ST correction

1 NATION TAX MARKET

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सेंट्रलटैक्सएवम् कस्टमअधीक्षक काकार्यालय
OFFICE OF THE SUPERINTENDENT OF CENTRAL TAX AND CUSTOMS
RAMGOPALPET III RANGE, SECUNDERABAD GST DIVISION & SECUNDERABAD COMMISSIONERATE
ADD: "SALIKE SENATE", D. No. 2-4-416 & 417, RAMGOPALPET, MG ROAD, SECUNDERABAD 500003
Contact No. 040-27718213 email- cgst.rgpetrg3@gov.in

C.No.IV/16/18/2017-III-B Dated:28.05.2018

ORDER IN ORGINAL NO.01 /2018 –Adjn(Supdt)

(Passed by Shri.K.SanthiSekhar, Superintendent)

PREAMBLE

1.निजी प्रयोग के लिए इसे जिस व्यक्ति को जारी किया गया है, यह प्रति बिना मूल्य के दी जाती है।

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2. जोभी व्यक्ति वित्त अधिनियम, 1994 के अंतर्गत धारा 85 (3A) संशोधित से दुष्प्रभावित हो। इस प्रकार प्राप्त आदेश निर्णय के खिलाफ आदेश की प्राप्ति के 60 दिन के भीतर आयुक्त (अपील), मुख्य कार्यालय । 7वा तल, एल बी स्टेडियम रोड, बशीरबाग, हैदराबाद 500004 को अपनी अपील प्रस्तुत कर सकती है।

Under Section 85(3A) of the Finance Act, 1994 as amended, any person aggrieved by this order can prefer an appeal within two months from the date of communication of such order/decision to the Commissioner(Appeals), Hqrs. Office, 7th floor, L.B.Stadium Road, Basheerbagh, Hyderabad – 500 004.

3.धारा 85 के उप खंड (1) के अंतर्गत आयुक्त (अपील) को की जाने वाली अपील फार्म ई. ए॰ 4 मेंहों और उसके साथ जिस निर्धारित पद्धति के अनुसार की जानी चाहिए ।

An appeal under Sec.85 to the Commissioner (Appeals) shall be made in the form ST-4 and shall be verified in the prescribed manner.

4. ई॰ ए॰ 1 फार्म मे की गयी अपील अनुलिपि मे प्रस्तुत की जानी चाहिए और उसके साथ जिस निर्णय या आदेश के विरुद्ध अपील की जा रही हो उसकी प्रति भी संलग्न की जानी चाहिए।

The form of appeal in Form No. ST-4 shall be filed in duplicate and shall be accompanied by a copy of the decision or the order appealed against.

5.अपील पर और जिस निर्णय या आदेश के विरुद्ध अपील की जा रही हो उस आदेश की प्रति पर भी समुचित मूल्य के अदालती टीकट लगाए जाने चाहिए।

The appeal as well as the copy of the decision or order appealed against must be affixed with court fee stamp of the appropriate amount.

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Sub:-Service Tax- Non-payment of "Interest on delayed payment of service tax for the period from October 2012 to March 2015 and "Short payment of Service Tax for the period from January 2015 to March 2015" - by M/s.Vista Homes – Issue of Adjudication Order- Reg.

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M/s Vista Homes, Dr.No.5-4-187/3, Soham Mansion, M.G.Road, 2nd Floor, Raniganj, Hyderabad-500 003. (here-in-after referred to as "M/s VH" or "the assessee") are service providers and they have obtained Service Tax Registration No.AAGFV2068PSD001 for rendering "Construction- of Residential Complex Service", and "Works Contract Service".

Brief Facts of the case:

2. On verification of records by the Audit team it appears that M/s VH engaged in the service activities mentioned above and regularly filing their periodical ST-3 Returns, wherein it was noticed that the assessees have paid the service tax liabilities belatedly during the period from October 2012 to December 2014. In terms of the Section 75 of the Finance Act, 1994 interest has to be charged on the belated payments, detailed as under, which works out to Rs.1,14,351/- and the same is recoverable from the assesses.

Oct, 2012 to Dec,2012

Month	Tax payable in cash	Challan No.	Challan amount	Date of payment	No. of days delayed	Interest payable	Interest already paid.	Balance interest payable	**Diff. Int payable**	Excess paid
Oct to Dec	41715	11	41715	24.08.2013	230	4732	0	4732	**4732**	0

Jan, 2013 to March, 2013

Month	Tax payable in cash	Challan No.	Challan amount	Date of payment	No. of days delayed	Interest payable	Interest already paid	Balance interest payable	**Diff. Int payable**	Excess paid
Jan to Mar	1299072	00012	100000	22.04.2013	22	1085	0	1085		
Jan to Mar		00011	100000	27.04.2013	27	1332	0	1332		
Jan to Mar		00013	100000	04.05.2013	34	1677	0	1677		
Jan to Mar		00010	200000	12.08.2013	134	13216	0	13216		

Jan to Mar		00012	168761	24.08.2013	146	12151	0	12151		
Jan to Mar		00013	200000	01.09.2013	154	15189	0	15189		
Jan to Mar		00011	200000	06.09.2013	159	15682	0	15682		
Jan to Mar		00012	200000	13.09.2013	166	16373	0	16373		
Jan to Mar		00008	41898	27.09.2013	210	4339	0	4339		
			1310659				**0**	81043	**81043**	**0**

April, 2013 to June, 2013

Month	Tax payable in cash	Challan No.	Challan amount	Date of payment	No. of days delayed	Interest payable	Interest already paid	Balance interest payable	**Diff. Int payable**	Excess paid
Apr-June	302025	00005	200000	20.09.2013	76	7496	0	7496	0	
Apr-June		00007	102025	27.09.2013	83	4176	0	4176	0	
			302025				**0**	11672	**11672**	**0**

July, 2013 to Sept, 2013

Month	Tax payable in cash	Challan No.	Challan amount	Date of payment	No. of days delayed	Interest payable	Interest already paid	Balance interest payable	Diff. Int payable	Excess paid
July-Sep	748161	00007	250000	11.11.2013	29	3575	0	3575		
July-Sep		00001	250000	14.11.2013	36	4438	0	4438		
July-Sep		00001	248161	26.11.2013	40	4895	1839	3056		
			748161				1839	11070	**9231**	**0**

Oct, 2013 to Dec, 2013

Month	Tax payable in cash	Challan No.	Challan amount	Date of payment	No. of days delayed	Interest payable	Interest already paid	Balance interest payable	Diff. Int payable	Excess paid
Oct-Dec	876812	00017	200000	07.02.2014	32	3156	0	0		
Oct-Dec		00005	183520	14.02.2014	39	3530	16480	0		
Oct-Dec		00006	200000	03.02.2014	29	2860	0	0		
Oct-Dec		00002	199137	18.02.2014	43	4223	863	0		
Oct-Dec		00004	94154	12.03.2014	65	3018	0	0		
			876811			16787	17343	**0**	**Nil**	**0**

Jan, 2014 to Mar, 2014

Month	Tax payable in cash	Challan No.	Challan amount	Date of payment	No. of days delayed	Interest payable	Interest already paid	Balance interest payable	Diff. Int payable	Excess paid
Jan-Mar	1088325	00004	183181	07.05.2014	37	3342	16819	-13477		
Jan-Mar		00004	197178	14.05.2014	44	4278	2822	1456		
Jan-Mar		00008	197762	22.05.2014	52	5071	2238	2833		
Jan-Mar		00012	299449	22.05.2014	52	7679	551	7128		
Jan-Mar		00001	210480	24.05.2014	54	5605	1208	4397		
			1088050			25976	23638	2338	**2338**	**0**

Apr, 2014 to June, 2014

Month	Tax payable in cash	Challan No.	Challan amount	Date of payment	No. of days delayed	Interest payable	Interest already paid	Balance interest payable	Diff. Int payable	Excess paid
Apr-June	634506	00001	200000	13.09.2014	69	6805	0	0		
Apr-June		00002	200000	19.09.2014	75	7397	0	0		

Apr-June		00006	200000	25.08.2014	50	4932	0	0		
Apr-June		00015	34506	06.09.2014	62	1055	20790	0		
			634506			20189	20790	**0**	**0**	**0**

July, 2014 to Sept, 2014

Month	Tax payable in cash	Challan No.	Challan amount	Date of payment	No. of days delayed	Interest payable	Interest already paid	Balance interest payable	Diff. Int payable	Excess paid
July to Sept	579937	00006	200000	24.10.2014	18	1775	0	1775		
July to Sept		00001	379937	25.10.2014	19	3560	0	3560		
			579937					5335	**5335**	0

Oct, 2014 to Dec, 2014

Month	Tax payable in cash	Challan No.	Challan amount	Date of payment	No. of days delayed	Interest payable	Interest already paid	Balance interest payable	Diff. Int payable	Excess paid
Oct-Dec	600269	30423	231042	28.02.2015	53	6039	18958	0		
Oct-Dec		34322	49658	05.03.2015	58	1420	342	0		
Oct-Dec		30508	49062	13.3.2015	66	1597	938	0		
Oct-Dec		32057	49031	27.03.2015	80	1934	969	0		
Oct-Dec		31130	49069	25.03.2015	78	1887	931	0		
Oct-Dec		30231	49707	18.4.2015	102	2500	293	0		
Oct-Dec		30374	49034	13.04.2015	97	2346	966	0		
Oct-Dec		30493	49041	04.04.2015	88	2128	959	0		
Oct-Dec		30860	24597	23.04.2015	107	1298	72	0		
			600241			21150	24428	**0**	**0**	0

Total differential interest payable **114351**

3. In addition to the above, the audit officers have made an observation that on verification of ST-3 Returns filed by the assessee online, for the period October 2014 to March 2015, the service tax amount assessed for the quarter January 2015 to March 2015 was not paid and thus there was a short payment of Service Tax which works out to Rs.5,86,216/-, Education Cess of Rs.11,725/-, and Secondary Higher Education Cess Rs.5,862/- total amounting to Rs.6,03,803/- detailed as under.

ST-3 RETURN FILED FOR THE PERIOD OCTOBER 2014 TO MARCH 2015	
January,2015 to March,2015, Short payment of Service Tax	Rs.5,86,216/-
2% Education Cess	Rs.11,725/-
1% SHE Cess	Rs.5,862/-
Total	Rs.6,03,803/-

4. In view of the foregoing, a show cause notice vide SCN No.28/2016-17/Asst.Commissioner. Circle-V in C.No.V/ST/54/28/2015-16 Gr.54 dated 17.02.2017 was issued to M/s Vista Homes, Door No.5-4-187/3, Soham Mansion, M.G.Road, 2nd Floor, Raniganj, Hyderabad-500 003, making the noticee to show cause to the Assistant Commissioner of Service Tax Commissionerate, Division-III, Redhills, Hyderabad as to why :

(i) an amount Rs.1,14,351/-, (Rupees One Lakh Fourteen Thousand Three Hundred and Fifty One only), towards interest on belated payment of Service Tax payable by them, during the period from October 2012 to December 2014 should not be demanded from them under the provisions of Section 73 of the Finance Act, 1994, read with provision to sub-section (1) therein and read with Section 75 of the Finance Act, 1994;

(ii) an amount Rs.6,03,803/- (Rupees Six Lakhs Three Thousand Eight Hundred and Three only), (consisting of Service Tax of Rs. Rs.5,86,216/-, Education Cess of Rs.11,724/- and Secondary & Higher Education Cess of Rs.5,862/-), being the service tax payable by them, during the period from 01-01-2015 to 31-03-2015 towards short payment of service tax should not be demanded from them under Section 73 of the Finance Act, 1994;

(iii) interest should not be demanded, at the applicable rates, on the amount demanded at (ii) above, under Section 75 of the Finance Act, 1994; and

(iv) penalty should not be imposed on them on the amount demanded at (ii) above, under Section 76 of the Finance Act, 1994.

5. Subsequent to the issuance of the above notice, a Corrigendum to the said notice was issued to the assesses by the Assistant Commissioner of Service Tax Commissionerate, Division-III, Redhills, Hyderabad vide C.No.IV/16/25/2017-ST (Division-III Tech) dated 10.03.2017 asking the assesse to show cause to the Superintendent of Service Tax, Range-IIIB of Division-III on monetary grounds for adjudication of the case. After re-organisation of the field formations in the GST regime, since the Show Cause Notice found pending adjudication has been received as a legacy file to the Ramgopalpet-III Range of Secunderabad GST Division, another corrigendum to the notice was given by the Superintendent of Central Tax, Ramgopalpet III Range, vide C.No.IV/16/25/2017-ST(Division-III Tech) dated 18.12.2017.

6. Defence Reply:

The assesse vide their reply dated 08.05.2018 to the Show Cause Notice *inter alia* stated that:

i)Short payment of interest on delayed payment of service tax for the period from 2012-13 to March 2015: As per Annexure interest calculated for the period from 2012-13, 2013-14 and 2014-15 is Rs.1,14,351/-. Whereas audit conducted from 2013-14 and 2014-15, hence, interest works out to be Rs.28,576/-only.

ii) Short payment of service tax for the period from January 2015 to March,2015 as per the ST-3 Returns for the period from October 2014 to March 2015: In this regard it is stated that at the time of ST-3 Returns they have not shown service tax payment particulars for the period from January 2015 to March 2015, however the payments for the said period were duly paid and copies of Challans enclosed.

Challan No-	Challan date	ST (Rs)	Ed. CESS	S.H.E Cess	Interest (Rs)	Total (Rs)
30805	01-07-2015	47,632	953	476	939	50000
30201	12-06-2015	48,283	966	483	268	50000
30546	08-06-2015	47,162	943	472	1,423	50000
30273	10-08-2015	17,991	360	180	329	18860
30288	19-06-2015	47,799	956	478	767	50000
30446	30-05-2015	48,544	971	485	-	50000
30452	30-05-2015	47,339	947	473	1,241	50000
30210	23-05-2015	48,319	966	483	232	50000
30342	21-05-2015	45,333	907	453	3,307	50000
31381	06-05-2015	40,535	811	405	8,249	50000
		438,937	**8,780**	**4,388**	**16,755**	**468,860**

7. PERSONAL HEARING:

The assesses were provided with an opportunity of Personal Hearing vide letters dated. 04.05.2017, 04.12.2017 and 11.04.2018. The assesse did not utilise the Personal Hearing but submitted reply vide their letter 08.05.2018, as stated above.

8. DISCUSSIONS AND FINDINGS:

I have carefully gone through the Show Cause Notice, case records and reply of the assesse. The two issues involved in the Show Cause Notice are that non-payment of interest on the belated payment of tax during the period Oct'2012 to Dec'2014 amounting to Rs.1,14,351/- and another issue is that the assesses have not paid the service tax amount self-assessed in their ST-3 return filed for the period Oct'2014 to March 2015 for the quarter period of Jan'15 to March'15. In fact, there is no need for issuance of Show Cause Notice for the two issues covered in the Show Cause Notice as first issue is demand of interest on belated payment of tax and second one is default payment of tax. Action for recovery of the quantified amounts should have been initiated under Section 87 of the Finance Act, 1994 instead of issuance of notice to the assesses. Now I take up the case for adjudication in terms of the provisions of Section 174 of Central Tax Act, 2017. The assesse vide their reply dated 08.05.2017 contesting that i) short payment of interest on delayed payment is Rs.28,576/- only instead of Rs.1,14,351/- as the audit conducted for the period is from 2013-14 and 2014-15. This contention of the assesse is not acceptable as interest liability flows from the tax liability automatically and there is no time limit fixed for such demands and hence the interest liability demanded by the audit is confirmed and the assesses are required to pay the said amount.

9 (i). Coming to the second issue in the Show Cause Notice, the assesses have stated that though they have paid the tax dues assessed for the period Jan'15 to March'15 they could not reflect the same in their ST-3 return filed for the period Oct'14 to March'15 and submitted 10 copies of the challans for a tax amount of Rs.4,38,937/-, Education Cess of Rs.8,780/- and SHE Cess of Rs.4,388/- along with interest amount of Rs.16,755/- totaling to Rs.4,68,860/-. The above contention is also not correct as the assesses have filed their ST-3 return for the period Oct'14 to March'15 on 09.06.2015 and 4 challans mentioned in their reply are dated after 09.06.2015, the details of which cannot be mentioned in their ST-3 return. However, taking into consideration of their payment of tax to the tune of Rs.4,52,105/- along with applicable interest of Rs.16,755/- the assesses still not produced the proof of payment of tax to the tune of Rs.1,51,698/-, which they have defaulted during the period Jan'15 to March'15. Surprisingly, the assesses have not furnished any reasons for non-payment of the balance dues for the defaulted payment of tax for the period Jan'15 to March'15 in their reply. But they have simply mentioned in their challan payments work sheet in Annexure-I that an amount of Rs.1,30,859/- was paid in their Cenvat Account but no proof to this extent was submitted to consider the said amount as payment towards tax dues. Since, the assesses have not contested the issue on merits, the issue is to be considered as admitted.

(ii). With respect to invocation of penal provisions on the assesse under Section 76 of the Finance Act, 1994, no reply on this count has been submitted by the assesses. In terms of Section 76(1), I impose a penalty of Rs.15,170/- on the short paid amount of tax Rs.1,51,698/- (Rs.6,03,803/- - Rs.4,52,105/-) for the period Jan'15 to March'15.

10.(0). Accordingly, I pass the following order.

ORDER

(i) I confirm the demand of interest amount of Rs.1,14,351/- (Rupees One Lakh Fourteen Thousand Three hundred and Fifty One only)made in the Show Cause Notice for the belated payment of Service Tax during the period from October,2012 to December,2014 M/s. Vista Homes under Section 75 of the Finance Act, 1994 read with Section 73(1) of the Finance Act, 1994.

(ii) I confirm the Service Tax demand amount of Rs.6,03,803/- (Rupees Six Lakhs Three Thousand Eight Hundred and Three only) (consisting of Service tax of Rs.5,86,216/-, Education Cess of Rs.11,724/- and Secondary & Higher Education Cess of Rs.5,862/-) not paid by M/s.Vista Homes during the period from 01.01.2015 to 31.03.2015 interms of Section 73 of the Finance Act,1994.

(iii) I hereby order for appropriation of Rs.4,52,105/- (Rupees Four lakhs Fifty Two Thousand One hundred and Five only) (Service Tax Rs.4,38,937/- + Ed.Cess Rs.8,780/- + SHE Cess Rs.4,388/-) paid towards the amounts confirmed at (ii) above.

(iv) I confirm the demand of interest, at the applicable rates, on the amount demanded at (ii) above.

(v) I hereby order for appropriation of Rs.16,755/- (Rupees Sixteen thousand Seven Hundred and Fifty Five only) paid towards interest on Rs.4,52,105/- at (iii) above.

(vi) A penalty of Rs. 15,170/- (Rupees Sixty Thousand three hundred and Eighty Only) is imposed on M/s. Vista Homes under Section 76 of the Finance Act, 1994, on the balance service tax amount of Rs.1,51,698/-.

28/05/18

(K.SANTHI SEKHAR)
SUPERINTENDENT
RAMGOPALPET III RANGE
SECUNDERABAD DIVISION

To

M/s Vista Homes, H.NO.5-4-187/3, Soham Mansion, M.G.Road, 2nd Floor, Ranigunj, Secunderabad -500 003

Copy submitted to

1) The Deputy Commissioner, Central Tax, (ARC, Hqrs)Secunderabad GST Commissionerate, Hyderabad.

2) The Assistant Commissioner, Central Tax, Secunderabad Division, Secunderabad GST Commissionerate, Hyderabad.

3) The Superintendent of Central Tax, Review Section, Hqrs Office, Secunderabad GST Commissionerate, Hyderabad.

सेंट्रल टैक्स, केंद्रीय उत्पाद शुल्क तथा कस्टम अधीक्षक का कार्यालय

OFFICE OF THE SUPERINTENDENT OF CENTRAL TAX, CENTRAL EXCISE & CUSTOMS

RAMGOPALPET RANGE-III ::SALAKE SANATE BUILDINGS 2ND FLOOR :: H.No.2-4-416 & 417

RAMGOPALPET M G ROAD :: SECUNDERABAD – 500 003.

C.No.IV/16/18/2017-III-B Dt.01.06.2018

CORRIGENDUM

Please refer to the Order-in-Original No.01/2018-Adjn(Supdt), dated 28.05.2018 passed by the Superintendent, Central Tax, Ramgopalpet III Range, Secunderabad Division vide file C.NO.IV/16/18/2017-III-B in respect of M/s Vista Homes, Hyderabad.

In the Order-In-Original, Para 10(vi) of page No.8 may be read as:

A penalty of Rs.15,170/-(**Rupees Fifteen Thousand one hundred and Seventy only**) is imposed on M/s Vista Homes under Section 76 of the Finance Act, 1994, on the balance service tax amount of Rs.1,51,698/-.

01/06/18

(K.SANTHI SEKHAR)
SUPERINTENDENT
RAMGOPALPET III RANGE.

To

M/s Vista Homes, H.NO.5-4-187/3, Soham Mansion, M.G.Road, 2nd Floor, Ranigunj, Secunderabad -500 003

Copy submitted to

1) The Deputy Commissioner, Central Tax, (ARC, Hqrs)Secunderabad GST Commissionerate, Hyderabad.
2) The Assistant Commissioner, Central Tax, Secunderabad Division, Secunderabad GST Commissionerate, Hyderabad.
3) The Superintendent of Central Tax, Review Section, Hqrs Office, Secunderabad GST Commissionerate, Hyderabad.