


S. TAX

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

F. No. V/15-62/Dem-ST/HQ/2010-11.

Date of Order: 10/01/2012

Date of Issue: 10/01/2012

Passed by

IMAMUDDIN AHMED  
Joint Commissioner  
Central Excise  
Bhavnagar

**Order-in-Original No: 01 / BVR / Jt.Commr / 2012**

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. Savaj & Co.,  
C/o M/s. Ultra Tech Cement Ltd.,  
Kovaya, Tal. : Rajula.  
(Distt. Amreli)

Subject: Show Cause Notice Number No. V/15-62/Dem-ST/HQ/2010-11 Dated 18.10.2010 issued to M/s. Savaj & Co., Kovaya (Distt. Amreli) demanding Service Tax of Rs. 44,98,801/-.

**Brief Facts of the case**

M/s Savaj & Co., Kovaya, Tal: Rajula, Dist: Amreli (herein after referred to as the Noticee) are registered under Service Tax as Manpower Recruitment or Supply Agency, and allotted Service tax registration No.AASFS7400GST001. During the course of audit, the Noticee were not able to produce any records for the period prior to the registration and therefore, an inquiry was initiated against them.

2. Summons dated 29.04.2010 and 11.05.2010 were issued to the Noticee by the Superintendent (A.E), Central Excise Bhavnagar, asking them to produce certain documents and remain present for giving evidence in the inquiry. The Noticee under their letter dated 24.06.2010 informed that they are manpower supplier to M/s UltraTech Cement Limited, Gujarat Cement Works, Kovaya (herein after referred to as UTCL); that they work for UTCL only; that they have charged service tax and paid the same; that they do not avail 'input credit' and the returns upto 31.03.2010 are filed. Since the Noticee did not furnish all the required documents another summons dated 6.08.2010, 6.09.2010 and 15.09.2010 were issued to the Noticee. In response to the summons dated 15.09.2010, a statement dated 28.09.2010 of Shri Gandabhai Jinabhai Lakhnotra, partner of the Noticee was recorded before Superintendent (A.E), Central Excise Bhavnagar at Kovaya, wherein he interalia stated that he is partner of the Noticee since last fourteen years and apart from him there are two other partners; that they are supplying labourers under contract to UTCL at Kovaya; that they have obtained registration under 'Manpower Recruitment and Supply Agency' services in July 2005 and are collecting tax and paying the same; that the labourers are supplied to work in the packing plant of UTCL where they undertake work like packing of cement, staking of empty bags etc.; that the consideration for the services provided by them is paid on tonnage basis, however the amount paid per tonne is calculated taking into consideration the minimum wages of the labourers, number of labourers supplied etc. and the number of labourers to be supplied is decided by the supervisor of UTCL; that their labourers work under the supervision and control of the supervisor of UTCL and he produced copies of work orders, profit and loss account and the income tax returns.

3. Inquiry was extended to the service recipient UTCL by calling for documents like ledgers of the Noticee for the period from 1.04.2005 to 31.03.2010 and work orders issued to the Noticee for the said period under summons dated 06.09.2010. UTCL under their letter UTCL/GCW/C.EX/A.E. 2010-11 dated 7.09.2010 received on 13.09.2010 supplied copies of agreement entered with the Noticee from 2005-06 to 2009-10 and ledger accounts of the Noticee from 2005-06 to 2009-10.

4. Since the partner of the Noticee could not explain the vast difference between their account ledgers submitted by UTCL and the value of taxable services shown by them in the ST-3 returns, the Noticee were called upon to explain the difference and Shri Ranigbhai Bijalbai Vagh, Supervisor of the Noticee appeared before Superintendent(A.E.), Central Excise, Bhavnagar on 13.10.2010. In his statement dated 13.10.2010 he interalia stated that they have not included expenditures towards P.F. contribution, medical expenses, water, school etc. which have been reimbursed by UTCL in the value for the purpose of charging tax and also in the income shown in their profit and loss account; that rent and electricity expenses of the quarters provided by UTCL are adjusted in the bills raised by them for the taxable services provided to UTCL; that there are certain accounting entries against which the 'doc. code' is 'AB' appearing in their ledger submitted by UTCL and such accounting entries are not for the payment made to them; that he is unable to explain the difference between the

accounting ledgers and the aggregate of income shown in profit & loss account and the amounts received as reimbursements at present; that it would take at least a month to explain the same.

5. It appeared from above that the Noticee are engaged in supplying labourers to UTCL for carrying out certain work at the packing plant like staking of bags, loading of bags, operation of rotary packers, tally checking etc; that the consideration for these work carried out by the labourers supplied by the Noticee is paid at the rate fixed per M.T. of cement loaded/handled; that the said rate per M.T. has been arrived at considering the average manpower per packer (packing machine), prevailing rate of Cement wage board effective for the period, minimum output, profit etc., that the Noticee is registered as 'Manpower Recruitment and Supply Agency' and have filed ST-3 returns for 2005-06 to 2009-10; that expenditures towards P.F. contribution, medical expenses, water, school etc. which have been reimbursed by UTCL are not included in the value for the purpose of charging tax and also in the income shown in their profit and loss account; that rent and electricity expenses of the quarters provided by UTCL are adjusted in the bills raised by them for the taxable services provided to UTCL;

6. On comparing ledger accounts of the Noticee furnished by UTCL and the taxable value declared in ST-3 returns for the corresponding periods (as tabulated hereunder), it appeared that there is substantial difference between the two, due to non-inclusion of certain payments received from UTCL for provision of taxable services, in the value of taxable services in ST-3 returns.

Financial Year	Amount received by the Noticee towards taxable services provided, (Rs.) (as per account ledgers)	Taxable value declared in ST-3 returns (Rs.)
2005-06 (w.e.f.16.06.05)	12338294/-	83,11,959/-
2006-07	17400418/-	1,04,87,699/-
2007-08	26859615/-	1,34,81,557/-
2008-09	23064811/-	1,30,24,623/-
2009-10	29199960/-	1,75,34,314/-
<b>Total</b>	<b>Rs. 10,88,63,098/-</b>	<b>Rs.6,28,40,152/-</b>

7. A perusal of the work orders furnished by UTCL reveals that the Noticee were awarded contract on certain terms and conditions enumerated in the said work orders. It appeared that these conditions are almost identical in all the work orders allotted to the Noticee. Relevant Clauses of work orders dated 19.07.2006, 13.06.2007 &, 15.04.2008 are reproduced hereunder for ready reference;

**"Scope of Work"**

1. *You shall carry out the various functions at packing plant at GCW such as operation of rotary packers, Bag diverters, moving of stamped bags from locations to the packers, loading Bagged Cement into trucks, Tractor and Tractor, tally checking and cement silo operation.*
2. *You shall carry out the packing and loading of cement @ 600 MT per packet per shift. You shall be provided work for packing and loading of cement of minimum 120000 MT per month.*
3. *You shall engage your own skilled manpower to carry out these jobs immediately upon the availability of Trucks and as instructed by our packing incharge. You shall execute the jobs Packing and Loading without any delay and with efficiency and safe manner. Whenever Loading is not available your workmen shall carry*

out cleaning and maintenance jobs as per instruction of our maintenance incharge.

**Payment Terms:**

1. You shall be paid @ Rs. 5.25 per M.T. of cement packed and loaded considering 9.5 average manpower per packer, prevailing rate of wage board (effective from 01.04.06) and output MT packer per shift. If quantity of cement packed is less than 1,20,000 MT in a month then packing and loading charges @ Rs. 5.25 per MT and profit @ Rs. 0.75 per MT will be paid for the minimum quantity of 1,20,000 MT.
2. You will also be paid Rs. 50000/- per month towards water provision to your workmen. We have instructed civil department to make of the job, charges for water provision will be paid. Afterward water will be provided on chargeable basis at prevailing rate.
3. You will also be paid Rs. 52900/- per month toward administration charges such as stationery, kora cloth, soap, misc items and school related expenditure.
4. You will be paid Rs. 0.75 PMT profit on tonnage packed.
5. We will reimburse you following on actual basis on submission of proper documents.
  - A] Leave benefit subject to maximum of Rs. 45600/- per month.
  - B] Premium of Group accident policy.
  - C] Bonus as per prevailing practices and mutual understanding.
  - D] Provident fund as per prevailing rules on submission of proof.
  - E] Medical benefits.
  - F] LTA Rs. 500 per person per annum.

Reimbursement of leave benefit, LTA and medical will be released in march-07.

Whenever you are required to run a single Packer in a shift, you will be paid extra cost of 2.5 person deployed by you at prevailing wage board rate (Basic and DA only).

6. You will be reimbursed Rs.350 per pair safety shoes once in a year. We will also reimburse the cost of uniforms for your manpower for 2 pairs per person in a year @ Rs.330 per pair of uniform. This also included stitching charges.
7. We will provide you one quarter in our colony for which rent and electricity will be deducted as per rules and regulations of the company. You have to vacant quarter within 2 months notice if so desire by the company.
9. TDS will be deducted as per Income Tax rules
10. Service Tax shall be paid extra as applicable.
11. You will be paid cost of Extra Packer engaged by us more than 200 nos in a month. . for such extra packers, you will be paid @ 9.5 mandays multiplied by prevailing wage board rate only based on the formula given below.  

$$\text{Extra Packer} = \text{Actual packer deployed} - (\text{Actual qty packed} / 600\text{MT}).$$

**4. General Terms & Conditions**

- 4.1 You shall be responsible to compliance of all statutory requirements such as Labour Licenses as per Contract Labour (R&A) Act, payment of wages as per the cement Wage board Rates, coverage under Provident Fund (PF), and other labour enactments applicable, payment of Bonus, Leave, LTA, Gratuity, two pairs of uniforms, jaggery & oil, providing of personal protective safety, two pairs of uniforms, jaggery & oil, providing of personal protective safety equipment such as Safety shoes, helmets, Dust mask etc. You shall produce evidence of the remittances made by you to P.F. etc, on.
- 4.2 You shall ensure disbursement of wages to the labour engaged by you in the presence of company's representative. Any deviation in payment of wages or

*coverage under any of the labour enactments will be solely at your responsibility and Management reserves the right to deduct for any lapse of payment on your part from your bills and disburse such payments to your workers or to the appropriate authorities. You shall ensure that working hour of labours engaged by you shall not exceed forty eight hour in a week.*

- 4.9 *Every person engaged by you for work at our premises or for carrying out work in accordance with this Works Contract shall be deemed to be your employee and no such of your employee shall have any right or claim against us. You shall enter into an agreement in your name with the persons employed by you.*
- 4.14 *You are requested to possess requisite valid licences required under the contract labour (Regulation and Abolition) Act 1971 for employing labour under this work order.*
- 4.16 *You shall undertake to administer Provident Fund of all the employees, if applicable to your organization and any liability arising out of the above would be to your account.*
- 4.17 *You shall submit to us the Provident Fund account number of all persons employed under this order and the provident fund amount so desposited will be reimbursed to you by us on submission of proof of payment by you”.*

8. It appeared from the said work orders that UTCL for carrying out certain works in their packing plant have awarded contract to the Noticee for supply of suitable labourers. It is forthcoming from the terms and conditions stipulated in the work orders that the entire amount to be paid by the Noticee to their employees including expenditures for the facilities to be extended to them, is in fact paid by the Noticee and the profit of the Noticee is predetermined and paid accordingly. In other words, UTCL pays salaries and other perks of the labourers supplied by the Noticee on actual basis and in addition to this UTCL pays an amount as profit which is not dependent upon the work accomplished by the Noticee. Apparently certain conditions in the work orders are for the purpose of achieving desired output (dispatch) whereas certain conditions are to ensure that the Noticee discharge their liability of provident fund contribution, medical expenses, LTA etc., towards their employees. Therefore certain expenses which the Noticee are required to incur for the welfare and as statutory obligations under various labour laws or other laws are reimbursed separately to ensure due compliance by the Noticee. It therefore appeared that the expenses which were reimbursed to the Noticee were sole liability and responsibility of the Noticee and no expenditure were incurred by the Noticee as the agent of UTCL or were incurred on behalf of UTCL or these expenses were for any goods or services received by UTCL. In view of the above, it appeared that all the amounts which were reimbursed to the Noticee by UTCL were expenditures or cost incurred by the Noticee in course of providing of taxable services classifiable under ‘Manpower Recruitment and Supply Agency’.

9. Section 65 (105) (k) of Finance Act 1994 substituted by the Finance Act 2005 w.e.f. 16-6-2005 reads “taxable service means any service provided or to be provided to a client, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner”. Section 65(68) of Finance Act 1994 as substituted by the Finance Act, 2005 with effect from 16-6-2005, reads as:

“Manpower Recruitment or Supply Agency” means any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to a client;’

In view of the above, it appeared that the Noticee have correctly classify services provided by them as “Manpower Recruitment or Supply Agency” service.

The value of the taxable services is determined in terms of Section 67 of the Finance Act, 1994, the relevant portion thereof reads :-

*"Section 67. Valuation of taxable services for charging service tax- (1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall,-*

- (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;*
- (ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;*
- (iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.*

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

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

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

10. Rule 5 of Service Tax (Determination of value) Rules, 2006 notified under clause (aa) of sub-section (2) of Section 94 of the Finance Act, 1994 for the determination of amount and value of taxable service under Section 67 of the Finance Act, 1994 reads;

*"Rule 5. Inclusion in or exclusion from value of certain expenditure or costs.-*

- (1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.*
- (2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:-*
  - (i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;*
  - (ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;*
  - (iii) the recipient of service is liable to make payment to the third party;*
  - (iv) the recipient of service authorizes the service provider to make payment on his behalf;*

- (v) *the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;*
- (vi) *the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;*
- (vii) *the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and*
- (viii) *the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.*

*Explanation 1.- For the purposes of sub-rule (2), "pure agent" means a person who-*

- (a) *enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;*
- (b) *neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;*
- (c) *does not use such goods or services so procured; and*
- (d) *receives only the actual amount incurred to procure such goods or services....."*

11. It appeared from above that the amounts paid to the Noticee as reimbursements are not the expenditures or costs incurred by the Noticee as pure agent of UTCL, therefore such amounts are not excludible from the value of the taxable services in terms of Rule 5 *ibid*. It therefore, follows that all the amounts received from UTCL whether termed as reimbursements or otherwise is to be treated as consideration for the taxable service provided by the Noticee and is to be included in the value for the purpose of charging service tax on "Manpower Recruitment or Supply Agency" services provided by the Noticee. Hence it also appeared that the Noticee have suppressed the actual value of the taxable services provided by them.

12. It appeared from above that the Noticee have contravened the provisions of Section 67 of the Finance Act, 1994 and Rule 5 of Service Tax (Determination of value) Rules, 2006 in as much as they have not taken the gross amount charged as the value for the purpose of charging the service tax.

13. On perusal of clause pertaining to taxes in the various work orders, reveals that service tax shall be paid extra. Therefore it appeared that rate per M.T. to be paid to the Noticee is exclusive of service tax and that reimbursements are also exclusive of service tax. However, as the tax already paid by the Noticee is included in the amounts received by the Noticee against the tax levied bills/invoices issued by them, the same is to be discounted for the purpose arriving at the value for the purpose of charging tax. (as calculated in the Annexure-A to the notice) Hence, for the purpose of calculating service tax not levied and not paid, the difference of the aggregate amount shown as paid to the Noticee in account ledgers and the value of taxable service shown in ST-3 returns is relevant. Accordingly service tax not levied and paid by the Noticee on the value of taxable services suppressed by them is calculated and attached to the notice as Annexure-B. The service tax not levied and paid is recoverable from the Noticee under Section 73 of the Finance Act, 1994.

14. The Noticee suppressed the material facts about receipt of certain amounts as consideration for the taxable services provided by them and thereby have suppressed the actual value of taxable services, it appeared that extended period contemplated under Section

73 of the Finance Act, 1994 is invokeable for recovery of service tax not levied and not paid. Further, as discussed in foregoing para the Noticee have suppressed the value of taxable service with intention to evade tax and thereby have rendered themselves liable for penalty under section 78 of the Finance Act, 1994.

15. Moreover, the Noticee were issued summons dated 29.04.2010 and 11.05.2010 to remain present produce documents on dated 10/11-05-2010 and dated 25.05.2010 to 26.05.2010 respectively and were also issued summons dated 6.08.2010 and dated 6.09.2010 to remain present on 10.08.2010 and 09.09.2010 respectively. The Noticee neither complied nor submitted the required documents and information on the stipulated date. Therefore, it appeared that the Noticee have rendered themselves liable for penalty under Section 77 of the Finance Act, 1994.

14 A. The Noticee also appeared to have rendered themselves liable to penalty under section 76 of the Finance Act, 1994

16. Therefore, the Noticee M/s. Savaj & Co. Labour Contractor, Kovaya was issued Show Cause Notice F.No.V/15-62/Dem-ST/HQ/2010-11 Dated 18.10.2010 by the Additional Commissioner, Central Excise and Service Tax, HQ., Bhavnagar to show cause as to why: -

- (i) The Service Tax amounting to Rs.43,76,746/- + Education Cess Rs. 87,539/- and Higher & Secondary Education cess Rs. 34,516/- Total Rs. 44,98,801/- (Rs. Forty Four Lacs, Ninety Eight Thousand, Eight Hundred, One only) should not be demanded and recovered under proviso to Section 73(1) of the Act and 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.
- (ii) Penalty should not be imposed upon them under Section 77 of the Act for the failure to provide information and documents on the stipulated dates.
- (iii) Penalty should not be imposed upon them under Section 78 of the Act for the Service Tax not levied and paid by reason of suppressing of the facts with intent to evade payment of Service Tax and having contravened the provisions of the Act and Rules made there under.
- (iv) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for their failure to pay the Service Tax.

### **Defense Reply and Personal Hearing**

17. The Show Cause Notice dated 18.10.2010 was received and acknowledged by Shri Vagh Parbat Govindbhai, Supervisor on behalf of M/S Savaj and Co. on 22.10.2010. A letter dated 07.10.2011 was issued to the Noticee for requesting them to submit their defense reply and that personal hearing was fixed on 18.10.2011. The P.H. on 18.10.2011 was attended by Shri Raning Bagh, Supervisor, M/s Savaj & Co. During the P.H. he said that he has been authorized from M/s Savaj & Co. for appearing in Personal hearing but he does not possess much knowledge of Service Tax. He demanded for some time so that they might avail services of some consultant. Interalia he stated that he will talk with his management about deposit of Duty demanded in the Service Tax. He requested to fix next P.H. on 15.11.11 which was granted.



18. M/s Savaj & Co. was granted another P.H. on 15.11.2011 which was again attended by Shri Raning Bhai Vagh, Supervisor. He demanded further one week time which was accepted. The next date of hearing was proposed to be 23 or 25 November 2011 which was noted by him. Since nobody attended the P.H. on the stipulated dates, a Letter dated 16.12.2011 was issued to the Noticee requesting them to submit defense reply and for fixing personal hearing on 26.12.2011 or 27.12.2011 but the Noticee did not bother to respond to that letter and did not turn up for personal hearing till date.

### **Discussion and findings**

19. I have carefully gone through the records of the case. I find that the Noticee has not filed any reply even after sufficient opportunities have been given to them for personal hearing but they did not seem to be interested as twice they took next dated for hearing, but showed no interest in replying to the Revenue thereby unnecessarily delaying the adjudication process. I find that the principle of natural justice is followed and I proceed to decide the case ex-parte and as per available records and the merits of the case.

20. I find that M/s Savaj & Co., Kovaya, Ta: Rajula Dist: Amreli (herein after referred to as the Noticee) are registered under Service Tax as Manpower Recruitment or Supply Agency. Since the noticee did not furnish the required documents, an inquiry was initiated against them, Summons dated 29.04.2010 and 11.05.2010 were issued to the Noticee by the Superintendent (A.E), Central Excise Bhavnagar, asking them to produce certain documents and remain present for giving evidence in the inquiry. The Noticee under their letter dated 24.06.2010 informed that they are manpower supplier to M/s UltraTech Cement Limited, Gujarat Cement Works, Kovaya (herein after referred to as UTCL); that they work for UTCL only. Another summons dated 6.08.2010, 6.09.2010 and 15.09.2010 were issued to the Noticee. In response to the summons dated 15.09.2010, a statement dated 28.09.2010 of Shri Gandabhai Jinabhai Lakhnotra, partner of the Noticee was recorded before Superintendent (A.E), Central Excise Bhavnagar at Kovaya, wherein he interalia stated that he is partner of the Noticee since last fourteen years and apart from him there are two other partners; that they are supplying labourers under contract to UTCL at Kovaya; that they have obtained registration under 'Manpower Recruitment and Supply Agency' services in July 2005 and are collecting tax and paying the same; that the labourers are supplied to work in the packing plant of UTCL where they undertake work like packing of cement, staking of empty bags etc.; that the consideration for the services provided by them is paid on tonnage basis, however the amount paid per tonne is calculated taking into consideration the minimum wages of the labourers, number of labourers supplied etc. and the number of labourers to be supplied is decided by the supervisor of UTCL; that their labourers work under the supervision and control of the supervisor of UTCL and he produced copies of work orders, profit and loss account and the income tax returns.

21. I find that inquiry was extended to the service recipient UTCL by calling for documents like ledgers of the Noticee for the period from 1.04.2005 to 31.03.2010 and work orders issued to the Noticee for the said period under summons dated 06.09.2010. UTCL under their letter UTCL/GCW/C.EX/A.E. 2010-11 dated 7.09.2010 received on 13.09.2010 supplied copies of agreement entered with the Noticee from 2005-06 to 2009-10 and ledger accounts of the Noticee from 2005-06 to 2009-10.

22. I find that there was vast difference between their account ledgers submitted by UTCL and the value of taxable services shown by them in the ST-3 returns, the Noticee were

called upon to explain the difference and Shri Ranigbhai Bijalbai Vagh, Supervisor of the Noticee appeared before Superintendent(A.E.), Central Excise, Bhavnagar on 13.10.2010. In his statement dated 13.10.2010 he interalia stated that they have not included expenditures towards P.F. contribution, medical expenses, water, school etc. which have been reimbursed by UTCL in the value for the purpose of charging tax and also in the income shown in their profit and loss account; that rent and electricity expenses of the quarters provided by UTCL are adjusted in the bills raised by them for the taxable services provided to UTCL; that there are certain accounting entries against which the 'doc. code' is 'AB' appearing in their ledger submitted by UTCL and such accounting entries are not for the payment made to them; that he is unable to explain the difference between the accounting ledgers and the aggregate of income shown in profit & loss account and the amounts received as reimbursements at present; that it would take at least a month to explain the same.

23. I find that Noticee are engaged in supplying labourers to UTCL under specific work orders for carrying out certain work at the packing plant like staking of bags, loading of bags, operation of rotary packers, tally checking etc. and the Noticee is paid at the rate fixed as per work orders and the Noticee is registered as 'Manpower Recruitment and Supply Agency' and have filed ST-3 returns for 2005-06 to 2009-10. I further find that the work order (as explained in detail in para 7 stipulated the terms and conditions for payments. On comparing ledger accounts of the Noticee furnished by UTCL and the taxable value declared in ST-3 returns for the corresponding periods, I find that there is substantial difference between the two as tabulated hereunder :-,

Financial Year	Amount received by the Noticee towards taxable services provided, (Rs.) (as per account ledgers)	Taxable value declared in ST-3 returns (Rs.)
2005-06 (w.e.f.16.06.05)	12338294/-	83,11,959/-
2006-07	17400418/-	1,04,87,699/-
2007-08	26859615/-	1,34,81,557/-
2008-09	23064811/-	1,30,24,623/-
2009-10	29199960/-	1,75,34,314/-
<b>Total</b>	<b>Rs. 10,88,63,098/-</b>	<b>Rs.6,28,40,152/-</b>

24. The service receiver was paying certain amount to the noticee and re-imbursing certain expenditures towards P.F. contribution, medical expenses, water, school etc. which have been reimbursed by UTCL are not included in the value for the purpose of charging tax and also in the income shown in their profit and loss account; that rent and electricity expenses of the quarters provided by UTCL are adjusted in the bills raised by them for the taxable services provided to UTCL; The Noticee has admitted that the said re-imbursedment of certain payments received from UTCL for provision of taxable services was not included in the value of taxable services in shown in ST-3 returns and accordingly no service tax was paid.

25. I find that all the amounts which were reimbursed to the Noticee by UTCL were expenditures or cost incurred by the Noticee in course of providing of taxable services classifiable under 'Manpower Recruitment and Supply Agency'. Section 65 (105) (k) of Finance Act 1994 substituted by the Finance Act 2005 w.e.f. 16-6-2005 reads "taxable service means any service provided or to be provided to a client, by a Manpower Recruitment or Supply Agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner".

Section 65(68) of Finance Act 1994 as substituted by the Finance Act, 2005 with effect from 16-6-2005, reads as:

“Manpower recruitment or supply agency” means any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to a client;’

26. I find that the value of the taxable services is determined in terms of Section 67 of the Finance Act, 1994, the relevant portion thereof reads

“Section 67. Valuation of taxable services for charging service tax- (1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall,-

- (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;
- (ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;
- (iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

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

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

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

and, Rule 5 of Service Tax (Determination of value) Rules, 2006 notified under clause (aa) of sub-section (2) of Section 94 of the Finance Act, 1994 for the determination of amount and value of taxable service under Section 67 of the Finance Act, 1994 reads;

“Rule 5. Inclusion in or exclusion from value of certain expenditure or costs.-

- (1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.
- (3) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:-
  - (i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;
  - (ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
  - (iii) the recipient of service is liable to make payment to the third party;
  - (iv) the recipient of service authorizes the service provider to make payment on his behalf;
  - (v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;

- (vi) *the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;*
- (vii) *the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and*
- (viii) *the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.*

*Explanation 1.- For the purposes of sub-rule (2), "pure agent" means a person who-*

- (a) *enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;*
- (b) *neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;*
- (c) *does not use such goods or services so procured; and*
- (d) *receives only the actual amount incurred to procure such goods or services....."*

27. I find that the amounts paid to the Noticee as reimbursements are not the expenditures or costs incurred by the Noticee as pure agent of UTCL, therefore, such amounts are not excludible from the value of the taxable services in terms of Rule 5 *ibid*. It therefore, follows that all the amounts received from UTCL whether termed as reimbursements or otherwise is to be treated as consideration for the taxable service provided by the Noticee and is to be included in the value for the purpose of charging service tax on "Manpower Recruitment or Supply Agency" services provided by the Noticee. Hence the Noticee have suppressed the actual value of the taxable services provided by them.

28. I further find that the Noticee have contravened the provisions of Section 67 of the Finance Act, 1994 and Rule 5 of Service Tax (Determination of value) Rules, 2006 in as much as they have not taken the gross amount charged as the value for the purpose of charging the service tax.

29. I find that the notice has paid certain amount of service tax (Rs.71,49,805/-) in their ST-3 returns during the period from 16.06.2005 to Rs.31.03.2010 whereas their liability to pay is worked out Rs.1,16,48,606/- for the said period and the differential amount of Rs.44,98,801/- (as is detailed in the Annexures A & B attached to the SCN) is required to be recovered from them under Section 73 of the Finance Act, 1994 alongwith Interest under Section 75 of the Act. I find that the Noticee has suppressed the material facts about receipt of certain amounts as consideration for the taxable services provided by them and thereby have suppressed the actual value of taxable services, the provision of extended period contemplated under Section 73 of the Finance Act, 1994 is invokeable for recovery of service tax not levied and not paid. Further, as discussed in foregoing para the Noticee have suppressed the value of taxable service with intention to evade tax and thereby have rendered themselves liable for penalty under section 78 of the Finance Act, 1994.

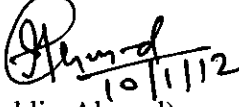
30. I find that the Noticee neither complied nor submitted the required documents and information on the stipulated date, therefore, they have rendered themselves liable for penalty under Section 77 of the Finance Act, 1994.

31. I find that The Noticee have also rendered themselves liable to penalty under section 76 of the Finance Act, 1994 for their failure to pay the Service Tax.

32. In view of the above I pass the following Order :

**ORDER**

- (a) I confirm the demand of Service Tax amounting to Rs.43,76,746/- + Education Cess Rs. 87,539/- and Higher & Secondary Education cess Rs. 34,516/- Total **Rs.44,98,801/-** ( Rs. Forty Four Lacs, Ninety Eight Thousand, Eight Hundred, One only) under proviso to Section 73(1) of the Act against the Noticee.
- (b) I order for recovery of interest at the appropriate rate as applicable till the date of payment of service tax under Section 75 of the Act.
- (c) I impose Penalty of Rs.200 per day or 2% per month whichever is greater under Section 76 of the Finance Act, 1994 for their failure to pay the Service Tax. However, the said penalty amount shall not exceed the amount of service tax confirmed i.e Rs.**44,98,801/-**.
- (d) I impose Penalty of Rs.5,000/- or Rs. 200/- (Rupees Two Hundred only) per day whichever is higher, under Section 77(1)(c) of the Finance Act, 1994 10.05.2008, the first day when the Noticee was summoned to give evidence by the investigating officer, for the failure to provide information and documents on the stipulated dates.
- (e) I impose Penalty of Rs. **44,98,801/-** upon them under Section 78 of the Act for the Service Tax not levied and paid by reason of suppressing of the facts with intent to evade payment of Service Tax and having contravened the provisions of the Act and Rules made there under. However, the penalty amount shall be reduced to Rs.11,24,700/- (i.e.25% of the penalty amount) if the amount of service tax confirmed and interest alongwith reduced p enalty is paid within one month of communication of this order.



(Imamuddin Ahmad)  
Joint Commissioner,  
Central Excise, Bhavnagar

By Registered Post A. D.

F.No.V/15-62/Dem-ST/HQ/2010-11

Date: -10.01.2012

To,

M/s. Savaj & Co.  
(Labour Contractor),  
C/o. M/s. Ultra Tech Cement Ltd.,  
Kovaya, Tal.: Rajula, Dist.: Amreli

Copy to:-

1. The Commissioner, Central Excise, HQ, Bhavnagar (RRA Section).
2. The Assistant Commissioner, Central Excise (Recovery), C.Ex. HQ, Bhavnagar.
3. The Assistant Commissioner, Central Excise (AE), HQ, Bhavnagar.
4. The Assistant Commissioner, Service Tax Division, Bhavnagar.
5. The Assistant Commissioner (Audit) Central Excise, Bhavnagar.
6. The Superintendent, Service Tax Rural Range, Bhavnagar.
7. Guard File.