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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH: HYDERABAD
Ist Floor, HMWSSB Building, Rear Portion, Khairathabad, Hyderabad
Tele No: 040-23312247, Fax No: 040-23312246

Dated: 02/01/2019

File No. :-ST/26234/2013

In the matter of :-

Mehta & Modi Homes
(Appellant as per address below)

(Appellant)

Vs

Commissioner of Central Tax-Secunderabad - G S T
(Respondent as per address below)

(Respondent)

MODI PROPERTIES PVT. LTD. INWARD No. 338 Date 23 Jan 19 Sign SEC'BAD

I am directed to transmit herewith a certified copy of Order No. : A/31630/2018 dated : 19/12/2018 passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

02.1.19

Assistant Registrar

S.NO, Case Number, Name & Address of Appellant :-

1 ST/26234/2013 **Mehta & Modi Homes**
5-4-187/3&4, 2nd Floor, M.g.road,
Secunderabad
Telangana-500003

S.NO, Case Number, Name & Address of Respondent :-

1 ST/26234/2013 COMMISSIONER OF CENTRAL TAX-SECUNDERABAD - G S T
SECUNDERABAD COMMISSIONERATE
KENDRIYA SHULK BHAVAN,
L.B STADIUM ROAD, BASHEERBAGH
HYDERABAD
TELANGANA-500004

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12.Advocate/(s) / Consultant/(s) / Representative:-

Hiregange & Associates C A (New)
4th Floor, West Block,
Anushka Pride, Opp. Ratnadeep
Supermarket, Road Number -12,
Banjara Hills, Hyderabad,
Telangana-500034

Assistant Registrar

DB-D-15

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court - I

Appeal No. ST/26234/2013

(Arising out of Order-in-Original No.07/2013-Adjn (ST) (Commr) dated 17.01.2013 passed by CCCE & ST, Hyderabad - I)

Mehta & Modi Homes ..... Appellant(s)

Vs.

CCT, Secunderabad - GST ..... Respondent(s)

Appearance
Shri Sunil Galawala, Shri V.S. Sudhir & Shri Venkata Prasad, Representatives (CA) for the Appellant.
Shri Arun Kumar, Dy. Commissioner/AR for the Respondent.

Coram:
HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 19.12.2018
Date of Decision: 19.12.2018

FINAL ORDER No. A/31630/2018

[Order per: P.V. Subba Rao.]

1. This appeal has been filed against Order-in-Original No. 07/2013-Adjn (ST) (Commr) dated 17.01.2013.

2. The appellant is registered with the service tax department under the category of 'works contract service' and is engaged in the sale of residential bungalows to prospective buyers while the units are under construction. Relying on some CBEC clarifications, the appellant discontinued payment of service tax and had undertaken residential project namely 'silver oak bungalows' in Cherlapally Village, Hyderabad. The sequence of events is as follows.

3. The appellant purchased land and developed it and constructed villas on it and sold them during the period April, 2006 to December, 2010. A show cause notice was issued on 24.10.2011 demanding service tax under

the category of 'Construction of Complex Services' for the period April, 2006 to June, 2007 and under the category of 'Works Contract Service' from July, 2007 to December, 2010 along with consequential interest; penalties are also proposed to be imposed. After following due process, learned Commissioner passed impugned order confirming the demand and interest and imposing penalties. Aggrieved, the appellant filed this appeal on following grounds.

a. What they have constructed is not a residential complex with 12 units in each but independent villas. Therefore, they should not be charged to service tax under residential complex as per Sec.65(91a) of the Finance Act, 1994. This clause reads as follows.

> *""residential complex" means any complex comprising of –*
>
> *(i) a building or buildings, having more than twelve residential units;*
>
> *(ii) a common area; and*
>
> *(iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person."*

It is the contention of the appellant that not one building of their entire complex has more than 12 units and therefore, they are not covered by Sec.65(91a) and cannot be charged to service tax. They relied on the case laws of Marco Marvel Projects Ltd [2012 (25) STR J154 (SC)] and Baba Constructions Pvt Ltd [2018 (15) GSTL J120 (SC)]. They also relied on the decision of this Bench in the case of Kolla Developers & Builders as reported in 2018 (11) TMI 164 (CESTAT - Hyd).

b. Since the complex is meant for personal use, the personal use benefit is also available and buildings for personal use are excluded from the section.

c. The entire transaction is a transaction in immovable property and levy of tax on sale of under-construction units has still not achieved finality

and is pending before the Supreme Court. The appellant also contested the demand on limitation.

4. Learned departmental representative reiterates the findings of the lower authority.

5. We find that on an identical issue, in the case of Kolla Developers & Builders (supra) this Bench has held that construction of residential complex by the builders prior to 01.07.2010 is not taxable in terms of CBEC Circular No.108/2/2009-ST dated 29.01.2009 and No.151/2/2012-ST dated 10.02.2012. The relevant portions of the Order are reproduced below.

> *"10. We have considered both sides and it is evident from the record that the relevant period was April, 2008 to September, 2008 which is prior to 01.07.2010 and the service provided was construction of residential complex by the builder which, as clarified by the CBEC in their circular dated 10.02.2012 (supra) was not taxable during the relevant period. This position was also held in the orders of the Tribunal in the case of Krishna Homes (supra), UB Constructions (supra) and Vinayaka Homes (supra). Thus, we find that the legal position is settled and the appellant was not required to pay service tax on the services allegedly rendered by them during the relevant period. Consequently the interest and penalty are also liable to be set aside. We, therefore, find that the appeal is liable to be allowed and we do so.*
>
> *11. The appeal is allowed with consequential relief, if any."*

6. As this Bench has decided the matter in favour of the assessee, we find no reason to deviate from our decision. Accordingly, we allow the appeal with consequential relief.

(Operative part of this order was pronounced in the open court on conclusion of hearing)

-Sd-

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

-Sd-

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

Veda

प्रमाणित प्रति / CERTIFIED COPY

18.01.19

सहायक पंजीयक / Asst. Registrar
सीमाशुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण
Customs Excise And Service Tax Appellate Tribunal
हैदराबाद / Hyderabad

सत्यमेव जयते

A/31630/18

भारत सरकार के सेवार्थ

ON INDIA GOVERNMENT SERVICE

प्रेषक / Despatcher :

सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण

1 तल्ल, एच.एम.डब्ल्यू.एस.एस.बी.बिल्डिंग, खैरताबाद, हैदराबाद - 500 004.

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