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By R.P.A.D.

F. No. V/15-49/Dem-ST/HQ/2011-12.

Date of Order: 15/03/2012

Date of Issue: 09/04/2012

Passed by

IMAMUDDIN AHMED
Joint Commissioner
Central Excise
Bhavnagar

Order-in-Original No: 24 / 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. Shreeji construction,
F-22, Neptune Tower,
Opp. Jalal Petrol Pump, Kalawad Road, Rajkot.

Subject: Show Cause Notice Number No. V/15-49/Dem-ST/HQ/2010-11
Dated 12.10.2010 issued to M/s. Shreeji construction., Kalawad Road,
Rajkot demanding Service Tax of Rs.6,12,574/-.

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 Survey), 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-stations for storage and distribution of electricity, maintenance and repairing of 66 KV/220 KV sub-stations 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) (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)(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 Superintendents 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 Shreeji Construction,F-22,Neptune Tower, Opp Jalaram Petrol Pump, Kalawad Road, Rajkot (Hereinafter referred to as the "Service Provider/Noticee") 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 dated 10.03.2010, 05.04.2010 and 21.04.2010 to the service provider. The summons dated 21.04.2010 was returned with remarks "Refused".

5 On going through the information provided by GETCO, Surendranagar/Junagadh/Amreli, it was observed that the service provider M/s Shreeji Construction,F-22, Neptune Tower, Opp Jalaram Petrol Pump, Kalawad Road, Rajkot 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)(zzzza) of the 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, 2006-07, 2007-08, 2008-09 and 2009-10, the service provider had not followed any procedure prescribed under the Finance Act, 1994 and the Service Tax Rules, 1994 and they also had not paid the Service Tax amounting to **Rs.6,12,574/-** as detailed in **Annexure-D** to the Show Cause Notice dated 11.10.2010 and this amount of Service Tax was 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 thus 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 The service provider failed to honour the Summons issued by the Central Excise Officer for appearance to give evidence or to produce document in an inquiry. The summons dated 10.03.2010 was received back without service; summons dated 05.04.2010 was received back and summons dated 21.04.2010 was also returned with remark 'refused' which showed the deliberate avoidance to give the evidence and information, therefore, penalty under Section 77 (1) c(iii) is liable to be imposed on the service provider.

11 Further in this case, the service provider has suppressed the material facts, in particular, by not obtaining registration, by not filing ST-3 returns and not showing the value of taxable 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. The 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.

12 Therefore, a Show Cause Notice No. V/15-49/DEM-ST/HQ/2010-11 dated 11.10.2010 was issued to the Noticee by the Additional Commissioner, Central Excise, Bhavnagar proposing the following actions:

- (i) Recovery of Service Tax of Rs.6,12,574/- for the period 2005-06, 2006-07, 2007-08, 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(1)(a), 77(1)(c), 77(2) and 78 of the Finance Act, 1994.

The said Show Cause Notice was served to the Noticee in terms of Section 37C(b) of the Central Excise Act, 1944 by the Superintendent, Service Tax Range, Junagadh.

DEFENCE REPLY :

13 The Noticee did not file any written reply to the Show Cause Notice dated 11.10.2010 in spite of being reminded time to time by this office letters dated 07.10.2010, 19.10.2010, 16.12.2010, 03.01.2012, 05.03.2012 addressed to their Rajkot office.

PERSONAL HEARING :

14 Personal hearing was fixed on 18.10.2011, 16.11.2011, 26/27.12.2011, 16/17.01.2012 and on 13/14.03.2012 and was intimated to the Noticee on their Rajkot office as well as through Superintendent, Central Excise, Assessment Range, Bamanbore at Noticee's Fax No.0281-2450359 (Rajkot Office). In spite of sufficient time and opportunities for filing the defence reply and appearing for personal hearing before the adjudicating authority, the Noticee has neither filed any written reply nor did avail opportunity of hearing. I find that enough opportunity has been provided to the Noticee but they have failed to file reply to the Show Cause Notice or appear for personal hearing. Therefore, I proceed to decide the case on the basis of facts available on record.

DISCUSSION AND FINDINGS :

15 I have carefully gone through the records of the case. The impugned Notice demands Service Tax on the following activities undertaken by the Noticee during the period 2005-06, 2006-07, 2007-08, 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 the Act ibid and ;
- (iv) "Management, Maintenance and Repair Services" as defined under Section 65 (105) (zzg) of the Act ibid.

16 I find that the inquiry for non-payment of Service Tax was commenced by the issuance of summons dated 10.03.2010, 05.04.2010 and 21.04.2010. These summons were either returned or refused by the Noticee.

17 The Noticee have been providing following taxable services during the period 2005-06, 2006-07, 2007-08, 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) "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 the Act ibid and ;

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

During the above said period the Noticee have received the following amount for providing services from the GETCO, the service recipient and after considering the abatement to the extent of 67% of the gross amount as provided under Notification No.1/2006-ST dated 01.03.2006 as amended for the said services as defined under Section under 65(105)(zzq) of the Act.

Sr. No.	Period	Gross amount received (Rs.)	Net taxable value after abatement. (Rs.)
1	2005-06	21,34,456	7,04,370
2	2006-07	75,96,986	25,07,005
3	2007-08	30,78,300	10,15,839
4	2008-09	13,11,170	4,32,686
5	2009-10	16,13,214	5,32,361

And the Service Tax at the applicable rate thereon as per **Annexure-A** to the Show Cause Notice dated 11.10.2010 comes to Rs.6,12,574/-.

18 I find that the Noticee have evaded Service Tax for the period 2005-06 to 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 the Rules made there under inasmuch as they have not paid Service Tax during the period 2005-056 to 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.

19 The Noticee have failed to make payment of Service Tax and subsequent filing of Service Tax returns for the period 2005-06 to 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 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 At, 1994.

20 I also find that the Noticee have failed to apply for registration for the service provided during the period 2005-06 to 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.

21 The Noticee have also failed to (i) furnish information called by an officer in accordance with the provisions of Chapter V or Rules made thereunder; (ii) produce documents called for by a Central Excise Officer in accordance with the provisions of Chapter V or Rules made thereunder and (iii) appear before the Central Excise Officer when issued with a summons for appearance to give evidence or to produce a document in an inquiry. Therefore, the Noticee is liable for penalty under the provisions of Section 77 of the Finance Act, 1994.

22 **M/s Shreeji Construction, Rajkot** 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 up to 10.05.2008 in terms of proviso 2 of the 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

23.1 **M/s Shreeji Construction, Rajkot** are liable to pay the amount of **Rs. 6,12,574/-** (Including Ed Cess, SHE Cess) for the period from 2005-06 to 2009-10 under Section 73(2) of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 which is hereby confirmed.

23.2 **M/s Shreeji Construction, Rajkot** are liable to pay interest at the applicable rate on the amount of Service Tax due and not paid for the period 2005-06 to 2009-10 under Section 75 of the Finance Act, 1994.

23.3 I impose penalty of Rs. 200/- upon **M/s Shreeji Construction, Rajkot** for every day under Section 76 for the period 2005-06 i.e. 01.04.2005 to 17.04.2006 and Rs.200/- for every day or 2% of Service Tax amount per month whichever is higher for the period from 18.04.2006 to 10.05.2008 during which failure to pay Service Tax within the period and in the manner prescribed under Section 68 of the Act read with Rule 6 of the Rules continued provided that the total amount of penalty payable in terms of this Section shall not exceed the Service Tax payable during the said period.

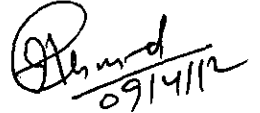
23.4 I impose penalty of Rs. 1000/- upon **M/s Shreeji Construction, Rajkot** under Section 77 of the Finance Act, 1994 for the period from 2005-06 i.e. 01.04.2005 to 09.05.2008 and Rs. 5000/- or Rs.

200/- for every day whichever is higher for the period from 10.05.2008 to 2009-10 under Section 77 (1)(a) of the Finance Act, 1994 for 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.

23.5 I impose penalty of Rs.5000/- or Rs. 200/- for every day under Section 77(1)(c) of the Finance Act, 1994, whichever is higher, starting with the first day after the due date till the date of actual compliance for failure to appear before a Central Excise Officer to give evidence or to produce a document in an inquiry.

23.6 I impose penalty of Rs. 5000/- upon **M/s Shreeji Construction, Rajkot** under Section 77(2) of the Finance Act, 1994.

23.7 I impose penalty of Rs. 6,12,574/- under Section 78 of the Finance Act, 1994 upon **M/s Shreeji Construction, Rajkot**. If the amount as determined under para 23.1 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 23.1 above. The benefit of reduced penalty shall be available only if the amount of penalty so determined has also been paid within the period of thirty days from the receipt of this order.



(IMAMUDDIN AHMED)

Joint Commissioner

Central Excise, Bhavnagar

Date: .03.2012

F.No.15-49/DEM-ST/HQ/2010-11

To

M/s Shreeji Construction,

F-22, Neptune Tower,

Opp. Jalaram Petrol Pump, Kalawad Road, RAJKOT.

Copy to :

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