

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

**BETWEEN:**

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

. . . **Petitioner**

**And**

1. The Union of India,  
Rep by its Secretary, Ministry of Finance,  
Department of Revenue,  
Government of India,  
New Delhi.
2. The Commissioner of Customs, C.Ex &  
Service Tax, Hyderabad-II Commissionerate,  
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, Hyderabad-II Commissionerate, Hyderabad and as such I am

*K. Jaganmohan*  
31/3/10  
ATTESTOR

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

*Ajit Indurkar*  
21/3.2010  
DEPONENT

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

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

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

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

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

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

*K. J. ...*  
ATTESTOR

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

*Ajit Indurkar*  
DEPONENT  
AJIT INDURKAR

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

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

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

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

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

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

*L. Jayaraman*  
ATTESTOR

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

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

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

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

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

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

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

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

*A. Jayadev Reddy*  
31/3/10  
ATTESTOR

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

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

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

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

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

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

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

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

*R. Jayachandran*  
21/3/10  
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**Superintendent (Legal)**  
Customs & Central Excise  
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*Ajit Indurkar*  
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DEPONENT

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

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

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

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

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

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

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

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

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

*J. Jayaram*  
31.3.11

ATTESTOR

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

*Ajit Indurkar*  
31.3.

DEPONENT

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

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

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

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

VERIFICATION

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

Verified today the 31st day of March, 2010.

*Ajit Indurkar*  
31.3.2010  
(AJIT INDURKAR)

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

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

*Ajit Indurkar*  
31.3.2010  
(AJIT INDURKAR)

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

ATTESTOR

DEPONENT



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

W.P.NO. 28007 OF 2009

BETWEEN:

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

...PETITIONER

AND

1. Union of India,  
Represented by its  
Secretary,  
Ministry of Finance,  
Government of India,  
New Delhi
2. Commissioner of Central Excise,  
Customs and Service Tax,  
Hyderabad II Commissionerate,  
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

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

✓ OK.

**Ref: Show Cause Notice dated 12-4-2010 issued to Modi & Modi  
Constructions**

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

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

Service tax is proposed to be levied on agreements of construction under Section 65(105) (zzza) of the Finance Act, 1994. Section 65 (105) (zzza) defines a "taxable service" as meaning "any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams". There is an explanation to the above section which defines a "works contract" as meaning a contract wherein such contract is for the purposes of carrying out construction of a new residential complex or a part thereof. Section 65(91a) of the Finance Act, 1994 defines a "residential complex" as comprising of:

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

attracted if the ultimate owner enters into an agreement of construction with the builder/promoter/developer directly engaging the said builder/promoter/developer for designing or planning of the layout and if the construction of such complex is intended for the personal use of the ultimate owner.

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

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

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

Thanking you,  
Yours sincerely,

Modi & Modi Constructions



DRAFT

Date: 14/05/2010

To  
Sri P. Krishna Mohan  
Sri V. Venkata Raju  
Advocates  
D.No.12-127/2, Lala Pet,  
Secunderabad

Dear Sir,

This has reference to your notice dated 28.4.2010 addressed to our clients Modi Ventures and Others, and the same has been placed in our hands for suitable reply.

Our Clients deny all adverse allegations contain<sup>ed</sup> in the notice under reply.

With reference Para No.1 of your notice under reply the same is ~~is to and hence~~ <sup>is the averment in</sup> ~~is not denied.~~ <sup>and</sup>

With regard to para No.2 of your notice <sup>it</sup> is to true ~~to~~ that our client has given newspaper publicity and your client approached for purchase of 2 flats and after due negotiations sale deeds were executed and possession was handed over. It is true that our client has provided amenities as agreed upon and the same is being enjoyed by your client.

With regard to para No.3, it is true that permissions have been taken from Huda and other authorities for construction of 350 flats in 5 blocks. It is true that our clients are providing all the amenities i.e., club house, Gym and other amenities and the same has been handed over to the flat owners Association.

With regard to para No.4 it is true that our client stated a new venture in a neighbouring land in name of Gulmohar Gardens Phase II. It is not true to say that our client has been promoting the new venture showing the amenities already provided for blocks A to F. It is not true to say that the amenities already existing would be used by the owners.

With regard to para No.5 the boundary wall was demolished only for facilitating or movement of men and material to the construction site of the new block and infact our client agreed to reconstruct the wall, infact your clients ware over reacted and issued a notice.

With regard to para No.6 the same is not denying <sup>since</sup> ~~is not denying~~ <sup>A temporary partition wall has been erected!</sup>

With regard to para No.7 it is not true to say that there is any security threat as our client has provided guard at the new construction site which is adjacent to the existing block.

With regard to para No.8 it is not to true to say that our client has tried to blackmail the existing residents. Our client has got every right to construct besides existing blocks. Infact G Block which is under construction is being done on a separate piece of land which is adjacent to the existing constructions and infact our client in no way breaking ~~any~~ <sup>any</sup> law or ~~is~~ <sup>is</sup> doing anything illegal.

With regard to para No.9 it is not true to that the activities of our client is illegal or malafide or constitutes any deficiency of service, breach of contract, Criminal Breach of trust or cheating. Our client is no way interfering with the possession of the owners in the 5 Blocks nor creating any hurdles for the existing owner in enjoying their property.

Our client has never mentioned any where that the existing amenities would also be used by the occupants of the G Block. Infact our client is providing exclusive amenities for G Block. If inspite of this reply <sup>your</sup> client launches upon any <sup>in</sup> ~~in~~ <sup>the</sup> court of law he would so <sup>is</sup> ~~is~~ <sup>at his</sup> own costs and consequences.

(G. BALAGOPAL)  
This reply does not propose to rebut all pleas of ~~law~~ <sup>law</sup> ~~liberty~~ <sup>liberty</sup> ~~is~~ <sup>is</sup> ~~being~~ <sup>being</sup> ~~infringed~~ <sup>infringed</sup> upon by our client and ~~the~~ <sup>the</sup> ~~liberty~~ <sup>liberty</sup> ~~is~~ <sup>is</sup> ~~being~~ <sup>being</sup> ~~infringed~~ <sup>infringed</sup> as ~~it~~ <sup>it</sup> ~~is~~ <sup>is</sup> ~~being~~ <sup>being</sup> ~~infringed~~ <sup>infringed</sup> upon.



Recd  
13/04/10  
(A Sheer)

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

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

**Date: 12.04.2010**

**SHOW CAUSE NOTICE**

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

\*\*\*\*\*

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

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

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

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

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

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

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

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

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

5. A Statement has been recorded from Sri. A. Shanker Reddy, Deputy General Manager (Admn.) authorized representative of M/s. Modi & Modi Constructions on 1.2.2010 under Section 14 of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994. Sri. Reddy vide his Statement dated 1.2.2010 had inter alia stated that "the activities undertaken by the company are providing services of construction of Residential Complexes. They purchased the land under sale deed. On that they constructed the residential complexes. Initially, they collect the amounts against booking form/agreement of sale. At the time of registration of the property, the amount received till then will be allocated towards Sale Deed and Agreement of construction. Therefore, service tax on amounts received against Agreement of construction portion up to registration was remitted immediately after the date of agreement. The service tax on remaining portion of the amounts towards Agreement of construction is paid on receipt basis. Agreement of sale constitutes the total amount of the land / semi finished flat with undivided share of land and the value of construction. The sale deed constitutes a condition to go for construction with the builder. Accordingly, the construction agreement will also be entered immediately on the same date of sale deed. All the process is in the way of sale of the constructed unit as per the agreement of sale but possession was given in two phases one is land / semi finished flat with undivided share of land and other one is completed unit. This is commonly adopted procedure as required for getting loans from the banks". Further, he stated that services to a residential unit / complex which is a part of a residential complex, falls under the exclusion clause in the definition of residential complex. Further, he stated that they have stopped collection and payment of service from 1-1-2009 in the light of the clarification of the Board vide circular No. 108/02/2009 - ST dated 29<sup>th</sup> 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 29<sup>th</sup> January 2009 if the ultimate owner enters into a contract for construction of a residential complex with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity is not liable to service tax. Therefore, as per the exclusion clause and the clarification mentioned above, if a builder/promoter/developer constructing entire complex for one person for personal use as residence by such person would not be subjected to service tax. For example, construction of residential quarters by the Income tax department for their employees by employing a contractor for design, planning and construction is not leviable to service tax because it is for the personal use of the Income tax department. Normally, a builder/promoter/developer constructs residential complex consisting number of residential units and sells those units to different customers. So, in such cases the construction of complex is not meant for one individual entity. Therefore, as the whole complex is not constructed for single person the exclusion provided in Sec 65(91a) of the Service Tax Act doesn't apply. Further, the builder/promoter/developer normally enters into construction / completion agreements after execution of sale deed. Till the execution of sale deed the property remains in the name of the builder/promoter/developer and services rendered thereto are self services. Moreover, stamp duty will be paid on the value consideration shown in the sale deed. Therefore there is no levy of Service Tax on the services rendered till sale deed i.e., on the value consideration shown in the sale deed. But, no stamp duty will be paid on the agreements / contracts against which they render services to the customer after execution of sale deeds. There exists the service provider and service recipient relationship between the builder/promoter/developer and the customer. Therefore, such services against agreements of construction are invariably attracts service tax under Section 65(105(zzzza)) of the Finance Act, 1994.

7. As per the definition of "Residential Complex" provided under Section 65(91a) of the Finance Act, 1994, it constitutes any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system. The subject venture of M/s. Modi & Modi Constructions qualifies to be a residential complex as it contains more than 12 residential units with common area and common facilities like park, common water supply etc., and the layout was approved by HUDA vide permit No. 6092/MP2/Plg/HUDA/07, dated 16-11-2007. As seen from the records submitted, the assessee have entered into 1) a sale deed for sale of land together with / without semi finished portion of the house and 2) an agreement for construction, with their customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by the assessee thereafter to their customers under agreement of construction are taxable under service tax as there exists service provider and receiver relationship between them. As there involved the transfer of property in goods in execution of the said construction agreements, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold vide sale deeds are taxable services under works contract service.

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

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

10. From the foregoing it appears that M/s. Modi & Modi Constructions, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad - 500 003 have contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 in as much as they have not paid the appropriate amount of service tax on the value of taxable services and Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they have not filed statutory Returns for the taxable services rendered and also did not truly and correctly assess the tax due on the services provided by them and also did not disclose the relevant details / information, with an intent to evade payment of service tax and are liable for recovery under proviso to the section 73(1) of the Finance Act, 1994 and thereby have rendered themselves liable for penal action under Section 76, 77 and 78 of the Finance Act, 1994

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

- (i) a differential amount of Rs. 5,86,589/- towards Service tax, Rs.11,732/- towards Education Cess and Rs.5,866/- towards Secondary & Higher Education Cess ( a total amount of Rs.6,04,187/-) should not be demanded on the works contract service under the Sub Section 1 of the Section 73 of the Finance Act, 1994 for the period from January 2009 to December 2009.
- (ii) interest is not payable by them on the amount demanded at (i) above and also on the delayed payments made during the period from January, 2009 to December 2009, under the Section 75 of the Finance Act, 1994
- (iii) penalty should not be imposed on them under Section 76, 77 and 78 of the Finance Act, 1994

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

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

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

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

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

  
15.04.10  
ADDITIONAL COMMISSIONER

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

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

Note on writ petition for service tax.

1. Service tax was imposed on construction of residential complex from 16.06.05 u/s. 65(105)(zzzh).
2. Service tax on works contracts was brought into effect from 01.06.2007 for residential complexes.
3. Vide circular no. 96/7/2007 dated 23.08.2007 (copy enclosed) a clarification was issued stating that a builder building a residential complex by employing direct labour is not liable to pay service tax u/s. 65(105)(zzzh). Further a contractor engaged by builder shall be liable to pay service tax under the said section.
4. Vide letter dated 21.2.08 addressed to M/s. Modi Developers the JC-ST has clarified that service tax is payable on the agreement of construction value executed in favour of the customer and the amount received towards sale deed would not be charged under service tax (copy enclosed).
5. Vide circular 108/02/2009-ST dated 29.01.09 (copy enclosed) issued in relation to section 65(105)(zzzh), it was further clarified that,

..... "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".

The said circular is very ambiguous and poorly drafted.

6. As per advice of JC we have changed the service tax registration from residential complex service u/s. 65(105)(zzzh) to works contract u/s. 65(105)(zzza).
7. Summons were issued to us for producing certain documents on 27.01.09 (copy enclosed). We have submitted the required documents.
8. In view of circular no. 108/02/09, we have stopped payment of service tax from Jan 09, however, service tax was paid upto 31.12.08.
9. We have written to the department vide our letter dated 12.3.09 for withdrawal of our service tax registration.
10. We have also filed nil returns along with the representation on 8.7.09 (copy enclosed).
11. We have once again received a letter from the department on 6.11.09 (copy enclosed) asking for bank statements, balance sheets, challans, ST3 returns from 2004 - 2009.
12. Department has not sent any reply regarding our request for withdrawal of registration.

13. Our customers are refusing to pay service tax citing the latest circular from the department. To the best of our knowledge no other builder in Hyderabad is paying service tax.

Query:

Can we file a writ petition restraining the department from taking coercive measures like search and seizure without issuing a show cause notice and giving us a chance to reply to the show cause notice. We are willing to provide all required information and are not averse to any search operations by the department. The department is raiding several builders and threatening to seize all documents and computers from their office and under duress collecting cheques from builders.

Note:

We have 8 firms that have the same issue and notices have been served on all of them.

Date: 12.11.09

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# MODI & MODI CONSTRUCTIONS 9/c

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

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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/123 dated 2.1.09  
2. Our letter dated 13.03.2009  
3. Notice for furnishing of records by the department, letter no. HQST No. 15/2009 ST  
AE dated 27.1.09.  
5. Our letter dated 8.07.2009.  
5. Notice for furnishing of records by the department, letter no. HQST No. 59/2009 AEIV  
dated 6.11.09.

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

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

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

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

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

✓



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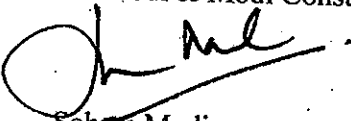
# MODI & MODI CONSTRUCTIONS

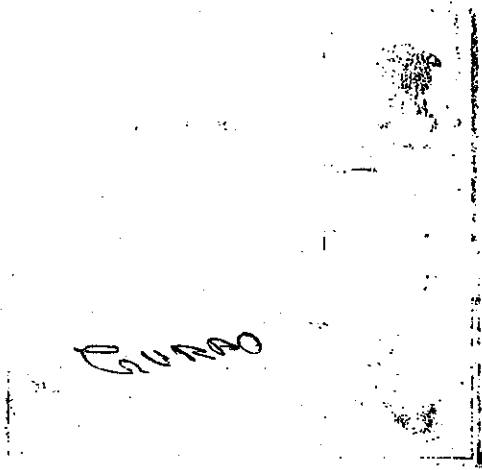
5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.  
☎ : 66335551 (4 lines) Fax : 040-27544058

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

Thank You.

Yours sincerely,  
For Modi & Modi Constructions,

  
Soham Modi.



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# MODI & MODI CONSTRUCTIONS

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

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

Date: 02.07.2009.

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

Dear Sir,

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

**Ref: Our STC No. AAKFM7214NST001.**

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

*Handwritten signature and date: 8/7/09*

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# MODI & MODI CONSTRUCTIONS

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

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

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

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# MODI & MODI CONSTRUCTIONS

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

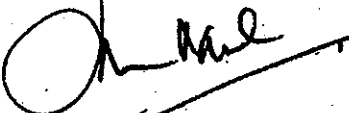
10. Further we also wish to clarify that this circular does not states that exclusion is only when the entire complex is being put to use by a single person. Any such notion may not be in line with clarification provided in the circular. This clarification is provided with an intention of construction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

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

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

Thanking You  
Yours truly,

For Modi & Modi Constructions,



Managing Partner

Encl

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

# 52 MODI & MODI CONSTRUCTIONS

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

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

Date: 12.03.2009

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

Dear Sir,

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


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

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

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

Thank You.

Yours sincerely,  
For MODI & MODI CONSTRUCTIONS,

  
Soham Modi.

Office of the  
Commissioner of Customs  
Central Excise & Service Tax

13/3/09

Hyd - II, Commissionerate  
HYDERABAD.

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

owner

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

45

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

**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) ]

Sri/Ms. **MODI AND MODI CONSTRUCTIONS**, 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 **AAKFM7214N**  
 2. Service Tax Code **AAKFM7214NST001**  
 (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**

1. In case the registrant starts providing any other taxable service (other than those mentioned above), he shall intimate the department.
2. In case the registrant starts billing from other premises (other than those mentioned above), he shall intimate the department.
3. 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.
4. This registration certificate is not transferable.
5. 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

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

*Ch. Q. S. S. Prastomw*  
 Name & Signature of the Central Excise  
 Officer with official seal  
**SUPERINTENDENT**  
**Customs, Excise & Service Tax**  
**Service Tax Cell GR ... ..**  
**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

ST-2 Annexure

Date : 29/02/2008

To  
 M/s. MODI AND MODI CONSTRUCTIONS  
 5-4-187/3 & 4 SOHAM MANSION  
 M.G.ROAD SECUNDRABAD HO  
 HYDERABAD URBAN  
 PINCODE - 500003  
 ANDHRA PRADESH

Sir/Madam,

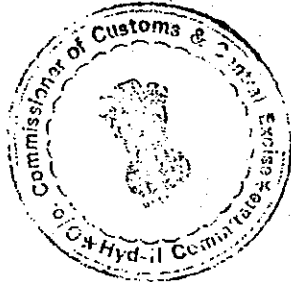
**Subject :** Account Head Details.**Ref :** Application Receipt No. 5206 dated 29/02/2008

- Your STC Number is AAKFM7214NST001
- The Location Code concerning your registered premise or office is 520000
- 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.

CORPORATION BANK  
INDIAN OVERSEAS BANK  
STATE BANK OF HYDERABAD

- You are required to quote the above STC Number on all the requisite documents and records like challans for duty payment, returns filed etc..
- 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(s)</u>	<u>A/c Head For</u> <u>Tax</u>	<u>A/c Head For</u> <u>Other Dues</u>	<u>A/c Head For</u> <u>Edu. Cess</u>
WORKS CONTRACT SERVICES	00440410	00440411	00440298



*Ch. V. S. S. Prathap*  
 Name & Signature of the Central Excise  
 Officer with official seal  
**SUPERINTENDENT**  
 Customs, Excise & Service Tax  
 Service Tax Cell GR ... ..  
 Hyderabad-II, Commissionerate

# MODI & MODI CONSTRUCTIONS 9/c

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

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

Date: 18.11.2009

Dear Sir / Madam,

Sub.: Request for time for providing required information

- Ref.: 1. Your notice bearing no. WCS/123 dated 2.1.09  
2. Our letter dated 13.03.2009  
3. Notice for furnishing of records by the department, letter no. HQST No. 15/2009 ST  
AE dated 27.1.09.  
5. Our letter dated 8.07.2009.  
5. Notice for furnishing of records by the department, letter no. HQST No. 59/2009 AEIV  
dated 6.11.09.

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

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

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

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

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

✓

# MODI & MODI CONSTRUCTIONS

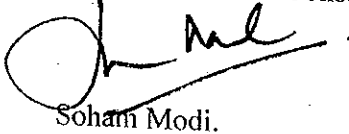
5-4-187/3 & 4, II Floor, M.G. Road, SECUNDERABAD - 500 003.  
☎ : 66335551 (4 lines) Fax : 040-27544058

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

Thank You.

Yours sincerely,  
For Modi & Modi Constructions,

  
Soham Modi.

GUANO



Ph: 040- 2323 1481

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

**S U M M O N S**

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

**HQST NO.15/2009 ST AE**

**Date: 27.01.2009.**

To

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

\*\*\*\*\*

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

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

You are hereby summoned under Section 14 of the Central Excise Act., 1944 made applicable to Service Tax matters under Section 83 of the Finance Act, 1994 to appear before me in person on the **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.



*Handwritten signature and date: 6/11/09*

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: 59/09 AE IV

Date: 6 .11. 2009

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

Sir,

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

\*\*\*\*

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

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

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

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

Please treat this as most urgent.

Yours faithfully

*Handwritten signature of R.L. Ramesh Ram*

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

*Recd*  
*07/01/10*  
*B*

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

HQ.ST No. 59/09 -AE. Sr.

Date: -1-2010

To  
M/s Rod & Rod Construction

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.

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

---

**From:** "sunaina punjabi" <sunainapunjabi@gmail.com>  
**To:** "Customer Relations" <cr@modiproperties.com>  
**Sent:** Monday, March 16, 2009 12:50 PM  
**Subject:** Fwd: India Property Update - March News

Dear Mr RamBabu,

Please refer the India property update which clearly states that Service Tax need not be paid..  
Please ask your legal Department to find out from relevant sources and let me know at the earliest,I  
know a Gentlemen who just got his apartment registered and did not pay any service tax...

Thanks Rajesh

----- Forwarded message -----

**From:** sunaina punjabi <sunainapunjabi@gmail.com>  
**Date:** Sun, Mar 15, 2009 at 11:17 AM  
**Subject:** Fwd: India Property Update - March News  
**To:** girish\_007g@yahoo.com

----- Forwarded message -----

**From:** Axiom Estates <sales@axiomestates.com>  
**Date:** Fri, Mar 13, 2009 at 3:23 PM  
**Subject:** India Property Update - March News  
**To:** sunainapunjabi@gmail.com

01-Apr-09

**From:** "sunaina punjabi" <sunainapunjabi@gmail.com>  
**To:** "Customer Relations" <cr@modiproperties.com>  
**Sent:** Wednesday, February 25, 2009 9:20 PM  
**Subject:** Fwd: Home Loan- Mr. Rajesh Punjabi & Mrs. Sunaina Punjabi

Dear Mr Ram Babu,  
 This for your info...By the way,I saw in the papers yesterday that the service tax has been reduced,will the property buyers also get this benefit...

Thanks  
 Rajesh

----- Forwarded message -----

**From:** Saurabh Sinha <saurabh.k.sinha@sbi.co.in>  
**Date:** Tue, Feb 24, 2009 at 8:09 PM  
**Subject:** Home Loan- Mr. Rajesh Punjabi & Mrs. Sunaina Punjabi  
**To:** sa.03529@sbi.co.in  
**Cc:** dindi.srinivas@sbi.co.in, sunainapunjabi@gmail.com

To,  
 The Branch Manager,  
 State Bank of India,  
 Chirag Ali Lane (3529)  
 Abids Shopping Centre,  
 Hyderabad-500001

### **Kind Attention : Mr. D. Srinivas**

Dear Sir,

24.02.09

**NRI HOME LOAN: Mr. Rajesh Punjabi & Mrs. Sunaina Punjabi**

**LOAN AMOUNT- Rs. 20 Lacs @ 9.25% ( Under Special Home Loan Scheme)**

Please find enclosed an NRI home loan application along with attested documents of Mr. Rajesh Punjabi & Mrs. Sunaina Punjabi for purchase of a flat no.A213, Block-A in 'Mayflower Heights' at Premises No. 3-3-27/1, Mallapur, Hyderabad-500076

Some points to be noted:

1. The property is being purchased in the joint name of the borrowers
2. Total cost of the project including registration, stamp duty & Taxes- Rs.40,08,720/-(appx).  
The property is under construction.
3. Amount already paid to the builder- Rs. 14,25,000/-
4. Loan Amount- Rs.20 lacs
5. Processing Fee- Waived under special offer till 30<sup>th</sup> April, 2009.
6. Period- 180 months (No Moratorium)
7. Interest Rate- 9.25%, as under the Special Scheme for loans upto Rs. 20 Lacs.

01-Apr-09



8. Mrs. Sunaina Punjabi has given the PoA to her husband Mr. Rajesh Punjabi for execution of documents and registration purposes.
9. Both customers want to avail the SBI Life Insurance for home loan borrowers. They will pay the premium from own sources.

Please do the necessary at the earliest.

In case of any queries or further assistance you may please contact the undersigned.

Yours faithfully,

(SAURABH KUMAR SINHA)

I.B.T.O.  
Emirates India International Exchange  
P.O. Box-7190  
Deira, Dubai, U.A.E.  
Mobile- 00971509158711  
Telfax - 0097142247088  
E-mail- [saurabh.k.sinha@sbi.co.in](mailto:saurabh.k.sinha@sbi.co.in)

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01-Apr-09

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**From:** "karanam prabhakar" <kpradvocate@gmail.com>  
**To:** <cr@modiproperties.com>  
**Sent:** Wednesday, March 18, 2009 7:30 PM  
**Subject:** K.Prabhakar,Flat No.319, Mayflower Hights, Hyderabad.

To

18.03.2009

The Managing Director,  
Modi Properties & investment Pvt. Ltd.,  
M.G. Road, Secunderabad.

Sir,

Sub: Refund of service tax in view of the Central Board Circular issued dated 29.1.2009 regarding:-

I booked a flat No.319 on 09.09.2007 in East Wing, B Block, in May flower Heights, Mallapur. I made approximately 90 % of the payments to the Company by way of installments towards sale consideration as per the agreement without fail. I have also paid to you a sum of Rs. 66,300/- towards service tax to be paid by you to the Department as per the said agreement. The said flat is still under construction and yet to be delivered. I was informed that possession will be delivered in the month of April 2009. I came to know recently, that the said Circular has been issued by the Central Government giving exemption service tax to the residential complex. Therefore, under the said Circular I am entitled to get exemption of the said service tax which to be paid on my behalf to the Department.

In view of the same I request you to consider the same and refund the said amount Rs. 66,300/- or adjust the same towards balance payment to be paid by me for the said flat.

Yours sincerely,

(K. Prabhakar)

01-Apr-09

---

**From:** "SaiKumar Pemmaraju" <saikog@rediffmail.com>  
**To:** <cr@modiproperties.com>  
**Cc:** "saikog" <saikog@rediffmail.com>  
**Sent:** Monday, March 09, 2009 11:41 AM

Sir,

I have booked a villa in your Nilgiri Homes project and the villa no is A53. In this regard I would like to clarify the issue of payment of service tax.

P.Chidambaram has introduced service tax on rental of immovable property used for commercial purpose in the budget 2007-08. The proposal is not extended to residential property. If the developer had employed a contractor, it is the contractor who will have to pay service tax and not the developer. If the contractor is not deployed then the developer also need not pay service tax. So, the property buyer never comes into the picture of paying service tax.

Also i prepared my entire budget excluding the above said tax. In the light of my opinion you are requested to pay attention to this and do the needful so that i may continue this venture smoothly.

regards

P. Sai Kumar  
saikog@rediffmail.com

 Shopping

01-Apr-09

---

**From:** "SaiKumar Pemmaraju" <saikog@rediffmail.com>  
**To:** <soham@modiproperties.com>  
**Cc:** <cr@modiproperties.com>  
**Sent:** Wednesday, March 25, 2009 5:57 PM

Dear Mr. Soham,

At the outset let me introduce myself to you. I am P. Sai Kumar, working in Bhabha Atomic Research Centre, near ECIL, Hyderabad. My wife mrs. Padma is also working in Nuclear Fuel Complex, Hyd-62. We have booked a detached bungalow in your Nilgiri Homes viz. A53. Loan has been sanctioned from LIC. Sir, I am very much worried about the service tax as it turns out to be a huge amount. Recent circulars say that service tax is not required for residential complexes. However clarifications are required about 65(1050)(zzzh) and 65(105)(zzzza) sections. I am afraid I will not be able to shell out that much amount as the total consideration along with registration & VAT are quite high. So I request you to kindly look into this matter so as to alleviate the financial pressure on your customer in ways best known to your goodselves.

Awaiting your kind compliance

regards

P.Sai Kumar



01-Apr-09

---

**From:** "SaiKumar Pemmaraju" <saikog@rediffmail.com>  
**To:** <cr@modiproperties.com>  
**Cc:** "saikog" <saikog@rediffmail.com>  
**Sent:** Wednesday, April 01, 2009 2:23 PM

Sir,

I have booked a villa in your Nilgiri Homes project and the villa no is A53. In this regard I would like to clarify the issue of payment of service tax.

P.Chidambaram has introduced service tax on rental of immovable property used for commercial purpose in the budget 2007-08. The proposal is not extended to residential property. If the developer had employed a contractor, it is the contractor who will have to pay service tax and not the developer. If the contractor is not deployed then the developer also need not pay service tax. So, the property buyer never comes into the picture of paying service tax.

Also i prepared my entire budget excluding the above said tax. In the light of my opinion you are requested to pay attention to this and do the needful so that i may continue this venture smoothly.

regards

P. Sai Kumar  
saikog@rediffmail.com

Shopping

01-Apr-09

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**From:** "SaiKumar Pemmaraju" <saikog@rediffmail.com>  
**To:** <cr@modiproperties.com>  
**Sent:** Wednesday, March 25, 2009 6:06 PM

KIND ATTENTION Mr.Krishna prasad...

-----  
Dear Mr Prasad,

I request you to kindly RECONSIDER THE AMOUNT of service tax I am going to be charged as it is very high and give a time frame for it. I would be glad if the request is viewed positively giving a sigh of relief on my finances.

regards

P.Sai Kumar



01-Apr-09

---

**From:** "SaiKumar Pemmaraju" <saikog@rediffmail.com>  
**To:** <cr@modiproperties.com>  
**Cc:** <saikog@rediffmail.com>  
**Sent:** Tuesday, March 24, 2009 12:36 PM  
**Attach:** stprofilesRESIDENTIAL\_COMPLEX\_CONSTRUCTION.htm

Attention Mr. RamBabu, and Mr. Krishna Prasad

Dear Sirs,

I am enclosing the article related to the section 65(105)(zzzh) mentioned by your goodselves about the payment of service tax. This is for your information and necessary action please...

regards

P. Sai Kumar



01-Apr-09

## RESIDENTIAL COMPLEX CONSTRUCTION

**Date of Introduction:** 16.06.2005 vide Notification NO.15/2005 dated 07.06.2005

**Definitions:** "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; (section 65(91a))

"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; (section 65(30a))

"taxable service" means any service provided or to be provided to any person, by any other person, in relation to construction of complex; (section 65(105)(zzzh)) **Value of Taxable Service:** The value of taxable service shall be the gross amount charged by the service provider for providing such service and the money value of any other consideration ( if any) received for providing such service. The value of taxable service shall be determined as per the provisions made under section 67 of the Finance Act, read with Service Tax (Determination of Value ) Rules, 2006 **Who is responsible to pay Service Tax:** The service provider is responsible to pay service tax. However, in cases, where the provider of taxable service is located **outside** India and the recipient of service is located **in** India, the recipient of service is responsible for payment of service tax. The responsibility to pay service tax under such situations is determined by the provisions made under section 66A of the Finance Act, 1994, read with Taxation of Services (Provided from outside India and received in India) Rules, 2006 **Scope of Service:** Any service provided or to be provided to any person, by any other person, in relation to construction of complex is taxable under sub-clause (zzzh) of section 65(105) of the Finance Act, 1994. "Construction of complex" has been defined under clause (30a) of section 65 of the Finance Act, 1994. "Residential complex" has been defined under clause (91a) of section 65 of the Finance Act, 1994.

Construction of new building or civil structures used for commercial or industrial purposes and repair, alteration or restoration activities of such buildings or civil structures is liable to service tax since 2004. In this year's budget the construction of new residential complex or a part thereof is also covered under service tax. The term of "construction of complex" is defined under section 65 (30a) of the Finance Act 1994. It covers,

construction of a new residential complex;

completion and finishing services in relation to a residential complex, whether or not new; repair, alteration, etc. in relation to residential complex, whether or not new.



This service would generally cover construction services in respect of residential complexes developed by builders, promoters or developers. Such residential complexes are normally constructed after obtaining approval of the statutory authority for their layout. For the purpose of this levy, residential complex means,

- (i) a building or buildings located within a premises;
- (ii) total number of residential units within the said premises are more than twelve;
- (iii) having common area;
- (iv) having common facilities or services; and
- (v) layout of the premises has been approved by the appropriate authority. Common area would include roads, staircases and other similar areas where residents of the residential complex have easement rights. The list of facilities prescribed is merely illustrative and not exhaustive. Some residential complexes may also contain other facilities such as market or shopping complex, schools, security, banks, gymnasium, health club, sports facilities, power back up and the like.

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.

Post construction, completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry and similar services done in relation to a residential complex, whether or not new, would be included as part of the construction activity of residential complexes for the purpose of levy of service tax.

The taxable service is the service provided in relation to construction of a residential complex. Service tax would be payable only on the gross amount charged by the service provider for the construction service provided and it would not include the cost of land and stamp duty paid for registration of land. However, notification No. 18/2005 -ST dated 7/6/05 provides option to avail abatement and pay service tax only on 33% of the gross amount charged, subject to fulfilment of conditions specified in the notification.

Repair, alteration, renovation or restoration of residential complexes would also be liable to service tax. Such services provided in relation to residential complexes which are in existence before the levy has come into force and are not new would also be liable to be taxed. (Ref: Board's Circular No. F.No.B1/ 6 /2005-TRU dated 27.07.2005)

#### General Exemptions:

Sr.No.	Notification No.	Nature of exemption
1	16/2002	Services provided to United nations or any International Organisation
2	12/2003	Exemption to value of goods and material sold during the cour providing taxable service, subject to conditions laid down in notification.
3	4/2004	Service provided to a developer of Special Economic Zone or Unit loci in SEZ
4	6/2005	Exemption from service tax for taxable services upto gross value of R lakhs, in case of service providers whose gross turnover for the prece financial year was less than Rs. 4 lakhs ( w.e.f 01.04.2005)

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