client copy

Hiregange & Associates
Chartered Accountants

Date: 17.04.2018
To
The Assistant Registrar,
Customs, Excise and Service Tax Appellate Tribunal,
1st Floor, HMWSSB Building,
Rear Portion, Khairtabad,
Hyderabad-500 004

सीमाशुल्क, उत्पादशुल्क और सेवा कर अपील अधिकरण
Customs Excise & Service Tax Appellate Tribunal
17 APR 2018
हैदराबाद/ Hyderabad

Dear Sir,

Sub: Filing of Cross Objections by M/s. Kadakia and Modi Housing in the Appeal No. ST/30115/2018-ST[DB] filed by the Commissioner of Central Tax, Secunderabad GST Commissionerate

We are authorized to file Cross Objections in the above referred subject and we are herewith enclosing the Cross Objections of M/s. Kadakia and Modi Housing in Appeal No. ST/30115/2018-ST[DB] filed by the Commissioner of Central Tax, Secunderabad GST Commissionerate, GST Bhavan, L.B.Stadium Road, Basheerbagh, Hyderabad-500 004 in Form S.T-6 containing in quadruplicate along with the authorization letter and Annexures.

Kindly post the matter for hearing at the earliest.

Thanking You,
Yours truly,
For Hiregange & Associates
Chartered Accountants

Hiregange & Associates Chartered Accountants Hyderabad

Venkata Prasad P
Partner

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5	Appeal No. ST/30115/2018-ST[DB]	I	A001-A025
6	Review Order No. 03/2018-2018(OIA) dated 30.01.2018	II	A026-A045
7	Order-In-Appeal: HYD-SVTAX-000-AP2-0210-17-18-ST dated 14.09.2017	III	A046-A056
8	Personal Hearing record dated 17.07.2017	IV	A057-A057
9	Form ST-4	V	A058-A090
10	Order-in-Original No.048/2016-ST dated 30.12.2016	VI	A091-A130
11	SCN reply	VII	A131-A172
12	SCN vide O.R. No. 99/2016-Adjn. (ST) (Commr) dated 22.04.2016	VIII	A173-A183
13	Copy of ST-2	IX	A184-A184
14	Letters dated 16.08.2010 and 13.09.2010	X	A185-A190
15	ST-3 returns for the period April 2011 to September 2011	XI	A191-A202
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FORM ST — 6
[See rule 9 (3)]

Form of Memorandum of Cross-Objections to the Appellate Tribunal under sub-section (4) of section 86 of Finance Act, 1994
In the Customs, Central Excise and Service Tax Appellate Tribunal

Cross objection No._____of 2018
In Appeal No. ST/30115/2018-ST[DB]

Between
The Commissioner of Central Tax,
Secunderabad GST Commissionerate,
GST Bhavan, L.B.Stadium Road,
Basheerbagh,
Hyderabad- 500 004 ..... **Appellant**

Vs

M/s. Kadakia and Modi Housing,
No. 5-4-187/3 & 4, Second Floor,
Soham Mansion, M.G. Road,
Secunderbad,
Telangana-500 003.....Respondent

1	Assessee Code	Premises Code	PAN or UID
	AAHFK8714ASD001	YO0102A001	AAHFK8714A
	E-Mail Address	Phone No.	Fax No
2	State or Union territory and the Commissionerate in which the order or decision of assessment, penalty was made.	Telangana State, Secunderabad GST Commissionerate	
3	Date of receipt of notice of appeal or application filed with the Appellate Tribunal by the appellant or, as the case may be, the Commissioner of Central Excise/ Service Tax/ Large Taxpayer Unit.	01.03.2018	
4	Number and date of the order appealed against.	Order-In-Appeal: HYD-SVTAX-000-AP2-0210-17-18-ST dated 14.09.2017	
5	Address to which notices may be sent to the respondent.	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 Respondent as stated in cause title supra)**	

6	Address to which notices may be sent to the appellant or applicant.	The Commissioner of Central Tax, Secunderabad GST Commissionerate, GST Bhavan, L.B.Stadium Road, Basheerbagh, Hyderabad-500 004.
7	Whether the decision or order appealed against involves any question having a relation to the rate of service tax or to the value of service for the purpose of assessment.	Yes
8	Description of service and whether under 'negative list'.	1. Site Formation and Clearance, excavation and earth moving and demolition 2. Works Contract 3. Taxable service Not in Negative list
9	Period of dispute	October 2010 to March 2015
10	(A) In case of cross-objections filed by a person other than the Commissioner of Central Excise/ Service Tax/ Large Taxpayer Unit;	
	i) Amount of service tax, if any, demanded for the period of dispute	Rs. 40,80,581/- on Works Contract Service + Rs.14,35,330/- on Site Formation and Clearance, excavation and earth moving and demolition+ Rs. 7,01,874/- on other taxable service
	ii) Amount of interest involved upto the date of the order appealed against.	As applicable under Sec.75 in respect of the amount mentioned above.
	iii) Amount of refund, if any, rejected or disallowed for the period of dispute	NA
	iv) Amount of penalty imposed.	Penalty under section 78 of Finance Act, 1994 & Rs. 10,000/- under section 77 of Finance Act, 1994.
	(B) (i) Amount of tax or penalty or interest deposited. If so, mention the amount deposited under each head in the box below. (A copy ofthe challan under which the deposit is made should be furnished)	Not applicable

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	(ii) If not, whether any application for dispensing with such deposit has been made?	NA
11	In case of cross-objections filed by the Commissioner of Central Excise/ Service Tax/ Large Taxpayer Unit: (i) Amount of service tax demand dropped or reduced for the period of dispute (ii) Amount of interest demand dropped or reduced for the period of dispute (iii) Amount of refund sanctioned or allowed for the period of dispute (iv) Whether no or less penalty imposed?	Not Applicable
	(B) Whether an application for staying the operation of the order appealed against has been made?	NA
12	Subject matter of dispute in order of priority. (please choose two items from the list below) Taxability - SI. No. of Negative List, Classification of Services, Applicability of Exemption Notification-Notification No., i Export of services., Import of services., Point of Taxation., CENVAT., Refund., Valuation., Others	
	Priority 1	**Priority 2**
	Taxability	Classification of Services
13	Central Excise Assessee Code, if registered with Central Excise.	-Not Applicable-
14	Give details of Importer Exporter Code, if registered with Director General of Foreign Trade.	-Not Applicable-
15	Reliefs claimed in memorandum of cross-objections.	As prayed for in the Grounds of Cross objections

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FACTS OF CASE

A. M/s.Kadakia & Modi Housing(hereinafter referred as 'Respondent') *inter alia* engaged in the sale of residential villas on their own land under the name & style of **'Bloomdale'**. They are registered with department vide STC No. AAHFK8714ASD001 w.e.f. 25.04.2010

B. While undertaking the above referred transactions, Respondent initially executes Agreement Of Sale (AOS) for sale of the residential villa and thereafter executes

   i. Sale Deed (sample copies sale deed is enclosed as **Annexure** XIII), that gets registered and appropriate 'Stamp Duty' has been discharged on the same. Initially 'sale deed' was entered only for the portion of land value and separate agreement was entered in the name of 'land development charges' however from 2012 practice of entering separate agreement for 'land development charges' was dispensed with as the land was already developed by that time and started entering 'sale deed' for the semi-constructed villa along with land attached thereto.

   ii. Construction agreement is being entered for the construction work to be undertaken for the said villa's (sample copies of construction agreements are enclosed as **Annexure** XIII). This agreement includes construction of common amenities like club house, CC roads, street lighting, landscaped gardens etc.,

C. Respondent collects amounts from their customers towards:

   i. Sale deed for sale of semi-finished villa along with land;
   ii. Construction agreement (includes for *'common amenities/facilities'*);
   iii. Other taxable receipts (additions/alternations works)
   iv. Other non-taxable receipts (Corpus fund, electricity deposit, water deposit & service tax);
   v. Taxes/duties (VAT, stamp duty, service tax etc.,);

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vi. Land development charges (only during 2010-11, 2011-12, nominally in 2012).

Service tax Compliance & correspondence with the department:

D. Respondent was given an understanding that service tax is not liable and same was also clarified vide CBEC circular No. 108/02/2009-ST dated 29.01.2009. On this understanding, initially Respondent has not paid service tax and however with an intentionof not getting into litigation and also in light of amendments took place in the year 2010, Respondent decided to pay service tax on the construction done from 01.07.2010 onwards.

E. The above understanding on the taxability prior to 01.07.2010 and after 01.07.2010 and compliance thereof was duly intimated to the department vide letter dated 16.08.2010 with specific request to revenue department on their understanding so that appropriate decision can be taken at Respondent end and same was followed-up vide letter dated 13.09.2010 (copy of both letters are enclosed as **Annexure** 8). But there was no response from the department.

F. Again vide letter dated 30.12.2011, Respondent intimated that service tax was paid under protest for the period 01.04.2011 to 30.09.2011 on the value attributable to the construction done after 01.07.2010 under the category of 'construction of complex service' (COCS) after adjusting the service tax payments previously made, if any (prior to 01.07.2010). And filed ST-3 return also (copy of the ST-3 return for the period April 2011 to September 2011 is enclosed as **Annexure** 9). Here again, there is no response from the revenue department.The above was done only on their

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sole understanding of law and because of this, Respondent repeatedly requested the revenue department to confirm their understanding but at no point of time received any communication from the department.

G. As the department was not responding and Respondent has their own doubts, Respondent approached consultant for advise on the compliance to be made for service tax. As per the consultant advise, Respondent started paying service tax under protest on the amounts received towards 'construction agreements' & also on the Other taxable receipts (stated supra) under the category of 'Works contract service (WCS). Said fact of paying under protest & on the amounts received towards 'construction agreement' was intimated to the department along with detailed statements showing the total receipts, amounts included in taxable value and excluded from it etc., was also submitted. For instance, for the period January 2012 to March 2012, letter dated 22.07.2012 was filed and similarly for the subsequent period also (copies of the letter filed are enclosed as **Annexure** XI. Here again, it was specifically requested revenue department to confirm Respondent understanding and but no response again. **All these were done voluntarily and well before the intervention of revenue department.**

H. And it was only after expiry of nearly 5 years from the date of filing letter asking for clarification/confirmation, officers of anti-evasion in the month of August 2015 sought various records, thereafter recorded statements and viewed that

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i. Land development charges collected are liable for service tax under the category of *'site formationand clearance, excavation and earthmoving and demolition ('site formation' for short)';*

ii. Service tax is liable to be paid at full rate on *'common amenities/facilities* without any abatement;

iii. Other charges collected are liable for service tax;

I. Subsequently, SCN vide O.R. No. 99/2016-Adjn. (ST) (Commr) dated 22.04.2016

i. An amount of Rs. 14,35,330 /- (including all cesses) being the service tax payable on Site formation Service (as per Enclosure WS-5 read with WS-3 & WS-4 to this notice) during the period October 2010 to March 2015 should not be demanded from them, under proviso to Section 73(1) of the Finance Act, 1994;

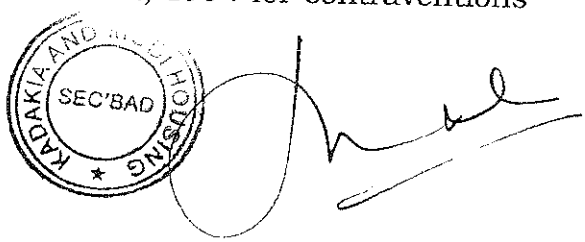
ii. An amount of Rs.40,80,581/- (including all cesses) being the service tax payable on Works Contract Service (as per Enclosure WS-5 read with WS-3 & WS-4 to this notice) during the period October 2010 to March 2015 should not be demanded from them, under proviso to Section 73(1) of the Finance Act, 1994;

iii. An amount of Rs.7,01,874/- (including all cesses) being the service tax payable on other taxable Services (as per Enclosure WS-5 read with Ws-3 & WS-4 to this notice) during the period October 2010 to March 2015 should not be demanded from them, under proviso to Section 73 (1) of the Finance Act, 1994;

iv. An amount of Rs. 19,00,736/- paid towards service tax (as per Enclosure WS-5) should not be appropriated towards the service tax demanded at Sl No. (i) to (iii) above

v. Interest as applicable, on an amount at Sl.No. (i) to (iii) above should not be paid by them under Section 75 of the Finance Act, 1994.

vi. Penalty should not be imposed on the amount at Sl.No. (i) to (iii) above under Section 78 of the Finance Act, 1994 for contraventions cited supra;



vii. Penalty should not be imposed under Section 77(2) of the Finance Act, 1994 for delayed Registration;

J. Respondent has submitted a detailed reply to the Show Cause Notice*inter alia* explained the reasons why the impugned services are not liable for service tax(copy of the SCN reply is enclosed as **Annexure**VII)

K. Despite of the detailed submissions, the impugned order vide OIO No. 12/2015-ST(JC) dated 29.01.2016 was passed confirming all the demand along with interest and penalties (Copy of the same is attached as **Annexure**VI)

Particulars	**As per Appellant**	**As per SCN/OIO**
(A) Gross Receipts	10,95,38,310	10,95,38,310
B) Towards sale of land	41,437,250	41,437,250
(C) Land development charges for laying of roads, drains etc.,	62,29,000	62,29,000
(D) Construction	5,54,36,665	5,54,36,665
(E) VAT, Registration charges, stamp duty and other non taxable receipts	64,35,395	64,35,395
(F) Taxable amount (=D)	5,96,06,204	6,81,01,060
Abatement @ 40%	2,38,42,482	-
Service Tax @ 12.36%	26,79,277	62,17,785
Actually Paid	19,29,728	19,00,736
Balance Demand	7,49,509	43,17,049

L. The Show Cause Notice was adjudicated vide Order-in-Original No.048/2016-ST dated 30.12.2016 confirming the demands proposed in the SCN (Copy of OIO is enclosed as Annexure VI).

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M. Against the above referred OIO, Respondent has filed an appeal before Commissioner (Appeals) (Copy of ST-4 is enclosed as **Annexure IV** and appeared for the personal hearing on 17.07.2017 (Copy of personal hearing record is enclosed as **Annexure V**)

N. Appreciating the written submissions,Commissioner (Appeals) vide Order in Appeal No. HYD-SVTAX-000-AP2-17-18-ST dated 14.09.2017 holding that

- 'land development charges' are not separately classifiable under the service category of "Site formation service" but liable as 'works contract service' at the composite rate. Accordingly, ordered for re-quantification of the demands made in OIO (Para 9 of OIA);
- Amounts received towards 'sale deed' (attributable to the land cost and semi-finished villa/house) are not liable for service tax. and also, the amount received towards 'common amenities' liable at abated rate and not at full rate as demanded in the OIO. Accordingly, set aside the demands made vide Para 26(2) of OIO (Para 10 of OIA);
- No service tax is liable on the amounts collected from the villa Vendees and deposited to the utilities/transferred to the association corpus fund without any retention. Accordingly, remanded to the lower authority for verification of the documents and the consequential re-quantification of the demands made in OIO in this regard (Para 11 of OIA);
- Extended period of limitation is invoiceable;
- Reduced the penalty u/s. 78 of Finance Act, 1994 to 50% of the tax demand confirmed during the period 08.04.2011 to 31.03.2015;

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- Set aside the penaltyimposed u/s. 77(2) of Finance Act, 1994;

N. Later, the Committee of Commissioners reviewed the above referred O-I-A under Section 86(2A) of the Finance Act, 1994 read with Section 174(2) of the CGST Act, 2017 and passed the review order vide Order No. 03/2018-(O.I.A.) dated 30.01.2018 directing the Assisting Commissioner (Tribunal), Central Tax, Secunderabad GST Commissionerate, GST Building, Basheerbagh, Hyderabad to file an appeal before Hon'ble CESTAT against the said OIA for correct determination of the following points arising out of the said order:

O. Accordingly, the Assistant Commissioner (Tribunal) of Central Tax, Secunderabad GST Commissionerate, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad 500 004 filed the present appeal to the Appellate Tribunal under Section 86(2A) of the Finance Act, 1994read with Section 174(2) of the CGST Act, 2017 in Form ST – 7 giving effect to the above review order of Committee of Commissioners.

P. The appeal has been filed on the following grounds

a. The Commissioner (Appeals) in the impugned Order-in Appeal opined that the prime service rendered by the assessee is only villa construction and the land development for access to that villa is clearly a subsidiary to it; the land development, a part of major activity of villa construction with common amenities, merits classification under Works Contract Service in the bundled service and not under SiteFormation as an independent service. Whereas, the Land Development Service" has nothing to do with

the "Works Contract Service'. The assessee, as per the agreement for sale entered with their Customers, Charged separately forLand Development Services" and "Works Contract Services for construction of villas". When the assessee himself has clearly bifurcated the land Development Service" from the Works Contract Service and as Section 65(a)(2)(a) the erstwhile Finance Act, 1994, gives more specific; description Of 'Land Development Services under formation and clearance, excavation and earth moving and demolition" Service, classification Of "Land Development' under "Works Contract Service" in Bundled Services and extending the benefit Of abatement in terms of Rule of Service Tax (Determination of Value) Rules, 2012 is not legal, proper and correct

b. From the above definition it clearly manifested that in order to classify a Land Development Service" under "Works Contract Service" two conditions required to be satisfied first there Should be a Of property in goods and to perform the activities from (a) to mentioned above. Whereas, while performing the services under "Land Development", the a have transferred any property in goods and no activities from (a) to (e) as above said have not been performed. Hence, it is not proper to classify the "Land Development" under "Works Contract' in Bundled Services.

c. In the instant case the assessee, under "Land Development Services", rendered the work pertaining to preparation of site

suitable for construction, laying or roads, laying of drainage lines, water pipes etc. Hence the common area and amenitieseven though constructed with murrarn and usage of labour it is not transferred in goods to any individual and the common area and amenities are used by the group of individual and hence the same cannot be treated as species of Works Contract service.

d. Further, the assessee are well aware Of the statutory provisions and are collecting Service Tax on the agreement entered for constructions. The assessee intentionally evaded the service tax on "Land Development Services" and "Other Taxable Services' Hence, extending the cum-tax benefit appears to be not proper

e. Board in their circular No 151/12/2013-ST dated 10.02.2012 vide para 2.1(A) has clarified construction services provided by the builder/ developer is taxable in case any part of the payment/ development rights of the land was received by the builder/ developer before the issuance of completion certificate and the service tax would be required to be paid by builder/ developer even for the flats given to the landowner. From above, it is clear that construction services under "Works Contract Service" rendered before the issuance of completion certificate is taxable service. Hence, the assessee is required to discharge their service tax obligation even on the semi-finished villas registered before the issuance of Completion Certificate by the Competent Authority

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f. From the above, it is amply clear that the assessee has intentionally included the cost of semi-finished construction in the land cost so as to evade Service Tax resulting in short payment under "Works Contract Service

g. The assessee has also collected certain amounts over and above the agreed amount in connection with rendering the construction of villas. The assessee have claimed that the same are in connection with Corpus Fund, Electricity Deposit, water charges towards service tax- However, the assessee has not submitted any documentary evidence to this effect. The have also not submitted the said documentary evidence even before the Commissioner (Appeals). However, the Commissioner (Appeals) without considering the same remanded the matter to the Original Adjudicating Authority for re-quantification which is not correct.

To the extent aggrieved by the impugned OIA and also as counter to the grounds submitted by the revenue department in their appeal, which is contrary to facts, law and evidence, apart from being contrary to a catena of judicial decisions and beset with grave and incurable legal infirmities, the respondent *qua* assessee file this cross objections on the following grounds (which are alternate pleas and without prejudice to one another) amongst those to be urged at the time of hearing of the appeal.

GROUNDS OF CROSS OBJECTIONS

1. Respondent submits that the grounds submitted in the appeal filed by the revenue department is ex-facie illegal and untenable in law since the same is contrary to facts and judicial decisions.

2. Respondent submits that for easy comprehension, the subsequent submissions in this cross-objections are given under the followings headings

   a. Service Tax is not liable to be paid on 'land development charges' as it is

      - Part of composite contract of villa construction/sale – hence not covered under the category of 'site formation';
      - Species of 'works contract' as it involves the supply of materials also and not liable for service tax as it was not specified under the category of 'works contract service' *qua* Section 65(105)(zzzza) of Finance Act, 1994;
      - Even assuming taxable, not liable in the cases wherein land development agreement was not entered;

   b. Villas construction is not subjected to service tax as it cannot be construed as complex;

   c. No Service tax liability under Works Contract Service on amount received towards Sale Deeds;

   d. Construction of common amenities involves the transfer of property and hence it is 'works contract' and correctly assessed at the abated rate – there is no short payment to this extent;

e. Extended period of limitation is not invokable;

f. Cum-tax benefit under Section 67 should be extended;

g. Interest and penalties are not payable/imposable;

In Re: Service Tax is not liable to be paid on 'land development charges':

3. Respondent submits that the Order-in-Appeal vide Para 9has dropped the demand by stating that land development activity forms part of composite works of works contract service and the same cannot be taxed separately under Site Formation and Clearance service. But the revenue department in their appeal vide Para I (d) of Grounds of Appeal contended that *"In terms of Section 65(97a) read with Section 65(A)2(a) of the erstwhile Finance Act, 1994, "Land Development Services" gives more specific description under "Site formation and clearance, excavation and earth moving and demolition" service and the works involved are leveling the land, making suitable for construction of villas and horizontal drilling for laying of drainage lines and water pipes and cables etc."*

4. In this regard, Respondent submits that Section 65(105)(zzza) of Finance Act, 1994 provides taxable service under site formation and clearance service means provision of service *"to any person, by any other person, in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities;*

5. For easy reference, the definition of the Site Formation is extracted as follows

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Section *65(97a)* of Finance Act, 1994: *"site formation and clearance, excavation and earthmoving and demolition" includes,—*

(i) drilling, boring and core extraction services for construction, geophysical, geological or similar purposes; or

(ii) soil stabilization; or

(iii) horizontal drilling for the passage of cables or drain pipes; or

(iv) land reclamation work; or

(v) contaminated top soil stripping work; or

(vi) demolition and wrecking of building, structure or road,

but does not include such services provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing,renovating or restoring of water sources or water bodies;

6. Respondent submits that the activity carried out by the Respondent does not fall under any sub-clauses of 'site formation' service as under:

   a. The first sub-clause covers drilling, boring and core extraction services and in the instant case of 'land development' there was no such activities were undertaken and therefore same is not covered under this sub-clause.

   b. The Second sub-clause covers the cases of soil stabilization and the instant case of 'land development' does not require any such type of 'soil stabilization' i.e. improving or changing the soil of surface. Therefore the not covered under second sub-clause too.

   c. The third sub-clause covers the cases of 'horizontal drilling' whereas 'land development' does not require such kind of drilling works hence not covered here also.

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d. Similarly, further sub-clause covers require 'Land reclamation' works which involve the converting unusable/disturbed land into usable form whereas in the instant case of 'land development' land is in very well usable form before Respondent carried the development work and development work only for laying of infrastructure as required by M/s. HUDA. Resultantly same has not covered under this sub-clause also.

e. The fifth sub-clause covers the cases of *'contaminated top soil stripping work'* involving the carrying out measures for preventing/correcting the soil contamination. Whereas in the instant case of 'land development' there is neither 'soil contamination' nor measures for prevention/correction. Therefore not covered under this sub-clause also.

f. The last sub-clause covers the cases of 'demolition and wracking services' and the instant case of 'land development' does not require any such kind of 'demolition/wrecking' resultantly not covered under this sub-clause also.

In view of the above, it is clear that impugned case of 'land development' does not fit into any sub-clauses of 'site formation' category qua Section 65(105)(zzza), ibid. Hence, the argument of the revenue department fails and deserves to be dismissed.

<u>It is part of composite contract of villa construction/sale – hence not covered under the category of 'site formation'</u>

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7. Respondent submits that that taxability under 'site formation' attracts only when those specified activities were undertaken independently and not as part of any other composite work. This is because if such works are held to be taxable under the site formation service irrespective of whether carried out independently or part of composite work, then every such construction work would involve the activity of site formation, which is separately taxed in other category. The same position was clarified by CBEC vide its Circular No. 123/5/2010-TRU, dated 24-5-2010. The relevant extract is as under:

"iv) 'site formation and clearance, excavation, earthmoving and demolition services' are attracted only if the service providers provide these services independently and not as part of a complete work such as laying of cables under the road."

8. In the instant case, 'land development' activity was not carried out independently and part of the composite contract for carrying out the villa construction/sale. This fact was fortified from the Para 'E' of Agreement of sale (AOS) entered with customers. The relevant extract reads as

"The vendor in the scheme of the development of Bloomdale has planned that the prospective buyers shall eventually become the absolute owners of the identifiable land (i.e. plot of land) ***together with independent bungalow*** *constructed thereon. For this purpose, the vendor and the vendee are required to enter into three separate agreements, one with respect to the sale of land, second with respect*

to development charges on land and the third with respect to the construction of the bungalow. ***These agreements will be interdependent, mutually co-existing and inseparable though in the scheme of the project*** *the vendor may execute a sale deed in favor of the vendee before commencing the construction of the bungalow."* (Sample copies of 'AOS' are enclosed as annexure XIII).

Therefore 'land development is not taxable under the category of 'site formation'.

9. Appellant vide Para I (e) contended that *"As per Section 66F of the erstwhile Finance Act, 1994, "Land Development Services" shall be treated as single service due to its nomenclature and essential characteristics even though it contains various elements"*

10. In this regard, Respondent submits that the contention of the appellant is not tenable as it is trying to decide the category of service based on the name/nomenclature of the activity without considering the nature of service.

11. Respondent submits that in case of CCE, Panaji, Goa v. Vrindavan Engineers & Contractors (I) (P) Ltd. 2015 (40) S.T.R. 765 (Tri. - Mumbai) it was held that land development is not liable under the category of 'site formation'. The relevant portion of the judgment reads as under

"From the above definition, we find that the site formation basically refers to earthwork or activities related to earthwork or, at the most, drilling for the passage of cables or drain pipes. Whereas the activities

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undertaken by the respondent indicate a comprehensive works contract which includes appreciable RCC work for foundations, columns and walls apart from construction of walls, laying of pipes. The definition includes the creation of passages for pipes. It does not include laying of pipes itself. There is merit in the finding of the Commissioner (Appeals) that if such works are held to be taxable under the site formation service, then every such project would involve the activity of site formation. Revenue could at most tax only that part of the contract which involves site formation and related earthwork and not the entire works. But that has not been done by Revenue. Be that as it may, the total activities undertaken cannot be categorized under the Site Formation service. The nature of work is more akin to a comprehensive works contract. It is not the argument of Revenue that the same may be split up into components including the component of site formation. Therefore, we hold that the work undertaken by the respondent cannot be termed as an activity of "Site formation and clearance, excavation & earthmoving & demolition".

12. Respondent submits that from the above referred decision, it is very clear that the activity carried out by the Respondent is not taxable under the category 'Site Formation and Clearance Service' therefore the contention of the Appellant is not valid and the same needs to be dismissed.

Species of 'works contract' as it involves the supply of materials also and not liable for service tax as it was not specified under the category of 'works contract service' *qua* Section 65(105)(zzzza) of Finance Act, 1994

13. Appellant vide Para I (c) contended that *"In the instant case the assessee, under "Land Development Services", rendered the work pertaining to preparation of the site suitable for constriction, laying of roads, laying of drainage lines, water pipes etc. Hence the common area and amenities even though constructed with murram and usage of labor it is not transferred in goods to any individual and the common area and amenities are used by the group of individual and hence the same cannot be treated as species of "Works Contract"*

14. In this regard, Respondent submits that before going into the discussion as to whether impugned activity is works contract or not it is worthwhile to keep the following principles in mind the fundamental principle of works contract is that it is a composite agreement for the transfer of property in goods by accretion together with the rendition of labour/service. It is well recognized naturally, lawfully and explicitly. Hence, in Central and State legislation,the Works contract is a composite, indivisible, distinct and insular contractual arrangement, a specie distinct from a contract for mere sale of goods or one exclusively for rendition of services.The above principles are flown from unvarying series of Apex court rulings *inter alia* the following:

    a. State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd — (1958) 9 STC 353 (SC);

    b. Gannon Dunkerley & Co. and others vs. State of Rajasthan and others (1993) 088 STC 0204;

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c. Builders Association of India v. Union of India — (1989) 2 SCC 645;

d. Bharat Sanchar Nigam Ltd. v. Union of India — 2006 (2) S.T.R. 161 (S.C.);

e. Larsen & Toubro Ltd. v. State of Karnataka — 2014 (34) S.T.R. 481 (S.C.);

f. Kone Elevator India Pvt. Ltd. v. State of Tamil Nadu — 2014 (34) S.T.R. 641 (S.C.)

g. CCE v. Larsen and Turbo Ltd 2015 (39) S.T.R. 913 (S.C.);

15. In the instant case, Respondent is incorporating various goods namely murrum, concrete, electrical poles, electrical wiring etc., in the execution of impugned activity of *'land development'* apart from the exertion of labor thereforeit is clear case that Respondent transferred the property in goods to their customer while undertaking the impugned activity and undisputedly exerted the labour for execution of impugned activity thereby satisfying the species of works contract viz., supply of goods and services/labour. Hence, the grounds assailed by the revenue department that there is no transfer of property in the goods is contrary to the above stated factual & legal position.

16. Noticee submits that Para I(b) of the Grounds of Appeal contended that that *"From the above definition it clearly manifested that in order to classify "Land Development Service" under Works Contract Service" two conditions are required to be satisfied i.e. first there should be a transfer*

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of property in goods and to perform the activities from to mentioned above. Whereas, while performing the services under "Land Development, the assessee have not transferred any property in goods and no activities from (a) to (e) as above said have not been performed. Hence, it is not proper to classify the "Land Development" under "Works Contract" in Bundled Services.*

17. In this regard, Respondent submits that it is settled law that in case of execution of works contract property in goods involved therein would get transferred through accretion. And in the instant case, Respondent incorporated the goods namely murrum, concrete, electrical poles, electrical wiring etc., therefore it is clear case that Respondent transferred the property in goods to their customer while undertaking the impugned activity and undisputedly exerted the labour for execution of impugned activity thereby satisfying the species of works contract viz., supply of goods and services/labour. Therefore the contention of the Appellant is not tenable and deserves the dismissal.

18. Respondent further submits that the entire definition of 'works contract' (either before 01.07.2012 or thereafter) does not provide that transfer should be to individual/customer/contractee and what all it requires is only the transfer of property that may be to customer/contractee or any third person and such transfer should be leviable to VAT, all these ingredients are satisfied in the instant case *inter alia* property in goods

incorporated was transferred to customers and VAT was levied & paid also. Hence averment of appeal is not correct.

19. Respondent submits that the amount incurred for land development is collected from every customer to whom the flats are sold therefore the contention of the Appellant that property in goods was not transferred to any individual is not correct. If the case of being the receiver should be individual is mandatory to decide the taxability than the service of common amenities does not even fall under service definition w.e.f 01.07.2012 since service definition itself says that "any activity carried out by a person to **another person** for consideration".

20. Respondent further submits that it is also submitted that value assessed for VAT also includes the *'land development charges'* collected which further fortifies that 'land development' is species of works contract.

21. Respondent submits that provisions of 'Works Contract Service' in the Finance Act, 1994 are as follows:

    a. Taxable service was defined in section 65(105)(zzzza) as "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".

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b. The term Works contract is defined to explanation to the above provision as - "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

d. Completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

e. Turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;

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22. Respondent submits that from the definition of 'Works Contract' given under the provisions of Finance Act, 1994 *qua*section 65(105)(zzzza), it is very clear that only specified activities of 'works contract' are intended to tax and not every contract of 'works contract' like therein VAT provisions. Hence in order to tax under the category of 'works contract', activity shall fall in the list of works specified therein but in the instant case 'land development' is not falling under any of such specified works for the following reasons

    a. It does not involve any work of 'erection, commissioning or installation' etc., accordingly sub-clause (a) fails;

    b. 'Land development' does not involve any construction of building/civil structure accordingly sub-clauses (b), (c) & (d) fails on this count;

    c. Similarly, sub-clause (e) also fails in the instant case as there is no execution of any turnkey projects/EPC contracts;

    Therefore impugned activity is not liable under the category of 'WCS'.

23. Respondent submits that composite contracts can be taxed only under the category of 'Works contract service' *qua*Section 65(105)(zzzza), ibid and not under any other categories including *'site formation'*. Reliance is placed on Hon'ble **Supreme court decision in CCE v. Larsen and Turbo Ltd 2015 (39) S.T.R. 913 (S.C.) wherein it was clearly held**

that *"24. A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines "taxable service" as "any service provided". All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract."*

24. The above judgment means that service element in the works contracts other than those covered under the specified category of 'Works Contract Services (WCS)' is not taxable.

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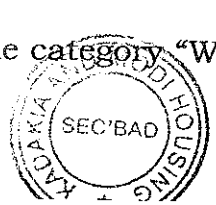
25. Respondent submits that the impugned Order-in-Appeal vide Para 9 stated that *"The ratio of the Tribunal ruling in the Vrindavan Engineers & Contractors case [2015(40)STR 765(Tri-Mum)] squarely applies to the instant case, and the classification of the land development activity separately under Site Formation is legally unsustainable. In terms of Sec 65A of the Finance Act 1994 (up to 30.06.2012) and Sec 66F ibidem (beyond 01.07.2012), the land development activity, part of major activity of villa construction with common amenities merits classification under WCS in the bundled service, and not under Site formation as an independent service. It automatically restricts the demand for short levy only where the charges are actually collected. Although the SCN admittedly sought to fasten the liability under Site Formation, the appellant fairly conceded at Para 26 of the grounds of appeal, that the demand would exist under WCS category, assessed under the composition scheme inasmuch as the necessary conditions (non availment of credit etc.) are met.* ***Para26(1) of the impugned order is therefore set aside and remanded*** *to the lower authority for re-quantification of liability under WCS, by extending composition scheme for the period up to 30.06.2012 and under Rule 2A of the Service Tax Valuations Rules with effect from 01.07.2012 by extending abatement."*

26. In this regard, Respondent submits that impugned show cause notice proposes to demand service tax on land development charges under the category 'Site Formation Services' but the impugned 'Order-in-Appeal' has confirmed the demand under the category "Works Contract Service"



which was never a proposition in the Show Cause Notice. From this it is clear that the Order-in-Appeal has travelled beyond the SCN to confirm the demand on land development charges which is not allowed therefore the findings of impugned Order-in-Appeal is not correct and the same needs to be set aside.In this regard, reliance is placed on

- Hindustan Polymers Co. Ltd. v. CCE, 1999 (106) ELT 12 (SC);
- Reckitt and Colman of India Ltd. v. CCE, 1996 (88) ELT 641 (SC)

27. Respondent further submits that the land development does not cover under any of the limbs of 'Works Contract Service' thus there is no levy of service tax under the said category. Hence, the confirmation of demand under 'Works Contract Service' by the Order-in-Appeal is not correct and the same needs to be set aside.

28. Respondent further submits that as there is a specific category for 'works contract' but Parliament has in its wisdom not covered the works contract in relation to *'land development'*, the same cannot be taxed under any other category of services. In this regard Relied on Dr. Lal Path Lab Pvt. Ltd. Vs Commissioner of C. Ex., Ludhiana 2006 (004) STR 0527 Tri.-Del and same was Affirmed in 2007 (8) STR 337 (P&H.) wherein it was held that *"What is specifically kept out of a levy by the legislature cannot be subjected to tax by the revenue administration under another entry".*

Even assuming taxable, not liable in the cases wherein land development agreement was not entered;

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29. Respondentfurther submits that,from 2012 onwards they had stopped the practice of entering into two agreements called Land Development Agreement and Sale Deed. From then there is only one agreement for the land development and sale of land. Respondent submits that mere bifurcation of the work into the different agreement does not alter the essence of the work. Since both are covered under the category of works contract, the contention of the department is not tenable and needs to be set aside.

30. Without prejudice to the foregoing, it is submitted that even assuming 'land development' activity is liable for service tax, it humbly request to allow the benefit of paying tax @4.8% in terms of 'Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 – as it is specie of works contract.

31. Even assuming 'land development charges' taxable, it is submitted that for the period 01.07.2012, adopting the principles of 'Bundled service' u/s. 66F of Finance Act, 1994, same shall be construed as 'works contract' and tax shall be levied only @40% on the amount received in terms of Rule 2A of Service tax (determination of value) Rules, 2012.

In Re: Villas construction is not subjected to service tax as it cannot be construed as complex

32. Respondent submits that independent villas are not covered under the definition of "residential complex" as defined under Section 65(91a) of

the Finance Act, 1994 and hence not subject to levy of Service tax. In this regard reliance is placed on Macro Marvel Projects Ltd. v. Commissioner — 2008 (12) S.T.R. 603 (Tribunal) maintained by SC in 2012 (25) S.T.R. J154 (S.C.);

33. Respondent submits that construction of independent villas does not include within the scope of "Construction of Complex" defined under Section 65(30a) of the Finance Act, 1994. The law makers did not want construction of individual residential houses to be subject to levy of service tax. Unfortunately, this aspect was ignored by the Appellant while filing the Appeal.

34. Respondent submits that in couple of the above mentioned judicial judgments, revenue had taken the same arguments that common approval, common facilities and common layout to levy the service tax on independent houses before the Hon'ble Tribunals and Tribunal held that only those buildings of more than 12 residential units in the same building will be covered by the definition of residential complex. However without giving cognizance to the same the Appellant has filed an appeal. Respondent submits that once the entire activity of construction is not taxable under the Finance Act, 1994, it is clear that on this ground alone the entire Appeal filed by the Appellant becomes invalid and the same needs to be set aside.

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35. Respondent submits that the above submissions were made in the appeal filed before Commissioner (Appeals) but the impugned Order-in-Appeal while confirming the demand missed to take submissions made by the Respondent that the activity of construction of villa is exempted from payment of service tax and stated vide Para 6 stated that *"The appellant's communication dated 10.08.2010 to the department adverts at Para 11, to the initial classification under WCS, and their intent to discharge tax under CRCS, subject to the reimbursement by the customer. Such conditional discharge of tax liability is not provided for in the fiscal statute, and the appellant made no assertion on the service classification at their end, nor the basis of the assessment made. Be that as it may, there is no dispute at any stage that the primary activity of villa construction under composite works contract has been classified by the appellant under WCS and accepted by the department; since even the demands in the impugned order toward the construction element is under WCS category.*

36. In this regard, Respondent submits that the allegation of the impugned Order-in-Appeal that the activity carried out by the Respondent amounts to 'Works Contract Service' is not at all correct as theactivity of construction of single residential unit is exempted from payment of service tax. Further, respondent submits that the construction of villas does not amount to construction of residential complex therefore the exemption under SI No 14(b) of Notification No.25/2012-ST dated 20.06.2017 is rightly eligible to the Respondent.

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37. Respondent submits thatmere paying service tax or filing of ST-3 returns under self assessment system does not alter the taxability of the impugned activity as Self assessment cannot be considered as final/decisive and further there is no restriction for claim of the refund of the duty so self-assessed. In this regard reliance is placed on

    a. Central Office Mewar Palaces Org. v. UOI 2008 (12) S.T.R. 545 (Raj.)

    b. Commissioner v. Vijay Leasing Company — 2011 (22) S.T.R. 553 (Tri. - Bang.)

Therefore, notwithstanding payment of service tax by Noticee during the subject period, there is no service tax liability at all on the transactions of construction of single residential unit,that being a position there is no question of any short payment and entire service tax demand fails on this count itself.

In Re: No liability under Works Contract Service on amount received towards Sale Deeds

38. Respondent submits that as stated inbackground facts Respondent stopped entering the separate agreement for *'land development'* since the land was already developed by that time and villas are in semi-constructed/finished stage (including villas not booked at that time). Accordingly, the sale deed was being entered covering the both portion of land & semi-constructed villa/house and stamp duty was paid.

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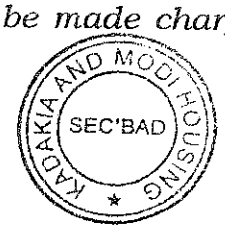
39. In this regard, Appellant vide Para I (g) of Grounds of Appeal contended that *"From the above, it is amply clear that the assessee has intentionally included the cost of semi-finished construction in the land cost so as to evade Service Tax resulting in short payment under "Works Contract Service"*

40. In this regard, Respondent submits that semi-finished villa/house represents the construction work already done prior to booking of villa/house by the prospective buyer. The work undertaken until that time of booking villa/house is nothing but work done for self as there is no service provider and receiver. It is settled law that there is no levy of service tax on the self service and further to be a works contract, there should be a contract and any work done prior to entering of such contracts cannot be bought into the realm of works contract. In this regard, reliance is placed on the following:

    a. Apex court judgment in Larsen and Toubro Limited v. State of Karnataka — 2014 (34) S.T.R. 481 (S.C.)wherein it was held that ***"115.*** *It may, however,* ***be clarified that 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****. The value addition made to the goods transferred after the agreement is entered into with the flat purchaser can only be made chargeable to tax by the State Government."*



b. CHD Developers Ltd vs State of Haryana and others, 2015 – TIOL-1521-HC – P&H-VAT wherein it was held that *"45. In view of the above, essentially, the value of the immovable property and any other thing done prior to the date of entering of the agreement of sale is to be excluded from the agreement value. The value of goods in a works contract in the case of a developer etc. on the basis of which VAT is levied would be the value of the goods at the time of incorporation in the works even where the property in goods passes later. Further, VAT is to be directed on the value of the goods at the time of incorporation and it should not purport to tax the transfer of immovable property."*

41. Further, Respondent submits that to be covered under the definition of works contract, one of the vital conditions is that there should be the transfer of property in goods leviable for sales tax/VAT. Undisputedly sale of the undivided portion of land along with semi-finished villa/house is not chargeable to VAT and it is a mere sale of immovable property (same was supported by above-cited judgments also). Therefore, the said sale cannot be considered as works contract and consequently no service tax is liable to be paid. All the goods till the prospective customer become owner have been self-consumed and not transferred to anybody. Further goods, being used in the construction of semi-finished villa/house, have lost its identity and been converted into the immovable property which cannot be considered as goods therefore the liability to pay service under 'works contract service' on

the portion of semi-constructed villa represented by *'sale deed'* would not arise.

42. Respondent further submits that there is no service tax levy on the sale of semi-finished villa/house as the same was excluded from the definition of 'service' itself. The relevant portion of definition *qua* section 65B(44) reads as follows:

a) an activity which constitutes merely,—

*(i) **a transfer of title in goods or immovable property, by way of sale**, gift or in any other manner; or*

43. Respondent submits that to be covered under the above exclusion the following ingredients shall be satisfied:

a) <u>There should be the transfer of title:</u>Transfer of title means "change in ownership". And in the instant case, there is the change in ownership from Appellant to their customer since after execution of 'sale deed' customer is the owner of "said immovable property" thereby this condition is satisfied.

b) <u>Such transfer should be in goods or immovable property:</u>What constitutes immovable property was nowhere defined in the provisions of Finance Act, 1994 or rules made thereunder. It is pertinent to refer the definition given in section 3 of Transfer of property act 1882 which reads as follows:

"Immovable property" does not include standing timber, growing crops or grass"

Further, section 3 of General clauses act, 1897 which reads as follows:"Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

Reading of the above, undisputedly "land along with semi-finished villa/house" is immovable property thereby this condition was also met.

c) It is by way of sale, gift or another manner:In the instant case execution of 'sale deed' & payment of applicable stamp duty itself evidences that there is the sale. Further, it is pertinent to consider the definition given under section 54 of Transfer of Property Act, 1882. In absence of the definition of "sale" in the provisions of Finance Act, 1994 and relevant extract reads as follows:

*"Sale" is a **transfer of ownership in exchange for a price paid or promised or part-paid and part promised.** Sale how made — Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, **can be made only by a registered instrument.***

In the instant case also there is the transfer of ownership and price was also paid (part of the price is promised to pay) and a transfer was made by executing 'sale deed' which is validity registered with stamp authorities. Therefore, undoubtedly there is sale thereby this condition was also met.

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d) Merely

Undoubtedly 'sale deed' was executed to transfer the title in the immovable property only and such transaction (sale of immovable property) does not involve any other activity namely construction activity as the same done entering separate agreement Mis-constructed by the impugned appellant.

Therefore, all the above conditions were satisfied in the instant case making the transaction falling under said exclusion.Hence, the amounts received towards 'Sale deed' are not subject to service tax.

44. Respondent further submits that if two transactions, although associated, are two discernibly separate transactions then each of the separate transactions would be assessed independently. In other words, the discernible portion of the transaction, which constitutes a transfer of title in the immovable property would be excluded from the definition of service by operation of the said exclusion clause while the service portion would be included in the definition of service. In the instant case, it was well discriminated the activity involved & amounts received towards

i. Sale of "land along with semi-finished villa" ('sale deed' separately)

ii. Construction activity (by executing construction agreement)

45. Respondent submits that whatever the activity involved & amounts received towards construction agreement was suffered service tax and

again taxing the associated transaction alleging that the same involves construction was not warranted under the Finance Act, 1994 more so in case when there is clear separation/bifurcation/vivisection of activity involved & amounts received towards such associated transactions from the activity of construction. Therefore, the allegation of the impugned order is not correct and the same needs to be set aside.

46. Appellant vide Para I (f) contended that *"Board in their circular. No 151/12/2013-ST dated 10.02.2012 vide para 2.1(A) has clarified construction services provided by the builder/ developer is taxable in case any part of the payment/ development rights of the land was received by the builder/ developer before the issuance of completion certificate and the service tax would be required to be paid by builder/ developer even for the flats given to the landowner. From above, it is clear that construction services under "Works Contract Service" rendered before the issuance of completion certificate is taxable service. Hence, the assessee is required to discharge their service tax obligation even on the semi-finished villas registered before the issuance of Completion Certificate by the Competent Authority"*

47. In this regard Respondent submits that Appellant has misinterpreted the provisions of the Finance Act, 1994 with respect to "Construction of Residential Complex service" and "Works Contract Service". The above condition of Occupancy Certificate is applicable only when the service is

categorized under "Construction of Residential Complex". Since the Respondent is classifying and paying the tax under the category of "Works Contract Service", the concept of "Occupancy Certificate" is not applicable in the instant case therefore the contention of the Appellant needs to be set aside.

48. Respondent submits that the Appellant vide Grounds of Appeal II (g) contended that *"The demand in the Show Cause Notice dated 22.04.2016, which was confirmed vide Order-In-Original No.048/2016-(S.T) dated 30.12.2016, was arrived at Rs.40,80,581/- by calculating villa wise taking together the values of semi-finished villas. The Service Tax already paid by the assessee under "Works Contract" during the period from October, 2011 to March, 2015 has been appropriated against the said demand. However, the Commissioner (Appeals) without considering the material facts, set aside the entire demand observing that the same pertains only to semi-finished villas; sale deed consisting of land parcel along with the unfinished house is assessed to Stamp duty and thereby recognized as a sale transaction alone"*

49. In this regard, Respondent submits that the portion of the service tax before the intervention of the revenue department and filed ST-3 returns should not have been part of the demand confirmed in the OIO and demand should be restricted to the differential amount (as per the revenue department).

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In Re: Construction of common amenities involves the transfer of property and hence it is 'works contract' and correctly assessed at the abated rate – there is no short payment to this extent;

50. Respondent submits that Para I (c) of Grounds of Appeal contended that *"Hence the common area and amenities even though constructed with murram and usage of labour it is not transferred in goods to any individual and the common area and amenities are used by the group of individual and hence the same cannot be treated as species of "Works Contract"*

51. Respondent submits that as stated in background facts, Construction agreement is being entered for the construction work to be undertaken including construction of common amenities/facilities like club house, CC roads, street lighting, landscaped gardens etc., and there is no bifurcation on the amounts towards common amenities/facilities. And Appellant is paying service tax on the amounts received towards this agreement adopting the taxable value as per Rule 2A of Service tax (determination of value) Rules, 2006. All these facts are undisputed in SCN also.

52. Construction of common amenities like club house, CC roads, street lighting, landscaped gardens etc., requires both materials/goods (Murrum/clay, cement, concrete, rocks etc.,) and also the labor exertion in executing the said construction. The Common amenities/facilities constructed would be transferred to society/association that is being

formed by all owners of villa in the impugned project. As the society/association (which is in turn owned by all customers) is the owner of the same, the cost incurred for the construction is being recovered from each & every customer.

53. Respondent submits that common amenities/facilities constructed are being transferred to society/association which is in turn owned by customers/individuals only and Appellant does not have any ownership over it. Further, it is a well-settled principle that society/association formed by a group of people are not different and both are one & same. That being a case, whatever the transfers made to society/association is nothing but transferred to individual customers. Hence, the contention of the Appellant that property in goods is not transferred to individual customers is not correct

54. Respondent further submits that the entire definition of 'works contract' (either before 01.07.2012 or thereafter) does not provide that transfer should to individual/customer/contractee and what all it requires is only the transfer of property that may be to customer/contractee or any third person and such transfer should be leviable to VAT, all these ingredients are satisfied in the instant case *inter alia* property in goods incorporated was transferred to society/association and VAT was levied & paid also. Hence averment of appeal is not correct.

55. Appellant submits that though the common amenities are for all, but the amount is collected from every customer. If the case of being the

receiver should be individual is mandatory to decide the taxability than the service of common amenities does not even fall under service definition w.e.f 01.07.2012 since service definition itself says that "any activity carried out by a person to **another person** for consideration".

56. Further 'residential complex' construction falls within the realm of 'WCS' and the expression "residential complex' was defined u/s. 65(91a), ibid to include 'common amenities/facilities'. On a conjoint reading of this, it is clear that construction of 'common amenities/facilities' also specie of 'works contract'. Therefore averment of appeal filed by the department goes contrary to this and hence not valid.

57. Respondent submits that the Appellant vide Grounds of Appeal III(h) contended that *"The assessee has also collected certain amounts over and above the agreed amount in connection with rendering the construction of villas. The assessee have claimed that the same are in connection with Corpus Fund, Electricity Deposit, water charges towards service tax- However, the assessee has not submitted any documentary evidence to this effect. The have also not submitted the said documentary evidence even before the Commissioner (Appeals). However, the Commissioner (Appeals) without considering the same remanded the matter to the Original Adjudicating Authority for re-quantification which is not correct."*

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58. Respondent submits that the contention of the Appellant is not at all tenable in as much as remanding the matter for verification is the discretion of the Commissioner (Appeals) which cannot be questioned. As the Commissioner (Appeals) has felt that the issue requires re-verification therefore, he has remanded the matter for verification of documents.

59. Respondent further submits that the grounds of the appeal filed by the department did not dispute the non-taxability of the Other receipts but has only contesting the remand by Commissioner (Appeals) for re-verification. Therefore, then non-taxability has attained finality and there is no scope for the department to contest in the present appeal.

In Re: Extended period of limitation is not invokable:

60. Respondent submits that the extended period of limitation is not invokable in the instant case for the following reasons:

a. Most of the builders/developers across the country are not at all paying service tax (especially on villas constructions) and there were serious doubts expressed on the applicability of service tax and customers are also very reluctant to reimburse citing the above practice of non-payment by other similar builders;

b. Judicially also it was held that construction of villas are not subjected to service tax as submitted supra;

c. There was a lot of confusion on the liability of builders on the applicability of service tax and was challenged before various courts and courts also expressed different views and most of the

cases in favor of the tax payer. For instance, recently the Hon'ble High court in case of Suresh Kumar Bansal v. UOI 2016-TIOL-1077-HC-DEL-ST held that construction contracts are not subjected to service tax.

d. Further taxability of contracts involving immovable property was also the subject matter of dispute during the subject period. There were contrary judgments of Supreme Court at such point of time and which was finally settled by the larger bench of Supreme Court in the year 2014 as reported in Larsen & Toubro Ltd. v. State of Karnataka — 2014 (34) S.T.R. 481 (S.C.).

e. The issue of classification of indivisible contracts under 'COCS'/'WCS' was in dispute. Courts expressed different views, referred to the larger bench and finally settled by Supreme Court in the year 2015 in favor of taxpayer as reported in Commissioner v. Larsen & Toubro Ltd. — 2015 (39) S.T.R. 913 (S.C.).

f. Apart from the above difficulties, the construction industry was in slump (especially in the erstwhile state of Andhra Pradesh due to state bifurcation issue) and builders were facing huge financial problems/difficulties.

Despite of above challenges/doubts/confusion, Respondent voluntarily paid all service tax dues within the due date before the intervention of revenue department. There is no evasion of tax. Therefore in the above background, intention to evade or delay the payment cannot be attributed. Further differentiation

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shall be made between the assessee (like Respondent) who are voluntarily complying with the law and paying all dues despite of doubts/confusion/challenges etc., and assessee who is not at all complying with the law despite knowing his liability. Giving equal punishment for the errant assessee and non-errant assessee shall be best avoided. Hence in view of above factual & legal matrix, the larger period of limitation is not invokable.

61. Respondent submits that suppression means not providing information which the person is legally required to state, but intentionally or deliberately not stated. As stated in factual matrix there was continuous intimation (from the year 2010) regarding the compliance being made from time to time and repeated requests were made asking to confirm the understanding of Respondent. Letters were filed giving the detailed breakup of amounts collected, amounts offered to tax & not offered (excluded) to tax. At no point of time, the department responded/rebutted to the above intimations/requests.

62. Respondent submits that what is believed to be not taxable/leviable as backed by their legal understanding was well put forth before the authorities in the year 2010 i.e. at the time of beginning their compliance itself and subsequently also. Thus **full facts of subject SCN were voluntarily disclosed by the Respondent without any enquiry/request from the departmental authorities and they had never hidden any fact from the officers of department** and subject

matter of present SCN was known to the department before the beginning of SCN period itself as evident from the corresponded referred above.

63. Not objecting/responding at that time which gave vehement belief that understanding & compliance made is in accordance with the law and but now that is after expiry of nearly 5 years coming out with the present SCN with illusory & baseless allegation to invoke larger period of limitation and proposing to punish the Respondent for the failure of departmental authorities is not valid in the eyes of law. In this regard reliance is placed on Pushpam Pharmaceuticals Company Vs Collector Of C. Ex., Bombay 1995 (78) E.L.T 401 (S.C) it was held that *"suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known to both the parties,the omission by one to do what he might have done not that he must have done would not render it suppression.It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression.*

64. Respondent submits that the impugned Order-in-Appeal vide Para 6 stated that *"The notice actually relied upon the ST3 filed for the material period, as admitted at para 10(iii) therein. It is only on reconciliation of the receipts declared in the ST3 against the actual receipts booked in their financial record on the various agreements examined, that the*

department concluded that there existed a variance between the receipts declared in ST3 and assessed to tax, and the actual detected from other sources; that the investigation uncovered facts leading to allegation of short discharge tax by suppressing values in the ST3. The natural presumption in demands arising from a departmental intervention is that of gross violations with intent to evade tax. However, in all fairness, I do find that the appellant issued communications to the jurisdictional Commissioner, seeking confirmation of the correctness of their understanding of the levy, post the period 01.07.2010 [Pages 147-152 of appeal book]; and there was admittedly no response shown to have been issued."

65. In this regard, Respondent submits that averment of impugned order that, lapse would not have come to light but for the investigation of department, standing alone cannot be accepted as a ground for confirming suppression, mis-statement or mis-declaration of facts. Any shortcomings noticed during the course of verification of records, itself cannot be reasoned that the deficiency was due to *mala fide* intention on the part of Noticee. In this regard relied on LANDIS + GYR LTD Vs CCE 2013 (290) E.L.T. 447 (Tri. - Kolkata).

66. Respondent submits that the impugned Order-in-Appeal itself has accepted the fact that the Notice has relied on ST-3 return which shows that there is no suppression of facts from Respondent. Further, the difference between the amounts disclosed in the ST-3 returns and

actual receipts is for the reasons explained in the preceding Para's such as land development charges and amount received for semi-finished flats. As the Respondent is under bonafide belief that the above referred charges are not taxable they have not paid service tax on the same therefore the same shall not be taken as ground to invoke extended period of limitation.

67. Respondent submits that the allegation of the Order-in-Appeal that no confirmation is taken from the department thereby invoking the extended period of limitation is not correct as the Appellant is under bonafide belief and such bonafide belief is supported by various provisions and case laws as explained in the preceding Para's.

68. Respondent submits that the impugned order-in-Appeal has rejected the case laws relied on by the Respondent by simply stating that they will not help the respondent but has not given any reasons why the said case laws cannot be considered in the instant case. This shows that the impugned order is an un-reasoned order therefore the Order-in-Appeal to that extent need to be set aside.

Interpretation is involved

69. TheRespondent submits that present SCN and order arises due to the difference of interpretation of provisions between Respondent & revenue. Further various letters were filed before department authorities, who never objected/responded to the compliance made by Respondent. In this regard, it is submitted that not objecting the

compliance made & taking nearly 6 months time after investigation to arrive their view/conclusion fortifies that subject matter **is plausible for different interpretations and involves in complexities in the determination of taxability. Thus it is the pure case of interpretational issue under which circumstances larger period of limitation cannot be invoked.** In this regard reliance is placed on CCE v. Poonam Plastics Industries 2011 (271) E.L.T 12 (Guj);

70. Respondent submits that merely because Respondent chooses an interpretation beneficial to him, malafide intension to evade payment of service tax cannot be attributed on part of the assessee accordingly larger period of limitation is not invokable. In this regard reliance is placed on Rangsons Electronic Solutions (P) Ltd v. CCE 2014 (301) E.L.T. 696 (Tri. - Bang.);

Returns filed regularly

71. Respondent submits that Para 6 of the OIA alleges that *"The department cannot presume that the identical activity is undertaken by the appellant bothas CRC simplicitor and WCS composite as the ST-3 provides no clue in this direction; and requires an intervention to ascertain the factual matrix. Hence the plea that ST-3 was filed, in contest of limitation, is rejected"*

72. In this regard Respondent submits that based on the understanding and the correspondence with the department, Respondent has duly paid the tax liability and filed the statutory returns. Further, the impugned notice has been issued based on the figures mentioned in the

ST-3 returns. That being a case the allegation of the impugned order-in-Appeal is baseless.

73. Respondent submits that they regularly paid service tax and duly filling ST-3 returns showing the all these particulars as required/permitted in the format prescribed in this behalf (Form ST-3 specified by CBEC). If the Respondent wants to suppress the fact with intent to evade the payment of taxes, they might not have disclosed the same in ST-3 returns. Further allegation that Respondent has not disclosed the relevant details/information to the department is not factually correct and requires to be set aside. In this regard, Respondent wishes to rely on the following judgments wherein it has been held that if disclosure of amounts received/charged towards impugned activity is made in ST 3 Returns, the extended period of limitation cannot be invoked:

a. Shree Shree Telecom Pvt Ltd., Vs. CCE Hyderabad [2008 (232) E.L.T. 689 (Tri. - Bang.)

b. Sopariwala exports pvt. Ltd v. CST 2014(36) S.T.R. 802 (Tri. - Ahmd.)

c. Bajaj Hindusthan Ltd v. CCE 2014 (33) S.T.R. 305 (Tri. - Del.)

Matters referred to larger bench and view supported by court decisions:

74. Respondent submits that as state supra various matters involved in the issue were referred to the larger bench. When the matter(s) were referred to the larger bench, the extended period of limitation cannot be invoked. Relied on the following:

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a. Continental Foundation Jt. Venture v. CCE, Chandigarh-I [2007 (216) E.L.T. 177 (S.C.)

b. J.R. Construction CO. v. CCE & ST 2016 (41) S.T.R. 642 (Tri. - Del.)

c. Megafine Pharma Pvt Ltd Vs CCE & ST 2014-TIOL-1312-CESTAT-AHM

d. CCE v. Mapro India Ltd 2015-TIOL-2554-CESTAT-MUM

75. When the issue was disputable and at one point of time, the view of the courts was in favor of the assessee, the question of invocation of the extended period of limitation does not arise. Relied on CCE v. Saurashtra Cement Ltd 2016-TIOL-365-HC-AHM-CX

76. Respondent submits that long list of familiar judicial pronouncements holding impugned two grounds of non-payment of Service Tax and failure to file correct ST-3 returns by themselves totally inadequate to sustain the allegation of willful misstatement/suppression of facts. Relied on Punj Lloyd Ltd. V. CCE & ST 2015 (40) S.T.R. 1028 (Tri. - Del.)

77. Respondent submits that they are under the bonafide belief that compliance made by them not in accordance with the law and whatever believed to be paid was paid. It is well settled legal position that suppression of facts cannot be attributed to invoke the longer period of limitation if there is bonafide belief. Same was flown from the following:

a. Padmini Products v. Collector – 1989 (43) E.L.T. 195 (S.C.)

b. Commissioner v. Surat Textiles Mills Ltd. — 2004 (167) E.L.T. 379 (S.C.)

Other cases:

78. TheRespondent submits that expression "suppression" has been used in 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 payment of duty.** Relied on Continental Foundation Jt. Venture CCE, **2007 (216) E.L.T 177 (S.C)**

79. Respondent submits that the show cause notice proposed demand by the invocation of the extended period of limitation only on the ground that Respondent has suppressed the details to Central Excise 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** - the 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.

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80. Intention to evade payment of tax is not mere failure to pay tax. It must be something more i.e. that assessee must be aware that tax was leviable/credit was inadmissible and he must act deliberately avoid such payment of tax. Evade means defeating the provision of law of paying tax and it is made more stringent by the use of word 'intent'. Where there was scope for doubt whether the tax is payable or not, it is not 'intention to evade payment of tax'. reliance is placed on Tamil Nadu Housing Board v. CCE, 1994 (74) ELT 9 (SC)

81. Mere non-payment/short payment of tax per se does not mean that Respondent has willfully contravened the provisions with the intent to evade payment of tax. in this regard reliance is placedon **Uniworth Textiles Ltd. v. Commissioner 2013 (288) E.L.T. 161 (S.C.)** wherein it was held that *"The conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts is, in our opinion, untenable. If that were to be true, we fail to understand which form of non-payment would amount to ordinary default? Construing mere non-payment as any of the three categories contemplated by the proviso would leave no situation for which, a limitation period of six months may apply. In our opinion, the main body of the Section, in fact, contemplates ordinary default in the payment of duties and leaves cases of collusion or willful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the Appellant as fit for the applicability of the proviso."*.

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82. The Respondent 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 LEDER FX Vs DCTO 2015-TIOL-2727-HC-MAD-CT; Jindal Vijayanagar Steel Ltd. v. Commissioner — 2005 (192) E.L.T. 415 (Tri-bang);

In Re: Cum-tax benefit under Section 67 should be extended:

83. Respondent submits that the Appellant vide Para I (e) contended that *"Further, the assessee are well aware of the statutory provisions and are collecting Service Tax on the agreements entered for constructions. The assessee intentionally evaded the service tax on "Land Development Services" and "Other Taxable Services" Hence, extending the cum-tax benefit appears to be not proper"*

84. In this regard, Respondent submits undisputedly whatever collected has been duly remitted to the government and entire impugned demands raised wherein Respondent did not collect the same from customers. In such circumstances, the contentions of the revenue does not hold water and deserved to be dismissed.

85. Respondent submits that in light of the statutory backup as mentioned above and cases where it was held that when no service tax is collected from the customers the assessee shall be given the benefit of paying service tax on the cum-tax basis

a. Jani & Co. vs. CST 2010 (020) STR 0701 (Tri.-Ahmd)

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b. Municipal Corporation of Delhi vs CST, Delhi 2009 (016) STR 0654 Tri.-Del

c. Omega Financial Services Vs CCE, Cochin 2011 (24) S.T.R 590

d. BSNL Vs CCE, Jaipur 2011 (24) S.T.R 435 (Tri-Del).

In Re: Interest and penalties are not payable/imposable:

86. Without prejudice to the foregoing, Respondent submits that when service tax is paid on time, the question of interest & also penalties does not arise.

87. Without prejudice to the foregoing, Respondent submits that all the grounds taken for ***"In Re: Extended period of limitation is not invokable"*** above is equally applicable for the penalty as well.

88. As submitted supra, there is no intention to evasion of tax and what are all believed to be payable was paid within time, which is undisputed. Hence no penalty shall be imposed to that extent.

89. The Respondent submits that the impugned show cause notice had not discharged burden of proof regarding the imposition of the penalty under Section 78 of the Finance Act, 1994. In this regard wishes to rely on the judgment in the case of Indian Coffee Workers' Co-Op. Society Ltd Vs C.C.E. & S.T., Allahabad 2014 (34) S.T.R 546 (All) it was held that ***"It is unjustified in absence of discussion on fundamental conditions for imposition of penalty under Section 78 of Finance Act, 1994".***

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90. Respondent submits that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the bonafide belief that the offender is not liable to act in the manner prescribed by the statute. Relied on Hindustan Steel Ltd. v. State of Orissa —1978 (2) E.L.T. (J159) (S.C.)

91. The Respondent submits that as submitted supra there were favorable judgments holding that **service tax is not at all payable and there was confusion existed at such point of time and the issue involved interpretation of provisions and law is at nascent stages and courts expressed different views**. Therefore the penalties cannot be imposed. Relied on CCE Vs Gujarat Narmada Fertilizers Co. Ltd 2009 (240) E.L.T 661 (S.C).

92. It is further submitted that when schemes of 'Extraordinary taxpayer friendly' and VCES was introduced to waive the penalty when assessees who did not at all comply with service tax law can be given immunity provided they pay service tax along with appropriate rate of interest, no reason why law-abiding assessee who had got himself registered more or less in time and started paying service tax, shall be denied benefit of waiver of penal provisions. In this regard relied on Commissioner v. R.K. Electronic Cable Network — 2006 (2) S.T.R. 153 (Tribunal).

93. Further Respondent is new to the service tax law and not much conversant with the provision of service tax and whatever believed to be taxable, same was assessed without any department intervention. In

this background, no penalty shall be imposed. Relied on Sundeep Goyal and Company v. Commissioner — 2001 (133) E.L.T. 785 (Tribunal).

94. Respondent submits that impugned SCN and order proposed/confirmed to impose penalty u/s. 77 of Finance Act, 1994 citing delayed registration. In this regard, it is submitted that they had registered with department vide STC No. AAHFK8714ASD001 w.e.f. 25.04.2010 (copy of ST-2 enclosed as annexure __) and now it is settled law that builders/developers are not liable for service tax upto 30.06.2010 and the same position was clarified by CBEC in its circulars & confirmed judicially also. That being a case, Respondent registered well within the time limit as per Section 69 of Finance Act, 1994 in fact before they become liable. Therefore, no penalty can be imposed u/s. 77, ibid.

<u>Benefit of Section 80 should be extended:</u>

95. Respondent submits that alleged short/non-payment of service tax was due to various reasons *inter alia*

a. Given understanding that compliance made by Respondent is in accordance with the law;

b. Whatever believed as taxable was duly paid voluntarily;

c. Various letters/disclosures were made to the department informing their compliance and requested for confirmation also;

d. There were divergent views of Courts over the classification of indivisible contracts, taxability of transaction involving immovable property etc.,;

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e. There was enough confusion prevalent on the applicability of the Service tax among the industry;

f. Matters were referred to the larger bench at various instances;

All the above can be considered as reasonable cause and waiver of penalty can be granted in terms of section 80 of Finance Act, 1994. Relied on **CST, Vs Motor World 2012 (27) S.T.R 225 (Kar)**

96. Respondent submits that Para 12 of the OIA stated that *"The plea for waiver under Section 80 cannot be considered at this juncture since the provision has been omitted from the statue with effect from 14.05.2015 by Sec 116 of the Finance Act 2015, without any saving/repeal in respect of existing impositions"*

97. In this regard, Respondentsubmits that above finding ignored the Article 20(1) of Constitution of India which reads as under:

*"**20.** (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."*

98. Respondent submits that section 80 was omitted by the Finance Act, 2015 only (with prospective effect) and the subject period is prior to such omission. Therefore, at the time of disputed period the waiver

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under section 80 is available therefore finding of impugned OIA is not valid as it contrary to the constitution.

99. Further according to Section 6 of the General Clause Act, 1897, it is clear that unless a different intention appears, the repeal shall not affect any penalty, forfeiture or punishment incurred of any offence committed against any enactment so repealed. Therefore the essential idea of a legal system is that current law should govern current activities.Respondent submits that several grounds are urged in the subject appeal, in this regard, Respondent wishes to communicate that **all grounds are without prejudice to one another.** Reliance is placed on the decision in case of Bombay Chemicals Pvt Ltd Vs Union of India 1982 (10) E.L.T 171 (Bom)

100. Respondent Craves leave to alter, add to and/or amend the aforesaid submissions.

101. Respondent wishes to be heard in person before passing any order in this regard.

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Signature of Respondent

PRAYER

Wherefore it is prayed:

a. To hold that Appeal filed by the Revenue is to be rejected;

b. To set aside the impugned OIA to the extent aggrieved by Respondent *qua* Assessee;

c. To hold that 'land development charges' are not liable for service tax under the category 'Site Formation and Clearance Service';

d. To hold that Service tax is not liable to be paid on amount collected towards sale of semi-finished flat;

e. To hold that 'common Amenities' are to be assessed as part of 'works contract' and taxing at full rate is not required;

f. To hold that other charges such as corpus fund, electricity deposit are not liable for service tax;

g. To hold that cum-tax benefit needs to be extended;

h. To hold that extended period of limitation shall be not invoked;

i. To hold that interest and penalties are not imposable;

j. Any other consequential relief be granted.

Place: Hyderabad
Date: __.04.2018

KADAKIA AND MODI HOUSING SEC'BAD

Respondent

VERIFICATION

I Soham Modi, Partner of M/s.Kadakia and Modi Housing, Respondent herein do declare that what is stated above is true to the best of our information and belief.

Verified today the 17th day of April 2018.

Place: Hyderabad

KADAKIA AND MODI HOUSING SEC'BAD

Respondent

DECLARATION

I/We, Soham Modi, Partner of Respondent, do hereby declare that subject matter not previously filed or pending before any other legal forum including Hon'ble High Courts/Supreme Court.

The Respondent further declares that they have not previously filed any appeal, writ petition or suit regarding the impugned order, before any court or any other authority or any other Bench of the Tribunal."

Declared today the 17th day of April, 2018 at Hyderabad

KADAKIA AND MODI HOUSING SEC'BAD

Respondent

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
1st FLOOR, HMWSSB BUILDING, REAR PORTION, KHAIRATABAD,
HYDERABAD- 4

Sub: Filing of cross-objections to the appeal filed by department vide Appeal No. ST/30115/2018-ST [DB]

I Soham Modi, Partner **of M/s. Kadakia and Modi Housing, Respondent,** hereby authorize and appoint Hiregange& Associates, Chartered Accountants, Bangalore or their partners and qualified staff who are authorized to act as an authorized 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-authorized 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 17th day of April 2018 at Hyderabad.

Signature

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: 17.04.2018

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

For Hiregange & Associates
Chartered Accountants

Venkata Prasad P
Partner (M. No. 236558)

I Partner/employee/associate of M/s Hiregange & Associates duly qualified to represent in above proceedings in terms of the relevant law, also accept the above said authorization and appointment.

Sl No.	Name	Qualification	Mem./Roll No.	Signature
01	Sudhir V S	CA	219109	
02	Lakshman Kumar K	CA	241726	

ANNEXURE 1

A2

716

Speed post/Registered/Ad

Outward No

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH: HYDERABAD
1st Floor, HMWSSB Building, Rear Portion, Khairathabad, Hyderabad
Tele No: 040-23312247, Fax No: 040-23312246

Appeal No. :ST/30115/2018-ST[DB]

To,

Kadakia And Modi Housing
No. 5-4-187/3 & 4, Second Floor
Soham Mansion, M G Road,
Secunderabad,
Telangana-500003

MODI PROPERTIES PVT. LTD. INWARD No. 541 Date 01/02/18 Sign SEC'BAD

(Respondent)

Enclosed: Appeal Folder
Subject - ST/30115/2018 - ST[DB] Arising out of HYD-SVTAX-000-AP2-0210-17-18-ST Dt. 14/09/2017
Commissioner of Central Tax--Secunderabad - G S T

(Appellant)

VS

Kadakia And Modi Housing
Sir

(Respondent)

1. I am to forward herewith a copy copy each of the memorandum of appeal(s) detailed above and to inform you that the appeal(s) will be heard by Regional bench of the tribunal in Hyderabad in due course

2. Please treat this as a notice under Section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Encl: Copy(ies) of Memorandum of appeal(s).

Yours Faithfully

Dated: 20/02/2018

Assistant Registrar
CESTAT, Hyderabad

Copy To:
1. S.D.R. (copy of appeal enclosed)
2. Appellant:

Commissioner of Central Tax--Secunderabad - G S T
Secunderabad Commissionerate
KENDRIYA SHULK BHAVAN,L.B STADIUM ROAD,
BASHEERBAGH
HYDERABAD
TELANGANA-500004

3. Advocate(s)/ Consultant(s):

4. Office Copy