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**By R.P.A.D.**

F. No. V/15-03/Dem-ST/HQ/2011-12.

Date of Order: 27/12/2011

Date of Issue: 27/12/2011

Passed by

IMAMUDDIN AHMED  
Joint Commissioner  
Central Excise  
Bhavnagar

**Order-in-Original No: 44 / 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 Section 85 of the Finance Act, 1994 read with Rule 8 of the Service Tax Rules, 1994. It should be signed by the appellants in accordance with the provisions of sub-rule (2) of Rule 3 of the Central Excise (Appeal) Rules, 2002.

It should be accompanied with the following:

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

**BY R.P.A.D.**

To,  
M/s. Smile Please Digital Lab. Private Ltd.,  
7, Aakashdeep Complex, Opp. Taluka Panchayat Office,  
Kalanala,  
Bhavnagar.

Subject: Show Cause Notice Number No. V/15-03/Dem-ST/HQ/2011-12 dated 19.04.2011 issued to M/s. Smile Please Digital Lab. Pvt. Ltd., Bhavnagar. demanding Service Tax of Rs. 32,46,134/-.

**BRIEF FACTS OF THE CASE :-**

M/s Smile Please Digital Lab Private Limited, 7, Aakashdeep Complex, Opp Taluka Panchayat Office, Kalanala, Bhavnagar (herein after referred to as "the noticee") have been providing taxable services of Photography & Video Tape Production Services falling under Section 65(105)(zb) & 65(105)(zi) respectively of the Finance Act, 1994 (herein after referred to as "the Act") . The noticee has been registered with Service Tax Department and is having Registration Certificate bearing No. BVR/ST/PS-151/2001 dated 04.10.2001 issued under Section 69 of the Act by the Superintendent of Service Tax, Bhavnagar. The noticee has obtained Registration Certificate bearing No. AAGCS5159PSD002 dated 17.09.2010 issued by the Range Superintendent, Service Tax , City Range, Bhavnagar in the category of Photography Services.

2. On the basis of an intelligence received, it came to the notice of the Department that M/s Smile Please Digital Lab Private Limited were providing taxable services of Photography & Video Tape Production Services falling under Section 65(105)(zb) & 65(105)(zi) respectively of the Act which are liable to Service Tax w.e.f 16.07.2001 and appropriate Service Tax has not been paid by the noticee on such services provided by them. Major portion of these services were provided during the election period of Legislative Assembly elections in 2007 and Parliamentary elections in 2009 at various places as per the work orders given to them by the respective election officers.

3. Therefore, an enquiry was initiated against the noticee by issuing summons under Section 14 of the Central Excise Act 1944, as made applicable in the Service Tax matter by virtue of Section 83 of the Act. Statement of Shri Maheshbhai Mavjibahi Patel, Director of M/s Smile Please Digital Lab Private Limited, Bhavnagar was recorded on 23.12.2010 wherein he *interalia* stated that he has been dealing with all the matters of M/s Smile Please Lab Private Limited including legal matters, company affairs, accounts, operation, finance and all taxation matter of VAT, CENVAT & Service Tax for the last 10 years; that his company has been providing taxable services of Photography & Video Tape Production Services; that the company is registered with the Service Tax Department from 04.10.2001 in the category of Photography Service; that most of the services have been rendered during Legislative Assembly elections in 2007 at Surat & Bhavnagar and during Parliamentary elections at Surat, Anand & Bharuch in 2009, against the work orders given to them by the respective election officers. He produced the copy of Registration Certificate bearing No BVR/ST/PS-151/2001 dated 04.10.2001 issued under Section 69 of the Act by the Superintendent of Service Tax, Bhavnagar. He also produced a copy of Registration Certificate bearing No AAGCS5159PSD002 dated 17.09.2010 issued by the Range Superintendent, Service Tax, City Range, Bhavnagar in the category of Photography Services. On being asked whether they were filing ST-3 returns with the Service Tax Department, he stated that they have filed ST-3 returns and paid Service Tax till the Financial Year 2005-06. Later on, as exemption limit was raised from Rs. 4 lakhs to Rs. 8 lakhs, they had availed exemption and in that impression they did not file ST-3 returns. He also admitted that they have not paid Service Tax even after crossing the exemption limit during the year 2006-07, 2007-08 & 2008-09. He stated that they have made a payment of Rs 15,15,283/- in the financial year 2009-10 for the services provided during the Financial year 2006-07, 2007-08 & 2008-09.. He submitted copies of the challans as documentary proof of having made payment of the same. He further submitted that the Service Tax leviable during 2009-10 is yet to be paid. He produced copies of Balance Sheet for the year 2006-07, 2007-08, 2008-09 & 2009-10.

4. Summons dated 23.02.2011, 04.03.2011, 09.03.2011 and 22.03.2011 were issued to the Shri Maheshbhai Mavjibhai Patel, who appeared on 25.03.2011 and his statement was recorded under section 14 of Central Excise Act, 1944, wherein he *interalia* stated that he has the authority to represent M/s Smile Please Digital Lab Private Limited, Bhavnagar, in the capacity of Director and the statement being given by him was binding on him as well as his company i.e. M/s Smile Please Digital Lab Private Limited, Bhavnagar; that he has already given statement under Section 14 of Central Excise Act, 1944, on 23.12.2010, wherein he had confessed that no ST-3 returns have been filed by M/s Smile Please Digital Lab Private Limited, Bhavnagar for the financial years 2006-07 and onwards and M/s Smile Please Digital Lab Private Limited, Bhavnagar did not pay the Service Tax for the financial years 2006-07 and onwards regularly but paid a lump sum amount of Rs 15,15,283/- during 2009-10 for the Service Tax arrears; that the ST-3 returns for the Half Year ending on 30.09.2005 and for the Half Year ending on 31.03.2006 have been filed on 22.04.2006; that the ST-3 returns for the periods from 01.04.2006

to 31.03.2009 have been filed on 13.01.2011; that the ST-3 returns for the period from 01.04.2009 to 30.09.2010 have not yet been filed; that invoice books are being traced out and will be produced as and when the same are found; that he is producing the copies of sales tax returns for the period from 01.04.2006 to 31.03.2010 which are NIL returns and no Sales Tax/VAT is paid by his company for last five years as no Sales Tax/VAT was payable for that period; that service tax has been charged by his company from the service recipients while raising the invoices and accordingly the same has been collected from the service recipients by his company; that his company has failed to pay the service tax collected from the service recipients in time; that he has the knowledge about taxability of the services provided by his company and being director of his company, he is responsible for filing ST-3 returns in time; that he understands that he has suppressed the facts on behalf of his company by not filing the ST-3 returns in time and not discharging the service tax liability in time; that he is shown the copies of balance sheets and relevant enclosures like Profit & Loss Account etc. produced by him and confirmed that income from the business of his company was as under for last five years:-

Sr No	Year	Type of Business	Value (In Rs.)
1	2005-06	Photography	24,00,413/-
2	2006-07	& Video	20,07,652/-
3	2007-08	Tape	1,04,99,617/-
4	2008-09	Production	8,03,754/-
5	2009-10	services	1,45,87,200/-

5. On being asked about discharging the tax liability, he stated that the service tax liability on the above said value of services has not been fully discharged by his company and only Rs. 14,04,795/- have been paid against service tax and Rs. 1,10,488/- have been paid against interest/penalty as under :-

Sr No	Challan No & Date	Service Tax Amount Rs.	Other Payments (Interest/Penalty)
1	69/15.10.2010	2,226/-	0
2	0214/15.10.2010	4,608/-	138/-
3	71/16.10.2010	2,08,024/-	6,173/-
4	70/16.10.2010	4,95,271/-	14,396/-
5	0121/17.4.2010	4,97,527/-	66,679/-
6	00129/17.4.2010	72,478/-	8,966/-
7	00119/17.4.2010	1,24,661/-	14,136/-
	TOTAL	14,04,795/-	1,10,488/-

6. On going through the copies of Balance Sheet and relevant enclosures like Profit & Loss Account for the financial year 2006-07, which contains the comparative figures of previous year i.e. 2005-06 and the ST-3 returns for the Half Year ending on 30.09.2005 and for the Half Year ending on 31.03.2006, filed on 22.04.2006, as submitted by Shri Maheshbhai M. Patel, it has been found that gross receipt during the financial year 2005-06 as per Balance Sheet of the noticee company for 2006-07 was Rs.24,00,413/-, whereas the value of taxable services shown in the ST-3 returns for financial year 2005-06 was Rs. 14,11,993/- as under :-

Sr No	ST-3 returns filed for the	Amount received towards taxable services Rs.
1	Half Year ending on 30.09.2005	8,69,071/-
2	Half Year ending on 31.03.2006	5,42,922/-
	TOTAL	14,11,993/-

7. Summons dated 25.03.2011, 28.03.2011 and 04.04.2011 were issued to Shri Maheshbhai Mavjibhai Patel who appeared on 08.04.2011 and his statement under Section 14 of the Central Excise Act, 1944 was recorded, wherein he *inter alia* stated that he has given statement under Section 14 of the Central Excise Act, 1944, on 23.12.2010 and 25.03.2011, wherein he had confessed that no ST-3 have been filed by M/s Smile Please Digital Lab Private Limited, Bhavnagar for the financial years 2006-07 and onwards. Later on, after initiation of this inquiry, the ST-3 returns for the periods from 01.04.2006 to 31.03.2009 have been filed on 13.01.2011. In respect of the invoices raised by his company for financial years 2005-06 to 2009-10, he stated

that the only invoice books for 2009-10 available with his company has been produced on 23.12.2010 and rest invoice books had been misplaced and not yet found. He also stated that he could not produce the Sales Tax return for 2005-06 as the same had been misplaced and not yet found. He was shown the copies of Balance Sheet for financial year 2006-07 and relevant enclosures like Profit & Loss Account etc. produced by him on 23.12.2010, which also contains the figures of financial year 2005-06. He was also shown the copies of ST-3 returns relating to financial year 2005-06. On being asked, he confirmed that income from the business of his company for the financial year 2005-06 was Rs. 24,00,413/- as shown in the Profit & Loss Account as under :-

Sr No	Particulars	Value (In Rs.)
1	Sales & other income	9,88,420/-
2	Digital printing income	14,11,993/-
	Total	24,00,413/-

8. On being asked he also confirmed that the value of taxable services shown in the ST-3 returns for financial year 2005-06 was Rs. 14,11,993/- as under :-

Sr No	ST-3 returns filed for the	Amount received towards taxable services Rs.
1	Half Year ending on 30.09.2005	8,69,071/-
2	Half Year ending on 31.03.2006	5,42,922/-
	TOTAL	14,11,993/-

9. In respect of the difference between the figures shown in Profit & Loss Account and in the ST-3 returns for F.Y. 2005-06, he stated that the amount of Rs.14,11,993/- is received against the digital printing income shown in the Profit & Loss Account and hence the same is shown in the ST-3 returns. The difference of Rs. 9,88,420/- is due to the figure of sales and other job work income shown in the Profit & Loss Account. On being asked he clarified that these other sales and job work income also concerned to the business of photography and videography. He further stated that since the Sales invoices and other documents were not available with him, he was unable to clarify how much amount of net sales is involved in this income. He stated that he was also unable to produce any other documentary evidence as to sales included in above said figures not involving service tax.

10. On being asked as to receipt of the consideration of the total income for the financial year 2005-06 and the service tax returns filed by the noticee, he explained as under :-

Sr No	ST-3 returns filed for the	Amount shown as received towards taxable services Rs.	Total amount actually received including the said other income Rs.	Net Difference Rs.
1	Half Year ending on 30.09.2005	8,69,071/-	8,69,071/-	Nil
2	Half Year ending on 31.03.2006	5,42,922/-	15,31,342/-	9,88,420/-
	TOTAL	14,11,993/-	24,00,413/-	9,88,420/-

11. On being asked as to payment of service tax for previous years as directed by service tax office, he stated that in addition to Rs.15,15,283/- paid by his company in April, 2010 and October, 2010, his company has further paid an amount of Rs.11,58,768/- as under :-

Sr. No	Challan No & Date	Service Tax Amount Rs.	Other Payments (Interest/Penalty)
1	260/29.03.2011	3,00,000/-	0
2	189/30.03.2011	2,50,000/-	0
3	172/04.04.2011	5,00,000/-	0
4	Cheque No. 076648 Saurashtra Gramin Bank dated 31.03.2011	1,08,768/-	0

		11,58,768/-	0
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12. On being asked he stated that he has the knowledge about taxability of the services provided by his company and being director of his company, he was responsible for showing the value correctly in the ST-3 returns. He also confirmed that he had willfully misstated the figures in the ST-3 return and suppressed the facts on behalf of his company by doing this and thereby evaded the payment of service tax payable by his company.

13. In view of the above, it appeared that the noticee has rendered taxable services of Photography and Videography as defined under Section 65(105)(zb) & 65(105)(zi) respectively of the Act and the amount of the service tax evaded by the noticee, on account of willful mis-statement and suppression of facts, is calculated as under :-

(A) For the period from 01.10.2005 to 31.03.2006

Amount shown as received towards taxable services in ST-3 return Rs.	Total amount actually received as per Balance Sheet /Profit Loss Account Rs.	Net amount of Difference Not shown in ST-3 return Rs.	Rate of Service Tax including Cess applicable	Amount of Service Tax short-paid Rs.
5,42,922/-	15,31,342/-	9,88,420/-	10.20%	1,00,819/-

(B) For the period from 01.04.2006 to 31.03.2010

Sr. No	Financial Year	Value of taxable services as per Balance Sheet/Profit & Loss a/c Rs.	Rate of Service Tax including cess applicable	Amount of Service Tax short-paid Rs.
1	2006-07	20,07,652/-	12.24%	2,45,737/-
2	2007-08	1,04,99,617/-	12.36%	12,97,753/-
3	2008-09	8,03,754/-	12.36%	99,344/-
4	2009-10	1,45,87,200/-	10.30%	15,02,481/-
			TOTAL	31,45,315/-

14. It further appeared that while providing these services, the noticee has failed to follow due procedures prescribed under the Act and Rules/Regulations made there under and also have not paid Service Tax amounting to Rs 32,46,134/- as calculated above, in due time and the same is recoverable by invoking the extended period of five years as per proviso to sub-section (1) of section 73 of Finance Act, 1994, along with interest as provided under section 75 of the Act.

15. It appeared that the noticee has --

- (1) Failed to pay correct amount of Service Tax on due date as envisaged under Section 68 of the Act read with Rule 6 of Service Tax Rules, 1994 and thus evaded service tax amounting to Rs. 32,46,134/- as discussed above;
- (2) Failed to self-assess the tax due on the services provided by him and to file periodical return as envisaged under Section 70 of the Act read with Rule 7 of Service Tax Rules, 1994 by way of not correctly showing the value of taxable services in the ST-3 return for the half year ending on 31.03.2006 and by way of not filing the ST-3 returns for the period from 01.04.2006 to 31.03.2010 until 13.01.2011;
- (3) Failed to produce documents i.e. invoices raised by the Noticee company for financial years 2005-06 to 2009-10, called for by a Central Excise Officer in an inquiry as envisaged under Section 83 of the Act read with Section 14 of the Central Excise Act, 1944.

16. The above said acts of omission and commission on the part of the noticee make them liable for penal action under Section 78 of the Act; Section 76 of the Act; sub-section (2) of Section 77 of the Act; clause (c) of sub-section (1) of Section 77 of the Act.

17. After initiation of this inquiry, the noticee has paid following amounts against the service tax short-paid as discussed above :-

Sr. No	Date of Payment	Service Tax Amount Rs.	Other Payments (Interest/Penalty) Rs.	Total
1	17.04.2010	6,94,666/-	89,781/-	7,84,447/-
2	15.10.2010	6,834/-	138/-	6,972/-
3	16.10.2010	7,03,295/-	20,569/-	7,23,864/-
4	29.03.2011	3,00,000/-		3,00,000/-
5	30.03.2011	2,50,000/-		2,50,000/-
6	04.04.2011	5,00,000/-		5,00,000/-
7	April, 2011	1,08,768/-		1,08,768/-
	TOTAL	25,63,563/-	1,10,488/-	26,74,051/-

18. From the statements dated 25.03.2011 and 08.03.2011 of Shri Maheshbhai Mavjibhai Patel, it appeared that the noticee has suppressed the material facts in particular by not filing ST-3 returns for the years 2006-07 to 2009-10 in time and by not showing the correct value of the taxable services in the ST-3 return for the half year ending on 31.03.2006 and thus evaded the service tax amounting to Rs.32,46,134/-. Therefore, extended period of five years under the proviso to sub-section (1) of Section 73 of the Act is attracted in this case for effecting recovery of the Service Tax which is not timely paid. As the noticee has provided taxable services and collected the service tax from the customers but has failed to pay the same to the credit of the Central Government, penalty under Section 78 of the Act is liable to be imposed upon the noticee.

19. Section 75 of the Act provides that every person, liable to pay the Service Tax in accordance with the provisions of Section 68 or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below 10% and not exceeding 36% per annum as is for the time being fixed by the Central Government by Notification in the official Gazette for the period by which such crediting of tax or any part thereof is delayed. In the present case, the noticee has provided taxable service but failed to pay the Service Tax due and hence the amount of Service Tax is required to be recovered along with interest as provided under Section 75 of the Finance Act 1994.

20. It appeared that Section 76 of the Act provides that any person, liable to pay Service Tax in accordance with the provisions of Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994, who fails to pay such tax, shall pay, in addition to such tax and the interest on that tax in accordance with the provisions of Section 75 of the Act, a penalty which shall not be less than two hundred rupees for every day during which such failure continues or at the rate of two per cent of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax. In the present case, the noticee has paid some portion of the amount of service tax due for the financial years of 2005-06 to 2008-09 amounting to Rs. 25,63,563/- along with interest. This late payment shall also attract penalty under Section 76 of the Act.

21. It appeared that Section 70 of the Act read with Rule 7 of the Service Tax Rules, 1994 provides that every assessee shall submit half yearly returns in Form ST-3 along with copy of Form TR-6, in triplicate for the month covered in the half year return by the 25<sup>th</sup> of the month following the particular half year. In the instant case, the noticee has provided taxable service but failed to file ST-3 returns for the period from 01.04.2006 to 31.03.2010 in time and hence penalty under Section 77(2) of the Act is liable to be imposed upon the Service Provider.

22. The noticee has failed to produce documents i.e. invoices raised by the noticee's company for financial years 2005-06 to 2009-10, called for by a Central Excise Officer in an inquiry as envisaged under Section of the Act read with Section 14 of Central Excise Act, 1944 and this failure on the part of the noticee attract penal action under clause (c) to sub-section (1) of Section 77 of the Act.

23. Therefore, M/s Smile Please Digital Lab were issued show cause notice F. No. V/15-03/Dem-ST/HQ/2011-12 dated 13.04.2011, issued by the Additional Commissioner, Central Excise and Service Tax, Bhavnagar calling upon them to show cause as to why:

1. The Service Tax amounting to Rs.32,46,134/- (Rs. Thirty two lakhs forty six thousands one hundred and thirty four only) as calculated above should not be demanded and recovered under proviso to Section 73(1) of the Finance Act, 1994 for the Services provided in the category of Photography/Videography services;
2. Service Tax payment of Rs. 25,63,563/- made by the noticee as discussed herein above should not be adjusted and appropriated against this demand;
3. Interest for the period from due date till the date of actual payment in terms of Section 75 of the Act should not be recovered from them;
4. Penalty should not be imposed upon them under Section 76 of the Act for late payment of service tax as discussed herein above;
5. payment of interest/penalty amounting to Rs. 1,10,488/- made by the noticee against this inquiry as discussed herein above should not be adjusted against this demand;
6. Penalty for non payment of Service Tax should not be imposed on them under Section 78 of the Act.
7. Penalty for failure to produce documents i.e. invoices raised by the noticee company for financial years 2005-06 to 2009-10, called for by a Central Excise Officer in an inquiry as envisaged under Section 83 of the Act read with Section 14 of the Central Excise Act, 1944 should not be imposed on them under the provisions of clause (c) to sub-section (1) of Section 77 of the Act.
8. Penalty for late submission of service tax return should not be imposed on them under the provisions of sub section 2 of Section 77 of the Act.

#### **Defense Reply of M/s Smile Please Digital Lab.**

24. M/s Smile Please vide their letter dated 03.06.2011 submitted their reply in which they submitted that their business is competitive and laborious. They were covered under exemption limit for the year 2005-06, 2006-07 and 2008-09. Due to the photography tender accepted by election commission for the year 2007-08 and 2009-10 their business crossed the exemption limit. They further stated that due to general practice of the business, the customers bargain and they are not ready to pay service tax but they have paid the service tax against liability. They are also selling the photography consumable items like Albums, Photo Rolls etc.

25. They stated that they have paid the Service Tax amounting to Rs.26,74,051/- .They produced details of Income and Service tax liabilities from FY 2005-06 to 209-10. They requested to waive the interest and penalty as they have filed the ST-3 returns before the issuance of SCN.

#### **Personal Hearing**

26. Shri Mahesh Patel, Director, M/s Smile Please Digital Labs. Pvt. Ltd. appeared for P.H. on 17/11/11. Reply to the SCN was already been filed vide their letter dated 03.06.2011. He produced a further written submission vide his letter dated 14.11.11 that day and he reiterated the same. He further sought 15 days time to give further submissions which was accepted. Accordingly the date of next P.H. was fixed on 07/08.12.2011, which was noted by Shri Mahesh Patel. Nobody appeared for P.H. on 07/08.12.2011 and another date of P.H. was granted on 22/23.12.2011, but again no body attended the P.H.

#### **Discussion and Findings**

27. I have carefully gone through records of the case, the defense reply submitted by M/s Smile Please Digital Lab. Bhavnagar. I find that sufficient opportunities have been provided to the Noticee to put up their defense and the principle of natural justice is followed and I proceed to decide the case as per records available and merits of the case.

28. I find that the Department gathered an intelligence that the Noticee has not discharged S.T. liability properly and the matter was investigated and found that they have not filed ST-3 Returns timely and also submitted incorrect ST-3 returns, thereby suppressing information from Revenue. Statements of Shri Maheshbhai Mavjibahi Patel, Director of M/s Smile Please Digital Lab Private Limited, Bhavnagar were recorded under section 14 of Central Excise Act, 1944 on 23.12.2010, 25.03.2011 and 08.04.2011 wherein he *interlia* stated that he has been dealing with all the matters of M/s Smile Please Lab Private Limited including legal matters, company affairs, accounts, operation, finance and all taxation matter of VAT, CENVAT & Service Tax for the last 10 years; that his company has been providing taxable services of Photography & Video Tape Production Services; that the company is registered with the Service Tax Department from 04.10.2001 in the category of Photography Service; that most of the services have been rendered during Legislative Assembly elections in 2007 at Surat & Bhavnagar and during Parliamentary elections at Surat, Anand & Bharuch in 2009, against the work orders given to them by the respective election officers; that they have filed ST-3 returns and paid Service Tax till the Financial Year 2005-06. Later on, as exemption limit was raised from Rs. 4 lakhs to Rs. 8 lakhs, they had availed exemption and in that impression they did not file ST-3 returns. He also admitted that they have not paid Service Tax even after crossing the exemption limit during the year 2006-07, 2007-08 & 2008-09. He stated that they have made a payment of Rs .15,15,283/- in the financial year 2009-10 for the services provided during the Financial year 2006-07, 2007-08 & 2008-09. He further submitted that the Service Tax leviable during 2009-10 is yet to be paid; that the ST-3 returns for the Half Year ending on 30.09.2005 and for the Half Year ending on 31.03.2006 have been filed on 22.04.2006; that the ST-3 returns for the periods from 01.04.2006 to 31.03.2009 have been filed on 13.01.2011; that the ST-3 returns for the period from 01.04.2009 to 30.09.2010 have not yet been filed; that invoice books are being traced out and will be produced as and when the same are found; that no Sales Tax/VAT was payable for that period; that his company has failed to pay the service tax collected from the service recipients in time; that he has the knowledge about taxability of the services provided by his company and being director of his company, he is responsible for filing ST-3 returns in time; that he understands that he has suppressed the facts on behalf of his company by not filing the ST-3 returns in time and not discharging the service tax liability in time; that he confirmed that income from the business of his company was as under for last five years:-

Sr. No.	Year	Type of Business	Value (In Rs.)
1	2005-06	Photography & Video Tape Production services	24,00,413/-
2	2006-07		20,07,652/-
3	2007-08		1,04,99,617/-
4	2008-09		8,03,754/-
5	2009-10		1,45,87,200/-

That the service tax liability on the above said value of services has not been fully discharged by his company and only Rs. 14,04,795/- have been paid against service tax and Rs. 1,10,488/- have been paid against interest/penalty; that he was unable to clarify how much amount of net sales is involved in this income. He stated that he was also unable to produce any other documentary evidence as to sales included in above said figures not involving service tax; that he has the knowledge about taxability of the services provided by his company and being director of his company, he was responsible for showing the value correctly in the ST-3 returns. He also confirmed that he had willfully misstated the figures in the ST-3 return and suppressed the facts on behalf of his company by doing this and thereby evaded the payment of service tax payable by his company.

29. I find that that the noticee has rendered taxable services of Photography and Videography as defined under Section 65(105)(zb) & 65(105)(zi) respectively of the Act and the amount of the service tax evaded by the noticee, on account of willful mis-statement and suppression of facts, is calculated as under :-

(A) For the period from 01.10.2005 to 31.03.2006



Amount shown as received towards taxable services in ST-3 return Rs.	Total amount actually received as per Balance Sheet /Profit Loss Account Rs.	Net amount of Difference Not shown in ST-3 return Rs.	Rate of Service Tax including Cess applicable	Amount of Service Tax short-paid Rs.
5,42,922/-	15,31,342/-	9,88,420/-	10.20%	1,00,819/-

(B) For the period from 01.04.2006 to 31.03.2010

Sr. No	Financial Year	Value of taxable services as per Balance Sheet/Profit & Loss a/c Rs.	Rate of Service Tax including cess applicable	Amount of Service Tax short-paid Rs.
1	2006-07	20,07,652/-	12.24%	2,45,737/-
2	2007-08	1,04,99,617/-	12.36%	12,97,753/-
3	2008-09	8,03,754/-	12.36%	99,344/-
4	2009-10	1,45,87,200/-	10.30%	15,02,481/-
			TOTAL	31,45,315/-

30. I further find that the noticee has failed to follow due procedures prescribed under the Act and Rules/Regulations made there under and also have not paid Service Tax amounting to Rs.32,46,134/- as calculated above, in due time as envisaged under Section 68 of the Act read with Rule 6 of Service Tax Rules, 1994 and thus evaded service tax and that the noticee has suppressed the material facts in particular by not filing ST-3 returns for the years 2006-07 to 2009-10 in time and by not showing the correct value of the taxable services in the ST-3 return for the half year ending on 31.03.2006 and therefore, extended period of five years under the proviso to sub-section (1) of Section 73 of the Act is attracted in this case for effecting recovery of the Service Tax which is not timely paid and the same is recoverable by invoking the extended period of five years as per proviso to sub-section (1) of section 73 of Finance Act, 1994, along with interest as provided under section 75 of the Act.

31. I further find that the Noticee failed to self-assess the tax due on the services provided by him and to file periodical return as envisaged under Section 70 of the Act read with Rule 7 of Service Tax Rules, 1994 by way of not correctly showing the value of taxable services in the ST-3 return for the half year ending on 31.03.2006 and by way of not filing the ST-3 returns for the period from 01.04.2006 to 31.03.2010 until 13.01.2011;

32. I find they failed to produce documents i.e. invoices raised by the Noticee company for financial years 2005-06 to 2009-10, called for by a Central Excise Officer in an inquiry as envisaged under Section 83 of the Act read with Section 14 of the Central Excise Act, 1944.

33. I find that the above said acts of omission and commission on the part of the noticee make them liable for penal action under Section 78 of the Act as the noticee has provided taxable services and collected the service tax from the customers but has failed to pay the same to the credit of the Central Government, penalty under Section 78 of the Act is liable to be imposed upon the noticee.

34. I find that Section 76 of the Act provides that any person, liable to pay Service Tax in accordance with the provisions of Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994, who fails to pay such tax, shall pay, in addition to such tax and the interest on that tax in accordance with the provisions of Section 75 of the Act, a penalty which shall not be less than two hundred rupees for every day during which such failure continues or at the rate of two per cent of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax. In the present case, the noticee has paid some portion of the amount of service tax due for the financial years of 2005-06 to 2008-09 amounting to Rs. 25,63,563/- along with interest. This late payment shall also attract penalty under Section 76 of the Act.

35. I find that Section 70 of the Act read with Rule 7 of the Service Tax Rules, 1994 provides that every assessee shall submit half yearly returns in Form ST-3 along with copy of Form TR-6, in triplicate for the month covered in the half year return by the 25<sup>th</sup> of the month following the particular half year. In the instant case, the noticee has provided taxable service but failed to file ST-3 returns for the period from 01.04.2006 to 31.03.2010 in time and hence penalty under Section 77(2) of the Act is liable to be imposed upon the Service Provider.

36. I find that the noticee has failed to produce documents i.e. invoices raised by the noticee's company for financial years 2005-06 to 2009-10, called for by a Central Excise Officer in an inquiry as envisaged under Section of the Act read with Section 14 of Central Excise Act, 1944 and this failure on the part of the noticee attract penal action under clause (c) to sub-section (1) of Section 77 of the Act.

37. I further find that after initiation of this inquiry, the noticee has paid following amounts against the service tax short-paid as discussed above :-

Sr. No	Date of Payment	Service Tax Amount Rs.	Other Payments (Interest/Penalty) Rs.	Total
1	17.04.2010	6,94,666/-	89,781/-	7,84,447/-
2	15.10.2010	6,834/-	138/-	6,972/-
3	16.10.2010	7,03,295/-	20,569/-	7,23,864/-
4	29.03.2011	3,00,000/-		3,00,000/-
5	30.03.2011	2,50,000/-		2,50,000/-
6	04.04.2011	5,00,000/-		5,00,000/-
7	April, 2011	1,08,768/-		1,08,768/-
	TOTAL	25,63,563/-	1,10,488/-	26,74,051/-

And the said amount of Rs.26,74,051/- is required to be appropriated/adjusted against the demand to be confirmed.

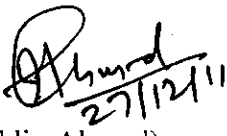
38. In view of the above, I pass the following order :

#### ORDER

1. I confirm the demand of Service Tax amounting to Rs.32,46,134/- (Rs. Thirty two lakhs forty six thousands one hundred and thirty four only) under proviso to Section 73(1) of the Finance Act, 1994 for the Services provided in the category of Photography/Videography services by the Noticee;
2. I order for appropriation of Service Tax payment of Rs.25,63,563/- made by the noticee against the demand confirmed at (1) above;
3. I confirm Interest for the period from due date till the date of actual payment in terms of Section 75 of the Act to be recovered from them; to be appropriated in Government Account.
4. I impose Penalty @ 2% per month or Rs.200 per day whichever is higher till 09.05.2008, under Section 76 of the Act for late payment of service tax. However, the said penalty amount shall not exceed the amount of service tax liability as on 09.05.2008.
5. I Confirm and appropriate payment of interest/penalty amounting to Rs.1,10,488/- made by the Noticee to be adjusted against the demand:
6. I impose penalty of Rs.32,46,134/- under Section 78 of the Act upon the Noticee. However, the penalty amount shall be reduced to Rs.8,11,534/- i.e. 25% of the penalty amount, if the Service tax amount so confirmed, Interest and reduced Penalty is paid within one month.
7. I impose Penalty of Rs.200/- for every day for failure to produce documents i.e. invoices raised by the noticee company for financial years 2005-06 to 2009-10, called for by a Central Excise Officer in an inquiry as envisaged under Section 83 of the Act read with

Section 14 of the Central Excise Act, 1944 during which such failure continues or Rs. 10,000/- whichever is higher, under the provisions of clause (c) to sub-section (1) of Section 77 of the Act.

8. I impose Penalty of Rs.2000/- for late submission of each service tax return under the provisions of sub section (2) of Section 77 of the Act.

  
(Imamuddin Ahmad)  
Joint Commissioner,  
Central Excise,  
Bhavnagar

F. No. V/15-03/Dem-ST/HQ/2011-12

Date :27/12/2011

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- (1) The Commissioner, Central Excise, Bhavnagar (RRA Section).
- (2) The Assistant Commissioner, Service Tax Division, Bhavnagar.
- (3) The Assistant Commissioner (Recovery), C.Ex., Hdqrs., Bhavnagar.
- (4) The Superintendent, Service Tax, City Range, Bhavnagar.
- ✓ (5) Guard File.