of Maharashtra. The assessee had provided services of ₹ 1,027.93 crore till June 2017, to private developers in respect of projects approved by SRA of Maharashtra and paid tax on the value of ₹ 534.52 crore only. The assessee had claimed irregular exemption to the extent of ₹ 493.41 crore on which tax payable worked out to ₹ 29.60 crore. Thus, there was irregular claim and allowance of exemption to the extent of ₹ 493.41 crore resulting in short levy of tax of ₹ 29.60 crore.

When we pointed this out (April 2018), the Ministry admitted the para and stated (May 2020) that an SCN had been issued for recovery of the amount of ₹ 29.60 crore.

6.5.3 Irregular availing of CENVAT Credit

Rule 4 of the CENVAT Credit Rules (CCR), 2004, provides conditions for allowing the CENVAT credit on input, input services and capital goods. As per Rule 4(7) of CCR, the CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in Rule 9, is received.

During test check of the Central Excise and financial records of assessees falling under Range IV of Division V of Mumbai East Commissionerate for the period April 2015 to March 2017, we noticed irregular availing of CENVAT credit by an assessee. The assessee had availed CENVAT credit twice on the same invoice in respect of five invoices. Further, the assessee, in respect of one invoice, irregularly availed CENVAT credit on xerox copy of the invoice. The total irregular CENVAT credit availed by the assessee amounted to ₹ 32.27 lakh, which was recoverable.

When we pointed this out (April 2018), the Department replied (August 2018) that the assessee had reversed the Service Tax CENVAT credit of ₹ 32.39 lakh.

6.5.4 Irregular distribution of ISD Credit

In accordance with the provisions of Rule 7 of CENVAT Credit Rules, 2004, the Input Service Distributor (ISD) shall distribute the credit of Service Tax attributable to service used by more than one units pro rata on the basis of turnover of such units during the relevant period to the total turnover of all its units, which are operational in that year. Further, it provides that the credit of Service Tax attributable as input service to a particular unit shall be distributed only to that unit.

During examination of Service Tax and financial records of assessees falling under Range IV of Goa Commissionerate, we noticed irregular availing of CENVAT credit by an assessee. The ISD of the assessee had availed CENVAT credit of ₹ 3.92 crore and ₹ 14.78 crore and distributed credit of ₹ 3.31 crore and ₹ 4.83 crore to the assessee during FY16 and FY17, respectively. As per the CA certificate, the turnover ratio of the assessee was 31.23 *per cent* and 13.16 *per cent* during FY16 and FY17, respectively, for the purpose of distribution of ISD credit. Therefore, the ISD credit required to be distributed to Goa unit was ₹ 1.23 crore (31.23 *per cent* of 3.92 crore) and ₹ 1.95 crore (13.16 *per cent* of ₹ 14.78 crore) as against ₹ 3.31 crore and ₹ 4.83 crore, respectively, distributed during the above mentioned period. This resulted in excess availing of ISD credit of ₹ 2.75 crore by the Goa unit.

When we pointed this out (July 2018), the Ministry admitted the audit objection (September 2020) and stated that demand for ₹ 3.08 crore had been confirmed.

6.5.5 Short-reversal of CENVAT Credit in respect of exempted services provided

Trading, which is a non-taxable service by virtue of its inclusion in the negative list of services under Section 66D of the Finance Act, 1994, qualifies as an 'exempted service' under Rule 2(e) of CENVAT Credit Rules, 2004 read with Section 66B of the Act. A provider of output service, opting not to maintain separate accounts for receipt and use of input services commonly for provision of both taxable and exempted services, has to reverse the portion of CENVAT credit pertaining to the input services utilised for provision of exempted services by opting any one of the methods prescribed under Rule 6(3) of CENVAT Credit Rules, 2004.

During test check of Service Tax and financial records of assessees falling under BED-5 Range of Bengaluru East Commissionerate, we noticed short-reversal of CENVAT Credit in respect of exempted services by one assessee. The assessee, a provider of taxable services, was also involved in trading of goods which is an exempted service. The assessee was availing CENVAT credit on services commonly used for provision of both taxable and exempted services and was reversing a portion of such credit availed every month. Verification of the CENVAT credit records of the assessee revealed that the assessee reversed only ₹ 17.56 crore against the amount of ₹ 32.28 crore that should have been reversed during FY17, resulting in short-payment of ₹ 14.72 crore.

It was further noticed that the assessee had communicated to the department its intention to avail the option under Rule 6 of CENVAT Credit Rules in May 2011, but did not send any communication for the subsequent years. Even though the assessee was reversing certain amounts under Rule 6 every month during FY17 provisionally, the assessee did not furnish the details of actual reversals as prescribed in the Rules. The department did not take any action to verify the actual reversals, as a result of which short reversal of CENVAT credit remained undetected until pointed out by CAG audit. The information whether ST-3 returns of the assessee were subjected to detailed scrutiny by the range was not made available.

When we pointed this out (January 2019), the Ministry admitted the observation (September 2020) and stated that Show Cause Notice was being issued.

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

Section 75 of the Finance Act, 1994 envisages that where any Service Tax or part thereof has not been paid within the stipulated period, the person liable to pay tax shall pay interest at the rates specified in the Act.

During examination of Service Tax and financial records of the assessees falling under Range-121 of Delhi West Commissionerate for the period FY18 and FY19, we noticed non-payment of interest on delayed payment of Service Tax by an assessee. The assessee had not paid interest of ₹ 5.44 crore on delayed payment of Service Tax for the months of November 2016, January 2017, February 2017 and May 2017.

When we pointed this out (December 2019), the Ministry admitted the observation (October 2020) and stated that the assessee had deposited the actual interest payable amounting to 4.82 crore.

6.6 Observations pointed out by Audit before the year FY19, where action was pending by the Department

In addition to the audit observations mentioned in para 6.4, 6.5 and 6.7, we issued 66 observations (**Appendix-IX**), involving ₹ 667.71 crore, which were noticed during CAG audit conducted prior to FY19. The observations pertain to issues such as non/short payment of duty/tax, irregular availing and utilisation of CENVAT credit and non/short payment of interest etc. With respect to 52 observations, involving ₹ 197.31 crore, action was completed by the department by either issuing of SCNs or recovery of revenue. As for the remaining 14 observations, involving ₹ 470.40 crore, action for recovery of revenue was pending/under process. Ministry admitted 45 audit observation, involving ₹ 180.12 crore and reported recovery of ₹ 9.07 crore. Ministry did not admit observations in six cases involving ₹ 19.19 crore. Ministry's reply is awaited in remaining 15 cases (December 2020).

6.7 Lapses committed by departmental officers

We noticed 28 cases involving revenue of ₹ 80.22 crore indicating shortcomings in functioning of jurisdictional Commissionerates, as detailed below.

Table No. 6.5: Observations indicating lapse in Department functions

Category of observations	Total No. of observations	Amount (in ₹ crore)
Irregularity in processing of refunds	3	1.44
Irregularities in issuing/monitoring of SCNs	6	1.68
Ineffective monitoring of call book cases	5	NMV
Non-levy of late fee/penalty	4	1.03
Non-completion of anti-evasion investigations	2	58.00
Observations regarding broadening of tax base	2	11.4
Lack of timely action by departmental officers	3	1.63
Irregularities in recovery of arrears	3	5.04
Total	**28**	**80.22**

A few instances are illustrated below:

6.7.1 Incorrect calculation of short levy while issuing SCN and adjudication of the same

As per rule 5 of Central Excise Rules, 2002, the rate of duty of tariff value applicable to any excisable goods shall be the rate or value on the date when such goods are removed from a factory or a warehouse, as the case may be. As per Notification No. CE 18/2012 dated 17 March 2012, basic excise duty was increased to 12 *per cent* from 10 *per cent* with effect from 17 March 2012.

During test check of records related to SCN and adjudication in Nashik I Division of the Nashik Commissionerate, we observed that in case of one assessee, registered in the Satpur Range, the Department issued SCN to the assessee for recovery of short payment for the period from FY11 to FY15, calculating excise duty at the rate of 10 *per cent* for the period from 17 March 2012 to 31 March 2012 instead of 12 *per cent*, as was required under the notification above. This resulted in short levy of excise duty of ₹ 29.14 lakh, including applicable interest.

When we pointed this out (July 2018), the Ministry admitted the observation (October 2020) and stated that the mistake occurred due to clerical arithmetical mistake, and the assessee had accepted the differential tax liability with interest amounting to ₹ 29.14 lakh. However, the assesse had already filed appeal in CESTAT against the Order-in-original and the recovery of differential duty and interest would be governed by the outcome of appeal in CESTAT.

6.7.2 Delay in initiation/completion of investigation by the Department

Any service provided to business entities by Government or Local Authority are liable to Service Tax under Section 66B read with 66D(a)(iv) of Finance Act, 1994, with effect from 01 April 2016. Services provided by Government or a local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Government or local authority on or after 01 April 2016, are liable to payment of Service Tax under Serial No.61 of Notification No.25/2012-ST dated 20 June 2012 (Mega Exemption Notification), as amended vide Notification No.22/2016-ST dated 13 April 2016. As per Serial No.6 of the Table under Notification No.30/2012-ST dated 20 June 2012, such Service Tax needs to be paid by the recipient of service.

We verified the data pertaining to royalty payments made by business entities to the Government of Karnataka (GOK) against the mines taken on lease by these business entities, as maintained by the Department of Mines and Geology (DMG) under GOK. We observed that 31 business entities paid a total of ₹ 772.50 crore to the GOK towards royalty in respect of the mines assigned to them during FY17 but did not pay Service Tax. We further observed that the

department had started investigation (July 2016) in respect of 23 cases out of these 31 cases based on the information obtained from the Monitoring Committee (MC) under the DMG. The department issued Show Cause Notices (SCNs), demanding Service Tax on royalty paid to the Government for leasehold of mines, in respect of five of these cases, consequent to the investigations. The department did not furnish the status of investigation in respect of the balance 18 cases involving Service Tax of ₹ 53.16 crore. Further, the department did not take any action in respect of the remaining eight cases involving Service Tax of ₹ 4.64 crore.

We communicated this to Belagavi Commissionerate (April 2019) and to the Bengaluru Zone (March 2020). Belagavi Commissionerate stated (December 2019) that jurisdiction of the assessees was not known in respect of the said eight contractors. The Commissionerate sought the details of these eight contractors from Audit.

We obtained the address and contact details of seven out of these eight contractors from the DMG and communicated to the department. Details of the remaining one assessee were not available. Action taken by the department on the details provided by Audit is awaited (October 2020).

The reply of the department revealed that the department did not initiate any action in respect of eight assessees even after obtaining the royalty payment details from the monitoring committee under DMG and Audit. Further, the fact that the department did not issue demand notices in 18 cases where action was initiated already, indicates ineffective monitoring mechanism.

Reply of the Ministry is awaited (December 2020).

6.7.3 Irregular transfer of SCN to Call Book

Board Circular No. 1028/2016-CX dated 26 April 2016 specifies the following categories of cases which can be transferred to call book:

Where no action can be taken on SCN due to various reasons as specified below:

(i) Cases in which the Department has gone in appeal to the appropriate authority.

(ii) Cases where injunction has been issued by Supreme Court/High Court/CEGAT etc.

(iii) Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book

(iv) Cases referred to Settlement Commission

Further, extant instructions issued to field formations require monthly review of pending call book cases.

During audit of the Bengaluru East Commissionerate and its field formations, we noticed that 254 Show Cause Notices (SCNs) were pending in Call Book

under the Commissionerate. We test checked 72 cases and found that 21 SCNs involving a demand of ₹ 34.88 crore, issued by various adjudicating authorities under the Commissionerate, were pending in Call Book for the period ranging from two to six years. These cases were incorrectly retained in Call Book even after the grounds on which the cases were transferred to Call Book no longer existed.

When we pointed this out (May 2018 to December 2018), the Department stated (July 2019) that all the 21 SCNs had been taken out of Call Book on the basis of the audit observation. Out of these, 17 cases had been adjudicated confirming a demand of ₹ 10.78 crore, and dropping the demand for balance amount. Remaining four cases were pending for adjudication.

The irregular retention of SCNs in Call Book indicates ineffective periodical review of Call Book cases by the Commissionerate, resulting in inordinate delay in confirming the demand of ₹ 10.78 crore in the above mentioned SCNs.

The Ministry stated (March 2020) that due to implementation of GST and re-organisation of the Commissionerates, large number of files were transferred from one jurisdiction to another. Also due to shortage of staff and workload of GST, review of call book cases was not taken up on monthly basis. Officers had been sensitized to review call book cases on monthly basis.

6.7.4 Not ensuring reversal of ineligible credit before sanctioning refund

As per Rule 5 of the CENVAT Credit Rules, 2004; refund of the unutilized credit is admissible to the assessee who clears goods/services for export without payment of duty/tax under bond or Letter of Undertaking (LOU). Notification (27/2012 CE (NT)) issued under rule ibid requires the Department to call for any document, in case the sanctioning authority (AC/DC) has reason to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused before the sanction of refund claim and shall satisfy himself or herself in respect of the correctness of the claim and facts regarding export of goods/services before sanction of refund. Thus, the provisions require the Department to ensure the correctness of CENVAT credit claim by the assessee before sanction of the refund relating to such unutilized credit.

In terms of the provisions of rule 4(1) CENVAT Credit Rules, 2004, the CENVAT credit in respect of inputs required to be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service. Further, the notifications 21/2014-CE (NT) dated 11 July 2014 and 6/2015-CE (NT) dated 01 March 2015 restrict claim of credit within six months and one year, respectively, from date of issue of invoices under Rule 9.

During test check of refund claims in Division IV of the Goa Commissionerate, we observed that an assessee had filed refund claim for ₹ 12.88 crore in

June 2017. The Department sanctioned amount of ₹ 12.71 crore and rejected ₹ 16.60 lakh (December 2017) from the refund claimed due to ineligible credit of ₹ 41.96 lakh included in the total CENVAT credit of ₹ 25.06 crore, considered for computation of said refund. Though ineligible credit was detected by the Department during the course of processing of refund of the assessee, the Department failed to take any action for recovery of the ineligible credit.

When we pointed this out (June 2018), the Ministry did not admit the observation (March 2020) stating that the assessee had already reversed the credit of ₹ 41.96 lakh. Refund claim of ₹ 16.60 lakh was rejected with the instruction not to take re-credit of the amount.

The reply is not acceptable as the balance credit of ₹ 25.35 lakh was reversed by the assessee in November 2018 after being pointed out by Audit in June 2018 indicating that the credit was not reversed by the assessee before filing the refund claim.

6.7.5 Interest payment on refund claim

As per Section 35 FF of the Central Excise Act, 1944, where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and if such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount.

During test check of the refunds sanctioned by the CGST Division Hauz Khas of Delhi South Commissionerate during FY18, we noticed that an assessee was issued SCNs in view of the inadmissible availing of CENVAT credit pertaining to pre-GST period. The SCNs were adjudicated by the department. Aggrieved by the adjudication, the assessee filed five appeals in CESTAT and the assessee was directed by the CESTAT to pre-deposit ₹ 3.03 crore under Section 35F of Central Excise Act, 1944. The appeals filed were decided in favour of the assessee vide CESTAT orders dated 21 May 2013 and 22 December 2016. As the refund orders were not processed in view of the CESTAT orders by the department, the assessee filed a refund claim application on 20 February 2017 for ₹ 3.03 crore along with interest. The department, however, issued refund orders along with interest of ₹ 70.83 lakh on 25 September 2017 and 01 September 2017. Thus, delay up to more than three years in sanction of refund amount since the date of the order of appellate authority resulted in avoidable payment of interest of ₹ 70.83 lakh by the department.

When we pointed this out (March 2019), the Ministry did not admit the undue delay pointed out by Audit stating (September 2020) that the department had undergone cadre restructuring twice, and subsequently jurisdictions were changed. The present jurisdictional officer received the refund file in July 2017 and refund claim was settled in September 2017.

Reply of the Ministry is not acceptable in view of considerable delay of up to more than three years in sanction of refund even after considering cadre restructuring of the Department.

6.7.6 Failure of the department in initiating coercive measures for recovery of arrears

CBIC vide Circular No. 967/01/2013-CX dated 1 Jan 2013 issued directives regarding the recovery proceedings against confirmed demands, which were further re-iterated in the Master Circular on Show Cause Notice, Adjudication and Recovery dated 10 March 2017. As per these directives, the department should proceed for recovery of arrears on confirmed demands after the appeal period is over in cases where appeal is not filed against the orders. Recovery of Service Tax dues can be made by exercising any of the powers under Section 87 of the Finance Act, 1994 such as adjustment from refunds payable, issue of Garnishee Notice to a third person who owes money to the person against whom the demand is confirmed, distrain or sale of immovable properties or through certificate action treating the recoverable amounts as arrears of land revenue.

During the audit of Belagavi Commissionerate and its field formations in FY20, we carried out verification of 168 cases of confirmed demands of Service Tax involving tax dues of ₹ 171.55 crore pending for recovery at various levels under the Commissionerate. Verification of the Tax Arrears Report (TAR) and the related files revealed that the department did not initiate coercive measures for recovery of arrears prescribed under Section 87 ibid in 69 cases involving tax dues of ₹ 46.62 crore even though these cases were fit for such action, as follows:

i. Four cases pertaining to two assessees involving tax dues of ₹ 5.59 crore were incorrectly classified under the category “unit closed or defaulters were not traceable” even though these two assessees were registered under Goods and Services Tax (GST), and were filing returns.

ii. The department classified 51 cases involving confirmed demands of ₹ 28.03 crore under the category of “appeal period not over” even though the appeal period was over, and appeals were not filed by the assessees.

iii. The department did not initiate any action in 14 cases involving confirmed demands of ₹ 12.80 crore under the category “appeal period over”, even

though these assessees were registered under the GST regime and were filing returns.

Thus, erroneous classification of arrears and inaction on the part of the department for recovery of arrears resulted not only in delay in recovery of ₹ 46.62 crore but also placed these amounts under the risk of non-recovery.

We have pointed this out in July 2019 and February 2020. Reply of the Commissionerate has not been received (October 2020).

Reply of the Ministry is awaited (December 2020).

6.7.7 Non-registration and Non-payment of Service Tax

As per the Director General of Service Tax's action plan circulated to Chief Commissioners on 26 May 2003, field formations were required to take necessary action to broaden the tax base. Further, the Board issued instructions (November 2011) to create a special cell in each Commissionerate to identify unregistered service providers from different sources such as yellow pages, newspaper advertisements, Income Tax department, regional registration authorities and websites, information from municipal corporations, major assessees etc.

Section 68 provides that the person providing taxable services shall be liable to pay Service Tax unless specifically exempted from payment of Service Tax. Rule 4 of Service Tax Rules, 1994 stipulates that every person liable to pay Service Tax should get registered within 30 days from the date on which Service Tax becomes leviable on the services provided.

As a follow-up audit of 'Para No. 5.3.2: Non-registration of local body and consequent non-payment of Service Tax' included in the Audit Report No. 4 of 2019, we examined the Service Tax accounts of one society, formed by the Government of Karnataka, and observed that even though the society neither registered itself under Service Tax nor discharged its Service Tax liability, the department did not initiate any action.

The society is engaged in conceptualizing, implementing and monitoring various e-governance initiatives in the State. In addition to that, the society had an e-procurement section which functions as a nodal agency and enables the contractors to download notice inviting tenders and tender schedules and submit the tenders online. The society collects charges such as tender processing, e-auction fees, supplies registration fees, renewal fees etc., from the clients as consideration for the services provided. Further, the society also provides services to various electricity companies and collects service charges from these companies in respect of portal usages and mobile one app usages. Though these services are taxable under Service Tax provisions, the society

neither got itself registered under the Service Tax provisions nor discharged the Service Tax liability of ₹ 9.95 crore for the period April 2014 to March 2017.

When we pointed this out (December 2018), the Commissionerate admitted the audit observation (November 2019) and issued Show Cause Notice to the assessee demanding Service Tax of ₹ 11.05 crore for the period April 2014 to June 2017.

The reply is silent on the reasons as to why the department failed to initiate any action to bring the assessee under tax base and to recover the dues, until pointed by Audit.

Reply of the Ministry is awaited (December 2020).

6.7.8 Non-initiation of action for best judgment assessment by the Jurisdictional officer

Section 72 of the Finance Act, 1994 bestows powers on the departmental officers to carry out assessment of the taxable value to the best of their judgment and determine the tax payable by the assessee by issuing an order in writing, in case of assessees who do not file ST-3 Returns. Section 73 of the Act prescribes issue of Show Cause Notice (SCN) within 30 months from the relevant date unless extended period is to be invoked. The Section also prescribes issue of Statement of Demand (SOD) in case of demands in continuation of SCNs issued earlier on similar grounds.

During the audit of AED-1 Range under Bengaluru East Commissionerate, we noticed that an offence case was registered (October 2012) by Anti-Evasion wing of the erstwhile Service Tax Commissionerate, Bengaluru, against an assessee for non-remittance of Service Tax collected from customers for the period upto March 2012. Consequently, the department issued (October 2012) an SCN and confirmed (May 2013) the demand of Service Tax along with applicable interest and penalty. The assessee paid the dues only partly and the balance amount was pending for recovery. We further noticed that the assessee neither paid Service Tax nor filed ST-3 Returns for the period from April 2013 onwards. Details obtained from the Income Tax Department by us revealed that the assessee had declared an income of ₹ 491.42 lakh for the period from FY14 to FY16 and was liable to pay Service Tax of ₹ 61.89 lakh[96] thereon. Since the assessee did not file ST-3 Returns, the department should have initiated action for best judgment assessment as prescribed under Section 72 ibid. Even though the department was aware of the assessee not filing returns and not paying Service Tax, the department did not initiate any action in this regard.

[96] The amount is provisionally calculated as ₹ 61.89 lakh based on gross service income of as declared in Income Tax returns of the assessee and tax rates of 12.36 *per cent* for FY14 & FY15 and 14 *per cent* for FY16.

When we pointed this out (October 2018), Ministry did not admit failure on the part of department (September 2020) stating that the assessee filed (February-March 2019) ST-3 returns for the period from April 2013 to June 2017 belatedly. The department did make efforts to trace the assessee but the assessee was not available in its registered premises. The department could trace the assessee only in GST regime and again asked the assessee to file its returns for the previous period after which the assessee filed its returns. The department verified the issue in detail and issued (April 2019) an SCN to the assessee demanding Service Tax of ₹ 55.60 lakh for the period from October 2013 to June 2017. The Ministry further stated (February 2020) that the assessee filed an application under Sabka Vishwas–Legacy Dispute Resolution Scheme, 2019 (SVLDRS) for this case and paid Service Tax of ₹ 27.80 lakh under the Scheme.

Ministry's reply is not acceptable in view of the delay of more than five years in tracing the assessee during which the assessee was providing taxable services to its customers, showing deficiency in the efforts made by the department in tracing the assessee.

6.7.9 Non-levy of late fee in respect of delayed filing of ST-3 Returns

Section 70 of the Finance Act, 1994, read with Rule 7C of Service Tax Rules, 1994, prescribes submission of returns to the Range Officer by the persons liable to pay Service Tax. Late fee is payable in case of delay in filing of returns. Late fee is prescribed at ₹ 500 for delay upto 15 days and ₹ 1000 for delay of more than 15 days upto 30 days. In case of delay beyond 30 days, the late fee is ₹ 1000 plus ₹ 100 for each day from 31st day subject to a ceiling of ₹ 20,000.

During the audit conducted in FY19, we noticed that 193 ST-3 Returns were filed belatedly by the assessees in three Ranges[97] falling under Bengaluru North Commissionerates with delays ranging from one day to 638 days. However, the Range Officers did not take any action to recover late fees of ₹ 18.77 lakh from the assessees.

When we pointed this out (October 2018 and May 2019), the Commissionerate replied (January 2020) that ₹ 2.57 lakh had been recovered in respect of 39 returns and that three assessees filed application under Sabka Vishwas – Legacy Dispute Resolution Scheme, 2019. Action had been initiated in respect of 106 cases, while the department was taking efforts to trace out 42 assessees. Compliance is awaited in respect of three assessees whose jurisdiction was stated to be outside the respective Range. Even though the department accepted the revenue implication, the department did not admit its failure in taking timely action for recovery of late fee, on the grounds that there is no time limitation prescribed under rules for collection of late fee. The

[97] Range AND-3, AND-5 and DND-4

department further stated that since suitable action has been taken, the recovery would be completed in a couple of months.

Although there is no time limit prescribed for recovery of late fee, the department did not initiate any action for recovery of late fee under the old tax regime even after one and half years from 1 July 2017, when the new GST tax regime came into effect, until CAG Audit pointed out the same. The fact that assessees are not traceable in respect of 42 cases indicate the importance of timely action. Since the returns were to be filed to the Range Officer through Automation of Central Excise and Service Tax (ACES) system, the department had enough information at hand to initiate immediate action for recovery. The fact that the department did not devise requisite mechanism, either in ACES or manually, for this purpose and did not initiate any action to recover the late fee even though a large number of returns were filed belatedly indicates serious control lapse on the part of the department even after implementation of ACES. The department's reply is, therefore, not acceptable.

Reply of the Ministry is awaited (December 2020).

New Delhi **(SATISH SETHI)**
Dated: 15 February 2021 **Principal Director (Goods and Services Tax-II)**

Countersigned

New Delhi **(GIRISH CHANDRA MURMU)**
Dated: 15 February 2021 **Comptroller and Auditor General of India**