

CASE STATUS INFORMATION SYSTEM

WP 26007 / 2009

WPSR 136902 / 2009

CASE IS:PENDING

PETITIONER		RESPONDENT	
M/S. MODI & MODI CONSTRUCTIONS, HYD.		VS UNION OF INDIA, NEW DELHI & 2 OTHERS	
PET.ADV. : PUSHYAM KIRAN		RESP.ADV. : PONNAM ASHOK GOUD(ASST SOL GEN)	
SUBJECT: CUSTOMS AND CENTRAL EXCISE (MISC.MATTERS)		DISTRICT: HYDERABAD	
FILING DATE: 27-11-2009	POSTING STAGE : FOR ADMISSION		
REG. DATE : 27-11-2009	LISTING DATE : 29-06-2010	STATUS : ADMIT	
HON'BLE JUDGE(S):		B.PRAKASH RAO	RAMESH RANGANATHAN

M.P	U.S.R	OTHER	VAKALATH	LOWERCOURT	PRAYER	PARTY	DAILYORDER	BACK
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CASE STATUS INFORMATION SYSTEM

WP 26012 / 2009

WPSR 136914 / 2009

CASE IS:PENDING

PETITIONER		RESPONDENT	
M/S.PARAMOUNT BUILDERS, PET.ADV. : PUSHYAM KIRAN		VS UNION OF INDIA., MIN OF FINANCE & 2 OTHERS RESPADV. : PONNAM ASHOK GOUD(ASST SOL GEN)	
SUBJECT: CUSTOMS AND CENTRAL EXCISE (MISC.MATTERS)		DISTRICT: HYDERABAD	
FILING DATE: 27-11-2009	POSTING STAGE : FOR ADMISSION		
REG. DATE : 27-11-2009	LISTING DATE : 29-06-2010	STATUS : ADMIT	
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M.P	U.S.R	OTHER	VAKALATH	LOWERCOURT	PRAYER	PARTY	DAILYORDER	BACK
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Dr. Jaykumar for filing or destroy it
**IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD
(SPECIAL ORIGINAL JURISDICTION)**

W.P.NO. 26012 OF 2009

2/6/10

BETWEEN:

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

...PETITIONER

AND

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

...RESPONDENTS

AFFIDAVIT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DEPONENT

ADVOCATE :: HYDERABAD

VERIFICATION STATEMENT

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

Verified at Hyderabad on this day of October, 2009.

ADVOCATE

DEPONENT

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

W.P.NO. 260/2009

BETWEEN:

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

...PETITIONER

A N D

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

...RESPONDENTS

AFFIDAVIT

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

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

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

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

"residential complex" means any complex comprising of –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DEPONENT

ADVOCATE :: HYDERABAD

VERIFICATION STATEMENT

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

Verified at Hyderabad on this day of October, 2009.

ADVOCATE

DEPONENT

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

Date : 17/08/2005

To

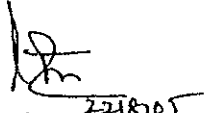
M/s. PARAMOUNT BUILDERS,
5-4-187/3&4 SOHAM MANSION 3RD FLOOR
M.G.ROAD SECUNDRABAD HO
HYDERABAD URBAN
PINCODE - 500003
ANDHRA PRADESH

Sir/Madam,

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

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

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


Signature of the
Deputy Commissioner of Service Tax
with official seal

Place : HYDERABAD

CC : To

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

File No: WCS/124

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

Form ST-2

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

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

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

4. Address of Business Premises

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

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

Note

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

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

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

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

Dt. 11.03.2009

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

Dear Sir,

Sub: Submission details as per Schedule – reg.

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

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

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

Please find enclosed Challan Copies, ST – 3.

Thanking you,

Yours faithfully,
For Paramount Builders

SOHAM MODI
(PARTNER)

PARAMOUNT BUILDERS

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

To,
Mr. K. Satyanarayana,
Flat No. 103, 1st Floor,
Kalanjali Classic Apartments,
Scientist Colony,
Hubsiguda, Secunderabad.

Date: 11.11.2009

Dear Mr. Satyanarayana,

Sub.: Payment of service tax.

Ref.: Your booking for flat no. 1C, 106, in the project known as Paramount Residency,
Situating at Sy. No. 176, Nagaram, Hyderabad – 500083.

Despite several reminders for payment of service tax you have not come forward to pay the same. You have been making several excuses including referring to certain circulars/notifications issued by the service tax department.

You have referred to circular no. 108/02/2009-ST dated 21.1.2009 in your earlier correspondence. We are aware of its contents. The circular is ambiguous and difficult to interpret. In any case we are being pressurized to remit service tax to the government. Despite the said circular, vide notice dated 2.1.09 the Superintendent of Central Excise and Service Tax, group X, Hyderabad which was served to us on 6.6.09, has demanded for payment of service tax. Now the Assistant Commissioner, Service Tax Anti Evasion, vide his notice dated 6.11.09 is pressurizing us to pay service tax. A copy of both the letters is enclosed.

We have no option but to remit service tax to the government. You are hereby requested to pay an amount of Rs. 14,846/- towards service tax within 7 days of receiving this letter failing which we will initiate legal proceedings to recover this amount and the cost and consequences thereof will be entirely to your account.

Thank you.

Yours sincerely,

Soham Modi.

PARAMOUNT BUILDERS

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

To,
Mr. K. Satyanarayana,
Flat No. 103, 1st Floor,
Kalanjali Classic Apartments,
Scientist Colony,
Hubsiguda, Secunderabad.

Date: 11.11.2009

Dear Mr. Satyanarayana,

Sub.: Payment of service tax.

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Situating at Sy. No. 176, Nagaram, Hyderabad – 500083.

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Thank you.

Yours sincerely,

Soham Modi.

PARAMOUNT BUILDERS

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

Mr. K. Satyanarayana,
Flat No. 103, 1st Floor,
Kalanjali Classic Apartments,
Scientist Colony,
Hubsiguda, Secunderabad.

Date: 10.02.2009

Dear Mr Satyanarayana,,

Sub.: Payment of service tax.

Ref.: Your booking for flat no. 1C, 106, in the project known as Paramount Residency,
Situating at Sy. No. 176, Nagaram, Hyderabad – 500083.

As per the discussions you had with our customer relations team, we hereby confirm that we have received the entire sale consideration along with registration charges and VAT. However, we have not received the amount due to us on account of service tax that you are liable to pay to us.

After consultation with our service tax consultants, the correct liability towards service tax has been determined as Rs. 14,846/-, being the amount payable on the consideration mentioned in the agreement of construction. We request you to remit this amount to us within 7 days of receiving this letter.

Thank you.

Yours sincerely,

Soham Modi

PARAMOUNT BUILDERS

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

Mr. K. Satyanarayana,
Flat No. 103, 1st Floor,
Kalanjali Classic Apartments,
Scientist Colony,
Hubsiguda, Secunderabad.

Date: 10.02.2009

Dear Mr Satyanarayana,,

Sub.: Payment of service tax.

Ref.: Your booking for flat no. 1C, 106, in the project known as Paramount Residency,
Situating at Sy. No. 176, Nagaram, Hyderabad – 500083.

As per the discussions you had with our customer relations team, we hereby confirm that we have received the entire sale consideration along with registration charges and VAT. However, we have not received the amount due to us on account of service tax that you are liable to pay to us.

After consultation with our service tax consultants, the correct liability towards service tax has been determined as Rs. 14,846/-, being the amount payable on the consideration mentioned in the agreement of construction. We request you to remit this amount to us within 7 days of receiving this letter.

Thank you.

Yours sincerely,

Soham Modi

PARAMOUNT BUILDERS

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

Mr. K. Satyanarayana,
Flat No. 103, 1st Floor,
Kalanjali Classic Apartments,
Scientist Colony,
Hubsiguda, Secunderabad.

Date: 05.04.2008

Dear Mr. Satyanarayana,

- Ref.: 1. Your booking for flat no. 1C, 106, in the project known as Paramount Residency,
Situating at Sy. No. 176, Nagaram, Hyderabad – 500083.
2. Your letter dated 9.2.2008 seeking clarification regarding applicability of service tax.

With regard to your query on service tax, please note the following:

- a. Service tax on builders can be levied u/s. 65(105)(zzzh) i.e., for construction of residential complex.
- b. Service tax can also be levied u/s. 65(105)(zzzza) i.e., for works contract which came into effect from 01.06.07.
- c. There is a great deal of ambiguity about the applicability of service tax. In our present case, we have sought clarity from the Joint Commissioner of Service Tax in the said matter. He has clarified that in our present case service tax is payable u/s. 65(105)(zzzza) – works contract. A copy of his letter dated 21.2.2008 is enclosed.

I hope that the letter of JC – service tax amply clarifies any doubts regarding payment of service tax. I request you to please pay the service tax along with the balance sale consideration as given in our letter dated 29.01.08.

Thank You.

Yours Sincerely,

Soham Modi.

PARAMOUNT BUILDERS

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

Mr. K. Satyanarayana,
Flat No. 103, 1st Floor,
Kalanjali Classic Apartments,
Scientist Colony,
Hubsiguda, Secunderabad.

Date: 05.04.2008

Dear Mr. Satyanarayana,

- Ref.: 1. Your booking for flat no. 1C, 106, in the project known as Paramount Residency,
Situating at Sy. No. 176, Nagaram, Hyderabad – 500083.
2. Your letter dated 9.2.2008 seeking clarification regarding applicability of service tax.

With regard to your query on service tax, please note the following:

- a. Service tax on builders can be levied u/s. 65(105)(zzzh) i.e, for construction of residential complex.
- b. Service tax can also be levied u/s. 65(105)(zzzza) i.e., for works contract which came into effect from 01.06.07.
- c. There is a great deal of ambiguity about the applicability of service tax. In our present case, we have sought clarity from the Joint Commissioner of Service Tax in the said matter. He has clarified that in our present case service tax is payable u/s. 65(105)(zzzza) – works contract. A copy of his letter dated 21.2.2008 is enclosed.

I hope that the letter of JC – service tax amply clarifies any doubts regarding payment of service tax. I request you to please pay the service tax along with the balance sale consideration as given in our letter dated 29.01.08.

Thank You.

Yours Sincerely,

Soham Modi.

From,
Mr. A. Shankar Reddy,
3-4-16/87/6,
Shiram Nagar,
Ramanthapur,
R.R. District – 500 013.

To,
The Managing Partner,
Paramount Builders,
5-4-187/3&4,
Soham Mansion, M.G. Road,
Secunderabad – 500003.

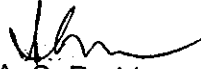
Date: 15.2.2008

Dear Sir,

I have been given to understand through several news paper reports that service tax is no longer applicable to builders as some clarification was issued by the service tax department. I request you to please clarify the issue regarding applicability of service tax.

Thanking you,

Yours truly,


A. S. Reddy.

From,
Mr. A. S. Reddy,
3-4-16/87/6,
Shiram Nagar,
Ramanthapur,
R.R. District – 500 013.

To,
The Managing Partner,
Paramount Builders,
5-4-187/3&4,
Soham Mansion, M.G. Road,
Secunderabad – 500003.

Date: 01.4.2009

Dear Sir,

On several occasions I have clearly informed your office that I am not liable to pay service tax and that I have cleared all my dues for purchase of flat no. 1C 102, in Paramount Residency. In spite of that an executive from your office calls me every week asking me to pay Rs. 15,849/- towards service tax.

I have clearly informed your office that several newspapers have reported that builders are not liable for payment of service tax as a circular no. 108 dated 29.01.09 issued by the government or service tax department has clearly clarified the matter. Builders are not liable to pay the service tax and therefore you are requested to not make any demands to payment of service tax.

Thanking you,

Yours truly,


A. S. Reddy

PARAMOUNT BUILDERS

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

Phone: 66335551

To,
Mr. A. Shankar Reddy,
3-4-16/87/6,
Shiram Nagar,
Ramanthapur,
R.R. District – 500 013.

Date: 15.02.2009

Dear Mr Shankar Reddy,

Sub.: Payment of service tax.

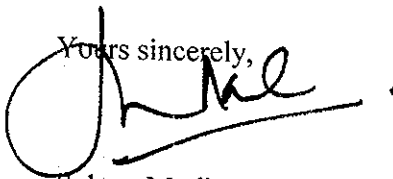
Ref.: Your booking for flat no. 1C, 102, in the project known as Paramount Residency,
Situated at Sy. No. 176, Nagaram, Hyderabad – 500083.

As per the discussions you had with our customer relations team, we hereby confirm that we have received the entire sale consideration along with registration charges and VAT. However, we have not received the amount due to us on account of service tax that you are liable to pay to us.

After consultation with our service tax consultants, the correct liability towards service tax has been determined as Rs. 15,849/-, being the amount payable on the consideration mentioned in the agreement of construction dated 30.08.2007. We request you to remit this amount to us within 7 days of receiving this letter.

Thank you.

Yours sincerely,



Soham Modi

PARAMOUNT BUILDERS

5-4-187/3&4, II Floor, M. G. Road, Secunderabad – 500 003.
Phone: 66335551

To,
Mr. A. Shankar Reddy,
3-4-16/87/6,
Shiram Nagar,
Ramanthapur,
R.R. District – 500 013.

Date: 01.04.2008

Dear Mr. Shankar Reddy,

- Ref.: 1. Your booking for flat no. 1C, 102, in the project known as Paramount Residency,
Situated at Sy. No. 176, Nagaram, Hyderabad – 500083.
2. Your letter dated 15.2.2008 seeking clarification regarding applicability of service tax.

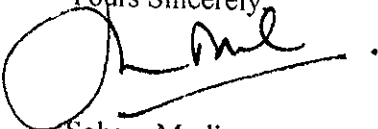
With regard to your query on service tax, please note the following:

- a. Service tax on builders can be levied u/s. 65(105)(zzzh) i.e., for construction of residential complex.
- b. Service tax can also be levied u/s. 65(105)(zzzza) i.e., for works contract which came into effect from 01.06.07.
- c. There is a great deal of ambiguity about the applicability of service tax. In our present case, we have sought clarity from the Joint Commissioner of Service Tax in the said matter. He has clarified that in our present case service tax is payable u/s. 65(105)(zzzza) – works contract. A copy of his letter dated 21.2.2008 is enclosed.

I hope that the letter of JC – service tax amply clarifies any doubts regarding payment of service tax. I request you to please pay the service tax along with the balance sale consideration as given in our letter dated 29.01.08.

Thank You.

Yours Sincerely,


Soham Modi.

PARAMOUNT BUILDERS

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

Phone: 66335551

By Regd. Post Ack. Due

To,
Mr. Shankar Reddy,
Flat no. 1C, 102,
Paramount Residency,
Sy. No. 176, Nagaram,
Hyderabad – 500083.

Date: 11.11.2009

Dear Mr. Shankar Reddy,

Sub.: Payment of service tax.

Ref.: Your booking for flat no. 1C, 102, in the project known as Paramount Residency,
Situated at Sy. No. 176, Nagaram, Hyderabad – 500083.

Despite several reminders for payment of service tax you have not come forward to pay the same. You have been making several excuses including referring to certain circulars/notifications issued by the service tax department.

You have referred to circular no. 108/02/2009-ST dated 21.1.2009 in your earlier correspondence. We are aware of its contents. The circular is ambiguous and difficult to interpret. In any case we are being pressurized to remit service tax to the government. Despite the said circular, vide notice dated 2.1.09 the Superintendent of Central Excise and Service Tax, group X, Hyderabad which was served to us on 6.6.09, has demanded for payment of service tax. Now the Assistant Commissioner, Service Tax Anti Evasion, vide his notice dated 6.11.09 is pressurizing us to pay service tax. A copy of both the letters is enclosed.

We have no option but to remit service tax to the government. You are hereby requested to pay an amount of Rs. 15,849/- towards service tax within 7 days of receiving this letter failing which we will initiate legal proceedings to recover this amount and the cost and consequences thereof will be entirely to your account.

Thank you.

Yours sincerely,


Soham Modi.

2C - 205

From: "Kumar, Anup K" <anup.kumar@genpact.com>
To: "Customer Relations" <cr@modiproperties.com>
Sent: 23 October, 2009 8:57 AM
Subject: RE: Repl to your mail - flat no. 2C-305, Paramount Residency

Thanks for the response. Better late than never.

Lift was functional- this is what your report from your office says- actually, even now it is not functioning properly. It has not been repaired properly. Come and check- I am one of the end user and I know this.
 Drinking water has been restored- this has been done- thank you.

Light from our main gate to the end of stretch is your responsibility- how do you expect people to walk without light? Even if it's govt's responsibility, who is responsible to run after them? It was you people who had promised us light- we don't know the govt. simply- you don't care for all these things- let's talk practical. Look at the roads- sorry no road, only sand and mud. Why should you bother? You have sold your flats- let the residents suffer.

Even I know that swimming pool work is under construction- why did Deshmukh say that this would be completed in June? To the next customer, it was told July, then August and so on... What do you have to say on this? Do you have any timeline to complete this? I challenge you to give a timeline on this mail- you will never give because you don't have a plan in place. Swimming pool is a appoint to sell flat but remember all these false points don't always work. You have to be transparent with customers. Sorry boss..you seem to be just a respondent, not a decision maker.

Who is the right person to contact for maintenance? I want to speak to him before I pay my next amount. In the same manner you took away my 16000 in name of service tax. It was not applicable. Now you are talking about maintenance. Please send me the name of right person.

Security- Come and see your people sleeping at night. 3 times I found both the watchmen sleeping when I returned at night. Since it is a matter of their job, I never thought of complaining. Explain to them.. do not throw them.

Anyway, doesn't make any sense writing again and again as we have to live here in a mess.

I am still waiting for my electricity connection on my name. 4 months are over.)

Anup

From: Customer Relations [mailto:cr@modiproperties.com]
Sent: Thursday, October 22, 2009 4:49 PM
To: Kumar, Anup K
Subject: Repl to your mail - flat no. 2C-305, Paramount Residency

Dear Mr. Anoop Kumar,

I have received your email dated 11.10.09. in reply please note the following:

Block 2C lift is now functional and the drinking water has been restored.

You may continue to send your complaints to cr@modiproperties.com or pmr@modiproperites.com . A procedure is in place whereby all complaints are monitored at different levels.

23-Oct-09

Street lights is the governments responsibility. Though, periodically we are taking up the issue with them for repairs/replacement. Similarly, water logging around the site is beyond our scope of work. The Grampanchayat is responsible for removing unauthorized constructions blocking the flow of water into Cherlapally lake. We are likely to file a writ petition in the High Court in relation to the said matter.

Swimming pool work is under progress and most other amenities have been provided. Adequate security has been provided and is being reviewed and monitored from time to time.

Please note that maintenance is being paid to the Owners Association and not to the builder and the Owners Association is free to take any decision regarding discount or reduction in maintenance charges on a later date. In the meantime you are requested to pay the maintenance charges as prescribed.

Regards,

K. Krishna Prasad.
Asst-Manager
Customer Relations.

From,
Mr. K. Satyanarayana,
Flat No. 103, 1st Floor,
Kalanjali Classic Apartments,
Scientist Colony,
Hubsiguda, Secunderabad.

To,
The Managing Partner,
Paramount Builders,
5-4-187/3&4,
Soham Mansion, M.G. Road,
Secunderabad - 500003.

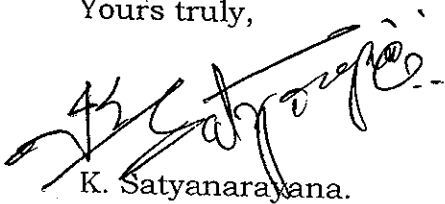
Date: 9.2.2008

Dear Sir,

I have been given to understand through several news paper reports that service tax is no longer applicable to builders as some clarification was issued by the service tax department. I request you to please clarify the issue regarding applicability of service tax.

Thanking you,

Yours truly,


K. Satyanarayana.

From,
From,
Mr. K. Satyanarayana,
Flat No. 103, 1st Floor,
Kalanjali Classic Apartments,
Scientist Colony,
Hubsiguda, Secunderabad.

To,
The Managing Partner,
Paramount Builders,
5-4-187/3&4,
Soham Mansion, M.G. Road,
Secunderabad - 500003.

Date: 5.4.2009

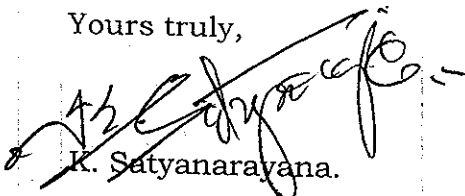
Dear Sir,

On several occasions I have clearly informed your office that I am not liable to pay service tax and that I have cleared all my dues for purchase of flat no. 1C 106, in Paramount Residency. In spite of that an executive from your office calls me every week asking me to pay Rs. 14,846/- towards service tax.

I have clearly informed your office that several newspapers have reported that builders are not liable for payment of service tax as a circular no. 108 dated 29.01.09 issued by the government or service tax department has clearly clarified the matter. Builders are not liable to pay the service tax and therefore you are requested to not make any demands to payment of service tax.

Thanking you,

Yours truly,


K. Satyanarayana.

PARAMOUNT BUILDERS

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

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

Date: 18.11.2009

Dear Sir / Madam,

Sub.: Request for time for providing required information

Ref.: 1. Your notice bearing no. WCS/124 dated 2.1.09

2. Our letter dated 13.03.2009

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

5. Our letter dated 2.07.2009.

5. Notice for furnishing of records by the department, letter no. HQST No. 55/2009 AEIV
dated 6.11.09.

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

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

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

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

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

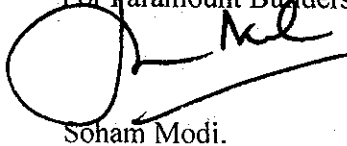
PARAMOUNT BUILDERS

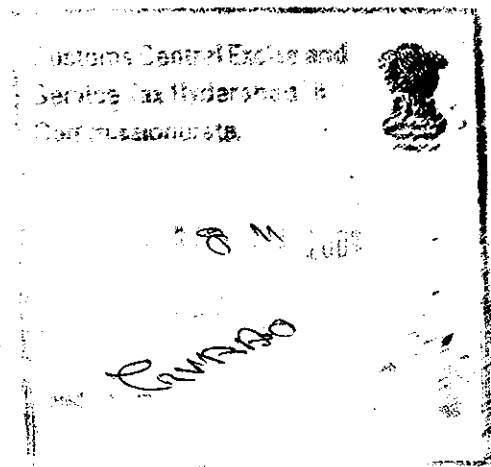
5-4-187/3 & 4, II Floor, Soham Mansion, M.G. Road, Secunderabad - 500 003.
Phone : +91-40-66335551, Fax :

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 Paramount Builders,


Soham Modi.





Phone : 23231481
23230196

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

HQST No: 55/09 AE IV

Date: 6.11.2009

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

Sir,

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

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

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

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

The above information is called for by virtue of the powers conferred under section 14 of the Central Excise Act, 1944 as made applicable to the Service Tax matters in terms of Section 83 of the finance Act, 1994.

Please treat this as most urgent.

Yours faithfully,


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

PARAMOUNT BUILDERS

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

Date: 02.07.2009.

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

Dear Sir,

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

Ref: Our STC No. AAHFP4040NST001.

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

PARAMOUNT BUILDERS

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

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

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

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

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

Thanking You
Yours truly,

For Paramount Builders,



Managing Partner

Encl

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



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)

HOST NO.15/2009 ST AF

Date: 27.01.2009.

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

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

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

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

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

SCHEDULE

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

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



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

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

PARAMOUNT BUILDERS

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

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

Date: 12.03.2009

- Ref.: 1. Your summon dated 27.1.09 bearing no. HQST No. 15/2009ST AE.
2. Circular No. 108/02/2009 issued by the Central Board of Excise and Customs dated 29.01.2009.
3. Clarification issued by The Joint Commissioner, Service Tax on 23.02.2008.

Dear Sir,

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

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

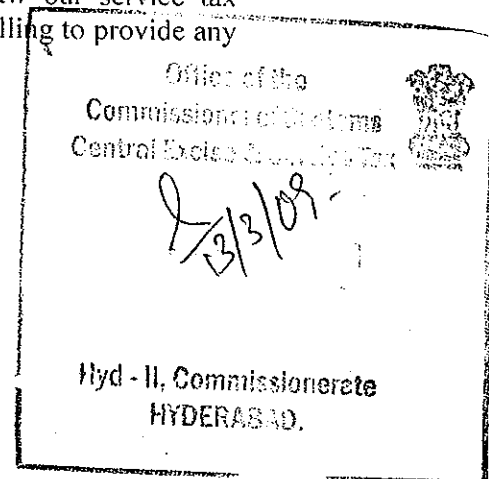
Vide circular given in reference 2, The Central Board of Excise and Customs has clarified that the builders, promoters and developers are not liable for payment of service tax under the circumstances mentioned in the said circular. We are developing flats/independent houses by providing our own design,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

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

Thank You.

Yours sincerely,
For PARAMOUNT BUILDERS.


Soham Modi





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

CNo: WCS / 124

BY SPEED POST

Dated:02-01-2009

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

Gentlemen,

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

Ref: Your registration No: AAHFP4040NST001

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

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

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

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

Yours truly.

Superintendent of Central Excise
Service Tax, Group-X

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

Date : 17/08/2005

To

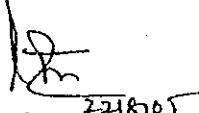
M/s. PARAMOUNT BUILDERS,
5-4-187/3&4 SOHAM MANSION 3RD FLOOR
M.G.ROAD SECUNDRABAD HO
HYDERABAD URBAN
PINCODE - 500003
ANDHRA PRADESH

Sir/Madam,

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

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

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


Signature of the
Deputy Commissioner of Service Tax
with official seal

Place : HYDERABAD

CC : To

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

File No: WCS/124

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

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

4. Address of Business Premises

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

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

Note

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. S. S. Prudhwan
Name & Signature of the Central Excise
Officer with official seal

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