


- S-tax

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

F. No. V/15-58/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: 06 / 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. Chhagan Meghaji Kansara,  
Sant Krupa, Harsiddhi Society  
Between Railway Line,  
Veraval-362266. (Distt. Junagadh)

Subject: Show Cause Notice Number No. V/15-58/Dem-ST/HQ/2010-11 Dated 18.10.2010 issued to M/s. Chhagan Meghaji Kansara, Veraval demanding Service Tax of Rs.7,37,376/-.

**BRIEF FACTS :**

On basis of intelligence that the labourers contractors / maintenance or repairs contractors engaged by M/s. Adiya Birla Nuvo Ltd., Unit- Indian Rayon, Veraval (hereinafter referred to as the "M/s. Indian Rayon") are not paying any service tax on the taxable service provided by them, necessary documents were called from M/s. Indian Rayon. It was observed there from that M/s. Chhagan Meghaji Kansara, Sant Krupa, Harsiddhi Society, Railway line, Veraval, (hereinafter referred to as the Noticee) has been engaged in providing Construction of Complex Services since about last five years without obtaining Service Tax Registration and without paying service tax. Therefore, an inquiry was initiated against the Noticee and Summons was issued to the Noticee on 22.02.10 & 05.04.10.

02. A statement of Shri Chhagan Meghaji Kansara, Proprietor of the Noticee was recorded before the Superintendent [A.E.] Central Excise H.Q. Bhavnagar under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 (hereinafter referred to as "the Act") on 13.04.2010, wherein he interalia stated that they have been engaged in providing Construction of Complex service to M/s. Indian Rayon, Veraval since last five years approx.; that under these they undertook the work of floor repairing, water proofing work and also undertook repairing work of damaged plaster etc. in colony of M/s Indian Rayon; that he further stated that they had provided labourers to M/s Indian Rayon as required by them and after execution of above work they received payment from M/s Indian Rayon. They had raised all the bills related Civil Maintenance and construction of Colony work after the completion of work. On being asked, he stated that he had no knowledge of service tax law and hence he had not paid the same; that they had obtained Service Tax registration in the year i.e. 2009-10 for the service provided by them; that, they had not paid any Service Tax for the previous period prior to March-10; that, they had not provided any taxable services to anybody else except M/s. Indian Rayon.

03 The provisions of section 65 (30a) of the Finance Act, 1994 reads---

"Construction of Complex" means, -

- (a) Construction of new residential complex or a part thereof; or building or civil structure or a part thereof; or
- (b) Completion and finishing services in relation to residential complex such as glazing, plastering, floor and wall tiling, wall covering and wall preparing, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services or
- (c) Repair, alteration, renovation or restoration of, or similar services in relation to, 'residential complex'....."

From the above, it appeared that the Noticee had carried out work related to construction and repairs of Colony and Civil Structure by carrying out only labour work involved in the said work. Therefore, it appeared that in terms of provisions of Section 65A of the Act, the service provided by the Noticee to M/s. Indian Rayon would merit classification under sub-Section 30(a) of Section 65 of the Act i.e. "Construction of Complex Services" since it gives essential characteristics of repairing and construction of Complex/Colony of M/s. Indian Rayon.

04. On perusing the copy of Ledger Account provided by M/s. Indian Rayon and copies of Income Tax returns, copy of Bank statement, etc. submitted by the Noticee and during the inquiry, it appeared that the Noticee had received the amount towards service provided to M/s. Indian Rayon as under:-

Sr. No.	Financial Year	Amount received by the Noticee towards taxable services provided, (in `)
1.	2005-06	9,70,900/-
2.	2006-07	14,14,695/-
3.	2007-08	15,20,924/-
4.	2008-09	12,65,619/-
5.	2009-10	11,84,183/-
<b>Total</b>		<b>63,56,321/-</b>

Thus, the Noticee had received total taxable amount for the period 01.04.2005 to 31.03.2010 is Rs. 63,56,321/-.

05 The Noticee was engaged in providing services to M/s Indian Rayon which in terms of Section 65A of the Act are classified as "Construction of Complex Services" as defined under Sub-Section 30(a) of Section 65 of the Act as discussed hereinabove and the Noticee have thereby rendered taxable services as defined under Section 65(105) (zzzh) of the Act. In terms of Rule 4 of Service Tax Rules, 1994 (herein after 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.

06. The Noticee had contravened the following provisions of chapter V of the Act and Service Tax Rules 1994 ((hereinafter referred to as "the Rules") related to Service Tax matter:

- i] Section 69 of the Act read with rule 4 of the Rules in as much as they failed to apply to the service tax department for registration under the category of 'Construction of Complex'.
- ii] Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 in as much as they have failed to pay service tax at the appropriate rate on the taxable value recovered by them from M/s. Indian Rayon for the taxable services rendered by them during the period from 01.04.2005 to 31.03.2010.
- iii] Section 70 of the Act read with Rule 7 of the Service Tax Rules, 1994 in as much 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.

07. The Noticee under statement admitted the facts of non payment of Service Tax on the service of "Construction of Complex" provided by them and thereby rendered themselves liable to penalty under Section 76 of the Act, for non payment of Service Tax. Further, for the act of suppression of facts of providing taxable services under the category of "Construction of Complex Service" and contravention of provisions of the Act, and the Rules as discussed hereinabove with an intent to evade payment of Service Tax, the Noticee had rendered themselves liable to penalty under Section 78 of the Act. Similarly, for the act of non applying for registration under Section 69 of the Act read with Rule 4 of the Rules and for the act of non submission required details of amount received for "Construction of Complex Service" in the prescribed return under Section 70 of the Act read with Rule 7 of the Rules as discussed hereinabove, the Noticee had rendered themselves liable for penalty under Section 77 of the Act.

08. Therefore, the Noticee was issued with a Show Cause Notice No. V/15-58/Dem/HQ/2010-11 dated 18/10/2010 asking them to show cause as to why: -

- (i) The Service Tax amounting to Rs. 7,18,491/- + Education Cess Rs.14,370/- and Higher & Secondary Education Cess Rs. 4,515/- Total Rs. 7,37,376/- ( Rs. Seven Lacs Thirty Seven Thousands Three Hundred Seventy Six 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 76 of the Act for the 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 read with rule 6 of the Rules.
- (iii) Penalty should not be imposed upon them under Section 77 of the Act for the failure to apply for registration under Section 69 of the Act read with Rule 4 of the Rules and to file prescribed returns under Section 70 of the Act read with rule 7 of the Rules.
- (iv) 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 have contravened the provision of the Act and Rules made thereunder.

**Defence :**

9.1 The Noticee vide letter dated 18.11.2010 submitted that they were engaged in repairing & maintenance work at the factory of M/s. Indian Rayon, Veraval. The said company did not inform them regarding Service Tax or Registration of Service Tax and they were raising bills as per Work Order without mentioning Service Tax as they were not aware about it. They had not collected Service Tax on the work undertaken by them in M/s. Indian Rayon, Veraval. They had obtained Service Tax Registration in March-2010. They also stated that M/s. Indian Rayon, Veraval would have compelled them for obtaining Service Tax Registration then this situation would not have been arisen. They had paid Service Tax and filed ST-3 Return on the work undertaken by them after obtaining Service Tax Registration in March-10.

9.2 It was submitted that Service Tax of R s. 7,37,376/- raised in Show Cause Notice for the period from 2005-06 to 2009-10 had not been recovered by them from M/s. India Rayon and same are required to be recovered from them and reference have been made in this regard with the said company. The repairing & maintenance work being undertaken by them in the factory of M/s. Indian Rayon, Veraval is estimated from Rs. 8 Lakhs to Rs. 15 Lakhs and they used to earn profit of 8 to 10 percentage by deducting labour charges and other expenses. Thus, it was not possible for them to pay such huge amount of Service Tax.

9.3 The said amount of Service Tax is to be recovered by them from M/s. Indian Rayon, Veraval and they had demanded the same from them. They will submit the copy of challan only after payment of Service Tax.

**PERSONAL HEARING :**

10.1 The personal hearing in the matter was granted to the Noticee on 18.10.2011 wherein Shri Chhagan Meghji Kansar, Proprietor appeared and stated that they knew very less about Service Tax and intend to submit the reply to Show Cause Notice with the assistance of some other and requested to grant some time for the same. The Noticee was informed to appear for personal hearing on 15.11.2011 so that he can submit the reply to Show Cause Notice. The Noticee submitted letter dated 17.10.2011 wherein interalia among other things stated that they did not come under Service Tax as Total Bill include Sale (Transfer of Material) on which VAT was imposed. Only 20-25% of the amount are involved towards labour charge which is below the Service Tax limit. They had not collected Service Tax from M/s. Indian Rayon.

10.2 Shri R. C. Pandya, Chartered Accountant appeared for personal hearing on 15.11.2011 and produce written submission dated 14.11.2011 and reiterated the same. He also produced a chart and submitted that only 20-25% amount was labour charges and rest were cost of material and if this 20-25% amount is considered as Taxable Value, they will be entitled for exemption. He has not produced any documentary evidence about his claim and requested to give some time to produce the Bills. Accordingly, the Noticee was granted another date of personal hearing on 24/25.11.2011. The Noticee vide letter dated 14.11.2011 reiterated the facts submitted during the course of personal hearing.

11.1 The Noticee vide letter dated 25.11.2011 sought the adjournment for personal hearing and submitted written submission dated 23.11.2011.

11.2 The Noticee submitted that they were providing Civil Service to M/s. Indian Rayon as per their requirement and not providing labours to the said company. They were not a labour contractor and doing civil work with material so their net service charge were not covered under Service Tax limit. The composite contract involved both the provision of services as well as supply of goods. To the extent of supply of goods, the transaction is also deemed to be a sale and therefore is also liable for state level VAT. The Service Tax law provides for two alternative concessional notifications in cases where goods are also supplied in the composite contract, which is as under :-

- (a) Actual abatement of the value of goods sold,
- (b) Presumptive abatement towards the value of goods sold to the extent of a specified percentage of the gross contract value.

Both the above alternative are optional.

11.2 They submitted that no Service tax on sale of goods as per Notification No. 12/2003. *There may be many situations wherein the service provider may also sell certain goods (whether*

directly as a sale or indirectly). If the Service Provider supplies goods and material while providing the service, value of goods and material has to be excluded for purpose of payment of service tax. The benefit of Notification No. 12/2003-ST is available also in the case of deemed sale subject to the existence of necessary documentary evidence.

11.3 They submitted that they are not able to produce bills as bills and other documents were destroyed in flood in 2009 and attached report in this regard and requested that on the basis of bonafide belief they had not taken Service Tax Number.

11.4 They also submitted that the Show Cause Notice alleged that they were carrying out only labour work involved in the said work but this statement is not true because they were doing Civil Work with material to a single resident house of staff of M/s. Indian Rayon as per requirement of the company.

11.5 They submitted that in view of the above discussion, they were of the bona fide belief that they were not liable to pay Service Tax, so not taken registration number, not collected Service Tax and not filed ST-3 return.

11.6 They further submitted that even if they are liable to pay service tax, they are entitled to basic exemption limit as per Service Tax law as well as abatement available under Notification No. 18/2005-ST dated 7.6.2005. They submitted two charts showing (1) Taxable amount calculated as per Gross amount mentioned in SCN, and (2) Taxable amount on the basis of statement provided by M/s. Indian Rayon and claimed Basic Exemption of Rs. 4,00,000/-. As per these two charts, they arrived at the Service Tax liability to Rs. 2,30,266/- & Rs. 2,22,794/- respectively.

12 The Notice was granted next date of Personal Hearing on 09.01.2012 wherein Shri R. C. Padiya, Chartered Accountant appeared and produced a written submission dated 06.01.2012 and reiterated the same and requested to decide the issue on the basis of written submission. The Noticee vide their written submission dated 06.01.2012 reiterated their earlier submission dated 23.11.2011.

### **Discussion & Findings:**

13. I have carefully gone through the notice, case records, written reply to the notice and submissions made at the time of personal hearing.

14. The impugned notice has been issued demanding service tax on the taxable services classifiable under Construction of complex services rendered by the Noticee and proposing to impose penalty under section 76,77 and 78 of the Act. The Noticee do not dispute the taxability of the services provided by them but have challenged the quantum of demand on the grounds that abatement in the consideration received from the service recipient has not been extended in the notice.

15. I find that the Noticee has been undertaking mainly civil works involving repairs in the buildings of M/s Indian Rayon. The Noticee were neither paying service tax on taxable services provided by them nor were registered with the department. In the course of the inquiry the Noticee did not produce any documents relating to the nature of services provided by them nor have they produced any documents relating to the consideration received by them. Therefore the deposition given by them under Section 14 of the Central Excise Act, 1944 was relied upon in the notice and for the purpose of calculation of the tax ledgers obtained from the service recipient- M/s Indian Rayon. The Noticee has however, disputed the quantum of tax demand in the notice on the grounds that the value of materials used in providing service has not been discounted while calculating the tax liability in the notice.

16. The Noticee have contended that they were doing civil work with material and their net services charges are within service tax limit. Therefore the classification of the taxable service provided by the Noticee is not disputed here. The services provided are taxable under Section 65(105)(zzzh) of the Act and the activities undertaken by them are "Construction of Complex" within the meaning of Section 65(30a) of the Act. The value for the purpose of service tax is governed by Section 67 of the Act and in terms of Notification No. 12/2003-S.T. the value of goods and materials sold by the service provider to the service provider is exempt from service tax. This exemption is available subject to non-availment of CENVAT credit on such goods and

materials and maintenance of documentary proof which specifically indicates the value of goods and materials as clarified by CBEC vide circular No, 233/2/2003-CX-4 dated 3.03.2006 (this circular was withdrawn vide circular no. 96/7/2007-S.T. dated 23.08.2007 but this has not affected the condition of production of documentary evidence). The Noticee has contended that they are not able to produce any bills as they are destroyed in flood, I find that the Noticee had not produced any documents whatsoever during the course of the inquiry for this very reason. However, they have produced certain documents like ledgers, work orders which were obtained from the service recipient. Therefore it is hard to believe that the Noticee could not procure bills submitted to the service recipient or any other document or certificate from the service recipient that the consideration paid to the Noticee includes value of goods and material sold to them. Moreover, the scrutiny of the documents procured from the service recipient and submitted by the Noticee reveals that the ledger shows in most entries words "CVLB" which is purportedly abbreviated form for "civil labour bill. Further in copy of work order No. Est90/ 05-06 dated 11/7/2005 under column "ITEM OF WORK" it is mentioned "RCC 1:2:4 up to plinth level excluding cost of reinforcement steel and framework" also in ledgers there is mention that cement is issued to the contractor. All such entries in the documents received from the service recipient makes serious dent on the claim of the Noticee that they have sold material as well. In view of this and in absence of any documentary evidence, I am not inclined to accept the submission of the Noticee that they were doing civil work with material.

17. The Noticee have also given / calculated their tax liability by allowing abatement and value arrived at from the statement given by M/s. Indian Rayon, the service recipient. As discussed earlier the abatement is not available to them and the difference in tax liability between the ones mentioned in the notice and the one arrived at by the Noticee is owing to this fact cannot be allowed to them.

18. I find that the Noticee has contravened the following provisions of chapter V of the Act and Rules related to Service Tax matter.

- i] Section 69 of the Act read with rule 4 of the Rules in as much as they failed to apply to the service tax department for registration under the category of 'Construction of Complex'.
- ii] Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 in as much as they have failed to pay service tax at the appropriate rate on the taxable value recovered by them from M/s. Indian Rayon for the taxable services rendered by them during the period from 01.04.2005 to 31.03.2010.
- iii] Section 70 of the Act read with Rule 7 of the Service Tax Rules, 1994 in as much 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.

19. I find that the noticee has evaded tax by wilfully suppressing their tax liability for which they are liable for penal action under the provisions of Section 76, 77 and 78 of the Act. The noticee has contravened the provisions of the Act and the Rules in as much as they have not paid service tax at the appropriate rate on the taxable value received by them from M/s. India Rayon for the taxable services rendered during the period from 01.04.2005 to 31.03.2010 on the services of Construction of Complex in view of Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994. Hence, penalty under Section 76 of the Finance Act, 1994 is imposable on the noticee for failure to make timely payment of Service Tax.

20. Regarding penalty under Section 77 of the Finance Act, 1994, I find that the noticee has failed to obtain registration under the category of 'Construction of Complex' for the taxable services provided by them in accordance with the provisions of section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 and not filed prescribed returns under Section 70 of the Act read with Rule 7 of the Rules, therefore, they are liable for penalty under section 77 of the Finance Act, 1994.


21. The noticee has failed to make payment of service tax and subsequent filing of Service Tax Return within prescribed time limit. It is also a fact that they have suppressed the facts of having received taxable services with an intent to evade payment of Service Tax. As the noticee has suppressed the vital facts with an intent to evade payment of Service Tax they are liable for penal action under Section 78 of the Finance Act, 1994.

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

**ORDER**

- (i) I determine Rs. 7,37,376/- (Rupees Seven lakhs thirty seven thousands three hundred seventy six only) as the amount of service tax not levied and paid by the Noticee under Section 73 (2) of the Finance Act, 1994 and the same shall be recovered from them. The Noticee shall also pay interest at appropriate rate on the above confirmed demand under Section 75 of the Finance Act, 1994.
- (ii) I impose a penalty at the rate of Rs.200/- per day or two per cent per month whichever is higher, under the provisions of Section 76 of the Finance Act, 1994 for failure to 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, during the period in which such failure continued during 01.04.2005 to 10.05.2008, provided that the total amount of penalty payable in terms of this account shall not exceed the service tax payable.
- (iii) I impose penalty of Rs.1,000/- (Rupees one thousand only) under Section 77 of the Finance Act, for the period upto 10.05.2008. For the period after 10.05.2008, I impose penalty of Rs.5,000/- (Rupees five thousand only) or Rs.200/- (rupees two hundred only) per day whichever is higher, under Section 77 (1) (a) of the Finance Act, 1994 starting with the first day after the due date till the date of actual compliance.
- (iv) I impose penalty of Rs.5,000/- (Rupees Five Thousands only) under Section 77(2) of the Finance Act, 1994 upon the Noticee, for failure to file prescribed return under Section 70 of the Act read with Rule 7 of the Rules. .
- (v) I impose penalty of Rs.7,37,376/- (Rupees Seven lakhs thirty seven thousands three hundred seventy six only) under Section 78 of the Finance Act, 1994. If the amount is determined under Sr. No.(i) above is paid within 30 days from the receipt of this order alongwith the interest payable than as per proviso to Section 78 the penalty will be only 25% of the Service Tax determined at Sr. No.(i) above. Further, 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.

The Noticee shall forthwith pay the aforementioned amount.

  
 (IMAMUDDIN AHMED)  
 JOINT COMMISSIONER  
 CENTRAL EXCISE & SERVICE TAX  
 BHAVNAGAR

F. No.: V/15-58/Dem/HQ/2010-11

Date:-13 /01/2012

By Registered Post A. D.

To,  
 M/s. Chhagan Meghaji Kansara ,  
 Sant Krupa,  
 Harsiddhi Society, Railway Line,  
 Ta-Veraval, Junagadh

Copy to:-

- (1) The Commissioner, Central Excise, Bhavnagar. (RRA Section).
- (2) The Assistant Commissioner, Central Excise (AE), HQ, Bhavnagar.
- (3) The Assistant Commissioner (Recovery), Central Excise, HQ, Bhavnagar.
- (4) The Assistant Commissioner, Service Tax Division, Bhavnagar
- (5) The Superintendent, Service Tax, AR-Junagadh.
- (6) Guard-file.