


S. Tax

	<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>
	<p>Ph.No. : 0278- 2523627 E-mail- adjbhavnagar@gmail.com Fax No.: 0278-2513086</p>

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

F. No. V/15-57/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: 15 / 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. Biswas Fabricators (Prop. Shri Amal Biswas),  
Tagore Nagar-2, Near Bihari Nagar,  
Dabhor Road,  
Veraval.

Subject: Show Cause Notice Number No. V/15-57/Dem-ST/HQ/2010-11  
Dated 18.10.2010 issued to M/s. Biswas Fabricators, Veraval  
demanding Service Tax of Rs.5,92,163/-.

**BRIEF FACTS OF THE CASE :**

1. M/s. Biswas Fabricators, Tagore Nagar-2, Near Bihari Nagar, Dabhor Road, Veraval (hereinafter referred to as the Noticee) were engaged in carrying out maintenance & repairs works since about last six years.

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. Biswas Fabricators, Tagore Nagar-2, Near Bihari Nagar, Dabhor Road, Veraval have been engaged in carrying out maintenance & repairs works since about last six years without obtaining Service Tax Registration and without paying service tax.

03. Accordingly, an inquiry was initiated against the Noticee and Summons was issued to the Noticee on recorded 24.02.2010, 09.03.2010 & 15.04.2010 and a statement of Shri Amal Biswas, Proprietor of the Noticee was on 27.04.2010, wherein he *interalia* stated that they have been engaged in providing maintenance and repairs services to M/s. Indian Rayon, Veraval since about last six years; that there is a fixed rate structure i.e. called "SOR" for different types of maintenance and repairs works at the factory of M/s. Indian Rayon; that under these works they had mostly to remove and replace worn/torn out pipes and sheets etc. by cutting and welding works and replacement of machinery or their parts etc.; that for these fabrication works, M/s. Indian Rayon provided all the material and tools, equipments, gas, electricity etc. Further, he stated that, they **had obtained Service Tax registration in the month of March-2010**; 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. He produced the copy of Bank Statements for the period 15.12.2005 to 04.03.2010; he also produced the copy of Income Tax Returns filed by them for the years 2006-07, 2007-08 & 2008-09 and a copy of GAR-7 Challan dated 24.04.2010 of Rs. 14,320/- under his dated signature.

04. As per section 65 (105) (zzg) of Finance Act 1994, "taxable service means any service provided or to be provided to a customer, by any person in relation to [management] maintenance or repair". Section 65(64) of Finance Act, 1994 reads, "Management, maintenance or repair" means any service provided by -

- (i) any person under a contract or an agreement; or
- (ii) a manufacturer or any person authorized by him, in relation to, -
  - (a) *management* of properties, *whether immovable or not*;
  - (b) *maintenance or repair of properties, whether immovable or not*; or
  - (c) maintenance or repair including reconditioning or restoration, or servicing of any goods, *excluding a motor vehicle*;

05. From the above, it was revealed that the Noticee had provided services to M/s. Indian Rayon since about last five to six years according to Company's Work Order (SOR), they performed the work of replacement of old pipelines, machinery parts etc. and shifting of machinery parts etc. 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 64 of Section 65 of the Act i.e. "Management, Maintenance or Repairs Services" since it gave essential characteristics of repairing and maintenance of machines/equipments in the factory of 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 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 Rs.)
1.	2005-06	7,31,939/-
2.	2006-07	10,17,443/-
3.	2007-08	11,26,842/-
4.	2008-09	10,70,983/-
5.	2009-10	16,17,570/-
<b>Total</b>		<b>55,64,777/-</b>

07. Thus, 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 "Management, Maintenance or Repairs Services" as defined under Sub-Section 64 of Section 65 of the Act, as discussed hereinabove and the Noticee had thereby rendered taxable services as defined under Section 65 (105) (zzg) 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. 55,64,777/- 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 Notice was liable to be recovered under proviso to Section 73 (1) of the Act along with interest under Section 75 of the Act. It also appeared that the Noticee have suppressed the fact that they were engaged in providing taxable services of 'Management, Maintenance or Repairs Services from the department.

08. It appeared from the foregoing paras that the Noticee has 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 'Management, Maintenance or Repairs Services'.
- 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.

09. From the above, it also appeared that the Noticee under statement admitted the facts of non payment of Service Tax on the "Management, Maintenance or Repairs 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 "Management, Maintenance or Repairs 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 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 Management, Maintenance or Repairs 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.

10. It appeared that the Noticee had paid the Service Tax Rs. 14,320/- (Rs. Fourteen Thousand Three Hundred & Twenty only) through GAR -7 Challan dtd. 24.04.2010 being the amount of Service Tax leviable on the amount received as discussed in Para supra. This payment of Service 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.

11. Accordingly, a Show Cause Notice No. V/15-57/Dem-ST/HQ/2010-11 dated 18.10.2010 was issued to the Noticee asking them as to why: -

- (i) The Service Tax amounting to Rs.5,76,443/- + Education Cess Rs.11,529 /- and Higher & Secondary Education Cess Rs. 4,191/- Total Rs. 5,92,163/- ( Rs. Five Lakhs, Ninety Two Thousand, One Hundred, Sixty Three 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 already paid by them should not be appropriated towards confirmed dues.

- (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 thereunder.

#### **WRITTEN SUBMISSION :**

12.1 The Noticee vide their letter dated 01.12.2010 written in Gujarati stated that they were engaged in Erection, Installation and Commissioning as well as Repairing an Maintenance work in the factory of M/s. Aditya Birla Nuvo Ltd. (Unit – Indian Rayon) situated at Veraval. The said company did not inform us regarding Service Tax and Registration of Service tax. They raised the bills as per work order without mentioning Service Tax as they were not aware about it. Hence, they had not recovered Service Tax for the work undertaken in M/s. Indian Rayon. They had taken Service Tax Registration in March-2010. If M/s. Indian Rayon would have pressed us for obtaining Service Tax Registration or informed them then they would have obtained the same long back and this situation would have not been arose. They had also paid Service Tax and file ST-3 return after obtaining Service Tax Registration in March-2010.

12.2 The amount of Service Tax demanded for the period from Year 2005-06 to 2009-10 under this Show Cause Notice is Rs. 5,92,163/-. They had not collected Service Tax from M/s. Indian Rayon during the year 2005-06 to 2009-10 and is required to be collected from M/s. Indian Rayon and represented the same to M/s. Indian Rayon. They have also sent copy of Show Cause Notice to M/s. Indian Rayon. They are undertaking work of Erection, Installation and Commissioning in M/s. Indian Rayon of amount of approx. Rs. 7 to 16 Lakhs on annual basis and by deducting expenses of labourers and other expenses, earned profit of 8 to 10%. They stated that they run the household expenses from profit as such cannot pay the such huge amount of Service Tax.

12.3 The amount of Service Tax is required to be recovered from M/s. Indian Rayon and hence they have demanded the same from them. They are providing the Service to M/s. Indian Rayon and they are the recipient of the Service and company has not paid amount of Service Tax to them, they requested to force the company to pay the amount of Service Tax to them. They can pay the Service Tax only when M/s. Indian Rayon pay the amount of Service Tax to them or M/s. Indian Rayon may pay the same directly to the Service Tax department. They will submit the copy of challan as and when the service tax is paid by them.

#### **PERSONAL HEARING :**

13.1 The personal hearing in the matter was held on 18.10.2011 wherein Shri Amal Biswas, Proprietor of the Noticee firm appeared and requested for some time so that he can file reply to the show Cause Noticee. Accordingly, next date of Personal Hearing was fixed on 15.11.2011.

13.2 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 which was considered and the next date of personal hearing was fixed on 24/25.11.2011.

#### **WRITTEN SUBMISSION :**

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

14.1 They are engaged in providing service to M/s. Indian Rayon, Veraval since last six years and undertook the work which mainly consists of to remove and replace worn/torn out pipes and sheets etc. by cutting and welding works and replacement of machinery or their parts etc. They provided services in relation to fabrication work for which all material and tools, equipments, gas, electricity etc. were provided by M/s. Indian Rayon. They received this type of job work one to one basis and had not entered in any annual contract with the company for providing fabrication services.

14.2 An inquiry was initiated and a statement was recorded on 27.04.2010 wherein it was agreed that they undertook the work to remove and replace worn / torn out pipes and sheets etc. by cutting and welding works and replacement of machinery or their parts etc. They provided services in relation to fabrication work for which all the materials and tools, equipments, gas, electricity etc. 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, their 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 'Management, Maintenance or Repairs Service'.

14.3 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 6 years. Practical perspective to the case here was that they were a small time contractor and provided fabrication service to Indian Rayon as and when required by the company.

#### **15. Wrong classification of Service.**

15.1 The demand cum show cause notice classified the service provided by them under the category of "Management, Maintenance or Repairs Service". Para 4 of Show Cause Notice mentioned that fabrication work undertaken by the Noticee for replacement of old pipelines, machinery parts and shifting of machinery etc. fall under the category of 'Management, Maintenance or Repairs Service'. The nature of work carried on and the statement of the Noticee as elaborated in the Show Cause Notice, the department erred in classifying the services provided by them. The department was of the view that this fabrication service gave essential characteristics of repairing and maintenance of machines / equipments in the factory of M/s. Indian Rayon. The Noticee quoted definition of "Management, Maintenance or Repair Service" and submitted that the first limb of definition is that service provided by any person to any other person under a contract or an agreement. In the instant case, they are not providing any service under contract or agreement. The Show Cause Notice also discussed at Para 2 that they provided serviced under a fixed rate structure for different types of maintenance and repair work. There was no such contract or agreement between them and Indian Rayon. Further, fabrication service provided cannot be construed as Management, Maintenance or Repairs Service of any movable or immovable property. The second limb of the definition is that the services provided by a manufacturer or any person authorized by the Manufacturer. In this case, they are independent contractor and neither a manufacturer nor a person authorized by any manufacturer, hence, services provided by them cannot be covered under second limb of the definition.

15.2 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.

16. 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 "Management, Maintenance or Repairs 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.

17.1 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)]**.

17.2 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.

17.3 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.

17.4 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.

17.5 **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]**.

18. 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 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, 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 :**

19. 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. 443716/-. They have calculated their Service Tax liability on actual amount accrued to them.

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

20. 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.

21 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:**

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

23. The impugned notice demands service tax on the activities of Maintenance and repair in the Industrial plant of the service recipient 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.

24. I find that the inquiry for non-payment of service tax was commenced by issuance of summons dated 15.04.2010 and in response thereof a statement dated 27.04.2010 was recorded before Superintendent of Central Excise, Bhavnagar. In the statement recorded in hindi under section 14 of Central Excise Act, 1944 Shri Amal Biswas, Proprietor of the Noticee has interalia deposed that they are engaged in fabrication work which involves replacing of old and worn out pipes with the new ones which are fabricated, fitting of machinery parts as per directions of service recipient; that the material involved or required is supplied by the service recipient and that they had obtained service tax registration in March 2010. 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 "MANGEMENT, MAINTENANCE AND REPAIR SERVICES. 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 and this application was made prior to the commencement of inquiry by the department.

25. In view of the above discussion it is clear that the Noticee has been providing taxable services classifiable under "MANGEMENT, MAINTENANCE AND REPAIR SERVICES" and upon their making application to the department the registration for payment of service tax for providing "MANGEMENT, MAINTENANCE AND REPAIR SERVICES" was issued on 19.03.2010 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 "MANGEMENT, MAINTENANCE AND REPAIR SERVICES" 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 "MANGEMENT, MAINTENANCE AND REPAIR SERVICES" "is not only contrary to their own version but also contrary to the facts on record and afterthought.

26. 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 be Rs.430608/-/- 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, 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 tax liability for year 2005-06 was calculated after allowing exemption for Rs.400000/-. 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.

27. 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.

28. I find that the Noticee has evaded tax by wilfully suppressing their tax liability for which they are liable for penal action under the Noticee 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 "MANGEMENT, MAINTENANCE AND REPAIR SERVICES" 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.

29. 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.

30. 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 read with Rule 4 of the Rules 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.

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

#### ORDER

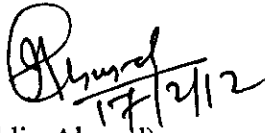
- (i) I determine Rs.5,92,163/-(Rupees Five lakhs Ninety two thousands and one hundred sixty three only) as the amount of service tax not levied and paid by the Noticee under Section 73 (2) of the Finance Act, 1994 and the same shall be recovered from them. The Noticee shall also pay interest at appropriate rate on the above confirmed demand under Section 75 of the Finance Act, 1994. I appropriate the amount of Service Tax of Rs. 14,320/- already paid by the Noticee towards amount of Service Tax determined above.
- (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 prescribe 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/- (Rs. Two Hundreds) 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.5,92,163/-(Rupees Five lakhs Ninety Two thousands and One hundred Sixty Three 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)  
 Joint Commissioner.  
 Central Excise,  
 Bhavnagar

F. No. V/15-57/Dem-ST/HQ/2010-11.

Date :- 17.02.2012.

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

To,  
 M/s. Biswas Fabricators,  
 (Prop. Shri Amal Biswas)  
 Tagore Nagar-2, Near Bihari Nagar,  
 Dabhor 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, Range - Junagadh.
- (6) Guard File.