

**IN THE HON'BLE HIGH COURT OF JUDICATURE OF  
ANDHRA PRADESH AT HYDERABAD  
WRIT PETITION NO : 26012 OF 2009**

**BETWEEN:**

M/s Paramount Builders,  
Registered Office, 5-4-187/3, & 4,  
II Floor, MG Road,  
SECUNDERABAD.  
Rep. by Managing Partner, Mr. Soham Modi,  
S/o. Satish Modi, Aged 39 years,  
R/o. Plot No. 280, Road No. 25, Jubilee Hills,  
Hyderabad.

. . . **Petitioner**

**And**

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

. . . **Respondents**

**COUNTER AFFIDAVIT FILED ON BEHALF OF RESPONDENTS**

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

2. I am the Assistant Commissioner in the Office of the Commissioner of Customs, Central Excise and Service Tax,

  
ATTESTOR

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

  
DEPONENT

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

Hyderabad-II Commissionerate, Hyderabad and as such I am well acquainted with the facts of the case as borne out of records. I am authorised to file this affidavit on behalf of the respondents.

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

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

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

(ii) a common area; and

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

*A. Jayadev Das*  
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**Superintendent (Legal)**  
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*Ajit Indurkar*  
31.3.2010  
DEPONENT  
AJIT INDURKAR  
Asst. Commissioner (ST-II)  
Customs & Central Excise  
Hyd - II Commissionerate  
HYDERABAD.

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;

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

As per the exclusion provided in Sec 65(91a) of the

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Customs & Central Excise  
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Hyd - II Commissionerate  
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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

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

*Ajit Indurkar*  
31.3.2010  
DEPONENT

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

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 invariably attract service tax. In the petition, the petitioner has intentionally replaced residential complex with residential house in the following line.

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

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

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

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

But, it is the fact that the service they render is the criteria to decide whether they are exempted or not. By mentioning the "ultimate owner" in the circular, it has been clarified that the services till execution of sale deed for the sale of land or land

  
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DEPONENT  
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Customs & Central Excise  
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along with flat/residential unit i.e., till the ultimate owner becomes the owner, though there are agreements for construction with the ultimate owner prior to the sale of such constructed flat/residential unit, would not be subjected to service tax. Further, from the definition of Residential Complex, the construction of a complex by a person for his personal use as residence, by engaging any other person for designing or planning of the layout was excluded. Therefore, the services for construction rendered after the sale of land/flat/residential unit to the owner of the land are taxable services. There exists service provider and recipient relationship between the builder/promoter/ developer/ contractor and the owner of the land / semi finished flat/ residential unit who purchased the same under sale deed and thereafter receives services by entering into a contract / agreement with the builder/promoter/developer/contractor for construction of a residential complex or part thereof, or completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to construction a residential complex or part thereof, as the case may be.

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

8. In reply to Para 15 of the affidavit, it is submitted that as per Service Tax provisions and the Circular No. 108/02/2009 — ST dated 29<sup>th</sup> January 2009, the services of construction of Residential Complex (As per definition) and part thereof, rendered after the sale of land/flat/residential unit to the owner of the land/flat/residential are taxable services. The customers of

  
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the petitioner may not understand the provisions of taxation as they are laymen. But, it is bounden duty of the petitioner to explain, and convince them about the taxability and collect the tax. In the indirect taxation, the petitioner cannot take escape from the payment of tax on this ground, as per the provisions the amounts received by them would be construed as inclusive of the tax.

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

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

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

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

  
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 AJIT INDIRKAR  
 Asst. Commissioner (ST-III)  
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 HYDERABAD.

of the Show Cause notices are meant to protect revenue and they are time bound. Any interference in the matter may cause revenue loss.

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

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

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

VERIFICATION

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

Verified today the 31<sup>st</sup> day of March, 2010.

*Ajit*  
31.3.2010  
(AJIT INDURKAR)  
**AJIT INDURKAR**  
DEPONENT  
Asst. Commissioner (ST-III)  
Customs & Central Excise  
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31/3/10  
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ATTESTOR

DEPONENT



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

**W.P.NO. 26012 OF 2009**

BETWEEN:

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

...PETITIONER

AND

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

...RESPONDENTS

**AFFIDAVIT**

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

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

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

3. The Petitioner eventually transfers the residential units or apartments to the intending buyers. Depending upon the stage at which the prospective buyer contracts with the Petitioner, the consummation of transaction could take one of the several forms. In the case of construction of residential bungalows, the Petitioner sells the land or causes the sale of the land in favour of the prospective buyer. In case of residential complexes, the Petitioner executes a sale deed with respect to undivided interest in the land with a partially constructed structure. In either event, the Petitioner enters into an agreement for construction of the residential complex and completing the construction of residential apartment in favour of the prospective buyer. A few typical documents executed by the Petitioner with its clients are marked collectively as **Annexure P-1** hereto.
4. The Union of India levies service tax on several services under the provisions of Finance Act, 1994 as amended from time to time. In so far as the construction activity is concerned, Section 65 (105) (zzzh) authorizes the levy of service tax in relation to services rendered "to any person by any other person in relation to construction of a complex". The expression "construction of complex" is defined in Section 65 (30a) of the Act in the following terms.
  - "(a) construction of a new residential complex or a part thereof;
  - (b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or
  - (c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex;"
5. The analysis of the scope of Section 65 (30a) of the Act would yield the following result. The term "residential complex" employed in Section 65 (30a) is again defined in Section 65 (91a) of the Act in the following terms:
  - " "residential complex" means any complex comprising of –
  - (i) a building or buildings, having more than twelve residential units;
  - (ii) a common area; and

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

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

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

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

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

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

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

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

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

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

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

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

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

DEPONENT

ADVOCATE :: HYDERABAD

**VERIFICATION STATEMENT**

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

Verified at Hyderabad on this        day of October, 2009.

ADVOCATE

DEPONENT

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# PARAMOUNT BUILDERS

9/c

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

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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/124 dated 2.1.09

2. Our letter dated 13.03.2009

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

5. Our letter dated 2.07.2009.

5. Notice for furnishing of records by the department, letter no. HQST No. 55/2009 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.



# PARAMOUNT BUILDERS

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

Date: 02.07.2009.

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

Dear Sir,

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

**Ref: Our STC No. AAHFP4040NST001.**

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

Hyd-II Commissionerate  
HYDERABAD



# PARAMOUNT BUILDERS

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

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.

# 73 PARAMOUNT BUILDERS

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

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 is 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.

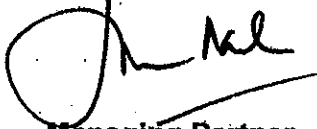
12. However since some amount has been paid in this regard till December 2008, we are submitting the returns herewith duly filled along with the late filing fee of Rs. 2000/- as prescribed.

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 Paramount Builders,



Managing Partner

Encl

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

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# PARAMOUNT BUILDERS

# 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 23.02.2008.

Dear Sir,

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

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

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


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

Thank You.

Yours sincerely,  
For PARAMOUNT BUILDERS.

  
Soham Modi.

Office of the  
Commissioner of Customs  
Central Excise and Service Tax



2/3/09

Hyd - II, Commissionerate  
HYDERABAD.

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P-2

Circular No. 108/02/2009 - ST

F. No. 137/12/2006-CX.4  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
\*\*\*

New Delhi, dated 29<sup>th</sup> January 2009

**Subject: Imposition of service tax on Builders - regarding**

\*\*\*\*\*

Construction of residential complex was brought under service tax w.e.f.01.06.2005. 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. The 'Construction of Complex' service has been defined under Section 65 (105)(zzzh) of the Finance Act as "any service provided or to be provided to any person, by any other person, in relation to construction of a complex". The 'Construction of Complex' includes construction of a 'new residential complex'. For this purpose, 'residential complex' means any complex of a building or buildings, having more than twelve residential units. A complex constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex intended for personal use as residence by such person has been excluded from the ambit of service tax.

2. A view has been expressed that once an agreement of sale is entered into with the buyer for a unit in a residential complex, he becomes the owner of the residential unit and subsequent activity of a builder for construction of residential unit is a service of 'construction of residential complex' to the customer and hence service tax would be applicable to it. A contrary view has been expressed arguing that where a buyer makes construction linked payment after entering into agreement to sell, the nature of transaction is not a service but that of a sale. Where a buyer enters into an agreement to get a fully constructed residential unit, the transaction of sale is completed only after complete construction of the residential unit. Till the completion of the construction activity, the property belongs to the builder or promoter and any service provided by him towards construction is in the nature of self service. 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.

3. 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

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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.

4. All pending cases may be disposed of accordingly. Any decision by the Advance Ruling Authority in a specific case, which is contrary to the foregoing views, would have limited application to that case only. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned.

(Gautam Bhattacharya)  
Commissioner (Service Tax)  
CBEC, New Delhi

*Recd  
11/10/10*

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

HQ.ST No. 58/07 -AE.TV

Date 1-1-2010

To  
M/s Parament Builders

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 17.1.09, 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.

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



Phone : 23231481  
23230196

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

HQST No: 55/09 AE IV

Date: 6 .11. 2009

To  
M/s Paramount Builders,  
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)



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.

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27/1/09.

SUMMONS

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

HOST NO.15/2009 ST AE

Date: 27.01.2009.

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

\*\*\*\*\*

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 **9<sup>th</sup> day of February, 2009 at 11.45 Hrs** in my office situated at III Floor, Shakkar Bhavan in the office of the Commissioner of Customs and Central Excise, L.B. Stadium Road, Basheerbagh, Hyderabad -500 004 to give evidence truthfully on such matters concerning the enquiry as you may be asked and to produce the documents and things mentioned in the schedule below:

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

SCHEDULE

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

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



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

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



Dt. 11.03.2009

To  
Mr. R.L.Ramesh Ram,  
Asst Commissioner,  
Service Tax - Anti Evasion.

Dear Sir,

**Sub:** Submission details as per Schedule -- reg.

**Ref:** Your Letter HQST No 15/2009 ST AE 27.07.09, Our letter dated 09.02.09

With reference to the above the following are the details of Service Tax paid.

S.No	Cheque No	Date	Amount
1	812581	04.04.2007	388,527.00
2	156415	26.10.2007	241,140.00
3	886034	05.07.2007	479,050.00
4	980832	02.01.2008	100,000.00
5	980833	09.01.2008	100,000.00
6	980834	16.01.2008	100,000.00
7	980835	23.01.2008	100,000.00
8	980836	30.01.2008	154,406.00
9	980644	04.02.2008	100,000.00
10	980645	11.02.2008	100,000.00
11	980646	18.02.2008	100,000.00
12	980647	25.02.2008	100,000.00
13	980648	03.03.2008	113,973.00
14	204142	24.07.2008	161,255.00
15	Cash	24.07.2008	1,150.00
16	246018	04.10.2008	100,000.00
17	246100	13.10.2008	100,000.00
18	154329	18.10.2008	100,000.00
19	154378	25.10.2008	101,987.00
20	154464	01.11.2008	100,000.00
<b>Total Amount :-</b>			<b>2,841,488.00</b>

Please find enclosed Challan Copies, ST - 3.

Thanking you,

Yours faithfully,  
For Paramount Builders

SOHAM MODI  
(PARTNER)

**OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS  
SERVICE TAX CELL : HYDERABAD-II COMMISSIONERATE  
6TH FLOOR : KENDRIYA SHULK BHAVAN : L.B.STADIUM ROAD,BASHEERBAGH :  
HYDERABAD - 500 004**

Form ST-2

[Certificate of registration under Section 69 of the Finance Act,1994 (32 of 1994) ]

Shri/Ms. **PARAMOUNT BUILDERS**, 5-4-187/3 & 4, SOHAM MANSION, , M.G.ROAD, SECUNDRABAD HO, HYDERABAD URBAN having undertaken to comply with the conditions prescribed in Chapter V of the Finance Act, 1994 read with the Service Tax Rules, 1994, and any orders issued thereunder is hereby certified to have been registered with the Central Excise Department. The Service Tax Code and other details are mentioned hereunder.

1. PAN **AAHFP4040N**  
2. Service Tax Code **AAHFP4040NST001**  
(Registration Number)  
3. Taxable Services **WORKS CONTRACT SERVICES**

**4. Address of Business Premises**

(i) Name of Premises / Building **SOHAM MANSION**  
(ii) Flat / Door / Block No. **5-4-187/3 & 4**  
(iii) Road / Street / Lane **SOHAM MANSION**  
(iv) Village / Area / Lane **M.G.ROAD**  
(v) Block / Taluk /sub-Division/ Town  
(vi) Post Office **SECUNDRABAD HO**  
(vii) City / District **HYDERABAD URBAN**  
(viii) State / Union Territory **ANDHRA PRADESH**  
(ix) PIN Code **500003** Telephone No.  
(x) e-mail Address  
5. Premises Code **520000**

6. This certificate is issued incorporating the changes intimated by the applicant and the previous certificate of registration bearing Registration Number \_\_\_\_\_ issued on \_\_\_\_\_ stand cancelled.

**Note**

- In case the registrant starts providing any other taxable service (other than those mentioned above), he shall intimate the department.
- In case the registrant starts billing from other premises (other than those mentioned above), he shall intimate the department.
- These intimations and any other information which registrant wishes to bring to the notice of the department can be submitted on-line by the registrant after logging on to web-site.
- This registration certificate is not transferable.
- List of Accounting codes is enclosed. These may invariable be furnished in the challan at the time of making payment of service tax.

Place : HYDERABAD  
Date : 29/02/2008

*Ch. S. S. Prasad*  
Name & Signature of the Central Excise  
Officer with official seal

CC : (by email) To  
(1) The Pay and Accounts Officer, HYDERABAD-II

**SUPERINTENDENT**  
Customs, Excise & Service Tax  
Service Tax Cell GR ...X...  
Hyderabad-II, Commissionerate

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS  
SERVICE TAX CELL : HYDERABAD-II COMMISSIONERATE  
6TH FLOOR : KENDRIYA SHULK BHAVAN : L.B.STADIUM ROAD  
BASHEERBAGH : HYDERABAD - 500 004

Date : 17/08/2005

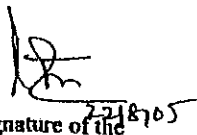
To  
M/s. PARAMOUNT BUILDERS,  
5-4-187/3&4 SOHAM MANSION 3RD FLOOR  
M.G.ROAD SECUNDRABAD HO  
HYDERABAD URBAN  
PINCODE - 500003  
ANDHRA PRADESH

Sir/Madam,

**Subject :** Allotment of Service Tax Code Number - Application Receipt No. 19627 dated 17/08/2005

1. Your STC Number is AAHFP4040NST001
2. The Location Code concerning your registered premise or office is 520000
3. You are advised to deposit Service Tax and other related Government dues in any of the authorised branches of the nominated bank(s). I.e.  
**STATE BANK OF HYDERABAD**
4. You are required to quote the above STC Number on all the requisite documents and records like challans for duty payment, returns filed etc.,
5. You are advised to indicate account heads as indicated below in all challans used for remitting service tax or other dues (interest, penalty etc)

<u>Service</u>	<u>A/c Head For Tax</u>	<u>A/c Head For Other Dues</u>
CONSTRUCTION OF RES. COMPLEX	00440334	00440335

  
Signature of the  
Deputy Commissioner of Service Tax  
with official seal

Place : HYDERABAD

CC : To  
(1) The Pay and Accounts Officer, HYDERABAD-II