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:18.04.2019

ORDER IN ORGINAL No. 01 /2019 – Adjn (Supdt)
(Passed by Shri A. Mohan Kumar, Superintendent)

PREAMBLE

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

1. This copy is granted free of charge for the private use of the person to whom it is issued.

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।

2. 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 ।

3. 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।

4. 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।

5. 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.

...

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 Denovo Adjudication Order-Reg.

. . .

M/s Vista Homes, D. 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. 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 notice 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.

3. Subsequent to the issuance of the above notice, a Corrigendum to the said notice was issued to the assessee 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 assessee 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.

4. The Superintendent of Central Tax, after due process, adjudicated the case and passed the following order.

invoices on which credit was taken and requested for more time to submit the balance of the copies evidencing credit. this piecemeal submissions of the balance copies of invoices in support if their claim which was not made before the Adjudicating Authority, through irregular and highly unconvincing, cannot be ignored for obvious reasons that the same should not to miscarriage of justice. As the Adjudicating authority did not have the evidences before him, as recorded in para 9(i) of the impugned order, there was no opportunity to verify the claim of the appellant is required to be taken into consideration to arrive to a decision regarding their claim of payment of the tax through Cenvat Credit account. Further the Adjudicating authority would also be required to undertake verification of the invoices based on which the credit was taken and the eligibility of the same for the being availed as credit. therefore, in the interest of justice, I am of the considered opinion that ***the matter is required to be remanded for denovo adjudication particularly in respect of our verification of the payment of tax demand of Rs. 6,02,803/- as claimed by the appellant before me and to pass a speaking order in this regard"***

7. In this regard, Noticee submitted that they have discharged the Service Tax liability of Rs. 6,03,803/- for the period January 2015 to March 2015 through cash and CENVAT credit. Out of liability of Rs.6,03,803/-, an amount of Rs. 4,52,105/- was paid in cash (copy of challans enclosed as Annexure V) and the amount of Rs.1,30,859/- was paid through CENVAT Credit. In this regard, Noticee is herewith enclosing the copies of invoices on which CENVAT credit is availed for an amount of Rs. 66,473/- therefore the demand to that extent needs to be set aside (Copy of invoices enclosed as Annexure II)

8. With respect to remaining amount, Noticee submitted that in the month of March 2015 an agreement entered with customer got cancelled on which Service Tax of Rs. 46,219/- was already paid periodically as and when advance is received (Statement showing the date of receipt of advance and the quarter in which Service Tax is paid is enclosed as Annexure-III and agreement entered with customer and cancellation letter along with re-payment details is enclosed as Annexure-IV).

9. Noticee submitted that as the agreement was cancelled, Noticee have taken the credit of the Service Tax paid on the said agreement of Rs. 46,219/- and adjusted the same against the service tax liability under Rule 6(3) of Service Tax Rules, 2004. For the purpose of adjustment, Noticee have taken the credit of Service Tax paid in CENVAT register (Copy of CENVAT register is enclosed as Annexure-II). Though the credit of Service Tax paid is taken in the CENVAT Register, the same is not the CENVAT Credit. As the Noticee is rightly eligible for adjustment of excess service tax paid, the same can be considered as payment of service tax. Hence, Noticee has request your good self to kindly consider the same as payment of service tax.

10. Noticee submitted that after considering the above referred amounts i.e, Rs.1,12,692/-, the remaining demand of Rs. 39,006/- (Rs. 6,03,803 - Rs. 4,52,105 - Rs.1,12,692) will be paid along with interest in due course.

11. M/s Vista Homes were called a personal hearing and on 20.03.2019, the Authorised representative Shri K. Lakshman Kumar, Chartered Accountant appeared before the Adjudicating Authority and reiterated the submissions made by them in their written submissions. The noticee filed an intimation dated 20/22.12.2018 regarding payment of Service Tax, Interest and penalty. The noticee furnished the details as follows:

Total demand confirmed for the period 01/2015 to 03/2015	Rs. 6,03,803/-
Amount paid in cash	Rs. 4,52,105/-
Paid through CENVAT credit	Rs. 1,12,692/-
Balance payable	Rs. 39006/-
Due date for payment	31.03.2015
Paid by	22.12.2018
Interest payable	Rs. 33,836/-
Penalty @10%	Rs. 3,900.06

12. The Noticee enclosed e-challan dated 22.12.2018 for an amount of Rs. 76,843/- along with their letter dated 20/22.12.2018.

Discussion and Findings:

13. I have gone through the case records, written submissions made by the assessee and the submissions made during the course of personal hearing and also the legal provisions. The points to be decided, in terms of the denovo orders of Hon'ble Commissioner (Appeals) in OIA No. HYD-EXCUS-MD-AP2-0092-18-19-ST dated 28.09.2018 in this case are as to whether:-

(i) 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;

(ii) 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

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

14. In this regard, it is observed from the submissions of the Noticee that they have discharged the service tax liability of Rs. 6,03,803/- for the period January 2015 to March 2015 through cash and CENVAT credit. Out of liability of Rs. 6,03,803/-, an amount of Rs. 4,52,105/- was paid in cash (copies of challans enclosed as Annexure V) and the amount of Rs. 1,30,859/- was paid through CENVAT Credit. In this regard, Noticee has submitted the copies of invoices on which CENVAT credit is availed for an amount of Rs. 66,473/-. It is seen that the noticee paid an amount of Rs. 4,52,105/- as detailed bellow:

Sl. No.	Date of Challan (CIN)	Amount paid (in Rupees) (ST + Ed. Cess + S&H Cess)	Interest paid	Total amount paid
01.	6360219 01072015 30805	49061	939	50000
02.	6360219 12062015 30201	49732	268	50000
03.	6360219 08062015 30546	48577	1423	50000
04.	6360219 10082015 30273	18531	329	18860
05.	6360219 19062015 30288	49233	767	50000
06.	6360219 30052015 30446	50000	0	50000

07.	6360219 30052015 30452	48759	1241	50000
08.	6360219 23052015 30210	49768	232	50000
09.	6360219 21052015 30342	46693	3307	50000
10.	6360219 06052015 31381	41751	8249	50000
	TOTAL	452105	16755	468860

15. It is further seen that the Noticee paid an amount of Rs. Rs. 66,473/- through CENVAT credit. The details of CEVAT earned by the assessee is as follows:

Sl. No.	Input invoice number & date	Name and address of the service provider	Amount of Service credit earned
01.	U53/143/14 dated 31.12.2014	United Security Services	3975
02.	1814961274 dated 27.12.2014	TATA DOCOMO	58
03.	414944624 dated 31.12.2014	Bharat Sanchar Nigam Limited	303.46
04.	1820791960 dated 18.01.2015	TATA DOCOMO	29
05.	409033806 dated 06.12.2014	Bharat Sanchar Nigam Limited	170.42
06.	1820763050 dated 18.01.2015	TATA DOCOMO	130
07.	USS/154/15 dated 31.01.2015	United Security Service	3844
08.	14-15/164 dated 06.02.2015	Sri Bhavani Ads	3090
09.	14-15/163 dated 06.02.2015	Sri Bhavani Ads	2472
10.	422741387 dated 06.02.2015	Bharat Sanchar Nigam Limited	166.95
11.	Inv07976 dated 23.02.2015	Fortune Travels	95
12.	1828055442 dated 18.02.2015	TATA DOCOMO	29
13.	1834980957 dated 18.03.2015	TATA DOCOMO	29
14.	14-15/188 dated 14.03.2015	Sri Bhavani Ads	2472
15.	14-15/189 dated 14.03.2015	Sri Bhavani Ads	3090
16.	14-15/153 dated 16.03.2015	Linus Consultants Pvt Ltd	1154
17.	14-15/149 dated 16.03.2015	Linus Consultants Pvt Ltd	962
18.	14-15/152 dated 16.03.2015	Linus Consultants Pvt Ltd	1154
19.	14-15/158 dated 16.03.2015	Linus Consultants Pvt Ltd	962
20.	14-15/162 dated 16.03.2015	Linus Consultants Pvt Ltd	962
21.	14-15/155 dated 16.03.2015	Linus Consultants Pvt Ltd	1154
22.	14-15/156 dated 16.03.2015	Linus Consultants Pvt Ltd	770
23.	14-15/154 dated 16.03.2015	Linus Consultants Pvt Ltd	924
24.	TP/VH/3 dated 03.04.2015	Trinity Realcon Transactions Pvt. Ltd.	12360
25.	INMAJ150200 393	Johnson Lifts Private Limited	14289
26.	14-15/161 dated 16.03.2015	Linus Consultants Pvt Ltd	962
27.	14-15/151 dated 16.03.2015	Linus Consultants	1154

		Pvt Ltd	
28.	14-15/160 dated 16.03.2015	Linus Consultants Pvt Ltd	962
29.	RF14041 dated 24.11.2014	Raasta Films	3090
30.	RF15016 dated 09.03.2015	Virtual Tours Invoice.	2583
31	14-15/163 dated 16.03.2015	Linus Consultants Pvt Ltd	962
32.	14-15/150 dated 16.03.2015	Linus Consultants Pvt Ltd	1154
33.	14-15/159 dated 16.03.2015	Linus Consultants Pvt Ltd	962
		TOTAL	66473.83

16. I have gone through the above invoices and found that they are covered within the ambit of Rule 9(3) of Cenvat Credit Rules, 1994 and satisfy the mandate of requisites for the purpose of eligibility of CENVAT credit. I further find that the assessee duly reflected the CENVAT credit in the periodical returns as well as in their book of accounts (Ledger). I find that the adjustment of Rs. 66,473/- through CENVAT credit towards the liability is proper.

17. Further, Noticee submitted that in the month of March 2015 an agreement was entered with customer got cancelled on which service tax of Rs 46,219/- was already paid periodically as and when advance is received and submitted a statement showing the date of receipt of advance and the quarter in which service tax is paid. Noticee has also submitted a copy of agreement entered with customer and cancellation letter along with re-payment details. Notice further submitted that as there is an excess payment of service tax, the same was adjusted for the subsequent month liability as per Rule 6(3) of Service Tax Rules, 1994 hence requested to extend the benefit of Rule 6(3) of Service Tax Rules, 1994. I have examined Rule 6(3) of Service Tax Rules, 1994 which reads as follows

> *"(3) Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason 3[or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract], the assessee may take the credit of such excess service tax paid by him, if the assessee—*
>
> *(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or*
>
> *(b) has issued a credit note for the value of the service not so provided to the person*
>
> *to whom such an invoice had been issued."*

The above referred rule allows the adjustment of service tax in case of non-provision of service or where the amount of invoice is re-negotiated due to deficient provision of service subject to refund of payment received from customers or issue of credit note.

18. In the instant case, assessee has initially entered into an agreement for provision of service and paid service tax on receipt of advance. However, the agreement got cancelled subsequently and the assessee has refunded the advance amount received from the customer. To evidence this, assessee has submitted the cancellation of letter and re-payment details. As the agreement for provision of service was cancelled and the entire amount received from customer is repaid, I find that assessee is eligible for

adjustment of excess service tax paid as per Rule 6(3) of Service Tax Rules, 1994.

19. The noticee paid the balance of Rs. 39,006/- through e Challan dated 22.12.2018 along with interest of Rs. 33,936/- and penalty of RS. 3,901/-. It is seen that the assessee has not contested the demand of Rs. 6,03,803/- being the Service Tax along with applicable cess payable by them (Service Tax of Rs. Rs. 5,86,216/-, Education Cess of Rs. 11,724/- and Secondary & Higher Education Cess of Rs. 5,862/-), during the period from 01-01-2015 to 31-03-2015 towards short payment. Further, they have also paid an amount of Rs.109/- towards interest for delay in payment of service tax by 2 days vide challan no.00250 dated 16.03.2019.

20. It is seen from the documents, the due date for payment of Service Tax of Rs. 6,03,803/- by M/s. Vista Homes was paid the service tax liability of Rs. 6,03,803/- for the period from 01-01-2015 to 31-03-2015 was 31.03.2015. M/s. Vista Homes discharges the liability as follows:

SI No	**Challan Amount**	**Tax Amount involved in Challan including EC and SHEC**	**Interest Amount Involved in the Challan**	**Due date**	**Paid Date**	**Delay in No of Days (Rate of interest in Black)**	**Interest Payable**
1	50,000	49,061	939	31-Mar-15	1-Jul-15	92	2,226
2	50,000	49,732	268	31-Mar-15	12-Jun-15	73	1,790
3	50,000	48,577	1,423	31-Mar-15	8-Jun-15	69	1,653
4	18,860	18,531	329	31-Mar-15	10-Aug-15	132	1,206
5	50,000	49,233	767	31-Mar-15	19-Jun-15	80	1,942
6	50,000	50,000	-	31-Mar-15	30-May-15	60	1,479
7	50,000	48,759	1,241	31-Mar-15	30-May-15	60	1,443
8	50,000	49,768	232	31-Mar-15	23-May-15	53	1,301
9	50,000	46,693	3,307	31-Mar-15	21-May-15	51	1,174
10	50,000	41,751	8,249	31-Mar-15	6-May-15	36	741
Total	**4,68,860**	**4,52,105**	**16,755**				**14,956**

The summary of the tax liability and taxes paid through difference means is as follows

SI No	**Particulars**	**Amount**
A	Total Payable	6,03,803
B	Paid though cash as tabulated above	4,52,105
C	Paid through CENVAT Credit (Para 15 of Order)	66,474
D	Adjusted under Rule 6(3) of Service Tax Rules, 1994 (Para 19)	46,219

E	Paid through cash vide Challan dated 22.12.2018	39,005
F	**Total Paid (B+C+D+E)**	**6,03,803**

21 Further, assessee has also paid an amount of Rs.16,755/- (as tabulated above) and Rs. 33,836/- vide Challan dated 22.12.2018 as interest on delayed payment of Rs. 39,005/- and Rs.3900.06 as 10% of penalty on balance amount paid on 22.12.2018 (i.e Rs.39,005 - after adjusting the CENVAT Credit and Rule 6(3) adjustment and amount paid through cash).

22. From the foregoing, it is seen that M/s. Vista Homes paid an amount of Rs. 5,64,798/- (Rs 4,52,105 + Rs 66,474 + Rs 46,219) out of the total liability of Rs. 6,03,803/- for the period from 01-01-2015 to 31-03-2015 before intervention of department. The remaining amount of Rs. 39,005/- was paid only after being pointed out by the department. Hence, M/s. Vista Homes are liable for penalty under Section 76 of Finance Act, 1994 i.e, not exceeding 10% of such service tax not paid. Accordingly, I impose the same.

23. In view of the foregoing, I pass the following order

i. I confirm the demand of an amount of Rs. 6,03,803/- (Rupees Six Lakhs Three Thousand Eight Hundred and Three only) (Rs.5,86,216/- of Service Tax + Rs.11,724/- of Education Cess + Rs.5,826/- of Secondary and Higher Education Cess, being service tax payable by them, during the period from 01-01-2015 to 31-03-2015 towards short payment of service tax under section 73(2) of the Finance Act, 1994.

ii. I appropriate an amount of Rs.4,52,105/- paid in cash as tabulated in Para _ and further adjust an amount of Rs.66,473/- through CENVAT as detailed supra and Rs. 46,219/- through adjustment of service tax under Rule 6(3) of Service Tax Rules, 1994 towards the above liability and Rs.39,006/- paid through challan dated 22.12.2018 towards the above liability.

iii. I demand an amount of Rs. 53,961/- towards interest under section 75 of Finance Act, 1994 as detailed supra.

iv. I appropriate Rs. 14,956/- of interest paid as tabulated above and Rs. 39,005/- vide challan dated 22.12.2018 towards the interest liability detailed at (iv) above

v. I impose a penalty of Rs. 3,900/- being 10% of service tax not paid initially of Rs. 39,005 under Section 76 of Finance Act, 1994

vi. I appropriate an amount of Rs. 3,900/- paid by the assessee vide Challan dated 22.12.2018 towards the penalty

(A.MOHAN KUMAR)
SUPERINTENDENT
RAMGOPALPET III RANGE
SECUNDERABAD DIVISION

अधीक्षक
Superintendent
केन्द्रीय कर (जी एस टी)
Central Tax (GST)
रामगोपालपेट-III जी एस टी रेंज
Ramgopalpet-III GST Range
सिकंदराबाद मण्डल
Secunderabad Division
हैदराबाद/Hyderabad

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.

NATION TAX MARKET

केन्द्रीय कर सहायक आयुक्त का कार्यालय,
माल एवम सेवा कर मण्डल, सिकंदराबाद माल एवम सेवा कर आयुक्तालय।

OFFICE OF THE SUPERINTENDENT OF CENTRAL TAX, RAMGOPALPET III RANGE SECUNDERABAD GST DIVISION, SECUNDERABAD GST COMMISSIONERATE.

Address: 2ND FLOOR, SLAIKE SENITE BUILDING, RAMGOPALPET M G ROAD: SECUNDERABAD

C.NO.IV/16/18/2017-III-B

Date.26.11.2018

OC NO. 330/18

MODI PROPERTIES PVT. LTD. SEC'BAD INWARD No. 50F Date 3/12/18 Sign.

To,
M/s Vista Homes,
No.5-4-187/3, Soham Mansion,
M.G.Road, 2nd floor,
Ranijung, Secunderabad – 500 003,

Madam/Sir,

Sub: Service Tax – Non Payment of Service Tax by M/s Vista Homes Intimation of Personal Hearing - Reg.

Ref: Appeal No.31/2018(ST)/886 and OrderIn Appeal No.HYD-EXCUS -MD-AP2-0092-18-19-st dated: 28.09.2018

With reference to the above, it is to inform that Personal Hearing in the above case has been fixed on **05.12.2018 at 12.00 Hrs.**

You are therefore requested to appear before the undersigned at the **Office of the Superintendent of Central Tax Ramgopalpet III Range, 2nd floor, Salike Senate Building, D.NO.2-4-416,417, Ramgopalpet, M G. Road, Secunderabad**. On the above mentioned date and time to represent your case in person.

In case you fail to appear, it would be construed that you do not be herd in person, the same would be taken into records and your case will be decided ex-parte based on the merits and the material evidence available on records.

Yours faithfully,

24/11/2018

A.MOHAN KUMAR
SUPERINTENDENT
RAMGOPALPET III RANGE

Client copy

1 NATION TAX MARKET

केन्द्रीय कर सहायक आयुक्त का कार्यालय,
माल एवम सेवा कर मण्डल, सिकंदराबाद माल एवम सेवा कर आयुक्तालय।

OFFICE OF THE SUPERINTENDENT OF CENTRAL TAX, RAMGOPALPET III RANGE SECUNDERABAD GST DIVISION, SECUNDERABAD GST COMMISSIONERATE.

Address: 2ND FLOOR, SLAIKE SENITE BUILDING, RAMGOPALPET M G ROAD: SECUNDERABAD

C.NO.IV/16/18/2017-III-B

Date:05.12.2018

Appeal OIA NO.31/2018(SC)ST/886 Dated 28.09.2018 passed by the Commissioner (Appeals II) Hyderabad

Appellant : M/s Vista Homes, Hyderabad

Represented by:

Name(s)

1. Sri. K. Lakshman Kumar

K. Lakshman Kumar 05/12/2018
Signature (with date)

RECORD OF PERSONAL HEARING

Shri. K. Lakshman Kumar, Charted Account appeared for personal hearing today on behalf of the appellant.

He reiterated the submission made in the remained submission and stated that he had nothing further more to add.

I. Mohan 5/12/18
SUPERINTENDENT
RAMGOPALPET III RANGE
SECUNDERABAD DIVISION

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

Sub: Written submissions for Remand Proceedings in C No. IV/16/18/2017-III-B pertaining to M/s. Vista Homes in Remand directions issued by Commissioner (Appeals) vide Order-in-Appeal No.HYD-EXCUS-MD-AP2-0092-18-19-ST dated 28.09.2018

Brief facts:

A. M/s. Vista Homes, Dr. No.5-4-187/3, Soham Mansion, M.G. Road, 2nd Floor, Ranigunj, Hyderabad – 500 003 (herein after referred as "Noticee") are registered with the Service Tax department vide STC No.AAGFV2068PSD001 under the category of "Construction of Residential Complex Service" and "Works Contract Service".

B. Noticee had regularly assessed their service tax liability and filed the ST-3 returns periodically. HoNoticeever in some instances there is a delay in payment of service tax and the interest amount for delay in such payment was not made at the time of filing the ST-3 returns for the period October 2012 to December 2014.

C. Service Tax department had conducted the audit and noticed that there is a delay in making payment of service tax for the period October 2012 to December 2014. The Superintendent of Central Tax had issued a SCN No.28/2016-17/Asst. Commissioner dated 17.02.2017 asking to show cause as to why

Hiregange & Associates Chartered Accountants Hyderabad

- An amount of Rs. 1,14,351/- towards interest on delayed payment of service tax payable by them during the period of from October, 2012 to December, 2014 should not be demanded from them under the provisions of Section 73 read with Section 75 of Finance Act, 1994.
- An amount of Rs. 6, 03,803/- 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
- Interest should not be demanded at the applicable rates on the demanded at (ii)above
- Penalty should not be imposed on them on the amount demanded at (ii) above under Section 76 of the Finance Act, 1994

D. Noticee has filed a detailed reply vide their letter dated 08.05.2018

E. Subsequently, Noticee has received the present Order-in-Original No. No.01/2018- Adjn(Supdt) dated 28.05.2018 confirming the following

- Demand of the interest amount of Rs. 1,14,351/- made in the Show Cause Notice for the belated payment of Service Tax during the period of 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

- Demand amount of Rs. 6, 03,803/- not paid by M/s. Vista Homes during the period from 01.01.2015 to 31.03.2015 interms of Section 73 o f the Finance Act, 1994
- Demand of interest, at the applicable rates on the demanded at (ii)above
- I hereby order for appropriation of Rs. 4,52,105/- paid toward the amounts confirmed at (ii) above
- A penalty of RS. 15,170/- is imposed on M/s. Vista Homes under Section 76 of the Finance Act, 1994 on the balance service tax amount of Rs. 1,15,698/-

F. Against the above referred order, Noticee has filed an appeal before Commissioner (Appeals) and the Commissioner Appeals Vide Order-In-Appeal No.HYD-EXCUS-MD-AP2-0092-18-19-ST dated 28.09.2018 which remanded the case back to the original authority for the verification of input service invoices regarding their CENVAT claim.

Hireganga & Associates
Chartered Accountants
Hyderabad

Submissions:

1. Noticee submits that the impugned order in Appeal vide Para 8 held that *"Regarding the demand of Service Tax short paid along with interest thereon, the contention of the appellant is the part of the demand was paid through the cash and the balance paid through cenvat credit account and that they are producing the copies of cenvat invoices on which credit was availed and demand to that extent may be set aside, this set of invoices on which credit was taken and requested for more time to submit the balance of the copies evidencing credit. this piecemeal submissions of the balance copies of invoices in support if their claim which was not made before the Adjudicating Authority, through irregular and highly unconvincing, cannot be ignored for obvious reasons that the same should not to miscarriage of justice. As the Adjudicating authority did not have the evidences before him, as recorded in para 9(i) of the impugned order, there was no opportunity to verify the claim of the appellant is required to be taken into consideration to arrive to a decision regarding their claim of payment of the tax through Cenvat Credit account. Further the Adjudicating authority would also be required to undertake verification of the invoices based on which the credit was taken and the eligibility of the same for the being availed as credit. therefore, in the interest of justice, I am of the considered opinion that* ***the matter is required to be remanded for denovo adjudication particularly in respect of our verification of the payment of tax demand of Rs. 6,02,803/- as***

Hiregange & Associates Chartered Accountants Hyderabad

claimed by the appellant before me and to pass a speaking order in this regard"

2. In this regard, Noticee submits that they have discharged the service tax liability of Rs. 6,03,803/- for the period January 2015 to March 2015 through cash and CENVAT credit. Out of liability of Rs.6,03,803/-, an amount of Rs. 4,52,105/- was paid in cash (copy of challans enclosed as Annexure V) and the amount of Rs.1,30,859/- was paid through CENVAT Credit. In this regard, Noticee is herewith enclosing the copies of invoices on which CENVAT credit is availed for an amount of Rs.66,473/- therefore the demand to that extent needs to be set aside (Copy of invoices enclosed as annexure II)

3. With respect to remaining amount, Noticee submits that in the month of March 2015 an agreement entered with customer got cancelled on which service tax of Rs.46,219/- was already paid periodically as and when advance is received (Statement showing the date of receipt of advance and the quarter in which service tax is paid is enclosed as Annexure-III and agreement entered with customer and cancellation letter along with re-payment details is enclosed as Annexure-IV).

4. Noticee submits that as the agreement was cancelled, Noticee have taken the credit of the service tax paid on the said agreement of Rs. 46,219/- and

Hiregange & Associates
Chartered Accountants
Hyderabad

adjusted the same against the service tax liability under Rule 6(3) of Service Tax Rules, 2004. For the purpose of adjustment, Noticee have taken the credit of service tax paid in CENVAT register (Copy of CENVAT register is enclosed as Annexure-II). Though the credit of service tax paid is taken in the CENVAT Register, the same is not the CENVAT Credit. As the Noticee is rightly eligible for adjustment of excess service tax paid, the same can be considered as payment of service tax. Hence, Noticee request your good self to kindly consider the same as payment of service tax.

5. Noticee submits that after considering the above referred amounts i.e, Rs.1,12,692/-, the remaining demand of Rs.39,006/- (Rs.6,03,803 - Rs. 4,52,105 - Rs.1,12,692) will be paid along with interest in due course.

6. Noticee craves leave to alter, add to and/or amend the aforesaid grounds.
7. Noticee wish to be personally heard before any decision is taken in this matter.

For Hiregange & Associates
Chartered Accountants

Hiregange & Associates Chartered Accountants Hyderabad

Lakshman Kumar, K
Chartered Accountant

सेंट्रल टैक्स, केंद्रीय उत्पाद शुल्क तथा कस्टम **अधीक्षक का कार्यालय**

OFFICE OF THE SUPERINTENDENT OF CENTRAL TAX,
RAMGOPALPET RANGE-III :: SECUNDERABAD GST DIVISION, Address: 'SALIKE SENATE' DOOR NO.2-4-416 & 417, RAMGOPALPET, M.G ROAD, SECUNDERABAD -500003.

OC.No. 175/2018 Dt. 02.08.2018

To
M/s Vista Homes,
H.No.5-4-187/3,
Soham Mansion,
M.G Road,
SECUNDERABAD -500 003.

Sir,

Sub: Order-in-Original No.01/2018-Adjn.(Supdt.)
Dt. 28.5.2018 in respect of M/s Vista Homes-reg.

***

Please refer to the above cited Order-in-Original, passed by the Superintendent of Central Tax, Ramgopalpet III Range.

Out of the arrears outstanding, an amount of Rs.1,14,351/- has been paid vide Challan No.00409 dt.27.6.2018. It is requested to pay the balance amount of Rs.151698/- + Interest and penalty of Rs.15,170/-.

Since, no appeal is preferred against the above O-I-O, it is once again requested to pay the above said amounts immediately and report compliance.

Yours faithfully,

2/8/2018

SUPERINTENDENT
RAMGOPALPET III RANGE

Copy submitted to the Assistant Commissioner, Central Tax, Secunderabad Division, Secunderabad-for favour of information pl.

ST correction

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।

This copy is granted free of charge for the private use of the person to whom it is issued.

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.

... .

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.

***

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 assese 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.