

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/15-08/Adj/DGCEI/HQ/2012-13

Date of order : 26.2.2013

Date of issue : 28.2.2013

Passed by Shri Harcharan Singh, Additional Commissioner.

ORDER-IN-ORIGINAL NO. 40/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/36-25/2012-13 dated 11.6.2012.

Brief facts:

1. M/s. Agricultural Produce Market Committee, Industrial Area, Wadhwan, District Surendranagar (hereinafter referred to as "APMC, Surendranagar") 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 APMC, Surendranagar 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 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 Directorate General of Central Excise Intelligence, (hereinafter referred to as "DGCEI") Vadodara Regional Unit, Vadodara under summons proceedings. The APMC, Surendranagar was requested to provide the details of rent charged and collected by them for five years along with the annual reports.

3. The APMC, Surendranagar submitted information vide their letter No.28/Administration/2012-13 dated 17.04.2012. The scrutiny of information 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, Surendranagar during the period from 2007-08 to 2011-12 are as under :

Period	Amount of rent collected (In Rs.)
01.06.2007 to 31.03.2008	9,47,623/-
01.04.2008 to 23.02.2009	11,68,658/-
24.02.2009 to 31.03.2009	3,31,537/-
01.04.2009 to 31.03.2010	15,35,098/-

Period	Amount of rent collected (In Rs.)
01.04.2010 to 31.03.2011	19,12,565/-
01.04.2011 to 31.03.2012	19,83,040/-

4. During the course of investigation, a statement of Shri Hashmukhbhai Gosaliya, an Accountant of APMC, Surendranagar 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, Surendranagar for the last 34 years; that being accountant he was looking after all the day to day work of APMC; that he did not remember PAN No. of APMC, Surendranagar; that they have collected rent from commission agents / traders; that APMC, Surendranagar 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, Surendranagar into any Government account and the same has been deposited into the bank accounts held by APMC, Surendranagar which are in State Bank of India and The Adarsh Co-operative Bank; that the sources of income are Market Fees, Licence fees, Rent, Interest etc. The APMC collected Market fees from the commission agents / traders. The rate of Market fees is Rs 0.50 per transaction of Rs 100/- by commission agents/ traders. In addition to above, they collect licence fees from the commission agents / traders every year towards renewal of licences; that they give offices, shops, godowns etc. to commission agents/traders on rent on monthly basis.

4. The Agriculture Produce Market Committees of State of Gujarat are formed and are 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, Surendranagar 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, Surendranagar is not a statutory levy inasmuch as there is no provision in the GAMPA, 1963 to collect rent. Further the income from rent has also not been deposited into the Government account but into various bank accounts held by APMC, Surendranagar. Therefore, Service Tax was leviable on the rent collected by APMC, Surendranagar 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 Immoveable Property" as defined under Section 65(90a) and 65(105)(zzzz) of the Finance Act, 1994.

6. The renting of Immoveable 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, Surendranagar had collected rent of Rs 78,78,521/-/- 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, Surendranagar 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, Surendranagar 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, Surendranagar 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, and APMC, Surendranagar were also liable to pay interest under the provisions of Section 75 of the Finance Act, 1994.

The APMC, Surendranagar 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, Surendranagar 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, 1st Floor, Preema Chambers, Opposite PWD Quarters, Near Mithakhali Six Roads, Ahmedabad 380 006 issued a show cause notice No. DGCEI/AZU/36-25/2012-13 dated 11.06.2012 to the APMC Surendranagar 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 8,55,083/- (Rupees eight lacs, fifty five thousand, and eighty three only) (Service Tax Rs 8,30,178/- + Edu. Cess Rs 16,604/- +SHE Cess Rs.8,302/-) 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, Surendranagar vide their letter No.316/S.Tax dated 21.08.2012 filed a written reply to the show cause notice dated 11.06.2012 mainly stating as under :

- (i) The APMC, Surendranagar have already paid Rs 8,55,084/- on 07.07.2012 as per calculation given in show cause notice dated 11.06.2012 and enclosed copy of self attested Challan for reference.

11.2 The APMC, Surendranagar filed a further reply No 1644/S.Tax/12-13 dated 01.02.2013 mainly stating as under:

- (i) They have received a SCN No. DGCEI/AZU/36-25/2012-13 dated 11.06.2012 issued by Directorate General of Central Excise Intelligence, Ahmedabad and thereafter they came to know that they were liable to pay Service Tax; that they had immediately applied for Registration in ST-1 Form on 28.06.2012 before Superintendent of Service Tax, Surendranagar Range, Surendranagar and had obtained Service Tax Registration in ST-2 Form having No. AAALTO117FSD001 on 10.07.2012; that they had immediately paid Service Tax of Rs 8,55,084/- vide Challan dated 07.07.2012 as per show cause notice and have filed Service Tax Returns regularly and are paying Service Tax;
- (ii) The APMC, Wadhwan is working as per provisions of the Gujarat Agricultural Market Act, 1963 and these activities undertaken as a mandatory and statutory function and are purely in public interest;
- (vi) The APMC Wadhwan have collected rent on Immoveable Property and they did not know that they were liable to pay Service Tax on rent of Immoveable Property and they had not charged Service Tax from them ;
- (vii) They have made payment of Service Tax, therefore it is apparent that no penalty is required to be imposed against them under Section 76, 77 and 78 of the Finance Act, 1994 and interest under Section 75 of the Finance Act, 1994;
- (viii) Finally, they requested that they did not want personal hearing in the matter as they have already paid the service tax and their case may be decided as per above submission.

12. Discussion and findings:

12.1 I have carefully gone through the facts of the case, defence reply filed by the APMC, Surendranagar and all the relevant documents placed in the file. On going through the facts of the case, I find that the APMC, Surendranagar is formed under the Gujarat Agricultural Produce Market Act, 1963 to regulate 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, Surendranagar 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, Surendranagar collected amount of Rs 78,78,521/- towards rent during the period from 2007-08 (from June 2007) to 2011-2012. The services provided by the APMC, Surendranagar viz. Renting of shops/godown/offices is a taxable service falling under the category of "Renting of immovable Property Services" and the APMC, Surendranagar is liable to Service Tax on the amount collected by them from 01.06.2007. The APMC, Surendranagar 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 immoveable 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 immoveable 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, Surendranagar falls under the category of “Renting of Immovable Property Service” and is a taxable service and the APMC, Surendranagar 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, Surendranagar 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, Surendranagar 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, Surendranagar had collected rent of Rs 78,78,521/- 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, Surendranagar were knowing that the rent collected by them from the commission agents / traders was liable to Service Tax, the APMC, Surendranagar deliberately did not pay the Service Tax and did not file the Service Tax returns and thereby, APMC, Surendranagar 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 8,55,083/- not paid.

12.7 I also observe that the APMC, Surendranagar are 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, Surendranagar 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, Surendranagar have rendered themselves liable for penalty under Section 78 of the Finance Act, 1994. APMC, Surendranagar 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, Surendranagar in their defence reply dated 21.08.2012 and 01.02.2012 have admitted their Service Tax liability and submitted that they have obtained Service Tax registration bearing No AAALTO0017FSD001 on 10.07.2012 and have made payment of Rs 8,55,084/- on 07.07.2012 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 8,55,083/- (Rupees eight lacs, fifty five thousand and eighty three only) (Service Tax Rs 8,30,178/- + Edu. Cess Rs 16,604/- + SHE Cess Rs 8,302/-) as detailed in to the Show Cause Notice dated 11.06.2012 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, Surendranagar. I appropriate an amount of Rs 8,55,083/- towards Service Tax already paid vide Challan dated 07.07.2012.

2. M/s Agricultural Produce Market Committee, Surendranagar 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, Surendranagar 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, Surendranagar for failure to obtain registration for the period starting with first day after the due date upto 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 08.04.2011 till the date of actual compliance under Section 77(1)(a) and I also impose penalty of Rs 10,000/- under Section 77(2) of the Finance Act, 1994 for failure to file prescribed returns under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

5. I impose penalty of Rs 8,55,083/- (Rupees eight lac, fifty five thousand, and eighty three only) under Section 78 of the Finance Act, 1994 on M/s Agricultural Produce Market Committee, Surendranagar. 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,
Industrial Area,
Wadhwan 363 035,
District Surendranagar.

Copy to:-

- (1) Commissioner, Central Excise Commissionerate, Bhavnagar.
- (2) Additional Director, Directorate General of Central Excise Intelligence, Ahmedabad Zonal Unit, 1st Floor, Preema Chambers, Opposite 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, Surendranagar.
- (6) Guard file.

Rd/-

20/2/2013

ADDL.COMMISSIONER