



**OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE &
SERVICE TAX**

**HYDERABAD II COMMISSIONERATE : L.B.STADIUM ROAD
BASHEERBAGH:: HYDERABAD-500 004.**

(Tele / Fax: 040 - 23231481)

O.R.No.125/2011-ST(Adjn)(Commr.)

Date: 24.10.2011

C.No.IV/16/169/2011-Adjn.(ST)(Commr.)

SHOW CAUSE NOTICE

**Sub : Service Tax – Works Contract Services – M/s Modi Ventures
- Non payment of Service tax on taxable services rendered –
Issue of Show cause Notice – Reg.**

M/s Modi Ventures, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad – 500 003 [here in after referred to as 'the assessee'] are engaged in providing **Construction of complex service and Works Contract service**. M/s Modi Ventures is a registered partnership firm and got themselves registered with department on **17.08.2005** under **Construction of Complex service** and on **29.02.2008** under **Works Contract Service** for payment of service tax with STC No. **AAJFM0646DST001**.

2. On gathering intelligence that **M/s Modi Ventures.**, being a registered assessee of the Service Tax department is not discharging the service tax liability properly, investigation has been taken up by the department. Summons dated **13.01.2010** for submission of relevant records /documents / information have been issued to them. On verification of records submitted by the assessee, it is found that **M/s Modi Ventures** have under taken one project namely **Gulmohar Gardens** located at Mallapur village, Uppal Mandal, RR District (total **506 Residential units**) in the year **2006** and received amounts from customers from **April,2006 to December 2010** towards **sale of land**, and **agreements for construction**. In the said projects, they have entered into **sale deed**, and **agreement for construction** with their customers in

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respect of **290 flats**. They have filed the **S.T.3** returns for **04/2006 to 09/2008 and 04/2010 to 12/2010**. They have not filed the **ST3** returns for the periods **10/2008 to 03/2010**. It is found that they have paid the Service Tax, including Education Cess and Secondary and higher Education cess of **Rs.15,21,176/- under Construction of complex service** and **Rs.5,25,567/- under Composition scheme of Works contract service**, on the receipts against **agreements for construction** for the period from **June,2007 to December, 2008**. They have paid the Service Tax under **Construction of complex** service availing abatement under **Notification No.1/2006-ST, dated 01-03-2006** (as amended) and under **Works Contract service** availing the **Composition scheme** under **Rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007**. It is found that they have stopped payment of Service Tax on receipts from **01-01-2009** by misinterpreting the clarification of the Board vide Circular **No.108/02/2009 – ST dated 29th January 2009**.

3. A Statement was been recorded from **Sri. A. Shanker Reddy, Deputy General Manager (Administration)** authorized representative on **01.02.2010** 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 **01.02.2010** had, interalia, stated that; the activities undertaken by the company are providing services of construction of Residential Complexes; purchased the land under sale deed and on that they have constructed the residential complexes; initially, they collect the amounts against booking form/agreement of sale and 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 for construction with the builder and 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 tax from **01.01.2009** in the light of the clarification of the Board vide **Circular No. 108/02/2009 – ST dated 29th January 2009**.

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. The subject venture of **M/s Modi Ventures.**, qualifies to be a residential complex as it contains **more than 12 residential units with common area and common facilities** like common water supply etc., and the layouts were approved by the concerned authorities. **M/s Modi Ventures**, received the amounts from the customers, as mentioned in the Sale deeds and **agreements of construction**. As seen from the records submitted, the assessee has entered into (i) a **sale deed** and (ii) an **agreement for construction**, with their customers. On execution of the **sale deed**, the right on a property got transferred to the customer, hence the construction service rendered by the assessee thereafter to their

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customers under agreement of construction are taxable under service tax as there exists service provider and service recipient relationship between them. As transfer of property in goods is involved in the execution of these contracts, it appears that the services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the land was already sold vide the sale deeds are taxable services under **Construction of Complex services / Works Contract Service**.

6. It is clarified in **para 3** of the **Circular No.108/02/2009 - ST, dated 29th January 2009** that 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 constructing entire complex for a single person for personal use as residence by such person would not be subjected to service tax. Normally, a builder/promoter/developer constructs residential complex consisting of 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 entity. Therefore, as the whole complex is not constructed for single person the exclusion provided in **Sec 65(91a)** of the Finance Act, 1994 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 the stamp duty is paid on the value consideration shown in the sale deed. As regard the agreements / contracts against which they render services to the customer after execution of sale deeds, there exists service provider and service recipient relationship between the builder/promoter/developer and the customer and such services are leviable to service tax. Thus it appears that the contention and interpretation of the definition of the Construction of Complex services and Board Circular dated **29.1.2009** by the assessee appears to be, incorrect.

7. Board vide Circular **No.128/10/2010-ST** dated **24.08.2010** has clarified as follows:

*"w.e.f. 01/06/2007 when the new service "Works Contract service" was made effective, classification of aforesaid services would undergo a change in case of long term contracts even though part of the service was classified under the respective taxable service **prior to 01/06/2007**. This is because '**works contract**' describes the nature of the activity more specifically and, therefore, as per the provisions of section 65A of the Finance Act, 1994, it would be the appropriate classification for the part of the service provided after that date. As regards applicability of composition scheme, the material fact would be whether such a contract satisfies **rule 3(3) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007**. This provision casts an obligation for exercising an option to choose the scheme prior to payment of service tax in respect of a particular works contract. Once such an option is made, it is applicable for the entire contract and cannot be altered. Therefore, in case a contract where the provision of service commenced **prior to 01.06.2007** and any payment of service tax was made under the respective taxable service before **01.06.2007**, the said condition under **rule 3(3)** was not satisfied and thus no portion of that contract would be eligible for composition scheme. On the other hand, even if the provision of service commenced **before 01.06.2007** but no payment of service tax was made till the taxpayer opted for the composition scheme after its coming into effect from 01.06.2007, such contracts would be eligible for opting of the composition scheme".*

7.1. As clarified by the above, Board Circular, the services rendered by **M/s. Modi Ventures** during the period **01.06.2007 to 31.12.2010** are classifiable **under Works Contract Services**.

Service tax liability under Works Contract service:

7.2. 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

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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;

7.3. Rule 2A of Service Tax (Determination of Value) Rules, 2006 the value of works contract service determined shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract and the gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract;

7.4. An optional Composition scheme for payment of Service Tax in relation to **Works Contract Service** has been framed by the Notification **No.32/2007-ST** dated **22.5.2007**, effective from **01.06.2007**, under

Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. Under the said scheme, an assessee has to pay an amount equivalent to **two percent** of the gross amount charged for the Works Contract, excluding the **Value Added Tax (VAT) or Sales Tax** paid on transfer of property of goods involved in the execution of Works Contract. With effect from **01.03.2008** onwards, the said rate of **2 %** has been changed to **4%** vide **Notification No.7/2008-S.T. dated 01.03.2008.**

7.5. As per **Rule 3(2) of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007,** the provider of taxable service shall not take CENVAT credit of duties or cess paid on **any inputs,** used in or in relation to the said works contract, under the provisions of **CENVAT Credit Rules, 2004.**

7.6. In terms of **Board Circular dated 24.08.2010,** the amounts received towards construction services **after 01.06.2007** were classified under **Works contract services.** The post sale deed construction services rendered by them to various customers after **01.06.2007** are classifiable under the category of **Works Contract Services.** The subject venture of **M/s. Modi Ventures** was started in the year **2006** and was going on after **01.06.2007** also. Hence, the same are **Ongoing Works Contracts.** As the said project is an **ongoing Works Contract and the assessee has paid service tax under Construction of Complex Service before 01.06.2007,** the benefit of **Composition scheme** can not be extended.

8. As **M/s Modi Ventures** have not furnished the month wise particulars of amounts received exclusively on **agreements for Construction.** Hence, the service tax liability has been arrived at on the basis of soft copies of the books of accounts provided by the assessee vide their letter dated **20.01.2010.** Board vide Circular No. **108/02/2009 - ST, dated 29th January 2009** has clarified that service tax is not chargeable for services provided upto the stage of Sale deed. Therefore the receipt of amounts from each customer, to the extent of the **sale deed value,** were excluded from the total receipts of individual customer to arrive at the total taxable value **of construction services rendered, post execution of sale deed.**

9. From June, 2007 to December, 2010, M/s Modi Ventures, have collected an amount of **Rs.13,81,56,949/-** against **Agreements of Construction** in respect of **ongoing Works contracts**. In respect of these contracts, the benefit of **Compositions Scheme** can not be extended. Further, they have also not furnished the details of material consumed. In the absence of which the deduction of material cost under **Rule 2A of Service Tax (Determination of Value) Rules, 2006** can not be extended. Hence, service tax calculated @**12.36% / 10.30%** on **Rs.13,81,56,949/-** works out to **Rs.1,58,60,319/-** (Service Tax of **Rs.1,53,98,368/-**, Education Cess of **Rs.3,07,967/-**, Secondary & Higher Education Cess of **Rs.1,53,984/-** (As detailed in the Annexure to the notice). However, M/s. Modi Ventures have paid an amount of **Rs.20,46,743/-** (**Rs.9,21,176/-** under **Construction of Complex Services** and **Rs.11,25,567/-** under **Works Contract Services**) after **01.06.2007**. Thus they have short paid / not paid an amount of **Rs.1,38,13,576/-** (including Cesses). The same is liable for recovery under **Section 73(1) of the Finance Act, read with proviso there to**. They are also liable to pay interest on the said amount under the provisions of **Section 75 of the Finance Act, 1994**.

10. Therefore, it appears that **M/s Modi Ventures** have misinterpreted the Board Circular only with an intention to evade payment of service tax and stopped paying service tax with effect from **01.01.2009**. Further, **M/s Modi Ventures** are well aware of the provisions and of the liability of Service tax on receipts against the agreements for Construction and have not assessed and paid service tax properly by suppression of facts and contravened the provisions of **Section 68 of the Finance Act, 1994** with an intent to evade payment of service tax. They have intentionally not shown any receipts towards construction in their **ST3** returns. Further, they misinterpreted the definition of the works contract service with an intent to evade payment of Service Tax. The fact of receipt of the amounts towards construction has come to light only after the department has taken up the investigation. Hence, the service tax payable by **M/s Modi Ventures** appears to be recoverable under **proviso to Sub Section (1) of Section 73 of the Finance Act, 1994**.

11. From the foregoing it appears that **M/s Modi Ventures**, Secunderabad 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 shown the amounts received for the taxable services rendered in the statutory Returns 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 hence the amounts are liable for recovery under **proviso to the section 73(1) of the Finance Act, 1994** along with interest under **Section 75** of the **Finance Act, 1994**. Further, **M/s. Modi Ventures** have rendered themselves liable for penal action under **Section 77 and 78 of the Finance Act, 1994**.

12. Therefore, **M/s Modi Ventures, 5-4-187/3 & 4, III Floor, MG Road, Secunderabad - 500 003**, are hereby required to show cause to the **Commissioner of Customs, Central Excise and Service Tax, Hyderabad-II Commissionerate, L.B. Stadium Road, Basheerbagh, Hyderabad-500 004**, within **30(thirty)** days of receipt of this Notice as to why:

- (i) an amount of Service Tax of Rs.1,38,13,576/- (Rupees one crore thirty eight lakh thirteen thousand five hundred and seventy six only) should not be demanded from them towards Service Tax (including Cesses) on the "Works Contract Services", provided by them during the period 01.06.2007 to 31.12.2010 under the Section 73(1) of the Finance Act, 1994 read with proviso thereto;
- (ii) interest should not be demanded from them on the amount demanded at (i) above under the Section 75 of the Finance Act, 1994
- (iii) Penalty should not be imposed on them under Section 77 of the Finance Act, 1994
- (iv) Penalty should not be imposed on them under Section 78 of the Finance Act, 1994

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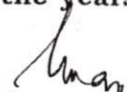
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13. They are also required to produce at the time of showing cause, all the evidence upon which they intend to rely in support of their defense. They are also required to state whether they would like to avail of opportunity to be heard in person before the case is adjudicated. If they do not reply to the Show Cause Notice within **30 (thirty)** days or do not appear in person when the case is posted for personal hearing, it would be presumed that the Noticee 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, 1994 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 2008-09 and 2010-11 (upto Dec 2010).
- (2) Service tax statement submitted by M/s Modi Ventures vide letter dated 29-12-2009.
- (3) The Statement dated 01-02-2010 of Sri. A Shankar Reddy, Authorised person of M/s Modi Ventures.
- (4) Balance Sheet of M/s Modi Ventures for the years 2006-07 to 2010-11.


24.10.2011
(P.N. RAO)
COMMISSIONER

To

✓ M/s Modi Ventures, 5-4-187/3 & 4, II Floor, MG Road, Secunderabad - 500 003. (through the superintendent of Service Tax, AE-Gr.II)

Copy to:

1. The Additional Commissioner, Service Tax, Hyderabad-II Commissionerate, Hyderabad.
2. The Assistant Commissioner, Service Tax, Anti Evasion, Hyderabad-II Commissionerate, Hyderabad.

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3. The superintendent of Service Tax, AE-Gr.II, Hyderabad-II Commissionerate (w.r.t. file HQST No.58/20089-AE ST.Gr.II) with a direction to serve the copy of the notice on the assesseees and forward a copy of the dated acknowledgement.

Master Copy / Office Copy.