

44

केंद्रीय उत्पाद, सीमाशुल्क एवं सेवाकर आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS &
SERVICE TAX

हैदराबाद II आयुक्तालय HYDERABAD-II COMMISSIONERATE

केंद्रीय शुल्क भवन, एल बी स्टेडियम रोड, बशीर बाग, हैदराबाद.

KENDRIYA SHULK BHAVAN, L.B.STAUIUM ROAD, BASHEER BAGH,
HYDERABAD-500 004.

O.R.No: 161/2014 - Adjn.(ST)(Commr.)

Dt. 26.09.2014

C.No: IV/16/62/2012-ST.Gr.X

SHOW CAUSE NOTICE

(Notice under Section 73(1A) of the Finance Act 1994)

Sub::Service Tax - Non-Payment of Service Tax on Taxable Services rendered by M/s. Alpine Estates - Issue of Show Cause Notice - Regarding.

M/s. Alpine Estates, #5-4-187/3 & 4, 2nd Floor, Soham Mansion, MG Road, Secunderabad-500 003 (here-in-after referred as "M/s Alpine Estates" or "the assessee(s)") are engaged in providing "Works Contract Service". The assessee is a registered partnership firm and got themselves registered with the department vide **Service Tax Registration Number AANFA5250FST001**.

2. As seen from the records, the assessee entered into 1) sale deed for sale of undivided portion of land together with semi finished portion of the flat and 2) agreement for construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by the assessees thereafter to their customers under agreement of construction are taxable under Service tax as there exists service provider and receiver relationship between them. As there involved the transfer of property in goods in execution of the said construction agreements, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold **are taxable services under "Works Contract Service"**.

3. Accordingly, the following Show Cause Notice had been issued to the assessee, by the Additional Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II Commissionerate.

Sl. No.	SCN O.R. No. Date	Period	Amount of Service Tax demanded Rs.	Status
1	HQPOR No. 82/2010-Adjn(ST) dt. 16.6.2010	Jan-Dec, 2009	31,10,377/-	Confirmed vide OIO No. 44/2010-ST dt. 15.10.2010. Party's appeal was dismissed vide OIA No. 08/2011(H-II) dt. 31.1.2011. CESTAT Granted Stay on 25.04.2012 vide stay Order No.666 & 667/2012 with the condition of Pre Deposit of Rs.10 lakhs. Vide Misc Order No.21860-21877/2014 dt.31.07.2014 extended stay for six months from 31.07.2014.
2	OR No. 62/2011-Adjn (ST) dt. 23.4.2011	Jan-Dec, 2010	35,03,113/-	Confirmed vide OIO No. 49/2012-Adjn (ST)(ADC), dated 31-8-2012. Ordered de novo by the Commissioner (Appeals) vide OIA No. 38/2013 (H-II) S.Tax dt. 27.02.1013 for re-quantification of the Service Tax payable.
3	OR No. 51/2012-Adjn (Addl.Commr.), dt. 24-4-2012	Jan-Dec, 2011	48,33,495/-	Confirmed vide OIO No. 49/2012-Adjn (ST)(ADC), dated 31-8-2012. Ordered de novo by the Commissioner (Appeals) vide OIA No. 38/2013 (H-II) S.Tax dt. 27.02.1013for re-quantification of the Service Tax payable.

4. As per information furnished by the assessee vide their letter dated 17.09.2014 along with statements, it is seen that "the assessee" have rendered taxable services under the category of "Works Contract Services" during the period **July, 2012 to March, 2014**. The assessee had rendered services for a taxable value of **Rs. 25,86,64,906/- (Rupees Twenty Five Crores Eighty Six Lakhs Sixty Four Thousand Nine Hundred and Six only)**. After deduction of VAT of Rs.91,18,679/- the taxable value works out to **Rs. 24,95,46,227/-** on which service tax (including cess) works out to

Rs. 1,23,37,565/-. As seen from the challans submitted by the assessee, an amount of **Rs. 34,43,562/-** was paid leaving an amount of **Rs. 88,94,003/-** unpaid/short paid for the services rendered during the said period, as detailed in the Annexure enclosed.

5. Vide Finance Act, 2012, sub section (1A) was inserted in Section 73 which reads as under:

SECTION 73 (1A) - *Notwithstanding anything contained in sub-section (1) (except the period of eighteen months of serving the notice for recovery of service tax), the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.*

6. The sections **65B, 66B to 66F** as inserted in the Finance Act, 1994 by the Finance Act, 2012 w.e.f. 1-7-2012 are reproduced below :

6.1. Section 65B (44) : *"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-*

(a) an activity which constitutes merely,-

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

6.2. SECTION 66B. - *There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.*

6.3. SECTION 66D : *Contains the negative list of services. It appears that services provided by the assessee are not covered under any of the*

47
services listed therein.

6.4. **SECTION 66E** : Contains declared service which includes service pertain in the execution of works Contract.

6.5. *Further, Notification No. 25/2012-ST, dated 20-06-2012, as amended specified services which were exempt from payment of Service Tax. It appears that services provided by the assessee are not covered under any of the services listed therein.*

7. The grounds as explained in the show cause cum demand notices issued above are also applicable to the present case; the legal position insofar as "Works Contract Service" is concerned, the said service and its taxability as defined under Sub-clause (zzzza) of Clause 105 of Section 65 of the Finance Act, 1994 as existed before 01.07.2012 stands now covered by Section 65B(54) whereby the said service, for not being in the Negative List prescribed under Section 66D, continues to be a taxable service under Section 66E(h) of Finance Act, 1994. But for the said changes in legal provisions, the status of Service and the corresponding tax liability remained same. Hence this statement of demand/show cause notice is issued in terms of **Section 73 (1A) of the Finance Act, 1994** for the period **July, 2012 to March, 2014.**

8. In view of the above, **M/s. Alpine Estates, Hyderabad** are hereby required to show cause to the **Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II Commissionerate, Hyderabad, Kendriya Shulkh Bhavan, 7th Floor, Basheerbagh, Hyderabad-04**, within **30 (thirty) days** of receipt of this Notice as to why:-

- (i) an amount of **Rs. 1,23,37,565/- (Rupees One Crore Twenty Three Lakhs Thirty Seven Thousand Five Hundred and Sixty five only)** including Cesses should not be demanded on the "Works Contract" services rendered by them during the period from **July, 2012 to March, 2014**; and an amount of **Rs. 34,32,328/-** already paid should not be adjusted against the above demand;
- (ii) Interest should not be demanded under **Section 75 of the Finance Act 1994**;
- (iii) Penalty should not be imposed on them under **Section 76 of the Finance Act 1994**; and

(iv) Penalty should not be imposed on them under **Section 77 of the Finance Act, 1994.**

9. **M/s. Alpine Estates, Hyderabad** at the time of showing cause as above are required to produce all the evidence upon which they intend to rely in their defence. They are also required to indicate in their written reply whether they wish to be heard in person before the case is adjudicated. If no cause is shown against the action proposed to be taken within the stipulated time or having desired a hearing if they do not appear for the personal hearing on the appointed day & time, the case will be decided on merits, basing on the material/evidence available on record.

10. The assessee filed their ST-3 return for the period July-September, 2012 filed on 22.05.2013 (due date being on 30.04.2013) and hence, **the due date for issue of this SCN is 21.11.2014.**

11. This notice is issued without prejudice to any other action that may be taken against the noticees / others under the Finance Act, 1994 or under any other law for the time being in force in India.

12. Reliance for issue of this notice is placed on the following:

Letter dated 17.09.2014 along with statements and challans submitted by **M/s. Alpine Estates, Hyderabad.**

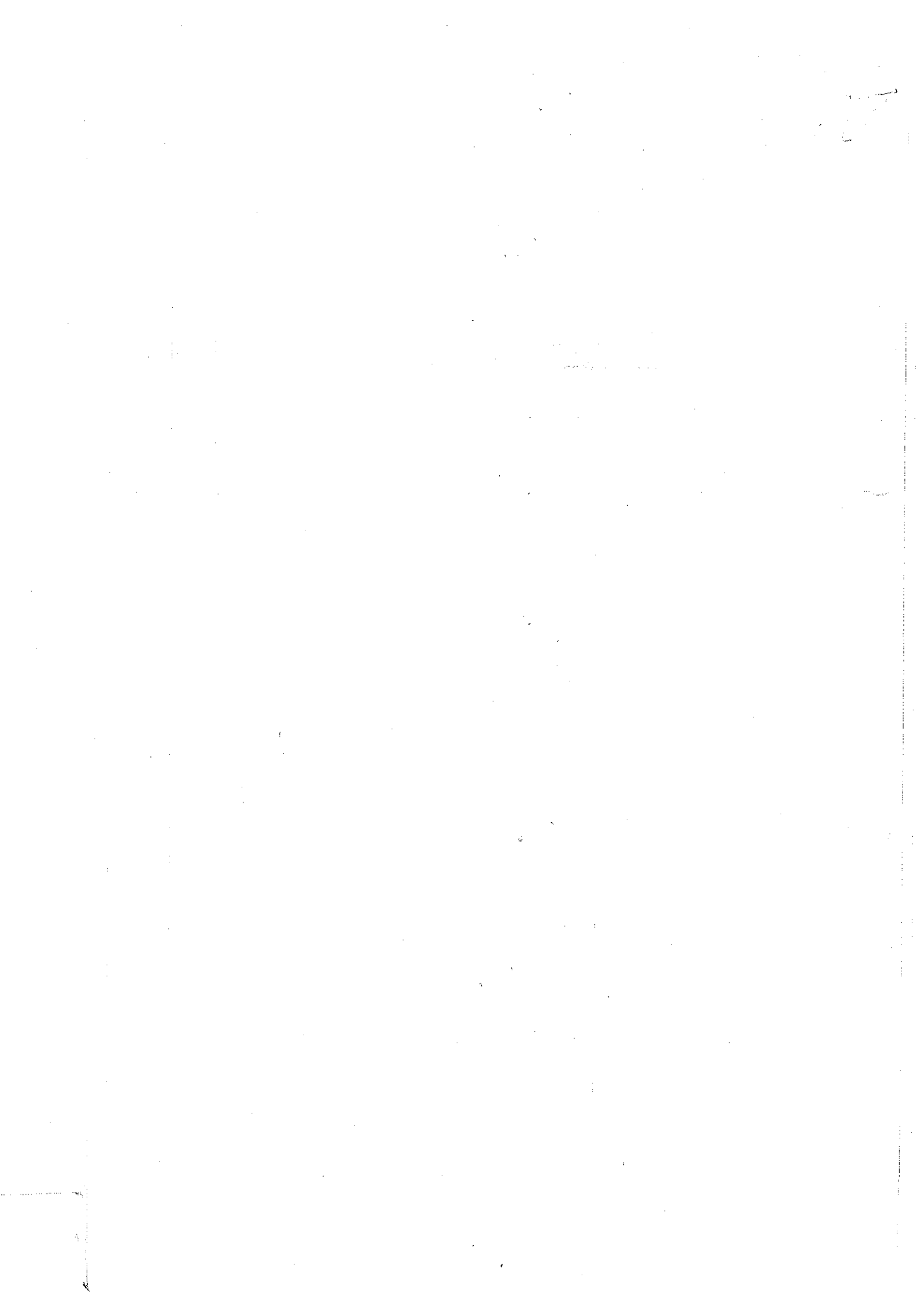

28/9/14
(M.K. SINGH)
Commissioner.

To
M/s.Alpine Estates,
5-4-187/3, 2nd Floor,
Soham Mansion, M.G.Road,
Secunderabad-500003.

(By SPEED POST)

Copy to:

1. The Superintendent, Service Tax (Adjudications) Hyd-II Commissionerate
2. The Superintendent of Service Tax, Group-X, Hyd- II Commissionerate,
Master Copy / Office Copy.



ANNEUXRE TO THE SHOW CAUSE NOTICE IN O.R.No.161/2014-Adjn. (ST) (Commr.) dated 26.09.2014
in the case of M/s. Alpine Estates, Hyderabad

Period	Gross Amount received	VAT Amount	Taxable Value	Service Tax rate %	Service Tax liability	Service Tax paid	Differential S. Tax to be paid
07/2102 to 09/2012	41117849	606537	40511312	4.944	2002879	1030179	972700
10/2012 to 03/2013	76102271	3177211	72925060	4.944	3605415	1863830	1741585
04/2013 to 09/2013	90513786	4287501	86226285	4.944	4263028	4752229	3787799
10/2013 to 12/2013	37892487	919842	36972645	4.944	1827928	74324	1753604
01/2014 to 03/2014	13038513	127588	12910925	4.944	638316	0	638316
Total	258664906	9118679	249546227		12337565	3443562	8894003

28/9/14

के.आर.के.वि.एच.एच. एच.एच.एच.एच.
KRVNS RADHA KRISHNA RAO
अधीक्षक, सेवा कर, ग्रुप-X
Superintendent, Service Tax, Group-X
केन्द्रीय उत्पाद शुल्क, सीमा शुल्क एवं सेवा कर
Customs, Central Excise & Service Tax
हैदराबाद-II आयुक्तान्त
Hyderabad-II Commissionerate
हैदराबाद/HYDERABAD.

100