

केन्द्रीय करके आयुक्तका कार्यालय

OFFICE OF THE COMMISSIONER OF CENTRAL TAX

सिकंदराबाद जीएसटी आयुक्तालय SECUNDERABAD GST COMMISSIONERATE

जीएसटी भवन, एलबीस्टेडियम रोड, बशीरबाग, हैदराबाद-500 004

GST BHAVAN, L.B.STADIUM ROAD, BASHEER BAGH, HYDERABAD-500 004

Email: adjudication3@gmail.com

O.R. No. 19 /2020-21- Sec- Adjn. -COMMR (ST)

Date 21.12.2020

SHOW CAUSE NOTICE

Sub :- Service Tax – Non- payment of Service Tax by M/s. Nilgiri Estates, Ranigunj, Secunderabad for the period from 2015-16 to 2017-18 (up to June, 2017)- Issue of Show Cause Notice – Reg.

M/s. Nilgiri Estates (here after referred as the assessee) is a partnership firm situated at Soham Mansion, 5-4-187/3 & 4, 2nd Floor, M.G.Road, Ranigunj, Secunderabad-500003. The assessee is registered vide Service Tax No: AAHFN0766FSD001 under Section 69 of the Chapter V of the Finance Act 1994 (32 of 1994) under the category of Construction of 'Residential Complex Service' and 'Works Contract Services' and has undertaken to comply with the provisions of the Finance Act, 1994 and Rules made thereunder.

2. The assessee is engaged in construction of complex service which is a declared service in terms of clause (b) of Section 66 E of the Finance Act, 1994. On scrutiny of ST-3 returns it is noticed that the assessee were availing abatement in terms of notification No.26/2012-ST as amended by Notification 2/2013 dt. 01.03.2013 and as further amended and were also availing Cenvat Credit on inputs which appeared to be violation of the conditions to claim abatement in taxable value of services. They were also availing abatement as 'amounts charged as pure agent'. In this regard four letters were addressed to the assessee and also to their five partners respectively as detailed below:

- SCN
- I. Letter vide DIN No. 20200756YO00006KFA16, dated 23.07.2020 was sent to the assessee regarding certain discrepancies noticed during the scrutiny of ST-3 Returns and also requested to submit Balance Sheet, 26AS, Sanctioned plan, sale deed and construction agreement along with occupancy certificate. In compliance, the assessee has submitted Balance Sheet, 26AS, copies of ST-3 returns and acknowledged copy of ITR (single copy).
 - II. Letter vide DIN No. 20200756YO00006KFA16, dated 07.08.2020 was sent to the assessee requesting to submit input invoices to examine whether the cenvat credit was taken on inputs or input services. In this regard, no response was received by the assessee.
 - III. Reminder vide DIN No. 20200756YO00006KFA16, dated 21.08.2020 was sent to the assessee. In this regard, again no response was received.
 - IV. A letter DIN no. 20200756YO00006KFA16, dated 28.08.2020 in e-file no GEXCOM/SoR/15/2020-CGST-RANGE-RGPET-II-DIV-SNBD-COMMRTE-SECUNDERABAD was addressed to the assessee to submit the relevant documentary evidence regarding pure agent, invoices raised on each customers and documentary evidence pertaining to sales declared in ITR and P&L a/c. In this regard, once again no response was received.

The said above four letters were sent by speed post and by mail to the individual partners to the address and e-mail address declared in Form ST - 1.

3. Further, a letter vide DIN No. 20200756YO0000HA4ED, dt. 23.07.2020 was addressed to the Income Tax Department requesting them to provide ITR, P&L A/c and 26AS. The said documents were received through mail vide mail id hyderabad.dcit10.1@incometax.gov.in on 12.08.2020.

4. On scrutiny of ST-3 returns for the period from 2015-16 to 2017-18 (up to June, 2017), it is found that the assessee is availing abatement under notification No.26/2012-ST as amended by 2/2013 ST dated 01.03.2013 as further amended, and is also deducting amount charged as pure agent from the gross income and paid Service Tax on the resultant taxable income through cash and Cenvat credit. ST-3 return- wise details of Service Tax paid by the assessee is tabulated as under:

Table -I

Sl. No.	Year	Period Covered	Gross Taxable Income	Deductions availed		Net Taxable Value	ST Payable	Amount in Rupees ST paid	
				Abatement vide Not. No. 2/ 2013	Pure Agent			Cash	Cenvat credit
1	2	3	4	5	6	7	8	9	10
1	2015-16	April - September	31817208	23862906	0	7954302	1080802	973334	107468
2		October - March	57237384	42890538	50000	14296846	2058711	1021227	1037484
	Total		89054592	66753444	50000	22251148	3139513	1994561	1144952
3	2016-17	April - September	61041279	42512837	308655	18219787	2701100	1881404	819696
4		October - March	93280123	63463672	2617733	27198718	4079809	2974696	1105113
	Total		154321402	105976509	2926388	45418505	6780909	4856100	1924809
5	2017-18	April - June	12383924	8668747	0	3715177	557277	239174	318103
6	Grand Total		255759918	181398700	2976388	71384830	10477699	7089835	3387864

5. Notification No. 26/2012 ST dated 20.06.2012 provides abatement from the taxable value in respect of various services subject to the satisfaction of the relevant conditions specified therein. Sl. No. 12 of notification No. 26/2012 ST pertains to "Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority" and holds that the Service Tax is payable only on 30% of the value subject to the condition that (i) Cenvat credit on inputs used for providing the taxable service has not been taken and (ii) the value of land is included in the amount charged from the service receiver. Notification No. 2/2013 ST dated 01-03-2013 was issued amending the percentage of abatement and the conditions to be followed in respect of Sl. No. 12 of notification No. 26/2012 dated 20.06.2012. Sl. No. 12 of notification No. 26/2012 ST is reproduced hereunder:

Sl. No.	Description of taxable service	Percentage	Conditions
12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority.	25	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The value of land is included in the amount charged from the service receiver

Notification No. 2/2013 ST dated 01-03-2013 which came into force on 01.03.2013 amended Sl. No. 12 of notification No. 26/2012 ST as under:

Sl. No.	Description of taxable service	Percentage	Conditions
12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority,- (i) for residential unit having carpet area upto 2000 square feet or where the amount charged is less than rupees one crore;	25	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004; (ii) The value of land is included in the amount charged from the service receiver.
	(ii) for other than the (i) above.	30	

The said notification No. 2/2013 ST dated 01.03.2013 was further amended vide following notifications:

- a. Notification No.9/2013 – Service Tax, 8th May, 2013.
- b. Notification No.8/2016 – Service Tax, 1st March, 2016.

The above two notifications are reproduced hereunder:

Sl. No.	Description of taxable service	Percentage	Conditions
12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly, except where entire consideration is received after issuance of completion certificate by the competent authority,- (a) for a residential unit satisfying both the following conditions, namely :- (i) the carpet area of the unit is less than 2000 square feet; and (ii) the amount charged for the unit is less than rupees one crore; (b) for other than the (a) above.	25 30	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The value of land is included in the amount charged from the service receiver

Notification No.9/2013 – Service Tax, 8th May, 2013

Sl. No.	Description of taxable service	Percentage	Conditions
12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority	30	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The value of land is included in the amount charged from the service receiver

Notification No.8/2016 – Service Tax, 1st March, 2016

6. From the notification No.26/2012-ST as amended by Notification 2/2013 ST dated 01.03.2013 and as further amended, it appears that the benefit of the notification can be availed only if the following two conditions are met:

- I. Cenvat credit on inputs used for providing the taxable service has not been taken under the provisions of the Cenvat Credit Rules, 2004.

- II. The value of land is included in the amount charged from the service receiver.

From the above it appears that the restriction on availing Cenvat credit is only limited to 'inputs credit' but not 'input services credit'.

7. On perusal of the ST-3 filed by the assessee for the period from 2015-16 to 2017-18 (up to June, 2017) it is found that the assessee had availed Cenvat credit on inputs only and not on input services as shown below:

Table-II				Amount in Rupees			
Sl. No.	Financial Year	ST-3 Period Covered	Opening Balance	Credit Taken on Inputs	Credit Taken on input Services directly	Cenvat Credit utilised	Balance Cenvat Credit
1	2	3		4	5	6	7
1	2015-16	April - September	0	107468	0	107468	0
2		October - March	0	1037484	0	1037484	0
3	2016-17	April - September	0	837854	0	819686	18168
4		October - March		1105113	0	1105113	0
5	2017-18	April - June	299566*	0	0	299566	0

* The assessee should have shown opening balance of Rs. 18,168/- in the return pertaining to the period October, 2016 to March, 2017 but has shown 'NIL' Balance. However, they have shown opening balance of Rs. 2,99,566/- in their return pertaining to the period April, 2017 to June, 2017.

From the above, it appears that the assessee have taken credit on inputs and have utilized the same to discharge their Service Tax liability. It appears that the assessee have violated the conditions stipulated in the notification and hence, it appears that the assessee are not eligible for abatement under notification No. 26/2012-ST as amended by 2/2013 ST dated 01.03.2013 and as further amended.

8. As per the ST-3 returns filed by the assessee they had deducted from the gross income an amount of Rs.29,76,388/- claiming to be amount charged as pure agent from the gross income over the period from 2015-16 to 2017-18 (up to June,2017) as shown in Table -1 above. In this regard, the assessee was requested to submit the relevant documentary evidence regarding pure agent the services rendered as pure agent as certain conditions are to be met to claim abatement on account of pure agent as [per the provisions of Rule 5 of the Service Tax Valuation Rules,2006. The assessee have not furnished any information or documentary evidence to support their claim. Hence, it appears that the deduction from the gross income towards "amount charged as pure agent" cannot be allowed.
9. It appears that the assessee are not eligible for abatement in terms of notification No. 26/2012-ST as amended vide notification No. 2/2013 ST dated 01.03.2013 and as further as amended and are also not eligible for deduction towards amount charged as pure agent. Therefore, it appears that they have to pay Service Tax on the gross incomes received by them during the period from 2015-16 to 2017-18 (up to June, 2017). The gross incomes for the Financial Years 2015-16 and 2016-17 are Rs. 8,90,54,592/- and Rs. 15,43,21,402/- respectively. In respect of Financial Year 2017-18 (up to, June, 2017) the assessee have shown taxable income of Rs. 1,23,83,924/-. However, the total sales for the Financial Year 2017-18 as per Income Tax Return filed by the assessee is Rs. 16,68,99,960/- and the outward supply as per GSTR-9 return filed by the assessee for the year 2017-18 is Rs. 3,78,87,611/-. Subtracting the taxable turn over shown in GSTR-9, which covers the period from July, 2017 to March, 2018, from the total sales for the year Financial Year 2017-18 as per Income Tax Return, taxable income for the period the 2017-18 (up to , June, 2017) works out to Rs. 12,90,12,349/- (Rs. 16,68,99,960/- minus Rs.3,78,87,611/-).
10. Adopting the taxable values as discussed above, the Service Tax liability of the assessee for the period from 2015-16 to 2017-18(up to June, 2017) works out to Rs. 5,49,08,106/- As per ST-3 returns filed by the assessee during the period from 2015-16 to 2017-18(up to June, 2017) the assessee have already paid an amount of Rs.1,04,77,699/- towards Service Tax. The assessee are liable to the balance Service Tax payable of Rs. 4,44,30,407/- as shown below: as shown here under:

Table-III					Amount in Rupees		
Sl. No.	Year	ST-3 Period Covered	Taxable value	Rate of Tax including applicable cesses (%)	ST Payable	ST Paid as per ST-3 returns	Balance Service Tax Payable
1	2015-16	April to June	12625000	12.36	1560450	3139513	9268530
		July to September	19192208	14	2686909		
		October to December	27747339	14	3884627		
		Jan-March	29490045	14.5	4276057		
		Total	89054592		12408043	3139513	9268530
2	2016-17		154321402	15	23148210	6780909	16367301
3	2017-18	April to June	129012349	15	19351852	557277	18794575
Grand Total			372388343		54908106	10477699	44430407

Therefore, it appears that the assesseees are liable to pay Service of Rs. 4,44,30,407/- (Rupees Four Corors Forty Four Lakhs Thirty Thousand Four Hundred and Seven Only) [including Education Cess, Secondary and Higher Education Cess, Swachh Bharat Cess and Krishi Kalyan Cess], along with interest.

11. The assessee has filed ST-3 returns covering the period from 2015-16 to 2017-18 (April to June). All these returns were filed beyond due dates. In terms of Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 every assessee who files ST-3 return after the due date are liable to pay Late Fee as prescribed. The assessee have paid late fee in respect of the four half yearly returns pertaining to the Financial Years 2015-16 and 2016-17 but have not paid late fee in respect of the ST-3 return pertaining to the period April, 2017 to June, 2017 which was filed 389 days beyond the prescribed due date. In terms of Section 70 read with Rule 7C (iii), for the period of delay beyond thirty days from the date prescribed for submission of such return late fee has to be paid at the rate of one thousand rupees plus one hundred rupees for every day from the thirty first day till the date of furnishing the said return, subject to a maximum of Rs. 20,000/-. Hence, it appears that the assessee are liable to pay late fee of Rs. 20,000/- for delayed filing of ST-3 return pertaining to the period April, 2017 to June, 2017.

12. From the foregoing, it appeared that M/s. Nilgiri Estates, Secunderabad had evaded Service Tax of Rs. 4,44,30,407/- (Rupees Four Crores Forty Four Lakhs Thirty Thousand Four Hundred and Seven Only) [including Education Cess, Secondary and Higher Education Cess, Swachh Bharat Cess and Krishi Kalyan Cess] without following the requisite Service Tax procedures and by way of willful suppression and misstatement of facts and accordingly they appeared to have contravened the following provisions of Chapter V of the Finance Act, 1994 and the rules made there under with intention to evade payment of Service Tax :

- i. Section 67 of the Finance Act, 1994 read with Notification No. 26/2012-ST as amended by 2/2013-ST and 8/2016-ST inasmuch as they had not arrived at the correct taxable value for payment of Service Tax in respect of the different taxable services provided by them;
- ii. Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 and Rule 3 of the Point of Taxation Rules, 2011 inasmuch as they had not paid the appropriate amount of Service Tax on the taxable value of services provided by them.
- iii. Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 inasmuch as they failed to properly self-assess the tax due on the taxable services and file periodical returns with correct details of the value of services rendered by them;

13. It appeared that M/s. Nilgiri Estates who are registered with the Department vide Service Tax No: AAHFN0766FSD001 were well aware that the services provided by them were taxable services and were liable to Service Tax by the service provider. It appears that the assessee have availed abatement in violation of the conditions notification No. 26/2012-ST as amended by notification No. 2/2013 ST dated 01.03.2013 and as further amended under construction of residential complex services without meeting the conditions specified therein. They have suppressed their taxable income in the ST-3 return filed for the period April, 2015 to June, 2017. But for the verification caused by the Department the short payment of Service Tax would have been un-detected.

14. Therefore, it appeared that, M/s. Nilgiri Estates had resorted to willful suppression of facts as well as contravention of statutory provisions of the Finance Act, 1994 and rules made thereunder as well as abatement notification which is available to subject to fulfilling conditions like not taking Cenvat credit on inputs as detailed above with intent to evade payment of Service Tax, hence, the extended period of limitation under proviso to Sub-section (1) of Section 73 of the Chapter V of the Finance Act, 1994 appeared invocable in this case for demanding Service Tax along with recovery of interest at applicable rates in terms of Section 75 of the Act, *ibid*.

15. In the above circumstances, M/s. Nilgiri Estates also appeared to have rendered themselves liable for mandatory penalty under Section 78 of the Finance Act, 1994 for contravention of the provisions of the Finance Act, 1994 and rules made there-under, which resulted in short-payment of Service Tax. It also appeared that M/s. Nilgiri Estates is also liable for payment of penalty under provisions of Section 77 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994 for failure to show the correct details of the value of services rendered by them, in their ST-3 returns.

16. In view of the above, M/s. Nilgiri Estates (here after referred as the assessee) a partnership firm situated at Soham Mansion, 5-4-187/3 & 4, 2nd Floor, M.G.Road, Ranigunj, Secunderabad - 500003, are hereby required to show cause to the Commissioner of Central Tax & Central Excise, Secunderabad Commissionerate, GST Bhavan, Basheerbagh, Near L.B. Stadium, Hyderabad-500004 within 30 (thirty) days of receipt of this notice as to why:-

- i. an amount of Rs. 4,44,30,407/- (Rupees Four Crores Forty Four Lakhs Thirty Thousand Four Hundred and Seven Only) [including Education Cess, Secondary and Higher Education Cess, Swachh Bharat Cess and Krishi Kalyan Cess] should not be demanded towards short payment of Service Tax rendered under construction of residential complex service, in terms of proviso to Section 73(1) of the Finance Act, 1994;
- ii. interest at the applicable rates on the above tax amount should not be recovered from them under 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.
- v. Late fee of Rs. 20,000/- (Rupees Twenty Thousand Only) should not be imposed on them under Section 70(1) of the Finance Act, 1994.

17. M/s. Nilgiri Estates are required to produce all the evidence upon which they intend to rely in their defense while showing 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 assessee 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 the basis of evidence available on records.

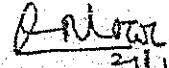
18. This notice is issued without prejudice to any other action that has been or may be taken against the noticee/other under this Act or under any other law for the time being in force in India.

19. The Chapter V of the Finance Act, 1994 and Central Excise Act, 1994, except with reference to certain commodities are repealed, the said Acts continue to be in force and valid for recovery of the duties/taxes/irregular Cenvat credit in view of the saving clause provided under Section 174(2) of CGST Act, 2017.

20. The assessee is also informed that in terms of second proviso to Section 78(1) of the Finance Act, 1994, the penalty stands reduced to fifteen percent of the Tax demanded, if the tax demanded under Section 73(1) and the interest payable thereon under Section 75, are paid within thirty (30) days of the communication of this show cause notice, subject to the condition that such reduced penalty is also paid within the said period of thirty (30) days.

21. Reliance for issue of this Notice is placed on the following:

- a. ST 3 Returns for the period 2015-16 to 2017-18 (April to June).
- b. P&L account and Balance sheet and ITR provided by the Income Tax Department.
- c. GSTR 9 filed on 09.11.2019 for the F.Y. 2017-18.


(M.R.R. REDDY)
COMMISSIONER

To,

✓
M/s. Nilgiri Estates,
5-4-187/3 & 4,
2nd Floor, Soham Mansion,
M.G.Road, Ranigunj,
Secunderabad - 500003.

//By Speed Post//

Copy to:

1. The Assistant Commissioner, Central Tax, Secunderabad GST Division, Secunderabad GST Commissionerate.
2. The Superintendent of Central Tax, Ramgopalpet-II Range, Secunderabad GST Division, Secunderabad GST Commissionerate.
3. Office Copy / Master Copy.