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|  | <p>Govt. of India Office of the Commissioner of Central Excise 'Siddhi Sadan', Plot No.6776/B-1, Narayan Upadhyay Road, Off Waghawadi Road, Bhavnagar</p> |
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By R.P.A.D.

F. No. V/15-56/Dem-ST/HQ/2010-11

Date of Order: 30/01/2012

Date of Issue: 02/02/2012

Passed by

IMAMUDDIN AHMED
Joint Commissioner
Central Excise
Bhavnagar

Order-in-Original No: 08/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 Rule 8 of the Service Tax Rules, 1994. It should be signed by the appellants

- It should be accompanied with the following:
- Copy of Appeal in duplicate

Copies of the order, Appealed against 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. **Diamond Fabricators,**
(Proprietor **Shri Javed Anwarmiya BuKharI**)
Kausar Colony, Street No. 1.
Veraval-362266
Dist. JUNAGADH.

Subject: Show Cause Notice Number V/15-56/Dem-ST/HQ/2010-11 dated 18.10.2010 demanding Service Tax of Rs. 10,00,263/-

BRIEF FACTS OF THE CASE

1 An intelligence was collected from the reliable sources by the Assistant Commissioner, Service Tax Division, Bhavnagar and Superintendent , Service Tax (Preventive and Survey), Bhavnagar that Maintenance or repairs contractors engaged by M/s Aditya Birla Nuvo Ltd., Unit – Indian Rayon, Veraval (Hereinafter referred to as the "M/s India Rayon") are not paying any Service Tax on the taxable service provided by them. Therefore necessary documents were called from M/s Indian Rayon wherein it was observed that M/s Diamond Fabricators, Kauser Colony, Street No. 1, Veraval , Dist- Junagadh (Hereinafter referred to as the Noticee) has been engaged in carrying out erection, commissioning or installation works for the last six years without obtaining Service Tax Registration and without paying Service Tax.

2 For undertaking such works, M/s Indian Rayon is not having their own man power but all such works are entrusted to various contractors . The works entrusted to various contractors by M/s Indian Rayon are falling in the category of **Taxable Services** i.e. erection, commissioning or installation service as defined under Section 65 (105)(zzd) and Section 65 (29), 65 (39a) of the Finance Act, 1994.

3 On the basis of such primary intelligence and on going through a copy of Work Order dtd. 18.12.2009 issued by M/s Indian Rayon to the Noticee it was revealed that the subject work order had been issued for " Fabrication and Erection of platform at Sand filter ", that under this contract, the Noticee had performed the work of 'dismantling pipe line, shifting, gas cutting, fabrication, erection of equipment and assop etc.,' Therefore it appeared that the service provided by the Noticee viz., "erection, Commissioning or Installation Services" to M/s Indian Rayon merit classification under sub-Section (39a) of Section 65 of of the Finance Act, 1944.

4 Detailed investigation was carried out by issuing Summons to the said Service Provider. During the course of inquiry, Shri Javed Anwarmiya Bukhari, Proprietor of the Noticee firm appeared on 13.04.2010 and his statement was recorded under Section 14 of the Central Excise Act, 1944 as made applicable in the Service Tax matter by virtue of Section 83 of the Finance Act, 2944 wherein he, interalia, stated that they have been engaged in providing maintenance and repairs services to M/s Indian Rayon, Veraval for the past seven years; that they have provided fabrication, installation services as per work order (SOR) issued to them by M/s Indian Rayon ; that under this contract they mostly had to replace old and torn motor pump, compressors pump, etc., with new ones; that they erect and replace platform for installing machinery in the factory; that they replace old and torn pipes fitted in the plant by cutting and welding works; that on instruction from company they replace parts of machinery installed in one place to another place as per requirements of the plant; that for these works M/s Indian Rayon had provided all materials; that after completion of works assigned to them they raised bills to M/s Indian Rayon and payments of all bills were received through cheques issued by M/s Indian Rayon. He stated that they had neither obtained Service Tax Registration nor paid any Service Tax prior to September 2009 and they had not provided any taxable service to anybody else except M/s Indian Rayon. He had produced a copy of work order dated 18.12.2009 issued in favour of his firm.

5 During the course of scrutiny of the documents i.e. copy of Ledger Account provided by M/s Indian Rayon, Veraval it appeared that the Noticee had received amount towards services provided to M/s Indian Rayon as under :

| Sr No. | Financial Year | Amount received by the Noticee towards taxable Services provided in Rs. |
|--------|----------------|---|
| 1 | 2005-06 | 20,29,598/- |
| 2 | 2006-07 | 20,32,992/- |
| 3 | 2007-08 | 24,25,467/- |
| 4 | 2008-09 | 16,22,397/- |
| 5 | 2009-10 | 8,61,639/- |
| | TOTAL | 89,72,093/- |

6 On going through the information provided by M/s Indian Rayon, Veraval , it has been observed that the Service provider **M/s Diamond Fabricators, Veraval** had undertaken the work of "Erection, commissioning or Installation service " as defined under Sub-section (39a) of Section 65 of the Finance Act, 1944 and the Noticee have rendered taxable service as defined under Section 65 (105) (zzd) of the Finance Act, 1994 without applying for registration under the category of the said Service and without payment of Service Tax leviable thereon under the Finance Act, 1944 and Rules made there under. The Service Tax on this service is leviable on the gross amount charged and while providing this Services, Service provider has not followed the procedure prescribed under the Finance Act, 1994 and the Rules issued there under and also have not paid Service Tax amounting to **Rs.10,00,263/-** and this amount is required to be recovered from the said service provider .

7 Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules 1944 provides that every person liable for paying the Service Tax shall make an application to the concerned Superintendent of Central Excise in Form ST-1 for Registration within a period of 30 days from the date on which the Service Tax under Section 66 of the Finance Act, 1994 is levied. Section 77(1) (a) of the Finance Act, 1944 provides that if any person who is liable to pay Service Tax or required to take registration, fails to take registration in accordance with the provisions of Section 69 or Rules made under that Chapter shall be liable to pay a penalty which may extend to five thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance. In the subject case, the service Provider has provided taxable service but failed to obtain registration and hence penalty under Section 77(1) (a) of the Finance Act, 1994 is liable to be imposed upon the Service Provider.

8 Section 70 of the Finance Act, 1994 read with Rule 7 of the service Tax Rules, 1994 provides that every assessee shall submit a half yearly return in Form ST-3 or ST-3A, as the case may be, along with a copy of the Form TR-6, in triplicate for the month covered in the half year return. In the subject case, the Service Provider has provided taxable service but failed to file a ST-3 returns and hence penalty under Section 77 (2) of the Finance Act, 1994 is liable to be imposed upon the Service Provider.

9 Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 provides that every person providing taxable service to any person shall pay Service Tax at the rate specified in Section 66 in such manner and within such period as may be prescribed; that Rule 6 of the Service Tax Rules, 1994 provides that the Service Tax shall be paid to the credit of the Central Government by the 6th of the month, if the duty is deposited electronically through internet banking and by the 5th day of the month, in any other case, immediately following the calendar month in which the payments are received, towards the value of taxable service. In the subject case, the Service provider has provided taxable

service but failed to pay the Service Tax and hence penalty under Section 76 of the Finance Act, 1994 is liable to be imposed upon the Service Provider.

10 Further, in the subject case, the Service Provider has suppressed the material facts, in particular by not obtaining registration, by not filing ST-3 returns and not showing the value of taxable service in returns and by not paying Service Tax. Since, this case is fit case to invoke extended period of five years under the Proviso to Section 73 (1) of the Finance Act, 1994 for effecting recovery of the service Tax which is not paid or short paid. As the Service Provider has provided taxable service but failed to pay the Service Tax and hence penalty under Section 78 of the Finance Act, 1994 is liable to be imposed upon the Service Provider.

11 Section 75 of the Finance Act, 1994 provides that every person, liable to pay the tax in accordance with the provisions of Section 68 or Rules made there under, who fails to credit the tax or any part thereof to the account of Central Government within the period prescribed shall pay simple interest at such rate not below 10% and not exceeding thirty-six percent per annum, as is for the time being fixed by the Central Government by notification in the official gazette for the period by which such crediting of tax or any part thereof is delayed. In the subject case, the Service Provider has provided taxable service but failed to pay the Service Tax and hence the amount of Service Tax is required to be recovered along with interest as provided under Section 75 of the Finance Act, 1994.

12 Rule 5 of the Service Tax Rules, 1994 provides that the records including computerised data as maintained by an assessee in accordance with the various laws in force from time to time shall be acceptable and every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time or the 31st day of January, 2008, whichever is later, a list in duplicate, of all the records prepared or maintained by the assessee of transaction in regard to providing of any service, whether exempted or taxable. As the assessee has not complied with the provisions of Rule 5 of the Service Tax Rules, 1994 penalty under Section 77 (2) of the Finance Act, 1994 is liable to be imposed upon the Service Provider.

13 From the above facts and discussion of the various provisions of the Finance Act, 1944 and the Service Tax Rules, 1994 it appeared that the Service Provider has not paid the Service Tax and also has not followed the procedure as prescribed in the Act and Rules and thereby rendered themselves liable for penal action as proposed in para supra.

14 After carrying out the investigation into the Services provided by **M/s Diamond Fabricators, Veraval**, a Show Cause Notice No. V /15 – 56 /DEM – ST /HQ /2010 -11 dated 18.10.2010 was issued to the Service Provider by the Additional Commissioner, Central Excise, Bhavnagar proposing action as under :

- 1 Demanding Service Tax **of Rs. 10,00,263/- (ANN-B)** under Section 73 (1) of the Finance Act, 1994 for the period 2005 -06 to 2009 -10 with extended period.
- 2 Imposing penalty under Section 76, 77, and 78 of the Finance Act, 1994.
- 3 Demanding interest on Service Tax under Section 75 of the Finance Act, 1994.

DEFENCE REPLY

15 The Service Provider has till date not filed any written reply in response to Show Cause Notice dtd. 18.10.2010 .

PERSONAL HEARING

16 Personal hearing was granted to the Noticee on dt. 17.10.11, 16.11.2011, 26/27.12.2011 and 16 /17.01.2012. The last letter dt. 28.12.2011 intimating the date of personal hearing on 16 /17.01.2012 was served through the office of Superintendent Central Excise , AR- 1, Veraval. However, the Noticee has not attended personal hearing nor has sought any extention. Therefore, it appeared that the Noticee is not interested in defending their case nor they have filed any reply to the Show Cause Notice. I, therefore , take up the matter for adjudication proceeding ex-parte since enough opportunity has been given to the Noticee to defend their Case and attend personal hearing.

DISCUSSION AND FINDINGS :

17 During the investigation, it is revealed that **M /s Diamond Fabricators, Veraval** is engaged in providing following taxable services as defined under Section 65 of the Finance Act, 1994 from the period 2005 -06 to 2009 - 10 to M /s Indian Rayon, Veraval, the Service Recipient, under Work Order (SOR).

"Erection, Commissioning or Installation Services" as defined under Section 65 (39a) and 65 (105)(zzd) of the Finance Act, 1994.

18 During the period from 2005 -06 to 2009 -10, the Service Provider has rendered taxable services as defined under Section 65 of the Finance Act, 1994 to M /s Indian Rayon, Veraval.

- (a) without applying / obtaining for Registration as provided u/s 69 of Finance Act, 1994 read with Rule 3 of Service Tax Rules, 1994 ;
- (b) without submitting Half Yearly Returns in ST-3 or ST -3A Form with TR - 6 copy in time as provided u/s 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 ;
- (c) without paying Service Tax at specified rate as provided u/s 66 in terms of Section 68 of Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 ;
- (d) therefore, is liable to pay interest u/s 75 of Finance Act, 1994 at applicable rate ;
- (e) and in view of violation of provisions of Section 68, 69, 73 and 75 of Finance Act, 1994 is liable for penalty as provided u/s 76, 77(1)(a), 77(2) Finance Act, 1994.

19 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 which is as per periodical Statement of Vendor Account issued by M/s Indian Rayon, Veraval according to which the amount of Service Tax comes **to Rs. 10,00,263/-** which is required to be recovered from the service provider under Section 73(1) of the Finance Act, 1994 alongwith interest at appropriate rate under Section 75 of the Finance Act, 1994.

20 **M/s Diamond Fabricators, Veraval** have failed to get registered as Service Provider u /s 69 of the Finance Act, 1994 read with Rule 3 of Service Tax Rules, 1994 from the period 2005 -06 to 2009 - 10 and have failed to pay Service Tax as provided u /s 68 of Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 and has failed to submit half yearly returns as

provided u /s 70 of Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994 and suppressed the fact with an 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.

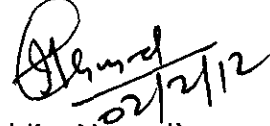
- 21 **M/s Diamond Fabricators, Veraval** is also liable for penal action u /s 76, 77(1) , 77(2) and 78 of Finance Act, 1994 for breach of provisions of Section 68 read with Rule 6 of Service Tax Rules, 1994 for failure to pay Service Tax at specified rate as per Section 66 of the Act, Section 69 read with Rule 4 of Service Tax Rules, 1994 for failure to apply for registration in Form ST-1 within a period of 30 days from the date on which the service tax on the services provided by the Noticee under Section 66 of the Finance Act, 1994 is levied and Section 70 read with Rule 7 of the Service Tax Rules, 1994 for failure to submit Half Yearly Returns in ST-3 Form with TR-6 Copy in triplicate for the months covered in half-yearly returns.

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

ORDER

- 22.1 **M /s Diamond Fabricators, Veraval** is liable to pay the amount of Service Tax of **Rs.10,00,263/-** for the period from 2005 - 06 to 2009 -10 under Section 73(2) of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 which is hereby confirmed.
- 22.2 **M/s Diamond Fabricators, Veraval** is also liable to pay interest under Section 75 of Finance Act, 1994 at applicable rate.
- 22.3 I impose penalty of Rs. 200/- for every day under Section 76 for the period 2005 - 06 to 10.05.2008 during which such failure continued or at the rate of 2 % of Service Tax for the period 2005 - 06 to 10.05.2008 per month whichever is higher 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 upon **M /s Diamond Fabricators, Veraval.**
- 22.4 I impose penalty of Rs. 1000/ - under Section 77 of Finance Act, 1994 for the period upto 10.05.2008 upon **M/s Diamond Fabricators, Veraval.**
- 22.5 I impose penalty of Rs.200 /- per day upon **M/s Diamond Fabricators, Veraval,** for failure to obtain registration during which such failure continued starting with the first day after the due date, till the date of actual compliance, or five thousand rupees whichever is higher under Section 77(1) (a) and I impose penalty of Rs. 5000/- under Section 77 (2) of the Finance Act, 1994.
- 22.5 I impose penalty of **Rs. 10,00,263/ -** under Section 78 of Finance Act, 1994 upon **M/s Diamond Fabricators, Veraval.** If the amount as determined under Para 22.1 above is paid within 30 days from the receipt of the order alongwith the interest payable then a per proviso to Section 78, the penalty will be only 25% of the Service Tax determined at para 22.1

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.



(Imamuddin Ahmed)
Joint Commissioner
Bhavnagar.

F.No. V / 15 - 56 /DEM -ST /HQ /2010- 11/

Date : .01.2012

To

M /s DIAMOND FABRICATORS,

(Proprietor Shri Javed Anwarmiya Bukhari)

Kauser Colony, Street No.1. **VERAVAL** -362 266. DIST : JUNAGADH.

Copy to :-

- (1) The Commissioner, Central Excise, Bhavnagar, (RRA Section).
- (2) The Assistant Commissioner, Service Tax, Bhavnagar.
- (3) The Superintendent, Service Tax, Range -Junagadh.
- (4) Guard File.