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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
11-5-423/1/A:: सीताराम प्रसाद टावर:: रेड हिलस:: हैदराबाद - 4
SITARAM PRASAD TOWERS:: RED HILLS:: HYDERABAD- 4

OR No: 53/2012 - Adjn (Addl. Commr.)
C.No: IV/16/ 35 /2012-S.Tax.Gr.X

Dt. 24.04.2012

SHOW CAUSE NOTICE

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

M/s. Modi & Modi Constructions, #5-4-187/3&4, II Floor, Soham Mansion, MG Road, Secunderabad-500 003 (here-in-after referred as "**Modi** " or the assessee(s)) are engaged in providing "**Works Contract Service**". **M/s Modi** is a registered partnership firm and got themselves registered with the department vide **Servicer Tax Registration Number AAKFM 7214 NST001**.

2. A Show Cause Notice vide **HQPOR No. 34/2010-Adjn(ST)** dt. **12.4.2010** was issued for the period from **January 2009 to December 2009** for an amount of **Rs. 604187/-** including cesses and the same has been adjudicated and confirmed vide **Order-In-Original No: 45/2010-ST** dt. **29.10.2010**. Further, the assessee has gone an appeal and the same has been dismissed vide **OIA No.10/2011(H-II)** dt. **31.1.2011** by the **Commissioner (Appeal), Hyderabad**. Further show cause notice vide **OR No.59/2011-Ajdn (ST) Gr.X** dt. **23.4.2011** was issued for the period **January 2010 to December 2010** for an amount of **Rs.12,06,447/-** The present notice is issued in sequel to the same for the period from **January 2011 to December 2011**.

3. As seen from the records, the assessee entered into 1) a sale deed for sale of undivided portion of land together with semi finished portion of the flat and 2) an 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 assesses 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 the 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 vide sale deed **are taxable services under "Works Contract Service"**

4. As per **Section 65 (105) (zzzza) of the Finance Act, 1994 'taxable service'** 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 leviable 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 by the **Notification No.32/2007-ST dated 22-5-2007**, effective from 01-6-2007, under the **'Works Contract (Composition Scheme for Payment of Service Tax) Rules, 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. W.e.f. 1-3-2008 onwards, the said **rate of 2 % is changed to 4% vide Notification No.7/2008-S.T. dated 1-3-2008**

5. M/s **Modi & Modi Constructions, Hyderabad** vide their statement received in this office on **08.02.2012** has submitted the Flat-wise amounts received for the period from **January 2011 to December 2011**. The total consideration received by them is **Rs.6,70,15,724/-** during the period and are liable to pay service tax including cess on the same works out to **Rs. 27,61,048/-** and the interest at appropriate rates under "**Works Contract Service**" respectively. Further, the assessee has submitted the paid challan copies for **Rs.73,124/- dt. 21.12.2011** and for **Rs. 1,00,000/- dt. 05.01.2011**

6. M/s **Modi & Modi Constructions, Hyderabad** registered with the service tax department and **not discharging the service tax liability properly and also not filing the ST-3 returns**, which are mandatory as per Service Tax Rules made there under. On verification of the records, it is found that **M/s Modi & Modi** have undertaken a single venture by name **M/s Nilgiri Homes** located at **Rampally Village, Keesara Mandal, RR District** and received amount from customers toward sale of land and agreement of **construction of 18 houses**.

7. M/s **Modi & Modi Constructions, Hyderabad** are well aware of the provisions and of liability of service tax on receipts as result of these agreements for construction and have not assessed and paid service tax properly. They have not filed the ST-3 returns for the period upto 3/2011. Hence, the service tax payable by **M/s Modi & Modi Constructions** appears to be recovered under **Sub-Section (1) of Section 73 of the Finance Act 1994**.

8. From the foregoing, it appears that **M/s Modi & Modi Constructions, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad-3** have contravened the provisions of **Section 68 of the Finance Act 1994** read with **Rule 6 of the Service Tax Rules, 1994** in as much as they have not paid the appropriate amount of service tax on the value of the taxable services and **Section 70 of the Finance Act 1994** read with **Rule 7 of the Service Tax Rules 1994** in as much as they have not filed statutory returns for the taxable services rendered and also did not truly and correctly assess the tax due on the services provided by them. Hence, the Service Tax is liable for recovery under provisions of **Section 73(1) of the Finance Act 1994** and are liable for penal

action under **Section 76 of the Finance Act, 1994** and **Section 77 of the Finance Act 1994**. They are also liable for interest under **Section 75 of the Finance Act, 1994**.

9. Therefore, **M/s Modi & Modi Constructions, Hyderabad**, are hereby required to show cause to the **Additional Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II Commissionerate, Hyderabad**, within **30 (thirty) days** of receipt of this Notice as to why:-

- (i) an amount of **Rs. 27,61,048/- (Rupees Twenty seven lakhs sixty one thousand and forty eight only)** including cess should not be demanded on the "works contract" service under the **Sub-Section (1) of Section 73 of the Finance Act 1994** for the period from **January 2011 to December 2011**. An amount paid vide vide **Challan dt. 21.12.2011 for Rs.73,124/ and Rs.1,00,000/- vide Challan Dt.05.01.2011** by them should not be adjusted against the demand discussed supra; and
- (ii) Interest is not payable by them on the amount demanded at (i) above under **Section 75 of the Finance Act 1994**; and
- (iii) Penalty should not be imposed on them under **Section 77 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 76 of the Finance Act, 1994**.

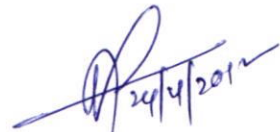
10. **M/s Modi & Modi Constructions, , Hyderabad** at the time of showing cause, as above, are required to produce all the evidence upon which they intend to rely in their defence. They are also required to indicate in their written reply whether they wish to be heard in person before the case is adjudicated. 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.

OR No. 53/2012- Adjn -ST (ADC)
C.No.IV/16/196/2011-Gr-X

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

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

- (i) Statement submitted by **M/s Paramount Builders** received in this office on **08.02.12**.


(G.SREEHARSHA)
Additional COMMISSIONER

Place: Hyderabad
Date: 23 04.2012

To: M/s Modi & Modi Constructions,
5-4-187/3 & 4, IInd Floor, 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.

10/1/1911