



केन्द्रीय उत्पाद शुल्क एवम सेवा कर आयुक्तालय , भावनगर
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX

प्लॉट नं. 6776-बी/1, 'सिद्धि सदन' बिल्डिंग,
PLOT NO. 6776/B-1, "SIDDHI SADAN" BUILDING,
नारायण उपाध्याय मार्ग, भावनगर-364001
NARAYAN UPADHYAY MARG, BHAVNAGAR-364 001.
दूरभाष : (0278) 2523627 फ़ैक्स : 0278-2513086

रजिस्टर्ड डाक पावती द्वारा

By R.P.A.D.

फाइल सं. V/15-23/Dem-ST/HQ/2011-12 आदेश की तारीख : 19/12/2012.

F. No.

Date of Order :

जारी करने की तारीख : 19/12/2012.

Date of Issue :

पारितकर्ता

Passed by

श्री एन के भुजबल

SHRI N. K. BHUJABAL

आयुक्त, केन्द्रीय उत्पाद शुल्क एवम सेवा कर, भावनगर

Commissioner, Central Excise and Service Tax, Bhavnagar

मूल आदेश संख्या Order-in-Original No : 33 TO 36/BVR/Commissioner/2012

1. यह प्रति उस व्यक्ति को, जिसके लिए यह आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है।

2. इस मूल आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित ढंग से कर सकता है

8

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील :

3. वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत अपील निम्न को की जा सकती है।

1। पश्चिम क्षेत्रीय पीठ, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) ऑफ 20, न्यू मेन्टल अस्पताल कंपाउन्ड, मेघाणीनगर, अहमदाबाद 380016।

2। अपीलीय न्यायाधिकरण का वित्त अधिनियम, 1994 की धारा 86 की उप धारा (1) के अंतर्गत अपील, सेवाकर नियमावली, 1994 के नियम 9(1) के अंतर्गत निर्धारित एस.टी.5 में, चार प्रतियों के साथ आदेश प्राप्ति के दिनांक से तीन माह के भीतर की जा सकेगी एवं उसके साथ जिस आदेश के अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) अधिनियम, 1994 की धारा 86 के अंतर्गत निर्धारित किए अनुसार शुल्क लगा होना चाहिए। स्थान पर न्यायाधिकरण की न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के सहायक रजिस्ट्रार के नाम से निर्धारित फीस रेखांकित बैंक ड्राफ्ट के रूप में भेजनी होगी।



- 3। वित्त अधिनियम, 1994 की धारा 86 की उपधाराओं (2) एवं (2ए) के अंतर्गत सेवाकर नियमावली, 1994 के नियम 9(2) के अंतर्गत निर्धारित किए गए फॉर्म एस.टी.7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क या आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश के प्रति (उनमें से एक प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उपआयुक्त, केन्द्रीय उत्पाद शुल्क को अपीलीय न्यायाधिकरण में आवेदन करने के आदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड / आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।
4. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची 1 के अंतर्गत निर्धारित किए अनुसार यथास्थिति मूल आदेश या न्यायनिर्णयनकर्ता प्राधिकारी के आदेश की प्रति पर रुपये 6.50/ का न्यायालय टिकट लगा होना चाहिए।
5. ब्यौरापूर्ण करने हेतु सीमाशुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 की ओर ध्यान आकर्षित किया जाता है।

To,

- (1) M/s. Shri Bileshwar Khand Udyog Khedut Sahakari Mandali Limited,
Kodinar, District- Junagadh. (Noticee No. 1).
- (2) Shri Ranvirbhai B. Mori, Chief Accountant of M/s Bileshwar Khand
Udyog Khedut Sahakari Mandali Limited, Kodinar, District- Junagadh.
(Noticee No. 2).
- (3) Shri Haribhai Oghadbhai Barad, Representative of Khedut Zone Samiti,
Kodinar, District – Junagadh. (Noticee No. 3).
- (4) Shri Arjanbhai Kanabhai Dahima, In-charge of Khedut Zone Samiti,
Kodinar, District – Junagadh. (Noticee No. 4)

Subject: Show Cause Notice F. No. V/15-23/Dem-ST/HQ/2011-12 dated 21.10.2011.



BRIEF FACTS OF THE CASE :-

M/s. Shri Bileshwar Khand Udyog Khedut Sahakari Mandali Limited, (hereinafter referred to as 'the Noticee No.1') situated at Kodinar, District- Junagadh, Gujarat, is engaged in manufacturing of sugar and having Central Excise Registration as manufacturer. The Noticee is also having Service Tax Registration under the category of "Transportation of goods by Road" and paying Service Tax.

2. A show cause notice F. No. V/15-23/Dem-ST/HQ/2011-12 dated 21.10.2011 was issued to the Noticee proposing to demand Service Tax of Rs.2,67,43,003/- under Section 73(1) of Chapter V of Finance Act, 1994 (herein after referred to as the "Act"), alongwith Interest at the appropriate rate as applicable till the date of payment of Service tax under Section 75 of the Act and also to impose penalty under Section 76, 77 and 78 of the Act. Along with the Noticee, Show Cause Notice was served to three persons (1) Shri Ranvirbhai B. Mori, Chief Accountant of M/s Bileshwar Khand Udyog Khedut Sahakari Mandali Limited, Kodinar, District- Junagadh (hereinafter referred to as 'the Noticee No.2'). (2) Shri Haribhai Oghadbhai Barad, Representative of Khedut Zone Samiti, Kodinar, District – Junagadh (hereinafter referred to as 'the Noticee No. 3') and (3) Shri Arjanbhai Kanabhai Dahima, In-charge of Khedut Zone Samiti, Kodinar, District – Junagadh (hereinafter referred to as 'the Noticee No. 4') for penal action under Section 77(1)(C) of the Finance Act, 1994.

3. The facts leading to issuance of aforesaid show cause notice are that an intelligence was gathered that the Noticee No 1 was providing the taxable services of supply of manpower to their members and sugarcane growers and collecting charges on per M.T. basis and not paying Service Tax thereon, a summons was issued to the Authorised Signatory of the Noticee No. 1 on 23-3-2011 to remain present and produce copies of (1) Audited reports alongwith profit & loss account for the financial year 2006-07 to 2009-10 and for the period from 1-4-2010 to 15-3-2011, (2) ledger of payments made to Khedut Zone Samiti (hereinafter referred to as 'the Samiti') for the financial year 2006-07 to 2009-10 and for the period from 1-4-2010 to 15-3-2011 and (3) Copy of agreement, if any, made with the above said Samiti or their members. In pursuance to the above summons, Shri Ranvirbhai B. Mori, Chief Accountant of the Noticee No. 1 appeared before the Superintendent of Central Excise (A.E.), H.Q., Bhavnagar.

4. Statement of Shri Ranvirbhai B. Mori, Chief Accountant of the Noticee No.1 (hereinafter referred to as 'the Noticee No.2') was recorded under Section 14 of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 (hereinafter referred to as "the Act") on 23-3-2011 before the Superintendent (A.E.), Central Excise, H.Q., Bhavnagar, wherein he, inter alia, stated that he is the Chief Accountant of the Noticee No. 1; that he is looking after the account matters as well as Central Excise matter with the help of other staff; that they are not providing labourers to their growers who are supplying to them their sugar cane; that the Noticee No. 1 had obtained registration for Service Tax for the category of transportation of goods by road; that he had been shown a copy of "Sabhasad Sherdi Advance" Bill No. 3301 dated 12-2-2011 and asked to explain the details mentioned therein that after perusing the same he put his dated signature on it in token of



perusing the same and stated that the same bill was issued by the Noticee No. 1 to the growers who are supplying their sugar cane to them, for advance payment of sugar cane; that the said bill contains the details such as name of the member, Village, date of receipt of sugar cane, number of slips, weight, rate per ton, amount to be payable and the said bill also contains the deduction amount for the Samiti; that as per the instructions from the Samiti in writing, they are deducting the amount in the name of the Samiti from the advance payment made by them to their members and paying the amount deducted to the Samiti by cheque and he produced a sample copy of the instructions received from the Samiti and stated that there is no any agreement with the Samiti for deducting the amount on behalf of the samiti; that they are not showing this payment in their books of account as the same is part of advance payment made to the members. On being asked regarding the function of the Samiti and that whether it is a part of the Noticee No. 1 or a separate entity, he stated that it is a separate entity and the Noticee No. 1 had no concern with them and he did not know the function of the Samiti; that he produced a copy of Audit Report along with profit & loss account and a copy of ledger of payments made to the Samiti for the Financial Year 2006-07 to 2009-10 of the Noticee No. 1 under their letter dated 23-3-2011; that he informed that Shri Arjanbhai Kanabhai Dahima of Village-Devali (Dedani), Taluka- Kodinar, District- Junagadh was the main person of the Samiti and that the Noticee No. 1 are not deducting tax deduction at source (TDS) from the payment made to the Samiti as provided under the Income-Tax Act.

5. Statement of Shri Haribhai Oghadbhai Barad, Representative of the Samiti, (hereinafter referred to as 'the Noticee No.3") was recorded under Section 14 of Central Excise Act, 1944 read with Section 83 of the Act on 23-3-2011 before the Superintendent (A.E.), Central Excise, H.Q., Bhavnagar wherein he, inter alia, stated that there are 11 zones under the Noticee No. 1; the Samiti have several representatives from each and every zone; that he was one of the representative of Alidar zone; that the samiti hired labour from Maharashtra, M.P. state and also from Bhavnagar and from local station for harvesting of sugarcane from the farms of their members and loading of the same in vehicle; that for this act, they were getting amount as fixed from time to time by mutual understanding of the samiti from the Noticee No. 1 by cheque; that for financial matter, they are giving letter to the Noticee No. 1 so that they can deduct the amount so fixed by the Samiti from payment to be made to the member of the Noticee No. 1. On being asked about the audit report, profit and loss account, he stated that they are not maintaining any books of account and not preparing any profit and loss account. He also stated that they are neither having PAN No. nor filing any IT return; that they are separate entity from the Noticee No. 1 as they do not have any relation and are not part of the Noticee No. 1; that he was one of the member of the Noticee No. 1; except the same, he had no relation with the Noticee No. 1; that the samiti is having bank account with Kodinar Taluka Co Operative Banking Union Limited, Sugar Factory Branch, Kodinar and Shri Arjanbhai Kanabhai Dahima is operating the said account; that they had not made any contract with any labour supply agencies.



6. It was stated by Noticee No. 2 and Notice No. 3 that the Samiti is a separate entity and the Samiti is not maintaining any records, whereas on scrutiny of the ledgers produced by the Noticee No. 2, it appears that there is a huge payment made by the Noticee No. 1 to the Samiti in each financial year. Therefore, a search was carried out at the office of the Samiti, which is situated in the premises of the Noticee No. 1 at Kodinar. During the course of search at the office of the Samiti some incriminating documents were recovered for further scrutiny under Panchnama dated 21-4-2011.

7. In follow up action, a copy of bank account opening form and a copy of the documents provided under "Know your customers" norms was asked from the Kodinar Taluka Co-Operative Banking Union Ltd., Khand Udyog Branch, Kodinar vide the letter dated 20-4-2011; that in response to this letter, the Kodinar Taluka Co-Operative Banking Union Ltd., Khand Udyog Branch, Kodinar provided a copy of bank account opening form and its supporting documents. On perusing the supporting documents provided by the above said bank, there is a copy of resolution no.5 (2) passed in the meeting of the Board of Directors of the Noticee no.1 held on 28-8-99. On perusing the said resolution, it appears that the samiti is part of the Noticee No. 1 and the same was created for maintaining separate account of payment made to the persons appointed for cutting and transporting of sugar cane for the purpose of curtailing the work of accounts; that the powers of transaction in bank accounts of the Samiti were delegated to the following officers:

- (i) Managing Director, Shri N. B. Gohil
- (ii) Manager/Secretary, Shri R. R. Vaish
- (iii) Chief Accountant, Shri J. S. Barad
- (iv) Assistant Chief Accountant, Shri R. B. Mori

8. A Statement of Shri Arjanbhai Kanabhai Dahima, in-charge of the Samiti, (hereinafter referred to as 'the Noticee No.4') was recorded under Section 14 of Central Excise Act, 1944 read with Section 83 of the Act on 21-4-2011 before the Superintendent (A.E.), Central Excise, H.Q., Bhavnagar in which he, inter alia, stated that he is a member of the Noticee No.1 and is working with the samiti and getting monthly pay; that his further statement was recorded in question and answer form which is reproduced below:

Ques1: Are you an office bearer of the Samiti of the Noticee No.1 and whether the Samiti is a part of the Noticee No.1 or is it a separate organization?

Ans 1: I am not an office bearer in the Samiti but working as a clerk.

Ques2: The Noticee No. 1 is paying Rs. 300/- Per MT by cheque to you for labour charges for harvesting of sugarcane and transportation charges of the same. Are these cheques given to you? Do you withdraw the money from the bank?

Ans: - 2 Yes, the Noticee No. 1 is paying Rs. 300/- per MT to the Samiti for administration of payment. These cheques have not been received by me and I do not withdraw money from the bank under my signature.



Ques: 3 To whom these cheques which were in the name of the Samiti, are handed over and under whose signature the money is being withdrawn from the bank?

Ans: 3 The Noticee No. 1 deposits the cheques in the account of the Samiti. Thereafter, the Samiti withdraw the money from the bank under signature of following three Directors as per requirement –

- (1) Dilipbhai Merubhai Mori
- (2) Haribhai Raysinbhai Vala
- (3) Kanabhai Jagmalbhai Jadav

Ques :-4 Who maintains the cash book and accounts of money withdrawn from the bank and paid to labours ? Please, produce the same.

Ans : 4 The Samiti is paying money to the labours who harvest sugarcane and also to transporters. (I don't have any more information in this regard).

Ques : 5 Whether the Samiti prepare any bill for charges of harvesting, loading and transporting of sugarcane? If yes, then produce a sample copy of the same.

Ans : 5 Yes, the Samiti prepare bills for charges of harvesting, loading and transporting of sugarcane. I produce a copy of Bill NO. 56504 dated 24.02.2011 as a sample copy.

Ques : 6 Please produce ledger of the Noticee No.1, ledger of expenditure for harvesting and loading of sugarcane maintained by the Samiti and copy of balance-sheet for the financial years from 2006-07 to 2010-11.

Ans : 6 At present all these records of the Samiti are lying in record room. Since there are huge number of records lying in the record room, to trace out the said records will take time. Therefore, I shall produce the said records within ten to fifteen days personally at your office. Moreover, due to election of Board of Directors of the Noticee No. 1 and the season 2010-11 is also on the verge of completion, the accounts of labour engaged in harvesting of sugarcane are to be settled, we are unable to produce the said records at present. This is for your kind information please.

9.1 The Samiti vide its letter no. Adm/ZOS/ dated 21-4-2011 submitted a copy of the following documents for the year 2010-2011:

- (i) Sample copy of sugar cane cutting and loading bill
- (ii) Last page of ledger of the Noticee No.1 for the month of March-2011
- (iii) Last page of ledger of sugar cane cutting and loading expenditure
- (iv) Last page of ledger of sugar cane transportation expenditure



9.2 In response to summons dated 28-4-2011 and 16-5-2011, the Samiti vide its letter dated 25-5-2011 submitted a copy of the following documents for the year 2006-07, 07-08, 08-09, 09-10 :

- (i) Ledger of the Noticee No.1,
- (ii) Ledger of sugar cane cutting and loading expenditure,
- (iii) Income & Expenditure statement
- (iv) Account of the Noticee no.1

9.3 In response to summons dated 16-5-2011, the Samiti vide his letter No. zos/12 C 7 dated 28-5-2011 submitted a sample copy of the following documents for the season 2006-07, 07-08, 08-09, 09-10 :

- (i) Bank Transfer voucher,
- (ii) Harvesting and Transportation (Katai & Vahtuk) payment bill,
- (iii) Page of payment register and
- (iv) Harvesting and Transportation (Katai & Vahtuk) payment voucher.

10. A further statement of the Noticee No. 4 was recorded under Section 14 of Central Excise Act, 1944 read with Section 83 of the Act on 24-6-2011 before the Superintendent (A.E.), Central Excise, H.Q., Bhavnagar. This statement was recorded in question and answer form which is reproduced below:

Ques 1: Under whose signature are you withdrawing the money from the bank account in which the cheques are issued by the Noticee No.1 in the name of the Samiti have been deposited?

Ans 1: Powers of withdrawing the money from the bank account of the Samiti has been delegated to Chief Accountant and Managing Director of the Noticee No.1. I withdraw money from the Bank on behalf of the Samiti.

Ques2: Who are maintaining the account and cash book relating to cash withdrawal from the bank and payments made to labour?

Ans 2: The Cashier of the Samiti keeps the cash with him and I write the daily book and vouchers and clerks of the Samiti maintain the ledger Books.

Ques3: Who pays the salary to you and other employees such as Cashier, Clerk etc. of the Samiti? Whether the Samiti or the Noticee no.1?

Ans3: The Noticee No. 1 pays Salary on behalf of the Samiti.

Ques4: You have stated in the above answer that the Noticee no.1 pays salary on behalf of the Samiti. Then please state whether any authority/power has been delegated to the Noticee No. 1 by the Samiti. If yes, then you have neither shown nor debited the expenses incurred for staff salary in Balance Sheet and in Profit & Loss Account. Hence, why it is not believed that the Samiti has not employed any officer/employee as they do not pay any salary to any employee. Whoever working there is the



employee of the Noticee No.1, to whom salary is paid by them.
Is it true?

Ans 4: Yes, this is true.

Ques: 5 Vide your letter dated 25.05.2011 you have produced ledger account of the Noticee No.1 and copy of Income-Expenditure statement of the Samiti. On going through the above documents, it appears that if your Samiti is a separate entity than the Noticee No.1, then as per the Income Tax Law, your Samiti must have a separate Permanent Account Number (PAN) and a separate Income Tax return is required to be filed. Have you filed any such return? Also state your PAN No.

Ans: 5 The Samiti has no PAN No. and we have not filed Income Tax return.

Ques: 6 what is the constitution of the Samiti? Whether it is an Association of Persons, Body of Individuals or Co-operative Society. Please state.

Ans: 6 I do not know anything in this matter.

Ques : 7 Whether any agreement regarding conditions of harvesting (cutting and loading charges) of sugar cane was made between your Samiti and Head (Mukadam) of labours engaged for cutting of sugar cane ? If yes, please produce copy of the same.

Ans: 7 at present, I have no any information. However, I will produce copy of the same if it is available.

Ques : 8 Is it true that the expenditure under the head of cutting and loading charges of sugarcane shown in the year wise statements of Income-Expenditure statement submitted by you is the amount which was paid to labours for cutting and loading of sugar cane.

Ans 9: Yes.

11. A further statement of the Noticee No. 2 was recorded under Section 14 of Central Excise Act, 1944 read with Section 83 of the Act on 8-7-2011 before the Superintendent (A.E.), Central Excise, H.Q., Bhavnagar. This statement was recorded in question and answer form which is reproduced below:

Q.1. In your earlier statement dated 23.03.2011, in reply to question number 8, you have answered that the Samiti is a separate entity, then please inform whether the said samiti is Association of person or body of individual or co-operative society?

A.1. Since I am not authorized to answer this question, I do not know.

Q.2. If the Samiti is a separate entity, then why are you not deducting TDS on payment made to them?



A.2. The Samiti is Association of persons and according to provisions of Income Tax Act, when we make payments to the Samiti, TDS is not required to be deducted and hence we are not deducting TDS from them. I will provide a copy of report submitted to our IT authorities.

Q.3. Is it true that the Noticee No.1 is paying the salary of the employees who are working with the Samiti?

A.3. The Noticee No.1 is providing his employees to the Samiti on their request without taking any amount from them.

Q.4. Is it true that the payment to labour contractors has been made by cashier of the Noticee No.1 by withdrawing the amount from the Bank Account of the Samiti?

A.4. As per my answer at Sr. No. 3.

He further stated that the Samiti is constituted by passing a resolution in meeting of Board of Directors of their Society on 28.08.1999 and he produced a copy of resolution No. 5(1) and 5 (2) and authorization letter of the Noticee No.1.

12. The Samiti vide their letter Acctt. /128-12 dated 9-7-2011 submitted a copy of their audited Profit & Loss account and Balance Sheet for the financial year 2006-07 to 2009-10 and also informed that they would provide a copy of their audited Profit & Loss account and Balance Sheet for the financial year 2010-11 after completion of audit. They also provided a sample copy of agreement dated 27-7-2008 made with the labour for sugar cane cutting.

13. On perusal of the copy of the resolution No. 5(1) and 5 (2) submitted by the Noticee No. 2 in his statement dated 8-7-2011, it appeared that the same was passed in the meeting of the Board of Directors of the Noticee No. 1 held on 28-8-99; that on perusing the said resolution, it appeared that the samiti is part of the Noticee No. 1 and the same was created for maintaining separate account of payment made to the persons appointed for cutting and transporting of sugar cane for the purpose of curtailing the work of accounts; that the answers given by the Noticee Nos. 2 to 4 are vague and mis-leading to the inquiry; that the samiti is nothing, but a sub-committee of the Noticee No. 1; that the Noticee No. 1 is neither deducting TDS as per the Income-Tax Law nor providing any exemption certificate issued by the jurisdictional Income-Tax Authority as provided under the Income-Tax Law nor the samiti have a permanent account number (PAN). Also, the Samiti has neither of his own staff nor showing any such expenditure in their audited Profit & Loss account which was produced by them. Thus, the Noticee No. 1 are engaging and providing the labours for cutting and harvesting of sugar cane to the growers of the sugar cane.

14. On scrutiny of the audited Profit & Loss account and balance sheet of the Samiti for the financial year 2006-07 to 2009-10 submitted by the Samiti vide its letter dated 9-7-2011, it is observed that in the Profit and Loss account, they have shown expenditure under the head "SHERDI KATAI BHARAI EXPENDITURE". The details of the same are as under:



Sr. No.	Year	Amount of "Sherdi Katai Bharai Expenditure" In Rs.
1	2006-07	4,36,66,633/-
2	2007-08	4,96,40,265/-
3	2008-09	3,57,64,308/-
4	2009-10	4,37,96,571/-
5	2010-11	4,84,03,798/- (Un audited figures)

From the above, it appeared that the Noticee No.1 have paid sherdi katai Bharai charges (sugarcane harvesting-loading charges) through the samiti amounting to total of Rs. 22,12,71,575/- to their labours during the during the year 2006-07 to 2010-11..

15.1 The Noticee No. 1 vide "Sabhasad Sherdi Advance" Bill no. 3301 dated 12-2-2011 recovered labour charges of Rs. 300/- in the name of the samiti from Shri Maheshbhai Nathabhai Vala of village- Kadodara towards sugarcane cutting at the place of sugarcane farmer and transporting the same from farm to factory. A scanned image of said bill is produced herein below:

SCAN IMAGE OF SABHASAD SHERDI ADVANCE BILL NO. 3301 DATED 12-2-2011

नं. 3301		[Redacted]		मि. म. नं. 20282	दि. 22-2-2011
समाप्त श्री. महेशबाई नथुबाई वाला		श्री. महेशबाई नथुबाई वाला		गा. कडोदरा	
शेर्डीआवारी तारीख	शेर्डीपती वि.नं.	रकम	एर रने लाग	आपवा भाज रकम सुधिया	शेर्डीनी वि.नं.
दि. 22-2-11	3	24	2400	30 2400	10002
मि. 9-2			1	1	10002
सुधी.					10002
आर शेर्डीआवारी जेवना येन अतिरिक्त			300	9.2400	10002
दवावारी अन्व खर्चात					10002
शेर्डी शेर्डीआवारी			2200	30.900	10002
अति सुधिया					10002
दिना / येन नंतर		For Shri. Bilechwar Khand Udyog Khadut Sahakar Ltd. Kadinar			
[Signature]		[Signature]			

On scrutiny of the above image, it appeared that the same is payment bill no. 3301 dated 12-02-2011 issued by the Noticee No. 1 towards the payment of

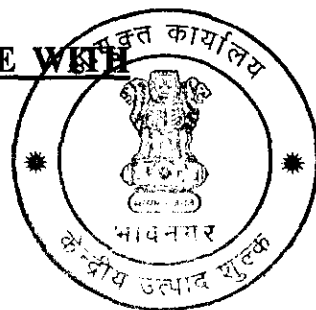


sugarcane supplied by the farmers showing the details such as name of supplier as Shri Maheshbhai Nathabhai Vala, Village- Kadodara, ledger page no. 20218, Period of receipt of sugarcane, number of slips, Quantity of sugarcane, rate of sugarcane per ton, deducted amount of zone samiti charges as Rs.300/- per MT; that the amount deducted in the name of the samiti has been paid & transferred by the Noticee No.1 in the bank account of the samiti and the same was not reflected in the profit and loss account of the Noticee No. 1.

15.2. A sample copy of agreement dated 27-7-2008 made by the Samiti with labour contractor:

The samiti has engaged the labours for harvesting sugarcane and made a contract with them. A sample copy of the same was submitted by the samiti vide their letter dated 9-7-2011 which was made with Smt. Mangaluben Kuvarsinh Vadvi of Village- Manoli, Taluka- Sharda, District- Nandurbar. A scanned image of said agreement is produced herein below:

SCAN IMAGE OF AGREEMENT DATED 27-7-2008 MADE WITH LABOURS FOR SUGARCANE HARVESTING



શેરડી કાપણી ભારતી ગંભેનો કથર

વખાલી લેનાર :- શ્રી સભાસ મેદુન એન સચિવિ-કોમીનાર.
 યુ. શેરી-વર. તા. શેરી-વર. જા. જુનાગઢ.

કામી આપનાર :- શ્રી ... શંભાણુજી ... કુંડાકામી ... વાલો.

યુ. ... શેરી ... તા. ... શેરી ... જા. ... જુનાગઢ.

આમી કું કામી આપનાર શ્રી ... શંભાણુજી ... કુંડાકામી ... વાલો

રહે ... શેરી ... આપને ત્યાં શેરડી કાપણી, ભારતી કામીની માટે આવવાનું છે.

ઉપરોક્ત કામના મજૂરી કરો તમો નક્કી કરો વા કામના મુજબ જે બોલ તે લેવા માટે ખુબી છે.

ઉપરોક્ત કામની કરવા માટે કું પોતે સચક્ત છે તેમજ અને કોઈપણ જાતની કામની ભીમણી નથી તેમજ આમા ક્યારા મુખત કરેલી શેરડી કાપણી તથા ભારતી કામની કું સંતોષકારક રીતે પૂર્ણ કરીયા.

આમ આપને ત્યાં કું શેરડી કાપણી તથા ભારતીના કામ માટે મજૂરી કરવા આવવા માટે કું કારણી બંધાઉ છે.

સ્થાન : કુંડાકામી

તા. 29/ 9 / 2007

કથર કામી આપનારની મામી

x _____

સામી :-

x ... ૨૦૦૭-૧૧૧૧૧૧૧૧

On scrutiny of the above image, it appeared that the samiti has engaged the labours for harvesting sugarcane and made a contract with them and that the rate of labour were either fixed by the Samiti or as per the law.

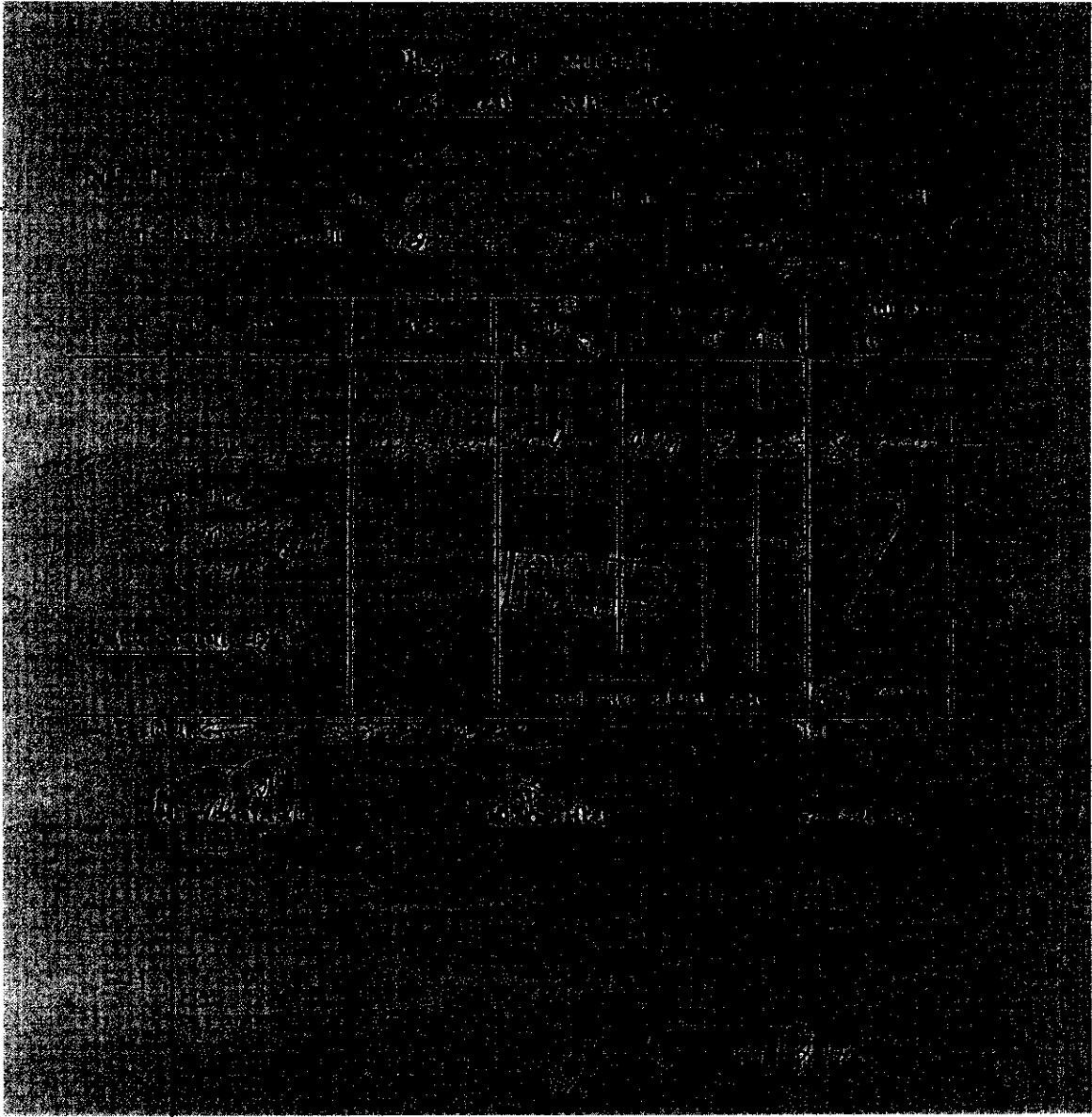
15.3. Sugarcane harvesting Bill (Sherdi Katai- Bharai Bill) No. 4059 dated 10-4-2007 issued by the Samiti:

The Samiti vide sugarcane harvesting bill No. 4059 dated 10-4-2007 paid labour charges to Shri Parmar Merubhai Karshanbhai, village- Kadodara towards sugarcane cutting at the place of sugarcane farmer. A scanned image of said bill is produced herein below:

SCAN IMAGE OF SUGARCANE HARVESTING BILL NO. 4059

DATED 10-4-2007





On scrutiny of the above image, it appeared that the said is cutting bill No. 4059 dated 10-4-2007 issued by the Samiti towards sugarcane harvesting (Sherdi Katai-Bharai) showing the details such as name of labour contractor as Shri Parmar Merubhai Karshanbhai, ledger page No., period of harvesting, name of the member and his village name, numbers of slips, Quantity of cutting of sugarcane, rate of cutting of sugarcane per ton, amount of cutting charges as Rs.12,000/-.

15.4 Sugarcane harvesting (sherdi katai) payment register-B page No. 101 of the Samiti:

The page No. 101 of sugarcane harvesting (sherdi katai) payment register-B of the Samiti, contains details of labour who had been engaged in cutting of sugarcane, place, quantity of sugarcane in ton, rate, advance amount, net amount payable, bill no., etc. A scanned image of said sugarcane harvesting (sherdi katai) payment register-B page No. 101 is produced herein below:

SCAN IMAGE OF SUGARCANE HARVESTING (SHERDI/KATAI) PAYMENT REGISTER-B PAGE No. 101:



29-4-2006

29-4-2006 B

Sl. No.	Name of the Bill	Particulars	Amount	Date	Remarks
1
2
3
4
5
6
7
8
9

Total

On scrutiny of the above image, it appeared that the said is page showing the details of bills of which payments had been made on 27-4-2006, including Bill No. 4059 as discussed herein above; that on comparison of the details mentioned in the ledger page with the details mentioned in the corresponding bill as discussed in above para, it appeared that the details mentioned in the bill tallies with the detailed mentioned in the ledger page; that as per the bill and ledger page, it appears that the Noticee No. 1, in the guise of the Samiti, had engaged labour for harvesting of sugarcane for the farmers at the place of farmer, to whom they were paying harvesting charges as per the rates fixed/prescribed by them; that the page of sugarcane harvesting (sherdi katai) payment register-B of the Samiti and sugarcane harvesting bill shows and prove beyond any doubt that of the Noticee No.1 in the guise of the Samiti were providing labours to the farmers for harvesting of sugarcane and paying the labour charges to the labours which falls under the category of 'Manpower Recruitment or supply Agency's Service'. Thus, it revealed that the Noticee No. 1 is engaged in providing services of 'Manpower Recruitment and supply Agency's Service' and chargeable to service tax.

16. On scrutiny of the records seized from the office of the Samiti under Panchnama dated 21-4-2011, it also revealed that the Samiti had provided the labours to the farmers who were not their members.

17.1 The statutory definitions of some of the relevant terms related to 'Manpower recruitment or supply Agency', as defined under the provisions of the Finance Act, 1994 are as under:

Section 65(105)(k)



“taxable service” means any service provided or to be provided to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner;

Section 65(68)

“Manpower recruitment or supply agency” means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, any person.

17.2 From the above, it appeared that the Noticee No. 1 was since 2006-07 engaged in providing services to the farmers who are either their members or not which in terms of section 65A of the Act are classifiable as ‘Manpower Recruitment or Supply Agency Service’ as defined under Sub-section 68 of Section 65 of the Act as discussed hereinabove and the Noticee No. 1 has thereby rendered taxable services as defined under Section 65 (105) (k) of the Act without applying for registration under the category of the said service and without payment of service tax leviable thereon under the Act and the rules made thereunder. Therefore, it appeared that as per the provisions of Section 68 of the Act, the Noticee No.1 is the person liable for paying the service tax for the services provided by them.

18.1 Section 67 of the Act provides for the valuation of taxable services for charging service tax, which is reproduced herein below.

67. Valuation of taxable services for charging Service tax. –

(1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall,—

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.



Explanation.—For the purposes of this section,—

(a) *“consideration” includes any amount that is payable for the taxable services provided or to be provided;*

(b) *“money” includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;*

(c) *“gross amount charged” includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called “Suspense account” or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.*

18.2 Thus, Section 67 of the Act provides that where service tax is chargeable on any taxable service with reference to its value, then such value shall be the gross amount charged by the service provider for such service provided or to be provided by him. Further, as per explanation (c) of said Section 67, “gross amount charged” includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called “Suspense account” or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

18.3 It also revealed that the Noticee No. 1 had collected a combined fixed amount by deducting from the payment made by them to the farmers who are either their members or not for providing Services of labour for harvesting of sugarcane and its transportation; that to arrive at the gross amount charged by the Noticee No. 1 for providing ‘Manpower Recruitment or Supply Agency Service’, on which Service Tax is to be recovered, the payment made towards transportation of sugarcane, which is shown in the Profit & Loss Account of the Samiti, is deducted from the combined fixed amount collected by the Noticee No. 1 and paid to the Samiti; that Service Tax at the appropriate rate on the amount of Rs. 23,00,19,776/- being gross amount charged from the farmers by the Noticee No. 1 as described in the Annexure-I to the Notice is liable to be recovered under Section 73 of the Act along with interest under Section 75 of the Act; that the Noticee No. 1 has suppressed the facts that they were engaged in providing services of ‘Manpower Recruitment or Supply Agency Service’ from the department by not mentioning the same in their ST-3 Returns filed from time to time in respect of the services provided by them under the category of ‘Goods Transport Agency’, with an intent to evade payment of Service Tax.

19. It also appeared that the Noticee Nos. 2 to 4 had given their statements which are misleading to the inquiry and wrong; that the Noticee Nos. 2 to 4 reneged from their promises to produce documents and to



provide required information; that the Noticee Nos. 2 to 4 have rendered themselves liable for penalty under Section 77(1) (C) of the Act.

20. From the above, it appeared that the Noticee No.1 have contravened the following provisions of the Act and the Service Tax Rules, 1994 (*hereinafter referred to as the Rules*) framed there under with an intent to evade payment of service tax:

- (i) Section 69 of the Act read with Rule 4 of the Rules in as much as they failed to apply for registration / add 'Manpower Recruitment or Supply Agency Service' as the category of services provided by them in the Service Tax Registration already held by them;
- (ii) Section 68 of the Act read with Rule 6 of the Rules in as much as they failed to pay service tax at the appropriate rate prescribed under Section 66 of the Act from time to time on the taxable value recovered by them from their service recipients for the taxable service provided by them during the period from 1-4-2006 to 31-3-2011;
- (iii) Section 70 of the Act read with Rule 7 of the Rules in as much as they failed to assess the Service Tax payable' on the 'Manpower Recruitment or Supply Agency Service' provided by them as discussed hereinabove and to submit returns in Form ST-3 duly mentioning the details of taxable services under the category 'Manpower Recruitment or Supply Agency Service' provided during the period from 1-4-2006 to 31-3-2011.

21. From the above, it also appeared that the Noticee Nos. 2 to 4 have contravened the provisions of Section 14 of the Central Excise Act, 1944 read with Section 83 of the Act in as much as they failed to furnish true information called by an officer and gave misleading and wrong statements before the investigating officer.

22. Therefore, it appeared that since the Noticee No. 1 have suppressed the facts and contravened various provisions of the Act and the Rules as discussed hereinabove with an intent to evade payment of service tax, extended period as contemplated under proviso to Section 73 (1) of the Act is invocable for recovery of Service Tax not levied and not paid by the Noticee No. 1.

23. From the above, it appeared that for the act of suppression of fact of providing taxable services under the category of 'Manpower Recruitment or Supply Agency Service' and contravention of provisions of the Act and the Rules as discussed hereinabove with an intent to evade payment of service tax, the Noticee No.1 have rendered themselves liable to penalty under Section 78 of the Act; that for the act of not applying for registration under Section 69 of the Act read with Rule 4 of the Rules and for the act of non submission required details of amount received for providing Manpower Recruitment or Supply Agency Service in the prescribed returns under Section 70 of the Act read with Rule 7 of the Rules as discussed hereinabove, the Noticee No. 1 have rendered themselves liable to penalty under Section 77 of the Act.

