CHAPTER-8

FINDINGS, SUGGESTIONS AND CONCLUSIONS

Now, after detailed discussion of almost each and every aspect of taxation of Works Contract Services, and based on this study there are some suggestions which are suggested to simplify the service tax procedures or to capture more assesses under the ambit of service tax. List of suggestions are as under:

8.1 Requirement to pass a separate Act

As it is well known by us that till date there is no separate act for taxation of service tax, it is basically administered by the Finance Act, 1994 and Central Excise Act, 1944. At the time of initial levy of service tax, there may not be need to pass a separate act as under this only 3 services were made taxable, but now when taxation of services is increased at a very higher level as after concept of negative list all the services have become taxable except services mentioned in negative list, it has become necessary to pass a separate act for levy of service tax.

Further, in recent decision of Delhi High Court it had been held by the Hon’ble Kolkatta High Court that no audit of service tax audit can be conducted by the CAG as there is no separate act providing for service tax audit and service tax audit provided in Rule 5A of Service Tax Rules, 1994 does not have any statutory backing.

However, this decision has been superseded by issuing a notification no 23/2014 dated 5th December, 2014 by which Rule 5A of the Service Tax Valuation Rules, 1994 has been substituted by following:-

“Every assessee shall, on demand make available to the officer empowered under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, or a cost accountant or chartered accountant nominated under section 72A of the Finance Act, 1994,-
i. the records maintained or prepared by him in terms of sub-rule (2) of rule 5;

ii. the cost audit reports, if any, under section 148 of the Companies Act, 2013 (18 of 2013); and

iii. the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961),

For the scrutiny of the officer or the audit party, or the cost accountant or chartered accountant, within the time limit specified by the said officer or the audit party or the cost accountant or chartered accountant, as the case may be.”

8.2 Increase the exemption limit and lower the tax rate

Increase exemption limit:- As we all know that every law should be properly updated at time to time as an un-updated thing would lose its relevance after a time whether it is a person or a law. Similarly from 2008, onwards the limit upto which no service tax is payable is Rs 10 lakhs, considering the inflation now it is required to increase this limit. As assesses are trying to keep their value of services in books at below Rs 10 lakhs to escape themselves from the limit of service tax, due to which value of services shown in books are not the actual value for which service has been provided by the assessee, thus it is promoting falsification of books of accounts and lessor payment of Income Tax Also.

Lower the tax rate:- If department wants to brought more assesses under the service tax net then service tax rate should be decreased. The current rate i.e 12% is very high. Service receiver prefers to go to those service providers who do not charge service tax, and thus encouraging the service providers to work in unorganised structure.

Department may either decrease the charging rate or may introduce slab system to increase the number of assessee covered under service tax. It has been proved in past that when the tax rates are reduced the collections of direct/indirect taxes increased.
8.3 Educate/aware the public in general about levy of service tax to collect more revenue and reduce the undue harassment of public:-

As service tax is increasing at wider level and there is a regular change made by the Government every day regarding levy of service tax and inclusion of services liable to service tax. Peoples are not much aware about the levy of service tax and thus when they come to know instantly that they are liable to service tax they try to escape from this levy by adopting various ways. And also for small service provider, it is not possible to go to the experts for advice, as it would increase their input cost. Further, as being an indirect tax, burden of it should be passed on service receiver, when a service provider doesn’t collect it from service receivers he would not be ready to pay it from his own pocket. Therefore service receiver should be educated that he should pay service tax service provider in the greater interest of Nation.

Further penalties under the Finance Act are so heavy that even if assessee knows that he is liable to pay service tax or liable to be registered under service tax after expiry of relevant period. Assessee tries to escapes himself from this levy through any way.

There is need is to educate the public about, which service is liable to be covered under service tax, who is liable to pay service tax, what are the exemptions available to various service providers, conditions under which the exemptions are available. The department should aware the public by organising various awareness programmes, a user friendly system should be adopted.

Govt. should try to reach upto maximum possible assessee by educating the Trade and Industry Associations about levy of service tax. Such associations should be promoted for educating the businessmen about service tax and to bring them under service tax net as it is an Indirect Tax which is to be born by some one else. In nutshell, there should be a friendly system where no terror of department should be among the assessee.
Public should be ensured that department is working for them not against them. More the department get friendly with the assessee, more coordination will be established, and more co-operation will be received by the department from the public.

Further it would be advisable to appoint a separate team which would supervise the awareness program over the country and yearly report of impact of these programs on service tax revenue should be made.

### 8.4 Widen the Scope of Reverse Charge Mechanism to cover more assessee and it should be turnover based

As provided in Income Tax Act for deducting TDS turnover of person liable to deduct TDS is made basis, on the same pattern it is advisable to widen the scope of reverse charge mechanism by covering the service receivers on turnover basis.

Further liability under reverse charge only on corporate is not justifiable as it is not right to say that only corporate are receiving the services many other organised sectors are also receiving the services and these should also be included under the Reverse Charge Mechanism.

In India most of the service is provided by non organised sector by implementing Reverse Charge mechanism on wider basis department would be able to catch more service providers. Further it is also advisable to cover more services under this mechanism.
8.5 Establishment of a separate department

As it has been discussed earlier also that service tax is administered by Excise Department and image of excise officers is not altogether good in public in general. There is a fear among the public of excise officers, hence it is required to establish a separate department for service tax same as there is a separate department for levy and collection of income tax.

Initially when service tax is introduced by the govt then it was applicable only on few services and hence need for opening a separate department might not have been felt, but now scope of service tax has been widened. It should not be continued to remain in hands of excise department.

8.6 Requirement to quote service tax registration number should be made mandatory

In many of cases contractors are working without getting service tax registration number for a tender which involves a high amount. Hence govt should make it mandatory to quote service tax registration number for vendors where tender value is of more than Rs. 10 lakhs whether it is government user or private user of services.
8.7 Increase the time limit for getting registration under service tax

At present service provider is required to be registered under service tax when aggregate value of services provided exceeds Rs 9 Lakhs within 30 days from the date the turnover exceeds. If an assessee fails to get registered himself under service tax then he would be liable to a penalty of Rs 10000/-. 

In such situation even after getting aware that he is liable to registered under service tax he tries to keep its amount below Rs 9 Lakhs which leads to falsification of books of accounts. Hence to encourage the assessee to come forward for getting registered the time limit should be increased upto 90 days.

8.8 Develop an integrated system to connect service tax with other departments

In general it has been observed that a single person who is showing its turnover from services more than Rs. 10 lakhs from providing services in his Income Tax Return does not get registered himself under service tax. There should be development of an integrated system through which department is able to capture those assessee who are disclosing his turnover under the income tax but not under the service tax.

Further, an option should be there requiring information about the area from which income has been earned under Income Tax return, so that if income has been earned by providing a service which is liable to service tax can be trapped automatically by the service tax department also.
8.9 Schemes like VCES should be repeated to encourage disclosures of past tax dues

The scheme (VCES) was announced in 2013. It came into effect from 10.5.2013. The objective of this Scheme was to encourage disclosure of tax dues and compliance of service tax law by the persons who have not paid service tax dues for the period from Oct. 2007 to Dec. 2012, either on account of ignorance of law or otherwise.

Such type of schemes should be repeated at least once more to invite assessee to come forward to disclose their dues and pay it voluntarily. Further assess what is the estimation of the department to capture assessee under this scheme, how many get registered, and how many are still not captured and to capture these assessee such type of **assessee friendly schemes** should be introduced.

8.10 Improve the Reverse Charge Mechanism

There are some loopholes under reverse charge which are required to be addressed by the Government. List of these loopholes are as under:-

- **Denial of SSI exemption to service recipients paying service tax under reverse charge:** The service recipient is liable to pay service tax under reverse charge irrespective of the fact that the service provider is falling within the threshold exemption limit. This leads to discrimination among certain services that are covered under reverse charge mechanism as for the said services, service tax is required to be paid by the service recipient as compared to other services wherein benefit of threshold exemption is available. Moreover, in case of partial reverse charge, while the service provider enjoys the threshold exemption for the entire value of services rendered by him, the service receiver is under obligation to discharge service tax liability on the same transaction irrespective of threshold exemp-
tion. Hence, even if single rupee is paid for any of the services specified under reverse charge, the service tax is required to be paid by the service recipient and for that particular service to obtain registration is also mandatory. In my opinion the discharge of reverse tax liability should be allowed under one code for all services.

✓ **Service tax to be paid in cash under reverse charge:-** The service recipient cannot pay service tax by utilizing cenvat credit balance which is a major drawback for those service recipients who are also service providers/manufacturers and have sufficient cenvat credit balance. The reason for the same is that the definition of “output service” given under Rule 2(p) of Cenvat Credit Rules, 2004 states that “output service means any service provided by a provider of service located in the taxable territory but shall not include a service-

1. *Specified in section 66D of the Finance Act; or*

2. **Where the whole of the service tax is liable to be paid by the recipient of service.**

It is worth observing that the explanation to Rule 3(4) states that “Cenvat Credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient. Accordingly, in view of the explanation, even in case of partial reverse charge, the service recipient is required to pay service tax in cash. It is submitted that the basic purpose of cenvat credit scheme is to avoid cascading effect but the requirement of paying service tax in cash and also credit of some of the specified services such as rent-a-cab services is also not admissible has lead to defeating the crux of the cenvat scheme.
☑ Increased registration and filing of service tax returns:- It is also worth observing that with the introduction of full/partial reverse charge mechanism, the formalities and administrative tax compliance has increased, as now service recipient is also liable to take registration, file returns etc. This has the effect of increasing the cost of assessee both of routine nature and that pertaining to litigation costs.

☑ Complexities in Valuation Method:- It is also noted that in some of the services specified under reverse charge, there are more than one option of valuation of services like in the case of works contract service or rent-a-cab service. In case of works contract, ambiguity exists in case of category of works contract i.e. whether the service is original works or whether the same is covered by repair and maintenance. The complicacies increase in case of composite contracts. Further, in case of rent-a-cab, there is benefit of abatement available and it depends on assessee to assessee, which option is chosen by them to be most beneficial to them. Moreover, it has also been specified in the Education Guide released by CBEC that the service provider and service receiver may adopt different valuation methods for discharging their service tax liability. In such a scenario, it is difficult to apprehend how will the government keep a check and control on service tax evasion through adopting the technique of reverse charge mechanism.

☑ Cost benefit analysis: both at Government’s and service recipient’s end:- Due to introduction of concept of partial reverse charge and denial of threshold exemption on the same, even a single transaction involving a minor amount of service tax is required to be paid off. Also, for this single and non recurring transaction, the service recipient is liable to get himself registered and file the return too. This increases the cost of service recipients. Also, since the specified categories of service recipients covered
under partial reverse charge does not prescribe any monetary limit based on turnover, even small entities which fall under specified categories are required to comply with the enormous formalities related to partial reverse charge. All these factors increases the cost of service recipients, particularly, small entities which are de-motivated in such circumstances which is not the intention of the government. If we check the scene at the end of government, there is drastic increase in the number of registrations including those which pertain to non-recurring transactions. People take the registration under particular category and even if the transaction will not take place in future, they fail to amend the registration again and keep on filing the NIL return. Thus, the returns run in number of pages, thereby blocking the official website of government for no use. Also, more interestingly, there are cases where the manufacturer is enjoying the SSI exemption under notification no. 8/2003-CE, however, he is liable to file the ST-3 as a service recipient with negligible amounts which are lost in the pocket of government. Thus, both at the end of government and service recipients, there are some issues which unnecessarily increase the cost when compared to benefit derived.

The concept of partial reverse charge is no doubt introduced for the sake of betterment in the service tax law. However, the problems discussed in the forgoing paras have hindered the acceptance and growth of this concept. The research scholar would like to suggest the **following measures that can be taken for betterment of partial reverse charge specially with reference to works contract:**

- A threshold limit just like small service providers exemption should be prescribed for the reverse charge including the partial reverse charge. It may not be as high as Rs. 10 lacs, rather the same should be on lower side. This will automatically absolve the small entities from the complex formalities of reverse charge.
➢ Discharge of service tax liability should also be allowed from Cenvat Credit. For government, payment from Cenvat is as good as payment in cash, particularly in case where the same is ultimately refunded to the assessee (like in case of exports). There have been a number of judicial pronouncements wherein it has been held that the payment from Cenvat is as good as payment in cash.

➢ If any service recipient is taking registration for payment of service tax under reverse charge on non-recurring transactions, there should be auto-cancellation of registration taken for the said purpose. This can be done by amending the form of registration. There can be option to be filled by the service recipient regarding the nature of transaction – whether the same is of recurring or non-recurring. Also, if possible time period after which auto-cancellation is sought can also be filled in by the recipient of service. This would reduce the efforts and time taken in procedural formalities.

➢ A special cell may be constituted at service tax division, which is dedicated to resolve the issues pertaining to valuation and other miscellaneous issues under reverse charge. This will bring uniformity in approach as followed at a particular area, thereby reducing the litigation as well as the cost of assessee. Also, this will reduce the mistakes occurring in ST-3 returns leading to unnecessary and non-fruitful departmental queries; thereby reducing the work load at service tax department.
8.11 Provide for service tax audit

A Comprehensive and compulsory audit in service tax by Chartered Accountants/cost accountants is the need of the hour due to following reasons:-

* Aim to reduce litigation
* Introduction of taxation of services based on negative list
* Capping of revenue leakage
* Coverage of cases non covered in scrutiny

It is suggested that the provision of service tax audit by Chartered Accountant be introduced, similar to the Tax Audit under Income Tax Act, 1961 and VAT audit under various States.

8.12 Reduce the interest rate or make amendment in applicability of interest

W.e.f. 1-10-2014 new interest rates will be applicable on late/non payment of service tax. The interest rate slab is very harsh for the assessee as delay of 3 years means interest of almost 100%.

Additionally a penalty under section 76 of the Finance Act, 1994 is imposed on non payment of service tax at the rate of Rs 100/- per day of default or 1% per month, whichever is higher.

Thus another 12 % for the year will be imposed for the same default i.e. if the default is beyond one year then highest slab of interest will be applicable plus the penalty under section 76 will be imposed thereby accumulating the interest and penalty together to 42%, which is very high. Following are the some suggestions which should be considered for implementing the same:-
This amendment should be made applicable for those assessee who have collected the tax but not remitted to the government. The assessee making delay in payment of tax due to other reasons be not penalized in parity with the evaders.

The rate of interest be resorted to the original rate at 18% irrespective of the period of delay as from the aforesaid calculations effective rate of interest comes to 36% per annum or 3% per month, which is very huge.

Without prejudice to above, it is suggested that a higher rate of interest may be charged according to slab rate of the tax demanded to protect the small service providers.

The interest rate for both the demand of the duty/tax and the refund of duty/tax be made uniform. There is need for fairness and equity in the rates at which interest is paid by the department and that is charged from tax payer.