	<p>भारत सरकार आयुक्त कार्यालय, केंद्रीय उत्पाद शुल्क सिद्धी सदन, नारायणभाई उपाध्य रोड, प्लाट नो. ६७-७६, बी-१, भावनगर-३६४००१</p>
	<p>Ph.No. : 0278- 2523627 E-mail- adjbhavnagar@gmail.com Fax No.: 0278-2513086</p>

F. No. V/15-62/Dem-ST/HQ/2013-14

Date of Order: 30/12/2014

Date of Order: 30/12/2014

पारितकर्ता : श्री अनिल मिश्रा,

अपर आयुक्त, केंद्रीय 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-025-14-15 DT. 30-12-2014

मूल आदेश सं. : BHV-EXCUS-000-ADC-025-14-15 DT. 30-12-2014

- 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.
- 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.
- The appeal should be filed in form EA 1 in duplicate, as per the provisions of Section 35(1) of the Central Excise Act, 1944 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.
केंद्रीय उत्पाद शुल्क अधिनियम, १९४४ की सेक्सन ३५ (१) के प्रावधानों और केंद्रीय उत्पाद शुल्क (अपील) नियम, 2001 के नियम 3 के साथ पढ़ने के अनुसार अपील दो प्रतियों में फार्म इए-१ में दर्ज किया जाना चाहिए. केंद्रीय उत्पाद शुल्क (अपील) नियम, 2001 के नियम 3 के उपनियम (2) के प्रावधानों के अनुसार आवेदक के हस्ताक्षर से 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
- An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute.
इस मूल आदेश से असंतुष्ट होने पर आयुक्त (अपील) के पास अगर सिर्फ उत्पाद शुल्क हो तो उत्पाद शुल्क का या अगर उत्पाद शुल्क और पेनल्टी हो तो उत्पाद शुल्क और पेनल्टी का या अगर सिर्फ पेनल्टी हो तो पेनल्टी का 7.5% भरकर अपील की जा सकती है.
- 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. Ganesh Heavy Machines,
C/o M/s. Jayshree Hero, Narsang Tekri,
National Highway 8-B,
Porbandar – 360575.

Subject: - Show Cause Notice Number F. No. V/15-62/Dem-ST/HQ/2013-14 dated 22.10.2013.

Brief Fact of the case

M/s Ganesh Heavy Machines, C/o M/s. Jayshree Hero, Narsang Tekri, National Highway 8-B, Porbandar – 360 575 (hereinafter referred to as "the Noticee") are engaged in providing taxable services of area development/site preparation/site formation and site cleaning at the mines of M/s.Saurashtra Chemicals Ltd. (a Division of Nirma Ltd.), Porbandar (hereinafter referred to as Saurashtra Chemicals).

1.1 An intelligence gathered by the department revealed that the Noticee was providing mining service to M/s. Saurashtra Chemicals Limited (hereinafter 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 but no document was found available at the premises of the Noticee during the search. As no documents were found from the Noticee, the relevant documents were obtained from the service recipient (SCL). Also, a statement of Shri Bhimabhai Rajanbhai Odedra, Proprietor of the Noticee was recorded on dated 15.10.2013.

1.2 Whereas on scrutiny of the statement of Shri Bhimabhai Rajanbhai Odedra, Proprietor of the Noticee dated 15.10.2013, the documents submitted by him thereunder and the documents submitted by M/s. Saurashtra Chemicals Limited vide their letter dated 03.10.2013, it is inferred that:

- a) The Noticee have provided services of drilling/ site formation/ site formation, removal of overburdens and site cleaning at the Limestone mines of the M/s Saurashtra Chemicals Limited located at Village: Dharampur, District: Porbandar.
- b) All the above said service provided by the Noticee comprehensively defined under Mining Services falling under Section 65(105)(zzzy) of the Finance Act, 1994.
- c) The Noticee have provided the taxable services of mining of Limestone without obtaining Service Tax registration and without making payment of Service Tax leviable thereon.

1.3 Accordingly, a Show Cause Notice bearing F. No. V/15-62/Dem-ST/HQ/2013-14 issued to M/s Ganesh Heavy Machines, C/o M/s. Jayshree Hero, Narsang Tekri, National Highway 8-B, Porbandar–360575 on dated 22.10.2013 asking as to why: -

- (i) Service Tax totally amounting to Rs. 7,44,554/- (Rupees seven lakhs forty four thousand five hundred and fifty four only) including Service Tax of Rs. 7,22,868/-, Education Cess of Rs. 14,457/- plus Secondary & Higher Education Cess of Rs. 7,229/- should not be demanded and recovered under proviso to Section 73(1) of the Act read with Rule 7(2) of the Service Tax Rules, 1994 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 Finance Act, 1994 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.

A copy of the subject SCN is enclosed as Annexure-I. Now, I have taken up the subject show cause notice for adjudication.

2. Personal Hearing:

2.1 In the matter, a personal hearing was held on 29.12.2014. Shri N.K. Maru, Consultant of the Noticee appeared in the personal hearing and stated that they submitted their defense reply vide letter dated 01.12.2014 and requested to take the same into consideration while deciding the subject case.

3. Defense of the Noticee:

3.1 The Noticee has submitted their defense reply dated 01.12.2014. A copy of the same is enclosed as Annexure-II.

4. **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 2008-09 to 2011-12 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 31.12.2013 and also filed revised declaration on 21.12.2013 under sub-section (1) of section 107 the Service Tax Voluntary Compliance Encouragement Scheme, 2013 (hereinafter 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 23.04.2014.

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 and hence, I hold that the subject SCN is required to be dropped.

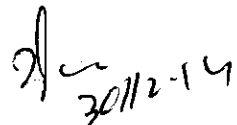
4.7 With regards to imposing penalties under Section 77 & 78 and levy of interest under Section 75, I find that in the circumstances when the Noticee has filed the declaration under VCES, the provisions of Section 108 of the VCES, 2013 provides immunity from imposing penalty, interest or any other proceeding. So, I hold that the question of penalty U/s 77 & 78 and interest u/s 75 does not arise.

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

:ORDER:

- (1) I drop the demand of service tax of Rs. 7,44,554/- made vide subject SCN for the period from 2008-09 to 2011-12, as the Noticee has declared the amount under VCES, 2013.
- (2) As the demand of Service Tax is dropped, I drop the proceeding for levy of interest proposed under Section 75 of Chapter V of the Finance Act, 1994 and also drop the proceeding for imposition of penalty under Section 77 & 78.

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
Bhavnagar, Date: 30.12.2014

F. No. VI/15-62/Dem-ST/HQ/2013-14

By Registered Post A.D.:

To,

M/s Ganesh Heavy Machines,
C/o - M/s. Jayshree Hero,
Narsang Tekri,
National Highway 8-B,
Porbandar – 360 575.

Copy to:

1. The Assistant Commissioner, Service Tax Division, Bhavnagar.
2. The 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.
3. The Assistant Commissioner (RRA), Central Excise, H.Q. Bhavnagar.
4. Guard file.