

202



**OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE &
SERVICE TAX
HYDERABAD II COMMISSIONERATE : L.B.STADIUM ROAD
BASHEERBAGH:: HYDERABAD-500 004.
(Tele / Fax: 040 - 23231481)**

**O.R.No.125/2011-ST(Adjn)(Commr.)
C.No.IV/16/169/2011-Adjn.(ST)(Commr.)**

Date: 24.10.2011

SHOW CAUSE NOTICE

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

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M/s Modi Ventures, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad - 500 003 [here in after referred to as 'the assessee'] are engaged in providing **Construction of complex service and Works Contract service**. M/s Modi Ventures is a registered partnership firm and got themselves registered with department on **17.08.2005** under **Construction of Complex service** and on **29.02.2008** under **Works Contract Service** for payment of service tax with STC No. **AAJFM0646DST001**.

2. On gathering intelligence that **M/s Modi Ventures.**, being a registered assessee of the Service Tax department is not discharging the service tax liability properly, investigation has been taken up by the department. Summons dated **13.01.2010** for submission of relevant records /documents / information have been issued to them. On verification of records submitted by the assessee, it is found that **M/s Modi Ventures** have under taken one project namely **Gulmohar Gardens** located at Mallapur village, Uppal Mandal, RR District (total **506 Residential units**) in the year **2006** and received amounts from customers from **April,2006 to December 2010** towards **sale of land, and agreements for construction**. In the said projects, they have entered into **sale deed, and agreement for construction** with their customers in

O.R.No. 125/2011-Adjn.(ST)(Commr.)
C.No.IV/16/169/2011-Adjn.(ST)(Commr.)

respect of **290 flats**. They have filed the **S.T.3** returns for **04/2006 to 09/2008 and 04/2010 to 12/2010**. They have not filed the **ST3** returns for the periods **10/2008 to 03/2010**. It is found that they have paid the Service Tax, including Education Cess and Secondary and higher Education cess of **Rs.15,21,176/- under Construction of complex service** and **Rs.5,25,567/- under Composition scheme of Works contract service**, on the receipts against **agreements for construction** for the period from **June,2007 to December, 2008**. They have paid the Service Tax under **Construction of complex** service availing abatement under **Notification No.1/2006-ST, dated 01-03-2006** (as amended) and under **Works Contract service** availing the **Composition scheme under Rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007**. It is found that they have stopped payment of Service Tax on receipts from **01-01-2009** by misinterpreting the clarification of the Board vide Circular **No.108/02/2009 - ST dated 29th January 2009**.

3. A Statement was been recorded from **Sri. A. Shanker Reddy, Deputy General Manager (Administration)** authorized representative on **01.02.2010** 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 **01.02.2010** had, interalia, stated that; the activities undertaken by the company are providing services of construction of Residential Complexes; purchased the land under sale deed and on that they have constructed the residential complexes; initially, they collect the amounts against booking form/agreement of sale and 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 and 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 tax from **01.01.2009** in the light of the clarification of the Board vide Circular No. 108/02/2009 - ST dated 29th January 2009.

4. 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.

5. The subject venture of **M/s Modi Ventures.**, qualifies to be a residential complex as it contains **more than 12 residential units with common area and common facilities** like common water supply etc., and the layouts were approved by the concerned authorities. **M/s Modi Ventures**, received the amounts from the customers, as mentioned in the Sale deeds and **agreements of construction**. As seen from the records submitted, the assessee has entered into (i) a **sale deed** and (ii) an **agreement for construction**, with their customers. On execution of the **sale deed**, the right on a property got transferred to the customer, hence the construction service rendered by the assessee thereafter to their

205

O.R.No. 125/2011-Adjn.(ST)(Commr.)
C.No.IV/16/169/2011-Adjn.(ST)(Commr.)

customers under agreement of construction are taxable under service tax as there exists service provider and service recipient relationship between them. As transfer of property in goods is involved in the execution of these contracts, 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 the sale deeds are taxable services under **Construction of Complex services / Works Contract Service.**

6. It is clarified in **para 3** of the **Circular No.108/02/2009 - ST, dated 29th January 2009** 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 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 a single person for personal use as residence by such person would not be subjected to service tax. Normally, a builder/promoter/developer constructs residential complex consisting of 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 Finance Act,1994 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 the stamp duty is paid on the value consideration shown in the sale deed. As regard the agreements / contracts against which they render services to the customer after execution of sale deeds, there exists service provider and service recipient relationship between the builder/promoter/developer and the customer and such services are leviable to service tax. Thus it appears that the contention and interpretation of the definition of the Construction of Complex services and Board Circular dated **29.1.2009** by the assesees appears to be, incorrect.

7. Board vide Circular No.128/10/2010-ST dated 24.08.2010 has clarified as follows:

"w.e.f. 01/06/2007 when the new service "Works Contract service" was made effective, classification of aforesaid services would undergo a change in case of long term contracts even though part of the service was classified under the respective taxable service prior to 01/06/2007. This is because 'works contract' describes the nature of the activity more specifically and, therefore, as per the provisions of section 65A of the Finance Act, 1994, it would be the appropriate classification for the part of the service provided after that date. As regards applicability of composition scheme, the material fact would be whether such a contract satisfies rule 3(3) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007. This provision casts an obligation for exercising an option to choose the scheme prior to payment of service tax in respect of a particular works contract. Once such an option is made, it is applicable for the entire contract and cannot be altered. Therefore, in case a contract where the provision of service commenced prior to 01.06.2007 and any payment of service tax was made under the respective taxable service before 01.06.2007, the said condition under rule 3(3) was not satisfied and thus no portion of that contract would be eligible for composition scheme. On the other hand, even if the provision of service commenced before 01.06.2007 but no payment of service tax was made till the taxpayer opted for the composition scheme after its coming into effect from 01.06.2007, such contracts would be eligible for opting of the composition scheme".

7.1. As clarified by the above, Board Circular, the services rendered by M/s. Modi Ventures during the period 01.06.2007 to 31.12.2010 are classifiable under Works Contract Services.

Service tax liability under Works Contract service:

7.2. As per Section 65(105(zzzza)) of the Finance Act, 1994 "taxable service " under works contract means any service provided or to be provided to any person, by any other person in relation to the execution of

207

O.R.No. 125/2011-Adjn.(ST)(Commr.)
C.No.IV/16/169/2011-Adjn.(ST)(Commr.)

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;

7.3. Rule 2A of Service Tax (Determination of Value) Rules, 2006 the value of works contract service determined shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract and the gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract;

7.4. An optional Composition scheme for payment of Service Tax in relation to **Works Contract Service** has been framed by the Notification **No.32/2007-ST** dated **22.5.2007**, effective from **01.06.2007**, under

202

O.R.No. 125/2011-Adjn.(ST)(Commr.)
C.No.IV/16/169/2011-Adjn.(ST)(Commr.)

Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. Under the said scheme, an assessee has to pay an amount equivalent to **two percent** of the gross amount charged for the Works Contract, excluding the **Value Added Tax (VAT) or Sales Tax** paid on transfer of property of goods involved in the execution of Works Contract. With effect from **01.03.2008** onwards, the said rate of 2 % has been changed to 4% vide **Notification No.7/2008-S.T. dated 01.03.2008.**

7.5. As per **Rule 3(2) of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007,** the provider of taxable service shall not take CENVAT credit of duties or cess paid on **any inputs,** used in or in relation to the said works contract, under the provisions of **CENVAT Credit Rules, 2004.**

7.6. In terms of **Board Circular dated 24.08.2010,** the amounts received towards construction services **after 01.06.2007** were classified under **Works contract services.** The post sale deed construction services rendered by them to various customers after **01.06.2007** are classifiable under the category of **Works Contract Services.** The subject venture of **M/s. Modi Ventures** was started in the year **2006** and was going on after **01.06.2007** also. Hence, the same are **Ongoing Works Contracts.** As the said project is an **ongoing Works Contract and the assessee has paid service tax under Construction of Complex Service before 01.06.2007,** the benefit of **Composition scheme** can not be extended.

8. As **M/s Modi Ventures** have not furnished the month wise particulars of amounts received exclusively on **agreements for Construction.** Hence, the service tax liability has been arrived at on the basis of soft copies of the books of accounts provided by the assessee vide their letter dated **20.01.2010.** Board vide Circular No. **108/02/2009 - ST, dated 29th January 2009** has clarified that service tax is not chargeable for services provided upto the stage of Sale deed. Therefore the receipt of amounts from each customer, to the extent of the **sale deed value,** were excluded from the total receipts of individual customer to arrive at the total taxable value of **construction services rendered, post execution of sale deed.**

208

O.R.No. 125/2011-Adjn.(ST)(Commr.)
C.No.IV/16/169/2011-Adjn.(ST)(Commr.)

9. From June, 2007 to December, 2010, M/s Modi Ventures, have collected an amount of **Rs.13,81,56,949/-** against **Agreements of Construction** in respect of **ongoing Works contracts**. In respect of these contracts, the benefit of **Compositions Scheme** can not be extended. Further, they have also not furnished the details of material consumed. In the absence of which the deduction of material cost under **Rule 2A of Service Tax (Determination of Value) Rules, 2006** can not be extended. Hence, service tax calculated @**12.36% / 10.30%** on **Rs.13,81,56,949/-** works out to **Rs.1,58,60,319/-** (Service Tax of **Rs.1,53,98,368/-**, Education Cess of **Rs.3,07,967/-**, Secondary & Higher Education Cess of **Rs.1,53,984/-** (As detailed in the Annexure to the notice). However, M/s. Modi Ventures have paid an amount of **Rs.20,46,743/-** (**Rs.9,21,176/-** under **Construction of Complex Services** and **Rs.11,25,567/-** under **Works Contract Services**) after **01.06.2007**. Thus they have short paid / not paid an amount of **Rs.1,38,13,576/-** (including Cesses). The same is liable for recovery under **Section 73(1) of the Finance Act, read with proviso there to**. They are also liable to pay interest on the said amount under the provisions of **Section 75 of the Finance Act, 1994**.

10. Therefore, it appears that **M/s Modi Ventures** have misinterpreted the Board Circular only with an intention to evade payment of service tax and stopped paying service tax with effect from **01.01.2009**. Further, **M/s Modi Ventures** are well aware of the provisions and of the liability of Service tax on receipts against the agreements for Construction and have not assessed and paid service tax properly by suppression of facts and contravened the provisions of **Section 68 of the Finance Act, 1994** with an intent to evade payment of service tax. They have intentionally not shown any receipts towards construction in their **ST3** returns. Further, they misinterpreted the definition of the works contract service with an intent to evade payment of Service Tax. The fact of receipt of the amounts towards construction has come to light only after the department has taken up the investigation. Hence, the service tax payable by **M/s Modi Ventures** appears to be recoverable under **proviso to Sub Section (1) of Section 73 of the Finance Act, 1994**.

210

O.R.No. 125/2011-Adjn.(ST)(Commr.)
C.No.IV/16/169/2011-Adjn.(ST)(Commr.)

11. From the foregoing it appears that M/s Modi Ventures, Secunderabad 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 shown the amounts received for the taxable services rendered in the statutory Returns 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 hence the amounts are liable for recovery under **proviso to the section 73(1) of the Finance Act, 1994** along with interest under **Section 75** of the **Finance Act, 1994**. Further, M/s. Modi Ventures have rendered themselves liable for penal action under **Section 77 and 78** of the **Finance Act, 1994**.

12. Therefore, M/s Modi Ventures, 5-4-187/3 & 4, III Floor, MG Road, Secunderabad - 500 003, are hereby required to show cause to the **Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II Commissionerate, L.B. Stadium Road, Basheerbagh, Hyderabad-500 004**, within **30(thirty)** days of receipt of this Notice as to why:

- (i) an amount of Service Tax of Rs.1,38,13,576/- (Rupees one crore thirty eight lakh thirteen thousand five hundred and seventy six only) should not be demanded from them towards Service Tax (including Cesses) on the "Works Contract Services", provided by them during the period 01.06.2007 to 31.12.2010 under the Section 73(1) of the Finance Act, 1994 read with proviso thereto;
- (ii) interest should not be demanded from them on the amount demanded at (i) above under the Section 75 of the Finance Act,1994
- (iii) Penalty should not be imposed on them under Section 77 of the Finance Act, 1994
- (iv) Penalty should not be imposed on them under Section 78 of the Finance Act, 1994

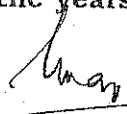
O.R.No. 125/2011-Adjn.(ST)(Commr.)
C.No.IV/16/169/2011-Adjn.(ST)(Commr.)

13. 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 they 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 (thirty)** days or do not appear in person when the case is posted for personal hearing, it would be presumed that the Noticee 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.

14. 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,1994 or any other law time being in force.

15. 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 2010-11 (upto Dec 2010).
- (2) Service tax statement submitted by M/s Modi Ventures vide letter dated 29-12-2009.
- (3) The Statement dated 01-02-2010 of Sri. A Shankar Reddy, Authorised person of M/s Modi Ventures.
- (4) Balance Sheet of M/s Modi Ventures for the years 2006-07 to 2010-11.


24.10.2011
(P.N. RAO)
COMMISSIONER

To

✓ M/s Modi Ventures, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad - 500 003. (through the superintendent of Service Tax, AE-Gr.II)

Copy to:

- 1. The Additional Commissioner, Service Tax, Hyderabad-II Commissionerate, Hyderabad.
- 2. The Assistant Commissioner, Service Tax, Anti Evasion, Hyderabad-II Commissionerate, Hyderabad.

2/2

O.R.No. 125/2011-Adjn.(ST)(Commr.)
C.No.IV/16/169/2011-Adjn.(ST)(Commr.)

3. The superintendent of Service Tax, AE-Gr.II, Hyderabad-II Commissionerate (w.r.t. file HQST No.58/20089-AE ST.Gr.II) with a direction to serve the copy of the notice on the assesseees and forward a copy of the dated acknowledgement.

Master Copy / Office Copy.

Annexure to the Show Cause Notice issued to M/s. Modi Ventures in G.R.No.125/2011-Adjn.(ST)(Commr.)

Tax calculation under Works contract service by M/s Ventures, Hyderabad, for the period June,2007 to to Dec,2010

Month		Rate of duty	Service Tax payable				S.T. paid	
			Service Tax	Ed.Cess	SHE Cess	Total	Con. Of Resi. Complex.	WCS
Jun-07	5464172	12.36%	655701	13114	6557	675372		
Jul-07	7868945	12.36%	944273	18885	9443	972602		
Aug-07	3125785	12.36%	375094	7502	3751	386347		
Sep-07	3371658	12.36%	401599	8092	4046	416737		
Oct-07	7219150	12.36%	866298	17326	8663	892287	921176	
Nov-07	4165868	12.36%	499904	9998	4999	514901		
Dec-07	2716188	12.36%	325943	6519	3259	335721		
Jan-08	8299347	12.36%	995922	19918	9959	1025799		
Feb-08	2661637	12.36%	319396	6388	3194	328978	600000	525567
Mar-08	7508182	12.36%	900982	18020	9010	928011		
Apr-08	3332201	12.36%	399864	7997	3999	411860		
May-08	3574788	12.36%	428975	8579	4290	441844		
Jun-08	2339753	12.36%	280770	5615	2808	289193		
Jul-08	6507802	12.36%	780936	15619	7809	804364		
Aug-08	3817667	12.36%	458120	9162	4581	471864		
Sep-08	2315396	12.36%	277848	5557	2778	286183		
Oct-08	1305748	12.36%	156690	3134	1567	161390		
Nov-08	2129908	12.36%	255589	5112	2556	263257		
Dec-08	357604	12.36%	42912	858	429	44200		
Jan-09	471715	12.36%	56606	1132	566	58304		
Feb-09	580127	12.36%	69615	1392	696	71704		
Mar-09	3154827	10.30%	315483	6310	3155	324947		
Apr-09	266711	10.30%	26671	533	267	27471		
May-09	18744	10.30%	1874	37	19	1931		
Jun-09	150000	10.30%	15000	300	150	15450		
Jul-09	910	10.30%	91	2	1	94		
Aug-09	13584	10.30%	1358	27	14	1399		
Sep-09	425000	10.30%	42500	850	425	43775		
Oct-09	581285	10.30%	58129	1163	581	59872		
Nov-09	2336472	10.30%	233647	4673	2336	240657		
Dec-09	1158500	10.30%	115850	2317	1159	119326		
Jan,10	2275425	10.30%	227543	4551	2275	234369		
Feb,10	5428135	10.30%	542814	10856	5428	559098		
March,10	5276002	10.30%	527600	10552	5276	543428		
April,2010	1827082	10.30%	182708	3654	1827	188189		
May,2010	2453404	10.30%	245340	4907	2453	252701		
June,2010	5626075	10.30%	562608	11252	5626	579486		
July,2010	4508309	10.30%	450831	9017	4508	464356		
Aug,2010	3555632	10.30%	355563	7111	3556	366230		
Sep,2010	1908166	10.30%	190817	3816	1908	196541		
Oct,2010	7195204	10.30%	719520	14390	7195	741106		
Nov,2010	6143344	10.30%	614334	12287	6143	632764		
Dec,2010	4720497	10.30%	472050	9441	4720	486211		
Total	138156949		15398368	307967	153984	15860319	1521176	525567
Service Tax payable on Works Contract Services					15860319			
Service Tax paid					2046743			
Service tax payable					13813576			

Propor case - 1

Sd/- [Signature]
Subdy Commr (Commr)