



सेवाकरप्रधानआयुक्तकाकार्यालय
OFFICE OF THE PRINCIPAL COMMISSIONER OF SERVICE TAX
सेवाकरआयुक्तालय : : SERVICE TAX COMMISSIONERATE

11-5-423/1/A::सीतारामप्रसादटावर::रेडहिलस::हैदराबाद- 4

11-5-423/1/A:: SITARAM PRASAD TOWER::RED HILLS::HYDERABAD-4

OR No.61/2011-Adjn(ST)ADC.Gr.X

Dated. 9.06.2017

OR No.52/2012-Adjn(ST)(ADC)

New OR No.26/2014-Adjn(ST)(ADC)

C.No.IV/16/197/2011-ST(Gr-X)

मूलआदेशसं°ORDER IN ORIGINAL No:83/2016 - Adjn(ST)(ADC)

(Passed by P.Anand Kumar, I.R.S., Additional Commissioner)

प्रस्तावना

PREAMBLE

1. निजी प्रयोग के लिए इसे जिस व्यक्ति को जारी किया गया यह प्रति बिना मूल्य के दी जाती है
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2. जो भी व्यक्ति वित्त अधिनियम, 1994 के अंतर्गत धारा 85(3A) से दुरुपभावित हो, इस प्रकार प्राप्त आदेश निर्णय के खिलाफ आदेश की प्राप्ति के दो महीने के भीतर आयुक्त (अपील), मुख्य कार्यालय, 7 वॉल, एल.बी. स्टेडियम रोड, बशीरबाग, हैदराबाद 500 004 को अपनी अपील प्रस्तुत कर सकता है।

Under Section 85(3A) of the Finance Act, 1994, any person aggrieved by this order can prefer an appeal within two months from the date of communication of such order/decision to the Commissioner (Appeals), Hqrs. Office, 7th floor, L.B.Stadium Road, Basheerbagh, Hyderabad - 500 004.

3. धारा 85 के अंतर्गत आयुक्त (अपील) को की जाने वाली अपील फार्म एस.टी.-4 में हो और इसकी जांच निर्धारित पद्धति के अनुसार की जानी चाहिए।

An appeal under Sec.85 to the Commissioner (Appeals) shall be made in form ST-4 and shall be verified in the prescribed manner.

4. एस.टी.-4 फार्म में की गई अपील अनुलिपि में प्रस्तुत की जानी चाहिए और उसके साथ जिस निर्णय या आदेश के विरुद्ध अपील की जा रही हो उसकी एक प्रति भी संलग्न की जानी चाहिए;

The form of appeal in Form No: ST-4 shall be filed in duplicate and shall be accompanied by a copy of the decision or the order appealed against.

5. अपील पर और जिस निर्णय या आदेश के विरुद्ध अपील की जा रही हो उस आदेश की प्रति पर भी समुचित मूल्य के अदालती टिकट लगाए जाने चाहिए। केंद्रीय उत्पाद शुल्क अधिनियम, 1944 की संशोधित धारा 85F के अधीन 7.5% की अनिवार्य पूर्वज माराशिके साथ किया जाना चाहिए अपील मांग की है या जमाना लगाया या दोनों और देय पूर्वज माकी गई राशि 10 करोड़ रुपये की सीमा के अधीन होगी।

The appeal as well as the copy of the decision or order appealed against must be affixed with court fee stamp of the appropriate amount. Under Section 35 F of Central Excise Act, 1944, the appeal also must be accompanied by mandatory pre-deposit amount of 7.5% of the duty demanded or penalty imposed or both and the amount of pre-deposit payable would be subject to a ceiling of Rs.10 Crore.

per day or 2% of such Service Tax per month whichever is higher under Section 76 of Finance Act, 1994 and imposed penalty of Rs.1000/- under Section 77 of Finance Act, 1994. In respect of Show Cause Notice O.R.No.52/2012-ADJ-ST dt.24.04.2012, the adjudicating authority confirmed the demand of S.Tax of Rs.46,81,850/- along with interest and imposed penalty of Rs.200/- per day or 2% of such Service Tax per month whichever is higher under Section 76 of Finance Act, 1994 and imposed penalty of Rs.1000/- under Section 77 of Finance Act, 1994.

2.4. Aggrieved by the Order-In-Original No.51/2012 dt.31.08.2012, the assessee filed an appeal before the Commissioner(Appeals), Hyderabad. The Commissioner(Appeals), Hyderabad vide Order-In-Appeal No.39/2013(H-II)S.Tax dt.27.02.2013 vide Para 7.3 of the Order-In-Appeal has found no merits or force in the grounds and contentions submitted by the appellants and observed that the case laws relied are also not helpful to them and further concurred with the findings made in the Order-In-Original No.51/2012 dt.31.08.2012 by the lower authority. However, with regard to the quantification of Service Tax, the Commissioner(Appeals) observed that the appellants had submitted that there is mistake in quantification of service demand for the two period viz., from Jan, 2010 to Dec, 2010, the S.Tax to be quantified on the value of Rs.5,73,06,000/- but not Rs.11,65,14,000/- and similarly for the period Jan,11 to Dec,11, the S.Tax to be quantified on the value of Rs.5,99,40,694/-. The Commissioner(Appeals) thus directed the lower authority to ascertain the factual position to re-quantify the S.Tax payable (after deducting the S.Tax paid if their claim is correct) and extend the benefit if they are found otherwise eligible for the same and an opportunity of personal hearing may be given to the appellants before this limited matter is decided. With regard to imposition of penalty under Section 76 of Finance Act, 1944 the Commissioner(Appeals) modified to the extent that the penalty imposed under Section 76 is Rs.100 from Rs.200 with effect from 08.04.2011. With regard to imposition of penalty under Section 77 of Finance Act, 1994, the Commissioner(Appeals) held that there is no

3.2. The assessee vide their letter dated 22.12.2015 have given the working of receipts and the attribution of the said receipts towards sale deed. The summary as given in their letter is reproduced below:

Description	Receipts	Non taxable	Taxable
Sum of towards sale deed	40744617	40744617	-
Sum of towards agreement of construction	53289887	-	53239887
Sum of towards other taxable receipts	1329697	-	1329697
Sum of towards VAT, Regn. charges, etc	11148364	11148364	-
	106462565	51892981	54569584

The assessee have further submitted the receipt details in Annexure B of their letter and submitted that once the deductions are provided to the appellants, the demand would be reduced to Nil.

DISCUSSION AND FINDINGS:

4.1. I have carefully gone through the above referred two Show Cause Notices, Order-In-Original, Order-In-Appeal, the Final Order of the Hon'ble CESTAT and the assessee's written submissions viz.,
 (i) SCN O.R.No.61/2011 dt.23.04.2011;
 (ii) SCN O.R.No.52/2012 dt.24.04.2012;
 (iii) OIO No.51/2012 dt.31.08.2012;
 (iv) OIA No.39/2013 dt.27.02.2013;
 (v) Hon'ble Tribunal's F.O.No.20401/2014 dt.25.03.2014; and
 (vi) the submissions made by the assessee during the PH conducted on 15.09.2015 and written submissions dated 22.12.2015.

4.2. As per the directions of the Hon'ble CESTAT, the issue before me is to decide all the aspects afresh and as far as re-quantification is concerned, wherever there is no dispute, re-quantification has to be done as directed by Commissioner(Appeals) and wherever there are disputes, the matter is to be decided afresh.

4.3. I have carefully gone through all the records of the case. I find that these two are periodical show cause notices which have

Section 65(105)(zzzza) of the Finance Act, 1994: "Taxable Service" means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation.—For the purposes of this sub-clause, "works contract" means a contract wherein,—

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and*
- (ii) such contract is for the purposes of carrying out,—*
 - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or*
 - (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or*
 - (c) construction of a new residential complex or a part thereof; or*

4.5. As per the statutory provisions, I find that the assessees are liable to pay Service Tax on the construction of residential complex undertaken by them since the above mentioned definition of residential complex service is squarely applicable and no exemption whatsoever can be allowed for such construction activity as it is not meant for self-use and 'taxable service' means any service provided or to be provided to any person by any other person in relation to construction of complex. I find that the assessees had collected total value from the customers and entered into sale deed agreements and construction agreements simultaneously. I find that the Board vide Circular No.108/102/2009-ST dt.29.01.2009 has clarified that "if the ultimate owner enters into a contract for construction of a residential complex with a promoter/builder/developer, who himself provides

etc. The assesseees have simply mentioned in their written reply dt.22.12.2015 that an amount of Rs.1,11,48,364/- pertains to VAT, Registration charges, Stamp duty, etc., and reiterated the same in the Annexure B to the letter in a tabular form without support of any evidence. Hence, I am inclined not to extend the said benefit to the assesseees. The assesseees also claimed that the amount received towards sale deed is not to be included in the gross value. This plea is not tenable as construction under works contract service is taxable on gross receipts basis and considering the scope of construction service, receipts of all amounts are liable for Service Tax, except where entire consideration is received after issue of completion certificate. As the completion certificates have not been issued by the competent authority, the amounts received as consideration towards the taxable activity of semi-finished flats are taxable.

4.8. The assesseees vide their reply dt.22.12.2015 have submitted that they have received a total amount of Rs.10,64,62,565/- for the said two periods viz., January, 2010 to December, 2010 and January, 2011 to December, 2011 as follows:

Towards sale deed	= Rs.4,07,44,617/-
Towards agreement of construction	= Rs.5,32,39,887/-
Towards other taxable receipts	= Rs.13,29,697/-
Towards VAT, Registration charges, etc.	= Rs.1,11,48,364/-

Total = Rs.10,64,62,565/-

The above figures are not supported by any material evidence. The assesseees have not furnished any of their audited Balance Sheets/P & L Accounts/Ledger copies/Bank Account statements for the relevant period in support of the figures mentioned in their letter. In view of this, I am not inclined to accept the figures submitted by the assesseees in their reply dated 22.12.2015 as the said figures are without any supportive evidence. Further the figures submitted by the assesseees in respect of the same issue to various fora are inconsistent. The details of the same are discussed below.

	Description of amounts received towards various heads	Amounts received by the assesseees during Jan'10 to Dec'10	Amounts received by the assesseees during Jan'11 to Dec'11	Total amount received
As per Para 32 & 33 (page 20 & 21) of the assesseees' written submissions made before the Commr(Appeals) in respect of the proceedings under OIO No.51/2012 dt.31.08.2012	<u>Amt. received</u> towards the sale deed	36612000	43626000	80238000
	<u>Amt. received</u> towards taxes and other charges	12993880	10070537	23064417
	<u>Amt. received</u> towards Construction Agreement charges	57306355	59940604	117246959
	Total	106912235	113637141	220549376

(iii) As per Para 3 & 4 (page 68) of the assesseees' written submissions made before the Hon'ble CESTAT in respect of proceedings under Order-In-Appeal No.39/2013 dt.27.02.2013, the assesseees submitted that they have received the following amounts as given below.

	Description of amounts received towards various heads	Amounts received by the assesseees during Jan'10 to Dec'10	Amounts received by the assesseees during Jan'11 to Dec'11	Total amount received
As per Para 3 & 4 (page 68) of the assesseees' written submissions made before the Hon'ble CESTAT in respect of proceedings under Order-In-Appeal No.39/2013 dt.27.02.2013	<u>Amt. received</u> towards the sale deed	36612000	10070537	46682537
	<u>Amt. received</u> towards taxes and other charges	12993880	6611038	19604918
	<u>Amt. received</u> towards Construction Agreement charges	57306355	59940604	117246959
	Total	106912235	76622179	183534414

Thus it can be seen that the assesseees have stated/submitted before the Commissioner(Appeals) that they had received an amount of Rs.4,36,26,000/- towards sale deed for the period Jan'11 to Dec'11. However, the assesseees have stated/submitted before the Hon'ble Tribunal that they had received only Rs.1,00,70,537/- towards the sale deed for Jan'11 to Dec'11. Similarly, the assesseees have submitted before the Hon'ble Tribunal that they had received Rs.66,11,038/- towards Taxes and other charges for the period Jan'11 to Dec'11 and have however submitted before the

4.9. Penalty is a preventive as well as a deterrent measure to defeat recurrence of breach of law and also to discourage non-compliance of the law. The issue of imposing penalty under Section was already discussed in the original Order-In-Original and the Commissioner(Appeals) has confirmed the penalty under Section 76 and has however waived penalty under Section 77 of the Finance Act, 1994. Thus I find that the assesseees are liable for imposition of penalty under Section 76 of the Finance Act, 1944.

5. In view of the above, I pass the following Order :

ORDER

(a) In respect of Show Cause Notice O.R.No.61/2011-Adjn(ST) dt.23.04.2011:

- (i) I confirm the demand of Service Tax of Rs.48,00,391/- (including cesses) (Rupees Forty Eight Lakhs Three Hundred And Ninety One Only) for the period January, 2010 to December, 2010 under Section 73(2) of the Finance Act, 1994 against M/s Greenwood Estates.
- (ii) I order for recovery of interest at the stipulated rate(s), on the Service Tax amount as demanded at S.No.(a)(i) above, in terms of Section 75 of the Finance Act, 1994 from M/s Greenwood Estates.
- (iii) I impose a penalty of Rs.200/- per day or 2% of such Service Tax per month whichever is higher, for the period of default till the date of payment of Service Tax under Section 76 of Finance Act, 1994 on M/s Greenwood Estates. However, the total amount of penalty payable in terms of Section 76 shall not exceed the Service Tax payable.

(b) In respect of Show Cause Notice O.R.No.52/2012-Adjn(ST) dt. 24.04.2012:

- (i) I confirm the demand of Service Tax of Rs.46,81,850/- (including cesses) (Rupees Forty Six Lakhs Eighty One Thousand, Eight Hundred And Fifty Only) for the period