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Govt. of India
Office of the Commissioner of Central Excise
'Siddhi Sadan', Plot No.6776/B-1, Narayan Upadhyay Road, Off Waghawadi Road,
Bhavnagar

Ph.No. : 0278- 2523627
Fax No.: 0278-2513086

E-mail- adjbhavnagar@gmail.com

By R.P.A.D.

F. No. V/15-06/Dem-ST/HQ/2010-11.

Date of Order: 11/01/2012

Date of Issue: 11/01/2012

Passed by

IMAMUDDIN AHMED

Joint Commissioner

Central Excise

Bhavnagar

Order-in-Original No: 03 / 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. Sunny Travels,
Municipal Shopping Centre,
Crescent Circle,
Bhavnagar.

Subject: Show Cause Notice Number No. V/15-06/Dem-ST/HQ/2010-11 Dated 06.05.2010 issued to M/s. Sunny Travels, Bhavnagar demanding Service Tax of Rs. 9,07,680/-.

Brief Facts of the case

M/s Sunny Travels, Municipal Shopping Centre, Crescent Circle, Bhavnagar (hereinafter referred to as the Service Provider) are holder of Registration under Section 69 of Chapter V of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as "the Act") bearing No ACYPB 8537D ST001 in the category of "Tour Operator" and have undertaken to comply with the conditions prescribed under the Act read with the Service Tax Rules, 1944 framed there under, pertaining to their service activities.

2. During the course of Audit of the said Service Provider and during verification of their records, it was observed that they had received an amount of Rs.1,17,87,399/- as freight. On pointing out, the tax payer informed that they had provided services in respect of transport of parcels and the said amount received by them in respect of transport of parcels from Bhavnagar to Mumbai and visa-a-versa. The said Services falls under the category of Courier Services and the Service provider is liable to pay Rs 12,97,924/- alongwith interest. The tax payer had already paid Rs.5,58,534/- [Rs.3,90,244/- (ST) + Rs. 1,68,290/- (Int.)] vide Challans dated 8.8.2009 and the remaining amount of Rs.9,07,680/- alongwith interest was required to be recovered from the Service Provider. A reference was made to the Service Provider on 22.10.2009 by the Range Superintendent, Service Tax, City Range, Bhavnagar, but they neither made any payment nor submitted any proof of payment.

3. It was further noticed that the Service provider is a Tour Operator but they are providing services in respect of transport of parcels which fall under the category of Courier Service. They made a payment of Rs.5,58,534/- at the time of Audit which confirms that they have accepted the point raised by the Audit.

4. In view of above, the Service Provider has collected an amount of Rs.1,17,87,399/- as freight during the period from 2004 to 2008 for the Services provided in respect of transport of parcels from Bhavnagar to Mumbai which falls under the Category of Courier Service. Accordingly, the Service provider was required to pay due tax at the prevailing rates to the tune of Rs.12,97,924/- (twelve lakhs ninety seven thousand nine hundred and twenty four only) alongwith interest. But the Service provider had failed to pay the due Service Tax during the material time by suppressing the facts only with an intent to evade the said Service Tax which was required to be demanded under the proviso of Section 73 (1) of the said Act alongwith due interest thereon under the provisions of Section 75 of the said Act.

5. Since the said Service Provider has contravened the various provisions viz. section 68, 69 & 70 of the said Act, they were also liable for penal action under Section 76,77,78 of the said Act, read with the various provisions made under the Service Tax Rules, 1944.

6. Therefore, the service provider was issued show cause notice F.No.V/15-06/Dem-ST/HQ/2010-11 dated 06/05/2010 by the Additional Commissioner, Central Excise, HQ, Bhavnagar calling upon them to Show Cause as to why :-

- (i) The Service Tax amount of Rs.9,07,680/- (Rs. nine lakhs seven thousand six hundred and eighty only) should not be demanded under Section 73 (2) of the said Act for rendering services in respect of transport of parcels from Bhavnagar to Mumbai & visa-a-versa which falls under the category of Courier Services.
- (ii) Interest at the appropriate rate as provided under Section 75 of the said Act, on the above amount of Service Tax should not be recovered from them till the actual payment.
- (iii) Penalty should not be imposed on them under Section 76, 77 & 78 of the said Act.

DEFENCE REPLY

7. The Noticee has filed defense reply dated 28.11.2011 wherein they have submitted that they were the holder of Registration bearing No.ASCYPB8537DST001 in the category 'Tour Operator'. They were audited by the Central Excise Officers and it was observed that during 2004 to 2008, they had received an amount of Rs.1,17,87,399/- as freight. This freight income was towards the transportation of parcels in their buses plied between Bhavnagar and Mumbai. Since the said service neither falls under the category of 'Tour Operator' nor under 'Courier Services', no Service Tax was charged from the customers. Therefore, the question of payment thereof to the Government account does not arise. The Service tax calculated by the audit was Rs.12,97,924/-.

8. Further, one of their party had voluntarily paid the Service Tax amount of Rs.3,90,244/- and interest of Rs.1.68.290/- vide challan dated 08.08.2009. They do not agree to the point for the reasons enumerated here under but the said party had made the payment of Service Tax amount as well as interest amount for the reasons better known to them. They confirm that the amount was paid by them and not by us. It can be evident from the fact that the interest amount was also paid by them and not by us.

9. They denied all the allegations made in the SCN dated 06.02.2010 because the transportation of the parcels in their buses does not fall under the category of 'Courier Service'. Section 65 (33) of the Act defines courier agency as 'Courier agency means any person engaged in the **door to door transportation** of time sensitive documents, goods or articles utilizing the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles.'

10. In the definition, the most important aspect is **door to door transportation**. This is the main part of the definition which distinguishes a courier agency from other transport agencies that the courier agency arranges the transportation from the '**door**' of the sender to the '**door**' of the addressee. It may be possible that the sender may himself go to the office of the courier agency to hand over the packed addressed to some person residing at another city. Similarly the addressee may come to the office of courier agency to collect the parcel but the important aspect is that the agency provides such door-to-door service as a general rule or as a business commitment.

11. In their case, the customer comes to their office to hand over the packed addressed to the person residing in another city. The parcels are booked and transported in their bus to another city. The addressee comes to collect the parcel from their office in that city. So in this case there is no general rule or business commitment for door-to-door services. So in general, it is not one instance or so that they had provided door-to-door services. It is in general or our business commitment not to provide such services. This activity/commitment clearly distinguish them from providing services under courier services. They vehemently believe that at least at one time i.e. to say that at the time of collection of parcel or at the time of delivery of parcel once the door-to-door services would have been provided for considering the services under the category 'courier services'. Here in their case on both sides, neither consignor nor consignee was given door-to-door services by them. Hence, from the above it is clear that they do not satisfy ourselves under the definition of courier agency services.

12. Further, it is pertinent to point out at this juncture that they had collected only freight charges from the customers for transportation of articles from one place to another. As pointed out by the audit themselves that in their books of accounts, such charges were mentioned as freight charges. So, there is no relation to door-to-door delivery of documents, goods or articles.

13. Further, it is to bring to the notice that such types of activities are being carried by the State Transport Authorities also. It can be evident from the departmental records itself that they are also not registered under 'Courier Services'.

14. Without prejudiced to the above, it is brought to notice that the SCN was issued on 06.05.2010. It can cover the period from 2005-06 and not from 2004-05, they requested to drop the SCN dated 06.05.2010.

PERSONAL HEARING

15. Personal Hearing was granted on 29/30.09.2011, 02/03.11.2011, 29.11.2011 and 15/16.12.2011, but nobody attended the P.H.

DISCUSSION & FINDINGS

16. I have carefully gone through the records of the case. I find that sufficient opportunities have been given to the Noticee to attend the P.H. and to defend their case, but they failed to do so, therefore, requirement of principle of natural justice are fulfilled and I proceed to decide the case ex-parte and as per available records, defense reply dated 28.11.2011 filed by the notice and the merits of the case.

17. I find that the Noticee M/s Sunny Travels, Municipal Shopping Centre, Crescent Circle, Bhavnagar (hereinafter referred to as the Service Provider) are holder of Registration under Section 69 of Chapter V of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as "the Act") bearing No **ACYPB 8537D ST001** in the category of "Tour Operator" and during the course of Audit of the said Service Provider, it was observed that they had received an amount of Rs.1,17,87,399/- as freight during the period from 2004 to 2008 which pertained to the amount towards the services provided by them in respect of transport of parcels from Bhavnagar to Mumbai and visa-a-versa. Since the said Services fall under the category of Courier Service, the Service provider was liable to pay Service Tax of Rs 12,97,924/- alongwith interest, out of which, the tax payer had already **paid Rs.5,58,534/- [Rs.3,90,244/- (ST) + Rs. 1,68,290/- (Int.)]** vide Challans dated 8.8.2009. The remaining amount of **Rs.9,07,680/- alongwith interest** was required to be recovered from the Service Provider and accordingly present SCN was issued.

18. In their Defense, the Noticee has not accepted the contention of the Department and submitted that :-

(i) in the definition of 'Courier Service', the most important aspect is **door to door transportation**. This is the main part of the definition which distinguishes a courier agency from other transport agencies that the courier agency arranges the transportation from the '**door**' of the sender to the '**door**' of the addressee and they are not providing any door to door service to the customers. It may be possible that the sender may himself go to the office of the courier agency to hand over the packet addressed to some person residing at another city. Similarly the addressee may come to the office of courier agency to collect the parcel but the important aspect is that the agency provides such door-to-door service as a general rule or as a business commitment. In their case, the customer comes to their office to hand over the packet addressed to the person residing in another city. The parcels are booked and transported in their bus to another city. The addressee comes to collect the parcel from their office in that city. Further, it is to bring to the notice that such types of activities are being carried by the State Transport Authorities also. It can be evident from the departmental records itself that they are also not registered under 'Courier Services'.

(ii) the SCN was issued to them on 06.05.2010 and it can cover the period from 2005-06 and not from 2004-05.

19. I find that since the Noticee has challenged the leviability of service tax on transport of parcels etc. under the category of 'courier service', therefore, I examine the issue in the light of definition of the said service. Section 65 (33) of the Act defines courier agency as '*Courier agency means any person engaged in the **door to door transportation** of time sensitive documents, goods or articles utilizing the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles.*'

20. As per Section 65(105)(f) of the Act, *Taxable service means any service provided or to be provided to any person by a courier agency in relation to door to door transportation of time sensitive documents, goods or articles.*

21. I find that the issue of door-to door transportation of goods was examined by the Hon'ble Tribunal, Bangalore in the case of Vijayanand Roadlines Ltd. vs. Commissioner of C.Ex., Belgaum, as reported in 2006(1) STR 113 (Tri.Bangalore) wherein the contention of Appellant that Door-to-Door transport was not done by them and they are not covered by the definition of Courier service was rejected it was held that there is no difference in transportation of goods from one place to another and door-to-door delivery.

22. Further, the case was upheld by Hon'ble Supreme Court as reported in 2006(4) STR J115(S.C.).

23. In view of the above, I find that the ratio of the said judgements is applicable to the instant case and the activity of transportation of goods from one place to another by the Noticee falls under Courier Service and the service tax has rightly been demanded from them.

24. I find that provision of extended period under Section 73 of the Act has been invoked and the same has not been challenged by the Noticee and their only contention is raising of demand beyond 5 years i.e. demand for the period 2004-05 cannot be raised as the SCN was issued only on 06.05.2010. I find that although the contention of the Noticee is correct, I find that the Demand for 2004-05 is Rs.390,244/- which, as is mentioned in the SCN, has already been recovered and as per Noticee's claim, the same was paid by someone else and not by them and the SCN proposes to recover only Rs.9,07,680/- for the period from 2005-06 onwards and the same is well within the period of 05 years and therefore I reject the contention of the Noticee.

25. I find that the Service provider had failed to pay the Service Tax of Rs.9,07,680/- for the period 2005-06 to 2008-09 by suppressing the facts only with an intent to evade the said Service Tax and the same is required to be recovered under the proviso of Section 73 (1) of the said Act alongwith due interest thereon under the provisions of Section 75 of the said Act.

26. I further find that for the acts of suppression of facts of providing taxable services & liability of the Noticee to pay service tax on them and contravening various provisions of the Act and the Rules as discussed hereinabove with an intent to evade payment of service tax, the Noticee have rendered themselves liable to penalty under Section 78 of the Act. Similarly, the Noticee is liable to penalty under Section 77 of the Act for contravention of provisions of Section 70 of the Act read with Rule 7 of the Rules as discussed hereinabove. Further, the Noticee is also liable to penalty under Section 76 of the Act 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 as discussed hereinabove.

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

ORDER

- (i) I determine the demand of Service Tax of Rs.9,07,680/- (Rs. nine lakhs seven thousand six hundred and eighty only) under Section 73 (2) of the said Act for rendering services in respect of transport of parcels from Bhavnagar to Mumbai & visa-a-versa which falls under the category of Courier Services.
- (ii) I order for recovery of Interest at the appropriate rate as provided under Section 75 of the said Act, on the above amount of Service Tax to be recovered from them till the date of actual payment.
- (iii) I impose Penalty of Rs.200 per day or 2% per month, whichever is greater, upon them, till the date of actual payment of service tax amount determined in (i) above under

Section 76 of the said Act for their failure to pay the service tax amount. However, the penalty amount shall not exceed the amount of service tax determined at (i) above.

- (iv) I impose Penalty of Rs. 1,000/- upon them under Section 77 of the said Act.
- (v) I impose Penalty of Rs. 9,07,680/- (Rs. Nine lakhs seven thousand six hundred and eighty only) upon them under Section 78 of the said Act. However, the penalty amount shall be reduced to Rs.2,26,920/- i.e.25% of the penalty amount if the amount of service tax determined and interest are paid along with reduced penalty within one month of communication of this order.



(Imamuddin Ahmad)
Joint Commissioner,
Central Excise, Bhavnagar.

F.NO.V/15-06/Dem-ST/HQ/2010-11

Date:11/01/2012

BY REGD. POST A.D./HAND DELIVERY

To,
M/S. Sunny Travels,
Municipal Shopping Centre,
Crescent Circle, Bhavnagar

Copy to:

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