

Q.M.4
SCN FOR 2011



केन्द्रीय उत्पाद सीमा शुल्क एवं सेवा कर के आयुक्त का कार्यालय
**OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE
AND SERVICE TAX**

हैदराबाद II आयुक्तालय : बशीरबाग, हैदराबाद
HYDERABAD-II COMMISSIONERATE: BASHEERBAGH: HYDERABAD

O.R.No. 95/2012 - Adjn.(ST)(Commr.)
C.No.IV/16/63/2012 - ST (Gr-X)

Date: 24.04.2012

SHOW CAUSE NOTICE

Sub : Service Tax - "Works Contract Services" - M/s Modi Ventures, Secunderabad - Non-payment of Service tax on "Works Contract 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. Show Cause Notice vide O.R.No.125/2011-ST(Adjn)(Commr.) dt. 24.10.2011 was issued for the period from 01.06.2007 to December 2010 for an amount of Rs.1,38,13,576/- including Cesses. The present notice is being issued for the period from January 2011 to December 2011.

3. 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 continued to receive amounts from customers from January 2011 to December 2011 towards sale of land, and agreements for construction. In the said projects, they

O.R.No. 95/2012 - Adjn.(ST)(Commr.)
C.No.IV/16/63/2012 - ST (Gr-X)

have entered into **sale deed**, and **agreement for construction** with their customers and not discharging the service tax liability on the services provided by them under "**Works Contract Service**".

4. 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 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 "**Works Contract Service**".

5. 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** does not 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 regards 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 liable 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.

6. 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

O.R.No. 95/2012 - Adjn.(ST)(Commr.)
C.No.IV/16/63/2012 - ST (Gr-X)

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 31.12.2011** 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 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 An optional Composition Scheme for payment of Service Tax in relation to Works Contract Service is provided by the **Notification No.32/2007-ST dated 22-5-2007**, effective from 01-6-2007, under the **Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007**. Under the said scheme, an assessee has to pay an amount equivalent to two percent of the gross amount charged for the Works Contract, excluding the Value Added Tax (VAT) or Sales Tax paid on transfer of property of goods involved in the execution of Works Contract. w.e.f. 1-3-2008 onwards, the said **rate of 2 % is changed to 4% vide Notification No.7/2008-S.T. dated 1-3-2008**

7.4 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**.

7.5 As per **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.

7.6 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

O.R.No. 95/2012 - Adjn.(ST)(Commr.)
C.No.IV/16/63/2012 - ST (Gr-X)

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 **assessees have paid service tax under Construction of Complex Service before 01.06.2007**, the benefit of **Composition scheme** can not be extended.

8. **M/s. Modi Ventures**, vide their letter dated **07.02.2012** have furnished the details of amounts received towards **Sale deed, Agreements of Construction** during the period **01/2011 to 12/2011**. 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 **January 2011 to December 2011**, **M/s Modi Ventures**, have collected an amount of **Rs. 5,88,68,851/-** 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 @ **10.30%** on **Rs. 5,88,68,851 /-** works out to **Rs. 60,63,492/-** (**Service Tax of Rs.58,86,885/-**, **Education Cess of Rs. Rs.1,17,738/-**, **Secondary & Higher Education Cess of Rs.58,869/-**) However, **M/s. Modi Ventures** have informed vide their letter dated **08.02.2012** that they have paid an amount of **Rs.10,40,000/-** under protest. **The amount paid under protest is liable to be appropriated and adjusted against their Service Tax liability as the services rendered by them are taxable under "Works Contract Services"**.

10. **M/s Modi Ventures** are well aware of the statutory provisions and the liability of Service tax on receipts against the agreements for Construction and have not assessed and paid service tax properly by

misinterpreting the definition of "Works Contract Service", thereby contravened the provisions of **Section 68** of the **Finance Act, 1994**. Hence, the service tax payable by **M/s Modi Ventures** appears to be recoverable under **Section 73(1)** of the **Finance Act, 1994**. They are also required to pay interest in terms of **Section 75** 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. Further, **M/s. Modi Ventures** have rendered themselves liable for penal action under **Section 76** and **Section 77** of the **Finance Act, 1994**.

12. In view of the above, **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 Rs. 60,63,492/- (Rupees Sixty lakh Sixty Three thousand Four hundred and Ninety Two only) should not be demanded from them towards Service Tax inclusive of Cesses, on the "Works Contract Services" provided by them during the period January 2011 to December 2011, under **Section 73(1)** of the **Finance Act, 1994**;
- (ii) an amount of Rs. 10,40,000/- already paid by them under protest should not be regularized and adjusted against the Service Tax demand at (i) above;

O.R.No. 95/2012 - Adjn.(ST)(Commr.)
C.No.IV/16/63/2012 - ST (Gr-X)

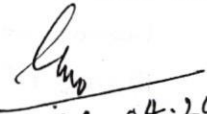
- (iii) interest should not be paid by them on the amount demanded at (i) above under the Section 75 of the Finance Act, 1994
- (iv) Penalty should not be imposed on them under Section 77 of the Finance Act, 1994
- (v) Penalty should not be imposed on them under Section 76 of the Finance Act, 1994

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 and the 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) Letter along with Statement received in this office on 08.02.2012.


24-04-2012
(P.N. RAO)
COMMISSIONER

To
M/s Modi Ventures,
5-4-187/3 & 4, II Floor,
MG Road,
Secunderabad - 500 003.

Copy to:

- 1. The Additional Commissioner, Service Tax, Hyderabad-II Commissionerate, Hyderabad.**
- 2. The Assistant Commissioner, Service Tax, Hyderabad-II Commissionerate, Hyderabad.**
- 3. The superintendent of Service Tax, Group-X, Hyderabad-II Commissionerate (with a direction to serve the notice on the assesseees and forward a copy of the dated acknowledgement).**

Master Copy / Office Copy.