


S. Rao

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

F. No. V/15-60/Dem-ST/HQ/2010-11.

Date of Order: 30/01/2012

Date of Issue: 17/02/2012

Passed by

IMAMUDDIN AHMED

Joint Commissioner

Central Excise

Bhavnagar

**Order-in-Original No: 14 / 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. Verma Paints Works,

Vishnu Priya Bhavan,

Hari Om Society, 60 Ft. Road,

Veraval.

Subject: Show Cause Notice Number No. V/15-60/Dem-ST/HQ/2010-11  
Dated 18.10.2010 issued to M/s. Verma Paint Works, Veraval  
demanding Service Tax of Rs.7,25,368/-.

**BRIEF FACTS OF THE CASE :**

1. M/s. Verma Paints Works, Vishnu Priya Bhavan, Hari Om Society, 60 ft. Road, Veraval, (hereinafter referred to as the Noticee) were engaged in providing structural steel painting service falling under "Commercial or Industrial Construction Services since about last fifteen years to M/s. Aditya Birla Nuvo Ltd., Unit- Indian Rayon, Veraval (hereinafter referred to as the "M/s. Indian Rayon").

2. On basis of intelligence that the labour contractors/maintenance or repairs contractors engaged by M/s. Aditya Birla Nuvo Ltd., Unit- Indian Rayon, Veraval (hereinafter referred to as the "M/s. Indian Rayon") were 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. Verma Paints Works, Vishnu Priya Bhavan, Hari Om Society, 60 ft. Road, Veraval, (hereinafter referred to as the Noticee) have been engaged in providing structural steel painting service falling under "Commercial or Industrial Construction Services since about last fifteen years without obtaining Service Tax Registration and without paying service tax.

3. Accordingly, an inquiry was initiated against the Noticee and Summons was issued to the Noticee on 22.02.2010 & 05.04.2010 and a statement of Shri Harishankar C. Verma, 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 *inter alia* stated that they have been engaged in providing steel structural paintings services to M/s. Indian Rayon, Veraval since last fifteen years approx.; that under these they undertook the work of painting and maintenance of machineries like Boiler, Power Plant, Acid Plant, A.T. Plant etc; that all the materials and tools are provided by M/s. Indian Rayon; that they received Job Orders from M/s Indian Rayon for these works and not entered into any annual contract with M/s Indian Rayon; that all the details related to work of painting of machinery have been mentioned in the Job Orders. They had provided labourers to M/s Indian Rayon as required by them and after execution of above work they received payment by cheques from M/s Indian Rayon. On being asked, he stated that he had no knowledge of service tax law and hence he had not paid Service Tax liable thereon; that, they had not provided any taxable services to anybody else except M/s. Indian Rayon.

4. As per section 65 (105) (zzq) of Finance Act 1994, "taxable service means any service provided or to be provided to any person, by [any other person], in relation to [commercial or industrial construction. Section 65(25b) of Finance Act, 1994 reads,

["commercial or industrial construction service"] means-

- (a) construction of a new building or a civil structure or a part thereof; or
- (b) construction of pipeline or conduit; or
- (c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or
- (d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is-
  - (i) used, or to be used, primarily for; or
  - (ii) occupied, or to be occupied, primarily with; or
  - (iii) engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams;]

5. Thus, it emerged that the Noticee had carried out work of structural steel painting service falling under "Commercial or Industrial Construction Services". 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 25(b) of Section 65 of the Act i.e. "Commercial or Industrial Construction Services" since it gave essential characteristics of paintings of Steel Structure/Machinery of M/s. Indian Rayon .

6. On perusing the copy of Ledger Account provided by M/s. Indian Rayon, 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 Rs.)
1.	2005-06	8,69,567/-
2.	2006-07	10,20,132/-
3.	2007-08	16,24,262/-
4.	2008-09	8,72,008/-
5.	2009-10	20,15,239/-
<b>Total</b>		<b>64,01,208/-</b>

It appeared from the above that the Noticee had received total taxable amount for the period 01.04.2005 to 31.03.2010 is Rs. 64,01,208/-

7. From the above, it appeared that the Noticee was engaged in providing services to M/s Indian Rayon which in terms of Section 65A of the Act were classified as "Commercial or Industrial Construction Services" as defined under Sub-Section 25(b) of Section 65 of the Act, as discussed hereinabove and the Noticee had thereby rendered taxable services as defined under Section 65(105) (zzq) of the Act. Since, the Noticee were undertaking only the labour work involved in the services provided by them without supplying goods & materials, it appeared that the abatement in value of taxable services under Notification 1/2005-ST, dated 01.03.2005 was not available to them. 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. 64,01,208/- for the period from 01.04.2005 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 Show Cause Notice was liable to be recovered under proviso to Section 73 (1) of the Act along with interest under Section 75 of the Act.

8. Further, the Noticee had not furnished the documents as he promised to furnish within fifteen days in his statement before a Central Excise officer, therefore the Noticee had rendered themselves liable for penal action under Section 77 of the Act. It also appeared that the Noticee had suppressed the fact that they were engaged in providing taxable services of 'Construction or Renovation of Commercial / Industrial Buildings / Pipelines / Conduits services' from the department. Hence, extended period contemplated under Section 73(d) of the Act was invocable for recovery of Service Tax not paid. 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.

9. 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 'Construction or Renovation of Commercial/Industrial Buildings/Pipelines/Conduits services'.
- ii] Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 in as much as they 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.
- iv] Section 77 of the act read with Rule 5 of the Service Tax Rules, 1994 in as much as they have failed to produce the document called by a Central Excise Officer and also as promised to produce such called documents by the Noticee in his statement dated 13.04.2010, in accordance with the provision of Chapter V or Rules made there under.

10. It also appeared that the Noticee under statement admitted the facts of non payment of Service Tax on the "Commercial or Industrial Construction Services" provided by him 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 "Commercial or Industrial Construction Services" contravened the 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 of required details of amount received for "Commercial or Industrial Construction Services" 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.

11. Accordingly, Show Cause Noticee No. V/15-60/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. 7,06,327/- + Education Cess Rs.14,127/- and Higher & Secondary Education Cess Rs. 4,914/- Total Rs. 7,25,368/- ( Rs.Seven Lakhs, Twenty Five Thousand, Three Hundred, Sixty Eight 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 having contravened the provisions of the Act and Rules made there under.
- (v) Penalty should not be imposed upon them under Section 77 of the Act for the failure to produce the documents called by a Central Excise officer in accordance with the provisions of the Act, and Rules made there under.

#### **PERSONAL HEARING :**

12.1 The Noticee was granted personal hearing wherein Shri Harishankar Verma, Proprietor of the Noticee firm appeared on 18.10.2011 and stated that he is not aware with the provisions of Service Tax and requested to give some time for filing reply to the Show Cause Notice. Accordingly, the Noticee was informed to again appear for personal hearing.

12.2 Shri Deepak L. Vaja, Chartered Accountant appeared for personal hearing on 15.11.2011 and requested for one week time to file reply to the Show Cause Notice. The said request was considered and the date of Personal Hearing was re-fixed on 24/25.11.2011.

#### **WRITTEN SUBMISSION :**

13. The Noticee submitted defense reply vide their letter dated 22.11.2011 wherein stated as under :-

13.1 They are engaged in providing steel structural paintings service to M/s. Indian Rayon, Veraval since last fifteen years and undertook the work of painting and maintenance of machineries like Boiler, Power Plant, Acid Plant, A.T. Plant etc. All materials and tools were

provided by M/s. Indian Rayon for these works and not entered in any annual contract. Details related to work of painting of machinery have been mentioned in separate job orders. The labourers were provided by them to Indian Rayon as per their requirement and after execution of the work, payment was received by them.

13.2 An inquiry was initiated and a statement was recorded on 13.04.2010 wherein it was agreed that they undertook the work of painting and maintenance of machineries like Boiler, Power Plant, Acid Plant, A.T. Plant etc and all the materials and tools were provided by Indian Rayon they received the job orders from the company and there were no annual contract with Indian Rayon. On the basis of this statement, ledger account were collected by the department from Indian Rayon and on the basis of amount received shown in ledgers, the department issued show cause notice classifying the service under the category of 'Commercial or Industrial Construction Service'.

13.3 It was submitted that they are a small contractor and ignorant about the provision of various acts and laws which could be very well understood from the statement given by the Noticee. It is quite evident that they were providing service only to Indian Rayon and that too since last 15 years. Practical perspective to the case here was that they were a small time contractor and provided painting service to Indian Rayon as and when required by the company. For this purpose, sometimes they hired labourers and finished the job as per individual job order given by the company.

13.4 The Noticee reiterated that they were a small contractor and provided services of painting of machinery at Indian Rayon only since last 15 years and were not well versed with acts and laws and unaware about the provisions of Service Tax.

#### **14. Wrong classification of Service.**

14.1 The demand cum show cause notice classified the service provided by them under the category of "Commercial or Industrial Construction Service". Para 4 of Show Cause Notice mentioned that painting of plant and machinery service provided by the Noticee fall under the category of 'Commercial or Industrial Construction services'. The nature of work carried on and the statement of the Noticee as elaborated in the Show Cause Notice, the department erred in classifying erred the services provided by them. The department was of the view that this service gave essential characteristics of painting of Steel Structure or Machinery of Indian Rayon, however, it must be noted that as per clause (c) of definition of 'Commercial or Industrial construction' service, the word "painting" is being used as a part of completion and finishing activity in relation to building or civil structure.

14.2 It must be noted that any type of painting is not included within purview of definition of "Commercial or Industrial Construction service"; only painting of building or civil structure and that too as a completion of finishing activity is taxable under this category. Accordingly, the department had made gross error in classifying the services provided by them of painting of plants and machinery under the category of "commercial or Industrial service".

14.3 They 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, they are agree to pay the amount of Service Tax as soon as same is collected from the Service Receiver i.e. from M/s. Indian Rayon.

15. Waiver of Interest - It was 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. They strongly believe that services provided to Indian Rayon did not fall under the category of "Commercial or Industrial Construction Service" and department erred by raising demand. Looking to the facts of the case, they requested to waive the interest raised in the said Show Cause Notice.

16.1 They submitted that according to Section 80, no penalty under Section 76, 77 or 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 Sections 76, 77 or 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. In this

regard, they relied on case laws of **CCE Meerut-II Vs. On Dot Couriers & Cargo Ltd. [2006 (6) STJ 337 (CESTAT, New Delhi)]**.

16.2 The reasonable cause has not been defined, it has been interpreted by various courts. In **Municipal Corporation of Delhi Vs. Jagannath Ashok 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.

16.3 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.

16.4 In **Gujarat Water Supply & Sewerage Board Vs. 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 reasonable, knows or ought to know.

16.5 **Ram Krishna Travels Pvt. Ltd. Vs. CCE, Vaodara, [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 Vs CCE [ 2005-TMI-165-CESTAT, New Delhi]**.

17. It was submitted that 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 intent 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, demands 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 allegations 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 there was a deliberate 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 absence of any finding of "intent to evade" demand cannot be sustained and the demand raised is barred by limitation.

#### **PERSONAL HEARING :**

18. Shri Deepak L. Vaja, Chartered Accountant appeared for personal hearing on 15.12.2011 and submitted a written submission dated 13.12.2011 and reiterated the same. He also submitted an Annexure and stated that the Service Tax demanded in the Show Cause Notice has been calculated wrongly and as per their calculation their Service Tax liability is Rs. 544904/-. They have calculated their Service Tax liability on actual amount accrued to them.

#### **FURTHER WRITTEN SUBMISSION :**

19. The Noticee enclosed annexure with detailed calculation of Service Tax payable in their case alongwith written submission dated 13.12.2011 stated as under :-

- (a) They can avail basic exemption limit of Rs. 4,00,000/- in the year 2005-06 and also Rs. 10,00,000/- in the year 2009-10 as their gross billing is less than Rs. 10,00,000/- in the previous year i.e. 2008-09.
- (b) They received net payment after deduction of TDS and P.F and Canteen Coupon from the company, the department wrongly taken all the amount in gross tax liability. They annexed detailed copy of calculations for all the years.
- (c) Department had taken a total figures of Debit side from the ledger of the Company and calculated the tax liability from the same which is totally wrong because they raise the

bill an department is made after deductions as stated earlier. Some times, advance payment is received for which company recorded twice or thrice for passing the JV's for the same and department taken all this entries in total for calculating the tax liability. They enclosed detailed calculations with bill amount for all the years.

20 The Noticee submitted further & final additional submission vide their letter dated 12.01.2012 wherein mainly reiterated their earlier submissions They attached the Certificate of a Chartered Accountant that the figures derived for the gross services rendered to the company s true and correct in all respect.

### **DISCUSSION & FINDINGS :**

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

22. The impugned notice demands service tax on the activities of Painting of industrial plants etc.,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.

23. I find that the inquiry for non-payment of service tax was commenced by issuance of summons dated 5.04.2010 and in response thereof a statement dated 13.04.2010 was recorded before Superintendent of Central Excise, Bhavnagar. In the statement recorded under section 14 of Central Excise Act, 1944 Shri harishankar C. Verma, Proprietor of the Noticee has inter alia deposed that they are engaged in painting of Plants, like power plant, Acid plant A.T. Plant; that they have provided only labourers for the work. 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. Now the relevant portion of Section 65 (25b) of the Finance Act, 1994 reads "..... ( c) Completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery.....and other similar services, in relation to building or civil structure or (d) repair, alteration, renovation or restoration of or similar services in relation to building or civil structure, pipeline or conduit, which is (i) used or to be used, primarily for, or (ii) occupied, or to be occupied, primarily with or (iii) engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams;" It is evident from the above that the activities like painting is very much covered under services taxable as "Commerce or Industrial construction services". Even if the activities is considered repairing it is classifiable under this service as is evident from clause (d) of the definition. Therefore I am unable to accept the plea that service provided by the Noticee is wrongly classified.

24. The other major contention of the Noticee is that the value considered in the notice is inflated on account of taking into 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 only be 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, 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 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. Moreover, the contention that they should be extended the benefit of exemption of up to Rs. 4,00,000/- in year 2005-06, cannot be accepted as the activities undertaken by the Noticee became taxable with effect from 10.09.2004 and the Noticee have not adduced any evidence to show that the

consideration received in 2004-05 was less than Rs.4,00,000/-. It is settled position of law that exemption is to be claimed on basis of cogent evidence. 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.

25. The Noticee have also claimed deduction of TDS, P.F. and canteen coupon from the value taken in the notice. I find that TDS is the statutory liability of the Noticee and can be claimed as refund from their ultimate tax liability therefore it cannot be claimed as deduction from the consideration for the services provided. The contribution towards P.F. reimbursed or paid separately can also be not deducted as the contribution towards Provident fund of the labourers or the employees of the Noticee is the liability of the Noticee and therefore forms the part of their cost for providing service. Similarly any benefit or perks enjoyed by their employees and charged by the service recipient is the cost towards provision of service and is part of the consideration received from the service recipient in terms of section 67 of the Act.

26. 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, 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 "Commerce or Industrial construction services". Hence, penalty under Section 76 of the Finance Act, 1994 is imposable on the Noticee for failure to make timely payment of Service Tax.

27. 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.

28. However, I find that allegation in notice that the Noticee has failed to apply for registration at the material time as required under Section 69 of the Act and hence penalty is imposable on this account. Moreover, they failed to file prescribed returns as stipulated under Section 70 of the Act read with Rule 7 of the Rules which also attract penal liabilities on this account.

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

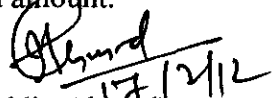
#### ORDER

- (i) I determine Rs.7,25,368/- (Rupees Seven lakhs Twenty Five thousands Three hundred and Sixty Eight 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 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, 1994 (for the period upto 10.05.2008) and 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 the period on or after 10.05.2008), for failure to obtain registration under Section 69 of the Act read with Rule 4 of the Rules, till the date of actual compliance.



- (iv) I impose penalty of Rs. 5,000/- (Rupees Five Thousand only) under Section 77(2) of the Finance Act, 1994, 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. 5,000/- (Rupees Five Thousand only) or Rs. 200/- (Rupees Two Hundred only) per day whichever is higher, under Section 77(1)(c)(i) of the Act read with Rule 5 of the Service Tax Rules, 1994, for failure to produce the documents called by a Central Excise officer in accordance with the provision of the Act and Rules made thereunder, during which such failure continues, starting with the first day after the due date, till the date of actual compliance,
- (vi) I impose penalty of Rs.7,25,368/- (Rupees Seven lakhs Twenty Five thousands Three hundred and Sixty Eight only) under Section 78 of the Finance Act, 1994. If the amount 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 Ahmad)  
17/2/12  
JOINT COMMISSIONER

F. No. V/15-60/Dem-ST/HQ/2010-11.

Bhavnagar, Date :- 17.02.2012.

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

To,

M/s. Verma Paints Works,  
Vishnu Priya Bhavan,  
Hari Om Society, 60 ft. Road,  
Veraval.

Copy to:-

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