


Kind Attn: Mr. Ramchandra

S.T.

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By R.P.A.D.

F. No. V/15-17/Dem-ST/HQ/2010-11

Date of Order: 15/02/2012

Date of Issue: 15/03/2012

Passed by

IMAMUDDIN AHMED
Joint Commissioner
Central Excise
Bhavnagar

Order-in-Original No: 21 / 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. New Bilnath Construction Co.,
1-Vishnu Colony, Near Mahesh Nagar,
Zanzarda Road, Junagadh.

Subject: Show Cause Notice Number No. V/15-17/Dem-ST/HQ/2010-11 dated 23.09.2010 issued to M/s. New Bilnath Construction Co., Junagadh demanding Service Tax of Rs. 10,72,889/-.

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 (Prev and Suevey), Bhavnagar that M/s Gujarat Energy and Transmission Corporation Ltd., (Hereinafter referred to as the "GETCO") has been engaged in storage and transmission of electricity and were not registered with the Service Tax Department and not paying the Service Tax. For transmission of electricity, the GETCO was required to undertake various types of activities like construction activities, erection and commissioning of plant i.e. 66 KV/220 KV sub-station for storage and distribution of electricity, maintenance and repairing of 656 KV/ 220 KV sub-station and without such infrastructure, it is not possible for the GETCO to store and transmit the electricity.

For undertaking such works, the GETCO is not having their own manpower /infrastructure but all such works are entrusted to various contractors. The works entrusted to various contractors by the GETCO are falling in the different categories of Taxable services i.e. "Industrial and Commercial Construction Service" as defined under Section 65(25b), 65 (105)(zzq) ; "Erection, commissioning or Installation Services " as defined under Section 65(29), 65(39a), 65(105)(zzd), "Execution of Work Contract Services " as defined under Section 65(105)(zzza) ; and "Management and Repair Services" as defined under Section 65 (105)(zzg) of Finance Act, 1994.

2 On the basis of such primary intelligence, letters were written to the Executive Engineer, GETCO, Amreli/Junagadh/Surendranagar. When information was not provided by GETCO, reminders were issued to the Superintendent Engineer (TR), GETCO, Circle Office Amreli/Junagadh/Surendranagar requesting to provide the details of service providers. The GETCO provided the required information vide their letter dated 24.12.2009 (GETCO Junagadh), 17.08.2009 (GETCO Amreli) and 12.03.2010 (GETCO Surendranagar).

3 On the basis of information provided, it was found that M/s New Bilnath Construction Co., 1- Vishnu Colony, Near Mahesh Near, Zanzarda Road, Junagadh (Hereinafter referred to as the "Service Provider") has provided taxable services to M/s GETCO as shown in Annexure-D of the Show Cause Notice containing details like description of the services provided by it, name of the place at which the said services were provided, period of work contract and amount of contract and duty calculation.

4 Detailed investigation was carried out by issuing summons to the service provider. During the course of inquiry Shri Rambhai R. Vasara, a partner of the service provider had appeared on 03.05.2010 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, 1994 wherein he has stated that their firm have provided the services to the GETCO for the period 2005-06, 2008-09 and 2009-10 as detailed Annexure-D to the statement; that their firm have not obtained

Service Tax registration certificate; that their firm have not paid the service tax on the services provided to GETCO as they were not aware about the provisions of the Finance Act, 1994 and even it was not informed by the GETCO for the payment of Service Tax and that their firm is ready for payment of service tax.

5 On going through the information provided by the GETCO Junagadh/Amreli/Surendranagar, it was observed that the service provider **M/s New Bilnath Construction Co., 1-Vishnu Colony, near Mahesh Nagar, Zanzarda Road, Junagadh** had undertaken the work of providing services as under :

(i)"Industrial and Commercial Construction Service" as defined under Section 65(25b), 65(105)(zzq) of the Finance Act, 1994 ;

(ii)"Erection, Commissioning or Installation Services" as defined under Section 65(29), 65(39a) and 65 (105)(zzd) of the Act, ibid ;

(iii)"Execution of Work Contract Services as defined under Section 65(105)(zzza) of Act ibid and ;

(iv)"Management, Maintenance and Repair Services" as defined under Section 65 (105)(zzg) of the Act ibid.

and the details in respect of work undertaken by the service provider, period of work, amount of contract, description of work undertaken and the place at which the work was undertaken have been provided by GETCO. From the information provided by the GETCO, it appeared that the work executed/undertaken by the Noticee falls in the category as detailed above and while providing these services during the period from 2005-06, 2008-09 and 2009-10, the service provider have not followed any procedure prescribed under the Finance Act, 1994 and the Service Tax Rules, 1994 and they also have not paid the Service Tax amounting to **Rs.10,72,889/-** as detailed in **Annexure - D** to the Show Cause Notice dated 23.09.2010 and this amount of Service Tax is required to be recovered from the Noticee.

6 Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 provides that every person liable for paying the Service Tax shall make an application 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, 1994 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 Chapter V 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 continued whichever is higher starting with the first day after the due date till the date of actual compliance. In this case the service provider has provided taxable service but failed to obtain registration and penalty under Section 77(1)(a) of the Finance Act, 1994 is liable to be imposed upon the service provider.

7 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 this

case, the service provider has provided taxable service but has failed to file ST-3 returns and hence penalty under Section 77(2) of the Finance Act, 1994 is liable to be imposed upon the service provider.

8 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 day 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 services. In this case, the service provider has provided taxable service but has 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.

9 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 the penalty under Section 77(2) of the Finance Act, 1994 is liable to be imposed upon the service provider.

10 Further in this case, the service provider has suppressed the materials facts in particular by not obtaining registration, by not filing ST-3 returns and not showing the value of taxable services in returns and by not paying Service Tax, the extended period as provided under Section 73 (1) of the Finance Act, 1994 is invokeable. Service provider has provided taxable service but has failed to pay Service Tax and penalty under Section 78 of the Finance Act, 1994 is liable to be imposed upon the Service provider.

11 Therefore, a Show Cause Notice No.V/10-113/ST/DIV/2009-10 dated 23.09.2010 was issued to the Noticee by the Additional Commissioner, Central Excise, Bhavanagar proposing the following actions :

- (i) Recovery of Service Tax of Rs.10,72,889/- for the period from 2005-06, 2008-09 and 2009-10 under Section 73(2) of the Finance Act, 1994 ;
- (ii) Recovery of interest on the Service Tax not paid under Section 75 of the Finance Act, 1994 ;
- (iii) Imposition of penalty under Section 76, 77(2), 77(1)(a) and 78 of the Finance Act, 1994.

DEFENCE REPLY :

12 The Noticee submitted their defence reply dated 21.12.2011 mainly stating as under :

- (i) For the year 2005-06, the actual work done by them was only Rs. 2,88,775/- while total work order was Rs.4,26,917/- and looking to the basic limit of Service Tax Rs. 4,00,000/-, they were not covered under the Service Tax. They enclosed TDS Certificate for this period ;
- (ii) They have paid all the Service Tax dues for the year 2008-09 and 2009-10 and enclosed copy of challans and Service Tax Returns for ready reference ;
- (iii) The actual amount received by them is less than the work order and enclosed copies of work orders. They have already paid Service Tax on the amount which is received by them upto 31.03.2010 with reference to statement showing the work done and enclosed TDS Certificate for ready reference.

PERSONAL HEARING :

13 Personal hearing was fixed on 08.12.2011, 26/27.12.2011, 06/07.02.2012 and 14.02.2012 wherein Shri Rambhai R. Vasra, partner of the firm and Shri Chintan C. Lakhani, Advocate on behalf of the Noticee appeared before the adjudicating authority on 14.02.2012 and reiterated arguments made in defence reply and submitted that they have already paid the Service Tax demanded alongwith interest ; they also submitted that the amount in Show Cause Notice is the works contract value whereas the amount actually received is less and produced TDS certificate as documentary proof ; they submitted that they have filed ST-3 returns alongwith penalty and requested for waiver of penalty since they were not aware about the provisions of Service Tax and stated that they have paid the amount alongwith interest immediately after receiving the Notice.

DISCUSSION AND FINDINGS :

14 I have carefully gone through the records of the case, defence reply and submissions made during the course of personal hearing.

15 The impugned Notice demands Service Tax on the following activities undertaken by the Noticee during the period 2005-06, 2008-09 and 2009-10 and seeks to impose penalty for non-payment of Service Tax :

- (i) "Industrial and Commercial Construction Service" as defined under Section 65(25b), 65(105)(zzq) of the Finance Act, 1994 ;
- (ii) "Erection, Commissioning or Installation Services" as defined under Section 65(29), 65(39a) and 65 (105)(zzd) of the Act, ibid ;
- (iii) "Execution of Work Contract Services" as defined under Section 65(105)(zzzza) of Act ibid and ;
- (iv) "Management, Maintenance and Repair Services" as defined under Section 65 (105)(zzg) of the Act ibid

The Noticee on the other hand have contested that for the period 2005-06 the actual work done by them was to the tune of Rs.2,88,775/- while in Demand Notice dated 23.09.2010 the total amount of work order of

Rs.4,26,917/- has been taken for calculating the amount of Service Tax which is unwarranted and have claimed the exemption of Rs. 4,00,000/-. For the period 2008-09 and 2009-10 they have contested that the actual amount for services rendered was less than the work order and they have paid all Service Tax dues for the amount received by them up to 31.03.2010 and they have submitted documentary proofs thereof. The Noticee have also contested that they have filed ST-3 returns and have paid Service Tax along with interest and therefore penalty may not be imposed.

16 I find that the inquiry for non-payment of Service Tax was commenced by the issuance of summons dated 21.04.2010 and in response thereof a statement of Shri Rambhai R. Vasara, partner of the Noticee firm was recorded on 03.05.2010 before Superintendent of Central Excise, Bhavnagar. In the statement recorded under Section 14 of Central Excise Act, 1944. Shri Rambhai R. Vasara, has deposed that they have provided services to GETCO for the period 2005-06, 2008-09 and 2009-10 and their firm had not obtained Service Tax registration certificate and had not paid Service Tax on the services provided to GETCO as they were not aware of the provisions of the Finance Act, 1994 nor they were informed by the GETCO for the payment of Service Tax and had stated that their firm was ready for payment of Service Tax. This statement has never been retracted, therefore, the deposition made before the Central Excise officer under Section 14 of the Central Excise Act, 1944 is valid and substantial evidence. I also find that the Noticee have deposited following amounts under 5 challans towards Service Tax in ST-3 returns as under :

Financial Year	Period	Amount Rs.	Payment date
2008-09	01.10.08 to 31.12.08	2,61,391	05.06.2010
2009-10	01.01.09 to 31.03.09	3,81,949	05.06.2010
2009-10	01.07.09 to 30.09.09	42,775	17.06.2010
2009-10	01.10.09 to 31.12.09	2,55,605	17.06.2010
2009-10	01.01.10 to 31.03.10	3,16,033	17.06.2010

But the Noticee have not paid any Service Tax for the taxable services provided by them for the period 2005-06 to GETCO.

17 In view of the above discussion, it is clear that the Noticee have been providing following taxable services during the period 2005-06, 2008-09 and 2009-10 without applying for registration and without payment of Service Tax leviable thereon under the Act and the Rules made there under:

- (i) "Industrial and Commercial Construction Service" as defined under Section 65(25b), 65(105)(zzq) of the Finance Act, 1994 ;
- (ii) "Execution of Work Contract Services as defined under Section 65(105)(zzzza) of Act ibid.

18 During the period **2005-06**, the Noticee have provided services of Civil works at Bhanvad to GETCO for the Tender amount of Works order of Rs. 4,26,917/- against this the Noticee have received Rs.2,82,282/- as per Form No. 16 A dated 19.04.2006 issued by the Executive Engineer, GETCO, Junagadh which is the value of taxable services under Section 67 of the

Finance Act, 1994. This service is classifiable under Section 65 (25b), 65(105)(zzq) of the Finance Act, 1994 as "Industrial and Commercial Construction Services" and benefit of Notification No. 6/2005-ST dated 01.03.2005 to small service provider upto the value of Rs. 4 lakhs is available. Similarly, the abatement as contained in Notification No. 01/2006-ST dated 01.03.2006 is available for the services provided for the above period. Therefore, no Service Tax on the taxable amount received Rs.2,82,282 is payable.

19 During the period **2008-09**, the Noticee have provided services at Devla and Fulzar to GETCO for the value of work order of Rs. 85,22,700/- and Rs. 90,53,075/- respectively. This service is classifiable under "Industrial and Commercial Construction Service" as defined under Section 65(25b), 65(105)(zzq) of the Finance Act, 1994 w.e.f. 01.06.2007 and the abatement as provided under Notification No.1/2006-ST dated 01.03.2006 as amended for the said services defined under Section under 65(105) (zzq) of the Act is available to the Noticee to the extent of 33% of the gross amount charged and received by the Noticee. Accordingly, the Service Tax payable is as under :

DEVLA WORK :

Against the Tender value of work of Rs.85,22,700 the amount received by the Noticee as per Form 16As issued by the Executive Engineer, GETCO, Amreli is Rs. 62,83,132/- which is the value of taxable services as per Section 67 of Finance Act, 1994 and after allowance of abatement for the said services, the value of taxable service arrives at Rs.20,73,434 and the service tax is payable on this value at applicable rate which comes to Rs.2,56,277 (Rs.2,48,813 Service Tax + Rs.4,976 Edu. Cess + Rs.2,488 SHE Cess).

FULZAR WORK

Against the Tender Value of work of Rs.1,30,66,362 for the period from October-March 2009 the amount received by the Noticee as per Form 16A issued by the Executive Engineer, GETCO, Amreli is Rs.74,67,021 which is value of taxable services provided as per Section 67 of Finance Act, 1994 and after allowance of abatement for the said services, the value of taxable services arrives at Rs.24,64,117, the Service Tax is payable on this taxable amount at the applicable rate which comes to Rs.3,04,565 (Rs.2,95,694 Service Tax + Rs.5,914 Edu.Cess + Rs.2,957 SHE Cess).

20 During the period **2009-10**, the Noticee have provided services of cable trenching at Sheth-wadala to GETCO for Tender amount of Rs. 83,75,953/- against which Noticee have received Rs.62,06,713/- as per Form 16 A issued by the Executive Engineer, Junagadh which is the value of Taxable services under Section 67 for the Finance Act, 1994. This service is classifiable under "Industrial and Commercial Construction Service" as defined under Section 65(25b), 65(105)(zzq) of the Finance Act, 1994 w.e.f. 01.06.2007 of the Finance Act, 1994 and after allowance of abatement for the said services, the value of taxable services arrives at Rs.20,48,215, the Service Tax is payable on this amount at the applicable rate which comes to

Rs.2,53,160 (Rs.2,45,786 Service Tax + Rs.4,916 Edu. Cess+ Rs. 2,458 SHE Cess).

In the result, the total amount of Service Tax payable is as under :

Period	Value for Service Tax after abatement Rs.	Service Tax Rs.	Ed. Cess Rs	SHE Cess Rs.	Total Rs.
2005-06 BHANVAD	2,82,282	--	--	--	--
2008-09 DEVLA	20,73,434	2,48,813	4,976	2,488	2,56,277
2008-09 FULZAR	24,64,117	2,95,694	5,914	2,957	3,04,565
2009-10 SETH WADALA	20,48,215	2,45,786	4,916	2,458	2,53,160
		7,90,293	15,806	7,903	8,14,002

The Noticee have deposited following amounts against the Service Tax dues as per ST-3 returns under "Works Contracts Services".

Period	Service Tax	Edu. Cess	SHE Cess	Interest Rs.	Penalty	Date of Payment
2005-06	Nil	Nil	Nil	Nil	Nil	Nil
2008-09 Devla	Nil	Nil	Nil	Nil	Nil	Nil
2008-09 Fulzar	45,605 90,481 86,354 1,67,619 1,06,983 32,115	912 1,810 1,727 3,352 2,140 642	456 905 864 1,676 1,070 321	32,268 37,333	28,707	Rs.2,61,391 Rs.3,81,949 On 04.06.2010
	5,29,157	10,583	5,292	69,601	28,707	
2009-10 Seth Wadala	31,690	634	317	3,607	6,527	Rs. 42,775 On 17.06.2010
	42,796 79,934 72,442 68,827 68,732 1,36,667	856 1,599 1,499 1,377 1,375 2,733	428 799 724 688 687 1,367	14,373 8,334	65,401	Rs.2,55,605 Rs.3,16,033 On 17.06.2010
	4,69,398	9,439	4,693	22,707	65,401	

However, on verification of challans it is found that the Noticee have deposited the amounts under the following Heads under "Works Contracts Services":

Period	Service Tax	Ed. Cess	She Cess	Penalty/ Interest	Payment date
A/c Code	00440410	00440298	00440426	00440411	
2008-09	3,44,616	--	--	37,333	05.06.2010
2009-10 (APR-SEP)	39,168	--	--	3,607	17.06.2010

2009-10	3,07,699	--	--	8,334	17.06.2010
(OCT-MAR)	2,41,232	--	--	14,373	17.06.2010
TOTAL	9,32,715	Nil	Nil	63,647	

Thus, the Noticee have deposited Rs.9,32,715 towards Service Tax and Rs.63,647 towards penalty and interest only, the Noticee have not deposited towards Education Cess and SHE Cess. The demand of Rs.7,90,293 of Service Tax is required to be confirmed and appropriated. The demand of Rs.15,806 Edu. Cess + Rs.7,903 SHE Cess on above amount of Service Tax is also required to be confirmed. Further, the amount of Rs. 63,647 deposited by the Noticee is required to be appropriated against the heading penalty/interest.

21 I find that the Noticee have evaded Service Tax for the period 2005-06, 2008-09 and 2009-10 by wilfully suppressing their tax liability for which they are liable for penal action under the provisions of Section 76, 77 and 78 of the Finance Act, 1994. The Noticee have contravened the provisions of Act ibid and Rules made there under inasmuch as they have not paid Service Tax during the period 2008-09 and 2009-10 on the Services of "Industrial and Commercial 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.

22 The Noticee have failed to make payment of Service Tax and subsequent filing of Service Tax returns for the period 2005-06, 2008-09 and 2009-10 within prescribed time limit. It is also a fact that they have suppressed the facts of having received consideration/gross value for providing taxable services during the period 2005-06, 2008-09 and 2009-10 for providing taxable services with an intent to evade payment of Service Tax. As the Noticee have 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.

23 I also find that the Noticee have failed to apply for registration for the service provided during the period 2005-06, 2008-09 and 2009-10 as required under Section 69 of the Act read with Rule 4 of the Service Tax Rules, 1994 and have failed to pay Service Tax as provided under Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 and have failed to submit half yearly returns as provided under Section 70 of Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 and have suppressed the facts with intent 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.

(a) In case of **Dharmendra Textile Processors** as reported in **2008 (231) E.L.T. 3 (S.C.)**, the Supreme Court has held that lesser amount of penalty is not imposable, there is no discretion available on quantum of penalty under Section 11 AC of Central Excise Act, 1944. In Union Budget of 1996-97 the position was made clear that there is no scope of discretion under Section 11 AC and the levy of penalty is mandatory penalty. Section 11AC of Central Excise Act, 1994 is pari-materia with Section 73 of the

Finance Act, 1994 as such penalty which is mandatory under Section 78 of the Finance Act, 1994.

(b) In case of **CCE Delhi III Vs Machino Montell (I) Ltd** as decided by the Hon'ble High Court of Punjab and Haryana it has been held that penal liability arises in situation mentioned in Section 11AC of Central Excise Act, 1944 and mere deposit of duty prior to issue of show cause notice does not negate the situations mentioned in Section 11AC ibid. Section 11AC of Central Excise Act, 1944 is pari materia with the provisions of Section 78 of the Finance Act, 1994.

(c) Hon'ble Tribunal, Delhi in case of **CCE, Ludhiana Vs City Cable Reported in 2011 (23) STR 155 (Tri. Del)** has held that short payment of tax is enough to impose penalty under Section 78 of Finance Act, 1994 even though the respondent was co-operative to the investigation as the penalty proceedings being independent of adjudication.

(d) The High Court of Karnataka in the case of **M/s United Communication, Udupi Vs CCE Manglore reported in 2011-TIOL-802-HC-KAR-ST** has held that before issue of SCN penalty is leviable for non-payment of Service Tax when liability is known. -

24 **M/s New Bilnath Construction Co, Junagadh** are liable for penal action under Section 76, 77(1), 77(2) and 78 of the Finance Act, 1994 for breach of provisions of Section 68, 69 and 70 of the Finance Act, 1994, however, the penalty under Section 76 of the Act shall be restricted upto 10.05.2008 in terms of proviso 2 of Section 78 which bars penalty under Section 76 if penalty is imposed under Section 78 of the Act, ibid.

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

ORDER

25.1 **M/s New Bilnath Construction Co., Junagadh** are liable to pay the amount of Rs. 8,42,725 (Rs. 7,90,293 Service Tax + 15,806 Ed. Cess +Rs. 7,903 SHE Cess) for the period from 2008-09 and 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. I appropriate amount of Rs. 7,90,293 towards Service Tax paid. The Noticee shall pay amount of Rs. 15,806 Edu. cess and Rs. 7,903 SHE Cess which is not paid.

25.2 **M/s New Bilnath Construction Co., Junagadh** are liable to pay interest on the amount of Service Tax for the period 2008-09 and 2009-10 under Section 75 of the Finance Act, 1994 at the applicable rate.

25.3 I impose penalty of Rs. 200/- upon **M/s New Bilnath Construction Co., Junagadh** for every day under Section 76 for the period 2008-09 i.e. from 01.04.2008 to 10.05.2008 during which failure to pay Service Tax continued or at the rate of 2 % of the Service Tax for the period 2008-09 i.e. 01.04.2008 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 said period.

25.4 I impose penalty of Rs.1,000/- upon **M/s New Bilnath Construction Co., Junagadh** under Section 77 of the Finance Act, 1994

for the period from 18.04.2006 to 10.05.2008 and Rs. 200/- for every day during which failure to obtain registration under Section 69 of the Act read with Rule 5 of the Rules during which such failure continued starting with the first day after the due date till the date of actual compliance.

25.5 I impose penalty of Rs.5000/- upon **M/s New Bilnath Construction Co., Junagadh** under Section 77(2) of the Finance Act, 1994.

25.6 I order to appropriate the amount of Rs. 28,707/- + Rs.65,401/- already deposited by the Noticee towards penalty/interest and order to adjust against the demand of penalty/interest confirmed hereinabove.

25.7 I impose penalty of Rs. 8,42,725/- under Section 78 of the Finance Act, 1994 upon **M/s New Bilnath Construction Co., Junagadh**.

If the amount as determined under para 25.1 above is paid within 30 days from the receipt of the order alongwith the interest payable then as per proviso to Section 78, the penalty will be only 25% of the Service Tax determined at para 25.1 above. The benefit of reduced penalty shall be available only if the amount of penalty so determined has also been paid within the period thirty days from the receipt of this order.


15/3/12

(IMAMUDDIN AHMED)
Joint Commissioner
Central Excise, Bhavnagar

F.NO.V/15-17/DEM-ST/HQ/2010-11

Date: .03.2012

To

**M/s New Bilnath Construction Co.,
1-Vishnu Colony, Near Mahesh Nagar,
Zanzarda Road, Junagadh.**

Copy to:

- (1) The Commissioner of Central Excise, Bhavnagar.
- (2) The Assistant Commissioner (RRA), Central Excise, Bhavnagar
- (3) The Superintendent of Service Tax, Range, Junagadh
- (4) The Assistant Commissioner, Service Tax Division, Bhavnagar
- (5) Guard file.