



सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX
हैदराबाद II आयुक्तलय HYDERABAAD II COMMISSIONERATE
KENDRIYA SHULK BHAVAN, L.B.STADIUM ROAD, BASHEER BAGH,
HYDERABAD- 4

OR No.163/2014 - Adjn.(ST)(Commr.)

Dt. 26.9.2014

C.No: IV/16/63/2012-ST.Gr.X

SHOW CAUSE NOTICE

Sub:: Service Tax - Non payment of Service tax on taxable Taxable services rendered by M/s. Modi Ventures - Issue of Show Cause Notice - Regarding.

M/s. Modi Ventures, #5-4-187/3 & 4, II Floor, Soham Mansion, MG Road, Secunderabad-500 003 (here-in-after referred as "M/s. Modi Ventures" or "the assessee") 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 No. AAJFM0646DST001.

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 each of their customers. On execution of the sale deed the right in property got transferred to the customer, hence the construction service rendered by the assessee 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 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's have been issued to the assessee, by the Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II Commissionerate.

S. No.	SCN O.R No., Date	Period	Amount of Service Tax Demanded Rs.	OIO No. & date
1	O.R.No.125/2011 - Adjn. (ST) (Commr.) dt. 25.10.2011	04/2006 to 12/2010	1,38,13,576/-	Pending Adjudication
2	O.R.No.95/2012 - Adjn. (ST) (Commr.)	01/2011 to 12/2011	60,63,492/-	Pending Adjudication

gross amount charged for the Works Contract, excluding the Value Added Tax (VAT) or Sales Tax paid on transfer of property of goods involved in the execution of Works Contract. **With effect from 01.3.2008 the said rate of 2% is increased to 4% vide Notification No.7/2008-S.T. dated 01.3.2008.**

4.2 As per Rule 3(2) of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, the provider of taxable service shall not take CENVAT credit of duties or cess paid **any inputs**, used in or in relation to the said works contract, under the provisions of **CENVAT Credit Rules, 2004.**

4.3 In terms of Rule 2A of Service Tax (Determination of Value) Rules, 2006, discussed above, 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 and 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. 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 **January, 2012 to March, 2014.** The assessee had rendered services for a taxable value of Rs. 16,40,81,782/-. After deduction of VAT of Rs. 61,13,646/- the taxable value works out to **Rs. 15,79,68,136/-** on which service tax (including cess) works out to **Rs. 74,39,581/-**. As seen from the challans submitted by the assessee, an amount of **Rs. 29,22,154/-** was paid leaving an amount of **Rs. 45,17,427/-** unpaid/short paid for the services rendered during the said period, as detailed in the Annexure enclosed.

6. The sections **65B, 66B and 66D** 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;

have intentionally not shown any receipts towards construction in their ST-3 Returns. The assesses are well aware of the statutory provisions and of their liability to pay Service Tax. Since they have not disclosed the above facts to the department by way of periodical return and the facts were submitted at later stage, on specially asked by the department vide letters dated 20.08.2014, 10.09.2014 and Summons dated 16.09.2014 the same amounts to suppression of facts with sole intention to evade payment of service tax and also involves contravention of statutory provisions with an intent to evade payment of Service Tax and hence the proviso to **Sub-Section (1) of Section 73 of Finance Act 1994** is liable to be invoked for extended period.


9. In view of the above, **M/s Modi Ventures, 5-4-187/3 & 4, 2nd Floor, Soham Mansion, MG Road, Secunderabad - 500 003** 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.74,39,581/- (Rupees Seventy Four Lakhs Thirty Nine Thousand Five Hundred Eighty One only)** including Cesses should not be demanded on the "**Works Contract**" services rendered by them during the period from **January, 2012 to March, 2014** under **Section 73(1) of Finance Act, 1994** read with proviso thereto; and an amount of **Rs. 29,22,154/-** already paid should not be adjusted against the above demand;
- (ii) Interest on the amount of demand at (i) above should not be recovered under **Section 75 of the Finance Act 1994**;
- (iii) Penalty should not be imposed on them under **Section 78 of the Finance Act 1994**; and
- (iv) Penalty should not be imposed on them under **Section 77 of the Finance Act, 1994**.

10. **M/s. Modi Ventures, 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.

ANNEUXRE TO THE SHOW CAUSE NOTICE IN O.R.No. 163/2014-Adjn. (ST) (Commr)
dated 26.09.2014 in the case of M/s. Modi Ventures, Hyderabad

Period	Gross Amount received	VAT Amount	Taxable Value	Service Tax rate %	Service Tax liability	Service Tax paid	Differential S.Tax to be paid
Jan-March 2012	44946992	0	44946992	4.12	1851816	1018490	833326
Apr-Sept 2012	59370068	2604709	56765359	4.944	2806479	1368268	1438211
Oct'12 - March 2013	24503661	2611026	21892635	4.944	1082372	0	1082372
April- Sept 2013	23707665	67659	23640006	4.944	1168762	487267	681495
Oct '13 - March '14	11553396	830252	10723144	4.944	530152	48129	482023
TOTAL	164081782	6113646	157968136		7439581	2922154	4517427


 20/9/14
 के.आर.के.वि.ए.ए. राधा कृष्णा राव
 K.R.K.V.N.S. RADHA KRISHNA RAO
 असिस्टेंट, सेल ऑफ, टैक्स-X
 Superintendent, Service Tax, Group-X
 के-आर.के. जयद गुरुकुल, सीमा गुरुकुल एव सेल ऑफ
 Customs, Central Excise & Service Tax
 हैदराबाद - II अप्रुविसिड
 Hyderabad-II Commissionerate
 हैदराबाद/HYDERABAD.

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