Hiregange & Associates
Chartered Accountants

CA

14.06.2018
To
The Deputy/Assistant Commissioner of Central Tax,
Secunderabad GST Division,
Secunderabad GST Commissionerate,
Salike Senate, D. No. 2-4-416 & 417,
Ramgopalpet, MG Road,
Secunderabad- 500 003.

Dear Sir,

Sub: Proceedings under SCN C. No. V/24/15/03/2018-Adjn dated 16.04.2018 issued to M/s. Kadakia & Modi Housing, #5-4-187/3 & 4, II Floor, Soham Mansion, MG Road, Secunderabad- 500 003

We have been authorized to reply and represent M/s. Kadakia & Modi Housing. We are herewith to submit the Reply to SCN, Authorization letter and other annexure etc.

Kindly note that there is a change in our address of the office premises

From	**To**
"Basheer Villa", House No.8-2-268/1/16/B, II Floor, Sriniketan Colony, Road No.3, Banjara Hills, Hyderabad – 500034 Landline: 040-0062934/23606181	**4th Floor, West Block, Anushka Pride, Opp. Ratnadeep Supermarket, Road Number 12, Banjara Hills, Hyderabad, Telangana 500034**

Hence we request you to make future correspondence to the above mentioned new address

Kindly acknowledge the receipt of the above.

Thanking You,
Yours faithfully,
For Hiregange & Associates
Chartered Accountants

Hiregange & Associates Chartered Accountants Hyderabad

Venkata Prasad
Partner

O/o. Asst./Dy. Commissioner of Central Tax, Secunderabad GST Division, Secunderabad
15 ... 2018
I.C. No. ...

Office Bangalore
2nd Floor (Above Corporation Bank) 26th Main, 4th "T" Block, Jayanagar, Bangalore-560 041 Tele. +91 80 4121 0703, Telefax. 080 2653 6404 / 05 E-mail: rajesh@hiregange.com
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Visakhapatnam Flat No. 101, D.No. 9-19-18, Sai Sri Kesav Vihar, Behind Gothi Sons Show room, CBM Compound, Visakhapatnam-530 003 Tele. +91 891 600 9235 Email: anil@hiregange.com
Gurgaon 509, Vipul Trade Centre, Sector 48, Sohna Road, Gurgaon, Harayana-122 009 Tele:+91 85109 50400 Email: ashish@hiregange.com
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BEFORE THE DEPUTY/ASSISTANT COMMISSIONER OF CENTRAL TAX AND CUSTOMS, SECUNDERABAD GST DIVISION & SECUNDERABAD COMMISSIONERATE, SALIKE SENATE, D. NO. 2-4-416 & 417, RAMGOPALPET, MG ROAD, SECUNDERABAD-500003

Sub: Proceedings under C. No. V/24/15/03/2018-Adjn dated 16.04.2018 issued to M/s Kadakia& Modi Housing, #5-4-187/3 & 4, II Floor, Soham Mansion, MG Road, Secunderabad - 500003

FACTS OF THE CASE:

A. M/s.Kadakia& Modi Housing (hereinafter referred as 'Noticee') *inter alia* engaged in sale of residential villas on their own land under the name & style of 'Bloomdale'. They are registered with department vide STC No. AAHFK8714ASD001 w.e.f. 25.04.2010

B. In many cases, sale deed is executed for the entire sale consideration. However in some cases, **Sale deed is being executed for the semi-finished construction along with an agreement of construction.** Sale deed is registered and appropriate 'Stamp Duty' has been discharged on the same.

C. Noticee collects amounts from their customers towards:

   i. Sale deed for sale of semi-finished villa along with land;
   ii. Construction agreement (includes for *'common amenities/facilities'*);
   iii. Other taxable receipts (additions/alternations works)
   iv. Other non-taxable receipts (Corpus fund, electricity deposit, water deposit & service tax);
   v. Taxes/duties (VAT, stamp duty, service tax etc.,);

D. SCN vide O.R.No. 99/2016-Adjn. (ST) (Commr)dated 22.04.2016was served for the period October 2010 to March 2015. The demands

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proposed in the above SCN was set aside by the Hon'ble Commissioner (Appeals) vide Order-In-Appeal: HYD-SVTAX-000-AP2-0210-17-18-ST dated 14.09.2017 (copy enclosed as annexure II). The revenue department filed the appeal before Hon'ble CESTAT, Hyderabad vide Appeal No. ST/30115/2018-ST [DB].

E. The detailed working of the receipts and the attribution of the said receipts was already provided to the Department authorities, identified receipt wise and flat wise. The summary of the same is provided hereunder:

Description	Receipts	Non taxable	Taxable
Amount received towards sale deed	16,505,950	16,505,950	0
Amount received towards agreement of construction	4,887,647		4,887,647
Amount received towards other taxable receipts	28,822	0	28,822
Amount received towards other non-taxable receipts	3,749,346	3,749,346	0
Amount received towards VAT, Registration charges, etc	1,190,570	1,190,570	0
Total	**26,362,335**	**21,445,866**	**4,916,469**

(Statement showing receipts towards various flats is enclosed as Annexure III)

F. Accordingly, the value of taxable services constituted 40% of Rs.49,16,469 i.e. Rs.19,66,588/- and the service tax thereon @ 12.36%/14%/14.5%/15% constituted Rs.2,87,934/-. It was also explained that the actual payment of service tax amounted to Rs.2,05,803.

G. Noticee received present SCN vide C.No. V/24/15/03/2018-Adjn dated 16.04.2018 as to why

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i. An amount of Rs.14,48,436/- should not be demanded as per Para-4 above towards "Works Contract Service" rendered by them during April, 2015 to June, 2017 in terms of Section 73(1) of the Finance Act, 1994; on the grounds discussed supra; and

ii. Interest should not be demand at (i) above under Section 75 of the Finance Act, 1994; and

iii. Penalty should not be imposed on them under Section 76 of the Finance Act, 1994 for the contravention of Rules and Provisions of the Finance Act, 1994 and

iv. Penalty should not be imposed on them under Section 77 of the Finance Act, 1994

Submissions:

1. Noticee submits that undoubtedly they are discharging service tax on construction agreements thereby paying service tax on activity as proposed by impugned SCN (Para 2 of the SCN). SCN included the value of sale deeds only at the time of quantifying the demand. As seen from the operative part of SCN, it is clear that it is only sole allegation of SCN (Para 2) that construction agreements are subject to service tax under the category of "works contract", no allegation has been raised to demand service tax on the sale deed value.

2. As stated in the background facts, the Noticee started paying service tax on the value of "construction agreements" from July 2012 onwards. Thereafter, the said taxes have been regularly paid. On a perusal of the SCN, it is evident that the issue in the current SCNs is therefore limited to the aspect of quantification of demand.

3. Noticee submitted detailed statements showing the breakup of the receipts into receipts towards "sale deeds", receipts towards "construction agreements", receipts towards other taxable receipts and receipts towards other non-taxable receipts was provided (Copy of statement enclosed as Annexure III). Further, the details of amounts received towards taxable and non-taxable receipts flat-wise is given as Annexure III

4. However, on going through the SCN, it can also be observed that though the allegation is to demand service tax on construction agreements, the

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quantification is based on gross amounts mentioned above for all the activities including amounts received towards the "sale deeds".

5. It is therefore apparent that the SCN represents an error in quantification of the demand. It may be noted that the Noticee have regularly and diligently discharged Service Tax on the value of "construction agreements" after June 2012 onwards. The above is explained through a comparative chart provided below:

Particulars	**As per Noticee**	**As per SCN**
Gross Receipts	26,362,335	26,362,335
Less Deductions		
Sale Deed Value	16,505,950	0
VAT, Registration charges, stamp duty and other non taxable receipts	4,939,916	1,190,570
Taxable amount	4,916,469	25,171,765
Abatement @ 40%	1,966,588	10,068,706
Service Tax as applicable	287,934	1,448,436
Actually Paid	287,934	0
Balance Demand	0	1,448,436

6. The Noticee submit that once the apparent error in calculation is taken to its logical conclusion, the entire demand fails and therefore there is no cause of any grievance by the department on this ground.

7. Since the impugned SCN agree on the principle that service tax cannot be demanded on the value attributable to sale deeds, the Noticee is not making detailed grounds on the legal merits of the said claim and would like to submit the following broad lines of arguments:

   a. In many cases, the "sale deed" is entered into after the completion of the building and therefore the demand cannot be justified under the said entries.

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b. Till the stage of entering into a "sale deed", the transaction is essentially one of sale of immovable property and therefore excluded from the purview of Service Tax.

c. In any case, the deeming fiction for construction services prior to completion cannot be classified under works contract services since doing the same would render Section 66E(b) of Finance Act, 1994 & Notification 26/2012 ST dated 20.06.2012 redundant.

d. If at all a view is taken that the value of "sale deed" is liable to service tax, the benefit of the above notification should be granted after reclassification of the service.

8. Further, the Ld. Commissioner (Appeals) vide Order-In-Appeal: HYD-SVTAX-000-AP2-0210-17-18-ST dated 14.09.2017 agreed on the principle that sale deed value need not be includible in the taxable value while paying service tax. hence, the service tax demand on the same does not sustain and requires to be dropped.

9. The Appellants also reserve their right to make additional arguments as felt necessary on this aspect of service tax on value of "sale deeds" if it is ultimately held that this aspect could be taken up without an allegation in the SCN.

10. Similar to the claim for exclusion of sale deed value, the value attributable to stamp duty, electricity etc., need to be reduced. It is submitted that once the above deductions are allowed, the demand would be reduced to <u>NIL</u>

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11. Noticee submits that as brought in background facts, an amount of Rs. 287,934/- has already paid towards service tax on the amounts received towards construction agreements. Noticee humbly request Ld. Adjudicating authority to consider the same while passing the order.

12. Noticee humbly request the adjudicating authority to exclude the value of land from determination of service tax liability.

13. As the Noticee has not collected service tax from the buyer, the benefit of cum-tax u/s. 67(2) of Finance Act, 1994 requires to be given.

14. Without prejudice to the foregoing, noticee submits that when service tax itself is not payable, the question of interest does not arise. Noticee further submits that it is a natural corollary that when the principal is not payable there can be no question of paying any interest as held by the Supreme Court in Prathiba Processors Vs. UOI, 1996 (88) ELT 12 (SC). Similarly, the penalty also cannot be imposed in absence of the any short payment as alleged in the SCN.

15. Without prejudice to the foregoing, Noticee submits that penalty is proposed under section 77. However, the subject show cause notice has not provided any reasons as to why how penalty is applicable under section 77 of the Finance Act, 1994. Further, the Noticee is already registered under service tax under works contract service and filing returns regularly to the department. Accordingly, penal provisions mentioned under section 77 is not applicable for the present case. As the subject show cause notice has not considered these essential aspects,

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the proposition of levying penalty under section 77 is not sustainable and requires to be dropped.

16. Noticee craves leave to alter, add to and/or amend the aforesaid grounds.

17. Noticee wishes to be heard in person before passing any order in this regard.

For M/s Kadakia& Modi Housing

Authorized Representative

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BEFORE THE ASSISTANT COMMISSIONER OF CENTRAL TAX, SECUNDERABAD GST DIVISION, SECUNDERABAD GST COMMISSIONERATE, SALIKE SENATE, D. NO. 2-4-416 & 417, RAMGOPALPET, MG ROAD, SECUNDERABAD-500 003

Sub: Proceedings under C. No. V/24/15/03/2018-Adjn dated 16.04.2018 issued to M/s Kadakia & Modi Housing, #5-4-187/3 & 4, II Floor, Soham Mansion, MG Road, Secunderabad–500003

I, Soham Modi, partner of M/s Kadakia & Modi Housing, 5-4-187/3 & 4, II Floor, Soham Mansion, MG Road, Secunderabad–500003 hereby authorizes and appoint Hiregange & Associates, Chartered Accountants, Hyderabad or their partners and qualified staff who are authorised to act as authorised representative under the relevant provisions of the law, to do all or any of the following acts: -

a. To act, appear and plead in the above noted proceedings before the above authorities or any other authorities before whom the same may be posted or heard and to file and take back documents.

b. To sign, file verify and present pleadings, applications, appeals, cross-objections, revision, restoration, withdrawal and compromise applications, replies, objections and affidavits etc., as may be deemed necessary or proper in the above proceedings from time to time.

c. To Sub-delegate all or any of the aforesaid powers to any other representative and I/We do hereby agree to ratify and confirm acts done by our above authorised representative or his substitute in the matter as my/our own acts, as if done by me/us for all intents and purposes.

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

Executed this on 13th day of June 2018 at Secunderabad

KADAKIA AND MODI HOUSING SEC'BAD

Signature

I the undersigned partner of M/s Hiregange& Associates, Chartered Accountants, do hereby declare that the said M/s Hiregange& Associates is a registered firm of Chartered Accountants and all its partners are Chartered Accountants holding certificate of practice and duly qualified to represent in above proceedings under Section 35Q of the Central Excises Act, 1944. I accept the above said appointment on behalf of M/s Hiregange& Associates. The firm will represent through any one or more of its partners or Staff members who are qualified to represent before the above authorities.
Dated: 13.06.2018

<u>**Address for service**</u>:
Hiregange & Associates,
Chartered Accountants,
4th Floor, West Block,
Srida Anushka Pride,
Opp. Ratnadeep Supermarket,
Road Number 12, Banjara Hills,
Hyderabad 500 034

For Hiregange & Associates
Chartered Accountants

Hiregange & Associates Chartered Accountants Hyderabad

Venkata Prasad P
Partner (M. No. 236558)

I Partner/employee/associate of M/s Hiregange & Associates duly qualified to represent in above proceedings in terms of the relevant law, also accept the above said authorization and appointment.

Sl No.	Name	Qualification	Mem./Roll No.	Signature
01	Sudhir V S	CA	219109	
02	Lakshman Kumar K	CA	241726	

Hiregange & Associates Chartered Accountants Hyderabad