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

F. No. V/15-11/Dem-ST/HQ/2012-13

Date of Order: 25.03.2014

Date of Issue: 25.03.2014

Passed by,

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

Order-in-Original No: 03 / 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. D. K. Gohil,
6, Sardarpara Plot,
Junagadh.

Subject: Show Cause Notice Number V/15-11/Dem-ST/HQ/2012-13 dated 19.04.2012 issued to M/s. D. K. Gohil, Junagadh.



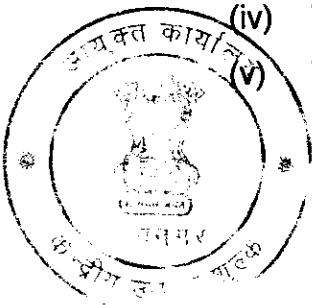
BRIEF FACTS OF THE CASE

M/s D. K. Gohil, 6, Sardarpara Plot, Junagadh hereinafter referred to as "the Noticee", are engaged in providing taxable services of "Management Maintenance or Repair" and non taxable services of Non Commercial construction to M/s Gujarat State Police Housing Corporation Ltd., Gandhinagar.

2. An investigation was started against the said Noticee and in compliance to that Shri Dhaneshvar Khodubha Gohil, Proprietor appeared before the Superintendent (A.E.) of Central Excise on 29/12/2011 and produced various financial and supportive documents. In his statement recorded, he stated that they had started the work of construction and repair of buildings in the year 1990 and since the year 2006, carrying out the work of construction and repair of buildings for Gujarat State Police Housing Corporation Ltd; that he has neither taken Service Tax registration nor paid any Service Tax since they are providing services to Gujarat State Police Housing Corporation Ltd. only which is a corporation of Government of Gujarat and as per their knowledge no Service Tax is levied on Government work; that he will produce the copies of work orders within 15 days; that their annual turnover is less than Rs. 40 Lacs therefore as per the Income Tax rules, audit or preparation of balance sheet is not mandatory for them and therefore they do not have any Balance Sheet/ Audit Report.

3. From the statement of the Proprietor of the Noticee, it appeared that the Noticee have provided service related to repair of immovable properties and constructions (construction of Police Station and wall around park at Staff colony) to M/s. Gujarat State Police Housing Corporation Ltd in different 15 work contracts. The repairs of immovable properties appears to be subjected to the Service Tax under "Management, Maintenance or Repairs" service as defined under Section 65(64) of the Finance Act, 1994. From the investigation carried out in this regard following inferences were drawn;

- (i) The Noticee have provided services of repairs of immovable property to Gujarat State Police Housing Corporation Limited, Gandhinagar.
- (ii) The Noticee have provided services of non-commercial construction to Gujarat State Police Housing Corporation Limited, Gandhinagar
- (iii) The Noticee have not taken Service Tax registration for the services provided by them.
- (iv) The Noticee have never paid the Service Tax.
The Noticee have never filed the Service Tax return.



4. During the course of recording of Statement dated 29.12.2011, the Notice has also submitted following details/records;

- (i) Copies of Income Tax returns for the financial years 2006-07 to 2009-10 and ITR-V for the financial year 2010-11 along with TDS certificates of the said period.
- (ii) Copies of payment vouchers issued by Gujarat State Police Housing Corporation Ltd pertaining to financial years from 2006-07 to 2010-11. The Noticee have also submitted the list of 30 vouchers stating that during the relevant period, they have totally received an amount of Rs. 1,47,54,766/- towards providing the said services. Out of that, in six vouchers involving an amount of Rs. 29,35,566/- were pertaining to non-commercial construction works such as construction of police station, patrolling payment etc. whereas, rest of 24 vouchers involving an amount of **Rs. 1,18,19,200/-** were pertaining to Special Repair work carried out by the Noticee. However, the Noticee could not produce the photocopy of the two vouchers involving an amount of Rs. 10,91,009/- mentioned in the list of 30 vouchers.
- (iii) The Noticee had also listed work orders in the list of enclosures in the above said letter but none of the copy of work order was received along with the said letter.

5. Vide letter dated 26.03.2012, the said Noticee has further informed that they are having no copy of work orders and what ever the details they had, the same have already been submitted and so as, the Noticee was totally failed to produce even a single copy of the said work orders nor they have submitted copy of balance sheets for the respective financial years. Further, it was also appeared during the scrutiny of the gross receipts that the details listed in the list are not in accordance with the payment vouchers or TDS certificate.

6. Thus, it appeared that the act of repair, alteration, renovation, maintenance etc. of buildings, drainage lines or wells by the Noticee falls within the ambit of "Management, Maintenance or Repair" which is a taxable service under Section 65 (105) (zzg) of the Act. and the Noticee, by their acts of omission and commission has 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 in as much 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 in as much 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;

7. The quantification of the Service Tax on the services provided by the Noticee during the last five years is based on the amounts received by them as shown in the TDS certificates. Whereas for nature of the services rendered, the payment vouchers are considered. Whereas, following amounts were discarded while calculating taxable value of services;

- (i) An amount of Rs. 9,39,974/- received prior to 01/10/2006 with due consideration of invoking the extended period and the due date of Service Tax return for the stipulated period.
- (ii) An Amount of Rs. 29,35,566/ received against non commercial construction such as construction of police station, patrolling payment etc. as mentioned at Sr. No. 8, 10, 11, 12, 22 & 25 of the table.

8. In view of the above the taxable amounts during each financial year from 2006-07 to 2010-11 are calculated as below-

Financial Year	Amount Received against Management, Maintenance or Repair (Rs.)
2006-07(From 01.10.06 to 31.03.07)	11,68,536
2007-08	24,58,324
2008-09	31,07,907
2009-10	7,59,320
2010-11	33,85,139
TOTAL	1,08,79,226

9. Accordingly A show cause Noticee bearing no V/15-11/Dem-St/HQ/12-13 dtd 19.4.12 was issued to M/s D. K. Gohil, 6, Sardarpara Plot, Junagadh asking them to show cause as to why: -

- (i) the Service Tax totally amounting to Rs. 12,57,893/-(Twelve Lacs Fifty Seven Thousand Eight Hundred & Ninety Three) including Service Tax of Rs. 12,22,618/- plus Education Cess of Rs. 24,452/- plus Secondary & Higher Education Cess of Rs. 10,823/- 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 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 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, 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.

DEFENSE SUBMISSION

10. On behalf of the Noticee, M/s. J.N. Vyas & Co, Junagadh have submitted defence reply dated 04.08.2012 whereby they have contested the show cause notice as under;

10.1 The Noticee have submitted that as per Section 98 inserted by Finance Act 2012, the Management, Maintenance & Repair work of all non commercial government buildings is exempted from service tax w.e.f. 16th June,2005; that the Gujarat state police housing corporation is wholly Gujarat Government own corporation and they have given service to various police staff quarters at various places thus the services which they provided have been given exempted; that they have not collected any amount of service tax from the service recipient; that as the service tax itself was not payable u/s. 73, interest and penalties mentioned in the SCN could not be charged against them; that they have neither made contravention of any rule nor suppressed any fact and given full information to the department; that the service provided by them is exempted from service tax and so there is no liability of registration, tax payment or filing returns and so as, there is no contra versus of any rule or act.

PERSONAL HEARING

11. Personal hearing was held on 26.02.2014 when Shri Jignesh Vyas, Advocate and Shri D.K. Gohil, Proprietor of the Noticee appeared and have reiterated the submission already made earlier on 04.08.2012. However, during the course of personal hearing, they have also submitted additional written submission whereby they reiterated that as per Section 98 inserted by Finance Act 2012 w.e.f. 28/05/2012, Management, Maintenance & Repair work

of all non commercial government buildings during the period 16th Jan, 2005 to 01/07/2012 is exempted from service tax; that Show cause notice issued is for the period from 13/04/2006 to 21/12/2010 hence covered in the exempted period and accordingly no service tax is leviable. The Noticee have also enclosed copy of Section 98 of Finance Act, 2012, the Print out copy of home web-page of Gujarat Police housing Corporation and copy of relevant portion in respect of definition of Government body from Notification No. 25/2012 ST dated 20-06-2012.

FINDINGS

12 I have carefully gone through the facts of the case on record and the various submissions of the noticee. The moot point to be decided is whether the activities done by the noticee during the period 01.10.2006 to 31.03.2011 attracts the levy of Service Tax under the category of Management, Maintenance & Repair Service defined under the provisions of Section 65 (105) (zzg) of the Finance Act, 1994 or otherwise and whether the Noticee is eligible for availing the benefit of exemption as provided retrospectively in terms of Section 98(1) inserted vide Finance Act, 2012.

12.1 I find from the defense submission made by the Noticee vide both the letters as discussed above, they have not protested the services they have provided but just relied on the newly inserted section 98 of Finance Act, 1994 as amended vide Finance Act, 2012 which 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 the said Noticee 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 element of the Section 98 that they provided the services towards management, maintenance or repair to non-commercial Government Buildings. I reply on the following scrutiny observations which tend to believe that the said Noticee is not eligible to avail the benefit of the said exemption;

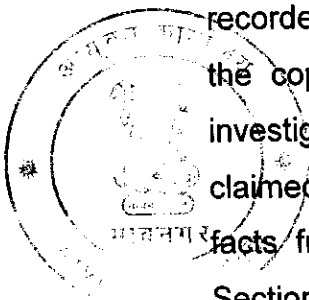
- (i) The department has infact already excluded the amount received against non commercial construction at para 2.2 of the show cause notice issued;
- (ii) I find from the show cause notice issued that the Noticee have not produced any supporting documents like work orders, contracts etc. to establish their claim that they have rendered management, maintenance or repair services to non-commercial Government buildings; thus the Noticee totally failed to produce even a single copy of the said work orders nor they have submitted copy of balance sheets for the respective financial years. During the scrutiny of the gross



receipts, it was found that the details listed in the list are not in accordance with the payment vouchers or TDS certificate.

- (iii) I find from the para No. 3 of the said show cause notice that the nature of the services provided i.e. the classification of service viz. "Management, Maintenance or Repairs" could be ascertained by the department only on the basis of the statement of proprietor and from the payment vouchers since neither the said Noticee could produce the copy of contract nor the balance sheets nor any other details relevant to. Thus, on the basis of that the department had divided the rendered services into two categories i.e. one is repair of immovable properties and the other is non-commercial construction. Accordingly, the department has infact already excluded the amount received against non commercial construction at para 2.2 of the show cause notice issued and since, the then time, the Management, Maintenance and Repair was fully taxable and therefore, it can be said that though the Noticee did not provide further details, the revenue accepted most nearest classification of the services provided on the basis of statement only. The said exemption was granted only in the Finance Act, 2012 and the Noticee have submitted their defense replies vide their letters dated 04.08.2012 & 24.02.2014. I find from the said letters that the Noticee have just claimed the benefit of Section 98 but totally failed to produce concrete evidences establishing the nature of services they provided is Management, Maintenance and Repair and the same were provided to Government building since the department had already asked the copies of contract to establish the nature of services they provided.
- (iv) Even if I accept the limited resources then also I find that the Noticee have provided the services to Gujarat Police Housing Corporation Limited and have not directly rendered services to the Government.

12.2 Further, the Noticee have admitted that they have not taken registration or filed the periodical returns. Thus, I find that if it was the bonafide intention to avail the exemption, they would have taken Service Tax Registration and filed returns and showed the services rendered by them in the exempted category. To avail the exemption, the assessee i.e. service provider have to maintain proper records upon which the relevant information regarding the service provided, the value thereof, the nature of work done etc are recorded and the burden of proof lies on the Noticee. The Noticee could not file the copy of contract or balance sheets for the relevant period before the investigating officer with regard to the purpose for which the exemption was claimed by the Noticee. Accordingly I hold that the Noticee had suppressed the facts from the department, the service tax is liable to be recovered under Section 73(1) also the Noticee is liable for penalty under section 76,77 and 78



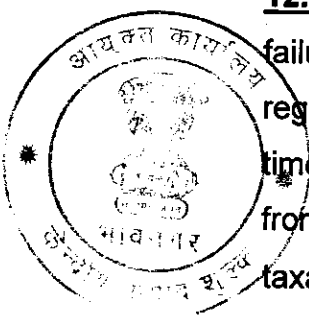
of the Act for non a payment of service tax, not taking registration and non filling of the returns.

12.3 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 the Noticee produced by them discussed in para 8 above. For calculation of value of taxable services, the payment vouchers have been considered since the balance sheets for the relevant period have not been produced by the Noticee. The amount received against non-taxable services i.e. construction of Government building have already been excluded for arriving upon the gross taxable value of the services under dispute.

Thus I find that the said Noticee have rendered taxable services of "Management, Maintenance or Repair" of worth Rs. 1,08,79,226/- over a period from Oct-2006 to Mar-2011 as shown above at Para No. 8 and evaded the Service Tax totally amounting to Rs. 12,57,893/- as calculated at Para No. 6.2 of the show cause notice.

12.4 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. Coming to the issue of imposing penalty, this issue is no more *res integra* in view of the judgments of the Supreme Court in the case of *Dharamendra Textile Processors and Ors., 2008 (231) E.L.T. 3 (S.C.) and Rajasthan Spinning and Weaving Mills - 2009 (238) E.L.T. 3 (S.C.)*. The Apex Court has held that penalty is civil liability and the ratio of the same is applicable in all case of tax evasion. In the present case, as discussed above, it is proved beyond doubt that the noticee has deliberately evaded payment of service tax and therefore they are liable for penalty under Section 78 of the Finance Act 1994. Since the noticee failed to assess service tax under Section 70 and make the payment of service tax within the period and in the manner prescribed under Section 68 of the Finance Act 1944 they are liable for penalty under Section 76 *ibid*. However this penalty will be on the service tax payable upto 10.05.2008 as a proviso to Section 78 was inserted with effect from 10.05.2008 which provided that 'if the penalty is payable under Section 78, the provisions of Section 76 shall not apply'.

12.5. Section 77 of the Finance Act 1994 provides to impose penalty for failure of the assessee to furnish information to the department and to obtain registration. Since the noticee failed to obtain registration during the relevant time I hold that he is liable for penalty under Section 77 *ibid*. Further, I also find from the provisions of the Section 68 of the Act 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.



12.6 In view of above discussion and findings, I find that M/s D.K. Gohil 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:

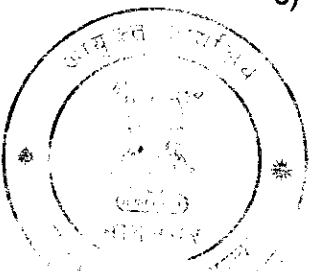
ORDER

- (i)** I confirm the Service Tax amounting to Rs. 12,57,893/- (Rupees Twelve lakh Fifty Seven thousand Eight hundred and Ninety Three only) under Section 73 of the Finance Act, 1994 which should be paid by/recovered from M/s D.K. Gohil, 6 Sardarpar Plot, Junagadh 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 D.K. Gohil.
- (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 D.K. Gohil 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. 12,57,893/- i.e. the amount of Service Tax recoverable from M/s. D.K. Gohil.

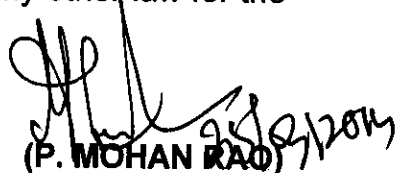
- (iv)** I impose penalty under Section 77 upon M/s. D.K. Gohil for contravention of Section 69 of the Act by way of not getting registered under Service Tax and in as much as they failed to file the prescribed ST-3 returns in respect of above said services rendered by them within the stipulated time in terms of the provisions of Rule 7 of the Service Tax Rules, 1994 as under which should be paid by /recovered from M/s. D.K. Gohil 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 09.05.2008;
- b) Rs. 200/- per day or Rs. 5,000/-, whichever is higher for the from 10.05.2008 onwards 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 under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994;



(v) I impose penalty of Rs. 25,15,786/- (Rupees Twenty Five lakhs Fifteen thousand Seven hundred Eighty Six only) under Section 78 of the Finance Act, 1994 on M/s D.K. Gohil. 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 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) 25/03/2014
JOINT COMMISSIONER

By Registered Post A.D./Hand delivery
F. No.: V/15-11/Dem-ST/HQ/2012-13

Dated: 25.03.2014

To,
M/s D.K. Gohil,
6 – Saradar Para Plot,
JUNAGADH

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.

