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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

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

F. No. V/15-538/Dem-ST/HQ/2010-11.

Date of Order: 17/01/2012

Date of Issue: 02/02/2012

Passed by

IMAMUDDIN AHMED

Joint Commissioner

Central Excise

Bhavnagar

**Order-in-Original No: 07 / 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,

Shri Om Prakash Sahu,  
Jalaram Society, Dabhor Road,  
Behind Gayatri Temple,  
Veraval-362266.

Subject: Show Cause Notice Number No. V/15-53/Dem-ST/HQ/2010-11 Dated 18.10.2010 issued to Shri Om Prakash Sahu, Veraval demanding Service Tax of Rs.20,94,840/-.

**BRIEF FACTS :**

On the basis of intelligence that the labourers supplier/contractors engaged by M/s. Adiya Birla Nuvo Ltd., Unit- Indian Rayon, Veraval (hereinafter referred to as the "M/s. Indian Rayon") were not paying service tax on the taxable service provided by them, necessary documents were called from M/s. Indian Rayon. It was observed there from that Shri Om Prakash Sahu, Jalaram Society Dabhor Road, Behind Gayatri Temple, Veraval (hereinafter referred to as the Noticee) has been engaged in supplying of labourers since about last fifteen years without obtaining Service Tax Registration and without paying service tax. An inquiry was initiated against the Noticee and Summons was issued to the Noticee on 24.02.10 & 05.04.10

02. A statement of Shri Om Prakash Sahu, (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 13-04-10, wherein he interalia stated that they have been engaged in supplying of labourers to M/s. Indian Rayon, Veraval since about last 15 years; that they supplied number of labourers as per requirement of M/s. Indian Rayon; that these labourers perform their works as per instruction from supervisor of M/s. Indian Rayon; that for above works M/s. Indian Rayon issued work orders; that nature of work, number of labourers required, rate of labour charges etc. are mentioned in work orders issued to them by M/s. Indian Rayon. Further he stated that he raised bills of labour charges to M/s. Indian Rayon at the end of the month and when he received the remuneration for supplying of labourers, he disbursed the labour wages to their labourers; that he did not supply labourers to anybody else except M/s. Indian Rayon; that he had neither obtained Service Tax Registration nor paid Service Tax upto January 2010; that he obtained Service Tax registration in month of February 2010 and started payment of Service Tax from February 2010.

03. During the course of investigation, the Noticee had submitted the copy of Labour License, ST-2 Service Tax registration certificate, Bank statement for the period 17.12.05 to 31.03.07, copy of Income Tax return Acknowledgment for period 2008-09 & 2007-08, copy of work order dt. 30.05.09 for labour supply etc.

04. 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 any person, 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, 2008 with effect from 16-05-2008, reads as follows:

"Manpower recruitment or supply agency" means any person engaged in providing any service, directly or indirectly, in any manner for recruitment *or supply* of manpower, *temporarily or otherwise*, to any other person.

Thus, it appeared that the scope of the service has been expanded so as to cover, apart from recruitment of manpower, the supply of manpower also. The expression 'temporarily or otherwise' will apply both to 'recruitment' and 'supply of manpower'.

05. On going through the copy of work order dtd. 30.05.09 issued by Ms/ Indian Rayon to the Noticee, it appeared that subject work order was issued for "Labour Supply for cleaning and sanitation jobs in power plant"; that the number of labourers required were mentioned and also the rate for such labourers were also mentioned and accordingly the noticee had supplied different category of labourers viz. skilled labourer, semi-skilled labourer, un-skilled labourer and clerical staff for carrying out cleaning and sanitation works of various areas in factory and office premises. 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 68 of Section 65 of the Act i.e. Manpower recruitment or supply agency" since it gave essential characteristics of labour supply to M/s. Indian Rayon.

06. On perusing the copy of Ledger Account provided by M/s. Indian Rayon and copies of Income Tax returns, copy of Bank statement, work order 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 (w.e.from 16.06.05)	1556161/-
2.	2006-07	30,95,050/-
3.	2007-08	48,80,181/-
4.	2008-09	42,05,094/-
5.	2009-10	46,79,215/-
<b>Total</b>		<b>1,84,15,701/-</b>

07 From the above, it appeared that the services provided by the Noticee to M/s. Indian Rayon which in terms of Section 65A of the Act are classified as "Manpower recruitment or supply agency Services" as defined under Sub-Section 68 of the Section 65 of the Act, and as defined under Section 65(105)(k) of the Act, without applying for registration under the category of the said service and without payment of Service Tax leviable thereon under the Act and the Rules made thereunder. As per Section 67 of the Act, Service Tax on these services is leviable on the gross amount charged. Therefore, it appeared that Service Tax at the appropriate rate on Rs. **1,84,15,701/-** for the period from 16.06.2005 to 31.03.2010 being gross amount charged and received by the Noticee from M/s. Indian Rayon as described in the '**Annexure-B**' to the Notice was liable to be recovered under Section 73 of the Act alongwith 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 Agency Services' from the department.

08. It appeared that the Noticee has paid the Service Tax Rs. 71130/- ( Seventy one thousand One hundred Thirty only) through GAR- 7 Challan dated 31.03.10 being the amount of Service Tax leviable on the amount received as discussed in para supra. This payment of tax is required to be confirmed and appropriated towards Service Tax payable by them under Section 68 of the Finance Act, 1994 read with Rule 6 of the Service tax Rules 1994.

09. It appeared from the foregoing paras that 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 'Manpower Recruitment and Supply Agencies Service'.
- 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 16.06.2005 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 16-6-2005 to 31.03.2010.

10. From the above, it also appeared that the Noticee under statement admitted the facts of non payment of Service Tax on "Manpower Recruitment and Supply Agency Services" 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 "Manpower Recruitment and Supply Agency Services" and contravention of 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, 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 'Manpower Recruitment and Supply Agency Services' in the prescribed return under Section 70 of the Act read with Rule 7 of the Rules as discussed hereinabove, the Noticee have rendered themselves liable for penalty under Section 77 of the Act.

11. Therefore, a Show Cause Notice No. V/15-53/Dem-ST/HQ/2010-11 dated 18.10.2010 was issued to the Noticee asking them to show cause as to why: -

- (i) The Service Tax amounting to Rs. 20,39,036/- + Education Cess Rs. 40,781/- and Higher & Secondary Education cess Rs.15023/-, Total **Rs. 20,94,840/-** ( Rs. Twenty Lakhs, Ninty four thousand, Eight hundred Forty 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. The amount of Rs. 71,130/- paid by the Noticee should not be appropriated towards the amount of Service Tax determined under Section 73(1), 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 having contravened the provision of the Act and Rules made thereunder.

**PERSONAL HEARING :**

12. Shri Om Prakash Sahu appeared for personal hearing on 18.10.2011 and stated that he is less educated and could not make payment of Service Tax for this reason. They requested to give some more time to submit the reply to Show Cause Notice so that they can take the help of consultant. Accordingly, the Personal Hearing was refixed on 15.11.2011 which was accepted by the Noticee. The date of Personal Hearing was adjourned on 24/25.11.2011 at the request of Shri Deepak L. Vaja, Chartered Account who appeared for Personal Hearing on 15.11.2011 on behalf of the Noticee.

**DEFENCE REPLY :**

13. The Noticee vide letter dated 22.11.2011 submitted Defense reply to Show Cause Notice and stated as under :-

13.1 The Noticee was engaged in providing services to M/s. Indian Rayon, Veraval since last 15 years and undertook the work of cleaning and sanitation jobs in power plant for which labourers were provided as per the work order.

13.2 They submitted that they are a small contractor and ignorant about the provision of various acts and laws. They were providing service only to Indian Rayon since last 15 years. The Demand-cum-Show Cause Notice was issued classifying the service provided by them under the category of "Manpower Recruitment or Supply Service".

13.3 As per Section 65 (105)(k), taxable service means –

“any service provided or to be provided to any person by manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner”

And as per Section 65 (68) –

“Manpower recruitment or supply agency” means any person engaged in providing any service, directly or indirectly, in any manner for recruitment *or supply* of manpower, *temporarily or otherwise*, to any other person.

As per the definition of Manpower Recruitment or Supply Agency, any person engaged in providing any service for recruitment or supply of manpower is covered.

13.4 As per the definition of “Cleaning Service” as provided under Section 65(105)(zzzd), taxable service means –

“any service provided or to be provided to any person by any other person in relation to cleaning activity”.

Further, as per Section 65(24b), “Cleaning activity” means –

“cleaning, including specialized cleaning services such as disinfecting, exterminating or sterilizing of objects or premises, of

- (i) commercial or industrial buildings and premises thereof; or
- (ii) factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof,

but does not include such services in relation to agriculture, horticulture, animal husbandry or dairying;

13.5 The work order dated 30.05.2009 was for “Labour supply for cleaning and sanitation jobs in power plants”. Accordingly, the predominant nature of work or job to be done is not supply of labour, but the purpose of this work order was to clean and sanitize power plants. Hence, it is clearly classification of service error made by department. The departmental clarification issued vide M.F. (D.R) letter F. No. B1/6/2005-TRU dated 27.07.2005 –

“Generally contracts / agreements are entered into for cleaning of commercial complexes such a multiplexes, shopping complexes, office complexes, industrial building etc. The contracts / agreements may be in writing or may be unwritten. The gross amount charged for such cleaning would be leviable to service tax. This taxable service includes :

- (i) specialized cleaning services such as disinfecting ..... ..

- (ii) .....
- (iii) .....
- (iv) Specialized cleaning services such as cleaning services for computer rooms, cleaning of machinery or plant, reservoir and tanks of commercial or industrial buildings, furnace and chimney cleaning services and similar services”.

As per the above extract of departmental clarification, it is quite evident that nature of service provided by them falls under the category of “Cleaning Activity” and not under the category of “Manpower Recruitment or Supply”. This Show Cause Notice should be quashed on this basis only.

13.6 The fact of this case are similar to a very recent judgment by Bangalore Tribunal in case of Karnataka Personnel Services Vs Commr. Of C.Ex Mangalore [ 2011 (12) S.T.R 47 (Tri. Bang)] wherein Hon’ble CESTAT held that –

“We find that the amount has been worked out based upon wages of a single person employed by the assessee. It would mean that the assessee would employ a specific number of persons for cleaning activity and consideration payable will be actual + 10% as an additional amount as service charges.....

In view of this, prima facie, we are of the view that the services rendered by the assessee could not fall under the category of ‘manpower recruitment and supply services’. In view of this, we find that the appellant has made out a prima facie case for waiver of the pre-deposit of the amounts adjudged by the adjudicating authority. Application for the waiver of pre-deposit of the amounts involved is allowed and recovery thereof stayed till the disposal of the appeal.”

The pre-dominant nature of services provided by the Noticee is of ‘Cleaning Activity’ and not “Manpower Recruitment or Supply”.

13.7 The Noticee submitted that notwithstanding anything submitted above, they are negotiating with the company and the company may positively agree to reimburse the service tax amount. In such a situation, the Noticee agree to pay the amount of Service Tax as soon as they collect the amount from the Service receiver i.e. M/s. Indian Rayon.

13.8 They submitted that they were not having knowledge regarding applicability of Service Tax and prayed for waiver of interest. If they were having knowledge then they might not have any impediment for payment of Service Tax. The Noticee strongly believe that service provided to Indian Rayon does not fall under the category of “management, maintenance or repair service” and the department made an error by raising demand under



this category of service. However, they are negotiating with the company and they are ready to reimburse the service tax if reimbursed by the company. Looking towards the fact of the case, the Noticee requested to waive the interest raised in the said Show Cause Notice.

13.9. The Noticee submitted that according to Section 80, no penalty under Section 76, 77 & 78 can be imposed if the assessee proves that there was a reasonable cause for default or failure under these sections. This Section provides relief to an assessee from imposition of penalty under Section 76, 77 & 78, if the assessee is able to prove that failure on his part to collect or pay Service Tax or to furnish prescribed return or suppressing or furnishing inaccurate value of taxable service was not intentional and that there was reasonable cause for such failure. Though, reasonable cause has not been defined, it has been interpreted by various courts –

- (a) In *Municipal Corporation of Delhi V Jagannath Ashiok Kumar* (1987) AIR 2316 (Supreme Court), Apex Court observed that the reasons given by the arbitrator are cogent and based on materials on record. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the time and circumstance in which he thinks.
- (b) In *Commissioner of Wealth Tax V Jagdish Prasad Choudhary*, (1996) AIR 58 (Patna), it was held that the context of penalty provision, the word, 'reasonable cause' would mean a cause which is beyond the control of the assessee. 'Reasonable cause' obviously means a cause which prevents a reasonable man of an ordinary prudence acting under normal circumstances, without negligence or inaction or want of bona fide from furnishing the return in time.
- (c) In *Gujarat Water Supply & Sewerage Board V. Unique Erectors (Gujarat) Pvt. Ltd.* (1989) AIR 973 (Supreme Court), it was held that it is difficult to give an exact definition of the word, 'reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual and the times and the circumstances of which the actor, called upon to act reasonably, knows or ought to know.
- (d) In *Ram Krishna Travels Pvt. Ltd. V CCE, Vadodara* [ 2007-TMI-977-CESTAT, MUMBAI] it was held that bonafide belief is a reasonable cause under Section 80 and as such, penalty was set aside following *ETA Engineering Ltd V CCE* [2005-TMI-165-CESTAT, NEW DELHI]

13.10 The Noticee submitted that the demand is barred by limitation. Section 78 is applicable –

“Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of –

- (a) fraud; or
- (b) collusion; or
- (c) willful mis-statement; or
- (d) suppression of facts; or

- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax, the person, liable to pay such service tax or erroneous refund, as determined under sub-section (2) of section 73, shall also be liable to pay a penalty, in addition to such service tax and interest thereon, if any, payable by him, which shall not be less than, but which shall not exceed twice, the amount of service tax so not levied or paid or short-levied or short-paid or erroneously refunded.”

Penalty under Section 78 can be levied only if there is a fraud; collusion; willful mis-statement; suppression of facts or contravention of any provisions with intend to evade payment of service tax and it can be imposed by invoking larger period or extended period for issue of show cause notice. Only in unusual circumstances, demand for extended period are to be invoked, with a very serious allegation of suppression of facts and intention to evade payment of service tax. Such serious allegatios of suppression can be invoked only if the assessee has deliberately done an action with an intention to hide certain facts from the department and department has confirmed it beyond doubt with aid of corroborative evidence that ther was a delilberate act on part of assessee to evade tax. There is no finding in impugned SCN which can allege that assessee has intended to evade payment of tax. In the absence of any finding of “intend to evade” demand cannot be sustained and the demand raised is barred by limitation.

14. Shri Deepak L Vaja, Chartered Accountant appeared for personal hearing and filed written submission dated 13.12.2011 and reiterated the same. He further stated that the Service Tax demanded in the SCN has been wrongly calculated and as per their calculation, their liability should be Rs. 17,85,850/- only, which is as per the actual payment accrued to them. The Noticee in their additional submission dated 13.12.2011 mainly submitted as under

:-

- (i) They attached the detailed calculation of Service Tax payable by them.
- (ii) They ca avail the basic exemption limit of Rs. 4,00,000/- in the year 2005-06.
- (iii) They received net payment from the company after deduction of TDS and P.F and Canteen Coupon, department wrongly taken all the amount in gross tax liability. They annexed copy of detailed calculation for all the years.
- (iv) The Department had taken a total figure of Debit side from the ledger of the company and calculated tax liability from the same which is totally wrong because they raised bill to the company and company made them payment after making necessary deductions. Some times, they received advancepayment from the company which is knock off by the company whenever raised the bill and for the same company recorded twice or thrice for passing the JV's for the same as per the policy of the company and department taken all this entries in total for calculating the tax liability. They annexed detailed calculation with bill amount for all the years.

- (v) They have relied upon the record available with the department and calculated the amount from the ledger of the company from which department raised the liability.

They submitted that all the above submissions which are alternate to each other, may kindly be considered before adjudicating the case.

**Discussion & Findings:**

15. I have carefully gone through the notice, records of the case and the submissions made by the Noticee.

16. The impugned notice demands service tax on the activities of supply of labour for various works in the Industrial plant undertaken by the Noticee and seeks to impose penalty for non-payment of service tax. The Noticee on the other hand have contested the very classification of the taxable service resorted to in the notice and have also challenged the value taken for the purpose of levy of service tax in the notice.

17. I find that the inquiry for non-payment of service tax was commenced by issuance of summons dated 05.04.2010 and in response thereof a statement dated 13.04.2010 was recorded before Superintendent of Central Excise, Bhavnagar. In the statement recorded in hindi under section 14 of Central Excise Act, 1944 Shri Omprakash Sahu has interalia deposed that they are engaged in supply of labourers as per the requirement of the company, in other words the number of labourers to be supplied depends upon the nature of work and demand of the company; that labourers work under the supervisor of the company and the nature of work mentioned in the work order issued by the company is mentioned as "Supply of labour" and also the number of labourers required, wages to be paid to such labourers are mentioned. It has been also deposed that he is in possession of licence for supply of labourers from the concerned department of the government of state of Gujarat. This statement has never been retracted; therefore the deposition made before the central excise officer under section 14 of the Central excise Act is valid and substantial evidence. I also find that the Noticee was issued registration certificate by the Superintendent Central Excise in Form ST-2 on 24.02.2010 and against the "Taxable service offered" it is mentioned as "MANPOWER RECRUITMENT AGENCY". It is pertinent to note that registration certificate is issued on application made by the concerned person to the jurisdictional Superintendent of central excise mentioning therein the nature of service among other details.

18. In view of the above discussion it is clear that the Noticee has been providing taxable services classifiable under "Manpower recruitment and supply service" and upon their making application to the department the registration for payment of service tax for providing "Manpower recruitment and supply service" was issued and the inquiry conducted also revealed that they have been providing the same service. Therefore, the taxable services provided by the Noticee has been rightly classified under "Manpower recruitment and supply service" in the notice for demanding the service tax not levied and paid by the Noticee. Hence the contention of the Noticee that they are not providing "Manpower recruitment and

supply service” and their services are classifiable under Cleaning service is not only contrary to their own version but also contrary to the facts on record and afterthought. In view of this the case laws cited by the Noticee are not relevant looking to the facts of the case.

19. The other major contention of the Noticee is that the value considered in the notice is inflated on account of taking in to consideration the amounts which were entered solely for the accounting purpose and such amount were never paid to them. Shri Vaja C.A. who appeared on behalf of the Noticee for personal hearing produced submission and stated that their liability should be Rs.17,85,850/- only which is as per the actual amount accrued to them. The request of Shri Vaja to personally explain discrepancies in the calculation resorted to in the notice was acceded to and he was directed to produce relevant records to the jurisdictional Central Excise officer viz. Superintendent, Service tax Range, Junagadh. The Superintendent submitted his factual report under letter dated 12.01.2012 wherein he submitted that the ledgers of the Noticee maintained by the service recipient- M/s Indian Rayon was tallied with the service tax calculation submitted by Shri Vaja and it was found that some entries in the ledgers have been left out by Shri Vaja while calculating the service tax liability. When this was pointed out, Shri Vaja informed that there are some mistakes in the calculation sheet presented by him. Further, the contention of Shri Vaja that owing to accounting system adopted by M/s. Indian rayon that certain entries were made twice or thrice is also not correct as no entry was found more than once in the ledgers. In view of this factual position, I am not in a position to accept the contention of the Noticee that their liability is less than the one arrived at in the notice.

20. I find that the Noticee have evaded tax by wilfully suppressing their tax liability for which they are liable for penal action under the the provisions of Section 76, 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 on the services of “Manpower recruitment and supply” service. Hence, penalty under Section 76 of the Finance Act, 1994 is imposable on the Noticee for failure to make timely payment of Service Tax.

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.

22. I also find that the Noticee have failed to apply for registration at the material time as required under Section 69 of the Act read with Rule 4 of the Service Tax Rules, 1994; penalty is imposable on this account.

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

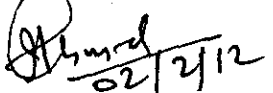
### ORDER

- (i) I determine Rs. 20,39,036/- (Rupees Twenty lakhs thirty nine thousands and thirty 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 from 16.06.2005 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, for failure to obtain registration under Section 69 of the Act read with Rule 4 of the Rules, 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.20,39,036/- (Rupees Twenty lakhs thirty nine thousands and thirty 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- 53/Dem-ST/HQ/2010-11

Date: 07.07.2012

**BY REGD. POST A.D.**

To,  
Shri Om Prakash Sahu,  
Jalaram Society Dabhor Road,  
Behind Gyatri Temple,  
Veraval -362266.

Copy to:-

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