



केन्द्रीय उत्पाद सीमा शुल्क एवं सेवा कर के आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE AND
SERVICE TAX

हैदराबाद II आयुक्तालय : बशीरबाग, हैदराबाद

HYDERABAD II COMMISSIONERATE: BASHEERBAGH: HYDERABAD

Ph: 040 - 23231486

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O.R.No.84/2013-Adjn.ST(ADC)(Hyd-II)
C.No.IV/16/256/2010-ST(Gr-III)

Date:03.12.2013

SHOW CAUSE CUM DEMAND NOTICE

(Notice under Section 73(1A) of the Finance Act 1994)

Sub:Service Tax - Construction of Complex Service & Works
Contract Service - M/s Mehta & Modi Homes - Non-payment
of Service tax on taxable services rendered - Issue of Show
Cause Notice - Reg.

M/s Mehta & Modi Homes a partnership firm, located at 5-4-187/3 & 4, Soham Mansion 3rd Floor, M.G.Road, Secunderabad-500003 [here in after referred to as 'the assessee'] are engaged in providing Construction of Complex service and Works Contract Service. M/s Mehta & Modi Homes were registered on 17.08.2005 under Construction of Complex service and under Works Contract Service on 29.02.2008 vide STC No. AAJFM0647CST001.

2. On gathering intelligence that M/s Mehta & Modi Homes, were not discharging the service tax liability properly, investigation was taken up and it was found that M/s Mehta & Modi Homes had under taken 3 (three) projects in the year 2004 viz; Silver Oak Bungalows (Phase I); Silver Oak Bungalows (Phase II) and Silver Oak Bungalows (Phase III) at Cherlapally village, Ghatkesar mandal, Ranga Reddy District and received amounts from customers from April 2006 to December 2010 towards sale of land, and agreements for construction. In the said projects, they had entered into sale deed, and agreement for construction with their customers in respect of 290 flats. They have paid the Service Tax under Construction of Complex service availing abatement under Notification No. 1/2006-ST, dated 1-3-2006 (as amended) and under Works Contract service availing the option under Rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. They informed that they had not availed Cenvat credit during the period 01.04.2006 to 31.12.2010. (It was also found that they had 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 29.01.2009.**)

3. Accordingly, the following Show Cause Notices were issued by the Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II Commissionerate.

Sl. No.	SCN O.R. No. Date	Period	Amount of Service Tax	Issue	Status
1.	O.R. No. 128/2011-Adjn. (S.Tax) (Commr.) dated 24.10.2011	01.04.2006 to 31.05.2007	22,72,979/-	Short-payment of Service Tax on Construction of Complex Service.	OIO No.07/2013 dt.17.01.2013 confirmed
		01.06.2007 to 31.12.2010	5,55,04,153/-	Short/Non-payment of Service Tax on Works Contract Service.	OIO No.07/2013 dt.17.01.2013 confirmed
2.	O.R. No. 65/2012-Adjn. (S.Tax) (Commr.) dated 10.04.2012	01.01.2011 to 31.12.2011	54,68,582/-	Short-payment of Service Tax on Works Contract Service.	-----

4. The assessee in response to the letter C. No. IV/16/256/2010-ST-Gr.III dated 25.10.2013 and 11.11.2013, submitted vide their letters dated 31.10.2013 and 12.11.2013 that they had received a total amount of **Rs.3,36,31,202/-** from 01.01.2012 to 30.06.2012. Out of this, an amount of **Rs.1,10,50,000/-** is towards Sale Deed; **Rs.38,91,767/-** is towards taxes, other charges, Advances, refunds and taxable receipts & non-taxable receipts; **Rs.1,86,89,435/-** is towards Development charges/agreement for construction/additions and alterations and other charges.

5. Since, the projects were own ventures, assesseees were required to pay Service Tax on all the amounts received after execution of sale deed. Thus, **Rs.38,91,767/-** received towards other charges and **Rs.1,86,89,435/-** towards Development were chargeable to Service Tax. Therefore, the assesseees are liable to pay Service Tax on taxable amount of **Rs.2,25,81,202/-** as detailed below.

Period	Amount received	Sale deed amount	Taxable amount	Rate of Service Tax	Service Tax
01.01.2012 to 31.03.2012	1,39,64,930	12,85,000	1,26,79,930	10.30%	13,06,033
01.04.2012 to 30.06.2012	1,96,66,272	97,65,000	99,01,272	12.36%	12,23,797
Total	3,36,31,202	1,10,50,000	2,25,81,202	----	25,29,830

6. Vide Finance Act, 2012 sub section (1A) was inserted in Section 73 which reads as under:

73 (1A) – Notwithstanding anything contained in sub-section (1) (except the period of eighteen months of serving the notice for recovery of service tax) the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notice.

7. The grounds and legal position as explained in the Show Cause Notices issued vide O.R. No. 128/2011-Adjn. (S.Tax) (Commr.) dated 24.10.2011 and O.R. No. 65/2012-Adjn. (S.Tax) (Commr.) dated 10.04.2012 are also applicable to the present case. Hence this statement of demand/Show Cause Notice is issued in terms of **Section 73 (1A) of Finance Act, 1994** for the period **January, 2012 to June, 2012.**

8. In view of the foregoing, **M/s Mehta & Modi Homes**, are hereby required to show cause to the **Additional Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II Commissionerate, 7th Floor, Kendriya Shulk Bhavan, Basheerbagh, L.B. Stadium Road, Hyderabad**, within **30 days** of receipt of this notice, as to why:-

- (i) **An amount of Rs.25,29,830/- towards Service Tax (including Education Cess and Secondary and Higher Education Cess) should not be demanded on the services of "Works Contract Service" provided by them during the period 01.01.2012 to 30.06.2012, as detailed in Para-5, under Section 73(1) and 73(1A) of the Finance Act, 1994, as amended;**
- (ii) **Interest on the amount of Service Tax not paid as mentioned at (i) above should not be paid by them in terms of Section 75 of the Finance Act, 1994.**
- (iii) **Penalty should not be imposed on them under Section 76 of the Finance Act, 1994 for failure to pay Service Tax.**
- (iv) **Penalty should not be imposed on them under Section 70 of the Finance Act, 1994 in as much as they have not filed the statutory Returns for the services stated above.**

9. M/s Mehta & Modi Homes, are required to produce, all the evidence upon which they intend to rely upon, in support of their defence at the time of showing cause. They are also required to mention in their written reply as to whether they wish to be heard in person before the case is adjudicated. If no cause is shown within **thirty (30) days** of receipt of this notice or if they do not appear before the adjudicating authority when the case is posted for hearing, it will be presumed that they do not have anything to submit in support of their defence and the case will be decided ex-parte on the basis of evidence available on record.

10. This notice is issued without prejudice to any other action that may be initiated, or already initiated against the assessee under the Finance Act, 1994, or any other law for the time being in force in India.

11. Reliance for issue of this notice is based on the information submitted by the assessee vide their letters dated **31.10.2013 and 12.11.2013**.

12. The assessee has filed the ST-3 Return for the second half period i.e. 01.10.2011 to 31.03.2012 on 04.06.2012 and all amounts received by them pertains to the said return period. Hence, the last date for issuance of the Show Cause Notice would be **03.12.2013**.

N. Padmasri
3.12.13
(N. PADMASRI)
ADDITIONAL COMMISSIONER

To
M/s Mehta & Modi Homes
5-4-187/3 & 4
Soham Mansion 3rd Floor, M.G.Road
Secundrabad-500003
(Through the Superintendent Service Tax, Group-III)

Copy to:

1. The Assistant Commissioner of Service Tax, Division-I, Hyderabad II Commissionerate.
2. The Superintendent of Service Tax, Group - III, Hyderabad II Commissionerate
3. The Superintendent (Adjudication), Hyderabad-II Commissionerate, Hyderabad.
4. Master copy / Office copy

o/c 84 34

MEHTA & MODI HOMES

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

To,
The Superintendent,
Office of the Commissioner of Customs,
Central Excise & Service Tax,
Hyderabad - II, Commissionerate, Group X,
Opp: Siagareni Bhavan,
Sitaram Bagh, Red Hills,
Hyderabad.

Date 22nd July 2012

Dear Sir,

Subject : Intimation of payment - Service Tax.

- Reference : 1. SCN No.128/2011-ST(Asdjn)(Commr.) - Dated 24.10.11 - Period:
Jun'07 to Dec'10
2. SCN No.65/2012-Adjn(ST)(Commr.) dated 10.04.12 - Period: Jan'11 to
Dec'11
3. STC No. AAJFM0647GST001

1. We have had extensive correspondence with the department regarding the applicability of service tax to our firm. We have received several notices, show cause notices and demand notices from the department given in reference 1 to 2. Some matters are pending before CESTAT, Bangalore. In our replies given in reference 1 to 2 we have made our stand clear regarding payment of service tax. For brevity they are not being enumerated here.
 2. We have computed service tax liability for the period Jan 12 to Mar 12 under works contract services, composition scheme. Details of receipts during the said period and computation of service tax liability is attached herein. Receipts were first appropriated towards
 - a. Sale deed,
 - b. Then towards the agreement of construction,
 - c. Towards additions and alternations and
 - d. Finally towards VAT, service tax, stamp duty, registration charges, excess consideration received, etc.
 3. The receipts under the following heads were excluded for computation of taxable amount under work contract services:
 - a. Receipts towards value of sale deed.
 - b. Receipts towards payment of VAT, service tax, stamp duty and registration charges that were remitted to the government either in advance or on a later date.
 - c. Receipts that are in excess of the agreed sale consideration which were refunded or liable to refunded to the purchaser.
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MEHTA & MODI HOMES

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

- d. Receipts towards the other charges like corpus fund, maintenance charges, electricity charges, etc. received on behalf of the Owners Association or the electricity department which were paid to them in advance or on a later date.
4. Accordingly, the taxable amount under works contract services was computed to be Rs. 91,25,376.00 and tax liability there on @ 4.12% is Rs. 3,75,965.00.
5. CENVAT credit of Rs.4,370.00 has been adjusted against the tax liability and the balance amount of Rs. 3,71,595.00 has been paid under protest by:
- a. Challan No. 01100841806201200033 of Rs. 1,00,000.00
 - b. Challan No. 01100840907201200025 of Rs. 1,00,000.00
 - c. Challan No. 01100840907201200018 of Rs. 1,00,000.00
 - d. Challan No. 01100842667201200001 of Rs. 71,595.00
6. We hope that our understanding is correct and we would be glad to provide you with any further information that may be required in this regard. We request you to kindly confirm the same.

Thank You.

Yours faithfully,
For Mehta & Modi Homes


Authorized Signatory

- Encl.:
- 1. Statement of receipts from Jan '12 to Mar'12 and details of ST computation.
 - 2. Copy of Challans referred to above.

- CC To:
- 1. Assistant Commissioner.
 - 2. Deputy Commissioner.
 - 3. Additional Commissioner.



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MEHTA & MODI HOMES

5-4-187/3 & 4, IInd Floor, Soham Mansion, M.G. Road, Secunderabad - 500003
Phone: +91-40-66335551, Fax: 040-27544058

2. The receipts under the following heads were excluded for computation of taxable amount under work contract services:
- Receipts towards value of sale deed.
 - Receipts towards payment of VAT, service tax, stamp duty and registration charges that were remitted to the government wither in advance or on a later date.
 - Receipts that are in excess of the agreed sale consideration which were refunded or liable to refunded to the purchaser.
 - Receipts towards the other charges like corpus fund, maintenance charges, electricity charges, etc received on behalf of the Owners Association or the electricity department which were paid to them in advance or on a later date.

We hope that our understanding is correct and we would be glad to provide you with any further information that may be required in this regard. We request you to kindly confirm the same.

Thank You.

Yours sincerely,
FOR MEHTA & MODI HOMES



Soham Modi
Managing Partner