FORM ST - 5

[See rule 9(1)]

Form of Appeal to the Appellate Tribunal under sub-Section (1) of Section 86 of the Finance Act, 1994

In the Customs, Excise and Service Tax Appellate Tribunal

APPEAL No..... of 2015

BETWEEN:
M/s. Modi Ventures,
5-4-187/3 & 4,
2nd Floor, Soham Mansion,
M.G Road, Secunderabad- 500 003. ..... **Appellant**

Vs.

The Commissioner of Service Tax,
Service Tax Commissionerate,
L.B Stadium Road, Basheerbagh,
Hyderabad – 500 004. ..... **Respondent**

01(a)	Assessee Code	AAJFM0646DST001
(b)	Premises Code	5213050001
(c)	PAN or UID	AAJFM0646D
(e)	E-mail Address	info@modiproperties.com
(f)	Phone Number	091-40-66335551
(g)	Fax Number	091-40-27544058
02.	The Designation and Address of the Authority passing the Order Appealed against.	The Commissioner of Service Tax, Service Tax Commissionerate L.B Stadium Road, Basheerbagh, Hyderabad – 500 004.
03.	Number and Date of the Order appealed against	Order-In-Original No. HYD-SVTAX-000 – COM – 04 & 05 / 15-16 dated 31.08.2015
04.	Date of Communication of a copy of the Order appealed against	07.10.2015
05.	State of Union Territory and the Commissionerate in which the order or decision of assessment, penalty, was made	Telangana, Commissioner of Service Tax, Service Tax Commissionerate, Hyderabad-500 004.
06.	If the order appealed against relates to more than one Commissionerate, mention the names of all the Commissionerate, so far as it relates to the Appellant	Not Applicable
07.	Designation and address of the adjudicating authority in case where the order appealed against is an order of the Commissioner (Appeals)	Not Applicable

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08.	Address to which notices may be sent to the appellant	M/s Hiregange & Associates, "Basheer Villa", House No: 8-2 268/1/16/B, 2nd Floor, Sriniketan Colony, Road No. 3, Banjara Hills, Hyderabad – 500 034 **(Also to Appellant as stated in cause title supra.)**
09.	Address to which notices may be sent to the respondent	The Commissioner of Service Tax, Service Tax Commissionerate L.B Stadium Road, Basheerbagh, Hyderabad – 500 004.
10.	Whether the decision or order appealed against involves any question having a relation to the rate of Service Tax or to the value of goods for the purpose of assessment.	Yes
11.	Description of service and whether in 'negative list'	Works Contract service Not in Negative list
12.	Period of Dispute	January 2011 to December 2011 January 2012 to March 2014
13(i)	Amount of service tax, if any Demanded for the period of dispute	Rs.60,63,492/- Rs.74,39,581/-
(ii)	Amount of interest involved up to the date of the order appealed against	Rs. 58,62,183/- (Approx.)
(iii)	Amount of refund if any, rejected or disallowed for the period of dispute	Not Applicable
(iv)	Amount of penalty imposed	Penalty imposed under Section 76, 77 & 78 of the Finance Act, 1994
14(i)	Amount of service tax or penalty or Interest deposited. If so, mention the amount deposited under each heading the box. (A copy of the Challan under which the deposit is made shall be furnished)	An amount of Rs.57,06,890/- was already paid by cash Rs. 55,66,170/- and by utilizing Cenvat credit Rs 1,40,720/-And same was adjusted for payment in terms of section 35F of Central Excise Act, 1944. (Challans enclosed as annexure-I)
(ii)	If not, whether any application for dispensing with such deposit has been made?	Not applicable
15.	Does the order appealed against also involve any central excise duty demand, and related fine or penalty, so far as the appellant is concerned?	No
16.	Does the order appealed against also involve any customs duty demand, and related penalty, so far as the appellant is concerned?	No

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17.	Subject matter of dispute in order of priority (please choose two items from the list below) [i) Taxability – Sl. No. of Negative List. ii) Classification of Services iii) Applicability of Exemption Notification No., iv) Export of Services v) Import of Services vi) Point of Taxation vii) CENVAT viii) Refund ix) Valuation x) Others]	Priority 1 – Taxability Priority 2 –Valuation
18.	Central Excise Assessee Code, if registered with Central Excise	Not registered with Central Excise
19.	Give details of Importer/Exporter Code (IEC), if registered with Director General Of Foreign Trade	Not Applicable
20.	If the appeal is against an Order-in-appeal of Commissioner (Appeals), the number of Order-in-original covered by the said Order-in-Appeal.	Not applicable
21.	Whether the respondent has also filed Appeal against the order against which this appeal is made.	No, as per the knowledge of the appellant
22.	If answer to serial number 21 above is 'Yes', furnish details of appeal.	Not Applicable
23.	Whether the appellant wishes to be Heard in person?	Yes. At the earliest convenience of this Honorable Tribunal.
24.	Reliefs claim in appeal	To set aside the impugned order to the extent aggrieved and grant the relief claimed.

For MODI VENTURES

Appellant

Partner

STATEMENT OF FACTS

A. M/s Modi Venture, Secunderabad (Hereinafter referred to as 'Appellant') is a partnership firm mainly engaged in the sale of residential houses to prospective buyers during and after construction. **In some cases sale deed for the entire sale consideration is being executed. In other cases sale deed is being executed for semi-finished construction along with an agreement of construction. This is being done solely to enable the customer obtain a housing loan. The housing finance company requires a title deed to release the first tranche of housing loan. Balance is released at time of handover.** Sale deed is registered and appropriate 'Stamp Duty' has been discharged on the same.

B. Various charges are recovered under the said agreements as under:

   a. Value towards the sale deed
   b. Value towards the construction agreement
   c. Other Charges like electricity charges, etc.
   d. Collection of taxes like VAT, Service Tax, Stamp Duty and Registration Charges from the buyer

C. The levy of service tax on such arrangements has seen a fair share of litigation and amendments. The Appellants were also a party to the litigation process and matters for earlier periods are pending at various adjudication / judicial forums.

D. In July 2012, the service tax law underwent a paradigm shift and importantly, the exemption for personal use available for construction of residential complexes was removed. Accordingly, it became evident that service tax was payable on the construction agreement as per valuation prescribed under Rule 2A of the Service Tax (Determination of Value) Rules, 2012 i.e. on a presumed value of 40% of the contract value. The Appellant

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regularly discharged the service tax on the said value in normal course. It also discharged service tax on other charges. However, it did not discharge service tax on sale deed value and on the value of taxes collected.

E. In view of earlier litigation, the Department preferred to issue a periodic SCN for the period from January 2011 to December 2011 and January 2012 to March 2014 despite the Appellants having discharged the service tax voluntarily during the said period. The said SCN was duly responded by the Appellants.

F. The detailed working of the receipts and the attribution of the said receipts was provided to the Department authorities, identified receipt wise and flat wise. The summary of the same is provided hereunder:

Description	Receipts	Non taxable	Taxable
Sum of towards sale deed	11,97,50,803	11,97,50,803	
Sum of towards agreement of construction	12,17,77,274		12,17,77,274
Sum of towards other taxable receipts	15,14,611		15,14,611
Sum of towards VAT, Registration charges, etc	1,58,91,785	1,58,91,785	
	27,69,24,159	13,56,42,588	12,32,91,935

G. Accordingly, the Appellants explained that the value of taxable services constituted 40% of Rs. 12,32,91,935/- i.e. Rs. 4,93,16,774/- and the service tax thereon calculated @ 10.30% for receipts upto March 2012 and @ 12.36% thereafter, constituted Rs. 54,98,324/-. It was also explained that the actual payment of service tax amounted to Rs. 57,06,890/- which was more than the tax required to be paid.

H. This excess payment is due to that at the time of giving statements the value of sale deed was at times not determined. Sale deed was executed at a later date and an adhoc value for sale deed was adopted for purposes of estimating service tax liability. Now the project has been completed and

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there is a finality in the value of sale deed. The excess so paid has not been claimed as refund.

I. During the course of adjudication, the Ld. Commissioner held that:
   a. Service tax is not chargeable till the execution of the sale deed (Para 26.2 of the OIO)
   b. Service tax is payable on the construction agreement (Para 26.2 of the OIO)
   c. The benefit of personal use is not available (Para 24.6 of the OIO)
   d. Accordingly, the service tax demand proposed in the SCN was confirmed.

J. Despite the detailed submissions made vide written reply as well as during the personal hearing, the Ld. Respondent has passed a common order vide Order-In-Original No. HYD-SVTAX-000 – COM – 04 & 05 / 15-16 dated 31.08.2015 (Copy of the order enclosed as Annexure II):

   a. **In Respect of OR No.95/2012-Adjn(ST)(Commr) dated 24.04.2012 :**
      i. Confirmed an amount of Rs. 60,63,492/- under Works Contract services rendered during the period January'2011 to December 2011 in terms of sub-section(2) of section 73 of Finance Act, 1994 and also appropriate an amount of Rs. 10,40,000/- already paid by them against the above demand.
      ii. Confirmed the interest at the applicable rates on the amount demanded at (i) above under Section 75 of the Finance Act, 1994.
      iii. Imposed penalty of Rs. 10,000/- under section 76 of Finance Act, 1994
      iv. Imposed a penalty of 10% of the service tax demanded at (i) above under section 76 of the Finance Act, 1994, provided that where service tax and interest is paid within a period of thirty days of the receipt of the order then the penalty payable shall be 25% of the penalty imposed in that order, only if such reduced penalty is also paid within such period.

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b. **In Respect of OR No.95/2012-Adjn(ST)(Commr) dated 24.04.2012 :**

i. Confirmed an amount of Rs. 74,39,581/- under Works Contract services rendered during the period January'2012 to March 2014 in terms of sub-section(2) of section 73 of Finance Act, 1994 and also appropriate an amount of Rs. 29,22,154/- already paid by them against the above demand.

ii. Confirmed the interest at the applicable rates on the amount demanded at (i) above under Section 75 of the Finance Act, 1994.

iii. Imposed a penalty of Rs.10,000/-in terms of Section 77 of the Finance Act, 1994.

iv. Imposed penalty under section 78 of Finance Act, 1994

K. The following table summarises the positions as claimed by the Appellant and as held in the OIO:

	As per Appellant	As per OIO
Gross Receipts	27,69,24,159	5,88,68,851
Less Deductions		
Sale Deed Value	11,97,50,803	-
VAT, Registration charges, stamp duty and other non taxable receipts	1,58,91,785	-
Taxable amount	13,56,42,588	5,88,68,851
Abatement @ 40%	4,93,16,774	-
Service tax thereon calculated @ 10.30% for receipts upto March 2012 and @ 12.36% thereafter	54,98,324	60,63,492
Actually Paid	57,06,890	10,40,000
Balance Demand	-2,08,566	50,23,492

L. On a perusal of the above comparative table, it is evident that the Ld. Commissioner for the first time in the entire set of proceedings has without giving any opportunity to Show Cause, denied the deduction on account of value received towards the "Sale Deeds" and accordingly, indirectly held that such values are also liable for payment of Service Tax. Similarly, the deduction on account of statutory taxes is not provided to the fullest extent

M. Being aggrieved by the Order, the Appellants prefer an Appeal before the CESTAT on the grounds mentioned hereinafter.

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GROUNDS OF APPEAL

In re: Violation of principles of natural justice:

1. Appellant submits that the impugned order was passed violating the principles of natural justice as the submissions made by the Appellant which are meritorious have not been adverted to or rebutted *inter alia* the following vital decision making submissions were made before the Ld. Respondent vide SCN reply but Ld. Respondent has **totally ignored** the same while passing the impugned order:

    a. SCN cannot be issued under section 73(1A) when there is substantial change in law

    b. Sole allegation of impugned SCN to demand service tax on construction agreements were duly paid and there is no short/non payment

    c. While quantifying the demand, SCN was erroneously included the amounts received towards sale deed, and statutory taxes., without alleging/raising ground for demand to that effect

2. The Appellant submits that all the above meritorious grounds have not been considered while passing the impugned order. The system of departmental adjudication is governed by the principles of natural justice. The impugned order neither analyses the submissions, nor discusses the relevant case law, but has given the order without proper reasoning making the same as non-speaking and predetermined order. In this regard Appellant wishes to rely on the following judicial pronouncements:

    a. Southern Plywoods Vs CCE 2009 (243) E.L.T 693 (Tri-Bang)
    b. Kesarwani Zarda Bhandar Vs CCE 2009 (236) E.L.T 735 (Tri-Mum)
    c. Herren Drugs & Pharmaceuticals Ltd. Vs CCE, Hyderabad 2005 (191) E.L.T 859 (Tri-Bang)
    d. Youngman Hosiery Factory Vs CCE, Chandigarh 1999 (112) E.L.T 114 (Tribunal)

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In light of the above, judicial pronouncements order passed without considering the submissions and without discussing and distinguishing the case laws relied by Appellant is liable to be quashed.

The allegation in SCN and the impugned OIO is that Appellant has to pay service tax on the "construction agreements", which has been paid properly by the Appellant. Therefore, the SCN needs to be dropped on this ground itself.

3. Appellant submits that undoubtedly they are discharging service tax on construction agreements thereby paying service tax on activity as proposed by impugned SCN read with earlier SCN's and as confirmed by the impugned OIO. Both SCN & OIO included the value of sale deeds only at the time of quantifying the demand. As seen from the operative part of both SCN & OIO it is clear that it is only sole allegation of SCN (Para 2) & finding of OIO (Para 26.2) that construction agreements are subject to service tax under the category of "works contract", no allegation has been raised to demand service tax on the sale deed value. In fact, as stated in Para 26.2 of the OIO, the Ld. Commissioner is in agreement that the value of the sale deed is not a subject matter of service tax.

4. As stated in the background facts, the Appellants started paying service tax on the value of "construction agreements" from January 2011 onwards. Thereafter, the said taxes have been regularly paid. This is also evident from the fact that the current SCN proposes appropriation of taxes already paid by them. The details of the taxes paid are also acknowledged in para 4 of the SCN dated 24.04.2012. On a perusal of the SCN, it is evident that the issue in the current SCNs is therefore limited to the aspect of quantification of demand. On a perusal of para 9 of the SCN which quantifies the demand, it can be easily inferred that the demand is quantified based on statements

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submitted by the Appellants. The said statements for the periods are marked as Annexure "III".

5. On going through the statements provided by the Appellants, it can be seen that a detailed breakup of the receipts into receipts towards "sale deeds", receipts towards "construction agreements", receipts towards other taxable receipts and receipts towards other non-taxable receipts was provided.

6. However, on going through the annexure to the SCN, it can also be observed that though the allegation is to demand service tax on construction agreements, the quantification is based on gross amounts mentioned above for all the activities including amounts received towards the "sale deeds".

7. It is therefore apparent that the SCN represents an error in quantification of the demand. It may be noted that the Appellants have regularly and diligently discharged Service Tax on the value of "construction agreements" after January 2011 onwards. The above is explained through a comparative chart provided below:

	As per Appellant	As per OIO
Gross Receipts	27,69,24,159	5,88,68,851
Less Deductions		
Sale Deed Value	11,97,50,803	-
VAT, Registration charges, stamp duty and other non taxable receipts	1,58,91,785	-
Taxable amount	13,56,42,588	5,88,68,851
Abatement @ 40%	4,93,16,774	-
Service tax thereon calculated @ 10.30% for receipts upto March 2012 and @ 12.36% thereafter	54,98,324	60,63,492
Actually Paid	57,06,890	10,40,000
Balance Demand	-2,08,566	50,23,492

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8. The Appellants submit that once the apparent error in calculation is taken to its logical conclusion, the entire demand fails and therefore there is no cause of any grievance by the department on this ground.

The Order is erroneous since it does not consider the calculations and documentation submitted in response to the SCN

9. As stated above, the Appellants submit that the **both SCN and OIO do not intend to include the value of "sale deeds".** The Appellants therefore submit that the contents of this letter be taken cognizance of and the service tax demand be quantified correctly. For the purposes of correct adjudication and quantification, the Appellants summarise the details of the receipts as under:

	As per Appellant	As per OIO
Gross Receipts	27,69,24,159	5,88,68,851
Less Deductions		
Sale Deed Value	11,97,50,803	-
VAT, Registration charges, stamp duty and other non taxable receipts	1,58,91,785	-
Taxable amount	13,56,42,588	5,88,68,851
Abatement @ 40%	4,93,16,774	-
Service tax thereon calculated @ 10.30% for receipts upto March 2012 and @ 12.36% thereafter	54,98,324	60,63,492
Actually Paid	57,06,890	10,40,000
Balance Demand	-2,08,566	50,23,492
	As per Appellant	As per OIO

10. Since a substantial component of the demand is on account of the value attributable towards the sale deed value, the Appellants crave leave to provide as Annexure "IV", the flat wise details of the sale deed value along with the amounts attributable during the disputed period. The Appellants enclose the full sale deed for Flat No. A 508 and the relevant extracts of all the sale deeds which aggregate to the value claimed as deduction by the Appellants Annexure "V"

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11. From the above documentation, it is more than evident that the value attributable towards the sale deed cannot be included in the value of taxable services and the demand needs to be dropped on this ground

12. The Appellants further submit that similar to the exclusion on account of sale deed value, the value attributable to statutory taxes like VAT, service tax, registration charges, stamp duty, etc need to be reduced. The detailed flatwise amounts are provided as Annexure "VI"

13. The Appellants submit that once the above deductions are provided to the Appellants, the demand would be reduced to NIL

14. Since both the SCN and OIO agree on the principle that service tax cannot be demanded on the value attributable to sale deeds, the Appellants are not making detailed grounds on the legal merits of the said claim. Notwithstanding the above, the Appellants reserve their right to make additional arguments as felt necessary on this aspect of service tax on value of "sale deeds" if it is ultimately held that the OIO in principle demands tax on the value of "sale deeds"

In Re: SCN dated 26.09.2014 is time barred:

15. Appellant submits that SCN dated 26.09.2014 was issued invoking larger period of limitation under proviso to Section 73(1) of Finance Act, 1994 after alleging vide Para 8 that *"Assessee have filed Nil ST-3 returns online for the period October 2011 to March 2012. Later, however vide letter dated 17.09.2014, they submitted that they have received Rs. 4,49,46,992/- for rendering taxable services. Despite having registered and discharging service tax liability on parts of taxable values, the assessee had not disclosed the receipt of taxable amounts for the period*

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January – March 2012 in statutory returns and also failed to discharge the service tax liability deliberately on the actual value of services under "Works contract services". They appear to have suppressed the material *facts before the department that they had received said taxable amounts.* ***They have neither disclosed the same to the department by way of the details of the activities/service in the periodical returns filed by them during the period October 2011 to March 2012. They have intentionally not shown any receipts towards construction in their ST-3 returns.*** Assessee is well aware of the statutory provisions and of their liability to pay service tax. ***Since they have not disclosed the above facts to the department by way of periodical return and the facts were submitted at later stage, on specially asked by the department vide letters dated 20.08.2014, 10.09.2014 and summons dated 16.09.214 the same amounts to suppression of facts with sole intention to evade payment of service tax*** and hence the proviso to sub-section (1) of section 73 of Finance Act, 1994 is liable to be invoked for extended period."

16. In this regard, Appellant submits that above allegation is not valid for the below mentioned reasons:

    a. Appellant have voluntarily paid service tax on amounts received on towards construction agreement and intimated the said payment details at various dates clearly showing the receipts from each and every customer & explaining how tax liability has been arrived and also submitted the copies of Challans for the impugned period vide their letter dated 22nd July 2012 for the period January 2012 to March 2012 and vide their letter dated 29th April 2013 for the period April 2012 to September 2012 and vide letter dated 26th September 2013 for the period October 2012 to March 2013 and vide letter dated 11th November 2013 for the period April 2013 to September 2013 and vide letter dated 1st June 2014 for the period

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October 2013 to March 2014. Along with the letter, the Appellant has also submitted the annexure which clearly explains that they have excluded the amount received towards the sale of undivided portion of land and paid applicable service tax ***under protest*** on the amount received towards the construction portion **(copy of the letters referred in this Para are enclosed as annexure VII).**

b. Appellant filed ST-3 returns showing the taxable amounts as "Nil" for the period upto March 2012 on the understanding that since they are contesting the demand of service tax on their activity and amounts paid as service tax is under protest, taxable amounts would be "Nil". Therefore allegation of non-disclosure of amounts received from customers in ST-3 returns is not valid.

c. Earlier two SCN's were served on the Appellant proposing service tax on their activity and there was no change in activity carried out by the Appellant.

Therefore invocation of larger period of limitation on the ground that Appellant has suppressed the facts is not valid.

17. Appellant submits that impugned SCN proposes to tax the amounts received towards sale of flats in respect of project named as " ***"Gulmohar Gardens"*** and said project was started during the month of October 2006 thereby activity which is subjected to present show cause notice was existed from October 2006. Further there was no other project executed by the Appellant during the subject period.

18. Appellant submits that previously a SCN was served by the office of this Commissionerate on Appellant proposing service tax for the period 01.06.2007 to December 2010 vide O.R. No 125/2011-Adjn. (ST) (Commr.) dated 25.10.2011 and it was followed by periodical show cause

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notice vide O.R No. 95/2012 – Adjn. (ST) (Commr.) dated 24.04.2012 covering the period January 2011 to December 2011. Thus officers of department were well aware of the activity carried out by the Appellant before the initiation of proceedings under present show cause notice in the form of earlier show cause notices

19. Notice submits that above mentioned earlier show cause notice disputed the payment of service tax on construction of apartments classifying under the category of works contract and now present show cause notice also proposes to demand service tax on same subject matter for the later period invoking the larger period of limitation is not sustainable and requires to be set aside. in this regard, Appellant wishes to rely on

a. *Nizam Sugar Factory* - 2008 (9) S.T.R. 314 (S.C.) = 2006 (197) E.L.T. 465 (S.C.) held that "*Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the* assessee/*appellant.*"

b. P & B Pharmaceuticals (P) Ltd. v. Collector — 2003 (153) E.L.T. 14 (S.C.), Apex court held that "the question was whether the extended period of limitation could be invoked where the Department has earlier issued show cause notices in respect of the same subject-matter. It has been held that in such circumstances, **it could not be said that there was any wilful suppression or**

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mis-statement and that therefore, the extended period under Section 11A could not be invoked."

20. Appellant further submits that they have filed appeal before CESTAT, Bangalore along with stay application and subsequent to this Hon'ble CESTAT granted stay vide Miscellaneous order No. 23566/2014 dated 26.06.2014 and disposal of main appeal is pending. That being a case, issuing second show cause notice invoking the larger period of limitation on the ground that Appellant suppressed facts is not sustainable and requires to be set aside. in this regard, Appellant wishes to rely on ECE Industries Ltd. v. Commissioner — 2004 (164) E.L.T. 236 (S.C.) wherein Apex court held that **"as earlier proceedings in respect of same subject matter were pending adjudication it could not be said that there was any suppression and the extended period under Section 11A was not available".**

a) **Specific disclosure is made:**

21. Appellant submits that they are paying service tax (under protest) on amounts received from customer after excluding the amounts attributable to the sale of semi-finished flat i.e. paying on amounts received towards construction agreement. The same was intimated to the officers of department vide their

d. letter dated 22nd July 2012 for the period January 2012 to March 2012

e. letter dated 29th April 2013 for the period April 2012 to September 2012

f. letter dated 26th September 2013 for the period October 2012 to March 2013

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g. letter dated 11th November 2013 for the period April 2013 to September 2013

h. Letter dated 1st June 2014 for the period October 2013 to March 2014.

While filling the above mentioned letters, Appellant also submitted the computation sheet specifically showing the amount received from each customer, deductions made from the gross amount charged to arrive the tax liability and also submitted Challan copies. Therefore Appellant voluntarily intimated all facts without any interaction of department.

22. Appellant submits that, contrasting to this, impugned show cause notice alleges that the facts were submitted at later stage, on specially asked by the department vide letters dated 20.08.2014, 10.09.2014 and summons dated 16.09.214 the same amounts to suppression of facts with sole intention to evade payment of service tax. Therefore this allegation is not valid since it is contrary to what was actually happened.

23. Appellant submits that what is believed to be not taxable as backed by their legal understanding was well put forth before the authorities well before beginning of present SCN period **and they had never hidden any fact from the officers of department** and it is failure on part of departmental authorities to inform/communicate the Appellant in case their legal understanding is not correct or any objections in tax compliance made by Appellant. And without all these and after expiry of normal period of limitation, proposes to punish the Appellant for the failure of departmental authorities by issuing impugned SCN after raising allegation that Appellant suppressed the facts & proposing demand for 5years is not valid in the eyes of law. In this regard Appellant wishes to rely on the larger bench decision in case of Mutual Industries

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Ltd. v. Collector — 2000 (117) E.L.T. 578 (Tribunal-LB) 2000 (117) E.L.T. 578 (Tribunal-LB) wherein it was held that *"The conclusions reached by us as stated above do not go to support the order impugned in this appeal. As stated earlier, the period covered by the show cause notice was from 1-10-1986 to 31-8-1990. Show cause notice was issued on 25-10-1991. While issuing this notice extended period of five years was invoked. The question is whether the Department was justified in invoking the extended period. In the show cause notice it is admitted that the appellant company was filing classification list during the period from October 1986 to August 1990. It is also admitted that the manufacturer filed price list declaring selling price of the goods and determining the assessable value for the purpose of levy. From this admission made in the show cause notice, it is evident that the manufacturer made available to the authorities under the excise law all details regarding transaction entered into between the manufacturer and the purchaser. This means that the terms and conditions of the contract under which the manufacturer was producing goods for the customer was made available to the Department. From the contract which was thus known to the Department they ought to have noticed that cost of mould which was also part of assessable value of the finished product was not being included in the value of the finished product. The show cause notice proceeds to state "It is, however, noticed subsequently that the assessee company did not include mould cost in the declared value of the manufactured moulded article of plastic ....." Subsequent notice, stated therein, is no ground to invoke extended period of five years provided by the Act.* ***When the entire document and materials were available with the Department, it was the duty of the Department to scrutinise the terms and conditions therein and to come to its conclusion. It cannot sleep over the matter and come***

forward with a statement that it was noticed only subsequently. Since the entire contract was with the Department, we hold that the manufacturer did not suppress or conceal any fact for the purpose of evading payment of duty. *No transaction mentioned in the show cause notice falls within six months immediately preceding the date of notice. The period was from 1-10-1986 to 31-8-1990. The show cause notice was dated 25-10-1991 that is, more than one year after the period mentioned in the notice. The show cause notice is clearly barred by limitation. The demand made in the show cause notice is not legally sustainable. Therefore, we hold that the proceedings initiated against the appellant pursuant to show cause notice dated 25-10-1991 is clearly barred by limitation. Consequently the impugned order has to be set aside in its entirety. We do so."*

24. Appellant further submits that suppression means not providing information which the person is legally required to state, but is intentionally or deliberately not stated. Whereas in the instant case full facts of present SCN were well disclosed before authorities by way of clear & specific letters & ST-3 returns. Further there is no willful mis-statement by Appellant in view of fact that what is believed to be correct as backed by legal provisions & decisions were put forth before the authorities. That being a case, allegation of impugned SCN that Appellant mis-stated/suppressed the facts of the case is not valid and requires to be dropped.

25. Appellant submits that above view was found support from the following judicial decisions:

a. *Continental Foundation Jt. Venture v. Commissioner 2007 (216) E.L.T. 177 (S.C.) wherein it was held that "The expression "suppression" has*

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been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. ***Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression.*** *When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact.* ***An incorrect statement cannot be equated with a willful misstatement.*** *The latter implies making of an incorrect statement with the knowledge that the statement was not correct."*

b. Pushpam Pharmaceuticals Company v. Collector 1995 (78) E.L.T. 401 (S.C.) wherein it was held that *"Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default.* ***In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it***

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can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

c. *Modipon Fibre Co. v. Commissioner 2007 (218) E.L.T. 8 (S.C.) – "By the impugned order, the Tribunal has confirmed the demand made on the assessee vide show cause notice dated 19-3-1999 for the period March, 1994 to March, 1997. However the Tribunal found that the demand made by the Department was beyond limitation after the assessee had categorically informed the Department vide letter dated 14-1-1997 that there were two types of sales, namely, backward area sales and normal area sales. According to the Tribunal, therefore, there was no suppression after the Department had acquired the knowledge for the first time vide the assessee's letter dated 14-1-1997 and, therefore, it was not open to the Department to claim suppression after 14-1-1997."*

d. Collector v. Chemphar Drugs & Liniments 1989 (40) E.L.T. 276 (S.C.) – *"In order to make a demand under Section 11A of the Central Excises and Salt Act for beyond a period of six months and upto a period of five years something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required to be established.* ***Where Department had full knowledge about the facts and the manufacturer's action or inaction is based on their belief that they were required or not required to carry out such action or inaction, the period beyond six months cannot be made applicable"***

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e. National Rifles v. CCE 1999 (112) E.L.T. 483 (Tribunal) – *"We have carefully considered these submissions. We find that the appellants have made out a case on limitation. We have perused the three declarations of 20-3-1986, 25-5-1987 and 30-5-1988. In these declarations that the full description of the goods is given as Air Rifles. The appellants have also given the process of manufacture in detail in all these declarations and the process of manufacture as furnished clearly indicates that the main components of the Air Rifles are manufactured and the Wooden Butts for the Rifles are also been manufactured and the metal components are blackened and after the final assembly of all the parts of the Air Rifle it is tested for performance by actual shooting itself. This being the declaration, the department had on its record clear indication that parts are also manufactured by the appellants. It is further noted from the perusal of these declarations that even earlier to the declarations filed on 30-5-1988 in the declaration filed on 25-5-1987 also they had indicated other sales.* ***Therefore, there was sufficient disclosure of material in these declarations by the appellant to put the department on notice for making further enquiries and for the same reason the department cannot allege that the appellants had withheld information from the department with an intention to evade duty.***"

f. CST v. P.J. Margo Pvt. Ltd. 2009 (14) S.T.R. 477 (Tri. - Bang.) *"It is very clear from the records that they had informed the Department all the processes undertaken by them. My attention was invited to the letter dated 28-7-98 wherein the details of the activity undertaken has been informed to the Superintendent of Central Excise. In fact the Commissioner (Appeals) in the impugned order has elaborately dealt with the facts and came to the conclusion that there was no suppression*

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of facts for invocation of the extended period. In my view, after going through all these records, there is no merit in the appeal of the Revenue. The Commissioner (Appeals) has passed an order which is legal and correct. Hence I reject the Revenue's appeal" and same was affirmed by Hon'ble High court in 2010 (18) S.T.R. 146 (Kar.)

g. Gajendra Enterprises v. Commissioner — 2008 (232) E.L.T. 445 (Tribunal) *wherein it was held that "In any case, the appellant having placed the entire fact before the department, the scrutiny of the said declaration being the basis for issuance of show cause notice in the year 1999, the said action i.e. scrutiny of declaration could have been done by the Revenue immediately after filing of the same. As such, we fully agree with the appellant that the demand in question is barred by limitation"*

26. Appellant submits that they have paid service tax on construction agreements after duly informing the officers of department about full facts along with their understanding of relevant legal provisions. In such circumstances and on mere premise that compliance was wrongly claimed, invocation of larger period of limitation is not warranted as there is no suppression/mis-statement of facts on part of Appellant. In this regard Appellant wishes to rely on

a. Apex court judgment in case of Vinod Paper v. Collector 1997 (91) E.L.T. 245 (S.C.) *wherein it was held that "The contention of the Department is that this is a case of wilful suppression of material facts and the case will clearly come within the extended period of 5 years. On behalf of the appellants, it has been contended that on the strength of a Notification they had taken relief of exemption of 50 per cent duty and they were entitled to do so. There is some dispute on this and ultimately the Tribunal held that because of the amended provisions of law which*

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came into force by virtue of the Finance Bill of 1982 with retrospective effect from 1975, and in view of that it had to be held that the appellant's price list was not correct. What is the effect of the amendment is a question of law. The question is on the day when the price list was filed, was there any wilful suppression? ***The appellants may have wrongly understood the effect of the amended law granting exemption. That will not make it a case of wilful suppression of facts. In the facts of this case, we are of the view that this is not a case of wilful suppression. The order passed by the Tribunal dated 14-9-1988 must be set aside. The show cause notice dated 29-8-1981 is quashed.*** *The second show cause notice dated 14-9-1981 can be enforced only for the period 15-3-1981 to 30-6-1981. The appeals are partly allowed. There shall be no order as to costs."*

b. Gajendra *Enterprises* v. Commissioner — 2008 (232) E.L.T. 445 (Tribunal) *wherein it was held that "We agree with the above submission of learned advocate. Wrong claim of benefit of notification, by any stretch of imagination cannot amount to mis-statement or suppression of the facts so as to invoke the longer period."*

27. Appellant submits that provisions of Section 73 of Finance Act, 1994 makes it clear that to invoke larger period of limitation, person liable to pay service tax shall involve in any of act specified acts namely fraud, suppression of facts etc., and such act should be coupled with malafide intention to evade payment of service tax and in present case Appellant himself assessed the tax, paid tax without any action from the officers of department this shows Appellant has no malafide intention to evade payment of tax. Therefore, invocation of larger period of limitation is not sustainable.

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28. Appellant submits that impugned OIO vide Para 34 alleges that "Mere knowledge of the activity performed by the assessee does not prohibit the department from invoking extended period of limitation when the intent to evade has been enumerated in the notice."

29. In this regard, Appellant submits that suppression means not providing information which the person is legally required to state, but is intentionally or deliberately not stated. Although, the word "Knowledge" as such is not mere in Section 73(1) and its proviso nevertheless, that exact opposite word is "Suppression" therein. According to proviso to Section 73(1) where no levy/nonpayment of service tax, or short-levy/short-payment/occurred by reason of fraud, collusion, willful mis-statement suppression of facts or contravention of any of the provision of this Act or of the rules with intent to evade payment of service tax the department can issue notice within five years from the relevant date instead of one year.

30. The Appellant submits that in other words department can raise demand by issuing a notice for a period of five years if there was suppression of facts. On the other hand if there is no suppression of facts or if it was within the knowledge of the Department there was no justification to raise demand invoking the larger period as there is no suppression on part of the appellant once it is within the knowledge of the department.

31. Appellant further submits that there is no necessity to insert knowledge on the part of the department into the proviso to Section 11A since the term "Suppression" was already there. There is lot of force in the word suppression in proviso to Section 73(1) that date of knowledge was relevant factor for issuing of a show cause notice under the proviso to

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Section 73(1) and the proviso cannot be invoked for justifying the extended period of five years when the department had knowledge and the show cause notice has to issued within a reasonable period i.e. 1 year from the date of knowledge.

32. Appellant submits that reliance is placed on the following in support of the above view:

a. CBEC Circular No. 5/92, dated 13-10-1992 – *"It has also come to the notice of the Board even in cases where either no duty was being levied or there was a short levy on any excisable goods in the belief that they were not excisable or were chargeable to lower rate of duty, as the case may be, show cause notices have been issued covering five years period on receipt of the communication from the Board that the said goods are excisable or chargeable to higher rate of duty. Such type of cases could not normally be covered by the proviso of para (i) of Section 11A, as it would be difficult to prove fraud, collusion etc. when the Department as well as the Trade were not clear about the correct legal position. In such cases, it would ordinarily call for restricting the deamands for six months from the relevant date only."*

b. Tamil Nadu Board v. Collector — 1994 (74) E.L.T. 9 (S.C.)

c. CCE., v Fermenta Pharma Biodil Ltd 2009 (234) E.L.T. 609 (H.P.)

33. The Appellant submits that expression "suppression" has been used in the Section 73 of the Finance Act, 1994 accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. **Suppression means failure to disclose full information with the intent to evade**

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payment of duty. Relied on Continental Foundation Jt. Venture CCE, **2007 (216) E.L.T 177 (S.C)**

34. The Appellant submits that the impugned show cause notice proposed demand by invocation of the extended period of limitation only on the ground that Appellant has suppressed the details to department. In this regard it is submitted that **extended period of five years applicable only when something positive other than mere inaction or failure on the part of manufacturer/service provider is proved** - Conscious or deliberate withholding of information by manufacturer/service provider necessary to invoke larger limitation of five years. In this regard wishes to rely on **CCE, Chemphar Drugs & Liniments 1989 (40) E.L.T 276 (S.C).** Therefore the allegation of SCN is not legal and proper.

35. The Appellant submits that all the entries are recorded in books of accounts and financial statements nothing is suppressed hence the extended period of limitation is not applicable. Wishes to place reliance on Rama Paper Mills vs Commissioner of C. Ex., Meerut 2011 (022) STR 0019 Tri.-Del

In Re: Benefit of Composition scheme in respect of SCN dated 24.04.2012:

36. Appellant submits that impugned SCN dated 24.04.2012 proposing demand for the period January 2011 to December 2011, denied the benefit of composition scheme as given under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 and alternatively the deduction of material value under Rule 2A of Service tax (determination of value) Rules, 2006.

37. Appellant further submits that as the impugned OIO has not at all considered the submissions made for allowing composition scheme or

deduction of material value, Appellant wishes to reiterate their submissions made vide Para 12 to 25 of SCN reply filed on 20.06.2012 (copy of the SCN reply is enclosed as annexure VIII)

In Re: Interest under Section 75

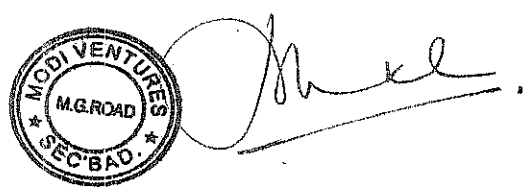
38. Without prejudice to the foregoing, Appellant submits that when service tax itself is not payable, the question of interest and penalty does not arise. Appellant further submits that it is a natural corollary that when the principal is not payable there can be no question of paying any interest as held by the Supreme Court in Prathiba Processors Vs. UOI, 1996 (88) ELT 12 (SC).

In Re: Penalty under section 78

39. Without prejudice to the foregoing, Appellant submits that all the grounds taken for ***"In Re: SCN is time barred"*** above is equally applicable for penalty as well.

40. Appellant submits that there is a change in law and Appellant has bonafide belief that the credit availed by them is legally permissible. And it is a settled proposition of law that when the assessee acts with a bonafide belief especially when there is doubt as to statute also the law being new and not yet understood by the common public, there cannot be levy penalty.

41. Appellant further submits that it was held in the case of Collector of Customs v. Unitech Exports Ltd. 1999 (108) E.L.T. 462 (Tribunal) that-***"It is settled position that penalty should not be imposed for the sake of levy. Penalty is not a source of Revenue.*** Penalty can be imposed depending upon the facts and circumstances of the case that there is a clear finding by the authorities below that this case does not warrant imposition of penalty. ***The respondent's Counsel has also relied upon the decision***



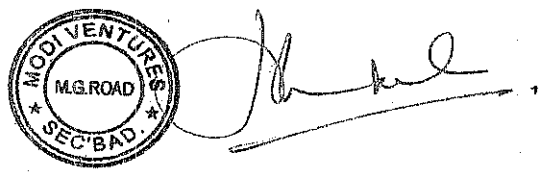
of the Supreme Court in the case of M/s. Pratibha Processors v. Union of India reported in 1996 (88) E.L.T. 12 (S.C.) that penalty ordinarily levied for some contumacious conduct or for a deliberate violation of the provisions of the particular statute." Hence, Penalty cannot be imposed in the absence of deliberate defiance of law even if the statute provides for penalty.

42. The Appellant submits that Penalty under Section 78, as the word suggests, **is punishment for an act of deliberate deception by the assessee with the intent to evade duty by adopting any of the means mentioned in the section.** Bona fide belief as to eligibility of Cenvat credit cannot be reason for imposition of the severe penalty. In this regard wishes to place a reliance on **Rajasthan Spinning & Weaving Mills [2009 (238)** E.L.T. **3 (S.C.)&Commissioner Of Central Excise, Vapi Vs Kisan Mouldings Ltd 2010 (260) E.L.T 167 (S.C).**

Therefore on this ground Appellant requests to drop the penalty proceedings under the provisions of Section 78.

In re: Penalty under Section 76 & 77 of the Finance Act, 1994

43. The Appellant submits that, when the tax itself is not payable, the question of penalty under section 76 does not arise. Further assuming but not admitting, that there was a tax liability as envisaged in SCN as explained in the previous paragraphs, when Appellant were not at all having the intention to evade the service tax and further also there was a basic doubt about the liability of the service tax itself on the construction activity, Appellant is acting in a bona fide belief, that he is not liable to collect and pay service tax, there is no question of penalty under section 76 resorting to the provisions of Section 80 considering it to be a reasonable cause for not collecting and paying service tax.



44. Appellant submits that service tax on amounts received towards construction agreements has been already discharged without any major delay & without intervention of department. ST-3 returns were also filed clearly showing the total amount received from customers and clearly bifurcating the amounts received towards sale deed value as amounts received for exempted service, and amounts received towards construction agreements as taxable amounts. Details of service tax computations, payment of service tax, utilization of CENVAT along with Challan copies has been submitted voluntarily to the department. They have not paid service tax on sale deed value on bonafide belief that same was not required to be paid as substantiated by the earlier SCN's & correspondence with department. It is settled law that if person acted on bonafide belief, imposition of penalties are not warranted.

45. The Appellant submits suppression or concealing of information with intent to evade the payment of tax is a requirement for imposing penalty. It is a settled proposition of law that when the assessee acts with a bonafide belief especially when there is doubt as to statute also the law being new and not yet understood by the common public, there cannot be intention of evasion and penalty cannot be levied. In this regard appellant wishes to rely upon the following decisions of Supreme Court.

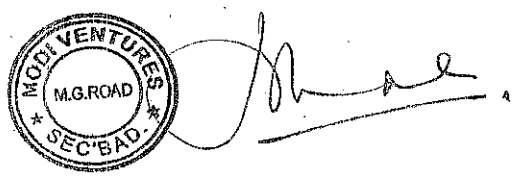
i. Commissioner of C.Ex., Aurangabad Vs. Pendhakar Constructions 2011(23) S.T.R. 75(Tri.-Mum)

ii. Hindustan Steel Ltd. V. State of Orissa – 1978 (2) ELT (J159) (SC)

iii. Akbar BadruddinJaiwani V. Collector – 1990 (47) ELT 161(SC)

iv. Tamil Nadu Housing Board V Collector – 1990 (74) ELT 9 (SC)

Therefore on this ground it is requested to drop the penalty proceedings under the provisions of Section 76 of the Finance Act, 1994.



46. The Appellant submits that penalty is imposable when the appellant breaches the provision of statute with an intent to defeat the scheme of the Act, when there is a confusion prevalent as to the leviability and the mala fide not established by the department, it would be a fit case for waiver of penalty as held by various tribunals as under

    a. Vipul Motors (P) Ltd. vs Commissioner of C. Ex., Jaipur-I 2008 (009) STR 0220 Tri.-Del

    b. Commissioner of Service Tax, Daman vs Meghna Cement Depot 2009 (015) STR 0179 Tri.-Ahmd

47. The Appellant submits that in the following two cases, M/s Creative Hotels Pvt. Ltd. Vs CCE, Mumbai (2007) (6) S.T.R (Tri-Mumbai) and M/s Jewel Hotels Pvt Limited Vs CCE, Mumbai-1 (2007) (6) S.T.R 240 (Tri- Mumbai) it was held that *"The authorities below have not given any finding as to why penalty is required to be imposed upon them. Only because penalty can be imposed, it is not necessary that in all cases penalty is required to be imposed. In this case I accept the explanation of the appellant and therefore set aside the penalty and allow the appeal."*

48. The Appellant submits that liability of the service tax on the sale deed value is depends on the interpretation of

    a. Definition of Works contract as defined 65(zzzza) of Finance Act, 1994and section 65B(54) of Finance Act, 1994 as existed during the relevant period

    b. Rule 2A of Service tax (determination of value) Rules, 2006

    c. Definition of service given under section 65B(44) of Finance Act, 1994

    d. Circular No. 108/02/2009-ST dated 29.01.2009

    e. and other provisions of Finance Act, 1994 &judicial pronouncements.

It is settled position of the Law that whenever there is any scope for

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interpretation of the provisions of Finance Act, 1994 there cannot be imposition of Penalties. In this regard Appellant wishes to rely on the following judicial pronouncements.

a. Commissioner Of Central Excise, Raipur Vs Ajanta Color Labs 2009 (14) S.T.R 468 (Tri-Del) it was held that *"Respectfully following the above decisions, we allow the appeals for the assessee on merits and hold that the portion of the value relating to photography materials would not be included in the levy of service tax.* ***It is a case of interpretation of the statutes and, therefore,*** *extended period of limitation and* ***imposition of penalties would not warrant"***

b. In the case of Ispat Industries Ltd Vs CCE, Raigad 2006 (199) E.L.T 509 (Tri-Mumbai) it was held that *"Apart from holding that the credit was admissible to the appellants on merits, we also find that the demand raised and confirmed against them is hopelessly barred by limitation. Admittedly, the appellant had reflected the fact of availing the balance 50% credit in the subsequent financial year, in their statutory monthly returns filed with the revenue. This fact is sufficient to reflect knowledge on the part of the revenue about the fact of taking balance 50% credit and is also indicative of the bona fides of the appellant. The appellants having made known to the department, no suppression or mis-statement on their part can be held against them.* ***The issue, no doubt involves bona fide interpretation of provisions of law and failure on the part of the appellants to interpret the said provisions in the way in which the department seeks to interpret them cannot be held against them so as to invoke extended period of limitation.*** *When there is a scope for doubt for interpretation of legal provisions and the entire facts have been placed before the jurisdictional, Central Excise*

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Officer, the appellants cannot be attributed with any suppression or misstatement of facts with intent to evade duty and hence cannot be saddled with demand by invoking the extended period of limitation.As much as the demand has been set aside on merits as also on limitation, ***there is no justification for imposition of any penalty upon them.***

c. In the case of Haldia Petrochemicals Ltd Vs CCE, Haldia 2006 (197) E.L.T 97 (Tri-Del) it was that the "*extended period of limitation cannot be invoked under the proviso to Section 11A(1) of the Central Excise Act, 1944.* ***There is also no case for imposition of penalty,*** *firstly for the reason that the demand of duty is unsustainable and secondly for the reason that the case involves* ***a question of interpretation of law."***

d. In the case of Itel Industries Pvt. Ltd Vs CCE, Calicut 2004 (163) E.L.T 219 (Tri-Bang) it was held that *"In view of the facts of this case, we do not find any case or cause to invoke the penal liabilities, as we find that the Commissioner has held "It is essentially,* ***a question of interpretation of law*** *as to whether Section 4 or Section 4A would be applicable...." and not sustained the penalty under Section 11AC. We concur with the same.* ***Therefore we cannot uphold the Revenue's appeal on the need to restore the penalty under Section 11AC as arrived at by the Original Authority. As regards the penalty under Rules 173Q & 210,*** *we find the Commissioner (Appeals) has not given any finding why he considered the same as correct and legal in Para 8 of the impugned order. Imposition of* ***penalty*** *under Rules 173Q & 210* ***on matters of interpretation,*** *without specific and valid reasons, is not called for".*

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On the basis of the above judgments it is clear that whenever due to bonafide interpretation of law service tax not paid penalty is not leviable.

In re: Benefit under Section 80 of the Finance, Act, 1994

49. Appellant submits that as explained in above Para's they are not paying service tax on bonafide belief that same was not liable to be paid in view of

a. Exclusion part of service definition given under section 65B(44) of Finance Act, 1994 in as much specifically excluding the sale of immovable property from levy of service tax.

b. Activity performed till the execution of sale deed is in the nature of self service and not liable for service tax.

c. Activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser and not prior to that.

d. Earlier SCN's demanding service tax on the value of construction agreement.

50. The Appellant submits that they have established the reasonable cause for the nonpayment of service tax. Since the Appellant explained the reasonable cause for the nonpayment of the service tax penalty imposition of the penalty is not sustainable. In this regard we wish to rely on Commissioner of Service Tax, Bangalore Vs Motor World 2012 (27) S.T.R 225 (Kar).

51. Appellant further submits that there is bona fide litigation is going on and issue was also debatable which itself can be considered as reasonable cause for failure to pay service tax. Accordingly waiver of penalty under section can be made. In this regard reliance is placed on C.C.E., & Cus., Daman v. PSL Corrosion Control Services Ltd 2011 (23) S.T.R. 116 (Guj.)

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52. Without prejudice to the foregoing, as explained in the background facts and submissions above, the impugned SCN/OIO is merely a periodical SCN covering same issue. The issue is being contested by the Appellant and Ld. Commissioner (Appeals) remanded to re-quanitfy the demand on similar issue on same footings. Therefore, the Appellant has reasonable cause for non-payment of service tax. Moreover, it should be appreciate that, Appellant being a tax compliance assessee, has been paying service tax regularly on the construction agreements wherever applicable. Therefore the Appellant has established its bonafides and hence by invoking provision of Section 80 of the Finance Act, entire penalty proceedings requires to be dropped based on this submission also. Appellant wishes to rely on the Hon'ble Apex court decision in case of Nizam Sugar Factory Vs CCE 2006 (197) E.L.T 465 (S.C) in this behalf.

53. The appellant craves leave to alter, add to and/or amend the aforesaid grounds.

54. The appellant wish to be personally heard before any decision is taken in this matter.

For M/s. Modi Ventures
For MODI VENTURES
Authorized Signatory

PRAYER

Therefore it is prayed

a. To hold that the service tax has been paid on the value of the construction agreement as alleged in the SCN and therefore the order needs to be dropped.

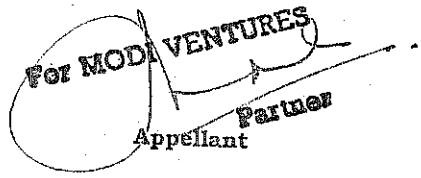
b. If required, to hold that even on merits the amounts received towards sale deed is not taxable.

c. To hold that SCN dated 26.09.2014 is barred by limitation

d. To hold that no Penalty is imposable under Section 76, 77 & 78 of the Finance Act, 1994.

e. To hold that Appellant is eligible for the benefit of waiver of the penalty under Section 80 of the Finance Act, 1994

f. Any other consequential relief is granted.

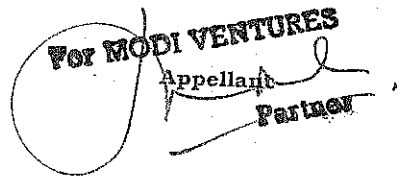


VERIFICATION

I, Soham Modi Partner of M/s. Modi Ventures, the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today the 16th day of December, 2015

Place: Hyderabad



IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

Sub: Appeal against the order of the Commissioner of Service Tax in Order-In-Original No. HYD-SVTAX-000 – COM – 04 & 05 / 15-16 dated 31.08.2015

I, Soham Modi, Partner of M/s Modi Ventures, hereby authorize and appoint Hiregange & Associates, Chartered Accountants, Bangalore or their partners and qualified staff who are authorised to act as authorised representative under the relevant provisions of the law, to do all or any of the following acts: -

- To act, appear and plead in the above noted proceedings before the above authorities or any other authorities before whom the same may be posted or heard and to file and take back documents.
- To sign, file verify and present pleadings, applications, appeals, cross-objections, revision, restoration, withdrawal and compromise applications, replies, objections and affidavits etc., as may be deemed necessary or proper in the above proceedings from time to time.
- To Sub-delegate all or any of the aforesaid powers to any other representative and I/We do hereby agree to ratify and confirm acts done by our above authorised representative or his substitute in the matter as my/our own acts, as if done by me/us for all intents and purposes.

This authorization will remain in force till it is duly revoked by me/us.
Executed this on 16th day of December 2015 at Hyderabad

For MODI VENTURES

Signature Partner

I the undersigned partner of M/s Hiregange & Associates, Chartered Accountants, do hereby declare that the said M/s Hiregange & Associates is a registered firm of Chartered Accountants and all its partners are Chartered Accountants holding certificate of practice and duly qualified to represent in above proceedings under Section 35Q of the Central Excises Act, 1944. I accept the above said appointment on behalf of M/s Hiregange & Associates. The firm will represent through any one or more of its partners or Staff members who are qualified to represent before the above authorities.

Dated: 16.12.2015
Address for service :
Hiregange & Associates,
Chartered Accountants
"Basheer Villa",
H.No: 8-2 268/1/16/B,
2nd Floor, Sriniketan Colony,
R. No. 3, Banjara Hills,
Hyderabad – 500 034

For Hiregange & Associates
Chartered Accountants

Sudhir V S
Partner. (M. No. 209109)