



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.

फ़ोन : (0278) 2523627

फैक्स : 0278-2513086

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

फ़ाइल स. - V/15-79/Dem-ST/HQ/2012-13  
F. No. - V/15-79/Dem-ST/HQ/2012-13

आदेश की तारीख : 20.03.2014.  
Date of Order : 20.03.2014.

जारी करने की तारीख : 31.03.2014.  
Date of Issue : 31.03.2014

पारितकर्ता,

श्री नवनील गोयल.

आयुक्त केंद्रीय उत्पाद शुल्क एवं सेवाकर, भावनगर

Passed by,

**SHRI NAVNEET GOEL**

Commissioner, Central Excise and Service Tax, Bhavnagar

मूल आदेश स.: BHV-EXCUS-000-COM-006-13-14 DT 20-03-2014

Order-in-Original No.: BHV-EXCUS-000-COM-006-13-14 DT 20-03-2014

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 :

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)  
ओ20, 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 में आदेश प्राप्त 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 न्यायापीठ 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।
- 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 उर्ष 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।
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।

**BY Regd. Post AD**

To,

M/s. Khushi Construction,  
F-103, Samweep Complex,  
Kalubha Road,  
Bhavnagar – 364 002

Subject: Show Cause Notice : V/15-79/Dem-ST/HQ/2012-13 dated 09.01.2013

## BRIEF FACTS OF THE CASE :

M/s Khushi Construction, F-103, Samweep Complex, Kaluba Road, Bhavnagar-364002 (hereinafter referred to as the Noticee) were engaged in providing service to various service recipients by way of carrying out construction activities as well as repairing of buildings. **The issue involved in the present case is the taxability of services rendered to Government departments and trust under works contract service.** The brief facts are as under :

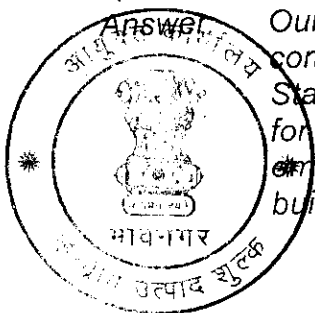
2.1 On the basis of the information gathered that the Noticee had been providing various taxable services and not paying Service Tax on the taxable services provided by them, an inquiry was initiated under summon proceeding against them and they were asked produced records as listed in the summons. Shri Avtar Saxena, Partner of Noticee vide his letters dated 09-12-2011 and 22-11-2012, submitted the following documents :

1. Income Tax returns for the years 2008-09 to 2010-11.
2. Tax Audit report for the period 2008-09 to 2011-12.
3. Copy of Works order dated 25-11-2008 in favour of M/s P. R. Patel from whom the noticee had taken composite work.
4. Two work orders dated 22-02-2008 and 11-06-2008 for the composite work of Shree Somnath Trust, Prabhaspatan.
5. Works contract dated 25-10-2010 of Bhavnagar University.
6. Works order dated 29-08-2009 and 29-12-2009 regarding construction of building works of Nadiad Nagarpalika.
7. Works order dated 11-03-2010 of R & B Division Bhavnagar for Modernization of Central Office building at Bhavnagar.
8. Agreement dated 17-11-2008, 13-03-2008, 17-06-2008, 09-01-2010, 04-12-2010 and 10-01-2011 between M/s P. R. Patel & M/s Khushi Construction.
9. Work order No. 301 dated 22-02-2012 for construction of minor bridge.
10. Work order No. 190 dated 01-02-2012 for construction of minor bridge.
11. Work order dated 24-11-2011 of GSPHC for M/s P. R. Patel Construction of District training center at Police head quarter Bhavnagar.
12. Work order No. 384 dated 15-07-2011 of EE (R & B) Division Bhavnagar for M/s Vijay Construction Co.
13. Agreement date 25-07-2011 between M/s KHushi Construction and M/s Vijay Construction Co.
14. Work order No. 405 dated 20-08-2011 for joining of drainage for irrigation department.
15. Work Order dated 29-12-2009 of Shri Somnath Trust for M/s RP. R. Patel & Co. for construction of VVIP guest house.
16. Ledger copies of for the financial year 2008-09 to 2011-12.
17. Form No. 3(A) of work wise details of work completed between M/s P. R. Patel and M/s Khushi Construction for development of Somnath Temple front area, Construction of dining hall, huts and dormitory at ground floor and atithi griha at 1<sup>st</sup> floor at Prabhas Patan, Somnath and Construction of Police Staff Quarters, Amreli.

2.2. A statement of Shri Avtar Sexana, Partner of M/s Khushi Construction 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 30.11.2012, which was in question-answer form as reproduced below:

Q. No. 1: What kinds of services are provided by your firm?

Our firm M/s Khushi Construction is a Government civil construction company. We provide our construction services to various departments of State Government. During the last four years we have provided our services for construction of various Government buildings such staff quarters for employees of various Government departments, Government office buildings, etc. Apart of this we have also undertaken work of maintenance &



repair of various Government buildings. We do not provide our services to private sector.

Q. No. 2: When did your firm start and at present how many partners are there in your firm?

Answer: Our firm was started in the year 2008 and at present there are two partners in our firm namely Smt. Anju Saxena who is my mother, and myself.

Q. No. 3: Have you taken Service Tax registration for the services provided by your firm? If yes then please produce the certificate.

Answer: No, we have not taken Service Tax registration.

Q. NO. 4: What is the reason for not taking Service Tax registration.

Answer: We provide our services to Government departments only and as per our knowledge no Service Tax is levied on the services provided to Government Departments.

Q. No. 5: Please give yearwise details of the amount received by your firm against the services provided to various receipts from the financial year 2008-09 onwards alongwith type of service provided.

Answer: The yearwise details of the amount received with details of work order and the type of service provided is as per Annexure attached with their statement. Further, I undertake to produce the work orders/contracts of the work undertaken by our firm wherever the same is not available, within three days.

Q. No. 6: In the annexure submitted, it is seen during the financial year 2008-2009, 2009-2010, 2010-11 and 2011-12 that you have received Rs. 3,88,14,720/-, Rs. 7,18,94,092/-, Rs. 3,04,53,700/- and Rs. 4,87,80,056/- respectively from P. R. Patel Works for providing construction services. Have you received these amount from the government directly or from M/s P. R. Patel & Co.

Answer: We have received these amount from M/s P. R. Patel & Co. and not from the government directly.

Q. No. 7: In the annexure submitted, it is seen that during the financial year 2011-12, you have received Rs. 38,62,200/- from Vijay Construction for the service provided for extension of rooms for staff quarters at R & B Deptt., Bhavnagar. Have you received these amounts from the government directly or from M/s Vijay Construction Co.

Answer: We have received these amount from M/s Vijay Construction Co. and not from the government directly.

Q. No. 8: Have you utilized your own material for construction of Civil Structure as stated by you above?

Answer: Yes we have utilized our own construction material for all the construction work undertaken by us and we have paid VAT on the said material.

Q. No. 7: Apart of above, have your firm provided construction or other services to any other recipient also? If yes then please provide the details.

Answer: No.

Q. No. 8: Apart of above, have your firm provided any other service to the above said recipients which have not been included in the Annexure attached with this statement? If yes then please provide details.

Answer: No.

Q. No. 10: Apart of above do you want to add something else in the matter?

Answer: I would like to add that as our firm provides construction service to Government Sectors only for the welfare and in the interest of public so we should be exempted from the Service Tax.

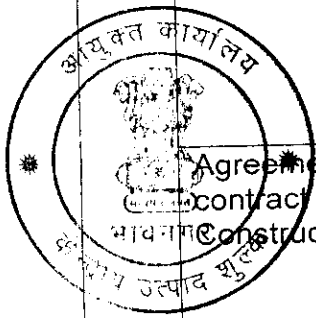


3.1 On scrutiny of the Tax Audit reports and Contract Work Income for the Financial year 2011-2012, it was observed that the said noticee had received total contract income as under :

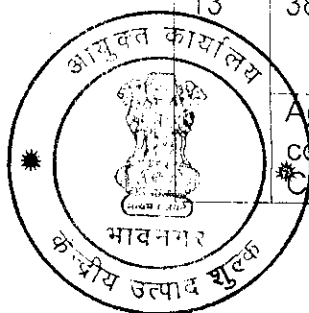
Sr. No.	Service Recipient	2008-09	2009-10	2010-11	2011-12
1	GSPHL	19,87,415/-	48,91,683/-	0	0
2	M/s P. R. Patel Co. Works	3,88,14,720/-	7,18,94,092/-	3,04,53,700/-	4,87,80,056/-
3	EE R & B Div-Bhavnagar	0	23,45,452/-	1,25,61,619/-	1,09,57,987/-
4	EE R & B Divn. Junagadh Work	0	0	0	16,35,003/-
5	EE R & B Dham 21-22-26-27	0	0	0	31,43,739/-
6	Nagarpalika - Nadiad Work	0	79,20,256/-	1,03,55,847/-	0
7	Vijay Construction Co.	0	0	0	38,62,200/-
8	Private Work	0	0	0	15,12,000/-
	<b>TOTAL</b>	<b>4,08,02,135/-</b>	<b>8,70,51,483/-</b>	<b>53,71,166/-</b>	<b>6,98,90,985/-</b>

3.2. Further, the scrutiny of the work orders submitted by the said noticee, revealed that the noticee had carried out the following works under different work orders:

Sr. No.	Work Order No. & Date	Work Order issued by	Description of work undertaken
1	Gupoha/teck/tender/md/3574/1399/2008 dated 25-11-2008	Gujarat Police Housing Corporation for P. R. Patel & Co.	Construction for staff quarters for Amerli police headquarter
	Agreement dated 17-11-2008 (subcontract of the above work to M/s Khushi Construction by P. R. Patel & Co.)	Agreement with P. R. Patel & Co. dated 17-11-2008	Construction of staff quarters for Amreli police headquarter
2	Gupoha/teck/tender/md/3609/1391/2008 dated 25-11-2008	Gujarat Police Housing Corporation for P. R. Patel & Co.	Construction of police station at Bhavnagar for B Division.
3.	ST/CIVIL/APPROACH/978/07-08 dated 22-02-2008	Shree Somnath Trust for P. R. Patel & Co.	Development of Somnath Temple Front Area.
	Agreement dated 13-03-2008 (sub-contract of above work to Khushi Construction by P. R. Patel & Co.)	Agreement with M/s P. R. Patel & Co. dated 13-11-2008	Development of Somnath Temple Front area
4	ST/CIVIL/NEW GHCMQ/234/08-09 dated 11-06-2008	Shree Somnath Trust for P. R. Patel & Co.	Construction of Dining hall, Huts and Dormitory at ground floor and Atithigrah at first floor.
	Agreement dated 17-06-2008 (sub-contract of above work to Khushi Construction by P. R. Patel & Co.)	Agreement with M/s P. R. Patel & Co. dated 17-06-2008	Construction of Dining hall, Huts and Dormitory at ground floor and Atithigrah at first



5	2380 dated 29-12-2009	Nadiad Municipality	floor. Construction of Staff quarters for fire brigade
6	Dated 29-08-2009	Nadiad Municipality	Construction of first & Second floor above the ground floor for office.
7	SST/CIVIL/MAHESHWARISAMAJ/WO/905 dated 29-12-2009	Shree Somnath Trust for M/s P. R. Patel	Construction of guest house for VVIP at Patan Somnath
	Agreement dated 09-01-2010 (sub-contract of the above work to Khushi Construction by P. R. Patel & Co.	Agreement with P. R. Patel & Co. dated 09-01-2010	Construction of guest house for VVIP at Patan Somnath
8	694 dated 11-03-2010	Executive Engineer, Bhavnagar (R & B) Division, Bhavnagar	Modernisation of Central Office building at Bhavnagar
9	Estate/11 <sup>th</sup> Plan/Auditorium/478/3449/10 dated 25-10-2010	Bhavnagar University for M/s P. R. Patel & Co.	Construction of Auditorium Building
	Agreement dated 04-12-2010 (sub-contract of the above work to Khushi Construction by P. R. Patel & Co.	Agreement with P. R. Patel & Co. dated 04-12-2010	Construction of Auditorium Building
10	Gupoha/tech/tender/md/4439/668/2011 dated 24-11-2011-2008	Gujarat Police Housing Corporation for P. R. Patel & Co. for P. R. Patel & Co.	Construction of District training centre at Police head quarter, Bhavnagar
	Agreement dated 10-01-2011 (subcontract of the above work to M/s Khushi Construction by P. R. Patel & Co.)	Agreement with P. R. Patel & Co. dated 10-01-2011	Construction of District training centre at Police head quarter, Bhavnagar
11	190 DATED 01-02-2012	(R & B) Division, Junagadh	Construction of minor bridge in place of existing damaged bridge on Sutrapada Damlej road between km 11 to 12 and 12 to 13
12	190 DATED 01-02-2012	(R & B) Division, Junagadh	Construction of minor bridge in place of existing damaged bridge on Sutrapada Damlej road between km 21 to 22 and 26 to 27
13	384 dated 15-07-2011	R & B Division, Bhavnagar for Vijay Construction	Extension of room for staff quarters
	Agreement dated 25-07-2011 (sub-contract of the above work to Khushi Construction by Vijay Construction	Agreement with Vijay Construction dated 25-07-2011	Extension of room for staff quarters



14.	Work order No. 405 dated 20-08-2011	Irrigation department, Sihor	Joining of drainage for irrigation department
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3.3. The scrutiny of Work orders submitted by the Noticee further revealed that the Noticee had provided construction service to the following service recipients :

- 1) Gujarat State Police Housing Corporation Ltd., Gandhinagar
- 2) Shree Somnath Trust.
- 3) Chief Officer, Nagarpalika Nadiad.
- 4) Executive Engineer, (Road & Building)
- 5) Bhavnagar University.
- 6) Irrigation Department, Sihor.

3.4. Further, from the details mentioned in the table given above, it was found that they had undertaken construction work for various governmental and non-governmental agencies, either directly or as a sub-contract from the main contractor, to whom the work was allotted directly.

4.1 From the details of the various works carried out by the said noticee, it was found that the works carried out were classifiable under the following services :

**A) Management, Maintenance or Repair Service for Goods, Equipments or Properties :**

4.1.2. As per the provisions of statutory definition and taxability of the Management, Maintenance and Repair services, discussed in the show cause notice, it appeared that the below mentioned work carried out by the noticee was covered within the ambit of "Management, Maintenance or Repair" as it gave essential character of repairing of immovable properties as provided under Section 65 (64) of the Act, read with Section 65 (91a) of the Act :

**(i) Modernization of Central office building at Bhavnagar for Executive Engineer (R & B) Division, Bhavnagar.**

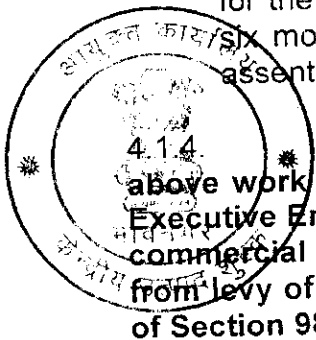
4.1.3 However, the Government of India vide Section 98 of Finance Act, 2012 granted special exemption from levy of Service Tax in relation to "Management, Maintenance or Repair" service of non commercial government buildings. The provision of Section 98 of the Finance Act, 2012 is reproduced below for the sake of brevity.

**98 (1)** Notwithstanding anything contained in section 66, no Service Tax shall be levied or collected in respect of management, maintenance or repair of non-commercial Government buildings, during the period on and from the 16<sup>th</sup> day of June'2005 till the date on which section 66B comes into force.

(2) Refund shall be made of all such Service Tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in this chapter, an application for the claim of refund of Service Tax shall be made within the period of six months from the date on which the Finance Bill, 2012, receives the assent of the President."

4.1.4. In view of the provisions of Section 98 of the Finance Act, 2012, the above work regarding Modernization of Central Office building at Bhavnagar for Executive Engineer (R & B) Division, Bhavnagar appeared to be in relation to non-commercial government building of Government of Gujarat, which was exempted from levy of Service tax by virtue of the special exemption granted by provisions of Section 98 of the Finance Act, 2012.



## B) Works Contract Service

4.2.1 Service tax on "Works Contract" service was introduced from 01-06-2007 vide Notifn. No. 23/2007-ST dated 22-05-2007. The definition of the said service under Section 65(105)(zzzza) of the Finance Act, 1994 as amended have been discussed in the show cause notice and the detailed scrutiny of the Contracts/Work orders mentioned at Sr. No. 2, 3, 6, 9 & 14 in the table given at Para 3.2 above, had been for construction of new Civil structures or a part thereof of Government building and for Somnath Trust, so as such they were not for the purpose of commerce and industry. Further, work order mentioned at Sr. No. 11 & 12 of the table to para 3.2. were for construction of bridge. So, the service provided in the said contracts /works are not covered under the ambit of "Works Contract".

4.2.2 However, the Contracts/Work orders mentioned at Sr. No. 1, 5 and 13 of the table to the Para 3.2. are contracts for Construction of Staff Quarters for Gujarat State Police Housing Corporation Ltd., Gandhinagar (GSPHCL), Staff quarters for Fire brigade at Nadiad and extension of rooms for staff quarters for R & B department, Bhavnagar, which falls within the ambit of "Works Contract" and as it gave essential character of Construction of Residential Complex as provided under Section 65 (105) (zzzza) of the Act. Further, the contracts/work order mentioned in Sr. No. 4 and Sr. No. 7 of the table at para 3.2. above were for the construction of dining hall, dormitory and VVIP guest house at Somnath temple complex, which falls within the ambit of Works Contract, as it appeared to be construction of new building or civil structure for the purposes of commerce. Therefore, the services provided by the noticee in the above work orders appeared to be covered under Taxable service of "Works Contract" as defined under Section 65 (105)(zzzza) of the Finance Act, 1994 and the Noticee were required to pay Service Tax on the value of taxable services realized by them, but the noticee had not paid any Service Tax on it under Works Contract service.

4.2.3 In view of the above, It appeared that the noticee had provided Works Contract service as detailed below:

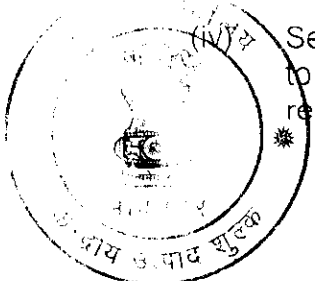
Sl.No.	Type of service	Taxable value	Service tax demanded	Annexure to notice
1.	Works Contract service	18,28,71,479/-	75,34,304/-	Annexure-A

5. 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 these services was leviable on the gross amount charged by the service provider. Therefore, it appeared that Service Tax at the appropriate rate on the services provided by the Noticee, amounting to **Rs. 75,34,304/-** as calculated & described in the **ANNEXURE-A** to this Notice was liable to be recovered under Section 73 of the Act along with interest under Section 75 of the Act.

6. From the above, it appeared that the Noticee had contravened the following provisions of the Finance Act, 1994 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.
- (ii) Rule 4 A of the Service Tax Rules, 1994 in as much as they have failed to show the Service Tax payable on the aforesaid services in their invoices.
- (iii) Section 67 of the Finance Act, 1994 in as much as they have suppressed the value of various taxable Services shown here-in-above, rendered by them;

Section 68 of the Act read with Rule 6 of the Rules in as much as they failed to pay the appropriate Service Tax on the gross value of taxable services rendered by them;





- (v) 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.

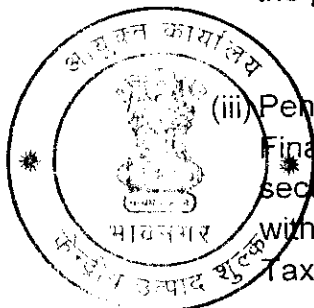
7. Therefore, it appeared that since the Noticee had suppressed the facts and contravened various provisions of the Act and the Rules as discussed hereinabove with an intent to evade payment of Service Tax, extended period as contemplated under proviso to Section 73 (1) of the Act is invocable for recovery of Service Tax not levied and not paid by the Noticee.

8. 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 failure to obtain Service Tax Registration in accordance with the provisions of Section 69 of the Act read with Rule 4 of the Rules and for 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 appeared to have rendered themselves liable to penalty under Section 77 of the Act. It also appeared that the Noticee admitted the facts of non-payment of 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.

9. Therefore, the Noticee was called upon to show cause to the Commissioner, Central Excise and Service Tax, Bhavnagar as to why: -

- (i) The Service Tax total amounting to **Rs. 75,34,304/- (Rupees Seventy Five Lakhs Thirty Four Thousand Three Hundred Four Only) including Service Tax of Rs. 73,14,859/- plus Education Cess of Rs. 1,46,297/- plus S & HE of Rs. 73,148/-** should not be demanded and recovered under proviso to Section 73(1) of the Finance Act, 1994 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 same should not be charged and recovered under Section 75 of the Act.
- (i) 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.
- (ii) Penalty should not be imposed upon them under Section 77 (1)(a) of the Finance Act, 1994, as they failed to obtain Service Tax registration in terms of the provisions of Rule 4 of the Service Tax Rules, 1994.

- (iii) Penalty should not be imposed upon the noticee under section 77 of the Finance Act, 1994, as they failed to file the prescribed ST-3 returns under section 70 of the Act in respect of above said services rendered by them within the stipulated time in terms of the provisions of Rule 7 of the Service Tax Rules, 1994;



- (v) Penalty should not be imposed upon them under Section 78 of the Act for for the Service Tax not levied and not paid by them by suppressing the facts with intent to evade payment of Service Tax and for the contravention of the provisions of the Act and the Rules made thereunder.

## DEFENCE REPLY

10. The noticee submitted their reply by letter dated 5<sup>th</sup> March 2014. The detailed submissions with reference to each service were as under:

### WORKS CONTRACT SERVICE

11.1 Noticee submitted that they had provided construction of Residential Staff Quarters for GSPHCL as well as for staff members of Nagar Palika, Nadiad and R & B Division, Bhavnagar, and construction of dining hall, dormitory and VVIP guest house at Somnath for Somnath Trust.

11.2 The noticee submitted that out of all the contracts and description of work listed in Annexure-A to the Show cause notice, in the following contracts they were engaged in construction of residential quarters at various places for Gujarat State Police Housing Corporation Ltd., Nagar palika, Nadiad and R & B Department, Bhavnagar.

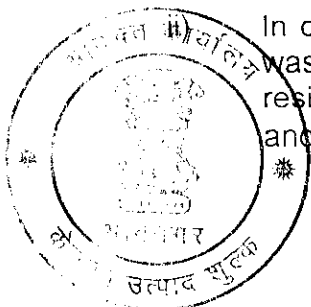
Sr. No.	Nature of Service	Name of the Service recipient	Whether Service provided as Principal contractor or as a subcontractor.
1	Construction of Police Staff Quarters, Amreli	Gujarat State Police Housing Corporation	As a Principal contractor in 01 case and sub-contractor in 02 cases in agreement with M/s P. R. Patel, the main contractor.
2	Extension of Room for Staff Quarters of R&B Division, Bhavnagar	R. & B Department, Bhavnagar	As a sub-contractor in agreement with M/s Vijay Construction Co.
3	Staff Quarters for fire brigade, Nadiad and construction of office of Nagarpalika, Nadiad	Nagar palika, Nadiad	As a Principal Contractor.

11.3 In this regard, the noticee has mentioned the entire definition of Works Contract Service and Construction of Complex service and in reference to the Sr. No. (iii) of the said definition, they have submitted that as per the clause (iii) of the definition of residential complex, if a residential unit was intended for **PERSONAL USE**, then it should be excluded from the service tax chargeability. Further, the term "personal use" was defined in explanation to definition of residential complex as permitting the complex for use as residence by another person on rent or without consideration.

11.4 The noticee further submitted that,

- i) The land was provided by the police department for the construction and then residential quarters are used for residential use of officers of police department,

In case of construction of staff quarters for Nagar Palika, Nadiad also, the land was provided by the Nagar palika for the construction to noticee and then residential quarters are used for residential use of Staff Members of Fire Brigade



- iii) Even in the case of Extension of room for Staff quarters of R & B Department, Bhavnagar, the land was provided by the R & B Department and then residential quarters were used for residential use of Staff Members.

11.5.1. Further, they have cited that in a recent and similar case of **S. Kadirvel vs Commissioner of C. Ex. & S.T. Tiruchirapalli, CESTAT-Chennai [2013 (30) S.T.R. 414 (Tri. - Chennai)] [Exhibit 1]** has allowed Stay Application, wherein it was held that,

*"Prima facie house constructed by the Tamil Nadu Police Housing Corporation Ltd. are owned by the State Government and were allotted to police personnel by the Government - Police Housing Corporation appears to have worked as an extended arm of the Government - Houses constructed should be considered to be in the personal use of the State Government - Sections 65(30a), 65 (91a) and 65(105)(zzzh) of Finance Act, 1994 - Section 35F of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994."*

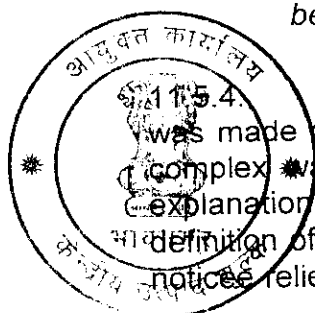
11.5.2. They have further submitted that, quoting the above grant of stay by Chennai Tribunal, in similar cases of **R. N. Dobariya** and **D. H. Patel**, Ahmedabad Tribunal has granted stay (**Order No. M/13462 & 13463/WZB/AHD/2013**) [Exhibit 2] wherein it was held that,

*"We find that there is no dispute to the fact that building constructed by the appellants herein are allotted to the police personnel and the personnel working in jail department of the Government of Gujarat, the only point which requires to be considered in this case is whether the appellant herein has rendered services to a personnel who has not occupied the said dwellings. We find that an identical issue in respect of Tamil Nadu Police Housing Corporation Ltd. came up before the Tribunal in the matter of S. Kadirvel."*

*It can be seen that the issue involved in the case of S. Kadirvel vs. CCE, Tiruchirapalli as was before the South Zonal Bench, Chennai is the same, hence, respectively following view already taken by the bench, we hold that the appellant has made out a case for the complete waiver of pre-deposit of the amounts involved. Application for the waiver of pre-deposit of the amounts involved is allowed and recovery thereof stayed till the disposal of appeals."*

11.5.3. Further, in the case of **Sima Engg Constructions Vs. CCE Trichy -2010-TIOL-1734-CESTAT-MAD** [Exhibit 3], same stand has been taken by the Hon'ble Chennai Tribunal, the relevant extract of the case was as under:

*"Nevertheless, considering the fact that the impugned quarters were constructed for the Tamil Nadu Police personnel under a contract from the TNPHCL, the plea taken for exemption of such quarters from the purview of the service tax on the basis of the definition of "residential complex" and explanation relating to "personal use" deserves to be considered. Hence, after waiving the requirement of pre-deposit, we set aside the impugned orders and remand all the matters to the original authority for fresh decision. The appellants shall be given adequate opportunity of hearing before passing fresh orders."*



11.5.4. They have further submitted that in all the three cases the construction was made directly by engaging another person (noticee) and the construction of such complex was intended for personal use as residence by such person as per the explanation - (a). Therefore such constructions were covered by the exclusion of definition of "residential complex" and hence, service tax was not applicable at all. The noticee relied upon the case of **M/s. Khurana Engineering Ltd - 2011 (21) S.T.R. 115**

(Tri. Ahmd.), Sima Engg Constructions -2010-TIOL-1734-CESTAT-MAD, M/s Senthil Constructions, Southupakkam -2010-PST-187-(Commr. Appl.)-MAD in support of their contention.

11.6 The noticee further submitted that the view on non taxability on residential complex constructed for personal use was not restricted for the Government or Semi-Government organizations. As per the definition of "personal use", even if the service receiver was a private company or industry who constructs staff quarters for residential purpose of its staff would be covered under the non-taxability clause of the definition of "Residential Complex". The noticee relied upon the case **M/s. Nitesh Estates Ltd-2012- TIOL-283(CES. BANG)** in this regard.

12.1. As regards, the services provided by them for construction of 'Dining Hall, Huts, Dormitory, at the ground floor of Atithi guruh in Somnath Temple and Construction of Guest house of VVIP, at Patan, Somnath as mentioned below, the noticee submitted that as per clause (b) to Explanation to section 65 (105) (zzzza), service tax would be chargeable only if it was for construction of new building or civil structure **PRIMARILY FOR THE PURPOSES OF COMMERCE OR INDUSTRY**. The noticee argued that that the primary intention of above said buildings was not for the Commerce or Industry. Since the applicability of service tax under this category depends on the nature of use of the constructed building or civil structure, the service tax would not be charged in the instant case.

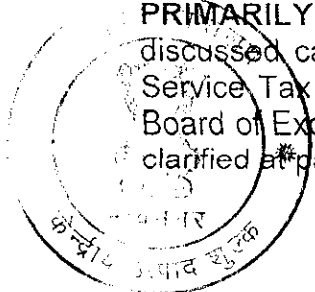
Sr. No.	Nature of Service	Name of the Service recipient	Whether Service provided as Principal contractor or as a subcontractor.
1	Construction of dining hall, huts, dormitory and aththigrah for Shree Somnath Trust	Somnath Trust.	As a Sub-contractor in agreement with M/s P. R. Patel main contractor.
2	Construction of VVIP Guest House for Somnath Trust	Somnath Trust.	As a Sub-contractor in agreement with M/s P. R. Patel main contractor

12.2. In the present case, the noticee was engaged in the business of construction of dining hall, huts, dormitory, aththigrah (Guest House) and VVIP Guest House for Shree Somnath Trust. The noticee has alleged that the said construction was for the purpose of 'commerce'. Specially explaining 'Commerce', the noticee has submitted that

1. The universally accepted meaning of 'commerce' is:  
*"a system of voluntary exchange of products and services to the market with motive of profit"*

2. The preliminary activity of Somnath Trust was to maintain Aadi Jyotirling Shree Somnath Mahadev temple. As the Somnath temple was one amongst the twelve jyotirling, thousands of pilgrims visit Somanth temple every day. Thus, in order to accommodate the pilgrims visiting Somnath temple, the Somnath Trust have constructed dining hall, huts, dormitory, aththigrah and VVIP Guest House for the pilgrims. Thus the main motive of Trust was not to earn profit, neither of industrial nor of commercial. Hence, it can be said the construction activity carried out by the noticee for the Somnath Trust was not for the purpose of commerce or industry.

12.3. The noticee submitted that in the definition itself it provided that service tax would be chargeable only if it was for construction of new building or civil structure **PRIMARILY FOR THE PURPOSES OF COMMERCE OR INDUSTRY**. In all the above discussed cases, primary intention was not for Commerce or Industry. Therefore, the Service Tax would not attract on all the contracts. The noticee submitted that Central Board of Excise and Customs (CBEC) vide circular no. 79/9/2004-ST dated 17-09-2004 clarified at para 13.2 about the non-taxability of buildings or civil structures used for non-



commercial or Government purpose. Therefore the noticee submitted that any construction of Government building used for residential purposes or of Government office purposes, or for providing civic amenities, educational facilities or infrastructural facilities were **non-commercial in nature** and hence service tax would not be levied.

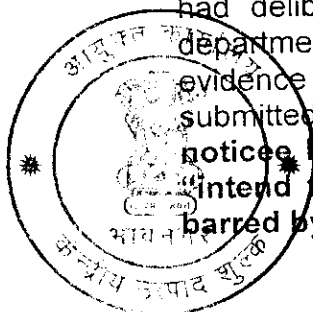
12.4 Further, the Supreme Court in case of **Ranadey Micronutrients v. Collector of Central Excise 2002-TIOL-184-SC-CX** has held that-

**"Such circulars are not advisory in character but binding on the Central Excise Officers - Department cannot be allowed to plead that such circular was not valid. One should have thought that an officer of the Ministry of Finance would have greater respect for circulars such as these issued by the Board. It does not lie in the mouth of the Revenue to repudiate a circular issued by the Board on the basis that it is inconsistent with a statutory provision. Consistency and discipline are of far greater importance than the winning or losing of court proceedings."**

13.1 The noticee submitted that when no tax was payable, the question of penalty did not arise and interest could not be demanded. Further, according to Section 80, no penalty under Section 76, 77 or 78 could be imposed if the noticee proved that there was a reasonable cause for default or failure under these sections. The noticee relied upon the decision of Karnataka High Court in case of **Motor World and other - 2012-TIOL-418-HC-KAR-ST** in this regard. The noticee submitted that Section 80 provided that notwithstanding anything contained in sections 76, 77, 78 or 79 no penalty should be imposed for any failure if it proved that there was reasonable cause for said failure as held in the case of **On Dot Couriers & Cargo Ltd. (2006) 6 STJ 337 (CESTAT, New Delhi)**

13.2 The noticee submitted that though reasonable cause had not been defined, it had been interpreted by various courts. In **Municipal Corporation of Delhi v. Jagannath Ashok Kumar, (1987) AIR 2316 (Supreme Court)**, Apex Court observed that the reasons given by the Arbitrator were cogent and based on materials on record. In **Commissioner of Wealth Tax v. Jagdish Prasad Choudhary, (1996) AIR 58 (Patna)**, it was held that the context of penalty provision, the word, 'reasonable cause' would mean a cause which was beyond the control of the noticee. 'Reasonable cause' obviously means a cause which prevents a reasonable man of an ordinary prudence acting under normal circumstances, **without negligence or inaction or want of bona fide** from furnishing the return in time. In **Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) Pvt. Ltd. (1989) AIR 973 (Supreme Court)**, it was held that it was difficult to give an exact definition of the word, 'reasonable'. In **Ram Krishna Travels Pvt. Ltd. v. CCE, Vadodara, [2007 -TMI - 977 - CESTAT, MUMBAI]** it was held that bonafide belief was a reasonable cause under section 80 and as such, penalty was set aside following **ETA Engineering Ltd. v. CCE [2005 -TMI - 165 - CESTAT, NEW DELHI]**.

13.3 The noticee submitted that penalty under section 78 could be imposed only if there was a fraud; collusion; willful mis-statement; suppression of facts or contravention of any provisions with intend to evade payment of service tax and it could be imposed by invoking larger period or extended period for issue of show-cause notice. Only in unusual circumstances, demands for extended period were to be invoked, with a very serious allegation of suppression of facts and intention to evade payment of service tax. Such serious allegations of suppression could be invoked only if the noticee had deliberately done an action with an intention to hide certain facts from the department and department had confirmed it beyond doubt with aid of corroborative evidence that there was a deliberate act on part of noticee to evade tax. The noticee submitted that **there was no finding in impugned SCN which could allege that noticee had intended to evade payment of tax. In the absence of any finding of "intend to evade" demand could not be sustained and the demand raised was barred by limitation.**



13.4 The noticee submitted that it was on record that the noticee was under bonafide belief regarding non taxability of the services, therefore the onus was on department to prove it otherwise and mere reference of Section 78 could not prove that the noticee had an intention to evade the tax and had willfully suppressed the facts.

14. Personal hearing was held on 12.03.2014 when CA Rashmin Vaja appeared on behalf of the noticee. He reiterated the written submissions.

### DISCUSSION AND FINDINGS

15. I have carefully gone through the facts of the case on record and various submissions of the noticee. On recapitulating the issue I find that demand has been made on the Works Contract Service and details of the income received and Service Tax demanded are tabulated below:

Sl. No.	Type of service	Taxable value	Service tax demanded
1.	Works Contract	182871479.00	7534305.00

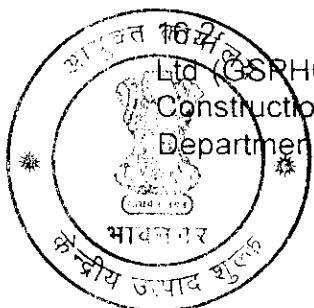
In the following paragraphs I am discussing the service and its taxability on its merits based on the documents made available on record.

### Works Contract:

16.1 The service provided as mentioned at paragraph 5 of the notice are as under:

Sr. No.	Name of the Service Recipient	YEAR				Type of Service provided
		2008-09	2009-10	2010-11	2011-12	
1.	Gujarat State Police Housing Corporation Ltd., through M/s P. R. Patel & Co., as principal contractor.	9542519	41418802	7322796	00	Construction of Staff Quarters
2.	Nagarpalika, Nadiad	00	7920256	10355847	00	Construction of Staff Quarters
3.	R & B Dept., Bhavnagar through M/s Vijay Construction Co., as principal contractor.	00	00	00	3862200	Extension of Staff quarters.
4.	Somnath Trust	14439642	28636764	8106078	36210260	Construction of dining hall, butts, dormitory and VVIP guest house

The services at Sl. No. 1 are for Gujarat State Police Housing Corporation Ltd (GSRHCL) for construction of police quarters. The services at Sl. No. 2 & 3 are for Construction and extension of staff quarters for Nagarpalika, Nadiad and R & B Department, Bhavnagar. As per the definition of 'taxable Service' under Section



65(105)(zzzza) of the Finance Act 1994 service provided in relation to the execution of a works contract for the purpose of carrying out construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, **primarily for the purposes of commerce or industry** is taxable. The said definition is reproduced below:

**Section 65 (105) (zzzza) of the Finance Act, 1994**

**Taxable service** means any service provided or to be provided:-

to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation.—for the purposes of this sub-clause, "**works contract**" means a contract wherein,—

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) such contract is for the purposes of carrying out,—
  - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or
  - (b) Construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, **primarily for the purposes of commerce or industry; or**
  - (c) Construction of a new residential complex or a part thereof; or
  - (d) Completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
  - (e) Turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;

**Taxable Service**

"Taxable Service" means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads airports, railways, transport terminals, bridges, tunnels and dams. "

16.3. In the present case, the show cause notice itself admits that the service was in relation to construction and extension of Government quarters. Therefore, the same are not primarily used for commercial or industrial purpose and hence not taxable. The Board by its Circular No. 79/10/2004-S.T., dated 17-9-2004 clarified that :

13.2 The leviability of service tax would depend primarily upon whether the building or civil structure is "used, or to be used" for commerce or industry. The information about this has to be gathered from the approved plan of the building or civil construction. Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature. **Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable.** However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax.



16.4. From the above clarification also it is evident that construction of Government buildings used for residential, office or for providing civic amenities are not taxable being non-commercial in nature.

16.5.1. Further, the services mentioned at Sl. No 1 and 3 regarding new construction and extension of staff quarters for Gujarat State Police Housing Corporation and R & B (Road and Building) Department, Bhavnagar have been carried out by the noticee as a sub-contractor. In this regard, the Board in its Circular No. 147/16/2011-S.T., dated 21-10-2011 clarified as under :

**Subject: Commercial construction/infrastructure development projects of road, airports, dams, tunnels etc, – levy of service tax on various service providers engaged / associated with such construction work – regarding;**

\*\*\*\*\*

Reference is invited to the Circular No. 138/07/2011 – Service Tax dated 06.05.2011 wherein it was clarified that the services provided by the subcontractors / consultants and other service providers to the Works Contract Service (WCS) provider in respect of construction of Dams, Tunnels, Road, Bridges etc. are classifiable as per Section 65 A of the Finance Act, 1994 under respective sub clauses (105) of Section 65 of the Finance Act and are chargeable to service tax accordingly. ....

3. **However, it is also apparent that in case the services provided by the sub-contractors to the main contractor are independently classifiable under WCS, then they too will get the benefit of exemption so long as they are in relation to the infrastructure projects mentioned above.** Thus, it may happen that the main infrastructure projects of execution of works contract in respect of roads, airports, railways, transport terminals, bridges tunnels and dams, is sub-divided into several sub-projects and each such sub-project is assigned by the main contractor to the various sub-contractors. In such cases, if the sub-contractors are providing works contract service to the main contractor for completion of the main contract, then service tax is obviously not leviable on the works contract service provided by such sub-contractor.

16.5.2. The said circular clarified that the exemption is available to service provided by sub-contractor. In the present case the noticee has provided service to main contractor for construction and extension of staff quarters. Since the main contractor is providing service to the Government, going by the above clarification the service provided by the noticee also becomes non-taxable as the same is provided to Government for non-commercial purpose. Therefore, I hold that the above services are not taxable and accordingly I drop the demand on the services mentioned at Sl. No. 1 to 3 above.

16.6.1 The service provided for construction of VVIP Guest House and Dining Hall for Somnath Trust mentioned at Sl. No. 4 above are as under:

Service Recipient	Year				Type of Service Provided
	2007-08	2008-09	2009-10	2010-11	
Shree Somnath Trust Work	14439642	28636764	8106078	36210260	Cons. Of Dining Hall,, huts dormitory and Guest House for VVIP at Somnath Temple Paras Patan

I find that though Shree Somnath Trust is a religious trust, the guest houses are not used for charitable purpose. On the contrary they are provided for commercial purpose as the guest houses are provided on a consideration. From the





website of the said Shree Somnath Trust <http://www.somnath.org/> I find that the guest houses are rented out at different tariffs. Tariff for one of the guest houses is as under as extracted from the said website.

**» Guesthouse Facility :**

*Pilgrims can avail the guest house facilities of Shree Somnath Trust. Trust maintains a VIP Guesthouse, Eighteen other guest houses and an economical dormitory. The total number of rooms in the trust guest houses are in excess of Two hundred.*

**SAGAR DARSHAN ATITHIGRUH**  
(Nr. Somnath Temple, Sea View Atithigruh)  
(View Photographs)

Sr. No.	Bed	Type	Tariff (Rs.)	Advance Deposit (Rs.)
1	2	Deluxe A.C.	1500/-	2000/-
2	2	A.C. SUITE	2500/-	3000/-

**Note:**

1. Check out time :10:00 AM
2. All sea facing rooms.
3. Extra charge for extra person/children (Above 10yrs.)
4. Extra mattress provided (Charges: Rs. 100/-)
5. Running hot water (Solar System).
6. Restaurant closing time 11:00 PM (Night)
7. Credit / Debit Card payment mode available

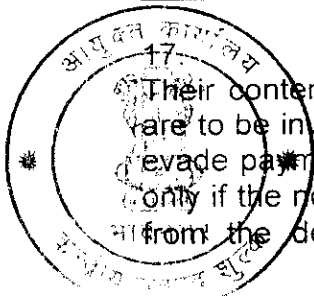
16.6.3. From the above it is evident that the guest houses are used for commercial purpose contrary to the claim of the noticee. Therefore, as clarified by the Board by its Circular No. 80/10/2004-S.T., dated 17-9-2004 the service provided in construction of the guest house and its dining hall is taxable. The service tax on the said service is determined as under:

Year	Gross Value	Taxable Value	S.Tax @ 4%	E.Cess	SHE Cess	
2008-09	14439642	13868269	554731	11095	5547	
2009-10	28636764	27503615	1100145	22003	11001	
2010-11	8106078	7785323	311413	6228	3114	
2011-12	36210260	34777430	1391097	27822	13911	
<b>Total</b>			<b>3357386</b>	<b>67148</b>	<b>33573</b>	<b>3458107</b>

Accordingly I confirm the demand of Rs. 34,58,107/- under 'Works Contract Service'.

**Limitation**

The noticee has contested the demand on the grounds of limitation also. Their contention is that only in unusual circumstances, demands for extended period are to be invoked, with a very serious allegation of suppression of facts and intention to evade payment of service tax. Such serious allegations of suppression can be invoked only if the noticee has deliberately done an action with an intention to hide certain facts from the department and department has confirmed it beyond doubt with aid of



corroborative evidence that there was a deliberate act on part of noticee to evade tax. In this regard it is a fact that the noticee had neither obtained Service tax registration nor paid service tax on the services provided. Their argument that they were providing services to Government departments only and trust and as per their knowledge no service tax levied on the services provided to Government Departments is not tenable. There is no exemption provided in the statute in respect of the services provided to a Trust for non commercial purpose. Therefore the inference drawn by the noticee in this regard that as per their knowledge no service tax levied on the service provided to government is only an after thought and such excuses do not absolve them from the non-payment of service tax. At no point of time they informed the department about their activities of providing taxable service. The instance of providing taxable service came to the knowledge of the department only after initiating inquiry against them. Thus the extended period is invocable in the present case.

18. Coming to the issue of imposing penalty, this issue is no more *res integra* in view of the judgments of the Supreme Court in the case of *Dharamendra Textile Processors and Ors.*, 2008 (231) E.L.T. 3 (S.C.) and *Rajasthan Spinning and Weaving Mills - 2009 (238) E.L.T. 3 (S.C.)*. The Apex Court has held that penalty is civil liability and the ratio of the same is applicable in all case of tax evasion. In the present case it is proved beyond doubt that the noticee has deliberately evaded payment of service tax and therefore they are liable for penalty under Section 78 of the Finance Act 1994.

19. Since the noticee had failed to assess service tax under Section 70 and make the payment of service tax within the period and in the manner prescribed under Section 68 of the Finance Act 1944 they are liable for penalty under Section 76 *ibid.* However this penalty will be on the service tax payable upto 10.05.2008 as a proviso to Section 78 was inserted with effect from 10.05.2008 which provided that '*if the penalty is payable under Section 78, the provisions of Section 76 shall not apply*'.

20. Section 77 of the Finance Act 1994 provides to impose penalty for failure of the assessee to furnish information to the department and to obtain registration. Since the noticee failed to obtain registration during the relevant time I hold that they are liable for penalty under Section 77 *ibid.*

21. In the above premises I pass the following order.

#### ORDER

- (i) I confirm the demand of **Rs. 34,58,107/- (Rupees Thirty Four Lakhs Fifty Eight Thousand One Hundred and Seven only)** under the category of '**Works Contract Service**' under Section 73(1) of the Finance Act 1994.
- (ii) I impose penalty of **Rs. 34,58,107/- (Rupees Thirty Four Lakhs Fifty Eight Thousand One Hundred and Seven only)** under Section 78 of the Finance Act 1994. However, In terms of proviso to Section 78 as it stood at the relevant time, the penalty shall be reduced to 25% of the confirmed demand if the service tax, interest and penalty are paid within 30 days from the date of communication of the order.
- (iii) I impose penalty of Rs.5,000/- (Rupees five thousand only) under Section 77 of the Finance Act 1994.
- (iv) I order for recovery of interest under Section 75 of the Finance Act, 1994.



*Navneet Goel*  
(NAVNEET GOEL)  
Commissioner

Date : 20.03.2014.

By Registered Post A.D./Hand Delivery

To,  
M/s. Khushi Construction,  
F-103, Samweep Complex, Kaluba Road,  
Bhavnagar -364003

Copy to:-

- (1) The Chief Commissioner, Central Excise, Ahmedabad Zone
- (2) The Assistant Commissioner, Service Tax Division, Bhavnagar.
- (3) The Asstt. Commissioner, Recovery Cell, HQ., Bhavnagar.
- (4) The Superintendent, City Service Tax Range, Bhavnagar.
- (5) Guard file.

