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**SERVICE TAX ON BANKING AND  
OTHER FINANCIAL SERVICES**

**MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)**

**PUBLIC ACCOUNTS  
COMMITTEE  
2012-2013**

**SEVENTY-NINTH REPORT**

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**FIFTEENTH LOK SABHA**



**LOK SABHA SECRETARIAT  
NEW DELHI**

SEVENTY-NINTH REPORT

PUBLIC ACCOUNTS COMMITTEE  
(2012-2013)

(FIFTEENTH LOK SABHA)

SERVICE TAX ON BANKING AND OTHER  
FINANCIAL SERVICES

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

*Presented to Lok Sabha on 21.03.2013*

*Laid in Rajya Sabha on 21.03.2013*



LOK SABHA SECRETARIAT  
NEW DELHI

*March, 2013/Phalguna, 1934 (Saka)*

**PAC No. 2006**

*Price: ₹ 50.00*

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fourteenth Edition) and Printed by the General Manager, Government of India Press, Minto Road, New Delhi-110 002.

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COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE  
(2012-2013)

Dr. Murli Manohar Joshi — *Chairman*

MEMBERS

*Lok Sabha*

- 2. Shri Anandrao Vithoba Adsul
- 3. Dr. Baliram
- 4. Shri Sandeep Dikshit
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- 12. Shri Ashok Tanwar
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- 16. Shri Prasanta Chatterjee
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- 21. Shri N.K. Singh
- 22. Prof. Saif-ud-Din Soz

SECRETARIAT

- |                        |   |                         |
|------------------------|---|-------------------------|
| 1. Shri Devender Singh | — | <i>Joint Secretary</i>  |
| 2. Shri Abhijit Kumar  | — | <i>Director</i>         |
| 3. Smt. A. Jyothirmayi | — | <i>Deputy Secretary</i> |
| 4. Smt. Anju Kukreja   | — | <i>Under Secretary</i>  |

\* Elected *w.e.f.* 6th December, 2012 *vice* Shri Sarvey Sathyanarayana appointed as Minister on 28th October, 2012.

† Elected *w.e.f.* 6th December, 2012 *vice* Dr. Shashi Tharoor appointed as Minister on 28th October, 2012.

## REPORT

### PART - I

#### I. INTRODUCTORY

This Report is based on the Audit review contained in Section - I of the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2010 No. 15 of 2011-12, Union Government (Indirect Taxes—Service Tax and Customs) relating to 'Service Tax on Banking and other Financial Services'.

2. Financial services refer to services provided by the finance industry. The finance industry encompasses a broad range of organizations that deal with management of money. Among these organizations are banks, credit card companies, insurance companies, consumer finance companies, stock brokerages, investment funds and some Government sponsored enterprises.

A bank is a financial intermediary that accepts deposits and channels those deposits into lending activities, either directly or through capital markets. A bank connects customers with capital deficits to customers with capital surpluses.

Service Tax on Banking and other Financial Services (BFNS) was levied with effect from 1 July, 2001. The scope of this service has been expanded from time to time through changes/amendments in the Finance Acts.

#### II. PROVISIONS FOR DEFINING BANKING AND OTHER FINANCIAL SERVICES (BFNS)

3. Section 65(12) of the Finance Act, 1994 defines BFNS as 'any service' in relation to:—

- (a) Banking Companies and Financial Institutions including Non Banking Financial Companies (NBFC) with effect from 16 July 2001;
- (b) 'Other body corporate' not covered in (a) with effect from 16 August 2002. Body corporate will include all types of organizations, which are incorporated under any statute. All the services provided by body corporate will be liable to Service Tax. The body corporate needs to be a banking company or financial institution including NBFC;
- (c) Foreign exchange broker not covered in (a) or (b) with effect from 1 July 2003. Foreign exchange broker includes any authorized dealer of foreign exchange. Being an inclusive definition, it covers any person engaged in foreign exchange broking and mainly intended to rope in other entities (like individuals, HUFs, firms) who are engaged in foreign exchange broking;
- (d) Other commercial concerns not falling under (a) to (c) with effect from 10 September 2004. Cooperative banks which are not covered under the

definition of 'banking company', fall under the category of 'any other commercial concern' and become taxable under this category of service with effect from 10 September 2004;

- (e) Other persons (including commercial concerns) not falling under (a) to (d) with effect from 1 May 2006.

The following two services were further included in the definition of banking and other financial services:

- Banker to an issue service; and
- Cheque, transfer of money including telegraphic transfer, mail transfer and electronic transfer services.

Credit card services have been removed from 'Banking and other Financial Services' with effect from 1 May 2006 and are being taxed separately.

### III. COLLECTION OF SERVICE TAX FROM BANKING AND OTHER FINANCIAL SERVICES

4. The Service Tax on Banking and other financial service is a major contributor in Service Tax revenue. Its contribution during the years 2007-08 and 2008-09 is 7.09 per cent (₹ 3634.94 crore out of ₹ 51,301.79 crore) and 6.15 per cent (₹ 3747.65 crore out of ₹ 60,940 crore) respectively. When asked about the targets fixed for collection of Service Tax from BFNS and achievements made there against, the Ministry in its written information stated that no specific targets were set for individual sectors like Banking and other Financial Services.

5. The Committee further sought to know if all the BFNS who were on the records of the Income Tax Department subjected to Service Tax assessments and if not, what measures were contemplated by the Department to bring them into the tax net.

6. In this regard the Ministry in its written submission made to the Committee has stated as under:—

"As such there is no mechanism available with the field formations to check the data on assessee's filing returns with Income Tax Department. However, *vide* letter F. No. 137/151/2011-ST, dated 7th June, 2012 Directorate General of Service Tax (DGST) has been entrusted with the work of calling for data from the Income Tax Authorities in respect of persons providing one or the other kind of services and having income in excess of ₹ 10 lakh per annum. The data received from Income Tax authorities would be scrutinized to find out such persons who are not filling their returns, not registered for Service Tax and not declaring true value for the taxable services provided by them. Thereafter, such cases would be forwarded to the jurisdictional authorities for further investigations and appropriate action under the law."

7. On being asked as to whether the present mechanism to identify and bring in potential assesseees providing banking and other financial services in tax net for levy of Service Tax is effective enough, the Ministry submitted as under:—

"Instructions have been issued to field formations *vide* letter No. 137/151/2011-ST dated 23.11.2011, wherein the field formations have been directed that special cell should be created in each Commissionerate mandated with the task of identifying potential assesseees. It has also been mentioned therein that the cell should collect list of service providers from various service providers' associations, yellow pages, local publications, advertisements, regional registration authorities, websites, regulatory bodies, State Government Department, Income Tax Department, Reserve Bank of India.

With effect from 1st July 2012, a paradigm change has been effected in the taxation of services. In the new system a negative list of services has been provided and all services, except those specified in the negative list, will be subjected to Service Tax. With this change, the tax base of Service Tax has widened significantly. It is being attempted to create a database of Service Tax assesseees at the national level through the Directorate General of Service Tax."

#### IV. AUDIT EXAMINATION

8. The performance Audit of Service Tax on Banking and other Financial Services, covered the period from 2006-07 to 2008-09. Audit objectives were to:—

- Seek assurance that the mechanism to identify and bring in potential assesseees providing banking and other financial services in tax net for levy of Service Tax was effective;
- Examine the rules, regulations and procedures to identify ambiguities and lacunae that were required to be addressed; and
- Identify instances of non-compliance to rules leading to loss of revenue.

9. Test check of records relating to this service was conducted in 60 out of total 74 Commissionerates dealing with Service Tax and it included all the six exclusive Service Tax Commissionerates and 54 Commissionerates dealing with both Service Tax and Central Excise.

10. The Audit found procedural deficiencies in registration of assesseees, receipt of returns, scrutiny of returns, ambiguities/inadequacy in rule provisions and non-compliance. The key findings of Audit are given as under:—

- (i) 1142 service providers who had provided Banking and other financial services and were liable to pay Service Tax but were not on the departmental registration lists. 65 of these potential assesseees were liable to pay Service Tax of ₹ 92.12 crore.
- (ii) 6 per cent of Service Tax returns were received late and 14 per cent of the returns were not received at all. Cross verification of Service Tax returns with income tax returns and other records revealed instances of evasion of Service Tax totalling ₹ 28.93 crore.
- (iii) The levy of penalty for delayed submission and non-submission of returns serves as a deterrent but the Department did not impose penalty of



₹ 4.35 crore on defaulting assessees. This amount was 97 per cent of the total amount leviable (₹ 4.50 crore).

- (iv) The relevant exemption notification did not indicate the treatment of interest charged for late realisation on discounted bills.
- (v) The provisions for Service Tax on foreign exchange broking services provided two very unequal options.
- (vi) Different institutions were following different practices for availing cenvat credit on interest income earned by the banks resulting in excess availment of cenvat credit.
- (vii) Instances of non-compliance to rules and provisions on incorrect valuation, incorrect/excess availment and utilisation of cenvat credit, non-remittance of Service Tax, etc. resulting in revenue impact of ₹ 251.38 crore.
- (viii) No system exists in the Department to co-relate the taxable income as shown in the Income Tax return with the ST-3 return to identify cases that indicated the need for further examination due to large gaps.

The Committee have examined in detail the various issues raised by the Audit and the same have been discussed in detail in the ensuing paragraphs.

#### **PART - A: PROCEDURAL DEFICIENCIES**

##### **V. REGISTRATION**

11. Every person liable to pay Service Tax has to apply for registration within a period of 30 days from the date of commencement of his business.

12. Audit observed that for registration of eligible service providers, the Government has relied largely on 'voluntary compliance'. Thus an entity, though liable to pay Service Tax, can evade tax by not applying for registration.

13. Explaining the reasons for registration of Service Tax assessee through voluntary compliance, the representative of the Ministry during evidence deposed before the Committee as under:—

"When Service Tax was introduced and even as of now, the focus of the Government policy for implementation of Service Tax had been that the Department was not to follow the normal coercive measures which they might be following in respect of the Central Excise and Customs assessee, and the assessee were to be encouraged to voluntarily comply the Service Tax requirements."

14. He further added:—

"For this purpose, the Department has been running, a media campaign by issuing a lot of advertisements in the print media, electronic media, outdoor hoardings, etc. so that the assessee are encouraged to comply with it .... In the year 2003-04 we had about 4 lakh Service Tax assessee, and today, in the year 2011-12 we have 16 lakh Service Tax assessee. So the number of assessee is

gradually growing up and we are taking all necessary action and also on the basis of the recommendation made by the C&AG necessary action is being taken."

15. On being asked as to whether the tax payer's awareness programme through the print and electronic media is enough for registration of eligible service providers, the Ministry in its written submission has stated that:—

"Regular advertisements are brought out in the print and electronic media to educate the tax payers. Help desks have been set up in Commissionerates for answering the tax payers' queries and problems faced by them. Furthermore, seminars are organised to educate existing and potential taxpayers of changes in Service Tax law and procedure. For instance, with the recent coming into effect of the negative list, seminars have been organised in Mumbai, Chennai, Kolkata, Delhi, Ahmedabad, Hyderabad, Jaipur, Chandigarh and Bangalore, covering the major Service Tax revenue centres. These seminars have been addressed by Chairman, Member (Service Tax) and other senior officials of CBEC who are associated with effecting policy changes in Service Tax law. CDs containing changes in the Service Tax law were distributed through the various local associations and chambers for distribution among Service Tax assesses. Being interactive in nature, the policy makers have also had opportunities to listen to the difficulties faced by the tax payers. These seminars were webcast live so as to increase their reach and cover a very wide cross section of society."

16. The Committee also sought to know about the strategy, if any, formulated by the Ministry for making Service Tax assessee tax compliant and for ensuring that those collecting Service Tax are depositing it in the exchequer. In response, the Ministry in its written submission has stated as follows:—

"The strategy adopted for achieving the above objectives would have to be multi-pronged so as to include efforts aimed at increasing the tax base and efforts to ensure that those already in the tax net comply with their tax obligations regularly. With this dual approach in mind, the following key areas emerge that should be in focus to achieve the stated objectives:—

**A. Tax compliance by the service providers who are not registered**

- (a) **Tax payer education** by way of open house meeting in co-ordination with various associations of service providers, service specific seminars, publicity through print and media about the tax provisions and Frequently Asked Questions (FAQ);
- (b) **Hassle Free Registration** by conducting e-registration Mela at periodical intervals arranging for spot verification of documents and sorting out connectivity problem in remote locations;
- (c) Using database of various **Third party Sources** by cross-verification of unregistered assessee like trade associations, RBI, Income Tax, local municipal authorities, yellow pages, Internet, newspapers etc.

(Example: TDS data from Income Tax, stamp duty, Registration data, construction permission data from State Govt.);

- (d) Creation of an **Inter-Departmental Co-ordination Committee** for sharing of database amongst each other aimed at location service providers who are not registered;
- (e) **Issue of Modus-Operandi circulars** in Important Tax Evasion Cases amongst the field officers;
- (f) Proactive role of existing **Social Service Tax Cells** in the Commissionerates for conducting surveys and giving assistance to potential tax payers;
- (g) Hosting of **Web portals of Commissionerates** and updating the same on regular basis giving details of the latest legal provisions and contact numbers of concerned officers along with timely response to any matter received by e-mail.

#### **B. Tax compliance by the service providers who are registered**

- (a) Identifying **Non Filers/Stop Filers** of returns by using ACES data and from Enterprise Data Warehousing (EDW) Team of Systems Directorate and taking necessary action for recovery wherever due;
- (b) **Amnesty scheme** for the assesseees encouraging them to file returns and making voluntary payment of Service Tax along with interest. Liberal usage of Section 80 of Finance Act, 1994, may be made by the field to obviate the fears from the mind of assesseees who have defaulted in paying tax but willing to comply;
- (c) **Service oriented Audit and Anti-evasion** so as to keep focus on service which are prone to tax evasion *e.g.* construction service, mining service and renting of immovable property service;
- (d) Selection of top assesseees of high revenue yielding sectors and scrutiny of their Balance Sheets and Profit and Loss Accounts to tally income reflected in the accounts with the taxable value declared in ST-3 returns;
- (e) **Publicity of available deterrent provisions** like search, provisional attachment of property of tax evaders, prosecution and penalty including penal interest which can act as a deterrent for tax evaders;
- (f) **Special Investigation Agency** mandate specifically for Service Tax similar to Directorate of Revenue Intelligence in Customs or DGCEI in Central Excise cases. For this the role and scope of the mandate of Directorate General of Service Tax may be re-cast by vesting it with investigation powers in Service Tax cases;
- (g) **Automated scrutiny of Service Tax returns** under ACES module based on risk parameters for detecting irregularities in tax compliance;

- (h) **MoUs** may be signed with few top assesseees like SBI, LIC, PSUs having centralized registration to have access to their Computerized data directly by the departmental officers for CAAP audit without visiting their premises.

### **C. Tax collected but not deposited**

- (a) The provision of **prosecution** may be made compulsory in cases where the tax is collected but not deposited with the exchequer.
- (b) Provisional attachment of property may be made compulsory in cases having tax implication of ₹ 25 lakhs and above.
- (c) Name and address of all registered Service Tax assesseees should be on the web portal of CBEC and it should be open to the public, so that public must know whether Service Tax paid by them is going to the Government or not.

The aforesaid points can form the basis for any strategy aimed at the above stated objects. Annual Action Plans based on the above parameters at the beginning of the financial year can help in guiding the field formations on a constant basis. Deterrent action prohibiting the defaulting assesseees to utilize cenvat credit for payment of service can be introduced."

17. Observing that apparent weakness in the tax law for voluntary tax compliance is lack of stringent penalty system, the Committee sought to know about the measures taken by the Ministry to make the penalty system more stringent. The Ministry replied as under:—

"Since the introduction of Service Tax, a number of amendments have been made in the Finance Act, 1994 on need basis. Earlier the administration of Service Tax was based upon soft non-intrusive approach. The penal provisions were reviewed and rationalized (as part of the Budget exercise, 2011) to encourage voluntary compliance, maximize deterrent effect of the penal provisions especially directed towards hard core tax evaders.

Key changes in penal provisions are:—

- Maximum late fee for non-filing of returns under Section 70 increased to ₹ 20,000.
- Interest rate on tax defaulted revised as 18% with effect from 01.04.2011.
- Penalty for serious offences under Section 78 has been made mandatory and equal to tax sought to be evaded. Waiver of penalty under Section 80 has been disallowed for offences under this category (which was earlier permissible).
- Maximum penalty for miscellaneous offences, prescribed under Section 77 has been increased to ₹ 10,000.

Other measures introduced are:

- Section 89 has been introduced, for prosecution of certain specified offences involving Service Tax of more than ₹ 50 lakh, with maximum of 3 years imprisonment.
- Section 83 has been amended to make sections 9A, 9AA, 9B, 9E, 34A of the Central Excise Act, relating to prosecution of offences, applicable to Service Tax.
- Notwithstanding recovery provisions under any other Act, first charge on assets will now rest with Central Excise and Service Tax, for recovering the tax dues except in specified circumstances, to enable faster recoveries."

18. Audit found that the Director General of Service Tax, Mumbai, the nodal agency to administer Service Tax, had issued a comprehensive action plan in May 2003 to monitor the administration of Service Tax. As per this instruction dated 26 May 2003, the Department was required to collect the list of Service Tax providers from various service providers associations, yellow pages, other local association publications, advertisements appearing in newspapers, regional registration authorities, website, etc. to identify the unregistered service providers and to get them registered. It has identified field survey as one of the important mechanisms in the action plan to identify potential assesseees and broaden the tax base. The circular had also suggested a performance monitoring system for surveys. Every range officer was to be entrusted with the job of doing surveys to identify potential Service Tax assesseees in his jurisdiction and report the outcome every fortnight to their Commissionerates through the divisional office.

19. Audit Review of the surveys undertaken by the Department indicated that none of the 60 Commissionerates test checked had fixed any targets for survey during 2007-08 to 2008-09. No surveys were conducted in 27 out of 60 Commissionerates, including all the six exclusive Service Tax Commissionerates. Chennai III Commissionerate did not provide the information on the number of surveys conducted. Out of 32 Commissionerates where surveys were conducted, 9 Commissionerates stated that 154 new service providers of BFN were registered through surveys resulting in additional revenue of ₹ 1.84 crore during the year 2007-08 to 2008-09. However, no new service providers could be registered through Surveys for this service in remaining 23 Commissionerates. Moreover, in the 32 Commissionerates where surveys had taken place, the outcome was not monitored as prescribed in the DGST circular.

20. When asked to furnish reasons for not conducting surveys in several Commissionerates and show justification with regard to identification of potential service providers in those Commissionerates the Ministry submitted as follows:

"Surveys were not conducted due to shortage of staff in the department as explained below. Tax on Services was first introduced in July 1994 and was initially imposed on 3 services only and Service Tax collections were ₹ 407 crore which was only 0.06% of the total Indirect Tax collections. Thereafter over the

years, there has been an exponential increase in the number of assesseees as well as quantum of Service Tax collections. In 2011-12, total Service Tax collection was ₹ 97,389 crore which is 24.8% of the total Indirect Tax collections which resulted in increased workload for the existing manpower available with the department. A number of initiatives have been taken in the recent past to tap the full potential of Service Tax. Till Budget 2011, every year new services were incrementally brought in the Service Tax net. With effect from 1st July 2012, the department has made a paradigm change in the taxation of services."

21. To the query of the Committee regarding the number of surveys conducted during the last three years to identify potential assesseees and actual realization of Service Tax as a result thereof, the Ministry responded as follows:—

"With effect from 1st July 2012, a paradigm change has been effected in the taxation of services. In the new system a negative list of services has been provided and all services, except those specified in the negative list, will be subjected to Service Tax. With this change, the tax base of Service Tax has widened significantly. Instructions have been issued to field formations *vide* letter F. No. 137/151/2011-ST dated 23.11.2011, wherein the field formations have been directed that special cell should be created in each Commissionerate mandated with the task of identifying potential assesseees. It has also been mentioned therein that the cell should collect list of service providers from various service providers' associations, yellow pages, local publications, advertisements, regional registration authorities, websites, regulatory bodies, State Government Departments, Income Tax Department, Reserve Bank of India."

Further, desired information is as under:—

(Amt. in ₹ crore)

Year	No. of surveys conducted	Assesseees registered after surveys	Service Tax realised
2009-10	113	Nil	0.08
2010-11	87	Nil	0.50
2011-12	1003	90	0.44

22. Audit scrutiny also revealed in 26 out of 60 Commissionerates, there were 1142 service providers for this service, who, though liable to pay Service Tax, were not available on the departmental registration lists. The majority of them were in the Commissionerates where surveys had not been conducted. However, there were 92 such cases detected in 8 Commissionerates where surveys had been conducted. The majority of the cases were from Jamshedpur (34 cases) and Ranchi (48 cases) Commissionerates. Out of the 1142 identified by Audit, data relating to 65 such providers was obtained from various sources such as Income Tax Returns (14 cases), Registrar of Companies (30 cases), Annual Accounts (11 cases) and other sources (10 cases). It was found that, *prima facie*, these potential assesseees had not paid Service Tax to

the extent of ₹ 92.12 crore. This also implied additional penalty upto ₹ 92.12 crore with further interest liability of ₹ 21.35 crore. The Department had confirmed only two cases of non-registration upto April 2011 which had a revenue implication of ₹ 9.94 crore besides interest and penalty.

23. While furnishing reasons for the loss of revenue in respect of non-registration of potential service providers and also giving the present position regarding recovery of the same, Ministry of Finance (Department of Revenue) in its written submission stated as follows:—

"The Audit objections have been examined and are accepted or not accepted on merits of each case. Wherever it is found that provisions of Acts/Rules have been violated, remedial measures such as issuance of Show Cause Notice for recovery of Service Tax and penal action, persuading the tax payer to deposit the tax, have been taken.

Audit objections in respect of 65 cases are partially accepted. On scrutiny of these cases, it is observed that:—

- (a) 19 Audit objections involving Service Tax of ₹ 36.47 crore have been accepted and necessary remedial measures have been taken to safeguard/recover Government revenue.
- (b) 17 Audit objections involving Service Tax of ₹ 46.12 crore are not accepted.
- (c) In 10 Audit objections involving Service Tax of ₹ 4.25 crore, assesseees have already been registered with Service Tax Department.
- (d) In 2 Audit objections involving Service Tax of ₹ 0.03 crore, service provider does not exist on given address.
- (e) Remaining 17 cases involving Service Tax of ₹ 5.34 crore are pending for investigation."

24. In respect of the balance 1074 cases of non-registration as pointed out by Audit during the Financial Year 2008-09, the Ministry replied as under:—

“(i) 370 cases of non-registration were verified and it has been found that:—

- (a) 272 service providers were found not existing on the given addresses.
- (b) In 24 cases, service providers were under exemption limit.
- (c) In 19 cases, service providers were already registered.
- (d) In 34 cases, service providers were not providing any taxable service.
- (e) In 21 cases, service providers are under investigation.

(ii) A list containing 171 service providers is being obtained by Delhi Service Tax Commissionerate from Audit.

- (iii) In 17 cases involving 2 Commissionerates, verification report is yet to be received.
- (iv) In case of Bangalore Service Tax Commissionerate, 208 service providers have been verified out of total 725 cases and due to paucity of staff and large number of cases, the verification of remaining 517 cases is currently underway".

25. While admitting non-registration of Service Tax assesseees, the representatives of the Ministry during evidence deposited before the Committee that:—

"Till 2010, everything was manual. We had no means to find out which of our assesseees were effectively into our system. for checking it up, I go to RBI and get a list of people, and then I can measure that these cases are missing. But if I want to do it for the countrywide as a whole for all the services, it requires either building up a good electronic system of throwing up such names or huge manpower."

26. Furnishing details of NBFCs as received from RBI and the follow-up action taken by the Department to bring them to the tax net, the Ministry in its written reply stated as follows:—

"Information received regarding NBFCs from RBI and the Information received from the field formations is as under:—

(Amount in ₹ lakh)

Total number of NBFCs as per the RBI list	No. of NBFCs already registered out of Col. (i)	No. of NBFCs registered after taking the list from RBI	Show Cause Notices issued and amount involved		NBFCs not required to take Service Tax registration
			Nos.	Amount	
(i)	(ii)	(iii)	(iv)	(v)	(vi)
14320	2228	46	18	264.62	472

The list provided by RBI has 14,320 NBFCs. On verification, it has been found that 2228 nos. are already registered with the Department, 46 new service providers have taken registration since then, 472 NBFCs are not required to take Service Tax registration and in 18 cases Show Cause Notices have been issued. In respect of the remaining 11,556 cases, the following has been reported by Directorate General of Service Tax (DGST):—

- (i) A large number of NBFCs are not traceable/locatable in the jurisdiction of the concerned zones at the addresses mentioned in the list received from RBI. In a number of cases, letters addressed have been returned by postal authorities with the remarks 'Do not exist at the given address', 'Left', 'No such addressee' and 'Addressee not found';



- (ii) Documents submitted by a number of units claiming that they are not required to be registered, are under scrutiny for further necessary action. In a number of cases, identification/verification and investigation is in progress;
- (iii) Those who have not yet furnished the requisite details are being persuaded to furnish details for necessary verification and further the field formations have been directed to complete the verification and investigation expeditiously on priority."

#### VI. MONITORING OF RECEIPT OF SERVICE TAX RETURNS

27. Every person liable to pay Service Tax has to assess and pay his own tax. He has to furnish half yearly returns to the Department. A person failing to furnish timely returns is liable to pay a penalty subject to a maximum of one thousand rupees. According to Audit, they had called for the statistics on the returns submission from all the 74 Commissionerates. The information was furnished by 64 Commissionerates and 10 Commissionerates did not furnish the requisite information. The information furnished by 64 Commissionerates showed that a large number of returns were either not received or received late but the Department had not taken any corrective action. The position of receipt of returns during the period September 2004 to March 2009 by the Department is shown in the following table:—

Name of service	No. of returns due	No. of returns received	Returns received by due date	Returns received late	No. of returns not received	Penalty levied and waived for late submission per return (Lakh of rupees)	Penalty not levied @ ₹ 1000/-
BFN	226490	194151	181474	12677	32339	14.77	435.39
Percentage of returns due		85.72	80.12	5.60	14.28		

- The table shows that six per cent of returns were received late and 14 per cent of the returns were not received at all. In these test checked Commissionerates it was seen that they had not followed any monitoring mechanism to ascertain the reasons for non-submission of returns.
- The Government had exempted small service providers delivering taxable service upto ₹ 4 lakh from payment of Service Tax from 1 April 2005. This limit was increased to ₹ 8 lakh from 1 April 2007 and ₹ 10 lakh from 1 April 2008. Amongst the returns not received, 301 service providers, whose annual receipts of BFN had exceeded ₹ four lakh during the year 2005-06, had not submitted the returns for the year 2006-07. Further, 440 service providers, whose annual receipts of BFN had exceeded ₹ eight lakh during the year 2006-07, but they had not submitted the returns for the year 2007-08. Similarly,

513 service providers whose annual receipt of BFN had exceeded ₹ ten lakh during the year 2007-08, had not submitted the returns for the year 2008-09. The Department had not taken any action to ascertain whether the value of services provided had fallen below exemption limits for these assesseees or they had stopped filing returns to evade payment of tax.

- The levy of penalty for delayed submission and non-submission of returns serves as a deterrent but the Department did not impose penalty of ₹ 4.35 crores on defaulting assesseees. This amount was 97 per cent of the total amount leviable (₹ 4.50 crore).

28. While furnishing their comments on the above mentioned Audit observations, the Ministry in its written replies has stated as under:—

"The period covered by Audit is September 2004 to March 2009. With effect from 12.05.2007, graded structure of late fee was provided under Rule 7C of Service Tax Rules, 1994 for late submission of Service Tax returns as follows [para 6.4 of CBEC Circular No. 97/8/2007-ST (F. No. 137/85/2007-CX.4) dated 23.8.2007]:—

- ₹ 500 for delay upto 15 days;
- ₹ 1000 for delay between 15 days and 30 days; and
- ₹ 1000 plus ₹ 100 per day beyond 30 days, till the filing of return, not exceeding ₹ 2000/-.

Prior to 16.5.2008, Section 77 of the Finance Act read as follows:—

77 Penalty for contravention of any provision for which no penalty is provided. Whoever contravenes any of the provisions of this Chapter or any rule made thereunder for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to an amount not exceeding one thousand rupees."

29. Submitting details about the present status of receipt of returns during the period from September 2004 to March 2009, the Ministry has stated as under:—

Name of service	No. of returns due	No. of returns received late	No. of returns not received	Amount of penalty levied (₹ lakh)	Amount of penalty waived (₹ lakh)	Amount of penalty recovered (₹ lakh)
BFN	2,37,593	10,994	18,684	60.32	3.31	31.79

As per updated information collected from the field formations, the total number of returns not received during the above period is 18,684 and not 32,339 as reported by Audit.

30. On being asked about the methodology that has been adopted by the Ministry in order to ensure that all the BFNs were complying with the requirement of filing of returns of income, the Ministry informed as under:—

"Electronic filing of Service Tax returns has been made mandatory *w.e.f.* 1.10.2011 (notification No. 43/2011-ST dated 25.8.2011). Monitoring of electronically filed returns is easier and efficient as compared to monitoring of manually filed returns. It may be further pointed out that all the BFNs who are on the record of the Income Tax may not be subject to Service Tax assessment due to the reason that under the Service Tax regime, exemption limit is ₹ 10 lakhs while Income Tax is charged for the income exceeding ₹ 1.80 lakhs. Since the exemption limit under IT Rules is different, which may be the reason for difference in two lists *i.e.* under Income Tax and under Service Tax. However, all the field formations do take action to identify and get the BFNs registered who have crossed the exemption limit.

Further, the Systems Directorate sends a monthly report to field formations and CBEC on the status of returns pending for review and correction by officials of different Commissionerates across India to facilitate monitoring the progress of processing of returns on a regular basis. Board has also issued a letter [D.O. No. 201/10/2011-CX.6(Pt.) dtd. 01.06.2012] setting timelines for clearing pending returns. Further, CBEC has also constituted a Committee under the Chairmanship of Chief Commissioner of Vizag zone to examine the issues relating to review and correction process in ACES and to suggest remedial measures. Based on the recommendations of the Committee further course of action will be taken."

31. When the Committee sought to know whether the Ministry had any database with regard to the actual number of BFNs filing returns and those who were not filing returns of income and were not on the records of the Department, the Ministry stated that the database of non-filers and stop-filers is being developed through the Directorate General of Service Tax. Furthermore, the registered assessee not filing Service Tax returns are issued Show Cause Notices when noticed.

32. Regarding the deterrent action taken by the Ministry against errant assessee, the Ministry *inter alia* has stated as under:—

"Deterrent action against errant assessee is being taken by the field formation depending upon the seriousness of the offence/s. The laws dealing with deterrent action have been amended to provide strict action against the defaulters.

Section 73 of the Finance Act provides that where any Service Tax has not been levied or paid or short levied or short paid, the same would be recovered by issuance of demand notice to the person chargeable with the Service Tax;

Section 75 of the Act *ibid* provided that where a person, liable to pay Service Tax, fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay interest on the said amount for the delayed period. The rate of interest in the case of delayed payment of

Service Tax has been increased to 18% from 13% *w.e.f.* 1st of April 2011 [Notification No. 14/2011-ST, dated 1.3.2011];

Specific provisions have been laid down under Section 76 of the Act *ibid* prescribing therein that if any person, liable to pay Service Tax, fails to pay such tax, he shall pay such tax along with a penalty not less than ₹ 100 per day during which such failure continues or @ 1% of such tax, per month, whichever is higher;

In addition, with a view to provide for deterrent penal action against service providers collecting Service Tax but not depositing the same with the Government exchequer, prosecution in a Court of Law has been specifically provided for by introducing Section 89(1) (d) through Finance Act, 2011 *w.e.f.* 8<sup>th</sup> April 2011."

#### VII. REGISTERED SERVICE PROVIDERS WHO HAVE STOPPED FILING RETURNS

33. In the limited scale of verification done by Audit regarding Income Tax Returns and other connected records of some of the registered service providers who had stopped filing returns for Service Tax it was found that 7 assesseees in Nagpur Commissionerate, had not filed their Service Tax returns but had continued to provide services during the period of non-filing. This resulted in non-payment of Service Tax of ₹ 20.33 lakh and interest of ₹ 4.97 lakh. Some illustrative cases pointed out by Audit are given below:—

(Amount in lakh ₹)

Sl. No.	Commissionerate	Name of Assessee	Revenue effect		Source of data
			Tax	Interest	
1.	Nagpur	M/s. Berar Finance	7.71	1.88	IT return
2.	Nagpur	M/s. Leo Marketing and Auto Deal	3.00	0.77	IT return
3.	Nagpur	M/s. Mendhekar Enterprises	2.94	0.57	IT return

34. The response of the Ministry in respect of all the seven assesseees that was pointed out by Audit are given as under:—

- "(a) M/s. Berar Finance Ltd: The value taken by Audit from income tax return is broken into the following nature of income, namely, interest on loans, interest on investments, securitization income, profit on securitization, misc. income, Service Tax/education cess credit for earlier year, bad debt recovered, interest on housing loan and risk mitigation charges. None of these form part of taxable value under Banking and other financial service. Moreover, scrutiny of ST-3 returns for the relevant period indicates that assessee has discharged their Service Tax liability.

- (b) M/s. Leo Marketing and Auto Deal: The value taken by Audit from income tax return is broken into the following nature of income, namely profit on sale of vehicles, income from repairs of vehicles and commission from banking and financial services. Of this, only commission from banking and financial services form a part of taxable value, but since the gross receipts were below the small scale threshold limit of ₹ 4 lakh and 8 lakhs, respectively in the years 2006-2007 and 2007-2008, assessee was not liable for payment of Service Tax. The assessee has also surrendered Service Tax registration on 22.7.2005.
- (c) M/s. Mendhekar Enterprises: The value taken by Audit from income tax return is broken into the following nature of income, namely, profit of Mangla Y. Mendhekar shares account and securities transaction tax, none of which form part of gross taxable value. In the ST-3 return filed for the period 2007-08 the assessee has shown total taxable value as 'Nil'. Therefore, there is no Service Tax liability.
- (d) M/s. Deekay Financial Services: The Audit has taken taxable value of services as shown in the income tax return for the year 2006-2007 as ₹ 8,68,651/- while scrutiny of profit and loss account shows break up of nature of income as commission received and incentive. Though commission does form a part of gross taxable value, they were below the threshold limit of ₹ 4 lakh and hence were not liable to payment of Service Tax. The IT return of the assessee for the financial year 2006-07 reveals gross total income of ₹ 2,77,653/- which also does not corroborate Audit's contention. The assessee has also surrendered Service Tax registration on 17.11.2005.
- (e) M/s. Nidhi Finance and Investment: The value taken by Audit from income tax return is broken into the following nature of income, namely, interest and miscellaneous income which do not form part of gross taxable value. The assessee surrendered Service Tax registration on 14.11.2006 being below the threshold limit of ₹ 4 lakh.
- (f) M/s. Jain Finance Company: The value taken by Audit from income tax return broken into the following nature of income, namely, interest and documentation charges for the year 2007-08. These receipts do not form part of gross taxable value. Interest is exempt from Service Tax by virtue of section 67 of the Finance Act 1994 read with Rule 6(2) (iv) of the Service Tax (Determination of Value) Rules, 2006. The assessee surrendered its Service Tax registration on 8.6.2005 being below the threshold limit of ₹ 4 lakh at the relevant time.
- (g) M/s. Orange City Credit Capital Pvt. Ltd.: The value taken by Audit from income tax return is broken into the following nature of income, namely, interest on loans, processing fees, penal charges and vehicle repossession charges. Of these only processing fees of ₹ 9500/- in year 2006-2007 and ₹ 5300/- in year 2007-08 form a part of gross taxable value on which the Service Tax is recoverable and has not been paid.

Protective show cause notices, all dated 13.10.2011, have been issued in all the above 7 cases."

35. With regard to the steps taken by the Department for identifying the registered service providers who had stopped filing returns for Service Tax, the Ministry in its written information has submitted as follows:—

"Instructions have been issued to field formations *vide* CBEC's letters dated 27.07.2011 and 14.07.2011 wherein they have been directed that a special cell should be created in each Commissionerate mandated with the task of identifying potential assessee and stop filers. Electronic filing that has been made mandatory would make it easier for the Department to monitor the filing of returns.

Further, a facility has been provided in ACES to generate a report on assessee-wise details so that the non-filers of ST-3 returns can be identified. A process note has been circulated to all the Commissioners to make use of this facility. Commissionerate-wise lists of stop-filers and non-filers of ST-3 returns for the year 2009-10, 2010-11 and 2011-12 has also been prepared and sent to field formations for taken necessary action. This is being monitored at various levels."

#### VIII. SCRUTINY OF RETURNS

36. The authority to conduct scrutiny of returns is provided in Rule 5A of the Service Tax Rules, 1994 which authorizes the Commissioner to empower any officer to carry out 'Scrutiny, verification and checks, as may be necessary to safeguard the interest of revenue'. The Rule also allows such an officer to call for any record maintained by the assessee for scrutinizing the return regarding the correctness of the assessments made. The Board has also issued guidelines *vide* letter F.No. 137/27/2007 CX. 4, dated 8 February 2007, which makes it mandatory to scrutinize returns on a regular basis. The guidelines clearly envisaged that returns' scrutiny would become the core function of the Service Tax Ranges.

37. When the Committee sought details regarding the number of cases of Service Tax returns filed by BFNs that were selected for scrutiny assessments and completed in the last three years, the Ministry furnished the following:—

(Amt. in ₹ crore)

Year	No. of returns of BFNs selected for scrutiny	No. of returns scrutinised
2009-10	4553	5279
2010-11	137540	137461
2011-12	54633	53729

38. Further, as regards the targets fixed for disposal of returns after scrutiny and achievements made thereagainst, the Ministry submitted:—

"The CBEC *vide* Circular Number 113/07/2009-ST dated 23.04.2009 has prescribed norms for scrutiny of ST-3 returns. They are as follows:—

- (a) The first half yearly returns filed in the financial year by all taxpayers making tax-payment (cash+credit) over ₹ 50 lakh (either during the previous financial year or during the current year) must be scrutinized.
- (b) 50% of the first half yearly returns filed in the financial year by all taxpayers making tax-payments, payment (cash+credit) between ₹ 25 lakh to ₹ 50 lakh (either during the previous financial year or during the current year) must be scrutinized.
- (c) After completing the scrutiny of the first two categories, 5% of the balance returns should be scrutinized, depending upon the time and manpower available.

Further, the Systems Directorate sends a monthly report to field formations & CBEC on the status of returns pending for review and correction by officials of different Commissionerates across India to facilitate monitoring the progress of processing of returns on a regular basis. CBEC has also issued a letter [D.O. No. 201/10/2011-CX. 6 (Pt.)] dated 01.06. 2012 setting timelines for clearing pending returns. Further, a Committee under the Chairmanship of Chief Commissioner of Vizag zone to examine the issues relating to review and correction process in ACES and to suggest remedial measures has been constituted by CBEC. Based on the recommendations of the Committee, further action will be taken."

39. As regards scrutiny of returns, Audit review revealed the following significant deficiencies:—

- (i) The compiled departmental data for 67 out of 74 Commissionerates and two divisions of Delhi ST Commissionerate for the year 2008-09 showed that 12.38 per cent of the returns received for this service (received: 52423 verified 45935) were pending preliminary verification/scrutiny. Six Commissionerates and two divisions of Delhi ST Commissionerate did not furnish the information.
- (ii) Audit also found 99 cases in 22 Commissionerates where the departmental officers had scrutinised the returns but failed to detect irregularities like payment of Service Tax at lower rate, non-levy of interest and penalty, short payment of interest, etc. which had led to short levy of Service Tax totalling ₹ 7.02 crore and interest of ₹ 1.56 crore. Of these, the department had accepted Audit observations involving revenue of ₹ 2.15 crore and had recovered ₹ 1.21 crore and issued SCNs for ₹ 1.21 crore. An illustrative case is given below:—

Audit observed that M/s. Citi Financial Consumer Finance India Ltd., in Delhi ST commissionerate continued to pay Service Tax at the lower rate during the period between April 2006 to March 2008 even after the rates has been enhanced from 10.2 per cent to 12.24 per cent with effect from 18 April 2006. This resulted in short payment of Service Tax of ₹ 77.33 lakh.

Audit pointed this out in September 2009. The reply of the Department was awaited (April 2011).



(iii) No system exists in the Department to co-relate the taxable income as shown in the income tax return with the ST-3 return to identify cases that indicated the need for further examination due to large gaps. When a cross verification of ST returns with income tax returns and other records maintained by assesseees was conducted it was found that 116 assesseees (in 29 Commissionerates) had shown lower figures in ST returns which had Service Tax implication of ₹ 21.91 crore and interest of ₹ 2.94 crore during the period from September 2004 to March 2009. Two illustrative cases are given below:—

- (a) M/s. State Bank of India (Industrial Estate Branch), Balasore, in Bhubaneswar I Commissionerate was engaged in providing BFN. A cross verification of Income Tax return with the ST-3 returns filed by the assessee revealed that the assessee had exhibited taxable value in Income Tax return and value of taxable services in ST-3 returns as ₹ 3.93 crore and ₹ 2.40 crore respectively. In the absence of process of cross verification, the difference had not been examined. This had Service Tax implication of ₹ 14.23 lakh.
- (b) M/s. Cholamandalam DBS Finance Ltd. in Chennai ST Commissionerate, was offering income received on processing/service charges, pre-closure charges, insurance/administration charges, documentation charges and PDC (Post Dated Cheque) Swap charges for Service Tax.

However, other incomes like reimbursement of expenses towards cheque bouncing charges, Electronic Clearing Scheme transfer, Outstation cheque collection, field collection and recovery, post seizure interest charges were not included for Service Tax purpose for the financial years from 2006-07 to 2008-09. These incomes have to be reckoned as consideration for the purpose of levy of Service Tax. Non-levy of Service Tax on this account worked out to ₹ 8.99 crore and interest of ₹ 2.18 crore.

The Department partially accepted the Audit observation involving Service Tax of ₹ 8.55 crore and intimated that SCN for ₹ 9.43 crore had been issued in July 2010.

40. The Committee sought to know the reasons for pendency with regard to preliminary verification/scrutiny of about 12.38 per cent of returns that were received. Further, in the absence of the same how the Department was able to ascertain the correctness of the amount of Service Tax that was due and was deposited by the assesseees. To this, the Ministry in its written submission stated as:—

"Norms for scrutiny of returns have been fixed *vide* Board's Circular Number 113/07/2009-ST, dated 23.04.2009. Service Tax Return Scrutiny Manual has also been prepared, which has been circulated to the field formation *vide* Circular Number 113/07/2009-ST dated 23.04.2009, where by guidelines have been issued for checking/verifying the ST-3 returns submitted by the service providers, Electronic filing of Service Tax returns has been made mandatory *w.e.f.* 1.10.2011 (notification Number 43/2011-ST dated 25.8.2011). Further, the system of ACES



(Automation in Central Excise and Service Tax) has been introduced throughout the county. The system is able to check the correctness of the returns from the perspective of arithmetical accuracy right away leaving the officers with greater time to perform a detailed scrutiny based on risk parameters. The system also provides for automated monitoring of receipts and scrutiny of returns. Thus, the preliminary scrutiny of returns is now automated in ACES.

Further, the field formations regularly scrutinise the periodical returns filed by the taxpayers and conduct audit of Service Tax assessees wherein the compliance with rules, regulations and procedures specified for levy and collection of Service Tax are verified. If any deviation in compliance of the rules, regulations and procedures is noticed at any stage, the appropriate actions initiating issuance of show cause notice etc. are being taken against the defaulters. Anti-evasion teams have been strengthened to conduct checks against the service providers prone to evasion of tax and where there is any reported misuse of tax laws.

Instructions have also been issued by CBEC *vide* F.No. 224/02/2012-CX.6 dated 21.2.2012 that the function of detailed scrutiny may be implemented in all the Ranges. Till such time that ACES does not do the sample selections of returns, the samples may be selected manually, as prescribed in the scrutiny manuals. AC/DC/JC/ADC are required to conduct the detailed scrutiny of high monetary value returns as prescribed in the returns manual. As preliminary scrutiny is done by ACES system, the probability of recurrence of such lapses is very low."

41. Elaborating on the position of the scrutiny of returns, the Chairman, CBEC deposing before the Committee informed the Committee, as follows:—

"We have a system of audit. We see the documents and we see the returns, which have been filed by the assesseees. Out of the returns filed by assesseees, a few are selected for scrutinising on the basis of identified risk parameters. Now, identified risk parameters are there that if the tax paid by him is going down or it is going up or if the value of the services provided by him is going down."

#### IX. LIST OF BOOKS OF ACCOUNT NOT FILED

42. Rule 5(2) of Service Tax Rules, 1994, stipulates that every assessee shall furnish to the superintendent of Central Excise at the time of filing his return for the first time, a list of books of accounts maintained by the assessee in relation to Service Tax.

The shortfall in receipt of details of books of accounts as pointed out by Audit for the period from April 2007 to March 2009 in 68 out of all the 74 Commissionerates, is given below:—

Name of service	No. of returns received from service providers for the first time	No. of first returns where list of books of accounts not received	Percentage
BFN	9273	2438	26.29

Audit had observed that 26 per cent of service providers had not given the list of books of accounts maintained by them. During the period from April 2007 to March 2009, in 10 Commissionerates, not a single assessee had submitted the list of books of accounts at the time of filing of returns for the first time in respect of BFN.

The Commissionerates had not pursued these cases to ascertain the reasons for non-submission of these details. Further, six Commissionerates did not provide the data relating to accounts details being filed with the first ST return despite repeated pursuance for over six months.

43. While submitting their comments on the above-said audit observations to the Ministry in its written note has stated that:—

"Non-compliance with the said rules invites penal action. A letter F.No. 137/62/2011-ST dated 13.07.2011 has been issued to field formations with a view to ensure compliance to the said rule."

44. On being asked whether any deterrent action was taken against the defaulters, the Ministry in its written submission has replied as under:—

"The assessee not complying with the provisions of Rule 5(2) of the Service Tax Rules, 1994 are subjected to deterrent action as per the existing provisions in the law.

It has been further reported by Bangalore zone that approximately 25,000 assessee file their returns during the last two days of the due date for filing returns—both existing registrants and new assessee. In view of the huge volume of work, this work is entrusted to all the staff of the Service Tax Commissionerate. They were not in a position to identify the first timers and insist on submission of list of books of accounts due to the sheer workload. Thus, this is a problem of staff crunch which is sought to be solved by diversion from Central Excise side to Service Tax. A medium term solution is cadre review which is also being pursued."

45. When the Committee desired to know about the strategy, if any, had been formulated by the Department to obtain the list of books of accounts along with the returns from the defaulters, the Ministry responded as follows:—

"Non-compliance with the Rule 5 (2) of the Service Tax Rules, 1994 invites penal action. A letter F.No. 137/62/2011-ST dated 13.07.2011 has been issued to field formations with a view to ensure compliance to the said rule.

Further, a need has been felt to train the Service Tax staff for developing a better understanding of the various books of accounts maintained by banks and financial services assessee. This capacity building would also enable the staff to effectively enforce the disclosure of documents by banks and financial services assessee as mandated by Board's Circular Number 137/62/2011-ST dated 13.7.2011."

## **PART-B : RULES, REGULATIONS AND SYSTEMS**

### **X. NON-MAINTENANCE OF DOCUMENTS FOR AVAILING EXEMPTION OF DISCOUNT CHARGES**

46. CBEC Notification Number 29/2004 ST dated 22 September, 2004 read with Number 30/2004 of the same date and Rule 4A of Service Tax Rules provide that discount charges on bills discounted are exempted from Service Tax provided that the discount charges are shown in a document containing other essential information specified in Rule 4A.

47. Audit scrutiny revealed that M/s. Vijaya Bank in Bangalore LTU Commissionerate had collected discounted charges of ₹ 145.21 crore during 2004-05 to 2008-09 on account of bills discounted. The bank had not issued any separate invoice/bill or challan but had credited amounts net of discount directly to the customers' accounts. Consequently, the conditions specified in rule and notifications for claiming exemption had not been fulfilled. Similarly, SBI commercial branches, Jaipur and Bhilwara collected ₹ 4.58 crore as discounting charges and availed exemption without issuing any documents.

On being pointed out (August, 2009), the LTU Bangalore contended (November, 2009) that under notification 30/2004 the customers were provided with the option of issuing any document *viz.* account statements/pass book, vouchers containing various details required as per Service Tax Rules. It was also stated that this was the uniform practice followed across the Banking industry considering the magnitude of the transactions. The reply of the Department did not specify the document(s) issued by banks that contained all the mandatory information namely name, address and the registration number of persons providing and receiving taxable service; description, classification, and value of taxable service and Service Tax payable thereon.

48. When asked about the justification of the Ministry in this regard and action taken against the above-said banks for the stated deficiencies, the Ministry replied as follows:—

"Board's letter Number 137/62/2011-Service Tax dated 13.7.2011 has directed field formations to ensure that in the list furnished by assessee under Rule 5(2) of Service Tax Rules, 1994 the banking companies and other financial companies have mentioned the source records from which the document, that is issued by them in fulfillment of provisions of Rule 4(A)(1) of Service Tax Rules, 1994, is prepared."

49. Pursuant to the exit conference held by Audit, the Board had stated that Banking industry was issuing statement of accounts periodically wherein all the charges debited to parties accounts mentioning clearly the details of discount, interest or other such charges. However the Board informed that it would consider issuing a suitable clarification in this regard.

50. To a pointed query as to whether the Board had issued suitable clarification on maintenance of documents for availing exemption on discount charges, the Ministry in its written information replied as under:—

"Board's letter Number 137/62/2011-Service Tax dated 13.7.2011 has directed field formations to ensure that in the list furnished by assessee under Rule 5(2) of Service Tax Rules, 1994, the banking companies and other financial companies have mentioned the source records from which the document, that is issued by them in fulfillment of provisions of Rule 4(A)(1) of Service Tax Rules, 1994, is prepared. CBEC's letter *ibid* states as follows:—

The C&AG of India has pointed out that Banks and Financial Institutions should disclose the documents issued to fulfil the mandatory information requirements for availing exemption on discount charges.

In this regard attention is invited to the first proviso to Rule 4(A)(1) of the Service Tax Rules, 1994. It provides that 'Provided that in case the provider of taxable service is a banking company or a financial institution including a non-banking financial company providing service to any person, an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered, and whether or not containing address of the person receiving taxable service but containing other information in such documents as required under this sub-rule'. Further Rule 5(2) of the Service Tax Rules, 1994 mentions that every assessee shall furnish to be Superintendent of Central Excise a list of all the records prepared or maintained by the assessee for accounting of transactions and all other financial records maintained by him in the normal course of business.

In order to obviate the problem noticed by C&AG, it may be ensured that in the list furnished under Rule 5(2), the banking companies and other financial companies have mentioned the source record from which the document that is issued by them in fulfilment of provisions of Rule 4(A)(1) is prepared.

It is reiterated that there should be no deviation in following the above provisions of Rule 4(A) and Rule 5(2) of Service Tax Rules, 1994."

51. The details about the cases of wrong availment of exemption or abatement during the years 2009-10 and 2010-11, as furnished by the Ministry are given below:—

Year	No. of Cases	Amount of Service Tax involved (₹ crore)	Amount recovered (₹ crore)
2009-10	110	339.47	10.53
2010-11	91	250.07	20.23

Zone-wise details as received from the Ministry regarding Service Tax cases involving wrong availment of exemption or abatement are given as under:—

(₹ crore)

Sl. No.	Name of Zone	Number of Cases		Amount of Service Tax involved		Amount Recovered	
		2009-10	2010-11	2009-10	2010-11	2009-10	2010-11
1.	Ahmedabad	Nil	Nil	Nil	Nil	Nil	Nil
2.	Bangalore	Nil	Nil	Nil	Nil	Nil	Nil
3.	Bhopal	Nil	Nil	Nil	Nil	Nil	Nil
4.	Bhubaneswar	Nil	Nil	Nil	Nil	Nil	Nil
5.	Chandigarh	6	2	1.0909	0.035	0.0009	0.02
6.	Chennai	1	1	1.05	1.04	0	0
7.	Cochin	8	0	0.07	0	0.01	0
8.	Coimbatore*	0	0	0	0	0.023	0
9.	Delhi	27	16	157.64	204.85	0.0019	0
						0.2987	
						+0.074	
10.	Hyderabad	Nil	1	Nil	0.2987	Nil (Interest)	0.3734
11.	Jaipur**	5	3	1.4	0.86	0	0
12.	Kolkata	26	34	29.88	3.98	0.164	1.089
13.	Lucknow	0	1	0	0.037	0	0
14.	Mysore	4	2	0.05	0.03	0.01	0
15.	Meerut	4	14	1.82	4.018	0.04	0.132
16.	Mumbai-I	10	6	6.08	7.24	0.25	0
17.	Mumbai-II	Nil	Nil	Nil	Nil	Nil	Nil
18.	Nagpur	Nil	Nil	Nil	Nil	Nil	Nil
19.	Pune	1	0	0.12	0	0.12	0
20.	Ranchi	1	1	0.04	0.0312	0	0
21.	Shillong	Nil	Nil	Nil	Nil	Nil	Nil
22.	Vadodara	Nil	Nil	Nil	Nil	Nil	Nil
23.	Vishakhapatnam	Nil	Nil	Nil	Nil	Nil	Nil
24.	LTU Delhi	Nil	Nil	Nil	Nil	Nil	Nil
25.	LTU Chennai	Nil	Nil	Nil	Nil	Nil	Nil
26.	LTU Bangalore	Nil	Nil	Nil	Nil	Nil	Nil
27.	LTU Mumbai	Nil	Nil	Nil	Nil	Nil	Nil
28.	DGCEI	17	10	140.23	27.65	9.91	18.62
Total		110	91	339.47	250.07	10.53	20.23

\* Single SCN issued for ₹ 0.81 cr. pertaining to the year 2009-10 and ₹ 1.05 cr. pertaining to 2010-11.

\*\* Out of ₹ 1.41cr., case of ₹ 0.41 cr. dropped.

52. On being asked to furnish the reasons for slow recovery of Services Tax involved in availment of exemption or abatement, the Ministry in its written submission stated as follows:—

"Recovery involves due process of law like adjudication and subsequent appeals which obviously affects the process of recovery of amount of Service Tax involved. In most of the cases, the assessee contests their liability to pay Service Tax and enter into protracted litigation."

53. Regarding the basis for availing exemption or abatement by large number of assesses involving such a huge amount of Service Tax to which they were not entitled to, the Ministry replied:—

"Sometimes the service providers wrongly avail exemption and abatement under the impression that they are entitled for such exemption or abatement. In other cases, the assessee does avail these benefits by misrepresenting and suppressing the relevant particulars."

#### **Valuation of Taxable Service**

54. The value of taxable service is determined as per Rule 3 of Service Tax (Determination of Value) Rules, 2006. Audit found 64 instances of undervaluation which resulted in short payment of Service Tax of ₹ 53.80 crore that was recoverable with interest of ₹ 1.54 crore and penalty.

55. Responding to the irregularities pointed out by Audit, the Ministry stated:—

"Twenty-six of the sixty-four cases mentioned by Audit are separately described in the succeeding paragraphs. The remaining cases are also circulated to the field formations for examination and necessary remedial steps. The field formations are already taking requisite action in this regard. For example:—

- (a) In Chandigarh I Commissionerate, Punjab National Bank branches Sector XVII, Chandigarh and Sector SCID, Chandigarh have deposited ₹ 2.18 lakh (including interest) on 18.2.2010 and ₹ 3.17 lakh (including interest) on 12.7.2010 and show cause notices both dated 10.09.2010 have also been issued to the assessee.
- (b) In Rajkot Commissionerate, with respect to M/s Rajkot Nagrik Sahkari Bank Ltd., the show cause notice dated 14.12.2009 for Service Tax ₹4.51 lakh (₹ 0.58 lakh and ₹ 3.93 lakh) was confirmed in adjudication, while in appeal the demand of ₹ 4.08 lakh was upheld and amount recovered.
- (c) Again in Rajkot Commissionerate, with respect to M/s. Rajkot Nagrik Sahkari Bank Ltd., the assessee paid the amounts of ₹ 0.73 lakh and ₹ 0.41 lakh (total ₹ 1.14 lakh) observed by Audit.
- (d) In Trivandrum Commissionerate, with respect to M/s. Kerala State Cooperative Bank Ltd., Audit had observed a liability of ₹8.16 lakh. The observation is partially accepted since there is no Service Tax liability on ₹ 28 lakh grant from NABARD. The actual liability works out of ₹ 5.28 lakh for twenty branches of the Bank, which has been paid by the Bank.

- (e) In Jaipur I Commissionerate, with respect, to M/s. JSEL Securities Ltd., the audit observation is admitted and show cause notices issued for Service Tax totalling ₹1.55 lakh.
- (f) In Surat I Commissionerate, with respect to State Bank of India (SCB), the amount of ₹ 1.71 lakh has been recovered.
- (g) In Vapi Commissionerate, with respect to State Bank of India, (Industrial Town Ship Branch, Vapi), the amount of ₹ 4.76 lakh has been recovered.

The field formations are being directed to intimate the action taken and results thereof to respective Accountant Generals' Office of the Comptroller and Auditor General of India."

56. Apprising the Committee of the mechanism that was in place for detecting the undervaluation, the Ministry submitted as follows:—

"The Service Tax (Determination of Value) Rules, 2006 have been incorporated w.e.f. 19.04.2006 for determining the value of taxable services. Field formations are required to determine the value as per these rules. The scrutiny of ST-3 returns, Audit of the records of the assessee and anti-evasion operation are used to determine cases of undervaluation and short payment of Service Tax."

57. When asked about the steps taken/proposed to be taken to check such malpractices, the Ministry in its submission stated as under:—

"Whenever any ambiguity is noticed in respect of valuation rules, suitable clarifications are issued or amendments done. To deter deliberate undervaluation, non-issuance of invoice and maintenance of false books of accounts are now punishable offence, attracting imprisonment upto 3 years under Section 89. As part of the Budget 2012, scope of Section 89(1) has been modified in such a manner that 'any person who knowingly evades payment of Service Tax' can be punished with prosecution."

#### XI. NON-INCLUSION OF FORECLOSURE CHARGES IN THE ASSESSABLE VALUE

58. Ministry of Finance letter F.No. 345/6/2008-TRU dated 11 June 2008 clarified that any amount collected by a service provider on account of lending is either interest or service charges. Pre-closure/fore-closure charges are collected for early payment of loans. These charges not being 'interest' are required to be treated as consideration for the services provided and are accordingly leviable to Service Tax under Section 65(105) (zm).

59. Audit scrutiny revealed that M/s. Infrastructure Development Finance Corporation Ltd. (IDFC), in Mumbai (ST) Commissionerate, had collected ₹ 825.54 lakh on account of foreclosure charges of loans during the period April 2006 to September 2009, on which Service Tax amounting to ₹ 99.00 lakh was not paid. This was recoverable with interest.

60. When Audit pointed this in December 2009, the Department accepted the Audit observation and reported that a Show Cause Notice for ₹ 98.78 lakh had been issued in March 2010. Further progress was awaited (April 2011).

61. While providing the current status of the Show Cause Notices (SCN) issued for recovery of Service Tax which was not paid owing to non-inclusion of foreclosure charges in the assessable value, the Ministry in its written submission stated as under:—

"The Show Cause notice dated 12.3.2010 for Service Tax amount of 5.52 crore (period 2005-06 to September 2009) which includes ₹ 98.78 lakh (period 2006-07 to September 2009) pertaining to this observation. The Show Cause Notices is pending adjudication."

#### **Cenvat Credit**

62. In terms of rule 4 of the Cenvat Credit Rules, 2004, credit of Excise Duty or Service Tax paid on any input, capital goods or any input service is allowed to a provider of taxable service. Credit can be utilised towards payment of Service Tax on output service subject to the fulfilment of certain conditions.

63. Audit observed that there was incorrect availment and utilisation of cenvat credit totalling ₹ 105.30 crore, by providers of banking and financial services in 75 cases. Interest of ₹ 6.26 crore was also leviable in these cases. The Department had accepted Audit observations involving revenue of ₹ 9.90 crore, recovered ₹ 3.07 crore and issued SCNs for ₹ 9.48 crore.

64. Apprising the Committee about the current status of recovery in the cases pointed out by Audit, the Ministry furnished the following details:—

- (i) "In 46 cases involving ₹ 52.59 crore, proceedings have been initiated by issuing Show Cause Notices to the defaulting service providers.
- (ii) 24 Audit objections involving ₹ 49.13 crore have been examined on merit and have not been accepted.
- (iii) 8 cases involving ₹ 5.47 crore are pending investigation.
- (iv) In 2 cases ₹ 0.33 crore has been recovered".

#### **XII. SEPARATE ACCOUNTS FOR DUTIABLE AND EXEMPTED GOODS NOT MAINTAINED**

65. Prior to 1 April 2008, if Cenvat credit had been availed on common inputs and input services which were used in providing taxable as well as exempted services and separate account of their use was not maintained, then the output service provider was allowed to utilise credit only upto 20 per cent of the amount of Service Tax payable on taxable output service.

66. Audit observed that M/s. Infrastructure Development Finance Co. Ltd., in Mumbai (ST) Commissionerate, provided infrastructure advisory work to the International Finance Corporation for World Bank projects in India during the period 2006-07 and 2007-08 and recovered advisory fees. The assessee availed exemption from Service Tax under notification Number 16/2002 dated 2 August 2002 for services



provided to International Organisation. The assessee did not maintain separate accounts for receipt, consumption and inventory of input services use for taxable and exempted services.

67. Under law, the assessee was liable to restrict the utilisation of cenvat credit to 20 per cent of the Service Tax payable during the period 2006-07 and 2007-08. Out of the 24 months in 2006-07 and 2007-08, the assessee paid Service Tax of ₹ 1198.04 lakh in 12 months. While the utilisation of cenvat credit to make these payments should have been restricted to ₹ 239.61 lakh (20 per cent), the actual utilisation was ₹ 626.65 lakh. This led to excess utilisation of credit of ₹ 387.04 lakh which was recoverable with interest of ₹ 95.84 lakh.

68. The Department accepted the Audit observation and stated that a Show Cause Notice for ₹ 387.04 lakh had been issued in March 2010.

69. On being asked as to how the Ministry could ensure that there were no revenue leakages in cases where separate accounts for dutiable and exempted goods were not maintained, the Ministry replied as under:—

"The assessee not maintaining separate accounts for providing taxable and exempted services, are required to pay an amount either @ 6% of value of exempted goods and exempted services or pay an amount as per the formula laid down under sub-rule (3A) of the Rule 6 to CENVAT Credit Rules, 2004. The field formations at the time of scrutiny of returns and conducting of audit of the records of the party take necessary measures to stop revenue leakages on this count."

70. Apprising the Committee about current status of Show Cause Notice issued for recovery of ₹ 387.04 lakh, the Ministry stated that the Show Cause Notice is dated 12.3.2010 for Service Tax amount of ₹ 5.52 crore (period 2005-06 to September 2009) which includes, ₹ 387.04 lakh (period May 2006 to March 2008) pertaining to this observation and the same was pending adjudication.

### XIII. SHORT-PAYMENT OF AMOUNT UNDER RULE 6 (3) OF CENVAT CREDIT RULES, 2004

71. Rule 6 (3A)(a) read with Rule 6 (3)(ii) of the Cenvat Credit Rules, 2004 prescribe that the manufacturer of goods or the provider of output services can pay an amount equal to the credit availed that is attributable to exempted products or executed services. The payment can be made on a provisional basis every month.

72. Audit pointed out that M/s. Allahabad Bank in Kolkata ST Commissionerate rendered various taxable financial services as well as exempted services. The assessee did not maintain separate accounts for common input services used for taxable and exempted output services. It determined the amount payable provisionally every month without considering the interest on cash credit and overdraft facility which were exempted from Service Tax. Failure to do so had resulted in short-payment of ₹ 515.56 lakh for the period from April 2008 to March 2009 which was recoverable with interest of ₹ 47.69 lakh.

73. Audit observed three other similar cases which are tabulated below:—

(in lakh of ₹)

Sl. No.	Name of Assessee	Commissionerate	Period	Income from exempted output services	Cenvat credit to be reversed	Cenvat credit actually reversed	Short reversal of cenvat credit
1.	M/s. Lakshmi Vilas Bank Ltd.	Trichy	2008-09	34318	164	Nil	164
2.	M/s. Tamil Nadu Mercantile Bank Ltd.	Tirunelveli	2008-09	28266	117	5.37	111.63
3.	M/s. Global Trade Finance Ltd.	Mumbai ST	2008-09	42668	65.20	8.13	57.07

74. While submitting their comments on each of the above-said cases, the Ministry has stated as follows:—

- (a) "M/s. Allahabad Bank: The Audit observation is not accepted. The interest income is specifically excluded in terms of Rule 6 (2) (iv) of Service Tax (Determination of Value) Rules, 2006. A show cause Notice dated 9.2.2010 for amount of ₹ 515.56 lakh has been issued to the assessee.
- (b) M/s. Lakshmi Vilas Bank Ltd. and M/s. Tamil Nadu Mercantile Bank Ltd. The Audit observation is not accepted. Interest on loans do not form part of any value of taxable services. Interest on loans stands excluded from valuation in recognition of the principle that interest is compensatory in nature and not a value addition in the nature of services. Therefore, where interest is not a component of valuation, the value for Service Tax is only after excluding the interest portion. When interest does not form part of Service Tax at all, it is also to be excluded from total turnover. In view of statutory provisions under section 67 of the Finance Act, 1994 that interest on loan shall not form part of valuation of services, further exemption circulars will not render the service as an exempt service and it shall remain an exclusion from valuation only. As a result, there is no excess utilization of cenvat credit. A show Cause Notice dated 24.10.2011 for ₹ 6.54 crore for period April 2007 to February 2011 has been issued to M/s. Lakshmi Vilas Bank Ltd. A show Cause Notice dated 13.10.2011 for ₹ 3.03 crore for period 2008-09 to 2010-11 has been issued to M/s. Tamil Nadu Mercantile Bank Ltd.
- (c) M/s. Global Trade Finance Ltd. The Audit observation is not accepted. The assessee has received discount charges amounting to ₹ 421.58 lakh during the year 2008-09. The service of factoring is a single composite service under which two types of charges viz. factoring charges and discount charges

are collected. The discount charges are in the nature of interest which is levied on account of pre-payment made to the customer and are only a part of the value of the factoring service which is taxable service. Thus, the receipt of discount charges cannot be treated as a receipt towards exempted service under Notification Number 29/2004. The said exemption has the effect of only providing exemption to discount charges and not to the entire factoring service. Thus, the service of factoring are not exempted service. Therefore, the discount charges are not required to be treated as value towards exempted service. The service of factoring does not fall under non-taxable service, neither is the service exempt from whole of the Service Tax leviable thereon but it is the only discount value that is actually exempted. Therefore, provisions of rule 6(3) of CENVAT Credit Rules, 2004 are not applicable. A protective Show Cause Notice dated 29.4.2010 for ₹ 57.07 lakh has been issued to the assessee."

75. Further, as regards the present status of recovery of the amount so short paid in case of M/s. Allahabad Bank in Kolkata ST Commissionerates, the Ministry in its written submission has stated that the Show Cause Notice dated 9.02.2010 covering the period 2008-09 that has been issued to the assessee is pending adjudication.

#### XIV. OVERSTATEMENT OF CENVAT CREDIT BALANCE IN ST-3 RETURNS

76. Audit found that the ST-3 return of M/s. Citifinancial Consumer Finance India Limited in Delhi ST Commissionerate for the period April 2006 to September 2006 had a closing balance of cenvat credit of ₹ 9.47 crore whereas in the ST-3 return for the period Oct. 2006 to March 2007 the opening balance of cenvat credit had been shown as ₹ 11.47 crore. This resulted in excess availment of cenvat credit of ₹ two crore. Accepting the above-stated Audit observation it was stated that the account would be corrected and appropriately reflected in ST-3 return for the period April 2009 to September, 2009.

77. Apprising the Committee about the present position of recovery, the Ministry stated that a Show Cause Notice dated 20.10.2011 for amount of ₹ 199.99 lakh had been issued to the assessee.

#### **Non-Remittance of Service Tax**

#### XV. SERVICE TAX COLLECTED BUT NOT REMITTED TO THE GOVERNMENT

78. Section 73A of the Finance Act, 1994 (as amended with effect from 18 April 2006), provides that any person who is liable to pay Service Tax and has collected any amount in excess of the Service Tax assessed shall forthwith pay the amount so collected to the credit of the Central Government.

79. Audit scrutiny had revealed that 14 cases of retention of Service Tax collected amounting to ₹ 1.41 crore that was recoverable.

80. Submission of the Ministry on the above-said 14 cases that was pointed out by Audit are as under:—

"Twelve of the fourteen cases mentioned by Audit are described separately in the succeeding paragraphs. The remaining two cases are of M/s. Rajasthan

Financial Corporation for Service tax of ₹ 1.94 lakh for which Show Cause Notice dated 25.1.2011 has been issued to the assessee and M/s. Guru Share Brokers Pvt. Ltd. Jaipur for Service Tax ₹ 1.82 lakh for which the assessee has deposited the amount *vide* challans dated 10.12.2009 and 18.12.2009."

81. A few cases as pointed by Audit and the submission of the Ministry thereon are illustrated below:—

**"Para 1.5.1—Audit observation**

On scrutiny of records of M/s. Central Bank of India, Civic Centre, Bhilai, in Raipur Commissionerate, Audit observed that during 2006-07 to 2008-09 the assessee had collected Service Tax of ₹ 158.28 lakh from customers but deposited only ₹ 84.74 lakh through challan and retained an amount of ₹ 73.54 lakh. This resulted in irregular retention of Service Tax of ₹ 73.54 lakh, which was recoverable with interest and penalty.

Audit pointed this out to the Department in September 2009, Reply was awaited (April 2011).

The Ministry's submission is mentioned below:—

A show cause notice dated 13.10.2010 was issued to the assessee. It includes the demand for Service Tax of ₹ 73.54 lakh raised in this objection. Assessee has reported that it is discharging Service Tax on their taxable activities and also collecting Service Tax from other tax payers on behalf of the Central Excise Department. There are two separate accounts for these activities. Due to clerical error some entries were posted *vice versa* in these two accounts, which has been subsequently corrected. The claim of the assessee is pending verification.

**Para 1.5.2—Audit observation**

Audit observed that after reduction in rates of Service Tax from 12.36 per cent to 10.30 per cent with effect from 24 February 2009, 10 assesseees (six branches of State Bank of India, four branches of State Bank of Patiala) in three Commissionerates continued charging the higher rate from their customers and collected Service Tax of ₹ 135.30 lakh in the month of February and March 2009 but deposited Service Tax of ₹ 112.75 lakh at the lower rate. This resulted in undue retention of Service Tax of ₹ 22.55 lakh which was required to be recovered with interest and penalty. Audit pointed this out to the Department in September, 2009 & December 2009. Reply was awaited (April 2011).

In this regard, the reply of the Ministry is mentioned below:—

The Audit objection is admitted. One case of State Bank of India for Service Tax of ₹ 6.16 lakh has already been adjudicated. Five cases of State Bank of India for Service Tax of ₹ 0.67 lakh, ₹ 1.8 lakh, ₹ 1.92 lakh, ₹ 4.28 lakh and ₹ 1.65 lakh (amount recovered), the show cause notices are pending adjudication. In two cases of State Bank of Patiala the show cause notices for Service Tax of

₹ 0.33 lakh and ₹ 1.54 lakh are pending adjudication. Another show cause stands issued to State Bank of Patiala, The Mall, Patiala for Service Tax of ₹ 14.59 lakh for the period February 2009 to January 2011. One show cause notice for ₹ 3.50 lakh pertaining to State Bank of Patiala, Sector 8C, Chandigarh Commercial Branch is under process of issuance.

**Para 1.5.3—Audit observation**

On reconciling the Ledger Accounts, which contains the details of the Service Tax collected by the assesseees, with the ST-3 returns for the period 2006-07 to 2008-09, Audit observed that M/s. Bank of India in Delhi ST Commissionerate collected Service Tax of ₹ 4.01 crore but paid only ₹ 3.59 crore. This resulted in short payment of Service Tax amounting to ₹ 41.29 lakh, which was required to be recovered with interest and penalty.

Ministry has submitted that: The Bank of India has discharged the Service Tax liability of ₹ 41.29 lakh by debiting from their cenvat credit account."

82. Apprising the Committee regarding the reasons for not depositing huge amount of Service Tax collected from consumers with the exchequer, the Ministry has stated that non-payments of taxes by a taxpayer are attributable to a propensity among a section of taxpayers to evade tax.

83. When the Committee sought to know the details regarding the number of cases of service providers who had collected Service Tax from consumers but had not deposited with exchequer during the year 2007-08, 2008-09, 2009-10 and 2010-11, amount of tax involved therein, recovery during that period and number of service providers against whom punitive action was taken and demand-cum-SCN issued, the Ministry submitted the following particulars:—

Year	Service providers who have collected the Service Tax from consumers but not deposited with exchequer		Recovery during the period		No. of service providers against whom punitive action taken and demand cum SCN issued	
	No.	Amount involved (₹ in crore)	No.	Amount involved (₹ in crore)	No. of SCN issued	Amount involved in the SCNs issued Details of other action taken, if any (₹ in crore)
2007-08	307	130.79	152	51.64	170	147.52
2008-09	386	259.40	263	132.74	207	223.11
2009-10	548	294.55	374	130.36	290	431.21
2010-11	870	450.08	554	245.32	398	241.36
Total	2111	1134.82	1343	560.07	1065	1043.20

84. Then the Committee further desired to know as to how the Ministry ensured that the Service Tax collected by the assessee was duly remitted to the Government. In reply, the Ministry has stated as under:—

"By regular scrutiny of returns, anti-evasion operations and audit of the records of the assessee, it is verified that entire tax collected by the assessee from service recipients has been credited into Government account. In case of any deviation, necessary action is taken against the defaulters."

85. Asked to state about the mechanism that was prevalent to check this practice, representative of the Ministry during evidence deposed before the Committee that:—

We do not have any foolproof system. We are depending on a trust based system. We are only randomly checking where there have been breaches of trust, through risk based scrutiny, through selective audit and on the basis of complaints, that is why, if we have that comprehensive physical control which used to be there during the British days, then the possibility of leakage would be much less. But then Government has consciously taken the decision that they want to threat the traders as stakeholders and promote them to comply voluntarily."

86. Regarding the provisions for imposing penalty on the defaulters, the Ministry in its written reply has submitted:—

- (i) "Section 75 of the Finance Act provides that where a person, liable to pay Service Tax, fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, he shall pay interest on the said amount for the delayed period;
- (ii) The rate of interest in the case of delayed payment of Service Tax has been increased to 18% from 13% w.e.f. 1st of April 2011 by issuance of notification Number 14/2011-ST, dated 1st March, 2011;
- (iii) Specific provisions are laid down under Section 76 of the Act *ibid* prescribing therein that if any person, liable to pay Service Tax, fails to pay such tax, he shall pay such tax along with a penalty not less than ₹ 100 per day during which such failure continues or @ 1% of such tax, per month, whichever is higher; and
- (iv) In addition, with a view to provide for deterrent penal action against service providers collecting Service Tax but not depositing the same with the Government exchequer, prosecution in a Court of Law has been specifically provided for by introducing Section 89(1) (d) through Finance Act, 2011".

#### XVI. STAFF POSITION

87. One of the main reasons furnished by the Ministry for procedural deficiencies in registration of assesseees, receipt of returns and scrutiny of returns is, shortage of staff at various levels.

88. To a pointed query of the Committee whether the present staff strength was adequate enough for overall management of Service Tax, the Ministry made the following submission:—

"Tax on Services was first introduced in July 1994 and was initially imposed on three services only, basically confined to services provided by public sector entities in the telecom and insurance sectors making its collection relatively easier. The collection during the year 1994-95 was ₹ 411 crore. With the increase in number of services under its umbrella as well as the number of assessees, at the time of the last Cadre Restructure in 1999-2000, the total Service Tax collection was ₹ 2072 crore. Thereafter, over the years, the exponential increase in number of assessees as well as quantum of Service Tax collected resulted in increased workload for the existing manpower available with the Department."

89. The relevant details in this regard submitted by the Ministry are give as under:—

**Workload Indicators**

Workload Indicator	2002-03	2010-11	2011-12	% Growth over 2002-03 in 2011-12
No. of ST Assessees	1,33,531	16,30,317	18,17,415	1261

**Revenue Collection**

(in ₹ crore)					
Revenue	2002-03	2011-12	2012-13 (BE)	% Growth over 2002-03 and 2011-12	Estimated % Growth over 2002-03 and 2012-13
Service Tax	5000	96670	124000	1800	2380

90. As seen from above table, the total number of Service Tax assessees have increased from about 1.34 lakh in 2002-03 to about 18.17 lakh in 2011-12; an increase of more than 12.5 times in less than a decade. Further, revenue realization in Service Tax has increased by 1800% in the year 2011-12 over 2002-03, and it is likely to increase by 2380% in the current fiscal (as per budgetary estimates) (2012-13).

91. Amongst other major changes which contributed to increase in workload relating to Service Tax, Ministry has *inter-alia* enumerated the following:—

- “(i) Allowing Cenvat on Services in 2002 and its later expansion to cross utilization among goods and services, requiring harmonization of the two taxes, namely the Service Tax and Central Excise
- (ii) Taxation on import of services in 2002



- (iii) Refund of taxes paid on services exported and taxes paid on input services used in export in 2005 and subsequent expansion of refund to taxes paid on inputs on export of services in 2006 as also reimbursement of taxes paid on input services used on export of goods
- (iv) Introduction of web-based services to clients since December, 2006 with a view to facilitate the user clients."

92. On being asked as to how the work relating to Service Tax is still being attended to, the representative of the Ministry deposing before the Committee stated that majority of Service Tax related work is presently being attended by the staff diverted from the Central Excise and Customs formations.

93. Regarding cadre review, Revenue Secretary during evidence deposed before the Committee as:—

"We have already moved a case for cadre review. Unfortunately, for the last ten years, in CBEC, they did not have a cadre review."

He further added that:—

"We are coming to a situation where one-third of our revenues are to come from Service Tax where we just do not have the staff. Therefore, we need to have a quantum jump in the requirement of staff for Service Tax."

94. Elaborating further on this aspect, the Chairman, CBEC informed the Committee as follows:—

"Sir, we started with very small field formations. Even today, the entire Service Tax that we had collected in the last year was ₹ 97,000 crore. If my figures were right, we have something like 4,000 to 5,000 officers deployed for this purpose as against 40,000 officers for Excise, for collecting roughly the same amount of excise excluding petroleum. Now, the point is that we are trying to do as much as possible within the existing constraint of the manpower while recognizing that the challenge is increasing and we need to measure up to that challenge.

The first thing is to provide sustenance level of facilities to the taxpayers. So, till 2010, everything was manual. We were registering people and we were getting their returns; we had no ready means to find out which of our assesseees were effectively into our system. For checking it up, I need to go to RBI and get a list of people, and then I can measure that these cases are missing. Rightly, Sir, the C&AG has been able to point out those things. But if I want to do it for the countrywide as a whole for all the services, it requires either building up a good electronic system of throwing up such names or huge manpower. So, we took stock of the whole thing last year. We have roughly 15 lakh to 16 lakh registered assesseees and six lakhs or so are filing returns. The first step we took is that everybody has to now file the return electronically."

95. Apprising the Committee of the problems in getting adequate staff, Secretary Revenue while depositing before the Committee stated that:—

"In the Ministry of Personnel, their stance is that whenever we do a cadre review for all Ministries, we stick to a yardstick of not allowing more than ten to fifteen per cent increase."



96. The proposal as submitted by CBEC for cadre restructuring and reorganization of the field formations is given as under:—

Formations	Existing	Proposed
Central Excise Zones	23	39
Central Excise Commissionerates	93	119
Central Excise Audit Commissionerates	0	39
Commissionerates CE Appeals	64	39
Service Tax Zones	0	6
Service Tax Commissionerates	7	22
Service Tax Audit Commissionerates	0	6
Commissionerate Service Tax Appeals	0	6
Customs/Customs (P) Zones	11	20
Customs/Custom (P) Commissionerates	34	60
Commissionerate Customs Appeals	8	20

Out of 119 proposed Central Excise Commissionerates, 87 Commissionerates would be Integrated Central Excise & Service Tax Commissionerates. Share of Service Tax in the projected revenue collection of these Commissionerates is likely to be 35-40% of total indirect tax revenue generated by these Commissionerates. The proposal also envisages strengthening of Directorate General of Service Tax, Large Taxpayers Units and Service Tax Wing of CBEC.

97. In order to meet the manpower requirement for improvement in efficiency of the Service Tax administration, the Committee during evidence sought to know the details about total manpower requirement. The Ministry in a written note submitted to the Committee stated as follows:—

**Manpower Requirement:** Originally, the Cadre Restructuring proposal envisaged increase in staff strength from existing 66808 to 95168 posts in various grades. The proposal was accepted by the Department of Expenditure. However, later on, at the behest of DoPT, the Department of Customs & Central Excise reduced the staff requirement from 95168 to 86888. Thus, presently the cadre restructuring proposal envisages creation of additional 20080 posts in various grades.

Share of Service Tax stream in the projected total staff strength of 86888 works out to 14990 posts in various grades. Following Table indicates the requirements of additional staff strength for Service Tax stream [including the staff requirements for Service Tax work of Integrated Central Excise & Service Tax Commissionerates, Service Tax Audit and Appeals set-up of these Commissionerates, DG (Service Tax), LTU and Commissioner (Service Tax), DG

(Service Tax), LTU and Commissioner (Service Tax) in CBEC], as assessed in the cadre restructuring proposal:—

**Staff Requirements of Service Tax Stream**  
(as projected in the Cadre Restructuring Proposal—2010)

Sl. No.	Grade & Existing Designation	Total Staff Requirement
1.	Chief Commissioner	7
2.	Commissioner	56
3.	Addl./Joint Commissioner	120
4.	Dy./Asst. Commissioner	757
5.	Sr. PS	10
6.	P.S.	56
7.	Steno	751
8.	Superintendent CE	3638
9.	Inspector CE	4803
10.	CAO	45
11.	A.O.	267
12.	DOS/STA	992
13.	TA	1257
14.	LDC	201
15.	Head Havaladar/Havaladar/Sepoy	2010
Grand Total		14990

98. Elaborating on their need for adequate staff strength, the Finance Secretary informed the Committee as follows:—

"Sir, the point being made is that for Service Tax, separate staff was not approved. So, it involves taking staff away from the excise and customs formations, and utilising them for Service Tax. Initially, as my colleague mentioned, where the amount was very small and it ran into ₹ 4,000 crore or so, it was a separate issue. Today, the growth in Service Tax even in the last two months has been close to about 42 per cent. Last year, we had collected about ₹ 90,000 crore from Service Tax. We do anticipate about 35 per cent growth in the current year. This is in spite of the fact that we are doing nothing really to tap the balance nine lakh registered assesseees, or those who are not even registered assesseees. So, we have already moved a case for cadre review. Unfortunately, for the last ten years, in CBEC, they did not have a cadre review.

The basic point is that we have three areas—Customs, Central Excise and now Service Tax. Last year, our total revenue from the indirect taxes was ₹ 395,000

crore, of which close to ₹ 90,000 crore was from Service Tax and this has shown the maximum buoyancy growth. It means that we are coming to a situation where one-third of our revenues are to come from Service Tax, where we just do not have adequate staff. Therefore, we need to have a quantum jump in the requirement of staff for Service Tax. While we may take whatever measures we may for additional computerisation, e-filing etc., but unless a person goes on the ground and checks—like an hon. MP mentioned as to whether someone, having collected Service Tax has deposited it or not to check this aspect, somebody has to go and check on the ground. Honestly speaking, I am stuck regarding the cadre review.”

## **PART-II**

### **RECOMMENDATIONS/OBSERVATIONS**

The Banks and other Financial Services accept deposits and channels those deposits into lending activities, either directly or through capital markets and connect customers with capital deficits to customers with capital surpluses by acting as Financial Intermediary. The Service Tax on the Banking and other Financial Services (BFN) was levied with effect from 1 July, 2001 and it is a major contributor to Service Tax revenue. Its contribution during the years 2007-08 and 2008-09 was 7.09 per cent (₹ 3634.94 crore out of ₹ 51,301.79 crore) and 6.15 per cent (₹ 3747.65 crore out of ₹ 60,940 crore) respectively. Audit conducted a comprehensive review of the performance of this sector with a view to (i) seek assurance that the mechanism to identify and bring in potential assesseees to tax net is effective enough; (ii) examine the rules, regulations and procedures to identify ambiguities and lacunae therein, and (iii) to identify instances of non-compliance with rules leading to loss of revenue. The Committee's examination of Service Tax on Banking and other Financial Services revealed several procedural deficiencies in registration of assesseees, receipt of returns and scrutiny of returns. Further, instances of non-compliance with rules and provisions on incorrect valuation, incorrect/excess availment and utilization of cenvat credit, non-remittance of Service Tax, etc. had resulted in revenue leakages. Furthermore, Service Tax of ₹1.41 crore was collected but not remitted to the Government. These issues along with the related issues have been examined in detail by the Committee and commented upon suitably in the succeeding paragraphs.

2. While the law clearly envisages that every person liable to pay Service Tax has to apply for registration within a period of 30 days from the date of commencement of businesses, the Committee note that, in 26 out of 60 Commissionerates, there were 1142 service providers, who, though liable to pay Service Tax, were not available on the departmental registration lists. Out of these 1142 assesseees, 65 potential assesseees had not paid Service Tax to the extent of ₹ 92.12 crore with additional penalty upto ₹ 92.12 crore and further interest liability of ₹21.35 crore. The Committee were apprised that out of 6517 cases involving Service Tax of ₹ 46.12 crore have not been accepted by the Government. In respect of 19 Audit objections involving Service Tax of ₹ 36.47 crore, necessary remedial measures have been taken to recover Government revenue. 17 cases involving Service Tax of ₹ 5.34 crore were pending investigation. While deploring the belated remedial measures being taken by the Department, the Committee should like to be apprised of the latest status of cases that are pending investigation within 03 months of the presentation of this Report and also the detail of the 17 cases not accepted by the Government and the reasons therefor.

3. The Committee are concerned to note that out of 1074 cases of non-registration pointed out in Audit, only 370 cases had been verified by the Ministry, 21 cases were

under investigation and in case of 188 service providers verification report was yet to be received as on 31.07.2012. In case of Bangalore Service Tax Commissionerate, out of 725 cases only 208 service providers had been verified and the verification of remaining 517 cases was underway but obviously hamstrung due to paucity of staff. Furthermore, while admitting the problem of non-registration of Service Tax assessees, the Secretary, Department of Revenue testified before the Committee that till 2010, they had no means to find out as to which of the assesseees were effectively into the system and underlined the need for building up a good electronic system and engagement of additional manpower to deal with the problem. The Committee are concerned to note that though Service Tax was levied with effect from 1 July, 2001, no whole-hearted and sustained efforts have been made by the Ministry either to build up a good electronic system for this purpose and engage the additional manpower. Apparently, the Service Tax was levied without working out the methodology for its effective implementation even after having realized the immense revenue potential of Service Tax and its rampant evasion. The Committee would like to be apprised about the efforts made by the Department during the last 11 years to ensure that the work of collection of Service Tax from Banking and other Financial Services does not suffer for want of manpower and introduction of good electronic system. The Committee further recommend that the verification of 517 cases be expedited and they be apprised of the same.

4. Notably, the Government have largely relied on "Voluntary Compliance" for registration of eligible service providers. The Committee have been informed that to make the service providers aware of the registration, the Department has been running a media campaign by issuing a number of advertisements in the print/electronic media, displaying outdoor hoardings, etc. Further, help desks have been set up in the Commissionerates for answering the tax payers queries and the problems faced by them. Seminars have been organized in Mumbai, Chennai, Kolkata, Delhi, Ahmedabad, Hyderabad, Jaipur, Chandigarh and Bangalore. While Voluntary tax compliance is a laudable objective, the considered view of the Committee is that the results have been far from encouraging. The Committee feel that with proper focus on non-intrusive but penetrating methods of collecting data through the instruments like returns and surveys, the Government would be able to widen the tax base and ensure better tax compliance. The Committee urge the Ministry to make all out efforts to ensure that while the Government remain assessee-friendly, tax evaders are dealt with stringently and that non-compliance becomes a costly proposition. The Committee are also of the opinion that if need be, measures taken in respect of Central Excise and Customs assesseees also be taken with regard to Service Tax assesseees *i.e.* for registration of eligible BFNs.

5. As per the action plan issued in May 2003 by the Director General of Service Tax, Mumbai, field surveys had been identified as one of the important mechanisms to identify and broaden the tax base. The Committee are disappointed that none of the 60 Commissionerates test checked in Audit had fixed any targets for surveys during 2007-08 to 2008-09 and no surveys were conducted in 27 out of 60 Commissionerates. Out of 32 Commissionerates, where surveys were conducted, in 9 Commissionerates 154 new service providers of BFNs were registered. However, no new service provider could be registered through surveys for this service in remaining

23 Commissionerates. In 32 Commissionerates where surveys had taken place, the outcome was not monitored as prescribed in the DGST circular. Moreover, during the years 2009-10 and 2010-11 although the number of surveys conducted was 113 and 87 respectively, no assesseees were registered thereafter. Again, during the year 2011-12, out of 1003 surveys conducted only 90 assesseees were registered realizing ₹ 0.44 crore only as a Service Tax. The Committee deplore that field surveys, construed as an important mechanism for widening the tax net have not been carried out with right earnestness by the Commissionerates. The Committee are dismayed that the Department was devoid of any mechanism to assess, monitor and enhance the efficiency of survey operations. Though instructions have been issued to file formations on 23.11.2011 to create special cell in each Commissionerates mandated with the task of identifying potential assesseees, the Committee find the reply of the Ministry silent regarding the status of creation of these cells in all the Commissionerates, the number of cells created so far and the number of service providers that were brought to the tax net as a result thereof. The Committee believes that these survey operations, if conducted methodically and efficiently, would discover new assesseees and bring additional tax revenue to the Government. The Committee would like to be apprised of the present position of creating these cells Commissionerate-wise and the outcome thereof.

6. The Committee find that a large number of returns for Service Tax by BFNs were either not received or received late by the Department. During the period September, 2004 to March, 2009, about six per cent of the returns were received late and 14 per cent of the returns were not received at all. Surprisingly, the Commissionerates had not followed any monitoring mechanism to ascertain the reasons for non-submission of returns. The Committee note that amongst the returns not received, 301 service providers, whose annual receipts had exceeded ₹ four lakh during the year 2005-06 had not submitted the returns for the year 2006-07. Further, 440 service providers whose annual receipts had exceeded ₹ eight lakh during the year 2006-07 had not submitted the annual returns for the year 2007-08. Similarly, 513 service providers whose annual receipts had exceeded ₹ ten lakh during the year 2007-08 had not submitted the returns for the year 2008-09. The Committee are deeply concerned to note that the Department had not initiated any action to ascertain the reasons for not filing annual returns. The Committee further find that the Department had not levied penalty on defaulting assesseees which constituted about 97 per cent of the total amount leviable (₹ 4.50 crore). Apparently, the defaulting assesseees are either allowed to go scot-free or let off with lighter punishment. The Committee, therefore, recommend that the Ministry devise a foolproof system so as to ensure that all the BFN assesseees, taxable under Service Tax Rules file their returns regularly. The Committee should be informed within 3 months about the system so desired. Further, defaulting assesseees be suitably penalized to act as a deterrent.

7. The Committee further observe that 7 assesseees in Nagpur Commissionerate had not filed their Service Tax returns but they had continued to provide services which were subjectable to tax during the period of non-filing. This resulted in non-payment of Service Tax of ₹ 20.33 lakh and interest of ₹ 4.97 lakh. It was submitted before the Committee that protective Show Cause Notices have been issued

on 13.10.2011 in respect of all the said 7 cases and that instructions have been issued to field formations on 14th and 27th July, 2011 to create special cell in each Commissionerate mandated with the task of identifying potential assesseees and stop filers. The Committee, therefore, recommend that field Commissionerates should periodically monitor the cases where assesseees have stopped filing returns and the Committee be apprised by the Ministry about the latest position with regard to Show Cause Notices issued, within 03 months of the presentation of this Report.

8. Every individual liable to pay Service Tax has to assess and voluntarily pay the tax. Further, half-yearly returns are to be furnished to the Department. An assessee failing to furnish timely return is liable to pay a penalty subject to a maximum of ₹ 1000. The information furnished by the Ministry relating to BFN for the period September, 2004 to March, 2009, reveals that out of 2,37,593 returns due during the said period as many as 18,684 were not received. The Committee further note that out of ₹ 60.32 lakh of penalties levied, penalties of ₹ 25.22 lakh has not been recovered. While emphasizing the need for effective monitoring of Service Tax returns and timely recovery of penalties imposed, the Committee would like to be informed about the current position with regard to recovery of outstanding penalties of ₹ 25.22 lakh, and the efforts made by the Ministry to ensure timely recovery of outstanding dues within 03 months of the presentation of this Report. The Committee also strongly express the need for taking stringent action against the defaulters and also have a re-look at the penalty provisions as the present penalty is insufficient to act as a deterrent with regard to non-submission of returns.

9. The Committee are shocked to learn that the vital database of the actual number of BFNs filing returns and those who have failed to do so, is not available with the Department. The Committee was informed that such data base is not being developed by the Directorate General of Service Tax. Further, the registered assesseees who were not filing Service Tax returns are issued Show Cause Notices. Obviously, the Department cannot function effectively and monitor their collection of Service Tax from BFNs in the absence of vital database. The Committee would, therefore, urge the Department of Revenue to put in place an effective mechanism to facilitate monitoring of the progress of revenue receipts and processing of returns on a periodical basis.

10. Audit scrutiny of returns revealed that during 2008-09 (i) in 67 Commissionerates 12.38 per cent returns received were pending preliminary verification/scrutiny; (ii) in 22 Commissionerates, there were 99 cases in which Department failed to detect irregularities like payment of Service Tax at lower rate, non-levy of interest and penalty, short payment of interest, etc. leading to short levy of Service Tax totalling ₹ 7.02 crore and interest of ₹ 1.56 crore; (iii) there was no system in place to co-relate the taxable income as shown in the Income Tax return with the ST-3 return; and (iv) 116 assesseees had shown lower figures in ST returns which had Service Tax implication of ₹ 21.91 crore and interest of ₹ 2.94 crore during the period from September, 2004 to March, 2009. Accepting the Audit observation, the Department issued Show Cause Notices for ₹ 9.43 crore in July, 2010. On the issue of 12.38% of returns that were received and were pending preliminary verification/scrutiny, the Committee have been apprised that norms for



scrutiny of returns have since been fixed and Service Tax Return Scrutiny Manual has been prepared, guidelines have been issued for checking/verifying the ST-3 returns. Further, electronic filing of Service Tax returns made mandatory w.e.f. 01.10.2011, the system of Automation in Central Excise and Service Tax (ACES) has been introduced throughout the country and instructions have also been issued by CBEC on 21.02.2012 that the function of detailed scrutiny be implemented in all the Ranges. The Department, however, could not furnish reasons for their failure to have timely verification/scrutiny of returns. The Committee would like to be apprised of the revenue due and realized as a result of the various corrective measures initiated by the Ministry and recommend a comprehensive review for identification of bottlenecks, if any, in the present system of scrutiny of returns, and overcome the same through appropriate policy intervention.

11. The Committee are distressed to note that no system exists in the Department to co-relate the taxable income as shown in the Income Tax Return with the ST-3 returns to identify cases for further scrutiny. Cross verification of a few ST returns with Income-tax returns had revealed Service Tax implication of ₹ 21.91 crore and interest of ₹ 2.94 crore during the period September, 2004 to March, 2009. Consequently, the Department issued SCNs for ₹ 9.43 crore in July, 2011. Taking note that the Ministry had initiated steps to safeguard the revenue interest, the Committee recommend a suitable but effective system be devised for correlating the data of various Departments and ensuring that the revenue due to the Government is collected without remiss.

12. As per Rule 5(2) of Service Tax Rules, 1994, every assessee shall furnish to the superintendent of Central Excise at the time of filing his return for the first time, a list of books of accounts maintained by the assessee in relation to Service Tax. Despite clear statutory provision, the Committee note that 26 per cent of service providers had not given the list of books of accounts maintained by them. During the period from April, 2007 to March, 2009, in 10 Commissionerates, not a single assessee had submitted the list of books of accounts at the time of filing of returns for the first time in respect of BFN. The Committee are surprised that the Commissionerates did not pursue these cases to ascertain the reasons for non-submission of these details. The Ministry attributed staff crunch and lack of proper training to the available staff of Service Tax Department as the main hurdles in the implementation of the Service Tax Rules. Since effective scrutiny of relevant books of accounts is imperative for ensuring proper assessment of Service Tax, the Committee urge the Ministry to take urgent measures to augment the staff strength and also to train the Service Tax staff for developing a better understanding of the various books of accounts maintained by BFN assesseees. The Committee should like to be apprised of the necessary follow-up action taken in this direction and the outcome thereof. Further, as regards the strategy formulated to obtain list of books of accounts alongwith the returns from defaulters, the Department reported that non-compliance with the Rule 5(2) of the Service Tax Rules, 1994 invites penal action and a letter has been issued to field formations to ensure compliance to the said Rule. The Committee would like to be apprised about the number of defaulters prosecuted so far as a result thereof.



13. The Committee further find that there were 110 cases of wrong availment of exemption or abatement during 2009-10 and 91 cases during 2010-11. The amount of Service Tax involved therein is ₹ 339.47 crore and ₹ 250.07 crore respectively. The Committee are concerned to note that only ₹10.53 crore and ₹20.23 crore respectively have been recovered by the Department. Further zone-wise details as received from the Ministry indicates that maximum number of wrong availment of cases have been noticed in the Kolkata zone. While 27 cases during 2009-10 and 16 cases during 2010-11 involving Service Tax of ₹ 157.64 crore and ₹ 204.85 crore respectively were noticed in Delhi zone, out of which only ₹ 0.0019 crore has been recovered during the year 2009-10. Similarly, 64 instances of undervaluation with short payment of Service Tax of ₹ 53.80 crore was detected in the Audit. The Committee are concerned to note that the entire process involved has resulted in locking up of substantial revenue for the years 2009-10 and 2010-11. The Committee, therefore, urge the Government to revisit the extant provisions of Service Tax law and the rules framed thereunder so as to ensure that the Service Tax dues are collected effectively and within the given time frame.

14. In terms of Rule 4 of the Cenvat Credit Rules, 2004 credit of Service Tax paid on any input service is allowed to a provider of taxable service. The Committee notice incorrect availment and utilization of cenvat credit totaling ₹105.30 crore by providers of banking and financial services in 75 cases including interest of ₹6.26 crore. The Committee have been apprised that in 46 cases involving ₹52.59 crore, proceedings have been initiated by issuing Show Cause Notices to the defaulting service providers and 8 cases involving ₹ 5.47 crore are pending investigation. The Ministry has not submitted the reasons for allowing Cenvat Credit incorrectly. Furthermore, in cases where the Ministry has differed from Audit, no justification has been adduced before the Committee. Merely issuing Show Cause Notices cannot be constructed as action taken by the Ministry. The Ministry needs to explain to the satisfaction of the Committee the reasons for the same and also the initiatives taken to ensure that all such leakages are plugged and that there are no such recurrences.

15. The Committee further find that as per the provisions, the assessee was liable to restrict the utilization of cenvat credit to 20 percent of the Service Tax payable during the period 2006-07 and 2007-08. Out of the 24 months in 2006-07 and 2007-08, the assessee paid Service Tax of ₹ 1198.04 lakh in 12 months. While the utilization of cenvat credit to make these payments should have been restricted to ₹ 239.61 lakh (20 percent) the actual utilization was ₹ 626.65 lakh. This led to excess utilization of credit of ₹ 387.04 lakh which was recoverable with interest of ₹ 95.84 lakh. The assessee also did not maintain separate accounts for receipt, consumption and inventory of input services used for taxable and exempted services. The Committee have been informed that the field formations at the time of scrutiny of returns and while auditing the records of the party take necessary measures to stop revenue leakages on this count. The Committee seek explanation as to how the mechanism failed in these cases which resulted in a considerable loss of revenue to the Government. The Department has reported that SCN of ₹ 5.52 crore (period 2005-06 to September, 2009) including ₹ 387.04 lakh had been issued in March, 2010, which is pending adjudication. The Committee would like to be apprised about the latest position in this regard.

16. Further, failure to consider the interest on cash credit and overdraft facility which were exempted from Service Tax had resulted in short-payment of ₹ 515.56 lakh for the period from April, 2008 to March, 2009 which was recoverable with interest of ₹ 47.69 lakh. The SCN dated 09.02.2010 issued for the period 2008-09 is pending adjudication. Again, incorrect reflection of cenvat credit in ST-3 returns of M/s Citi Finance Consumer Finance India Limited in Delhi ST Commissionerate for the period April, 2006 to September, 2006 resulted in excess availment of Cenvat credit to the extent of ₹ two crore. Show Cause Notice dated 20.10.11 for a demand of ₹ 199.99 lakh has been issued to the assessee. Having observed that in a large number of cases the basic prerequisite *i.e.* proper maintenance of records is wanting, the Committee would like the Ministry to enumerate the concrete measures taken by them to ensure compliance with the instructions regarding maintenance of records.

17. Section 73A of the Finance Act, 1994 (as amended *w.e.f.* 18th April, 2006) provides that any person who is liable to pay Service Tax and has collected any amount in excess of the Service Tax assessed should without fail, pay the amount so collected to the credit of the Government. The Committee find that during the years 2007-08 to 2010-11, there have been 2111 cases in which service providers have collected the Service Tax to the tune of ₹ 1134.82 crore but had not deposited the same in the Exchequer. During the same period, recovery of ₹ 560.07 crore involving 1343 cases has been effected. Further, out of the 2111 cases, 1065 cases pending realization are under litigation and the revenue involved is to the extent of ₹ 1043.20 crore. The Committee are perturbed to note that the amount involved in the SCNs issued constitute nearly 90% of the total amount that was collected by the service providers from the consumers but not deposited with exchequer. The Committee desire that the adjudication process be expedited and recoveries be made at the earliest.

18. The Committee note that there is a lack of perspective planning in the matter of deployment of staff on such a vital source of revenue collection *viz.*, Service Tax. Taking into consideration the amount of revenue collected from Service Tax and Central Excise during the year 2011-12, the Committee are surprised to find that in contrast to the deployment of nearly 40000 officers for excise, only 4000 to 5000 officers have been deployed for Service Tax stream and that too after withdrawing from the Central Excise stream. Apparently, Service Tax wing has been working for more than 15 years, with no staff of its own. The Committee are dismayed to note the helplessness expressed both by the Finance Secretary and Chairman, Central Board of Excise & Customs in this regard especially when, Ministry of Finance is itself one of the nodal authorities for examining and sanctioning requisite staff to Ministries. The Committee feel that the staff requirement be examined on priority basis by the concerned authorities in order to ensure that the Service Tax Collections, which have increased phenomenally from ₹ 407 crore in 1994-95 to Rs. ₹ 97,389 crore in 2011-12 does not suffer for want of human resource.

NEW DELHI;  
19 March, 2013  
28 Phalgun, 1934 (Saka)

DR. MURLI MANOHAR JOSHI  
Chairman,  
Public Accounts Committee.

## APPENDIX I

### MINUTES OF THE FOURTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2012-13) HELD ON 20TH JUNE, 2012

The Public Accounts Committee sat on Wednesday, the 20th June, 2012 from 1500 hrs. to 1640 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

#### PRESENT

Dr. Murli Manohar Joshi — *Chairman*

#### MEMBERS

##### *Lok Sabha*

2. Shri Anant Kumar Hegde
3. Shri Sarvey Sathyanarayana
4. Shri Ashok Tanwar
5. Dr. Shashi Tharoor
6. Dr. Girija Vyas

##### *Rajya Sabha*

7. Shri Prasanta Chatterjee
8. Shri Prakash Javadekar
9. Shri Sukhendu Sekhar Roy
10. Shri J.D. Seelam

#### SECRETARIAT

1. Shri Devender Singh — *Joint Secretary*
2. Shri Abhijit Kumar — *Director*
3. Smt. A. Jyothirmayi — *Deputy Secretary*

#### **Representatives of the Office of the Comptroller and Auditor General of India**

1. Shri J.N. Gupta — Dy. CAG (Revenue Audit)
2. Ms. Sandhya Shukla — Pr. Director (Customs)

#### **Representatives of the Ministry of Commerce and Industry (Department of Commerce)**

1. Shri R.S. Gujral — Secretary
2. Shri S.K. Goel — Chairman, CBEC
3. Ms. Sheila Sangwan — Member (Service Tax), CBEC
4. Shri V.K. Garg — Joint Secretary (TRU-II)
5. Shri Arun Sahu — DG (Systems)

2. At the outset, the Chairman welcomed the Members and the Audit Officers to the Sitting of the Committee. The Chairman then apprised the Members that the Sitting was convened to take oral evidence of the representatives of the Ministry of Finance (Department of Revenue) on the subject '**Service Tax on Banking and other Financial Services and Duty Drawback Scheme**', based on the C&AG's Report No. 15 of 2011-12, Union Government (Indirect Taxes—Service Tax and Customs). The Committee decided to discuss the subject relating to 'Service Tax on Banking and other Financial Services' during the Sitting and discuss the subject relating to 'Duty Drawback Scheme' at a later date. Thereafter, the representatives of the Ministry of Finance (Department of Revenue) were called in. Before commencing the examination, the Chairman made it clear that the deliberations of the Committee were confidential and were not to be divulged to any outsider until the Report on the subject was presented to the Parliament. The Committee then proceeded with the examination of the subject.

3. The Members asked questions about the deficiencies in the procedures regarding registration of service tax assesses, filing of returns, scrutiny of service tax returns, ambiguities and inadequacies in rule provisions apart from non-compliance which had financial implications. The Members also sought reasons for not including in the departmental registration list those service providers who were liable to pay Service Tax, reasons for late/non-receipt of Service Tax returns, mechanism for identifying the potential service tax payers, steps initiated to ensure that the service tax collected from assesseees is duly remitted to Government, measures initiated to bring non-banking financial companies under the tax net, availability of human resources in the Department of Revenue for collection of Service Tax, mechanism for calculating the under-valuation of taxable services and so on. The representatives of the Ministry clarified the various issues raised by the Members and assured that the information which was not readily available with them would be furnished to the Committee expeditiously.

4. At the end, the Chairman thanked the representatives of the Ministry of Finance (Department of Revenue) and asked them to furnish the requisite information as sought by the Members within a week. He also stated that the representatives may be asked to re-appear before the Committee if further clarifications on the subject were required. The representatives of the Ministry were informed that they would be examined separately on the 'Duty Drawback Scheme'. The Chairman also thanked the representatives of the office of the C&AG of India for providing valuable assistance to the Committee in the examination of the subject.

*The witnesses then withdrew.*

A copy of the verbatim proceedings of the sitting was kept on record.

*The Committee then adjourned.*

**APPENDIX II**

**MINUTES OF THE TWENTY-SEVENTH SITTING OF THE PUBLIC ACCOUNTS  
COMMITTEE (2012-13) HELD ON 19TH MARCH, 2013**

The Committee sat on Tuesday, the 19th March, 2013 from 1500 hrs. to 1615 hrs.  
in Room No. '62', Parliament House, New Delhi.

**PRESENT**

Dr. Murli Manohar Joshi — *Chairman*

**MEMBERS**

*Lok Sabha*

- 2. Shri Anandrao Vithoba Adsul
- 3. Shri Sandeep Dikshit
- 4. Shri Bhartruhari Mahtab
- 5. Shri Shripad Yesso Naik
- 6. Shri Abhijit Mukherjee
- 7. Shri Ashok Tanwar
- 8. Dr. Girija Vyas

*Rajya Sabha*

- 9. Shri Prasanta Chatterjee
- 10. Shri Prakash Javadekar
- 11. Shri J.D. Seelam
- 12. Shri N.K. Singh

**SECRETARIAT**

- 1. Shri Devender Singh — *Joint Secretary*
- 2. Shri Abhijit Kumar — *Director*
- 3. Shri M.L.K. Raja — *Deputy Secretary*
- 4. Shri D.R. Mohanty — *Deputy Secretary*
- 5. Smt. A. Jyothirmayi — *Deputy Secretary*
- 6. Shri S.L. Singh — *Under Secretary*
- 7. Smt. Anju Kukreja — *Under Secretary*

**Representatives of the office of the Comptroller and Auditor General of India**

- |    |                         |   |                                   |
|----|-------------------------|---|-----------------------------------|
| 1. | Ms. Shubha Kumar        | — | Director General (Report Central) |
| 2. | Shri Venkatesh Mohan    | — | Director General of Audit         |
| 3. | Ms. Anim Cherian        | — | Principal Director (ST)           |
| 4. | Shri Rajiv Kumar Pandey | — | Principal Director of Audit       |

2. At the outset, the Chairman welcomed the Members and the representatives of the Office of the C&AG of India to the sitting of the Committee. The Chairman, then, apprised that the meeting had been convened to consider the following Draft Reports of the Committee:

- |        |   |     |     |
|--------|---|-----|-----|
| (i)    | ***   | *** | *** |
| (ii)   | ***   | *** | *** |
| (iii)  | ***   | *** | *** |
| (iv)   | ***   | *** | *** |
| (v)    | ***   | *** | *** |
| (vi)   | ***   | *** | *** |
| (vii)  | ***   | *** | *** |
| (viii) | ***   | *** | *** |
| (ix)   | ***   | *** | *** |
| (x)    | <b>"Service Tax on Banking and other Financial Services"</b> based on C&AG Report No. 15 of 2011-12, Union Government (Indirect Taxes-Service Tax and Customs). |     |     |

3. Giving an overview of the issues contained in the Draft Reports and the comments of the Committee thereupon, the Chairman solicited the views/suggestions of the Members.

4. After some discussions, the Committee adopted the above mentioned Draft Reports. The Committee, then, authorized the Chairman to finalise the Reports in the light of the factual verifications, if any, made by the Audit and present them to Parliament on a convenient date.

5. The Chairman thanked the Members for their active participation in the consideration and adoption of the Reports.

*The Committee then adjourned.*

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\*\*\*Matter not related to this Report.

GMGIPMRND—6052LS(S-4)—23-07-2013.