



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

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

Date of Order: 28.03.2014

Date of Issue: 31.03.2014

Passed by,

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

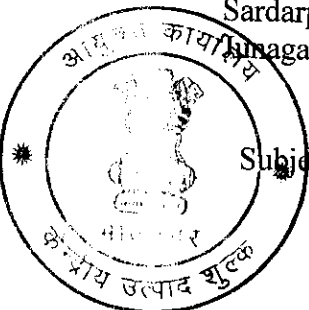
Order-in-Original No: 04 / BVR / Jt. Commr / 2014

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. Pranav Builders,
2, Sardarpara Plot,
Sardarpara Main Road,
Junagadh.

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



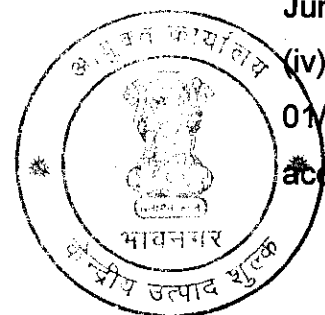
BRIEF FACTS OF THE CASE

M/s. Pranav Builders, 2, Sardar Para Plot, Junagadh (here-in-after referred to as the Noticee) are engaged in providing taxable services of "Management, Maintenance or Repair" and other non-taxable services of Non-Commercial construction to Junagadh Agriculture University, M/s Gujarat State Police Housing Corporation Ltd., Gandhinagar and others.

2. During the investigation, the statement of Shri Haresh Chhailshankar Vyas, Proprietor of the Noticee was recorded by the Superintendent (A.E.) of Central Excise on 29/12/2011 wherein, he had also produced various financial and supportive documents. In his statement, it was stated that their firm has been carrying out the constructions & repair of buildings since 1982-83 by way of direct work contract as well as under sub-contract; that occasionally they also supply labour for constructions activities; that they mean that they are Service Provider; that they have neither taken Service Tax registration nor paid any Service Tax; that they have produced all the 35 work orders for whatever work of construction & repair carried out for Junagadh Agriculture University by them; that out of these 35 work orders, 30 are pertaining to non-commercial construction of various civil structures such as new laboratory building, training building, godown shed, compound wall, etc. for the said University; that apart from it, they have undertaken the work of changing the cement sheet with G.I. sheet for renovation of auditorium and re-plastering, flooring etc. for renovation of sugar cane research station; that they have supplied labour to M/s. Sorath Builders; that they also undertaken the work for GETCO whereby they have constructed a compound wall of Supedi Sub Station at Dhoraji Division; that for Gujarat State Police Housing Corporation Ltd., they have carried the work of repair of police quarters in Junagadh for which they have produced the work order and bill; that for Panchayat Irrigation Department, they have constructed protection wall around pond in Village Kob in Taluka Una.

2.1 Shri Haresh Chhailshankar Vyas, Proprietor of the Noticee under his statement dated 29/12/2011 & letter dated 28.02.2012 had produced following documents;

- (i) Copies of acknowledgements of the Income Tax returns and the balance sheets for the financial years from 2006-07 to 2010-11.
- (ii) A list containing year wise and work wise details of amounts received by the Noticee against the services provided by them.
- (iii) Copies of 35 work orders for the works carried out by the Noticee for Junagadh Agricultural University.
- (iv) Work order No. GPH/Tech/Tender/MD/3270/1657/2007 dated 01/06/2007 issued by Gujarat State Police Housing Corporation Ltd. accompanying with 3 payment vouchers/ R.A.Bills. This is the single work order



produced by the Noticee according to which the Noticee have carried out the repair of police quarters for an amounting to Rs. 6,27,415/-.

- (v) Ledger accounts of their service recipients for the financial years from 2006-07 to 2010-11.
- (vi) Copies of sixty RA Bills against which the services provided to Junagadh Agricultural University.
- (viii) Copies of letter of acceptance of tender No. DTD/AB/431 dated 07-06-2007 issued by GETCO and RA Bills
- (ix) The Noticee have submitted two RA Bills against the services provided by them to Panchayat Irrigation Division, Junagadh

2.2 From the investigation, it was revealed by the revenue that;

- (i) the Noticee have provided services of construction of civil structures, services of repair and renovation of immovable property to Junagadh Agricultural University.
- (ii) the Noticee have provided services of repairs of immovable property to Gujarat State Police Housing Corporation Limited, Gandhinagar;
- (iii) the Noticee have provided services of manpower supply to M/s Sorath Builders, Ahmedabad who vide his letter 24.02.2012 have also admitted that they had sublet their contract to the Noticee for labour work;
- (iv) the Noticee have provided services of industrial construction to GETCO;
- (v) the Noticee have provided services of non-commercial construction to Panchayat Irrigation Division, Junagadh;
- (vi) the Noticee have neither taken Service Tax registration for the services provided by them nor paid the service tax nor filed the Service Tax Returns and so suppressed the facts of providing the taxable services.
- (vii) the Noticee have not produced correct information as called for from him.

3. Thus, it appeared that the Noticee admittedly not paid the Service Tax on the services provided by them under the category "Management, Maintenance or Repairs", "Manpower Recruitment or Supply Agency" & "Commercial or Industrial Construction" which are taxable services as defined under Section 65 (64) read with Section 65(105)(k), Section 65(68) read with Section 65(105)(k) and as per Section 65(25b) read with Section 65(105)(zzq) of the Finance Act respectively and the Noticee, by their acts of omissions have 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 in as much 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;

4. The quantification of the taxable value of the service provided and the service tax on the services provided by the Noticee during the last five years was done from the most appropriate documents among the documents submitted by the Noticee from which following amounts were discarded while calculating taxable value of services;

- (i) The amount 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 received against non commercial construction to Junagadh Agricultural University and from Panchayat Irrigation Department treating them as not taxable services.

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

Name of the Service provided	Taxable Amounts Received (Rs.)					Total	Services provided to
	2006-07 (Oct-06 to Mar-07)	2007-08	2008-09	2009-10	2010-11		
Management, Maintenance or Repair							Junagadh Agriculture University & GSPHCL
Taxable Value	262826	538472	88943	6038491	0	6,928,732	
Service tax	32170	66555	10993	621965	0	731,682	
Manpower Recruitment or Supply							Sorath Builders
Taxable Value	398260	555680	0	0	0	953,940	
Service tax	48747	68683	0	0	0	117,430	
Commercial or Industrial Construction							GSPHCL & CETCO
Taxable Value	0	713351	260653	88848	0	1,062,852	
Service tax	0	88170	32217	9152	0	129,539	
TOTAL							
Taxable Value	661086	1807503	349596	6127339	0	8945524	
Service tax (including Cess)	80917	223408	43210	631117	0	978651	

6. Thus, it appeared that the Noticee have rendered taxable services of "Management, Maintenance or Repair", "Manpower Recruitment or Supply" and "Commercial or Industrial Construction" of worth Rs. 89,45,524/- over a period from Oct-2006 to Mar-2011 and have evaded the Service Tax totally amounting to Rs. 9,78,651/- as calculated above. Accordingly, the show cause notice bearing F.No. V/15-13/Dem-ST/HQ/2012-13 dated 20.04.2012 was issued to them asking them as to why;

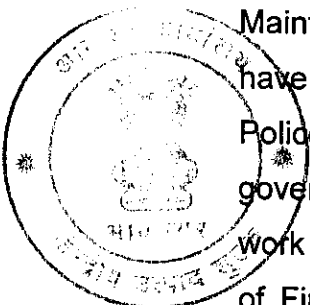


- (i) the Service Tax totally amounting to Rs. 9,78,651/- (Nine Lacs Seventy Eight Thousand Six Hundred & Fifty One) which includes Service Tax of Rs.7,31,682/- on Management Maintenance or Repair service, Rs.1,17,430/- on Manpower Recruitment or Supply Agency's service and Rs. 1,17,430/- on Commercial or Industrial Construction service rendered by the Noticee 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

7. On behalf of the Noticee, M/s. J.N. Vyas & Co, Junagadh, vide their letter dated 13.08.2012, have submitted defence reply whereby they have submitted year wise and category wise submissions but mainly stated that they have not collected service tax from anybody; that the threshold exemption and abatement is not calculated at the time of preparing show cause which are the basic rights of tax payer awarded by service tax law.

7.1 So far as the demand of service tax in relation to Management, Maintenance and Repair Services is concerned, the Noticee submitted that they have provided the said service to Junagadh Agri. University and Gujarat State Police Housing Corporation Limited; that both of the said service recipients are government body and the service provided to them is non commercial repairing work of Government building which is exempted from service tax as per Sec. 98 of Finance Act, 2012. Thus, they stated that during the relevant period, the



service in relation to Management, Maintenance & Repair totally an amounting to Rs. 6928732/- provided by them is not taxable service and so as, the service tax to the tune of Rs. 7,31,682/- should not be demanded from them.

7.2 With regards to the demand of service tax in relation to Man Power Supply is concerned, the Noticee submitted that they have done sub contract work of M/s. Sorath Builders, Ahmedabad for their contract of railway at various locations of Junagadh and Rajkot districts; that sub contract work does not fall under the category of Man power supply service ; that they have done the work on sub contract basis with condition to complete work; that there was not a contract of supply labor as per requirement of M/s. Sorath Builders; that they have received payment on the base of completion work; that they have not supplied day to day or minus plus labor to M/s. Sorath builders; that the letter of Sorath builders dated 24/02/2012 written to Superintendent (AE) also clarify that they have sub contracted work to the Noticee which is exempted from service tax and it could not treat as Man power supply service; that all the work is made for Western railway thus both the way this amount is not taxable receipt. In support of that, they have also furnished various judgments Stating that during the relevant period, the service in relation to Man Power Supply totally an amounting to Rs. 9,53,940/- provided by them is not taxable service and so as, the service tax to the tune of Rs. 1,17,430/- should not be demanded from them.

7.3 The Noticee further submitted that so far as income under commercial or industrial construction service is concerned, they have provided all this service to GETCO (Gujarat Energy Transmission Corporation) which is wholly Gujarat Government owned company which distributes and transmits electricity in all Gujarat; that for transmission of electricity, GETCO construct sub stations for transmission of electricity at various places; that they have also provided service to GETCO by small scale construction work at 66 k.v. sub station at-Supedi, Dhoraji; that as as per C.B.D.T. notification No.45/2010, all the tax which was payable by the service provider for various services given for transmission of electricity is exempted from service tax; that if the department is not agree with their view then also threshold exemption for the particular financial year as applicable should be granted to them and after this threshold exemption there will be no tax payable for the relevant financial years.

7.4 To protest the payment of interest and the penalties as charged in the said show cause notice, the Noticee submitted that they have not liable for payment of service tax since they have not collected any amount of tax from any body, so interest could not be charged; that as per Sec.76 if any person liable for service tax accordance with provision of sec. 68 fails to pay such tax shall pay penalty; that as per judgment of Chettinadu Construction Vs Commissioner of Central Excise, Madurai 2010 23 STJ 187 (Cestat Chennai) penalty can be charged if assessee does not pay even after receipt of tax from



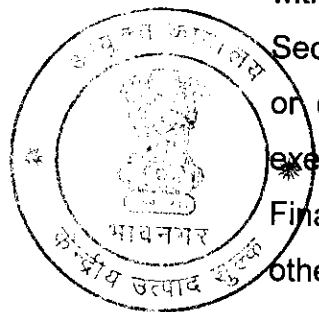
their clients whereas, their client have not collected any tax from any body so he is not liable for penalty u/s 76; that. they are also not liable to pay service tax or required to take registration due to exempted service; that they have furnished all the information and documents called by the Central Excise Officer and thus they have fully supported the department and not contravenes of any act or rule so penalty. u/s. 77 should not be charged; that they have not made any fraud, collusion, willful misstatement, not hide or suppressed any fact or not contravention any fact for evasion of service tax; that Penalty u/s. 76 and 78 could not be charged because they were in genuine belief that they are not liable for service tax and this should be considered as reasonable cause and penalty should not be charged.

PERSONAL HEARING

8. Personal hearing was held on 26.02.2014 when Shri Jignesh Vyas, Advocate, representative of the Noticee appeared and have reiterated the submission already made earlier on 13.08.2012. However, during the course of personal hearing, they have also submitted an additional written submission vide letter dated 25.02.2014 whereby they reiterated that as per Section 98 inserted by Finance Act 2012, Management, Maintenance & Repair work of all non commercial government buildings during the period 16th Jan, 2005 is exempted from service tax; that Junagadh Agricultural University falls under category of Government which is established under Gujarat Agriculture University Act, 2004 by bill passed in Legislative Assembly of the Gujarat State; that the Governor of Gujarat is chancellor of this university; that they enclosed three pages of gazette and copy of Section 98 of Finance Act, 2012; that the said service was also provided to Gujarat State Police Housing Corporation Limited for police staff quarters which is also Gujarat Government Organization and therefore in terms of Section 98 of Finance Act, 2012 exempted from paying service tax; that the services provided to GETCO under commercial or industrial service category is also not taxable as per circular no. 45/2010.

FINDINGS

9. 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 "Management, Maintenance or Repairs", "Manpower Recruitment or Supply Agency" & "Commercial or Industrial Construction" as defined under Section 65 (64) read with Section 65(105)(k), Section 65(68) read with Section 65(105)(k) and as per Section 65(25b) read with Section 65(105)(zzq) of the Finance Act respectively 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 and circular No. 45/2010 as defended by the Noticee or otherwise.



10. I find from the defense submission made by the Noticee vide both the letters as discussed above that except the services related to "Manpower Recruitment or Supply Agency", they have not disputed the classification of rest of 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. So far as the service viz. Management, Maintenance or Repair is concerned, I find 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 in fact already excluded the amount received against non commercial construction at para 2.5 (iv) & 6 (a) of the show cause notice issued;
- (ii) So far as the work done for GSPHCL, 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;
- (iii) Further, the Noticee has just replied stating that the said service provided to government building but totally failed to prove that the service provided to non-commercial government buildings;
- (iii) I find from 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. 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 in fact already excluded the amount received against non commercial construction at para 2.5 (iv) & 6 (a) 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 could not specify, 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



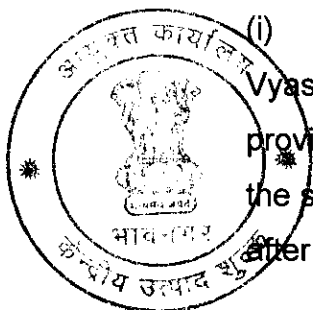
dated 13.08.2012 & 25.02.2014. I find from the said letters that the Noticee have just claimed the benefit of Section 98 but totally failed to produce concrete evidences establishing the nature of services they provided i.e. Management, Maintenance and Repair and the same were provided to non-commercial Government building.

- (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.

10.1 I further find that the University generally formed for higher education (i.e. bachelors, masters, doctoral, post doctoral course), specialized education, vocational education, language (including foreign language) courses etc. These vary in terms of their content; purpose; scope; and the type of institutes or establishments, which impart them. The system of statutory recognition of educational establishments or institutions in India is still in the state of evolution. As per the definition, in terms of Section 2(f) of the Act, a University means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act. Therefore, all universities which are a creature of a State or Union Act fall within this definition of 'University.' Thus, merely the identity of "University" does not define it's status of "non-commercial government building". It is true that the University always runs by the government but it is equally essential character to avail the exemption under Section 98 of the Act that the service recipient must be "non commercial government building". The said concept have no where proved by the Noticee and therefore, I hold that the Noticee is not entitled to avail the benefit of said exemption and so as the service viz. Management, Maintenance & Repair to Junagadh Agricultural University as well as to Gujarat State Police Housing Corporation Limited is taxable in terms of Section Section 65 (64) read with Section 65(105)(k) of the Act.

11. Further I find that with regards to the demand of service tax in relation to Man Power Supply, the Noticee submitted that they have done sub contract work of M/s. Sorath Builders, Ahmedabad for their contract of railway at various locations of Junagadh and Rajkot districts and their sub contract work does not fall under the category of Man power supply service. In the matter, I do not find any merit in the party's plea on the following grounds;

- (i) The statement dated 29.12.2011 of Shri Haresh Chhailshankar Vyas, Proprietor of the Noticee no where speaks that the said service was provided to various locations of railways and more, M/s. Sorath Builders who is the service recipient have also no where said so. Thus, it seems that it could be after thought to escape from the liability.



(ii) From the financial records of the Noticee, the statement of the Noticee, the records submitted by M/s. Sorath Builders as well as from the letter of M/s. Sohal Builders, it clearly reveals that the said service has been provided to M/s. Sorath Builders directly by the Noticee, the payment of the same has been made by M/s. Sorath and it is only M/s. Sorath Builders who have issued Form No. 16 A i.e. certificate of deduction of tax at source under Section 203 of the Income Tax Act, 1961 for the relevant period on their TAN only in favour of the Noticee. The TDS certificate can be issued by the employer/service recipient to the party from whom the services obtained and to whom the payment are due.

(iii) M/s. Sorath Builders have admitted in their letter dated 24.02.2014 that they are not entered into any written format contract or agreement with the Noticee but they have sub-contracted labour work to the Noticee for their contract work.

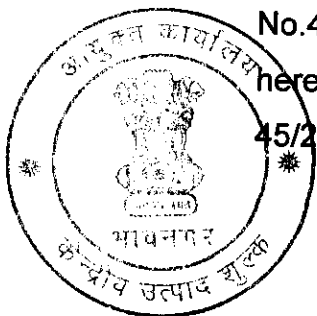
Thus, I hold that the Noticee has provided the said service to M/s. Sorath Builders and not to any government authority.

11.1 Moreover, I also find that the Noticee have also protested the classification of the service. To affirm the classification, I hereby rely on the definition of "Manpower Recruitment or Supply Agency" which has been defined under Section 65(68) of the Act as "*manpower recruitment or supply agency*" means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person".

The Noticee's arguments is not acceptable since the ledger account of the Noticee in the books of M/s. Sorath Builders clearly shows the credit as "Labour Exp.", M/s. Sorath Builders have admitted in their letter dated 24.02.2014 that they have sub-contracted labour work to the Noticee for their contract work, the income tax accordingly deducted on the contract work, the Noticee himself in his statement dated 29.12.2011 admitted the same etc. are the evidential witnesses upon which I can establish and hold that the service provided by the Noticee to M/s. Sorath Builders are nothing but just the services classifiable under "Manpower Recruitment or Supply Agency" in terms of Section 65(68) read with Section 65(105)(k) of the Finance Act, 1994.

12. Further, I also find that so far as the services of industrial construction provided to GETCO is concerned, the Noticee in their defense mainly rely on the fact that the same are exempted as per the Notification No.45/2010-Service Tax Dt.20th July, 2010. 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

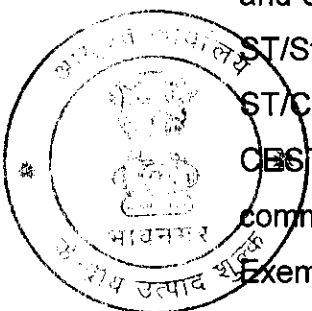
Further, I also reproduced here the clarification imparted vide Letter D.O. F. No. 334/3/2010-TRU, dated 1-7-2010 by the Ministry at Para No. 8 of the said letter;

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).*

12.1 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 exempted 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 exemption, directly in relation to the transmission and distribution of electricity. It would be pertinent here to note that the service provided by the Noticee for which the demand raised is Commercial or Industrial Construction.

12.2 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 CBSTAT, 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

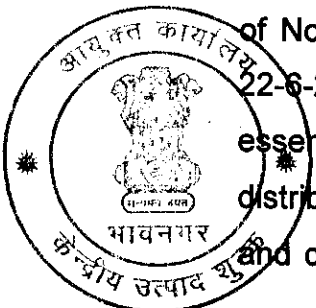


essential for billing consumers - Thus, impugned activity or service to be termed 'service relating to transmission and distribution of electricity' - Thus, services squarely covered by exemption notification - Similar view taken in MP Power Transmission for interpretation of similar exemption notification - 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, Bangalore 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.

12.3 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, the Noticee is no where engaged in the activities which are directly related to transmission and distribution of electricity. 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

12.4 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. Commercial or Industrial Construction by the Noticee is nowhere 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 the Noticee in this regard.

12.5 I also find that the Noticee are not eligible for threshold exemption as per Not.6/2005-S.T.Dt.01-03-2005 since they are not fulfilling the conditions of threshold exemption as per Not.6/2005-S.T.Dt.01-03-2005. Further, I find that the very first year i.e. in the year of 2006-07 only, the Noticee have crossed the threshold exemption limit of taxable services and more, the Noticee nowhere given the details of their taxable turnover for the previous financial years to determine their claim of threshold exemption limit. So I reject this contention of the Noticee.

13. Further, the Noticee have admitted that they have not taken registration nor 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. 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.

14. 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 above. For calculation of value of taxable services, the payment vouchers have been considered since the balance sheets for the relevant period does not specify the classification and the proper valuation of the services provided. Further, I also find that the documents submitted by the Noticee are in a discrete form and therefore only a single document cannot be considered for arriving the value of the services rendered by the Noticee; that this act of the Noticee seems to have been done only to suppress the facts regarding nature of services rendered by them with an intent to create a confusion in classification of services, and to evade the Service Tax leviable thereon. Further, I also find that the amount received against non-taxable services i.e. construction of Government building have



already been excluded by the revenue 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 Repairs", "Manpower Recruitment or Supply Agency" & "Commercial or Industrial Construction" totally having the taxable value of Rs. 89,45,524/- over a period from Oct-2006 to Mar-2011 and evaded the Service Tax totally amounting to **Rs. 9,78,651/-** as calculated at Para No. 5 above.

15. 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'.

16. 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.

17 In view of above discussion and findings, I find that M/s. Pranav Builders 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 totally amounting to Rs. 9,78,651/- (Nine Lacs Seventy Eight Thousand Six Hundred & Fifty One) under Section 73 of the Finance Act, 1994 which should be paid by/recovered from M/s. Pranav Builders, 2- Sardar Para 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. Pranav Builders.
- (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. Pranav Builders 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. 9,78,651/- i.e. the amount of Service Tax recoverable from M/s. Pranav Builders.

- (iv)** I impose penalty under Section 77 upon M/s. Pranav Builders 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. Pranav Builders 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. 19,57,302/- (Rupees Nineteen Lakhs Fifty Seven thousand Three hundred Two only) under Section 78 of the Finance Act, 1994 on M/s. Pranav Builders. 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)
JOINT COMMISSIONER

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

Dated: 28.03.2014

To,
M/s. Pranav Builders,
2 – 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.

