	<p style="text-align: center;"><i>Govt. of India</i>  <i>Office of the Commissioner of Central Excise</i>  <i>'Siddhi Sadan', Plot No.6776/B-1, Narayan Upadhyay Road, Off Waghawadi Road,</i>  <i>Bhavnagar</i></p>
	<p>Ph.No. : 0278- 2523627                  Fax No.: 0278-2513086</p> <p style="text-align: right;">E-mail- adjbhavnagar.gmail.com</p>

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

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

Date of Order: 18.03.2014

Date of Issue: 18.03.2014

Passed by

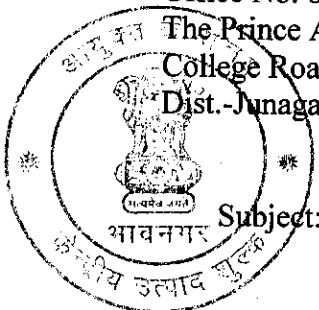
P. MOHAN RAO  
 Joint Commissioner  
 Central Excise & Service Tax  
 Bhavnagar

**Order-in-Original No: 02 / 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. Ghelaram & Co.,  
 Office No. 8, First Floor,  
 The Prince Aga Khan's Hostel  
 College Road,  
 Dist.-Junagadh – 362 001.



Subject: Show Cause Notice Number V/15-15/Dem-ST/HQ/2012-13 dated 20.04.2012 issued to M/s. Ghelaram & Co., Junagadh.

**BRIEF FACTS OF THE CASE:**

M/s Ghelarama & Co., Office No. 8, First Floor, The Prince Aga Khan's Hostel, College Road, Junagadh – 362 001 (hereinafter referred to as "M/s Ghelarama") were engaged in providing taxable services of "Management Maintenance or Repair", "Commercial or Industrial Construction," "Construction of Complex" and other services to Gujarat State Police Housing Corp. Ltd., R&B Department, GETCO, Gujarat State Civil Suppliers Corp. Ltd., Gujarat State Electricity Corp Ltd., and other service recipients.

2. During the course of an investigation, the financial records as well as the documents related to were called from of M/s. Ghelarama. However, in compliance to that, their consultant viz. M/s Shivam Tax Consultancy, Dipmandir Complex, Vanzari Chowk, M. G. Road, Junagadh vide their written submission dated 19/10/2011 alongwith the arguments that the services provided by their client i.e. M/s Ghelarama were not chargeable to Service Tax, submitted the photo copies of following documents;

(i) Two Work Orders issued by Gujarat State Police Housing Corporation Limited as per details shown below:

Sr. No.	Work Order No.	Date	Description of Work	Tender Amount (Rs.)
1	GPH/TECH/TENDER/MD/2786/5618/2005	15-12-2005	Construction of Class C-01 Police Quarters	5,06,179
2	GPH/TECH/TENDER/MD/3134/5259/2006	22-11-2006	Construction of Coastal Police Station	22,90,852

(ii) RA Bills as per details shown below-

Sr. No.	RA Bill No.	Date of Bill	Description of Work	Amount (Rs.)
1	1 & Final Bill	08-12-2006	Construction of Class C-01 Police Quarters	4,64,566
2	3rd & Final Bill	12-12-2007	Construction of Coastal Police Station	20,42,591

2.2 On being further asked, M/s Ghelarama had, vide their letter dated 11.01.2012 further furnished the such as (i) Audited Balance Sheets for the F.Y. from 2007-08 to 2010-11; (ii) Work orders issued by Gujarat State Police Housing Corporation Ltd; (iii) RA Bills of Gujarat State Police Housing Corporation Ltd; (iv) OIO No. 38/BVR/Jt. Commr/2011 dated 15.12.2011. On scrutiny of the same, apart from the above, the following observations were revealed;

(i) From the Audit Reports of the F.Y. from 2007-08 to 2010-11, it was gathered that M/s Ghelarama had received gross income as under;



Financial Year	Turnover (Rs.)
2006-07	13395440
2007-08	5772237
2008-09	7467984
2009-10	8134417
2010-11	12418389

(ii) As discussed in para 2.2(iii) M/s Ghelarama submitted two bills as shown in the table therein. Under their letter dated 11.01.2012 they submitted 4 RA Bills in total out of which one pertains to construction of class C-01 Police staff quarters whereas remaining 3 pertain to construction of coastal Police Station. As per the payment vouchers submitted along with the said RA Bills the amounts received by M/s Ghelarama in this regard were as under-

Sr. No.	RA Bill No.	Date of payment	Description of Work	Amount (Rs.)
1	1st & Final Bill	05-02-2007	Construction of Class C-01 Police Quarters	4,64,566
2	1st Bill	24-07-2007	Construction of Coastal Police Station	5,70,098
3	2nd Bill	28-09-2007		6,08,619
4	3rd & Final Bill	11-02-2008		8,63,874

(iii) Further, M/s Ghelarama have also submitted a copy of Order-in-Original No. 38/BVR/Jt. Commr/2011 dated 15.12.2011 passed by the Joint Commissioner, Central Excise, Bhavnagar by which the demand of Service Tax of Rs. 5,88,276/- has been confirmed by the Department. The said OIO has covered the demand of Service Tax on the services provided by M/s Ghelarama to GETCO and that too for the period from 2005-06 to 2008-09 whereas the present Notice was covering the demand of Service Tax on all the taxable services rendered by M/s Ghelarama to all the Service Recipients during the period from 2006-07 to 2010-11.

3. M/s. Ghelarama have deposited in their written submission that they have provided following services-

(a) Services of construction of CR Building, Foundation, Cable Trench, Compound Wall, Road etc. provided to Gujarat Energy Transmission Corporation Limited (GETCO), Paschim Gujarat Vij Company Ltd. (PGVCL) and Gujarat State Electricity Corporation Ltd. (GSECL).

(b) Services of construction of Barrack and Police Station provided to Gujarat State Police Housing Corporation Limited (GSPHCL)

(c) Services of renovation/ strengthening & repairs to Museum Building at Prabhas Patan and repair of Hospital Building at Amreli provided to R & B Division, Junagadh.



**(d)** Services of construction of road provided to Irrigation Project Division, Junagadh.

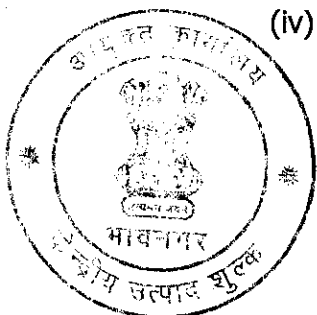
**3.2** M/s Ghelarama submitted copies of TDS Certificates. A close scrutiny of these TDS Certificates reveal that the figures shown therein are more or less in agreement with the figures containing in the list of year wise amount received by M/s Ghelarama as discussed above.

**4** From the Scrutiny of the documents submitted by M/s Ghelarama, the following facts were revealed that they have;

- (a) provided services of Commercial Construction of Civil structures to Gujarat Energy Transmission Corporation Limited; to Gujarat State Civil Supplies Corp. Ltd; to Gujarat State Police Housing Corporation Limited;
- (b) provided services of Non-Commercial Construction of police station to Gujarat State Police Housing Corporation Limited ;
- (c) provided services of Renovation, strengthening and repair to R&B Division, Junagadh & Amreli ;
- (d) carried out Construction of road for Irrigation Project Division ;
- (e) provided service of Commercial Construction to PGVCL ;
- (f) provided services of Commercial or Industrial Construction of civil structures to GSECL;
- (g) not taken Service Tax registration for the services provided by them nor paid the Service Tax nor filed the Service Tax returns ;
- (h) suppressed the facts of providing the taxable services and even not produced true and correct information as called for from them.

**4.1** So as, M/s Ghelarama were liable to pay Service Tax on the taxable services rendered by them as per Section 66 of the Act and as per provisions stated under Section 69 of the Act read with Rule 4 of the Service Tax Rules, 1994 (hereinafter referred to as "**the Rules**"). Thus, it appeared that M/s Ghelarama, by their acts of omission and commission contravened the following provisions of the Chapter V of the Finance Act, 1994 and Service Tax Rules, 1994:-

- (i) Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 inasmuch as they have failed to obtain Service Tax registration ;
- (ii) Section 67 of the Finance Act, 1994 inasmuch as they have suppressed the value of Taxable Services rendered;
- (iii) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 inasmuch as they have failed to pay the appropriate service tax on the gross value of taxable services rendered by them ;
- (iv) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 inasmuch as they failed to correctly assess, pay service tax



due thereon and to file a return in such form with correct details about services rendered and in such manner and at such frequency as prescribed.

**5.** The quantification of the value of services was carried out on the basis of list of year wise amounts received by M/s Ghelarama produced by them under their letter dated 26-03-2012 discussed in aforesaid paras and the half yearly bifurcation of the amounts received during F.Y. 2006-07 produced by M/s Ghelarama under their letter dated 27/03/2012. The amount received against non-taxable services such as construction of Police station and road had not been taken in the calculation. Further as the Department have confirmed the demand of Service Tax on the taxable service provided by M/s Ghelarama to GETCO for the period from 2005-06 to 2008-09 vide Order-in-Original No. 38/BVR/Jt. Commr/2011 dated 15.12.2011 as discussed in above, values of services provided by M/s Ghelarama to GETCO for the period from 2006-07 to 2008-09 were also not being included in calculation for arriving upon the taxable value of services provided. Based on above the taxable amounts received by M/s Ghelarama during the period from 2<sup>nd</sup> half of the Financial Year 2006-08 to 2010-11 against the taxable services provided by them are calculated as under:

Name of the Service	Taxable Amounts Received (Rs.)					
	2006-07 (2nd Half)	2007-08	2008-09	2009-10	2010-11	TOTAL
Commercial or Industrial Construction	2,82,491	0	0	81,34,417	1,11,82,350	1,95,99,258
Management, Maintenance or Repair	19,29,917	3,35,832	0	0	0	22,65,749
Construction of Complex	4,64,566	0	0	0	0	4,64,566
<b>TOTAL</b>	<b>26,76,974</b>	<b>3,35,832</b>	<b>0</b>	<b>81,34,417</b>	<b>1,11,82,350</b>	<b>2,23,29,573</b>

**5.1** The Service Tax on the above said amount is calculated as below-

**(A) Service Tax on Commercial or Industrial Construction-**

(Amount in Rs.)

Financial Year	Taxable Amount Received	Rate of Service Tax	Service Tax	Edu. Cess @ 2% of ST	S&H Edu. Cess @ 1% of ST	Total Service Tax
2006-07 (2 <sup>nd</sup> Half)	2,82,491	12%	33,899	678	0	34,577
2009-10	81,34,417	10%	8,13,442	16,269	8,134	8,37,845
2010-11	1,11,82,350	10%	11,18,235	22,365	11,182	11,51,782
<b>TOTAL</b>	<b>1,95,99,258</b>		<b>19,65,576</b>	<b>39,312</b>	<b>19,316</b>	<b>20,24,204</b>



**(B) Service Tax on Management, Maintenance or Repair-**

(Amount in Rs.)

Financial Year	Taxable Amount Received	Rate of Service Tax	Service Tax	Edu. Cess @ 2% of ST	S&H Edu. Cess @ 1% of ST	Total Service Tax
2006-07 (2 <sup>nd</sup> Half)	1929917	12%	2,31,590	4,632	0	2,36,222
2007-08	335832	12%	40,300	806	403	41,509
<b>TOTAL</b>	<b>22,65,749</b>		<b>2,71,890</b>	<b>5,438</b>	<b>403</b>	<b>2,77,731</b>

**(C) Service Tax on Construction of Complex service -**

(Amount in Rs.)

Financial Year	Taxable Amount Received	Rate of Service Tax	Service Tax	Edu. Cess @ 2% of ST	S&H Edu. Cess @ 1% of ST	Total Service Tax
2006-07 (2 <sup>nd</sup> Half)	464566	12%	55,748	1,115	0	56,863
<b>TOTAL</b>	<b>4,64,566</b>		<b>55,748</b>	<b>1,115</b>	<b>0</b>	<b>56,863</b>

**The total Service Tax payable by M/s Ghelarama was shown as under-**

(Amount in Rs.)

Name of the Service	Taxable Amount Received	Service Tax	Edu. Cess @ 2% of ST	S&H Edu. Cess @ 1% of ST	Total Service Tax
Commercial or Industrial Construction	1,95,99,258	19,65,576	39,312	19,316	20,24,204
Management, Maintenance or Repair	22,65,749	2,71,890	5,438	403	2,77,731
Construction of Complex	4,64,566	55,748	1,115	0	56,863
<b>TOTAL</b>	<b>2,23,29,573</b>	<b>22,93,214</b>	<b>45,865</b>	<b>19,719</b>	<b>23,58,798</b>

**5.2** M/s Ghelarama rendered taxable services of "Commercial or Industrial Construction", "Management, Maintenance or Repair" and "Construction of Complex" of worth Rs. **2,23,29,573/-** over a period from Oct-2006 to Mar-2011 as shown above and evaded the Service Tax totally amounting to **Rs. 23,58,798/-** as calculated above.

**6.** Therefore, M/s Ghelarama & Co., Office No. 8, First Floor, The Prince Aga Khan's Hostel, College Road, Junagadh - 362 001 were called upon to show cause to the Joint Commissioner, Central Excise, Bhavnagar within 30 days from the date of receipt of the notice as to why: -

(i) The Service Tax totally amounting to **Rs. 23,58,798/-** (Twenty Three Lacs Fifty Eight Thousand Seven Hundred & Ninety Eight) which includes Service Tax of Rs. 20,24,204/- on Commercial or Industrial Construction, Rs.2,77,731/- on Management Maintenance or Repair service and Rs. 56,863/-



on Construction of Complex service rendered by them should not be demanded and recovered under proviso to Section 73(1) of the Finance Act, 1994;

(ii) Interest at appropriate rate on delayed payment of Service Tax from the due date of payment of Service Tax to the actual payment of the same should not be charged and recovered from them under Section 75 of the Finance Act, 1994;

(iii) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 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;

(iv) Penalty under Section 77 of the Finance Act, 1994 should not be imposed upon them for contravention of Section 69 of the Act by way of not getting registered under Service Tax within one month of the start of providing the taxable service as stipulated under Section 69 of the Act;

(v) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 should not be imposed on them inasmuch as they failed to file the prescribed ST-3 returns in respect of above said services rendered by them within the stipulated time in terms of the provisions of Rule 7 of the Service Tax Rules, 1994;

(vi) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for the Service Tax not levied and not paid by them by suppressing the facts with intent to evade payment of Service Tax and for the contravention of the provisions of the Act and the Rules made thereunder.

#### **DEFENCE REPLY**

**Z.** With reference to the said show cause notice issued, vide their letter dated 28.05.2012, M/s. Ghelarama has filed their defence reply as detailed below;

**7.1** **As regards proposed tax of Rs.19,29,917/-** under the head "Management, Maintenance or Repair" Service in respect of services provided to R & B Division, Govt. of Gujarat for Renovation/Strengthening & repairs to Museum Building at Prabhas Patan (Somnath) and Hospital Bldg. at Amreli, they have drawn attention to statutory definition of taxable service u/s 65(105) [zcg] of Finance Act, 1994, prevailing till 15<sup>th</sup> May, 2008. Further stated that only services provided to a customer is taxable till 15<sup>th</sup> May, 2008 under this head of service; that the Service was taxable if the recipient of service was customer of the service provider, till the amendment made vide Finance Act, 2008. "To any person" in place of "to a customer" has been substituted by Finance Act, 2008, effective from 16<sup>th</sup> May, 2008. The TRU circular issued by the Ministry of Finance, Govt. of India, vide D.O.F. No.334/1/2008-TRU DT. 29-



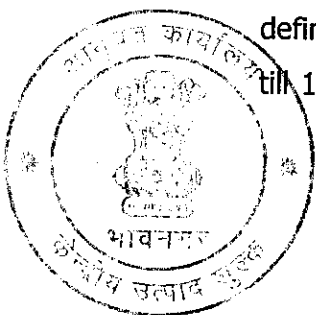
02-2008 in relation to Finance Bill, 2008 clearly spells out the purpose of this amendment; that R & B Division, Govt. of Gujarat, is not their customer since the firm has not sold any goods to them; that they have provided services to R & B. Division, Govt. of Gujarat, during the FY 2006-07, much before the amendment vide Finance Act, 2008 and so as, repairs service in respect of museum and hospital bldg. to R & B Division, Govt. of Gujarat, who is not customer of the firm (service provider), does not fall in the statutory definition of taxable service for "management, maintenance or repair" service and accordingly the same is not taxable.

**7.2** As regards Proposed tax of Rs.4,64,566/- under the head "Construction of Complex" Service in respect of services provided to Gujarat State Police Housing Corp. Ltd. for construction of Police Staff Quarters, they have drawn attention to statutory definition of construction of complex. Further, M/s Ghelarama also relied on Ministry's Letter F.No.332/35/2006- TRU, Dt.01-08-2006, wherein answer to 3<sup>rd</sup> question clarifies that residential complex constructed for personal use is not liable to service tax; that the firm has provides services of construction of staff quarters to Gujarat State Police Housing Corp. Ltd. (in short GSPHCL); that GSPHCL has constructed residential units (staff quarters) for its police staff for use as residence, which falls in exclusion part of statutory definition, supported by above referred letter; that the Ministry vide F.No.332/16-2010-TRU Dt.24/05/2010 has clarified that construction of residential houses by National Building Construction Corp. Ltd. (in short NBCC) for Central Govt. employees would be considered as for personal use and the same will not be taxable; that the said service is, therefore, not taxable under the head "construction of complex" service, since covered under exclusion part of definition.

**7.3** M/s Ghelaram further submitted that they are also eligible for threshold exemption as per Not.6/2005-S.T.Dt.01-03-2005. Since rest of the amount of Rs.2,82,491/- proposed to tax under the head "commercial or industrial construction" service, would be covered by threshold exemption as per Not.6/2005-S.T.Dt.01-03-2005, this is also not taxable. Accordingly, they may be granted benefit of thresholds exemption as per above notification

**7.4** For the Financial Year 2007-08, an amount of Rs. 3,35,832/- has been received under the head of Management, Maintenance or Repair of Musiem at Junagadh i.e. the services provided to R & B Division, Govt. of Gujarat for Renovation/Strengthening & repairs to Museum Building at Prabhas Patan (Somnath).

In the matter, M/s Ghelaram has drawn attention to statutory definition of taxable service u/s 65(105) (zzg) of Finance Act, 1994, prevailing till 15<sup>th</sup> May, 2008 stating that only services provided to a customer is taxable.

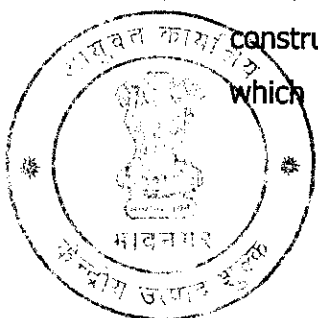




till 15<sup>th</sup> May, 2008; that the Service was taxable if the recipient of service was customer of the service provider, till the amendment made vide Finance Act, 2008; that "To any person" in place of "to a customer" has been substituted by Finance Act, 2008, effective from 16<sup>th</sup> May, 2008; that the TRU circular issued by the Ministry vide D.O.F. No.334/1/2008-TRU DT.29-02-2008 in relation to Finance Bill, 2008 clearly spells out the purpose of this amendment; that R & B Division, Govt. of Gujarat, is not their customer since the firm has not sold any goods to them; that they have provided services to R & B Division, Govt. of Gujarat, during the FY 2007-08, much before the amendment vide Finance Act, 2008 and thus, the repairs service in respect of museum to R & B Division, Govt. of Gujarat, who is not customer of the firm (service provider), does not fall in the statutory definition of taxable service for "management, maintenance or repair" service and accordingly the same is not taxable. Further, they have also stated that they are also eligible for threshold exemption as per Not.6/2005-S.T.Dt.01-03-2005.

**7.5** During the Financial Year 2009-10, an amount of Rs. 81,34,417/- has been received under the service head "Commercial & Industrial Construction". In the matter, M/s Ghelaram referred to OIO No.38/BVR/Jt. Commr/2011 Dt. 15.12.11 passed by Joint Commissioner, Central Excise & Service Tax, Bhavnagar in favour of self only wherein similar services provided to GETCO during the FY 2005-06 to 2008-09 were made taxable against which they had preferred an appeal before the Commissioner of Central Excise (Appeals), Rajkot. Further, they pleaded that services provided to GETCO are covered by Not. No.45/2010-Service Tax Dt.20-07-2010 issued by Central Govt. u/s 11C of the Central Excise Act, 1944 and accordingly no service tax is to be paid on said taxable services. The appellate authority has decided the appeal in their favour. Further they added that Notification No.45/2010-Service Tax Dt.20<sup>th</sup> July, 2010 provides that service tax payable on all taxable services relating to transmission and distribution of electricity provided by a person (service provider) to any other person (service receiver) shall not be required to be paid for the period specified in the notification; that services provided to GETCO during FY 2009-10 are covered vide the aforesaid notification.

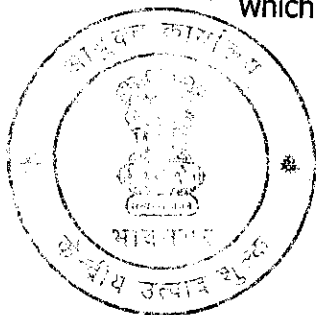
**7.6** Further they pleaded that the the nature of services provided to Gujarat State Electricity Co. Ltd. is Wire Fencing to Staff Quarters at GSECL colony at Kutch Lignite Power Station, Pandharo, Kutch, which is proposed to be taxed under the head "commercial or industrial construction" service. In the matter, they submitted the running account bills in respect of wire fencing work/services and has also drawn attention to statutory definition of construction service under that head. As per definition given in 65(30a) of Act which states that "Construction service" means ; Construction of new building



or civil structure or a part thereof; or Repair, alteration or restoration of, or similar services in relation to, building or civil structure for commerce or industry. In support to that they added that the Wire fencing to staff quarters, an independent activity, does not fall in the definition of construction service and the same is not taxable; that only repairing, alteration, restoration of, or similar kind of services (as per principle of ejusdem generis) to building or civil structure is taxable; that Wire fencing is carried out outside the building area and the same is outside the purview of statutory definition; that even otherwise, the said service has been provided to Gujarat State Electricity Corp. Ltd., a company engaged in transmission and distribution of power in Gujarat State and so the said service is also covered under Not. No.45/2010-Service Tax Dt.20-07-2010 issued by Central Govt. u/s 11C of the Central Excise Act, 1944 and accordingly no service tax is to be paid on said taxable service.

**7.7** During the Financial Year 2010-11, an amount of Rs. 1,11,82,350/- has been receiving for providing the services related to Commercial & Industrial Construction. To defend the taxable amount, M/s. Ghelarama submitted that they rendered services to Gujarat Energy Transmission Corporation Ltd. (in short GETCO) and Gujarat State Electricity Corporation Ltd. (in short GSECL) which both are Govt. of Gujarat companies engaged in transmission and distribution of Electricity, i.e. public utility, in Gujarat State; that they relied on Not No.11/2010-ST Dt.27<sup>th</sup> Feb. 2010 for exemption to transmission of electricity which exempts the taxable service provided to any person by any other person for transmission of electricity from the whole of service tax leviable thereon under section 66 of the said Finance Ac; that they have provided basic infrastructure facilities like control room building, cable Trench, Road etc. for power substation, which has direct and proximate relation with electricity for transmission purpose; that Power substation is means for transmission of electricity; that as such, transmission of electricity is carried out through power lines connected between two power substations, therefore, services provided to GETCO and GSECL for electricity are covered by aforesaid exemption notification and are not taxable.

**7.8** Further they reiterated that road service is specifically excluded from the statutory definition of commercial or industrial construction service and is not liable to tax and so they reserved their right of segregating value of road services from the composite service value as and when required. Further they stated that among the above taxable amount, some services provided to Gujarat State Electricity Co. Ltd. (in short GSECL) is Wire Fencing to Staff Quarters at GSECL colony at Kutch Lignite Power Station, Pandharo, Kutch, which is proposed to be taxed under the head "commercial or industrial



construction" service for which they also submitted running account bills in respect of wire fencing services and the submission made above.

**7.9** Apart from the above, M/s Ghelaram has further submitted that they have not been granted the benefit of abatement from the taxable value in respect of services proposed to be taxed under the head "commercial or industrial construction" and "construction of complex" service, while calculating service tax demand in show cause notice; that as per Notification No.1/2006-ST Dt. 1<sup>st</sup> March, 2006, there is abatement of 67% and only 33% of contract value is taxable under this head of service; that they understand that abatement is towards the cost of materials used in providing services. M/s Ghelaram further requested to allow benefit of abatement vide Not.1/2006-ST Dt.01-03-2006, in case service tax is applicable and the same will reduce service tax liability to a greater extent. Further, they stated that there is no suppression of facts with intent to evade payment of service tax since there are similar number of cases found by the department; that the invocation of extended period of 5 years by the department, after lapse of several years, is not in accordance with law, especially in their our case; that they rely on territorial H'ble CEGAT, Ahmedabad decision in the case of M/s Stone & Webster International Inc. Vs CCE, Vadodara reported at 22 STR 467 in this regard. M/s Ghelaram has finally requested to drop the proceedings and oblige considering their defence reply.

**7.10** Further M/s. Ghelarama vide letter dated 11.06.2012 had submitted their additional defence reply relying on newly inserted section 98 of Finance Act, 1994 as amended vide Finance Act, 2012 stating further that they have carried out work of repairs to Museum and Hospital Building to Government of Gujarat, which are non commercial Govt. Buildings and as per the said new section, they are not liable to pay service tax on that.

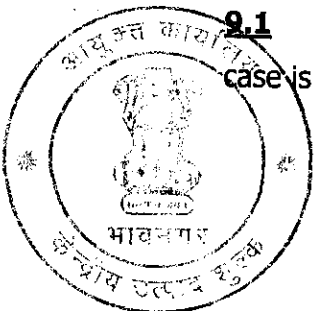
**PERSONAL HEARING :**

**8.** Personal Hearing was held on 19.02.2014 and Shri Jayesh N. Mehta, Chartered Accountant has attended the P. H. on behalf of the M/s Ghelaram & Co., Junagadh who has stated that their written submission / defence reply dated 24.05.2012 and 11.06.2012 may be considered while adjudicating the case. He has reiterated the submissions made vide above said defence reply and stated that they have nothing to add further.

**DISCUSSION AND FINDINGS**

**9.** I have carefully gone through the entire case records, Show Cause Notice dated 20.04.2012, submissions made by M/s Ghelarama & Co., Junagadh vide their letter/defence reply dated 24.05.2012 and 11.06.2012 as well as oral submissions made during the course of Personal Hearing.

**9.1** I find from the case records that the issue involved in the present case is that the services provided by M/s Ghelarama & Co. Junagadh falls under

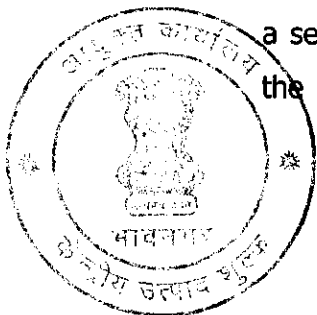


the purview of service tax or otherwise. The services rendered by M/s Ghelarama under dispute are divided into following three categories:

- a) Services of construction of civil structures provided to GETCO, GSCSCL, PGVCL & GSECL subjected to Service Tax under "Commercial or Industrial Construction" service as defined under Section 65(25b) read with Section 65(105)(zzq) of the Finance Act, 1994 ;
- b) Services of repair and renovation of immovable properties provided to R & B Division, Junagadh & Amreli subjected to Service Tax under "Management, Maintenance or Repairs" service as defined under Section 65(64) read with Section 65(105)(k) of the Finance Act, 1994 ; and I therefore find that noticee has provided taxable services as defined under "Management, Maintenance or Repairs" service to their client i.e. customer.
- c) Services of Construction of Residential Complex provided by M/s Ghelarama to GSPHCL subjected to Service Tax under "Construction of Complex" service as defined under Section 65(30a) read with Section 65(91a) & 65(105)(zzh) of the Finance Act, 1994. It is pertinent to mention here that GSPHCL do not construct the residential quarters for their personal use but for the use of Police personnel therefore the service provided by M/s Ghelarama to GSPHCL are classifiable under the category of taxable service namely construction of complex.

**9.2** Further I also find in their defense submission that M/s. Ghelarama have no where challenged the levy of the service tax on the said categories but categorically defended that because of these services were provided to the service recipients of specified category, the service not leviable. I further find that they mainly relied on the amendment made vide Finance Act, 2008 i.e. "To any person" in place of "to a customer". However, I find that the taxable services are defined separately under clause (105) of Section 65 of the Finance Act, 1994. The main concept of the replacing word "to any person" in place of "customer" is just to establish the person to whom the service/s has been supplied.

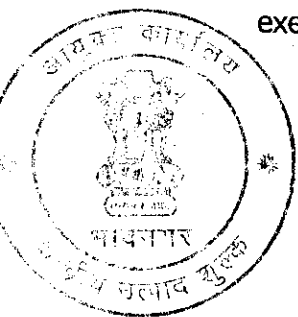
In the old law, the tax liability may vary depending upon the treatment of the transaction either person or as a single composite service or multiple supply of service. For the purpose of levy of service tax, the transaction between "a service provider" and "a service recipient" were required to be defined and coverage of a taxable service, the assessee are to be determined strictly in accordance with the language of the relevant statutory provision existing during the material period. For the purpose of classification of a service recipient a view has to be taken as to whether the person to whom the service has been provided and the transactions made between them



attracts the levy or otherwise. To define the base component and to narrow the scope of taxability, the said clarifications were issued. However, in the past also, the transactions between M/s. Ghelarama and various service recipients are just the transactions of a service providers and the customers only. As per the Definition of *customer* in Oxford Dictionary "A person who buys goods or services from a shop or business". As per Business Dictionary, the Customer means " A party that receives or consumes products (goods or services) and has the ability to choose between different products and suppliers.

**9.3** Thus, the base elements of a Customers is that receives the goods or services of different products and as per the definitions and the transactions had by M/s. Ghelaram are nothing but the transactions of a service providers to Customers only so I do not find any merit in the defense submitted by M/s. Ghelarama since they have provided the services as per the requirement of the Customer against which they have charged as per the contractual price defined which are just the transactions which attracts the service tax levy even in ancient service tax law also. Furthermore, I find that principles for classification of persons is based on that component of the person/s which gives the essential character. There is a need to determine whether a given transaction is the one containing major and ancillary elements or the one containing multiple and separate major elements. In the case of a transaction containing a major and ancillary elements, classification is to be determined based on the essential features or the dominant element of the transaction. When a supply has just an economic point of view, the real nature and substance of the transaction are to be taken into consideration for the levy of the service tax and the same should be accounted for to consider the guided factor to determine the levy. So as, I hold that the transaction that had been between the said service recipients with the M/s. Ghelarama had the pure economic elements and purely dominant among the business entity and thus the gross amounts received by M./s. Ghelaram are the amounts received towards providing the services and the services so provided is taxable who falls under the statutory definition of taxable service for "management, maintenance or repair" service as well as under the head of "Construction of Complex" Service and accordingly the same are taxable and the demand accordingly issued is just and proper

**9.4** I also find that M/s Ghelaram are not eligible for threshold exemption as per Not.6/2005-S.T.Dt.01-03-2005 for the rest of the amount of Rs.2,82,491/- proposed to tax under the head "commercial or industrial construction" service since they are not fulfilling the conditions of threshold exemption as per Not.6/2005-S.T.Dt.01-03-2005.



**9.5** Further, I also find that M/s. Ghelarama in their defense mainly rely on the fact that as per the Notification No.45/2010-Service Tax Dt.20th July, 2010, service tax payable on all taxable services relating to transmission and distribution of electricity provided by a person (service provider) to any other person (service receiver) shall not be required to be paid for the period specified in the notification and so, the services provided to GETCO during FY 2009-10 are covered vide the aforesaid notification.

To clarify the base difference, I hereby reproduce the gist of the said Notification and as per Notification No. 45/2010-ST;

*"...Whereas, the Central Government is satisfied that a practice was generally prevalent regarding levy of service tax (including non-levy thereof), under section 66 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as 'the Finance Act'), on all taxable services relating to transmission and distribution of electricity provided by a person (hereinafter called 'the service provider') to any other person (hereinafter called 'the service receiver'), and that all such services were liable to service tax under the said Finance Act, which were not being levied according to the said practice during the period up to 26th day of February, 2010 for all taxable services relating to transmission of electricity, and the period up to 21st day of June, 2010 for all taxable services relating to distribution of electricity;*

*Now, therefore, in exercise of the powers conferred by section 11C of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the said Finance Act, the Central Government hereby directs that the service tax payable on said taxable services relating to transmission and distribution of electricity provided by the service provider to the service receiver, which was not being levied in accordance with the said practice, shall not be required to*

Further, I also reproduced here the clarification imparted vide Letter D.O. F. No. 334/3/2010-TRU, dated 1-7-2010 by the Ministry at Para No. 8 of the said letter;

*8. Transmission of Electricity : Vide Budget Notification 11/2010-S.T., dated 27th February 8.1 2010, transmission of electricity was exempted from service tax. Subsequent to post budget discussions, taxable service provided by a distribution licensee or a distribution franchisee authorised to distribute power under the Electricity Act, 2003 for distribution of electricity is also exempt from levy of service tax (Refer Notification No. 32/2010-Service Tax dated 22nd June 2010).*

**9.6** Thus, the base components of the said notification as well as the clarification issued in this regard is that the services that are being provided in relation to **transmission and distribution of electricity** are exempt from the levy of service tax and not all the services that have been received by the company who engaged in providing. Therefore, I hold that the services must be the services, if attracts the exemptions, directly in relation to the transmission and distribution of electricity. It would be pertinent here to note that the services provided by M/s. Ghelarama for which the demand raised are



(i) Commercial or Industrial Construction (ii) Management, Maintenance or Repair and (iii) Constuction of complex.

**9.7** Before I stipulate specifically further, I reiterate here the voice of the several judgments where the higher judiciary forums had held that some of the services which provides the essential character to be termed as 'service relating to transmission and distribution of electricity' and so as the same are exempted from service tax levy.

(i) In the case of PURVANCHAL VIDYUT VITRAN NIGAM LTD. Versus C.C.E., ALLAHABAD in their Final Order Nos. ST/A/522-523/2012-Cus.(PB) and Stay Order No. ST/S/805/2012-Cus.(PB), dated 2-7-2012 in Application No. ST/Stay/119/2010 in Appeal Nos. ST/85 and 135/2010 and Cross Objection No. ST/CO/114/2010 (2013 (30) S.T.R. 259 (Tri-Del.), the principal bench of CESTAT, New Delhi has held that " Transmission of electricity, erection, commissioning and installation and technical testing and analysis - Eligibility to Exemption Notification No. 45/2010-S.T. - Sale of electricity to consumers after purchase from UP Power Corporation - Installation of electricity meters essential for billing consumers - Thus, impugned activity or service to be termed 'service relating to transmission and distribution of electricity' - Thus, services squarely covered by exemption notification - Similar view taken in MP Power Transmission for interpretation of similar exemption notification - No merit in Department's appeal - Impugned order set aside - Section 73 of Finance Act, 1994.

(ii) In an another issue, the CESTAT, South Zonal Bench, Banglore in the case of M/s. RAVEEN ELECTRICAL WORKS Versus COMMISSIONER OF C. EX., BELGAUM (2011(22)S.T.R. 17 (Tri. - Bang.) had held that "- Erection, Commissioning or Installation service - Rent-a-cab service - Services rendered to electricity supply companies and statutory authorities - Notification No. 45/2010-S.T., dated 20-7-2010 granting exemption to all taxable services related to transmission and distribution of electricity - Client in the business of transmission and distribution of electricity and prima facie, erection and commissioning covered under said notification - Part amount deposited in respect of Rent-a-cab service - Pre-deposit of balance amount waived and recovery of such amount stayed - Section 35F of Central Excise Act, 1944 as applicable to Service tax vide Section 83 of Finance Act, 1994.

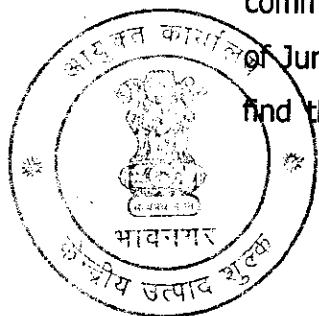
**9.8** Thus, on careful reading of the aforesaid notification as well as the various judgments, I find that the said notification exempts the services which are directly relating to transmission and distribution of electricity provided by the service provider to the service receiver from the incidence of levy of service tax. Admittedly, M/s. Ghelarama is no where engaged in the activities which are directly related to transmission and distribution of



electricity. Thus, any of the activity or service which M/s. Ghelarama had provided can never be termed as the service relating to the transmission and distribution of electricity provided by the service provider to the service receiver. Thus, in my considered view such services, which are subject matter of this case, would not be covered under the exemption provided under Notification referred to above. I further note that similar view was taken by the coordinate Bench of this Tribunal in the matter of M.P. Power Transmission Company Limited v. CCE, Bhopal [2011 (24) S.T.R. 67 (T)] in relation to interpretation of similar exemption Notification No. 11/2010-S.T., dated 27-2-2010 which is pari materia to the Notification No. 45/2010-S.T., dated 20-7-2010 that there must be the direct nexus between the activity which covered under the said notification

**9.9** I also reiterated here the gist of Circular No. 131/13/2010-S.T., dated 7-12-2010 issued from from F.No. 356/13/2010-TRU by the Ministry which was specifically issued to clarify further whether Electricity meter installed in consumers' premises and hire charges collected - Whether covered under exemption for transmission and distribution of electricity or otherwise in terms of Notification No. 11/2010-S.T., dated 27-2-2010 and/or 32/2010-S.T., dated 22-6-2010 and the exemption was granted treating the services having an essential activity and having direct and close nexus with transmission and distribution of electricity, the same is covered by the exemption for transmission and distribution of electricity extended under the relevant notification. On the basis of the above clarifications, it can be said that all the services that have been provided to the company dealing in transmission and distribution of electricity are not exempted but the exemption is granted to the services which are directly in relation to transmission and distribution of electricity. Thus, the services provided viz. (i) Commercial or Industrial Construction (ii) Management, Maintenance or Repair and (iii) Constuction of complex by M/s. Ghelarama are no where related to the services connected with transmission and distribution of electricity and therefore, can not be granted exemption from paying service tax and so I do not find any merits in the defense submitted by M/s. Ghelarama.

**9.10** Further I find on the additional defense submission made by M/s. Ghelarama vide letter dated 11.06.2012 that newly inserted section 98 of Finance Act, 1994 as amended vide Finance Act, 2012 stipulates that notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of non-commercial Government buildings, during the period on and from the 16th day of June, 2005 till the date on which section 66B comes into force. However, I find that M/s. Ghelarama have nowhere established the relevancy of the said





section with the present issue except claiming exemption. The obligation cast upon them to prove the base elements of the Section 98 that they provided the services towards management, maintenance or repair to non-commercial Government Buildings. Thus, I do not accept the plea of M/s. Ghelarama.

**9.11** Further, I hold that the demand for recovery of not paid service tax under the category as discussed above proposed under the notice is recoverable by invoking extended period of time under Section 73 of the Act and Section 75 of the Act mandates levy of interest on delayed payment of Service Tax, therefore, the demand is recoverable along with interest under the said Section. I further find that where any service tax has not been levied or paid or has been short-levied or short-paid by the reason of suppression of facts or fraud or collusion or wilful mis-statement or contravention of any of the Act or the Rules made there under with intent to evade payment of Service Tax, Section 76 and section 78 of the Act provides mandatory penalty and the person, liable to pay such service tax, shall also be liable to pay a penalty, in addition to such Service Tax and interest thereon. It is settled law that penalty is imposable on the basis of law operating on the date on which the wrongful act is committed, and it is levied on the totality of facts and circumstances of each case under the relevant provisions. In view of the findings given in foregoing paras, as extended period of time for demand under proviso to Section 73(1) of the Act is invocable in the present case, I find as discussed hereinabove.

**9.12** I further find that, M/s Ghelarama admittedly not paid the Service Tax on the services provided by them under the category "Commercial or Industrial Construction" "Management, Maintenance or Repairs", and "Construction of Complex" when they were due and thereby rendered themselves liable to penalty under Section 76 of the Finance Act, 1994 for nonpayment of Service Tax and liable for interest under section 75 of the Finance Act, 1994. Also, their acts of contravention of the various provisions of the Finance Act, 1994 as amended from time to time and Rules framed there under on the part of the said service provider appears to have been committed by way of suppression of facts with an intention to evade payment of service tax as a matter of fact that this evasion would not have come to light until the inquiry was initiated by the Department and therefore, the Service Tax not so paid was required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 as amended from time to time by invoking the extended period of five years. Further also, all these acts of contravention of the provisions of Sections 69, 68 and 70 of the Finance Act, 1994 as amended from time to time read with Rules 4, 6 and 7 of the Service



Tax Rules, 1994 are punishable under the provision of Section 76, 77 and 78 of the Finance Act, 1994 as amended from time to time.

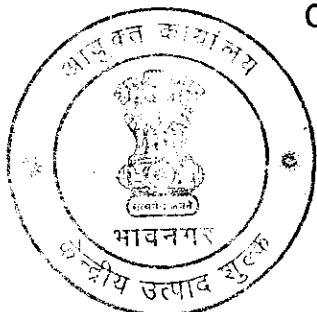
**9.13** I further find that, the quantification of the value of services in the SCN was carried out on the basis of list of year wise amounts received by M/s Ghelarama produced by them under their letter dated 26-03-2012 discussed in para 2.6 of the SCN and the half yearly bifurcation of the amounts received during F.Y. 2006-07 produced by M/s Ghelarama under their letter dated 27/03/2012. For calculation of value of taxable services work contract and R.A. Bills as discussed in para 2.3 have been considered. The amount received against non-taxable services such as construction of Police station and road had not been taken in the calculation. Further as the Department have confirmed the demand of Service Tax on the taxable service provided by M/s Ghelarama to GETCO for the period from 2005-06 to 2008-09 vide Order-in-Original No. 38/BVR/Jt. Commr/2011 dated 15.12.2011 as discussed above, values of services provided by M/s Ghelarama to GETCO for the period from 2006-07 to 2008-09 were also not being included in calculation for arriving upon the taxable value of services provided.

Thus I find that, M/s Ghelarama rendered taxable services of "Commercial or Industrial Construction", "Management, Maintenance or Repair" and "Construction of Complex" of worth Rs. 2,23,29,573/- over a period from Oct-2006 to Mar-2011 as shown above at Para No. 5 and evaded the Service Tax totally amounting to **Rs. 23,58,798/-** as calculated above at Para No. 5.

**10.** In view of above discussion and findings, I find that M/s Ghelarama have contravened the provisions of the Chapter V of the Finance Act, 1994 and Service Tax Rules, 1994 as charged in the said show cause notice and accordingly, I pass the following order:

**: ORDER :**

- (i) I confirm the Service Tax amounting to Rs.23,58,798/- (Rupees Twenty Three Lacs Fifty Eight Thousands Seven Hundred Ninty Eight only) under Section 73 of the Finance Act, 1994 which should be paid by/recovered from M/s Ghelarama & Co. , Office No. 8, First Floor, The Prince Aga Khan's Hostel, College Road, Junagadh- 362 001 forthwith.
- (ii) I order to charge and recover interest under Section 75 of the Finance Act, 1994 at the appropriate rate on the above mentioned amount of Service Tax confirmed which should be paid by/recovered from M/s Ghelarama & Co.



**(iii)** I impose penalty of Rs.200/- per day for the period during which to pay the service 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 upon M/s Ghelarama & Co. under Section 76 of the Finance Act, 1994, for the period from 01.06.2007 to 09.05.2008; †

Provided that the total amount of penalty payable in terms of this section shall not exceed Rs. 23,58,798/- i.e. the amount of Service Tax Recoverable from M/s. Ghelarama.

**(iv)** I impose penalty under Section 77 upon M/s. Ghelarama & Co. for contravention of Section 69 of the Act by way of not getting registered under Service Tax within one month of the start of providing the taxable service as stipulated under Section 69 of the Act and in as much as they failed to file the prescribed ST-3 returns in respect of above said services rendered by them within the stipulated time in terms of the provisions of Rule 7 of the Service Tax Rules, 1994as under which should be paid by /recovered from M/s Ghelarama & Co. forthwith.

- a) Rs.1,000/- (Rupees One thousands only) for failure to take registration for the period starting from first day after the due date upto March-2011 for each of the category of taxable services;
- b) Rs.200/- per day or Rs. 5,000/-, whichever is higher for the period from October-2006 to March-2011 onwards in respect of each of the categories of taxable services, till the date of actual compliance under Section 77 of the Finance Act, 1994 for failure to take registration;
- c) I also impose a penalty of Rs 5000/- under Section 77 of the Finance Act, 1994 for failure to file prescribed return for each of the category of taxable services under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994;

**(v)** I impose penalty of Rs. **47,17,596/-** (Rupees Forty Seven Lacs Seventeen thousand Five hundred Ninety Six only) under Section 78 of the Finance Act, 1994 on M/s Ghelarama & Co. However, as provided in proviso to section 78 ibid, if they pay the amount of service tax confirmed along with interest thereon, within thirty days from the communication of this order, the amount of penalty shall be twenty-five per cent of the penalty imposed above. The benefit of reduced penalty shall be available only if the amount of penalty so determined has also been paid within thirty days from the receipt of this order.



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



(P. MOHAN RAO)  
JOINT COMMISSIONER

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

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

Dated: 18.03.2014

To,  
M/s Ghelarama & Co.,  
Office No. 8, First Floor,  
The Prince Aga Khan's Hostel,  
College Road,  
Junagadh - 362 001

Copy to:

- (i) The Commissioner (RRA Section), Central Excise & Service Tax, Bhavnagar.
- (ii) The Deputy Commissioner, Service Tax Division, Bhavnagar
- (iii) The Deputy Commissioner (TRC), Central Excise, Hq., Bhavnagar.
- (iv) The Superintendent, Service Tax Range, Junagadh.
- (v) Guard file.

