


- S. Tax

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By R.P.A.D.

F. No. V/15-54/Dem-ST/HQ/2010-11.

Date of Order: 13/01/2012

Date of Issue: 13/01/2012

Passed by

IMAMUDDIN AHMED
Joint Commissioner
Central Excise
Bhavnagar

Order-in-Original No: 04 / 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. Jai Mataji Construction Co.,
C/o M/s. G.H.C.L., Sutrapada,
Distt. Junagadh.

Subject: Show Cause Notice Number No. V/15-54/Dem-ST/HQ/2010-11 Dated 18.10.2010 issued to M/s. Jai Mataji Construction Company, Sutrapada demanding Service Tax of Rs.25,25,022/-.

BRIEF FACTS OF THE CASE

An intelligence was collected from the reliable sources by the officers of Central Excise and Service Tax that contractors i.e. service providers of M/s GHCL, Sutrapada, District Junagadh (Hereinafter referred to as "GHCL ") are not paying any Service Tax on the taxable service and therefore enquiries were initiated against them. Necessary documents were called for from GHCL. It was observed from documents that a labour contractor **M/s Jai Mataji Construction Company, Sutrapada, Dist, Junagadh** (Hereinafter referred to as Noticee) was supplying Manpower since last five years without paying Service Tax thereon. Summons were issued dt.09.04.2010 and 19.05.2010

2. It appeared that the Noticee did not appear in response the Summons issued by the Superintendent (A.E.), Central Excise, Bhavnagar and did not provide any documents. However, on the basis of documents received from M/s GHCL, it appeared that the Noticee had provided services of "Manpower Recruitment or supply" and "Maintenance and Repair" to M/s GHCL during the period from 2005-06 to 2007-08 without applying for Service Tax Registration, without paying Service tax and without filing ST-3 returns for the period from 2005-06 to 2007-08.

3. It appeared that the services of "Manpower Recruitment or supply" provided by the Noticee to M/s GHCL merit classification under sub-Section 68 of Section 65 of the Finance Act, 1994 and "Maintenance and Repairs" services provided by the Noticee merit classification under sub-Section 64 of Section 65 of the said Act since it gave essential characteristics of supplying of Manpower. It also appeared that the Noticee had applied for the registration in the month of January 2008 and Service Tax Registration No.AOCPS8012GST001 was allotted and had filed ST-3 returns for the Financial Year 2008-09. However, during the course of audit, the noticee was not able to produce any records for the period prior to the registration and therefore inquiry was initiated.

4. It appeared during the course of inquiry that the Ledger provided by M/s GHCL, the noticee had received total taxable amount of Rs. 3,67,99,309/- upto the financial year 2009-10 and on comparing the value of consideration received from M/s GHCL for providing taxable services from the ledger accounts received from M/s GHCL with the value of taxable services shown in the ST-3 returns by the noticee, it appeared that the Noticee has not paid service tax on the value of services provided by them as shown below.

Sr No.	Financial Year	Amount received by the noticee towards taxable services provided (in Rs.)	Value of taxable services shown in the ST-3 returns (in Rs.)
1	2005-06	41,64,558	Not filed
2	2006-07	60,46,015	Not Filed
3	2007-08	81,90,086	Not Filed
4	2008-09	85,06,752	65,27,143
5	2009-10	98,91,898	85,90,687
	Total	3,67,99,309	1,51,17,830

Thus, the Noticee had totally collected Rs. 3,67,99,309/- for providing taxable services during the afore said period.

5. It appeared from the above that the Noticee was engaged in providing services to M/s GHCL which in terms of Section 65A of the Finance Act, 1994 are classified as "Manpower Recruitment and Supply Services" and "Maintenance and Repairs Service" as defined under Sub-section 68 and Sub-section 64 of Section 65 of the Act respectively and the Noticee has thereby rendered taxable services as defined under Section 65 (105) (k) of the Act and Section 65 (105) (zzg) of the Act. Further in terms of Rule 4 of Service Tax Rules, 1994 (hereinafter referred to as the Rules), every person liable for paying the service tax shall make an application to the concerned Superintendent of Service Tax Range for Registration within thirty days from the date on which the service under Section 66 of the Act,

1994 is levied. This service has become taxable w.e.f. 16.6.2005 and as per Section 67 of the Finance Act, 1994 Service Tax on this service is leviable on the gross amount charged.

6. Therefore, it appeared that the Noticee had provided taxable service without paying Service Tax leviable thereon. Therefore Service Tax at the appropriate rate on Rs.3,67,99,309/- for the period from 01.04.2005 to 30.03.2010 being the gross amount charged and received by the Noticee from M/s GHCL is liable to be recovered under Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Act. It also appeared that the Noticee have suppressed the facts that they were engaged in providing taxable services of "Manpower Recruitment and Supply Service " and "Maintenance and Repairs " from the Department, therefore, extended period as contemplated under proviso to Section 73(1) of the Act, is invokable for recovery of Service Tax not paid.

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

8. It further appeared that the Noticee has provided Manpower Recruitment and Supply Agency's Service valued at Rs 3,67,99,309/-during the period from 16-06-2005 to 30.03.2010 and suppressed the actual value of the taxable service provided by them from the Department with intent to evade the payment of Service Tax leviable on the said services, inasmuch as the Noticee did not submit the ST-3 returns for the said period, hence extended period as contemplated under Section 73(1) of the Act is invokable for recovery of Service Tax not paid.

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

- 1 Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 inasmuch they have failed to apply to the Service Tax Department for Registration under the category of "Manpower Recruitment and Supply Agency Service" and "Maintenance and Repairs Service";
- 2 Section 68 of the said Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as they have failed to pay service Tax at the appropriate rate on the taxable value recovered by them from M/s GHCL for the taxable services rendered by them during the period from 01-04-2005 to 31-03-2010;
- 3 Section 70 of the Act read with Rule 7 of the Service Tax Rules, 1994 inasmuch as they have failed to assess the service Tax and file returns in Form ST-3 in respect of taxable services rendered for the period from 01-04-2005 to 31-03-2010.

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

11 After carrying out the investigation into the services provided by **M/s Jai Mataji Construction Co., C/o GHCL, Sutrapada, Dist.Junagadh**, a Show Cause Notice No.V/15-54/DEM-ST/HQ/2010-11 dated 18-10-2010 was issued to

the service provider by Additional Commissioner, Bhavnagar proposing actions as under :

- 1 Service Tax amounting to Rs.25,25,022/- should not be demanded and recovered under the proviso to Section 73(1) of the Finance Act, 1994;
- 2 Interest at the appropriate rate as applicable till the date of payment of Service Tax should not be charged under Section 75 of the Act, *ibid*;
- 3 Penalty should not be imposed upon them under Section 76 of the Act for the failure to assess Service Tax under Section 70 of the Act and make the payment of Service Tax within the period and in the manner prescribed under Section 68 of the Act read with Rule 6 of the Rules *ibid* ;
- 4 Penalty should not be imposed upon them under Section 77 of the Act read with Rule 7 for failure to apply for registration under Section 69 of the Act read with 4 of the Rules and to file prescribed returns inasmuch as they failed to file Service Tax returns under Section 70 of the Act read with Rule 7 of the Rules ;
- 5 Penalty should not be imposed upon the under Section 78 of the Act *ibid* for the Service Tax not levied and paid by reason of suppressing of the facts with intent to evade payment of Service Tax and having contravened the provisions of the Act and the Rules made thereunder ;
- 6 Penalty should not be imposed under Section 77 of the Finance Act, 1994 for non-appearance before the officers of the Department in response to summons.

DEFENCE REPLY

12 **M/s Jai Mataji Construction Co.,C/o GHCL, Sutrapada, Junagadh** were called upon to file their written reply under this office letter No.V/15-54/DEM-ST/HQ/2010-11 dtd.07-10-2011 and an opportunity of personal hearing was afforded to the Noticee wherein Shri Merubhai Arjanbhai Solanki ,proprietor of M/s Jai Mataji Construction Co., appeared before the adjudicating authority and he submitted that he is barely literate and he could only sign and he was not aware of Service Tax laws and did not understand the implications of the Show Cause Notice. He requested to provide two weeks' time so that he could understand the issue through his consultant and file reply to the Show Cause Notice which has been accepted. Therefore, next opportunity for personal hearing was fixed on 02/03-11-2011 during which he could file a written reply to the Show Cause Notice. Thereafter the Noticee was informed by this office letters dt.18/20-10-2011, 24-11-2011 and 13-12-2011 wherein personal hearings were fixed on 01-11-2011, 08-12-2011 and 26/27-12-2011 but nobody appeared for hearing. Enough opportunities have been given to the noticee to file reply to the Show Cause Notice and appear for personal hearing but it appears that the noticee are not interested in defending their case. I,therefore , proceed to decide the case *ex-parte* on the basis of facts available or record.

DISCUSSION AND FINDINGS :

13. I have carefully gone through the records of the case,. During the investigation, it has been revealed that **M/s Jai Mataji Construction Co., Sutrapada, Junagadh** are engaged in providing taxable service as defined under Section under Section 65 of the Finance Act, 1994 for the period 2005-06 to 2009-10 to M/s GHCL., the service recipient, i.e. Manpower Recruitment and Supply Services and "Maintenance and Repairs Service" as defined under Section 65 (68), 65 (64) of the Finance Act, 1994.

14 I find that the Noticee have not filed their written reply to the Show Cause Notice dtd.18-10-2010 nor they have cared to attend the personal hearing afforded to them on Dt. 01-11-2011, 08-12-2011 and 26/27-12-2011. The Noticee have obtained Service Tax Registration No. AOCPS8012GST001 when investigation

was initiated but they have not paid Service Tax to the Government Account nor filed ST-3 returns till date and have suppressed the amount received against service provided to circumvent from the service Tax liability.

15 During the period 2005-06 to 2009-10, the service provider has rendered taxable services as defined under Section 65 (68) of the Finance Act, 1994 to M/s. GHCL, the service recipient:

- (a) Without submitting Half Yearly Returns in ST-3 Form with TR-6 copy in time as provided under Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 ;
- (b) Without paying Service Tax in terms of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax, therefore, is liable to pay interest under Section 75 of Finance Act, 1994 at applicable rate ;
- (c) And in view of violation of provisions of Section 66, 68 and 75 of the Finance Act, 1994, Noticee is liable for penalty as provided under Section 76, 77(1)(a), 77(2) and 77 (1) of Finance Act, 1994.

16 The Service Tax for the period 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10 for the services rendered by the service-provider has been demanded in Show Cause Notice Dt. 18-10-2010 based on the amount received from M/s.GHCL, Sutrapada, accordingly amount of Service Tax comes to **Rs. 25,25,022/-** which is required to be recovered from the service provider under Section 73(1) of the Finance Act, 1994 along with interest at appropriate rate under Section 75 of the Finance Act, 1994.

17 **M/s Jai Mataji Construction Co., Sutrapada, Junagadh** have obtained Service Tax Registration as service provider when the inquiry was initiated against them, however, they have failed to pay Service Tax as provided under Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules 1994 and has failed to submit half yearly returns as provided under Section 70 of Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994 and suppressed the fact with intention to evade payment of service tax on the services provided by them. Therefore, extended period is rightly invoked by the Department under proviso to Section 73 of the Finance Act, 1994.

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

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

ORDER

- 19.1 I hereby confirm amount of Service Tax of **Rs.25,25,022/-** for the period from 2005-06 to 2009-10 under Section 73(2) of the Finance Act, 1994 on **M/s Jai Mataji Construction Co., Sutrapada, Junagadh.**
- 19.2 **M/s Jai Mataji Construction Co., Sutrapada, Junagadh** are also liable to pay interest under Section 75 of the Finance Act, 1944 at appropriate rate.
- 19.3 I impose penalty of Rs. 200/- for every day or at the rate of 2% per month of Service Tax whichever is higher upon **M/s Jai Mataji Construction Co., Sutrapada, Junagadh** under Section 76, for failure to assess service tax as required 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 red with Rule 6 of the Rules, during the period in which such failure continued during 2005-

06 to 10.05.2008, provided that the total amount of penalty payable in terms of this Section shall not exceed the Service Tax payable, during the period 2005-06 to 10.05.2008.

- 19.4 I impose penalty of Rs.200/- per day or five thousand rupees whichever is higher upon **M/s Jai Mataji Construction Co., Sutrapada, Junagadh** under Section 77 (1)(a) of the Finance Act, 1994, for failure to obtain registration under Section 69 of the Act read with Rule 5 of the Rules, during which such failure continued starting with the first day after the due date, till the date of actual compliance.
- 19.5 I impose penalty of Rs. 200/- per day or five thousand rupees, whichever is higher upon **M/s Jai Mataji Construction Co., Sutrapada, Junagadh** under Section 77 (1) (c) of the Finance Act, 1994, for non-appearance before officers of department in response to Summons, for the period during which such failure continued starting with the first day after the due date, till the date of actual compliance.
- 19.6 I impose penalty of Rs.5000/- upon **M/s Jai Mataji Construction Co., Sutrapada, Junagadh** under Section 77 (2) of the Finance Act, 1994, for failure to file prescribed returns under Section 70 of the Act read with Rule 7 of the Rules.
- 19.7 I impose penalty of Rs. 25, 25, 022/- upon under Section 78 of Finance Act, 1994 upon **M/s Jai Mataji Construction Co., Sutrapada, Junagadh**. If the amount as determined under Sr. No.(1) above is paid within 30 days from the receipt of the order along with the interest payable then as per proviso to Section 78, the penalty will be only 25% of the Service Tax determined at Sr. No.(1) above. The benefit of reduced penalty shall be available only if the amount of penalty so determined has also been paid within the period of thirty days from the receipt of this order.


13/1/12

(Imamuddin Ahmed)
Joint Commissioner
Central Excise
Bhavnagar

F.No.V/15-54/DEM-ST/HQ/2009

Date :13. 01.2012

To.
M/s Jai Mataji Construction Co.,
C/o M/s GHCL , Sutrapada,
DIST. Junagadh.

Copy to:

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