

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/15-50/Dem-ST/HQ/2011-12

Date of order : 27.12.2012

Date of issue : 11.01.2013

Passed by Shri Harcharan Singh, Additional Commissioner.

Order-in-Original No. 34/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 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, 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. V/15-50/DEM-ST/HQ/2011-12 dated 10.04.2012.

Brief facts: -

1. M/s Mahendrakumar & Co, Bhavsinghji Park, Shop No. 4 (South), Porbander (hereinafter referred to as "the Noticee") are engaged in providing the taxable services to the Gujarat State Police Housing Corporation Limited, (hereinafter referred to as "GSPHCL").

2. On the basis of intelligence it was gathered that the Noticee was providing the taxable services to the GSPHCL without discharging the Service Tax liability properly, a summons was issued to the Noticee on 16.09.2011 to remain present and produce copies of the last five years of the following:-

- (1) Contracts / Agreements made with GSPGCL or with other companies ;
- (2) Service Tax returns, if any ;
- (3) Details of payments received from various companies ;
- (4) Income Tax returns ;
- (5) Ledger Accounts of GSPHCL and other companies ;
- (6) Profit and Loss Account along with audited balance sheet and ;
- (7) All the ledger accounts which are part of Profit and Loss Account.

3. Since the Noticee did not provide the required documents as called for under summons dated 16.09.2011, a further Summons was issued on 25.10.2011. In pursuance to summons, an authorised person of the Noticee remained present and submitted copy of following documents :

- (1) Contracts (work order) issued by GSPHCL or issued by other Govt. Department during the last five years ;
- (2) Copy of Service Tax return for the last three years;
- (3) Details of payments received from the various Govt. Departments during the last five years ;
- (4) Copy of Income Tax returns for the last five years;
- (5) Copy of Ledger of GSPHCL and;
- (6) Copy of Profit and Loss accounts with audited Balance Sheet for the last five years.

9/15/12

4. In response to further summons dated 09.11.2011 to remain present and produce documents Shri Bharat Mahendrabhai Godhania, partner of the Noticee appeared before Superintendent of Central Excise (A.E.) Hqrs. Bhavnagar on 15.11.2011. Statement of Shri Bharatbhai Mahendrabhai Godhania was recorded under Section 14 of the Central Excise Act, 1944 in question-answer form as under :

Q. No.1: Have you brought all the documents as listed in the schedule of the summons dated 24.10.11 and 09.11.2011? If yes, then please produce the same.

Answer: - I have already submitted the following copies of documents under our letter dated 09.11.11:-

- (i) Copies of contract(work orders) issued by Gujarat State Police Housing Corporation Ltd(GSPHCL) and other Government Departments for the last five years as listed in 'list of details of payment received' except copies of work orders mentioned at sr. No. 74,75,76& 81 of the said list submitted by us under letter dated 09/11/2011;
- (ii) Copies of Service Tax returns (ST-3) for last Three years i.e. 2008-09 to 2010-11;
- (iii) List of details of payments received from various Government Departments during Financial year 2006-07 to 2010-11;
- (iv) Copies of Income Tax Returns for F.Y. 2006-07 to 2010-11;
- (v) Copy of ledger account of GSPHCL for the F.Y. 2011-12;
- (vi) Copies of audit reports for F.Y. 2006-07 to 2010-11.

Now I produce photocopies of the following documents as called under your summons dated 09.11.11 for your examination.

- (i) Copies of Work Orders mentioned at Sr. No. 71,73,77,78,79,80,82 &83 of list submitted by us today. Copies of Work Orders mentioned at sr. No. 74, 75, 76, 81, 85 & 86 are not available with us.
- (ii) Copies of ledger account of contract work income for the period 2006-07 to 2010-11;
- (iii) A revised list of details of payments received from various Government Departments during F.Y. 2006-07 to 2010-11.

Q. No. 2: What kinds of services are provided by your firm?

Answer: - Our firm M/s Mahendrakumar & Co. undertakes Work Contracts to provide service of construction of Civil Structures such as Bridges, canals, Government Buildings, Government Residential Quarters etc. We provide our services to various State/Central government Departments/GMB and usually we don't provide our services to private parties.

Q. No. 3: When did your firm start and how many partners are there in your company? Please give details in this regard.

Answer: - Our firm has been working from about last 20 years, and at present there are three partners in our firm namely Shri Sidibhai Vejabhai Godhania, Smt. Bhavnaben Mahendrabhai Godhania and myself. The main works viz. filling of tender, work starting of the firm is looked by me.

Q. No. 4: Have you obtained Service Tax registration for the services provided by your company? If yes, then please produce the certificate.

Answer: - Yes, we have obtained Service Tax registration on 23.04.2008 in the Service Category of "Management, Maintenance and Repairs Service" and "Work Contract Service" and from then we regularly file Nil ST-3 Returns to the Service Tax Department.

Q. No. 5: It means no Service Tax has been paid by your firm till date. Is it true?

Answer: - Yes, it is true; we have not paid any Service Tax till date on the services provided by our firm. In our opinion Service Tax is not applicable on the services/work carried out for the Government work.

Q. No. 6: Please give year wise details of the amount received by your firm against the services provided to various recipients from the financial year 2006-07 onwards.

Answer: - The required year wise details are as under:

Year	Amount Received Rs.	Type of Service Provided
2006-07	5,60,59,846/-	As per list submitted by us.
2007-08	8,33,33,726/-	As per list submitted by us.
2008-09	9,56,80,514/-	As per list submitted by us.
2009-10	11,65,50,046/-	As per list submitted by us.
2010-11	12,10,34,137/-	As per list submitted by us.

Apart of the above Table, I have produced copies of Work Order of M/s. Gujarat State Police Housing Corporation Ltd (GSPHCL) along with copy of account ledger and payment advice.

Q. No. 7: Have you utilised your own material for construction of Civil Structure as stated by you above ?

Answer: - Yes, we have utilised our own construction material for all the construction work undertaken by us.

Q. No. 8: Apart of above, have your firm provided construction or other services to any other recipient also? If yes, then please provide the details.

Answer: No.

Q. No. 9: Does your firm pay VAT on various contracts works done by your firm ?

Answer: Yes, we pay VAT on Contract Works carried out by our firm. VAT No. of our firm is 24110101043 dated 27.09.2005, I produce a photo copy of same under my dated signature.

5. A further summons was issued to the Noticee on 02.12.2011 to remain present and produce copies of Work Order or Bills raised by them for the work mentioned at Sr. No. 57, 74, 75, 81, 85 and 86 in the list of Details of Payments received, which was submitted by them. In pursuance to the above Summons on 21-12-2011, Shri Bharat Mahendrabhai Godhania, Partner of the Noticee appeared before the Superintendent of Central Excise (A.E) H.Q., Bhavnagar. Statement of Shri Bharat Mahendrabhai Godhania, Partner of the Noticee was recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Act on 15-11-2011 before the Superintendent (A.E.), Central Excise, H.Q., Bhavnagar. The said statement was also recorded in question-answer form and is reproduced below:

Q. No. 1: Please go through your earlier statement dated 15/11/2011. Do you confirm the facts narrated by you therein?

Answer: I go through my earlier statement dated 15/11/2011 completely and in token of having confirmed the facts narrated therein I put my dated signature on last page of it.

Q. No.2: Please go through the "revised statement of work wise/ year wise payment received from state Government Department" (hereinafter referred to as the "list of payment received") submitted by you under point (iii) of answer given in response to question No. 1 in the above said statement. Are the entries of payment received in the said list the only payment received against the services rendered by you? Have you provided some other services also in addition to services mentioned in "the list of payment received"? If yes, then give details thereof.

Answer: I go through the above said "list of payment received" and I confirm that the figures shown in the said list are the only payments received by me against the services rendered by me to the various Government departments and the works mentioned in the said list are the only works handled by me during the past five years. In addition to what has been mentioned in the said list, I have not undertaken any other work. In confirmation of all of these facts, I put my dated signature on each page of the said list.

Q. No. 3: Please peruse the entry at Sr. No. 2 of the "list of payment received" in which under column Name of work "Improvement of Rural Roads under NABARD IRDF 11 Package no. G-25" is mentioned. Please explain that what does this entry depict and what kind of work have you undertaken vide the said entry and where have you done the said work?

Answer: I peruse the above said entry, it is in respect of laying Bapodar, Kerala, Jambu, Thoyana Road in district Porbandar. This is a rural road which connects Bapodar, Kerala, Jambu and Thoyana villages.

Q. No. 4: The Work Order related to the above said work is for "improvement of roads" therefore it appears that you have repaired or resurfaced or relayed or strengthened the pre-existed road connecting Bapodar, Kerala, Jambu and Thoyana villages for its improvement ?

Answer: No, we have not repaired or resurfaced or relayed or strengthened the pre-existed road connecting Bapodar, Kerala, Jambu and Thoyana villages for its improvement, it is an entirely new road constructed by our company as no *pacca* road was pre existing before. However, a clay road existed there having no surface and hence for improvement of the same i.e. for constructing a B.T. road over it we undertook the said work.

Q. No.5: Now peruse the entries mentioned at Sr. No. 3, 4, 6, 16, 17, 18, 19, 21, 23, 28, 31 to 33, 38, 39, 40, 43, 44, 46, 47, 50, 52 to 55, 58 and 62 to 70 in the "list of payment received". In each of these entries it is mentioned that you have undertaken the work of improvement of various roads. What does it meant by improvement of roads in these entries i.e. what kind of work have you undertaken vide all these entries? Please also produce copies of sample bills in respect of the said work undertaken by your company.

Answer: I peruse all of the above said entries which pertain to improvement of various roads under various schemes of the Government of Gujarat. Here the word "improvement" is frequently used by the Government for conversion of a clay road having no surface into B.T. road. Improvement doesn't include resurfacing, relaying, repairing or strengthening of pre-existed roads as far as the work undertaken by our company is concerned. Therefore, entries mentioned at 3, 4, 6, 16, 17, 18, 19, 21, 23, 28, 31 to 33, 38, 39, 40, 43, 44, 46, 47, 50, 52 to 55, 58 and 62 to 70 in the "list of payment received" depict construction of various new B.T. roads by our company. The copies of sample bills in respect of the work undertaken by us vide the said entries are not available with me as of now but I'll produce the same within 15 days.

Q. No. 6: Now peruse the entries mentioned at Sr. No. 7, 9, 10, 14, 15, 24, 27, 34, 41, 42, 48, 49, 59, and 60 in the "list of payment received". In each of these entries abbreviation "S.R." has been used, what does it mean by the abbreviation "S.R."? What kind of work have you undertaken vide all these entries?

Answer: I peruse the said entries. The abbreviation "S.R." is a head in which Government grants are allocated. I don't know the full form of S.R. I explain the works undertaken by our company vide each of the above said entries as unde :

- (i) Entry at Sr. No. 7:- this entry depicts the construction of New Bypass Road near Village Mahobatpara, District Porbandar. This was a panchayat road which bypassed the village Mahobatpara

- (ii) Entry at Sr. No. 9:- this entry depicts widening of road at Kolikhada-Bakharla- Nagka road between 15/7 to 18/4 kilometers total 2.7 Kilometers.
- (iii) Entry at Sr. No. 10:- this entry depicts widening of road at Bagvadar - Miyani road between 19/0 to 21/7 kilometers total 2.7 Kilometers.
- (iv) Entry at Sr. No. 14:- this entry depicts the re-metalling and B.S.G. i.e. built of Spray Grouting of selected portion of Vadvala – Aniyari road.
- (v) Entry at Sr. No. 15:- This entry shows widening of road at Majiwana – Shishli – Fatana road between 0/0 to 2/50, 2/50 to 5/0 total 5 Kms.
- (vi) Entry at Sr. No. 24:- This entry shows construction of new road at Majivana – Kunvadar – Hathla road between 0/0 to 4/20 total 4.2 Kms.
- (vii) Entry at Sr. 27:- This entry depicts construction of new road at Dharampur – Aditpara road between 0/0 to 2/800 total 2.8 Kms.
- (vii) Entry at Sr. 34:- This entry depicts construction of new road at Modhavada – Fatana road between 0/0 to 3/0 total 3 Kms.
- (viii) Entry at Sr. No. 41:- This entry shows widening of road at Bhod Approach between 0/0 to 1/50 total 1.5 Kms.
- (ix) Entry at Sr. No. 42:- This entry shows widening of road at Majiwana – Shishli – Fatana road between 1/250 to 4/00 total 2.75 Kms.
- (x) Entry at Sr. No. 48:- This entry depicts construction of new road at Khapat – Aditpara road between 0/0 to 3/400 total 3.4 Kms.
- (xi) Entry at Sr. No. 49:- This entry depicts construction of new road at Ramgadh Approach road between 0/0 to 2/200 total 2.2 Kms.
- (xii) Entry at Sr. No. 59:- This entry depicts construction of new road at Jambu – Mahira road between 0/0 to 2/50 total 2.5 Kms.
- (ix) Entry at Sr. No. 60:- This entry shows widening of road at Majiwana – Shishli – Fatana road between 4/00 to 6/50 total 2.5 Kms.

I will produce the invoices related to above said road work within 15 days.

Q. No. 7: Please peruse the work agreements No. B-1/6/Year 2009-10 dated 08.07.2009 and B-1/5/Year 2009-10 dated 08.07.2009 submitted by you under point (i) of answer given in response to question No. 1 in your statement dated 15.11.2011. These work agreements are respectively corresponding to entries at Sr. No. 41 and 42 in the “list of payment received”, in these agreements it has been clearly mentioned under their subject that “(રસ્તીની ખાસ મરામત)” i.e. Special Repair of Road whereas you have answered above that these entries depict widening of roads. Why is this contradiction have you actually undertaken the work of repairing of roads instead of their widening ? What do you have to say in this regard ?

Answer: I peruse the said entries and the work agreements and in token of having seen the same I put my dated signature on the said work agreements. We have undertaken the work of widening of roads vide the above said work agreements and I'll produce copies of certificate issued by the concerned engineer of PWD in this regard within 15 days.

Q. No. 8: Please peruse the entry No. 11 & 12 in the “list of payment received” and the corresponding work orders No. જીપં/બાધ/ટેન્ડર/વર્કઓર્ડર/૯૭/૨૦૦૮૭ dated 28.03.2007 and જીપં/બાધ/ટેન્ડર/વર્કઓર્ડર/૯૫/૦૭ dated 28.03.2007. In these entries you have shown receipt of payments in the year 2006-07 whereas the work orders for work undertaken vide the said entries were issued on 28/03/2007. It shows that you received your payments within 4 days of issue of the work orders. How did you receive payments within 4 days ? What was the nature of work undertaken by you in this regard ? Please explain.

Answer: I peruse the said entries and the corresponding work orders and in token of having seen the same I put my dated signature on the said work orders. We received the cheques of part payment within 4 days which is also reflected in our ledger

accounts, according to which we received the cheques dated 30.03.2007 and 31.03.2007 against the part of work completed by us. Vide the said work orders we had constructed new approach roads for temples at Khimeshwar Temple and Bharat Temple.

Q. No. 9: Now peruse the entry Sr. No. 37 in the "list of payment received" which is "RISING SILL LEVEL OF BHADAR T.R. NEAR VILLAGE CHIKASA IN PORBANDAR TALUKA & DIST.". What does abbreviation T.R. stands for and what kind of work have you undertaken vide this entry ?

Answer: I peruse the said entry. The abbreviation T.R. stands for "TIDAL RESERVE" it is mechanism used to prevent mixing of salty water with sweet water in the Dam. Vide this entry we had constructed wall of tidal reserve and raised the level of sill.

Q. No.10: Please peruse the entry at Sr. No. 57 under which "Misc. Work Salinity" is mentioned. What kind of miscellaneous work have you undertaken vide this entry ?

Answer: I peruse the said entry, it is for yearly contract for various miscellaneous work related to dam. I produce copies of bills and TDS certificate in this regard. There is no work order issued in this regard.

Q. No. 11: Please peruse the entry at Sr. No. 74 & 75 under which "Misc. Road work" is mentioned. What kind of work have you undertaken vide this entry ?

Answer: I peruse the said entry; it is for yearly contract for repairs, maintenance, jungle cutting and petty constructions etc. in respect of roads. I produce herewith copies of some of the bills and TDS statements in this regards. There is no work order issued in respect of miscellaneous work.

Q. No. 12: Please peruse the entry at Sr. No. 85 "Const. of RCC ESR at Village Divrana". You have not given any Work Order in respect of this entry, why ? Please also explain that what kind of work have you undertaken vide this entry ?

Answer: No Work Order was issued in this regard, I produce copy of TDS statement. We had constructed an overhead water tank at village Divrana vide this entry.

Q. No. 13: Please peruse the entry at Sr. No. 86 "Ranavav Bus Stand Road Work". You have not given any work order in respect of this entry, why ? Please also explain that what kind of work have you undertaken vide this entry ?

Answer: No work order was issued in this regard as we were the sub-contractor for this work, I produce copy of TDS statement. We had constructed a road inside Ranavav bus stand.

6. The Noticee vide their letter dated 2.1.2012 submitted the copies of R.A. Bills for the road work as assured by them and also submitted a copy of Certificates issued by the Executive Engineer, R & B Division, Porbandar for the widening work at Sr. No. 41 and 42 in the List submitted vide their letter dated 06.01.2012.

7. On going through Copy of Audit Report for the Financial Year 2006-07 to 2010-11 it was found that Contract Work Income as shown in the Profit & Loss account is as per the answer to Question No.6 given by the partner of the Noticee in his statement dated 15.11.2011. Further, ongoing through the Revised List of Details of Payments received from various Government Department produced by the partner of the Noticee in his statement dated 15.11.2011; it is found that the total of the said income is tallied with the Contract Work Income shown under the Profit & Loss account. Moreover, ongoing through the said Revised List of Details of Payments submitted along with the Statement dated 15.11.2011 of the partner of the Noticee, it appears that the following works done by the Noticee are not construction of roads and buildings, but maintenance or repair of roads and buildings :

- (i) Re-carpeting on Baloch approach road Km 0/0 to 0/50 Tal - Kutiyana;

- (ii) Improvement and strengthening to Mal - Choliyana Bavdavadar Road Km. 0/0 to 5/100 (NABARD scheme);
- (iii) Strengthening of Bagvadar-Vachhoda- Khistri Road by providing earth work (NABARD Scheme);
- (iv) Improvement and strengthening to Bantva- Saradiya- Chauta- Kutiyana Road Km. 56/700 to 58/800 (Taluka to Taluka joining road)
- (v) Special repairs to damaged sheet piled wharf at port Okha;
- (vi) Misc Road repairing works;
- (vii) Retrofitting incl. repairs & rehabilitation of Panchayat Building in Zone-3 of Porbandar;
- (viii) Upgradation of Simariya-Amanganj-Panna Road Km. 35 in the state of M. P;

The Work Bill income and Work Orders details of these works are also as shown against each of the work in **Annexure A1** to the Notice.

8. On going through copy of Work Orders produced by the Noticee during the course of investigation it was found that the following works were not construction and repairing works of roads but supply of tangible goods:

- (i) Engaging JCB for clearing the Lushala canal near village Keshod (Lushala) in Porbandar Taluka and District ;
- (ii) Engaging Excavator machinery for the earth work excavation and removal of obstruction of sand bar in Porbandar Taluka and District ;
- (iii) Engaging JCB for clearing the Erada canal near village Erda in Porbandar Taluka and District.

The work bill income and Work Orders details of these works are also as shown against each of the work in **Annexure A1** to the Notice.

9. Further, ongoing through Copy of Work Orders and Copy of the Running Accounts Bills produced by the Noticee during the course of investigation it was found that the following works were neither Construction and Repairing Works of Roads nor works related to Canal but were work related to excavation and site formation:

- (i) Clearing of earth dam west weir H. R. of Karly T.R. near village Tukada (Gosa);
- (ii) Removing obstruction and C.D. work opening of Ghed area in Porbandar Taluka and District.

The work bill income and work order's details of these works are also as shown against each of the work in **Annexure A1** to Notice.

10. From the investigation carried out, it appeared that the Noticee provided one or more of the following services during last five years i.e. from 2006-07 to 2010-11 to:

- (1) R & B Division, Porbandar (2) Panchayat (R & B) Division, Porbandar (3) Gujarat Maritime Board, Salinity Control Division, Porbandar and (4) P. W. D. Division, Panna (M. P.) and received payment from them as mentioned in the **Annexure A** to the Notice :
- (i) Repairs, resurfacing, strengthening etc. of various roads;
- (ii) Short term improvement and routine maintenance of various roads;
- (iii) Maintenance and repairs of damaged sheet piled wharf and Panchayat building;
- (iv) Supply of JCB machine and Excavator machinery;
- (v) Excavation and site formation.

11. The provisions of sub-section (64) of the Act defines "Management, Maintenance or Repair" means any service provided by –

- (i) any person under a contract or an arrangement ; or

- (ii) a manufacturer or any person authorised by him, in relation to –
- (a) management of properties, whether immovable or not ;
 - (b) maintenance or repair of properties, whether immovable or not ;
 - (c) maintenance or repairing including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle.

Explanation – For the removal of doubts, it is hereby declared that for the purposes of this clause,-

- (a) “goods” includes computer software ;
- (b) “properties” includes information technology software.

The provisions of clause (zzg) of sub-section (105) of Section defines ‘taxable service’ means any service provided or to be provided to any person by any person in relation to management, maintenance or repair.

Further, it appeared that the Noticee had provided various services namely (1) R & B Division, Porbandar (2) Panchayat (R & B) Division, Porbandar (3) Gujarat Maritime Board, Salinity Control Division, Porbandar and (4) P. W. D. Division, Panna (M. P.) which are in the nature of repairing of roads, wharf, building etc. having essential characteristics of “Management, maintenance or repair” service as defined under sub-section 64 of Section 65 of the said Act. Thus, it appeared that in terms of provisions of Section 65A of the Act, these service merited classification under Section 65(64) of the Act.

11. The provisions of clause (zzzzj) of sub section (105) of Section 65 of the Act defines –

“taxable services” means any service provided or to be provided to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use without transferring right of possession and effective control of such machinery, equipment and appliance.

The Noticee had provided various services by way of engaging machineries which are in the nature of supply of tangible goods and having essential characteristics of “Supply of Tangible Goods Services” as defined under clause (zzzzj) of sub section (105) of Section 65 of the Act, thus these services merited classification under Section 65(64) of the Act.

12. Further, the provisions of sub-section (97a) of Section 65 of the Act defines “Site formation and clearance, excavation and earthmoving and demolition” which includes –

- (i) Drilling, boring and core extraction services for construction geographical, geological or similar purposes ; of
 - (ii) Soil stabilization ; or
 - (iii) Horizontal drilling for the passage of cables or drain pipes ; or
 - (iv) Land reclamation work ; or
 - (v) Contaminated top soil striping work; or
 - (vi) Demolition and wrecking of building, structure or road,
- but does not include such services provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies. Further, the provisions of clause (zzza) of sub section (105) of Section 65 defines –

‘taxable service’ means any service provided or to be provided to any person, by any other person in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities.

The Noticee had provided services in the nature of Site Formation and having essential characteristics of “Site Formation and clearance, Excavation and Earthmoving and Demolition Services” as defined under sub section (97a) of Section of Section 65 of the Act. Thus, in terms of provisions of Section 65A of the Act, these services merited classification under Section 65(97a) of the Act.

13. As per provisions of Section 68 of the Finance Act, 1994, the Noticee is the person liable for paying the Service Tax for the services provided by them. As per Section 67 of the Act, Service Tax on these services is leviable on the gross amount charged by the service provider. Therefore, it appeared that the Service Tax at the appropriate rate on the services provided by the Noticee during the period 01.10.2006 to 31.03.2011 amounting to **Rs 48, 40, 473/-** as calculated in **Annexure A** to the Notice was liable 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 services of "supply of tangible goods Service" and "Site Formation and Clearance, Excavation and Earthmoving and Demolition Service" from the Department by not mentioning the same in their ST-3 returns filed from time to time for the services provided by them under the category of "Commercial or Industrial Construction Service and "Management, Maintenance or Repair Service" with an intent to evade payment of Service Tax.

14. It was observed that the Noticee did not file any ST-3 Returns for the period April 2006 to March 2008 as prescribed under Rule 7 of the Service Tax Rules, 1994 and thereby they have suppressed the facts that they were liable for paying the Service Tax for the services provided under the categories of 'Management, Maintenance or Repair Service', 'Supply of Tangible Goods Service' and 'Site Formation and Clearance, Excavation and Earthmoving and Demolition Service'. The Noticee also did not declare in the ST-3 Returns filed by them for the period from April 2008 to March 2011 that they did provide the services under the categories of 'Management, Maintenance or Repair Services', 'Supply of Tangible Goods Service', 'Site Formation and Clearance, Excavation and earthmoving and Demolition Service' which was clearly with an intent to evade payment of Service Tax.

15. Therefore, a show cause notice No.V/15-50/DEM-ST/HQ/2011-12 dated 10.04.2012 was issued by Joint Commissioner, Central Excise Commissionerate, Bhavnagar to the Noticee proposing the following actions: -

- (i) recovery of Service Tax amounting to Rs 48,40,473/- (Rupees forty eight lac, forty thousand, four hundred and seventy three only) under proviso to Section 73(1) of the Finance Act, 1994 along with interest at the appropriate rate under Section 75 of the Finance Act, 1994 ;
- (ii) imposition of penalty under Section 76 of the Finance Act, 1994 for failure to assess Service Tax under Section 70 of the Act and make payment of Service Tax payable within the 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 for failure to file prescribed returns under Section 70 of the Finance Act, 1994 read with Rule 7 of the said Rules ;
- (iv) Imposition of penalty under Section 78 of the Finance Act, 1994 for suppression of facts of providing taxable services and liability of the Noticee to pay Service Tax on it and contravention of various provisions of the Finance Act, 1994 and the Rules with intent to evade payment of Service Tax.

16. Defence reply and personal hearing: -

16.1 The Noticee filed their written reply dated 04.06.2012 to the Notice mainly submitting as under:

- (i) We are registered dealer, categorised as work contractor with R and B Division, Junagadh and VAT department, Porbandar ;
- (ii) As per show cause Notice, the demand of Service Tax is raised by assuming ourselves in the following categories ;
 - (A) Management, maintenance or repair services ;
 - (B) Site formation and excavation service ;
 - (C) Supply of tangible goods service.

Vide Annexure A -1, we want to clarify the real nature and type of the works / services carried out during the questioned year for your honour's kind perusal as under :

Re-carpeting on Baloch Approach Road km 0/0 to 0/50 Taluka Kutiana : As there was no specific clarification upto date 26.07.2009 regarding the repair /renovation /resurfacing / re-carpeting of road, we were in belief that our service for Re-carpeting on Baloch Approach Road Km 0/0 to 0/500 Taluka Kutiana spreading in two years amounting to Rs 1,20,914.00 is within the ambit of the exemption clause of the taxable service under the head of "Commercial or Industrial Construction Service" and there was no malafide intention to avoid the responsibility for paying Service Tax about the same.

Improvement and strengthening to Mal - Choliyan-Bavdavadar Road Km 0/0 to 5/100 (NABARD Yojana) : As per the description given in work order / R.A Bill is such as Improvement and strengthening to Mal-Chilian-Bavdavadar Road of length 5 km and 100 mtrs (NABARD Yojana) it seems that it could be work of renovation /repairing but you can see directly from the amount of the contract that for just 5 km repairing, the value of the contract must be nominal instead of Rs 80,25,954.00 further to add, we are producing the bills for materials like bitumen and others for your kind perusal that this was the work for the new work instead of repairing. You can observe from the reply for Sr no 1 that there was road work relating to repairing / re-carpeting for 3 km amounting only for Rs 1,20,954.00 while in this case for 5 km and 100 mtrs we got contract for 80,25,954.00 and as per our view this service squarely fall within the ambit of the exemption clause under the head of "Commercial or Industrial Service". The certificate regarding the nature of work from competent authority is attached herewith for your honour's kind perusal and the value of material consumption details is also attached herewith.

Strengthening of Bagvadar-Vachhoda-Khistri Road by providing Earth work WBM 50mm, BM 20mm (NABARD Yojana) : The work carried out by us for Strengthening of Bagvadar- Vachhoda-Khstri Road by providing Earth work WBM 50mm, BM 20mm of length 7 km, the total contract work amounting to Rs 1,35,13,608/- We would like to submit our reply as per reply for Sr no 2 and the certificate regarding the nature of work from competent authority is attached herewith for your honour's kind perusal and the value of material consumption details is also attached herewith .

Improvement and Strengthening to Batva-Saradia-Chauta-Kutiana Road km 56/7 to 58/8 (Tal. to Tal. Joining Road) : The work carried out by us for Improvement and Strengthening to Bantva-Saradia-Chauta-Kutiana Road Km 56/7 to 58/8 (Taluka to Taluka Joining Road) of length 2 km and 100 mtrs, we would like to submit our reply given as per reply for Sr no 2.

Special Repairs to damaged sheet piled Wharf at Port Okha : we accept that the service providing by us is of the nature of Management, Maintenance and Repairs service mounting to Rs 5,92,857/-.

Misc.Road Repairing work : We had done misc. Contract work regarding the road repairing we reiterate our stand that upto the date 2.07.2009 there was no clarification for the road work and we are of the view that we are providing exempted service and there was no malafide intention to defraud the Government revenue. Further, we had consumed the materials to provide the service and detailed list of consumption material is attached herewith for your honour's kind perusal

Misc. Road Repairing work : We had done misc. Contract work regarding the road repairing, we reiterate our stand that upto the date 26.07.2009, there was no clarification for the road work and we are of the view that we are providing exempted service, there was no malafide intention to defraud the Government revenue. Further, we had consumed the materials to provide the service and detailed list of consumption material and value is attached herewith for your honour's kind perusal.

Retrofitting including Repairs and Rehabilitation of Panchayat Building in Zone 3 of Porbandar : The contract awarded by Panchayat (R & B) Division, Porbandar was

of the nature of Construction of Complex Service as we built the residential complex which were being used by the Panchayat to accommodate their employees for rent as without rent and it clearly falls within the explanation of the definition clause for residential complex and it is exempted service.

We have built the residential complex and Repairing of Residential Building as follows under the contract with Panchayat (R & B) Division, Porbandar.

- (i) Residential Vikash Colony at Wagheshwari Plot, Porbandar ;
- (ii) Veternity Staff Quarters at Pashu Davakhana, near Kamala baug, Porbandar ;
- (iii) Panchayat Staff quarters at Pashu Davakhana, near Kamala baug, Porbandar ;
- (iv) Panchayat Staff Quarters at Bhojeshwar Plot, Porbandar.

And the certificate regarding the nature of work from competent authority attached herewith for your honour's kind perusal.

Upgradation of Simariya-Amanganj-Panna Road km 35 in the state of Madhya Pradesh: As there was no specific clarification upto date 26.07.2009 regarding the repair / renovation / resurfacing / re-carpeting of road, we were in belief that our service for Upgradation of Simariya-amanganj-Panna Road km 35 in the state of Madhya Pradesh amounting to Rs 6,21,197/- is within the ambit of the exemption clause of the taxable service under the head "Commercial or Industrial construction Service" and there was no malafide intention to avoid the responsibility for paying Service Tax about the same.

Engaging JCB for clearing the Lushala Canal near Village Keshod in Porbandar Taluka and District ;

Engaging Vator Machinery for the earth work Excavation and removal of obstruction of sand bar in Porbandar Taluka and District ;

Engaging JCB for clearing the Erada Canal near Village Erada in Porbandar Taluka and District ;

Clearing of earth dam west weir H.R. of Karly T.R. near Village Tukda (Gosa) ;

Removing obstruction and C.D. Work opening Ghed area in Porbandar Taluka and District ;

All the contract pertaining to aforesaid entries are of the work like the clearing of water way, canals, used for agriculture and irrigation purpose and these service are not marked as taxable services but as non-taxable services. The certificate from the competent authority describing the nature of service will be produced in short time for your honours kind perusal. We had already paid total VAT amounting Rs 22,50,480/- with challans as by Tax Deducted at sources by our principals during the year 2006-07 to 2010-11. The Certificate dated 29.03.2011 for VAT for Financial Year 2010-11 amounting to Rs 66,968/- will be produced in short time.

Further to add that there was no malafide intention or any malice by us as we have already stated in our statement and therefore we are not liable to pay any penalty under the relevant sections of the said Act. Our partner Shri Sidibhai Vejabhai Godhania's wife is suddenly expired on 01.06.2012, we therefore request to give us more time to explain and clarify the points raised by your Show Cause Notice.

16.2 A personal hearing was fixed on 23.07.2012 before the adjudicating authority wherein Shri Bharat Mahendrabhai Godhania, partner of the Noticee firm appeared for hearing and stated as under :

- (i) New Road was constructed and no road was repaired or renovated as claimed by the Department in (Sr no. 2,3,4 and 9 of Annexure A1) ;

- (ii) In respect of Sr No. 6 and 7 of Annexure A 1, he stated that they had used their own materials and were entitled to deductions of value of materials ;
- (iii) In respect of Sr No. 8 of Annexure A 1, the service comes under exempted category Construction of Complexes services ;
- (iv) In respect of Sr no 10 to 14 of Annexure A 1, the service provided was for clearing of water canal whereas the Department has regarded this service as Supply of Tangible Goods Service which is not correct. They have already submitted written submission as well and had nothing more to add.

The Noticee also filed an addendum dated 06.09.2012 to the reply dated 14.06.2012 to show cause notice dated 10.04.2012 mainly stating as under:

- (i) We had personally appeared at your honour's office for reply to show cause notice given by your office on 23.07.2012 ;
- (ii) Most of the demand raised in was due to the treatment of the service regarding the road has been categorised under the head of 'Management, Maintenance and Repairs Services ;
- (iii) We want to add that through Finance Act, 2012 w.e.f. 28.05.2012, Section 97 is introduced and wherein the exemption is granted with retrospective effect dated 16.06.2005 to 26.07.2009 both days inclusive to the service provided regarding Management etc. of the Road ;
- (iv) Our case clearly falls within ambit of exemption Section 97 of the Finance Act, 2012.

17. Discussion and Findings:

17.1 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 are engaged in providing the following services to their clients viz. R & B Division, Porbandar, Panchayat (R & B) Division, Porbandar, Gujarat Maritime Board, Salinity Control Board, Porbandar and P.W.D. Division (M.P) etc. and have obtained Service Tax registration on 23.04.2008 and have filed NIL ST-3 regularly for the following services.

- (a) Management, Maintenance and Repairs Service ;
- (b) Works Contact Service.

During the course of investigation, it was found that the Noticee were also providing the following taxable services of supply of machinery and equipment to R & B Division, Porbandar and Panchayat (R & B) Division, Porbandar. Further, the Noticee were also providing taxable services of site formation and clearance to Salinity Control Division, Porbandar without payment of Service Tax leviable thereon under the Finance Act, 1994 and the Rules framed thereunder.

- (c) Supply of Tangible Goods Service ;
- (d) Site Formation and Clearance, Excavation and Earth moving and Demolition Service.

It is alleged in the show cause notice that the Noticee have suppressed the facts that they were engaged in providing above (c) and (d) taxable services from the department by not mentioning in the same in their ST-3 returns filed from time to time for "Commercial or Industrial Construction Service" and "Management, Maintenance or Repair Service" with intent to evade payment of Service Tax, therefore, an amount of Rs 48,40,473/- as calculated and described in the Annexure-A to the show cause notice is liable to recovered under Section 73 along with interest under Section 75 of the Finance Act, 1994. It is also alleged in the show cause notice that the Noticee did not file any ST-3 returns for the period April 2006 to March 2008 as prescribed in Rule 7 of the Service Tax Rules, 1994 and the Noticee also did not declare in the ST-3 returns filed by them for the period from April 2008 to March 2011 that they had provided the services under the categories of "Management, Maintenance or Repair Services", "Supply of Tangible Goods Service", "Site Formation and Clearance, Excavation and Earthmoving and Demolition service" which has been done with intent to evade payment of

Service Tax. The show cause notice also proposes the imposition of penalty under Section 76 of the Finance Act, 1994 for failure to assess the Service Tax under Section 70 of and Act and make payment of Service Tax within the manner prescribed under Section 68 of the Service Tax Rules, 1994, 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 above Rules, penalty under Section 78 of the Act for suppression of fact of providing taxable services and contravention of provisions of the Finance Act, 1994 and the Service Tax Rules, 1994.

17.2 I first take up the issue of leviability of Service Tax under the category of 'Management, Maintenance or Repair' in respect of services provided by the Noticee. The definition of 'Management, Maintenance or Repair' service under Section 65(64) of the Finance Act, 1994 and taxable service under Section 65(105)(zzg) of the Act as amended from time to time is as under :

(a) Definition as on 01.07.2003 (effective till 15.06.2005)

"65(64) 'maintenance or repair' means any service provided by –

- (i) Any person under a maintenance contract or agreement; or
- (ii) A manufacturer or any person authorised by him in relation to maintenance or repair or servicing of any goods or equipment, excluding motor vehicle."

(b) Definition as on 16.06.2005 (effective till 30.04.2006)

"65(64) 'maintenance or repair' means any service provided by –

- (i) Any person under a contract or agreement; or
- (ii) A manufacturer or any person authorised by him, in relation to
 - (a) maintenance or repair including reconditioning or restoration, or servicing of any goods or equipment excluding motor vehicles; or
 - (b) maintenance or management of immovable property."

(c) Definition effective from 01.05.2006

"65(64) '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 repair of properties whether immovable or not; or
 - c) maintenance or repair including reconditioning or restoration, or servicing of any goods or equipment, excluding motor vehicle;

In the above definition, following explanation has been inserted vide Finance Act, 2007.

'Explanation — For the removal of doubts, it is hereby declared that for the purposes of this clause, "goods" includes computer software.'

The above explanation has been substituted as follows, vide Finance Act, 2008.

'Explanation.— For the removal of doubts, it is hereby declared that for the purposes of this clause —

- (a) "goods" includes computer software;
- (b) "properties" includes information technology software.'

Taxable Service: -

(a) Definition as on 01.07.2003 (effective till 15.06.2005)

"65(105)(zzg) taxable service means any service provided to a customer, by any person in relation to maintenance or repair"

- (b) Definition as on 16.06.2005 (effective till 30.04.2006)
 “65(105)(zzg) taxable service means any service provided or to be provided to a customer, by any person in relation to maintenance or repair”
- (c) Definition effective from 01.05.2006
 “65(105)(zzg) taxable service means any service provided or to be provided to a customer, by any person in relation to management, maintenance or repair”

Vide Finance Act, 2008, words for the words “to a customer”, the words “to any person” have been substituted.

17.3 From the above, I find that services of “maintenance or repair” had been brought under the Service Tax net w. e. f. 1.7.2003. Since 16.6.2005, services relating to reconditioning or restoration of goods and equipments and maintenance or management of immovable property had also been brought under the purview of the definition. The Finance Act, 2006 w. e. f. 1.5.2006 had further enhanced the coverage of taxable services under this category by including therein the services of management of property other than immovable property (maintenance or management of immovable property was already included) and repair of immovable and other property. The Finance Act, 2007 w. e. f. 01.06.2007 had inserted an explanation to the definition of management, maintenance or repair to clarify that goods include computer software for the purpose of this taxable service. The Finance Act, 2008 w. e. f. 16.05.2008 has further expanded this explanation to clarify that properties include information technology software.

17.4 From the changes made in the definition as discussed above, it is evident that services relating to maintenance or management of immovable property had also been brought under the purview of the definition. The expression immovable property refers to properties such as roads, airports, railways, buildings and parks etc. which are immovable. The scope of ‘Maintenance or Repair’ service was expanded vide Finance Act, 2005. Para 16 of C.B.E.C. Circular No. B1/6/2005-TRU dated 27.07.2005 explains the scope of these changes as follows:-

“16.Maintenance or repair service

16.1 Maintenance or repair services are liable to Service Tax under section 65(105) (zzg) of the Finance Act 1994. “Maintenance or repair” is defined under section 65(64) of the Finance Act, 1994.

16.2 Prior to 16-6-2005, such services covered maintenance or repair or servicing of any goods or equipment, excluding motor vehicles. However, since 16-6-2005, services relating to maintenance or management of immovable property (such as roads, airports, railways, buildings, parks, electrical installations and the like) have also been covered under the purview of Service Tax. Such services would be taxable when provided under a contract or an agreement by any person or by a manufacturer or any person authorized by a manufacturer.

16.3 Maintenance is to keep a machine, building etc. in a good condition by periodically checking and servicing or repairing. While repair is a one time activity, maintenance is a continuous process of which repairing may be incidental or ancillary.

16.4 Prior to 16-6-2005, maintenance or repair carried out under a maintenance contract or agreement was covered under Service Tax. Repair or servicing carried out under a contract other than a maintenance contract or agreement was not covered within the purview of Service Tax. Maintenance or repair, including reconditioning or restoration or servicing of any goods or equipment, except motor vehicle (which is taxable under the category of authorized service station), undertaken as part of any contract or agreement (not necessarily maintenance contract or agreement) is now liable to Service Tax under this category of taxable service. To attract Service Tax under this category, the contract or agreement need not necessarily be a maintenance contract/ agreement.

17.5 It has been explained in Para 16.2 of the C.B.E.C. Circular No. B1/6/2005-TRU dated 27.07.2005 that services relating to maintenance or management of immovable property, such as roads, have been covered under the purview of Service Tax under the category of 'Maintenance or Repair Service' with effect from 16.06.2005.

17.6 The Noticee has contended that the activities of repair of road would be covered under the exclusion clause of the definition of 'Commercial or Industrial Construction' Service and their services is squarely covered within the ambit of the exemption clause under the head of "Commercial or Industrial Construction Service".

17.7 For the purpose of appreciation of the above contentions of the Noticee, I look into the definition of 'Commercial or Industrial Construction' Service. The Service Tax was levied on 'Construction Services' vide Finance Act, 2004. Section 65(30a) inserted in the Finance Act, 2004 w. e. f. 10.9.2005 defined the "Construction Service" as follows :

"65(30a) "construction service" means, —

- (a) construction of new building or civil structure or a part thereof; or*
- (b) repair, alteration or restoration of, or similar services in relation to, building or civil structure,*
which is —
 - (i) used, or to be used, primarily for; or*
 - (ii) occupied, or to be occupied, primarily with; or*
 - (iii) engaged, or to be engaged, primarily in,*
commerce or industry, or work intended for commerce or industry, but does not include road, airport, railway, transport terminal, bridge, tunnel, long distance pipeline and dam.'

17.8 The aforesaid definition specifically excluded 'road'. While explaining the scope of this new service, it has been clarified vide Para 13.4 of C.B.E.C. Circular No. B2/8/2004-TRU dated 10.09.2004 that 'the definition of service specifically excludes construction of roads, airports, railway, transport terminals, bridge, tunnel, long distance pipelines and dams.'

17.9 The scope of this service has been expanded vide Finance Act, 2005. Section 65(25b) inserted in the Finance Act, 2005 w. e. f. 16.6.2005 defined the "Commercial or Industrial Construction Service" as follows:

"(25b) "commercial or industrial construction service" means —

- (a) construction of a new building or a civil structure or a part thereof; or*
- (b) construction of pipeline or conduit; or*
- (c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or*
- (d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit,*
which is —
 - (i) used, or to be used, primarily for; or*
 - (ii) occupied, or to be occupied, primarily with; or*
 - (iii) engaged, or to be engaged, primarily in,*
commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams;';

17.10 In the definition of 'Commercial or Industrial Construction' service, it has been specifically mentioned that services enumerated therein provided in respect of roads etc. are not included in the 'Commercial or Industrial Construction' service. The expansion in the scope of this service has been explained at Para 14 of C.B.E.C. Circular No. B1/6/2005-TRU dated

27.07.2005. It has been clarified at Para 14.4 of the said Circular that 'at present, services rendered for construction of commercial or industrial buildings is taxable; however, construction of roads is not liable to Service Tax.'

17.11 The Service Tax has been levied with effect from 01.06.2007 on services provided in relation to the execution of Works Contract. The definition of taxable service in relation to the execution of Works Contract is as follows:-

"65(105)Taxable service means any service provided or to be provided -

(zzzza) to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation. — For the purposes of this sub-clause, "works contract" means a contract wherein, —

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and*
- (ii) such contract is for the purposes of carrying out, —*
 - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or*
 - (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or*
 - (c) construction of a new residential complex or a part thereof; or*
 - (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or*
 - (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;"*

17.12 In the above definition, "Works Contracts" in respect of roads has been specifically excluded. It has also been communicated vide Para 6.4.1 of letter D.O.F. No. 334/1/2007-TRU dated 28.02.2007 that 'Works contract in respect of specified infrastructure projects namely roads, airports, railways, transport terminals, bridges, tunnels and dams are specifically excluded from the scope of the levy.

17.13 On careful consideration of the definitions of 'Maintenance and Repair Service/Management, Maintenance or Repair Service', 'Construction Service/Commercial or Industrial Construction Service' and 'Works Contract Service, I find that maintenance or management of immovable property had been brought under the purview of definition of 'Maintenance or Repair Service' with effect from 16.06.2005 whereas definition of 'Construction Service/ Commercial or Industrial Construction Service' and 'Works Contract Service' specifically excluded roads from its purview. The same view has also been explained and communicated by C.B.E.C. under Circulars referred to above.

17.14 I further observe that the issue of levy of Service Tax on Maintenance or Repair of Road has been clarified vide letter F. No. 332/16/2008-TRU dated 03.06.2008 addressed to the Director General, National Highways Builders Federation, New Delhi. The copy of the said letter is scanned below:-

F. No. 332/16/2008-TRU
Government of India
Ministry of Finance
Department of Revenue
Tax Research Unit

Room No.146G, North Block,
 New Delhi, the 3rd June, 2008.

To,
 Shri M. Murari
 Director General
 National Highways Builders Federation
 C-713/G, Palam Extension,
 Sector - 7, Dwarka,
 New Delhi - 110 075.

Sir,

Subject: Reference seeking clarification in respect of levy of service tax on maintenance or repair of roads - Regarding.

Please refer your letter Nhbf/005/at/12/08-09 dated 13.05.2008 seeking clarification in respect of levy of service tax on maintenance or repair of roads.

2. Clarification has been sought regarding levy of service tax on maintenance or repair of roads under "management, maintenance or repair service".
3. Commercial or industrial construction service [section 65(105)(zzq)] includes repair, alteration, renovation or restoration of a new building or a civil structure or part thereof but does not include such services provided in relation to roads, airports etc. This indicates that repair, alteration, renovation or restoration of a new building or a civil structure or part thereof is classifiable under this service and similar services provided in relation to road etc. are not classifiable under section 65(105)(zzq). Road does not fall within the scope of new building or a civil structure.
4. Management, maintenance or repair provided under a contract or an agreement in relation to properties, whether immovable or not, is leviable to service tax under section 65(105) (zzg). There is no specific exemption under this service for maintenance or repair of roads etc.
5. In view of the above, maintenance or repair of road is leviable to service tax under management, maintenance or repair service [section 65(105)(zzg)].



(G.G. Pai)
 Under Secretary (TRU)
 Tel.: 2309 5558

17.15 In the above letter, it is clarified that Management, maintenance or repair provided under a contract or an agreement in relation to properties whether immovable or not, is leviable to Service Tax under section 65(105)(zzg) of the Finance Act, 1994. Therefore, maintenance or repair of road is leviable to Service Tax under management, maintenance or repair service [section 65(105) (zzg)].

17.16 Further, Govt. of India, Ministry of Finance (D.R.) vide Circular No. 110/4/2009-ST dated 23.02.2009 issued clarification in respect of levy of Service Tax on repair/ renovation/ widening of roads. At Para 2 of the said Circular, it has been clarified as follows:-

"2. Commercial or industrial construction service [section 65(105) (zzq)] specifically excludes construction or repairs of roads. However, management, maintenance or repair provided under a contract or an agreement in relation to properties, whether immovable or not, is leviable to Service Tax under section 65(105)(zzg) of the Finance Act, 1994. There is no specific exemption under this service for maintenance or repair of roads etc. Reading the definitions of these two taxable services in tandem leads to the conclusion