

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/15-07/Adj/DGCEI/HQ/2012-13

Date: - 23.11.2012

Passed by Shri Harcharan Singh, Additional Commissioner.

Order-in-Original No.30/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 three months from the date of receipt of the decision or order of adjudicating authority. The appeal should bear a Court Fee stamp of Rs. 2.50 paise only.

The appeal should be filed in Form ST-4 in duplicate as per the provisions of Section 85 of the Finance Act, 1994 read with Rule 8 of the Service Tax Rules, 1994.

- It should be accompanied with the following :
- Copy of appeal in duplicate.
- Copies of the order in duplicate, 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 the Article of the Court Fee Stamp Act, 1870.
- Proof of payment of Service Tax, penalty, interest etc.

Sub: - Show Cause Notice No. DGCEI/AZU/36-222/2012-13 dated 08.06.2012.

**Brief facts :**

1. M/s Agricultural Produce Market Committee, Junagadh, Sardar Vallabhbhai Patel Market Yard, Dolatpara, Junagadh (hereinafter referred to as "APMC, Junagadh") are formed under the Gujarat Agricultural Produce Market Act, 1963 to regulate the market for protecting agriculturist sellers and to establish modern market yard with required facilities for producers and traders. The APMC, Junagadh also provides shops/godowns/offices in the market area to commission agents/traders on rental basis and they collect rent from such commission agents/traders.

2. On the basis of an intelligence that the Agricultural Produce Market Committees of Gujarat have not paid service tax on rent collected by them from the commission agents/traders for providing shops/godowns/offices, an inquiry was initiated by the Directorate General of Central Excise Intelligence (hereinafter referred to as "DGCEI"), Vadodara Regional Unit, Vadodara under summons proceedings. The APMC, Junagadh was requested to provide the details of rent charged and collected by them for five years along with the annual reports.

3. The APMC, Junagadh submitted the information vide their letter No.BSJ/1071/2011 dated 04.08.2011, No.BSJ/1103/2011 dated 10.08.2011 and 16.04. They furnished copies of the Annual Reports for the years 2007-08 to 2010-11. The scrutiny of annual Reports revealed that they have rented shops/godowns/offices to the commissions agents/traders on monthly basis and they have collected rent from the commission agents/traders. The details of rent collected by APMC, Junagadh during the period from 2007-08 to 2011-12 are as under :

Period	Amount of rent collected ( In Rs.)
2007-08 (From June 2007)	11,04,600
2008-09	14,95,150
2009-10	14,80,190
2010-11	17,96,230
2011-12	19,40,380
<b>Total</b>	<b>78,16,550</b>

4. During the course of investigation, a statement of Shri Arvindbhai Mohanbhai Ghardeshiya, in charge Secretary of APMC, Junagadh was recorded on 16.04.2012 under Section 14 of the Central Excise Act, 1944 which has been made applicable to the Service Tax under Section 83 of the Finance Act, 1994 wherein he, inter alia, stated that he was working with APMC, Junagadh for the last two years; that the APMC, Junagadh was established in the year 1979; that being in-charge Secretary he was looking after all the day to day work of APMC; that the PAN No. of APMC, Junagadh is AAAK2396N; that they have collected rent from commission agents/traders; that APMC, Junagadh is the owner of shops/godowns/offices situated in the market area; that they have not registered for Service Tax with Central Excise, Customs and Service Tax Department and they have not paid service tax on the rent collected; that they have not deposited any amount collected by the APMC, Junagadh into any Government account and the same has been deposited into the bank account held by APMC, Junagadh.

5. The Agriculture Produce Market Committees of State of Gujarat are formed and working under the Gujarat Agriculture Produce Market Act, 1963 (hereinafter referred to as the "GAPMA") and in terms of Section 28 of GAPMA, APMCs are empowered to levy fees. The section 28 of GAPMA is as under :

**28. Power to levy fees :**

The market committee shall, subject to the provisions of the rules and the maxima and minima from time to time proscribe levy and collect fees on the agricultural produce bought or sold in the market area;

Provided that the fees so levied may be collected by the market committee through such agents as it may appoint.

During the investigation conducted by the DGCEI authority, it was found that the APMC, Junagadh had collected rent from their commission agents/traders on monthly basis for providing the shops/godown. There is no provision in the GAPMA 1963 to collect rent from the commission agents/traders, therefore, the rent collected by the APMC, Junagadh is not a statutory levy inasmuch as there is no provision in the GAPMA, 1963 to collect rent. Further the income from rent has also not been deposited in to the Government account but into various bank accounts held by APMC, Junagadh therefore, service tax is leviable on the rent collected by APMC, Junagadh from their commission agents/traders. The Renting of immovable property for use in the course of furtherance of business or commerce is taxable service under the category of "Renting of Immovable Property" as defined under Section 65(90a) and 65(105)(zzzz) of the Finance Act, 1994.

6. The renting of Immovable Property service was brought under Service Tax net with effect from 01.06.2007 and has been defined in Section 65(90a) of Finance Act, 1994 as under :

(90a) "renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course of furtherance of business or commerce but does not include –

- (i) Renting of immovable property by a religious body or to a religious body ; or
- (ii) Renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.

Explanation 1 – For the purpose of this clause, "for use in the course or furtherance business or commerce" includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings.

Explanation 2 – For the removal of doubts, it is hereby declared that for the purposes of this clause "renting of immovable property" includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property.

7. As per Section 65(105) (zzzz), "taxable service" means any service provided or to be provided to any person by any other person by renting of immovable property or any other service in relation to such renting for use in the course of or for furtherance of business or commerce.

Explanation 1 – For the purpose of this sub-clause "immovable property" includes –

- (i) Building and part of a building and the land appurtenant thereto;
- (ii) Land incidental to the use of such building or part of a building;
- (iii) The common or shared areas and facilities relating thereto; and
- (iv) In case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate;
- (v) Vacant land, given or lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce; but does not include –
  - (a) Vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;
  - (b) Vacant land, whether or not having facilities clearly incidental to the use of such vacant land;
  - (c) Land used for educational, sports, circus, entertainment and parking purposes; and
  - (d) Building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, boarding houses, holiday accommodation, tents, camping facilities.

Explanation 2 – For the purposes of this sub-clause, immovable property partly for use in the course of furtherance of business or commerce and partly for residential or any other purposes shall be deemed to immovable property for use in the course of furtherance of business or commerce.

8. During the course of investigation it was revealed that APMC, Junagadh had collected rent of Rs 78,16,550/- during the period from 01.06.2007 to 31.03.2012 and have contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994.

- (i) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 inasmuch as they failed to determine and pay the service tax on the rent collected by them towards taxable services provided by them on the specified date;
- (ii) Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 inasmuch as they have failed to obtain Service Tax registration;
- (iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 inasmuch as they have failed to file the Service Tax returns on the specified dated;
- (iv) Rule 4A of the Service Tax Rules, 1994 inasmuch as they have failed to issue an invoice, a bill or a challan in respect of taxable service provided by them in the prescribed manner.

9. It further appeared that APMC, Junagadh were knowing that the rent collected by them from the commission agents/traders was liable to Service Tax and the Noticee were liable to pay tax and accordingly did not file returns. The APMC, Junagadh also appeared to have suppressed this vital fact from the department with intent to evade payment of service Tax in contravention of various provisions of Finance Act, 1994 therefore, Service Tax not paid by the APMC, Junagadh was required to be recovered by invoking the extended period of five years as provided under the proviso to sub section (1) of Section 73 of the Finance Act, 1994, the APMC, Junagadh were also liable to pay interest under the provisions of Section 75 of the Finance Act, 1994.

The APMC, Junagadh were also liable for penalty under Section 76 of the Finance Act, 1994 inasmuch as they have failed to pay Service Tax in accordance with the provisions of "Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994. The APMC, Junagadh were also liable for penalty under Section 77 of the Finance Act, 1994 inasmuch they have failed (i) to take registration (ii) to pay service tax (iii) keep, maintain or retain books of

accounts and other documents as required in accordance with the provisions of Chapter V of the Finance Act, 1994 or the rules made there under. These acts and omissions on their part rendering themselves liable for penalty under Section 78 of the Finance Act, 1994 inasmuch they had failed to pay Service Tax.

10. Therefore, Additional Director, Directorate General of Central Excise Intelligence, Ahmedabad Zonal Unit, 1<sup>st</sup> Floor, Preema Chambers, Opposite PWD Quarters, near Mithakhali Six Roads, Ahmedabad 380 006 issued a show cause notice No.DGCEI/AZU/ 36-222/2012-13 dated 08.06.2012 to the APMC Junagadh answerable to Additional/Joint Commissioner, Central Excise Commissionerate, Siddhi Sadan Building, Plot No.6776/B-1, Narayan Upadhyay Marg, Bhavnagar 364 001 proposing the following actions :

- (i) Recovery of Service Tax amounting to Rs 7,49,984 (Rupees seven lac, forty nine thousand, nine hundred and eighty four only) ( Service tax Rs 7,28,140/- + Edu. Cess Rs 14,563/- +SHE Cess Rs.7,281/-) under the provisions of Section 73(1) of the Finance Act, 1994 ;
- (ii) Recovery of interest at the appropriate rate on the amount of Service Tax determined under Section 75 of Chapter V of the Finance Act, 1994 ;
- (iii) Imposition of penalty for failure to pay Service Tax under Section 76 of the Finance Act, 1994 ;
- (iv) Imposition of penalty for failure to take Service Tax registration and for failure to file periodical ST-3 returns for the period 01.06.2007 to 31.03.2012 under Section 77 of Chapter V of the Finance Act, 1994 ;
- (v) Imposition of penalty for suppression of taxable value of services provided by the Noticee during the period 01.06.2007 to 31.03.2012 under Section 78 of Chapter V of the Finance Act, 1994.

#### **11. Defence reply and personal hearing :**

11.1 The APMC, Junagadh vide their letter No.BSJ/2843/2012 dated 08.09.2012 filed a written reply to the show cause notice dated 08.06.2012 mainly stating as under :

- (i) The APMC, Junagadh have collected rent from commission agents/traders; that they did not know that they were liable to pay Service Tax on the rent collected from commission agents/traders; that they have not charged service tax from them; that they have received a copy of SCN No. DGCEI/AZU/36-222/2012-13 dated 08.06.2012 by Directorate General of Central Excise Intelligence, Ahmedabad thereafter they came to know that they were liable to pay service tax; that they had immediately applied for Service Tax registration but their Range Superintendent's own SSO ID and Password were not received from the system; that they immediately paid Rs 7,49,999/- when they received the Service Tax No. and they filed all Service Tax returns.
- (ii) The Agriculture Produce Market Committee, Junagadh is working as per provisions of the Gujarat Agricultural Produce Market Act, 1963; that the APMC, Junagadh's activities are purely in public interest and are undertaken as mandatory and statutory function;
- (iii) They have made payment of Service Tax, it is apparent that no penalty is required to be imposed against them under Section 76, 77 and 78 of the Finance Act, 1994.

11.2 A personal hearing was fixed on 23.10.2012 and 06.11.2012 before the adjudicating authority wherein Shri Paresh Darji, an authorised representative of consultant M/s J.B. Tanna, Tanna Service Tax, Junagadh appeared on 06.11.2012 for hearing and stated that full payment is already made and submitted that he had nothing more to state.

#### **12 Discussion and findings :**

12.1 I have carefully gone through the facts of the case, defence reply filed by the APMC, Junagadh and all the relevant documents placed in the file. On going through the facts of the case, I find that the APMC, Junagadh is formed under the Gujarat Agricultural Produce Market Act, 1963 to regulate the market for protecting agriculturist sellers and to establish modern market yard with required facilities for producers and traders. The investigation carried out by the DGCEI, Ahmedabad Zonal Unit, Ahmedabad revealed that the APMC, Junagadh also

provided shops/godowns/offices in the market to the commission agents/traders on rental basis and they had collected rent from commission agents/traders. The APMC, Junagadh collected amount of Rs 78,16,550/- towards rent during the period from 2007-08 (from June 2007) to 2011-2012. The services provided by the APMC, Junagadh viz. Renting of shops/godown/offices is a taxable service falling under the category of "Renting of immovable Property Services" and the APMC, Junagadh are liable to Service Tax on the amount collected by them from 01.06.2007. The APMC, Junagadh have neither obtained Service Tax registration from the Service Tax department under Section 69 of the Finance Act, 1994 for providing such services nor they have paid Service Tax on the rent collected by them.

12.2 The renting of Immoveable Property Service was brought under Service Tax w.e.f 01.06.2007 and is defined in Section 65(90a) of Finance Act, 1994 and for better appreciation it is reproduced as under :

(90a) "renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course of furtherance of business or commerce but does not include –

- (i) Renting of immovable property by a religious body or to a religious body ; or
- (ii) Renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.

Explanation 1 – For the purpose of this clause, "for use in the course or furtherance of business or commerce" includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings.

Explanation 2 – For the removal of doubts, it is hereby declared that for the purposes of this clause "renting of immovable property" includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property.

12.3. As per Section 65(105) (zzzz), "taxable service" means any service provided or to be provided to any person by any other person by renting of immovable property or any other service in relation to such renting for use in the course of or for furtherance of business or commerce.

Explanation 1 – For the purpose of this sub-clause "immovable property" includes –

- (i) Building and part of a building and the land appurtenant thereto;
- (ii) Land incidental to the use of such building or part of a building;
- (iii) The common or shared areas and facilities relating thereto; and
- (iv) In case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate;
- (vi) Vacant land, given or lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce; but does not include –
  - (a) Vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;
  - (b) Vacant land, whether or not having facilities clearly incidental to the use of such vacant land;
  - (c) Land used for educational, sports, circus, entertainment and parking purposes; and
  - (d) Building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, boarding houses, holiday accommodation, tents, camping facilities.

Explanation 2 – For the purposes of this sub-clause, immovable property partly for use in the course of furtherance of business or commerce and partly for residential or any other purposes shall be deemed to immovable property for use in the course of furtherance of business or commerce.

12.4 From the above definition, the renting of shops/godowns/offices by the APMC, Junagadh falls under the category of "Renting of Immoveable Property Service" and is a taxable service

and the Noticee are liable to pay Service Tax on the rent collected by them from 01.06.2007. Apart from above, it is revealed in investigation that the APMC, Junagadh have collected rent from commission agents/traders, they have not registered for Service Tax with Central Excise and Service Tax department, they have not paid service Tax on the amount of rent collected, they have failed to deposit the Service tax into Government Account thereby the APMC, Junagadh have contravened following provisions of Chapter V of the Finance Act, 1994 and The Service Tax Rules, 1994 :

12.5. During the course of investigation it was revealed that APMC, Junagadh had collected rent of Rs 78,16,550/- during the period from 01.06.2007 to 31.03.2012 and have contravened following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994.

- (i) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 inasmuch as they failed to determine and pay the service tax on the rent collected by them towards taxable services provided by them on the specified date;
- (ii) Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 inasmuch as they have failed to obtain Service Tax registration;
- (iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 inasmuch as they have failed to file the Service Tax returns on the specified dates;
- (iv) Rule 4A of the Service Tax Rules, 1994 inasmuch as they have failed to issue an invoice, a bill or a challan in respect of taxable service provided by them in the prescribed manner.

12.6 During the course of investigation, it was also revealed that the APMC, Junagadh were knowing that the rent collected by them from the commission agents/traders was liable to Service Tax, the APMC, Junagadh deliberately did not pay the Service Tax and did not file the Service Tax returns hereby the APMC, Junagadh have suppressed the vital facts from the department with intent to evade payment of Service Tax, therefore, the department has rightly invoked the extended period of five years as provided under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 for recovery of Service Tax amounting to Rs 7,49,984/- not paid.

12.7 I also observe that the APMC, Junagadh are also liable for penalty under Section 76 of the Finance Act, 1994 in as much as they have failed to pay service tax in accordance with the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994. The APMC, Junagadh are also liable for penalty under Section 77 of the Finance Act, 1994 inasmuch as they have failed (i) to take registration (ii) to pay service Tax and (iii) to keep, maintain or retain books of accounts and other documents as required in accordance with the provisions of Chapter V of the Finance Act, 1994 and the rules made there under. These acts and omissions on the part of APMC, Junagadh have rendered themselves liable for penalty under Section 78 of the Finance Act, 1994. APMC, Junagadh are also liable to pay interest under section 75 of the Finance Act, 1994 on the Service Tax liability at appropriate rate.

12.8 I find that the APMC, Junagadh in their defence reply dated 08.09.2012 have admitted their Service Tax liability and submitted that they have made payment of Rs 7,49,999/- on 30.08.2012 towards Service Tax.

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

### ORDER

1. I confirm amount of Service Tax of Rs 7,49,984/- (Rupees seven lacs, forty nine thousand, nine hundred and eighty four only) (Service Tax Rs 7,28,140/- + Edu. Cess Rs 14,563/- + SHE Cess Rs 7,281/-) as detailed in **Annexure A** to the Show Cause Notice dated 08.06.2012 for the period from 2007-08 (from 01.06.2007), 2008-09, 2009-10, 2010-11 and 2011-12 (up to 31.03.2012) under Section 73(2) of Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 on M/s Agricultural Produce Market Committee, Junagadh.

2. M/s Agricultural Produce Market Committee, Junagadh are also liable to pay interest on the above said Service Tax under Section 75 of the Finance Act, 1994 at applicable rate.

3. I impose penalty of Rs 200/- on M/s Agricultural Market Produce Committee, Junagadh for every day under Section 76 of the Finance Act, 1994 for failure to pay Service Tax for the period starting with the day after the due date 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/- on M/s Agricultural Produce Market Committee, Junagadh 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 Finance Act, 1994 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 08.04.011 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 the Service Tax Rules, 1994.

5. I impose penalty of Rs 7,49,984/- (Rupees seven lacs, forty nine thousand, nine hundred and eighty four only) under Section 78 of the Finance Act, 1994 on M/s Agricultural Produce Market Committee, Junagadh. 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 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 been paid within the period of thirty days from the receipt of this order.

*sd/*

(HARCHARAN SINGH)  
ADDL. COMMISSIONER

By Registered Post A.D.

To,  
M/s Agricultural Produce Market Committee,  
Sardar Vallabhbhai Patel Market Yard,  
Dolatpara,  
Junagadh, District Junagadh.

Copy to :-

- (1) Commissioner of Central Excise and Service Tax (RRA Section), Bhavnagar.
- (2) Additional Director, Directorate General of Central Excise Intelligence, Ahmedabad Zonal Unit, 1<sup>st</sup> Floor, Preema Chambers, Opp. PWD Quarters, near Mithakhali six roads, Ahmedabad 380 006.
- (3) Assistant Director, DGCEI, Regional Unit, Vadodara.
- (4) Assistant Commissioner, Service Tax Division, Bhavnagar.
- (5) Superintendent, Service Tax Range, Junagadh.
- (6) Guard file.

*sd/*  
27/11/2012  
ADDL. COMMISSIONER