

Approved by 16/12/17

**BEFORE THE OFFICE OF THE COMMISSIONER OF SERVICE TAX,
SERVICE TAX COMMISSIONERATE, 11-5-423/1/A, SITARAM PRASAD
TOWER, RED HILLS, HYDRABAD-500 004**

Sub: Miscellaneous Application under Section 74 of the Finance Act, 1994 for rectifying the mistake apparent on Order In Original No. HYD-SVTAX-000-COM-144-16-17 dated 15.12.2016-M/s. Greenwood Estates, Secunderabad

The Applicant herein and craves to submit the following for your kind consideration as under:-

The facts and circumstances leading to filing this application enumerated as follows.

1. Show Cause Notice (SCN) No.131/2015 Adjn (ST) (Commr) [C.No. IV/16/197/2011 ST Gr. X] dated 21.10.2015 was issued to Applicant proposing the demand of Rs.69,13,733/- on "works contract services" for the period of "January 2014 to March 2015" vide Para 7 (i) read with Annexure to the SCN. The extract of Annexure of SCN is as follows

<u>Before OC</u>		<u>After OC</u>		Total tax payable
Gross Receipt	21,212,565	Gross Receipt	12,30,45,921	14,42,58,486
Less VAT & Registration	3,74,517	Less VAT & Registration	40,43,083	44,17,600
Net Receipt	20,838,048	Net Receipt	11,90,02,838	13,98,40,886
Tax Rate	4.944%	Tax Rate	4.944%	
Total tax payable	10,30,233	Total tax payable	58,83,500	69,13,733

2. SCN (vide Para 2) proposed the impugned service tax demand on the sole allegation that "services rendered by them after execution of sale deed against agreements of construction to each of their customers to whom the

land was already sold vide sale deed are taxable services under "works contract service"

3. From the above, it is clear that SCN proposed to demand service tax on the amounts received towards construction agreements alone and not on the amounts received towards sale deed. However, vide Annexure to the SCN wherein demand of service tax was quantified by impugned SCN, it is observed that demand of service tax has been proposed based on gross amount received which includes amount received towards "**sale deed**" **also**. Thus there is error in SCN in as much it proposed to include the value of sale deeds within the ambit taxable value while alleging service tax is liable only after execution of sale deed i.e. on construction agreements.
4. Applicant submitted their defence reply and vide Para 10 of the SCN reply, a comparative table was given (given below for ready reference) showing that aforesaid error in quantification of demand by impugned SCN and pleaded that applicable service tax has been paid on the construction agreements thereby paying service tax on activity as proposed by impugned SCN and there is no short payment in fact there was excess payment.

Particulars	As per Noticee	As per SCN
Gross Receipts	14,45,85,486	14,42,58,486
Less Deductions		
Sale Deed Value	13,51,90,266	
VAT, Registration charges, stamp duty and other non taxable receipts	51,55,789	44,17,600

Taxable amount	42,39,431	13,98,40,886
Abatement @ 40%	16,95,772	5,59,36,354
Service Tax @ 12.36%	2,09,597	69,13,733
Actually Paid	3,82,643	0
Balance Demand	(1,76,046)	69,13,733

And also submitted the supporting documents for the above (copy of SCN reply submitted are enclosed as annexure __ along with this application.

5. The aforesaid error of including 'sale deed' amounts in the taxable was also specifically highlighted during the course of personal hearing (copy of personal hearing record is enclosed as annexure __)
6. Subsequently, subject Order In Original was passed wherein vide Para 13.2 categorically given finding that *"no service tax been demanded on the sale deed value in the light of Board's circular dated 29.01.2009. After execution of sale deed, the assessee had entered into another agreement with the customer for completion of the said flats and the service tax demand is confined to this agreement"*
7. Further vide Para 13.6 stated that *"I find that the demand of service tax has been made after excluding the sale deed value. the total amount collected from a customer minus sale deed value has been as gross amount charged for the works contract"*
8. Though subject OIO states that value of sale deed was excluded but same was not actually excluded as seen from the comparative chart given in the preceding Para's of this application.

9. Hence the applicant is of the view that there is a mistake apparent on record to this extent, which may be rectified by amending the order in terms of Section 74 of Finance Act, 1994. It is humbly prayed to amend the order to rectify the aforesaid Order in Original so as to exclude the value of 'sale deed' from the taxable value.
10. Applicant wish to be heard in person through our authorised representative before any decision is taken in this matter.
11. Therefore it is humbly prayed to amend the order to rectify the Order In Original so as to consider the fact of actual tax liability & payment thereof.

For M/s. Greenwood Estates

Authorized Signatory

PRAYER

Therefore it is humbly prayed to amend the order to rectify the order In Original to give effect that deduction of sale deed value from gross receipt.

Place: Hyderabad

Date: 06.04.2017

Applicant

VERIFICATION

I, _____, _____ M/s. Greenwood Estates, Hyderabad the Appellant herein do declare that what is stated above is true to the best of our information and belief.

Verified on 06th day of April 2017

Place: Hyderabad

Applicant

**BEFORE THE COMMISSIONER OF SERVICE TAX, SERVICE TAX
COMMISSIONERATE, 11-5-423/1/A, SITARAM PRASAD TOWER, RED
HILLS, HYDERABAD-500 004**

Sub: Order in Original No. HYD-SVTAX-000-COM-144-16-17 dated 15.12.2016 issued to M/s. Greenwood Estates

I, _____, _____ of M/s. Greenwood Estates, Hyderabad hereby authorize and appoint Hiregange & Associates, Chartered Accountants, Hyderabad or their partners and qualified staff who are authorised to act as authorised representative under the relevant provisions of the law, to do all or any of the following acts: -

- a. 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.
- b. 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.
- c. To Sub-delegate all or any of the aforesaid powers to any other representative and I/We do hereby agree to ratify and confirm acts done by our above authorised representative or his substitute in the matter as my/our own acts, as if done by me/us for all intents and purposes.

This authorization will remain in force till it is duly revoked by me/us.

Executed this 06th day of April, 2017 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: 06.04.2017

**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-5000034**

**For Hiregange & Associates
Chartered Accountants**

**Sudhir V S
Partner (M. No. 219109)**

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	Membership No.	Signature
1	Shilpi Jain	CA	221821	
2	Venkata Prasad P	CA	236558	