

PARAMOUNT BUILDERS

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

To,
The Additional. Commissioner,
Anti Aviation, Service Tax
Central Excise, Customs & Service Tax
Commissionerate II
Hyderabad.

Date: 13.09.2010

Respected Sir

Sub: Gentle follow up on our earlier letter – Reg
Ref: Our letter dated 30.08.2010.

The above referred letter was filed in your office and was duly acknowledge on 30.08.10. In that letter, we had communicated our understanding with respect to the liability of service tax under the category "Construction of Complex Service".

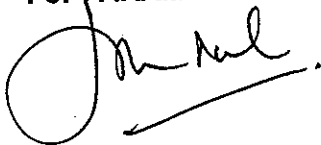
We request you to kindly confirm if our understanding therein is correct or otherwise so that appropriate decision can be taken at our end as to whether service tax has to be collected and paid.

Requesting to revert on this at the earliest as per convenience on this issue.

Thanking You.

Yours Truly

For PARAMOUNT BUILDERS,



Authorised Signatory.

Customs Central Excise and
Service Tax Hyderabad II
Commissionerate.



13 SEP 2010

Signal no

PARAMOUNT BUILDERS

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

Phone : +91-40-66335551, Fax :

To

The Additional Commissioner,
Commissioner,
Group III, Hyderabad - II Commissionerate,
L.B. Stadium Road,
Basheerbagh,
Hyderabad - 500004.

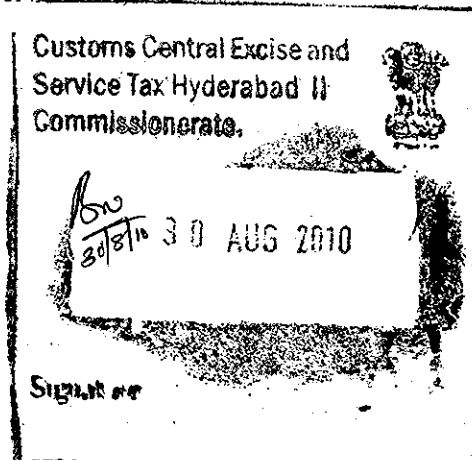
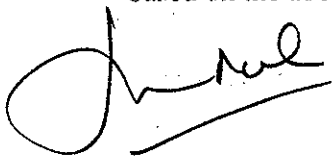
Date: 28.08.2010.

Dear Sir

Sub: Intimation regarding payment of service tax from 01.07.2010

Ref: STC No. AAHFP4040NST001

1. With reference to above, we would like inform that we are Builders/Developers of Residential Apartments. We wish to recall our letter No. Nil dated 16.08.10 were in, we had informed that we would not be liable for service tax and accordingly we had stopped remitting the payment of service tax also.
2. The reason for termination of payment of service was as under
 - a. Single Agreement: Since the transaction involved is sale of immovable property (stamp duty has been suffered) service tax would not be payable in view of 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.
 - b. Sale Deed & Construction Agreement: For the consideration relating to Sale Deed, the stand same as mentioned for single agreement would be applied. In case of construction, since the construction is for the customer for his personal use, the same has been excluded in the definition of the Residential Complex, which was also clarified vide Circular No.108/02/2009-ST dated 29.01.2009.
 - c. Customer was not reimbursing the service tax, since the same was not liable based on the above view.

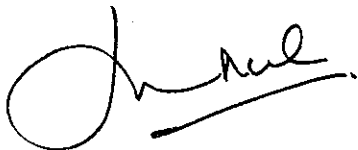


PARAMOUNT BUILDERS

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

Phone : +91-40-66335551, Fax :

3. Now we understand that, recently there are amendments vide the Finance Act, 2010 r/w recent circulars and notifications issued in this regard. The essence of the amendment is that if we receive any amount/advance prior to taking completion certificate, then we would be liable for service tax under "Construction of Residential Complex Service", whereas if the entire consideration is received post obtaining completion certificate, then the same would be totally excluded from the service tax.
4. We understand that such explanation inserted is not constitutionally valid for the reason that this intends to tax transfer of immovable property by apply the Doctrine of Pith and substance. Transfer of Immovable Property has been governed by List II of the Seventh Schedule to Indian Constitution, which is exclusively state subject and Union cannot levy tax on the same. Interim stay by the Bombay High Court has also been granted in this regard.
5. Further we understand, since the taxable object in the instant case is "Residential Complex", which excludes personal use of the customer. Therefore insertion of this explanation in the taxable service definition does not dilute our view taken in our earlier letter. Further to illustrate this with an example in construction of an independent house and advance taken prior to completion certificate would not be liable for service tax even w.e.f 01.07.2010 Similarly the personal use complex would also not be liable for service tax.
6. However if we intend not litigating on the above ground, we understand that such amendment is prospective and applicable only from 01.07.2010 for the reasons mentioned below:
 - a. Since there is no specific retrospective provision in Finance Act 2010 as provided for the explanation inserted for "Commercial Coaching & Training Center Service"



PARAMOUNT BUILDERS

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

Phone : +91-40-66335551, Fax :

- b. The explanation was inserted to enhance the scope of the existing service and hence the same can be only prospectively and not retrospectively. This view is also supported by a recent decision of Supreme Court in case of Union of India v. Martin Lottery Agencies Ltd. [2009] 20 STT 203 (SC).
 - c. Circular F.No.334/03/2010-TRU dated 01.07.2010 clarifies that this service came into effect only after 01.07.2010 and further the receipts received prior to such date was not liable for service tax as the same was specifically exempted.
7. Hence the transactions and receipts prior to 01.07.2010 are not liable to service tax at all. In the instant case the taxable event is "Construction of Complex" and for such construction of complex if the consideration has been received in advance/installments before the completion certificate then the same is deemed to be taxable service. Therefore the construction (taxable event) performed prior to 01.07.2010 would not be taxable.
 8. In the instant case the completion/occupancy certificate has been received on 16.04.2009 itself and the entire consideration has been received from the customers before 01.07.2010. Hence we are not liable to service tax in respect of such consideration received. Copies of completion certificate are herewith enclosed for ready reference.
 9. We hope all our understanding is correct and we would be glad to provide you with any further information that may be required in this regard.

Kindly acknowledge the receipt of the same.

Thanking You
Yours Truly,
For Paramount Builders



Authorised signatory

CC to AC/DC, AId Comm.

Dept copy

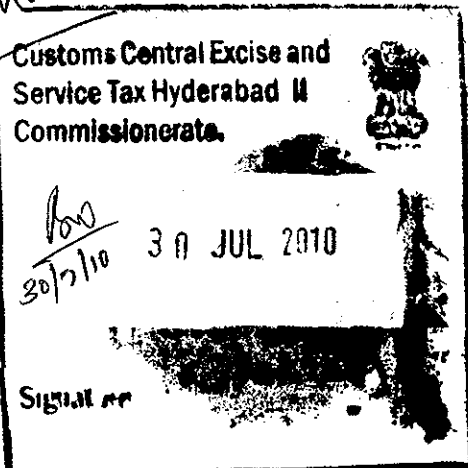
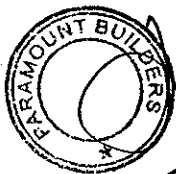
**BEFORE THE ADDITIONAL COMMISSIONER OF CUSTOMS, CENTRAL
EXCISE & SERVICE TAX, HYDERABAD II COMMISSIONERATE,
L.B. STADIUM ROAD, BASHEERNAGH,
HYDERABAD 500 004**

Sub: Proceeding under SCN O.R. No. 87/2010-ST (HQST No. 55/09 - AE IV) dated 24.06.2010 issued to M/s Paramount Builders, Secunderabad.

We are authorized to represent M/s Paramount Builders, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad - 500 003 (hereinafter referred to as 'Noticee') vide their authorization letter enclosed along with this reply.

FACTS OF THE CASE:

1. Noticee is a partnership firm engaged in the business of construction of residential units. Noticee had undertaken a venture by name Paramount Residency wherein 122 apartments were constructed and sold. Noticee had obtained service tax registration and made payments of service tax for the receipts pertaining to the period September 2006 to December 2008.
2. In respect of the 122 apartments constructed and sold two agreements were entered into by the noticee, one for sale of the land and the other for construction of the semi finished house in addition to the initial document Agreement to sell.
3. Initially, upto December 2008, when amounts were received by the noticee and eventhough there was a doubt and lot of confusion on the applicability of service tax the noticee paid service tax in respect of the receipts of construction agreement. Later, on the issue of the clarification



vide the circular No. 108/02/2009 dated 29.01.2009 by the department the customers of the noticee, stopped paying the service tax and accordingly noticee was forced to stop collecting and discharging service tax liability on the amounts collected in respect of the construction agreement as they were of the bonafide belief that they were excluded vide the personal use clause in the definition of residential complex.

4. Investigation was taken up by the department and summons dated 13.01.2010 were done for the submission of relevant records/documents/information for which the noticee had extended full cooperation.

5. Subsequently, the Additional Commissioner has issued a show cause notice dated 24.06.2010 to the noticee to show cause as to why:

a. An amount of Rs. 6,86,791 which was paid excess in construction of residential complex service should not be appropriated towards the liability under works contract service.

b. The Remaining amount of Rs. 11,80,439/- payable towards Service Tax, Education Cess and Secondary and Higher education cess which was short paid under works contract service should not be demanded under section 73(1) of the Finance Act, 1994 (hereinafter referred to as the Act) for the period January 2009 to December 2009;



[Handwritten signature]



- c. Interest on the above should not be demanded under section 75 of the Act;
- d. Penalty under sections 76 of the Act should not be demanded from them.
- e. Penalty under sections 77 of the Act should not be demanded from them.
- f. Penalty under sections 78 of the Act should not be demanded from them.

In as much as:

- a. Whether the noticee is liable to service tax in respect of the amounts received during the above period?
- b. Whether the same service can be classified under two different heads of service just because the period of provision of services is different?
- c. Whether the noticee had intended to evade the payment of duty?
- d. Whether penalty under section 76 and 78 be imposed simultaneously?

Submissions:

In reply to the above propositions –

1. In SCN you have raised an amount of Rs. 11,80,439/- but as per our calculation our liability to pay the service tax is about Rs. 5,27,800/- only during January 2009 to December 2009.



[Handwritten signature]



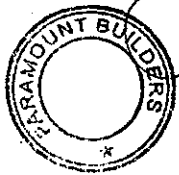
2. Without prejudice to the foregoing Noticee submits that the SCN is not clear as to the chargeability as it specifies the services provided by Noticee fall under 'Construction of Residential Complex' for certain period and under "Works Contract Service" without being any change in the scope of contract. The Special Bench of Tribunal consisting of three members in case of Crystic Resins (India) Pvt. Ltd., vs CCE, 1985 (019) ELT 0285 Tri.-Del has made the following observations on uncertainty in the SCN and said the SCN is not valid.

"If show cause notice is not properly worded inasmuch as it does not disclose essential particulars of the charge any action based upon it should be held to be null and void."

"The utmost accuracy and certainty must be the aim of a notice of this kind, and not a shot in the dark"

3. Since the SCN in the instant case has not set out clearly under which category of services the activity is taxable, the same is not sustainable under the law and proceedings under the same requires to be dropped.

4. Noticee also submits that the SCN has been issued without considering the factual position and the relevant provisions and hence should be set aside.



[Handwritten signature]



5. The facts in respect of the project under question are that the noticee has constructed flats and the transaction with the customer was in two folds as under:

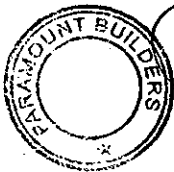
- a. Noticee sold the undivided share of land along with the semi-constructed residential unit to the customer.
- b. Subsequently the customer/owner of the land along with the semi-built up unit gets the construction done by the noticee.

6. In respect of the first fold there is no construction service provided by the noticee to their customer as there is no distinct service provider and receiver. Therefore there is no service tax on the same. This is not disputed by the department as well.

7. In respect of the second fold of the transaction there was always a doubt regarding the applicability of service tax as the definition of residential complex mentioned in section 65((91a) states that where such a complex is for personal use then no service tax is payable. The definition is extracted below:

"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;

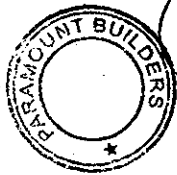
(b) "residential unit" means a single house or a single apartment intended for use as a place of residence;

8. Without prejudice to the foregoing noticee submits that although there was no liability the entire amount of service tax was paid out of doubt and the same was clearly clarified* in the recent circular no. 108/02/2009 -ST dated 29.02.2009. This was also clarified in two other circulars as under :

a. F. No. B1/6/2005-TRU, dated 27-7-2005

b. F. No. 332/35/2006-TRU, dated 1-8-2006

Therefore the entire amount of service tax is eligible for refund.



[Handwritten signature]



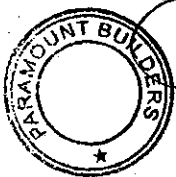
9. Noticee submits that non-taxability of the construction provided for an individual customer intended for his personal was clarified by TRU vide its letter dated F. No. B1/6/2005-TRU, dated 27-7-2005 (mentioned above) during the introduction of the levy, therefore the service tax is not payable on such consideration from abinito.

Relevant Extract

"13.4 However, residential complex having only 12 or less residential units would not be taxable. Similarly, residential complex constructed by an individual, which is intended for personal use as residence and is constructed by directly availing services of a construction service provider, is also not covered under the scope of the service tax and not taxable"

10. Noticee further submits that the board in between had clarified in an indicative manner that the personal use of a residential complex is not liable for service tax in the Circular F. No. 332/35/2006-TRU (mentioned above), dated 1-8-2006.

2.	<i>Again will service tax be applicable on the same, in case he constructs commercial</i>	<i>Commercial complex does not fall within the scope of "residential complex intended for personal use". Hence, service provided</i>
----	---	--



[Handwritten signature]

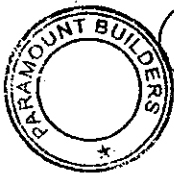


	complex for himself for putting it on rent or sale?	for construction of commercial complex is leviable to service tax.
	Will the construction of an individual house or a bungalow meant for residence of an individual fall in purview of service tax, is so, whose responsibility is there for payment?	Clarified vide F. No. B1/6/ 2005-TRU, dated 27-7-2005, that residential complex constructed by an individual, intended for personal use as residence and constructed by directly availing services of a construction service provider, is not liable to service tax.

11. Board Circular No. 108/2/2009-S.T., dated 29-1-2009 states that the construction for personal use of the customer falls within the ambit of exclusion portion of the definition of the "residential complex" as defined u/s 65(91a) of the Finance Act, 1994 and accordingly no service tax is payable on such transaction.

Relevant extract

"...Further, if the ultimate owner enters into a contract for construction of a residential complex with a



[Handwritten signature]

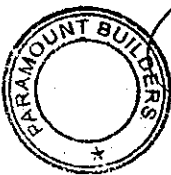


promoter/builder/developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because this case would fall under the exclusion provided in the definition of 'residential complex'..."

12. Noticee submits that with the above exclusion, no service tax is payable at all for the consideration pertaining to construction service provided for its customer and accordingly the SCN is void abinitio.

13. Further the noticee has bought a new theory that the exemption for personal use as stated in the definition would be available only if the entire complex is for personal use of ONE person. The noticee wishes to state that while interpreting the law no words should be added or deleted. The law should be read as it is in its entirety. The relevant part of the circular is as under

"...Further, if the ultimate owner enters into a contract for construction of a residential complex with a promoter/builder/developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because this



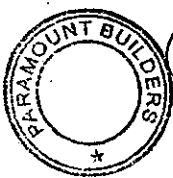
case would fall under the exclusion provided in the definition of 'residential complex'..."

14. The noticee wishes to highlight that neither in the definition nor in the clarification, there is any mention or whisper that the entire complex should be used by **one** person for his or her residence to be eligible for the exemption. The exemption would be available if the sole condition is satisfied i.e. personal use. And such personal use, either by one person or multiple person is irrelevant.

15. The noticee submits the preamble of the referred circular for understanding what issue exactly the board wanted to clarify. The relevant part of the said circular (para 1) is extracted hereunder for ready reference.

*"...Doubts have arisen regarding the applicability of service tax in a case where developer/builder/promoter enters into an agreement, with the ultimate owner for **selling a dwelling unit in a residential complex** at any stage of construction (or even prior to that) and who makes construction linked payment..." (Para 1)*

16. The noticee submit that from the above extract, it is clear that the subject matter of the referred circular is to clarify the taxability in transaction of dwelling unit in a residential complex by a developer.



[Handwritten signature]



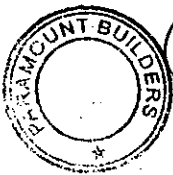
Therefore the clarification aims at clarifying exemption of residential unit and not the residential complex as alleged in the notice.

17. The noticee submits that it is important to consider what arguments are considered by board for providing this clarification. The relevant part as applicable in the context has been extracted as under for ready reference.
"...It has also been argued that even if it is taken that service is provided to the customer, a single residential unit bought by the individual customer would not fall in the definition of 'residential complex' as defined for the purposes of levy of service tax and hence construction of it would not attract service tax..." (Para 2)

18. The noticee submits that the argument is in context of single residential unit bought by the individual customer and not the transaction of residential complex. The clarification has been provided based on the examination of the above argument among others.

19. The noticee submits the final clarification was provided by the board based on the preamble and the arguments. The relevant portion of the circular is provided here under for the ready reference.

"... The matter has been examined by the Board. Generally, the initial agreement between the promoters/builders/developers and the ultimate owner is in the nature of 'agreement to sell'. Such a case, as per the

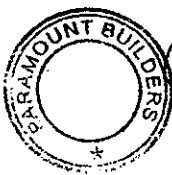


[Handwritten signature]



provisions of the Transfer of Property Act, does not by itself create any interest in or charge on such property. The property remains under the ownership of the seller (in the instant case, the promoters/builders/developers). It is only after the completion of the construction and full payment of the agreed sum that a sale deed is executed and only then the ownership of the property gets transferred to the ultimate owner. Therefore, any service provided by such seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of 'self-service' and consequently would not attract service tax. Further, if the ultimate owner enters into a contract **for construction of a residential complex** with a promoter/builder/developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because this case would fall under the exclusion provided in the definition of 'residential complex'. However, in both these situations, if services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax..." (Para 3)

20. The noticee submits that the clarification provided above is that in the under mentioned two scenario service tax is not payable.



[Handwritten signature]

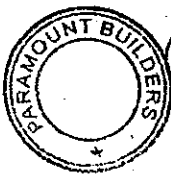


- a. For service provided until the sale deed has been executed to the ultimate owner.
- b. For service provided by entering into construction agreement with such ultimate owner, who receives the constructed flat for his personal use.

21. The noticee submits that it is exactly the facts in their case. The first clarification pertains to consideration received for construction in the sale deed portion. The second clarification pertains to construction in the construction agreement portion. Therefore this clarification is applicable to them *ibid*.

22. The impugned notice has very narrowly interpreted by the department without much application of mind and has concluded that if the entire complex is put to personal use by a single person, then it is excluded. The circular or the definition does not give any meaning as to personal use by a single person. In fact it is very clear that the very reason for issuance of the circular is to clarify the applicability of residential unit and not the residential complex.

23. Where an exemption is granted, the same cannot be denied on unreasonable grounds and illogical interpretation as above. In the definition "*complex which is constructed by a person directly engaging*



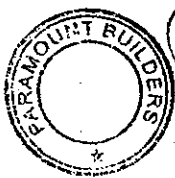
[Handwritten signature]



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.**" Since the reference is "constructed by a person" in the definition, it cannot be interpreted as "complex which is constructed by **ONE person.....**" similar the reference "personal use as residence by **such person**" also cannot be interpreted as "personal use by **ONE persons**" Such interpretation would be totally against the principles of interpretation of law and also highly illogical.

24. The noticee submits that the entire amount of service tax paid is eligible for refund. Further noticee submits that when the levy does not exist, then payment of penalty does not arise and hence the SCN has to be set aside.

25. Without prejudice to the foregoing, noticee further submits that Honorable CESTAT, Bangalore, has granted the stay in the case of M/s Classic Promoters and Developers, M/s Classic Properties v/s CCE Mangalore 2009-TIOL-1106-CESTAT-Bang relying on the Circular No. 108/02/2009-ST dated 29.01.2009, therefore the impugned notice is not in order. Also in case of Mohtisham Complexes Pvt. Ltd. vs Commr. of C. Ex., Mangalore 2009 (016) STR 0448 Tri.-Bang. ; while remanding the case to the original adjudicating authority, it was clearly held that the residential complex was not taxable, since the same is for the personal use.



[Handwritten signature]



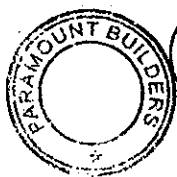
26. Based on the above the noticee was of the bonafide belief that service tax was not payable and stopped collecting and making payment. Hence where service tax is itself not payable then the question of non payment raised by the SCN is not correct and the entire SCN has to be set aside based on these grounds only.

27. Without prejudice to the foregoing noticee submits that the SCN states that in respect of the construction agreement services are provided by the noticee and there exists service provider and receiver relationship between them and hence it invariably attracts service tax.

28. Noticee wish to submit here that for any activity to be a taxable service few conditions mentioned below have to be satisfied:

- a. There must be a defined service provider
- b. There must be a defined service receiver
- c. The activity under question should be a defined activity
- d. During the period that is under question the levy must be in existence.

All these conditions have to be fulfilled simultaneously and cumulatively.



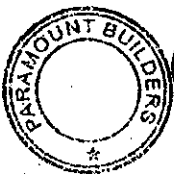
[Handwritten signature]



29. In the instant case the condition 'c' is not fulfilled as the complex that is constructed falls under the exclusion portion of the residential complex definition and for other reasons already mentioned above. Hence even if other 3 conditions are satisfied it does not mean that the activity is a taxable service. Hence the SCN should be set aside.

30. Further the noticee submits that in the Finance Bill 2010 there was an explanation added to the section 65(105)(zzzh) of the Act where the taxable service construction of residential complex is defined. This was the first time the deeming fiction of the service provided by the Builder was brought into the tax net. (prior to this only contractors were taxable) In this respect, in the clarification issued by the TRU vide D.O.F. No.334/1/2010-TRU dated 26.02.2010 it was stated that in order to bring parity in tax treatment among different practices, the said explanation was inserted. The circular also clarifies that by this explanation the scope has been enhanced. This gives the conclusion of the same being prospective and also clarifies that the transaction between the builder and buyer of the flat is not taxable until the assent was given to the Bill. Hence this shows that the transaction in question is not liable to service tax for the period of SCN .

31. Without prejudice to the foregoing noticee submits that if the transaction is considered as taxable and there is service tax liability then



[Handwritten signature]



the noticee would be eligible for CENVAT credit on the input services and capital goods used and hence the liability shall be reduced to that extent. The SCN has not considered this and has demanded the entire service tax.

Cum tax benefit

32. Without prejudice to the foregoing, assuming but not admitting that the service tax is payable as per the SCN, Noticee submits that they have not collected the service tax amount being demanded in the subject SCN. Therefore the amount received should be considered as cum-tax in terms of Explanation to Section 67 of the Finance Act, 1994 and the service tax has to be re-computed giving the noticee the benefit of cum-tax.

INTEREST

33. Without prejudice to the foregoing noticee submits that when service tax itself is not payable, the question of interest and penalty does not arise.

34. Noticee further submits that it is a natural corollary that when the principal is not payable there can be no question of paying any interest as held by the Supreme Court in Prathiba Processors Vs. UOI, 1996 (88) ELT 12 (SC).



[Handwritten signature]



PENALTY

35. Without prejudice to the foregoing, Noticee submits that service tax liability on the builders till date has not been settled and there is full of confusion as the correct position till date. With this background it is a settled proposition of law that when the assessee acts with a bonafide belief especially when there is doubt as to statute also the law being new and not yet understood by the common public, there cannot be intention of evasion and penalty cannot be levied. In this regard we wish to rely upon the following decisions of Supreme Court.

- (i) Hindustan Steel Ltd. V. State of Orissa - 1978 (2) ELT (J159)
(SC)
- (ii) Akbar Badruddin Jaiwani V. Collector - 1990 (47) ELT
161(SC)
- (iii) Tamil Nadu Housing Board V Collector - 1990 (74) ELT 9
(SC)

Therefore on this ground it is requested to drop the penalty proceedings under the provisions of Section 76.

36. Without prejudice to the foregoing, Noticee submits that there is no allegation as to any intention to evade the payment of service tax setting out any positive act of the Appellant. Therefore any action proposed in the SCN that is invocable for the reason of fraud, wilful mis-statement,

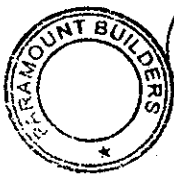


[Handwritten signature]



collusion or suppression of facts, or contravention of any of the provisions of the Excise Act or the rules made thereunder with intention to evade payment of duty, is not sustainable and penalty under section 78 is not sustainable. In this regard reliance is placed on the following decisions:

- a. Cosmic Dye Chemical v. CCE, 1995 (75) ELT 721 (SC) wherein at para-6 of the decision it was held that – “Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word “wilful” preceding the words “mis-statement or suppression of facts” which means with intent to evade duty. The next set of words “contravention of any of the provisions of this Act or Rules” are again qualified by the immediately following words “with intent to evade payment of duty”. It is, therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A. Mis-statement or suppression of fact must be wilful”.
- b. T.N. Dadha Pharmaceuticals v. CCE, 2003 (152) ELT 251 (SC) wherein it was held that - To invoke the proviso three requirements have to be satisfied, namely, (1) that any duty



[Handwritten signature]



of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded; (2) that such a short-levy or short-payment or erroneous refund is by reason of fraud, collusion or wilful mis-statement or suppression of facts or contravention of any provisions of the Central Excise Act or the rules made thereunder; and (3) that the same has been done with intent to evade payment of duty by such person or agent. These requirements are cumulative and not alternative. To make out a case under the proviso, all the three essentials must exist. Further it was held that burden is on the Department to prove presence of all three cumulative criterions and the Revenue must have perused the matter diligently. It is submitted none of the ingredients enumerated in proviso to section 11A(1) of the Act is established to present in our clients case.

- c. Tamil Nadu Housing Board v. CCE, 1994 (74) ELT 9 (SC) wherein it was held that proviso to section 11A(1) is in the nature of an exception to the principal clause. Therefore, its exercise is hedged on one hand with existence of such situations as have been visualized by the proviso by using such strong expression as fraud, collusion etc. and on the other hand it should have been with intention to evade payment of duty. Both must concur to enable the Excise

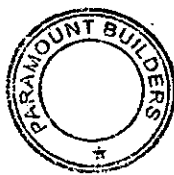


[Handwritten signature]



Officer to proceed under this proviso and invoke the exceptional power. Since the proviso extends the period of limitation from six months to five years it has to be construed strictly. Further, when the law requires an intention to evade payment of duty then it is not mere failure to pay duty. It must be something more. That is, the assessee must be aware that the duty was leviable and it must deliberately avoid paying it. The word 'evade' in the context means defeating the provision of law of paying duty. It is made more stringent by use of the word 'intent'. In other words, the assessee must deliberately avoid payment of duty which is payable in accordance with law.

- d. *Padmini Products v. CCE*, 1989 (43) ELT 195 (SC) wherein it was held that mere failure or negligence on the part of the manufacturer either not to take out a licence or not to pay duty in case where there was scope for doubt, does not attract the extended limitation. Unless there is evidence that the manufacturer knew that goods were liable to duty or he was required to take out a licence. For invoking extended period of five years limitation duty should not had been paid, short-levied or short paid or erroneously refunded because of either any fraud, collusion or wilful mis-statement or suppression of facts or contravention of any provision of the

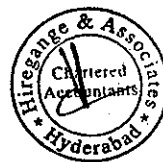
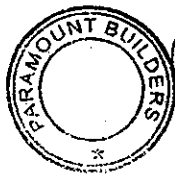


Handwritten signature



Act or Rules made thereunder. These ingredients postulate a positive act, therefore, failure to pay duty or take out a licence is not necessary due to fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provisions of the Act. Likewise suppression of facts is not failure to disclose the legal consequences of a certain provision.

- e. Pahwa Chemicals Pvt. Ltd. v. CCE, 2005 (189) ELT 257 (SC) wherein it was held that mere failure to declare does not amount to mis-declaration or wilful suppression. There must be some positive act on the part of party to establish that either wilful mis-declaration or wilful suppression and it is a must. When the party had acted in bonafide and there was no positive act, invocation of extended period is not justified.
- f. Gopal Zarda Udyog v. CCE, 2005 (188) ELT 251 (SC) where there is a scope for believing that the goods were not excisable and consequently no license was required to be taken, then the extended period is not applicable. Further, mere failure or negligence on the part of the manufacturer either not to take out the licence or not to pay duty in cases where there is a scope for doubt, does not attract the extended period of limitation. Unless there is evidence that

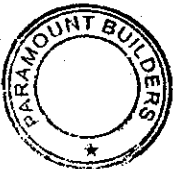


the manufacturer knew that the goods were liable to duty or he was required to take out a licence, there is no scope to invoke the proviso to Section 11A(1).

- g. *Kolety Gum Industries v. CCE*, 2005 (183) ELT 440 (T) wherein it was held that when the assessee was under bonafide belief that the goods in question was not dutiable, there was no suppression of fact.

37. Further the noticee submits that until there was no clarity on the applicability of service tax the amounts were collected and paid properly by the noticee. It was only on issue of a clarification by the department vide the circular 108/02/2009 *ibid* that the noticee stopped making service tax payments as it was of the bonafide belief that there was no service tax liability. There was never an intention to evade payment of service tax by the noticee. Hence the penalty under section 78 is not leviable in the instant case. On the other hand it was not practicable for collection of service tax from the customer as the same was denied by the customer.

38. Further the SCN states that the noticee was well aware of the provisions and that they have misinterpreted the provisions with an intent to evade payment of duty. But Noticee submits that when there is a confusion prevalent as to the leviability and the mala fide not established by the



[Handwritten signature]



department, it would be a fit case for waiver of penalty as held by various tribunals as under. Further there cannot be an intent to evade payment of duty in such cases and just because the noticee has not interpreted the law properly it cannot be said that there was an intent to evade payment of tax. This does not prove the malafide intent at all.

- a. The Financiers vs Commissioner of C. Ex., Jaipur 2008 (009) STR 0136 Tri.-Del
- b. Vipul Motors (P) Ltd. vs Commissioner of C. Ex., Jaipur-I 2008 (009) STR 0220 Tri.-Del
- c. Commissioner of Service Tax, Daman vs Meghna Cement Depot 2009 (015) STR 0179 Tri.-Ahmd

39. The SCN has levied penalties under sections 76 and 78. Noticee wish to submit here that penalties under Sections 76 and 78 are mutually exclusive and both the penalties cannot be imposed simultaneously. In this regard reliance is placed on the following decisions:

- a. Opus Media and Entertainment Vs Commissioner of C. Ex., Jaipur 2007 (8) STR 368 (T).
- b. The Financers Vs Commissioner of Central Excise, Jaipur 2007 (8) STR 7 (T).

40. Further section 80 of Finance Act provides no penalty shall be levied under section 76. 77 or 78 if the assessee proves that there is a



[Handwritten signature]



reasonable cause for the failure. The notice in the instant case was under confusion as to the service tax liability on their transaction, therefore there was reasonable case for the failure to pay service tax, hence the benefit under section 80 has to be given to them.

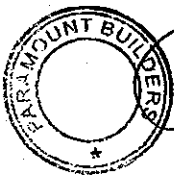
41. Noticee crave leave to alter, add to and/or amend the aforesaid grounds.

42. Noticee wish to be heard in person before passing any order in this regard.



**For Hiregange & Associates
Chartered Accountants**

Sudhir V S
**Sudhir V S
Partner**



[Handwritten signature]

**BEFORE THE ADDITIONAL COMMISSIONER OF CUSTOMS, CENTRAL
EXCISE & SERVICE TAX, HYDERABAD II COMMISSIONERATE,
L.B. STADIUM ROAD, BASHEERNAGH,
HYDERABAD 500 004**

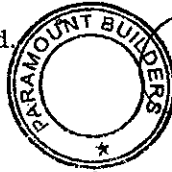
Sub: Proceeding under SCN O.R. No. 87/2010-ST (HQST No. 55/09 - AE IV) dated 24.06.2010 issued to M/s Paramount Builders, Secunderabad.

I, _____, Partner of M/s Paramount Builders, hereby authorise and appoint Hiregange & Associates, Chartered Accountants, Bangalore or their partners and qualified staff who are authorised to act as authorised representative under the relevant provisions of the law, to do all or any of the following acts: -

- To act, appear and plead in the above noted proceedings before the above authorities or any other authorities before whom the same may be posted or heard and to file and take back documents.
- To sign, file verify and present pleadings, applications, appeals, cross-objections, revision, restoration, withdrawal and compromise applications, replies, objections and affidavits etc., as may be deemed necessary or proper in the above proceedings from time to time.
- To Sub-delegate all or any of the aforesaid powers to any other representative and I/We do hereby agree to ratify and confirm acts done by our above authorised representative or his substitute in the matter as my/our own acts, as if done by me/us for all intents and purposes.

This authorization will remain in force till it is duly revoked by me/us.

Executed this 28th day of July 2010 at Hyderabad.



Signature

I the undersigned partner of M/s Hiregange & Associates, Chartered Accountants, do hereby declare that the said M/s Hiregange & Associates is a registered firm of Chartered Accountants and all its partners are Chartered Accountants holding certificate of practice and duly qualified to represent in above proceedings under Section 35Q of the Central Excises Act, 1944. I accept the above said appointment on behalf of M/s Hiregange & Associates. The firm will represent through any one or more of its partners or Staff members who are qualified to represent before the above authorities.

Dated 28.07.2010

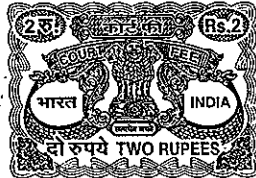
Address for service :

**Hiregange & Associates,
"Basheer Villa", House No: 8-2-268/1/16/B,
2nd Floor, Sriniketan Colony,
Road No. 3 Banjara Hills,
Hyderabad - 500 034.,**

**For Hiregange & Associates
Chartered Accountants**



**Sudha V. S.
Partner (M. No. 219109)**



70

PARAMOUNT BUILDERS

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

To,
~~The Superintendent,~~ *ASST. Commissioner (AE)*
Central Excise,
Customs and Service Tax,
Commissionerate II,
Hyderabad.

Date: 03.04.2010

Dear Sir,

Sub.: Consideration of entries for receipts and turnover for service tax – reg.
Ref.: 1. Your letter dated 11.01.2010.
2. Our personal discussion on 30.04.2010 at your office.

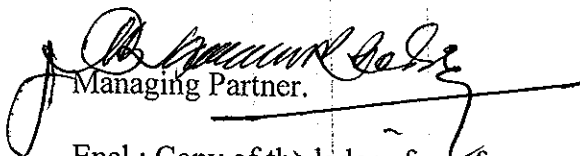
With reference to the above, we would like to inform you that as per your letter dated 11.01.2010, we had submitted all balance sheets of all our projects for verification pertaining to service tax. On 30.4.2010 our Accounts Manager Mr. Sambasiva Rao had discussed with you regarding the consideration of entries for receipts and turnover. As per his version, the following steps and things to be taken into consideration to arrive final receipts and turnover.

1. You have to consider only the receipts and turnover in the ledger where mentioned as SCR & SBR.
2. You should not consider as receipt or turnover in the ledger where mentioned as JV which reveals installments declared.
3. You should not consider as receipt or turnover in the ledger where mentioned as other payments like VAT, service tax and registration charges, etc.

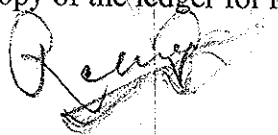
We hope you have understood the process to arrive final receipts and turnover.

Thank You,

Yours sincerely,
For Paramount Builders,


Managing Partner.

Encl.: Copy of the ledger for reference.



*2ccw
H
4/4/10
2/3/10 AEVI*

P-3 68

PARAMOUNT BUILDERS

9/c

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.

h

69

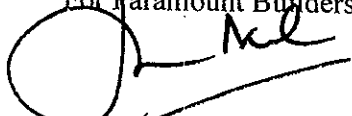
PARAMOUNT BUILDERS

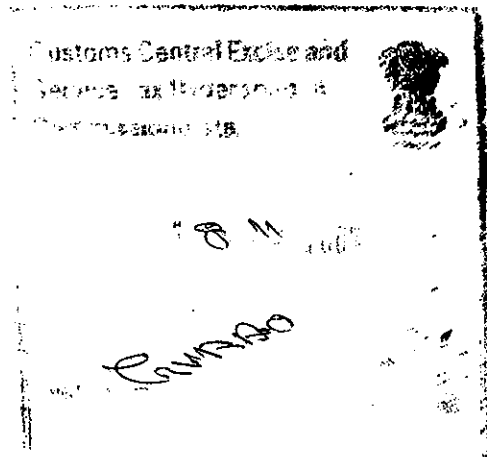
5-4-187/3 & 4, II Floor, Soham Mansion, M.G. Road, Secunderabad - 500 003.
Phone : +91-40-66335551, Fax :

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.



70

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.

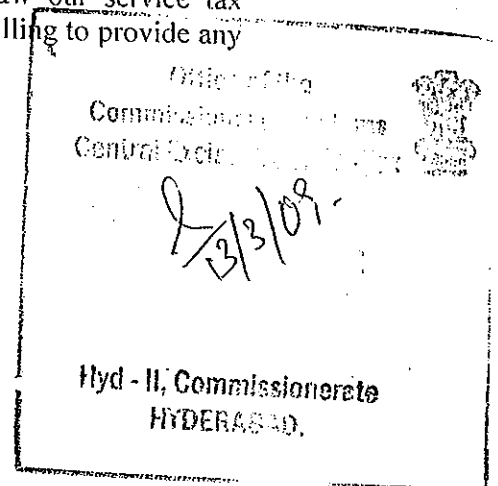
Vide circular given in reference 2, The Central Board of Excise and Customs has clarified that the builders, promoters and developers are not liable for payment of service tax under the circumstances mentioned in the said circular. We are developing flats/independent houses by providing our own design, 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



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 31.03.2009

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 of the circular 108/2/2009-ST dated 29.01.2009 and the decided case given in the subsequent points.

HYD - II, SERVICE TAX
willing to provide any
Circular
2/3/09
Hyd - II, Commissionerate
HYDERABAD.

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.

73 PARAMOUNT BUILDERS

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

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.



74

18
27/1/09

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 proceeding'. 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.



Phone : 23231481
23230196

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

**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

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 HON'BLE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH AT HYDERABAD
WRIT PETITION NO : 26012 OF 2009**

BETWEEN:

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

. . . **Petitioner**

And

1. The Union of India,
Rep by its Secretary, Ministry of Finance,
Department of Revenue,
Government of India,
New Delhi.
2. The Commissioner of Customs, C.Ex &
Service Tax, Hyderabad-II Commissionerate,
3rd Floor, Shakkar Bhavan, L.B. Stadium Road,
Basheerbagh, Hyderabad-500 004.
3. The Superintendent of Service Tax,
Service Tax, Hyd-II Commissionerate,
L.B. Stadium Road,
Basheerbagh, Hyderabad-500 004.

. . . **Respondents**

COUNTER AFFIDAVIT FILED ON BEHALF OF RESPONDENTS

I, Ajit Indurkar, S/o Late. Sri I. Gopal Rao, aged about 58 years,
resident of Hyderabad, do hereby solemnly and sincerely affirm
and state as follows:

2. I am the Assistant Commissioner in the Office of the
Commissioner of Customs, Central Excise and Service Tax,

(Signature)
ATTESTOR

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

(Signature)
31.3.2010
DEPONENT

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

Hyderabad-II Commissionerate, Hyderabad and as such I am well acquainted with the facts of the case as borne out of records. I am authorised to file this affidavit on behalf of the respondents.

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

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

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

(ii) a common area; and

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

[Signature]
31/3/10
ATTESTOR

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

[Signature] 31.3.2010
DEPONENT
AJIT INDURKAR
Asst. Commissioner (ST-III)
Customs & Central Excise
Hyd - II Commissionerate
HYDERABAD.

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;

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

As per the exclusion provided in Sec 65(91a) of the

[Signature]
3/13/10
ATTESTOR

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

[Signature] 31.3.2010
DEPONENT
AJIT INDURKAR
Asst. Commissioner (ST-III)
Customs & Central Excise
Hyd - II Commissionerate
HYDERABAD

Service Tax Act, the residential complex does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person. Here, "personal use" includes permitting the complex for use as residence by another person on rent or without consideration.

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

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

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

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

Further, the builder/promoter/developer normally enters into construction / completion agreements after execution of sale deed. Till the execution of sale deed the property remains in the name of the builder/promoter/developer and services rendered thereto are self services. Moreover, stamp duty will be paid on

A. B. Lakshmi
3/13/10
ATTESTOR

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

Ajit Indurkar
21.3.2010
DEPONENT

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

the value consideration shown in the sale deed. Therefore there is no levy of Service Tax on the services rendered till sale deed i.e., on the value consideration shown in the sale deed. But, no stamp duty will be paid on the agreements / contracts against which they render services to the customer after execution of sale deeds. There exists the service provider and service recipient relationship between the builder/promoter/developer and the customer. Therefore, such services invariably attract service tax. In the petition, the petitioner has intentionally replaced residential complex with residential house in the following line.

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

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

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

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

But, it is the fact that the service they render is the criteria to decide whether they are exempted or not. By mentioning the "ultimate owner" in the circular, it has been clarified that the services till execution of sale deed for the sale of land or land


ATTESTOR

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


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

along with flat/residential unit i.e., till the ultimate owner becomes the owner, though there are agreements for construction with the ultimate owner prior to the sale of such constructed flat/residential unit, would not be subjected to service tax. Further, from the definition of Residential Complex, the construction of a complex by a person for his personal use as residence, by engaging any other person for designing or planning of the layout was excluded. Therefore, the services for construction rendered after the sale of land/flat/residential unit to the owner of the land are taxable services. There exists service provider and recipient relationship between the builder/promoter/ developer/ contractor and the owner of the land / semi finished flat/ residential unit who purchased the same under sale deed and thereafter receives services by entering into a contract / agreement with the builder/promoter/developer/contractor for construction of a residential complex or part thereof, or completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to construction a residential complex or part thereof, as the case may be.

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

8. In reply to Para 15 of the affidavit, it is submitted that as per Service Tax provisions and the Circular No. 108/02/2009 — ST dated 29th January 2009, the services of construction of Residential Complex (As per definition) and part thereof, rendered after the sale of land/flat/residential unit to the owner of the land/flat/residential are taxable services. The customers of

A. Jayaram Reddy
3113/10
ATTESTOR

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

Ajit Inourkar
DEPONENT
AJIT INOURKAR
Asst. Commissioner (ST-III)
Customs & Central Excise
Hyd - II, Commissionerate
HYDERABAD.

the petitioner may not understand the provisions of taxation as they are laymen. But, it is bounden duty of the petitioner to explain, and convince them about the taxability and collect the tax. In the indirect taxation, the petitioner cannot take escape from the payment of tax on this ground, as per the provisions the amounts received by them would be construed as inclusive of the tax.

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

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

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

K. Jagadeesh
 ATTESTOR
 Superintendent (Legal)
 Customs & Central Excise
 Hyderabad-II, Commissionerate
 HYDERABAD - 500 004.

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

of the Show Cause notices are meant to protect revenue and they are time bound. Any interference in the matter may cause revenue loss.

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

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

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

VERIFICATION

Ajit Indurkar
31.3.2010
(AJIT INDURKAR)
DEPONENT
AJIT INDURKAR
Asst. Commissioner (ST-III)
Customs & Central Excise
Hyd - II Commissionerate
HYDERABAD.

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

Verified today the 31st day of March, 2010.

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

Ajit Indurkar
31.3.2010
(AJIT INDURKAR)
DEPONENT
AJIT INDURKAR
Asst. Commissioner (ST-III)
Customs & Central Excise
Hyd - II Commissionerate
HYDERABAD.

ATTESTOR

DEPONENT

PARAMOUNT BUILDERS

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

Phone : +91-40-66335551, Fax :

To,
Mr. R.L. Ramesh, Asst. Commissioner, Service Tax
Office of the Commissioner of Custom,
Central Excise & Service Tax,
Hyderabad -II, Commissionerate,
Shakar Bhavan, Basheerbagh,
Hyderabad.

Date: 04.02.2010.

Dear Sir,

Sub.: Requesting not to give any further notices to pay service tax -vide case nos.
WPMP no. 33868/2009 and WP No. 26012/2009, which are pending in High Court
- reg.

Ref.: Your letter dated 04.01.2010(HQST No. 15/2009) and 06.11.2009
(HQST No. 59/09).

We are in receipt of your above referred letters and directed us to furnish the following information which have been furnished to your by us.

1. Balance Sheets for the years 2004 -05 to 2008-2009 and trail balance for the period April 2009 to September 2009.
2. Bank statement for the preceding 5 years from 2004-05 to 2008-09.
3. Project wise details of income of sale deeds and agreements.
4. Copies of sale deeds and constructions agreement entered with the purchasers for the above period and respective ledgers.
5. ST3 returns and paid challan copies for the above period.
6. Work sheets furnishing month wise details of receipts.

We have filed a case vide WP No. 26012/2009 before Honorable High Court of Andhra Pradesh praying for a writ of mandamus declaring that in view of circular no. 108/2/2009 dated 29.01.2009 explaining the provisions of the Finance Act of 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, to issue a writ of prohibition against respondents no. 2 & 3 (Commissioner of Central Excise, Customs and Service tax, Hyd II Commissionerate and the Superintendent of Service Tax Hyd II, Commissionerate respectively) from raising any demand on the petitioner towards service tax in respect of agreement of sale / sale deeds/ agreement of construction in respect of residential dwelling units.

We have also filed W.P.M.P. No. 33868 of 2009 in W.P. No. 26012 of 2009 praying the honorable High Court to grant stay of all further proceedings pursuant to the notices issued by the respondents no.2 and 3 for levy of service tax in relation to the consideration receivables by the petitioner from prospective purchasers of dwelling units either under an agreement of sale / conveyance or under agreement of construction.

W

PARAMOUNT BUILDERS

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

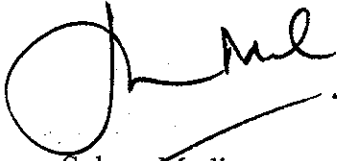
Phone : +91-40-66335551, Fax :

The above writ petition came up for admission before the honorable High Court of Andhra Pradesh on 02.12.2009. The Honorable High court was pleased to order a notice to the respondents in the writ petition directing them to show cause as why the writ petition should not be admitted (copy enclosed).

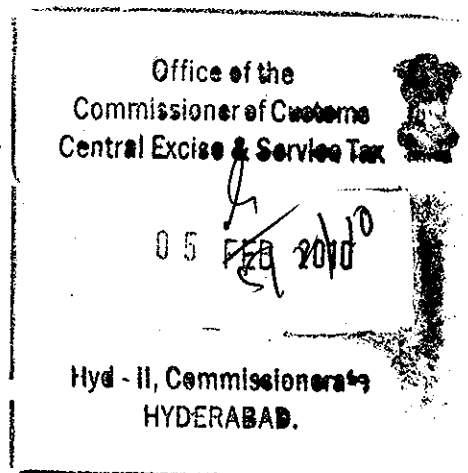
In view of the above facts the matter is sub judice before the Honorable High Court of Andhra Pradesh. Hence, you are requested to please keep the proceeding in relation to the same in abeyance until appropriate orders are passed by the Hon'ble high court in the writ petition.

Tank you.

Yours sincerely,
For Paramount Builders,



Soham Modi
Managing 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. R.L. Ramesh,
Asst. Commissioner, Service Tax
Office of the Commissioner of Custom,
Central Excise & Service Tax,
Hyderabad -II, Commissionerate,
Shakar Bhavan, Basheerbagh,
Hyderabad.

Date: 27.01.2010.

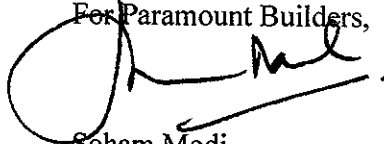
Dear Sir,

Ref.: Your summons dated 13.1.2010 vide letter no. HQST No.: 55/09 AE -IV
4.1.2010 for personal appearance at 11 am on 27.01.2010.

Mr. Shankar Reddy, DGM- Administration has unexpectedly taken leave today for personal reasons. He is aware of all the matters regarding service tax. I request you to grant us another date for a personal hearing. However, I am sending you a representation along with the copy of all documents requested for along with this letter.

Thank You.

Yours sincerely,
For Paramount Builders,


Soham Modi,
Managing 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. R.L. Ramesh,
Asst. Commissioner, Service Tax
Office of the Commissioner of Custom,
Central Excise & Service Tax,
Hyderabad -II, Commissionerate,
Shakar Bhavan, Basheerbagh,
Hyderabad.

Date: 25.01.2010.

Dear Sir,

Ref.: Your summons dated 13.1.2010 vide letter no. HQST No.: 55/09 AE -IV for personal appearance at 11 am on 27.01.2010.

We have received your summons dated 13.1.10 requesting for documents pertaining to the financial year 2005 - till date. Please note that all the documents requested for have already been provided to the service tax department vide our letters dated 18.1.2010 and 30.11.2009 (copy enclosed).

Please find enclosed scanned copies of following document on a CD as requested by you.

- a. Bank statements from 1.4.2005 till 31.12.2009.
- b. Copies of all sale deeds and construction contracts.
- c. Books of accounts from 1.4.2005 till 31.03.2009.
- d. Un audited books of accounts from 1.4.2009 till 31.12.2009.

We are unable to meet your request for providing a month wise statement of amounts received towards sale deed, construction contract, etc., for comparison with the balance sheet as we are not sure as to how to make such a statement. It is not possible to distinguish payments received from customers towards sale deed, construction agreement, VAT, stamp duty and other charges, etc., as payments are received from customers on an adhoc basis. In our books of accounts, we are debiting these costs periodically as and when due to the customer account. Payment received from them are credited to their accounts. Therefore, the ledger copy of each individual customer needs to be looked into to determine the details of payments towards sale consideration, VAT, registration charges, etc. Ledger copies of every customer is enclosed in the CD.

Further, several customers have paid us advances towards purchase of flats / villas wherein no sale deed has been executed in their favour. The amounts are received towards tentative booking subject to cancellation and refund. On later dates which may vary from customer to customer sale deed (in some cases construction agreement) is executed in favour of the customer. Therefore, it is not possible to make a month wise detailed statement as requested by you.

Page 1 of 2

Office of the
Commissioner of Customs
Central Excise & Service Tax

Hyd - II, Commissionerate
HYDERABAD.

PARAMOUNT BUILDERS

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

Further, we are not to certain about our liability under service tax rules and the method of computation to be adopted for payment of service tax. We are unsure about the section under which we are liable to pay service tax i.e., under works contract or under residential complex services. In light of circular 108/2/2009 we believe that we do not fall under the ambit of service tax.

However, please find enclosed a month wise statement of receipts from customers. Please note that this statement does not bifurcate payments received towards sale deed, construction contract, finishing and completion services, VAT, service tax, stamp duty and registration charges, etc. Further it does not distinguish payments received towards sales made for phases/blocks/residential units completed prior to the notification of service tax u/s. 65(105)(zzzh) or 65(105)(zzzza). Therefore, it may be difficult to compute service tax liability based on the monthly receipts statement.

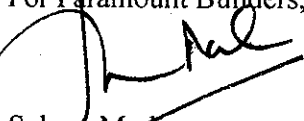
We request you to please clarify the ambiguity in the application of service tax and the method for computation of service tax liability. Please clarify the following:

- a. Whether we are liable to pay service tax under works contract or residential complex services.
- b. Can we exclude residential units whose construction was completed before respective date of notification.
- c. Can we exclude payments made towards sale deed, VAT, service tax, stamp duty and registration charges, etc., and calculate service tax liability only on value of construction contract.
- d. Can we exclude construction contracts executed prior to date of notification.

We await your advise on the above issues so that we can prepare a month wise statement as requested by you. Please write to us if any further details or information is required.

Thank You.

Yours sincerely,
For Paramount Builders,



Soham Modi,
Managing Partner

PARAMOUNT BUILDERS

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

To,
The Superintendent (AE) Service Tax (AE – Group IV),
Office of the Commissioner of Custom,
Central Excise & service Tax,
Hyderabad –II, Commissionerate,
Shakar Bhavan, Basheerbagh,
Hyderabad.

Date: 18.01.2010.

Dear Sir,

Sub.: Request for furnishing of certain information.

Ref.: Notice for furnishing of furnishing of certain information, vide letter no. HQST
No. 55/2009 AE IV 4.1.2010.

We have received your notice dated 04.01.2010 requesting for documents pertaining to the financial year 2005 – till date. Please note that balance sheet, profit and loss statement and IT returns for those years have already been submitted to your office a few weeks ago. We have also given details of sale deeds, construction agreements and service tax paid vide our letter dated 29.12.09. Balance sheets, profit & loss statement, etc., have not been finalized for the financial year 2009-10 and therefore can not be produced.

Please find enclosed scanned copies of following document on a CD as requested by you.

- Bank statements from 1.4.2005 till 30.09.2009.
- Copies of all sale deeds and construction contracts.
- Books of accounts from 1.4.2005 till 31.03.2009.


It is not possible to distinguish payments received from customers towards sale, construction agreement, VAT, stamp duty and other charges, etc., as payments are received from customers on an adhoc basis. In our books of accounts, we are debiting these costs periodically as and when due to the customer account. Payment received from them are credited to their accounts. Therefore, the ledger copy of each individual customer needs to be looked into to determine the details of payments towards sale consideration, VAT, registration charges, etc. Ledger copies of every customer is enclosed in the CD. Further, several customers have paid us advances towards purchase of flats / villas wherein no sale deed has been executed in their favour. The amounts are received towards tentative booking subject to refund. On later dates which may vary from customer to customer sale deed (in some cases construction agreement) is executed in favour of the customer. Therefore, it is not possible to make a month wise detailed statement as requested by you.

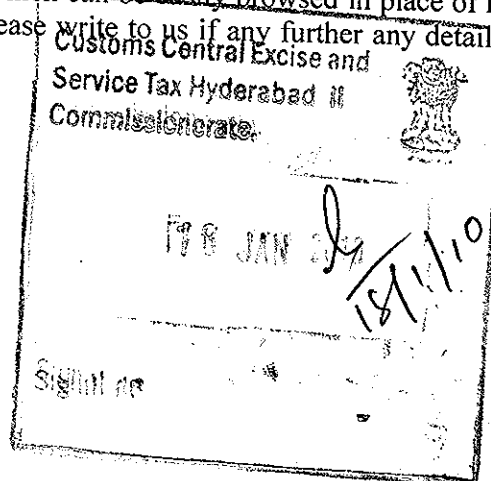
Further, we are not certain about our liability under service tax rules and the method of computation to be adopted for payment of service tax. In light of circular 108/2/2009 we believe that we do not fall under the ambit of service tax.

We have given all the above information on a CD which can be easily browsed in place of hard copies as the total no. of pages exceeds 16,500. Please write to us if any further any details or information is required.

Thank You.

Yours sincerely,
For PARAMOUNT BUILDERS,


Soham Modi,
Managing Partner



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

SUMMONS

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

HQST No: 55/09- AE- IV

Date: 13.1.2010

To
M/s Paramount Builders,
5-4-187/3&4, 2nd Floor,
Soham Mansion, MG Road,
Secunderabad



Whereas an investigation against you about Non payment/evasion of Service Tax/ contravention of Provisions of Finance Act, 1994 and Rules made there under is being inquired by me.

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 as made applicable to Service Tax matters under Section 83 of the Finance Act, 1994 to appear before me in person/authorised agent on 27.01.2010 at 11.00 hours in my office situated at 3rd Floor (Annexe), Shakkar Bhawan, 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 for my examination.

If you fail to comply with this summons and intentionally avoid to attend, 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.

SCHEDULE

To give a Statement of facts and furnish the following documents

1. Copies of Ledgers & Bank Statements of receipts towards construction and finishing & Completion services from 16-6-2005 to 31-12-2009.
2. A statement of monthly receipts separately towards sale deed, construction and finishing & completion services from 16-6-2005 to 31-12-2009 and comparison to the balance sheets.
3. A statement of monthwise value and payment details of Service tax, Education cess and S&HEd. Cess

Given under my hand and seal of office today the 13th of January, 2010.

(R. D. RAMESH RAM)
ASSISTANT COMMISSIONER
SERVICE TAX

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 of IPC, 1860.

*Recd
Hottel
[Signature]*

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

HQ.ST No. 55/07 -AE.TV

Date 7-1-2010

To
M/s Paramount Builders

Soham Mansion,
MGRoad,
Secunderabad – 500 003.

Gentleman,

Sub: Service tax – Request for furnishing of certain information – Reg.

<<>>

Please refer to this office letter of dated 17.1.09, reminder dated 6.11.09 and time to time requests for submission of information.

Despite of several requests, the copies of bank statements, all the sale deeds, agreements, sale ledgers etc., have not been received as yet. Therefore, it is once again requested to submit all the pending information and documents / record, along with an worksheet furnishing the month-wise details of receipts (by cash / by cheque / in kind) towards sale, construction and finishing works separately during the last five financial years.

Matter may please be treated as most urgent.

[Signature]
SUPERINTENDENT (AE)
Service Tax (AE - Group VI)

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: 30.11.2009

Dear Sir / Madam,

Sub.: Statement of amounts received against sales made.

Ref.: 1. Notice for furnishing of records by the department, letter no. HQST No. /09 AE IV dated 6.11.09.

2. Our representation dated 18.11.2009

Mr. Shankar Reddy – Manger Admin had met you personally to discuss the details of documents to be produced as requested in reference 1 above. You have clarified that, at the moment a statement showing details of sale deeds executed along with construction contract executed pertaining to those sale deeds with details of receipts is required by the department. Details of service tax paid upto date should also be furnished.

Accordingly please find enclosed the following documents:

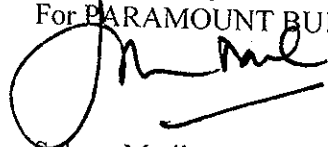
1. Statement of sale deeds executed.
2. Statement of construction contract pertaining to those sale deeds and the amounts received against the said construction contracts.
3. Details of service tax paid.
4. Copies of sale deed and construction contract of 3 customers.

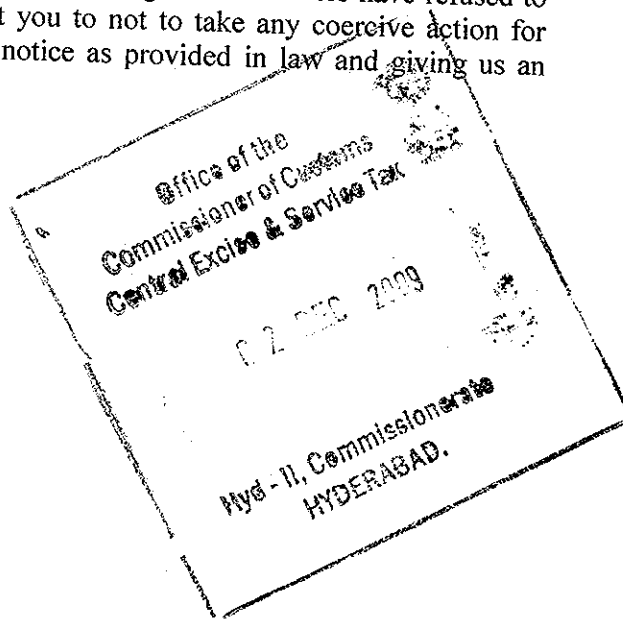
Balance sheets, trial balance and bank statements can be produced upon request. Copies of ST3 returns and challans can also be produced upon request. Please write to us if any further information and documents are required.

We have been regularly paying service tax to the department until the circular no. 108/2/2008 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.



Name of the Company		Paramount Builders						
Project/Location		Negaram						
Date		28.11.09						
List of Sale Deed Executed								
S.No	Block	Flat No	Name of Customer	Sale Deed No	Date	Sale Deed Value	Amount Received towards sale deed	Balance Amount receivable for Sale deed
1	A	105	Ms. Felicie Boalar / Mr. Anit Kumar	11837-07	29-09-07	555,000	555,000	-
2	A	109	Mr. Shyam Krishnan	9443-07	30-07-09	719,000	719,000	-
3	A	205	Mr. Md Sulaiman	1931-08	13-03-08	617,000	617,000	-
4	A	206	Mr. M. Indrasena	3286-07	28-02-07	1,195,000	1,195,000	-
5	A	208	Mr. E. Pradeep	5991-07	30-04-07	1,956,000	1,956,000	-
6	A	209	Mr. R. Arand	7401-07	11-06-07	1,920,000	1,920,000	-
7	A	301	Mr. K. Kallesh Badrinayyan Samdani	1929-09	27-04-09	1,051,000	1,051,000	-
8	A	309	Mrs. G. Arpitha	4385-09	17-08-09	1,055,000	1,055,000	-
9	A	401	Mr. D.N Prasad	2217-07	15-03-07	1,836,000	1,836,000	-
10	A	404	Mr. A.N Roy	3284-07	24-02-07	1,181,000	1,181,000	-
11	A	407	Mr. Gopi Srinivasa Reddy	10505-07	24-08-07	914,500	914,500	-
12	A	409	Mr. Ashok & Mrs. Manjari	7130-07	25-06-07	1,928,000	1,928,000	-
13	A	503	K. C. Raj Kumar	4131-09	17-08-09	1,200,000	1,200,000	-
14	A	506	Mr. Ranjit Bathula	1175-08	07-12-07	590,000	590,000	-
15	B	101	Mr. Mahesh Agarwal	3287-07	24-02-07	1,438,000	1,438,000	-
16	B	102	Balakrishna Bajaj	864-07	16-10-07	864,000	864,000	-
17	B	107	Mr. Vijayendra Kumar	5162-07	09-04-07	803,000	803,000	-
18	B	108	Mr. Anup Ostwal	864-09	31-12-08	486,205	486,205	-
19	B	109	Mr. Shashi Kiran Trimala	6515-07	19-05-07	475,000	475,000	-
20	B	202	Mr. Ashok Chand Ostwal	3283-07	24-02-07	1,566,000	1,566,000	-
21	B	203	Mrs. T. Vijayalaxmi	1664-09	02-04-09	1,600,000	1,600,000	-
22	B	204	Mr. N. Laxmi Narayana	995-08	08-02-08	487,000	487,000	-
23	B	205	Mr. Lakshmi Rangalah	269-07	12-10-07	430,000	430,000	-
24	B	301	Harnarayan Vyas	3827-07	09-03-07	1,018,000	1,018,000	-
25	B	303	Aarthi Singh	1529-09	19-03-09	479,215	479,215	-
26	B	304	A. Mohan Babu	1031-08	11-02-08	513,000	513,000	-
27	B	305	Laxmi Vyas	7652-08	11-09-08	674,000	674,000	-
28	B	306	V. Sheker Reddy	5460-09	28-10-09	479,215	479,215	-
29	B	307	Mr. Mukesh Sharma	5159-07	09-04-07	803,000	803,000	-
30	B	309	B. Arun Vijay	1100-107	07-09-07	457,000	457,000	-
31	B	402	Mr. S.N.S. Srinivas Rao	1026-07	20-01-07	1,438,000	1,438,000	-
32	B	403	Ashok Svarnathahan	1024-07	20-01-07	676,000	676,000	-
33	B	404	Prahakar Shivastava	4758-08	05-07-08	473,000	473,000	-
34	B	405	Mr. M. Raja Sekhar	3553-08	23-05-08	513,000	513,000	-
35	B	501	Mr. Rajesh Garg	3285-07	24-02-07	1,438,000	1,438,000	-
36	B	505	Mr. A. A. Qhalq	1033-08	11-02-08	473,000	473,000	-
37	B	506	S. A. K. Zeelani	6765-07	25-05-07	743,000	743,000	-
38	B	507	Mrs. Namrata Sanghi	1944-07	31-01-07	803,000	803,000	-

APPROVED
30 NOV 2009
MANAGING DIRECTOR


At: *Sanku Divilass*
30/11/09

S.No	Block	Flat No	Name of Customer	Sale Deed No	Date	Sale Deed Value	Amount Received towards sale deed	Balance Amount receivable for Sale deed
39	B	508	Mr. Prakash A. Shah	6163/07	07-05-07	869,000	869,000	-
40	IC	102	A. Shanker Reddy	10698/07	30-08-07	465,000	465,000	-
41	IC	106	K. Sanyanarayana	8667/07	13-07-07	432,000	432,000	-
42	IC	107	Mr. Gopu Hari Prasad	6869/08	31-07-08	305,000	305,000	-
43	IC	108	D. Narayana Rao	1801/09	09-01-09	340,000	340,000	-
44	IC	109	Harnath Reddy	9028/07	20-07-07	231,000	231,000	-
45	IC	201	P. Srinivas	1591/07	30-11-07	465,000	465,000	-
46	IC	202	Mr. VS. Balasubramanian	3992/08	13-06-08	441,000	441,000	-
47	IC	204	B. Anand	6164/07	07-05-07	979,000	979,000	-
48	IC	205	V.R. Hemanth Kumar	702/07	11-01-07	432,000	432,000	-
49	IC	207	MR. M.S.N. Prasad	703/07	11-01-07	432,000	432,000	-
50	IC	208	Moiz Lalani	4681/08	30-06-08	288,000	288,000	-
51	IC	209	Chandra mouli	6905/08	22-08-08	339,000	339,000	-
52	IC	301	Mr. N. Karthi Kiran	7680/08	11-09-08	562,000	562,000	-
53	IC	303	Mr. R. Ashok Swaminathan	1025/07	20-01-07	875,000	875,000	-
54	IC	305	Nayakam Bala Krishna	701/07	11-01-07	432,000	432,000	-
55	IC	306	S.M. Raju	700/07	11-01-07	432,000	432,000	-
56	IC	309	Mr. P. Suresh	1663/09	31-03-09	594,000	594,000	-
57	IC	401	Mr. N. Parvatheswara Sharma	10503/07	24-08-07	491,500	491,500	-
58	IC	405	Gangadhar	546/08	25-01-08	294,000	294,000	-
59	IC	406	P. Sasibhusana Rao	2626/08	11-04-08	305,000	305,000	-
60	IC	407	J. Lalitha Krishna	704/07	11-01-07	475,000	475,000	-
61	IC	409	Mr. K. Srinivas	3825/07	09-03-07	475,000	475,000	-
62	IC	502	Mr. K.V.V.S.V. Prasad	1027/07	20-01-07	795,000	795,000	-
63	IC	505	Mr. Vijaya Kumar	6514/07	19-05-07	475,000	475,000	-
64	IC	506	Mr. Pralap Kumar	3826/07	24-02-07	475,000	475,000	-
65	IC	507	Mr. P. Nageshwara Rao	6763/07	25-05-07	518,000	518,000	-
66	IC	508	Mr. D. Raja Shekhar	6764/07	25-05-07	519,000	519,000	-
67	2C	102	V. Sanyanarayana	271/07	12-10-07	465,000	465,000	-
68	2C	103	Mr. G.R. Krishna Murthy	1866/09	20-04-09	602,890	602,890	-
69	2C	104	Mrs. G. Rajeshwari			602,890	602,890	-
70	2C	106	Mr. Nagu Babu	3828/07	09-03-07	572,000	572,000	-
71	2C	107	Reena Prakashree Pagadala	8880/08	30-09-08	339,000	339,000	-
72	2C	108	Santjay Mukherjee	8550/08	16-10-08	339,000	339,000	-
73	2C	109	Ms. Sushma Bhanooey	606/08	28-01-08	277,000	277,000	-
74	2C	201	Mr. G.R. Krishna Murthy	3864/09	30-06-09	480,910	480,910	-
75	2C	202	Mr. Veeraseey	7945/07	25-06-07	1,095,000	1,095,000	-
76	2C	204	Mrs. G.R.K. Murthy	3533/09	30-06-09	602,890	602,890	-
77	2C	205	Mr. Bobba srinivas	7644/08	11-09-08	339,000	339,000	-
78	2C	207	A.S. Ramani Iyengar	1711/08	05-03-08	288,000	288,000	-
79	2C	209	Malikarjuna Rao	275/07	12-10-07	277,000	277,000	-
80	2C	301	Mr. Prasad Babu	5161/07	09-04-07	960,000	960,000	-
81	2C	304	Mr. G.R.K. Murthy	3352/09	30-06-09	685,940	685,940	-

APPROVED
 30 NOV 2009
 MANAGING DIRECTOR

A. Sambasivarao
 30/11/09

S.No	Block	Flat No	Name of Customer	Sale Deed No	Date	Sale Deed Value	Amount Received towards sale deed 30.10.09	Balance Amount receivable for Sale deed
82	2C	305	Anup Kumar	3210/09	25-06-09	691,000	691,000	-
83	2C	306	Nagaraj Kumar	5160/07	09-04-07	582,000	582,000	-
84	2C	307	S. Suresh	5841/08	28-07-08	305,000	305,000	-
85	2C	309	Mr.A. Venkateswarlu.	273/07	12-10-07	294,000	294,000	-
86	2C	401	Mr. A. Ajay	8383/07	06-07-07	1,054,000	1,054,000	-
87	2C	402	Mrs. M. Kalvani	8021/07	27-06-07	1,054,000	1,054,000	-
88	2C	406	C.H.V.Kiran Kumar	11271/07	24-08-07	294,000	294,000	-
89	2C	409	Mr. Ibrahim Ali Khan	1528/09	19-03-09	310,510	310,510	-
90	2C	502	Srinivas Kumar	3773/09	27-07-09	1,055,000	1,055,000	-
91	2C	504	Vivek Chandra Prakash Joshi	10999/07	07-09-07	616,000	616,000	-
92	3C	102	Dr.V.V.Kuchroo	5839/08	28-06-08	508,000	508,000	-
93	3C	103	R. Venkat Ramam	993/08	31-01-08	603,000	603,000	-
94	3C	104	M Srinivas	943/09	11-02-09	602,890	602,890	-
95	3C	106	P.Guha Priya	7925/08	18-09-08	339,000	339,000	-
96	3C	107	William Alfred	1793/09	15-04-09	745,000	745,000	-
97	3C	108	K.Raghavender	5094/09	16-10-09	1,131,000	1,131,000	-
98	3C	109	D Venkata Prasad	8432/08	30-09-08	339,000	339,000	-
99	3C	202	Leena Chowdary	73/08	05-01-08	465,000	465,000	-
100	3C	204	Mr. Ankuash sher	8552/08	15-10-08	710,000	710,000	-
101	3C	205	B. Murali Krishna	3868/08	07-06-08	288,000	288,000	-
102	3C	209	Mr. Chandramouli	6986/08	26-08-08	339,000	339,000	-
103	3C	303	Jyothi Pancholi	544/08	25-01-08	616,000	616,000	-
104	3C	304	Mr. Rita Dhanra & Mrs. Urmila Dhanra	1715/08	05-03-08	637,000	637,000	-
105	3C	305	P. Sriatha	5350/09	28-10-09	638,000	638,000	-
106	3C	306	B. Shobha Rani	4133/09	17-08-09	700,000	700,000	-
107	3C	309	Mr. P. Nitin	7648/08	11-09-08	339,000	339,000	-
108	3C	401	Mr. Pratap	7646/08	11-09-08	562,000	562,000	-
109	3C	402	V. Sasitharan	1713/08	05-03-08	508,000	508,000	-
110	3C	409	Mr. R. K. Munshi	7650/08	11-09-08	339,000	339,000	-
111	3C	502	P. D. Dastoor	1929/08	13-03-08	508,000	508,000	-
112	3C	504	G. Jaya Kumar	3866/08	07-06-08	637,000	637,000	-
113	D	101	Suveni Prakash	3865/09	30-07-09	2,170,000	1,863,120	306,880
114	D	102	Vikas Kushwaha	4504/09	11-09-09	1,170,000	1,032,110	137,890
115	D	105	Sudha Rani	3863/09	29-07-09	724,000	498,000	226,000
116	D	202	Christina Gnanaraj	1867/09	09-04-09	1,158,000	1,028,808	129,192
117	D	204	V. Balakrishna	4167/09	19-08-09	1,300,000	1,300,000	-
118	D	302	Krishna Kumar	4030/09	07-08-09	1,167,000	828,865	338,135
119	D	305	Mr. Siya Shanker	3341/09	03-07-09	330,000	330,000	-
120	D	401	Ghanashyam Kumar	3946/09	29-07-09	1,193,000	1,056,375	136,625
121	D	404	R. S. Mahvi	6006/09	11-11-09	1,066,000	110,000	956,000
122	D	407	Venkat Saayanarayana	5095/09	16-10-09	651,000	651,000	-
				86,247,555		84,016,833	2,230,722	


 RECEIVED
 30 NOV 2009
 DIRECTOR
 PROJECT

A. Sambasivaram
 30/10/09

Name of the Company		Paramount Builders					
Project/Location	Nagararam						
Date	28.11.09						
Details of Construction Contract where sale deeds were executed							
S.No	Block	Flat No	Name of Customer	Date	C D Value	Amount Received towards sale deed	Balance Amount receivable towards Construction deed
1	A	105	Ms. Felcine Boaler / Mr. Arun Kumar	29-09-07	1,145,000	Up to 28.02.08 1,3,08 to 31.3.09 1,4.09 to 31.10.09	114,100
2	A	109	Mr. Shyam Krishnan	30-07-09	1,730,000	175,990 982,358	510
3	A	205	Md. Sulaiman	13-03-08	1,257,000	-	(51,623)
4	A	206	Mr. M. Indrasena	28-02-07	299,000	-	147,245
5	A	208	Mr. E. Pradeep	30-04-07	489,000	392,225	829
6	A	209	Mr. R. Anand	11-06-07	480,000	-	990
7	A	301	Mr. Kailash Badhinarayan Sandanti	27-04-09	1,085,000	-	668
8	A	309	Mrs. G. Arpitha	17-08-09	1,345,000	871,863	(55,083)
9	A	401	Mr. D.N Prasad	15-03-07	300,000	-	165
10	A	404	Mr. A.N Roy	24-02-07	295,000	-	-
11	A	407	Mr. Goli Srinivasa Reddy	24-08-07	1,325,500	389,535	(45,319)
12	A	409	Mr. Ashok & Mrs. Manjari	25-06-07	482,000	-	829
13	A	503	K.C.Raj Kumar	17-08-09	695,000	-	595,606
14	A	506	Mr. Ranjit Bathula	07-12-07	1,010,000	426,713	(31,207)
15	B	101	Mr. Mahesh Agarwal	24-02-07	360,000	-	175
16	B	102	Balakrishna Bajaj	16-10-07	1,284,000	632,426	165
17	B	107	Mr. Vijayendra Kumar	09-04-07	201,000	-	661
18	B	108	Mr. Anup Oswal	31-12-08	600,795	377,866	-
19	B	109	Mr. Shashi Kiran Trimmala	19-05-07	870,000	388,638	995
20	B	202	Mr. Ashok Chand Oswal	24-02-07	392,000	-	333
21	B	203	Mrs. T. Vijayalakshmi	02-04-09	-	-	-
22	B	204	Mr. N.Laxmi Narayana	08-02-08	999,000	525,004	330
23	B	205	Mr. Lakshmi Rangiah	12-10-07	957,000	781,669	(56,745)
24	B	301	Hanumanth Vyas	09-03-07	255,000	-	663
25	B	303	Aarun Singh	19-03-09	366,785	-	999
26	B	304	A.Mohan Babu	11-02-08	949,000	515,021	38,979
27	B	305	Laxmi Vyas	11-09-08	-	-	-
28	B	306	V. Sheker Reddy	28-10-09	449,785	439,613	-

30 NOV 2009

A. Shankar Reddy
30/11/09

S.No	Block	Flat No	Name of Customer	Date	C D Value	Total Receipts up to Oct 09	Amount Received towards sale deed	Balance Amount receivable towards Construction deed
29	B	307	Mr. Mukesh Sharma	09-04-07	201,000	up to 30.10.09 1,119,558	Up to 28.02.08 411,668	200,339
30	B	309	B. Arun Vijay	07-09-07	818,000	1,361,626	360,165	332
31	B	402	MR. S.N.S. Srinivas Rao	20-01-07	360,000	1,986,226	66,393	(165)
32	B	403	Ashok Swaminathan	20-01-07	170,000	926,607	103,607	-
33	B	404	Prahalakar Srinivasa	05-07-08	1,055,000	1,667,643	1,055,000	-
34	B	405	Mr. M. Raja Sekhar	23-05-08	823,000	1,556,373	185,627	637,373
35	B	501	Mr. Rajesh Garg	24-02-07	360,000	1,960,927	396,370	(36,370)
36	B	505	Mr. A. A. Qhalig	11-02-08	456,000	1,019,965	453,671	2,329
37	B	506	S.A.K. Zeelani	25-05-07	186,000	1,029,748	8,924	660
38	B	507	Mrs. Namrata Sanghi	31-01-07	201,000	1,079,024	242,886	2,052
39	B	508	Mr. Prakash A. Shah	07-05-07	218,000	1,194,700	82,097	(24,886)
40	IC	102	A. Shanker Reddy	30-08-07	422,000	684,613	37,563	339,903
41	IC	106	K. Satyanarayana	13-07-07	109,000	587,505	722,465	19,136
42	IC	107	Mr. Gopu Hari Prasad	31-07-08	721,000	1,103,000	698,711	(1,485)
43	IC	108	D. Narayana Rao	09-01-09	699,000	1,082,968	309,099	289
44	IC	109	Harinath Reddy	20-07-07	310,000	582,475	728,650	901
45	IC	201	P. Srinivas	30-11-07	1,006,000	1,566,333	275,000	2,350
46	IC	202	Mr. V.S. Balasubramanian	13-06-08	1,078,000	1,627,839	1,076,898	1,102
47	IC	204	B. Anand	07-05-07	245,000	1,535,000	244,805	195
48	IC	205	V.R. Hemant Kumar	11-01-07	109,000	593,860	90,758	195
49	IC	207	MR. M.S.N. Prasad	11-01-07	109,000	593,860	101,337	195
50	IC	208	Moziz Lalani	30-06-08	662,000	1,012,700	599,295	5
51	IC	209	Chandra mouli	22-08-08	255,000	1,206,177	254,313	687
52	IC	301	Mr. N. Kanthi Kiran	11-09-08	325,000	1,025,483	324,505	495
53	IC	303	Mr. R. Ashok Swaminathan	20-01-07	219,000	1,268,263	197,566	171
54	IC	305	Nayakam Bala Krishna	11-01-07	109,000	593,860	95,310	195
55	IC	306	S.M. Raju	11-01-07	109,000	593,860	94,325	390
56	IC	309	Mr. P. Suresh	31-03-09	-	631,931	-	-
57	IC	401	Mr. N. Parvatheswara Sharma	24-08-07	897,500	1,478,638	871,065	330
58	IC	405	Gampadhar	25-01-08	300,000	642,200	292,061	7,939
59	IC	406	P. Sasubhama Rao	11-04-08	688,000	1,066,435	687,509	491
60	IC	407	J. Lalitha Krishna	11-01-07	119,000	682,002	118,805	195
61	IC	409	Mr. K. Srinivas	09-03-07	119,000	655,708	118,805	195
62	IC	502	Mr. K. V. S. V. Prasad	20-01-07	199,000	1,141,641	198,288	712

30 NOV 2009

A. Sankar Sekhar
20/11/09

S.No	Block	Flat No	Name of Customer	Date	C D Value	Total Receipts up to Oct 09	Amount Received towards sale deed	Balance Amount receivable towards Construction deed
63	1C	505	Mr. Vijaya Kumar	19-05-07	119,000	675,227	Up to 28.02.08 1,3,08 to 31.3.09 1,4,09 to 31.10.09	(3,446)
64	1C	506	Mr. Pratap Kumar	24-02-07	119,000	680,331	122,446	195
65	1C	507	Mr. P Nageshwara Rao	25-05-07	130,000	743,000	134,710	(4,710)
66	1C	508	Mr. D. Raja Shekhar	25-05-07	129,000	743,000	128,930	70
67	2C	102	V. Satyanarayana	12-10-07	883,000	1,457,704	316,381	165
68	2C	103	Mr. G.R. Krishna Murthy	20-04-09	858,110	1,544,067	185,327	330
69	2C	104	Mrs. G. Rajeshwari	20-04-09	859,110	1,545,106	185,530	10,130
70	2C	106	Mr. Naga Babu	09-03-07	143,000	769,496	-	-
71	2C	107	Reena Prakash Pagadala	30-09-08	701,000	1,112,407	701,000	-
72	2C	108	Sanjay Mukherjee	16-10-08	753,000	1,147,319	753,000	-
73	2C	109	Ms. Sustha Bhanooey	28-01-08	669,000	1,010,608	369,440	330
74	2C	201	Mr. G.R. Krishna Murthy	30-06-09	698,090	1,247,194	160,706	330
75	2C	202	Mr. Veerasety	25-06-07	274,000	1,530,695	245,340	(27,392)
76	2C	204	Mrs. G.R.K. Murthy	30-06-09	858,110	1,544,287	212,499	-
77	2C	205	Mr. Bobba srinivas	11-09-08	697,000	1,130,370	697,000	(900)
78	2C	207	A.S. Raman Iyengar	05-03-08	632,000	976,378	442,954	65
79	2C	209	Malikarjuna Rao	12-10-07	531,000	875,730	288,155	165
80	2C	301	Mr. Prasad Babu	09-04-07	240,000	1,412,345	227,335	(27,387)
81	2C	304	Mr. G.R.K. Murthy	30-06-09	775,060	1,544,398	393,145	1,573
82	2C	305	Anup Kumar	25-06-09	387,000	1,078,207	-	57
83	2C	306	Nagarjuna Kumar	09-04-07	146,000	793,570	128,173	-
84	2C	307	S. Suresh	28-07-08	715,000	1,123,150	715,000	1,500
85	2C	309	Mr. A. Venkateswaru.	12-10-07	514,000	865,335	264,465	-
86	2C	401	Mr. A. Ajay	06-07-07	264,000	1,463,974	-	496
87	2C	402	Mrs. M. Kalyani	27-06-07	264,000	1,463,974	95,504	(116)
88	2C	406	C.H.V. Kiran Kumar	24-08-07	540,000	873,692	391,155	625
89	2C	409	Mr. Ibrahim Ali Khan	19-03-09	470,490	820,346	149,519	487
90	2C	502	Srinivas Kumar	27-07-09	595,000	1,581,445	320,346	5,264
91	2C	504	Vivek Chandra Prakash Joshi	07-09-07	1,107,000	1,793,774	851,634	234,181
92	3C	102	Dr. V. V. Kuchroo	28-06-08	1,060,000	1,400,800	825,819	-
93	3C	103	R. Venkat Ramm	31-01-08	1,225,000	1,939,692	488,055	100
94	3C	104	M. Srinivas	11-02-09	1,354,110	2,007,675	997,675	3
95	3C	106	P. Gaha Priya	18-09-08	754,000	1,120,007	752,497	-
96	3C	107	William Alfied	15-04-09	387,000	1,081,600	-	-

31 NOV 2009
MANAGING DIRECTOR

A. Sambasivarao
30/11/09

S.No	Block	Flat No	Name of Customer	Date	C D Value	Amount Received towards sale deed			Balance Amount receivable towards Construction deed
						Up to 28.02.08	1.3.08 to 31.3.09	1.4.09 to 31.10.09	
97	3C	108	K.Raghavender	16-10-09	-	-	-	-	
98	3C	109	D.Venkata Prasad	30-09-08	754,000	483,795	135,000	135,205	
99	3C	202	Leena Chowdary	05-01-08	993,000	32,775	315,345	-	
100	3C	204	Mr.Ankush sher	15-10-08	1,222,000	1,204,520	17,180	300	
101	3C	205	B.Murali Krishna	07-06-08	699,000	426,707	272,293	-	
102	3C	209	Mr.Chandramouli	26-08-08	608,000	590,622	17,378	-	
103	3C	303	Jyothi Panchohi	25-01-08	1,212,000	400,000	250,000	205,653	
104	3C	304	Mr.Rita Dharta & Mrs.Urmila Dharta	05-03-08	1,382,000	1,008,935	336,250	36,815	
105	3C	305	P.Srilatha	28-10-09	387,000	-	128,970	258,030	
106	3C	306	B.Shoobha Rani	17-08-09	378,000	-	373,345	4,655	
107	3C	309	Mr.P.Nitin	11-09-08	647,000	647,000	-	-	
108	3C	401	Mr.Pratap	11-09-08	975,000	975,000	-	-	
109	3C	402	V.Sasidharan	05-03-08	1,054,000	528,850	365,150	-	
110	3C	409	Mr.R.K.Munshi	11-09-08	621,000	621,000	-	-	
111	3C	502	P.D.Dastoor	13-03-08	1,026,000	632,290	250,000	143,710	
112	3C	504	G.Jaya Kumar	07-06-08	1,398,000	1,287,926	150,629	(40,555)	
113	D	101	Suveni Prakash	30-07-09	-	-	33,070	(33,070)	
114	D	102	Vikas Kushwaha	11-09-09	782,000	-	-	782,000	
115	D	105	Sudha Rani	29-07-09	380,000	-	-	380,000	
116	D	202	Christina Gnanaraj	09-04-09	782,000	-	84,137	782,000	
117	D	204	V.Balakrishna	19-08-09	503,000	-	-	418,863	
118	D	302	Krishna Kumar	07-08-09	785,000	-	431,920	785,000	
119	D	305	Mr.Siva Shanker	03-07-09	631,000	-	-	199,080	
120	D	401	Ghanshyam Kumar	29-07-09	800,000	-	-	800,000	
121	D	404	R.S.Malvi	11-11-09	602,000	-	87,915	602,000	
122	D	407	Venkat Saayanayana	16-10-09	400,000	-	818,259	312,085	
123	-	-	Bhargavi Developers	-	26496750	16687,000	818,259	1,460,558	
					98,648,195	35,208,043	9,065,081	8,407,928	

30 NOV 2009

A. Sankar

30/11/09

Name of the Company		Paramount Builders	
Project/Location		Nagarani	
Date		28.11.09	
Paramount Builders - Service Tax Payment Details			
S.No	Details of ST Paid	Challan No	Amount
Cheque No	Date		
1	812581	04.04.2007	-
			388,527.00
2	156415	26.10.2007	-
			241,140.00
			629,667.00
3	886034	05.07.2007	-
			479,050.00
4	980832	02.01.2008	103
			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	46
			100,000.00
13	980648	03.03.2008	-
			113,973.00
			1,547,429.00
14	204142	24.07.2008	27
			161,255.00
15	Cash	24.07.2008	-
			1,150.00
16	246018	04.10.2008	59
			100,000.00
17	246100	13.10.2008	60
			100,000.00
18	154329	18.10.2008	60
			100,000.00
19	154378	25.10.2008	15
			101,987.00
20	154464	01.11.2008	106
			100,000.00
			664,392.00
Total Amount :-			2,841,488.00

APPROVED BY
 30 NOV 2009
 SRIKANTH
 MANAGING DIRECTOR



gjt

A. Sankar Reddy
 20/11/09

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

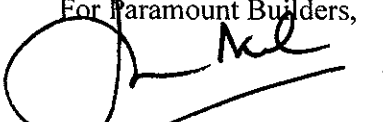
5-4-187/3 & 4, II Floor, Soham Mansion, M.G. Road, Secunderabad - 500 003.

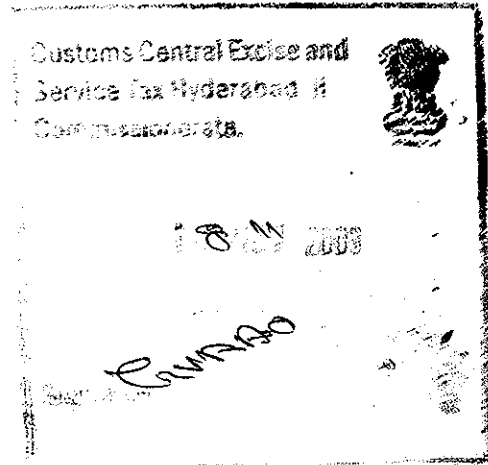
Phone : +91-40-66335551, Fax :

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.





Handwritten signature and date 6/11/09

Phone : 23231481
23230196

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

Handwritten signature of R.L. Ramesh Ram
(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.

PARAMOUNT BUILDERS

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

Phone : +91-40-66335551, Fax :

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 is not liable for service tax no returns are 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.

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.

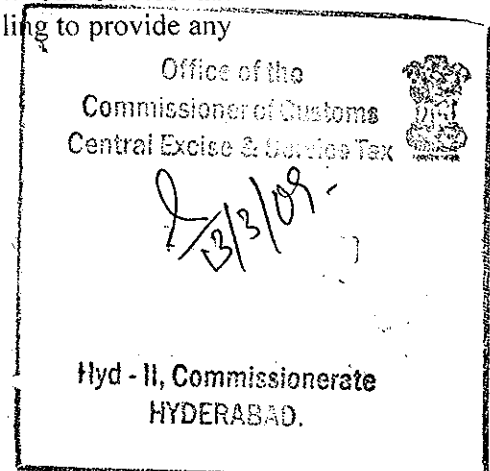
Vide circular given in reference 2, The Central Board of Excise and Customs has clarified that the builders, promoters and developers are not liable for payment of service tax under the circumstances mentioned in the said circular. We are developing flats/independent houses by providing our own design, 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.



PARAMOUNT BUILDERS

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

Date: 09.02.2009

To,
Mr. R. L. Ramesh Ram,
Assistant Commissioner,
Service Tax – Anti Evasion.

Dear Sir,

Sub.: Submission of details as per schedule – reg.

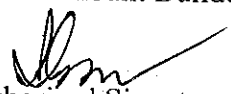
Ref.: Your letter no. HQST NO.15/2009 ST AE dated. 27.01.2009.

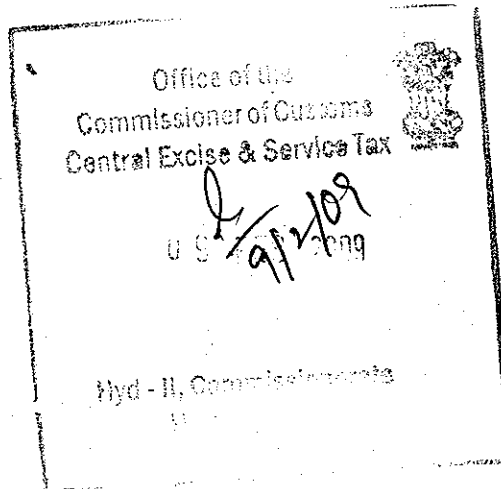
With reference to the above, we request your good selves to grant two more days' time i.e. upto 11.02.09 to submit all documents which mentioned schedule in summon vide no HQST NO.15/2009 ST AE dated 27.01.09 as we are in taking of legal opinion from service tax experts with reference to circular no. 108/02/09 of CBEC. Which says "Sale of property won't come under purview of service tax's.

Please do the needful and oblige.

Thanking you,

For Paramount Builders,


Authorised Signatory.





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.

SUMMONS

(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 AE

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 intertionally 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.



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

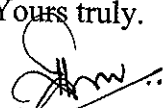
With reference to the above, you are requested to furnish the returns in form ST-3 to be filed on half yearly basis. The half yearly return for April to September has to be filed on or before 25th October and second half year return for October to March has to be filed on or before 25th April.

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 here under or any other law for the time being force in India.

Yours truly,


Superintendent of Central Excise
Service Tax, Group-X

Statement of Shri A. Shankar Reddy, S/o Late A. Sathi Reddy, Age: 49 years, Deputy General Manager (Administration) of M/s Modi Properties and Investments (P) Ltd given under section 14 of Central Excise Act, 1944 as made applicable to Service Tax Under Section 83 of Finance Act, 1994 before the Superintendent of Service Tax, Anti-Evasion, Hyderabad-II Commissionerate, Basheerbagh, Hyderabad on 1st February 2010.

My personal details are as above. I am appearing before you on behalf of M/s Paramount Builders to give my truthful statement in respect of the affairs of the said company, in response to your summons dated 13.1.2010 issued on the company. In this connection I submit that I am authorised to represent before the Service Tax authorities in connection with assessment proceedings for the Financial Years 2004-05 to 2009-10 (till December 2009) and to produce any documents and information connected herewith. I have been explained with the provisions of Section 14 of Central Excise Act, 1944 as made applicable to Service Tax under section 83 of Finance Act, 1994 according to which these are deemed judicial proceedings within the meaning of section 193 and 228 of Indian Penal Code, 1860. I have been explained that giving false statement or fabricating evidence is an offence punishable under section 193 of Indian Penal Code and obstructing the officers sitting in these proceedings is an offence punishable under section 228 of Indian Penal Code. Having understood the above provisions of law and knowing my responsibilities and implication of law, I depose this statement to the best of my knowledge and as per the information provided by company to me.

Q 1) Please tell briefly about yourself ?

A) I am Deputy General Manager (Administration) of M/s Modi Properties and Investments (P) Ltd and am authorized to represent our group company M/s Paramount Builders, before Service Tax authorities in connection with Service Tax matters and to give Statement.

Q 2) You are aware that without submission of documents and information like month wise details of receipts, liability of tax and interest cannot be arrived at as the rate of tax and classification during the subject period changed. Then, why you have not submitted all the documents and information as called for therein the summons dated 13.1.2010?

A) We have already submitted the balance sheets, some ST3 return copies and plot-wise receipts details towards sale deed and agreement of construction since inception to October 2009. Book of accounts, Bank statements, Customer documents and unaudited book of accounts upto December, 2009 were provided in CD. The sample copies of agreement of construction and sale deed, monthwise receipts statement are also provided. Trial balance sheet for this financial year upto December, 2009, remaining copies of the ST3 returns filed, and plot-wise receipts details towards sale deed and agreement of construction for the months Nov & Dec 2009 will be submitted at the earliest.

Q 3) When was the business operations started by M/s Paramount Builders.? What are the activities undertaken by the said company?

A) Our business was started in 2005 as a Partnership firm. The activities undertaken by the company are providing services of construction of Residential Complexes. We purchased the land under sale deed. On that we constructed the residential complexes. Initially, we collect the amounts against booking form/agreement of sale. At the time of registration of the property, the amount received till then will be allocated towards Sale Deed and Agreement of construction. Therefore, service tax on amounts received against Agreement of construction portion up to registration was remitted immediately after the date of agreement. The service tax on remaining portion of the amounts towards Agreement of construction is paid on receipt basis.

Contd-2



Agreement of sale constitutes the total amount of the land / semi finished flat with undivided share of land and the value of construction. The sale deed constitutes a condition to go for construction with the builder. Accordingly, the construction agreement will also be entered immediately on the same date of sale deed. All the process is in the way of sale of the constructed unit as per the agreement of sale but possession was given in two phases one is land / semi finished flat with undivided share of land and other one is completed unit. This is commonly adopted procedure as required for getting loans from the banks.

Q4.) Is the entire land on which construction has been took place registered in the name of M/s Paramount Builders? If not, state the details of agreement between the land owners and M/s Paramount Builders.

A) We are having single project under this concern since inception, namely 1) Paramount Residency. We are the owners of the land by virtue of sale deeds.

Q5) When did you receive the first payments for service and when did you start providing the services of construction?

First booking amount was received in Nov., 2006, and the construction was also started in the same month.

Q 6) Have you taken registration under Service Tax and paying Service Tax?

A) We have been registered with Service Tax Department under Construction of residential complex service in 2007 and works contract services in 2008 and paying Service Tax on the total taxable services rendered by us w.e.f Apr., 2007.

Q 7) Did you pay the tax along with interest on the receipts towards construction services from 16-6-2005 till the date of payment of tax?

A) All the tax has been remitted in advance, considering the first receipt as tax as per actual completion of work though the partial amounts are receivable by the date of payment of tax. We have already submitted consolidated receipts towards the services from our customers.

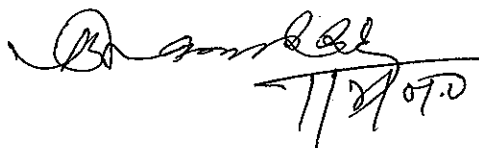
Q8.)How did you reclassified and converted the services of construction into works contract services?

A) Till 31.5.2007 we were remitting service tax under construction of residential complex service. From 01.06.2007, we started paying service tax under Works Contract Service for all the agreements of construction including those agreements done prior to 1.6.2007 and tax on first amount was paid under construction of residential complex service. As the service i.e., construction is ongoing and our services are appropriately classifiable under works contract, we started paying the service tax accordingly on receipts for the works done after 1-6-2007. Details of the same shall be provided soon.

Q.9)Why there is a difference in the receipts shown in the balance sheet, actual receipts shown in your worksheet and the receipts shown in the ST3 returns?

A) Net receipt from customers shown in the balance sheet doesn't directly reflect the actual receipts from customers towards construction service. However, the same can be arrived at by making certain calculations and the working sheet shall be provided. Our worksheet of receipts covers the period up to Dec., 2009 whereas the ST3 returns show the receipts up to Dec. 2008 only. We have not shown the receipts in ST3 returns from Jan 2009 onwards as we found our services are not taxable and as our customers stopped payment of service tax.

Cont-3



Handwritten signature and date: 11/27/07.0

Q. 10) Do you say that the difference of total receipts up to Dec., 2009 shown in your worksheet and the total of values shown in ST3 returns filed, pertains to the months starting from 1/2009 to 12/2009 on which tax has not been paid?

A) Yes.

Q.11) Why did you stop payment of service tax from 1-1-2009 and also not submitted the returns?

A) Our customers have stopped payment of service tax from January, 2009 onwards in the light of the CBEC Circular No.108/2009/ST dt.29.01.2009. We already submitted our letter for cancellation of service tax registration as we believe our services are not taxable. In this regard we didn't receive any communication from the department. As we applied for cancellation we stopped submission of returns. Copy of our letter for cancellation is submitted.

Q 12) As per the statute and as clarified in the circular mentioned above, tax is not leviable on the sale value only i.e., the value mentioned in the sale deed, and only the complex built by a person for his personal use as residence engaging any person to design, plan and construct was excluded from the definition of residential complex. Therefore, why the service tax should not be demanded in your case where you provided the services of the construction of residential complex to residential units i.e., the part of the residential complex of your customers?

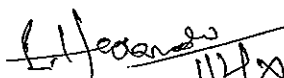
A) In this regard, we have already provided our submissions in detail vide our letters dated 13-3-2009 and 2-7-2009 respectively. Copies of the same will be provided.


Q 13) Do you want to say anything more?

A) The word used in the exclusion is 'complex' not the 'residential complex'. A complex may also have single residential unit. Therefore, it is understood by us and our customers, 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.

The above statement is given by me voluntarily without being under any pressure, threat or coercion. All the above information was given by me as per the records produced before me by the company and to the best of my knowledge. On my request, one of the officers typed the statement on the computer available in your office. I have gone through the hard copy of the statement which is true, correct and is as dictated by me.

BEFORE ME


SUPERINTENDENT
SERVICE TAX
ANTI EVASION (GR. VI)


(A. SHANKAR REDDY) 12/01/09
for M/s Paramount Builders
Hyderabad.



11/7/10

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

O.R.No. 87/2010-ST
HQST No: 55/09 - AE IV

Date: 24.06.2010

SHOW CAUSE NOTICE

Sub : Service Tax – Works Contract Services – Non payment of Service tax on taxable services rendered – Show cause Notice – Reg.....

M/s Paramount Builders, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad – 500 003 [here in after referred to as 'the service provider'] are engaged in providing works contract service. M/s Paramount Builders is a registered partnership firm and got themselves registered with department on 17-8-2006 (Construction of Residential Complex service) and on 29-2-2008 (Works contract service) for payment of service tax with STCNo. AAHFP4040NST001.

2. As per Sec 65(105 (zzzh) of the Service Tax Act "taxable service" means any service provided or to be provided -to any person, by any other person, in relation to construction of complex. As per Sec 65 (30a) of the Service Tax Act "construction of complex" means construction of a new residential complex or a (a) part thereof; or completion and finishing services in relation (b) to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or repair, alteration, renovation or restoration (c) of, or similar services in relation to, residential complex;

3. 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 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;

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. On gathering intelligence that M/s Paramount Builders though registered with the service tax department are not discharging the service tax liability properly and also not filing the required returns, investigation has been taken up by the department and Summons dated 13.1.2010 for submission of relevant record /documents / information have been issued to them. On verification of records submitted by the assessee, it is found that M/s Paramount Builders have undertaken a single venture by name **Paramount Residency** located at Nagaram village, Keesara Mandal, RR District, and received amounts towards sale of undivided portion of land and semi finished flats and agreement of construction from September 2006 to December 2009 from their customers, and also from M/s Bhargavi Developers for construction services. In the said venture, they have entered into sale deed, agreement of construction in respect of 122 flats with their customers. Out of the above 122 flats, in respect of 14 flats and M/s Bhargavi Developers they started receiving amounts towards construction prior to the date from which the works contract service is taxable and therefore they are classifiable under Construction of Residential complex service. In respect of the remaining flats they started receiving the amounts from their customers after the date from which the works contract service is taxable and therefore they are classifiable under works contract service. Though they got registered for payment of service tax against construction of residential complex service and works contract service, till date they have not filed the ST3 returns with the department. However, they have submitted the copies of the ST3 returns prepared for the periods October, 2007 to March 2008 (two returns), October, 2008 to March 2009 (two returns) which were not acknowledged by the department, along with the copies of the challans evidencing ~~of~~ payment of Rs. 20.63.125/- towards construction of Residential complex service, Rs. 7.75.228 towards works contract service along with other payments of Rs. 3.137/- . Further, it is found that they have stopped payment of Service Tax on receipts from 1-1-2009 by misinterpreting the clarification issued by the Board vide circular No. 108/02/2009 – ST dated 29th January 2009.

6. A Statement was recorded from Sri. A. Shanker Reddy, Deputy General Manager, (Admn.) authorized representative of M/s Paramount Builders on 1.2.2010 under Section 14 of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994. Sri. Reddy vide his Statement dated 1.2.2010 had interalia stated that "the activities undertaken by the company are providing services of construction of Residential Complexes: They purchased the land under sale deed; On that they constructed the residential complexes; Initially, they collect the amounts against booking form/agreement of sale; At the time of registration of the property, the amount received till then will be allocated towards Sale Deed and Agreement of construction; Therefore, service tax on amounts received against Agreement of construction portion up to registration was remitted immediately after the date of agreement; The service tax on remaining portion of the amounts towards Agreement of construction is paid on receipt basis; Agreement of sale constitutes the total amount of the land / semi finished flat with undivided share of land and the value of construction; The sale deed constitutes a condition to go ahead for construction with the builder; Accordingly, the construction agreement will also be entered immediately on the same date of sale deed; All the process is in the way of sale of the constructed unit as per the agreement of sale but possession was given in two phases one is land / semi finished flat with undivided share of land and other one is completed unit. This is commonly adopted procedure as required for getting loans from the banks". Further, he stated that services to a residential unit / complex which is a part of a residential complex, falls under the exclusion clause in the definition of residential complex. Further, he stated that they have stopped collection and payment of service from 1-1-2009 in the light of the clarification of the Board vide circular No. 108/02/2009 – ST dated 29th January 2009.

7. As per the exclusion provided in Sec 65(91a) of the Service Tax Act, the residential complex does not include a **complex** which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person. Here, "personal use" includes permitting the complex for use as residence by another person on rent or without consideration. *It is further clarified in para 3 of the Circular No. 108/02/2009 – ST, dated 29th January 2009* if the ultimate owner enters into a contract for construction of a **residential complex** with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity is not liable to service tax. Therefore, as per the exclusion clause and the clarification mentioned above, if a builder/promoter/developer is constructing entire residential complex for one person for personal use as residence by such person would not be subjected to service tax. For example, construction of residential quarters by the Income tax department for their employees by employing a contractor for design, planning and construction is not leviable to service tax because it is for

the personal use of the Income tax department. Normally, a builder/promoter/developer constructs a residential complex consisting number of residential units and sells those units to different customers. So, in such cases the construction of complex is not meant for one individual. Therefore, as the whole complex is not constructed for single person the exclusion provided in Sec 65(91a) of the Service Tax Act doesn't apply. Further, the builder/promoter/developer normally enters into construction / completion agreements after execution of sale deed. Till the execution of sale deed the property remains in the name of the builder/promoter/developer and services rendered thereto are self service. Moreover, stamp duty will be paid on the value consideration shown in the sale deed. Therefore there is no levy of Service Tax on the services rendered till sale deed i.e., on the value consideration shown in the sale deed. But, no stamp duty will be paid on the agreements / contracts against which they render services to the customer after execution of sale deeds. There exists the service provider and service recipient relationship between the builder/promoter/developer and the customer. Therefore, such services against agreements of construction invariably attract service tax under Section 65(105(zzzza)) of the Finance Act, 1994.

8. As per the definition of "Residential Complex" provided under Section 65(91a) of the Finance Act, 1994, it constitutes any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system. The subject venture of M/s Paramount Builders qualifies to be a residential complex as it contains more than 12 residential units with common area and common facilities like park, common water supply etc., and the layout was approved by HUDA vide permit No. 6008/P4/P1g/HUDA/2006, dated 14-9-2006. As seen from the records submitted, the assessee has entered into 1) a sale deed for sale of land together with / without semi finished portion of the house and 2) an agreement for construction, with their customers. On execution of the sale deed the right in the property got transferred to the customer, and hence the construction service rendered by the assessee thereafter to their customers under agreement of construction is taxable under service tax as there exists service provider and receiver relationship between them. As there involved the transfer of property in goods, it appears that the services rendered by them against agreements of construction are taxable services under Construction of residential complex service or works contract service as the case may be.

9. As M/s Paramount Builders have not furnished the monthwise particulars of amounts received exclusively on agreements for Construction, the tax liability has been arrived at on the basis of soft copies of the books of accounts provided by M/s Paramount Builders. It is arrived at that they have collected an amount of Rs. 10,80,90,207/- (towards Construction of residential complex service - Rs. 3,41,50,269/- and towards Works contract service - Rs. 7,39,39,938/-) other than sale deed amount and are liable to pay service tax of Rs. 40,18,792/- (towards Construction of residential complex service - Rs. 13,76,334/- and towards Works contract service - Rs. 26,42,458/-) during the period from September, 2006 to December 2009. Against the said liability M/s Paramount Builders have paid service tax of Rs. 28,38,353/- (towards Construction of residential complex service - Rs. 20,63,125/- and towards Works contract service Rs. 7,75,228/-). Therefore there is a short payment of Rs. 11,80,439/- (towards Construction of residential complex service - Rs. 6,86,791/- (Excess payment) and towards Works contract service - Rs. 18,67,230/- (Short payment)). The details of amounts collected, service tax liability, paid details, balance tax payable are as detailed in the **Annexure** to this Notice.

10. M/s Paramount Builders are well aware of the provisions and of liability of Service tax on receipts towards Construction and have not assessed and paid service tax properly by suppression of facts and contravened the provisions of Section 68 of finance Act, 1994 with an intent to evade payment of tax. They have intentionally not filed the returns and produced the particulars. Further, they misinterpreted the definition of the works contract service with an intent to evade payment of Service Tax. All the facts have come to light only after the department has taken up the investigation. Hence, the service tax payable by M/s Paramount Builders appears to be recoverable under **Sub Section (1) of Section 73 of the Finance Act, 1994**.

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

12. Therefore, M/s Paramount Builders, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad - 500 003 . are hereby required to show cause to the Additional Commissioner of Customs, Central Excise

and Service Tax, Hyderabad-II Commissionerate, 3rd floor, Shakkar Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad-500 004, within 30 days of receipt of this Notice as to why:

- (i) Rs. 6,86,791/- which was excess paid in construction of residential Complex service should not be appropriated towards the liability under works contract service of Rs 18,67,230/- and the remaining short paid tax of Rs. 11,80,439/- (Service tax Rs. 11,46,057/- Education Cess, Rs.22,921/- Secondary & Higher Education Cess Rs. 11,461/-) should not be demanded under the works contract service under the Sub Section (1) of the Section 73 of the Finance Act, 1994 for the period from September, 2006 to December 2009 as shown in the Annexure attached to this Notice.
- (ii) interest is not payable by them on the amount demanded at (i) above and also on the delayed payments made during the period from September, 2006 to December 2009, under the Section 75 of the Finance Act,1994
- (iii) Penalty should not be imposed on them under Section 76 of the Finance Act,1994 for their failure to pay service tax in accordance with the provisions of Section 68 or the rules made under Chapter V of the Finance Act 1994.
- (iv) Penalty should not be imposed on them under Section 77 of the Finance Act,1994 for the contravention of Rules and provisions of the Finance Act, 1994 for which no penalty is specified else where.
- (v) Penalty should not be imposed on them under Section 78 of the Finance Act, 1994 for suppression of value of service tax.

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

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 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 2005-06 to 2008-09 and 2009-10 (upto Dec 2009).
- (2) Service tax statement submitted by M/s Paramount Builders vide letter dated 25-11-2009.
- (3) The Statement dated 1.2.2010 of Sri. A. Shankar Reddy, Authorised person of M/s Paramount Builders.
- (4) Balance Sheet copies of M/s Paramount Builders for the year 2005-06 to 2008-09.


(G. SREE HARSHA)
ADDITIONAL COMMISSIONER

To
✓ M/s Paramount Builders, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad – 500 003

(By RPAD)

Copy to:

The Superintendent, Service Tax, Group X, Hyderabad-II Commissionerate,
Hyderabad.
The Superintendent, Service Tax, Group X, Hyderabad-II Commissionerate,
Office

REVISED WORKSHEET

W/s Paramount Builders

Month	Tax paid as per		Total tax paid as per challans	Service wise receipts as		Tax rates		Total tax liability		Due date for payment of tax
	Service Tax	Education cess		Construction of Residential complex service	Works contract service	Construction of Residential complex service	Works contract service	Construction of Residential complex service	Works contract service	
Nov-06				2470000	0	12.24% on 33% of value		99768		5-Jan-07
Dec-06				5098795	0	12.24% on 33% of value		205951		5-Jan-07
Jan-07				84173	0	12.24% on 33% of value		3400		5-Apr-07
Feb-07				86000	0	12.24% on 33% of value		3474		5-Apr-07
Mar-07				660483	0	12.24% on 33% of value		26678		5-Apr-07
Apr-07				942986	0	12.24% on 33% of value		38089		5-Jul-07
May-07				2404087	0	12.36% on 33% of value		98058		5-Jul-07
Jun-07	377211	11316	388527	413556	207946	12.36% on 33% of value	2.06% on value	16868	4284	5-Jul-07
Jul-07				0	587790	12.36% on 33% of value	2.06% on value	0	12108	5-Oct-07
Aug-07				830000	2924962	12.36% on 33% of value	2.06% on value	33854	60254	5-Oct-07
Sep-07				2208590	1821742	12.36% on 33% of value	2.06% on value	90084	37528	5-Oct-07
Oct-07	699214	20978	720192	1000000	3270348	12.36% on 33% of value	2.06% on value	40788	67369	5-Jan-08
Nov-07				600000	1252958	12.36% on 33% of value	2.06% on value	24473	25811	5-Jan-08
Dec-07				2000000	1968882	12.36% on 33% of value	2.06% on value	81576	40559	5-Jan-08
Jan-08	97087	2913	100000	1326428	3101392	12.36% on 33% of value	2.06% on value	54102	63889	5-Jan-08
Feb-08	829518	24888	854406	2952752	4469193	12.36% on 33% of value	2.06% on value	120437	92065	5-Apr-08
Mar-08	110653	3320	113973	87987	3276621	12.36% on 33% of value	4.12% on value	3589	134997	5-Apr-08
Apr-08				151015	4630234	12.36% on 33% of value	4.12% on value	6160	190766	5-Jul-08
May-08				1472000	1537215	12.36% on 33% of value	4.12% on value	60040	63333	5-Jul-08
Jun-08				152000	5330953	12.36% on 33% of value	4.12% on value	6200	219635	5-Jul-08
Jul-08	156558	4697	161255	1814608	4183242	12.36% on 33% of value	4.12% on value	74014	172350	5-Oct-08
Aug-08				714423	3645373	12.36% on 33% of value	4.12% on value	29140	150189	5-Oct-08
Sep-08				1749000	6176662	12.36% on 33% of value	4.12% on value	71338	254478	5-Oct-08
Oct-08	388348	11652	400000	1312140	4238015	12.36% on 33% of value	4.12% on value	53520	174606	5-Jan-09
Nov-08	97087	2913	100000	590832	1395737	12.36% on 33% of value	4.12% on value	24099	57504	5-Jan-09
Dec-08				111715	2347218	12.36% on 33% of value	4.12% on value	4557	96705	5-Jan-09
Jan-09				760933	2328828	12.36% on 33% of value	4.12% on value	31037	95948	5-Apr-09
Feb-09				259946	2090959	12.36% on 33% of value	4.12% on value	10603	86148	5-Apr-09
Mar-09				603366	1231690	10.3% on 33% of value	4.12% on value	20508	50746	5-Apr-09
Apr-09				130000	1732256	10.3% on 33% of value	4.12% on value	4419	71369	5-Jul-09
May-09				260000	1515885	10.3% on 33% of value	4.12% on value	8837	62454	5-Jul-09
Jun-09				421990	1233168	10.3% on 33% of value	4.12% on value	14343	50807	5-Jul-09
Jul-09				200000	1950100	10.3% on 33% of value	4.12% on value	6798	80344	5-Oct-09
Aug-09				250000	2021291	10.3% on 33% of value	4.12% on value	8498	83277	5-Oct-09
Sep-09				2205	597544	10.3% on 33% of value	4.12% on value	75	24619	5-Oct-09
Oct-09				28259	1040741	10.3% on 33% of value	4.12% on value	961	42879	5-Jan-10
Nov-09				0	589215	10.3% on 33% of value	4.12% on value	0	24276	5-Jan-10
Dec-09				0	1241778	10.3% on 33% of value	4.12% on value	0	51181	5-Jan-10
Total	2755676	82677	2838353	34150269	73939938			1376334	2642458	

Name of the service	Amounts collected	Total tax liability from Nov. 2006 to Dec. 2009	Total tax paid from Nov. 2006 to Dec. 2009	Tax short (+) or excess (-) paid
Construction of Residential complex service	34150269	1376334	2063125	-686791
Works contract service	73939938	2642458	775228	1867230
Total	108090207	4018792	2838353	1180439

Break-up of tax liability

Name of the service	Service Tax	Ed. Cess	S&H Ed.
Construction of Residential complex service	-666788	-13336	-6667
Works contract service	1812845	36257	18128
Total	1146057	22921	11461

D. Daniel
 (M. Janaki Ramiah)
 Inq. STAE VI