



कार्यालय आयुक्त केंद्रीय उत्पाद शुल्क एवं सेवाकर
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
प्लॉट न. ६७-७६ / बी-१ "सिद्धि सदन" बिल्डिंग
PLOT NO. 67-76/B-1, "SIDDHI SADAN" BUILDING,
नारायणभाई उपाध्याय मार्ग, भावनगर - ३६४ - ००१
NARAYAN UPADHYAY MARG, BHAVNAGAR-364 001.

फोन : (0278) 2523627

फैक्स : 0278-2513086

रजिस्टर्ड डाक पावती द्वारा
By Regd. Post A. D.

फाइल नं. - V/15-19/Dem-ST/HQ/2012-13
F. No. - V/15-19/Dem-ST/HQ/2012-13

आदेश की तारीख : 27.02.2014.
Date of Order : 27.02.2014.

जारी करने की तारीख : 03.03.2014.
Date of Issue : 03.03.2014

पारितकर्ता,

श्री नवनीत गोयल.

आयुक्त केंद्रीय उत्पाद शुल्क एवं सेवाकर, भावनगर

Passed by,

SHRI NAVNEET GOEL

Commissioner, Central Excise and Service Tax, Bhavnagar

मूल आदेश नं.: 03/BVR/Commissioner/2014
Order-in-Original No. 03/BVR/Commissioner/2014

11. यह प्रति उस व्यक्ति को, जिसके लिए यह आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है।
12. इस मूल आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित ढंग से कर सकता है :

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



विधि अधिनियम, 1994 की धारा 86 के अंतर्गत अपील निम्न की जा सकती है।

पश्चिम क्षेत्रीय पीठ, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)
ओ20, न्यू मेन्टल अस्पताल कंपाउन्ड, मेघाणीनगर, अहमदाबाद 380016।

- 8। 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 में आदेश प्राप्ति के दिनांक से तीन माह के भीतर की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निर्धारित किए अनुसार शुल्क लगा होना चाहिए। जिस स्थान पर न्यायाधिकरण की न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्रा बैंक के न्यायापीठ के सहायक रजिस्ट्रार के नाम से निर्धारित फीस रेखांकित बैंक ड्राफ्ट के रुप में भेजनी होगी।
- 9। 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 उर्प आयुक्त, 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।
14. 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।
15. व्यौरापूर्ण करने हेतु सीमाशुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 की ओर ध्यान आकर्षित किया जाता है।

BY RPAD

To,
M/s. Vimal Construction,
6, Mahila Society,
Chittal Road,
Amreli – 365 601.

Subject: Show Cause Notice : V/15-19/Dem-ST/HQ/2012-13 dated 20.04.2012



Brief facts of the case :

On the basis of Intelligence that M/s. Vimal Construction, 6, Mahila Society, Chittal Road, Amreli – 365 601 (*hereinafter referred to as 'the Noticee'*) holding Service Tax registration No. AKNPK5825GST001 under the category of 'Commercial and Industrial Construction Service' are providing the taxable services to the Gujarat State Police, Housing Corporation Limited, Gandhinagar (*hereinafter referred to as "GSPHCL"*) and not paying Service Tax properly, inquiry was conducted by issuing summons.

2. The Noticee under their letter dated 16.01.2012 informed that they were registered Service Provider having Service Tax registration No. AKNPK5825GST001 under the category of Construction Services and were paying the Service Tax on the taxable services provided by them. They produced copies of following documents under the said letter-

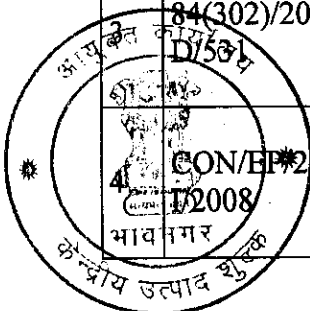
- (i) Income Tax return for the assessment year 2007-08 to 2011-12
- (ii) Work order dated 04-07/12/2008 issued by GSPHCL.
- (iii) TDS certificates dated 30.04.2008, 13.05.2009 and 05.06.2010 regarding tax deducted at source by GSPHCL.
- (iv) ST-3 return for the period from April-September 2011.

3. On scrutiny of the above said documents, it appeared that the Noticee had carried out construction of barracks, cell, compound wall, guard room, sentry box, visitor waiting room, security cabin, toilet, generator room, flag post etc. in the new sub jail at Amreli. From the work order of the GSPHCL, it appeared that the Noticee had carried out non-commercial construction for GSPHCL in respect of the said work order. The ST-3 return submitted by the Noticee showed that they had paid the Service Tax of Rs.2,74,967/- for the first half of the financial year 2011-12.

4. Since the Noticee had not submitted all the documents as desired in the summons and the documents submitted by the Noticee were not sufficient to ascertain the correct picture of the taxable service provided during a period of past five years, a team of officers of Anti-Evasion Section of Headquarter office of Central Excise Commissionerate, Bhavnagar visited the office of the Noticee at Amreli on 24-01-2012. The Noticee informed under his letter dated 24-01-2012 that they had submitted their audited balance sheets and copies of work orders etc. for audit to Audit Cell, Central Excise Commissionerate, Bhavnagar and requested to collect the same from there.

4.1 The documents of the Noticee provided to the Audit Cell were audited financial reports for the year 2005-06 to 2008-09 and Work order/ Letters of intent as listed below:

Sr. No.	Work Order/ Letter of intent Ref. No.	Date	Service Recipient	Nature of Work
1	NTC/GM-RNM/490/2008	13-11-2008	National textile Corporation, Ahmedabad	General Construction
2	TSD/COMML/06-07/1003/90	10-04-2007	IFFCO, Mumbai	Construction of commercial/ office building
	84(302)/2009/EE(C)/BSNL/CD/JN	11-06-2009	BSNL, Junagadh	Construction of Foundation for ground based tower
	CON/EP*2050/Khodiya/AB/T-1/2008	29-07-2008	CONCOR, Ahmedabad	Construction of Administrative Building & Gate Complex



5	GIDC/NTA/VUN/Upgradation Water Supply/WO/2644	04-12-2007	G.I.D.C., Vitthal Udyog Nagar, Amreli	Up gradation of Water Supply System
6	TSD/Comml/06-07/1034	19-06-2007	IFFCO, Ahmedabad	Supply and fixing of Aluminium Composite Panels, Electrical Accessories, Storage System & Furniture.
7	TSD/Comml/06-07/1020/70	29-01-2007	IFFCO, Ahmedabad	Manpower Supply for House Keeping

The Noticee had submitted sample copies of Bills/ RA Bills in respect of services tabulated as above.

4.2 On the basis of Service Tax return filed by the Noticee it appears that they have paid Service Tax on commercial or industrial construction as per following details-

Amount in Rs.				
Financial years	Taxable Amount received.	S.Tax (including E.C. & H&SC) Paid through <u>Cash</u>	S.Tax (including E.C. & H&SC) paid Through <u>CENVAT Credit</u>	Total Service Tax paid
2006-07	73,96,060	4,35,014	4,19,856	8,54,870
2007-08	23,03,184	2,84,349	0	2,84,349
2008-09	55,47,310	6,66,087	4,367	6,70,454
2009-10	26,59,656	2,44,770	8,712	2,53,482
TOTAL	1,79,06,210	16,30,220	4,32,935	20,63,155

4.3 On going through the records produced by the Noticee to the Audit Cell, it appeared that the Noticee had submitted only those documents which in their opinion pertained to the taxable services i.e. services on which they were paying Service Tax. The scrutiny showed that the quantum of gross turnover of the Noticee as shown in their Audit Reports was much more than what they had received from the services as listed in table in para 4.1. Therefore, it appeared that the Noticee had not submitted the documents related to services provided by them other than those listed in table in para 4.1. Further, the documents submitted by the Noticee to the Audit Cell were limited till March-2010. Therefore to obtain the remaining documents and to record the statement of the Proprietor of the Noticee was summoned again on 16.02.2012.

5. A statement of Shri Vimal Parshotambhai Kathiriya, Proprietor of the Noticee was recorded on 28.02.2012 under section 14 of the Central Excise Act, 1944 read Section 83 of the Finance Act, 1994 (*hereinafter referred to as "the Act"*) as reproduced below :-

On being asked I state that we have obtained Service Tax registration No.AKNPK5825GST001 on 02.05.2005 in the category of Commercial and Industrial Construction Service; that the Central Excise officers of Bhavnagar Central Excise office had audited our records in the month of June, 2010 and at that time we had provided Audited Balance Sheet, alongwith Profit & Loss Account for the period from 2005-06 to 2008-09, copy of ST-3 Returns for period 2005-06 to 2009-10 to them and our Audit for the period from April 2005 to March-2010 had been carried out on 10 & 11/06/2010. On being asked I herewith produce today copies of 'Balance Sheet' 2009-10 & 2010-11, copy of 'General work Income' alongwith copies of work



orders mentioned therein for the F.Y. 2006-07 to 2010-11, and copy of 'Computation of Income' for the financial year 2006-07 to 2010-11.

On being asked I state that we are engaged in civil construction of mainly water treatment plant, water sump & ESR's and main trunk water pipeline. We are paying service tax regularly. On being asked I state that during the financial year 2006-07 we have paid the Service Tax of the amount received from M/s. Pratibha Industries Ltd. Mumbai for the work of contract for housekeeping service for M/s IFFCO Ltd. at Ahmedabad. On being asked regarding payment of Service Tax for the work construction of office of IFFCO Ltd., Ahmedabad, I state that we have paid Service Tax on the amount received from them. The remaining income shown in our general work income ledger has been earned for the civil construction work of water sump, ESR's, pipeline networking work of Narmada-Mahi pipe line at various places and the same is not liable for Service Tax.

On being asked I state that during the financial year 2007-08 we have paid the Service Tax of the amount received from M/s. Pratibha Industries Ltd. Mumbai for the work of contract for housekeeping service for M/s IFFCO Ltd. at Ahmedabad. On being asked regarding payment of Service Tax for the work construction of office of IFFCO Ltd Ahmedabad, I state that we have paid Service Tax on the amount received from them. The remaining income shown in our general work income ledger has been earned for the civil construction work of water sump, ESR's, pipeline networking work of Narmada-Mahi pipe line at various places and the same is not liable for Service Tax. On being asked regarding construction work allotted by M/s Gujarat State Police Housing Corporation Ltd. I state that I have constructed sub jail Amreli.

On being asked I state that during the financial year 2008-09 & 2009-10 regarding payment of Service Tax for the work of construction of office of IFFCO Ltd. Mumbai, National Textile Corporation (NTC.), and Container Corporation of India Ltd., I state that we have paid Service Tax on the amount received from them. The remaining income shown in our general work income ledger has been earned for the civil construction work of water sump, ESR's, pipeline networking work of Narmada-Mahi pipe line at various places and the same is not liable for Service Tax.

On being asked I state that during the financial year 2010-11 regarding the work of "S.R. (special repairing) to various non -residential building under R& B Sub-Division No.1 at Amreli, I state that the said work is work of repairing work of various buildings under R&B sub Division No. 1 Amreli and work done for Halol Nagar Sevasadan, I state that the said work is for water pipeline work.

At present I do not have to add anything else. My above statement which has been recorded as per my say and runs in two pages is true and correct. I have given this statement willingly without any threat, pressure or coercion for which I sign on all the pages of this statement of mine."

6.1 As per the depositions made by the proprietor of the it appeared that they had paid Service Tax only on the services of housekeeping provided to M/s IFFCO Ltd., and services of construction provided to M/s IFFCO, Ltd., M/s National Textile Corporation (NTC.), and M/s Container Corporation of India Ltd. and they had not paid any Service Tax on the construction service provided in respect of GSPHCL, pipeline networking work of Narmada-Mahi pipe line and Repairs of various Non-residential Building under R&B Division P.H. Work, Amreli.

6.2 Shri Vimal Parshotambhai Kathiriya, Proprietor of the Noticee under his statement dated 28.02.2012 provided copies of Audited financial report for the year 2009-10 and 2010-11. Accordingly the gross turnovers of the Noticee from the financial year 2006-07 to 2010-11 were as below:

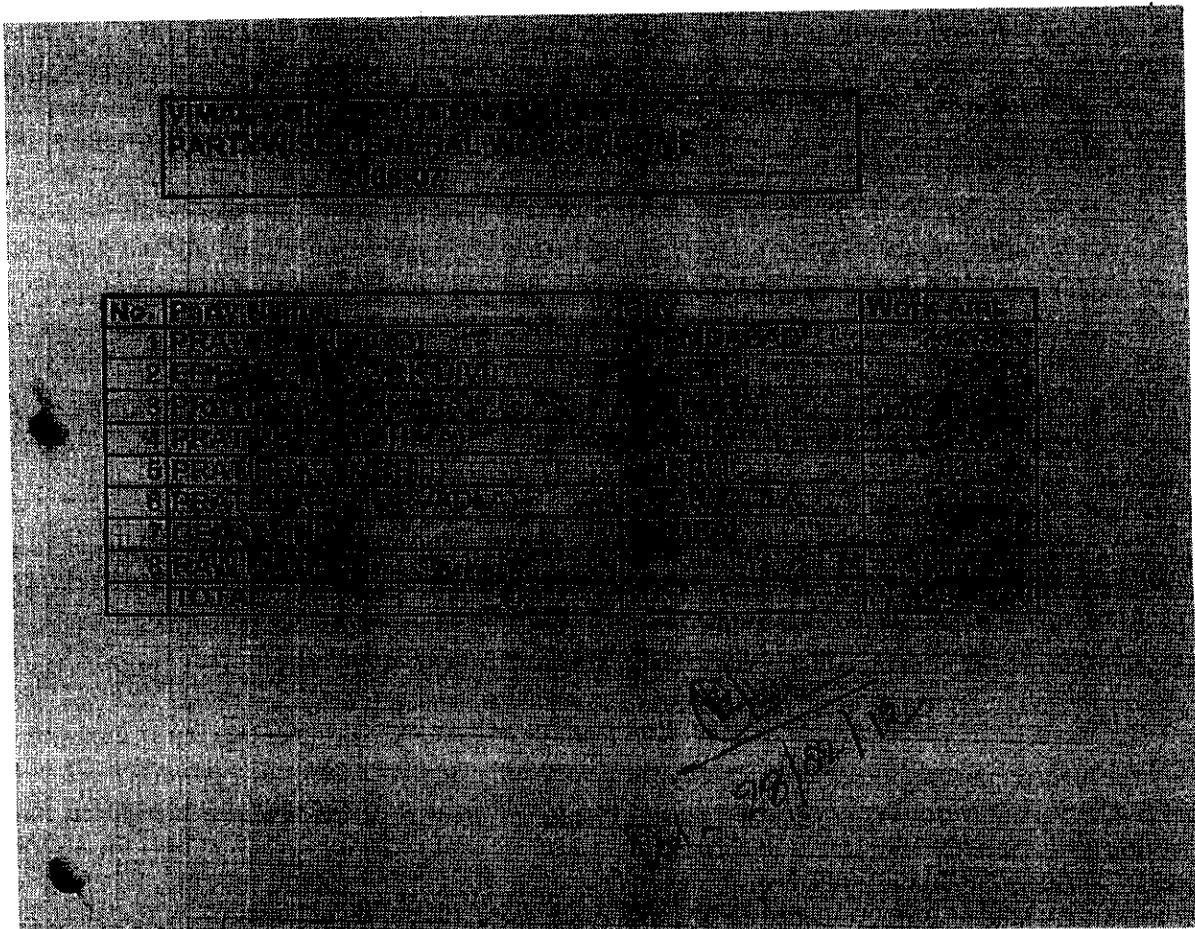


Financial Year	Gross Turnover (Rs.)
2006-07	6,58,84,602
2007-08	12,73,16,256
2008-09	39,25,04,372
2009-10	19,78,36,395
2010-11	16,59,46,169

It was observed that the Noticee had also shown the following income in his profit & loss account for the F. Y. 2010-11:

- (i) I.T. Survey Business disclosure- Rs.25,00,000/-
- (ii) Office Rent Income- Rs.17,50,000/-

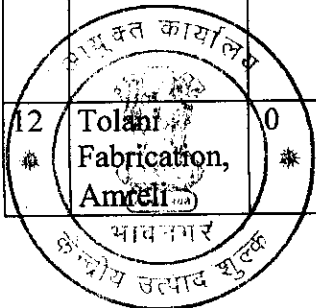
6.3 The Noticee had submitted party-wise general work income for each financial year from 2006-07 to 2010-11. In the said General Work Income, the Noticee had shown the income for the supply of raw material separately i.e. the cost of raw material was not included in the cost of services rendered. For appreciation scanned image of such General Work Income for the financial year is reproduced as below-



The Noticee had also submitted various work orders of the various services provided by them. On the basis of these work orders and the party wise General Work Income submitted by the Noticee, a chart showing nature of service provided by the Noticee and the amount received against each type of service over the past 5 years is prepared and placed below.

Sr. No.	Party	Financial Year wise Amount Received (Rs.)					Nature of Work
		2006-07	2007-08	2008-09	2009-10	2010-11	
1	Pratibha (IFFCO), Ahmedabad *	76,27,653	11,59,760	0	0	0	Construction of office building for IFFCO at Ahmedabad
2	EE P.H. Work	6,60,565	4,55,70,547	22,33,25,330	7,93,841	0	Site filling and encasing work

	Division, Amreli						Ground cutting & levelling work
3	Pratibha (Tankara)	25,63,347	17,73,751	0	24,18,106	0	Construction Sumps, ESR's & Civil Works based on Narmada Mahi Pipeline.
4	Pratibha (Lodhika)	46,86,698	3,91,427	0	29,42,517	0	Construction Sumps, ESR's & Civil Works based on Narmada Mahi Pipeline.
5	Pratibha (Amreli)	8,31,542	6,80,326	0	0	0	Construction Sumps, ESR's & Civil Works based on Narmada Mahi Pipeline.
6	Pratibha (Chorvadla)	72,00,003	36,46,626	0	0	0	Construction Sumps, ESR's & Civil Works based on Narmada Mahi Pipeline.
7	Gemon India (Mumbai)	33,79,942	2,83,05,733	0	0	0	Design, construction & commissioning conventional water treatment Plant at various locations under GWSSB
8	Pratibha (General), Ahmedabad	0	22,73,699	0	0	0	House Keeping and Allied Services
9	IFFCO Ltd., Ahmedabad	0	84,89,968	0	0	0	Civil and Electric Work in Ahmedabad Building
10	Pratibha (Haripur Hadala)	0	29,91,056	0	32,53,829	0	Construction Sumps, ESR's & Civil Works based on Narmada Mahi Pipeline.
11	Pratibha (Morjar Dhari)	0	14,63,639	0	0	0	Desining, providing, constructing & Conventional Water Treatment Plant at various places & various capacity includes Compound Wall, Staff Quarter, internal road & horticultural activity under Mahi Distribution pipeline network.
12	Tolani Fabrication, Amreli	0	2,60,47,964	7,12,33,706	0	0	Construction of RCC Sump/P/F & Pipe line for



							Savarkundla Group under Mahi distribution pipe line
13	GSPHCL	0	45,21,760	1,79,44,249	68,14,821	0	Construction of Compound Wall, infrastructure facility, Guard Room, visitor waiting room, Security cabin, etc for Jail in Amreli.
14	IFFCO Ltd., Ahmedabad	0	0	22,66,582	13,02,523	0	House Keeping and Allied Services
15	Surat Municipal	0	0	3,06,16,916	4,00,30,868	41,51,732	construction of Residents under Jawaharlal Nehru National Urban Renewal Mission in Surat
16	G.I.D.C Vithal Udhyog, Anand	0	0	83,76,598	35,59,671	3,25,245	up-gradation of Water Supply System under CIP at Notified Area, V.U.Nagar
17	IFFCO, Mumbai-Maharashtra	0	0	2,70,50,000	4,77,80,000	1,82,45,130	Construction of Commercial/Office Building at 181, water Field Road, Bandra(West), Mumbai
18	Container Corporation, New Delhi	0	0	86,60,898	2,83,31,102	0	Construction of New Administrative Building & Gate Complex at IC Khodiyarm, Ahmedabad
19	National Textile, Ahmedabad	0	0	30,30,093	3,43,37,076	4,76,43,880	Construction for the proposed Rajnagar Textile Mill at Ahmedabad
20	IFFCO (KALOL)	0	0	0	2,25,54,982	0	Construction of Project Office-cum-Administrative Building (civil & electrical work) for Kalol
21	BSNL Junagadh	0	0	0	37,17,059	3,96,703	Construction of Foundation for Tower
22	Gujarat State Land D.Co., Gandhinagar	0	0	0		5,25,23,085	Construction and Deeping of Ponds
23	Pune Mahanagar					27,73,703	Construction of compound wall

	Palika						around the pond,
24	EE R & B P.H. Work Div., Amreli					1,14,23,141	Repairs to various Non-residential building under R & B Division
25	Chief Office Halol					2,84,63,550	Water Supply works for Halol Nagarpalika
	TOTAL	2,69,49,750	12,73,16,256	39,25,04,372	19,78,36,395	16,59,46,169	

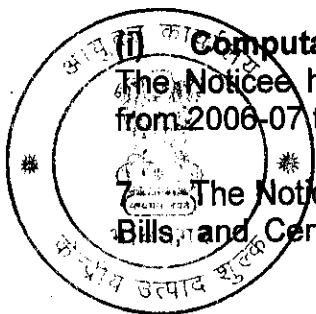
6.4 The services mentioned at Sr. No. 3 to 7, 10 to 13, 22, 23 and 25 in the above shown table appeared to be non-taxable being non-commercial construction whereas rest of the services appeared to be chargeable to Service Tax under various categories as mentioned below-

Sr. No.	Party	Nature of Work	Category of Service
1	Prartibha (IFFCO), Ahmedabad	Construction of office building for IFFCO at Ahmedabad	Commercial or Industrial Construction
2	EE P.H. Work Division, Amreli	Site filling and encasing work, Ground cutting & levelling work	Site formation
3	Pratibha (General), Ahmedabad	House Keeping and Allied Services	Manpower Recruitment or Supply
4	IFFCO Ltd., Ahmedabad	Civil and Electric Work in Ahmedabad Building	Commercial or Industrial Construction
5	IFFCO Ltd., Ahmedabad	House Keeping and Allied Services	Manpower Recruitment or Supply
6	Surat Municipal	construction of Residents under Jawaharlal Nehru National Urban Renewal Mission in Surat	Construction of Complex
7	G.I.D.C Vithal Udhog, Anand	up-gradation of Water Supply System under CIP at Notified Area, V.U.Nagar	Management Maintenance or Repair
8	IFFCO, Mumbai-Maharashtra	Construction of Commercial/Office Building at 181, water Field Road, Bandra(West), Mumbai	Commercial or Industrial Construction
9	Container Corporation of India Ltd., New Delhi	Construction of New Administrative Building & Gate Complex at ICD, Khodiyarm, Ahmedabad	Commercial or Industrial Construction
10	National Textile Corporation, Ahmedabad	Construction for the proposed Rajnagar Textile Mill at Ahmedabad	Commercial or Industrial Construction
11	IFFCO (KALOL)	Construction of Project Office-cum-Administrative Building (civil & electrical work) for Kalol	Commercial or Industrial Construction
12	BSNL Junagadh	Construction of Foundation for Tower	Commercial or Industrial Construction
13	EE R & B P.H. Work Div., Amreli	Repairs to various Non-residential building under R & B Division	Management Maintenance or Repair

(ii) **Computation of Income for the financial years from 2006-07 to 2010-11.**

The Noticee have also submitted computation of total income for the financial years from 2006-07 to 2010-11 which were also in agreement with their Audit Reports.

The Noticee under their letter dated 02.03.2012 provided copies of work order, RA Bills and Certificate of payment issued by the consultant alongwith project details in



respect of service provided by them to Halol Nagar Seva Sadan. The scrutiny of the work order and certificate of payments revealed that the Noticee had carried out the work of laying of pipe line for supply of water which appeared to be non-taxable being non-commercial construction.

8. It also appeared that the Noticee had provided more than one taxable service to various parties and authorities during the financial years 2006-07 to 2010-11. Form the nature and scope of works /services as mentioned in the works orders and Bills/RA Bills in respect of taxable services provided by the Noticee the same could be categorised in the following services:-

- (i) Commercial and Industrial construction service,
- (ii) Manpower recruitment and supply agency service,
- (iii) Management, Maintenance or Repairs Service,
- (iv) Site formation and Clearance, Excavation and Earthmoving and Demolition and
- (v) Construction of Complex service.
- (vi) Renting of Immovable property service

9. The Noticee had submitted the copies of Audit Reports, Work Orders, Letters of intent, General Work Income from the works carried out by them during the financial years 2006-07 to 2010-11, on the basis of those documents/records, a chart showing nature of service provided by the Noticee and the amount received against each type of service over the past 5 years had been prepared and placed under para 5.2(ii) above. The taxable values received by the Noticee during each of the financial year from 2006-07 to 2010-11 were shown as below:-

Sr. No.	Name of the Service provided	Financial Year wise Amount Received (Rs.)				
		2006-07	2007-08	2008-09	2009-2010	2010-11
1	Commercial or Industrial Construction	76,27,653	96,49,728	3,87,40,991	13,67,20,219	6,62,85,713
2	Management Maintenance or Repair	0	0	83,76,598	35,59,671	1,17,48,386
3	Manpower Recruitment or Supply	0	22,73,699	22,66,582	13,02,523	0
4	Construction of Complex	0	0	3,06,16,916	4,00,30,868	NA
5	Site formation and Clearance, Excavation and Earthmoving and Demolition	6,60,565	4,55,70,547	22,33,25,330	7,93,841	0
6	Taxable Service (IT survey disclosure)					25,00,000
7	Renting of immovable property					17,50,000
	Total	82,88,218	5,74,93,974	30,33,26,417	18,24,07,122	8,22,84,099
	Grand total	63,37,99,830/-				

10. The Noticee was directed under various summons issued to them to produce the copies of ST-3 returns filed with the department for the period from 2006-07 to 2010-11, but the Noticee did not submitted that same. However, the copies of ST-3 returns for the financial years from 2006-07 to 2009-10 produced by them to the Audit Cell as discussed in para 4.1(iv) revealed that the Noticee had paid Service Tax only on one Service i.e. Commercial or Industrial Construction. Further they have utilised CENVAT credit to pay the Service Tax as shown in the table in table 4.1(iv). On scrutiny of the ST-3 returns filed by the Noticee, it was observed that:-

- (i) The Noticee had filed returns for the category "commercials and Industrial construction service" only.

(ii) The taxable amounts shown in ST-3 returns did not tally with the amount received by Noticee as shown in general work income sheets and statutory Audit reports of the Noticee.

(iii) The Noticee had not shown the amount received by them towards providing exempted services during the period from 2006-07 to 2010-11 in their ST-3 returns, if any

(iv) The Noticee had not filed any ST-3 returns for other taxable services viz. Manpower recruitment and supply agency services, Management, Maintenance or Repairs Services, Construction of Complex Service, Site formation & Clearance, Excavation & Earthmoving & Demolition Service and Renting of immovable property service provided by them as mentioned in above paras.

(v) The Noticee had not obtained Service Tax Registration for the service category of Manpower recruitment and supply agency services, Management, Maintenance or Repairs Services, Construction of Complex Service, Site formation & Clearance, Excavation & Earthmoving & Demolition Service and Renting of immovable property service.

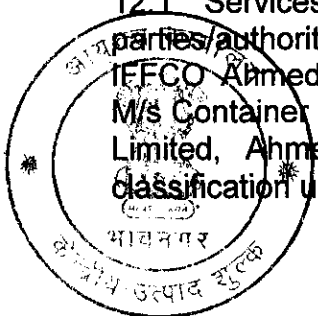
11.1 From the General Work Income for the financial years 2006-07 to 2010-11 submitted by the Noticee, it appeared that the Noticee had received taxable amount of Rs. 63,37,99,830 /- towards providing various taxable services during 2006-07 to 2010-11, and Service tax leviable thereon is Rs.7,28,75,074/- as calculated in Annexure-A1 to the Show Cause notice. The Noticee had shown taxable amount of Rs. 1,79,06,210/- only as received for providing 'Commercial and Industrial Construction Service' and paid service Tax amounting to Rs.20,63,155/- thereon during the period from 2006-07 to 2009-10. Further since the Noticee had utilised the CENVAT credit to pay the Service Tax and also charged their service recipients separately for supply of raw materials, as discussed in the foregoing paras, they were not eligible for the abatement in value of services for calculation of Service Tax. Thus, it appeared that the Noticee had suppressed the amount received by them for providing taxable services and mis-stated the same in their self-assessed half yearly returns ST-3 and evaded payment of Service Tax of Rs.7,08,11,919/- as calculated in Annexure-A to this notice during the period from 2006-07 to 2010-11.

11.2 It also appeared that the Noticee had made agreement with IFFCO Ltd., Ahmedabad and M/s. Pratibha Industries Limited, Mumbai for providing housekeeping service. However, on going through the bills produced by the Noticee during the course of audit, it was found that the same were issued on the basis of manpower supplied to IFFCO for housekeeping. Therefore, the services provided to above said service recipients would merit classification under the category of Manpower Supply services.

11.3 On going through the profit & loss account of the Noticee for the financial year 2010-11, it appeared that the Noticee had earned office rent income of Rs.17,50,000/- and also disclosed their business income of Rs.25,00,000/- during the course of Income Tax Survey. Since the most of the income of the Noticee was from providing taxable service, the income disclosed during the course of survey of income tax department appeared to be earned from providing taxable service. Since, the Noticee had not come forward with all the details before the investigating officer, it was not possible to classify the category of the service which was provided by the Noticee and the amount received for providing such service was suppressed in their statutory records and not shown.

12. Therefore, it appeared that in terms of provisions of Section 65A of the Act, that:-

12.1 Services provided by the Noticee during 2006-07 to 2010-11 to various parties/authorities viz. M/s Pratibha Industries Limited, Mumbai main contractor of M/s IFFCO Ahmedabad, M/s IFFCO Ltd. Ahmedabad, M/s IFFCO Mumbai-Maharashtra, M/s Container Corporation of India Limited, New Delhi, M/s National Textile Corporation Limited, Ahmedabad, M/s IFFCO Kalol and M/s BSNL, Junagadh would merit classification under Sub-section (25b) of Section 65 of the said Act i.e. "Commercial and



Industrial Construction Service" since it gives essential characteristics of construction of commercial and Industrial structures.

12.2 Services provided by the Noticee during 2007-08 to 2009-10 to various parties/authorities viz. M/s Pratibha Industries Limited, Mumbai and M/s IFFCO Ltd., Ahmedabad would merit classification under Sub-section (68) of Section 65 of the said Act i.e. "Manpower Recruitment or Supply Agency's Service" since it gave essential characteristics of providing skilled labours for, housekeeping activities.

12.3 Services provided by the Noticee during 2008-09 to 2010-11 to G.I.D.C Vithal Udhyog, Anand and Executive Engineer (R & B) Div., Amreli, would merit classification under Sub-section (64) of Section 65 of the said Act i.e. "Management, Maintenance or Repairs Service" since it gave essential characteristics of operation and maintenance of water supply systems and special repairing works to non-residential buildings.

12.4 Services provided by the Noticee during 2006-07 to 2009-10 to Executive Engineer, Public Health Works Division, Amreli, would merit classification under Section 65(97a) read with Clause (zzza) of Sub-section (105) of Section 65 of the said Act i.e. "Site formation and Clearance, Excavation and Earthmoving and Demolition" service since it gave essential characteristics of site filling and encasing work, Ground cutting & levelling work.

12.5 Services provided by the Noticee during 2008-09 and 2009-10 to Surat Municipal Corporation, would merit classification under Sub-section (30a) of Section 65 read with section 65(91a) and 65(105)(zzzh) of the said Act i.e. "Construction of Complex" since it gave essential characteristics of Construction of residential complex under Jawaharlal Nehru National Urban Renewal Mission. It is pertinent to mention here that the Noticee had received amount against construction of complex under Jawaharlal Nehru National Urban Renewal Mission in the financial year 2010-11 also but the said service of construction of residential complex under Jawaharlal Nehru National Urban Renewal Mission became exempted from payment of Service Tax with effect from 22/06/2010 vide Notification No. 28/2010-ST dated 22/06/2010. Therefore, the amount received in the year 2010-11 was not taken for calculation of service tax in this notice.

12.6 Services provided by the Noticee during 2010-11 for renting their offices would merit classification under Sub-section (90a) of Section 65 and 65(105)(zzzz) of the said Act i.e. "Renting of immovable property service" since it gave essential characteristics of renting of offices.

12.7 Services provided by the Noticee which were suppressed by them and the amount received for providing such taxable services were not mentioned and shown in their records would also merit classification of taxable service as defined under Section 65 of the Act. The exact classification of that service was not possible as the Noticee had not stated the scope of the work.

13. From the above, it appeared that the Noticee had provided following taxable services during the period from 2006-07 to 2010-11:-

13.1 The Noticee had provided taxable service of "Commercial and Industrial Construction service" to M/s Pratibha Industries Limited, Mumbai main contractor to M/s IFFCO Ahmedabad, M/s IFFCO Ltd. Ahmedabad, M/s IFFCO Mumbai-Maharashtra, M/s Container Corporation of India Limited New Delhi, M/s National Textile Corporation Limited, Ahmedabad, M/s IFFCO Kalol and M/s BSNL Junagadh, which in terms of section 65A of the Act are classifiable as 'Commercial and Industrial Construction service' as defined under Section 65 (105) (zzq) of the Act without appropriate payment of appropriate service tax leviable thereon under the Act and the Rules framed thereunder

13.2 The Noticee had provided taxable services of providing labourers for housekeeping to M/s Pratibha Industries Limited, Mumbai and M/s IFFCO Ltd., Ahmedabad which in terms of section 65A of the Act were classifiable as 'Manpower

Recruitment or Supply Agency's Service' as defined under Section 65 (105) (k) of the Act without payment of service tax leviable thereon under the Act and the Rules framed thereunder.

13.3 The Noticee had provided taxable services of repairing of various non-residential buildings and operation and maintenance of water supply system to Executive Engineer (R & B) Div., Amreli and G.I.D.C Vithal Udhyog, Anand respectively, which in terms of Section 65A of the Act were classifiable as 'Management, Maintenance or Repairs Service' as defined under Section 65 (105) (zzg) of the Act without payment of service tax leviable thereon under the Act and the Rules framed thereunder.

13.4 The Noticee had provided taxable services of excavation, encasing, ground cutting and leveling to Executive Engineer, Public Health Works Division, Amreli, which in terms of Section 65A of the Act are classifiable as 'Site formation and Clearance, Excavation and Earthmoving and Demolition' as defined under Section 65 (105) (zzza) of the Act without payment of service tax leviable thereon under the Act and the Rules framed thereunder.

13.5 The Noticee had provided taxable services of construction of residential complex under Jawaharlal Nehru National Urban Renewal Mission to Surat Municipal Corporation, which in terms of section 65A of the Act were classifiable as 'Construction of Complex' as defined under Section 65(105)(zzzh) of the Act without payment of service tax leviable thereon under the Act and the Rules framed thereunder.

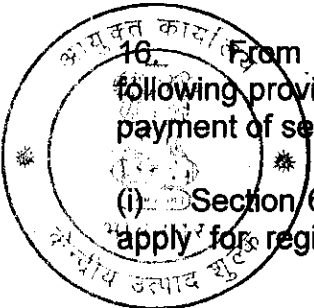
13.6 The Noticee had provided taxable services of renting their offices which in terms of Section 65A of the Act were classifiable as "Renting of immovable property service" as defined under Section 65(105)(zzzz) of the Act and Rules framed thereunder.

14. Therefore, it appeared that as per the provisions of Section 68 of the Act, the Noticee was liable for paying the service tax for the services provided by them. Further, it appeared that as per Section 67 of the Act, service tax on those services were leviable on the gross amount charged by the service provider. Therefore Service Tax at the appropriate rate on the services provided by the Noticee amounting to **Rs.7,08,11,919/-** was calculated & described in the **Annexure-A** to the Show Cause Notice and the same appeared liable to be recovered under Section 73 of the Act along with interest under Section 75 of the Act. It also appeared that the Noticee had suppressed the facts that they were engaged in providing services of "Manpower Recruitment or Supply Agency's Service, Management Maintenance or Repairs Service, Site formation and Clearance, Excavation and Earthmoving and Demolition service, Construction of Complex service and Renting of immovable property service and other taxable services" from the department by not obtaining/adding the categories of taxable services provided by them in their existing Service Tax registration under the category of 'Commercial and Industrial Construction Service' and also suppressing & mis-stating the value of taxable services provided by them in their ST-3 Returns filed from time to time with the department with an intent to evade payment of Service Tax.

15. It also appeared that the Noticee did not file ST-3 Returns for the period from April-2006 to March-2011 as prescribed under Rule 7 of the Service Tax Rules, 1994 ("hereinafter referred to as the Rules") for the services provided by them under the categories of "Manpower Recruitment or Supply Agency's Service, Management Maintenance or Repairs Service, Site formation and Clearance, Excavation and Earthmoving and Demolition service and Construction of Complex service, Renting of immovable property service and other taxable services" and suppressed the facts about having provided the said services with an intent to evade payment of Service Tax.

16. From the above, it also appeared that the Noticee had contravened the following provisions of the Act and the Rules framed thereunder 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's Service,



Management Maintenance or Repairs Service, Site formation and Clearance, Excavation and Earthmoving and Demolition service and Construction of Complex service, Renting of immovable property service and other taxable services" in the Service Tax Registration already held by them for the service category 'Commercial and Industrial Construction Service',

(ii) Section 68 of the Act read with Rule 6 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 value of the taxable services of "Manpower Recruitment or Supply Agency's Service, Management Maintenance or Repairs Service, Site formation and Clearance, Excavation and Earthmoving and Demolition service and Construction of Complex service, Renting of immovable property service and other taxable services" provided by them during the period from 2006-07 to 2010-11,

(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 value of taxable services received for providing various services as discussed hereinabove and to furnish Returns in Form ST-3 duly mentioning the details of taxable services provided by them during the period from April-2006 to March-2011.

17. Therefore, it appeared that the Noticee 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 was invoked for recovery of Service Tax not levied and not paid by the Noticee.

18. From the above, it appeared that for the acts of suppression of facts of providing taxable services as mentioned hereinabove & liability of the Noticee to pay service tax on it and contravening various provisions of the Act and the Rules as discussed hereinabove with an intent to evade payment of service tax, the Noticee had rendered themselves liable to penalty under Section 78 of the Act. Similarly, for the act of non-furnishing of ST-3 Returns prescribed under Section 70 of the Act read with Rule 7 of the Rules as discussed hereinabove, the Noticee had rendered themselves liable to penalty under Section 77 of the Act.

19. From the above, it also appeared that the Noticee had not paid Service Tax payable by them as per the provisions of Section 68 of the Act on the taxable services provided by them. Thus, it appeared that the Noticee was also liable to penalty under Section 76 of the Act for non-payment of Service Tax.

20. Therefore, a show cause notice bearing Number V/15-19/Dem-St/HQ/2012-13 dated 20.4.2012 was issued to the Noticee asking them to show cause to the Commissioner, Central Excise, Bhavnagar as to why: -

(i) the amount of Rs. 25,00,000/- disclosed by the Noticee during the course of Income Tax survey in the financial year 2010-11 should not be considered as the amount received against the taxable service provided by the Noticee;

(ii) the Service Tax total amounting to Rs.7,08,11,919/- (Rupees Seven Crore Eight Lakhs Eleven Thousand Nine Hundred Nineteen only) should not be demanded and recovered under proviso to Section 73(1) of the Finance Act, 1994 along with the interest at the appropriate rate as applicable till the date of payment of service tax under Section 75 of the said Act;

(iii) penalty should not be imposed upon them under Section 76 of the Act for failure to assess service tax under Section 70 of the Act and make the payment of service tax payable within the period and in the manner prescribed under Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994;

(iv) penalty should not be imposed upon them under Section 77 of the Act for failure to file prescribed returns under Section 70 of the Act read with Rule 7 of the said Rules;