



OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE &
SERVICE TAX :: SHAKKAR BHAVAN :: 3RD FLOOR ::
HYDERABAD -II COMMISSIONERATE
L.B.STADIUM ROAD:: BASHEERBAGH :: HYDERABAD 500 004

O.R.No.34/2010-Adjn.ST

Dated:15.09.2010

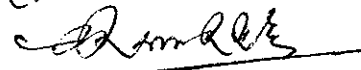
1) Name of the Noticee : M/s Modi & Modi Constructions

2) Represented by : 1) Sudhir V.S

2) A. SHANKER REDDY DGM

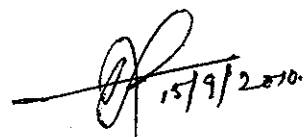
3) Signature

: 1) V.K.L
(Sudhakar V.S)
15/9/10

2) 

RECORD OF PERSONAL HEARING

The party appeared before me for PH. They reiterated the submissions made in their reply to SCR. They have also submitted additional grounds and reiterated the same and further stated that in this project they construct independent vilas and the same are not liable for S.T as per the decision of Trib reported in 2008 (012) STR 0603 (Tri-Mad). Based on the above submissions, they requested to drop the proceedings.


15/9/2010



Handwritten signature and date: 02/09/10

केन्द्रीय उत्पाद सीमा शुल्क एवं सेवा कर के आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE AND SERVICE TAX
हैदराबाद II आयुक्तालय : बशीरबाग, हैदराबाद
HYDERABAD II COMMISSIONERATE: BASHEERBAGH: HYDERABAD

Ph: 040- 23231486

Fax: 040- 23244310

*आ.सं/O.R.No. 34/ 2010-Adjn.- ST

Date : 02.9.2010

To
M/s. Modi & Modi Constructions,
5-4-187/3&4, II Floor,
M.G. Road, Secunderabad - 3.

(By Speed Post)

Gentlemen,

Sub: Service Tax - M/s Modi & Modi Constructions - Non payment
of Service Tax - Intimation of Personal Hearing - Reg.

Ref: Show cause notice O.R.No. 80/2010-Adjn. ST Dt:
15.01.2010 & your reply dt: Nil.

Please refer to the show cause notice and your letter dated 25.8.2010
requesting for postponement of the Personal Hearing.

2. I am directed by the Additional Commissioner of Service Tax, Hyderabad - II Commissionerate to inform you that the Personal Hearing in the above case has been **re-fixed at 1100 hrs. on 15.9.2010.**
3. You are therefore requested to appear before the **Additional Commissioner at III Floor, Shakkar Bhavan, Fateh Maidan Road, Basheer Bagh, Hyderabad - 500 001** on the date and time mentioned above, with all connected documents and records, to represent your case in person and/ or through Counsel.
4. In case you fail to appear before the Additional Commissioner on the said date, it would be construed that you do not want be heard in person, the same would be taken into record and your case will be decided ex-parte basing on the merits and the material evidence available on record.

Yours faithfully,

Handwritten signature and date: 02/09/10

(P.SUDHAKAR REDDY)
Superintendent of Central Excise
Adjudication Section.

MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.
☎ : 66335551 (4 lines) Fax : 040-27544058

To,
The Additional. Commissioner,
Anti Aviation, Service Tax
Central Excise, Customs & Service Tax
Commissionerate II
Hyderabad.

Date: 13.09.2010

Respected Sir

Sub: Gentle follow up on our earlier letter – Reg
Ref: Our letter dated 16.08.2010.

The above referred letter was filed in your office and was duly acknowledge on 16.08.10. In that letter, we had communicated our understanding with respect to the liability of service tax under the category "Construction of Complex Service".

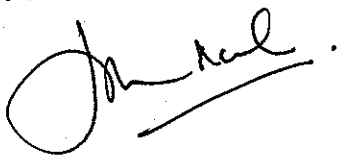
We request you to kindly confirm if our understanding therein is correct or otherwise so that appropriate decision can be taken at our end as to whether service tax has to be collected and paid.

Requesting to revert on this at the earliest as per convenience on this issue.

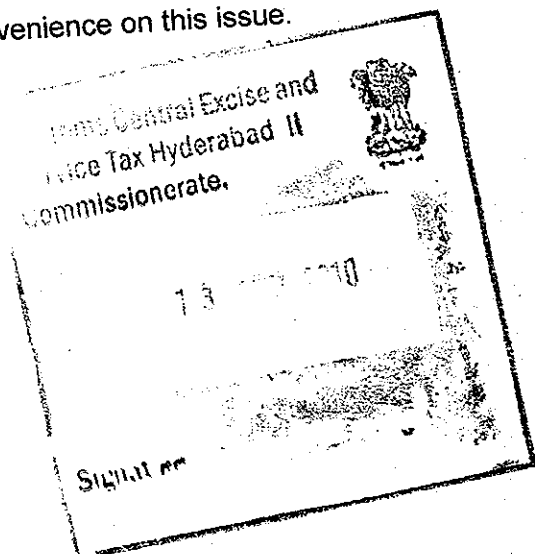
Thanking You.

Yours Truly

For MODI & MODI CONSTRUCTIONS,



Authorised Signatory.



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5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.
© : 66335551 (4 lines) Fax : 040-27544058

Date: 25.08.2010

To
The Additional Commissioner of Service Tax
Hyderabad II Commissionerate,
Basheerbagh,
Hyderabad.

Sir

Sub: Seeking Adjournment for the hearing relating to M/s. Modi & Modi
Constructions, Secunderabad in respect of SCN O.R. No. 34/2010 - Adjn. - ST dated
12.04.2010

We are in receipt of the personal hearing intimation in respect of the above which is posted
for hearing on 25.08.2010. As our legal counsel is not available on that date and since the
authorization in this respect is also to be issued by us, hence we request you to kindly
adjourn the hearing to any other date as is convenient to you.

We sincerely regret the inconvenience caused to you.

Thanking you.

Yours Truly

For Modi & Modi Constructions


Authorized Signatory

Customs Central Excise and
Service Tax Hyderabad II
Commissionerate.

ASW
25/8/10

25 AUG 2010

Signature



केन्द्रीय उत्पाद सीमा शुल्क एवं सेवा कर के आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE AND SERVICE TAX
हैदराबाद II आयुक्तालय 8 बशीरबाग, हैदराबाद
HYDERABAD II COMMISSIONERATE: BASHEERBAGH: HYDERABAD

Ph: 040- 23231486

Fax: 040- 23244310

आ.सं/O.R.No. 34/ 2010-Adjn.- ST

Date : 5.8.2010

To

M/s. Modi & Modi Constructions,
5-4-187/3&4, II Floor,
M.G. Road, Secunderabad - 3.

(By Speed Post)

Gentlemen,

Sub: Service Tax - M/s Modi & Modi Constructions - Non
payment of Service Tax - Intimation of Personal Hearing -
Reg.

Ref: Show cause notice O.R.No. 34/2010-Adjn. ST Dt:
12.4.2010 & your reply dt: 14.5.2010.

Please refer to the show cause notice.

2. I am directed by the Additional Commissioner of Service Tax, Hyderabad - II Commissionerate to inform you that the Personal Hearing in the above case has been fixed at **1130 hrs. on 25.8.2010.**
3. You are therefore requested to appear before the **Additional Commissioner at III Floor, Shakkar Bhavan, Fateh Maidan Road, Basheer Bagh, Hyderabad - 500 001** on the date and time mentioned above, with all connected documents and records, to represent your case in person and/ or through Counsel.
4. In case you fail to appear before the Additional Commissioner on the said date, it would be construed that you do not want be heard in person, the same would be taken into record and your case will be decided ex-parte basing on the merits and the material evidence available on record.

Yours faithfully,

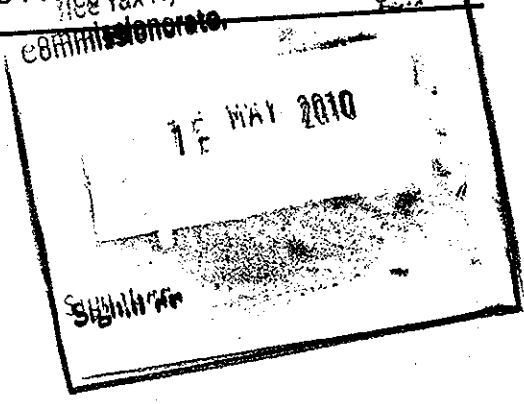
(V.V.S.PRASAD)

Superintendent of Central Excise
Adjudication Section.

Te

MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500005. and
☎ : 66335551 (4 lines) Fax : 040-27544058
Tax Hyderabad II
Commissionerate.



To,
The Additional Commissioner,
The office of the Commissioner of Central Excise,
Customs and Service Tax,
Hyderabad II Commissionerate,
3rd Floor, Shankar Bhavan,
L.B. Stadium, Basheerbagh,
Hyderabad - 500004.

Date: 14.05.2010

Sub.: Service tax – works contract services – non payment of service tax.
Ref: Show Cause Notice dated 12-4-2010 issued to Modi & Modi
Constructions vide C.R. No.34/2010 ST/HQST No. 5/09 -AEIV
received on 19.05.10

We are in receipt of your show cause notice calling upon us to make
payment of an amount of Rs. 6,04,187/- towards service tax for the period
from January, 2009 to December, 2009.

The show cause notice relates to amount collected by Modi & Modi
Constructions against agreements of construction during the period from
January, 2009 to December, 2009.

Service tax is proposed to be levied on agreements of construction under
Section 65(105) (zzza) of the Finance Act, 1994. Section 65 (105) (zzza)
defines a "taxable service" as meaning "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". There is an
explanation to the above section which defines a "works contract" as
meaning a contract wherein such contract is for the purposes of carrying
out construction of a new residential complex or a part thereof. Section
65(91a) of the Finance Act, 1994 defines a "residential complex" as
comprising of:

- "(i) a building or buildings having more than twelve residential units (ii)
a common area; and

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(iii) anyone or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within the premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person."

Therefore, according to the above definition, a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person is excluded. A circular was issued by the Central Board of Excise and Customs (Circular No. 108j2j2009-ST) clarifying the above exclusion. As per the circular, if the ultimate owner enters into a contract for construction of a residential complex with a promoter builder *j* developer, who himself provides service of design, planning and construction and after such construction, the ultimate owner receives the property for personal use, then such activity would not be subjected to service tax as this case would not fall under the exclusion provided in the definition of "residential complex".

The interpretation given to the above exclusion in the show cause notice that it would be attracted only if the builder *j* promoter *j* developer is constructing the entire complex for **one person** for personal use as a residence by such person is untenable in view of the clarification. provided in the circular. The exception reads as follows: "... but does not include a complex which is constructed by a **person** directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person." The above exception has been misconstrued by the Department in the show cause notice to read as "one person" instead of "a person". According to the exception and the clarification given in the circular, the said exception would be attracted if the ultimate owner enters into an agreement of construction with the builder/promoter/developer directly engaging the said builder/promoter/developer for designing or planning of the layout and if the construction of such complex is intended for the personal use of the ultimate owner.

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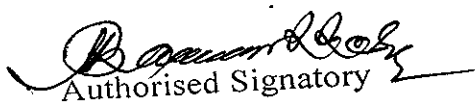
Moreover, it is clear from the contents of para 1 that the object of Circular No.108 is to provide a clarification with respect to applicability of service tax in a case where the builder/developer/promoter enters into an agreement with the ultimate owner for selling a dwelling unit in a residential complex at any stage of construction.

The agreements of construction entered into by Modi & Modi Constructions would fall within the exception to the definition of a "residential complex" under Section 65(91a) where the ultimate owner of the property enters into an agreement of construction with the builder (Modi & Modi Constructions) for designing and planning of the layout and construction of the same for his personal use.

Therefore, Modi & Modi Constructions is not liable for payment of service tax on the agreements of construction that it had entered into with its customers during the period January, 2009 to December, 2009. In view of the same, you are requested to kindly withdraw the show cause notice dated 12-4-2010 proposing to levy tax of Rs.6,04,187/- for the period from January, 2009 to December, 2009.

Thanking you,

Yours sincerely,
Modi & Modi Constructions,


Authorised Signatory



केन्द्रीय उत्पाद सीमा शुल्क एवं सेवा कर के आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE AND SERVICE TAX
हैदराबाद II आयुक्तालय 8 बशीरबाग, हैदराबाद
HYDERABAD II COMMISSIONERATE: BASHEERBAGH: HYDERABAD
Ph: 040- 23231486 Fax: 040- 23244310

आ.सं/O.R.No. 34/ 2010-Adjn.- ST

Date : 5.8.2010

To
M/s. Modi & Modi Constructions,
5-4-187/3&4, II Floor,
M.G. Road, Secunderabad - 3.

(By Speed Post)

Gentlemen,

Sub: Service Tax - M/s Modi & Modi Constructions - Non
payment of Service Tax - Intimation of Personal Hearing -
Reg.

Ref: Show cause notice O.R.No. 34/2010-Adjn. ST Dt:
12.4.2010 & your reply dt: 14.5.2010.

Please refer to the show cause notice.

2. I am directed by the Additional Commissioner of Service Tax, Hyderabad - II Commissionerate to inform you that the Personal Hearing in the above case has been fixed at **1130 hrs. on 25.8.2010.**
3. You are therefore requested to appear before the **Additional Commissioner at III Floor, Shakkar Bhavan, Fateh Maidan Road, Basheer Bagh, Hyderabad - 500 001** on the date and time mentioned above, with all connected documents and records, to represent your case in person and/ or through Counsel.
4. In case you fail to appear before the Additional Commissioner on the said date, it would be construed that you do not want be heard in person, the same would be taken into record and your case will be decided ex-parte basing on the merits and the material evidence available on record.

Yours faithfully,

(V.V.S.PRASAD)

Superintendent of Central Excise
Adjudication Section.

MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.
☎ : 66335551 (4 lines) Fax : 040-27544058

To,
The Additional Commissioner,
Group III, Hyderabad – II Commissionerate,
L.B. Stadium Road,
Basheerbagh,
Hyderabad – 500004.

Date: 16.08.2010.

Dear Sir,

Sub.: Intimation regarding payment of service tax from 01.07.2010.
Ref.: STC No. AAKFM7214NST001.

1. With reference to above, we would like to inform that we are Builders/Developers of Residential Villas (independent houses in a gated community). We wish to recall our letter no. Nil dated 12.03.009 wherein, we had informed that we would not be liable for service tax and accordingly we had stopped remitting the payment of service tax also.
2. The reason for termination of payment of service was as under
 - a. Single Agreement: since the transaction involved is sale of immovable property (stamp duty has been suffered) service tax would not be payable in view of the Gauhati High Court in case of Magus Construction (P) Ltd., (2008 (11) S.T.R. 225 (Ga.)) and circular no. 108/02/2009-ST dated 29.0.2009.
 - b. Sale deed & construction agreement: For the consideration relating to Sale Deed (transfer of vacant land), the stand same as mentioned for single agreement would be applied. In case of construction, since the construction is for the customer for his personal use, the same has been excluded in the definition of the Residential Complex, which was also clarified vide Circular no. 108/02/2009-ST dated 29.01.2009.
 - c. Chennai Tribunal in case of Macro Marvel has held that independent houses in a gated community would not be liable for service tax.
 - d. Customer was not reimbursing the service tax, since the same was not liable based on the above view.
3. Now we understand that, recently there are amendments vide the Finance Act, 2010 r/w recent circulars and notifications issued in this regard. The essence of the amendment is that if we receive any amount/advance prior to taking completion certificate, then we would be liable for service tax under "Construction of Residential Complex Service", whereas if the entire consideration is received post obtaining completion certificate, then the same would be totally excluded from the service tax.

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4. We understand that such explanation inserted is not constitutionally valid for the reason that this intends to tax transfer of immovable property by apply the Doctrine of Pith and substance. Transfer of immovable property has been governed by List II of the seventy Schedule to Indian Constitution, which is exclusively state subject and union cannot levy tax on the same. Interim stay by the Bombay High Court has also been granted in this regard,
5. Further we understand, since the taxable object in the instant case is "Residential Complex", which excludes personal use of the customer. Therefore insertion of this explanation in the taxable service definition does not dilute our view taken in our earlier letter. Further to illustrate this with an example in construction of a single independent house and advance is take prior to completion certificate would not be liable for service tax even w.e.f. 01.07.2010. similarly the personal use complex would also be not liable for service tax.
6. However if we intend not litigating on the above ground, we understand that such amendment is prospective and applicable only from 01.07.2010 for the reasons mentioned below.
 - a. Since there is no specific retrospective provision in Finance Act 2010 as provided for the explanation inserted for "Commercial Coaching & training Center Service".
 - b. The explanation was inserted to enhance the ~~scope~~ ^{scope} of the existing service and hence the same can be only prospectively and ~~not~~ ^{not} retrospectively. This view is also supported by a recent decision of Supreme Court in case of union of India v. Martin Lottery Agencies Ltd. (2009) 20 STT 203(SC).
 - c. Circular F.No.334/03/2010-TRU dated 01.07.2010 clarifies that this service came into effect only after 01.07.2010 and further the receipts received prior to such date was not liable for service tax as the same was specifically exempted.
7. Hence the transactions and receipts prior to 01.07.2010 are not liable to service tax at all. In the instant case the taxable event is "Construction of Complex" and for such construction of complete if the consideration has been received in advance/installments before the completion certificate then the same us deemed to be taxable service. Therefore the construction (taxable event) performed prior to 01.07.2010 would not be taxable.
8. Based on the above explanation, we have approached our customer, whether they are willing to reimburse service tax. Most f the customers expressed their willingness to pay service tax if at all they are liable from 01.07.2010at 2.575% for the amounts payable by them after this date.

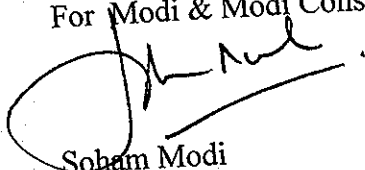
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9. Hence we would be paying only in respect of amounts received after 01.07.2010. we would be paying service tax at the rate of 2.575% (i.e., on 25% of value @ 10.3%). We understand this exemption would not be eligible subject to following condition
- Not availing the CENVAT credit
 - Not availing exemption under notification 12/2003-ST as amended.
 - Not only completion and finishing services in relation to residential complex.
 - Value of goods and materials supplied or provided or used for providing the taxable service by the service provider should be included in the value.
 - Cost of land has not been separately recovered from the buyer by the builder or his representative.
10. In our case we have satisfied all the condition above and hence we would be paying service on the amount received after 01.07.2010.
11. We had earlier classified ourself under works contract service as per the advice of the Additional Commissioner under works contract service upto Dec 2008 later the payment was stopped in view of exclusion for personal use. Now our customer are willing to pay service tax at 2.575% levied under 'Residential Complex Service' hence we intend to pay the same accordingly as long as the same is reimbursed by the customer.
12. We hope all our understanding is corrected and we would be glad to provide you with any further information that may be required in this regard. We request you to kindly confirm the same so that we can start collecting and making the payment of service tax.

Kindly acknowledge the receipt of the same.

Thank You,
Yours Faithfully,
For Modi & Modi Constructions,


Soham Modi
Managing Partner

CC to AC/DC, Asst. Commissioner (A.E)

Received 2 Copies
Addl. Commr. &
Asst. Commr.
Copies.
- 3 -

Customs Central Excise and
Service Tax Hyderabad II
Commissionerate.

16/0
17/8/10 17 AUG 2010

Signature

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MODI & MODI CONSTRUCTIONS 9/c

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.

☎ : 66335551 (4 lines) Fax : 040-27544058

To,
The Asst. Commissioner,
Service Tax: Anti Evasion,
O/o. Commissioner of Central Excise and Service Tax,
Hyderabad II Commissionerate,
Hyderabad.

Date: 18.11.2009

Dear Sir / Madam,

Sub.: Request for time for providing required information

Ref.: 1. Your notice bearing no. WCS/123 dated 2.1.09

2. Our letter dated 13.03.2009

3. Notice for furnishing of records by the department, letter no. HQST No. 15/2009 ST
AE dated 27.1.09.

5. Our letter dated 8.07.2009.

5. Notice for furnishing of records by the department, letter no. HQST No. 59/2009 AEIV
dated 6.11.09.

We have received your notice on 7.11.09. You have requested for details like service tax paid challans, ST3 return copies, bank statements, balance sheet, etc., for the period 2005 to 2009. Please note that you have requested for the same details for the period 2005 to 31.12.2008 vide reference 5 above. These details were furnished to the department over several visits. The same has also been stated in our letter dated 12.3.09 (reference 4).

Vide our letters addressed to the service tax department (Reference 2 & 4) we have clearly and in detail given reasons for non-applicability of service tax to our business in lieu of circular no. 108/2/2009 - ST dated 21.1.09. We have also requested for withdrawal of service tax registration.

Till date the department has not replied to our detailed representation or issued any show cause notice. Instead you have requested for details, most of which have been given to you on an earlier date.

As the information requested by you in reference 1 above is voluminous, we request you to grant us 15 days time to provide the information.

We further request you to please reply to our detailed representations regarding non-applicability of service tax to our operations. Infact, on an earlier date in our meeting with Mrs. Manjula, Deputy Commissioner of Service Tax, she had assured us that builders will not be pressurized to pay service tax until clarification on circular no. 108/2/2009 is received from CBEC. She had promised to write to CBEC seeking clarification in the matter. We have not heard from her or the department since then.

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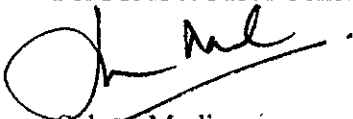
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☎ : 66335551 (4 lines) Fax : 040-27544058

We have been regularly paying service tax to the department until the said circular was issued. Because of the circular and its ambiguous wording, our customers have refused to pay service tax. In light of the above, we request you to not to take any coercive action for payment of service without issuing a show cause notice as provided in law and giving us an opportunity for a hearing in the said matter.

Thank You.

Yours sincerely,
For Modi & Modi Constructions,


Soham Modi.

GUANO



48
Ramesh Ram
6/11/09

Phone : 23231481
23230196

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX
HYDERABAD II COMMISSIONERATE
3RD FLOOR (Annexe) :: SHAKKAR BHAWAN
L.B. STADIUM ROAD :: BASHEERBAGH :: HYDERABAD - 500 004

HQST No: 59/09 AE IV

Date: 6 .11. 2009

To
M/s Modi & Modi Constructions,
5-4-187/3&4, 2nd floor,
Soham Mansion,
M.G.Road,
Secunderabad 500 003

Sir,

Sub:- Service tax – Request for furnishing certain information reg.

Please refer to this office letter HQST No. 15/2009 ST AE, dated 27.01.2009, on the above subject.

2. Information as called for in the above cited letter is still pending receipt from your office. You are therefore once again requested to furnish the following information immediately.

- 1) Balance sheets for the years 2004-05 to 2008-09 and trial balance for the period From 4/09 to 9/09.
- 2) Bank statements for the preceeding five years from 2004-05 to 2008-09.
- 3) Project wise details of income of sale deeds and agreements received.
- 4) Copies of the sale deeds and agreements entered with the purchasers for the above period and respective deposits.
- 5) ST3 returns and paid challan copies for the above period.

The above information is called for by virtue of the powers conferred under section 14 of the Central Excise Act, 1944 as made applicable to the Service Tax matters in terms of Section 33 of the finance Act, 1994.

Please treat this as most urgent.

Yours faithfully

(R.L.RAMESH RAM)
Assistant Commissioner(S.T.AE)

49

MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.

☎ : 66335551 (4 lines) Fax : 040-27544058

Date: 02.07.2009.

To,
The Superintendent of Service Tax
Hyderabad -II Commissionerate
L. B. Stadium Road, Basheerbagh
Hyderabad - 500 004

Dear Sir,

Sub: Non-filing of ST-3 returns for the half year ended 31.03.3009

Ref: Our STC No. AAKFM7214NST001.

1. We acknowledge the receipt of the above referred letter on 06.06.2009. We had earlier corresponded with Asst Com of Service Tax (AE) as to non-applicability of service tax liability for our operation.
2. With this regard, we again wish to clarify the above with the brief background of our company for your better appreciation. We are engaged in development of residential projects. The present project is with respect to development and selling of the residential flats. The transaction with the customer shall be as under
 - a. The customer interested in buying the property approaches us.
 - b. We sell the undivided portion of land along with the semi-constructed flat on which applicable stamp duty shall be paid by the purchaser.
 - c. We also enter into the construction/completion agreement with each of such customer for the construction/finishing of the flat.
 - d. The total consideration shall be received in installments, which is generally spread across the period i.e. right from the customer approach and completion of construction.
3. We have paid service tax on the said projects under "construction of complex service"/ "Works Contract Service" upto December 2008. However we have not made any remittance of tax for the month of January 2009 onwards in view of view the circular 108/2/2009-ST dated 29.01.2009 and the decided case given in the subsequent points.

8/17/09

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MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.
☎ : 66335551 (4 lines) Fax : 040-27544058

4. The consideration received for the first part of the transaction is not taxable for the reason
 - a. The transaction is in the nature of sale of immovable property therefore the same is not liable for service tax.
 - b. The construction undertaken is for oneself and there is no distinct service receiver and provider.

5. The above view is as per the Gauhati High Court in case of Magus Construction (P) Ltd., [2008 (11) S.T.R. 225 (Gau.)] and circular no. 108/02/2009-ST dated 29.01.2009.

6. The second part of the consideration is not taxable in view of the recent clarification given vide circular no.108/02/2009-ST dated 29.01.2009 clarifies that if the ultimate owner enters into a contract for construction of a residential complex with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax.

7. Instantly in our case, we execute construction for the owner of the semi-constructed flat, where the construction, service of designing and planning is done by our self. On completion of the said construction such owner receives for his/her personal use. Therefore the said circular exactly applies in our case and therefore we are not liable for payment of service tax.

8. Since the personal use exclusion is given in the definition on residential complex definition, there shall be no levy either under Construction of Complex service or under works contract service.

9. Therefore the service provided by us is not covered in the definition of the residential complex given under section 65(91a) of the Finance Act and accordingly no service tax is payable either under construction of complex service or under works contract service. Therefore the entire amount remitted by us has to consider as a deposit and not tax and accordingly we are eligible for refund of the same.

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10. Further we also wish to clarify that this circular does not states that exclusion is only when the entire complex is being put to use by a single person. Any such notion may not be in line with clarification provided in the circular. This clarification is provided with an intention of construction of residential units only, therefore the same is applicable although the same is put to use by multiple service receiver.

11. In view of the above we have stopped paying service tax with effect from January 2009. Since the service provided by us in not liable for service tax no returns is required to be filed as clarified in the Board Circular no. 97/08/2007 dated 23.08.2007 in Para 6.1.

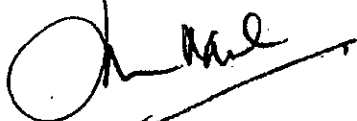
12. However since some amount has been paid in this regard till December 2008, we are submitting the returns herewith duly filled along with the late filing fee of Rs. 2000/- as prescribed.

We hope our understanding is clear and correct. We would like to request your good self to drop initiating any further proceedings in this regard.

We shall be glad to provide any further information or explanation in this regard. Kindly acknowledge the receipt of the following

Thanking You
Yours truly,

For Modi & Modi Constructions,



Managing Partner

Encl

1. Copy of Circular No.108/02/2009-ST dated 29.01.2009
2. ST- 3 returns
3. Copy of counterfoil of the payment challan.

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MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.
© : 66335551 (4 lines) Fax : 040-27544058

To,
The Asst Commissioner,
Service Tax: Anti Evasion,
Office of The Commissioner of Customs,
Central Excise & Service Tax,
Hyderabad II Commissionerate,
Hyderabad , A.P.

Date: 12.03.2009

- Ref.: 1. Your summon dated 27.1.09 bearing no. HQST No. 15/2009ST AE.
2. Circular No. 108/02/2009 issued by the Central Board of Excise and Customs dated 29.01.2009.
3. Clarification issued by The Joint Commissioner, Service Tax on 23.07.2008

Dear Sir,

Mr. Shankar Reddy – Admin Manager has produced the relevant documents requested by you in reference 1 from time to time, as per your request, over the last several weeks. Mr. Shankar Reddy has also explained in detail the method adopted for computing service tax. In any case, please find enclosed the copy of challans showing proof of payment of service tax along with copies of ST3 returns filed for the period 1.06.2006 to 31.12.08. Please write to us if any further clarification are required

You are aware that there is a great deal of uncertainty regarding the applicability and method of computation for payment of service tax by builders. We have paid service tax on advances received from purchasers as per our understanding of applicability of service tax, after regular consultation with our counsel and also in consultation with the Excise Department. The Excise Department had issued clarification regarding applicability of service tax (Reference 3 above) and we have been following the same. Upto date service tax payments have been made upto 31.12.08.

Vide circular given in reference 2, The Central Board of Excise and Customs has clarified that the builders, promoters and developers are not liable for payment of service tax under the circumstances mentioned in the said circular. We are developing flats/independent houses by providing our own design, planning and construction and the prospective purchaser is purchasing units in our projects by way of an agreement of sale. Therefore, as per circular given in reference 2, we are not liable for payment of service tax.

Under the circumstances we request you to please drop any proceedings as mentioned in your summons (Reference 1). Further, we wish to withdraw our service tax registration. We request you to please do the needful. We are willing to provide any further details or documents that you may require.

Thank You.

Yours sincerely,
For MODI & MODI CONSTRUCTIONS,


Soham Modi.

Office of the
Commissioner of Customs
Central Excise & Service Tax

12/3/09

Hyd - II, Commissionerate
HYDERABAD.



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19
27/1/09

Ph: 040- 2323 1481

OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE &
SERVICE TAX ::HYDERABAD II COMMISSIONERATE:: SHAKAR BHAVAN
L.B.STADIUM ROAD:: BASHEERBAGH:: HYDERABAD-500 004.

SUMMONS

(Under Section 14 of the Central Excise Act.1944 made applicable to Service Tax
under Section 83 of Finance Act, 1994)

HQST NO.15/2009 ST AE

Date: 27.01.2009.

To

M/s. Modi & Modi Constructions,
5-4-183/3 & 4,
Soham Mansion,
MG Road,
Secunderabad.

Whereas an investigation against you about non-payment/evasion of Service Tax/contravention of the provisions of Finance Act, 1994 and Rules made there under is being inquired by me /under my orders.

And whereas I have reasons to believe that you are in possession of facts or/and documents and things which are relevant to the above inquiry.

You are hereby summoned under Section 14 of the Central Excise Act., 1944 made applicable to Service Tax matters under Section 83 of the Finance Act, 1994 to appear before me in person on the **9th day of February, 2009 at 11.45 Hrs** in my office situated at III Floor, Shakkar Bhavan in the office of the Commissioner of Customs and Central Excise, L.B. Stadium Road, Basheerbagh, Hyderabad -500 004 to give evidence truthfully on such matters concerning the enquiry as you may be asked and to produce the documents and things mentioned in the schedule below:

If you fail to comply with this summons and intentionally avoid to attend or to give evidence and to produce the documents and things, without a lawful excuse, you will be liable to be punished under the provisions of section 174 & 175 of the Indian Penal Code. **Penal provisions are applicable under Section 77 of the Finance Act, 1994 to delay in submission of documents/information within stipulated date/time specified above.**

SCHEDULE

1. Details of works carried out / amounts received towards rendering taxable services for the period from 16.06.2005 to 31.12.2008.
2. Details of Bank statements for the relevant period.
3. Balance Sheets for the years 2005-06, 2006-07 & 2007-08.
4. Details of service Tax payments, if any, made for the relevant period.
5. Copies of GAR Challans and ST-3 returns filed, if any, for the relevant period.

Given under my hand and seal of office today the, 27th day of January, 2009.



(R.L.RAMESH RAM)
Assistant Commissioner
Service Tax ::Anti Evasion

NOTE: Under clause 3 of Sec 14 of Central Excise Act, 1944, the above inquiry is deemed to be 'Judicial proceedings' within the meaning of Sec193 and Sec 228 of Indian Penal Code, 1860 according to which giving intentional false statement in any stage of proceedings punishable under Sec193 and intentional insult or interruption to public servant sitting in any stage of proceedings punishable under Sec 228.



OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE AND
SERVICE TAX : HYDERABAD II COMMISSIONERATE
3rd FLOOR : SHAKAR BHAVAN : BASHEERBAGH : HYDERABAD – 500 004
PHONE NO 23231172

CNo: WCS / 123

BY SPEED POST

Dated:02-01-2009

To
M/s
MODI AND MODI CONSTRUCTIONS,
5-4-187/3 & 4, SOHAM MANSION,
M.G.ROAD, SECUNDRABAD HO,
Hyderabad 500003

Gentlemen,

Sub:-Service Tax-Payment of Service Tax and filling of Service Tax
Returns under Section 70 of the Finance Act,1994 - Reg.

Ref: Your registration No: AAKFM7214NST001

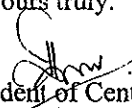
With reference to the above, you are requested to furnish the returns in form ST-3 to be filed on half yearly basis. The half yearly return for April to September has to be filed on or before 25th October and second half year return for October to March has to be filed on or before 25th April.

Therefore you are requested to file the return upto the period ending 30-9-2008 along with original copies of TR6 Challans. **Hence, please take note that the said returns along with late fee of Rs.2000/-for each non filed return** and the same may be filed within seven days from the receipt of this letter failing which action will be initiated as per law.

Delay in depositing tax attracts interest @ 13% per annum. In addition, it, also attracts a penalty per day of delay or 2% per month of the Tax liability, which ever is higher. This penalty could be upto the amount of Service Tax payable.

This letter is issued without prejudice to any other action that may be initiated against you under the Finance Act,1994 and the rules made her under or any other law for the time being force in India.

Yours truly,


Superintendent of Central Excise
Service Tax, Group-X

**IN THE HON'BLE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH AT HYDERABAD
WRIT PETITION NO : 26007 OF 2009**

BETWEEN:

M/s. **Modi & Modi Constructions**,
Registered Office, 5-4-187/3, & 4,
II Floor, MG Road,
SECUNDERABAD.
Rep. by Managing Partner, Mr. Soham Modi,
S/o. Satish Modi, Aged 39 years,
R/o. Plot No. 280, Jubilee Hills,
Hyderabad

. . . **Petitioner**

And

1. The Union of India,
Rep by its Secretary, Ministry of Finance,
Department of Revenue,
Government of India,
New Delhi.
2. The Commissioner of Customs, C.Ex &
Service Tax, Hyderabad-II Commissionerate,
3rd Floor, Shakkar Bhavan, L.B. Stadium Road,
Basheerbagh, Hyderabad-500 004.
3. The Superintendent of Service Tax,
Service Tax, Hyd-II Commissionerate,
L.B. Stadium Road,
Basheerbagh, Hyderabad-500 004.

. . . **Respondents**

COUNTER AFFIDAVIT FILED ON BEHALF OF RESPONDENTS

I, Ajit Indurkar, S/o Late. Sri I. Gopal Rao, aged about 58 years,
resident of Hyderabad, do hereby solemnly and sincerely affirm
and state as follows:

2. I am the Assistant Commissioner in the Office of the
Commissioner of Customs, Central Excise and Service Tax,
Hyderabad-II Commissionerate, Hyderabad and as such I am

K. J. Jaganmouli
21/3/10
ATTESTOR

Superintendent (Legal)
Customs & Central Excise
Hyderabad-II Commissionerate
HYDERABAD 500 004

Ajit Indurkar
21.3.2010
DEPONENT

AJIT INDURKAR
Asst. Commissioner (ST-III)
Customs & Central Excise
Hyd - II Commissionerate
HYDERABAD

well acquainted with the facts of the case as borne out of records. I am authorised to file this affidavit on behalf of the respondents.

3. I have read the affidavit filed in support of the writ petition and I submit that it contains many incorrect allegations and such of the allegations, which are not specifically admitted hereunder, are here by denied.
4. In reply to Para's 1 to 6 of the affidavit, it is submitted that it contains basic facts and rule position, hence no comments.
5. In reply to Para 7 of the affidavit, it is submitted that as per Sec 65(105) (zzzh) of the Service Tax Act "taxable service" means any service provided or to be provided -to any person, by any other person, in relation to construction of complex.

As per Sec 65 (30a) of the Service Tax Act "construction of complex" means - construction of a new residential complex or a (a) part thereof; or completion and finishing services, in relation (b) to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or repair, alteration, renovation or restoration (c) of, or similar services in relation to, residential complex;

As per Sec 65(91a) of the Service Tax Act "residential complex" means any complex comprising of— (i) a building or buildings, having more than twelve residential units;

(ii) a common area; and

(iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

L. J. Sankar Reddy
31/3/10
ATTESTOR

Superintendent (Legal)
Customs & Central Excise
Hyderabad - II Commissionerate
500 002

Ajit Indurkar
31/3
DEPONENT
AJIT INDURKAR
Asst. Commissioner (ST-III)
Customs & Central Excise
Hyd - II Commissionerate
HYDERABAD.

Explanation. - For the removal of doubts, it/s hereby declared that for the purposes of this clause, -

(a) "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;

(b) "residential unit" means a single house or a single apartment intended for use as a place of residence;

As per para 3 of the Circular No. 108/02/2009-ST, dated 29th January 2009, the matter has been examined by the Board. Generally, the initial agreement between the promoters / builders / developers and the ultimate owner is in the nature of 'agreement to sell'. Such a case, as per the provisions of the Transfer of Property Act, does not by itself create any interest in or charge on such property. The property remains under the ownership of the seller (in the instant case, the promoters/builders/developers). It is only after the completion of the construction and full payment of the agreed sum that a sale deed is executed and only then the ownership of the property gets transferred to the ultimate owner. Therefore, any service provided by such seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of 'self-service' and consequently would not attract service tax. Further, if the ultimate owner enters into a contract for construction of a residential complex with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because this case would fall under the exclusion provided in the definition of residential complex'. However, in both these situations, if services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax.

As per the exclusion provided in Sec 65(91a) of the Service Tax Act, the residential complex does not include a complex which is constructed by a person directly engaging any

L. Jayakumar
ATTESTOR

Superintendent (Legal)
Customs & Central Excise
Hyderabad-II Commissionerate
HYDERABAD - 500 004.

Ajit Indurkar
DEPONENT
AJIT INDURKAR
Asst. Commissioner (ST-III)
Customs & Central Excise
Hyd - II Commissionerate
HYDERABAD.

other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person. Here, personal use" includes permitting the complex for use as residence by another person on rent or without consideration.

It is further clarified in para 3 of the Circular No. 108/02/2009-ST dated 29th January 2009 if the ultimate owner enters into a contract for construction of a residential complex with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity is not liable to service tax.

Therefore, as per the exclusion clause and the clarification mentioned above, if a builder/promoter/developer constructing entire complex for one person for personal use as residence by such person would not be subjected to service tax.

For example, construction of residential quarters by the Income tax department for their employees by employing a contractor for design, planning and construction is not leviable to service tax because it is for the personal use of the Income tax department.

Normally, a builder/promoter/developer constructs residential complex consisting number of residential units and sells those units to different customers. So, in such cases the construction of complex is not meant for one individual entity. Therefore, as the whole complex is not constructed for single person the exclusion provided in Sec 65(91a) of the Service Tax Act doesn't apply.

Further, the builder/promoter/developer normally enters into construction / completion agreements after execution of sale deed. Till the execution of sale deed the property remains in the name of the builder/promoter/developer and services rendered thereto are self services. Moreover, stamp duty will be paid on the value consideration shown in the sale deed. Therefore there is no levy of Service Tax on the services rendered till sale deed i.e., on the value consideration shown in the sale deed. But, no stamp

A. S. Sankar Reddy
3/13/10
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Superintendent (Legal)
Customs & Central Excise
Hyderabad-II Commissionerate

Ajit Indurkar
2/13
DEPARTMENT
AJIT INDURKAR
Asst. Commissioner (ST-III)
Customs & Central Excise
Hyd - II Commissionerate
HYDERABAD.

duty will be paid on the agreements / contracts against which they render services to the customer after execution of sale deeds. There exists the service provider and service recipient relationship between the builder/promoter/developer and the customer. Therefore, such services invariably attract service tax. In the petition, the petitioner has intentionally replaced residential complex with residential house in the following line.


"In respect of such complexes, if construction is undertaken by engaging another person for designing or planning of the layout, then construction of the residential house intended for personal use is exempt from the purview of definition of residential complex, and consequently the charging section in Section 65(105)(zzzh) of the Act is inapplicable".


According to the department, if the whole residential complex (i.e., more than 12 units) is intended for the personal use of a person then it falls under the exclusion clause of the definition. However, the petitioner has twisted the fact and gave the meaning as residential house is exempted which is a categorical mis-statement and misguidance of Hon'ble High Court.

6. In reply to Para's 8 to 13 of the affidavit, it is submitted that it contains basic facts and rule position, hence no comments.

7. In reply to Para 14 of the affidavit, it is submitted that the petitioner has misinterpreted the provisions of Law and the clarifications of the Board, the petitioner has tried to drive to the conclusion that all the builders/Promoters/ developers are not liable for Service Tax irrespective of the services they render.

But, it is the fact that the service they render is the criteria to decide whether they are exempted or not. By mentioning the "ultimate owner" in the circular, it has been clarified that the services till execution of sale deed for the sale of land or land along with flat/residential unit i.e., till the ultimate owner becomes the owner, though there are agreements for construction with the ultimate owner prior to the sale of such constructed flat/residential unit, would not be subjected to service


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Hyderabad-II, Commissionerate
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DEPONENT
AJIT INDURKAR
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Customs & Central Excise
Hyd - II Commissionerate
HYDERABAD.

tax. Further, from the definition of Residential Complex, the construction of a complex by a person for his personal use as residence, by engaging any other person for designing or planning of the layout was excluded. Therefore, the services for construction rendered after the sale of land/flat/residential unit to the owner of the land are taxable services. There exists service provider and recipient relationship between the builder/promoter/ developer/ contractor and the owner of the land / semi finished flat/ residential unit who purchased the same under sale deed and thereafter receives services by entering into a contract / agreement with the builder/promoter/developer/contractor for construction of a residential complex or part thereof, or completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to construction a residential complex or part thereof, as the case may be.

The department has only requested to submit the record and documents of the petitioner to issue show cause notice to follow the principles of natural justice. As seen from the communication between the department and the petitioner, which is filed as Annexure P-3 of the writ petition, the petitioner has not produced the record in spite of several requests made by the department time and again. It shows non-cooperation and disinterest of the petitioner for giving information for issuance of show cause notice.

8. In reply to Para 15 of the affidavit, it is submitted that as per Service Tax provisions and the Circular No. 108/02/2009 – ST dated 29th January 2009, the services of construction of Residential Complex (as per definition) and part thereof, rendered after the sale of land/flat/residential unit to the owner of the land/flat/residential are taxable services. The customers of the petitioner may not understand the provisions of taxation as they are laymen. But, it is bounden duty of the petitioner to explain, and convince them about the taxability and collect the tax. In the indirect taxation, the petitioner cannot take escape from the

S. Tejendra
 ATTESTOR
 Superintendent (Legal)
 Customs & Central Excise
 Hyderabad-II Commissionerate
 HYDERABAD - 500 004.

A. N. Indurkar
 DEPONENT
 Asst. Commissioner (ST-III)
 Customs & Central Excise
 Hyd - II Commissionerate
 HYDERABAD.

payment of tax on this ground, as per the provisions the amounts received by them would be construed as inclusive of the tax.

9. In reply to Para 16 of the affidavit, it is submitted that it is a fact that the circulars are binding on the department. The stand taken by the department is in tune with the circular referred above which infers that the services for construction rendered after the sale of land/flat/residential unit to the owner of the land/flat/residential unit are taxable services. Further, the whole complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person, is exempted.

10. In reply to Para 17 of the affidavit, it is submitted that the action taken by the Department is as per the statutory provisions of the Act, Rules and the circulars. Therefore, questioning the jurisdiction of the department by the petitioner is totally baseless.

11. In reply to Para 18 of the affidavit, it is submitted that it is to submit that when the service provider differs with the department and not paid the tax, the department with the details obtained from the assessee gives a Show Cause Notice following the principles of natural justice to give him an opportunity to make his submissions before the adjudicating authority. Thereafter, the petitioner has got opportunity to be heard before various appellate forums defending his contention or arguments. In this case, the petitioner without exhausting the procedures under the ambit of law directly approached the High Court to hinder the department. Hence, this petition is premature and the same may be disallowed on this ground itself. Moreover, issuance of the Show Cause notices are meant to protect revenue and they are time bound. Any interference in the matter may cause revenue loss.

L. J. Srinivasan
3/13/16
ATTESTOR

Superintendent (Legal)
Customs & Central Excise
Hyderabad-II. Commissionerate

Ajit Indurkar
3/13/16

DEPONENT
AJIT INDURKAR
Asst. Commissioner (ST-III)
Customs & Central Excise
Hyd - II Commissionerate

In view of above facts and circumstances the Hon'able court may be pleased to dismiss the writ petition as devoid of merits.

Solemnly affirmed at Hyderabad on the thirty first day of March, 2010 and signed his name in my presence.

A. Jayaram Reddy
31/3/10
ATTESTOR
Superintendent (Legal)
Customs & Central Excise
Hyderabad-II Commissionerate
HYDERABAD - 500 004.

VERIFICATION

I, Ajit Indurkar, the deponent do hereby declare that what is stated above is true to the best of my information and knowledge.

Verified today the 31st day of March, 2010.

Ajit Indurkar
31.3.2010
(AJIT INDURKAR)
DEPONENT
AJIT INDURKAR
Asst. Commissioner (ST-III)
Customs & Central Excise
Hyd - II Commissionerate
HYDERABAD.

A. Jayaram Reddy
31/3/10
ATTESTOR
Superintendent (Legal)
Customs & Central Excise
Hyderabad-II Commissionerate
HYDERABAD - 500 004.

Ajit Indurkar
31.3.2010
(AJIT INDURKAR)

DEPONENT
AJIT INDURKAR
Asst. Commissioner (ST-III)
Customs & Central Excise
Hyd - II Commissionerate
HYDERABAD.

ATTESTOR

DEPONENT

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD
(SPECIAL ORIGINAL JURISDICTION)

W.P.NO. 28007 OF 2009

BETWEEN:

M/s. Modi & Modi Constructions,
Having its registered office
5-4-187/3 & 4, II Floor, MG Road,
Secunderabad
Rep.by its Managing Partner,
Mr. Soham Modi,
S/o. Satish Modi, Aged 39 years,
R/o. Plot No. 280, Road No. 25,
Jubilee Hills, Hyderabad.

...PETITIONER

AND

1. Union of India,
Represented by its
Secretary,
Ministry of Finance,
Government of India,
New Delhi
2. Commissioner of Central Excise,
Customs and Service Tax,
Hyderabad II Commissionerate,
3rd Floor, Shakkar Bhawan,
LB Stadium Road,
Basheerbagh,
Hyderabad
3. Superintendent of Service Tax,
Hyderabad-II Commissionerate,
LB Stadium Road,
Basheerbagh, Hyderabad

...RESPONDENTS

AFFIDAVIT

I, Soham Modi, S/o. Shri Satish Modi, aged about 39 years, Resident of Hyderabad, do hereby solemnly affirm and sincerely state as follows:-

1. I am the Managing Partner of the Petitioner Company herein and as such I am well acquainted with the facts of the case and swear to the contents of this affidavit.
2. The Petitioner is engaged in the business of promoting, developing and constructing residential complexes. The Petitioner identifies plots of land suitable for development

into residential complexes and makes an outright purchase or enters into a development agreement with the owners of the land. The Petitioner employs contractors / sub contractors as also its own labour after having conceived construction of the residential complex. The architects are employed by the Petitioner, designs are prepared, approval and permission of GHMC, HUDA or other local authorities for the purposes of construction is taken by the Petitioner. The residential flats so constructed are marketed by the Petitioner.

3. The Petitioner eventually transfers the residential units or apartments to the intending buyers. Depending upon the stage at which the prospective buyer contracts with the Petitioner, the consummation of transaction could take one of the several forms. In the case of construction of residential bungalows, the Petitioner sells the land or causes the sale of the land in favour of the prospective buyer. In case of residential complexes, the Petitioner executes a sale deed with respect to undivided interest in the land with a partially constructed structure. In either event, the Petitioner enters into an agreement for construction of the residential complex and completing the construction of residential apartment in favour of the prospective buyer. A few typical documents executed by the Petitioner with its clients are marked collectively as **Annexure P-1** hereto.

4. The Union of India levies service tax on several services under the provisions of Finance Act, 1994 as amended from time to time. In so far as the construction activity is concerned, Section 65 (105) (zzzh) authorizes the levy of service tax in relation to services rendered "to any person by any other person in relation to construction of a complex". The expression "construction of complex" is defined in Section 65 (30a) of the Act in the following terms.
 - “(a) construction of a new residential complex or a part thereof;
 - (b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or
 - (c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex;”

5. The analysis of the scope of Section 65 (30a) of the Act would yield the following result. The term "residential complex" employed in Section 65 (30a) is again defined in Section 65 (91a) of the Act in the following terms:
 - ““residential complex” means any complex comprising of –
 - (i) a building or buildings, having more than twelve residential units;
 - (ii) a common area; and

(iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system,

Located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

Explanation-For the removal of doubts, it is hereby declared that for the purposes of this clause,-

(a) "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;

(b) "residential unit" means a single house or a single apartment intended for use as a place of residence;"

6. Qua the residential complex, it is essential, therefore, that there must be 12 or more residential dwelling units. A complex which has less than 12 residential units is outside the purview of the definition of "residential complex". There is a further exception which is carved out in the definition of a "residential complex". That exception says that if the complex is located within the premises and the layout of such premises is approved by the authority and if the complex is constructed by a person directly engaging any other person for designing or planning of the layout and the construction of such complex is intended for personal use as a residence by such person, then there is no liability to service tax.
7. "Personal use" has been defined to include residence by another person on rent or without consideration. The applicability of latter part of the definition of a residential complex under Section 65 (91a) of the Act could only be in relation to complexes which house more than 12 residential units. In respect of such complexes, construction is undertaken by engaging another person for designing or planning of the layout. Construction of the residential house intended for personal use is exempt from the purview of definition of residential complex, and consequently the charging section in Section 65 (105) (zzzh) is inapplicable.
8. The parliament amended the provisions of Finance Act, 1994 with effect from 01.06.2007 by Finance Act, 2007 by inserting several further clauses. One such clause is clause 65 (105) (zzzza) which brings to charge services in relation to execution of a works contract. A works contract in relation to construction of a new residential complex or part thereof is taxed under the provisions of Section 65 (105) (zzzza) (ii) (c) of the Act.

9. A considerable amount of confusion prevailed in the housing/builder with respect to the implication of the two statutory provisions contained in Section 65 (105 (zzzh) and 65 (105) (zzzza) of the Act. The Central Board of Excise and Customs ("CBEC") from time to time issued circulars clarifying the position with respect to the applicability of service tax in relation to residential complexes. One such circular was issued by the CBEC on the 29.01.2009 vide Circular No. 108/02/2009-ST. The provisions of Section 65 (105) (zzzh) in relation to the construction of a residential complex has been examined by the CBEC and the position has been clarified. A copy of the circular dated 29.01.2009 is annexed hereto as **Annexure P-2** hereto.
10. The circular, in paragraph 3, specifically deals with the different methods that the developers adopt for eventually conveying right, title and interest in the apartments in favour of the prospective buyers. The first case that is examined is where the Agreement of Sale precedes the sale deed in respect of a residential unit. Until such time as the conveyance is executed in favour of the prospective buyer, service if any, rendered by promoter / developer / builder is a service to himself. Consequently, the circular recognizes that there is no charge to service tax in such cases. The second mode that is considered is where the prospective purchaser enters into a contract of construction of a residential complex with promoter / developer / builder. In such cases where the contract provides service of design, planning and construction of after such construction the ultimate owner receives such property for personal use, the view of the Central Board of Excise and Customs is that this would fall within the exclusion provided in the definition of "residential complex" in terms of definition in Section 65 (91a) of the Act.
11. The real purport of the circular is further explained that in both these situations services that promoter / developer / builder may hire like that of a contractor, designer or other similar service provider are the services which would attract levy of service tax.
12. Whether a charge is under section 65 (105) (zzzh) or 65 (105) (zzzza) (ii) (c), eventually the liability is to be determined on the basis of the definition of "residential complex" in Section 65 (91a) of the Act to be read along with the exclusion.
13. The Petitioner had been paying service tax up to December, 2008. However, from about January, 2009 onwards there were discussions that were going on between the builders' representatives and the Union of India, represented by Central Board of Excise and Customs which culminated in the issuance of the circular referred to hereinbefore. Therefore, the Petitioner had stopped paying service tax from 1st of January, 2009.
14. The Petitioner is now bombarded with frequent queries from Respondent Nos. 2 and 3 with respect to the various projects that it is undertaking. There is a demand for

production of records and there is threat of collection of service tax by coercion. In fact, in case of certain other builders, the service tax personnel have forcibly collected cheques in spite of the fact that the CBEC has categorically held that whether a promoter / developer / builder is engaged in the construction of a residential complex, irrespective of whether the whole apartment is sold by execution of single conveyance or there is an agreement of construction that is entered into between such promoter / developer / builder and the prospective buyer, there is no liability to service tax. The Petitioner has been apprising the Respondent Nos. 2 and 3 of the legal position as has been explained by the CBEC. Copies of the entire correspondence exchanged between the Petitioner and the service tax department in this context are collectively filed as **Annexure P-3** in chronological order.

15. While on one hand, the service tax authorities are insisting that the Petitioner comply with the provisions of the Finance Act, 1994 as amended from time to time by paying the service tax, on the other hand, the prospective buyers of the residential units are protesting the collection of service tax from them. Service tax being an indirect tax, the Petitioner is entitled to recover the same from the purchasers and remit it to the service tax department, if truly there is a charge on the activities which the Petitioner undertakes. Copies of the correspondence with some of the prospective purchasers are collectively filed as **Annexure P-4** hereto.
16. It is respectfully submitted that the question whether there is a liability to service tax in respect of the activity of construction of residential complex in relation under consideration payable by a buyer of flats or not is *res integra*.
17. The circulars issued by the Central Board of Excise and Customs are with statutory sanction and are also in the nature of contemporaneous exposition on the law and merit consideration especially since such circular in the present case is favourable to the tax payer. The settled legal position is that circulars that are favourable to the tax payers bind the department. The department cannot go behind the circulars.
18. It is submitted that the action of the Respondents No. 2 and 3 which is at variance of the statutory provisions of the Finance Act, as also the circular, is therefore without jurisdiction, Respondents No. 2 and 3 are acting in excess of the jurisdiction and the Petitioner is entitled for writ of prohibition restraining Respondents No. 2 and 3 from exercising jurisdiction which is totally absent. It is respectfully submitted that it is not the case of irregular exercise of jurisdiction by the Respondent but an attempt to exercise jurisdiction which is totally absent in view of circular of the CBEC as explained above.

19. The Petitioner having no effective alternative remedy has approached this Hon'ble Court under Article 226 of the Constitution of India. The Petitioner has not filed any application, petition or appeal before any authority except as mentioned hereinbefore.

For the reasons aforesaid, the Petitioner prays that this Hon'ble Court may be pleased to issue an appropriate writ, direction or order especially in the nature of writ of mandamus declaring that in view of the circular No. 108/2/2009 dated 29-1-2009 explaining the provisions of Finance Act, 1994, agreements of sale / sale deeds / agreements of construction in respect of residential dwelling units do not attract service tax with respect to the consideration payable by the prospective buyer to the builder / promoter / developer and consequently issue a writ of prohibition against Respondents No.2 and 3 from raising any demand on the Petitioner towards service tax in respect of agreements of sale / sale deeds / agreements of construction in respect of residential dwelling units and pass such other order(s) as this Hon'ble Court deems fit and proper.

Pending disposal of the writ petition, it is humbly prayed that this Hon'ble Court may be pleased to stay all further proceedings pursuant to the notices issued by Respondent Nos. 2 and 3 for levy of service tax in relation to the consideration receivable by the Petitioner from prospective purchasers of residential dwelling units either under an agreement of sale / conveyance or under agreements of construction and pass such other order(s) as this Hon'ble Court deems fit and proper in the circumstances of the case.

Solemnly affirmed and signed
on this the day of October,
2009, before me at Hyderabad.

DEPONENT

ADVOCATE :: HYDERABAD

VERIFICATION STATEMENT

I, Soham Modi, S/o. Shri Satish Modi, aged about 39 years, Resident of Hyderabad being the Petitioner / person acquainted with the facts do hereby verify and state that the contents of paras (1) to (19) etc., of the affidavit filed in support of the Writ Petition are true to my personal knowledge, based on records and believed to be correct and are based on legal advice believed to be correct.

Verified at Hyderabad on this day of October, 2009.

ADVOCATE

DEPONENT



Recd
13/04/10
(A. S. Sheer)

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX
HYDERABAD II COMMISSIONERATE
3RD FLOOR (Annexe) :: SHAKKAR BHAWAN :: L.B. STADIUM ROAD
BASHEERBAGH::HYDERABAD - 500 004

O.R.No. 34/2010-ST
HQST No: 59/09 - AE IV

Date: 12.04.2010

SHOW CAUSE NOTICE

Sub : Service Tax - Works Contract Services - M/s. Modi & Modi Constructions - Non payment of Service tax on taxable services rendered - Show cause Notice - Reg.

M/s. Modi & Modi Constructions, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad - 500 003 [here in after referred to as 'the service provider'] are engaged in providing works contract service. M/s. Modi & Modi Constructions is a registered partnership firm and got themselves registered with department for payment of service tax with STCNo. AAKFM7214NST001.

2. As per Section 65(105(zzzza)) of the Finance Act, 1994 "taxable service" under workscontract 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;

3. As per Section 65(91a) of the Finance Act, 1994, "Residential Complex means any complex comprising of—

- (i) a building or buildings, having more than twelve residential units
- (ii) a common area; and
- (iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system,

located within the premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

4. On gathering intelligence that M/s. Modi & Modi Constructions though registered with the service tax department are not discharging the service tax liability properly and also not filing the required returns, investigation has been taken up by the department and Summons dated 11.1.2010 for submission

(Handwritten signature)

of relevant record /documents / information have been issued to them. On verification of records submitted by the assessee, it is found that M/s. Modi & Modi Constructions have undertaken a single venture by name Nilgiri homes located at Rampally village, Keesara Mandal, RR District, and received amounts from customers from December, 2007 to December 2009 towards sale of land, agreement for development charges for development of the layout into plots by laying of roads, drainage lines, electrical lines, water lines etc., and agreement of construction. In the said venture, in respect of 18 houses they have entered into sale deed, agreement for development charges and agreement of construction with their customers. Till date they have not filed the ST3 returns with the department. However, they have submitted the copies of the ST3 returns prepared for the periods October, 2007 to March 2008, October, 2008 to March 2009 which were not acknowledged by the department, along with the copies of the challans consisting of payments of Rs. 13,56,460/-. It is also found that in respect of 18 houses they have paid the said service tax for the period from December, 2007 to December, 2008 under Works Contract service availing the option under Rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007.

5. A Statement has been recorded from Sri. A. Shanker Reddy, Deputy General Manager (Admn.) authorized representative of M/s. Modi & Modi Constructions on 1.2.2010 under Section 14 of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994. Sri. Reddy vide his Statement dated 1.2.2010 had inter alia stated that "the activities undertaken by the company are providing services of construction of Residential Complexes. They purchased the land under sale deed. On that they constructed the residential complexes. Initially, they collect the amounts against booking form/agreement of sale. At the time of registration of the property, the amount received till then will be allocated towards Sale Deed and Agreement of construction. Therefore, service tax on amounts received against Agreement of construction portion up to registration was remitted immediately after the date of agreement. The service tax on remaining portion of the amounts towards Agreement of construction is paid on receipt basis. Agreement of sale constitutes the total amount of the land / semi finished flat with undivided share of land and the value of construction. The sale deed constitutes a condition to go for construction with the builder. Accordingly, the construction agreement will also be entered immediately on the same date of sale deed. All the process is in the way of sale of the constructed unit as per the agreement of sale but possession was given in two phases one is land / semi finished flat with undivided share of land and other one is completed unit. This is commonly adopted procedure as required for getting loans from the banks". Further, he stated that services to a residential unit / complex which is a part of a residential complex, falls under the exclusion clause in the definition of residential complex. Further, he stated that they have stopped collection and payment of service from 1-1-2009 in the light of the clarification of the Board vide circular No. 108/02/2009 - ST dated 29th January 2009.

6. As per the exclusion provided in Sec 65(91a) of the Service Tax Act, the residential complex does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person. Here, "personal use" includes permitting the complex for use as residence by another person on rent or without consideration. It is further clarified in para 3 of the Circular No. 108/02/2009 - ST, dated 29th January 2009 if the ultimate owner enters into a contract for construction of a residential complex with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity is not liable to service tax. Therefore, as per the exclusion clause and the clarification mentioned above, if a builder/promoter/developer constructing entire complex for one person for personal use as residence by such person would not be subjected to service tax. For example, construction of residential quarters by the Income tax department for their employees by employing a contractor for design, planning and construction is not leviable to service tax because it is for the personal use of the Income tax department. Normally, a builder/promoter/developer constructs residential complex consisting number of residential units and sells those units to different customers. So, in such cases the construction of complex is not meant for one individual entity. Therefore, as the whole complex is not constructed for single person the exclusion provided in Sec 65(91a) of the Service Tax Act doesn't apply. Further, the builder/promoter/developer normally enters into construction / completion agreements after execution of sale deed. Till the execution of sale deed the property remains in the name of the builder/promoter/developer and services rendered thereto are self services. Moreover, stamp duty will be paid on the value consideration shown in the sale deed. Therefore there is no levy of Service Tax on the services rendered till sale deed i.e., on the value consideration shown in the sale deed. But, no stamp duty will be paid on the agreements / contracts against which they render services to the customer after execution of sale deeds. There exists the service provider and service recipient relationship between the builder/promoter/developer and the customer. Therefore, such services against agreements of construction are invariably attracts service tax under Section 65(105(zzzza)) of the Finance Act, 1994.

7. As per the definition of "Residential Complex" provided under Section 65(91a) of the Finance Act, 1994, it constitutes any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system. The subject venture of M/s. Modi & Modi Constructions qualifies to be a residential complex as it contains more than 12 residential units with common area and common facilities like park, common water supply etc., and the layout was approved by HUDA vide permit No. 6092/MP2/Plg/HUDA/07, dated 16-11-2007. As seen from the records submitted, the assessee has entered into 1) a sale deed for sale of land together with / without semi finished portion of the house and 2) an 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 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 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 vide sale deeds are taxable services under works contract service.

8. As M/s. Modi & Modi Constructions have not furnished the monthwise particulars of amounts received exclusively on agreements for Construction, the tax liability has been arrived at on the basis of soft copies of the books of accounts provided by M/s. Modi & Modi Constructions. It is arrived at that they have collected an amount of Rs. 1,46,64,738/- against agreements of Construction during the period from January 2009 to December 2009 and are liable to pay service tax including Education cess and Secondary & Higher education cess of Rs. 6,04,187/- and the interest at appropriate rates under works contract service respectively. The details of amounts collected, service tax liability are as detailed in the Annexure to this Notice.

9. M/s. Modi & Modi Constructions are well aware of the provisions and of liability of Service tax on receipts agreements for Construction and have not assessed and paid service tax properly with an intention to evade payment of tax. They have intentionally not filed the returns and produced the particulars. Further, they misinterpreted the definition of the works contract service with an intention to evade payment of Service Tax. All the facts have come to light only after the department has taken up the investigation. Hence, the service tax payable by M/s. Modi & Modi Constructions appears to be recoverable under Sub Section 1 of Section 73 of the Finance Act, 1994.

10. From the foregoing it appears that M/s. Modi & Modi Constructions, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad - 500 003 have contravened the provisions of 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 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they have not filed statutory Returns for the taxable services rendered and also did not truly and correctly assess the tax due on the services provided by them and also did not disclose the relevant details / information, with an intent to evade payment of service tax and are liable for recovery under proviso to the section 73(1) of the Finance Act, 1994 and thereby have rendered themselves liable for penal action under Section 76, 77 and 78 of the Finance Act, 1994

11. Therefore, M/s. Modi & Modi Constructions, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad - 500 003, are hereby required to show cause to the Additional Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II Commissionerate, 3rd floor, Shakkar Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad-500 004, within 30 days of receipt of this Notice as to why:

(i) a differential amount of Rs. 5,86,589/- towards Service tax, Rs.11,732/- towards Education Cess and Rs.5,866/- towards Secondary & Higher Education Cess (a total amount of Rs.6,04,187/-) should not be demanded on the works contract service under the Sub Section 1 of the Section 73 of the Finance Act, 1994 for the period from January 2009 to December 2009.

(ii) interest is not payable by them on the amount demanded at (i) above and also on the delayed payments made during the period from January, 2009 to December 2009, under the Section 75 of the Finance Act, 1994

(iii) penalty should not be imposed on them under Section 76, 77 and 78 of the Finance Act, 1994

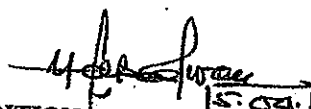
12. They are also required to produce at the time of showing cause, all the evidence upon which they intend to rely in support of their defense. They are also required to state whether would like to

avail of opportunity to be heard in person before the case is adjudicated. If they do not reply to the Show Cause Notice within 30 days or do not appear in person when the case is posted for personal hearing, it would be presumed that the Notice does not have anything to state in their defense or they do not prefer any personal hearing and case will be decided on merit based on the evidence available on record.

13. This show cause Notice is issued without any prejudice to any other action that may be taken against the recipients of this Notice or any other persons concerned with the Finance Act or any other law time being in force.

14. The above Notice is issued placing Reliance on the following Records:

- (1) Soft copy of the bank statements, books of accounts, Customer documents 2008-09 and 2009-10 (upto Dec 2009).
- (2) Service tax statement submitted by M/s. Modi & Modi Constructions vide letter dated 25-11-2009.
- (3) The Statement dated 2.1.2010 of Sri. A. Shankar Reddy, Authorised person of M/s. Modi & Modi Constructions.
- (4) Balance Sheets of M/s. Modi & Modi Constructions for the year 2008-09.


15.04.10
ADDITIONAL COMMISSIONER

To
M/s. Modi & Modi Constructions, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad - 500 003
(By Speed Post Ack. Due)

Copy to:

The Superintendent, Service Tax, Group-X, Hyderabad-II Commissionerate, Shakkar Bhavan, Hyderabad.

The Superintendent, Adjudication, Hqrs, Hyderabad-II Commissionerate, Hyderabad.

Office Copy / Spare Copy.

ANNEXURE

M/s Modi and Modi Constructions
Worksheet of tax calculation

1. Statement - I (Month wise total receipts as per customer ledgers, tax payable and paid details)

	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Total
Receipts towards construction where sale deed & agreement of construction entered into	624780	2979292	147326	2880690	1980000	34980	1535000	400000	200000	1440000	200000	2242670	14664738
Rate of Service tax, Ed.Cess, S&Hed. Cess under works contract service	4.12%	4.12%	4.12%	4.12%	4.12%	4.12%	4.12%	4.12%	4.12%	4.12%	4.12%	4.12%	4.12%
Tax payable	25741	122747	6070	118684	81576	1441	63242	16480	8240	59328	8240	92398	604187

2. Statement-II (Due date, tax payable details)

Due date for payment of Tax	5/4/2009	5/7/2009	5/10/2009	5/1/2010	Total
Tax payable under works contract service	154558	201702	87962	159866	604187

3. Statement- III (Breakup of tax payable)

Service Tax	Education Cess	S&Hed Cess
586589	11732	5666

MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.

☎ : 66335551 (4 lines) Fax : 040-27544058

To,
Mr. R.L. Ramesh, Asst. Commissioner, Service Tax
Office of the Commissioner of Custom,
Central Excise & Service Tax,
Hyderabad -II, Commissionerate,
Shakar Bhavan, Basheerbagh,
Hyderabad.

Date: 04.02.2010.

Dear Sir,

Sub.: Requesting not to give any further notices to pay service tax -vide case nos.
WPMP no. 33868/2009 and WP No. 26012/2009, which are pending in High Court
- reg.

Ref.: Your letter dated 04.01.2010 (HQST No. __/2009) and 06.11.2009
(HQST No. __/09).

We are in receipt of your above referred letters and directed us to furnish the following information which have been furnished to your by us.

1. Balance Sheets for the years 2004 -05 to 2008-2009 and trail balance for the period April 2009 to September 2009.
2. Bank statement for the preceding 5 years from 2004-05 to 2008-09.
3. Project wise details of income of sale deeds and agreements.
4. Copies of sale deeds and constructions agreement entered with the purchasers for the above period and respective ledgers.
5. ST3 returns and paid challan copies for the above period.
6. Work sheets furnishing month wise details of receipts.

We have filed a case vide WP No. 26002/2009 before Honorable High Court of Andhra Pradesh praying for a writ of mandamus declaring that in view of circular no. 108/2/2009 dated 29.01.2009 explaining the provisions of the Finance Act of 1994, agreements of sale/ sale deeds/ agreements of construction in respect of residential dwelling units do not attract service tax with respect to the consideration payable by the prospective buyer to the builder/ promoter/developer and, consequently, to issue a writ of prohibition against respondents no. 2 & 3 (Commissioner of Central Excise, Customs and Service tax, Hyd II Commissionerate and the Superintendent of Service Tax Hyd II, Commissionerate respectively) from raising any demand on the petitioner towards service tax in respect of agreement of sale / sale deeds/ agreement of construction in respect of residential dwelling units.

We have also filed W.P.M.P. No. 33868 of 2009 in W.P. No. 26002 of 2009 praying the honorable High Court to grant stay of all further proceedings pursuant to the notices issued by the respondents no.2 and 3 for levy of service tax in relation to the consideration receivables by the petitioner from prospective purchasers of dwelling units either under an agreement of sale / conveyance or under agreement of construction.

h

MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.

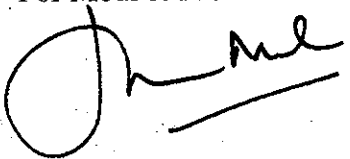
☎ : 66335551 (4 lines) Fax : 040-27544058

The above writ petition came up for admission before the honorable High Court of Andhra Pradesh on 02.12.2009. The Honorable High court was pleased to order a notice to the respondents in the writ petition directing them to show cause as why the writ petition should not be admitted (copy enclosed).

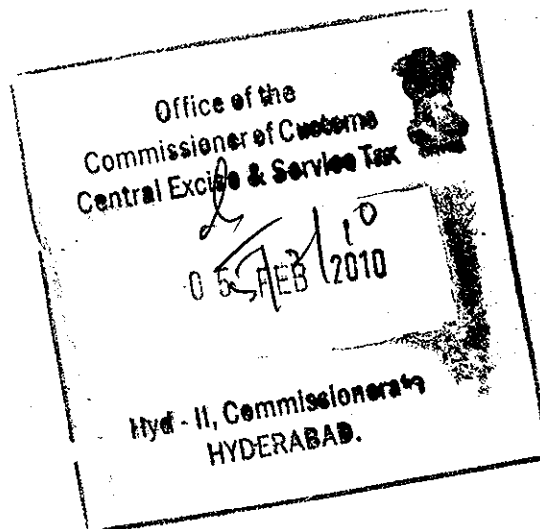
In view of the above facts the matter is sub judice before the Honorable High Court of Andhra Pradesh. Hence, you are requested to please keep the proceeding in relation to the same in abeyance until appropriate orders are passed by the Hon'ble high court in the writ petition.

Tank you.

Yours sincerely,
For Modi & Modi Constructions,



Soham Modi
Managing Partner.



MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.
☎ : 66335551 (4 lines) Fax : 040-27544058

To,
Mr. R.L. Ramesh,
Asst. Commissioner, Service Tax
Office of the Commissioner of Custom,
Central Excise & Service Tax,
Hyderabad -II, Commissionerate,
Shakar Bhavan, Basheerbagh,
Hyderabad.

Date: 27.01.2010.

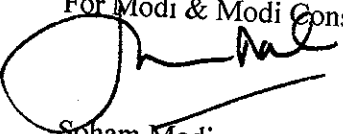
Dear Sir,

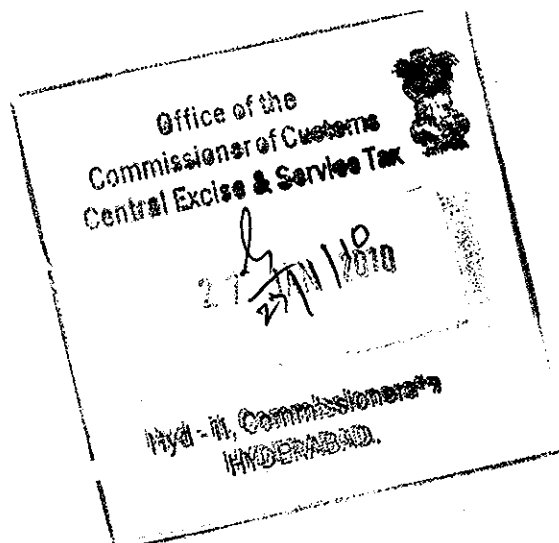
Ref.: Your summons dated 13.1.2010 vide letter no. HQST No.: 59/09 AE -IV
4.1.2010 for personal appearance at 11 am on 27.01.2010.

Mr. Shankar Reddy, DGM- Administration has unexpectedly taken leave today for personal reasons. He is aware of all the matters regarding service tax. I request you to grant us another date for a personal hearing. However, I am sending you a representation along with the copy of all documents requested for along with this letter.

Thank You.

Yours sincerely,
For Modi & Modi Constructions,


Soham Modi,
Managing Partner



MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.
☎ : 66335551 (4 lines) Fax : 040-27544058

To,
Mr. R.L. Ramesh,
Asst. Commissioner, Service Tax
Office of the Commissioner of Customs,
Central Excise & Service Tax,
Hyderabad -II, Commissionerate,
Shakar Bhavan, Basheerbagh,
Hyderabad.

Date: 25.01.2010.

Dear Sir,

Ref.: Your summons dated 13.1.2010 vide letter no. HQST No.: 59/09 AE -IV for personal appearance at 11 am on 27.01.2010.

We have received your summons dated 13.1.10 requesting for documents pertaining to the financial year 2005 - till date. Please note that all the documents requested for have already been provided to the service tax department vide our letters dated 18.1.2010 and 30.11.2009 (copy enclosed).

Please find enclosed scanned copies of following document on a CD as requested by you.

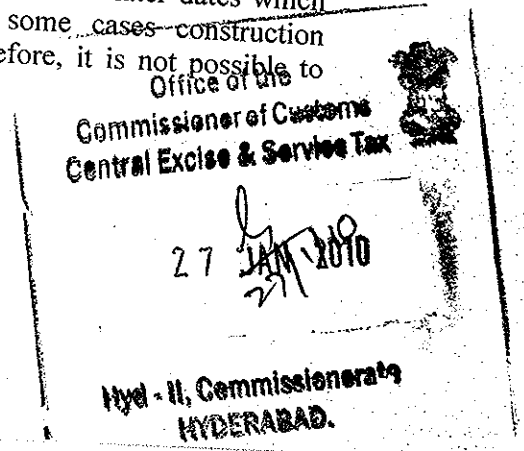
- Bank statements from 1.4.2005 till 31.12.2009.
- Copies of all sale deeds and construction contracts.
- Books of accounts from 1.4.2005 till 31.03.2009.
- Un audited books of accounts from 1.4.2009 till 31.12.2009.

We are unable to meet your request for providing a month wise statement of amounts received towards sale deed, construction contract, etc., for comparison with the balance sheet as we are not sure as to how to make such a statement. It is not possible to distinguish payments received from customers towards sale deed, construction agreement, VAT, stamp duty and other charges, etc., as payments are received from customers on an adhoc basis. In our books of accounts, we are debiting these costs periodically as and when due to the customer account. Payment received from them are credited to their accounts. Therefore, the ledger copy of each individual customer needs to be looked into to determine the details of payments towards sale consideration, VAT, registration charges, etc. Ledger copies of every customer is enclosed in the CD.

Further, several customers have paid us advances towards purchase of flats / villas wherein no sale deed has been executed in their favour. The amounts are received towards tentative booking subject to cancellation and refund. On later dates which may vary from customer to customer sale deed (in some cases construction agreement) is executed in favour of the customer. Therefore, it is not possible to make a month wise detailed statement as requested by you.

W

Page 1 of 2



MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.

☎ : 66335551 (4 lines) Fax : 040-27544058

Further, we are not to certain about our liability under service tax rules and the method of computation to be adopted for payment of service tax. We are unsure about the section under which we are liable to pay service tax i.e., under works contract or under residential complex services. In light of circular 108/2/2009 we believe that we do not fall under the ambit of service tax.

However, please find enclosed a month wise statement of receipts from customers. Please note that this statement does not bifurcate payments received towards sale deed, construction contract, finishing and completion services, VAT, service tax, stamp duty and registration charges, etc. Further it does not distinguish payments received towards sales made for phases/blocks/residential units completed prior to the notification of service tax u/s. 65(105)(zzzh) or 65(105)(zzzza). Therefore, it may be difficult to compute service tax liability based on the monthly receipts statement.

We request you to please clarify the ambiguity in the application of service tax and the method for computation of service tax liability. Please clarify the following:

- a. Whether we are liable to pay service tax under works contract or residential complex services.
- b. Can we exclude residential units whose construction was completed before respective date of notification.
- c. Can we exclude payments made towards sale deed, VAT, service tax, stamp duty and registration charges, etc., and calculate service tax liability only on value of construction contract.
- d. Can we exclude construction contracts executed prior to date of notification.

We await your advise on the above issues so that we can prepare a month wise statement as requested by you. Please write to us if any further details or information is required.

Thank You.

Yours sincerely,
For Modi & Modi Constructions,


Saham Modi,
Managing Partner

MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.
☎ : 66335551 (4 lines) Fax : 040-27544058

To,
The Superintendent (AE) Service Tax (AE - Group IV),
Office of the Commissioner of Custom,
Central Excise & service Tax,
Hyderabad -II, Commissionerate,
Shakar Bhavan, Basheerbagh,
Hyderabad.

Date: 18.01.2010.

Dear Sir,

Sub.: Request for furnishing of certain information.

Ref.: Notice for furnishing of certain information, vide letter no. HQST
No. 59/2009 AE IV 4.1.2010.

We have received your notice dated 04.01.2010 requesting for documents pertaining to the financial year 2005 - till date. Please note that balance sheet, profit and loss statement and IT returns for those years have already been submitted to your office a few weeks ago. We have also given details of sale deeds, construction agreements and service tax paid vide our letter dated 29.12.09. Balance sheets, profit & loss statement, etc., have not been finalized for the financial year 2009-10 and therefore can not be produced.

Please find enclosed scanned copies of following document on a CD as requested by you.

- Bank statements from 1.4.2005 till 30.09.2009.
- Copies of all sale deeds and construction contracts.
- Books of accounts from 1.4.2005 till 31.03.2009.

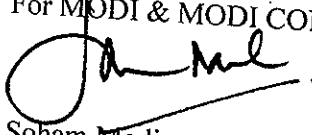
It is not possible to distinguish payments received from customers towards sale, construction agreement, VAT, stamp duty and other charges, etc., as payments are received from customers on an adhoc basis. In our books of accounts, we are debiting these costs periodically as and when due to the customer account. Payment received from them are credited to their accounts. Therefore, the ledger copy of each individual customer needs to be looked into to determine the details of payments towards sale consideration, VAT, registration charges, etc. Ledger copies of every customer is enclosed in the CD. Further, several customers have paid us advances towards purchase of flats / villas wherein no sale deed has been executed in their favour. The amounts are received towards tentative booking subject to refund. On later dates which may vary from customer to customer sale deed (in some cases construction agreement) is executed in favour of the customer. Therefore, it is not possible to make a month wise detailed statement as requested by you.

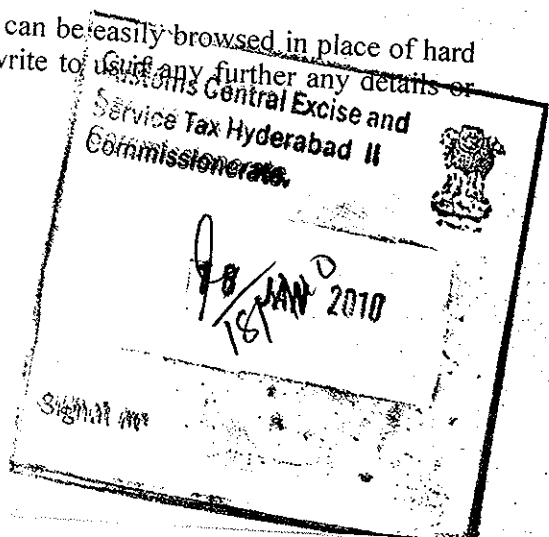
Further, we are not to certain about our liability under service tax rules and the method of computation to be adopted for payment of service tax. In light of circular 108/2/2009 we believe that we do not fall under the ambit of service tax.

We have given all the above information on a CD which can be easily browsed in place of hard copies as the total no. of pages exceeds 5,500. Please write to us if any further any details or information is required.

Thank You.

Yours sincerely,
For MODI & MODI CONSTRUCTIONS,


Soham Modi,
Managing Partner



OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE AND SERVICE TAX
HYDERABAD II COMMISSIONERATE : 3rd FLOOR (Annexe) :: SHAKKAR BHAWAN
L.B.STADIUM ROAD : BASHEERBAGH:: HYDERABAD-500 004.

S U M M O N S

(Under Section 14 of the Central Excise Act, 1944 made applicable to Service Tax under Section 83 of Finance Act, 1994)

HQST No: 59/09- AE- IV

Date: 11.1.2010

To
M/s Modi & Modi Constructions,
5-4-187/3&4, 2nd Floor,
Soham Mansion, MG Road,
Secunderabad



Whereas an investigation against you about Non payment/evasion of Service Tax/ contravention of Provisions of Finance Act, 1994 and Rules made there under is being inquired by me.

And whereas I have reasons to believe that you are in possession of facts or/and documents and things, which are relevant to the above inquiry.

You are hereby summoned under Section 14 of the Central Excise Act., 1944 as made applicable to Service Tax matters under Section 83 of the Finance Act, 1994 to appear before me in person/authorised agent on **27-01-2010 at 11.00 hours** in my office situated at **3rd Floor (Annexe), Shakkar Bhawan, L.B.Stadium Road, Basheerbagh, Hyderabad-500 004** to give evidence truthfully on such matters concerning the enquiry as you may be asked and to produce the documents and things mentioned in the schedule below for my examination.

If you fail to comply with this summons and intentionally avoid to attend, to give evidence and to produce the documents and things, without a lawful excuse, you will be liable to be punished under the provisions of section 174 & 175 of the Indian Penal Code.

S C H E D U L E

To give a Statement of facts and furnish the following documents

1. Copies of Ledgers & Bank Statements of receipts towards construction and finishing & Completion services from 16-6-2005 to 31-12-2009.
2. A statement of monthly receipts separately towards sale deed, construction and finishing & completion services from 16-6-2005 to 31-12-2009 and comparison to the balance sheets.
3. A statement of monthwise value and payment details of Service tax, Education cess and S&HEd. Cess

Given under my hand and seal of office today the 11th of January, 2010.


(R.L. RAMESH RAM)
ASSISTANT COMMISSIONER
SERVICE TAX

NOTE: Under clause 3 of Sec. 14 of Central Excise Act, 1944, the above inquiry is deemed to be 'Judicial proceedings' within the meaning of Sec. 193 and Sec. 228 of Indian Penal Code, 1860 according to which giving intentional false statement in any stage of proceedings punishable under Sec 193 and intentional insult or interruption to public servant sitting in any stage of proceedings punishable under Sec. 228 of IPC, 1860.

gicrao@modiproperties.com
Ramasesh
@yahoo.co.in.

Recd
07/01/09
SR

**OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX
HYDERABAD-II COMMISSIONERATE, SHAKAR BHAVAN, BASHEERBAGH, HYDERABAD - 500004.**

HQ.ST No. 59/05 -AE. Sr

Date: -1-2010

To
M/s Mod & Mod Construction

Soham Mansion,
MGRoad,
Secunderabad - 500 003.

Gentlemen,

Sub: Service tax - Request for furnishing of certain information - Reg.

<<>>

Please refer to this office letter of dated 27-1-05, reminder dated 6-11-05 and time to time requests for submission of information.

Despite of several requests, the copies of bank statements, all the sale deeds, agreements, sale ledgers etc., have not been received as yet. Therefore, it is once again requested to submit all the pending information and documents / record, along with an worksheet furnishing the month-wise details of receipts (by cash / by cheque / in kind) towards sale, construction and finishing works separately during the last five financial years.

Matter may please be treated as most urgent.

S. Rao
SUPERINTENDENT (AE)
Service Tax (AE - Group VI)

MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.

☎ : 66335551 (4 lines) Fax : 040-27544058

To,
The Asst. Commissioner,
Service Tax: Anti Evasion,
O/o. Commissioner of Central Excise and Service Tax,
Hyderabad II Commissionerate,
Hyderabad.

Date: 25.11.2009

Dear Sir / Madam,

Sub.: Statement of amounts received against sales made.

Ref.: 1. Notice for furnishing of records by the department, letter no. HQST No. 59/09 AE IV dated 6.11.09.

2. Our representation dated 18.11.2009

Mr. Shankar Reddy – Manger Admin had met you personally to discuss the details of documents to be produced as requested in reference 1 above. You have clarified that, at the moment a statement showing details of sale deeds executed along with construction contract executed pertaining to those sale deeds with details of receipts is required by the department. Details of service tax paid upto date should also be furnished.

Accordingly please find enclosed the following documents:

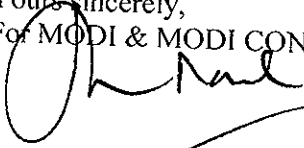
1. Statement of sale deeds executed.
2. Statement of construction contract pertaining to those sale deeds and the amounts received against the said construction contracts.
3. Details of service tax paid.
4. Copies of sale deed and construction contract of 3 customers.

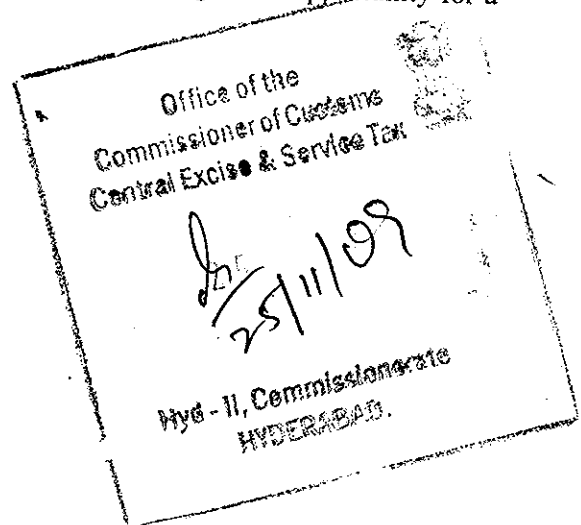
Balance sheets, trial balance and bank statements can be produced upon request. Copies of ST3 returns and challans can also be produced upon request. Please write to us if any further information and documents are required.

We have been regularly paying service tax to the department until the circular no. 108/2/2008 was issued. Because of the circular and its ambiguous wording, our customers have refused to pay service tax. In light of the above, we request you to not to take any coercive action for payment of service without issuing a show cause notice as provided in law and giving us an opportunity for a hearing in the said matter.

Thank You.

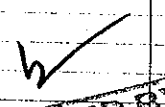
Yours sincerely,
For MODI & MODI CONSTRUCTIONS,


Soham Modi.



Details of construction contract where sale deeds were executed							
Sl.No.	Name of the customer	Construction contract date	value mentioned in construction	Amount received towards construction contract			Balance receivable towards construction contract
				upto 28-02-2008	01-03-08 to 31-03-09	01-04-09 to 31-10-09	
1	Mr.Aditya Jaiswal	15-10-09	4121000	-	-	575,535	3,545,465
2	K. Venkata Krishna Murthy	30-06-08	3792000	417,000	1,651,677	150,000	1,573,323
3	Mr.V.Ramakrishnan	23-05-08	4660000	-	3,108,579	625,000	926,421
4	P. Padma Savitri & P. sai Kuma	02-04-09	4932000	-	-	1,473,680	3,458,320
5	Mr.Pramod Gajbe	29-03-08	4305000	160,000	1,331,186	-	2,813,814
6	Mr.V.ChandraMouli & Padmava	23-05-08	4305000	-	2,533,113	525,000	1,246,887
7	Mr.P.V.S.Chandra Sekharam	30-04-09	4460000	-	-	3,556,150	903,850
8	Rajesh Patel	23-05-08	4583000	-	3,046,044	615,000	921,956
	Mrs. R Usha	19-04-08	3734000	55,000	2,871,527	-	807,473
	Mr. R.Vivekananda	06-10-08	4192000	-	2,782,685	-	1,409,315
11	Mr.Raju Vadlamani	21-04-08	3663000	55,000	2,786,987	-	821,013
12	Mrs. G Renuka	16-07-08	3663000	55,000	2,235,846	-	1,372,154
13	Mrs. Padmalatha	29-03-08	3808000	55,000	990,242	-	2,762,758
14	Gaurang Mody	-	0	-	2,363,535	285,000	(2,648,535)
15	Boddapati Prasad	12-11-08	3283000	-	1,965,829	500,000	817,171
16	Mr.Samir Mody	05-02-09	3383000	-	1,637,343	240,000	1,505,657
17	Shreya Mody	05-02-09	3383000	-	1,637,343	240,000	1,505,657
18	Ponnana RamaKrishna Rao	11-08-08	4510000	-	3,103,570	750,000	656,430
	TOTAL		68777000	797,000	34,045,506	9,535,365	24,399,129

Details of service tax paid			
Sl.No.	Date	Challan No.	Amount paid
1	05-04-08	1095114	20394
2	07-03-08	-	21218
	20-10-08	717996	100000
	15-10-08	962860/73	100000
5	10-07-08	1171938	814492
6	09-01-09	1317415/21	50000
7	24-01-09	642900/7	50249
8	15-01-09	666606/5	50107
9	02-02-09	-	50000
10	31-03-09	-	100000
	TOTAL		1356460


APPROVED BY
 25 NOV 2009
 SOHAM MODI
 MANAGING DIRECTOR

A. Sambasivarao
 25/11/09

Service tax Statement						
Name of the Company :		Modi & Modi Constructions				
Project/Location :		Nilgiri Homes				
Date :		24-11-2009				
List of Sale Deeds executed						
Sl.No.	Name of the customer	Sale deed document no.	Date	Value	Amount received towards sale deed	Bnalance amount receivable for sale deed
1	Mr.Aditya Jaiswal	5254/09	15-10-09	179,000	179,000	-
2	K. Venkata Krishna Murthy	4673/08	30-06-08	179,000	179,000	-
3	Mr.V.Ramakrishnan	3547/08	23-05-08	240,000	240,000	-
4	P. Padma Savitri & P. sai Kuma	1660/09	02-04-09	240,000	240,000	-
5	Mr.Pramod Gajbe	2356/08	29-03-08	240,000	240,000	-
6	Mr.V.ChandraMouli & Padmava	3550/08	23-05-08	240,000	240,000	-
8	Mr.P.V.S.Chandra Sekharam	1995/09	30-04-09	240,000	240,000	-
8	Rajesh Patel	3544/08	23-05-08	240,000	240,000	-
9	Mrs. R Usha	2819/08	19-04-08	170,000	170,000	-
10	Mr. R.Vivekananda	8342/08	06-10-08	170,000	170,000	-
11	Mr.Raju Vadlamani	2816/08	21-04-08	170,000	170,000	-
12	Mrs. G Renuka	5272/08	16-07-08	170,000	170,000	-
13	Mrs. Padmalatha	2353/08	29-03-08	170,000	170,000	-
14	Gaurang Mody	3775/09	27-07-09	117,000	117,000	-
15	Boddapati Prasad	9196/08	12-11-08	117,000	117,000	-
16	Mr.Samir Mody	868/09	05-02-09	117,000	117,000	-
17	Shreya Mody	865/09	05-02-09	117,000	117,000	-
18	Ponnana RamaKrishna Rao	6424/08	11-08-08	240,000	240,000	-
TOTAL				3,356,000	3,356,000	-


APPROVED BY
 25 NOV 2009
 SOHAM MODI
 MANAGING DIRECTOR

A. Samba Sireesha
 25/11/09

MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.

☎ : 66335551 (4 lines) Fax : 040-27544058

To,
The Asst. Commissioner,
Service Tax: Anti Evasion,
O/o. Commissioner of Central Excise and Service Tax,
Hyderabad II Commissionerate,
Hyderabad.

Date: 18.11.2009

Dear Sir / Madam,

Sub.: Request for time for providing required information

Ref.: 1. Your notice bearing no. WCS/123 dated 2.1.09

2. Our letter dated 13.03.2009

3. Notice for furnishing of records by the department, letter no. HQST No. 15/2009 ST
AE dated 27.1.09.

5. Our letter dated 8.07.2009.

5. Notice for furnishing of records by the department, letter no. HQST No. 59/2009 AEIV
dated 6.11.09.

We have received your notice on 7.11.09. You have requested for details like service tax paid challans, ST3 return copies, bank statements, balance sheet, etc., for the period 2005 to 2009. Please note that you have requested for the same details for the period 2005 to 31.12.2008 vide reference 5 above. These details were furnished to the department over several visits. The same has also been stated in our letter dated 12.3.09 (reference 4).

Vide our letters addressed to the service tax department (Reference 2 & 4) we have clearly and in detail given reasons for non-applicability of service tax to our business in lieu of circular no. 108/2/2009 – ST dated 21.1.09. We have also requested for withdrawal of service tax registration.

Till date the department has not replied to our detailed representation or issued any show cause notice. Instead you have requested for details, most of which have been given to you on an earlier date.

As the information requested by you in reference 1 above is voluminous, we request you to grant us 15 days time to provide the information.

We further request you to please reply to our detailed representations regarding non-applicability of service tax to our operations. Infact, on an earlier date in our meeting with Mrs. Manjula, Deputy Commissioner of Service Tax, she had assured us that builders will not be pressurized to pay service tax until clarification on circular no. 108/2/2009 is received from CBEC. She had promised to write to CBEC seeking clarification in the matter. We have not heard from her or the department since then.

MODI & MODI CONSTRUCTIONS

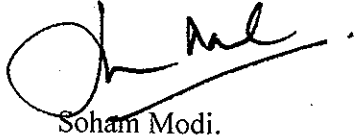
5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.

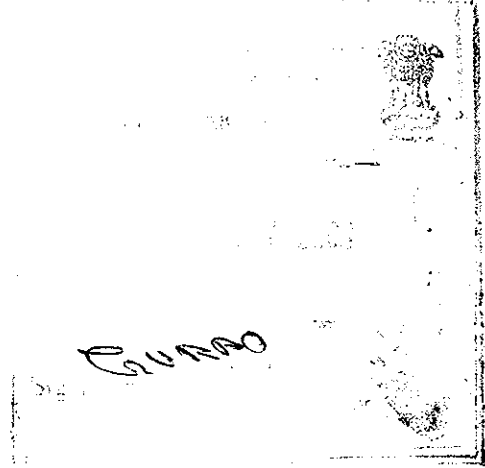
☎ : 66335551 (4 lines) Fax : 040-27544058

We have been regularly paying service tax to the department until the said circular was issued. Because of the circular and its ambiguous wording, our customers have refused to pay service tax. In light of the above, we request you to not to take any coercive action for payment of service without issuing a show cause notice as provided in law and giving us an opportunity for a hearing in the said matter.

Thank You.

Yours sincerely,
For Modi & Modi Constructions,


Soham Modi.





Ramesh Ram

Phone : 23231481
23230196

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX
HYDERABAD II COMMISSIONERATE
3RD FLOOR (Annexe) :: SHAKKAR BHAWAN
L.B. STADIUM ROAD :: BASHEERBAGH :: HYDERBAD - 500 004

HQST No: 59/09 AE IV

Date: 6 .11. 2009

To
M/s Modi & Modi Constructions,
5-4-187/3&4, 2nd floor,
Soham Mansion,
M.G.Road,
Secunderabad 500 003

Sir,

Sub:- Service tax -- Request for furnishing certain information reg.

Please refer to this office letter HQST No. 15/2009 ST AE, dated 27.01.2009, on the above subject.

2. Information as called for in the above cited letter is still pending receipt from your office. You are therefore once again requested to furnish the following information immediately.

- 1) Balance sheets for the years 2004-05 to 2008-09 and trial balance for the period From 4/09 to 9/09.
- 2) Bank statements for the preceeding five years from 2004-05 to 2008-09.
- 3) Project wise details of income of sale deeds and agreements received.
- 4) Copies of the sale deeds and agreements entered with the purchasers for the above period *and respective ledgers.*
- 5) ST3 returns and paid challan copies for the above period.

The above information is called for by virtue of the powers conferred under section 14 of the Central Excise Act, 1944 as made applicable to the Service Tax matters in terms of Section 33 of the finance Act, 1994.

Please treat this as most urgent.

Yours faithfully,

R.L. Ramesh Ram

(R.L.RAMESH RAM)
Assistant Commissioner(S.T.AE)

MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.

☎ : 66335551 (4 lines) Fax : 040-27544058

Date: 02.07.2009.

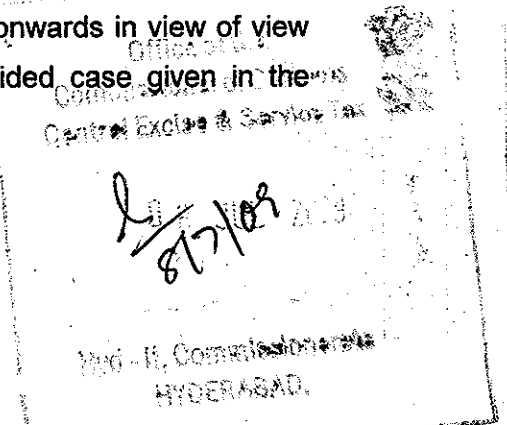
To,
The Superintendent of Service Tax
Hyderabad -II Commissionerate
L. B. Stadium Road, Basheerbagh
Hyderabad - 500 004

Dear Sir,

Sub: Non-filing of ST-3 returns for the half year ended 31.03.2009

Ref: Our STC No. AAKFM7214NST001.

1. We acknowledge the receipt of the above referred letter on 06.06.2009. We had earlier corresponded with Asst Com of Service Tax (AE) as to non-applicability of service tax liability for our operation.
2. With this regard, we again wish to clarify the above with the brief background of our company for your better appreciation. We are engaged in development of residential projects. The present project is with respect to development and selling of the residential flats. The transaction with the customer shall be as under
 - a. The customer interested in buying the property approaches us.
 - b. We sell the undivided portion of land along with the semi-constructed flat on which applicable stamp duty shall be paid by the purchaser.
 - c. We also enter into the construction/completion agreement with each of such customer for the construction/finishing of the flat.
 - d. The total consideration shall be received in installments, which is generally spread across the period i.e. right from the customer approach and completion of construction.
3. We have paid service tax on the said projects under "construction of complex service"/ "Works Contract Service" upto December 2008. However we have not made any remittance of tax for the month of January 2009 onwards in view of the circular 108/2/2009-ST dated 29.01.2009 and the decided case given in the subsequent points.



MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.

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4. The consideration received for the first part of the transaction is not taxable for the reason
 - a. The transaction is in the nature of sale of immovable property therefore the same is not liable for service tax.
 - b. The construction undertaken is for oneself and there is no distinct service receiver and provider.
5. The above view is as per the Gauhati High Court in case of Magus Construction (P) Ltd., [2008 (11) S.T.R. 225 (Gau.)] and circular no. 108/02/2009-ST dated 29.01.2009.
6. The second part of the consideration is not taxable in view of the recent clarification given vide **circular no.108/02/2009-ST** dated 29.01.2009 clarifies that if the ultimate owner enters into a contract for construction of a residential complex with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax.
7. Instantly in our case, we execute construction for the owner of the semi-constructed flat, where the construction, service of designing and planning is done by our self. On completion of the said construction such owner receives for his/her personal use. Therefore the said circular exactly applies in our case and therefore we are not liable for payment of service tax.
8. Since the personal use exclusion is given in the definition on residential complex definition, there shall be no levy either under Construction of Complex service or under works contract service.
9. Therefore the service provided by us is not covered in the definition of the residential complex given under section 65(91a) of the Finance Act and accordingly no service tax is payable either under construction of complex service or under works contract service. Therefore the entire amount remitted by us has to consider as a deposit and not tax and accordingly we are eligible for refund of the same.

MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.

☎ : 66335551 (4 lines) Fax : 040-27544058

10. Further we also wish to clarify that this circular does not states that exclusion is only when the entire complex is being put to use by a single person. Any such notion may not be in line with clarification provided in the circular. This clarification is provided with an intention of construction of residential units only, therefore the same is applicable although the same is put to use by multiple service receiver.
11. In view of the above we have stopped paying service tax with effect from January 2009. Since the service provided by us in not liable for service tax no returns is required to be filed as clarified in the Board Circular no. 97/08/2007 dated 23.08.2007 in Para 6.1.
12. However since some amount has been paid in this regard till December 2008, we are submitting the returns herewith duly filled along with the late filing fee of Rs. 2000/- as prescribed.

We hope our understanding is clear and correct. We would like to request your good self to drop initiating any further proceedings in this regard.

We shall be glad to provide any further information or explanation in this regard. Kindly acknowledge the receipt of the following

Thanking You
Yours truly,

For Modi & Modi Constructions,



Managing Partner

Encl

1. Copy of Circular No.108/02/2009-ST dated 29.01.2009
2. ST- 3 returns
3. Copy of counterfoil of the payment challan.

MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.

☎ : 66335551 (4 lines) Fax : 040-27544058

To,
The Asst Commissioner,
Service Tax: Anti Evasion,
Office of The Commissioner of Customs,
Central Excise & Service Tax,
Hyderabad II Commissionerate,
Hyderabad , A.P.

Date: 12.03.2009

- Ref.: 1. Your summon dated 27.1.09 bearing no. HQST No. 15/2009ST AE.
2. Circular No. 108/02/2009 issued by the Central Board of Excise and Customs dated 29.01.2009.
3. Clarification issued by The Joint Commissioner, Service Tax on 27.02.2009

Dear Sir,

Mr. Shankar Reddy – Admin Manager has produced the relevant documents requested by you in reference 1 from time to time, as per your request, over the last several weeks. Mr. Shankar Reddy has also explained in detail the method adopted for computing service tax. In any case, please find enclosed the copy of challans showing proof of payment of service tax along with copies of ST3 returns filed for the period 1.06.2006 to 31.12.08. Please write to us if any further clarification are required

You are aware that there is a great deal of uncertainty regarding the applicability and method of computation for payment of service tax by builders. We have paid service tax on advances received from purchasers as per our understanding of applicability of service tax, after regular consultation with our counsel and also in consultation with the Excise Department. The Excise Department had issued clarification regarding applicability of service tax (Reference 3 above) and we have been following the same. Upto date service tax payments have been made upto 31.12.08.

Vide circular given in reference 2, The Central Board of Excise and Customs has clarified that the builders, promoters and developers are not liable for payment of service tax under the circumstances mentioned in the said circular. We are developing flats/independent houses by providing our own design, planning and construction and the prospective purchaser is purchasing units in our projects by way of an agreement of sale. Therefore, as per circular given in reference 2, we are not liable for payment of service tax.

Under the circumstances we request you to please drop any proceedings as mentioned in your summons (Reference 1). Further, we wish to withdraw our service tax registration. We request you to please do the needful. We are willing to provide any further details or documents that you may require.

Thank You.

Yours sincerely,
For MODI & MODI CONSTRUCTIONS,


Soham Modi.

Office of the
Commissioner of Customs
Central Excise & Service Tax



13/3/09

Hyd - II, Commissionerate
HYDERABAD.

MODI & MODI CONSTRUCTIONS

5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.

☎ : 66335551 (4 lines) Fax : 040-27544058

Date: 09.02.2009

To.
Mr. R. L. Ramesh Ram,
Assistant Commissioner,
Service Tax – Anti Evasion.

Dear Sir,

Sub.: Submission of details as per schedule – reg.

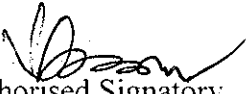
Ref.: Your letter no. HQST NO.15/2009 ST AE dated. 27.01.2009.

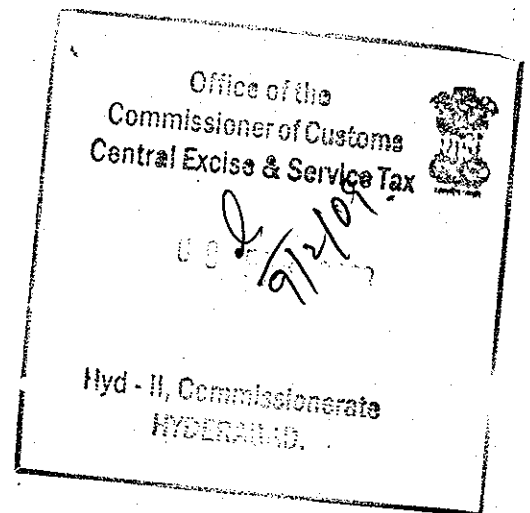
With reference to the above, we request your good selves to grant two more days' time i.e. upto 11.02.09 to submit all documents which mentioned schedule in summon vide no HQST NO.15/2009 ST AE dated 27.01.09 as we are in taking of legal opinion from service tax experts with reference to circular no. 108/02/09 of CBEC. Which says "Sale of property won't come under purview of service tax's".

Please do the needful and oblige.

Thanking you,

For Modi & Modi Constructions,


Authorised Signatory.





Ph: 040- 2323 1481

OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE &
SERVICE TAX ::HYDERABAD II COMMISSIONERATE:: SHAKAR BHAVAN
L.B.STADIUM ROAD:: BASHEERBAGH:: HYDERABAD-500 004.

S U M M O N S

(Under Section 14 of the Central Excise Act, 1944 made applicable to Service Tax
under Section 83 of Finance Act, 1994)

HQST NO.15/2009 ST AE

Date: 27.01.2009.

To

M/s. Modi & Modi Constructions,
5-4-183/3 & 4,
Soham Mansion,
MG Road,
Secunderabad.

Whereas an investigation against you about non-payment/evasion of Service Tax/contravention of the provisions of Finance Act, 1994 and Rules made there under is being inquired by me /under my orders.

And whereas I have reasons to believe that you are in possession of facts or/and documents and things which are relevant to the above inquiry.

You are hereby summoned under Section 14 of the Central Excise Act., 1944 made applicable to Service Tax matters under Section 83 of the Finance Act, 1994 to appear before me in person on the **9th day of February, 2009 at 11.45 Hrs** in my office situated at III Floor, Shakkar Bhavan in the office of the Commissioner of Customs and Central Excise, L.B. Stadium Road, Basheerbagh, Hyderabad -500 004 to give evidence truthfully on such matters concerning the enquiry as you may be asked and to produce the documents and things mentioned in the schedule below:

If you fail to comply with this summons and intentionally avoid to attend or to give evidence and to produce the documents and things, without a lawful excuse, you will be liable to be punished under the provisions of section 174 & 175 of the Indian Penal Code. **Penal provisions are applicable under Section 77 of the Finance Act, 1994 for delay in submission of documents/information within stipulated date/time specified above.**

SCHEDULE

1. Details of works carried out / amounts received towards rendering taxable services for the period from 16.06.2005 to 31.12.2008.
2. Details of Bank statements for the relevant period.
3. Balance Sheets for the years 2005-06, 2006-07 & 2007-08.
4. Details of service Tax payments, if any, made for the relevant period.
5. Copies of GAR Challans and ST-3 returns filed, if any, for the relevant period.

Given under my hand and seal of office today the, 27th day of January, 2009.



(R.L.RAMESH RAM)
Assistant Commissioner
Service Tax ::Anti Evasion

NOTE: Under clause 3 of Sec 14 of Central Excise Act, 1944, the above inquiry is deemed to be 'Judicial proceedings' within the meaning of Sec 193 and Sec 228 of Indian Penal Code, 1860 according to which giving intentional false statement in any stage of proceedings punishable under Sec 193 and intentional insult or interruption to public servant sitting in any stage of proceedings punishable under Sec 228 of Indian Penal Code, 1860.



OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE AND
SERVICE TAX : HYDERABAD II COMMISSIONERATE
3rd FLOOR : SHAKAR BHAVAN : BASHEERBAGH : HYDERABAD - 500 004
PHONE NO 23231172

CNo: WCS / 123

BY SPEED POST

Dated:02-01-2009

To
M/s
MODI AND MODI CONSTRUCTIONS,
5-4-187/3 & 4, SOHAM MANSION,
M.G.ROAD, SECUNDRABAD HO,
Hyderabad 500003

Gentlemen,

Sub:-Service Tax-Payment of Service Tax and filling of Service Tax
Returns under Section 70 of the Finance Act,1994 - Reg.

Ref: Your registration No: AAKFM7214NST001

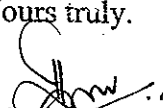
With reference to the above, you are requested to furnish the returns in
form ST-3 to be filed on half yearly basis. The half yearly return for April to
September has to be filed on or before 25th October and second half year return for
October to March has to be filed on or before 25th April.

Therefore you are requested to file the return upto the period ending
30-9-2008 along with original copies of TR6 Challans. **Hence, please take note that the
said returns along with late fee of Rs.2000/-for each non filed return** and the same
may be filed within seven days from the receipt of this letter failing which action will be
initiated as per law.

**Delay in depositing tax attracts interest @ 13% per annum. In
addition, it, also attracts a penalty per day of delay or 2% per month of the Tax
liability, which ever is higher. This penalty could be upto the amount of Service Tax
payable.**

This letter is issued without prejudice to any other action that may be
initiated against you under the Finance Act,1994 and the rules made her under or any
other law for the time being force in India.

Yours truly,


Superintendent of Central Excise
Service Tax, Group-X



Recd
13/04/10
(A S Neer)

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX
HYDERABAD II COMMISSIONERATE
3RD FLOOR (Annexe) :: SHAKKAR BHAWAN :: L.B.STADIUM ROAD
BASHEERBAGH::HYDERBAD - 500 004

O.R.No. 34 /2010-ST
HQST No: 59/09 - AE IV

Date: 12.04.2010

SHOW CAUSE NOTICE

Sub : Service Tax – Works Contract Services – M/s. Modi & Modi Constructions - Non payment of Service tax on taxable services rendered – Show cause Notice – Reg.

M/s. Modi & Modi Constructions, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad – 500 003 [here in after referred to as 'the service provider'] are engaged in providing works contract service. M/s. Modi & Modi Constructions is a registered partnership firm and got themselves registered with department for payment of service tax with STCNo. AAKFM7214NST001.

2. As per Section 65(105(zzzza)) of the Finance Act, 1994 "taxable service" under workscontract 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;

3. As per Section 65(91a) of the Finance Act, 1994, "Residential Complex means any complex comprising of—

- (i) a building or buildings, having more than twelve residential units
- (ii) a common area; and
- (iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system,

located within the premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

4. On gathering intelligence that M/s. Modi & Modi Constructions though registered with the service tax department are not discharging the service tax liability properly and also not filing the required returns, investigation has been taken up by the department and Summons dated 11.1.2010 for submission

of relevant record /documents / information have been issued to them. On verification of records submitted by the assessee, it is found that M/s. Modi & Modi Constructions have undertaken a single venture by name Nilgiri homes located at Rampally village, Keesara Mandal, RR District, and received amounts from customers from December, 2007 to December 2009 towards sale of land, agreement for development charges for development of the layout into plots by laying of roads, drainage lines, electrical lines, water lines etc., and agreement of construction. In the said venture, in respect of 18 houses they have entered into sale deed, agreement for development charges and agreement of construction with their customers. Till date they have not filed the ST3 returns with the department. However, they have submitted the copies of the ST3 returns prepared for the periods October, 2007 to March 2008, October, 2008 to March 2009 which were not acknowledged by the department, along with the copies of the challans consisting of payments of Rs. 13,56,460/-. It is also found that in respect of 18 houses they have paid the said service tax for the period from December, 2007 to December, 2008 under Works Contract service availing the option under Rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007.

5. A Statement has been recorded from Sri. A. Shanker Reddy, Deputy General Manager (Admn.) authorized representative of M/s. Modi & Modi Constructions on 1.2.2010 under Section 14 of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994. Sri. Reddy vide his Statement dated 1.2.2010 had inter alia stated that "the activities undertaken by the company are providing services of construction of Residential Complexes. They purchased the land under sale deed. On that they constructed the residential complexes. Initially, they collect the amounts against booking form/agreement of sale. At the time of registration of the property, the amount received till then will be allocated towards Sale Deed and Agreement of construction. Therefore, service tax on amounts received against Agreement of construction portion up to registration was remitted immediately after the date of agreement. The service tax on remaining portion of the amounts towards Agreement of construction is paid on receipt basis. Agreement of sale constitutes the total amount of the land / semi finished flat with undivided share of land and the value of construction. The sale deed constitutes a condition to go for construction with the builder. Accordingly, the construction agreement will also be entered immediately on the same date of sale deed. All the process is in the way of sale of the constructed unit as per the agreement of sale but possession was given in two phases one is land / semi finished flat with undivided share of land and other one is completed unit. This is commonly adopted procedure as required for getting loans from the banks". Further, he stated that services to a residential unit / complex which is a part of a residential complex, falls under the exclusion clause in the definition of residential complex. Further, he stated that they have stopped collection and payment of service from 1-1-2009 in the light of the clarification of the Board vide circular No. 108/02/2009 – ST dated 29th January 2009.

6. As per the exclusion provided in Sec 65(91a) of the Service Tax Act, the residential complex does not include a **complex** which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person. Here, "personal use" includes permitting the complex for use as residence by another person on rent or without consideration. *It is further clarified in para 3 of the Circular No. 108/02/2009 – ST, dated 29th January 2009* if the ultimate owner enters into a contract for construction of a **residential complex** with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity is not liable to service tax. Therefore, as per the exclusion clause and the clarification mentioned above, if a builder/promoter/developer constructing entire complex for one person for personal use as residence by such person would not be subjected to service tax. For example, construction of residential quarters by the Income tax department for their employees by employing a contractor for design, planning and construction is not leviable to service tax because it is for the personal use of the Income tax department. Normally, a builder/promoter/developer constructs residential complex consisting number of residential units and sells those units to different customers. So, in such cases the construction of complex is not meant for one individual entity. Therefore, as the whole complex is not constructed for single person the exclusion provided in Sec 65(91a) of the Service Tax Act doesn't apply. Further, the builder/promoter/developer normally enters into construction / completion agreements after execution of sale deed. Till the execution of sale deed the property remains in the name of the builder/promoter/developer and services rendered thereto are self services. Moreover, stamp duty will be paid on the value consideration shown in the sale deed. Therefore there is no levy of Service Tax on the services rendered till sale deed i.e., on the value consideration shown in the sale deed. But, no stamp duty will be paid on the agreements / contracts against which they render services to the customer after execution of sale deeds. There exists the service provider and service recipient relationship between the builder/promoter/developer and the customer. Therefore, such services against agreements of construction are invariably attracts service tax under Section 65(105(zzzza)) of the Finance Act, 1994.

avail of opportunity to be heard in person before the case is adjudicated. If they do not reply to the Show Cause Notice within 30 days or do not appear in person when the case is posted for personal hearing, it would be presumed that the Notice does not have anything to state in their defense or they do not prefer any personal hearing and case will be decided on merit based on the evidence available on record.

13. This show cause Notice is issued without any prejudice to any other action that may be taken against the recipients of this Notice or any other persons concerned with the Finance Act or any other law time being in force.

14. The above Notice is issued placing Reliance on the following Records:

- (1) Soft copy of the bank statements, books of accounts, Customer documents 2008-09 and 2009-10 (upto Dec 2009).
- (2) Service tax statement submitted by M/s. Modi & Modi Constructions vide letter dated 25-11-2009.
- (3) The Statement dated 2.1.2010 of Sri. A. Shankar Reddy, Authorised person of M/s. Modi & Modi Constructions.
- (4) Balance Sheets of M/s. Modi & Modi Constructions for the year 2008-09.


15.04.10
ADDITIONAL COMMISSIONER

To
✓ M/s. Modi & Modi Constructions, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad – 500 003
(By Speed Post Ack. Due)

Copy to:
The Superintendent, Service Tax, Group-X, Hyderabad-II Commissionerate, Shakkar Bhavan, Hyderabad.
The Superintendent, Adjudication, Hqrs, Hyderabad-II Commissionerate, Hyderabad.
Office Copy / Spare Copy.

7. As per the definition of "Residential Complex" provided under Section 65(91a) of the Finance Act, 1994, it constitutes any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system. The subject venture of M/s. Modi & Modi Constructions qualifies to be a residential complex as it contains more than 12 residential units with common area and common facilities like park, common water supply etc., and the layout was approved by HUDA vide permit No. 6092/MP2/Plg/HUDA/07, dated 16-11-2007. As seen from the records submitted, the assessee has entered into 1) a sale deed for sale of land together with / without semi finished portion of the house and 2) an 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 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 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 vide sale deeds are taxable services under works contract service.
8. As M/s. Modi & Modi Constructions have not furnished the monthwise particulars of amounts received exclusively on agreements for Construction, the tax liability has been arrived at on the basis of soft copies of the books of accounts provided by M/s. Modi & Modi Constructions. It is arrived at that they have collected an amount of Rs. 1,46,64,738/- against agreements of Construction during the period from January 2009 to December 2009 and are liable to pay service tax including Education cess and Secondary & Higher education cess of Rs. 6,04,187/- and the interest at appropriate rates under works contract service respectively. The details of amounts collected, service tax liability are as detailed in the Annexure to this Notice.
9. M/s. Modi & Modi Constructions are well aware of the provisions and of liability of Service tax on receipts agreements for Construction and have not assessed and paid service tax properly with an intention to evade payment of tax. They have intentionally not filed the returns and produced the particulars. Further, they misinterpreted the definition of the works contract service with an intention to evade payment of Service Tax. All the facts have come to light only after the department has taken up the investigation. Hence, the service tax payable by M/s. Modi & Modi Constructions appears to be recoverable under Sub Section 1 of Section 73 of the Finance Act, 1994.
10. From the foregoing it appears that M/s. Modi & Modi Constructions, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad - 500 003 have contravened the provisions of 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 and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they have not filed statutory Returns for the taxable services rendered and also did not truly and correctly assess the tax due on the services provided by them and also did not disclose the relevant details / information, with an intent to evade payment of service tax and are liable for recovery under proviso to the section 73(1) of the Finance Act, 1994 and thereby have rendered themselves liable for penal action under Section 76, 77 and 78 of the Finance Act, 1994
11. Therefore, M/s. Modi & Modi Constructions, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad - 500 003, are hereby required to show cause to the Additional Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II Commissionerate, 3rd floor, Shakkar Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad-500 004, within 30 days of receipt of this Notice as to why:
- (i) a differential amount of Rs. 5,86,589/- towards Service tax, Rs.11,732/- towards Education Cess and Rs.5,866/- towards Secondary & Higher Education Cess (a total amount of Rs.6,04,187/-) should not be demanded on the works contract service under the Sub Section 1 of the Section 73 of the Finance Act, 1994 for the period from January 2009 to December 2009.
 - (ii) interest is not payable by them on the amount demanded at (i) above and also on the delayed payments made during the period from January, 2009 to December 2009, under the Section 75 of the Finance Act, 1994
 - (iii) penalty should not be imposed on them under Section 76, 77 and 78 of the Finance Act, 1994
12. They are also required to produce at the time of showing cause, all the evidence upon which they intend to rely in support of their defense. They are also required to state whether would like to

ANNEXURE

M/s Modi and Modi Constructions
Worksheet of tax calculation

1. Statement - I (Month wise total receipts as per customer ledgers, tax payable and paid details)

	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Total
Receipts towards construction where sale deed & agreement of construction entered into	624780	2979292	147326	2880690	1980000	34980	1535000	400000	200000	1440000	200000	2242670	14664738
Rate of Service tax, Ed.Cess, S&Hed. Cess under works contract service	4.12%	4.12%	4.12%	4.12%	4.12%	4.12%	4.12%	4.12%	4.12%	4.12%	4.12%	4.12%	
Tax payable	25741	122747	6070	118684	81576	1441	63242	16480	8240	59328	8240	92398	604187

2. Statement-II (Due date, tax payable details)

Due date for payment of Tax	5/4/2009	5/7/2009	5/10/2009	5/1/2010	Total
Tax payable under works contract service	154558	201701	87962	159966	604187

3. Statement- III (Breakup of tax payable)

Service Tax	Education Cess	S&Hed Cess
586589	11732	5866

located within the premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

4. On gathering intelligence that M/s. Modi & Modi Constructions though registered with the service tax department are not discharging the service tax liability properly and also not filing the required returns, investigation has been taken up by the department and Summons dated 11.1.2010 for submission

Statement of Shri A. Shankar Reddy, S/o Late A. Sathi Reddy, Age: 49 years, Deputy General Manager (Administration) of M/s Modi Properties and Investments (P) Ltd given under section 14 of Central Excise Act, 1944 as made applicable to Service Tax Under Section 83 of Finance Act, 1994 before the Superintendent of Service Tax, Anti-Evasion, Hyderabad-II Commissionerate, Basheerbagh, Hyderabad on 1st February 2010.

My personal details are as above. I am appearing before you on behalf of M/s Modi and Modi Constructions to give my truthful statement in respect of the affairs of the said company, in response to your summons dated 13.1.2010 issued on the company. In this connection I submit that I am authorised to represent before the Service Tax authorities in connection with assessment proceedings for the Financial Years 2004-05 to 2009-10 (till December 2009) and to produce any documents and information connected herewith. I have been explained with the provisions of Section 14 of Central Excise Act, 1944 as made applicable to Service Tax under section 83 of Finance Act, 1994 according to which these are deemed judicial proceedings within the meaning of section 193 and 228 of Indian Penal Code, 1860. I have been explained that giving false statement or fabricating evidence is an offence punishable under section 193 of Indian Penal Code and obstructing the officers sitting in these proceedings is an offence punishable under section 228 of Indian Penal Code. Having understood the above provisions of law and knowing my responsibilities and implication of law, I depose this statement to the best of my knowledge and as per the information provided by company to me.

Q 1) Please tell briefly about yourself ?

A) I am Deputy General Manager (Administration) of M/s Modi Properties and Investments (P) Ltd and am authorized to represent our group company M/s Modi and Modi Constructions, before Service Tax authorities in connection with Service Tax matters and to give Statement.

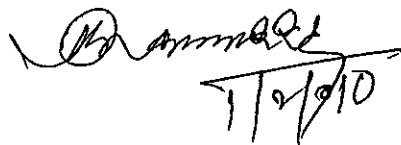
Q 2) You are aware that without submission of documents and information like month wise details of receipts, liability of tax and interest cannot be arrived at as the rate of tax and classification during the subject period changed. Then, why you have not submitted all the documents and information as called for therein the summons dated 13.1.2010?

A) We have already submitted the balance sheets, some ST3 return copies and plot-wise receipts details towards sale deed and agreement of construction since inception to October 2009. Book of accounts, Bank statements, Customer documents and unaudited book of accounts upto December, 2009 were provided in CD. The sample copies of agreement of construction and sale deed, monthwise receipts statement are also provided. Trial balance sheet for this financial year upto December, 2009, remaining copies of the ST3 returns, plot-wise receipts details towards sale deed and agreement of construction for the months Nov & Dec 2009 will be submitted at the earliest.

Q 3) When was the business operations started by M/s Modi and Modi Constructions.? What are the activities undertaken by the said company?

A) Our business was started in 2005 as a Partnership firm. The activities undertaken by the company are providing services of construction of Residential Complexes. We purchased the land under sale deed. On that we constructed the residential complexes. Initially, we collect the amounts against booking form/agreement of sale. At the time of registration of the property, the amount received till then will be allocated towards Sale Deed and Agreement of construction. Therefore, service tax on amounts received against Agreement of construction portion up to registration was remitted immediately after the date of agreement. The service tax on remaining portion of the amounts towards Agreement of construction is paid on receipt basis.

Contd-2


11/2/10

Agreement of sale constitutes the total amount of the land / semi finished flat with undivided share of land and the value of construction. The sale deed constitutes a condition to go for construction with the builder. Accordingly, the construction agreement will also be entered immediately on the same date of sale deed. All the process is in the way of sale of the constructed unit as per the agreement of sale but possession was given in two phases one is land / semi finished flat with undivided share of land and other one is completed unit. This is commonly adopted procedure as required for getting loans from the banks.

Q4.) Is the entire land on which construction has been took place registered in the name of M/s Modi and Modi Constructions? If not, state the details of agreement between the land owners and M/s Modi and Modi Constructions.

A) We are having single project under this concern since inception, namely 1) Neelgiri Homes. We are the owners of the land by virtue of sale deeds.

Q5) When did you receive the first payments for service and when did you start providing the services of construction?

First booking amount was received in Dec 2007, and the construction was also started in the same month.

Q 6) Have you taken registration under Service Tax and paying Service Tax?

A) We have been registered with Service Tax Department under Construction of residential complex service in 2007 and works contract services in 2008 and paying Service Tax on the total taxable services rendered by us w.e.f Apr 2008.

Q 7) Did you pay the tax along with interest on the receipts towards construction services from 16-6-2005 till the date of payment of tax?

A) All the tax has been remitted in advance, considering the first receipt as tax as per actual completion of work though the partial amounts are receivable by the date of payment of tax. We have already submitted consolidated receipts towards the services from our customers.

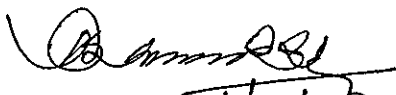
Q8.)How did you reclassified and converted the services of construction into works contract services?

A) Prior to 31.5.2007, we have not provided the services of construction and there are no receipts towards construction during that period. We paid service tax under Works Contract Service for all the agreements of construction till 31.12.2009.

Q.9)Why there is a difference in the receipts shown in the balance sheet, actual receipts shown in your worksheet and the receipts shown in the ST3 returns?

A) Net receipt from customers shown in the balance sheet doesn't directly reflect the actual receipts from customers towards construction service. However, the same can be arrived at by making certain calculations and the working sheet shall be provided. Our worksheet of receipts covers the period up to Dec., 2009 whereas the ST3 returns show the receipts up to Dec. 2008 only. We have not shown the receipts in ST3 returns from Jan 2009 onwards as we found our services are not taxable and as our customers stopped payment of service tax.

Cont-3


1/2/09

Q. 10) Do you say that the difference of total receipts up to Dec., 2009 shown in your worksheet and the total of values shown in ST3 returns filed, pertains to the months starting from 1/2009 to 12/2009 on which tax has not been paid?

A) Yes.

Q.11) Why did you stop payment of service tax from 1-1-2009 and also not submitted the returns?

A) Our customers have stopped payment of service tax from January, 2009 onwards in the light of the CBEC Circular No.108/2009/ST dt.29.01.2009. We already submitted our letter for cancellation of service tax registration as we believe our services are not taxable. In this regard we didn't receive any communication from the department. As we applied for cancellation we stopped submission of returns. Copy of our letter for cancellation is submitted.

Q 12) As per the statute and as clarified in the circular mentioned above, tax is not leviable on the sale value only i.e., the value mentioned in the sale deed, and only the complex built by a person for his personal use as residence engaging any person to design, plan and construct was excluded from the definition of residential complex. Therefore, why the service tax should not be demanded in your case where you provided the services of the construction of residential complex to residential units i.e., the part of the residential complex of your customers?


A) In this regard, we have already provided our submissions in detail vide our letters dated 13-3-2009 and 2-7-2009 respectively. Copies of the same will be provided.


Q 13) Do you want to say anything more?

A) The word used in the exclusion is 'complex' not the 'residential complex'. A complex may also have single residential unit. Therefore, it is understood by us and our customers, services to a residential unit / complex which is a part of a residential complex, falls under the exclusion clause in the definition of residential complex.

The above statement is given by me voluntarily without being under any pressure, threat or coercion. All the above information was given by me as per the records produced before me by the company and to the best of my knowledge. On my request, one of the officers typed the statement on the computer available in your office. I have gone through the hard copy of the statement which is true, correct and is as dictated by me.

BEFORE ME


SUPERINTENDENT
SERVICE TAX
ANTI EVASION (GR. VI)


For M/s Modi and Modi Constructions
Hyderabad.