	भारत सरकार आयुक्त कार्यालय, केंद्रीय उत्पाद शुल्कसिद्धी सदन, नारायणभाई उपाध्य रोड, प्लाट नो. ६७-७६, बी-१, भावनगर-३६४००१
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F. No. V/15-59/Dem-ST/HQ/2013-14

Date of Order: 30/12/2014

Date of Issue: 30/12/2014

पारितकर्ता : श्री अनिल मिश्रा,**अपर आयुक्त, केन्द्रीय उत्पाद शुल्क एवं सेवा कर, भावनगर****Passed by : Shri Anil Misra, Additional Commissioner, Central Excise & Service Tax, Bhavnagar.****ORDER IN ORIGINAL NO. : BHV-EXCUS-000-ADC-024-14-15 DT. 29-12-2014****मूल आदेश सं. : BHV-EXCUS-000-ADC-024-14-15 DT. 29-12-2014**

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
यह प्रति जिनको भेजा है , उन व्यक्ति (ओं) को निजी उपयोग के लिए निः शुल्क दी जाती है.
 2. Any person(s) deeming himself aggrieved by this Order may appeal against this order to the Commissioner Central Excise(Appeals), Rajkot, Central Excise Bhavan, Race Course Ring Road, Rajkot-360001 within 60 days from the date of its communication. The appeal should bear a court fee stamp of Rs 2.50/- paise only.
इस आदेश से किसी भी व्यक्ति (ओं) पीड़ित होने पर आदेश के संचार की तारीख से 60 दिनों के भीतर आयुक्त केन्द्रीय उत्पाद शुल्क (अपील), राजकोट, केन्द्रीय उत्पाद शुल्क भवन, रेस कोर्स, रिंग रोड, राजकोट 360 001 के सामने इस आदेश के खिलाफ अपील कर सकते हैं. अपील पर 2.50 रुपये की एक अदालत शुल्क स्टाम्प लगानी रहेगी.
 3. The appeal should be filed in form ST-4 in duplicate, as per the provisions of Section 85 of the Finance Act, 1994 (32 of 1994) read with Rule 3 of the Central Excise (Appeals) Rules, 2001. It should be signed by the appellants in accordance with the provisions of sub-rule (2) of Rule 3 of the Central Excise (Appeal) Rules, 2001.
वित्त अधिनियम, 1994 (1994 का 32) की धारा 85 के प्रावधानों और केंद्रीय उत्पाद शुल्क (अपील) नियम, 2001 के नियम 3 के साथ पड़ने के अनुसार अपील दो प्रतियों में फार्म एसटी - 4 में दर्ज किया जाना चाहिए. केंद्रीय उत्पाद शुल्क (अपील) नियम, 2001 के नियम 3 के उपनियम के प्रावधानों (2) के अनुसार अप्पेलंट्स के हस्ताक्षर में होने चाहिए.
- It should be accompanied with the following:
अपील निम्नलिखित के साथ होनी चाहिए
 - Copy of appeal in duplicate.
दो प्रतियों में अपील की कॉपी
4. Copies of the order, one of which shall be certified copy OR the other must bear a court fee stamp of Rs 2.50/- paise as per Schedule 1 to Article 6 of the Court Fee Stamp Act, 1870.
आदेश की प्रतियां, , जिनमें से एक प्रतिलिपि प्रमाणित किया जाएगा अथवा 2.50 रुपये की एक अदालती शुल्क टिकट सहन करना होगा न्यायालय शुल्क स्टाम्प अधिनियम, 1870 की धारा 6 की अनुसूची 1 के अनुसार.

BY R. P. A. D.

To,

M/s Jay Shankar Transport,
Village - Amardad, Taluka – Ranava,
Distt: Porbandar.

Subject: - Adjudication of Show Cause Notice Number F. No. V/15-59/Dem-ST/HQ/2013-14 dated 22.10.2013.

1. BRIEF FACTS OF THE CASE:

1.1 M/s Jay Shankar Transport, Village: Amardad, Taluka: Ranava, Distt: Porbandar, C/o – Shri Sureshbhai Hamirbhai Rathod, Partner of the said firm (hereinafter referred to as the Noticee) were engaged in raising, sizing and transportation of Lime stone at mines of M/s. Saurashtra Chemicals Ltd. (a division of Nirma Ltd.), Porbandar.

1.2 An intelligence gathered by the department revealed that the Noticee was providing mining service to M/s. Saurashtra Chemicals Ltd. (a division of Nirma Ltd.), Porbandar (herein after referred to as the SCL) and was not paying service tax. A search was conducted at the office premises of the Noticee on 15.10.2013 and relevant documents were seized at the premises of the Noticee. Also, the relevant documents have been obtained from M/s Saurashtra Chemicals Ltd., submitted by Shri Bharatbhai M Thanki vide letter dated 18.10.2013 and a statement dated 15.10.2013 of Shri Sureshbhai Hamirbhai Rathod, a partner of the Noticee has been recorded. On scrutiny of the documents seized during the search of the premises of the Noticee, documents submitted by M/s. SCL, documents submitted by Shri Bharatbhai M Thanki vide letter dated 18.10.2013 and statement dated 15.10.2013 of Shri Sureshbhai Hamirbhai Rathod, a partner of the Noticee, it was found that:

- a) the Noticee was awarded contract under the Minutes of Understanding for supply of sized limestone from the mines of M/s. Saurashtra Chemicals Ltd. (a division of Nirma Ltd.), Porbandar.
- b) The transportation of limestone from the mines to the plant of M/s. Saurashtra Chemicals Ltd. (a division of Nirma Ltd.), Porbandar was also awarded to the Noticee.
- c) the Noticee was required under the Minutes of Understandings to carry out all the activities viz. blasting, drilling, sizing etc. for the mining of the limestone on their own account and sizing charges, development charges, Machinery charges and transportation charges mentioned in these understanding is the consideration for the mining activity viz. blasting, drilling and sizing.
- d) It has been also agreed that M/s. Saurashtra Chemicals Ltd. (a division of Nirma Ltd.), Porbandar shall pay incentives per ton of supply of limestone which increases with the quantity of limestone mined & supplied and shall also pay loyalty bonus of Rs. 5 per ton for exclusive supply made to Nirma group.
- e) That these Noticee are paid for enhancing the efficiency and productivity of the Noticee and for encouraging uninterrupted supply of mined limestone by the Noticee.
- f) That all these amounts are paid in relation to mining of limestone and transportation of lime stone for the provision of mining services by the Noticee.
- g) The Noticee is not registered for payment of Service Tax and have not levied and paid any Service Tax for the activities undertaken by them, in relation to mining of limestone.

1.3. From the definition of taxable service under the provisions of Section 65 (105) (zzzy) of the Finance Act, 1994 it appeared that the service provided by the Noticee would fall under Mining Service. It appeared that the Noticee had not followed any statutory procedure of obtaining Service Tax registration, filing of return and payment of Service Tax. Accordingly, a Show cause bearing no V/15-59/Dem-ST/HQ/2013-14 dated 22.10.2013 was issued to M/s Jay Shankar Transport, Village: Amardad, Taluka: Ranava, Distt: Porbandar, C/o – Shri Sureshbhai Hamirbhai Rathod, Partner of the said firm asking them as to why: -

- (i) Service Tax totally amounting to Rs. 8,61,132/- including Education Cess - plus Secondary & Higher Education Cess should not be demanded and recovered under proviso to Section 73(1) of the Act by invoking extended period of 5 years;
- (ii) interest at appropriate rate on delayed payment of Service Tax from the due date of payment of Service Tax to the actual payment of the same should not be charged and recovered under Section 75 of the Act;
- (iii) penalty should not be imposed upon them under section 77(1)(a) of the Finance Act, 1994, for failure to obtain Service Tax registration in terms of the provisions of Rule 4 of the Service Tax Rules, 1994;

- (iv) penalty should not be imposed upon them under section 77 of the Finance Act, 1994, for they failed to file the prescribed ST-3 returns under Section 70 of the Act in respect of above said services rendered by them within the stipulated time in terms of the provisions of Rule 7 of the Service Tax Rules, 1994;
- (v) penalty should not be imposed upon them under Section 78 of the Act for the Service Tax not levied and not paid by them by suppressing the facts and the contravention of the provisions of the Act and the Rules made thereunder with intent to evade payment of Service Tax.

I have taken up the subject show cause notice for adjudication.

2. Personal Hearing:

2.1 Personal hearing was held on 24.12.2014. Shri M. A. Patel, Consultant of the Noticee appeared in the personal hearing and stated that government has announced a VCES Scheme and the noticee has applied for VCES, so the department can not initiate any action for non-payment of service tax. So, the case booked by the department is required to be dropped. He also stated that his defense reply dated 16th October, 2014 may please taken into account while passing the adjudication order.

3. Defense of the Noticee:

The Noticee submitted defense reply dated 16.10.2014. The same is reproduced here for reference:

Written Submission:-

“3.1 It is submitted that the issue in question is about the validity of the action initiated by way of Show Cause Notice is justifiable or otherwise.

The facts in brief are that after the receipt of the information from M/s Saurashtra Chemicals Division of Nirma Ltd., Porbandar, the preventive officers of Bhavnagar conducted the inquiry on 15.10.2013 against the Noticee and withdrawn invoices and books of accounts pertaining to 5 years from 2008 onwards and also recorded the statements of the Noticee on 15.10.2013. As a result of investigation the present subject show cause notice has been issued to the Noticee u/s 73(1) by invoking the longer period for the recovery of Service Tax amount along with interest liability and proposed penal action for breach under various sections of finance act, 1994.

It is submitted that the government has declared Voluntary Compliance Encouragement Scheme (VCES) under Finance Act, 2013. According to the scheme, if any tax payer has not paid the service tax or escaped from payment of Service Tax on due dates and failed to get Service Tax Registration and filing of returns during the period from Oct. 2007 to 31st Dec. 2012, such defaulters can avail the benefits of the scheme by disclosing the correct and true amount of Service Tax liability by way of filing the declaration before the designated officer on or before 31.12.2013 and to made the payments of Service Tax in two instalments. As per the VCES scheme 2013, liability to pay the amount is only of the Service Tax amount and no interest is required to be paid nor penalty to be imposed.

From this it is as clear as day light that the provisions under the Finance Act for Service Tax registration, payment of service tax, filing of returns under various sections of the finance act could not be made applicable during the period declared under the scheme, irrespective of fact whether short payment to tax, non-payment of tax, non-registration etc. has been done or not. The VCES scheme 2013 is not applicable in case where action has been initiated by the department either by way of inquiry, investigation or show cause notice, which are pending before 1.3.2013. In the present case no such inquiry or investigation has been initiated nor any show cause notice has been issued nor pending for decision as on 1.3.2013. Therefore, the Noticee is legally eligible to avail the benefit under the declared VCES Scheme 2013. Accordingly, the Noticee has filed the declaration disclosing the service tax liability from the data available with the notice and also supported by invoice wise, month wise and year wise details. Not only that but in case of any irregularity or any short amount is noticed by the

department from the records of the Noticee in custody with the department, the noticee under his letter dated 30.11.2013 has categorically requested to intimate the same immediately with a view to file the revised statement if necessary. Thereafter nothing contrary received from the department. From this also it is clear evident that whatever service tax amount disclosed in the declaration filed before the designated authority is proper and correct.

It is also admitted fact that the Noticee has deposited the entire amount of Service Tax in two instalments within a stipulated period under the scheme. The designated authority after being fully satisfied issued the discharge certificate under letter No. 0000001 dated 30.12.13. Copy of which is produced herewith.

From all the submissions made above your Honour will be fully convinced and satisfied that the action initiated U/S 73 of the Finance Act is totally without authority, jurisdiction and contrary to the provisions made under the VCES Scheme 2013 declared in the Finance Act, 2013. Therefore, issuance of subject Notice is pre-matured and totally without authority and jurisdiction and not sustainable in law, so the entire proceedings being illegal and required to be dropped.

It is pertinent to note that during operation of the VCES Scheme 2013 declared by the Government, the department by way of advertisement in local news papers, in TV media by personal contact by officers to various service providers to come forward to take the benefits under VCES scheme 2013 and get amenity from interest and penalty. Visits of the officers on 15.10.2013 is for this purpose only and not to book the case. Moreover, the scheme does not permit the officers of the department to take any action against the defaulters during the period of operation of the scheme. Otherwise the scheme is meaningless and will not serve any purpose at all. In view of this fact also the issuance of SCN is not only bad in law and illegal but without authority and jurisdiction and beyond the scope of the scheme declared by the government. Therefore, the entire proceedings under subject Show Cause Notice is required to be dropped.

In the present case the department invoked the longer period for recovery of the Service Tax only on the grounds stated in para 10.2 of the Show Cause Notice and the only ground is that had it been not pointed out by the officers during visits the tax amount would have been escaped. For this the department relied upon the statement dated 15.10.2013 of the noticee recorded by the officers. On referring to the contents in the statement, the question and answers for question no. 1 to 5 are pertaining to the activities carried out by the Noticee. In question No. 6 the Noticee is asked whether service tax registration is taken or not and whether for the service tax payable return has been filed or not. In answer to this question the noticee has stated that no returns are filed nor payment is made. From this it is clear evidence that the officers has not asked any further questions as to why the service tax not paid nor return filed. Therefore, in absence of any positive and concrete evidence brought on record to establish the charge of fraud, suppression etc. the invocation of longer period is not sustainable in law.

It is well settled law by various decisions of the Hon'ble Supreme Court and the Tribunals by various decisions that mere allegation of suppression of facts in the Show Cause Notice is not enough unless proved by concrete evidence brought on record by the department. The department has grossly failed to prove about mala-fide act on the Noticee for no-payment of tax intentionally. But longer period has been invoked only on presumptions and assumptions. It is well settled law that wilful suppression cannot be assumed or presumed merely on failure to disclose certain facts unless it is preceded by deliberate non-disclosure later on could not be brought within the emit of suppression of facts for the purpose of extension of limitation. Therefore, the invocation of longer period only on presumption and assumption is not permitted by any law. Therefore, the proposed recovery of service tax beyond a period of limitation is without authority, jurisdiction and not sustainable in law and so required to be dropped.

It is further submitted that the Noticee has already discharged the service tax liability along with interest on delayed payment of service tax for the period from 1.1.13 to 30.09.2013

and intimated the same to the Jurisdictional Range Superintendent and also filed the ST-3 returns on dues dates. The amount of tax with interest has been deposited within a period of one year and so the service tax amount demanded for this period in the show cause notice is required to be dropped. Further since the service tax liability for the period from 1.1.13 up to Aug. 13 has been paid within a period of one year voluntarily and so no penalty required to be imposed. Therefore, the proposed penalty is required to be dropped.

From all the submissions made above your goodself is requested to drop the proceeding under the subject show cause notice and oblige and to pass a speaking order.”

Discussion & Findings:

4.1 I have carefully gone through the facts of the case on record and the various submissions of the Noticee. The issues to be decided in the subject SCN are :

(a) Whether the activities undertaken by the Noticee during the period 01.04.2008 to 31.08.2013 attracts the levy of Service Tax under the category of Mining Service as defined under the provisions of Section 65 (105) (zzzy) of the Finance Act, 1994 or otherwise?

(b) Whether revenue can initiate action under section 73 of the Finance Act, 1994 in the cases where the noticee has filed declaration under sub-section (1) of section 107 the Service Tax Voluntary Compliance Encouragement Scheme, 2013?

4.2 I have gone through the subject case record, defense reply filed by the noticee and contention raised at the time of personal hearing and find undisputed fact that the activity of mining undertaken by the noticee is a taxable service of “Mining of mineral services” as defined in Section 65(105)(zzzy). I also find that the noticee has not disputed taxability of service tax on the mining undertaken by them and hence they have paid service tax on 26.12.2013 and also filed declaration on 30.12.2013 under sub-section (1) of section 107 the Service Tax Voluntary Compliance Encouragement Scheme, 2013(herein after referred to as “VCES”).

4.3 Now, first of all I would like to examine the issue whether revenue can initiate action under section 73 of the Finance Act, 1994 in the case where the noticee has filed declaration under sub-section (1) of section 107 the Service Tax Voluntary Compliance Encouragement Scheme, 2013. For reference, the relevant provisions of the Service Tax Voluntary Compliance Encouragement Scheme, 2013 is reproduced here:

106. Person who may make declaration of tax dues. — (1) Any person may declare his tax dues in respect of which no notice or an order of determination under section 72 or section 73 or section 73A of the Chapter has been issued or made before the 1st day of March, 2013 :

Provided that any person who has furnished return under section 70 of the Chapter and disclosed his true liability, but has not paid the disclosed amount of service tax or any part thereof, shall not be eligible to make declaration for the period covered by the said return :

Provided further that where a notice or an order of determination has been issued to a person in respect of any period on any issue, no declaration shall be made of his tax dues on the same issue for any subsequent period.

Where a declaration has been made by a person against (2) whom,—

an (a) inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by way of—

(i) search of premises under section 82 of the Chapter; or

(ii) issuance of summons under section 14 of the Central Excise Act, 1944 (1 of 1944), as made applicable to the Chapter under section 83 thereof; or

(iii) requiring production of accounts, documents or other evidence under the Chapter or the rules made thereunder; or

an (b) audit has been initiated,

and such inquiry, investigation or audit is pending as on the 1st day of March, 2013, then, the designated authority shall, by an order, and for reasons to be recorded in writing, reject such declaration.

107. Procedure for making declaration and payment of tax dues. — (1) Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2013 in such form and in such manner as may be prescribed.

(2) The designated authority shall acknowledge the declaration in such form and in such manner as may be prescribed.

(3) The declarant shall, on or before the 31st day of December, 2013, pay not less than fifty per cent. of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority.

(4) The tax dues or part thereof remaining to be paid after the payment made under sub-section (3) shall be paid by the declarant on or before the 30th day of June, 2014 :

Provided that where the declarant fails to pay said tax dues or part thereof on or before the said date, he shall pay the same on or before the 31st day of December, 2014 along with interest thereon, at such rate as is fixed under section 75 or, as the case may be, section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014.

(5) Notwithstanding anything contained in sub-section (3) and sub-section (4), any service tax which becomes due or payable by the declarant for the month of January, 2013 and subsequent months shall be paid by him in accordance with the provisions of the Chapter and accordingly, interest for delay in payment thereof, shall also be payable under the Chapter.

(6) The declarant shall furnish to the designated authority details of payment made from time to time under this Scheme along with a copy of acknowledgement issued to him under sub-section (2).

(7) On furnishing the details of full payment of declared tax dues and the interest, if any, payable under the proviso to sub-section (4), the designated authority shall issue an acknowledgement of discharge of such dues to the declarant in such form and in such manner as may be prescribed.

108. Immunity from penalty, interest and other proceeding. — (1) Notwithstanding anything contained in any provision of the Chapter, the declarant, upon payment of the tax dues declared by him under sub-section (1) of section 107 and the interest payable under the proviso to sub-section (4) thereof, shall get immunity from penalty, interest or any other proceeding under the Chapter.

(2) Subject to the provisions of section 111, a declaration made under sub-section (1) of section 107 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 107 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority or court relating to the period covered by such declaration.

109. No refund of amount paid under the Scheme. — Any amount paid in pursuance of a declaration made under sub-section (1) of section 107 shall not be refundable under any circumstances.

Tax dues declared but not paid. **110.** — Where the declarant fails to pay the tax dues, either fully or in part, as declared by him, such dues along with interest thereon shall be recovered under the provisions of section 87 of the Chapter.

Failure to make true declaration. **111.** — (1) Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve

notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dues not paid or short-paid.

(2) No action shall be taken under sub-section (1) after the expiry of one year from the date of declaration.

(3) The show cause notice issued under sub-section (1) shall be deemed to have been issued under section 73, or as the case may be, under section 73A of the Chapter and the provisions of the Chapter shall accordingly apply.

4.4 The provisions of section-106 of the Service Tax Voluntary Compliance Encouragement Scheme, 2013 provides that any person may declare his tax dues in respect of which no notice or an order of determination under section 72 or section 73 or section 73A of the Chapter has been issued or made before the 1st day of March, 2013. Sub-section (2) of section 106 of the VCES provides that where a declaration has been made by a person against whom : (a) an inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by way of (i) search of premises under section 82 of the Chapter; or (ii) issuance of summons under section 14 of the Central Excise Act, 1944 (1 of 1944), as made applicable to the Chapter under section 83 thereof; or (iii) requiring production of accounts, documents or other evidence under the Chapter or the rules made thereunder; or (b) an audit has been initiated, and such inquiry, investigation or audit is pending as on the 1st day of March, 2013, then, the designated authority shall, by an order, and for reasons to be recorded in writing, reject such declaration. In the subject case, I find that the designated authority has accepted the VCES declaration under sub-section (7) of section 107 of the VCES on 12.05.2014.

4.5 The provisions of sub section (1) of section-108 of the Service Tax Voluntary Compliance Encouragement Scheme, 2013 provides that notwithstanding anything contained in any provision of the Chapter, the declarant, upon payment of the tax dues declared by him under sub-section (1) of section 107 and the interest payable under the proviso to sub-section (4) thereof, shall get immunity from penalty, interest or any other proceeding under the Chapter. Further, the provisions of sub section (2) of section-108 of the Service Tax Voluntary Compliance Encouragement Scheme, 2013 provides that subject to the provisions of section 111, a declaration made under sub-section (1) of section 107 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 107 **and no matter shall be reopened thereafter in any proceedings** under the Chapter before any authority or court relating to the period covered by such declaration.

4.6 From the above provisions, I find sufficient force in the argument of the noticee that once the designated authority accepts the declaration under sub-section (7) of section 107 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority or court relating to the period covered by such declaration. I also find that the revenue can reopen the matter under the provisions of section 111 of the Service Tax Voluntary Compliance Encouragement Scheme, 2013 where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dues not paid or short-paid. But in the subject case, I find that the competent authority (Commissioner) has not issued the show cause notice under the provision of section 111 of the Service Tax Voluntary Compliance Encouragement Scheme, 2013.

4.7 Further, on perusal of the subject show cause notice, I find that the period covered in the SCN is from 2008-09 to August-2013. However, as per the definition of "tax dues" as defined under section 105(1)(e) of the Service Tax Voluntary Compliance Encouragement Scheme, 2013, the "tax dues" means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from the **1st day of October, 2007 and ending on the 31st day of December, 2012** including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013. From the definition of "tax dues", it can be seen that the noticee can make declaration under VCES for the period from **1st October, 2007 to 31st day of December, 2012 only**. Whereas, in the subject case, I find that the SCN covers period 2008-09 to August-2013. So, I hold that the noticee is required to pay the service tax for the remaining period. Further, on perusal of defense reply and duty paying documents submitted by the noticee, I find that the amount of service tax of Rs.24,356/- and interest of Rs.3,050/- already paid by the noticee for the period from 01.01.2013 to August-2013 and I appropriate the same. On perusal of the work sheet attached with the subject SCN and work sheet submitted by the noticee with the VCES declaration (marked as Annexure-D), I find that the noticee has raised Bill for the period from 01.01.2013 to 31.03.2013 for Rs.40,025/- on which service tax of Rs.4,947/- is required to be paid @ 12.36% (including edu.cess and higher edu.cess). Further, I find that the noticee is required to pay

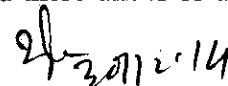
Rs.40,611/- for the period 2013-14 (up to August-2013) as per calculation made in Annexure-A attached with the subject SCN. In short, after period of VCES, the noticee is required to pay service tax of Rs.45,558/-(Rs.4,947/- + Rs.40,611/- = Rs.45,558/-including edu.cess and higher edu.cess). On perusal of the defense reply filed by the noticee and duty paying documents submitted therewith, I find that the noticee has calculated service tax for the period 01.01.2013 to August-2013 and as per their calculation they have paid service tax amounting to Rs.24,356/- . So, I hold that the noticee is required to pay remaining amount of service tax Rs.21,202/-along with the interest. [Rs.45558/- minus Rs.24356/-=Rs.21202/-].

4.8 In view of above discussion and findings, I pass the following order:

:ORDER:

- (1) I drop the demand of service tax for the period from 2008-09 to December-2012 as the noticee has declared the amount under VCES, 2013.
- (2) I confirm the remaining amount of service tax of Rs.45,558/-under section 73(2) of the Finance Act,1994 and appropriate an amount of service tax Rs.24,356/- already paid towards confirmed dues and also appropriate an amount of interest Rs.3050/- already paid by the noticee. The noticee shall pay the remaining amount of Rs.21202/- along with interest.
- (3) I order to charge and recover interest at the appropriate rate as per the provisions of Section 75 of the Finance Act, 1994 on the amount of service tax confirmed as above which should be paid by / recovered from Noticee forthwith.
- (4) I impose a penalty for the period from 01.01.2013 to August-2013 under Section 77(1)(a) of the Finance Act 1994 for **failure to take registration** of **Rs. 10,000/-** (Rupees ten thousand only) or Rs.200/- for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance which should be paid by / recovered from Noticee forthwith.
- (5) I impose a penalty for the period from 01.01.2013 to August-2013 of **Rs. 10,000/-** (Rupees ten thousand only) under **Section 77** of the Finance Act,1994 for failure on the part of the Noticee to file ST-3 Returns as provided under Section 70 of the Finance Act,1994 which should be paid by / recovered from Noticee forthwith.
- (6) I impose an equal amount of penalty of Rs.45,558/-under the provisions of **Section 78** of the Finance Act,1994 which should be paid by / recovered from Noticee forthwith.

This order is issued without prejudice to any other action that may be taken against the noticee under the provisions of the Finance Act, 1994 or the Rules, framed there under or under the provisions of any other law for the time being in force.


(Anil Misra)

Additional Commissioner
Central Excise Bhavnagar
Bhavnagar, Date: 30.12.2014

F. No. V/15-59/Dem-ST/HQ/2013-14

By Registered Post A.D.:

To,

M/s Jay Shankar Transport, Village - Amardad, Taluka – Ranava,
Distt: Porbandar.

Copy to:

1. Assistant Commissioner, Service Tax Division, Bhavnagar
2. Superintendent of Service Tax Range, Junagadh with a direction to ensure service of the subject Order in Original to the noticee and report to O & A Section regarding service of the subject Order in Original.
3. RRA Section, H.Q. Bhavnagar
- ✓ 4. Guard file.