

B & C Estates
M G Road, Ranigunj
Secunderabad

ALL OK

Payment Register
1-Mar-21 to 31-Mar-21

					Page 1
Date	Particulars	Vch Type	Vch No.	Debit Amount	Credit Amount
1-Mar-21	TDS on Contractor @ 0.75%	Payment	PAY/10234 ✓	239.00	
3-Mar-21	EMP-G.Rajesh Kumar	Payment	PAY/10235 ✓	14,486.00	
3-Mar-21	EMP-R Lavanya Salary A/c	Payment	PAY/10236 ✓	9,370.00	
9-Mar-21	SP- Hiregange Associates	Payment	PAY/10237 ✓	25,000.00	
9-Mar-21	CONJBDW-G Mannem	Payment	PAY/10238 ✓	1,900.00	
9-Mar-21	CONJBDW- N Krishna	Payment	PAY/10239 ✓	2,200.00	
9-Mar-21	CONJBDW-G Mannem	Payment	PAY/10240 ✓	2,850.00	
9-Mar-21	CONJBDW-Shaik Javid Pasha	Payment	PAY/10241 ✓	1,200.00	
9-Mar-21	CONJBDW- N Krishna	Payment	PAY/10242 ✓	2,300.00	
9-Mar-21	OTHLOAN-Summit Builders Statutory Payments	Payment	PAY/10243 ✓	5,847.00	
9-Mar-21	SIP-Service Tax	Payment	PAY/10244 ✓	62,246.00	
9-Mar-21	EMP-R Lavanya Salary A/c	Payment	PAY/10245 ✓	2,342.00	
9-Mar-21	EMP-G.Rajesh Kumar	Payment	PAY/10246 ✓	3,621.00	
10-Mar-21	SUP-Radiant Systems	Payment	PAY/10247 ✓	14,160.00	
10-Mar-21	SUP-Praful Sanitary	Payment	PAY/10248 ✓	3,172.00	
10-Mar-21	SUP-Supreme Paints & Coatings	Payment	PAY/10249 ✓	6,887.00	
11-Mar-21	CONJBDW-Shaik Javid Pasha	Payment	PAY/10250 ✓	1,200.00	
11-Mar-21	CONJBDW- N Krishna	Payment	PAY/10251 ✓	4,600.00	
11-Mar-21	CONJBDW-G Mannem	Payment	PAY/10252 ✓	1,950.00	
11-Mar-21	SP- Hiregange Associates	Payment	PAY/10253 ✓	25,000.00	
11-Mar-21	CONT-B Bassappa on A/c	Payment	PAY/10254 ✓	50,000.00	
15-Mar-21	EMP-R Lavanya Salary A/c	Payment	PAY/10255 ✓	399.00	
15-Mar-21	EMP-G.Rajesh Kumar	Payment	PAY/10256 ✓	1,599.00	
18-Mar-21	CONT-Janardhan Prasad on A/c	Payment	PAY/10257 ✓	42,187.00	
18-Mar-21	CONJBDW-Shaik Javid Pasha	Payment	PAY/10258 ✓	1,200.00	
18-Mar-21	CONJBDW-G Mannem	Payment	PAY/10259 ✓	1,900.00	
18-Mar-21	SP- Hiregange Associates	Payment	PAY/10260 ✓	25,000.00	
20-Mar-21	SUP-Summit Sales LLP	Payment	PAY/10261 ✓	16,157.00	
20-Mar-21	SUP-Praful Sanitary	Payment	PAY/10262 ✓	2,115.00	
20-Mar-21	SUP-Anisha Associates	Payment	PAY/10263 ✓	54,220.00	
22-Mar-21	CONT-MD Nadeem	Payment	PAY/10264 ✓	7,500.00	
26-Mar-21	SP- Hiregange Associates	Payment	PAY/10265 ✓	25,000.00	
Total:				4,17,847.00	

B & C Estates (20-21)
M G Road, Ranigunj
Secunderabad
State Name : Telangana, Code : 36

Payment Voucher

No. : ~~PAY/40233~~ 10234 ✓

01-Mar-21
Dated : ~~23-Feb-21~~

Particulars	Amount
Account :	
TDS on Contractor @ 0.75%	239.00
TDS-7.5% Professional Charges	7,688.00
Through : BANK-Yes Bank A/c No:009763700002182	
On Account of : Being cheque issued towards TDS for the month of Feb 2021 against ch no:042000	
Amount (in words) : Indian Rupees Seven Thousand Nine Hundred Twenty Seven Only	
	₹ 7,927.00

Prepared by: lavanya.r

Approved by

Receiver's Signature

B & C Estates (20-21)

M G Road, Ranigunj
Secunderabad

TDS Payable

Group Summary

1-Apr-20 to 28-Feb-21

Page 1

Particulars	Opening Balance	Transactions		Closing Balance
		Debit	Credit	
TDS-1% Contract	347.00 Cr	347.00		
TDS-2% Contract	82.00 Cr	82.00		
TDS-7.5% Professional Charges		16,143.00	23,831.00	7,688.00 Cr
TDS on Contractor @ 0.75%		1,248.00	1,487.00	239.00 Cr
TDS on Professional 10%	16,500.00 Cr	16,500.00		
Grand Total	16,929.00 Cr	34,320.00	25,318.00	7,927.00 Cr

P. C Estates (20-21)
G Road, Ranigunj
Secunderabad
State Name : Telangana, Code : 36

Payment Voucher

No. : **PAY/10235**

Dated : **3-Mar-21**

Particulars	Amount
Account : EMP-G.Rajesh Kumar	14,486.00
Through : BANK-Yes Bank A/c No.009763700002182	
On Account of : Being amt transfer towards staff salary for the month of Feb 21	
Amount (in words) : Indian Rupees Fourteen Thousand Four Hundred Eighty Six Only	
	₹ 14,486.00

Prepared by: lavanya.r

Approved by

Receiver's Signature

C Estates (20-21)
M G Road, Ranigunj
Secunderabad
State Name : Telangana, Code : 36

Payment Voucher

No. : **PAY/10236** ✓

Dated : **3-Mar-21**

Particulars	Amount
Account : EMP-R Lavanya Salary A/c	9,370.00
Through : BANK-Yes Bank A/c No:009763700002182	
On Account of : Being amt transfer towards staff salary for the month of Feb 21	
Amount (in words) : Indian Rupees Nine Thousand Three Hundred Seventy Only	
	₹ 9,370.00

Prepared by: lavanya.r


Approved by

Receiver's Signature

B & C Estates (20-21)
M G Road, Ranigunj
Secunderabad
State Name : Telangana, Code : 36

Payment Voucher

No. : **PAY/10233** 10237

Dated : **09-03-21**
~~24-Feb-21~~

Particulars	Amount
Account : SP- Hiregange Associates	25,000.00
Through : BANK-Yes Bank A/c No:009763700002182	
On Account of : Being amt transfer to hiregange associates against bill nos:01160H,01081H,00795H &00517h	
Amount (in words) : Indian Rupees Twenty Five Thousand Only	
	₹ 25,000.00

Prepared by: lavanya.r

Approved by

Receiver's Signature

B & C Estates (20-21)
M G Road, Ranigunj
Secunderabad
State Name : Telangana, Code : 36

Payment Voucher

No. : **PAY/10235 10238**

Dated : **25-Feb-21**

09-03-21

Particulars	Amount
Account :	
CONJBDW-G Mannem	1,900.00
TDS on Contractor @ 0.75%	(-)14.00
Through :	
BANK-Yes Bank A/c No:009763700002182	
On Account of :	
Being amount transfered to G.Mannem towards as per advice for payment V no : 6793	
Amount (in words) :	
Indian Rupees One Thousand Eight Hundred Eighty Six Only	
	₹ 1,886.00

Prepared by: mfh@modiproperties.com

Approved by

Receiver's Signature



Payment Voucher

No. : ~~PAY/10235~~ 10239

Dated : 09-03-21
~~25-Feb-21~~

Particulars	Amount
Account :	
CONJBDW- N Krishna	2,200.00
TDS on Contractor @ 0.75%	(-)16.00
Through :	
BANK-Yes Bank A/c No:009763700002182	
On Account of :	
Being amount transfered to N.Krishna towards as per advice for payment V no : 6792	
Amount (in words) :	
Indian Rupees Two Thousand One Hundred Eighty Four Only	
	₹ 2,184.00

Prepared by: mfh@modiproperties.com

Approved by

Receiver's Signature



B & C Estates (20-21)
M G Road, Ranigunj
Secunderabad
State Name : Telangana, Code : 36

Payment Voucher

No. : **PAY/10237 10240**

Dated : **4-Mar-21**

Particulars	Amount
Account :	
CONJBDW-G Mannem	2,850.00
TDS on Contractor @ 0.75%	(-)21.00
Through :	
BANK-Yes Bank A/c No:009763700002182	
On Account of :	
Bieng amount transfered to G.Mannem towards as per advice for payment Vno : 6794	
Amount (in words) :	
Indian Rupees Two Thousand Eight Hundred Twenty Nine Only	
	₹ 2,829.00

Prepared by: mfh@modiproperties.com

Approved by

Receiver's Signature



Payment Voucher

No. : **PAY/10237** 10241

Dated : **4-Mar-21**

Particulars	Amount
Account :	
CONJBDW-Shaik Javid Pasha	1,200.00
TDS on Contractor @ 0.75%	(-)9.00
Through :	
BANK-Yes Bank A/c No:009763700002182	
On Account of :	
Bieng amount transfered to Shaik javid pasha towards as per advice for payment Vno : 6795	
Amount (in words) :	
Indian Rupees One Thousand One Hundred Ninety One Only	
	₹ 1,191.00



Prepared by: mfh@modiproperties.com



Approved by

Receiver's Signature



Payment Voucher

No. : **PAY40237** 10242

Dated : **4-Mar-21**

Particulars	Amount
Account :	
CONJBDW- N Krishna	2,300.00
TDS on Contractor @ 0.75%	(-)17.00
Through :	
BANK-Yes Bank A/c No:009763700002182	
On Account of :	
Bieng amount transfered to N.Krishna towards as per advice for payment Vno : 6796	
Amount (in words) :	
Indian Rupees Two Thousand Two Hundred Eighty Three Only	
	₹ 2,283.00

Prepared by: mfh@modiproperties.com

Approved by

Receiver's Signature



C Estates (20-21)
M G Road, Ranigunj
Secunderabad
State Name : Telangana, Code : 36

Payment Voucher

No. : **PAY/10245** 10243

Dated : **9-Mar-21**

Particulars	Amount
Account : OTHLOAN-Summit Builders Statutory Payments	5,847.00
Through : BANK-Yes Bank A/c No:009763700002182	
On Account of : Being amt transfer to Summit builderd towards PF/ESI & PT for the month of Feb 21, PF=4412, ESI=1285 & PT=150	
Amount (in words) : Indian Rupees Five Thousand Eight Hundred Forty Seven Only	
	₹ 5,847.00

Prepared by: lavanya.r

Approved by

Receiver's Signature

ESI/ PF/ PT Advance Statement.

Pay to - Summit Builders - Axis Bank account

Date: 04.03.2021

Company:	B & C ESTATES	
S.No	Particulars	Amount
1	PF	4,412
2	ESI	1,285
3	PT	150
	Total	5,847

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& C Estates (20-21)
M G Road, Ranigunj
Secunderabad
State Name : Telangana, Code : 36

Payment Voucher

No. : **PAY/10246** 10244

Dated : **9-Mar-21**

Particulars	Amount
Account : SIP-Service Tax	62,246.00
Through : BANK-Yes Bank A/c No:009763700002182	
On Account of : Being amt transfer towards Service tax towards OIO no.12/2020-ST, C. No.V/15/01/2020-ST and DIN:20201256YO000000DD3E	
Amount (in words) : Indian Rupees Sixty Two Thousand Two Hundred Forty Six Only	
	₹ 62,246.00

Prepared by: lavanya.r

Approved by

Receiver's Signature

Mandate Form Details

Account Number	002000STYO0101306202111119424
Account Name	RBI
Virtual IFSC Code	RBIS0CBICER
Challan Expiry Date	Mar 21, 2021 11:08:56 AM
Total Duty Amount	62246.00
Print / Save Home	



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केन्द्रीयकरउपायुक्तकार्यालय,सिकंदराबादमालएवमसेवाकरमण्डल,
सिकंदराबादमालएवमसेवाकरआयुक्तालय।

OFFICE OF THE DEPUTY COMMISSIONER OF CENTRAL TAX,
SECUNDERABAD GST DIVISION, SECUNDERABAD GST COMMISSIONERATE
Address: SALIKE SENATE, D.No: 2-4-416 & 417, RAMGOPALPET,
M.G. ROAD, SECUNDERABAD- 500 003
Contact No. 7901243130 mail- cgst.secdiv@gov.in

C.No.V/15/01/2020-ST(Adjn.)

Date:11.12.2020

DIN : 20201256Y0000000DD3E

Order in Original No.12/2020-ST

Sub: Service Tax- Non-payment of Service Tax under reverse charge mechanism on Freight and Legal Services and availment of Cenvat Credit on common input services and non-payment of 7% on exempted services by M/s B&C Estates, 5-4-187/3&4, Soham Mansion, M.G.Road, Raniganj, Secunderabad, Telangana – 500003 during the period from April, 2014 to June, 2017- Regarding.

M/s B&C Estates, 5-4-187/3&4, Soham Mansion, M.G.Road, Raniganj, Secunderabad, Telangana – 500003 holding Service Tax Registration No. AAHFB7046ASD001 (hereinafter referred to as "the assessee" or "M/s B&C") are engaged in the activity of Construction of Residential Complex Services as defined under the Finance Act, 1994.

2. During the course of audit and verification of ledgers with ST-3 Returns, it was observed that Service Tax is being discharged on taxable services viz, construction of residential complex services provided on the amounts received against the flats which were sold before the receipt of occupation certificate. It was also observed that certain amounts were deducted from the value of taxable services as exempted service. Upon enquiry, a statement showing the details of flats sold after receipt of OC i.e. Occupancy Certificate was produced by the assessee on which exemption was claimed by the assessee. Perusal of the statement reveals that 07 flats were sold after receipt of OC during the period 01.10.2014 to 30.06.2017. The total receipt from the sale of the above 07 flats is Rs.2,94,69,000/-. No Service Tax was paid on the consideration received from the sale of the above flats on the ground that the said flats were sold after receipt of Completion Certificate from the proper authority. M/s B&C are also availing Credit of Service Tax paid on Input Services. From the

of Service tax. Since credit has been availed on the total project, it is but appropriate that they use Cenvat Credit to the proportion they have paid tax on and reverse proportion of credit for which they are claiming exemption. In the instant case M/s B& C have not exercised their option and have neither reversed proportionate credit attributable to exempted services nor paid 7% of the value of the exempted services, thereby it amounts to double benefit which is not permissible as per the above provisions and the very purpose of Rule 6(3) would be defeated. Since M/s B&C have provided both taxable and exempted services and have not followed the procedure prescribed under Rule 6(3) of the Cenvat Credit Rules, 2004, they are liable to pay an amount of Rs.18,20,344/- which is equal to the 7% on the total sale consideration received from the sale of the above 7 flats in terms of Rule 6(3) of the Cenvat Credit Rules, 2004 read with Notification 13/2016 CE (NT) Dated 01.03.2016 .

6. It was further observed from the Balance Sheet submitted by M/s B&C Estates, that an expenditure of Rs.89,315/- in the F.Y. 2014-15 (Oct, 2014 to Mar, 2015), Rs.84,062/- in the F.Y. 2015-16, Rs.45,150/- in the F.Y. 2016-17 and Rs.4,050/- in the F.Y. 2017-18 (upto June, 2017) was incurred towards **Legal Expenses** and no Service Tax was paid on such expenditure. M/s. B&C Estates being a Partnership Firm, Service Tax under partial reverse charge under proviso to Section 68(2) of Finance Act, 1994 in terms of Notification No. 30/2012 dated 20.06.2012 to the extent of service tax is payable by the person who receives the service as per Sl. No.5 of Table of the above said notification. In the instant case M/s. B&C Estates being the service recipient, Service Tax is to be paid by M/s. B&C Estates.

7. It was further seen from the Balance Sheet that an expenditure of Rs.4,52,017/- in the F.Y. 2014-15 (Oct, 2014 to Mar, 2015), Rs.2,51,980/- in the F.Y. 2015-16, Rs.2,89,044/- in the F.Y. 2016-17 and Rs.71,605/- in the F.Y. 2017-18 (upto June, 2017) was incurred M/s B&C towards **Transportation Charges** and no Service Tax was paid on such expenditure. M/s. B&C Estates being a Partnership Firm, Service Tax under partial reverse charge under proviso to Section 68(2) of Finance Act, 1994 in terms of Notification No. 30/2012 dated 20.06.2012 to the extent of service tax is payable by the person who receives the service as per Sl. No.2 of Table of the above said notification after availing 70% abatement as per Sl. No.7 of Notification No. 26/2012 dated 20.06.2012 as amended vide Notification No.8/2016-ST dated 01.03.2016 w.e.f. 01.04.2016 wherein the rate of abatement is reduced from 75% to 70%. In the instant case M/s. B&C Estates being the service recipient, Service Tax is to be paid by M/s. B&C Estates. It appears that the Service Tax after proper abatement on above amount to the tune of Rs.13,967/- @12.36% for the F.Y. 2014-15 (Oct, 2014 to Mar, 2015), Rs.10,961/- @14.50% for the F.Y. 2015-16, Rs.13,007/- @15.00% for the F.Y. 2016-17 and Rs.3,223/- @15.00% for the F.Y. 2017-18 (upto June, 2017)

GST Division, Salike Senate, D.No.2-4-416 & 417, Ramgopalpet, M.G.Road, SECUNDERABAD - 500003 within thirty days from the date of receipt of this notice as to why:-

- (i) An amount of **Rs 20,62,830/-** (Rs Twenty Lakhs Sixty Two Thousand Eight Hundred and Thirty Only) which is equal to the 7% on the total sale consideration received from the sale of the 7 flats after issuance of occupation certificate during the period 2016 to 2017, should not be recovered from them under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 73(1) of the Finance Act, 1994;
- (ii) Service Tax amounting to **Rs. 30,608/-** (Rupees Thirty Thousand Six Hundred and Eight Only) [inclusive of applicable cesses] as detailed in the show cause notice, should not be demanded from them in terms of the proviso to Section 73(1) of Finance Act, 1994 as amended for the Legal Services under Reverse Charge Mechanism;
- (iii) Service Tax amounting to **Rs. 41,158/-** (Rupees Forty One Thousand One Hundred and Fifty Eight Only) [inclusive of applicable cesses] as detailed in the show cause notice, should not be demanded from them in terms of the proviso to Section 73(1) of Finance Act, 1994 as amended towards Goods Transport Agency Services, under Reverse Charge Mechanism;
- (iv) Late fee of **Rs 21,000/-** (Rupees Twenty One Thousand Only) should not be demanded towards Late fee for delayed filing of ST-3 Returns under Rule 7 of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994;
- (v) An amount of **Rs 4,93,498/-** (Rupees Four Lakhs Ninety Three Thousand Four Hundred and Ninety Eight Only) as discussed in Para 9 above, being the interest short paid on delayed payment of service tax should not be demanded from them under Section 75 of the Finance Act, 1994
- (vi) Interest at applicable rate(s) should not be demanded / recovered from them under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 75 of Finance Act, 1994 on the amount demanded at (i) above;
- (vii) Interest at applicable rate(s) should not be demanded / recovered from them under Section 75 of Finance Act, 1994 on the amount of Service Tax demanded at (ii) & (iii) above;
- (viii) Penalty should not be imposed on them equivalent to the amount demanded at (i) above, Rule 15(3) of the Cenvat Credit Rules, 2004, read with Section 78 of Finance Act, 1994 for wilful suppression of the facts with intent to evade payment of service tax;
- (ix) Penalty should not be imposed on them equivalent to the amount demanded at (ii) & (iii) above under Section 78 of Finance Act, 1994 for wilful suppression of the facts with intent to evade payment of service tax.

Personal Hearing :

10. A Personal Hearing was conducted on 29.07.2020 by video conference and Shri Lakshman Kumar Kadali, Chartered Accountant and Shri. Jaya Prakash.M attended and submitted their reply to the Show Cause Notice and

taxable services and rest in activities which do not amount to service at all and still would have been entitled to full credit of the tax paid. This was rectified by insertion of explanation (3) to Rule 6(1) with effect from 01.4.2016 vide notification 13/2016-CE (NT) dated 01.3.2016. This explanation however was not given retrospective application in the notification. I am unable to agree with the learned departmental representative that since this explanation is keeping in line with the spirit of the entire scheme of CENVAT Credit Rules, 2004 that credit is available only when tax is paid, it should be treated as having retrospective application."

10.3. Further they submit that in the instant case, they had not availed any CENVAT Credit in the year in which the occupancy certificate is received and the same is evident from the ST-3 returns filed during the period April 2016 to June 2017. Therefore, there is no requirement to reverse any CENVAT Credit as alleged by impugned notice.

10.4. They state, without prejudice to the above, that impugned SCN proposed to demand 7% of the value of flats sold after receipt of occupancy certificate as the They had not opted for proportionate reversal option under Rule 6(3) of CENVAT Credit Rules, 2004. In this regard, they submits that Rule 6(3), ibid gives 3 options and assessee has free choice to choose any one of those three options. In any of the three options given in Rule 6(3), ibid there is no provision that if the assessee does not opt any of the option at a particular time, then option of payment of 6%/7% will automatically be applied. It is a choice of the assessee which option to be availed. In the present case, if at all it is treated as exempted service, without prejudice to the grounds taken above, they wish to avail the option under rule 6(3)(ii) read with rule 6(3A), therefore Revenue cannot insist to avail the option of Rule 6(3)(i) and demand huge amount of tax which is otherwise not payable by the assessee. They further submit that when the options have been provided, the department has no say for choice of the assessee, the assessee has liberty to choose any of the option and department has no role to decide regarding any other option available in these rules. In this regard reliance is placed on following decisions which has dealt with similar facts & circumstances and held that option of proportionate reversal u/r. 6(3)(ii), ibid shall be given. They rely on the judgement of The Hon'ble High Court of Telangana in case of Tiara Advertising Vs. Union of India 2019 (30) GSTL 474 (Telangana) "Rule 14 of the Cenvat Credit Rules, 2004 empowered the authorities to recover such credit which had been taken or utilized wrongly along with interest. However, the second respondent did not choose to exercise power under this Rule but relied upon Rule 6(3)(i) and made the choice of the option thereunder for the petitioner, viz., to pay 5%/6% of the value of the exempted services. The statutory scheme did not vest the second respondent with the power of making such a choice on behalf of the petitioner. The Order-

a) Noticee submits that the impugned notice vide Para 6.2 alleged that "it appears that subsequent to the introduction of Negative List from 01.07.2012 service tax is payable by the recipient of service irrespective whether consignment note is issued or not as there is no mention of the same in the above provision of law".

b) In this regard, Noticee submits that as per Section 65B (26) of the Finance Act, 1994, Goods Transport Agency (GTA) means "any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called".

c) From the above referred definition, it is clear that to become a Goods Transport Agency it should satisfy the following cumulative conditions

- a. Service should be in relation to transport of goods by road and
- b. Issues consignment note, by whatever name called

Unless the above conditions are satisfied cumulatively, the service received shall not amount to 'Goods Transport Agency Service'. This shows that the issue of consignment note is one of the mandatory condition to become a Goods Transport Agency. Hence, the allegation of the impugned notice that after introduction of negative list, transportation charges are liable under reverse charge irrespective of issuance of consignment note is not correct and the same needs to be dropped.

d) Noticee submits that amounts classified under the ledger 'transportation charges' are payments made to Auto-Rickshaws, trollies, etc. i.e., from Goods Transport Operators (GTO) but not to Goods Transport Agency. It may be noted that GTO has not issued any consignment note or any document therefore they cannot be treated as GTA. Therefore, the question of service tax liability does not arise.

e) Without prejudice to above, Noticee submits that alleged transportation charges are not liable for service tax in view of the transaction amount being below Rs. 750/- or 1500/- as the case may be. Noticee submits that small consignments involving Rs. 750/- per consignee or 1500/- per vehicle are exempted in terms of Notification No. 34/2004-S.T. dated 03.12.2004 and Notification No. 25/2012-ST dated 20.06.2012 as amended. In this background, Noticee submit that the transactions involving transportation charges below Rs.750/- per consignee or 1500/- per vehicle shall be exempted. Hence, the demand needs to be re-quantified to that extent.

f) In this regard, they placed reliance on the following case laws:

- a. Birla Ready Mix v. Commissioner — 2013 (30) S.T.R. 99 (Tribunal)
- b. Shanti Fortune (India) (P.) Ltd. v. CCE [2010] 24 STT 464 (Chennai – CESTAT)

of demand in instant notice is not warranted and the same needs to be dropped.

11. Discussion and Findings :

I have gone through the records of the case, the Notice, written submissions made by the assessee, Record of the Personal Hearing and the case laws cited/relied upon by the Assessee. I find that the assessee has availed Cenvat Credit on common input services from the beginning of their residential project till the time they got Occupancy Certificate. They have discharged the Service Tax in respect of flats sold before obtaining Occupancy Certificate from the competent authorities but in respect of 07 flats sold after the Occupancy Certificate they have neither availed Cenvat Credit nor paid any Service tax.

I find that I have to pass an order in respect of the following points:

1. Availment of Cenvat Credit on common inputs for providing Dutiable and Exempted Services by the assessee and reversal of Cenvat Credit @ 7% of value of Exempted Services. (para 5 above)
2. Service Tax applicable on the LEGAL EXPENSES incurred by the assessee and tax liability under Serial No.5 of Notification 30/2012-ST dated 20.06.2012. (para 6 above)
3. Service Tax applicability on TRANSPORT CHARGES incurred by the assessee under Serial No.2 of Notification 30/2012-dated 20.06.2012. (para 7 above)
4. Demand of Late Fee for delayed filing of ST-3 Returns. (para 8 above)
5. Demand of INTEREST on delayed payment of service tax. (para 9 above)

11.1 Reversal of Cenvat credit @7% of Value of Exempted Services:

Whether the Assessee is required to reverse Cenvat Credit availed during the period when output service was taxable before receipt of Completion Certificate, since such services were availed to construct entire property, and portion of such property did not attract Service Tax after receipt of Completion Certificate is to be determined. I disagree with the assessee's claim that the sale of flats after obtaining Occupancy Certificate is not service at all. The Notification no.13/2016-CE (NT) had defined Exempted service.

11.1.a Explanation 3 to Rule 6(1) of CCR, 2004.

"For the purposes of this rule, exempted services as defined in clause (e) of rule 2 shall include an activity, which is **not a service** as defined in section 65B(44) of the Finance Act, 1994."

11.1.b The above Explanation 3 has been inserted in Rule 6, *ibid* w.e.f. 01.04.2016 to specify that 'exempted service' includes an activity which is not a 'service' defined u/s. 65B(44). The matter of taxability of builders is

relation to the manufacture of the exempted goods or for exempted services. If this is the objective then at the most amount which is to be recovered shall not be in any case more than Cenvat Credit attributed to the input or input services used in the exempted goods. It is also observed that in either of the three options given in sub-rule (3) of Rule 6, there is no provisions that if the assessee does not opt any of the option at a particular time, then option of payment of 5% will automatically be applied."

11.1.e Hence, respectfully following judicial discipline, the request of the assessee for reversal of proportionate Cenvat Credit calculated as per Rule 6(3A) can be conceded to.

11.1.f The provisions of Rule 6(3A) of Cenvat Credit Rules, 2004 prescribe formula for calculating proportionate Cenvat credit to be reversed in cases where the manufacturer /service provider has both dutiable and exempted goods or services. The provisions read as under.

"The amount attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services = (M/N) multiplied by P, where M denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, N denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and P denotes total

CENVAT credit taken on input services during the financial year;

11.1.g In the present case the total value of exempted services provided by the assessee (M) is Rs. 2,94,69,000/-. The total value of taxable and exempted services provided by the assessee(N) for the period is Rs. 83,48,74,856/-. The total CENVAT credit taken on input services (P) during the period is Rs.4,66,329/-The worksheet for arriving at the above values is prepared and placed as annexure to the OIO. Going by the formula above the amount of Reversal of Cenvat Credit attributable to exempted services is $(M/N)*P$ i.e.,

$(Rs. 29469000/Rs.834874856)*466329 = Rs. 16,460/-$.

Hence I find that the assesses are required to reverse the amount of Rs.16,460/- towards exempted services provided during the period Further, I propose to demand interest at appropriate rate on the amount reversible as stated above from 01.04.2014 to the date of payment. Further, the assessee should have exercised the option 6(3)(ii) earlier and not at the time of adjudication. Despite audit pointing out the assessee did not reverse the proportionate Cenvat Credit voluntarily. Hence, for the non compliance to Rule 6(3) of Cenvat Credit Rules, 2004, I propose to impose penalty under Section 77 of Finance Act, 1994.

11.2 Service Tax applicable on the LEGAL EXPENSES incurred :

In respect of legal charges, I find that that as per the serial No.5 of Notification No. 30/2012 dated 20.06.2012, only the services provided by individual advocate or a firm of advocates are liable for the service tax 100% in

below Rs. 750/- or 1500/- as the case may be. The small consignments involving Rs. 750/- per consignee or 1500/- per vehicle are exempted in terms of Notification No. 34/2004-S.T. dated 03.12.2004 and Notification No. 25/2012-ST dated 20.06.2012 as amended. In this background, I find that the demand for Service tax on Reverse Charge mechanism under Goods Transport Agency does not sustain.

11.4 Demand of Late Fee for delayed filing of ST-3 Returns:

I find that the notice has proposed to demand an amount of Rs.22,700/- towards short payment of late fees for the period October 2014 to June 2017. However, I find that there is excess demand for the period Oct to Mar'14 of Rs. 1,200/- (the late fee payable is shown as Rs. 1200/- and paid as Rs.1200 Hence the demand is to be Rs.0). Hence, giving discount wrong demand as stated above I find that the assesses are liable to pay an amount of Rs. 21,500/- (Rs.22,700/- Minus Rs.1,200/-).

11.5 Demand of Interest for delayed filing of ST-3 Returns:

In respect of demand for interest, I find from the table in the Show Cause Notice at para no 9 the interest paid by the assessee for the October'14 to June'17 is shown as 6,50,476/- where as interest payable for the corresponding period is shown as Rs.5,10,502/-.

11.5 a Thus, I find that there is no short payment of interest as alleged in impugned notice. Hence, the demand to that extent needs to be dropped.

11.5.b Hence, in view of the averments above, I pass the following order.

- (i) I demand an amount of **Rs.16,460/-** (Rs Sixteen Thousand four hundred and Sixty Only) which is the proportionate Cenvat Credit to be reversed for the period April'2014 to June'2017, from M/s B & C Estates under Rule 6(3A)(iii) read with proviso to Section 73(1) of the Finance Act, 1994;
- (ii) I impose Penalty of Rs. 10,000/- for non compliance to Rule 6(3) of Cenvat Credit Rules, 2004, under Section 77 of Finance Act, 1994.
- (iii) I demand interest on Rs.16,460/- on the proportionate Cenvat Credit to be reversed for the period April'2016 to actual date of payment @ 18% as per Section 75 of Finance Act, 1994.
- (iv) I drop demand for Service tax on Legal Services under Reverse Charge Mechanism;
- (v) I drop demand for Service tax on Goods Transport Agency Services under Reverse Charge Mechanism;

B & C Estates (20-21)
M G Road, Ranigunj
Secunderabad
State Name : Telangana, Code : 36

Payment Voucher

No. : **PAY/10247 10245**

Dated : **9-Mar-21**

Particulars	Amount
Account : EMP-R Lavanya Salary A/c	2,342.00
Through : BANK-Yes Bank A/c No:009763700002182	
On Account of : Being amt transfer to R Lavanya towards balance salary for the month of Feb 21	
Amount (in words) : Indian Rupees Two Thousand Three Hundred Forty Two Only	
	₹ 2,342.00

Prepared by: lavanya.r

Approved by

Receiver's Signature

B & C Estates (20-21)
M G Road, Ranigunj
Secunderabad
State Name : Telangana, Code : 36

Payment Voucher

No. : ~~PAY/10248~~ 10246

Dated : 9-Mar-21

Particulars	Amount
Account : EMP-G.Rajesh Kumar	3,621.00
Through : BANK-Yes Bank A/c No:009763700002182	
On Account of : Being amt transfer towards balance salary for the month of Feb 21	
Amount (in words) : Indian Rupees Three Thousand Six Hundred Twenty One Only	
	₹ 3,621.00

Prepared by: lavanya.r

Approved by

Receiver's Signature

& C Estates (20-21)
M G Road, Ranigunj
Secunderabad
State Name : Telangana, Code : 36

Payment Voucher

No. : **PAY/10249** 10247

Dated : **10-Mar-21**

Particulars	Amount
Account : Sup Radiant Systems	14,160.00
Through : BANK-Yes Bank A/c No:009763700002182	
On Account of : Being amt transfer to radiant systems against bil no:121, dt:25-2-21	
Amount (in words) : Indian Rupees Fourteen Thousand One Hundred Sixty Only	
	₹ 14,160.00

Prepared by: lavanya.r

Approved by

Receiver's Signature

& C Estates (20-21)
M G Road, Ranigunj
Secunderabad
State Name : Telangana, Code : 36

Payment Voucher

No. : **PAY/10250** 10248

Dated : 10-Mar-21

Particulars	Amount
Account : SUP-Praful Sanitary	3,172.00
Through : BANK-Yes Bank A/c No:009763700002182	
On Account of : Being amt transfer to praful sanitary against bill no:867, dt:13/2/21, po no:74758, dt:12/2/21	
Amount (in words) : Indian Rupees Three Thousand One Hundred Seventy Two Only	
	₹ 3,172.00

Prepared by: lavanya.r

Approved by

Receiver's Signature

C Estates (20-21)
M G Road, Ranigunj
Secunderabad
State Name : Telangana, Code : 36

Payment Voucher

No. : **PAY/10251** 10249

Dated : 10-Mar-21

Particulars	Amount
Account : SUP-Supreme Paints & Coatings New Ref PAY/10251 6,887.00 Dr	6,887.00
Through : BANK-Yes Bank A/c No:009763700002182	
On Account of : Being amt transfer to superme paints & coating on full & final payment against bil no:59	
Amount (in words) : Indian Rupees Six Thousand Eight Hundred Eighty Seven Only	
	₹ 6,887.00

Prepared by: lavanya.r

Approved by

Receiver's Signature

Payment Voucher

No. : **PAY/10251** 10250

Dated : **11-Mar-21**

Particulars	Amount
Account :	
CONJBDW-Shaik Javid Pasha	1,200.00
TDS on Contractor @ 0.75%	(-)9.00
Through :	
BANK-Yes Bank A/c No:009763700002182	
On Account of :	
Bieng amount transfered to Shaik javid pasha towards as per advice for payment Vno : 6801	
Amount (in words) :	
Indian Rupees One Thousand One Hundred Ninety One Only	
	₹ 1,191.00



Prepared by: mfh@modiproperties.com



Approved by

Receiver's Signature



B & C Estates (20-21)
M G Road, Ranigunj
Secunderabad
State Name : Telangana, Code : 36

Payment Voucher

No. : **PAY/10251** ✓

Dated : **11-Mar-21**

Particulars	Amount
Account :	
CONJBDW- N Krishna	4,600.00
TDS on Contractor @ 0.75%	(-)34.00
Through :	
BANK-Yes Bank A/c No:009763700002182	
On Account of :	
Bieng amount transfered to N.Krishna towards as per advice for payment Vno : 6800	
Amount (in words) :	
Indian Rupees Four Thousand Five Hundred Sixty Six Only	
	₹ 4,566.00

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Receiver's Signature



Payment Voucher

No. : **PAY/10251** 10252

Dated : **11-Mar-21**

Particulars	Amount
Account :	
CONJBDW-G Mannem	1,950.00
TDS on Contractor @ 0.75%	(-)15.00
Through :	
BANK-Yes Bank A/c No:009763700002182	
On Account of :	
Bieng amount transfered to G.Mannem towards as per advice for payment Vno : 6799	
Amount (in words) :	
Indian Rupees One Thousand Nine Hundred Thirty Five Only	
	₹ 1,935.00

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Receiver's Signature



& C Estates (20-21)
M G Road, Ranigunj
Secunderabad
State Name : Telangana, Code : 36

Payment Voucher

No. : **PAY/10254** 10253

Dated : **11-Mar-21**

Particulars	Amount
Account : SP- Hiregange Associates	25,000:00
Through : BANK-Yes Bank A/c No:009763700002182	
On Account of : Being amt transfer to hiregange associates against bill nos:01160H, 01081H,00795H&00517h	
Amount (in words) : Indian Rupees Twenty Five Thousand Only	
	₹ 25,000.00

Prepared by: lavanya.r

Approved by

Receiver's Signature

B & C Estates (20-21)

M G Road, Ranigunj
Secunderabad

SP- Hiregange Associates

Monthly Summary

1-Apr-20 to 11-Mar-21

Page 1

Particulars	Transactions		Closing Balance
	Debit	Credit	
Opening Balance			1,82,607.30 Cr
April			1,82,607.30 Cr
May	1,82,607.00		0.30 Cr
June			0.30 Cr
July			0.30 Cr
August			0.30 Cr
September	43,260.00	1,45,860.00	1,02,600.30 Cr
October	50,000.00		52,600.30 Cr
November	40,000.00		12,600.30 Cr
December	12,600.00		0.30 Cr
January	49,961.00	49,961.00	0.30 Cr
February		1,13,262.00	1,13,262.30 Cr
March	50,000.00		63,262.30 Cr
Grand Total	4,28,428.00	3,09,083.00	63,262.30 Cr



Payment Voucher

No. : **PAY/10255 10254**

Dated : **11-Mar-21**

Particulars	Amount
Account :	
CONT-B Bassappa on A/c	50,000.00
TDS on Contractor @ 0.75%	(-)375.00
Through :	
BANK-Yes Bank A/c No:009763700002182	
On Account of :	
Bieng amount transfered to B.Basappa towards as per advice for payment Vno : 6802	
Amount (in words) :	
Indian Rupees Forty Nine Thousand Six Hundred Twenty Five Only	
	₹ 49,625.00

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Receiver's Signature

Attendance Details
Mayflower Grande
Survey No.191, Mallapur, Hyderabad

Advice for Payment No : 6802

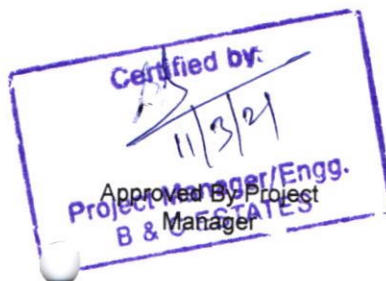
Date : 11-03-2021

Contractor Name	From Date	To Date
B.Basappa (Painter)	04-03-2021	10-03-2021

Skill Name	Attendance		Department		Job Work		On A/c	
	Value	Amount	Auto	Manual	Auto	Manual	Auto	Manual
Totals...	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Advice For Payment	
PARTICULARS	AMOUNT
On A/c Description : Credit balance Rs.30898/- Bill sent on 20.02.2021 amount of Rs.50272/- This week we recommend Rs.50000/-	50000.00
Department Description :	0.00
Job Work Description :	0.00
Other Deductions Description :	Total Amount % 50000.00
	TDS : @ 0.75 375.00
	Less Rent : 0.00
	Less Loan : 0.00
	0.00
Net Amount :	49625.00
Rupees : Fourty Nine Thousand Six Hundred Twenty Five Only.	

Approved By Admin



Approved By Accounts

Approved By Managing Director

P C Estates (20-21)

Mr G Road, Ranigunj
Secunderabad

State Name : Telangana, Code : 36

Payment Voucher

No. : **PAY/10255**

Dated : **15-Mar-21**

Particulars	Amount
Account : EMP-R Lavanya Salary A/c	399.00
Through : BANK-Yes Bank A/c No:009763700002182	
On Account of : Being amt transfer towards mobile allowance for the month of Feb 21	
Amount (in words) : Indian Rupees Three Hundred Ninety Nine Only	
	₹ 399.00

Prepared by: lavanya.r

Approved by

Receiver's Signature

C Estates (20-21)
G Road, Ranigunj
Secunderabad
State Name : Telangana, Code : 36

Payment Voucher

No. : **PAY/10256**

Dated : **15-Mar-21**

Particulars	Amount
Account : EMP-G.Rajesh Kumar	1,599.00
Through : BANK-Yes Bank A/c No:009763700002182	
On Account of : Being amt transfer towards mobile allowance for the month of Feb 21	
Amount (in words) : Indian Rupees One Thousand Five Hundred Ninety Nine Only	
	₹ 1,599.00

Prepared by: lavanya.r

Approved by

Receiver's Signature

Payment Voucher

No. : **PAY/10257**

Dated : **18-Mar-21**

Particulars	Amount
Account :	
CONT-Janardhan Prasad on A/c	42,187.00
TDS on Contractor @ 0.75%	(-)316.00
Through :	
BANK-Yes Bank A/c No:009763700002182	
On Account of :	
Being amount transfered to Janardhan prasad towards as per advice for payment V NO:6805	
Amount (in words) :	
Indian Rupees Forty One Thousand Eight Hundred Seventy One Only	
	₹ 41,871.00

Prepared by: mfh@modiproperties.com

Approved by

Receiver's Signature

For
[Signature]
25/3/21

[Signature]

Approved By Managing
Director

B & Estates (20-21)
M G Road, Ranigunj
Secunderabad
State Name : Telangana, Code : 36

Payment Voucher

No. : **PAY/10257 10258**

Dated: 18-Mar-21

Particulars	Amount
Account :	
CONJBDW-Shaik Javid Pasha	1,200.00
TDS on Contractor @ 0.75%	(-)9.00
Through :	
BANK-Yes Bank A/c No.009763700002182	
On Account of :	
Being amount transfered to Shaik javid pasha towards as per advice for payment V NO:6804	
Amount (in words) :	
Indian Rupees One Thousand One Hundred Ninety One Only	
	₹ 1,191.00

Prepared by: mfh@modiproperties.com

Approved by

Receiver's Signature

