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8/11/09

Phone : 23231481  
23230196

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX  
HYDERABAD II COMMISSIONERATE  
3<sup>RD</sup> 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)

1/10/09

# 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.**

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.

*[Handwritten signature]*  
8/7/09

# ALPINE ESTATES

# 103, First Floor, Hariganga Complex, Rafigunj, 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.

# 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.



F: Value of taxable service, service tax payable and gross amount charged

		Month / Quarter**	Apr/Oct.	May/Nov.	June/Dec.	July/Jan.	Aug./Feb.	Sept./Mar.
		(1)	(2)	(3)	(4)	(5)	(6)	(7)
<b>(1) Service tax payable</b>								
(a)	Gross amount received / (paid #) in money		184,46,602	NIL	NIL	133,49,515	NIL	48,54,369
	(i) against service provided		184,46,602	NIL	NIL	133,49,515	NIL	48,54,369
	(ii) in advance for service to be provided		NIL	NIL	NIL	NIL	NIL	NIL
(b)	Money equivalent of considerations received / (paid #) in a form other than money		NIL	NIL	NIL	NIL	NIL	NIL
(c)	Value on which service tax is exempt / not payable		184,46,602	NIL	NIL	133,49,515	NIL	48,54,369
	(i) Amount received against export of service		NIL	NIL	NIL	NIL	NIL	NIL
	(ii) Amount received / (paid #) towards exempted service (other than export of service, i.e., (i) above)		184,46,602	NIL	NIL	133,49,515	NIL	48,54,369
	(iii) Amount received as / (paid to #) pure agent (Please see instructions)		NIL	NIL	NIL	NIL	NIL	NIL
(d)	Abatement amount claimed		NIL	NIL	NIL	NIL	NIL	NIL
(e)	Taxable value = (a+b) minus (c+d)		184,46,602	NIL	NIL	133,49,515	NIL	48,54,369
(f)	Service tax rate wise break-up of taxable value = (e)		84,46,602	NIL	NIL	133,49,515	NIL	48,54,369
	(i) Value on which service tax is payable @ 5%		NIL	NIL	NIL	NIL	NIL	NIL
	(ii) Value on which service tax is payable @ 8%		NIL	NIL	NIL	NIL	NIL	NIL
	(iii) Value on which service tax is payable @ 10%		NIL	NIL	NIL	NIL	NIL	NIL
	(iv) Value on which service tax is payable @ 12%		NIL	NIL	NIL	NIL	NIL	NIL
	(v) other rate, if any, (please specify)	4%	184,46,602	NIL	NIL	133,49,515	NIL	48,54,369
(g)	Service tax payable = (5% of f(i) + 8% of f(ii) + 10% of f(iii) + 12% of f(iv) + f(v) X other rate)		7,37,864	NIL	NIL	8,33,981	NIL	1,94,125
(h)	Education cess payable (@2% of Service tax)		14,75,80	NIL	NIL	16,67,80	NIL	3,88,4
(i)	Secondary and higher education cess payable (@ 1% of Service tax) (Please see instructions)		7,37,864	NIL	NIL	8,33,981	NIL	1,94,125

\*\* 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 to service receiver liable to pay service tax.

Month / Quarter**	Apr/Oct	May/Nov	June/Dec	July/Jan	Aug/Feb	Sept/Mar
(1)	(2)	(3)	(4)	(5)	(6)	(7)

(II) Taxable amount charged						
(i) Gross amount for which bills/invoices/challans are issued relating to service provided / to be provided (including export of service and exempted service)	184948602	NU	NU	13349555	NU	194125
(k) Money equivalent of other consideration charged, if any, in a form other than money	NU	NU	NU	NU	NU	NU
(l) Amount charged for exported service provided / to be provided ^	NU	NU	NU	NU	NU	NU
(m) Amount charged for exempted service provided / to be provided (other than export of service given at (l) above)	18446602	NU	NU	13349555	NU	485335
(n) Amount charged as pure agent (Please see instructions)	NU	NU	NU	NU	NU	NU
(o) Amount claimed as abatement	NU	NU	NU	NU	NU	NU
(p) Net taxable amount charged = (j+k) minus (l+m+n+o)	18446602	NU	NU	13349555	NU	194125

\*\*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 to service receiver liable to pay service tax.

4. Amount of service tax paid in advance under sub-rule(1A) of rule 6

Month / Quarter**	Apr/Oct	May/Nov	June/Dec	July/Jan	Aug/Feb	Sept/Mar
(1)	(2)	(3)	(4)	(5)	(6)	(7)
(a) Amount deposited in advance	NU	NU	NU	NU	NU	NU
(b) Challan Nos.	NU	NU	NU	NU	NU	NU
(c) Challan dates	NU	NU	NU	NU	NU	NU

\*\*Assessee liable to pay service tax on quarterly basis may furnish details quarter wise i.e. Apr-Jun, Jul-Sep, Oct-Dec, Jan-Mar

4A. Service Tax, education cess and other amounts paid (To be filled by a person liable to pay service tax / Not to be filled by input service distributor)

Month / Quarter**	Apr/Oct	May/Nov	June/Dec	July/Jan	Aug/Feb	Sept/Mar
(1)	(2)	(3)	(4)	(5)	(6)	(7)

(I) Service tax, education cess, secondary and higher education cess paid						
(a) Service tax paid -	337864	NU	NU	533981	NU	139135
(i) in cash	337864	NU	NU	533981	NU	139135
(ii) by CENVAT credit^	NU	NU	NU	NU	NU	NU
(ia) by adjustment of amount earlier paid in advance and adjusted in this period under rule 6 (1A)	NU	NU	NU	NU	NU	NU
(iii) by adjustment of excess amount paid earlier and adjusted in this period under Rule 6(3) of ST Rules	NU	NU	NU	NU	NU	NU
(iv) by adjustment of excess amount paid earlier and adjusted in this period under Rule 6(4A) of ST Rules	NU	NU	NU	NU	NU	NU
(b) Education cess paid -	14259	NU	NU	15680	NU	3884
(i) in cash	14259	NU	NU	15680	NU	3884
(ii) by CENVAT credit^	NU	NU	NU	NU	NU	NU
(ia) by adjustment of amount earlier paid in advance and adjusted in this period under rule 6 (1A)	NU	NU	NU	NU	NU	NU

\*\*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

Month / Quarter**		Apr/Oct.	May/Nov.	June/Dec.	July/Jan.	Aug./Feb.	Sept/Mar.
(1)		(2)	(3)	(4)	(5)	(6)	(7)
(c)	(iii) by adjustment of excess amount paid earlier and adjusted in this period under Rule 6(3) of ST Rules	Nil	Nil	Nil	Nil	Nil	Nil
	(iv) by adjustment of excess amount paid earlier and adjusted in this period under Rule 6(4A) of ST Rules	Nil	Nil	Nil	Nil	Nil	Nil
	Secondary and Higher education cess paid	73378	5340	5340	5340	1942	1942
	(i) In cash	73378	5340	5340	5340	1942	1942
(d)	Other amounts paid	Nil	Nil	Nil	Nil	Nil	Nil
	(i) Arrears of revenue paid in cash	Nil	Nil	Nil	Nil	Nil	Nil
	(ii) Arrears of revenue paid by credit	Nil	Nil	Nil	Nil	Nil	Nil
	(iii) Arrears of education cess paid in cash	Nil	Nil	Nil	Nil	Nil	Nil
(d)	(iv) Arrears of education cess paid by credit	Nil	Nil	Nil	Nil	Nil	Nil
	(v) Arrears of Sec. & higher edu. cess paid by cash	Nil	Nil	Nil	Nil	Nil	Nil
	(vi) Arrears of Sec. & higher edu. cess paid by credit	Nil	Nil	Nil	Nil	Nil	Nil
	(vii) Interest paid	1445	Nil	Nil	Nil	Nil	2000
	(viii) Penalty paid	Nil	Nil	Nil	Nil	Nil	2000
	(ix) Section 73A amount paid	7,6000	Nil	Nil	55000	Nil	20000
	(x) Any other amount (please specify)	Nil	Nil	Nil	Nil	Nil	Nil

(II) Details of Challan (Vide which service tax education cess, secondary and higher education cess and other amounts paid in cash)

(a) Challan Nos.	(b) Challans Date (May please be furnished in the order of Challan Nos. furnished above)	(i)				(ii)				(iii)				(iv)				
		(i)	(ii)	(iii)	(iv)	(i)	(ii)	(iii)	(iv)	(i)	(ii)	(iii)	(iv)	(i)	(ii)	(iii)	(iv)	

\*\* Assessee liable to pay service tax on quarterly basis may give detail quarter wise i.e. Apr-Jun, Jul-Sep, Oct-Dec, Jan-Mar  
 Not applicable to service receiver liable to pay service tax.





5A. Amount payable under rule 6(3) of the Cenvat Credit Rules, 2004

Month	Apr/Oct	May/Nov	June/Dec	July/Jan	Aug/Feb	Sept/Mar
(a) Value of exempted goods cleared	(2)	(3)	(4)	(5)	(6)	(7)
(b) Value of exempted goods destroyed						
(c) Amount paid under rule 6(3) of Cenvat Credit Rules, 2004, by CENVAT Credit						
(d) Amount paid under rule 6(3) of Cenvat Credit Rules, 2004, by cash						
(e) Total amount paid = (c) + (d)						
(f) Challan Nos, vide which amount mentioned in (d) is paid						
(g) Challan dates						

5B. CENVAT Credit taken and utilized

Month / Quarter**	Apr/Oct	May/Nov	June/Dec	July/Jan	Aug/Feb	Sept/Mar
(i) CENVAT Credit of Service Tax and Central Excise Duty	(2)	(3)	(4)	(5)	(6)	(7)
(a) Opening balance						
(b) Credit taken						
(i) On inputs						
(ii) On capital goods						
(iii) On input services received directly						
(iv) As received from input service distributor						
(v) From inter unit transfer by a LUTU *						
Total credit taken = ((i)+(ii)+(iii)+(iv)+(v))						
(c) Credit utilized						
(i) For payment of service tax						
(ii) For payment of education cess on taxable service						
(iii) For payment of excise or any other duty #						
(iv) Towards clearance of input goods and capital goods removed as such						
(v) Towards inter unit transfer of LUTU*						
(vi) For payment under rule 6(3) of the Cenvat Credit Rules, 2004						
Total credit utilized = ((i)+(ii)+(iii)+(iv)+(v)+(vi))						
(d) Closing Balance of CENVAT credit = (a+b-c)						

# 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 LUTU. In case LUTU has centralized registration for service tax, this information is not applicable in respect of service tax credit.

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

Month / Quarter**	Apr/Oct.	May/Nov.	June/Dec.	July/Jan.	Aug./Feb.	Sept./Mar.
(1)	(2)	(3)	(4)	(5)	(6)	(7)

(III) CENVAT Credit of Education Cess and Secondary and Higher Education Cess

(a)	Opening balance							
(b)	Credit of education cess and secondary and higher education cess taken, -							
	(i) On inputs							
	(ii) On capital goods							
	(iii) On input services received directly							
	(iv) As received from input service distributor							
(b)	(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))							
(c)	Credit of education cess and secondary and higher education cess 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 and capital goods removed as such							
	(iv) Towards inter unit transfer of LTU*							
(d)	Total credit of education cess and secondary and higher education cess utilized = ((i)+(ii)+(iii)+(iv))							
	Closing Balance of Education cess and secondary and higher education cess = (a+b-c)							

# 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.

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

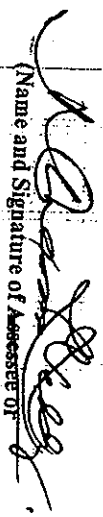
6. Credit details for input service distributor (To be filled only by an input service distributor)

Month / Quarter	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Month / Quarter	Apr/Oct.	May/Nov.	June/Dec.	July/Jan.	Aug./Feb.	Sept./Mar.	
(I) CENVAT Credit of Service Tax and Central Excise Duty							
(a) Opening Balance of CENVAT Credit							
(b) Credit taken (for distribution) on input service							
(c) Credit distributed							
(d) Credit not eligible for distribution (rule 7(b) of CENVAT Credit Rules, 2004)							
(e) Closing balance							
(II) CENVAT credit of education cess and secondary and higher education cess Credit							
(a) Opening balance of Education Cess and secondary and higher education cess credit							
(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							
(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							

7. 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 and the rules made thereunder.
- (c) I / We have paid duty within the specified time limit and in case of delay, I / We have deposited the interest leviable thereon.

Place:  
Date:

  
(Name and Signature of Assessee or Authorized Signatory)

I hereby acknowledge the receipt of your ST-3 return for the period

Date:  
Place:

ACKNOWLEDGEMENT

(Signature of the Officer of Central Excise & Service Tax)  
(With Name & Official Seal)

**INSTRUCTIONS**

**A Instructions to fill the Form**

- General instructions:**
- (i) If there is a change in the address or any other information as provided by the assessee in Form ST-1 or as contained in Form ST-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.
  - (ii) Please indicate 'NA' against entries which are not applicable.
  - (iii) Please indicate 'nil' where the information to be furnished is nil.
- B Information to be furnished in the Form**

Column No. In Form	Instructions
1A	Fill 'Y' for yes, or 'N' for No.
2A	Name should be filled as mentioned in the Form ST-2 (Certificate of Registration issued by the department)
2B	STC No. is 15 digit PAN based service tax code No. issued to assessee in the Certificate of Registration of in the Annexure - III (prescribed vide circular No. 35/3/2001-ST dated 27.08.2001)
2C	Premises code is issued to an assessee under S.No. 5 of the Certificate of Registration (Form ST-2). An assessee to whom premises code has not been issued, may furnish location code as issued to him in the Annexure III (prescribed vide circular No. 35/3/2001-ST dated 27.08.2001)
3	This entry is to be filled separately for each taxable service on which service tax is to be paid by assessee.
3A/1/3B	Name of taxable service and their clause in sub-section (105) of section 65 are as given in the Annexure to these instructions. Sub-clauses from (zzx) to (zzzd) to come into effect from a date to be notified after enactment of the Finance Bill, 2007.
3C1	Fill 'Y' for yes, and 'N' for No.
3C2	Details of notification is to be furnished in the format NN-YYYY (NN=Notification No. and YYYY = Year of issue).
3D	In case abatement is availed under notification No. 1/2006-ST, the relevant S.No. of this notification may be furnished.
3E1 & 2	Fill 'Y' for yes and 'N' for No. In case of provisional assessment, order No. for provisional assessment, if any, may please be furnished.
3F(1)	(i) An assessee liable to pay service tax on quarterly basis may furnish details quarter wise i.e. Apr-Jun, Jul-Sep, Oct-Dec, Jan-Mar. (ii) The service receiver liable to pay service tax should indicate the amount paid by him to service provider. Gross amount received (or paid in case of service receiver) against service provided is the total amount received for taxable service on provision of service (including any amount received for continuous service), and (A) It includes:- (a) amount received towards exported service, (b) amount received towards exempted service (other than export), and (c) amount received as pure agent. (B) It excludes:- (a) service tax, (b) education cess, (c) secondary and higher education cess, (d) any amount excluded in terms of rule 6(2) of the Valuation Rules, 2006 (Please see the example below).
3F(1)(a)(i)	Gross amount received (or paid in case of service receiver) in advance is the total amount received for the taxable service before provision of service and: (A) It includes:- (a) amount received towards exported service (b) amount received towards exempted service (other than export) and (c) amount received as pure agent. (B) It excludes:- (a) service tax, (b) education cess, (c) secondary and higher education cess (d) any amount excluded in terms of rule 6(2) of the Valuation Rules, 2006 (Please see the example below).
3F(1)(b)	(i) The value of consideration received for 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 67 of the Act. (Please see the example below)
3F(1)(c)(i)	Exempted service refers to the taxable service which is exempt for the time being under a notification issued by the Government. (Please see the example below)
3F(1)(c)(ii)	Pure Agent may be understood as defined in Explanation 1 to rule 6 of the Service Tax (Determination of Value) Rules, 2006
3F(1)(d)	Abatement refers to the portion of value of taxable service which is exempt in terms of a notification such as notification No. 1/2006
3F(1)(e)	Service tax rate wise break of value may be furnished
3F(1)(f)	Secondary and higher education cess would be applicable to service tax from the date of enactment of Finance Bill 2007
3F(1)(g)	An assessee liable to pay service tax on quarterly basis may furnish details quarter wise i.e. Apr-Jun, Jul-Sep, Oct-Dec, Jan-Mar.
3F(1)(h)	(i) The service receiver liable to pay service tax should indicate the amount billed to him by a service provider. (ii) The service receiver liable to pay service tax should indicate the amount relating to the particular taxable service, in the specified period, whether received or not, includes:- (a) amount charged towards exported service, (b) amount charged towards exempted service (other than export of service) and (c) amount charged by a pure agent.

	(B) It excludes: (a) service tax, 10% educational cess, secondary and higher education cess, any amount excisable in terms of rule 61(2) of the Valuation Rules, 1995 (b) The value of consideration paid for (or paid in case of service received, in a form other than money) is to be estimated in equivalent money value, (please see the example below) (c) Gross amount charged for the exempted service is the amount payable for the service which is exempt for the time being under a notification other than the exemption (please see the example below) (d) Money may be understood as defined in section 67 of the Act. Example: A banking and other financial services (BFS) providers has the following information to furnish in the ST-3 return, for a month namely: Head			
A	Gross amount for BFS (including export, exempted service and as pure agent) already provided later	12000	10000 (out of this taxable amount Rs. 1000 received for the period July 2004, and Rs. 2000 received for the period March 2005, and rest of the amount is for the period July 2006 onwards)	
B	Advance for services	3000	4000	
C	Export of Service	2000	1500	
D	Pure Agent	250	500	
E	Money equivalent of other consideration received	1000	500 (out of this, Rs. 450 pertains to March, 2005)	
F	Interest on Financial leasing	500	300	
G	Bill discounting and overdraft service	200	500 (out of this, Rs. 150 pertains to July, 2004)	
H	Service to Government for collection of taxes	400	600 (out of this, Rs. 150 pertains to July, 2004)	
I	Service provided in SEZ	1000 (this received)	800 (amount paid to service provider)	
J	Bills received / amount paid to sign service provider subsequent to receipt of service	750	500 (amount paid to service provider)	
(i)	Advance bills received and advance amount paid to such service provider			
(ii)	Notification under which benefit of exemption / overdraft			
(iii)	No. 29/2004-ST w.r.t. bill discounting / overdraft			
(iv)	No. 13/2004-ST w.r.t. services provided to Government for collection of taxes			
(v)	No. 4/2004-ST w.r.t. services provided in SEZ			

Abatement available to assessee:  
 (a) Notif. No. 14/2006 - ST, abatement equal to 90% of the interest amount on financial leasing service.

The entries shall be furnished by this assessee at S.No. 3 in the following manner:  
 Separate entries will be made for taxable services provided by the assessee and taxable services received on which assessee is liable to pay service tax in terms of rule 2(d)(iv) of the ST Rule, 1994, even though both, the service provided and the service received, on which assessee is liable to pay service tax, are same, i.e. banking and other financial services.

(A) Entries to be furnished for BFS services provided by the assessee	S.No.	Information / figures furnished (as indicated in bold)	S.No.	Information / figures furnished (as indicated in bold)
3A1 (service provided)	3F(1)(d)	Banking & other financial services	3F(1)(e)	= 90% of 1200 = 1080
3A2	3F(1)(f)	Tick (i)	3F(1)(g)	= (10000 + 4000 + 900) - (1500 + 1600 + 500 + 1080) = 10220
3B	3F(1)(h)	Zm	3F(1)(i)	Value (ST payable @ 5%) = Nil Value (ST payable @ 8%) = (1000 - 150) = 850 Value (ST payable @ 10%) = (2000 - 450) = 1550 Value (ST payable @ 12%) = 7820 Value (ST payable @ 10% of 850 + @ 10% of 1550 + @ 12% of 7820 = 88 + 155 + 938 = 1161 (rounded off).
3C1	3F(1)(g)	Y	3F(1)(h)	= @ 2% of (155 + 938) = 22 (rounded off)
3C2	3F(1)(i)	(i) 29-2004 (ii) 13-2004 (iii) 4-2004 (iv) 14-2006	3F(1)(j)	= Nil, as this cess will come into effect only after enactment of Finance Bill, 2007
3D	3F(1)(k)	NA	3F(1)(l)	= (12000 + 3000) = 15000
3E1	3F(1)(m)	NA	3F(1)(n)	Nil
3E2	3F(1)(o)	NA	3F(1)(p)	500 + 200 + 400 = 1100
3F(1)(a)(i)	3F(1)(q)	10000	3F(1)(r)	250
3F(1)(a)(ii)	3F(1)(s)	4000	3F(1)(t)	@ 90% of 1000 = 900
3F(1)(b)	3F(1)(u)	900	3F(1)(v)	= (15000 - (2000 + 1100 + 250 + 900)) = 10750
3F(1)(c)(i)	3F(1)(w)	1500		
3F(1)(c)(ii)	3F(1)(x)	= 700 + 300 + 600 = 1600		
3F(1)(c)(iii)	3F(1)(y)	500		

In respect of B & FS services received from a service provider who is outside India and doesn't have establishment in India, this assessee is liable to pay service tax in terms of rule 2(d)(v) of the ST Rules, 1994. On such service separate entries would be made at S. No. 3 in the following manner.

S.No.	Information / figures furnished (as indicated in bold)	S.No.	Information / figures furnished (as indicated in bold)
3A1 (Service received)	Banking & other financial services	3F(1)(d)	Nil
3A2	TICK (I)	3F(1)(e)	800+500 = 1300
3B	ZW	3F(1)(f)	1300
3C1	NA	3F(1)(g)	$\approx 0/12\%$ of 1300 = 156
3C2	NA	3F(1)(h)	$\approx 0/2\%$ of 156 = 3 rounded off.
3D	NA	3F(1)(i)	Nil. As this case will come into effect only after enactment of Finance Bill 2007
3E2	NA	3F(1)(j)	1400+750 = 1750
3F(1)(a)(i)	800	3F(1)(k)	Nil
3F(1)(a)(ii)	500	3F(1)(l)	Nil
3F(1)(b)	Nil	3F(1)(m)	NA
3F(1)(c)(i)	NA	3F(1)(n)	Nil
3F(1)(c)(ii)	Nil	3F(1)(o)	Nil
3F(1)(c)(iii)	Nil	3F(1)(p)	= 1750
4A(1)(a)(iii)	Rule 6(3) allows adjustment of such service tax amount which was paid earlier in respect of taxable service not provided wholly or partially by the service provider. Example: A service provider receives an advance of Rs. 1000 on which he pays a service tax of Rs. 120. 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 of Rs. 120 in day of the future liability of service tax.		
4A(1)(a)(iv)	Rule 6(4A) allows adjustment of such service tax amount paid in preceding months or quarter, which is in excess of the service tax liability for such month or quarter. Example: A service provider having centralized registration pays an amount of Rs. 1000 as service tax for services provided by him from his five branches. However, 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 can adjust this excess amount of Rs. 100 against service tax liability for succeeding month / quarter.		
4A(1)(c)	Secondary and higher education cess would be applicable to service tax from the date of enactment of Finance Bill 2007.		
4A(1)(d)(i) to (iv)	Arrears of revenue includes:- (a) amount that was payable earlier but not paid; (b) amount pending recovery on finalization of application or appellate stage, as the case may be; (c) amount pending adjudication or pending in appeals; or (d) amount arising on finalization of provisional assessment etc.		
4A(1)(d)(vii)	Furnish the amount paid in terms of section 73A (any amount collected in excess of the service tax amount assessed or determined and paid on any taxable service)		
4A(1)(d)(viii)	Any other amount may be specified. (It may include amount pre-deposit amount as ordered by Commissioner (Appeal) or Appellate Tribunal or Courts).		
4B	Against sources of documents, following details may be furnished:- -For adjustment under rule 6(3), furnish details of earlier return, from where excess amount is derived in the format YYYY-YY-III/Month, CYYY-YY is the financial year and III is the half year for which this return pertains, i.e., 2004-05-III/Nov refers to the month Nov in II half yearly return of FY 2004-05). -For adjustment under rule 6(4A), furnish details of acknowledgment No. of return to Superintendent as required to be furnished in the rules. -For arrears, interest and penalty, the source document / period is as follows: (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./for Order In Appeal No. of any other order etc.		
4C	In case service tax liability is not discharged in full during the period of return, the details of short payment may be indicated against this S.No.		
5B	(i) The terms "input", "capital goods", "input services" and "input service distributor" may be understood as defined in the CENVAT Credit Rules, 2004. (ii) Against S.No. 5B(1)(b)(iii) furnish the details of credit availed on input services received directly by the assessee in other words, 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 towards purchases of input services and issues invoices/bills/slip/stallans for distribution of such credit in terms of the CENVAT Rules, 2004). Credit received from "input service distributor" has to be shown separately against S.No. 5B(1)(b)(iv). (iii) Against S.No. 5B(1)(b)(v) furnish the details of service tax credit as received from "input service distributor". (iv) Above instructions for S.No. 5B(1)(b)(iii), S.No. 5B(1)(b)(iv), will mutually interlink and apply to S.No. 5B(1)(b)(iii), S.No. 5B(1)(b)(iv) for furnishing details of credit taken of "education cess" and "secondary and higher education cess".		
6	This information has to be furnished only by an input service distributor.		

Sub-clause No. (under clause 105 ) of section 65 ) Annexure to Instructions

Name of taxable service	Sub-clause No.	Name of taxable service	Sub-clause No.
Stock broking	(a)	Erection, commissioning or installation	(zzd)
Telephone connection	(b)	Franchise service	(zze)
Radio Paging	(c)	Internet Cafe	(zzf)
General Insurance	(d)	Management, maintenance or repair	(zzg)
Advertising agency	(e)	Technical testing and analysis	(zzh)
Courier	(f)	Technical inspection and certification	(zzi)
Consulting Engineer	(g)	Forex exchange broking by a broker other than those covered in 'zri' above	(zzk)
Custom House Agent	(h)	Port other than those covered in 'zri' above	(ztl)
Steamer Agent	(i)	Airport Services	(zzm)
Cleaning and Forwarding	(j)	Air Transport of Goods service	(ztn)
Man Power Recruitment and Supply agency	(k)	Business exhibition service	(zto)
Air travel Agent	(l)	Goods Transport by Road	(ztp)
Mandap Keeper	(m)	Construction of commercial complex	(ztr)
Tour Operator	(n)	Intellectual Property Service	(zts)
Rent-a-Cab operator	(o)	Opinion Poll Service	(ztt)
Architect	(p)	Outdoor Catering Service	(ztu)
Interior Decorator	(q)	Television and Radio Programme Production	(ztv)
Management Consultant	(r)	Survey and Exploration of Minerals,	(zta)
Chartered Accountant	(s)	Randall and Shantiana	(ztb)
Cost Accountant	(t)	Travel Agent	(ztc)
Company Secretary	(u)	Forward Contract Brokerage	(ztd)
Real Estate Agent / Consultant	(v)	Transport through Pipeline	(zte)
Security Agency	(w)	Site Preparation	(ztf)
Credit Rating Agency	(x)	Dredging	(zth)
Market Research agency	(y)	Survey and map making	(zti)
Underwriter	(z)	Cleaning service	(ztk)
Scientific and Technical consultancy	(za)	Clubs and associations service	(ztl)
Photography	(zb)	Packaging service	(ztn)
Convention services	(zc)	Mailing list compilation and mailing	(zto)
Leased circuits	(zd)	Residential duplex construction	(ztp)
Telex	(ze)	Registrar service to an issue	(ztr)
Facsimile (FAX)	(zf)	Share transfer agent	(zts)
On-line information and database access and / or retrieval	(zg)	Automated teller machine operation, management, maintenance	(ztt)
Video tape production	(zh)	Recovery agents	(ztu)
Sound recording	(zi)	Sale of space for advertisement	(ztv)
Broadcasting	(zj)	Sponsorship	(zta)
Insurance auxiliary (General Insurance)	(zk)	International air travel	(ztb)
Banking and other financial	(zl)	Containerized rail transport	(ztc)
Port services	(zm)	Business support service	(ztd)
Authorized automobile repair and maintenance	(zn)	Auction service	(zte)
Beauty Parlour	(zo)	Public relation management	(ztf)
Cargo handling	(zp)	Ship management	(zth)
Cable Operators	(zq)	Internet telephony	(zti)
Dry cleaning	(zr)	Ship Cruise tour	(ztl)
Event Management	(zs)	Credit card/charged card	(zto)
Fashion designer	(zt)	Telecommunication service	(ztp)
Health Club and Fitness Centres	(zu)	Development and supply of content for telecom, advertising and	(ztr)
Life Insurance	(zv)	online information database (retrievable)	(ztt)
Insurance auxiliary service (life insurance)	(zw)	Assets management service (other than 'zri' above)	(ztu)
Mining of mineral, oil or gas	(zx)	Design services (other than (q) and (zv) above)	(ztv)
Renting of immovable property	(zy)	Information technology software services for furtherance of business or commerce	(zta)
Works contract	(zz)	Management of investment under unit linked insurance business (ULIP) scheme	(ztb)
Rail travel agent	(zza)	Stock exchange services	(ztc)
Storage and Warehousing	(zzb)	Services provided by a recognized/registered association (commodity exchanges) for	(ztd)
Business auxiliary	(zzc)	transaction in goods or forward contracts	(zte)
Commercial coaching or training	(zcd)	Processing and cleaning house services in relation to processing, cleaning and	(ztf)
		settlement of transactions in securities, goods or forward contracts	(zth)
		Supply of taxable goods services	(zti)

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• I AMRFI S. Natarajamiah / Ph : 24754151 • I AM DURI JON SYEMERANI COUNCILOR Hyderabad / Ph : 66997576



# ALPINE ESTATES

# 103, First Floor, Hariganga Complex, Raigunj, 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 21.02.2009.

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.

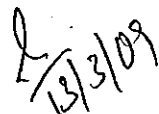
Under the circumstances we request you to please drop any proceedings as mentioned in your summons (Reference 1). Further, we wish to withdraw our service tax registration. We request you to please do the needful. We are willing to provide any further details or documents that you may require.

Thank You.

Yours sincerely,  
For ALPINE ESTATES,

  
Soham Modi

Office of the  
Commissioner  
Central Excise & Service Tax

  
Hyd - II, Commissionerate  
HYDERABAD.

Six,  
for u r reference.  
5/8/09.

Circular No. 108/02/2009 - ST

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 29<sup>th</sup> January 2009

**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.

2. A view has been expressed that once an agreement of sale is entered into 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



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)

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.

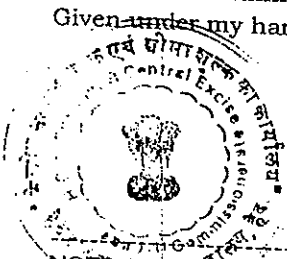
You are hereby summoned under Section 14 of the Central Excise Act., 1944 made applicable to Service Tax matters under Section 83 of the Finance Act, 1994 to appear before me in person on the **9<sup>th</sup> day of February, 2009 at 14.30 Hrs.** in my office situated at III Floor, Shakkur Bhavan in 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, 27<sup>th</sup> 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 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 IPC, 1860.

**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

To  
M/s. Modi Developers,  
5-4-187/3&4, 3<sup>rd</sup> 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 –

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

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

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

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

- (a) The Board vide Circular 96/7/2007-ST dated 23.8.2007 has clarified as under
- (b) Whether service tax is liable under construction of complex service [section 65(105)(zzzh)] on builder, promoter, developer or any such person,-

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

**Clarification:**

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

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

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

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

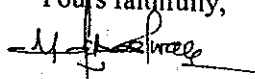
As per section 65(105) (zzzza) Works contract means a contract wherein -

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

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

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

Yours faithfully,

  
(R.S. MAHESHWARI)  
JOINT COMMISSIONER  
SERVICE TAX

**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.

3. 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, export of 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 service tax stand withdrawn.

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. Unique 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 code. First three digits of the reference code relates to a specific taxable service. In addition to 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.  
997 – Export of Services

<p>9.01 / 23.08.07</p>	<p>Whether service tax is liable under construction of complex service [section 65(105)(zzzh)] on builder, promoter, developer or any such person,-</p> <p>(a) who gets the complex built by engaging the services of a separate contractor, and</p> <p>(b) who builds the residential complex on his own by employing direct labour?</p>	<p>(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.</p> <p>(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)].</p> <p>(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,-</p> <p>(i) service provider and service recipient relationship does not exist,</p> <p>(ii) services provided are in the nature of self-supply of services.</p> <p>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.</p>
<p>086.01 / 23.08.07</p>	<p>An international journey commencing from an Indian airport involves stopover / transfer at intermediate airports outside India before reaching the destination (say Mumbai-Dubai-London-New York).</p> <p>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?</p>	<p>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.</p> <p>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.</p>
<p>086.02 / 23.08.07</p>	<p>An international journey (say Delhi-Mumbai-London) includes travel in a domestic sector (Delhi - Mumbai) as part of the international journey.</p> <p>Whether service tax is liable on the value of whole journey or after excluding the value attributable to the domestic sector</p>	<p>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</p>