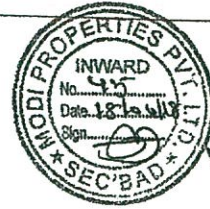




**NATION
TAX
MARKET**



सेंट्रल टैक्स एवम् कस्टम उप/सहायक आयुक्त का कार्यालय
OFFICE OF THE DEPUTY/ASSISTANT COMMISSIONER OF CENTRAL TAX AND CUSTOMS
सिकंदराबाद माल एवम् सेवा कर मंडल & सिकंदराबाद माल एवम् सेवा कर आयुक्तालय
SECUNDERABAD GST DIVISION & SECUNDERABAD COMMISSIONERATE
पता: "सलीक सीनेट", गेट. 2-4-416 & 417, रामगोपालपेट, एम.जी. रोड सिकंदराबाद 500003
ADD: "SALIK SENATE", D. No. 2-4-416 & 417, RAMGOPALPET, MG ROAD, SECUNDERABAD 500003
Contact No. 7901243130 email- cgst.secdiv@gov.in

C. NO. V/24/15/02/2018-Adjn

Date: 16.04.2018

SHOW CAUSE NOTICE

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

Sub: Service Tax – M/s Modi & Modi Constructions, Hyderabad – Non-Payment of Service Tax during the period April 2015 to June 2017- Issue of Show Cause Notice – Regarding.

M/s Modi & Modi Constructions., 5-4-187/3& 4, 2nd FLOOR soham Mansion, M.G. Road, Secunderabad - 500 003 (hereinafter referred to as 'M/ s. MMC' or "the Assessee" for short) have registered themselves with the service tax Department vide Registration No. **AAKFM7214NST001**, for payment of service Tax Under the categories of "Works contract service" and "construction of Residential complex service".

2. As seen from the records, the assess 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 their customers. On execution of the sale deed the right in a 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 transfer of property in goods in execution of the said construction agreements is involved, 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 had been issued to the Assessee:

SL.NO.	SCN OR NO. & date	Period	Amount of Service Tax demanded (Rs.)	OIO NO. Date
1	HQPOR No.34/2010-Adjn(ST) dated 12.04.2010	2009	6,04,187/-	45/2010-ST Dt.29.10.2010 (Confirmed)
2	OR No. 59/2011-Adjn (ST) Gr.X Dt.23.04.2011	2010	12,06,447/-	48/2012-Adjn(ST) ADC Dt.31.08.2012 (Confirmed)
3	OR No.53/2012-Adjn (ADC) Dt.24.04.2012	2011	27,61,048/-	Pending Adjudication
4	OR No81/2013-Adjn (ST) (ADC) Dt.02.12.2013	01/2012 to 06/2012	11,87,407/-	Pending Adjudication
5	OR No.109/2014 Adjn (ST) (JC) Dt.24.09.2014	07/2012 to 03/2014	38,35,321/-	Pending Adjudication
6	OR No. 25/2016-Adjn (ST) (JC) Dt. 18.04.2016	04/2014 to 03/2015	6,30,349/-	Pending Adjudication

4. As per the information furnished by the Assessee vide their letter dated 15.02.2018 received by the jurisdictional Range Superintendent on 16.02.2018, it is seen that "the Assessee" have rendered taxable services under the category of "Works Contract Services" during the period April, 2015 to June, 2017. The Assessee had rendered services for a taxable value of Rs.7,50,49,757/-(Rupees Seven Crores Fifty Lakhs Forty Nine Thousand Seven hundred and Fifty Seven only). After deduction of VAT of Rs.40,12,405/- the taxable value works out to Rs.7,10,37,352/-(Rupees Seven Crores Ten Lakhs Thirty Seven Thousand Three hundred and Fifty Two only) on which service tax (including Cesses) works out to Rs.42,07,651/- for services rendered during the said period, as detailed in the Annexure enclosed to this notice.

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

SECTION 73(1A) – Notwithstanding anything contained in sub-section (1), 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 notices.

6. The section 65B, 66B, 66D as inserted in the Finance Act, 1994 by the Finance Act, 2012 w.e.f. 01.07.2012 are reproduced below:

6.1. SECTION 65B (44): "service" means any activity carried out by 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) 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 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; Contains declared service and work contract is covered under 66E(h) of the 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 grounds as explained in the Saw Cause cum demand notices issued above are also applicable to the present case; the legal position in so far 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 being declared service under Section 66E(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 provision, the status of Service and the corresponding tax liability remained same. Hence, this statement of demand / show because notice is issued in terms of Section 73(1A) of the Finance Act, 1994 for the period April, 2015 to June, 2017.

8. In view of the above, M/s. Modi & Modi Constructions, Hyderabad are hereby required to show cause to the Assistant Commissioner of Central Tax & Central Excise, Office of the Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad GST Commissionerate, D.No. 2-4-416&417, 1st Floor, Salike Senate, Ramgopalpet, M.G Road, Hyderabad, within 30(thirty) days of receipt of this notice as to why: -

i). an amount of **Rs.42,07,651/- (Rupees Forty-Two Lakh Seven Thousand Six hundred and Fifty One only)** (including Cesses) 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.

9. M/s MMC, are required to Produce all the evidence upon which they intend to rely in their defense while showing cause. They are also required to indicate in their written reply whether they wish to be heard in person before the case is adjudicated.

10. If no cause is shown against the action proposed to be taken within the stipulated time and if the noticee does not appear for the personal hearing on the appointed day, then it will be presumed that they do not have anything to state in their defense and the case will be decided on merits on the basis of evidence available on records.

11. This Notice is issued without prejudice to any other action that has been or may be taken against the noticee / others under this Act or under any other law for the time being in force in India.

12. The provisions of the Finance Act, 1994 as discussed above are validated under the provisions of Section 174 of the Central Goods and Services Tax Act, 2017.

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

(i) Assessee's letter dated 15.02.2018 received by the Jurisdictional Range Superintendent on 16.02.2018, in which Service Tax consolidated statement is provided.

(ii) ST3 Returns for the period 2015-16, 2016-17 and 2017-18 (up to June, 2017)

Place: Secunderabad

Date: 16 .04.2018


(के गोपाल राव/K Gopala Rao)

सहायक आयुक्त/Assistant Commissioner
सिकंदराबाद मण्डल/Secunderabad Division

To
M/s. Modi & Modi Constructions,
Address; 5-4-187/3 & 4, 2nd Floor,
Soham Mansion, M.G. Road,
Secunderabad- 500 003.

Copy to:

1. The Superintendent of Central Tax, Central Excise and Service Tax, Ramgopalpet Range-II, Secunderabad GST Division, Secunderabad Commissionerate, with direction to serve the Notice on the assessee and submit dated Acknowledgment to this office.
2. The Commissioner of Central Tax, Central Excise and Service Tax, Secunderabad Commissionerate, Hyderabad. (By name to the Superintendent of Central Tax, Central Excise and Service Tax, (Adjudication) for information).