

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/15-47/Dem-ST/HQ/2012-13

Date of order: 21.01.2013

Date of Issue: 24.01.2013

Passed by Shri Harcharan Singh, Additional Commissioner.

ORDER-IN-ORIGINAL NO. 39/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/15-47/DEM-ST/HQ/2012-13 dated 22.10.2012.

**Brief facts: -**

1. M/s. Madhubala Surendrabhai Mendpara, Gayatri Mandir Society, Block No. 3, Manavadar, District, Junagadh (hereinafter referred to as the "Noticee") are engaged in providing taxable services. The Noticee are not registered with the Service Tax Department.

2. It appeared that Petroleum companies like Bharat Petroleum Corporation Limited, Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited are having retail outlets for selling petroleum products. These retail outlets are of two types viz., (i) Retail outlets owned by the individuals/companies on the basis of dealership granted by the Oil companies and (ii) company owned and company operated Retail Petroleum outlets (known as COCO retail outlets). In the former category, the dealer will buy the petroleum products by making necessary payments and sells them with profit margin as specified by the oil companies. In the case of the COCO retail outlets, it gives an impression that the said outlets are owned and operated by the company but it is a misnomer. The COCO retail outlets are operated and managed by the outsiders and not by the employees/staff of the company.

3. The information was received from the Director General of Service Tax, Mumbai vide letter F.No.V/DGST/BAS-189/2011 dated 05.04.2011 that the petroleum companies are operating "Company Operated Company Owned" (known as COCO) outlets through various contractors with whom they have entered into agreement for running the outlets and that such services provided by the said contractors are taxable services falling under category of "Business Auxiliary Services". Accordingly letter was written to M/s. Indian Oil Corporation Ltd. (hereinafter referred to as M/s. IOCL), Rajkot for details of their Company Operated Company Owned retail outlets - COCO outlets. M/s. IOCL vide their letters ref. no. RDO:R:5111 dated 11.07.2011 provided the names, addresses of COCO outlets and payment details during 2007-08 to 2010-11. As per the said information received from IOCL, the payments made to the Noticee by IOCL for the said period are as under:

F.Y.	Payment made by M/s. IOCL to the Noticee (Rs.)
2007-08	12,15,938/-
2008-09	20,08,068/-

g/file

F.Y.	Payment made by M/s. IOCL to the Noticee (Rs.)
2009-10	26,49,114/-
2010-11	24,57,756/-
Total	83,30,876/-

4. Further, a Job Contract was awarded to the Noticee by IOCL vide letter dated 28.03.2008, 23.03.2009 and 15.03.2010. As per the said contract the Noticee were to operate the Retail Outlet - "RO" and provide various services in relation to proper functioning and maintenance of the retail outlet.

The Noticee have also undertaken to guarantee a minimum sale of 60 KL of MS, 200 KL of HSD and 2 KL of Lubes per month or as determined by the IOCL. As per the agreement a monthly remuneration was payable to the Noticee i.e. 90% of dealer commission applicable at any given point of time net of return on net fixed assets. It appeared that the above services provided by the Noticee to M/s. IOCL under the said contract falls under the taxable service category of "Business Auxiliary Service". This service is classified under Section 65(105) (zzb) of the Finance Act, 1994 and is defined under Section 65(19) of the Finance Act, 1994, as under:

"Business Auxiliary Service" means any service in relation to, —

- (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
  - (ii) promotion or marketing of service provided by the provided, by the client; or
  - (iii) any customer care service provided on behalf of the client; or
  - (iv) procurement of goods or services, which are inputs for the client Explanation- For removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;
  - (v) production or processing of goods for, or on behalf of the client; or
  - (vi) provision of service on behalf of the client; or
  - (vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, but does not include any activity that amounts to "manufacture" of excisable goods.
- (viii) Explanation- For the removal of doubts, it is hereby declared that for the purposes of this clause-
- (a) 'commission agent' means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person: -
    - (i) deals with goods or services or documents of title to such goods or services; or
    - (ii) collects payment of sale price of such goods or services; or
    - (iii) guarantees for collection or payment for such goods or services; or
    - (iv) undertakes any activities relating to such sale or purchase of such goods or services;
  - (b) "Excisable goods" has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944(1 of 1944);
  - (c) "manufacture" has the meaning assigned to it in clause (f) of section 2 of the Central Excise Act, 1944(1 of 1944);

5. As per Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 every person liable to pay service tax shall get registered with the department for payment of service tax. As per Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 every person liable to pay service tax shall himself assess the tax due on the services provided by

him and shall furnish ST-3 return showing details of services provided and tax paid thereon from time to time.

6. In terms of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, it is mandatory on every person/firms providing taxable service to pay service tax at the rate specified in Section 66 of the Finance Act, 1994 from the date on which a service is notified for the purpose of collection of Service Tax levy. Further, it appeared that the service tax liability of the Noticee was required to be arrived at by taking into account all the relevant material which was available or which had been gathered as per the provisions of Section 72 of the Finance Act, 1994. Section 72 of the Finance Act, 1994 is re-produced below for the sake of convenience:

**“Section 72. Best judgment assessment.-**

*If any person, liable to pay service tax,—*

- (a) *fails to furnish the return under section 70;*
- (b) *having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.”*

In view of above statutory provisions, the taxable value was arrived at on the basis of figures provided by M/s. IOCL. Accordingly the Service Tax liability of the Noticee for F.Y. 2007-08 to 2010-11 was worked out as under:

F.Y.	Value of service provided (in Rs)	Rate of applicable Service Tax with Edu. Cess	Service Tax (in Rs) (in Rs)	Education Cess (in Rs)	S & H Ed. Cess (in Rs)	Service Tax payable (in Rs)
2007-08	12,15,938/-	12.36%	1,45,913/-	2,918/-	1,459/-	1,50,290/-
2008-09	20,08,068/-	12.36%	2,40,968/-	4,819/-	2,410/-	2,48,197/-
2009-10	26,49,114/-	10.30%	2,46,911/-	5,298/-	2,649/-	2,72,859/-
2010-11	24,57,756/-	10.30%	2,45,776/-	4,916/-	2,458/-	2,53,149/-
<b>TOTAL</b>	<b>83,30,876/-</b>		<b>8,97,568/-</b>	<b>17,951/-</b>	<b>8,976/-</b>	<b>9,24,495/-</b>

7. Thus from the facts narrated above, it appeared that the said Noticee have contravened the provisions of various Sections of the Finance Act, 1994 and the Service Tax Rules, 1994 as explained below:

- Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 in as much as they failed to take registration from the department for the service provided by them.
- Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they have failed to pay the Service Tax including Education Cess and Secondary and Higher Secondary Education Cess amounting to Rs 9,24,495/- as mentioned in Para supra to the credit of the central Government within the stipulated time limit.

■ Section 70 (1) and 70 (2) of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self assess the Service Tax on the taxable value received by them and to file ST-3 returns for the said service.

8. It appeared that the Noticee had by their acts and omission, failed to obtain Service Tax registration, did not assess his liability of service tax, failed to disclose wholly and truly all the

material facts required, and suppressed the taxable service with a wilful intention to evade payment of Service Tax for the period 2007-08 to 2010-11 and evaded the payment of Service Tax. All the above acts of contravention of Finance Act, 1994 and rules made there under on the part of the said Noticee appeared to have been committed by way of suppression of facts with an intention to evade payment of service tax and therefore, the said service tax not paid is required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.

9. All these acts of contravention of the provisions of Section 68, Section 69 and Section 70 of the Finance Act, 1994 read with Rule 4, Rule 6, and Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 77 and Section 78 of the Finance Act, 1994 as amended from time to time.

10. Therefore, Additional commissioner, Central Excise Commissionerate, Bhavnagar issued a show cause notice to the Noticee proposing the following actions:

- a) Services rendered by them to be considered as taxable service under "Business Auxiliary Service" as defined under Section 65 of the Finance Act, 1994 as amended and the total amount of Rs 83,30,876/- received by them as payment from their client to be considered as taxable value and the Service Tax including Education Cess and Secondary and Higher Secondary Education Cess amounting to Rs 9,24,495/- (Rupees nine lac twenty four thousand four hundred ninety five only) for the Financial Year 2007-08 to 2010-11 to be demanded and recovered from them under Section 73(1) of the Finance Act, 1994;
- b) Recovery of Interest at the appropriate rate on the above amount in terms of the provision of Section 75 of the Finance Act, 1994;
- c) Imposition of penalty upon them under Section 77 of the Finance Act, 1994;
- d) Imposition of penalty upon them under Section 78 of the Finance Act, 1994

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

11.1 The Noticee submitted written reply dated 16.01.2013 mainly stating as under :

- (i) They submitted that as per show cause notice gross amount Rs 83,30,876/- is calculated from the Financial year 2007-08 but they had stated business from 01.04.2008 and submitted a copy of Agreement and requested to drop demand of Rs 1,50,290/- pertaining to period 2007-08;
- (ii) They submitted that service tax for the period 2009-10 is calculated to be Rs 26,49,114/- and for 2010-11 it is calculated to be Rs 24,57,756/- but as per their records and details provided by M/s IOCL to Income Tax department, their income arrives as under :

Financial year	Actual value of service provided (Rs)	Value calculated as per show cause notice (Rs)	Difference (Rs)
2009-10	23,34,179/-	26,49,114/-	(-) 3,14,935/-
2010-11	23,35,958/-	24,57,756/-	(-) 1,21,798/-
	46,70,137-	51,06,870/-	(-) 4,36,733/-

Therefore, an amount of Rs 4,36,733/- requires to be reduced from the gross receipt and the tax be re-calculated. They submitted copy of Form 26 and return from Income Tax department

- (iii) They submitted that they had started their business with Ms IOCL from 01.04.2008 and therefore they are eligible for threshold exemption limit of Rupees ten lac in the Financial year 2008-09 and requested to reduce tax liability accordingly;
- (iv) For imposition of penalty under Section 77 of the Finance Act, 1994 they submitted that they had received Petrol pump from M/s IOCL as their land is touching the highway No 8D; that they come from Patel community and their occupation was agriculture and her

education qualification is H.S.C. in Gujarati medium and her husband is S.S.C. failed; that they depended on officers and instructions of the Company for registration and permission purpose; that M/s IOCL had never instructed about registration or payment of Service tax nor it was mentioned in the Contract; that M/s IOCL had made a reference about Sales tax, P.P.F., Commission or remuneration in the agreement; that they send the commission bills to M/s IOCL every month in the format provided by the company wherein there no column for service tax registration or service tax calculation; that for a common man, the knowledge of number of laws like Income tax, Sales tax, Service tax, Profession tax, Provident Fund Act, Pollution Control Act, Explosives Act, National Highways Rules, Forest Act, Weight and Measurement Act, Civil Supply Act and many other is too much; that they used to depend on company officers who had never instructed about the service tax therefore they had not applied for registration therefore they requested not to charge penalty for non-registration; that they had currently applied for registration, therefore there is no mens rea for availing benefit against the law; that the M/s IOCL has not paid a single rupee as service tax to them and the registration with various departments had been done by M/s IOCL in their name.

They requested not to charge penalty for registration under Section 77 of the Finance Act, 1994 and submitted a copy of Bill format provided by M/s IOCL, Copy of Contract made with M/s IOCL for reference;

- (v) For imposition of interest under Section 75 of the Finance Act, 1994, they submitted that payment of interest is compensation of payment enjoyed by tax payers; that they have not received any amount of tax from M/s IOCL and they have not availed any advantage of money of tax; that as per taxation rules, the individuals and partnership firms are liable to tax after receipt of payments; that they have sent a copy of show cause notice to M/s IOCL and have demanded an amount of tax if payable but M/s IOCL have not paid any amount for service tax to them, therefore, they are not liable to pay interest under Section 75 of the Finance Act, 1994;
- (vi) For imposition of penalty under Section 78 of the Finance Act, 1994, they submitted that penalty under Section 78 is leviable only in the case where service tax has been not paid by reason of;
- (a) Fraud- fraud means to take any advantage by unlawful representation; that they have not taken any unlawful advantage from this matter;
  - (b) Collusion- Collusion means any secret understanding or contract to evade any tax or take any benefit made between persons; that they had not made any contract or act for taking unlawful benefit of this matter;
  - (c) Wilful misstatement – wrong statement given wilfully; that they had not made any wrong statement before any authority of service tax department;
  - (d) Suppression of facts -- means attempt to crush any factor replace the fact; that they had not done any type of work and had disclosed all the fact in its true nature;
  - (e) Contravention of any of the provision of act or rule with intent to evade payment of service tax – They have not availed any benefit or evaded any service tax; that they had neither received nor paid any tax which is due to the policy of M/s IOCL, therefore, they requested not to charge penalty under Section 78 of the Finance Act, 1994.
  - (f) They submitted that this matter is on all India level and as per letter dated 14.02.2012 of Service Tax Research and Intelligence Wing, Coimbatore, in para 5, the COCO owners are becoming victims of Company policy due to lack of knowledge of service tax; that all these facts show that there was no fault or criminal mind on their part, therefore, they requested to treat this reason as a reasonable cause for failure under Section 80 of the Finance Act, 1994 and penalty under Section 77 or 78 may not be charged and they relied upon decision

in case of M/s Faithful Security Services Vs CCE, reported in 2007 (8) STR 411 (Tri. Chennai);

- (g) They submitted that the show cause notice has proposed to charge multiple penalty for one guilt and stated that if any person does not know that he is liable for registration therefore, they had not applied and without registration they were unable to file the Service tax return and further there is no provision in service tax law to force service receiver to pay service tax to service provider and because of this they have demanded service tax from M/s IOCL but they are not paying nor replying them therefore, they submitted not to confirm the service tax against them.

11.2 A personal hearing was fixed on 17.1.2013 wherein Shri Jignesh Vyas, of M/s J.N.Vyas & Co. Taxation Advisor, Junagadh on behalf of the Noticee appeared before the adjudicating authority and submitted as under :

- (i) the demand fore the period 2007-08 is not proper because agreement started from 01.04.2008 and the commission figures given by M/s IOCL are on higher side whereas actual commission received is less;
- (ii) the pump was started on 01.04.2008 and hence they are entitled to threshold exemption up to Rupees ten lac; that their pump is COCO pump and all are in the name of M/s IOCL; that M/s IOCL officers never guided in the matter of service tax; that he submitted a written submissions and stated that the agreement with M/s IOCL is silent as to who will pay service tax; that non obtaining of registration was not wilful so was non-payment of service tax, therefore, penalty under Section 78 may not be imposed hence they are entitled to benefit of Section 80 and requested to take a lenient view; that they have not got any amount from M/s IOCL towards service tax hence interest may not be charged and stated that the mistake was bonafide.

## 12. Discussion and findings;

12.1 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 Department has issued a show cause notice dated 22.10.2012 to the Noticee proposing to consider the services rendered by them for operation and management of petrol pump i.e. COCO retail outlet through M/s IOCL under the category of "Business Auxiliary Service" under Section 65(105) (zzb) and as defined in Section 65(19) of the Finance Act, 1944 and the notice proposes to recover service tax of Rs 9,24,495/- on the gross amount of taxable value of Rs 83,30,876/- received by the Noticee during the period from 2007-08 to 2011 under the provision of Section 73(1) of the Finance Act, 1994. The show cause notice proposes to recover interest on the said service tax amount under the provision of Section 75 of the Finance Act, 1944 and imposition of penalty under Section 77 and 78 of the Finance Act, 1944.

12.2 I find that the Noticee have entered into a contract/agreement dated 28.03.2008, 23.03.2009 and 15.03.2010 with M/s IOCL where under the Noticee have to operate a Retail Outlet (RO) and to provide various services in relation to proper functioning and maintenance of the Retail Outlet (RO) and the Noticee have also undertaken to guarantee a minimum sale of 60 KL of MS, 200 KL of HSD and 2 KL of Lubes per month or as determined by M/s IOCL and in return a monthly remuneration i.e. 90% of dealer commission applicable at any given point of time, net of return on net fixed assets was payable to the Noticee. I find that the services provided by the Noticee to M/s IOCL falls under the taxable service category of 'Business Auxiliary Service' under section 65(105) (zzb) and defined under Section 65(19) of the Finance Act, 1994 as under :

"Business Auxiliary Service" means any service in relation to, —

- (ix) promotion or marketing or sale of goods produced or provided by or belonging to the client;
- or
- (x) promotion or marketing of service provided by the provided, by the client; or
- (xi) any customer care service provided on behalf of the client; or
- (xii) procurement of goods or services, which are inputs for the client

- Explanation- For removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;
- (xiii) production or processing of goods for, or on behalf of the client; or
  - (xiv) provision of service on behalf of the client; or
  - (xv) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, but does not include any activity that amounts to "manufacture" of excisable goods.

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

- (a) "commission agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person -
  - (iv) deals with goods or services or documents of title to such goods or services; or
  - (v) collects payment of sale price of such goods or services; or
  - (vi) guarantees for collection or payment for such goods or services; or
  - (iv) undertakes any activities relating to such sale or purchase of such goods or services;
- (b) "excisable goods" has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944(1 of 1944);
- (c) "manufacture" has the meaning assigned to it in clause (f) of section 2 of the Central Excise Act, 1944.

From the above, I find that the services rendered by the Noticee is classifiable under the category of "Business Auxiliary Service" under Section 65(105)(zzb) and as defined under Section 65(19) of the Finance Act, 1994 and the Noticee are liable to pay service tax thereon.

12.3 As per Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 every person liable to pay service tax shall get registered with the department for payment of service tax. As per Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 every person liable to pay service tax shall himself assess the tax due on the services provided by him and shall furnish ST-3 return showing details of services provided and tax paid thereon from time to time. From the above I find that the Noticee are liable to pay service tax on the services, I find that the Noticee have not registered themselves with service tax department under Section 69 of the Finance Act, 1944 read with Rule 4 of the Service Tax Rules, 1994. However, M/s IOCL have provided the details of payments made to the Noticee for the period 2007-08 to 2010-10 for the services rendered by the Noticee. Similarly, the Noticee have failed to assess themselves the service tax due thereon and have failed to file ST-3 returns from 2007-08 onwards therefore, the Noticee are liable for penal action under provisions of Section 77 of the Finance Act, 1944. I find that the Noticee have entered into a contract/agreement with M/s IOCL for operating, running and maintain the Retail Outlet (RO) which is a Company owned and Company operated-COCO Retail Out let for selling the petroleum products since 2007-08 onwards and have received the payments from M/s IOCL for the period from 2007-08 to 2010-2011. I find that the Noticee have suppressed the material fact of receipt of payments from M/s IOCL which is the 'gross amount charged' for the services rendered in terms of provisions of Section 67 of the Finance Act, 1944. Therefore, the Noticee are liable to penal action under the provisions of Section 78 of the Finance Act, 1944.

12.4. In terms of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, it is mandatory on every person/firms providing taxable service to pay service tax at the rate specified in Section 66 of the Finance Act, 1994 from the date on which a service is notified for the purpose of collection of Service Tax levy. Therefore, the service tax liability of the Noticee is required to be arrived at by taking into account all the relevant material which was available or which had been gathered as per the provisions of Section 72 of the Finance Act, 1994.

Accordingly, the show cause notice has proposed service tax liability for the period 2007-08 to 2010-11 as under :

F.Y.	Value of service provided (Rs)	Rate of applicable Service Tax with Edu. Cess	Service Tax	Education Cess	S & H Ed. Cess	Service Tax payable (Rs)
2007-08	12,15,938/-	12.36%	1,45,913/-	2,918/-	1,459/-	1,50,290/-
2008-09	20,08,068/-	12.36%	2,40,968/-	4,819/-	2,410/-	2,48,197/-
2009-10	26,49,114/-	10.30%	2,46,911/-	5,298/-	2,649/-	2,72,859/-
2010-11	24,57,756/-	10.30%	2,45,776/-	4,916/-	2,458/-	2,53,149/-
<b>TOTAL</b>	<b>83,30,876/-</b>		<b>8,97,568/-</b>	<b>17,951/-</b>	<b>8,976/-</b>	<b>9,24,495/-</b>

12.5 The Noticee have contended that they had started their business from 01.04.2008 and have submitted a copy of agreement with M/s IOCL for reference and have requested to drop the demand for the period 2007-08. In this context, I find from the information provided by M/s IOCL regarding the details of payments of last four years wherein it is indicated that M/s IOCL have made a payment of Rs 12,15,936/- for the period 2007-08 under the heading 'Sr No 8. COCO Vanthli, Madhubala Mendpara', therefore, Noticee's argument on this count is not acceptable and I find that service tax is rightly demanded for the gross amount received for the period 2007-08 under the provision of Section 73(1) of the Finance Act, 1994.

The Noticee have contested to extend the threshold exemption of Rupees ten lac. I find that the Noticee had started rendering of "Business Auxiliary Service" from the period 2007-08 and their value of services in the preceding financial year did not exceed Rupees ten lac, therefore, I extend the threshold limit of exemption of Rupees ten lac as contained in Notification No 6/2005-ST dated 01.03.2005 for the year 2007-08 as new assessee. The Noticee are required to pay the service tax for the year 2007-08 after availing threshold limit of Rupees ten lac.

12.6 The Noticee have submitted that there is a difference in the figures of value of services rendered in SCN and actual value of services rendered for the period 2009-10 and 2010-11 as under :

Financial year	Actual value of service provided (in Rs)	Value calculated as per show cause notice (in Rs)	Difference (in Rs)
2009-10	23,34,179/-	26,49,114/-	(-) 3,14,935/-
2010-11	23,35,958/-	24,57,756/-	(-) 1,21,798/-
	46,70,137-	51,06,870/-	(-) 4,36,733/-

I find that M/s IOCL have provided the details of payments made to the Noticee for the period from 2007-08 to 2010-11 which the value of services rendered by the Noticee i.e. 'gross amount charged' in terms of Section 67 of the Finance Act, 1944, I therefore, do not accept the Noticee's argument and hold that the amount of value of services rendered for the period 2009-10 and 2010-10 as proposed in the show cause notice dated 22.10.2012 to be acceptable and correct under the provisions of Section 67 of the Finance Act, 1944 and the Noticee are liable to pay service tax thereon accordingly.

12.7 The Noticee have contended that they are not liable to pay interest as payment of interest is a compensation of payment enjoyed by the taxpayers. They have stated that they have not received any amount of tax from M/s IOCL and they have not enjoyed any advantage of money of tax as an individual or a partnership firm is liable to tax after the receipt of payment. I do not accept this argument. The interest is levied under Section 75 of the Finance Act, 1994 on the amount of service tax not paid to the Government. I hold that the Noticee have not paid the amount of Service tax and therefore they are liable to pay interest under the provisions of Section 75 of the Finance Act, 1994.

In view of the facts, evidence, discussion and findings I pass the following order:

#### ORDER

1. I confirm the amount of Service Tax of Rs.8,00,895/- (Rupees eight lac, eight hundred and ninety five only) on the taxable value of services of Rs 83,30,876/- after extending threshold

exemption of Rupees ten lac for the period 2007-08 only for the period 2007-08 to 2010-11 under Section 73(2) of Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 along with interest at applicable rate on the amount of service tax determined, under the provisions of Section 75 of the Finance Act, 1994 on M/s Madhubala Surendrabhai Mendpara, Manavadar, Junagadh.

2. I impose penalty of Rs 1000/- on M/s Madhubala Surendrabhai Mendpara, Manavadar, Junagadh for failure to obtain registration for the period starting with first day after the due date upto 09.05.2008 under Section 77 of 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 31.03.2011 till the date of compliance under Section 77(1)(a) and I also impose penalty of Rs 10,000/- under Section 77(2) of 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.

3. I impose penalty of Rs.8,00,895/- (Rupees eight lac, eight hundred and ninety five only) under Section 78 of the Finance Act, 1994 on M/s Madhubala Surendraabhai Mendpara, Manavadar, Junagadh. If the amount as determined at para 1 above is paid within 30 days from the receipt of the order alongwith 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, Regd. Post A.D.

To,  
M/s. Madhubala Surendrabhai Mendpara,  
Gayatri Mandir Society,  
Block No. 3, Manavadar,  
Dist: Junagadh.

Copy to:

1. Commissioner, Central Excise & Service Tax, Bhavnagar.
2. Assistant Commissioner, Service Tax, Bhavnagar.
3. Superintendent, Service Tax Range, Junagadh.
- ✓ 4. Guard File.

*sd/-*  
24/1/2013

ADDL. COMMISSIONER