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**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.77/2010-Adjn.ST

Date:29.09.2010

~~To~~
✓ M/s Greenwood Estates,
5-4-187/3 & 4, II Floor,
M.G.Road,
Secunderabad - 3.

[By Speed Post]

Gentlemen,

Sub: Service Tax- Works Contract Services - M/s Greenwood Estates - Non payment of Service Tax- Issue of Show Cause Notice -Intimation of Personal Hearing-Reg.

I am directed to inform that the Additional Commissioner is pleased to fix personal hearing in this case on **12.10.2010 at 11.30 Hrs.** You are therefore requested to attend personal hearing in person or through a counsel with all your replies/defense before the Additional Commissioner at Office of the Commissioner of Central Excise, Customs & Service Tax, Hyderabad-II Commissionerate, 3rd Floor (Annexe), Shakkar Bhavan, L.B.Stadium Road, Basheerbagh, Hyderabad.

2. If you fail to appear for the personal hearing on the date fixed as mentioned above, the case will be decided on merits/ evidence available in the records.

Yours faithfully
[Signature]
29/9/10
Superintendent (Adjn.)

GREENWOOD ESTATES

Shop No.1, 2 & 3, Ground Floor, Hariganga Complex, Ranigunj, Secunderabad - 500 003.

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.

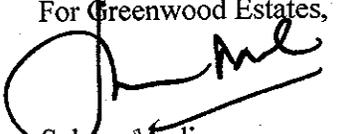
Dear Sir,

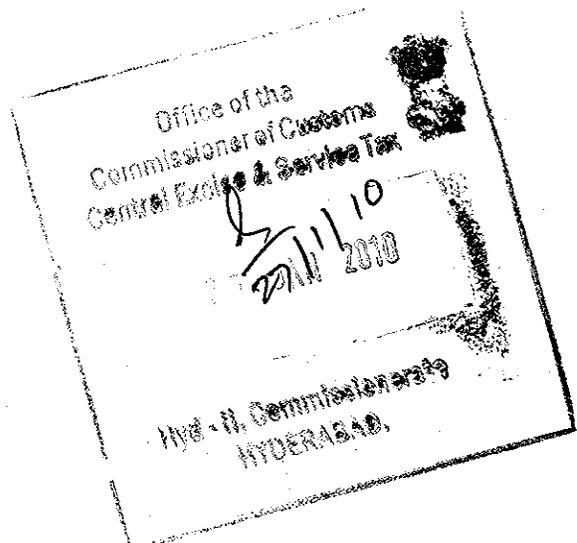
Ref.: Your summons dated 13.1.2010 vide letter no. HQST No.: 56/09 AE -IV
4.1.2010 for personal appearance at 11 am on 27.01.2010.

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 Greenwood Estates,


Soham Modi,
Managing Partner



GREENWOOD ESTATES

5-4-187/3 & 4, II Floor, Soham Mansion, M.G. Road, Secunderabad - 500 003.
Phone : +91-40-66335551, Fax :

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: 25.01.2010.

Dear Sir,

Ref.: Your summons dated 13.1.2010 vide letter no. HQST No.: 56/09 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.

Commissioner of Customs
Central Excise & Service Tax

20 JAN 2010
27/1/10
Hyd - II, Commissionerate
HYDERABAD.

GREENWOOD ESTATES

5-4-187/3 & 4, II Floor, Soham Mansion, M.G. Road, Secunderabad - 500 003.
Phone : +91-40-66335551, Fax :

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.

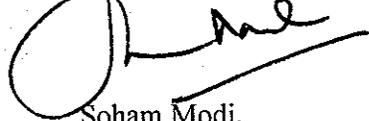
We request you to please clarify the ambiguity in the application of service tax and the method for computation of service tax liability. Please clarify the following:

- 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 Greenwood Estates,



Soham Modi,
Managing Partner

GREENWOOD ESTATES

Shop No.1, 2 & 3, Ground Floor, Hariganga Complex, Ranigunj, Secunderabad - 500 003.

To,
THE ADDITIONAL COMMISSIONER OF CUSTOMS,
CENTRAL EXCISE & SERVICE TAX,
HYDERABAD II COMMISSIONERATE,
L.B. STADIUM ROAD, BASHEERNAGH,
HYDERABAD 500 004.

Date: 16.06.2010

Sub: Reply to Show Cause Notice (SCN) viz., No. 77/2010-ST (HQST No. 56/09 - AE IV)
dated 21.05.2010 issued to M/s Greenwood Estates, Secunderabad.

Ref.: Our Service Tax registration no. AAHFGO711B-ST001.

1. M/s. Greenwood Estates is a partnership firm engaged in the business of construction of residential units. M/s. Greenwood Estates had undertaken a venture by name Greenwood Residency. M/s. Greenwood Estates had obtained service tax registration and made payments of service tax for the receipts pertaining to the period December 2007 to December 2008.
2. With respect to residential units constructed and sold M/s. Greenwood Estates has entered into two agreements, namely 'Sale Deed' for conveying the title of land along with the semi-constructed apartments and another "Construction Agreement" for construction of the semi finished house.
3. Initially, upto December 2008, when amounts were received by the M/s. Greenwood Estates some amount was paid towards service tax in spite of having doubt and lot of confusion on the applicability of service tax. Later, on the issue of the clarification vide the circular No. 108/02/2009 dated 29.01.2009 by the department the M/s. Greenwood Estates had stopped collecting and discharging service tax liability on the amounts collected in respect of the construction agreement as they were of the bonafide belief that they were excluded vide the personal use clause in the definition of residential complex.
4. Investigation was taken up by the department and summons dated 13.01.2010 were done for the submission of relevant records/documents/information for which the M/s. Greenwood Estates had extended full cooperation.
5. Subsequently, the Additional Commissioner has issued a show cause notice dated 21.05.2010 to the M/s. Greenwood Estates to show cause as to why:
 - a. An amount of Rs.9,20,133/- payable towards Service Tax, Education Cess and Secondary and Higher education cess should not be demanded under section 73(1) of the Finance Act, 1994 (hereinafter referred to as the Act) for the period January 2009 to December 2009;
 - b. Interest on the above should not be demanded under section 75 of the Act;
 - c. Penalty under sections 76, 77 and 78 of the Act should not be demanded from them.

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In as much as :

- a. Whether the M/s. Greenwood Estates is liable to service tax in respect of the amounts received during the above period?
- b. Whether the M/s. Greenwood Estates had intended to evade the payment of duty?
- c. Whether penalty under section 76 and 78 be imposed simultaneously?

Submissions:

In reply to the above propositions –

1. M/s. Greenwood Estates submits that the SCN has been issued without considering the factual position and the relevant provisions and hence the same has to be set aside.
2. The facts in respect of the project in the subject SCN are that the M/s. Greenwood Estates has constructed flats and the transaction with the customer was in two folds as under:
 - a. M/s. Greenwood Estates sold the undivided share of land along with the semi-constructed residential unit to the customer.
 - b. Subsequently the customer/owner of the land along with the semi-built up unit gets the construction done by the M/s. Greenwood Estates.
3. Whereas the SCN has assumed that the M/s. Greenwood Estates constructs HOUSES and that it sells the land in the first agreement entered with the client. It can be seen from this that the SCN has been issued without considering the actual facts and has been issued just for the purposes of creating an issue. Hence for this reason itself it shall be set aside. It was held in the case of SCT v BPL Ltd. [2010] 24 STT 220 (KAR) by the Honourable High Court that "*Without ascertaining the actual facts, the substantial questions of law could not be answered.*"
4. In respect of the first fold there is no construction service provided by the M/s. Greenwood Estates to their customer as there is no distinct service provider and receiver. Therefore there is no service tax on the same. This is not disputed by the department as well.
5. In your SCN you have claimed that Rs. 9,20,133/- payable towards service tax, education cess and secondary and higher education cess. The amount you are narrated is wrong and the actual amount payable is only Rs. 2,38,589/- towards service tax, education cess and secondary and higher education cess from January 2009 to December 2009.



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6. In respect of the second fold of the transaction there was always a doubt regarding the applicability of service tax as the definition of residential complex mentioned in section 65(91a) states that where such a complex is for personal use then no service tax is payable. The definition is extracted below:

“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;

In this case where it says that where the complex is used for personal use of ‘SUCH PERSON’ then no liability. But who is SUCH PERSON was not clear.

7. The same was clearly clarified in the recent circular no. 108/02/2009 –ST dated 29.02.2009. This was also clarified in two other circulars as under :
- a. F. No. B1/6/2005-TRU, dated 27-7-2005
 - b. F. No. 332/35/2006-TRU, dated 1-8-2006
8. M/s. Greenwood Estates submits that Board Circular No. 108/2/2009-S.T., dated 29-1-2009 states that the construction for personal use of the customer falls within the ambit of exclusion portion of the definition of the “residential complex” as defined u/s 65(91a) of the Finance Act, 1994 and accordingly no service tax is payable on such transaction.



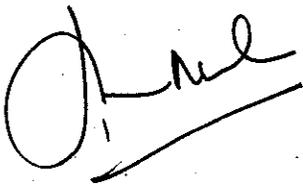
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Relevant extract

"...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'..."

9. M/s. Greenwood Estates submits that with the above exclusion, no service tax is payable at all for the consideration pertaining to construction service provided for its customer and accordingly the SCN is void abinitio.
10. Further the notice has bought a new theory that the exemption for personal use as stated in the definition would be available only if the entire complex is for personal use of ONE person. The M/s. Greenwood Estates wishes to state that while interpreting the law no words should be added or deleted. The law should be read as it is in its entirety. The relevant part of the circular is as under
"...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'..."
11. The M/s. Greenwood Estates wishes to highlight that neither in the definition nor in the clarification, there is any mention that the entire complex should be used by one person for his or her residence to be eligible for the exemption. The exemption would be available if the sole condition is satisfied i.e. personal use.
12. The M/s. Greenwood Estates submits the preamble of the referred circular for understanding what issue exactly the board wanted to clarify. The relevant part of the said circular (para 1) is extracted hereunder for ready reference.
"...Doubts have arisen regarding the applicability of service tax in a case where developer/builder/promoter enters into an agreement, with the ultimate owner for selling a dwelling unit in a residential complex at any stage of construction (or even prior to that) and who makes construction linked payment..." (Para 1)



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13. The M/s. Greenwood Estates submit that from the above extract, it is clear that the subject matter of the referred circular is to clarify the taxability in transaction of dwelling unit in a residential complex by a developer. Therefore the clarification aims at clarifying exemption of residential unit and not the residential complex as alleged in the notice.
14. The M/s. Greenwood Estates submits that it is important to consider what arguments are considered by board for providing this clarification. The relevant part as applicable in the context has been extracted as under for ready reference.
"...It has also been argued that even if it is taken that service is provided to the customer, a single residential unit bought by the individual customer would not fall in the definition of 'residential complex' as defined for the purposes of levy of service tax and hence construction of it would not attract service tax..." (Para 2)
15. The M/s. Greenwood Estates submits that the argument is in context of single residential unit bought by the individual customer and not the transaction of residential complex. The clarification has been provided based on the examination of the above argument among others.
16. The M/s. Greenwood Estates submits the final clarification was provided by the board based on the preamble and the arguments. The relevant portion of the circular is provided here under for the ready reference.
"... 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..." (Para 3)



GREENWOOD ESTATES

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17. The M/s. Greenwood Estates submits that the clarification provided above is that in the under mentioned two scenario service tax is not payable.
- For service provided until the sale deed has been executed to the ultimate owner.
 - For service provided by entering into construction agreement with such ultimate owner, who receives the constructed flat for his personal use.
18. The M/s. Greenwood Estates submits that it is exactly the facts in their case. The first clarification pertains to consideration received for construction in the sale deed portion. The second clarification pertains to construction in the construction agreement portion. Therefore this clarification is applicable to them *ibid*.
19. The M/s. Greenwood Estates has very narrowly interpreted by the department without much application of mind and has concluded that if the entire complex is put to personal use by a single person, then it is excluded. The circular or the definition does not give any meaning as to personal use by a single person. In fact it is very clear that the very reason for issuance of the circular is to clarify the applicability of residential unit and not the residential complex.
20. Where an exemption is granted, the same cannot be denied on unreasonable grounds and illogical interpretation as above. In the definition "*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.*" Since the reference is "constructed by a person" in the definition, it cannot be interpreted as "complex which is constructed by ONE person....." similar the reference "personal use as residence by such person" also cannot be interpreted as "personal use by ONE persons" Such interpretation would be totally against the principles of interpretation of law and also highly illogical.
21. The M/s. Greenwood Estates submits that the entire amount of service tax paid is eligible for refund. Further M/s. Greenwood Estates submits that when the levy does not exist, then payment of penalty does not arise and hence the SCN has to be set aside.
22. Without prejudice to the foregoing, M/s. Greenwood Estates further submits that non-taxability of the construction provided for an individual customer intended for his personal was also clarified by TRU vide its letter dated F. No. B1/6/2005-TRU, dated 27-7-2005 during the introduction of the levy, therefore the service tax is not payable on such consideration from abinito.

Relevant Extract



GREENWOOD ESTATES

Shop No.1, 2 & 3, Ground Floor, Hariganga Complex, Ranigunj, Secunderabad - 500 003.

"13.4 However, residential complex having only 12 or less residential units would not be taxable. Similarly, residential complex constructed by an individual, which is intended for personal use as residence and is constructed by directly availing services of a construction service provider, is also not covered under the scope of the service tax and not taxable"

23. Without prejudice to the foregoing, M/s. Greenwood Estates further submits that the board in between had clarified in an indicative manner that the personal use of a residential complex is not liable for service tax in the Circular F. No. 332/35/2006-TRU, dated 1-8-2006.

2.	<i>Again will service tax be applicable on the same, in case he constructs commercial complex for himself for putting it on rent or sale?</i>	<i>Commercial complex does not fall within the scope of "residential complex intended for personal use". Hence, service provided for construction of commercial complex is leviable to service tax.</i>
	<i>Will the construction of an individual house or a bungalow meant for residence of an individual fall in purview of service tax, is so, whose responsibility is there for payment?</i>	<i>Clarified vide F. No. B1/6/ 2005-TRU, dated 27-7-2005, that residential complex constructed by an individual, intended for personal use as residence and constructed by directly availing services of a construction service provider, is not liable to service tax.</i>

24. Without prejudice to the foregoing, M/s. Greenwood Estates further submits that Honorable CESTAT, Bangalore, has granted the stay in the case of M/s Classic Promoters and Developers, M/s Classic Properties v/s CCE Mangalore 2009-TIOL-1106-CESTAT-Bang relying on the Circular No. 108/02/2009-ST dated 29.01.2009, therefore the impugned notice is not in order.

25. Based on the above the M/s. Greenwood Estates was of the bonafide belief that service tax was not payable and stopped collecting and making payment. Hence where service tax is itself not payable then the question of non payment raised by the SCN is not correct and the entire SCN has to be set aside based on these grounds only.

26. Without prejudice to the foregoing M/s. Greenwood Estates submits that the SCN states that in respect of the construction agreement services are provided by the M/s. Greenwood Estates and there exists service provider and receiver relationship between them and hence it invariably attracts service tax.



GREENWOOD ESTATES

Shop No.1, 2 & 3, Ground Floor, Hariganga Complex, Ranigunj, Secunderabad - 500 003.

27. M/s. Greenwood Estates wish to submit here that for any activity to be a taxable service few conditions mentioned below have to be satisfied:
- There must be a defined service provider
 - There must be a defined service receiver
 - The activity under question should be a defined activity
 - During the period that is under question the levy must be in existence.
- All these conditions have to be fulfilled simultaneously and cumulatively.
28. In the instant case the condition 'c' is not fulfilled as the complex that is constructed falls under the exclusion portion of the residential complex definition and for other reasons already mentioned above. Hence eventhough the other 3 conditions are satisfied it does not mean that the activity is a taxable service. Hence the SCN should be set aside.
29. Further the M/s. Greenwood Estates submits that in the Finance Bill 2010 there was an explanation added to the section 65(105)(zzzh) of the Act where the taxable service construction of residential complex is defined. In this respect, in the clarification issued by the TRU vide D.O.F. No.334/1/2010-TRU dated 26.02.2010 it was stated that in order to bring parity in tax treatment among different practices, the said explanation was inserted. The circular also clarifies that by this explanation the scope has been enhanced. This gives the conclusion of the same being prospective and also clarifies that the transaction between the builder and buyer of the flat is not taxable until the assent was given to the Bill. Hence this shows that the transaction in question is not liable to service tax for the period under question.
30. Without prejudice to the foregoing M/s. Greenwood Estates submits that if the transaction is considered as taxable and there is service tax liability then the M/s. Greenwood Estates would be eligible for CENVAT credit on the input services and capital goods used and hence the liability shall be reduced to that extent. The SCN has not considered this and has demanded the entire service tax.

INTEREST

31. Without prejudice to the foregoing M/s. Greenwood Estates submits that when service tax itself is not payable, the question of interest and penalty does not arise.
32. M/s. Greenwood Estates further submits that it is a natural corollary that when the principal is not payable there can be no question of paying any interest as held by the Supreme Court in Prathiba Processors Vs. UOI, 1996 (88) ELT 12 (SC).



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PENALTY

33. Without prejudice to the foregoing, M/s. Greenwood Estates submits that service tax liability on the builders till date has not been settled and there is full of confusion as the correct position till date. With this background it is a settled proposition of law that when the assessee acts with a bonafide belief especially when there is doubt as to statute also the law being new and not yet understood by the common public, there cannot be intention of evasion and penalty cannot be levied. In this regard we wish to rely upon the following decisions of Supreme Court.

- (i) Hindustan Steel Ltd. V. State of Orissa – 1978 (2) ELT (J159) (SC)
- (ii) Akbar Badruddin Jaiwani V. Collector – 1990 (47) ELT 161(SC)
- (iii) Tamil Nadu Housing Board V Collector – 1990 (74) ELT 9 (SC)

Therefore on this ground it is requested to drop the penalty proceedings under the provisions of Section 76.

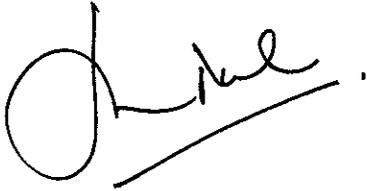
34. Further section 80 of Finance Act provides no penalty shall be levied under section 76, 77 or 78 if the assessee proves that there is a reasonable cause for the failure. The notice in the instant case was under confusion as to the service tax liability on their transaction, therefore there was reasonable case for the failure to pay service tax, hence the benefit under section 80 has to be given to them.

35. Further the SCN states that the M/s. Greenwood Estates was well aware of the provisions and that they have misinterpreted the provisions with an intent to evade payment of duty. But M/s. Greenwood Estates submits that when there is a confusion prevalent as to the leviability and the mala fide not established by the department, it would be a fit case for waiver of penalty as held by various tribunals as under. Further there cannot be an intent to evade payment of duty in such cases and just because the M/s. Greenwood Estates has not interpreted the law properly it cannot be said that there was an intent to evade payment of tax. This does not prove the malafide intent at all.

- a. The Financiers vs Commissioner of C. Ex., Jaipur 2008 (009) STR 0136 Tri.-Del
- b. Vipul Motors (P) Ltd. vs Commissioner of C. Ex., Jaipur-I 2008 (009) STR 0220 Tri.-Del
- c. Commissioner of Service Tax, Daman vs Meghna Cement Depot 2009 (015) STR 0179 Tri.-Ahmd

36. The SCN has levied penalties under sections 76 and 78. M/s. Greenwood Estates wish to submit here that penalties under Sections 76 and 78 are mutually exclusive and both the penalties cannot be imposed simultaneously. In this regard reliance is placed on the following decisions:

- a. Opus Media and Entertainment Vs Commissioner of C. Ex., Jaipur 2007 (8) STR 368 (T).
- b. The Financers Vs Commissioner of Central Excise, Jaipur 2007 (8) STR 7 (T).



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37. M/s. Greenwood Estates crave leave to alter, add to and/or amend the aforesaid grounds.
38. M/s. Greenwood Estates wish to be heard in person before passing any order in this regard.

Thank You.

Yours sincerely,
For GREENWOOD ESTATES,



Soham Modi
Managing Partner.

GREENWOOD ESTATES

Shop No.1, 2 & 3, Ground Floor, Hariganga Complex, Ranigunj, Secunderabad - 500 003.

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 - Reg.
Ref.: STC No. AAHFG0711BST001.

1. With reference to above, we would like to inform that we are Builders/Developers of Residential Apartments. We wish to recall our letter no. Nil dated 12.03.2009 where in, 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 (Gau.)) and circular no. 108/02/2009-ST dated 29.0.2009.
 - b. Sale deed & construction agreement: For the consideration relating to Sale Deed 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. 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.

GREENWOOD ESTATES

Shop No.1, 2 & 3, Ground Floor, Hariganga Complex, Ranigunj, Secunderabad - 500 003.

4. We understand that such explanation inserted is not constitutionally valid for the reason that this intends to tax transfer of immovable property by applying the Doctrine of Pith and substance. Transfer of immovable property has been governed by List II of the seventh 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 taken 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 of the existing service and hence the same can be only prospectively and ~~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 is deemed to be taxable service. Therefore the construction (taxable event) performed prior to 01.07.2010 would not be taxable.

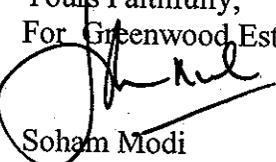
GREENWOOD ESTATES

Shop No.1, 2 & 3, Ground Floor, Hariganga Complex, Ranigunj, Secunderabad - 500 003.

8. Based on the above explanation, we have approached our customer, whether they are willing to reimburse service tax. Most of the customers expressed their willingness to pay service tax if at all they are liable from 01.07.2010 at 2.575% for the amounts payable by them after this date.
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%). C block completed and occupancy certificate applied for and awaited. Service tax shall be paid for all blocks. We understand this exemption would not be eligible subject to following condition.
 - a. Not availing the CENVAT credit
 - b. Not availing exemption under notification 12/2003-ST as amended.
 - c. Not only completion and finishing services in relation to residential complex.
 - d. 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.
 - e. 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.

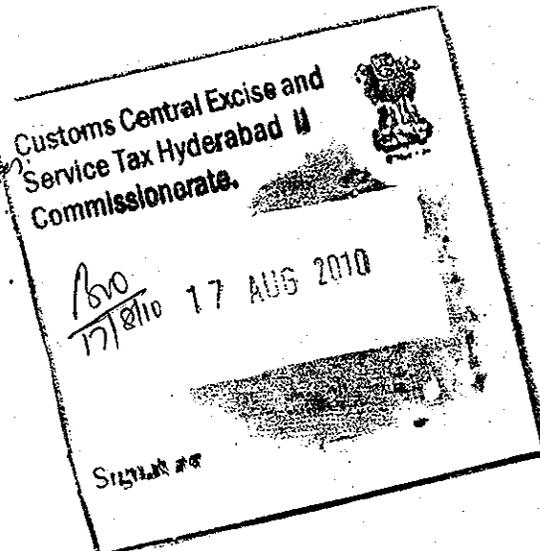
Thank You,
Yours Faithfully,
For Greenwood Estates,


Soham Modi
Managing Partner.

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

*Received 2 Copies
Addl. & Asst
Commr.'s*

- 3 -



GREENWOOD ESTATES

Shop No.1, 2 & 3, Ground Floor, Hariganga Complex, Ranigunj, Secunderabad - 500 003.

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.

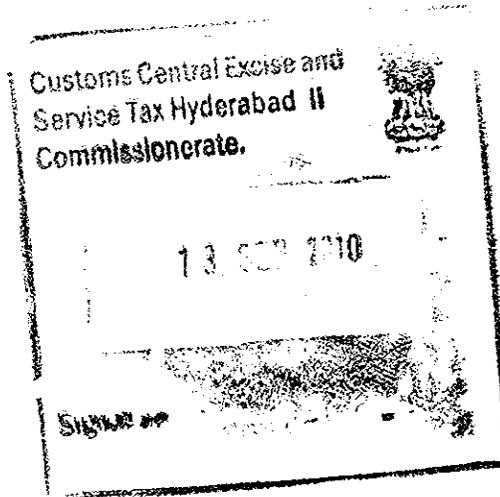
Thanking You.

Yours Truly

For GREENWOOD ESTATES,



Authorized Signatory.



GREENWOOD ESTATES

Shop No.1, 2 & 3, Ground Floor, Hariganga Complex, Ranigunj, Secunderabad - 500 003.

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 furnishing of certain information, vide letter no. HQST
No. 56/2009 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.

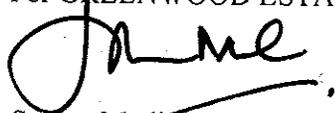
It is not possible to distinguish payments received from customers towards sale, construction agreement, VAT, stamp duty and other charges, etc., as payments are received from customers on an adhoc basis. In our books of accounts, we are debiting these costs periodically as and when due to the customer 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 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.

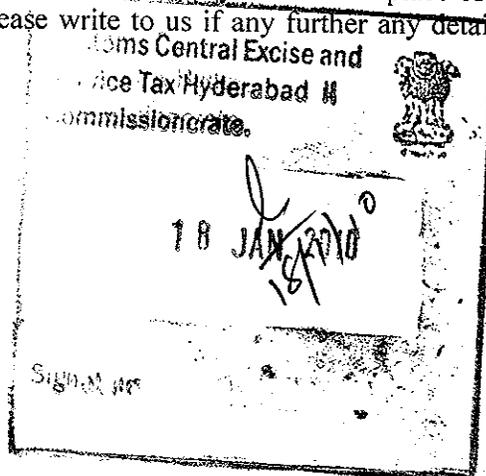
We have given all the above information on a CD which can be easily browsed in place of hard copies as the total no. of pages exceeds 8,500. Please write to us if any further any details or information is required.

Thank You.

Yours sincerely,
For GREENWOOD ESTATES,



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: 56/09- AE- IV

Date: 13.1.2010

To
M/s Greenwood Estates,
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.

SCHEDULE

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 13th 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 Sec193 and intentional insult or interruption to public servant sitting in any stage of proceedings punishable under Sec. 228 of IPC, 1860.

Keep
Office
File

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

HQ.ST No. 56/09 -AE. 15

Date: 1-1-2010

To
M/s Greenwood Estates

Soham Mansion,
MGRoad,
Secunderabad - 500 003.

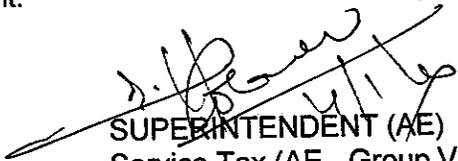
Gentleman,

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

Please refer to this office letter of dated 27.1.09, reminder dated 6.11.09 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.


SUPERINTENDENT (AE)
Service Tax (AE - Group VI)

GREENWOOD ESTATES

5-4-187/3 & 4, II Floor, Soham Mansion, M.G. Road, Secunderabad - 500 003.
Phone : +91-40-66335551, Fax :

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. /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.

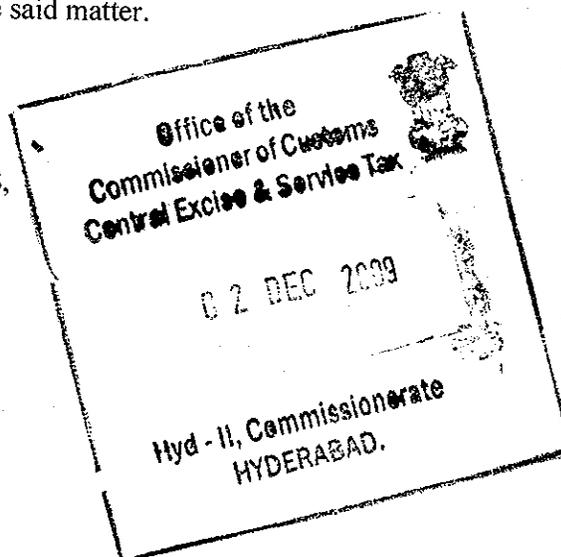
Balance sheets, trial balance and bank statements can be produced upon request. Copies of ST3 returns and challans can also be produced upon request. Please write to us if any further information and documents are required.

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 GREENWOOD ESTATES,


Soham Modi.



Details of construction contract where sale deeds were executed

Sl.No.	Name of the customer	Construction contract No	Construction in contract date	value mentioned on construction	Amount received upto 28-02-2008	Amount received towards construction contract		Balance receivable towards construction contract
						01-03-08 to 31-03-09	01-04-09 to 31-10-09	
1	Mr. Joy Das Gupta & Mrs. Modhumita Das Gupta	457/09	12/03/2009	2016000	0	1219194	112000	684806
2	Mrs. Tejal Modi	110/08	09/01/2008	1449000	591502	279000		578498
3	Mr. Sambit Mohanty & Mrs. Shigdia Mohanty	81/09	19/01/2009	2180000		1498484		681516
4	Mr. Mohan Nambiar & Mrs. Meera. M. Nambiar	1342/08	11/04/2008	2290000		1602885		687115
5	Mr. Mohan Nambiar & Mrs. Meera. M. Nambiar	1221/09	11/06/2009	2115000		1551259	656650	-92909
6	Lt.Col. K.S.P.S. Prasad	1370/08	18/04/2008	1417000		820036	50000	546964
7	Vijay Kiran Agastya	2330/09	27/08/2009	2115000			1430366	684634
8	Eppe Venkat Reddy	648/09	03/04/2009	2017500			1323889	693611
9	Mr. Vinay Kumar	1824/08	24/05/2008	1786000		1262476		523524
10	Mr. N.V. Kishore Naidu	4058/08	30/08/2008	1598000		1079731		518269
11	Mr. P. Anand Kumar	4861/08	30/10/2008	1568000		980404	100000	487596
12	Mr. Shamsundar Mouray	1856/08	26/05/2008	1602000		1117553		484447
13	Mr. I.Rajasekar, Mrs. I.Sweha	624/08	16/02/2008	1873000		1894131		-21131
14	Mr. Pihany Varghese	102/08	09/01/2008	1450000		1009428	1126820	440572
15	Lt Col O.Sudhar Reddy	2682/09	30/10/2009	1740000			613180	397196
16	Mr. Kapil R.Mehta	1154/08	27/03/2008	1479000		1081804	1009720	933280
17	Sqn Ldr Vijay Kumar	2141/09	05/09/2009	1943000		137866		788144
18	V. S. Vidyaaraj & Mrs. Sont Dixon	5092/08	22/11/2008	1506000		904023	580000	1373977
19	Mrs. Lakshmi Anand	2525/08	08/07/2008	2278000			754980	771020
20	G.Siva Rama Krishna	2362/09	30/09/2009	1526000		350394	1675155	174451
21	Col.Dinesh Anand & Mrs. Monisha Anand	2698/09	30/10/2009	2200000		1318104	1000896	1000896
22	Mr. Sujit Kumar B	2352/08	01/07/2008	2319000		90442	530000	700568
23	Mr. Rajesh. V. Mallan & Mr. Sreenesh. V. Mallan	4986/08	11/11/2008	1321000		543635	700000	742365
24	Miss Ritu Chawla	1590/08	06/08/2008	1986000		837626	120000	419374
25	Mr.Chandan Ghosh	1372/08	15/04/2008	1377000		632000	400000	227340
26	Alok Sawitney	106/08	09/01/2008	1349000	89660		748850	1226150
27	Lt.Col. J Alexander	2558/09	16/10/2009	1975000		660771	610000	218229
28	Mr. Jitender Sharma	108/08	09/01/2008	1782000	293000	466633	462000	361367
29	Ran Saraj Singh	823/08	01/03/2008	1290000	981876			340124
30	Mr. Pratyush Khare	157/08	16/01/2008	1322000				215035
31	Mrs. Shalini Manish Jain	104/08	09/01/2008	1782000	113965	838000	615000	

30 NOV 2009

A. *Douglas Siva Rao*
30/11/09

Service tax Statement

Name of the Company : **Greenwood Estates**
 Project/Location : **Greenwood Residency**
 Date : **30-11-2009**

List of Sale Deeds executed

Sl.No.	Name of the customer	Sale deed document no.	Date	Value	Amount received towards sale deed	Balance receivable for sale deed
1	Mr.Joy Das Gupta &Mrs.Mochnmita Das Gupta	456/09	12/03/2009	1160000	1160000	0
2	Mrs. Tejal Meoti	109/2008	9/1/2008	737000	737000	0
3	Mr.Sambit Mohanty&Mrs.Singha Mohanty	81/09	19/01/2009	1160000	1160000	0
4	Mr. Mohan Nambiar & Mrs. Meera M. Nambiar	1341/08	11/04/2008	1027000	1027000	0
5	Lt.Col. K.S.P.S. Prasad	1220/09	11/06/2009	1160000	1160000	0
6	Vijay Kiran Agastya	1369/08	18/04/2008	769000	769000	0
7	Lt.Col.Srinivas	2029/09	27/08/2009	1160000	1160000	0
8	Eppa Venkat Reddy	647/09	03/04/2009	1158000	1158000	0
9	Mr. Vinay Kumar	1823/08	24/05/2008	769000	769000	0
10	Mr.N.V.Kishore Naidu	4057/08	30/08/2008	865000	865000	0
11	Mr.P Anand Kumar	4860/08	30/10/2008	865000	865000	0
12	Mr. Shamsundar Mouray	1855/08	26/05/2008	769000	769000	0
13	Mr.L.Rajashakar,Mrs.L.Swetha	623/08	16/02/2008	1027000	1027000	0
14	Mr. Phinny Varghese	101/08	09/01/2008	737000	737000	0
15	Lt.Col.O.Sridhar Reddy	2682/09	30/10/2009	1200000	1200000	0
16	Mr.Kapil R.Mehta	1153/08	27/03/2008	769000	769000	0
17	San Ldt. Vijay Kumar	2140/09	05/09/2009	1200000	1200000	0
18	V. S. Vidyaraj & Mrs. Soni Dixon	5091/08	22/11/2008	865000	865000	0
19	Mrs.Lakshmi Anand	2624/08	08/07/2008	1081000	1081000	0
20	G.Siva Rama Krishna	2361/09	30/09/2009	870000	870000	0
21	Col.Dhesh Anand &Mrs.Monisha Anand	2697/09	30/10/2009	1200000	1200000	0
22	Mr.Sujit Kumar B	2351/08	01/07/2008	1081000	1081000	0
23	Mr. Rajesh. V. Mallan & Mr. Sreenesh. V. Mallan	4985/08	11/11/2008	865000	865000	0
24	Miss Ritu Chawla	1589/08	06/08/2008	1081000	1081000	0
25	Mr. Chandan Ghosh	1371/08	15/04/2008	809000	809000	0
26	Alok Sawhney	105/08	09/01/2008	776000	776000	0
27	Lt.Col. J.Alexander	2557/09	16/10/2009	1200000	1200000	0
28	Mr. Jitender Sharma	107/08	09/01/2008	1036000	1036000	0
29	Ram Suraj Singh	822/08	01/03/2008	790000	790000	0
30	Mr.Prapush Khare	156/08	16/01/2008	758000	758000	0

A. Shankar Reddy
 20/11/09

30 NOV 2009

31	Mrs. Shalini Manish Jain	103/08	09/01/2008.	1036000.	1036000.	0
32	A V M. Devedendrah Ganesh & Mrs. Iza Ganesh	2506/09	12/10/2009.	1200000.	1200000.	0
33	Mrs. Alamelu Randas & Mr. N. Randas	3999/08	28/08/2008.	865000	865000	0
34	Mr. Arni Gupta	158/08	16/01/2008.	776000	776000	0
35	Mrs. Athuri Durga Rani & Mrs. A. N. Sameera	2005/08	09/06/2008.	1121000	1121000	0
36	Mr. Sabyasachi Ray	1325/08	10/04/2008.	809000	809000	0
37	Mr. Narinder Mohal	951/08	13/03/2008.	1081000	1081000	0
38	Mr. Kaushik Jena & Mrs. Smaranika Patnaik	4469/08	25/09/2008.	865000	865000	0
39	Mr. Srinivas Oruganti	580/08	13/02/2008.	809000	809000	0
40	V. V. S. Chaitanya	1710/08	15/05/2008.	809000	809000	0
41	Mr. Kamalakhar Rao. G.	1366/08	15/04/2008.	790000	790000	0
42	Dr. Thuppal Sreedhar	5029/08	15/11/2008.	1160000.	1160000	0
43	Mr. Rajeev Bisht	1292/08	08/04/2008.	1121000.	1121000	0
44	Vandana Jain	2551/09	15/10/2009.	1200000.	1200000	0
45	Ch. Shanhi Kumar	796/08	28-02-08	1120500.	1120500	0
46	Mr. Rishi Khurana & Mrs. Lata Singh	1317/08	10-04-08	1121000.	1121000	0
47	Ch. Rohini Kumar	1316/08	10/04/2008.	1121000	1121000	0
TOTAL				45948500	45948500	0

A. Sambasivadas
30/11/09

30 NOV 2009

Details of service tax paid			
Sl.No.	Date	Challan No.	Amount paid
1	25-02-08	-	120946
2	05-04-08	49	210065
3	14-07-08	10	885394
4	20-10-08	23	100000
5	24-10-08	57	100000
6	01-11-08	14	103322
7	07-11-08	69	100972
8	21-11-08	18	136874
9	04-12-08	52	25000
10	23-01-09	-	150000
11	31-03-09	-	300000
TOTAL			2232573

A. Sankaralingam
 30/11/09

30 NOV 2009

✓

GREENWOOD ESTATES

Shop No.1, 2 & 3, Ground Floor, Hariganga Complex, Ranigunj, Secunderabad - 500 003.

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/122 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 dated 27.1.09.
4. Our letter dated 2.07.2009.
5. Notice for furnishing of records by the department, letter no. HQST No. 56/2009 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.



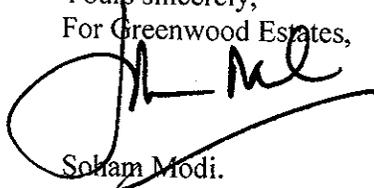
GREENWOOD ESTATES

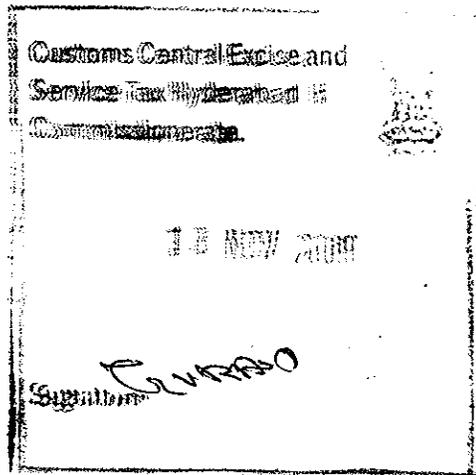
Shop No. 1, 2 & 3, Ground Floor, Hariganga Complex, Ranigunj, Secunderabad - 500 003.

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 Greenwood Estates,


Soham Modi.





Recd
S/T/AE

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: 56/09 AE IV

Date: 6.11.2009

To
M/s Greenwood Estates,
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 83 of the finance Act, 1994.

Please treat this as most urgent.

Yours faithfully,

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

GREENWOOD ESTATES

Shop No.1, 2 & 3, Ground Floor, Hariganga Complex, Ranigunj, Secunderabad - 500 003.

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. AAHFG0711BST001.

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.

GREENWOOD ESTATES

Shop No.1, 2 & 3, Ground Floor, Hariganga Complex, Ranigunj, Secunderabad - 500 003.

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.

GREENWOOD ESTATES

Shop No.1, 2 & 3, Ground Floor, Hariganga Complex, Ranigunj, Secunderabad - 500 003.

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.

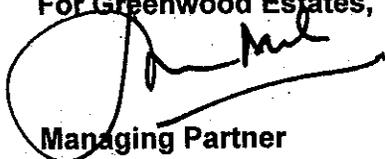
We hope our understanding is clear and correct. We would like to request your good self to drop initiating any further proceedings in this regard.

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 Greenwood Estates,



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.

GREENWOOD ESTATES

5-4-187/3 & 4, II Floor, Soham Mansion, M.G. Road, Secunderabad - 500 003.
Phone : +91-40-66335551, Fax :

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 21.02.2009.

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 GREENWOOD ESTATES,

Soham Modi.

Office of the
Commissioner of Customs
Central Excise & Service Tax



Hyd - II, Commissionerate
HYDERABAD.

GREENWOOD ESTATES

5-4-187/3 & 4, II Floor, Soham Mansion, M.G. Road, Secunderabad - 500 003.
SS
Phone : +91-40-66335551, Fax :

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.

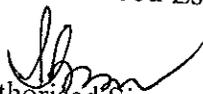
Ref.: Your letter no. HQST NO.15/2009 ST AE dated. 27.01.2009.

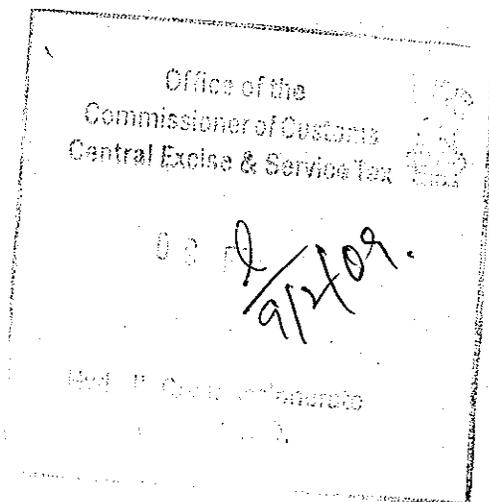
With reference to the above, we request your good selves to grant two more days' time i.e. upto 11.02.09 to submit all documents which mentioned schedule in summon vide no HQST NO.15/2009 ST AE dated 27.01.09 as we are in taking of legal opinion from service tax experts with reference to circular no. 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 Greenwood Estates,


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. Greenwood Estates,
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 11.15 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 20.12.2006 to 31.12.2008 (Year-wise/ Month-wise).
2. Details of Bank statements for the relevant period.
3. Balance Sheets for the years 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 / 122

BY SPEED POST

Dated:02-01-2009

To
M/s
GREEN WOOD ESTATES,
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: AAHFG0711BST001

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

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 Greenwood Estates 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 Greenwood Estates, 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 filed, and 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 Greenwood Estates.? 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


1/2/10

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 Greenwood Estates? If not, state the details of agreement between the land owners and M/s Greenwood Estates.

A) We are having single project under this concern since inception, namely 1) M/s Greenwood Estates. 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 Sep., 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 February, 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



Handwritten signature and date: 1/2/10

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.

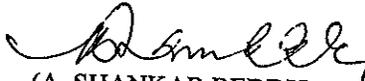
Q 13) Do you want to say anything more?

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)


(A. SHANKAR REDDY)
For M/s Greenwood Estates
Hyderabad. 1/2/10



[Handwritten signature]
[Handwritten date: 25/05/10]

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. 77/2010-ST
HQST No: 56/09 - AE IV

Date:21.05.2010

SHOW CAUSE NOTICE

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

M/s. Greenwood Estates, 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. Greenwood Estates is a registered partnership firm and got themselves registered with department for payment of service tax with STCNo. AAHFG0711BST001.

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

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

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

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. Greenwood Estates 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 13.1.2010 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. Greenwood Estates have undertaken a single venture by name **Greenwood Estates** located at Kowkur Village, Malkajgiri Mandal, R.R. District and received amounts from customers from September, 2007 to December 2009 towards sale of land and agreement of construction. In the said venture, in respect of 47 houses they have entered into sale deed, 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 tax Rs. 22,24,946/- along with other payments of Rs. 7,624/- . It is also found that in respect of 47 houses they have paid the said service tax for the receipts towards construction service 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. Greenwood Estates 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. Shanker Reddy vide his Statement dated 1.2.2010 had interalia stated that "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. The 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 was a part of a residential complex, fall under the exclusion clause in the definition of residential complex. Further, he stated that they had 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. Greenwood Estates 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 & the Alwal Municipality vide Letter No. 3822/P4/P/H/07, dated 9-7-2007. As seen from the records submitted, the assessee have entered into 1) a sale deed for sale of undivided portion of land together with semi finished portion of the flat 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. Greenwood Estates 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 obtained from M/s. Greenwood Estates. It is arrived at that they have collected an amount of **Rs. 2,30,03,332/-** 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. 9,47,737/-** 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. Greenwood Estates are well aware of the provisions and of liability of Service tax on receipts as result of these 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. Greenwood Estates 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. Greenwood Estates, 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. Greenwood Estates, 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) an amount of **Rs. 9,20,133/-** towards Service tax, **Rs.18,403/-** towards Education Cess and **Rs.9,201/-** towards Secondary & Higher Education Cess (a total amount of **Rs.9,47,737/-**) 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

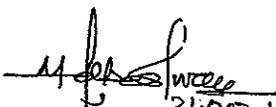
- (iii) Penalty should not be imposed on them under Section 76 of the Finance Act, 1994 for their failure to pay service tax in accordance with the provisions of Section 68 or the rules made under Chapter V of the Finance Act 1994.
- (iv) Penalty should not be imposed on them under Section 77 of the Finance Act, 1994 for the contravention of Rules and provisions of the Finance Act, 1994 for which no penalty is specified else where.
- (v) Penalty should not be imposed on them under Section 78 of the Finance Act, 1994 for suppression of value of service tax and contravention of provisions of Chapter V of the Finance Act or the rules made there under, with intent to evade payment of service tax.

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. Greenwood Estates vide letter dated 25-11-2009.
- (3) The Statement dated 1.2.2010 of Sri. A. Shankar Reddy. Authorised person of M/s. Greenwood Estates.
- (4) Balance Sheets of M/s. Greenwood Estates for the year 2008-09.


21.05.10
ADDITIONAL COMMISSIONER

To

M/s. Greenwood Estates, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad – 500 003
(By RPAD)

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

	Amounts collected	Rate of total tax	Total tax payable
	Works contract service	Works contract service	Works contract service
Jan-09	2132436	4.12% on value	87856
Feb-09	0	4.12% on value	0
Mar-09	2843000	4.12% on value	117132
Apr-09	1826369	4.12% on value	75246
May-09	500000	4.12% on value	20600
Jun-09	1068670	4.12% on value	44029
Jul-09	860000	4.12% on value	35432
Aug-09	3663666	4.12% on value	150943
Sep-09	1975234	4.12% on value	81380
Oct-09	4271402	4.12% on value	175982
Nov-09	3152729	4.12% on value	129892
Dec-09	709826	4.12% on value	29245
Total	23003332		947737

Name of the service	Amounts collected	Total tax liability from Jan 2009 to Dec. 2009	Total tax paid on receipts from Jan 2009 to Dec. 2009	Differential tax payable
Works contract service	23003332	947737	0	947737

Differential tax break up

Service tax	Education cess	S & H Education cess
920133	18403	9201

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. Greenwood Estates though registered with the service tax department are not discharging the service tax liability properly and also not filing the required returns