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OFFICE OF THE COMMISSIONER(Appeals-II)
CUSTOMS, CENTRAL EXCISE & SERVICE TAX
HYDERABAD.

Appeal No. 06 /2010(H-II)S.Tax

Date: 31.01.2011

Name of the appellant : M/s Modi & Modi Construction,
Secunderabad

Name of the Consultant/ Advocate : 1. CA Sudhir V.S.
M/s Hiregange & Associates

2. Shri A.Shanker Reddy, DGM(Admn)
Modi Properties & Investments

Handwritten:
F.A.L.
CA Sudhir V.S.
31/1/11

Handwritten:
Shri A.Shanker Reddy
31/01/11

RECORD OF PERSONAL HEARING

CA Sudhir V.S., along with Shri A.Shanker Reddy, appeared for personal hearing on behalf of M/s Modi & Modi Construction for disposal of stay petition as well as main appeal and made the following submissions :

1. Reiterated the submissions made in the grounds of appeal.
2. Construction of houses for individuals does not come under 'Works Contract Service' definition as construction of individual houses/villas would not come under meaning of construction of residential complex or a part thereof .
3. Draw attention of Tribunal Chennai decision in the case relating to macro Marvel Projects Ltd. Vs. Commr. of S.Tax, Chennai reported in 2008(12)STR(603) Tri.Mad which specifically held that individual houses are not taxable.
4. As per Board's Circular No. 108/02/2009-ST dt. 29.1.2009, it has been clarified that residential unit sold for a customer for his personal use is not liable to service tax. In the impugned order of the adjudicating authority has only considered the conclusion of the Board's Circular and the preamble or the arguments have not been taken into consideration while adjudicating the show cause notice.
5. It is further submitted that builders became liable to service tax from 1.7.2010 as per Finance Act, 2010 as per Explanation added to the taxable service.
6. Since the matter was not free from confusion, the facts were intimated to the department and the issue involved is a matter of interpretation, penalty under Section 80 may be waived as the appellant had acted under bonafide belief.

Nothing more to add.

(Dr. S.L.Meeha)
Commissioner(Appeals-II)