

सेंट्रल टैक्स एवम् कस्टम उप/सहायक आयुक्त का कार्यालय
OFFICE OF THE DEPUTY/ASSISTANT COMMISSIONER OF CENTRAL TAX AND CUSTOMS
सिकंदराबाद माल एवम् सेवा कर मंडल & सिकंदराबाद माल एवम् सेवा कर आयुक्तालय
SECUNDERABAD GST DIVISION & SECUNDERABAD COMMISSIONERATE
पता "सलीक सीनेट", गेट . 2 -4 416 & 417, रामगोपालपेट, एम.जी.रोड सिकंदराबाद 500003
ADD: "SALIKE SENATE", D. No. 2-4-416 & 417, RAMGOPALPET, MG ROAD, SECUNDERABAD 500003
Contact No. 7901243130 email- cgst.secdiv@gov.in

C.No.V/24/15/08/2018-Adjn

Date: 20-04-2018

SHOW CAUSE NOTICE

Sub:- Service Tax - M/s Mehta & Modi Homes, Hyderabad - Non-payment of Service Tax on taxable services rendered during the period April 2015 to June 2017- Issue of Show Cause Notice - Regarding.

M/s Mehta & Modi Homes, 5-4-187/3& 4, 2nd Floor, Soham Mansion, M.G. Road, Secunderabad - 500003 (hereinafter referred to as the 'assessee'), are providers of taxable services under the categories of Construction of Complex Service, Works contract Service. M/s Mehta & Modi Homes is a partnership firm and got themselves registered with the department on 17.08.2005 under "Construction of Complex Service and under Works Contract Service" on 29.02.2008 STC No. AAJFM0647CST001. M/s Mehta & Modi Homes changed their firm name to M/S Silver Oak Reality with effect from 01.09.2015 and registered with Register of Firms, Hyderabad District. Whereas the assessee has not amended their firm name in Service Tax Registration. Hence, the notice is to M/s Mehta & Modi Homes.

2. On gathering information, it is observed that M/s Mehta & Modi Homes, is not discharging the Service Tax liability properly, a letter was addressed to the assessee on 07.12.2018, 16.01.2018, 23.01.2018 and 12.02.2018 to submit the details of any new ventures taken up during April 2015 to June 2017 along with the details of the amounts received and to submit the Financial Statement and ST 3 Returns. The assessee vide their letter dated 20.03.2018 submitted the Financial documents, ST3 Returns and statement of receipt of the amounts under different heads. On scrutiny of records of the assessee it was noticed that the assessee is not discharging the Service Tax liability properly. It is found that M/s Mehta & Modi Homes have undertaken different projects i.e. Silver Oak Bungalows (Phase-I), Silver Oak Bungalows (Phase-II) and Silver Oak Bungalows (Phase-III) and received amounts from customers from April, 2015 to June 2017 towards Sale of land and agreements for construction. In the said projects, they have entered into sale deed and agreement for construction with their customers.

3. As per the statutory provisions discussed below, the activity of construction of Villas and Apartments are covered under Works Contract Service under 'Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007.

WORKS CONTRACT SERVICE:

4 'Works Contract Service' was brought under the Service Tax net with effect from 01.06.2007 vide **Notification No. 32/2007-ST, dated 22.05.2007**. The relevant provisions of law with regard to this service are reproduced hereunder:

4.1. As per **Section 65(105) (zzzza) of the Finance Act, 1994 "Taxable Service"** under Works Contract means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation — For the purposes of this sub-clause, "**works contract**" means a contract wherein—

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) such contract is for the purposes of carrying out—
 - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or
 - (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
 - (c) **construction of a new residential complex or a part thereof;** or
 - (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
 - (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;

4.2 **As per Rule 2A of Service Tax (Determination of Value) Rules, 2006** the value of works contract service determined shall be equivalent to the

gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract and the gross amount

charged for the works contract shall not include Value added Tax (VAT) or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract;

5. With Effect From 01.07.2012, Section 65 of the Finance Act, 1994 is not applicable as per Notification 20/2012-Service Tax dated 05.06.2012. However Section 65B has been introduced for giving interpretations of various services.

As per Section 65 B(54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, improvement, repair, renovation, alteration of any building or structure on land or for carrying out any other similar activity or a part thereof in relation to any building or structure on land;

5.1 The above interpretation is similar to the definition given in Section 65(105)(zzzza) previously. Hence even after 01.07.2012 there appears to be no change in the classification with regard to Construction of Complex service where transfer of property in goods is involved and the same appears to be rightly classifiable under 'Works Contract Service'.

5.2 After 01.07.2012 'Construction of Complex' is a declared service under Section 66E of the Finance Act, 1994. As per Section 66E(b) of the Finance Act, 1994 'construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority' is a declared service. Further as per Section 66E(h) of the Finance Act, 1994 '**service portion in the execution of Works Contract**' is also a declared service.

5.3 **In the instant case the assesseees are paying VAT, hence there appears to be a transfer of property involved in the execution of work. Further the contract was for the purpose of construction of complex, which is a declared service. So, the work under taken by the assesseees appear to satisfy the definition specified at Section 65B (54) of Finance Act, 1994 and the same can be termed as "Works Contract" service.**

5.4 As per the S.T-3 returns filed by the assesseees during the period from 01.04.2015 to 30.06.2017, the assesseees shown the gross amount received and they claimed abatement, amount claimed as deduction towards sale deed value and amount charged as Pure Agent against amounts received under "Works Contract Service"

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5.6 Rule 2A has been substituted with effect from 01.07.2012 vide Notification 24/2012-Service Tax dated 06.06.2012. Rule 2 A is as under:

"2A. Determination of value of service portion in the execution of a works contract.- Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Explanation- For the purposes of this clause-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

- (i) labour charges for execution of the works;
- (ii) amount paid to a sub-contractor for labour and services;
- (iii) charges for planning, designing and architect's fees;
- (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- (v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;
- (vi) cost of establishment of the contractor relating to supply of labour and services;
- (vii) other similar expenses relating to supply of labour and services; and
- (viii) profit earned by the service provider relating to supply of labour and services;

(c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely: -

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on **forty per cent.** of the total amount charged for the works contract;

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent. of the total amount charged for the works contract;

(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property, service tax shall be payable on sixty per cent of the total amount charged for the works contract;

Explanation 1.- For the purposes of this rule-

(a) "original works" means-

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

5.7 Accordingly value has to be determined for 'Works Contract' under Rule 2A of Service Tax (Determination of Value) Rules, 2006 substituted w.e.f. 01.07.2012 vide Notification 24/2012-Service Tax dated 06.06.2012. In this case after 01.07.2012 the provisions of clause (i) of Rule 2A of Service Tax (Determination of Value) Rules, 2006 as amended w.e.f. 01.07.2012 cannot be followed as the assessee has not segregated the actual value of property in goods transferred in the execution of the works contract while paying VAT. Therefore, clause (ii) of Rule 2A of Service Tax (Determination of Value) Rules, 2006 as amended w.e.f. 01.07.2012 shall be followed in this case. As per

clause (ii) (A) service tax shall be payable on **forty percent** of the total amount charged for the works contract for execution of original works. In the instant case the assessee has constructed a new residential complex and is the original works, hence Service Tax is payable on forty percent of the total amount charged.

6. Therefore, the assessee is liable to pay Service Tax of **Rs.39,42,774/-** as per the "**Annexure**" attached to the notice under the category of "**Works Contract Service**" along with interest under **Section 75** and are also liable to penalty under **Section 76 of Finance Act, 1994.**

7. By their acts of omissions and commission as above, it thus appears that **M/s Mehta & Modi Homes** have contravened the provisions of the **Finance Act, 1994** and the **Service Tax Rules, 1994**, with an intent to evade payment of Service Tax as follows:

- i) **Section 66B of the Finance Act, 1994**, in as much as they did not declare the service which is chargeable to Service tax.
- ii) **Section 67 of the Finance Act, 1994**, in as much as they did not declare and adopt the gross amounts received.
- iii) **Section 68 of the Finance Act, 1994** read with **Rule 6 of the Service Tax Rules, 1994**, in as much as they have not paid the appropriate amount of Service Tax on the value of taxable services rendered;
- iv) **Section 70 of the Finance Act, 1994** read with **Rule 7 of Service Tax Rules, 1994**, in as much as they did not truly and correctly assess the tax due on the services provided by them and also did not disclose the relevant details/information to the department. Therefore, it appears that the assesseees are liable for penalty under **Section 77 and 76 of the Finance Act, 1994**.

12. **M/s Mehta & Modi Homes** have been rendering various taxable services but they have not discharged their tax liability as detailed in the above sections / Rules. Hence, notice under proviso to **Section 73(1)** appears to be issued to recover the short paid / not paid service tax. The assesseees are liable for penal action under **Section 77 and 76 of the Finance Act, 1994** as they have failed comply with the provisions of the Act.

13. In view of the above **M/s Mehta & Modi Homes, 5-4-187/3& 4, 2nd Floor, Soham Mansion, M.G. Road, Secunderabad - 500003** are hereby required to show cause to **the Assistant Commissioner of Central Tax, Central Excise and Service Tax, Office of the Assistant Commissioner of Central Tax & Central Excise, Secunderabad GST Division, Secunderabad GST Commissionerate, D.No. 2-4-416&417, 1st Floor, Salike Senate, Ramgopalpet, M.G Road, Secunderabad-500 003, within 30 (Thirty) days** from the date of receipt of this notice as to why:

- (i) an amount of **Rs.39,42,774/- (Rupees Thirty Nine Lakh Forty Two thousand Seven hundred and Seventy Four only)**, including cesses, being the Service Tax payable under **Works Contract Service** for the period from **April, 2015 to June, 2017** should not be demanded under **Section 73 (1) of the Finance Act, 1994** ; on the grounds discussed supra;
- (ii) **Interest** on the amount as mentioned at Sl. No. (i) should not be demanded from them under **Section 75 of the Finance Act, 1994**;
- (iii) **Penalty** should not be imposed under **Section 77 of the Finance Act, 1994**.
- (iv) **Penalty** should not be imposed under **Section 76 of the Finance Act, 1994** in respect of non-payment of Service Tax mentioned at (i) above.

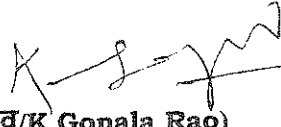
14. M/s Mehta & Modi Homes, Hyderabad are required to produce all evidence upon which they intend to rely in support of their defense at the time of submitting their reply to this notice. They are also required to indicate in their written reply whether they wish to be heard in person by the Adjudicating Authority before adjudicating the case. In case no reply is filed within stipulated time or if they fail to attend the personal hearing on the appointed day, the case is liable to be decided ex-parte based on the evidence available on record.

15. Reliance for issue of Show Cause Notice is placed on the following documents.

- i) ST-3 returns filed for the period April, 2015 to June, 2017
- ii) The assesses letter dated 20.03.2018 enclosing the Financial documents, ST3 Returns and statement of receipt of the amounts under different heads.

Place: Secunderabad

Date: 20.04.2018.


(के गोपाल राव/K Gopala Rao)
सहायक आयुक्त/Assistant Commissioner
सिकंदराबाद मण्डल/Secunderabad Division

To

M/s. Mehta & Modi Homes,
Address; 5-4-187/3 & 4, 2nd Floor,
Soham Mansion,
M.G. Road,
Secunderabad- 500 003

Copy to:

1. The Superintendent, Ramgopalpet GST Range-II, Secunderabad Division, Hyderabad, with a direction to serve the copy of the Show Cause Notice and forward the dated acknowledgment to this office.
2. The Superintendent (Adjudication), Secunderabad GST Commissionerate, Hyderabad.
3. Master Copy/ Office copy.

Annexure to the Show Cause Notice C. No. V/24/15/08/2018-Adjn
 Dated. 20-04-2018- M/S Mehta & Modi Homes, Hyderabad.

	Before Occupancy Certificate			Total (Rs)
	2015-16	2016-17	2017-18 (Up to June, 2017)	
Gross Receipts	72823680	1968995	0	74792675
Construction Agreement value	12404292	490000	0	12894292
Gross Sale Deed Value	56999950	766000	0	57765950
Less: VAT & Registration	1771401	261444	0	2032845
Net Taxable Value (Net of VAT)	71052279	1707551	0	72759830
Tax Rate	5202078@4.944%	588231@5.80%	0	
	21772587@5.60%	1119320@6.00%	0	
	44077614@5.80%	0	0	
Service Tax Payable	4032958	101276		4134234
Service Tax paid	191460	0	0	191460
Differential Service Tax Payable	3841498	101276	0	3942774

Lawrence
 20.04.18
 M/S Mehta & Modi Homes
 Hyderabad

