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OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX
HYDERABAD II COMMISSIONERATE
3RD FLOOR (Annexe) :: SHAKKAR BHAWAN :: L.B.STADIUM ROAD
BASHEERBAGH::HYDERBAD – 500 004

O.R.No. 87/2010-ST

HQST No: 55/09 - AE IV

Date: 24.06.2010

SHOW CAUSE NOTICE

Sub : Service Tax – Works Contract Services – Non payment of Service tax on taxable services rendered – Show cause Notice – Reg.....

M/s Paramount Builders, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad – 500 003 [here in after referred to as 'the service provider'] are engaged in providing works contract service. M/s Paramount Builders is a registered partnership firm and got themselves registered with department on 17-8-2006 (Construction of Residential Complex service) and on 29-2-2008 (Works contract service) for payment of service tax with STCNo. AAHFP4040NST001.

2. As per Sec 65(105 (zzzh) of the Service Tax Act "**taxable service**" means any service provided or to be provided -to any person, by any other person, in relation to construction of complex. As per Sec 65 (30a) of the Service Tax Act "**construction of complex**" means construction of a new residential complex or a (a) part thereof; or completion and finishing services in relation (b) to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or repair, alteration, renovation or restoration (c) of, or similar services in relation to, residential complex;

3. As per Section 65(105(zzzza)) of the Finance Act, 1994 "**taxable service**" under works contract 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, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(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. As per Section 65(91a) of the Finance Act, 1994, "Residential Complex means any complex comprising of—

(i) a building or buildings, having more than twelve residential units

(ii) a common area; and

(iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system,

located within the premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

5. On gathering intelligence that M/s Paramount Builders though registered with the service tax department are not discharging the service tax liability properly and also not filing the required returns, investigation has been taken up by the department and Summons dated 13.1.2010 for submission of relevant record /documents / information have been issued to them. On verification of records submitted by the assessee, it is found that M/s Paramount Builders have undertaken a single venture by name **Paramount Residency** located at Nagaram village, Keesara Mandal, RR District, and received amounts towards sale of undivided portion of land and semi finished flats and agreement of construction from September 2006 to December 2009 from their customers, and also from M/s Bhargavi Developers for construction services. In the said venture, they have entered into sale deed, agreement of construction in respect of 122 flats with their customers. Out of the above 122 flats, in respect of 14 flats and M/s Bhargavi Developers they started receiving amounts towards construction prior to the date from which the works contract service is taxable and therefore they are classifiable under Construction of Residential complex service. In respect of the remaining flats they started receiving the amounts from their customers after the date from which the works contract service is taxable and therefore they are classifiable under works contract service. Though they got registered for payment of service tax against construction of residential complex service and works contract service, till date they have not filed the ST3 returns with the department. However, they have submitted the copies of the ST3 returns prepared for the periods October, 2007 to March 2008 (two returns), October, 2008 to March 2009 (two returns) which were not acknowledged by the department, along with the copies of the challans evidencing payment of Rs. 20,63,125/- towards construction of Residential complex service, Rs. 7,75,228 towards works contract service along with other payments of Rs. 3,137/- . Further, it is found that they have stopped payment of Service Tax on receipts from 1-1-2009 by misinterpreting the clarification issued by the Board vide circular No. 108/02/2009 – ST dated 29th January 2009.

6. A Statement was recorded from Sri. A. Shanker Reddy, Deputy General Manager, (Admn.) authorized representative of M/s Paramount Builders on 1.2.2010 under Section 14 of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994. Sri. Reddy vide his Statement dated 1.2.2010 had inter alia stated that "the activities undertaken by the company are providing services of construction of Residential Complexes; They purchased the land under sale deed; On that they constructed the residential complexes; Initially, they collect the amounts against booking form/agreement of sale; At the time of registration of the property, the amount received till then will be allocated towards Sale Deed and Agreement of construction; Therefore, service tax on amounts received against Agreement of construction portion up to registration was remitted immediately after the date of agreement; The service tax on remaining portion of the amounts towards Agreement of construction is paid on receipt basis; Agreement of sale constitutes the total amount of the land / semi finished flat with undivided share of land and the value of construction; The sale deed constitutes a condition to go ahead for construction with the builder; Accordingly, the construction agreement will also be entered immediately on the same date of sale deed; All the process is in the way of sale of the constructed unit as per the agreement of sale but possession was given in two phases one is land / semi finished flat with undivided share of land and other one is completed unit. This is commonly adopted procedure as required for getting loans from the banks". Further, he stated that services to a residential unit / complex which is a part of a residential complex, falls under the exclusion clause in the definition of residential complex. Further, he stated that they have stopped collection and payment of service from 1-1-2009 in the light of the clarification of the Board vide circular No. 108/02/2009 – ST dated 29th January 2009.

7. As per the exclusion provided in Sec 65(91a) of the Service Tax Act, the residential complex does not include a **complex** which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person. Here, "personal use" includes permitting the complex for use as residence by another person on rent or without consideration. *It is further clarified in para 3 of the Circular No. 108/02/2009 – ST, dated 29th January 2009* if the ultimate owner enters into a contract for construction of a **residential complex** with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity is not liable to service tax. Therefore, as per the exclusion clause and the clarification mentioned above, if a builder/promoter/developer is constructing entire residential complex for one person for personal use as residence by such person would not be subjected to service tax. For example, construction of residential quarters by the Income tax department for their employees by employing a contractor for design, planning and construction is not leviable to service tax because it is for

the personal use of the Income tax department. Normally, a builder/promoter/developer constructs a residential complex consisting number of residential units and sells those units to different customers. So, in such cases the construction of complex is not meant for one individual. Therefore, as the whole complex is not constructed for single person the exclusion provided in Sec 65(91a) of the Service Tax Act doesn't apply. Further, the builder/promoter/developer normally enters into construction / completion agreements after execution of sale deed. Till the execution of sale deed the property remains in the name of the builder/promoter/developer and services rendered thereto are self service. Moreover, stamp duty will be paid on the value consideration shown in the sale deed. Therefore there is no levy of Service Tax on the services rendered till sale deed i.e., on the value consideration shown in the sale deed. But, no stamp duty will be paid on the agreements / contracts against which they render services to the customer after execution of sale deeds. There exists the service provider and service recipient relationship between the builder/promoter/developer and the customer. Therefore, such services against agreements of construction invariably attract service tax under Section 65(105(zzzza)) of the Finance Act, 1994.

8. As per the definition of "Residential Complex" provided under Section 65(91a) of the Finance Act, 1994, it constitutes any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system. The subject venture of M/s Paramount Builders qualifies to be a residential complex as it contains more than 12 residential units with common area and common facilities like park, common water supply etc., and the layout was approved by HUDA vide permit No. 6008/P4/Plg/HUDA/2006, dated 14-9-2006. As seen from the records submitted, the assessee have entered into 1) a sale deed for sale of land together with / without semi finished portion of the house and 2) an agreement for construction, with their customers. On execution of the sale deed the right in the property got transferred to the customer, and hence the construction service rendered by the assessee thereafter to their customers under agreement of construction is taxable under service tax as there exists service provider and receiver relationship between them. As there involved the transfer of property in goods, it appears that the services rendered by them against agreements of construction are taxable services under Construction of residential complex service or works contract service as the case may be.

9. As M/s Paramount Builders have not furnished the monthwise particulars of amounts received exclusively on agreements for Construction, the tax liability has been arrived at on the basis of soft copies of the books of accounts provided by M/s Paramount Builders. It is arrived at that they have collected an amount of **Rs. 10,80,90,207/-** (towards Construction of residential complex service - Rs. 3,41,50,269/- and towards Works contract service - Rs. 7,39,39,938/-) other than sale deed amount and are liable to pay service tax of Rs. 40,18,792/- (towards Construction of residential complex service - Rs. 13,76,334/- and towards Works contract service - Rs. 26,42,458/-) during the period from September, 2006 to December 2009. Against the said liability M/s Paramount Builders have paid service tax of Rs. 28,38,353/- (towards Construction of residential complex service - Rs. 20,63,125/- and towards Works contract service Rs. 7,75,228/-). Therefore there is a short payment of Rs. 11,80,439/- (towards Construction of residential complex service - Rs. 6,86,791/- (Excess payment) and towards Works contract service - Rs. 18,67,230/- (Short payment)). The details of amounts collected, service tax liability, paid details, balance tax payable are as detailed in the **Annexure** to this Notice.

10. M/s Paramount Builders are well aware of the provisions and of liability of Service tax on receipts towards Construction and have not assessed and paid service tax properly by suppression of facts and contravened the provisions of Section 68 of finance Act, 1994 with an intent to evade payment of tax. They have intentionally not filed the returns and produced the particulars. Further, they misinterpreted the definition of the works contract service with an intent to evade payment of Service Tax. All the facts have come to light only after the department has taken up the investigation. Hence, the service tax payable by M/s Paramount Builders appears to be recoverable under **Sub Section (1) of Section 73 of the Finance Act, 1994**.

11. From the foregoing it appears that M/s Paramount Builders, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad - 500 003 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 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 and also did not disclose the relevant details / information, with an intent to evade payment of service tax and are liable for recovery under proviso to the section 73(1) of the Finance Act, 1994 and thereby have rendered themselves liable for penal action under Section 76, 77 and 78 of the Finance Act, 1994.

12. Therefore, M/s Paramount Builders, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad - 500 003, are hereby required to show cause to the Additional Commissioner of Customs, Central Excise

and Service Tax, Hyderabad-II Commissionerate, 3rd floor, Shakkar Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad-500 004, within 30 days of receipt of this Notice as to why:

- (i) Rs. 6,86,791/- which was excess paid in construction of residential Complex service should not be appropriated towards the liability under works contract service of Rs 18,67,230/- and the remaining short paid tax of Rs. 11,80,439/- (Service tax Rs. **11,46,057/-** Education Cess, **Rs.22,921/-** Secondary & Higher Education Cess **Rs. 11,461/-**) should not be demanded under the works contract service under the Sub Section (1) of the Section 73 of the Finance Act, 1994 for the period from September, 2006 to December 2009 as shown in the Annexure attached to this Notice.
- (ii) interest is not payable by them on the amount demanded at (i) above and also on the delayed payments made during the period from September, 2006 to December 2009, under the Section 75 of the Finance Act, 1994
- (iii) Penalty should not be imposed on them under Section 76 of the Finance Act, 1994 for their failure to pay service tax in accordance with the provisions of Section 68 or the rules made under Chapter V of the Finance Act 1994.
- (iv) 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 for which no penalty is specified else where.
- (v) Penalty should not be imposed on them under Section 78 of the Finance Act, 1994 for suppression of value of service tax.

13. They are also required to produce at the time of showing cause, all the evidence upon which they intend to rely in support of their defense. They are also required to state whether would like to avail of opportunity to be heard in person before the case is adjudicated. If they do not reply to the Show Cause Notice within 30 days or do not appear in person when the case is posted for personal hearing, it would be presumed that the Notice does not have anything to state in their defense or they do not prefer any personal hearing and case will be decided on merit based on the evidence available on record.

14. This show cause Notice is issued without any prejudice to any other action that may be taken against the recipients of this Notice or any other persons concerned with the Finance Act or any other law time being in force.

15. The above Notice is issued placing Reliance on the following Records:

- (1) Soft copy of the bank statements, books of accounts, Customer documents 2005-06 to 2008-09 and 2009-10 (upto Dec 2009).
- (2) Service tax statement submitted by M/s Paramount Builders vide letter dated 25-11-2009.
- (3) The Statement dated 1.2.2010 of Sri. A. Shankar Reddy, Authorised person of M/s Paramount Builders.
- (4) Balance Sheet copies of M/s Paramount Builders for the year 2005-06 to 2008-09.


(G. SREE HARSHA)

ADDITIONAL COMMISSIONER

To
✓ M/s Paramount Builders, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad – 500 003
(By RPAD)

Copy to:

The Superintendent, Service Tax, Group-X, Hyderabad-II Commissionerate, Shakkar Bhavan, Hyderabad.

The Superintendent, Adjudication, Hqrs. Hyderabad-II Commissionerate, Hyderabad.
Office Copy / Spare Copy.

REVISED WORKSHEET

M/s Paramount Builders

Month	Tax paid as per		Total tax paid as per challans	Service wise receipts as		Tax rates		Total tax liability		Due date for payment of tax
	Service Tax	Education cess		Construction of Residential complex service	Works contract service	Construction of Residential complex service	Works contract service	Construction of Residential complex service	Works contract service	
Nov-06				2470000	0	12.24% on 33% of value		99768		5-Jan-07
Dec-06				5098795	0	12.24% on 33% of value		205951		5-Jan-07
Jan-07				84173	0	12.24% on 33% of value		3400		5-Apr-07
Feb-07				86000	0	12.24% on 33% of value		3474		5-Apr-07
Mar-07				660483	0	12.24% on 33% of value		26678		5-Apr-07
Apr-07				942986	0	12.24% on 33% of value		38089		5-Jul-07
May-07				2404087	0	12.36% on 33% of value		98058		5-Jul-07
Jun-07	377211	11316	388527	413556	207946	12.36% on 33% of value	2.06% on value	16868	4284	5-Jul-07
Jul-07				0	587790	12.36% on 33% of value	2.06% on value	0	12108	5-Oct-07
Aug-07				830000	2924962	12.36% on 33% of value	2.06% on value	33854	60254	5-Oct-07
Sep-07				2208590	1821742	12.36% on 33% of value	2.06% on value	90084	37528	5-Oct-07
Oct-07	699214	20978	720192	1000000	3270348	12.36% on 33% of value	2.06% on value	40788	67369	5-Jan-08
Nov-07				600000	1252958	12.36% on 33% of value	2.06% on value	24473	25811	5-Jan-08
Dec-07				2000000	1968882	12.36% on 33% of value	2.06% on value	81576	40559	5-Jan-08
Jan-08	97087	2913	100000	1326428	3101392	12.36% on 33% of value	2.06% on value	54102	63889	5-Apr-08
Feb-08	829518	24888	854406	2952752	4469193	12.36% on 33% of value	2.06% on value	120437	92065	5-Apr-08
Mar-08	110653	3320	113973	87987	3276621	12.36% on 33% of value	4.12% on value	3589	134997	5-Apr-08
Apr-08				151015	4630234	12.36% on 33% of value	4.12% on value	6160	190766	5-Jul-08
May-08				1472000	1537215	12.36% on 33% of value	4.12% on value	60040	63333	5-Jul-08
Jun-08				152000	5330953	12.36% on 33% of value	4.12% on value	6200	219635	5-Jul-08
Jul-08	156558	4697	161255	1814608	4183242	12.36% on 33% of value	4.12% on value	74014	172350	5-Oct-08
Aug-08				714423	3645373	12.36% on 33% of value	4.12% on value	29140	150189	5-Oct-08
Sep-08				1749000	6176662	12.36% on 33% of value	4.12% on value	71338	254478	5-Oct-08
Oct-08	388348	11652	400000	1312140	4238015	12.36% on 33% of value	4.12% on value	53520	174606	5-Jan-09
Nov-08	97087	2913	100000	590832	1395737	12.36% on 33% of value	4.12% on value	24099	57504	5-Jan-09
Dec-08				111715	2347218	12.36% on 33% of value	4.12% on value	4557	96705	5-Jan-09
Jan-09				760933	2328828	12.36% on 33% of value	4.12% on value	31037	95948	5-Apr-09
Feb-09				259946	2090959	12.36% on 33% of value	4.12% on value	10603	86148	5-Apr-09
Mar-09				603366	1231690	10.3% on 33% of value	4.12% on value	20508	50746	5-Apr-09
Apr-09				130000	1732256	10.3% on 33% of value	4.12% on value	4419	71369	5-Jul-09
May-09				260000	1515885	10.3% on 33% of value	4.12% on value	8837	62454	5-Jul-09
Jun-09				421990	1233168	10.3% on 33% of value	4.12% on value	14343	50807	5-Jul-09
Jul-09				200000	1950100	10.3% on 33% of value	4.12% on value	6798	80344	5-Oct-09
Aug-09				250000	2021291	10.3% on 33% of value	4.12% on value	8498	83277	5-Oct-09
Sep-09				2205	597544	10.3% on 33% of value	4.12% on value	75	24619	5-Oct-09
Oct-09				28259	1040741	10.3% on 33% of value	4.12% on value	961	42879	5-Jan-10
Nov-09				0	589215	10.3% on 33% of value	4.12% on value	0	24276	5-Jan-10
Dec-09				0	1241778	10.3% on 33% of value	4.12% on value	0	51161	5-Jan-10
Total	2755676	82677	2838353	34150269	73939938			1376334	2642458	

Name of the service	Amounts collected	Total tax liability from Nov. 2006 to Dec. 2009	Total tax paid from Nov. 2006 to Dec. 2009	Tax short (+)/ excess (-) paid
Construction of Residential complex service	34150269	1376334	2063125	-686791
Works contract service	73939938	2642458	775228	1867230
Total	108090207	4018792	2838353	1180439

Break-up of tax liability

Name of the service	Service Tax	Ed. Cess	S&H Ed.
Construction of Residential complex service	-666788	-13336	-6667
Works contract service	1812845	36257	18128
Total	1146057	22921	11461

Daniel
C.M. Janaki Raman
Ingr. STAE II