

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX  
PLOT NO. 6776/B-1, "SIDDHI SADAN" BUILDING,  
NARAYAN UPADHYAY MARG,  
BHAVNAGAR – 364 001.

F. No. V/15-18/DEM-ST/HQ/2012-13

Date of order : 17.09.2012

Date of issue : 27.09.2012

Passed by Shri Harcharan Singh, Additional Commissioner.

Order-in-Original No. 27/ADC/BVR/2012-13

Any person(s) deeming himself aggrieved by this order may appeal against this order to the Commissioner, Central Excise (Appeals), Central Excise Bhavan, Race Course Road, Rajkot 364 001 within 60 days from the date of its communication. The appeal should bear a Court Fee stamp of Rs. 2.50 paise only.

The appeal should be filed in Form EA-1 in duplicate as per the provisions of Section 35(1) of the Central Excise Act, 1944 read with Rule 3 of the Central Excise (Appeals) Rules, 2002. It should be signed by the Appellants in accordance with the provisions sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2002.

- It should be accompanied with the following :
- Copy of appeal in duplicate.
- Copies of the order, one of which shall be certified copy of the order must bear a Court Fee stamp of Rs. 2.50 paise as per Schedule I to Article of the Court Fee Stamp Act, 1870.

Sub :- Show Cause Notice No.V/15-18/HQ/DEM/2011-12 dated 20.04.2012.

**Brief facts :**

1.1 Intelligence gathered revealed that Shri Atul Harshadbhai Khimani, B-4, Avadh Residency, Chittal Road, Amreli (hereinafter referred to as the "Noticee") is providing taxable services to the Gujarat State Police Housing Corporation Limited, Gandhinagar (hereinafter referred to as "GSPHCL") and is not paying Service Tax thereon. Therefore, summon dated 16.9.2011 was issued to the Noticee for appearance and production of copies of following documents for the last five years.

- i. Contract / Agreement made with GSPHCL and other companies ;
- ii. Service tax returns, if any ;
- iii. Details of payments received from various companies ;
- iv. Copies of Income Tax returns ;
- v. Ledger account of GSPHCL and other companies ;
- vi. Profit and Loss Account alongwith audited Balance Sheet and ;
- vii. All ledger accounts which are part of Profit and Loss Account.

However, the Noticee did not provide requisite documents called for by the department. Therefore, another summons dated 21.10.2011 was issued. Noticee vide letter dated 15.11.2011 informed that he is working in private Insurance company and his business is being handled by his elder brother namely Shri Vijay H. Khimani since 21.03.2005. Hence, further summon dated 15.11.2011 was issued for appearance and production above mentioned documents. Shri Vijaykumar Harshadrai Khimani, Proprietor of the Noticee appeared before Superintendent of Central Excise (AE), Hqrs, Bhavnagar on 29.11.2011.

1.2 Statement of Shri Vijay Kumar Harshadrai Khimani, Proprietor of the Noticee was recorded under Section 14 of Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 (hereinafter referred to as the "Act") on 29.11.2011 before Superintendent (AE), Central

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Excise, Hqrs, Bhavnagar wherein he, inter alia, stated that he is the proprietor of M/s Atul Harshadrai Khimani ; that for the last ten years, he was engaged in business of maintenance and repairs works or new construction work to Government Agencies and Govt. local bodies ; that he did not obtain Service Tax registration for any category and did not pay Service Tax under any category of taxable services. He produced copies of Income Tax returns along with computation of income for the Financial Years 2006-07 to 2010-11. He further stated that he had filed his Income Tax Returns under Section 44 AD of Income Tax Act and he had not maintained any records and had not obtained Commercial Tax Registration. He stated that he had done work of GSPHCL during Financial Year 2006-07 and had received total Rs. 19,34,376/- and stated that he would produce the same. He further stated that he had done work of GSPHCL during the Financial Year 2007-08 and had also done special repairing work of Shri Girdharbhai Sangrahalaya, Amreli and had received total Rs. 35,08,393/-. He further stated that he had carried out works of Airports Authority of India (hereinafter referred to as "AAI") and Project Implementation Unit (PIU). He produced copy of Work Order of AAI and copy Work Order of PIU. The bills issued to PIU were not available with him. He stated that during the Financial Year 2009-10, he had received an amount of Rs.18,24,799/- for works of AAI and GSPHCL and he produced copies of Work Orders for those works. He further stated that during the year 2010-11, he received an amount of Rs.24,89,568/- for doing repairing works of GHSPHCL at Rajula, Khambha and Amreli and had constructed a Bunglow for GSPHL at Amreli and produced copies of Works Orders for those works. He stated that Shri Harshadbhai Khimani is his younger brother and is working in Insurance Co. since long and he is not doing any work of any Agency. He stated that all works were carried out in the name of Noticee.

1.3 Further information was called from GSPHCL for Works Orders who supplied the copy of ledger account of the Noticee. Further on going through computation of income from their Income Tax Returns, it was found as under :

S. No	Financial Year	Contract Income
1.	01.10.2006 to 31.03.2007	Rs 7,01,965/-
2.	2007-08	Rs 35,08,393/-
3.	2008-09	Rs 20,87,315/-
4.	2009-10	Rs 18,24,799/-
5.	2010-10	Rs 24,89,568/-
		Rs 1,06,12,040/-

1.4 On going through copies of Work Orders produced by the Noticee during the course of investigation, it was found that following works were executed by the Noticee during the Financial Years 2006-07 to 2010-11 ;

- I. Special Repairs to Police Staff Quarters A-16, B-08 and PSI Quarters at Vartej, Bhavnagar ;
- II. Minor and Special repairing work at Shri Girdharbhai Sangrahalaya, Children's Museum, Amreli ;
- III. Provision of stone pitching in operational area boundary wall, New perimeter Road, Pump House, near ILS Building at C.A Bhavnagar ;
- IV. Miscellaneous Repairs and Maintenance works for operational and non-operational area at C.A Rajkot during 2009-10 ;
- V. Special repairing to kitchen mess (1), (2), (3) and waterproofing works to Kot Room and Store Room at PST Vadodara ;
- VI. Special repairs to Police Staff Quarters B-12, C-08, D-01 quarters at Rajula and B-08 at Khambha in Amreli District ;
- VII. Special Repairs to Block No. 18, 19 and 20 at Police Headquarters at Amreli.

1.5 From the investigation carried out, it appeared that the Noticee had provided one or more of the following services during last five years i.e. from 2006-07 to 2010-11 to GSPHCL, AAI, PIU and Shri Girdharbhai Sangrahalaya, Children's Museum, Amreli and had received payment from them as mentioned in Annexure-A to the Show Cause Notice dated 20.04.2012.

1.6 Section 65 (64) of the Finance Act, 1994 provides that "Management, Maintenance or Repair" means any service provided by –

- (i) any person under a contract or an agreement ; or
- (ii) a manufacturer or any person authorised by him,

In relation to , -

- (a) Management of properties, whether immovable or not ;
- (b) Maintenance or repairs of properties, whether immovable or not ; or
- (c) Maintenance or repairs including reconditioning or restoration, or servicing of any goods excluding a motor vehicle ;

Therefore, it appeared that in terms of provisions of "Section 65A of the Finance Act, 1994, services provided by the Noticee to various agencies namely GSPHCL, AAI, PIU and Shri Girdharbhai Sangrahalaya, Children's museum, Amreli merit classification under sub-section 64 of Section 65 of the said Act, 1994 i.e. "Management, Maintenance or Repair Service "since it gives essential characteristics of maintenance or repair.

Further Section 65 (105) (zzg) of Finance Act, 1994 defines "taxable service" means any service provided or to be provided to any person, by any person in relation to management, maintenance or repair."

1.7 From above, it appeared that the Noticee were providing taxable service of "Management, Maintenance or Repair" service without payment of Service Tax leviable thereon under the Act and the Rules framed there under, Therefore, the Noticee was liable for payment of Service Tax under Section 68 of the Act for the services provided by them. It further appeared that the Service Tax on these services is leviable on the gross amount charged by the service provider under the provisions of Section 67 of the Act and is required to be recovered under Section 73 of the Act along with interest under Section 75 of the Act. It also appeared that the Noticee had suppressed the facts that they were engaged in providing the said services from the Department by not obtaining Service Tax Registration with an intent to evade payment of service Tax.

1.8 After completion of investigation, it appeared that the Noticee had contravened following provisions of the Act :

- a. The Noticee did not file ST-3 Returns for the period October, 2006 to March, 2011 as required under Rule 7 of the Service Tax Rules, 1994 (hereinafter referred to as the "Rules") and had thereby suppressed the facts with intent to evade payment of Service Tax.
- b. The Noticee had failed to apply to Service Tax department for registration under the category of "Management, Maintenance or Repairs Service" and had thereby contravened Section 69 of the Act read with Rule 4 of the Rules ;
- c. The Noticee had failed to pay Service Tax at the appropriate rate prescribed under Section 66 of the Act from time to time on the value of taxable services provided by them during the period 2006-07 to 2010-11 and had thereby contravened Section 68 of the Act read with Rule 6 of the Rules ;
- d. The Noticee had failed to assess the Service Tax on the value received for providing taxable service and to furnish returns in Form ST-3 Returns and had thereby contravened Section 70 of the Act read with Rule 7 of the Rules ;

- e. The Noticee had failed to discharge the Service Tax liability on the receipt of the payments and accordingly suppressed the facts from the Department and had thereby contravened the provisions of Section 73 of the Act with intent to evade payment of Service Tax ;
- f. The Noticee had failed to pay Service Tax on which they are liable to pay interest at the appropriate under Section 75 of the Act ;
- g. The Noticee had failed to pay Service Tax within due date at the appropriate rate, thereby they were liable for penalty under Section 76 of the Act ;
- h. The Noticee had failed to pay Service Tax, to obtain registration, to furnish information called by an officer, to produce documents as called for by an officer of Central Excise and failed to appear before him in response to summons issued for appearance to give evidence or to produce a documents and thereby were liable for penalty under Section 77 of the Act ;
- i. The Noticee had failed to discharge the Service Tax liability by reason of suppression of facts with an intent to evade payment of Service Tax and thereby were liable for penalty under Section 78 of the Act .

1.9 Therefore, Show Cause Notice No. V/15-18/DEM-ST/HQ/2012-13 dated 20.4.2012 was issued to the Noticee by Joint Commissioner, Central Excise Commissionerate, Bhavnagar proposing the following actions :

- i. Recovery of Service Tax amounting to Rs 12,21,930/- (Rupees twelve lacs, twenty one thousand, nine hundred and thirty only) under proviso to Section 73(1) of the Finance Act, 1994 along with interest at the appropriate rate as applicable till the payment of Service Tax under Section 75 of the Act ;
- ii. Imposition of penalty under Section 76 of the Act for failure to assess Service Tax under Section 70 of the Act and make payment thereof within period and in the manner prescribed under Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 ;
- iii. Imposition of penalty under Section 77 of the Finance Act, 1994 for contravention of Section 69 of the Act by way of not getting registered within one month of the start of providing taxable service as required under Section 69 of the Act ;
- iv. Imposition of penalty under Section 77 of the Act for failure to file prescribed returns under Section 70 of the Act read with Rule 7 of the Rules ;
- v. Imposition of penalty under Section 78 of the Act for suppression of fact of providing taxable services and liability to pay Service Tax.

## **2 Defence reply and personal hearing :**

M/s V. B. Sheth & Co, Rajkot, Advocate submitted reply dated 9.7.2012 on behalf of the Noticee as under :

- a) Allegations contained are not proper and justified inasmuch as the Noticee has not violated any of the provisions of the Act and the Rules made there under ;
- b) The amount of Service Tax proposed to be recovered is also not proper inasmuch as the services provided are not chargeable under the category specified in captioned show cause notice and requested to drop the proceedings. The Advocate also requested for personal hearing.

2.1 Shri Paresh Sheth, Advocate appeared for personal hearing on 3.8.2012 and requested 15 days' time for filing written submissions.

2.2 M/s V.B. Sheth & Company, Rajkot, Advocate filed written submission dated 14.8.2012 which is as under :

- a) They drew attention to para 7 to 9 of SCN which clarifies beyond doubt that the proceedings are initiated on the premise that the Noticee has failed in obtaining registration and discharging his liability under the category of "Management, Maintenance or Repairs Services". In other words, the department has proposed to recover Service Tax under category of "Management, Maintenance or Repair" and consequently interest and penalty under various provisions.
- b) They drew attention to para 3, 4 and 5 of the show cause notice whereby it is crystal clear that the department has proceeded on presumptions and assumptions only. Though in para 3 and 5, the department has referred to various tenders allotted to the Noticee and the work done for one of the Government Organizers has preferred to charge Service Tax on the income shown in the relevant returns of the Income Tax.
- c) However, for considering the said receipt as service charge recovered from the customer, the department has not produced any evidence to prove that the said recovery is only a service charge. They drew attention to the statement of the Noticee as well as the documentary evidences relied upon by the department and submitted that it is crystal clear that the Noticee has not provided services under the category of "Management, Maintenance or Repairs" but has carried out the relevant work with material cost and therefore, the said activity cannot be treated as "Management, Maintenance or Repairs" service chargeable under the said head ; they submitted relevant page of the tender supplied by the Noticee and stated that the relevant work undertaken were with material cost on it not for the service charge only. Though the department was in possession of the fact that the Noticee has performed work with material cost has considered the total receipt as service charge only which is bad in law and is liable to be set aside. In any case, the department has neither referred any provision which would enable them to charge Service Tax on the total cost of the work done nor has produced any evidence to prove that the total receipt is service charge only and hence the allegations contained are liable to be set aside and the proceedings initiated is liable to be dropped ;
- d) Without prejudice to the above, they submitted that even assuming for a while that the said activity is covered under the category of "Management, Maintenance or Repair", even then the value of raw materials is liable to be excluded and consequently the taxable value is liable to be reduced; they submitted that from the copy of tender enclosed that the works allotted were not of only Management, Maintenance or Repairs but it also included work for new constructions or of construction of wall at various places which could not be treated as maintenance or repair activity and accordingly cannot be charged to Service Tax under the said category ;
- e) They submitted that in any case, the Noticee is eligible for the abatement of raw material cost of the general abatement allowable under various notifications issued by the Government and hence the taxable value worked out by the department is liable to be reduced to the extent of profit worked out and indicated in the Income Tax returns and consequently the duty liability is also liable to be worked out accordingly ;
- f) They drew attention to the provisions of Rule 7 (1) of Service Tax (Determination of Value) Rules, 2006 whereby it is settled that the value of taxable service shall be equal to the actual consideration charged for the service provided or to be provided. In other words, the Service Tax cannot be charged on the value which does not represent the service charge and therefore in view of the submission made hereinabove and the documentary evidences available, the value of material cost is

liable to be reduced and Service Tax liability is liable to be worked out on the value of service charge only ;

They submitted that in any case, in their opinion the Service Tax to be recovered under the category of "Management, Maintenance or Repair" is improper and unjustified and is liable to be set aside inasmuch as if the work is done along with the material cost, then it cannot be treated as "Management, Maintenance or Repair" but is only a works contract and therefore no part of amount is liable to be recovered under the category referred by the department and consequently the proceedings initiated is liable to be set aside and they relied on the following decisions :

- i) K. V. Nagarajan Vs Deputy Commercial Tax Officer reported in 2007-5-STR-325(Mad) ;
- ii) K. Raheja Development Corporation Vs State of Karnataka reported in 2006-3-STR-337-SC ;
- iii) CCE Vs Dusad Transformer and Switchgears (P) Ltd. Reported in 2007-5-STR-37-Tri-Del.

They submitted that it is crystal clear from above submission that the activity undertaken by the Noticee is not covered under the category of Maintenance and Repair services and whether the said services could be treated as maintenance and Repair services or not is a disputable issue and hence it cannot be said that the Noticee had any malafide intention to evade the payment of duty or tax and consequently no penalty is liable to be imposed and no interest is payable under the said category.

They submitted that in any case, the penalty proceedings initiated by the department on such disputable issue is not proper and justified and therefore they prayed that the penalty proceedings initiated be dropped and in this regard they relied on the following decisions :

- i) CCE, Chandigarh Vs Saluja Exim reported in 2011 (270) ELT 560 (Tri-Del).
- ii) Sheil Industries Vs CCE, Ahmedabad reported in 2011 (263) ELT 436 (Tri-Ahd).
- iii) Arisht Spinning Mills Vs CCE, Chandigarh reported in 2010 (261) ELT 417 (Tri-Del).
- iv) Manglam Cement Ltd Vs CCE, Jaipur reported in 2004 (163) ELT 177 (Tri-Del).
- v) Before CCE (Appeals), Kanpur in case of Khuwani Print Pack (P) Ltd reported in 2010 (250) ELT 435 (Commr. Appl).

They submitted that in view of above decisions, it is proved beyond doubt that there was no malafide intention to evade payment of Service Tax but it was only under the bonafide belief that the amount recovered on account of reimbursement of expenditure is not treated as part of service charge and therefore, the extended period of limitation invoked by the department is not proper and justified and consequently the demand raised is barred by limitation.

They referred CBEC Circular No. 312/28/97-CX dated 22.4.1997 wherein it is clarified that unless positive inaction with intention to evade payment of duty is produced, extended period of limitation cannot be sustained and also relied on the following decisions :

- i) Mahindra UGINE Steel Co. Ltd Vs CCE Nasik reported in 2009 (234) ELT 668 (Tri-Mumbai).

ii) Havukal Tea and Produce Co. (P) Ltd Vs CCE Salem reported in 2009 (233) ELT 518 (Tri-Chennai) and confirmed by High Court.

iii) CCE, Salem Vs Havukal Tea and Produce Co. (P) Ltd reported in 2011 (267) ELT 162 (Mad).

iv) C. B. Maheshwari Vs CCE Valsad reported in 2007 (218) ELT 555 (Tri-Ahd).

They submitted that since the penalty is proposed to be imposed under the provisions of Section 76, the penalty shall not be imposed under the provisions of Section 78 of the Act and hence the penalty proposed to be imposed under the said section may be dropped and they relied on the decision in case of CCE Ludhiana Vs Akash Cable reported in 2010 (19) STR 753 (Tri-Del) and submitted that the issue involves interpretation of the relevant provisions and hence in view of settled proposition of law, no penalty is liable to be imposed.

### 3 Discussion and findings :

3.1 I have carefully gone through the facts of the case, defence reply filed by the Noticee and all the relevant documents placed in the file. On going through the facts of the case, I find that the Noticee is engaged in providing taxable services of maintenance, repairs / special repairs of properties of immovable nature to various agencies viz. Gujarat State Police Housing Corporation, Airport Authority of India Project Implementation Unit and Shri Girdharbhai Sangrahalaya, Children's Museum, Amreli. The investigation carried out and the statements of the Noticee revealed that the services provided by the Noticee pertained to maintenance and repair works or new construction work to the above said Government Agencies and Government local bodies since 2006 till 2010-11 merit classification under the category of "Management, Maintenance or Repair service" as defined under Section 65 (64), 65 (105) (zzg) of the Finance Act, 1994 which is a taxable service. It is also observed that the Noticee have not obtained Service Tax Registration and have failed to pay the Service Tax from the year 2006 till 2010-11. It is also fact that the Noticee have failed to file ST-3 Returns for the period from October, 2006 to March, 2011 and had thereby suppressed the fact of not paying Service Tax with malafide intention to evade payment of Service Tax.

3.2 Section 65 (64) of the Finance Act, 1994 provides that "Management, Maintenance or Repair" means any service provided by –

- (i) Any person under a contract or an agreement ; or
- (ii) A manufacturer or any person authorised by him,

In relation to, -

- (a) Management of properties, whether immovable or not ;
- (b) Maintenance or repairs of properties, whether immovable or not ; or
- (c) Maintenance or repairs including reconditioning or restoration, or servicing of any goods excluding a motor vehicle.

3.3 Section 65 (105) (zzg) of Finance Act, 1994 defines "Taxable service" means any service provided or to be provided to any person, by any person in relation to "Management, Maintenance or Repair".

3.4 From the plain reading of above definitions, the services provided by the Noticee fell in the category of "Management, Maintenance or Repair" and the Noticee were liable to pay Service Tax thereon since 2006 under the provisions of Section 68 of the Act. Further, as per Section 67 of the Act, the Service Tax on the above services is leviable on the gross amount charged by the service provider and is required to be recovered under Section 73 of the Act along with interest under Section 75 of the Act. Further, the Noticee had suppressed the fact that they were providing services of "Management, Maintenance or Repair" from the department by not obtaining Service Tax registration which was with intent to evade payment of service tax.

3.5 At the outset, the Noticee has argued that they have performed work with material cost and the department has considered the total receipt as service charge and no evidence is produced to prove that the total receipt is service charge only. They have argued that the value of raw material is liable to be excluded consequently the taxable value is liable to be reduced. They have also submitted that the abatement of raw material cost of the general abatement allowable under may be allowed and as such taxable value worked out by the department is liable to be reduced.

3.6 Notification No. 12/2003-S.T dated 20.06.2003 as amended provides for exemption of the value of goods and materials sold by the service provider to the recipient of service from the Service Tax leviable thereon under Section 66 of the Act subject to the condition that there is documentary proof specifically indicating the value of the said goods and materials provided that no credit of duty paid on such goods and materials sold has been taken under the provisions of Cenvat Credit Rules, 2004 and where such credit has been taken by the service provider on such goods and materials such service provider has paid the amount equal to such credit availed before the sale of such goods and materials. From the records, it is seen that the Noticee had not submitted any documentary proof specifically indicating the value of goods and materials in support of their claim. Since the Noticee have not submitted the proof as to the value of goods and materials from the total year wise receipt of the value of services rendered, I am not inclined to accede to the claim of the Noticee for the deduction of value of materials from the value of services. I reject the Noticee's claim for general abatement of value of materials from the value of receipt of the services rendered by Noticee.

3.7 The Noticee have argued that as per provisions of Rule 7(1) of Service Tax (Determination of Value) Rules, 2006, the value of taxable service shall be equal to the actual consideration charged for the services provided or to be provided. The said Rule 7(1) of the Service Tax (Determination of Value) Rules, 2006 is for the purpose of value of taxable service received under the provisions of Section 66A of the Finance Act, 1994. The Section 66A deals with Service Tax on services received from outside India which has no relevance to the present case and as such I reject the same.

3.8 The Noticee have argued that the Service Tax is proposed to be recovered under the category of "Management, Maintenance or Repair" is improper and unjustified for the reason that if the work is done along with the material cost, then it cannot be treated as Management, Maintenance or Repair but is only a Works Contract and no part of amount is liable to be recovered under the category proposed by the department and have placed reliance on decisions. In this context, I observe that the services provided by the Noticee appropriately fall in the category of "Management, Maintenance or Repair Service" as defined in Section 65(64) read with 65 (105) (zzg) of the Finance Act, 1994 as concluded in para 3.4 supra.

3.9 The investigation conducted revealed that Shri Vijay Kumar Harshdrai Khimani, Proprietor of the Noticee firm in his statement dated 29.11.2011 recorded before Superintendent (AE), Central Excise, Hqrs, Bhavnagar has stated that he was engaged in the business of maintenance and repairs works to Government Agencies and Government local bodies and he had not obtained Service Tax registration for any category of services. I therefore hold that the Noticee has failed to obtain **Service Tax registration** under the category of "Management, Maintenance or Repairs" as required under the provision of Section 69 of the Act read with Rule 4 of the Service Tax Rules, 1994. Section 69 provides that every person liable for paying the Service Tax shall make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within a period of thirty days from the date on which the Service Tax under Section 66 of the Finance Act, 1994 is levied. The Noticee had failed to obtain Service Tax registration in the year 2006. I, therefore hold that the Noticee are liable for penalty under Section 77 of the Act read with Rule 4 of the Service Tax Rules, 1994.

3.10 Further, the investigation had revealed that the Noticee did not **file any ST-3 Returns** for the period October, 2006 to March, 2011 as required under Section 70 of the Act read with Rule 7 of the Service Tax Rules, 1994 and thus had suppressed the fact that they were liable to pay the Service Tax on the above said services provided during the above said period. I, therefore, hold that the Noticee are liable to penalty under Section 77 of the Act.



3.11 In statement dated 29.11.2011, Shri Vijay Kumar Harshabhai Khimani, proprietor of the Noticee firm has stated that he did not pay Service Tax under any category of taxable services, however, he had produced copies of Income tax returns for computation of income for the period 2006-07 to 2010-11.

Section 68 of the Act provides that (1) every person providing taxable service to any person shall pay Service Tax at the rate specified in Section 65 in such manner and within such period as may be prescribed and Rule 6 of the Rules provides that the Service Tax shall be paid to the credit of the Central Government-

- (i) by the 6<sup>th</sup> day of the month, if the duty is deposited electronically through internet banking ; and
- (ii) by the 5<sup>th</sup> day of the month, in any other case, immediately following the calendar month in which the service is deemed to be provided as per the rules framed in this regard.

In view of the provision of Section 68 of the Act and Rule 6 of the Rules, I hold that the Noticee have **failed to pay the Service Tax** from the year 2006 to 2010-11 and are liable to penalty under Section 76 of the Act.

3.12 The Noticee, during the course of investigation had produced Income Tax Returns for the period from 01.10.2006 to 31.03.2007, 2007-08, 2008-09, 2009-10 and 2010-11 from which it was revealed that Noticee have received the gross amount totalling Rs. 1,06,12,040/- towards value of services provided by them during above periods. This act of the Noticee reveals that the Noticee have failed to discharge the Service Tax at the appropriate rate amounting to Rs. 12,21,930/- as per calculation in **Annexure-A** to the show cause notice dated 20.04.2012 by reason of suppression of facts of providing taxable services from the department with malafide intention to evade payment of Service Tax, I hold **that longer period of limitation is rightly invoked** by the department under Section 73 of the Act and as a result, the Noticee is also liable for penalty under Section 78 of the Act. The case laws relied upon by the Noticee for dropping the penalty proceedings are of no help to the Noticee. The Noticee is also liable to pay interest on the above amount of Service Tax under Section 75 of the Act.

In view of the above facts, evidences, discussion and findings, I pass the following orders.

#### ORDER

- 1 I confirm amount of Service Tax of Rs. 12,21,930/- (Rupees twelve lacs, twenty one thousand, nine hundred and thirty only) for the period from 01.10.2006 to 31.03.2007, 2007, 2008-09, 2009-10 and 2010-2011 under Section 73(2) of the Finance Act, 1944 read with Rule 6 of the Service Tax Rules, 1994 on M/s Atul Harshadrai Khimani, Amreli.
- 2 M/s Atul Harshadrai Khimani, Amreli are also liable to pay interest on the above said Service Tax under Section 75 of the Finance Act, 1994 at the applicable rate.
- 3 I impose penalty of Rs. 200/- on M/s Atul Harshadrai Khimani, Amreli for every day under Section 76 of the Finance Act, 1994 for failure to pay Service Tax for the period starting with the first day after the due date till the date of actual payment till 09.05.2008 or at the rate of 2% of Service Tax for the above period per month whichever is higher.
- 4 I impose penalty of Rs.1,000/- upon M/s Atul Harshadrai Khimani for failure to obtain registration for the period starting with first day after the due date to 09.05.2008 under Section 77 of the Act and I impose penalty of Rs. 200/- per day or five thousand rupees whichever is higher for the period from 10.05.2008 to 07.04.2011 and Rs. 200/- per day or ten thousand rupees whichever is higher from 08.04.2011 till the date of actual compliance under Section 77(1)(a) and I also

impose penalty of Rs. 10,000/- under Section 77(2) of the Finance Act, 1994 for failure to file prescribed returns under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994.

- 5 I impose penalty of Rs. 12,21,930/- (Rupees twelve lacs, twenty one thousand, nine hundred and thirty only) under Section 78 of the Finance Act, 1994 upon M/s Atul Harshadrai Khimani, Amreli. If the amount as determined under para 1 above is paid within 30 days from the receipt of the order along with the interest payable, then as per proviso to Section 78, the penalty will be only 25% of the Service Tax determined at para 1 above. The benefit of reduced penalty shall be available only if the amount of penalty so determined has also been paid within the period of thirty days from the receipt of this order.




(HARCHARAN SINGH)  
ADDL.COMMISSIONER

To,  
M/s Atul Harshadrai Khimani,  
(Prop. Shri Vijay Harshadrai Khimani)  
B-4, Avadh Residency,  
Chittal Road,  
Amreli - 365 601.

Copy to :-

- (1) Commissioner of Central Excise & Service Tax (RRA Sec.), Bhavnagar
- (2) Assistant commissioner Central Excise (AE), Hqrs, Bhavnagar.
- (3) Assistant Commissioner, Service Tax Division, Bhavnagar.
- (4) Superintendent, Service Tax, Rural Range, Bhavnagar.
- (5) Guard File.



27/9/2012

ADDL.COMMISSIONER