



केन्द्रीय उत्पाद सीमा शुल्क एवं सेवा कर के आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE AND
SERVICE TAX

हैदराबाद II आयुक्तालय : बशीरबाग, हैदराबाद

HYDERABAD II COMMISSIONERATE: BASHEERBAGH: HYDERABAD

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O.R.No.84/2013-Adjn.ST(ADC)(Hyd-II)

Date:03.12.2013

C.No.IV/16/256/2010-ST(Gr-III)

SHOW CAUSE CUM DEMAND NOTICE

(Notice under Section 73(1A) of the Finance Act 1994)

**Sub:Service Tax - Construction of Complex Service & Works
Contract Service - M/s Mehta & Modi Homes - Non-payment
of Service tax on taxable services rendered - Issue of Show
Cause Notice - Reg.**

M/s Mehta & Modi Homes a partnership firm, located at 5-4-187/3 & 4, Soham Mansion 3rd Floor, M.G.Road, Secunderabad-500003 [here in after referred to as 'the assessee'] are engaged in providing Construction of Complex service and Works Contract Service. M/s Mehta & Modi Homes were registered on 17.08.2005 under Construction of Complex service and under Works Contract Service on 29.02.2008 vide **STC No. AAJFM0647CST001**.

2. On gathering intelligence that M/s Mehta & Modi Homes, were not discharging the service tax liability properly, investigation was taken up and it was found that M/s Mehta & Modi Homes had under taken 3 (three) projects in the year 2004 viz; Silver Oak Bungalows (Phase I); Silver Oak Bungalows (Phase II) and Silver Oak Bungalows (Phase III) at Cherlapally village, Ghatkesar mandal, Ranga Reddy District and received amounts from customers from April 2006 to December 2010 towards sale of land, and agreements for construction. In the said projects, they had entered into sale deed, and agreement for construction with their customers in respect of 290 flats. They have paid the Service Tax under Construction of Complex service availing abatement under Notification No. 1/2006-ST, dated 1-3-2006 (as amended) and under Works Contract service availing the option under Rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. They informed that they had not availed Cenvat credit during the period 01.04.2006 to 31.12.2010. It was also found that they had stopped payment of Service Tax on receipts from

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01.01.2009 by misinterpreting the clarification of the Board vide **Circular No. 108/02/2009 - ST dated 29.01.2009.**

3. Accordingly, the following Show Cause Notices were issued by the Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II Commissionerate.

Sl. No.	SCN O.R. No. Date	Period	Amount of Service Tax	issue	Status
1.	O.R. No. 128/2011-Adjn. (S.Tax) (Commr.) dated 24.10.2011	01.04.2006 to 31.05.2007	22,72,979/-	Short-payment of Service Tax on Construction of Complex Service.	OIO No.07/2013 dt.17.01.2013 confirmed
		01.06.2007 to 31.12.2010	5,55,04,153/-	Short/Non-payment of Service Tax on Works Contract Service.	OIO No.07/2013 dt.17.01.2013 confirmed
2.	O.R. No. 65/2012-Adjn. (S.Tax) (Commr.) dated 10.04.2012	01.01.2011 to 31.12.2011	54,68,582/-	Short-payment of Service Tax on Works Contract Service.	-----

4. The assessee in response to the letter **C. No. IV/16/256/2010-ST-Gr.III** dated **25.10.2013** and **11.11.2013**, submitted vide their letters dated **31.10.2013** and **12.11.2013** that they had received a total amount of **Rs.3,36,31,202/-** from 01.01.2012 to 30.06.2012. Out of this, an amount of **Rs.1,10,50,000/-** is towards Sale Deed; **Rs.38,91,767/-** is towards taxes, other charges, Advances, refunds and taxable receipts & non-taxable receipts; **Rs.1,86,89,435/-** is towards Development charges/agreement for construction/additions and alterations and other charges.

5. Since, the projects were own ventures, assesseees were required to pay Service Tax on all the amounts received after execution of sale deed. Thus, **Rs.38,91,767/-** received towards other charges and **Rs.1,86,89,435/-** towards Development were chargeable to Service Tax. Therefore, the assesseees are liable to pay Service Tax on taxable amount of **Rs.2,25,81,202/-** as detailed below.

Period	Amount received	Sale deed amount	Taxable amount	Rate of Service Tax	Service Tax
01.01.2012 to 31.03.2012	1,39,64,930	12,85,000	1,26,79,930	10.30%	13,06,033
01.04.2012 to 30.06.2012	1,96,66,272	97,65,000	99,01,272	12.36%	12,23,797
Total	3,36,31,202	1,10,50,000	2,25,81,202	-----	25,29,830

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(12)

6. Vide Finance Act, 2012 sub section (1A) was inserted in Section 73 which reads as under:

73 (1A) – Notwithstanding anything contained in sub-section (1) (except the period of eighteen months of serving the notice for recovery of service tax) the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period; on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notice.

7. The grounds and legal position as explained in the Show Cause Notices issued vide O.R. No. 128/2011-Adjn. (S.Tax) (Commr.) dated 24.10.2011 and O.R. No. 65/2012-Adjn. (S.Tax) (Commr.) dated 10.04.2012 are also applicable to the present case. Hence this statement of demand/Show Cause Notice is issued in terms of **Section 73 (1A) of Finance Act, 1994** for the period **January, 2012 to June, 2012**.

8. In view of the foregoing, **M/s Mehta & Modi Homes**, are hereby required to show cause to the **Additional Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II Commissionerate, 7th Floor, Kendriya Shulk Bhavan, Basheerhagh, L.B. Stadium Road, Hyderabad**, within **30 days** of receipt of this notice, as to why:-

(i) An amount of **Rs.25,29,830/-** towards **Service Tax** (including **Education Cess and Secondary and Higher Education Cess**) should not be demanded on the services of **"Works Contract Service"** provided by them during the period **01.01.2012 to 30.06.2012**, as detailed in **Para-5**, under **Section 73(i) and 73(1A) of the Finance Act, 1994**, as amended;

(ii) **Interest** on the amount of **Service Tax** not paid as mentioned at (i) above should not be paid by them in terms of **Section 75 of the Finance Act, 1994**.

(iii) **Penalty** should not be imposed on them under **Section 76 of the Finance Act, 1994** for failure to pay **Service Tax**.

(iv) **Penalty** should not be imposed on them under **Section 70 of the Finance Act, 1994** in as much as they have not filed the statutory **Returns** for the services stated above.

9. **M/s Mehta & Modi Homes**, are required to produce, all the evidence upon which they intend to rely upon, in support of their defence at the time of showing cause. They are also required to mention in their written reply as to whether they wish to be heard in person before the case is adjudicated. If no cause is shown within **thirty (30) days** of receipt of this notice or if they do not appear before the adjudicating authority when the case is posted for hearing, it will be presumed that they do not have anything to submit in support of their defence and the case will be decided ex-parte on the basis of evidence available on record.

10. This notice is issued without prejudice to any other action that may be initiated, or already initiated against the assessee under the Finance Act, 1994, or any other law for the time being in force in India.

11. Reliance for issue of this notice is based on the information submitted by the assessee vide their letters dated **31.10.2013 and 12.11.2013**.

12. The assessee has filed the ST-3 Return for the second half period i.e. 01.10.2011 to 31.03.2012 on 04.06.2012 and all amounts received by them pertains to the said return period. Hence, the last date for issuance of the Show Cause Notice would be **03.12.2013**.

N. Padmasri
3.12.13
(N. PADMASRI)
ADDITIONAL COMMISSIONER

To
M/s Mehta & Modi Homes
5-4-187/3 & 4
Soham Mansion 3rd Floor, M.G.Road
Secundrabad-500003
(Through the Superintendent Service Tax, Group-III)

Copy to:

1. The Assistant Commissioner of Service Tax, Division-I, Hyderabad II Commissionerate.
2. The Superintendent of Service Tax, Group - III, Hyderabad II Commissionerate
3. The Superintendent (Adjudication), Hyderabad-II Commissionerate, Hyderabad.
4. Master copy / Office copy