

OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE  
& SERVICE TAX :: HYDERABAD-II COMMISSONERATE  
BASHEER BAGH :: HYDERABAD-500 004.

HQST NO. 03/2008 ST AE-IV

DL 21.2.2008

To  
M/s. Modi Developers,  
5-4-187/3&4, 3<sup>rd</sup> floor,  
Solan Mansion, M.G.Road,  
SECUNDERABAD – 500 003

Gentlemen,

Sub: SERVICE TAX – Liability of service tax on Construction of  
Complex ( Residential Complex ) Services – Regarding.

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Please recall our discussion held on 21.2.2008 regarding applicability of Service Tax on  
the construction work under taken by you.

In this regard the statutory defines are as under:-

Construction of Complex

As per section 65(30a) “ Construction of Complex “ means construction of a new residential  
complex or a part of thereof, or 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 fitting and other similar services , or repair ,  
alteration, renovation or restoration of , or similar services in relation to , residential  
complex.”

Section 65(91a) defines a residential complex as “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”.

As per section 65(105zzzh) taxable service means “any service provided or to be  
provided to any person, by any other person in relation to construction of complex”.

The execution of works contract has also been brought under the tax net w.e.f.1.6.2007.

(a) The Board vide Circular 96/7/2007-ST dated 23.8.2007 has clarified as under

(b) Whether service tax is liable under construction of complex service  
[section 65(105)(zzzh)] on builder, promoter, developer or any such  
person,-

- who builds the residential complex on his own by employing direct labour?

Clarification:

(b) If no other person is engaged for construction work and the builder /  
promoter / developer / any such person undertakes construction work  
on his own without engaging the services of any other person, then in  
such cases,-

(i) service provider and service recipient relationship does not exist,

(ii) services provided are in the nature of self-supply of services.

Hence, in the absence of service provider and service recipient relationship and the services provided are in the nature of self-supply of services, the question of providing taxable service to any person by any other person does not arise.

The import of the said Circular is that if the builders/developers/promoters are under take the construction for himself by engaging his own labour, the liability of Service Tax is not attracted. However, it is seen that in your case you have entered into TWO agreements with the customers i.e one for sale of land plus part construction(Sale Deed) and the other- the agreement to construct. In other words, you have undertaken construction work on behalf of the customer and not for yourself. Under the circumstances, the liability to service tax would be attracted in so far as the Second agreement of construction is concerned and the amounts received towards the construction would be chargeable to Service Tax. However the amounts received towards the sale deed would not be chargeable to Service Tax. It was held by the Hon'ble Supreme Court in case of M/s. Raheja Development Corporation vs State of Karnataka that the activities undertaken by builders for construction of Flat/ building for or on behalf of the prospective customers/buyers for consideration in cash or deferred payment is not to be considered as Sale and the activity will amount to works contract. Hence under these circumstances it is evident that there is a relationship of service provider and service recipient between you and the customer and the transaction is not merely that of sale/purchase of flat.

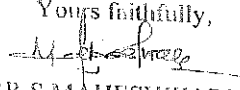
Service Tax has been imposed on execution of works contracts services as a separate taxable service w.e.f. 01.06.07 vide Notfn. No. 23/2007 -ST dated 22.05.07. Provisions of Execution of Works Contracts Services are as follows.

As per section 65(105) (zzzza) 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 etc; or
  - b) Construction of 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.

**Taxable service** as per section 65(105)(zzzza) 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.

Hence, you are requested to discharge the service tax liability alongwith interest. You are also requested to submit the copies of your various contracts and agreements entered with the prospective customers/buyers and finishing service contractors.

Yours faithfully,  
  
(R.S. MAHESHWAR)  
JOINT COMMISSIONER  
SERVICE TAX