IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2334 OF 2014

M/s. Sai Labour Contractor,
Through its Proprietor
Sushila W/o. Dhondiram Phoke,
Age-50 years, Occu-Business,
R/o. Plot No. 1138, N-6,
Sai Nagar, CIDCO,
Aurangabad. .. **PETITIONER**

Versus

1. The Union of India, .. **RESPONDENTS**
through Its Secretary,
Excise Department,
New Delhi.

2. National Textile Corporation
Limited (Western Region)
(A Government of India
Undertaking-Ministry of Textile
NTC House, 15, N.M.Marg
Ballard Estate, Mumbai 400 001)

3. The Secondary School Board,
Aurangabad at Aurangabad.

4. The Commissioner,
Central Excise & Customs,
Town Centre, N-5, Cidco,
Aurangabad.

5. Aurangabad Textile Mill
A Company incorporated
under Company Act,
(A Subsidary of National Textiles

Corporation Ltd. Western Region)
through its General Manager/Officer
in Charge Having Office at
Post Box No. 97, Kotwalpura,
Mill Corner, Aurangabad

6. Barshi Textile Mills, Barshi
(Unit of National Textile Corporation
(SM) Ltd.) through its General Manager/
Officer situated at 2553,
Bhoyare Road, P.B. No. 36,
Barshi, Pin-413 401
Dist. Solapur (MS)

Mr. Mr.V.J. Dixit, h/f Mr.A.G.Talhar, Advocate for the petitioner.
Mr.S.B.Deshpande, Advocate for respondent No.1
Mrs.Surekha Mahajan, Advocate for respondent No.3
Dr.Kalpalata Bharaswadkar, Advocate for respondent No.4
Mr.M.N. Navandar, Advocate for respondent Nos. 2 & 5 to 9.

CORAM : A.V. NIRGUDE &
A.M. BADAR,JJ.
DATED : 25.06.2015

ORAL JUDGMENT: [PER: A.V. NIRGUDE, J.]

1. The petitioner is Proprietor engaged in supply of man power to various Private Companies and Government undertakings. The petitioner is also registered as service tax payer. The petitioner deposited certain amount as service tax. During 2008 service tax department conducted audit of record and books of account of the petitioner and in 2011 they issued show cause-cum-demand notice to the petitioner, directing to show cause as to

why the taxable value of service tax payment for a period between 2006-2010 should not be recomputed. They asserted that taxable value of the service showed by the petitioner was grossly less and the difference of the service tax to the tune of Rs.95,00,000/- was demanded. The petitioner resisted this demand but in vain. He then filed an appeal before the Commissioner, Central Excise Customs & Service Tax but the appeal was also dismissed. The main bone of contention of the petitioner is that he is liable to pay service tax only on commission he earned and not on gross amount he has charged and received from his client. In order to substantiate this the petitioner also gave a break-up of cost he incurred for providing the service. In this calculation he included 4% service tax on his commission and not on gross amount which he received and utilized for providing service. Learned counsel for the petitioner asserted that Section 67 and Rule made thereunder clearly indicate that valuation of taxable service would depend only on commission charged & earned. In order to appreciate this submission we must read Section 67 as under:-

> “67. Valuation of Taxable Service for charging Service Tax:
>
> (1)Subject to the provision of the Chapter, service tax chargeable on any taxable service with reference to its value shall,

(i) in case whether the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him:

(ii)in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration:"

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1),(2) & (3), the value shall be determined in such manner as may be prescribed."

2. The wording of this provision is very clear. When service is provided for a consideration in money the gross amount charged by the provider would be the value of such service for purpose of charging service tax. For calculating of service tax, "Service Tax Determination of Value Rules are made in 2006.

3. Rule 2-A of the Rules is relates to determination of value of service involved in execution of a work contract. Explanation-B to Sub-Rule 1 gives list of items which are required to be taken into account for calculating value of work contract. This provision elaborates as to what would be taken into account for calculating gross amount. These Provisions clearly indicate that the service provider must realize before providing service that the gross value of his service would be taken into account for calculating service tax and such tax should be recovered from the recipient of the service. If the petitioner did not realize this at the relevant time and apparently did not recover such amount from recipient, filing this writ petition would serve no purpose. The petitioner has admittedly filed suits for recovery of such amounts against recipient of service and such suits are still pending. In view of this we find no reason for admitting the writ petition. The petition stands dismissed.

4. The arguments suggesting that Rule-5 of the Service Tax (Determination of Value) Rules, 2006, is held to be ultra vires to Section 67 is misplaced and not relevant to the question that is involved in this case.

[A.M. BADAR,J.] **[A.V. NIRGUDE,J.]**