



सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX
हैदराबाद II आयुक्तालय HYDERABAAD II COMMISSIONERATE
KENDRIYA SHULK BHAVAN, L.B.STADIUM ROAD, BASHEER BAGH,
HYDERABAD- 4

OR No.163/2014 - Adjn.(ST)(Commr.)
C.No: IV/16/63/2012-ST.Gr.X

Dt. 26.9.2014

SHOW CAUSE NOTICE

Sub.: Service Tax - Non payment of Service tax on taxable Taxable services rendered by M/s. Modi Ventures - Issue of Show Cause Notice - Regarding.

M/s. Modi Ventures, #5-4-187/3 & 4, II Floor, Soham Mansion, MG Road, Secunderabad-500 003 (here-in-after referred as "**M/s. Modi Ventures**" or "**the assessee**") are engaged in providing "**Works Contract Service**". The assessee is a registered partnership firm and got themselves registered with the department vide **Service Tax Registration No. AAJFM0646DST001**.

2. As seen from the records, the assessee entered into 1) sale deed for sale of undivided portion of land together with semi finished portion of the flat and 2) agreement for construction, with each of their customers. On execution of the sale deed the right in property got transferred to the customer, hence the construction service rendered by the assessee thereafter to their customers under agreement of construction are taxable under Service Tax as there exists service provider and receiver relationship between them. As there involved transfer of property in goods in execution of the said construction agreements, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold **are taxable services under "Works Contract Service"**.

3. Accordingly, the following Show Cause Notice's have been issued to the assessee, by the Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II Commissionerate.

S. No.	SCN O.R No., Date	Period	Amount of Service Tax Demanded Rs.	OIO No. & date
1	O.R.No.125/2011 - Adjn. (ST) (Commr.) dt. 25.10.2011	04/2006 to 12/2010	1,38,13,576/-	Pending Adjudication
2	O.R.No.95/2012 - Adjn. (ST) (Commr.) dated 24.04.2012	01/2011 to 12/2011	60,63,492/-	Pending Adjudication

If a builder / promoter / developer constructing entire complex for a single person for personal use as residence by such person would not be subjected to service tax. Normally, a builder / promoter / developer constructs residential complex consisting of number of residential units and sells those units to different customers. So, in such cases the construction of complex is not meant for one individual entity. Therefore, as the whole complex is not constructed for single person the exclusion provided in **Sec. 65 (91a)** of the **Finance Act, 1994** does not apply. Further, the builder / promoter / developer normally enters into construction / completion agreements after execution of sale deed, till the execution of sale deed the property remains in the name of the builder / promoter / developer and the stamp duty is paid on the value consideration shown in the sale deed. As regards the agreements / contracts against which they render services to the customer after execution of sale deeds, there exists service provider and service recipient relationship between the builder / promoter / developer and the customer and such services are liable to service tax.

4. As per **Section 65 (105) (zzzza) of the Finance Act, 1994** 'taxable service under works Contract means any service provided or to be provided – to any person, by any other person, in relation to the execution of a Works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams'.

Explanation: For the purposes of this sub-clause, "works contract" means a contract wherein,

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

4.1 An optional Composition scheme for payment of Service Tax in relation to "Works Contract Service" is provided with effect from 01.6.2007 by '**Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007** as notified by **Notification No.32/2007-ST dated 22.5.2007**. Under the said scheme, an assessee has to pay an amount equivalent to **two percent** of the

gross amount charged for the Works Contract, excluding the Value Added Tax (VAT) or Sales Tax paid on transfer of property of goods involved in the execution of Works Contract. **With effect from 01.3.2008 the said rate of 2% is increased to 4% vide Notification No.7/2008-S.T. dated 01.3.2008.**

4.2 As per **Rule 3(2) of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007**, the provider of taxable service shall not take CENVAT credit of duties or cess paid **any inputs**, used in or in relation to the said works contract, under the provisions of **CENVAT Credit Rules, 2004**.

4.3 In terms of **Rule 2A of Service Tax (Determination of Value) Rules, 2006**, discussed above, the value of works contract service determined shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works and Value Added Tax (VAT) or sales tax, as the case may be, paid if any, on transfer of property in goods involved in the execution of the said works contract.

5. As per information furnished by the assessee vide their letter dated 17.09.2014 along with statements, it is seen that **"the assessee"** have rendered taxable services under the category of "Works Contract Services" during the period **January, 2012 to March, 2014**. The assessee had rendered services for a taxable value of Rs. 16,40,81,782/-. After deduction of VAT of Rs. 61,13,646/- the taxable value works out to **Rs. 15,79,68,136/-** on which service tax (including cess) works out to **Rs. 74,39,581/-**. As seen from the challans submitted by the assessee, an amount of **Rs. 29,22,154/-** was paid leaving an amount of **Rs. 45,17,427/-** unpaid/short paid for the services rendered during the said period, as detailed in the Annexure enclosed.

6. The sections **65B, 66B and 66D** as inserted in the Finance Act, 1994 by the Finance Act, 2012 w.e.f. 1-7-2012 are reproduced below :

6.1. Section 65B (44) : *"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-*

(a) an activity which constitutes merely,-

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

6.2. SECTION 66B. - There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

6.3. SECTION 66D : Contains the negative list of services. It appears that services provided by the assessee are not covered under any of the services listed therein.

6.4. SECTION 66E : Covers declared services and Works Contract Service is covered by **66 E (h)** of Finance Act, 1994.

6.5. Further, Notification No. 25/2012-ST, dated 20-06-2012, as amended specified services which were exempt from payment of Service Tax. It appears that services provided by the assessee are not covered under any of the services listed therein.

7. The legal position insofar as "Works Contract Service" is concerned, the said service and its taxability as defined under Sub-clause (zzzza) of Clause 105 of Section 65 of the Finance Act, 1994 as existed before 01.07.2012 stands now covered by 65B(54) whereby the said service, covered under Section 66 E (h) of Finance Act, 1994 and for not being in the Negative List prescribed under 66D, continues to be a taxable service. But for the said changes in legal provisions, the status of Service and the corresponding tax liability prior to 01.07.2012 remained same now also.

8. Assessee have filed **NIL** ST-3 Return online for the period October 2011 to March 2012. Later, however vide their letter dated 17.09.2014, they submitted that they have received Rs. 4,49,46,992/- for rendering taxable services. Despite having registered and discharging Service Tax liability on parts of the taxable values, the assessee had not disclosed the receipt of the taxable amounts for the period January – March, 2012 in statutory return ST-3 and also failed to discharge the Service Tax liability deliberately on the actual taxable value of Services under "**Works Contract Service**". They appear to have suppressed the material facts before the department that they had received said taxable amounts. They have neither disclosed the same to the department by way of the details of the activities / service in the periodical returns filed by them during the period October, 2011 to March 2012. They

have intentionally not shown any receipts towards construction in their ST-3 Returns. The assesses are well aware of the statutory provisions and of their liability to pay Service Tax. Since they have not disclosed the above facts to the department by way of periodical return and the facts were submitted at later stage, on specially asked by the department vide letters dated 20.08.2014, 10.09.2014 and Summons dated 16.09.2014 the same amounts to suppression of facts with sole intention to evade payment of service tax and also involves contravention of statutory provisions with an intent to evade payment of Service Tax and hence the proviso to **Sub-Section (1) of Section 73 of Finance Act 1994** is liable to be invoked for extended period.

9. In view of the above, **M/s Modi Ventures, 5-4-187/3 & 4, 2nd Floor, Soham Mansion, MG Road, Secunderabad - 500 003** are hereby required to show cause to the **Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II Commissionerate, Hyderabad, Kendriya Shulkh Bhavan, 7th Floor, Basheerbagh, Hyderabad-04**, within **30 (thirty) days** of receipt of this Notice as to why:-

- (i) an amount of **Rs.74,39,581/- (Rupees Seventy Four Lakhs Thirty Nine Thousand Five Hundred Eighty One only)** including Cesses should not be demanded on the **"Works Contract"** services rendered by them during the period from **January, 2012 to March, 2014** under **Section 73(1) of Finance Act, 1994** read with proviso thereto; and an amount of **Rs. 29,22,154/-** already paid should not be adjusted against the above demand;
- (ii) Interest on the amount of demand at (i) above should not be recovered under **Section 75 of the Finance Act 1994**;
- (iii) Penalty should not be imposed on them under **Section 78 of the Finance Act 1994**; and
- (iv) Penalty should not be imposed on them under **Section 77 of the Finance Act, 1994**.

10. **M/s. Modi Ventures, Hyderabad** at the time of showing cause as above are required to produce all the evidence upon which they intend to rely in their defence. They are also required to indicate in their written reply whether they wish to be heard in person before the case is adjudicated. If no cause is shown against the action proposed to be taken within the stipulated time or having desired a hearing if they do not appear for the personal hearing on the appointed day & time, the case will be decided on merits, basing on the material/evidence available on record.

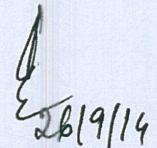
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12. The assessee filed their ST-3 return for the period October, 2011 to March 2012 on 31.05.2012 (due date being on 25.05.2012) and hence, **the due date for issue of this SCN is 30.05.2017.**

12. This notice is issued without prejudice to any other action that may be taken against the noticees / others under the Finance Act, 1994 or under any other law for the time being in force in India.

13. Reliance for issue of this notice is placed on the following:

- (i) Letter dated 17.09.2014 along with statements and challans submitted by **M/s. Modi Ventures, Hyderabad.**


(M.K.SINGH)
COMMISSIONER.

To
M/s Modi Ventures,
5-4-187/3 & 4, 2nd Floor,
Soham Mansion, MG Road,
Secunderabad - 500 003.

Copy to:

The Superintendent (Adjudication), Hqrs.Office, Hyd-II Commr'ate, Hyd.
The Superintendent, Group - X, Hyd-II Commr'ate, Hyd.
Spare copy.