



CENTRAL WAREHOUSING CORPORATION
(A GOVT. OF INDIA UNDERTAKING)



No. CWC/FD-Taxation/ST (Gen.)/12-13 | 4/13-B.

Date: 23.12.2013

Service Tax Circular # 77

Sub: Applicability of Service Tax on Construction of Warehouses for Storage of Agricultural Produce

- 1) Please refer to CO ST-Circular No.67 having reference No. CWC/FD-Taxation/ ST(Gen)/12-13 dated 11.02.2013 wherein it was advised to the Construction Cells that wherever the Works Contract for construction of warehouses is meant for storage of agricultural produce, no service tax is to be claimed by the Contractor. Accordingly, the Construction Cells would also not have paid service tax under Reverse Charge Mechanism as applicable in the Works Contract for construction of warehouses for storage of Non-Agricultural Produces.
- 2) It has now been clarified by the Ministry of Finance vide its letter dated 08.11.2013 and the Administrative Ministry on 27.11.2013 that the Rice is not covered in the definition of Agricultural Produce as found in Section 65B(5) of Finance Act. As a result, the Works Contracts for construction of warehouses for storage of Agricultural produce where it is not known that what commodity will be stored therein i.e. wheat, Rice or some other commodity, the construction of such warehouses will be subject to service tax w.e.f. 01.07.2012.
- 3) The Construction Cells are, therefore, advised to treat the works contract for construction of warehouses (including deposit work) which are meant for the purpose of storage of agricultural produce as if they are not exempt from the levy of service tax and service tax is to be paid w.e.f 01.07.2012 as per para II of the above mentioned ST-Circular No.67 which deals with Payment of Service Tax on Works Contract Bills (other than those meant for Post-harvest Storage infrastructure and exempt from levy of Service Tax). The instructions under para I of ST Circular # 67 are now withdrawn with the issue of this Circular.
- 4) You are well aware that **taxable value** for payment of service tax for original/new construction, the service tax is payable on **40% of the total amount chargeable for Works Contract** and the Corporation has to **pay service tax on 50% amount of taxable value under Reverse Charge Mechanism.**

- 5) The Construction Cells are also advised to ensure that in all tender documents, it is to be highlighted that construction will be subject to levy of service tax and 50% of the applicable service tax will be deposited by Corporation under Reverse Charge Mechanism.
- 6) Therefore, the Arrear of service tax payable under Reverse Charge Mechanism, w.e.f 01.07.2012 is to be deposited with Service Tax Department before 31.12.2013. The following instructions may please be kept in view for deposit of service tax:

(a) Service Tax for the period from 01.07.2012 to 31.12.2012:

Under the Service Tax Voluntary Compliance Encouragement Scheme (VCES) 2013, the interest and penalty shall not be levied by the service tax department if permission to deposit the arrears of service tax is obtained from them in the prescribed form and service tax amount is deposited before 31.12.2013. Therefore, it is advised to compute the arrear of service tax under Reverse Charge Mechanism by 26.12.2013 and deposit the same with the service tax department by 28.12.2013 positively.

(b) Service Tax for the period from 01.01.2013 to 30.11.2013:

The service tax for this period is to be deposited under Reverse Charge Mechanism by 28.12.2013 with simple interest @ 18% per annum to avoid any penalty. For this purpose, a separate format is enclosed as per Annex-I. The interest paid is not to be capitalised and is to be charged as revenue expenditure i.e to be debited to Interest Expenses Account.

(c) Service Tax for the period from 01.12.2013 and onwards:

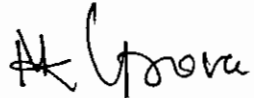
The service tax may be deposited under Reverse Charge Mechanism for each month on due date i.e. By 5th day of the succeeding month.

- 7) To avail the benefit of deposit of service tax without payment of interest and penalty for the period 1.07.2012 to 31.12.2012 under the Voluntary Compliance Encouragement Scheme (VCES), 2013, a declaration is to be filed by the Construction Cell with the Service Tax Department in form VCES-I showing the total tax dues along with the calculation sheet showing the Service Tax dues. This form is to be filed with the service tax authorities before the date of deposit of the service tax and acknowledgment is to be obtained from the service tax department in form VCES-II. The calculation of Service Tax liability is to be enclosed with form VCES-I using calculation sheet as per Part B of ST-3 form copy of which also enclosed. After deposit of the service tax with the service tax department, the proof of payment is to be given to concerned Excise Office and an acknowledgment of discharge is to be obtained from them in form VCES-III for the period 01.07.2011 to 31.12.2012.

The copies of forms VCES-I, II and III are enclosed for your reference, however the same can also be downloaded from the website of the department i.e. servicetax.gov.in. The assistance of expert/consultant in Service Tax matters may also be availed by the Construction Cell if considered necessary. In case of any difficulty please do not hesitate to contact the undersigned or Mr. A.S. Gopalan, DGM (F&A) or Mr. Vijay Kumar Garg, SAM (ST) or Mr. Gaurav Dutt, Acctt. (ST).

- 8) Please instruct all the concerned Contractors to charge Service Tax on such contracts if not already charged and please advise the concerned officials in CC to comply with these guidelines. The confirmation of compliance for the period up to 30.11.2013 be sent to CO by 28.12.2013, duly intimating the amount of service tax. The interest amount deposited may also be intimated. Please note that this is a time bound exercise and is to be completed by all means to avoid further interest and penalty. All concerned may be advised to work late and on holidays, if required. The funds requirement, if any, for deposit of service tax may also be intimated to CO on estimated basis for remitting the same to you in time.

This issues with the approval of the Competent Authority.



(N.K.GROVER)

General Manager (F&A)

Distribution to:

1. All Executive Engineers in-charge of all the Construction Cells of CWC.
2. All Regional Managers of CWC.
3. All AGMs/Managers/ (Sr.) Asstt. Managers in-charge of the Finance, Accounts & Internal Audit Wings of all ROs & CCs of CWC.

Copies for information to:

1. All HODs at CWC, Corporate Office, New Delhi.
2. All DGM/AGMs/Managers/ (Sr.) Asstt. Managers/Accountants in Finance, Accounts & Internal Audit Cadre at CWC, Corporate Office, New Delhi.
3. PS to Managing Director, CWC, CO, New Delhi.
4. PS to Director (Pers)/Director (MCP)/Director (Fin), CWC, CO, New Delhi.
5. PS to CVO/GM (F&A)s, CWC, Corp. Office, New Delhi.
6. PS to GM (Systems), CWC, CO, New Delhi with a request to place this Circular on CWC's Website.
7. Manager (Rajbhasha), CWC, CO, New Delhi with a request to arrange Hindi Version of this Circular.

FORM VCES-1

[In duplicate]

Declaration under sub section (1) of section 107 of the Act.

[See rule 4]

(Please read the instructions carefully before filling the form)

1. Name of the declarant

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2. Address of the declarant

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3. Telephone No.

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4. E-mail id

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5. Service Tax Code (STC No.)

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6. Details of tax dues*

A. Service tax

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B. Education cess

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C. Secondary & Higher Education Cess

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D	Amount under section 73A of the Finance Act,1994
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E	Total Tax dues* [A+B+C+D]
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*Furnish a calculation sheet separately [for the purposes of calculation of tax dues, the manner of calculation as prescribed in S. No. 3F (1), or as the case may be, the Part 'B' of Form ST-3, as existed during relevant period may be used and calculation of tax dues may be furnished tax return period wise, and service wise if the tax dues relates to more than one service.]

VERIFICATION

I.....(name in block letters) son/daughter of Shri..... solemnly declare that I have read and understood the Service Tax Voluntary Compliance Encouragement Scheme as contained in Chapter VI of the Finance Act 2013, and to the best of my knowledge and belief -

- (a) the information given in this declaration and the enclosures accompanying it are correct and complete and the amount of tax dues and other particulars shown therein are truly stated;
- (b) the tax dues declared above do not attract the provisions of sub-section (1), including the provisos thereto, of section 106 of the Act;
- (c) no inquiry, investigation or audit is pending against the declarant as on the 1st day of March 2013 as envisaged in sub-section (2) of section 106 of the Act;

I further declare that I am authorised to make this declaration and verify it on behalf of the declarant in the capacity as

Enclosures:

S. No.	Details of enclosure/statement annexed
1	Calculation sheet in respect of tax dues (refer S. No. 6 above and the instructions)
2	Any other documents (please specify)

Signature of the declarant/authorised person with stamp

Place:

Date:

Declaration No.		Date	
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(To be assigned by the department)

Instructions:

1. The Scheme has been prescribed in the Chapter VI of the Act. The provisions contained therein may please be read carefully (refer www.cbec.gov.in).
2. This Form shall be submitted to the Central Excise Officer notified as designated authority under section 105(c) of the Act.
3. The tax dues may be computed separately for each service if the tax dues relates to more than one service during the period of declaration.
4. For calculation of tax dues, the manner as prescribed at S. No. 3F (1), or as the case may be the Part 'B' of the Form ST-3, as existed during the relevant period, may be used and calculation of tax dues may be furnished tax return period wise
5. Calculation sheet showing the tax dues calculation may please be enclosed with this declaration.
6. Obtain an acknowledgment from the designated authority in form VCES -2.
7. The declarant may approach the designated authority for any clarification.

B

Remaining tax dues to be paid on
or before the 30th June, 2014
[Amount at S. No. 5(-)Amount at S. No. 6A]

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C

Any tax dues remaining unpaid as on 1st day of July,2014 shall be paid before the 31st December,2014 along with interest, as prescribed under section 75 or as the case may b, section 73B of the Finance Act, 1994 for the period of delay starting from the 1st day of July,2014.

Signature, name and seal of designated authority

Place:

Date:

Instructions:

1. This acknowledgment has been issued on the basis of declaration furnished by the declarant and it does not certify the correctness of the declaration made. This declaration does not certify payment of any tax dues.
2. Certificate of discharge in form VCES -3 shall be issued only upon full payment of tax dues along with interest if any, as per the details at S. No. 6 above.
3. If any amount declared as tax dues under the Scheme remain unpaid as on 1.1.2015, the same shall be recoverable under section 87 of the Finance Act, 1994.
4. For any clarification, the declarant may get in touch with the designated authority

FORM VCES-3

ACKNOWLEDGEMENT OF DISCHARGE

[Issued under sub-section (7) of section 107 of the Act]

[See rule 7]

No.											
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This acknowledgment of discharge has been issued under sub-section (7) of section 107 of the Act, to ACKNOWLEDGE that the tax dues declared under sub-section (1) of section 107 of the Act have been paid, in respect of declaration so made as per the following details.

1	Declaration No.													Date						
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2.	Name of the declarant
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3	Address of the declarant
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4	STC No.																			
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5	Tax dues declared under the Scheme															
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6	Payment of tax dues
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A	Tax dues paid on or before 31.12.2013											
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B	Tax dues paid after 31.12.2013 but on or before 30.6.2014											
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C	Tax dues paid after 30.6.2014 but on or											
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before 31.12.2014

D Interest paid under section 107 (4) on amount mentioned at '6C'

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E Total amount paid (A+B+C+D)

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7 Details of challan(s)

Challan No(s)(CIN)

Amount

Signature, name and seal of designated authority
Place: Date:

Calculation Sheet of Service Tax liability Declared under VCES-1

PART - B	VALUE OF TAXABLE SERVICE AND SERVICE TAX PAYABLE (TO BE DISPLAYED SERVICE-WISE)							
	B1 FOR SERVICE PROVIDER							
Sl. No	Month/Quarter	Jul 2012	Aug 2012	Sep 2012	Oct 2012	Nov 2012	Dec 2012	Total
B1.1	Gross Amount (excluding amounts received in advance, amounts taxable on receipt basis, for which bills/invoices/challans or any other document may not have been issued) for which bills/invoices/challans or any other documents are issued relating to service provided or to be provided (including export of service and exempted service)							
B1.2	Amount received in advance for services for which bills/invoices/challans or any other documents have not been issued							
B1.3	Amount taxable on receipt basis under third proviso to Rule 6(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued							
B1.4	Amount taxable for services provided for which bills/invoices/challans or any other documents have not been issued							
B1.5	Money equivalent of other considerations charged, if any, in a form other than money							
B1.6	Amount on which Service Tax is payable under partial reverse charge							
B1.7	Gross Taxable Amount B1.7=(B1.1+B1.2+B1.3+B1.4+B1.5+B1.6)							
B1.8	Amount charged against export of service provided or to be provided							
B1.9	Amount charged for exempted service provided or to be provided (other than export of service given at B1.8 and above)							
B1.10	Amount charged as Pure Agent							
B1.11	Amount claimed as abatement							
B1.12	Any other amount claimed as deduction, please specify	0						
B1.13	Total Amount claimed as Deduction B1.13=(B1.8+B1.9+B1.10+B1.11+B1.12)							
B1.14	Net Taxable Value B1.14=(B1.7-B1.13)							
B1.15	Service Tax Rate-wise breakup of NET TAXABLE VALUE(B1.14): Advalorem Rate							

Sl. No	Taxable Rate			Taxable Value						
	Tax Rate%	Education Cess Rate%	Secondary And Higher Education Cess Rate%	Jul 2012	Aug 2012	Sep 2012	Oct 2012	Nov 2012	Dec 2012	Total
(1)										

CIRCULAR-170/5/2013

The Central Board of Excise and Customs has issued circular no 170/05/2013- ST dated 08.08.2013 to provide further clarification on various issues under the Voluntary Compliance Encouragement Scheme, 2013 (VCES) and will be effective from 10.08.2010. For ready reference, issues and clarification, the extract of circular has been reproduced below.

S No.	Issues	Clarification
1	Whether the communications, wherein department has sought information of roving nature from potential taxpayer regarding their business activities without seeking any documents from such person or calling for his presence, while quoting the authority of section 14 of the Central Excise Act, 1944, would attract the provision of section 106 (2) (a)?	<p>Attention is invited to clarification issued at S. No. 4 of the circular No. 169/4/2013-ST, dated 13.5.2013, as regards the scope of section 106 (2) (a) of the Finance Act, 2013, wherein it has been clarified that the provision of section 106 (2)(a)(iii) shall be attracted only in such cases where accounts, documents or other evidence are requisitioned by the authorized officer from the declarant under the authority of a statutory provision.</p> <p>A communication of the nature as mentioned in the previous column would not attract the provision of section 106 (2)(a) even though the authority of section 14 of the Central Excise Act may have been quoted therein.</p>
2	An assessee has two units at two different locations, say Mumbai and Ahmedabad. Both are separately registered. The Mumbai unit has received a Show Cause Notice for non-payment of tax on a revenue stream but the Ahmedabad unit has not. Whether the Ahmedabad unit is eligible for VCES?	Two separate service tax registrations are two distinct assessees for the purposes of service tax levy. Therefore, eligibility for availing of the Scheme is to be determined accordingly. The unit that has not been issued a show cause notice shall be eligible to make a declaration under the Scheme.
3	Whether a declaration can be made under the Scheme in respect of CENVAT credit wrongly utilized for payment of service tax?	Any service tax that has been paid utilizing the irregular credit, amounts to non-payment of service tax. Therefore such service tax amount is covered under the definition of "tax dues".
4	Whether a party, against whom an inquiry, investigation or audit has been initiated after 1.3.2013 (the cutoff date) can	Yes. There is no bar from filing of declaration in such cases.

	make a declaration under the Scheme?	
5	There was a default and a Show Cause Notice was issued for the period prior to the period covered by the Scheme, i.e. before Oct 2007. Whether declaration can be filed for default on the same issue for the subsequent period?	In the context of the Scheme, the relevant period is from Oct 2007 to Dec 2012. Therefore, the 2nd proviso to section 106 (1) shall be attracted only in such cases where a show cause notice or order of determination has been issued for the period from Oct 2007 to Dec 2012. Accordingly, issuance of a show cause notice or order of determination for any period prior to Oct 2007, on an issue, would not make a person ineligible to make a declaration under the Scheme on the same issue for the period covered by the Scheme. Therefore, declaration can be made under VCES.
6	In a case where the assessee has been audited and an audit para has been issued, whether the assessee can declare liability on an issue which is not a part of the audit para, under the VCES 2013?	Yes, declarant can declare the "tax dues" concerning an issue which is not a part of the audit para.
7	Whether a person, who has paid service tax for a particular period but failed to file return, can take the benefit of VCES Scheme so as to avoid payment of penalty for non-filing of return?	Under VCES a declaration can be made only in respect of "tax dues". A case where no tax is pending, but return has not been filed, does not come under the ambit of the Scheme. However, rule 7C of the Service Tax Rules provides for waiver of penalty in deserving cases where return has not been filed and, in such cases, the assessee may seek relief under rule 7C.
8	A person has made part payment of his 'tax dues' on any issue before the scheme was notified and makes the declaration under VCES for the remaining part of the tax dues. Will he be entitled to the benefit of non-payment of interest/penalty on the tax dues paid by him outside the VCES, i.e., (amount paid prior to VCES)?	No. The immunity from interest and penalty is only for "tax dues" declared under VCES. If any "tax dues" have been paid prior to the enactment of the scheme, any liability of interest or penalty thereon shall be adjudicated as per the provisions of Chapter V of the Finance Act, 1994 and paid accordingly.

9	<p>Whether an assessee, who, during a part of the period covered by the Scheme, is in dispute on an issue with the department under an erstwhile provision of law, can declare his liability under the amended provisions, while continuing to litigate the outstanding liability under the erstwhile provision on the issue?</p>	<p>In terms of the second proviso to section 106 (1), where a notice or order of determination has been issued to a person in respect of any issue, no declaration shall be made by such person in respect of "tax dues" on the same issue for subsequent period. Therefore, if an issue is being litigated for a part of the period covered by the Scheme, i.e., Oct, 2007 to Dec 2012, no declaration can be filed under VCES in terms of the said proviso on the same issue for the subsequent period.</p>
10	<p>Whether upon filing a declaration a declarant realizes that the declaration filed by him was incorrect by mistake? Can he file an amended declaration?</p>	<p>The declarant is expected to declare his tax dues correctly. In case the mistake is discovered suo-moto by the declarant himself, he may approach the designated authority, who, after taking into account the overall facts of the case may allow amendments to be made in the declaration, provided that the amended declaration is furnished by declarant before the cut off date for filing of declaration, i.e., 31.12.2013.</p>
11	<p>What is the consequence if the designated authority does not issue an acknowledgement within seven working days of filing of declaration? Whether the declarant can start making payment of the tax dues even if acknowledgement is not issued?</p>	<p>Department would ensure that the acknowledgement is issued in seven working days from the date of filing of the declaration. It may however be noted that payment of tax dues under the Scheme is not linked to the issuance of an acknowledgement. The declarant can pay tax dues even before the acknowledgement is issued by the department.</p>
12	<p>Whether declarant will be given an opportunity to be heard and explain his cases before the rejection of a declaration under section 106(2) by the designated authority?</p>	<p>Yes. In terms of section 106 (2) of the Finance Act, 2013, the designated authority shall, by an order, and for reasons to be recorded in writing, reject a declaration if any inquiry/investigation or audit was pending against the declarant as on the cutoff date, i.e., 1.3.2013. An order under this section shall be passed following the principles of natural justice. To allay any apprehension of undue delays and uncertainty, it is clarified that the designated authority, if he has reasons to believe that the declaration</p>

		<p>is covered by section 106 (2), shall give a notice of intention to reject the declaration within 30 days of the date of filing of the declaration stating the reasons for the intention to reject the declaration. For declarations already filed, the said period of 30 days would apply from the date of this circular.</p> <p>The declarant shall be given an opportunity to be heard before any order is passed by the designated authority.</p>
13	What is the appeal mechanism against the order of the designated authority whereby he rejects the declaration under section 106 (2) of the Finance Act, 2013?	The Scheme does not have a statutory provision for filing of appeal against the order for rejection of declaration under section 106 (2) by the designated authority.
14	A declarant pays a certain amount under the Scheme and subsequently his declaration is rejected. Would the amount so paid by him be adjusted against his liability that may be determined by the department?	The amount so paid can be adjusted against the liability that is determined by the department.
15	Section 111 prescribes that where the Commissioner of Central Excise has reasons to believe that the declaration made by the declarant was 'substantially false', he may serve a notice on the declarant in respect of such declaration. However, what constitutes a 'substantially false' declaration has not been specified.	<p>The Commissioner would, in the overall facts of the case, taking into account the reasons he has to believe, take a judicious view as to whether a declaration is 'substantially false'. It is not feasible to define the term "substantially false" in precise terms. The proceeding under section 111 would be initiated in accordance with the principles of natural justice.</p> <p>To illustrate, a declarant has declared his "tax dues" as Rs 25 lakh. However, Commissioner has specific information that declaration has been made only for part liability, and the actual "tax dues" are Rs 50 lakh. This declaration would fall in the category of "substantially false".</p> <p>This example is only illustrative.</p>
16	What is the consequence if a declarant fails to pay atleast 50% of declared amount of tax dues by the 31st Dec 2013?	One of the conditions of the Scheme section 107 (3) is that the declarant shall pay atleast an amount equal to 50% of the declared tax dues under the Scheme, on or before the 31.12.2013. Therefore, if the

		<p>declarant fails to pay atleast 50% of the declared tax dues by 31st Dec, 2013, he would not be eligible to avail of the benefit of the scheme.</p>
17	<p>Whether the CENVAT credit is admissible on the inputs/input services used for provision of output service in respect of which declaration has been made under VCES for payment of any tax liability outside the VCES?</p>	<p>The VCES Rules 2013 prescribe that CENVAT credit cannot be utilized for payment of "tax dues" under the Scheme. Accordingly the "tax dues" under the Scheme shall be paid in cash.</p> <p>The admissibility of CENVAT credit on any inputs and input services used for provision of output service in respect of which declaration has been made shall continue to be governed by the provisions of the Cenvat Credit Rules, 2004.</p>
18	<p>(a) Whether the tax dues amount paid under VCES would be eligible as CENVAT credit to the recipient of service under a supplementary invoice?</p> <p>(b) Whether cenvat credit would be admissible to the person who pays tax dues under VCES as service recipient under reverse charge mechanism?</p>	<p>Rule 6(2) of the Service Tax Voluntary Compliance Encouragement Rules, 2013, prescribes that CENVAT credit cannot be utilized for payment of "tax dues" under the Scheme. Except this condition, all issues relating to admissibility of CENVAT credit are to be determined in terms of the provisions of the Cenvat Credit Rules.</p> <p>As regards admissibility of CENVAT credit in situations covered under part (a) and (b), attention is invited to rule 9(1)(bb) and 9(1)(e) respectively of the Cenvat Credit Rules.</p>
19	<p>In terms of section 106 (2)(b), if a declaration made by a person against whom an audit has been initiated and where such audit is pending, then the designated authority shall by an order and for reasons to be recorded in writing, reject such declaration. As the audit process may involve several stages, it may be indicated as to what event would constitute,-</p> <p>(i) initiation of audit; and</p> <p>(ii) culmination of audit.</p>	<p>Initiation of audit: For the purposes of VCES, the date of the visit of auditors to the unit of the taxpayer would be taken as the date of initiation of audit. A register is maintained of all visits for audit purposes.</p> <p>Culmination of audit: The audit process may culminate in any of the following manner.-</p> <p>(i) Closure of audit file if no discrepancy is found in audit;</p> <p>(ii) Closure of audit para by the Monitoring Committee Meeting (MCM);</p> <p>(iii) Approval of audit para by MCM and payment of amount involved</p>

therein by the party in terms of the provisions of the Finance Act, 1994;
(iv) Approval of audit para by MCM, and issuance of SCN, if party does not agree to the para so raised.

The audit culminates at a point when the audit paras raised are settled in any manner as stated above.

The pendency of audit as on 1.3.2013 means an audit that has been initiated before 1.3.2013 but has not culminated as on 1.3.2013.

Computation of Interest on late payment of Service Tax during the period from January' 2013 to November' 2013					
Month	Service Tax due for storage of Rice	Delay in Service Tax payment (in days)(upto 31 Dec' 2013)	Rate of interest	effective Rate of interest upto 31 Dec' 2013	Amount of interest
A	B	C	D	E= D*C/12	F=B*E
January , 2013		329	18% p.a.	16.23%	
February, 2013		301	18% p.a.	14.85%	
March, 2013		270	18% p.a.	13.32%	
April, 2013		240	18% p.a.	11.84%	
May, 2013		209	18% p.a.	10.31%	
June, 2013		179	18% p.a.	8.83%	
July, 2013		148	18% p.a.	7.30%	
August, 2013		117	18% p.a.	5.77%	
September, 2013		87	18% p.a.	4.29%	
October, 2013		56	18% p.a.	2.76%	
November, 2013		26	18% p.a.	1.29%	