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Supdt (III A)
For n/cO.R.No.99/2016-Adjn.(ST) (Commr.)
HQPOR No. 10/2016-ST-AE-VIII

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सेवा कर प्रधान आयुक्त का कार्यालय
OFFICE OF THE PRINCIPAL COMMISSIONER OF SERVICE TAX
सेवा कर आयुक्तालय : : SERVICE TAX COMMISSIONERATE
11-5-423/1/A:: सीताराम प्रसाद टावर:: रेड हिलस:: हैदराबाद - 500004
11-5-423/1/A::SITARAM PRASAD TOWER::RED HILLS::
HYDERABAD-500004

O.R.No.99/2016-Adjn.(ST) (Commr)
HQPOR No. 10/2016-ST-AE-VIII

Date:22.04.2016

SHOW CAUSE NOTICE

Sub: Service Tax - Non -payment of Service Tax on Works Contract
Service by M/s. Kadakia & Modi Housing - Issue of Show Cause
Notice for the period from October 2010 to March 2015 - Reg.

M/s. Kadakia & Modi Housing having their Registered office at 5-4-187/3 & 4, II Floor Soham Mansion, M.G.Road, Secunderabad (here-in-after referred to as M/s KMH or the "assessee") are engaged in the construction of Villas and are registered with Service Tax Department under STC NO AAHFK8714ASD001 for "Construction of Residential Complex service" and "Works Contract Service"

2. Intelligence received indicated that M/s KMH are Constructing Villas under the project titled "Bloomsdale", and are not discharging Service Tax properly. Documents were called from M/s KMH under Summons and a statement was recorded from the authorized signatory of the Company on 16/11/2015 and 01/02/2016.

2.1 Sri M.Jaya Prakash authorized signatory of the assessee in his Statement dated 16/11/2015 and 01/02/2016, (Enclosed as E.6) inter-alia submitted that

- M/s KMH are involved in the activity of Construction of Residential Villas
- so far there is only one project of Residential Villas known as "Bloomsdale" located at Shamirpet Village;
- they acquired the land by outright purchase and the project consists of 72 Villas out of which 31 Villas were sold upto 2014-15;
- the mode of sale is that they enter into agreement of sale, then execute sale deed (for land Value) and agreement of Construction; that they are first appropriating the amounts received from the Customer towards the sale deed thereafter they appropriate the amounts towards agreement of construction. Amounts received from third parties like Registration

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Charges, VAT, Service Tax, Electricity deposit, maintenance charges excluded for the purpose of estimating service tax liability;

- that they are paying Service Tax under the category of "Works Contract Service" against Agreement of Construction Value only.
- That because of ambiguity on applicability of service tax before the amendment to the act in 2012 they were given to understand that service tax is not applicable for the activity undertaken by them.
- that they are willing to pay the amounts collected under Works Contract Service

2.2 Examination of the documents revealed that M/s KMH have not filed the Statutory ST-3 Returns and not paid any service tax for the period October 2010 to March 2011. For the year 2011-12 they have filed the ST-3 returns and self assessed their service under Construction of Residential Complex service for the period upto September 2011; and from October 2011 onwards they changed the classification of the service and are discharging duty under Works Contract Service and they filed the returns for the period 2012-13 to 2014-15. (**Enclosed as E.3**)

2.3 Examination of the Agreement of Sales in respect of customers mentioned in **Enclosure WS-1** to this notice indicates that M/s KMH are collecting the agreed value under the following three separate heads

A Towards Sale of land

B Towards development Charges of land for laying of roads, drains parks etc

C Towards Cost of Construction , water and electricity connection and for other amenities.

2.3.1 The following consideration details in Condition number 1 of the agreement dated 12.11.2009 (**Enclosure E.1**) entered with Major Achyut Ranjan confirms the above mode of receipt of payments

Sl. No.	Description	Amount
A.	Towards sale of land	Rs. 1,85,000/-
B.	Towards development charges of land for laying of roads, drains, parks, etc.	Rs. 11,95,000/-
C.	Total towards land cost (A+B)	Rs. 13,80,000/-
D.	Towards cost of construction, water & electricity connection and for other amenities.	Rs. 20,70,000/-
E.	Total sale consideration (C+D)	Rs. 34,50,000/-

2.3.2 As per Para 13 of agreement of Sale date 12.11.2009 entered with Major Achyut Ranjan reads as under

"13 The vendee shall enter into a separate agreement with the vendor for

construction of the bungalow as per the specifications and other terms and conditions agreed upon. The vendee shall also enter into separate agreement with the Vendor for payment of development charges on land"

2.3.3 Identical conditions forms part of the all other agreement of Sales in respect of Customers mentioned in **Enclosure WS-1**. Accordingly M/s KMH are entering into separate agreement for development of land and for construction of Villas. M/s KMH vide their letter dated 09.02.2016 informed that in the Statement of receipts submitted by them, under Column: "Receipts towards agreement of Construction include the receipt towards the land development.

2.3.4 However examination of the receipts vis-à-vis the amounts indicated in the Agreement of sales showed that the cost of Land development is not included in the Agreement of Construction in some cases and partially included in some cases. The Cost of land development in some cases is included in the amount indicated in the Sale deed (Cost of land value) and exemption is claimed in this respect

2.3.5 The activity of land development involves preparing the site suitable for construction, laying of roads, laying of drainage lines water pipes etc thus it is a separate activity different from construction of Villas

2.3.6 Upto the period 30.06.2012 As per Section 65 (97a) of the Finance Act 1994 Site formation and clearance ,excavation and earth moving and demolition includes

(i) drilling, boring and core extraction services for construction,geophysical geological or similar purposes

(ii) Soil stabilization or

(iii) horizontal drilling for the passage of cables or drain pipes or

(iv) land reclamation work or

(v) contaminated top soil stripping work or

(vi) demolition and wrecking of building structure or road

2.3.7 Upto the period 30.06.2012 As per Section 65(105) (zzza) of Finance Act 1994 "Taxable Service" means any service provided or to be provided to any person, by any other person in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities

2.3.8 Thus the activity of development of land appears to fall under the definition of site formation as per Section 65(97a) *ibid* and the development

charges collected appear to be taxable to service tax as per Section 65 (105) (zzza)ibid. and with effect from 1.7.2012 it appears to be a service under Section 65B (44) of the Act and taxable under the provisions of 65B (51) read with Section 66(B) of the Act . Further the activity does not fall under the negative list mentioned in Section 66 D of the Act. Thus the activity of land development appears to be chargeable to service tax without any abatement.

2.4 Upto the period 30.06.2012 As per Section 65 (105) (zzza) of Finance Act, 1994, "**Taxable Service**" 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
 - (f) commissioning (EPC) projects; .

From 01.07.2012 onwards, Service portion of Works Contract service is a "**declared service**" under **Section 66E(h)** of Finance Act as amended.

2.4.1 After 01.07.2012, as per **Section 66B** of Finance Act 1994 as amended, 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.

2.4.2 As per **Sec 65B(34)** of Finance Act 1994, "negative list" means the services which are listed in section 66D;

2.4.3 As per **Sec 65B(51)** of Finance Act 1994, "taxable service" means any service on which service tax is leviable under section 66B;

2.4.4 As per **Sec 65B (44)** of Finance Act 1994 "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) 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.

2.4.5 As per Section 68 of the Finance Act 1994, every person providing taxable service to any person shall pay service tax at the rate specified in section 66 (upto 30.06.2012) and Section 66B (from 01.07.2012 onwards) in such manner and within such period as may be prescribed.

2.4.6 Section 66D specifies the Negative List of services & Exemption Notification No. 25/2012 dated 20.06.2012 lists the exempted taxable services. "Works Contract Service" does not figure in the negative list or in the said exemption Notification.

2.4.7 As detailed above the M/s KMH are entering into a Separate agreement of construction with his customers and the activity appears to be taxable under Works Contract service even during the period from **October 2010 to September 2011** during which M/s KMH appears to have erroneously classified the service under construction of Residential Complex Service. The fact that M/s KMH are discharging VAT under Works Contract and are assessing the service under Works Contract confirms the nature of the service that it is "Works Contract Service" Only.

2.5 As mentioned in Para 2.3 above the cost of construction includes the cost providing common amenities also. Sri Jaya Prakash in his Statement dated 01/02/2016 (**Enclosure E.6**) in response to Question No 3 submitted that the cost of providing common amenities is between one to one and half lakh rupees and the cost forms a part and parcel of Cost of Construction and they are discharging Service tax for the said amount under works contract providing common amenities is not a Works Contract as there is no transfer of property to the individual. Hence the abatement appears to be not available

for the value of Rs 1,50,000/- per Villa (being the higher of the value admitted as M/s KMH failed to arrive at the correct value of common amenities) and appears to be chargeable to full rate of Service Tax under other taxable services

2.6 In view of the foregoing M/s KMH appears to be liable to discharge charge service tax for Cost of land development shown in agreement of sales under "Site formation Service". They appear to be liable to service tax on the full value of Common amenities with out any abatement at full rate. They appear to be liable to Service Tax under "Works Contract Service" in respect of the value of construction shown in agreement of sales excluding the value of Common amenities. The cost of land of shown in agreement of sales only appears to be exempt from service tax.

2.7 Accordingly the service tax liability is arrived villa wise and detailed in **Enclosure WS-3** enclosed to this notice. Further the villa wise Year wise and Service wise liability is detailed in **Enclosure WS-4** to this notice

3 Agreement of Sales in respect of customers mentioned in **Enclosure WS-2** to this notice indicates that the assessee is collecting the agreed value under the following two heads only.

A Towards Sale of land

B Towards Cost of Construction , water and electricity connection and for other amenities.

The consideration details in Condition Number 1 of the Agreement of Sale dated 20.07.2012 entered with Sri Abdul Rahim and another confirms the above mode of receipt of payment.

Sl. No.	Description	Amount
A.	Towards sale of land	Rs. 18,00,000/-
B.	Towards cost of construction, water & electricity connection and for other amenities.	Rs. 26,83,000/-
C.	Total sale consideration (A+B)	Rs. 44,83,000/-

M/s KMH are not entering into any land development agreement in respect of these customers. In his Statement dated 01/02/2016, Sri M.Jaya Prakash authorized signatory of the Company in response to question number 4 why there is no separate agreement for development of land in respect of some customers , submitted that these booking were done after development of the land, that is why there is no separate agreements for land development charges in respect of them.

3.1 Condition No 1 of the sale deed dated 10.09.2012 entered with Sri

Abdul Rahim and another (**Enclosure E.2**) indicates the following details

1. The Vendor do hereby convey, transfer and sell the Plot No. 9, admeasuring 183 sq. yds., along with semi-finished construction having a total built-up area of 1849 sft., forming part of Sy. No.1139 situated at Shamirpet Village, Shamirpet Mandal, Ranga Reddy District, which is herein after referred to as the Scheduled Property and more particularly described in the schedule and the plan annexed to this Sale Deed in favour of the Vendee for a consideration of Rs.18,00,000/- (Rupees Eighteen Lakhs Only) financed by HDFC Ltd., Hyderabad. The Vendor hereby admit and acknowledge the receipt of the said consideration in the following manner: 3.1.1

Further Annexure 1-A of the above cited sale deed dated 10.09.2012 indicates the following details

ANNEXTURE-1-A

- | | |
|--------------------------------|--|
| 1. Description of the Building | : ALL THAT PIECE AND PARCEL OF SEMI-FINISHED HOUSE on bearing Plot No. 09 in the project known as "BLOOMDALE" forming part of Sy. No. 1139 of Shamirpet Village, Shamirpet Mandal, Ranga Reddy District. |
| (a) Nature of the roof | : R. C. C. (G+1) |
| (b) Type of Structure | : Framed Structure |
| 2. Age of the Building | : Under Construction |

3.1.2 Identical details are incorporated in all other Sale deeds in respect of Customers mentioned in **Enclosure WS-2** to this notice.

3.2 In view of the above facts it appears what is transferred by way of sale deed is a semi- finished construction and not merely land. However it is observed that M/s KMH have erroneously claimed exemption for the entire value indicated in the sale deed. The value cost of construction of these semi finished houses is to be arrived by deducting from sale deed value , the cost of land which is to be arrived proportionately basing on the values of identical lands indicated in **Enclosure WS-1**.

3.3 As mentioned in Para 3 above the cost of construction includes the cost providing common amenities also. The cost of common amenities have to be arrived at as detailed in Para 2.5 above and appears to be chargeable to full rates of Service Tax.

3.4 In view of the foregoing, In respect of Customers mentioned in **Enclosure WS-2**, M/s KMH appears to be liable to discharge service tax for Cost of construction in respect of value of semi finished houses shown in the Sale deed " and value shown in agreement of Construction, under Works Contract Service. They appear to be liable to service tax on the full value of Common amenities with out any abatement at full rate. The cost of land arrived proportionately based on identical lands of customers mentioned in **Enclosure WS-1** appears to be exempt from service tax.

3.5 Accordingly the service tax liability is arrived villa wise and detailed in Annexure C enclosed to this notice. Further the villa wise Year wise and Service wise liability is detailed in **Enclosure WS-3 & WS-4** to this notice.

3.6 The total service tax payable for both **Enclosure WS-1** and **Enclosure WS-2** customers together works out to Rs 14,35,330/- in respect of site formation service, Rs 40,80,581 in respect of works contract service, Rs 7,01,784/- in respect of other taxable services totaling to Rs 62,17,785/- . M/s KMH have paid an amount of Rs 19,00,736/- during the period from October 2010 to March 2015 and the differential amount payable works out to Rs 43,17,049/- (Details as per **Enclosure WS-5** to this notice) .

4 Service Tax under Works Contract Service has been arrived @ 4.12% under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 issued vide Notification No.32/2007-ST dated 22.5.2007 for the period 01.10.2010 to 31.03.2011 as the value of goods and materials consumed in the project could not be arrived as provided under Rule 2A and 3 of the Service Tax (Determination of Value) Rules, 2007.

4.1 Service Tax under Works Contract has been arrived @ 40% of the consideration received for rendering the services for the period from 01.04.2012 to 31.03.2015 as per the provisions of Section 2A[(ii)(A)] of the Service Tax (Determination of Value) Rules, 2007 as the value of the goods and materials consumed in the project could not be provided by the declarant.

5 Contraventions

By their acts of omission and commission as above, it thus appears that M/s. KMH have contravened the various provisions of Finance Act, 1994 and the Service Tax Rules, 1994, with an intent to evade payment of Service Tax as follows

5.1 **Section 73A(1)** of the Finance Act 1994 (hereinafter referred to as the Act) in as much as they have not paid the service tax collected from the customers completely.

5.2 **Section 65A(2)(a)** of the Finance Act, 1994 inasmuch as they have not classified their services of construction of villas under "Works Contract service" during the period from October 2010 to September 2011" under Section 65 (105) (zzzza) and not classified the service of land development under Site formation Service under Section 65 (105)(zzza) from October 2010 to 30.06.2012.

5.3 **Section 67 of the Finance Act 1994 read with Rule 2A of the Service Tax (Determination of Value) Rules, 2006**, inasmuch as they have

not assessed correct values and not paid proper service tax on amounts received pertaining to the **"Works Contract Service"** during the period October 2010 to March 2015 and on site formation service from October 2010.

5.4 **Section 68 (1) of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules 1994** inasmuch as they had not paid appropriate Service Tax under **"Works Contract Service"** , **" Site formation Service and Other taxable service** on the considerations received for the services rendered.

5.5 **Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994** inasmuch as they have not filed the statutory Returns under **"Works Contract Service"** during the period **October 2010 to March 2012. And under Site formation Service from October 2010 and not assessing the taxable values correctly.**

6 Justification for extended period of Limitation

M/s Kadakia & Modi Housing have been rendering taxable services under the category of "Works Contract Services" and site formation service however they have not paid the of service tax charged and collected from the customers to the account of the Central Government properly during the period from October 2010 to March 2015 They have not discharged service tax on site formation service and they have not discharged service tax on works contract service by undervaluing the services they have not discharged service tax on the total value of common amenities. These facts have been suppressed from the Department and would not have come to its notice but for the investigation conducted. Therefore, it appears that the assessee has intentionally suppressed the facts to evade the payment of service tax . Hence, it appears that the period of limitation under proviso to Section 73 (1) is invokable to recover the short paid/not paid service tax along with interest under Section 75 of the Finance Act, 1994. The assessee appears to be liable for penalty under Section 78 of the Finance Act, 1994 for suppression of facts, with an intent to evade payment of Service Tax

7 In view of the above, M/s. Kadakia & Modi Housing , **are hereby required to show cause to the Commissioner of Service Tax, Service Tax Commissionerate, 11-5-423/1/A,I st Floor Sitaram Prasad Towers Red Hills Hyderabad 4, within 30 (Thirty) days from the date of receipt of this notice as to why:**

(i) An amount of **Rs. 14,35,330 /-** (Rupees Fourteen lakhs thirty five thousand three hundred thirty Only)(including all cesses) being the service tax payable on Site formation Service (as per **Enclosure WS-5 read with WS-3 & WS-4** to this notice) during the period October 2010 to March 2015 should

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not be demanded from them, under proviso to Section 73 (1) of the Finance Act, 1994;

(ii) An amount of **Rs. 40,80,581 /-** (Rupees Forty lakhs eighty thousand five hundred and eighty one Only)(including all cesses) being the service tax payable on Works Contract Service (as per **Enclosure WS-5 read with WS-3 & WS-4** to this notice) during the period October 2010 to March 2015 should not be demanded from them, under proviso to Section 73 (1) of the Finance Act, 1994;

(iii) An amount of **Rs. 7,01,874 /-** (Rupees seven lakhs one thousand eight hundred and seventy four Only) (including all cesses) being the service tax payable on other taxable Services (as per **Enclosure WS-5 read with WS-3 & WS-4** to this notice) during the period October 2010 to March 2015 should not be demanded from them, under proviso to Section 73 (1) of the Finance Act, 1994;

(iv) an amount of Rs 19,00,736/- (Nineteen lakhs seven hundred and thirty six only) paid towards service tax (as per **Enclosure WS-5**) **Should not be appropriated towards the service tax demanded at Sl No (i) to (iii) above**

(v) Interest as applicable, on an amount at Sl.no (i) to (iii) above should not be paid by them under Section 75 of the Finance Act, 1994;

(vi) Penalty should not be imposed on the amount at Sl. No. (i) to (iii) above under Section 78 of the Finance Act, 1994 for contraventions cited supra;

(vii) Penalty should not be imposed under Section 77(2) of the Finance Act, 1994 for delayed Registration.

8 M/s.Kadakia & Modi Housing, Secunderabad are also required to produce all the evidence upon which they intend to rely in their defense while showing the cause. 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 and if the noticee does not appear for the personal hearing on the appointed day, then it will be presumed that they do not have anything to state in their defense and the case will be decided on merits on the basis of evidence available on record.

9. This notice is issued without prejudice to any other action that has been or may be taken against the noticee under this Act or under any other law for the time being in force in India.

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

- (i) Agreement of Sale dated 12.11.2009 entered with Major Achyut Ranjan (Enclosure E.1 Pages 38to45)
- (ii) Sale deed dated 10.09.2012 entered with Sri Abdul Rahim (Enclosure E.2 Pages 46 to 50)
- (iii) ST-3 returns filed for the period 2011-12 to 2014-15 (Enclosure E.3 No of Pages 51 to 121)
- (iv) Copies of Agreement of Sales, Sale deeds Agreement of Land Development Charges, Agreement of Construction provided vide letter dated 05.10.2015 submitted on 27/10/2015 (Enclosure E.4 No of Pages 122 to 765)
- (v) Statement of receipts date wise and villa wise submitted on 01.02.2016 (Enclosure E.5 Pages 766 to 780)
- (vi) Statements dated 16.11.2015 and 01.02.2016 of Sri M.Jaya Prakash authorized signatory of M/s KMH (Enclosure E.6 Pages 781 to 785)

(D.PURUSHOTAM)
COMMISSIONER

To

M/s. Kadakia & Modi Housing,
5-4-187/3&4 II Floor, Soham Mansion,
M.G Road, Secunderabad 500 003

(Through the Superintendent of Service Tax AE (Group VIII), Service Tax Commissionerate, Hyderabad with a direction to submit dated Acknowledgement in token of receipt of SCN from the Assessee.) & By
RPAD/SPEED POST

Copy to :

- 1) The Asst Commissioner of Service Tax Division III, Service Tax Commissionerate , Hyderabad.
- 2) The Superintendent, Service Tax (Adjudication) Service Tax Commissionerate , Hyderabad along with a copy of relied upon documents.
- 3) The Superintendent, Service Tax Range III A Service Tax Commissionerate , Hyderabad.
- 4) The Superintendent, Service Tax, Anti-Evasion(Gr-VIII), Service Tax Commissionerate , Hyderabad

Attested
T.V.S.R. PRASAD
अधीक्षक/Superintendent
केन्द्रीय कर एवं सीमा शुल्क
Central Tax & Customs
सिकंदराबाद जी एस टी आयुक्तालय
Secunderabad GST Commissionerate
हैदराबाद/Hyderabad