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By R.P.A.D.

F. No. V/15-116/Dem-ST/HQ/2009

Date of Order: 26/12/2011

Date of Issue: 26/12/2011

Passed by

IMAMUDDIN AHMED
Joint Commissioner
Central Excise
Bhavnagar

Order-in-Original No: 43/BVR/Jt.Commr/2011

This copy is granted free of charge for private use of the person(s) to whom it is sent.

Any person(s) deeming himself aggrieved by this Order may appeal against this order under Section 85 of Finance Act, 1994 to the Commissioner Central Excise (Appeals), Rajkot, Central Excise Bhavan, Race Course Ring Road, Rajkot-360001 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs 2.50/- paise only.

The appeal should be filed in Form ST.4 in duplicate, as per the provisions of Rule 8 of the Service Tax Rules, 1994. It should be signed by the appellants

- It should be accompanied with the following:
- Copy of Appeal in duplicate

Copies of the order, Appealed against one of which shall be certified copy OR the other must bear a court fee stamp of Rs 2.50/- paise as per Schedule 1 to Article 6 of the Court Fee Stamp Act, 1870.

BY R.P.A.D.

To,
M/s. Yash & Company,
25-A, Anantwadi,
Near Shyamal Flats,
Bhavnagar- 364 001.

Subject: Show Cause Notice Number V/15-116/Dem-ST/HQ/2009 dated 25.02.2010 demanding Service Tax of Rs. 5,29,426/-

BRIEF FACTS OF THE CASE :

1 An intelligence was collected from the reliable sources by the officers of Central Excise and Service Tax that contractors i.e. service providers of M/s Nirma Limited ,, Village-Kala Talav, Taluka , District, Bhavnagar (hereinafter referred to as "Nirma ") are not paying any Service Tax on the taxable service and therefore enquiries were initiated against them and necessary documents were called for from Nirma. It was observed from documents that a labour contractor **M/s Yash & Co.,** 25-A, Anantwadi, near Shyamal Flats, Bhavnagar-364001 was supplying Manpower since last four years without paying Service Tax thereon. Thereafter Summons were issued dt.09.06.2008, 11.11.2008 and 08.12.2008 for detailed investigation of the matter.

2 A statement of Shri Uday Shamjibhai Rathod, authorized person of the Noticee was recorded before the Superintendent (A.E.), Central Excise, HQ, Bhavnagar under Section 14 of the Central Excise Act, 1994 read with Section 83 of the Finance Act, 1994 on 24.12.2008 in response to Summons dtd.08-12-2008, wherein he, inter alia, stated that he was engaged in Manpower supply from 2005-06, that he had obtained Service Tax Registration No.BVN/STAX//CTY/XX/1/MRA/002/05-06 dated 08.08.2005 before starting the supply of labours from Assistant Commissioner of Service Tax, Bhavnagar for the category of "Manpower Recruitment and Supply Service" and he produced a copy of the same. On being asked he stated that he has been providing labours to Nirma for which he received the payment, that he paid wages/salary etc., to the labours engaged by him. He also produced a copy of Income Tax Return alongwith copy of Balance Sheet for the financial year 2005-06 and 2006-07. On being asked regarding payment of Service Tax by him for the said period he stated that he had neither paid Service Tax to the Government account nor filed ST-3 returns till date, he also stated that he had suppressed the amount received against service provided to circumvent service tax liability. He assured that he was ready to pay service tax payable for providing this service.

3 Further, statement of Shri Uday Shamjibhai Rathod, authorized person of the Noticee was recorded before the Superintendent (A.E.) Central Excise, HQ, Bhavnagar under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 on dt. 10.02.2010 wherein he confirmed the statement dt.24.12.2008 and stated that they have neither filed service tax returns nor paid service tax for the years 2008-09 and 2009-10.He also produced profit and loss Account for the years 2007-08 and 2008-09 under his dated signature.

4 It appeared from the perusal of submission of copy of Profit and Loss Account and Income Tax Returns that the Noticee had received amount towards services provided to Nirma as under :

Sr No	Financial Year	Amount received by the Noticee towards taxable services provided (in Rs)
1	2005-06	9,90,930
2	2006-07	11,13,907
3	2007-08	13,30,422
4	2008-09	10,34,475
	Total	Rs.44,69,734

5 It appeared from the foregoing narration that the services provided by the Noticee merit classification under Sub-section 68 of Section 65 of the Finance Act, 1994 i.e. "Manpower Recruitment and Supply Agency's Service". It appeared that service of labour supply is covered under Manpower Supply Agency's Services under Manpower Recruitment and Supply Agency's Service described under the Sub-Section 68 of Section 65 of the Finance Act, 1994. This service has become taxable w.e.f. 16.6.2005 and as per Section 67 of the Finance Act, 1994, Service Tax on this service is leviable on the gross amount charged.

6. It further appeared that the Noticee has provided Manpower Recruitment and Supply Agency's Service valued at Rs.44,69,734/- during the period from 16-06-2005 to 13-03-2009 and suppressed the actual value of the taxable service provided by them from the Department with intent to evade the payment of Service Tax leviable on the said services, inasmuch as the Noticee did not submit the ST-3 returns for the said period, hence extended period as contemplated under Section 73(1) of the Act is invocable for recovery of Service Tax not paid.

7 It appeared from the inquiry initiated that the Noticee has contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules 1994.

- 1 Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 inasmuch they have failed to pay Service Tax at the appropriate rate on the taxable value recovered by them from Nirma for the taxable services rendered by them for the period from 16-6-2005 to 31-3-2009 ;
- 2 Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 inasmuch as they have failed to assess the Service Tax and to file returns in Form ST-3 in respect of taxable services rendered for the period from 16-6-2005 to 31-3-2009.

8 From the above facts and discussion of provisions of the Finance Act, 1994 and the Service Tax Rules, 1994 it appeared that the service provider has not paid the Service Tax and also has not followed the procedures as prescribed in the Act *ibid* and Rules and thereby rendered themselves liable for penal action.

9 After carrying out the investigation into the services provided by **M/s Yesh & Company**, 25-A, Anantwadi, near Shyamal Flat, Bhavnagar a Show Cause Notice No.V/15-116/DEM-ST/HQ/2009 dated 25-09-2010 was issued to the service provider by Additional Commissioner, Bhavnagar proposing actions as under :

- 1 Service Tax amounting to Rs.5,29,426/- should not be demanded and recovered under the proviso to Section 73(1) of the Finance Act, 1994 ;
- 2 Interest at the appropriate rate as applicable till the date of payment of Service Tax should not be charged under Section 75 of the Act, *ibid* ;

- 3 Penalty should not be imposed upon them under Section 76 of the Act for the failure to assess Service Tax under Section 70 of the Act and make the payment of Service Tax within the period and in the manner prescribed under Section 68 of the Act read with Rule 6 of the Rules *ibid* ;
- 4 Penalty should not be imposed upon them under Section 70 of the Act read with Rule 7 inasmuch as they failed to file Service Tax returns ;
- 5 Penalty should not be imposed upon the under Section 78 of the Act, *ibid* for the Service Tax not levied and paid by reason of suppressing of the facts with intent to evade payment of Service Tax

DEFENCE REPLY

10 **M/s Yash & Company, Bhavnagar** were called upon to file their written reply under this office letter No.V/15-116/DEM-ST/HQ/2009 dtd.29-06-2011 but they have failed to file the reply. Thereafter, an opportunity of personal hearing was afforded to them on dt.30-09-2011, dt.01-11-2011 , dt. 28-11-2011 and on dt. 14-12-2011, however , they have failed to attend the personal hearing.

DISCUSSION AND FINDINGS :

11 I have carefully gone through the records of the case,. During the investigation, it is revealed the **M/s Yash & Company, Bhavnagar** are engaged in providing taxable service as defined under Section 65 of the Finance Act, 1994 for the period 2005-06 to 2008-09 to M/s Nirma Limited., the service recipient under agreement /contract i.e. Manpower Recruitment and Supply Agency's Services as defined under Section 65 (68) of the Finance Act, 1994.

12 I find that the Noticee have not filed their written reply to the Show Cause Notice dtd.25.02.12010 nor they have cared to attend the personal hearing afforded to them on dt.30-09-2011, dt.01-11-2011, dt.28-11-2011 and on dt.14-12-2011. The Noticee have obtained Service Tax Registration No. BVN / STAX / CTY /XX /1/ MRA/ 002/ 05-06 dated 08-08-2005 but they not paid Service Tax to the Government Account nor filed ST-3 returns till date and have suppressed the amount received against services provided to circumvent the service Tax liability.

13 During the period 2005-06 to 2008-09 the service provider has rendered taxable services as defined under Section 65 (68) of the Finance Act, 1994 to M/s. Nirma Limited, Bhavnagar, the service recipient:

- (a) Without submitting Half Yearly Returns in ST-3 Form with TR-6 copy in time as provided under Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 ;
- (b) Without paying Service Tax at specified rate as provided under Section 66 in terms of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules , 1994 ;
- (c) Therefore, is liable to pay interest under Section 75 of Finance Act, 1994 at applicable rate ;
- (d) and in view of violation of provisions of Section 66, 68 and 75 of the Finance Act, 1994 Noticee is liable for

penalty as provided under Section 76, 77(1)(a), 77(2) and 77 (8) of Finance Act, 1944.

14 The Service tax for the period 2005-06, 2006-07, 2007-08 and 2008-09 for the services rendered by the service-provider has been demanded in Show Cause Notice dt.25-02-2010 based on the amount received from M/s Nirma Limited, Bhavnagar accordingly amount of Service Tax comes to Rs.5,29,426/- which is required to be recovered from the service provider under Section 73(1) of the Finance Act, 1994 alongwith interest at appropriate rate under Section 75 of the Finance Act, 1944.

15 **M/s Yash & Company, Bhavnagar** have obtained Service Tax Registration as service provider on dt.08-08-2005 however, they have failed to pay Service Tax as provided under Section 66 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules 1994 and has failed to submit half yearly returns as provided under Section 70 of Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994 and suppressed the fact with intention to evade payment of service tax on the services provided by them. Therefore, extended period is rightly invoked by the Department under proviso to Section 73 of the Finance Act, 1944.

16 I find that Shri Uday Shamjibhai Rathod, an authorized person of the Noticee in his statements dt.24.12.2008 and dt.10.02.2010 recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 has stated that he was engaged in Manpower supply from 2005-06 and had obtained Service Tax Registration No.BVN/STAX/CTY/XX/1/MRA/002/05-06 dated 08.08.2005 before starting supply of labours for the category of "Manpower Recruitment and Supply Service" and has stated that he had neither paid Service Tax to the Government account nor filed ST-3 returns, he has also stated that he had suppressed the amount received against service provided to circumvent service tax liability. Thus, he has accepted his Service Tax liability, the fact of suppression and has not retracted his Service Tax liability in his statements.

17 **M/s Yash & Company, Bhavnagar**, is also liable for penal action under Section 76, 77(1), 77(2), 78 of Finance Act, 1944 for breach of provisions of Section 68 and 70 of the Act *ibid*. However, penalty under Section 76 of the Act shall be restricted upto 10.05.2008 in terms of proviso 2 of Section 78 which bars penalty under Section 76 if penalty is payable under Section 78 of the Act, *ibid*.

In view of above discussion, I pass the following order.

ORDER

18.1 I hereby confirm amount of Service Tax of Rs.5,29,426/- for the period from 2005-06 to 2007-08 under Section 68 and 73(1) of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 on **M/s Yash & Company, Bhavnagar**.

18.2 **M/s Yash & Company, Bhavnagar** is also liable to pay interest under Section 75 of the Finance Act, 1944 at appropriate rate.

18.3 I impose penalty of Rs. 200/- upon **M/s Yash & Company, Bhavnagar** for every day under Section 76 for the period

2005-06 to 10.05.2008 during which such failure continued or at the rate of 2 % of Service Tax for the period 2005-06 to 10.05.2008 per month whichever is higher provided that the total amount of penalty payable in terms of this Section shall not exceed the Service Tax payable, during the period 2005-06 to 10.05.2008.

18.4 I impose penalty of Rs. 1000/- upon **M/s Yash & Company, Bhavnagar** under Section 77 for the period upto 10.05.2008.

18.5 I impose penalty of Rs.5,29,426/- under Section 78 of Finance Act,1994 upon **M/s Yash & Company, Bhavnagar**. If the amount as determined under Sr. No.(1) above is paid within 30 days from the receipt of the order alongwith the interest payable then as per proviso to Section 78, the penalty will be only 25% of the Service Tax determined at Sr. No.(1) above. The benefit of reduced penalty shall be available only if the amount of penalty so determined has also been paid within the period of thirty days from the receipt of this order.

Imamuddin Ahmed
26/12/11

(Imamuddin Ahmed)
Joint Commissioner
Bhavnagar

F.No.V/15-116/DEM-ST/HQ/2009

Date : 12.2011

To.
M/s Yash & Company,
25-A, Anantwadi,
Near Shymal Flats,
Bhavnagar- 364 001.

Copy to:

- ~~(1)~~ The Commissioner, Central Excise, Bhavnagar (RRA Section)
- (2) The Assistant Commissioner, Service Tax Division, Bhavnagar.
- (3) The Superintendent, Service Tax Range, Bhavnagar.
- (4) Guard file.

~~(5)~~ The Assistant Commissioner (Recovery Cell)