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सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX
हैदराबाद II आयुक्तालय HYDERABAAD II COMMISSIONERATE
11-5-423/1/A:: सीताराम प्रसाद टावर:: रेड हिलस:: हैदराबाद - 4
SITARAM PRASAD TOWERS:: RED HILLS:: HYDERABAD- 4

OR No: 109/2014 - Adjn.(ST)(JC)
C.No: IV/16/196/2011-STG-X

Dt. 24.9.2014

SHOW CAUSE NOTICE

(Notice under Section 73(1A) of the Finance Act 1994)

Sub:: Service Tax - Non payment of Service tax on taxable Taxable services rendered by M/s. Modi & Modi Constructions - Issue of Show Cause Notice - Regarding.

M/s. Modi & Modi Constructions, #5-4-187/3&4, II Floor, Soham Mansion, MG Road, Secunderabad-500 003 (here-in-after referred as "M/s. Modi" or "the assessee") are engaged in providing "Works Contract Service". The assessee is a registered partnership firm and got themselves registered with the department vide **Service Tax Registration Number AAKFM7214NST001.**

2. As seen from the records, the assessee entered into 1) sale deed for sale of undivided portion of land together with semi finished portion of the flat and 2) agreement for construction, with their customers. On execution of the sale deed the right in 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 receiver relationship between them. As there involved the transfer of property in goods in execution of the said construction agreements, 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 **are taxable services under "Works Contract Service".**

3. Accordingly, the following Show Cause Notice had been issued to the assessee:

S. No.	SCN O.R No., Date	Period	Amount of Service Tax Demanded Rs.	OIO No., & date
1	HQPOR No. 34/ 2010-Adjn(ST), dated 12.4.2010	2009	6,04,187	45/2010-ST, dt.29-10-2010 (Confirmed)
2	OR No. 59/2011-Adjn. (ST) Gr.X, dated 23-4-2011	2010	12,06,447	48/2012-Adjn(ST)ADC, dt. 31-08-2012.
3	OR No. 53/2012-Adjn. (Addl.Commr), dated 24-04-2012	2011	27,61,048	Pending Adjudication
4	OR No. 81/2013 - Adjn. (ST) (ADC) dated 02.12.2013	01/2012 to 06/2012	11,87,407	Pending Adjudication

4. As per information furnished by the assessee vide their letter dated 17.09.2014 along with statements, it is seen that "the assessee" have rendered taxable services under the category of "Works Contract Services" during the period **July, 2012 to March, 2014**. The assessee had rendered services for a taxable value of **Rs. 8,05,95,293/- (Rupees Eight Crore Five Lakhs Ninety Five Thousand Two Hundred Ninety Three only)**. After deduction of VAT of Rs.30,20,030/- the taxable value works out to **Rs. 7,75,75,263/-** on which service tax (including cess) works out to **Rs. 38,35,321/-**. As seen from the challans submitted by the assessee, an amount of **Rs. 16,10,050/-** was paid leaving an amount of **Rs. 22,25,271/-** unpaid/short paid for the services rendered during the said period, as detailed in the Annexure enclosed.

5. Vide Finance Act, 2012, sub section (1A) was inserted in Section 73 which reads as under:

SECTION 73 (1A) - Notwithstanding anything contained in sub-section (1) (except the period of eighteen months of serving the notice for recovery of service tax), the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.

6. The sections **65B, 66B and 66D** as inserted in the Finance Act, 1994 by the Finance Act, 2012 w.e.f. 1-7-2012 are reproduced below :

Section 73 (1A) of the Finance Act, 1994 for the period July, 2012 to March, 2014.

8. In view of the above, **M/s Modi & Modi Constructions, Hyderabad** are hereby required to show cause to the **Joint Commissioner, Service Tax, 11-5-423/1/A, Sitaram Prasad Towers, Red Hills, Hyderabad-4**, within **30 (thirty) days** of receipt of this Notice as to why:-

- (i) an amount of **Rs. 38,35,321/- (Rupees Thirty Eight Lakhs Thirty Five Thosuang Three Hundred and Twenty One only)** including Cesses should not be demanded on the **"Works Contract"** services rendered by them during the period from **July, 2012 to March, 2014**. An amount of **Rs. 16,10,050/-** already paid should not be adjusted against the above demand;
- (ii) Interest should not be demanded under **Section 75 of the Finance Act 1994**;
- (iii) Penalty should not be imposed on them under **Section 76 of the Finance Act 1994** for the contravention of Rules and provisions of the Finance Act 1994 ; and
- (iv) Penalty should not be imposed on them under **Section 77 of the Finance Act, 1994**.

9. **M/s. Modi & Modi Constructions, Hyderabad** at the time of showing cause as above are required to produce all the evidence upon which they intend to rely in their defence. They are also required to indicate in their written reply whether they wish to be heard in person before the case is adjudicated. If no cause is shown against the action proposed to be taken within the stipulated time or having desired a hearing if they do not appear for the personal hearing on the appointed day & time, the case will be decided on merits, basing on the material/evidence available on record.

10. The assessee filed their ST-3 return for the period July-September, 2012 filed on 01.05.2013 (due date being on 30.04.2013) and hence, **the due date for issue of this SCN is 29.10.2014.**

11. This notice is issued without prejudice to any other action that may be taken against the noticees / others under the Finance Act, 1994 or under any other law for the time being in force in India.

6.1. Section 65B (44) : "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-

(a) an activity which constitutes merely,-

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

6.2. SECTION 66B. - There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

6.3. SECTION 66D : Contains the negative list of services. It appears that services provided by the assessee are not covered under any of the services listed therein.

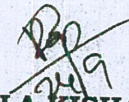
6.4. SECTION 66E : Contains declared service and work contract is covered under 66E(h) of Finance Act, 1994.

6.5. Further, Notification No. 25/2012-ST, dated 20-06-2012, as amended specified services which were exempt from payment of Service Tax. It appears that services provided by the assessee are not covered under any of the services listed therein.

7. The grounds as explained in the show cause cum demand notices issued above are also applicable to the present case; the legal position insofar as "**Works Contract Service**" is concerned, the said service and its taxability as defined under Sub-clause (zzzza) of Clause 105 of Section 65 of the Finance Act, 1994 as existed before 01.07.2012 stands now covered by 65B(54) whereby the said service being declared service under Section 66E(h) of Finance Act, 1994 and for not being in the Negative List prescribed under 66D, continues to be a taxable service. But for the said changes in legal provisions, the status of Service and the corresponding tax liability remained same. Hence this statement of demand/show cause notice is issued in terms of

12. Reliance for issue of this notice is placed on the following:

Letter dated 17.09.2014 along with statements and challans submitted by **M/s. Modi & Modi Constructions, Hyderabad.**


(K. BALA KISHAN RAJU)
JOINT COMMISSIONER.

To
M/s. Modi & Modi Constructions,
5-4-187/3 & 4, IInd Floor,
Soham Mansion, MG Road,
Secunderabad - 500 003.

(SPEED POST)

Copy to:

The Superintendent (Adjudication), Hqrs. Office, Hyd-II Commr'ate, Hyd.
The Superintendent, Group - X, Hyd-II Commr'ate, Hyd.
Master Copy / Spare copy.

~~ANNEUXRE TO THE SHOW CAUSE NOTICE IN O.R.No. /2014-Adjn. (ST) (Commr.) dated .09.2014~~

in the case of M/s. MODI & MODI CONSTRUCTIONS

Period	Gross Amount received	VAT Amount	Taxable Value	Service Tax rate %	Service Tax liability	Service Tax paid	Differential S. Tax to be paid
07/2102 to 09/2012	14088089	282425	13805664	4.944	682552	367635	314917
10/2012 to 03/2013	31915281	1284073	30631208	4.944	1514407	663087	851320
04/2013 to 09/2013	18116825	1086247	17030578	4.944	841992	356959	485033
10/2013 to 12/2013	9592942	100335	9492607	4.944	469314	222369	246945
01/2014 to 03/2014	6882156	266950	6615206	4.944	327056	0	327056
Total	80595293	3020030	77575263		3835321	1610050	2225271

24 July

के. आर. के. वि. एम. एस. राधा कृष्णा राओ
KRAVNS RADHA KRISHNA GROUP-X
अधीक्षक, सेवा कर, राष्ट्रीय सेवा कर
Superintendent, Service Tax & Service Tax
हस्तांतरित, मीमांसा शुल्क एवं सेवा कर
Customs, Central Excise & Service Tax
Hyderabad-II Commissioner
हैदराबाद-१२