



Govt. of India  
Office of the Commissioner of Central Excise  
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**By R.P.A.D.**

F. No. V/15-52/Dem-ST/HQ/2012-13

Date of Order: 04.03.2014

Date of Issue: 04.03.2014

Passed by

P. MOHAN RAO  
Joint Commissioner  
Central Excise & Service Tax  
Bhavnagar

**Order-in-Original No: 01 / BVR / Jt. Commr / 2014**

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. Any person(s) deeming himself aggrieved by this Order may appeal against this order to the Commissioner Central Excise (Appeals), Rajkot, Central Excise Bhavan, Race Course Ring Road, Rajkot-360 001 within two months from the date of its communication. The appeal should bear a court fee stamp of Rs 2.50/- paise only.

3. The appeal should be filed in form ST-4 in duplicate, as per the provisions of Section 85 of the Finance Act, 1994 (32 of 1994) read with Rule 3 of the Central Excise (Appeals) Rules, 2001. 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, 2001.

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

4. 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. Karsanbhai Govindbhai Gadhe,  
P.O. Vadnagar, Tal.-Kodinar, Sindhaj,  
Dist.-Junagadh – 362 715.

Subject: Show Cause Notice Number V/15-52/Dem-ST/HQ/2012-13 dated 11.10.2012 issued to M/s. Karsanbhai Govindbhai Gadhe, Junagadh.

**BRIEF FACTS OF THE CASE :**

M/s. Karsanhai Govindbhai Gadhe, Vadanagar, Taluka Kodinar Sindhaj, District Junagadh (hereinafter referred to as "the Noticee") are engaged in providing taxable service in the category of "Manpower Recruitment and Supply Agency" and "Construction Service in respect of Commercial or Industrial Building and Civil structures" as defined under Section 65 (105)(k) and 65(105)(zzq) respectively of the Finance Act,1994 (herein after referred to as the Act). It appeared that the Noticee had taken registration for "Construction of Commercial or Industrial Building and Civil structures" and are also providing "Manpower Recruitment and Supply Agency Service" for which they have not obtained Service Tax registration under the Finance Act,1994.

2. During the course of audit, the financial records of the said Noticee were scrutinized as well as verification of TDS statement (Form No. 26 AS) & ST-3 Returns for the Financial Years 2007-08 to 2011-12 and it was appeared that the Noticee have made short-payment of Service Tax. Further, on verification of ST-2, it was also noticed that the Noticee had taken registration in the month of July, 2007 but had not filed the Service Tax Return (ST-3) for the period April to September, 2007.

2.1 On being asked about the invoices by the audit for the F.Y. 2007-08 to 2011-12, the Noticee could not produce the same and explained that invoices for the above stated period have been burnt in fire.

2.2 Further, on verification of ST-2 and ST-3, it has been noticed that the Noticee had taken registration only for 'Construction of Commercial or Industrial Building and Civil Structures' whereas, they are also providing the services related to 'Manpower Recruitment and Supply Agency Service' but neither the service tax registration was got amended nor any service tax with regards to the said services has been paid into the credit of government account.

3. From the discussions in paras supra it appeared that the Noticee had short paid service tax amounting to Rs.24,33,681/- as per details given in table below:-

YEAR	GROSS INCOME as per TDS Statement (In Rs)	TAXABLE VALUE (In Rs)	S. TAX PAYABLE (In Rs)	SERVICE TAX PAID AS PER ST-3 RETURN AND CHALLANS (In Rs)	DIFF. SERVICE TAX TO BE PAID (In Rs)	S. TAX @ 12% & 10% (In Rs)	ED CESS (@ 2%) (In Rs)	SHE CESS @ 1% (In Rs)
2007-08	83,84,811/-	74,62,452/-	9,22,359/-	30,482/-**	8,91,877/-	8,65,900/-	17,318/-	8,659/-
2008-09	1,88,80,223/-	1,68,03,331/-	20,76,892/-	13,85,897/-	6,90,995/-	6,70,869/-	13,417/-	6,709/-
2009-10	1,77,88,084/-	1,61,27,003/-	16,61,081/-	10,92,921/-	5,68,160/-	5,51,612/-	11,032/-	5,516/-
2010-11	1,34,28,918/-	1,21,74,903/-	12,54,015/-	10,01,311/-	2,52,704/-	2,45,344/-	4,907/-	2,453/-
2011-12	1,47,66,387/-	1,33,87,477/-	13,78,910/-	13,48,965/-	29,945/-	29,073/-	581/-	291/-
TOTAL	7,32,48,423/-	6,59,55,166/-	72,93,257/-	48,59,576/-	24,33,681/-	23,62,797/-	47,256/-	23,628/-

**\*\* The Noticee could not produce the proof of payment of Service Tax amounting to Rs. 1,51,491/- for the period October-December, 2007 (year 2007-08).**

The Noticee clarified to the audit that they have provided some part of construction services towards religious/educational purpose to M/s Gujarat Ambuja Foundation which is an exempted service, however, could not produce the proof in respect of his claim (i.e. Invoices, certificate etc). Therefore, it appeared that the Noticee was required to pay the short-paid Service Tax amounting to Rs 24,33,681/- alongwith interest.

4. The "Manpower Recruitment and Supply Agency Service" and "Construction of Commercial or Industrial Building and Civil Structures" are defined under the provision of the Act, as under:

**Section 65(105)(k):** "taxable service" means to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner; Explanation - For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, recruitment or supply of manpower includes services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and authenticity of documents submitted by the candidate;

**Section 65(105) (zzq):** "taxable service" means to any person, by any other person, in relation to commercial or industrial construction.

Explanation--For the purposes of this sub-clause, the construction of a new building which is intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorized by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer;

5. Whereas, Gross Income as per TDS statement as well as ST-3 returns and challans for the F.Y. 2007-08 to 2011-12 as enumerated hereinabove

were received by the Noticee towards services provided in relation to "Manpower Recruitment and Supply Agency Service" and "Construction of Commercial or Industrial Building and Civil Structures" and consideration received against the services attracts Service Tax liable to be paid by the service provider i.e. the Noticee in terms of the provision of Section 66 of the Act read with Section 68 of the Act and Rule 6 of Service tax Rules, 1994 (hereinafter referred to as "the Rules").

6. In light of the facts and circumstances as mentioned hereinabove, it appears that the Noticee had shown different income for the year 2007-08 to 2011-12. The Service Tax worked out to Rs 24,33,681/- is liable to be recovered from the Noticee. It appeared that the Noticee have contravened the following provisions of the Act and the Rules in the manner described as under and as such liable for penal action:

S. No.	Manner of Contravention	Breach of		Liable of Penal Action	
		Finance Act, 1994 Section	Service Tax Rules, 1994 Rule	Finance Act, 1994 Section	Service Tax Rules, 1994 Rule
1.	Did not apply for registration for the service provided under the category of "manpower recruitment or supply agency".	69	4	77	-
2.	Did not pay the Service Tax	68	6	76	-
3.	Did not furnish the prescribed Returns for the F.Y. 2007-08 to 2011-12	70	7	77	7c
4.	Non-maintenance of records the F.Y. 2007-08 to 2011-12.	-	5(3)	77	7c
5.	Did not pay the service tax by reason of suppression of facts from the department and contravened the provisions of the Act and Rules.	Proviso(1) of 73	-	78	-

7.1 Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 where there is any change in information or details furnished by the service provider in the Form ST-1 at the time of obtaining registration or he intended to furnish any additional information or details, he can intimate such details in writing to the Assistant Commissioner / Deputy Commissioner within a period of 30 days of such change, in as much as they failed to take registration from the department, though being liable to pay service tax.

7.2 Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they have failed to pay the Service Tax including Education Cess and Secondary and Higher Secondary Education Cess amounting to Rs 24,33,681/- at the appropriate rate.

7.3 Section 70 of the Finance Act, 1994 as amended read with Rule 7 of the Service Tax Rules, 1994 in as much as they have failed to self assess the Service Tax payable on the value of taxable services received for providing various services as discussed hereinabove and to furnish Returns in Form ST-3 duly mentioning the details of taxable services provided by them during the period April to September 2007.

8. As per Rule 5(3) of the Service Tax Rules, 1994 amended by Notification No. 5/2006-ST, dated 01.03.2006, all records maintained by the Noticee shall be preserved at least for a period of five years immediately after the financial year to which such records pertain.

9. Section 73 Recovery of Service tax not-levied or paid or short-levied or short-paid or erroneously refunded -

(1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within 'eighteen months' from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the Notice :

Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "eighteen months" the words "five years" had been substituted.

Further, Section 75 of the Finance Act, 1994 stipulates that every person liable to pay the tax in accordance with the provisions of Section 68 of the Rules made there under and who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period shall pay simple interest at the notified rate.

10. Accordingly a Show Cause Notice bearing No. V/15-52/DEM-ST/HQ/2012-13 dtd 11.10.12 was issued asking the Noticee to show cause to the Joint Commissioner, Central Excise Commissionerate, Plot No. 6776/B-1, "Siddhi Sadan" Building, Narayan Upadhyay Marg, Bhavnagar" within 30 days from the date of receipt of this Notice as to why :

1. Service tax amounting of Rs 24,33,681/- (Rupees twenty four lac, thirty three thousand, six hundred and eighty one only) short-paid should not be demanded and recovered from them under Section 73 (1) of Finance Act, 1994 ;
2. Interest at the appropriate rate should not be charged and recovered on the Service Tax mentioned at (i) above under section 75 of the Finance Act 1994 ;
3. Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 ;
4. Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994;
5. Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994.

**Defence submissions:**

**11.** Vide their letter dated 06.11.12 the Noticee requested for extension of time to reply to the SCN as they had called for certain details from Ambuja Cement Foundation –Calcutta-West Bengal. In this letter the Noticee also enclosed the following:-

- Revised working of service tax liability
- Xerox Copy of the challan for Rs.1,51,492/-
- Details of bills which are considered for Service Tax liability though actually exempted
- Copies of Profit and Loss Account for all 04 years
- Copy of Ambuja Cement Foundation appointment for Rural Development from Rural Development Commissioner Gujarat State –Gandhinagar.
- Copy of Service tax Notification No.25/2012-ST dated 20.6.12 Vide their subsequent letter dated 22.12.2012 the Noticee enclosed
- copy of Certificate u/s 12A of Ambuja Cement Foundation-Calcutta issued by Director of Income Tax Calcutta
- Copies of Sales bills submitted to Ambuja Cements Ltd for Road work alongwith copies of work orders for the exemption claimed in service tax liability for FY 07-08 to 09-10
- Copies of invoices submitted to Ambuja Cement foundation for charitable works and for which exemptions claimed from service tax for FY 07-08 to F.Y.11-12

- The Noticee further submitted that they had already provided proof of payment of Rs.151492/- dtd 08.01.2008 vide their earlier reply dated 06.11.12.

## 12. Personal hearing :

Shri Bheda Mulubhai Naranbhai authorized representative of the noticee appeared for personal hearing on 20.2.14 at 15.00 hrs and reiterated their submissions made vide their letter dated 06.11.12 and 22.12.12 and requested that adjudication be done on basis of these submissions.

## Discussions & Findings:

13. I have carefully gone through the show cause notice, submissions made in their defense by the Noticee in their written replies as well as during personal hearing and evidences available on record. From the facts, I find that the main contention of the Noticee is that they have not paid service tax as the services provided by them is to M/s Gujarat Ambuja Foundation-Calcutta which is an entity registered under section 12AA of the Income tax Act 1961(43 of 1961) by way of charitable activities and hence is exempted vide virtue of Notification. 25/2012 dtd 20.06.2012. In this regard the Noticee have also submitted Xerox copy of a letter dated 17.12.93 addressed to The Member, M/s Ambuja Cement Foundation, 2156, AJC Bose Road, Calcutta-7007017 issued by the Director of Income Tax(Exemptions) Calcutta certifying them to be registered under Section **12A**.

14. I find that Notification 25/2012 dtd 20.6.2012 gives exemption to services provided by entity registered under Section **12AA** of the Income tax Act, 1961 (43 of 1961) by way of charitable activities .The Noticee is not such a entity but have only provided service to such an entity. Even otherwise I observe that the period of service tax demanded is prior to issue of the Notification (issued on 20.6.2012 in supersession of Notification No 12/2012-St dtd 17.03.12), the Noticee service receiptant is M/s Gujarat Ambuja Cement/Gujarat Ambuja Foundation-**Junagadh** and not **Calcutta** also as per xerox copy of letter/certificate enclosed in the Noticee defence reply M/s Ambuja Cement Foundation, Calcutta is not registered under section **12AA** but under **12A**. Further, I also find that if the Noticee has the bonafide intention of availing the benefit of such exemption, he would have either inform the department through the submitting the relevant data into the respective ST-3 returns specifically mentioning the details of the exemption claimed or he would have the full details of the exemption so called availed to the respective JRS. Thus, I find that the Noticee had never approached the department to disclose such facts before the department which clearly tends to believe that the claiming the exemptions of such hidden taxable value is just improper and after thoughts upon



being identified by the Audit party. Accordingly I reject this defence contention of the Noticee.

15. I also find that the Noticee has only submitted Xerox copy of the challan amounting to Rs.1,51,492/-. I observe that when any service tax is paid the bank endorses its dated stamp along with signature on the challan and returns it back to the tax payer in original. The Noticee neither in his written reply or during personal hearing produced this original challan for my verification accordingly I reject this defence of the Noticee.

16. From the Discussion held above I find that the Noticee has short paid service tax and the same could be identified only during the course of Audit. Thus, I find that the Noticee has clearly suppressed the service tax liabilities for an amounting to Rs. 24,33,681/- and accordingly the same is required to be recovered under Section 73(1) alongwith appropriate interest under Section 75 and the above act of commissions and omissions is rightly required to be penalized under section 76 and 78 of the finance Act 1994.

17. I also find that the Noticee has not got registration under the category of manpower recruitment or supply agency, did not furnish the prescribed returns for F.Y. 2007-08 to 2011-12 and did not maintain records accordingly I find that the noticee is liable for penalty under section 77 of the Finance Act 1994.

Accordingly I pass the following order

### **ORDER**

(i) I confirm the demand of Service tax amounting to Rs.24,33,681/-(Twenty four lakhs thirty three thousand and six hundred and eight one only) to be recovered from M/s Karsanbhai Govindbhai Gadhe under Section 73(1) of the Finance Act 1994 (as amended).

(ii) I order to charge and recover interest at the appropriate rate on the above amount of Service Tax confirmed under Section 75 of the Finance Act 1994 from M/s Karsanbhai Govindbhai Gadhe.

(iii) I also impose penalty of Rs. 200/- (Rupees Two hundred only) per day for the period during which failure to pay the tax continued or at the rate of 2% of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of Service Tax, on M/s Karsanbhai Govindbhai Gadhe under Section 76 of the Finance Act, 1994 for the period from 01.06.2007 to 09.05.2008;



Provided the total amount of penalty payable in terms of this section shall not exceed Rs. 24,33,681/- i.e. the amount of Service Tax Recoverable from M/s. Karsanbhai Govindbhai Gadhe .

(iv) I impose penalty of Rs.1000/-on the Noticee for failure to take registration for the period starting with first day after the due date upto 09.5.2008 under Section 77 of the Finance Act, 1994 for the category of taxable service viz. Manpower recruitment & Supply Agency and I impose penalty of Rs.200/- per day or Rs.10,000/- whichever is higher for the period from 10.5.2008 onwards in respect of the said category of taxable service , till date of actual compliance under Section 77 of the finance Act, 1994 for failure to take registration and I also impose a penalty of Rs.10,000/- on M/s Karsanbhai Govindbhai Gadhe under Section 77 of the Finance Act,1994 for failure to file prescribed returns for the said category of taxable services and non maintenance of record.

(v) I Impose penalty of Rs.48,67,362/-(Forty eight lakhs sixty seven thousand three hundred and sixty two only) on M/s Karsanbhai Govindbhai Gadhe under Section 78 of the Finance Act, 1994. However in terms of provision to Section 78 as it stood at the relevant time the penalty shall be reduced to 25% of the confirmed demand if the service tax, interest and penalty are paid within 30 days from the date of communication of the order.

18. This order is issued without prejudice to any other action that may be taken against the Noticee under the provisions of the Finance Act, 1994 or the Rules framed there under or under the provisions of any other law for the time being in force.

  
(P. MOHAN RAO)  
JOINT COMMISSIONER

F. No. V/15-52/Dem-ST/HQ/2012-13

Date: 04. 03.2014

**By. Regd. Post A.D./Hand delivery**

To,  
M/s Karsanbhai Govindbhai Gadhe,  
P.O Vadnagar, TRal: Kodinar Sindhaj,  
Dist-Junagadh-362715

Copy to:

1. The Commissioner, Central Excise & Service Tax, HQ, Bhavnagar (ATTN:RRA Section).
2. The Deputy Commissioner, Service Tax Division, Bhavnagar.
3. The Superintendent, Service Tax Range, Junagadh.
4. Guard File.