OFFICE OF THE SUPERINTENDENT OF
CENTRAL TAX, CENTRAL EXCISE & SERVICE TAX:
केंद्रीय कर, केंद्रीय उत्पाद शुल्क और सेवा कर के अधीक्षक के कार्यालय:
RAMGOPALPET – I RANGE, SECUNDERABAD DIVISION, SECUNDERABAD COMMISSIONERATE:
रामगोपालपेट – १ रेंज, सिकंदराबाद मंडल, सिकंदराबाद आयुक्त:
SALIKE SENATE, DOOR NO. 2-4-416 & 417, M. G ROAD, SECUNDERABAD – 500 003
सालिके सीनेट, दरवाजा नंबर - २-४-४१६ और २-४-४१७, महात्मा गाँधी रोड, सिकंदराबाद - ५०० ००३

OC. No. 158/2018-Rgpet-I Date: 11.07.2018

RECORD OF PERSONAL HEARING

Name of the Unit: M/s Alpine Estates, 5-4-187/3 & 4, 2dn Floor, Soham Mansion, M. G Road, Secunderabad – 500 003.

Date and time of Personal Hearing: 11.07.2018 at 11:00 AM

Name and designation of the person attended the PH: Shri Lakhman Kumar Kadali, CA representing M/s Alpine Estates

****

The personal hearing has been attended by Shri Lakshman Kumar Kadali, CA who represented M/s Alpine Estates in respect of the Show Cause Notice OC No. 85/2018-Rgpet-I dated 18.04.2018 issued by the Superintendent of Ramgopalpet – I Central GST Range, Secunderabad Division.

Shri Lakshman Kumar Kadali made the submission vide letter No. Nil dated 11.07.2018 along with 3 Occupancy Certificates dated 09.04.2010, 01.11.2010 and 23.03.2011 in connection with the above said Show Cause Notice and stated that the disputed amount of Rs. 8,53,032/- (Rs. 6,66,347/- towards sale deed and Rs. 1,86,685 towards other non-taxable amount received) had been received after issuance of the Occupancy certificates. The same has been reiterated in their submission.

11.07.18

(M. RAVI RAJU)
(एम्. रवि राजू)
SUPDT. RAMGOPALPET-I RANGE
अधीक्षक ,रामगोपालपेट – १ रेंज
SECUNDERABAD DIVISION
सिकंदराबाद मंडल

3. Noticee submits that the details of amounts on which SCN proposes to tax and the purpose for which the same were received is as follows

Block	Flat No	Amounts on which SCN proposed to demand Service tax	Bifurcation for amounts received			
			VAT	Maintenance & Security	Corpus Fund	Electricity Deposit
B	114	130,100	37509	91234	-	1357
C	506	6,66,347	2,53,998			
A	507	56,585		8775	47810	
	Total	**853032**				

The maintenance charges and corpus fund collected were inturn paid to M/s. Mayflower Heights Owners Association, a registered society, formed for the purposes of maintaining the housing project.

Comment [A2]: VAT was already given as deduction in SCN itself so we have considered the same as sale deed value. Please give any other reason but with supporting documents.

4. From the above referred explanation, it is therefore apparent that the SCN represents an error in quantification of the demand. The above is explained through a comparative chart provided below:

Particulars	**As per Noticee**	**As per SCN**
Gross Receipts	12,91,930	12,91,930
Less Deductions		
Sale Deed Value	6,66,347	0
VAT, Registration charges, stamp duty and other non taxable receipts	6,25,583	4,38,898
Taxable amount	0	8,53,032
Abatement @ 40%	0	5,11,819
Service Tax as applicable	0	46,916
Actually Paid	0	0
Balance Demand	0	46,916

Comment [A3]: 2.Please change as per the reason given in point 3 not discharge service tax on sale deed value, which is in the nature of immovable property and on the value of taxes collected.

G. 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**
Sum of towards sale deed	6,66,347	6,66,347	0
Sum of towards agreement of construction	0	0	0
Sum of towards other taxable receipts	0	0	0
Sum of towards VAT, Registration charges, etc	6,25,583	6,25,583	0
Total	**12,91,930**	**12,91,930**	**0**

Comment [A1]: 1.Will get changed as per reason given in point 3 of submissions

H. Accordingly, the taxable value for the same is Nil and there arises no service tax liability.

I. Previously several SCN's were issued covering the period upto March 2014 with sole allegation that "*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 vide sale deed are taxable services under "works contract service"*.

   a. Vide Para 3of SCN dated 16.06.2010and Para 2 of the Order adjudicating the said SCN
   b. Vide Para 3 of Second SCN dated 23.04.2011
   c. Vide Para 2 of third SCN dated 24.04.2012
   d. Vide Para 2 of fourth SCN dated 10.06.2013

Dt. 07.07.2018

Respected MD Sir,

Please find enclosed FIANL DRAFT FOR YOUR APROVAL OF APLINE ESTATE SCN REPLY TO BE SUBMITTED BY OUR CONSULTANT – Hiregange & Associates.

SCN No. OC No. 85/2018-Regpet-I dated 18-04-2018 for Rs. 46,916/-

Kindly guide us.

Thanks and best regards.

7/7/18

S. Rajendra Kumar

BEFORE THE SUPERINTENDENT OF CENTRAL TAX, RAMGOPALPET – I RANGE, SECUNDERABAD GST DIVISION, SECUNDERABAD GST COMMISSIONERATE, SALIKE SENATE, DOOR NO. 2-4-416 & 417, M. G ROAD, SECUNDERABAD - 500003

Sub: Proceedings under OC No. 85/2018-Rgpet-I dated 18.04.2018 issued to M/s Alpine Estates, 5-4-187/3 & 4, II Floor, Soham Mansion, M.G. Road, Secunderabad - 500003

FACTS OF THE CASE:

A. Alpine Estates, Secunderabad (hereinafter referred to as "Noticee') is mainly engaged in the sale of residential flats to prospective buyers during and after construction. The project was completed and the occupancy certificate was received on 04.04.2010, 13.04.2010 and 23.03.2011 pertaining to block nos. ___, ___ & ___ respectively (copy of occupancy certificates is enclosed as Annexure ___).

APPROVED BY 07 JUL 2018 SOHAM MODI MANAGING DIRECTOR

B. Noticee has sold some flats before OC and some flats after OC. However, for the flats which were booked after OC, sale deed is executed for the entire sale consideration in most cases. Only in some cases **Sale deed is being executed for semi-finished construction along with an agreement of construction.** Sale deed is registered and appropriate 'Stamp Duty' has been discharged on the same. **Service tax was not paid on the amounts received towards these 'sale deed' since same is sale of 'immovable property'. Details of flats, Occupancy Certificate details and booking details are given in Annexure ___**

C. The various amounts recovered under the said agreements as under:

   a. Value towards the sale deed

   b. Value towards the construction agreement

   c. Other Charges like electricity charges, etc.

d. Collection of taxes like VAT, Service Tax, Stamp Duty and Registration Charges from the buyer

D. **The details of flats booked after OC and before OC during the disputed period are as follows**

Particulars	No of Flats
No of flats booked before receipt of OC during the disputed period (Taxable as the flats are booked before OC)	0
No of flats booked after receipt of OC during the disputed period (Not-taxable as the flats are booked after OC)	3
Total	**3**

E. The levy of service tax on above referred transactions has seen a fair share of litigation and amendments. The Noticee is also a party to the litigation process and matters for earlier periods are pending at various adjudication/judicial forums.

F. In July 2012, the service tax law underwent a paradigm shift and importantly, the exemption for personal use available for construction of residential complexes was removed. Accordingly, it became evident that service tax was payable on the construction agreement as per valuation prescribed under Rule 2A of the Service Tax (Determination of Value) Rules, 2012 i.e. on a presumed value of 40% of the contract value. The Noticee regularly discharged the service tax on the said value in normal course. It also discharged service tax on other charges. However, it did not discharge service tax on sale deed value, which is in the nature of immovable property and on the value of taxes collected.

G. 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**
Sum of towards sale deed	6,66,347	6,66,3470	0
Sum of towards agreement of construction	0	0	0
Sum of towards other taxable receipts	0	0	0
Sum of towards VAT, Registration charges, etc	6,25,583	6,25,583	0
Total	**12,91,930**	**12,91,930**	**0**

H. Accordingly, the taxable value for the same is Nil and there arises no service tax liability.

I. Previously several SCN's were issued covering the period upto March 2014 with sole allegation that "*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 vide sale deed are taxable services under "works contract service".*

   a. Vide Para 3of SCN dated 16.06.2010and Para 2 of the Order adjudicating the said SCN
   b. Vide Para 3 of Second SCN dated 23.04.2011
   c. Vide Para 2 of third SCN dated 24.04.2012
   d. Vide Para 2 of fourth SCN dated 10.06.2013

e. Vide Para 2 of fifth SCN dated 26.09.2014

f. Vide Para 2 of Sixth SCN dated 15.04.2016

In all the above SCN's, there is error in as much including the value of sale deeds within the ambit of taxable value while alleging service tax is liable only after execution of sale deed i.e. on construction agreements.

J. Now the present SCN OC No. 85/2018-Rgpet-I dated 18.04.2018 was also issued with similar error of quantifying the proposed demand of service tax in as much treating the sale deed values & other taxes as taxable value of services (annexure to SCN) while alleging that service rendered after execution of sale deed alone liable for service tax (Para 2 of SCN).

K. The present SCN has been issued under Section 73(1A) of Finance Act, 1994 therefore the allegations based on which the previous SCN is issued was equally applicable to present SCN.

Submissions:

1. Noticee submits that as stated in background facts, they have received the occupancy certificate in the year 2010 & 2011 itself and **the amounts received during the disputed period are in relation to flats booked after receipt of occupancy certificate which are not liable to service tax therefore the Noticee has not paid any service tax on the same. As the amounts received are towards flats booked after OC the proposition of SCN to demand service tax is not correct and the same needs to be dropped** (details of date of booking, occupancy certificate and amounts received from the customer during the disputed period are enclosed as Annexure____.)

2. In this regard, Noticee submits that during the disputed period Noticee has received only amounts towards sale deed, VAT, registration charges and other non-taxable receipts such as electricity deposit, corpus fund, maintenance charges etc. The amounts received towards sale deed is not at all a service as the activity of transfer of property is excluded from definition of service under Section 65B(44) of Finance Act, 1994. Further, the amounts received towards electricity deposit, corpus fund and maintenance charges are completely paid to respective departments i.e, electricity departments, residential welfare society therefore the said amounts shall not be treated as received by Noticee for provision of taxable service.

3. Noticee submits that the details of amounts on which SCN proposes to tax and the purpose for which the same were received is as follows

Block	**~~Bunglow~~ Flat No**	**Amounts on which SCN proposed to demand Service tax**	**Bifurcation for amounts received**			
			VAT	**Maintenance & Security**	**Corpus Fund**	**Electricity Deposit**
B	114	130,100	37509	91234	-	1357
C	506	6,66,347	2,53,998			
A	507	56,585		8775	47810	
	Total	**853032**				

The maintenance charges and corpus fund collected were inturn paid to M/s. Mayflower Heights Owners Association, a registered society, formed for the purposes of maintaining the housing project.

4. From the above referred explanation, it is therefore apparent that the SCN represents an error in quantification of the demand. The above is explained through a comparative chart provided below:

Particulars	**As per Noticee**	**As per SCN**
Gross Receipts	12,91,930	12,91,930
Less Deductions		
Sale Deed Value	6,66,347	0
VAT, Registration charges, stamp duty and other non taxable receipts	6,25,583	4,38,898
Taxable amount	0	8,53,032
Abatement @ 40%	0	5,11,819
Service Tax as applicable	0	46,916
Actually Paid	0	0
Balance Demand	0	46,916

APPROVED BY
07 JUL 2018
SOHAM MODI
MANAGING DIRECTOR

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.

5. Without prejudice to the above, Noticee further submits that the
   a. Commissioner of Central Excise (Appeals) and the Hon'ble CESTAT, Bangalore in the previous period has remanded the matter back to the adjudicating authority for re-quantification of the duty liability. However, the subject show cause notice has not considered this aspect and demanded service tax on the Noticee. On the basis of the same, Noticee submits that the proposition of the subject show cause notice demanding the duty is not sustainable and requires to be dropped.
   b. The grounds based on which the previous SCN's are issued is not at all applicable for the current period due to the substantial changes took place in the provisions of service tax.
   c. Once SCN raises allegation/demand based on inapplicable provisions then such allegation/demand cannot sustain. Relied on Maharashtra Industrial Development Corporation Vs CCE, Nasik 2014 (36) S.T.R. 1291 (Tri. - Mumbai) wherein it was held that *"With regard to the show cause notice in Appeal No. ST/85267/14 we find that the period involved is 1-10-2011 to 30-9-2012. In the said case, the demand is for two periods - one from 1-10-2011 to 30-6-2012 and the second is from 1-7-2012 to 30-9-2012* ***when the negative list came into effect but the show cause notice has been issued on***

the basis of definition of Management, Maintenance and Repair service has stood prior to 1-7-2012. Therefore, as post-1-7-2012 the provisions are not existing therefore, the demands for the period post-1-7-2012 are not maintainable"

d. As the subject SCN is issued without any allegations, the same has not proved the burden of proof of taxability, which is essential under new service tax law. Relied on United Telecom Ltd. Vs CST 2008 (9) S.T.R 155 (Tri-Bang); Jetlite (India) Ltd. Vs CCE 2011 (21) S.T.R 119 (Tri-Del)

e. 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.

6. 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.

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

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

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

For M/s Alpine Estates,

Authorized Signatory

BEFORE THE SUPERINTENDENT OF CENTRAL TAX, CENTRAL EXCISE & SERVICE TAX, RAMGOPALPET – I RANGE, SECUNDERABAD DIVISION, SECUNDERABAD COMMISSIONERATE, SALIKE SENATE, DOOR NO. 2-4-416 & 417, M. G ROAD, SECUNDERABAD – 500003

Sub: Proceedings under OC No. 85/2018-Rgpet-I dated 18.04.2018 issued to M/s Alpine Estates, #5-4-187/3 & 4, II Floor, Soham Mansion, MG Road, Secunderabad – 500003

I,Soham Modi, partner of M/s Alpine Estates, 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 __ day of July 2018 at Secunderabad

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: __.07.2018

Address for service:
Hiregange & Associates,
Chartered Accountants,
4th Floor, West Block,
SridaAnushka Pride,
Opp. Ratnadeep Supermarket,
Road Number 12, Banjara Hills,
Hyderabad 500 034

For Hiregange & Associates
Chartered Accountants

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	

Details of receipts - sorted by date of receipt
Alpine Estates Service Tax deatils 17.10.2015 ver117

Block No	Bungalow No	Sale deed executed	Booking Date	OC Date	Receipt No	Receipt Date	Receipt Amount	Towards Sale Deed	Towards Agreement of Construction	Towards Other Taxable Receipts	Towards VAT, Registration Charges, etc.	Towards Other Non-Taxable Receipts	Total receipts towards agreement of construction	Tax rate under works contract with composition	Estimate of tax liability
B	114	No	30-04-2010	13-04-2010	4290	20-04-2015	3,15,000	-	-	-	1,84,900	1,30,100	-	4.944	-
C	506	No	05-05-2013	23-03-2011	.	21-07-2015	9,20,345	-	-	-	2,53,998	6,66,347	-	4.944	-
A	507	Yes	31-10-2013	04-04-2010	4291	22-07-2015	56,585	-	-	-	-	56,585	-	4.944	-
	Receipts from Apr 15 to Jun 17						**12,91,930**	-	-	-	**4,38,898**	**8,53,032**	-		-

APPROVED BY
07 JUL 2018
SOHAM MODI
MANAGING DIRECTOR

Details of receipts - sorted by date of receipt
Alpine Estates Service Tax deatils 17 10 2015 ver117 - Copy

M/s. Alpine Estates - Details of flats, Occupancy Certificate, and booking details and amount received from customers																
Block No	Bungalow No	Occupancy Certificate Date	Booking Date	Sale Deed Date	Receipt No	Receipt Date	Receipt Amount	Net Sale Consideration	Towards Sale Deed	Towards Agreement of Construction	Towards Other Taxable Receipts	Towards VAT, Registration Charges, etc.	Towards Other Non-Taxable Receipts	Total receipts towards agreement of construction	Tax rate under works contract with composition	Estimate of tax liability
B	114	13/4/2010	30-04-2010	22.04.2015	4290	20-04-2015	3,15,000	-	-	-	-	1,84,900	1,30,100	-	4.944	-
C	506	23/03/2011	04-05-2010	10.03.2015	.	21-07-2015	9,20,345	-	6,66,347	-	-	2,53,998		-	4.944	-
A	507	11-04-2010	01.10.2010	21.02.2014	4291	22-07-2015	56,585	-	-	-	-	-	56,585	-	4.944	-
	Receipts from Apr 15 to Jun 17						**12,91,930**	-	**6,66,347**	-	-	**4,38,898**	**1,86,685**	-		-

ALPINE ESTATES ★ SEC'BAD ★

Legal Information Sheet

ID : 27 CIS Date : 11-06-2018 Prepared By :Rajendra Kumar / Assigned To : Rajendra Kumar / Reassigned To : Rajendra Kumar	Company/Firm, Name	Alpine Estates ST 4/15 to 6/17
Consultant firm And Address HIREGANGE & ASSOCIATES Branch Office: 4th Floor, West Block, Srida Anushka Pride, Opp. Ratnadeep Supermarket, Road Number 12, Banjara Hills, Hyderabad, Telangana 500034	Consultant Name	V V Sudhir
	Consultant Work Phone	9908113787
	Consultant Mobile	9908113787
	Consultant Email	: sudhir@hiregange.com

For Period	Case No.	Court/Departement
April 2015 to June 2017	OC No. 85/2018-Rgpet-I dt. 18.04.2018	Department

Related to	Pending With	Case Status	Priority
ST	Commissioner	Active	High
Reply Prepared	Reply Feild	Reply Ack. Received	Next hearing date available
Yes	Yes	Yes	No
Consultant's assistant 1 Name. Mobile & Email	Consultant's assistant 2 Name. Mobile & Email	Officer 1 name, designation, Mobile, Email	Officer 2 name, designation, Mobile, Email
Lakshman Kumar Kadali,	9948977787		
Officer 3 name, designation, Mobile, Email	Original demand of first notice	Revised demand - latest	
Yes	46916		
Amount paid/ pre-deposit	Balance payable	Opposite Party details-Name, Address, Mobile	Oppositon lawer/DR details, name,address,mobile.
0	0		The Additional Commissioner, Service Tax Commissionerate, Hyderabad

Brief nature of case

1) Demand raising in WCS, Sale Ded value, and other Non Taxable Receipts inlcuded

Brief details of documents/calculations required

2) File to be made proof of documents and Calculation statement of VAT, Registration charges and other Non Taxable Receipts

Present Status of case

1) File pending in ADC

Events log

1) SCN Raised - Against SCN Reply filed

Event/Entry Date	Event Details	
11-06-2018	Follow-up By :	Contact Type : NA
11-06-2018	OutCome Of Event :	
	Next Event Date : 12-06-2018	
	Target Of next Event : first call detail to be entered	

In
19/6