

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:: HYDERBAD - 500 004

HQST No: 57/09 AE IV

Date: 6 .11. 2009

To M/s Alpine Estates, 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.
 - 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)

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ALPINE ESTATES

103, First Floor, Hariganga Complex, Ranigunj. 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. AANFA5250FST001.

- 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.

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ALPINE ESTATES

103, First Floor, Hariganga Complex, Ranigunj, 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.
- 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.
- 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.

ALPINE ESTATES

103, First Floor, Hariganga Complex, Ranigunj. 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 Alpine Estates,

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.

[ORIGINAL / REVISED RETURN (Strike whichever is NOT applicable)]

tick the appropriate period) [Please see the instr

For the period (Please tick the appropriate period)

April-September

October-March

FORM ST-3
(Return under section 70 of the Finange Act, 1994)
[Please see the instructions carefully before filling the Form]

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FINANCIAL YEAR

ORIGINAL DUPLICATE TRIPLICATE

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If abatement is claimed Whether provisionally		Sub-clause No. of clar		l. Name of Taxable service	Computation of Services 7 (To be repeated for every	 Constitution of assessee (Please tick the appropriate category) 	C. Premises Code No.	2B. STC No.	2A. Name of the assessee	1A. Has the assessee opted (As defined under Rule
If abatement is claimed as per notification No. 1/2006-ST, Please furnish Sr. No. in the notification under which such abatement is claimed Whether provisionally assessed ('Y/N') E2. Prov. Assessment order No. ('if any')	Has the assessee availed benefit of any exemption notification ('Y/N') If reply to column "C1" is 'yes', please furnish notification Nos.	Sub-clause No. of clause (105) of section 65 (Please see instructions) 2 2 2 2 7 7 7	Assessee is liable to pay service tax on this taxable service as, -(Please tick the appropriate category) (i) a service provider, or (ii) a service receiver liable to make payment of service tax	HORKS CONTRACT.	Computation of Services Tax (To be filled by a person liable to pay service / not to be filled by input service distributor) (To be repeated for every category of taxable service on which service tax is payable by the assessee)	riate category) (ii) Individual / Proprietory (iii) Partnership (iv) Registered Public Ltd. Company (v) Registered Trust (vi) Other (vi) Society / Co-op. Society	<u>C 1000010</u>	A AN PAS 2 30 0 1	ALPINE SEN ES ALB	October-March Has the assessee opted to operate as Large Taxpayer (Y/N) [N] 1B. If reply to column "1A" is 'Yes' name of Large Taxpayer Unit (LTU) opted for Wante of City) (As defined under Rule 2(ca) of the Central Excise Rules, 2002 read with rule 2(1)(cccc) of the Service Tax Rules, 1994)
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(i)	E		(g)			···			3	(e)	(d)						(c)		<u>(</u> ъ			(a)	9		
(i) Secondary and higher education cess payable (@ 1% 7376 0.500 f. Service tax) (Please see instructions)	Education cess payable (@2% of Service tax)	Ì	Service tax payable = $(5\% \text{ of } f(i) + 8\% \text{ of } f(ii) + 10\% \text{ of } f(ii) + 12\% \text{ of}$	(v) other rate, if any, (please specify)	able	(iii) Value on which service tax is payable @ 10%	(ii) Value on which service tax is payable @ 8%	(i) Value on which service tax is payable @ 5%	Service tax rate wise break-up of taxable value = (e)	Taxable value = $(a+b)$ minus $(c+d)$	Abatement amount claimed	see instructions)	(iii)Amount received as / (paid to #) pure agent (Please	service (other than export of service, i.e.,(i) above)	(ii)Amount received / (paid #)towards exempted	(i) Amount received against export of service?	Value on which service tax is exempt / not payable	in a form other than money	Money equivalent of considerations received / (paid #)	(ii) in advance for service to be provided	(i) against service provided	Gross amount received / (paid #) in money	Service tax payable	(1)	Month / Quarter**
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marier wice i.e. Anr. Inc	Net taxable amount charged = $(j+k)$ minus $(l+m+n+0)$	Amount claimed as abatement	Amount charged as pure agent (Please see instructions)	than export of service given at (I) above)	Amount charged for exempted service provided / to be provided (other	Amount charged for exported service provided / to be provided ^	than money	(k) Money equivalent of other consideration charged, if any, in a form other	SETVICE	Service provided / to be provided (including export of service and exempted)	Gross amount for which bills/invoices/challans are issued relating to	Taxable amount charged	(1)	Month / Quarter**		
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receiver liable to pay service tax. nen service receiver is liable to pay service tax; ^ Not applicable to empice ()

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	Month / Quarter**	Apri/Oct.	May/Nov.	Јунfe/Dec.	July/Jan.	Aug/Feb.	Sear/Mar.
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(a)	Amount deposited in advance	71	211	ra	sh.	35	7
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(c)	Challan dates	ج ج	2	2	X		*
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1	(11a) by adjustment of amount earlier paid in advance and adjusted in this period under rule 6 (1A).	(11) C. 11. V. 12. C.	(i) by CENVAT credit?	(1) In cash	Education cess paid-	inis period under Kule 6(4A) of S1 Kules	(iv)by adjustment of excess amount paid earlier and adjusted in	this period under Rule 6(3) of ST Rules	(iii)by adjustment of excess amount paid earlier and adjusted in	in this period under rule 6 (1A).	(iia) by adjustment of amount earlier paid in advance and adjusted	(ii)by CENVAT credit'	(I) in cash Chapur	x paid - , , , ,	Service tax, education cess, secondary and higher education cess paid	(1)	Month / Quarter**	berieve that contained the animounts have the part of the parties of the part of the part of the parties of the
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**Assessee liable to pay service tax on quarterly basis may furnish details quarter wise i.e. Apr-Jun, Jul-Sep., Oct-Dec, Jan-Mar. # Applicable when service receiver is liable to pay service tax; ^ Not applicable

	(b) Challans Date (May please be furnished in the order of (i) Challan Nos. furnished above) (ii)			(a) Challan Nos.	(II) Details of Challan (Vide which service tax education cess, secondary and higher education cess and other amounts paid in cash)	(x) Any other amount (please specify)	(ix) Section 73A amount paid^	(viii)Penalty paid	(vii)Interest paid	(vi)Arrears of Sec. & higher edu. cess paid by credit	(v) Arrears of Sec. & higher edu. cess paid by cash	(iv)Arrears of education cess paid by credit ^	(iii)Arrears of education cess paid in cash	(ii)Arrears of revenue paid by credit^	(i)Arrears of revenue paid in cash	(d) Other amounts paid	(iv)by adjustment of excess amount paid earlier and adjusted in this period under Rule 6(4A) of ST Rules	this period under Rule 6(3) of ST Rules	(iii) by adjustment of excess amount paid earlier and adjusted in	(iia) by adjustment of amount earlier paid in advance and adjusted	(ii)by CENVAT credit^	(i) in cash	(c) Secondary and Higher education cess paid	(iv)by adjustment of excess amount paid earlier and adjusted in this period under Rule 6(4A) of ST Rules	(iii)by adjustment of excess amount paid earlier and adjusted in this period under Rule 6(3) of ST Rules	(1)	Month / Quarter**
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	-	200			n cash)		da k	200													(4)		1200 J			(7)	Sept/Mar.

4B. Source documents details for entries at column 4A(I)(a)(iii), 4A(I)(a)(iv), 4A(I)(b)(iii), 4A(I)(b)(iv), 4A(I)(c)(iii), 4A(I)(c)(iv), 4A(I)(d)(i) to (vii) (To be filled only if any entry is made against column 4A(I)(a)(iii), 4A(I)(a)(iv), 4A(I)(b)(iii), 4A(I)(b)(iv), 4A(I)(c)(iii), 4A(I)(c)(iv), 4A(I)(d)(i) to (vii))

4C. Details of amount of service tax payable but not paid as on the last day of the nation for the last day of the last day of the last day of the nation for the last day of

Made Charle
S.No. Month / quarter
Entry in Table 4A above

'n Details of input stage CENVAT credit (To be filled by a taxable service provider only / not to be filled by service receiver liable to pay service tax or input service distributor)

5A. Whether the assessee providing exempted / non taxable service or exempted goods

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services used in or in relation to manufacture of exempted goods or provision of	value of exempted service (Y/N); or Onted to pay an amount equal to 10% of the value of exempted goods and 8% of the	(i) Onted to pay an amount small to 100/ fel	(d) If any one of the (a) and (b) is 'yes', and (c) is 'no' which option is being availed under rule	of input service and input goods (refer to rule 6(2) of CENVAT credit Rule, 2004)	If any one of the above is west whether mointain	(b) Whether manufacturing any exempted goods ('Y/N')	(a) whether providing any exempted or non taxable service ('Y/N')	(*)	(1)
NA.	977	45			2		5	(2)	

(b)			 -													9			5B.	_	-				!		}		Ų,
0		TI	_				(c)	당	Γ	Γ.		г <u> </u>	· ·	(b)	(a)					(g)	3	(e)	(a)	35		2			SAA
Closing Balance of CENVAT credit = (a+b-c)	Total credit utilized = $((i)+(ii)+(ii)+(iv)+(v)+(vi))$	(v) Towards inter unit transfer of LTU*	(iv) Towards clearance of input goods and capital goods removed as such	(iii) For payment of excise or any other duty #	(ii) For payment of education cess on taxable service	(i) For payment of service tax	Credit utilized	[otal credit taken = ((i)+(ii)+(ii)+(iv)+(v))	(v) From inter unit transfer by a LFU *	(iv) As received from input service distributor	(iii) On input services received directly	(ii) On capital goods	(I) On inputs	Credit taken	Opening balance	CENVAT Credit of Service Tax and Central Excise Duty.	(1)	Month / Quarter**	CENVAT Credit taken and utilized	Chailan dates	Challan Nos, vide which amount "entioned in (d) is paid	Total amount paid $= \{i\} + (d)$	े मार्गामा paid until सिंह 6(3) व्हिट्सिम्स ट्रिस्सिम्स सिंह, 504, by ट्रेडिंग	Middlin phili hinder rule v(J) of Ostivati Crédit Kulat, 2004, by Self-Var Credit.	THE CONTROL SECURITY STATES	1:		Month	Antiquet payable under rule 6(3) of the Cenvat Credit Rules, 2004
			\							\	\	\					. (2)	Apri/Oct.	7.				1		4		(2)	Apri/Oct.	lules, 2004
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																	(7)	Sgpt/Mar.			1	7-4				Carrier Pro-	C_{ij}	T Willelan	:

Relevant only if assessee providing taxable service is also engaged in manufacture and clearance of excisable goods. This would also include excise duty paid on capital goods and inputs removed as waste and scrap, in terms of sub - rule 5A of rule 3 of the CENVAT Credit Rules, 2004.

^{*} To be filled only by Large Taxpayer as defined under Rule 2(ea) of the Central Excise Rules, 2002 and who has opted to operate as LTU. In case LTU has centralized registration for service tax, this information is not applicable in respect of service tax credit.

^{**} Assessees liable to pay service tax on quarterly basis may give detail quarter wise i.e.Apr-Jun, Jul-Sep, Oct-Dec, and Jan-Mar.

#Rel remo * To l service	<u> </u>		<u> </u>	(b) (a) (B)	
#Relevant only if assessee providing taxable service is also engaged in manufacture and clearance of excisable goods. This would also in the Relevant only if assessee providing taxable service is also engaged in manufacture and clearance of excisable goods. This would also in terms of sub - rule 5A of rule 3 of the CENVAT Credit Rules, 2004. *To be filled only by Large Taxpayer as defined under Rule 2(ca) of the Central Excise Rules, 2002 and who has opted to operate as Li service tax, this information is not applicable in respect of service tax credit. **Assessees liable to pay service tax on quarterly basis may give detail quarter wise i.e. Apr-Jun, Jul-Sep, Oct-Dec, and Jan-Mar.	and capital goods removed as such (iv) Towards inter unit transfer of LTU* Total credit of education cess and secondary and higher education cess utilized = ((i)+(ii)+(ii)+(iv)) Closing Balance of Education cess and secondary and bigher education cess = (a+b-c)	utilized (i) For payment of education cess and secondary and higher education cess on services (ii) For payment of education cess and secondary and higher education cess on goods # (iii) Towards payment of education cess and secondary and higher education cess on clearance of input goods	(ii) On capital goods (iii) On input services received directly (iv) As received from input service distributor (v) From inter unit transfer by a LTU * Total credit of education cess and secondary and higher education cess taken = ((i)+(ii)+(iii)+(iv)+(v)) Credit of education cess and secondary and higher education cess	Opening balance Credit of education cess and higher education cess taken.	Month / Quarter**
acture and clearance of excisal AT Credit Rules, 2004. tral Excise Rules, 2002 and witer wise i.e.Apr-lun, Jul-Sep,	cation	1 1 1	cation	Secondary and Higher Education ler education cess	Apr/Oct.
erance of excisable goods. This would a les, 2004. Les, 2002 and who has opted to operate pr-Jun, Jul-Sep, Oct-Dec, and Jan-Mar.				on Cess	May/Nov.
<u>5</u> # :		1	1		Jupe/Dec.
ase LTU has centr					July/Jan.
clude excise duty paid on capital goods and inputs U. In case LTU has centralized registration for					Aug.Treb.
for					Sept Aviar.

I hereby acknowledge the receipt of your ST-3 return for the period Place: (Signature of the period place)	Place: Date: ACKNOWLEDGEMENT	Self Assessment Memorandum (a) I / We declare that the above particulars are in accordance with the records and books maintained by me / us and are correctly stated. (b) I / We have assessed and paid the service tax and / or availed and distributed CENVAT credit correctly as per the provisions of the Finance Act, 1994 (c) I / We have paid duty within the specified time limit and in case of delay, I / We have deposited the interest Levich 4.	(d) Credit of Education cess and secondary and higher education cess not eligible for distribution (rule 7(b) of CENVAT Credit Rules, 2004) (e) Closing balance	(b) Credit of education cess and secondary and higher education cess taken (for distribution) on input service (c) Credit of Education cess and secondary and higher education cess distributed	_	Month / Quagfer** Month / Quagfer** Apr/Oct. May/Nov. Ju (1) CENVAT Credit of Service Tax and Central Excise Duty (a) Opening Balance of CENVAT Credit (b) Creditlaken (for distribution) on input service (c) Credit distributed
Im for the period (Signature of the Officer of Central Excise & Service Tax)	MENT (Name and Signature of Assesses of Authorized Signatory)	books maintained by me / us and are correcty stated. ENVAT credit correctly as per the provisions of the Finance Act, 1994 have deposited the interest levial to the			ess Credit	t. May/Nov. Jupe/Dec. July/Jan. Aug./Feb. Sept./Mar. (3) (4) (5) (6) (7)

INSTRUCTIONS

3F(I)(b) 3F(I)(a)(ii) -3F(I)(a)(i) 3A1/3B 2C Column No. Instructions to fill the Form A. General Instructions: 4.5 4.5 6 0.024 ... : (A) it includes. manufic (b)simple amount received (induality (A) it includes,-(a) (b) (B) It excludes a constraint in the re-Gross amount rebeived (or baid in case of service receiver) in advance is the total amount received for the particular (A) it includes: (i) The value of consideration received (or paid in case of service receiver), other than money, is to be estimated in equivalent money value.

(ii) Money may be understood as defined in section to the Actual Please see the cample of the control of the control of the case of the ca HIL'Y for yes, or 'N' for No.

Name should be filled as mentioned in the form ST-2 (Certificate of Reols STC No. is 15 digits PAN based service tax code No. issued to:assessee 2001-ST dated 27.08.2001). If there is a change in the address or any other information as provided by the assessee in Form \$1.1 or as contained in Form \$1.2 (Certificate of Registration Issued by the department), it may please be brought to the notice of the jurisdictional Superintendent of Central Excise under an acknowledgement.

Please indicate 'NA' against entries which are not applicable.

Please indicate 'nil' where the information to be turnished is nil. Premises code is issued to an assessee under S.No. 5 of the Oertificate of Registration (Form ST-2). An assessee furnish location code as issued to him in the Annexure III (prescribed videl circular No. 35/3/2001/ST dated 27.Ds.20 This entry is to be filled separately for each taxable service on which service tax is to be paid by assessee.

Name of taxable service and their dause in sub-section (105) of section 65 are as given in the Annexure to these in ome into effect from a date to be notified a "III" Y for was, and W for No. Details of notification is to be furnished in the case abatement is availed under notification for No. In case of provided in the case abatement is availed under notification of the case of provided in the case of prov E. 100. (B) 14-11-12 (b) education cess.
(c) sebindary and higher education cess (2) of the differentiable below) excludible in terms of rule, 6(2) of the amount charged towards exported service; amount charged towards exempted service (other than export of service) and amount charged by a pure agent; service tax, :: amount received service tax, 11 amount received towards exported service; amount received towards exempted service (officer than export), and amount received as pure agent. separatery for each taxable service on which service tax is to be paid by assesses.

e and their clause in sub-section (105) of section 65 are as given in the Annexure to these instructions. Sub-clauses from (zzzx) to (zzzzd) to date to be notified after enactment of the Finance Bill, 2007. towards exported service, (other than export), as pure agent. 11 11 11 Valuation Rules, 2006 J. (C. Jon 5) the series described stration issued by the department) in the Certification of in the Certificate of Registration of in the Anhibxure - ill (prescribed vide circular No. 35/3/ and '' THE OWNER Mental Silver William to a second the te to whom premises code has not been issued, may Towns of the second service before provision or ser the street of the Cartesian 1.1 fibe jand

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6 (의)(B) 4A(I)(d)(i) to (vi) 4A(I)(a)(iv) 4A(I)(a)(iii) S.No. In respect of B & FS services received from a service provider who is outside India and doesn't have establishment in I 3A1(Servide Any othek amount may be specified. (It may include amount pre-r Against source documents, following details may be furnished. : Rule 6(4A) allows adjustment of such service tax amount paid in preceding menths of quarter which is in excess of the service tax liability for such month of guarter on receipt of information from these branches, the service tax liability is computed as Rs. 900. In this case he has paid an excess amount of Rs. 100 as service tax. He However, later on he does not provide this service and refunds the amount to the person from whom the advance was received. He can in this case adjust the amount his information bas to be full shed only by an Arrears of revenue includes,-Example: A service provider having centralized registration pays an ambunt of Rs. 1000 as service tax for services provided by him from his five branches. However, Secondary and higher education cass would be applicable to service tax from the da can adjust this excess amount of Rs. 100 against service tax liability for succeeding month. Rule 6(3), allows adjustment of such service tax amount which was paid earlier in respect of taxable service notiforovided wholly or partially by the service provider. of Rs. 120 In any of his future liability of service tax. Example; A service provider receives an advance of Rs. 1000 on which he pays a service tax of Rs. 120. ₹ indust the amount paid in terms of section 73A (Any amount callected in excess Banking & other financial services Information / figures furnished (as licated in bold ூ(I) The terms "Inputs"- çapital goods", "Input services" and "Input service distributor" may be understood as defined in the CENVAT Credit Rules, ஐழ்ச் service distributor, has to be shown separately against s. No.5B(I)(b)(iv). service tax liability is not discharged in full, during the period of return, the details of (iv) Above instructions for S.No. 5B(I)(b)(III), (iii) Against S.No.BB(I)(b)(iv), furnish the details of service tax gredit as received from 'input service purchases of input services and issues invoices/bills/challans (ii) Against S.No. 5B(I)(b)(iii); furnish the details of credit availed on input services received directly by the assessed in othbrivoirds, this figure would not include the service tax credit received from input service distributor (i.e., office of manufacturer or output service provider, which receives invoices (bwards (0) (a) in case these are paid suo-moto by the assessee, if period for which such amount is paid may be furnished
(b) If paid consequent to a show cause notice (SCN) of order, the source document is relevant SCN No/Demand Notice No., Order in Original No. Abbeel No. of any lotter order etc... -For adjustment under rule 6(3), furnish details of earlier return, from where excess amount is derived in the format ΥΥΥΥ-ΥΥ-ΙΝΙΜοπίπ (ΥΥΥΥ-Υ). Is the financial year and III is the half year for which this return pertains, i.e., 2004-05-II/Nbv felers to the month Nov in II half yearly return of FY:2004-05).
For adjustment under rule 6(4A), turnish details of acknowledgement No. Stirlbination 10 Superiendent as required to be turnished in the rules. For arrears, interest and penalty, the source document, period is as follows, amount that was payable earlier but not paid; _amount pending adjudication or pending in appeals; or amount pending recovery on finalization of adjudication or appellate stage, as the case may 3F(II)(m) 3F(II)(p) 3F(I)(o) 3F(II)(k) 3F(II)(I) S.No. 3F(I)(e) 3F(I)(d) 3 umis vi servinge tax greati as received from input service distributor.

S.No.5B(I)(b)(iv), will mutatis intilaridis apply to S.No.5B(II)(b)(iii), S.No.5B(II)(b)(iv) for furnishing details of credit and higher education cess." = 17,50=nilities this cess will come into effect only after enactment of Finance Bill 2007 = 000+500 Z 1000+750) = 1750 Information / figures furnished (as indicated in bold) @12% df.1300 = 156+ for distribution of such credit, in terms of the CENVAT Rules, the service tax amount ass druered by Commissioner (short payment ma India, this assessee is liable to pay service tax in terms of hule (Appeal) or Appellate be indicated /be; Bill 2007 1 2004). Credit received from Input Tribunal or Courts) jor Order in

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103, First Floor, Hariganga Complex, Ranigunj. 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, Hyderabd II Commissionerate, Hyderbad . 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
- 3. Clarification issued by The Joint Commissioner, Service Tax on 26.07200%

Dear Sir,

東西の大きななのであるとのできないできなく との信仰を見ているとなっていましている。これには、これには、これにはないのできない。

Mr. Shankar Reddy - Admin Manager has produced the relevant documents requested by you in reference I 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

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. 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

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,

Soham Modi

Office of the Commissioner of

Central Excise & Land

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F. No. 137/12/2006-CX.4
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

New Delhi, dated 29th January 2009

Circular No. 108/02/2009 - ST

Subject: Imposition of service tax on Builders - regarding

Construction of residential complex was brought under service tax w.e.f.01.06.2005. 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. The 'Construction of Complex' service has been defined under Section 65 (105)(zzzh) of the Finance Act as "any service provided or to be provided to any person, by any other person, in relation to construction of a complex". The 'Construction of Complex' includes construction of a 'new residential complex'. For this purpose, 'residential complex' means any complex of a building or buildings, having more than twelve residential units. A complex constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex intended for personal use as residence by such person has been excluded from the ambit of service tax.

- A view has been expressed that once an agreement of sale is entered into 2. with the buyer for a unit in a residential complex, he becomes the owner of the residential unit and subsequent activity of a builder for construction of residential unit is a service of 'construction of residential complex' to the customer and hence service tax would be applicable to it. A contrary view has been expressed arguing that where a buyer makes construction linked payment after entering into agreement to sell, the nature of transaction is not a service but that of a sale. Where a buyer enters into an agreement to get a fully constructed residential unit, the transaction of sale is completed only after complete construction of the residential unit. Till the completion of the construction activity, the property belongs to the builder or promoter and any service provided by him towards construction is in the nature of self service. 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.
- 3. 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.

4. All pending cases may be disposed of accordingly. Any decision by the Advance Ruling Authority in a specific case, which is contrary to the foregoing views, would have limited application to that case only. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned.

(Gautam Bhattacharya) Commissioner (Service Tax) CBEC, New Delhi wing way



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)

HQST NO.15/2009 ST AE

Date: 27.01.2009.

To M/s Alpine Estates, 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 14.30 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

Details of works carried out / amounts received towards rendering taxable services 1. 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.

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.RAMESA RAM) Assistant Commissioner Service Tax :: Anti Evasion

NOTE: Index clause 3 of Sec 14 of Central Excise Act, 1944, the above inquiry is deemed to be 'Judicial proceedings within the meaning of Sec193 and Sec 228 of Indian Penal Code, 1860 according to which giving intentional false statement in any stage of proceedings punishable under Sec193 and intentional insult or interruption to public servant sitting in any stage of proceedings punishable under Sec228 of

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

HQST NO. 08/2008 ST AE-IV

Dt. 21.2.2008

M/s. Modi Developers. 5-4-187/3&4, 3rd floor, Soham Mansion, M.G.Road, SECUNDERABAD - 500 003

Gentlemen,

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

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

In this regard the statutory defines are as under:-

Construction of Complex

As per section 65(30a) " Construction of Complex " means construction of a new residential complex or a part of thereof, or completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fitting and other similar services, or repair, alteration, renovation or restoration of, or similar services in relation to, residential complex."

Section 65(91a) defines a residential complex as "any complex comprising of -

a building or buildings, having more than twelve residential units; (i)

(ii) a common area; and

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

"a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person".

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

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

- (a) The Board vide Circular 96/7/2007-ST dated 23.8.2007 has clarified as under
- (b) Whether service tax is liable under construction of complex service [section 65(105)(zzzh)] on builder, promoter, developer or any such person,-
 - who builds the residential complex on his own by employing direct labour?

Clarification:

(b) If no other person is engaged for construction work and the builder / promoter / developer / any such person undertakes construction work

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

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

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

As per section 65(105) (zzzza) Works contract means a contract wherein -

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) such contract is for the purposes of carrying out
 - a) erection, commissioning or installation of plant, machinery, equipment or structures etc; or
 - Construction of new building or a civil structure or a part thereof, or of a
 pipeline or conduit, primarily for the purposes of commerce or industry;
 - c) Construction of a new residential complex or a part thereof; or
 - d) Completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
 - e) Turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.

Taxable service as per section 65(105)(zzzza) means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

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

Yours faithfully,

(R.S.MAHESHWARI)
JOINT COMMISSIONER

F.No.354/28/2007-TRU

Government of India Ministry of Finance Department of Revenue Tax Research Unit

Sub: Clarification on technical issues relating to taxation of services under the Finance Act, 1994 – Regarding.

Service Tax was introduced in the year 1994 with three taxable services. At present, one hundred services are specified as taxable services. Since the introduction of service tax, number of clarifications in the form of circulars / instructions / letters have been issued by the Central Board of Excise & Customs (CBEC), Director General (Service Tax) and field formations.

- 2. Government decided to undertake a comprehensive review of all the clarifications issued since the introduction of service tax on matters relating to service tax in various forms by different authorities keeping in view the changes that had been made in the statutory provisions, the judicial pronouncements and other relevant factors, and appointed a Committee under Shri T.R.Rustagi, former Chief Commissioner of Customs & Central Excise and Director General of Inspection to undertake the review of the clarifications.
- Comments, views and suggestions were also sought from the trade and industry associations, departmental officers and interested persons.
- 4. Shri T.R.Rustagi submitted his report to the Government. The report of Shri T.R.Rustagi was placed on the CBEC web site for comments and suggestions.
- 5. Taking into consideration the report submitted by Shri T.R.Rustagi and the views and suggestions received from the trade and industry associations, departmental officers and other stakeholders, it is proposed to codify and issue a comprehensive circular on the technical issues.
- 6. This circular supersedes all circulars, clarifications and communications, other than Orders issued under section 37B of the Central Excise Act, 1944 (as made applicable to service tax by section 83 of the Finance Act, 1994), issued from time to time by the CBEC, DG (Service Tax) and various field formations on all technical issues including the scope and classification of taxable services, valuation of taxable services, services, services received from outside India, scope of exemptions and all other matters on levy of service tax. With the issue of this circular, all earlier clarifications issued on technical issues relating to
- 7. At the time of introduction of the Finance Bills and after enactment of respective Finance Acts, letters are issued by TRU explaining the provisions contained in the Finance Bills / Finance Acts. Such letters explaining the provisions contained in the Finance Bill / Finance Act would be read in the relevant context.
- 8. Views stated in the circular reflect the interpretation of the law and the current practice of the department. This circular is not to be treated as part of law and does not override the legal provisions. The relevant statutory provisions must be referred to and they will prevail.

9. **CODING SYSTEM:**

For ease of reference, a coding system is followed. Views of CBEC are indicated separately for each individual issue. Individual reference code is given for each issue. Un que three-digit reference code followed by the date of issue is given for each issue-wise classification. Individual taxable service is identified by a three-digit codes for individual taxable services, three-digit codes are also provided for issues other than individual taxable services:

996 – Services provided from outside India and received in India.

http://www.serviceax.gov.in/circular/st-circular07/st_circ_96-2k7.htm

04-Sep-07

/9.01 / 23.08.07/ Whether service tax is liable under construction of complex service [section 65(105)(zzzh)] on builder, promoter, developer or any such person,-

- (a) who gets the complex built by engaging the services of a separate contractor, and
- (b) who builds the residential complex on his own by employing direct labour?

(iii) The value of total consideration received from an individual member by the association for providing the services does not exceed Rs.3,000/- per month.

- (a) In a case where the builder, promoter, developer or any such person builds a residential complex, having more than 12 residential units, by engaging a contractor for construction of the said residential complex, the contractor in his capacity as a taxable service provider (to the builder / promoter / developer / any such person) shall be liable to pay service tax on the gross amount charged for the construction services under 'construction of complex' service [section 65 (105)(zzzh)].
- (b) If no other person is engaged for construction work and the builder / promoter / developer / any such person undertakes construction work on his own without engaging the services of any other person, then in such cases,-
- (i) service provider and service recipient relationship does not exist,
- (ii) services provided are in the nature of self-supply of services.

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

086.01 23.08.07 An international journey commencing from an Indian airport involves stopover / transfer at intermediate lindia before reaching the destination (say Mumbai-Dubai-London-New York).

Whether service tax would be liable in such case on the value indicated in the ticket for the entire journey or only on that part of the value attributable to the first sector (Mumbai-Dubai) of the journey?

Aim of the passenger is to travel from Mumbai to New York. Actual destination of the international journey is the criterion to decide the value of the service (in this case, New York). Stopover / transfer at intermediate airports, being merely incidental and part of the main journey, is of no relevance or consequence for levy of service tax under section 65(105)(zzzo) read with section 66.

Service tax in such cases is leviable on the total consideration of a single composite service relating to the entire journey. i.e., value indicated on the ticket for the entire journey.

086.02 23.08.07 An international journey (say Delhi-Mumbai-london) includes travel in a domestic sector (Delhi - Mumbai) as part of the international journey.

Whether service tax is liable on the value of whole journey or after excluding the value attributable to the domestic sector

In this case, the journey is a single composite journey. The aim of the passenger is to travel from India to a place outside India. Part of the travel in the domestic sector cannot be segregated from the single journey. Service tax is, therefore, leviable on the total value of the ticket treating the domestic sector as integral part of the international journey

http://www.servicetax.gov.in/circular/st-circular07/st_circ_96-2k7.htm

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