केन्द्रीयकरआयुक्तकाकार्यालय
OFFICE OF THE COMMISSIONER OF CENTRAL TAX
सिकंदराबादजीएसटीआयुक्तालय SECUNDERABAD GST COMMISSIONERATE
जी°एस°टी°भवन :: एलबीस्टेडियमरोड :: बशीरबाग :: हैदराबाद 500 004
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Email: adjudication3@gmail.com

OR No.71/2018-19-GST-Sec-Adjn-JC(ST) Date: 29.07.2021

ORDER IN ORIGINAL NO: 07 / 2021-22-SEC-ADJN- ADC (ST)

[Passed by G. Rashmi, Additional Commissioner of Central Tax & Central Excise, Secunderabad GST Commissionerate in respect of M/s. Greenwood Estates, Secunderabad]

p`stavanaa
PREAMBLE

1. निजीप्रयोगकेलिए इसेजिसव्यक्तिकोजारीकियागया यह प्रतिबिनामूल्यकेदीजातीहै

This copy is granted free of charge for the private use of the person to whom it is issued.

2. जोभीव्यक्तिकेन्द्रीय उत्पाद शुल्कअधिनियम, 1944 केअंतर्गत धारा 35 ह्य1ह संशोधितसेदुषप्रभावितहो, इसप्रकार प्राप्तआदेशनिर्णय क खिलाफआदेशकी प्राप्तिके 60 दिन के भीतरआयुक्त ह्य अपीलह् मुख्यालयकार्यालय, 7 वॉतल, एल.बी. स्टेडियमरोड, बशीरबाग, हैदराबाद 500 004 कोअपनीअपीलप्रस्तुतकरसकताहै ।

Under Sec.85 of the Finance Act, 1994, as amended, any person aggrieved by this order can prefer an appeal within 60 days from the date of communication of such order/decision to the Commissioner (Appeals), Hqrs., Office, 7th floor, L.B.Stadium Road, Basheerbagh, Hyderabad – 500 004.

3. धारा 35 के उप खण्ड ह्य1ह केअंतर्गत आयुक्त ह्यअपीलह कोकीजानेवालीअपीलफार्म ई .ए .1 मेंहोऔर इसकीजॉचनिर्धारितपद्धतिकेअनुसारकीजानीचाहिए ।

An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, where penalty alone is in dispute.

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

4. एस टी ४ फार्म में की गई अपील अनुलिपि में प्रस्तुत की जानी चाहिए और उसके साथ जिसने निर्णय या आदेश विरूध्द अपील की जा रही हो। उसकी एक प्रति भी संलग्न की जानी चाहिए।

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

5. अपील और जिसने निर्णय या आदेश के विरूध्द अपील की जा रही हो उस आदेश की प्रति पर भी समुचित मूल्य के अदालती टिकट लगाए जाने चाहिए.

The appeal as well as the copy of the decision or order appealed against must be affixed with their fee stamp of the appropriate amount.

Sub:-Service Tax – Service Tax - Non-Payment of Service Tax on Taxable Services rendered by M/s. Greenwood Estates, Hyderabad for the period April 2015 to June 2017–Order Passed- Reg.

* * * *

1. BRIEF FACTS OF THE CASE:

M/s. Greenwood Estates, #5-4-187/3 & 4, II Floor, Soham Mansion, MG Road, Secunderabad-500 003 (here-in-after referred as "M/s Greenwood" or "the assessee(s)") are engaged in providing "Works Contract Service". The assessee is a registered partnership firm and got themselves registered with the department vide Service Tax Registration Number AAHFG0711BST001.

2. NON-PAYMENT OF SERVICE TAX ON TAXABLE SERVICES RENDERED:

2.1 As seen from the records, it was observed that the assessee entered into i) sale deed for sale of undivided portion of land together with semi finished portion of the flat and ii) agreement for construction, with the customers. On execution of the sale deed the right in a property got transferred to the customer, hence the construction service rendered by the assessee to their customers under agreement of construction is classifiable under " Works Contract Service" under Section 65 (105) (zzzza) under Service tax as there exists service provider and receiver relationship between them. As there is transfer of property in goods in execution of the said construction agreements, it appeared that the 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 are taxable services under "Works Contract Service".

2.2. Accordingly, for the period covering upto March 2015, the following Show Cause Notices and orders had been issued to the assessee for non-payment of service tax:-

Sl No.	SCN O.R. No. Date	Period covered	Amount of Service Tax demanded in Rs.	Status
1	HQPOR No. 77/2010-Adjn (ST), dated 21-5-2010	Jan - Dec, 2009	9,47,737/-	Confirmed vide OIO No. 47/2010-ST, dt. 24-11-2010. Party's appeal was dismissed vide OIA No. 11/2011 (H-II) S.Tax, dated 31-1-2011. CESTAT Granted Stay on 25.04.2012 vide stay Order No.666 & 667/2012 without pre deposit condition. Vide Misc Order No.21860-21877/2014 dt.31.07.2014 extended stay for six months from 31.07.2014.
2	OR No. 61/2011, dt. 23-04-2011	Jan – Dec, 2010	48,00,391/-	Confirmed vide OIO No. 51/2012- Adjn (ST)(ADC), dated 31-8-2012. Ordered de novo by the Commissioner (Appeals) vide OIA No. 39/2013 (H-II) S.Tax for

				re-quantification of the Service Tax payable. Denovo OIO No. 83/2016-ADC dated 09.06.2017 served on the assessee on 02.10.2017.
3	OR No. 52/2012-Adjn (Addl.Commr.), dt. 24-4-2012	Jan – Dec, 2011	46.81.850/-	Confirmed vide OIO No. 51/2012- Adjn (ST)(ADC), dated 31-8-2012. Ordered de novo by the Commissioner (Appeals) vide OIA No. 39/2013 (H-II) S.Tax for re-quantification of the Service Tax payable. De novo OIO No. 83/2016-ADC dated 09.06.2017 served on the assesses on 02.10.2017.
4	O.R.No.83/2013 Adjn. (ST) ADC dated 02.12.2013	Jan – June, 2012	16,53,856/-	An amount of Rs.15,64,777/- towards ST has been confirmed vide 0I0 No.HYD-SVTAX-000-COM-02-14-15 dated: 20.02.2015.
5	O.R.No.156/2014-Adjn (ST) (Commr) dated:25-09-2014.	July, 2012 – March, 2014	92,38,975/-	An amount of Rs.89,57,783/- only towards ST has been confirmed for the period July, 2012 to December, 2013 vide 010 No.HYD-SVTAX-000-COM-02 - 14- 15 dated: 20.02.2015.
6	O.R.No. 131/2015-Adjn.(ST)(Commr) dt. 21.10.2015	Jan, 2014 – March, 2015	69,13,733/-	Confirmed vide OIO No.HYD-SVTAX-000-COM-144-16-17 dated 15.12.2016 by the Commissioner of Service Tax.

2.3. Now for the period April 2015 to June 2017 , as per the information furnished by the assessee vide their letter dated 15.02.2018 along with statements, it appears that the assessee had rendered services for a taxable value of Rs. 7,81,36,512/- (Rupees Seven Crore Eighty One Lakh Thirty Six Thousand Five Hundred Twelve only). After deduction of VAT of Rs.38,59,385/- the taxable value works out to Rs.7,42,77,127/- on which service tax (including Education and S & H.E cess) worked out to be Rs.42,01,762/- as per the relevant Annexure to the Notice.

2.4 In view of the foregoing ,M/s Greenwood Estates were issued with a Show Cause Notice under section 73 (1A) of the Finance Act, 1994 by the Assistant Commissioner of Central Tax, Secunderabad Division vide file C. No. V/24/15/07/2018-Adjn, dated 17.042018 requiring them to show cause as to why:

(i) An amount of Rs.42,01,762/- (Rupees Forty Two Lakh One Thousand Seven Hundred and Sixty Two only) including Education Cess and SHE Cess, should not be demanded from them on the "Works Contract Services" rendered by them during the period April, 2015 to June, 2017 in terms of Section 73 (1) of the Finance Act , 1994; on the grounds discussed *supra;* and

ii) Interest on the amount at Sl.No. (i) above at appropriate rates should not be demanded under Section 75 of the Finance Act 1994;

(iii) Penalty should not be imposed on them under Section 76 of the Finance Act 1994;

(iv) Penalty should not be imposed on them under Section 77 of the Finance Act, 1994.

3. **STATUTORY PROVISIONS FOR ISSUE OF NOTICE:-**

3.1 The Notice was issued under Section 73 (1A) of the Finance Act, 1994 which was inserted in Section 73 Vide Finance Act, 2012, which reads as under:

SECTION 73 (1A) - *Notwithstanding anything contained in sub-section (1) (except the period of eighteen months of serving the notice for recovery of service tax), the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.*

3.2. The grounds as explained in previous show cause cum demand notices issued are also applicable to the present case. Hence, the present statement of demand/show cause notice is issued in terms of Section 73 (1A) of the Finance Act, 1994 for the period April, 2015 to June 2017.

4. CORRIGENDUM TO THE SHOW CAUSE NOTICE:

4.1 Also Corrigendum to above Show Cause Notice was issued vide C.No.V/24/15/07/2018-Adjn (PF), dt 26.02.2019. Vide the above said corrigendum ,in respect of para 7 of the Show Cause Notice for the words "are hereby required to show cause to the Assistant Commissioner of Central Tax & Central Excise, Office of the Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad GST Commissionerate, D.No.2-4-416 & 417, 1st Floor, Salike Senate, Ramgopalpet, M.G. Road, Secunderabad" are substituted with "are hereby required to show cause to the Joint Commissioner, Central Tax. Secunderabad GST Commissionerate, 4th Floor, GST Bhavan, Basheerbagh Hyderabad" and made the Notice answerable to the Joint Commissioner, Central Tax, Secunderabad GST Commissionerate.

5. REPLY TO SHOW CAUSE NOTICE:

5.1 The assessee furnished reply to the Show Cause Notice vide their letter dated 14.06.2018 and made the following submissions:-

5.2 The assessee stated that during the disputed period for which present notice has been issued, the assessee has undertaken the following type of transactions:

i. <u>Sale of Flats before receipt of Occupancy Certificate (OC):</u> In these transactions, the assessee said that he is executing sale deed for semi-finished flat along with an agreement of construction and said that Sale deed is registered and appropriate 'Stamp Duty' has been discharged on the same and is discharging service tax on agreement of construction value after availing deduction towards sale deed value and non-taxable receipts.

ii. <u>Sale of Flats after receipt of Occupancy Certificate (OC):</u>The assessee stated in these transactions, in most of the cases sale deed is executed for the entire sale consideration and in some cases **<u>Sale deed is being executed for semi-finished construction along with an agreement of construction.</u>** and said that the flats sold after OC is not leviable to service tax, he has not paid any service tax on the same but paid service tax only on amounts received towards construction.

5.3 The assessee submitted details of flats booked after OC and before OC and amount received as follows:-

Particulars	No of Flats
No of flats booked before receipt of OC (Taxable as the flats are booked before OC)	16
No of flats booked after receipt of OC (Not-taxable as the flats are booked after OC)	38
Total	**54**

Period	Total Amount Received	Amount towards sale deed and other non-taxable receipts	Amount towards construction Agreement and Taxable receipts	Service Tax on Construction Agreement
Jan'15 to Dec'15	3,86,26,319	3,80,63,528	5,62,791	29,272
Jan'16 to Dec'16	3,92,81,603	3,84,48,293	8,33,310	49,174
Jan'17 to June'17	2,28,590	2,04,898	23,147	1,389
Total	**7,81,36,512**	**7,67,16,719**	**14,19,248**	**79,835**

5.4 The assessee stated that the present SCN was issued with error of quantifying the proposed demand of service tax in treating the sale deed values & other taxes as taxable value of services (annexure to SCN). The assessee stated that SCN continued to make similar allegations as like in previous notices that when amount received towards construction agreement (in excess of the sale deed) is alone is liable for service tax under the category of 'works contract service' as per para 2 of SCN, however, while quantifying the demand, the SCN inadvertently included values of 'sale deed' in the taxable value.

5.5 The assessee also submitted that, during the subject period, most of the **flats were booked after the date of occupancy certificate and sale deed is being executed for the entire sale value that is being a case no service tax is liable on the amounts received towards said flats since same is 'sale of immovable property' and said that it was specifically provided in Section 66E(b) of Finance Act, 1994 that service tax is not liable for the flats booked after OC date and stated that the proposal of present SCN to demand service tax on the flats booked after OC date is not sustainable and required to be dropped.**

The details of amounts received towards the flats booked before and after occupancy certificate are submitted by the assessee as under:

Total amount received during the subject period	Rs.7,81,36,512
Received towards the flats booked after OC	Rs.7,45,75,547
Received towards the flats booked before OC	Rs.35,60,965

The assessee also submitted the statement showing the flat wise details booked after OC date as well as booked before OC, the details of the amount received there from and the copies of OC's and alleged that service tax demand proposed on Rs.7,45,75,547/- received towards the flats sold after OC requires to be dropped on this count alone.

5.6 The assessee said that as seen from the operative part of SCN, it is clear that it is only sole allegation of SCN (Para 2) that construction agreements are subject to service tax under the category of "works contract", and no allegation has been raised to demand service tax on the sale deed value. Assessee however alleged that while calculating the demand of service tax on construction agreements, the quantification is based on gross amounts mentioned above for all the activities including amounts received towards the "sale deeds".

5.7 The assessee reiterated that the SCN represents an error in quantification of the demand and stated that once the apparent error in calculation is taken to its logical conclusion, the entire demand fails and therefore there is no cause of any grievance by the Department on this ground and the following quantification of the amounts is submitted by the assessee in this regard:-

Particulars	As per Noticee	As per SCN
Gross Receipts	7,81,36,512	7,81,36,512
Less Deductions		
Sale Deed Value (including the flats sold after OC date)	7,14,70,558	-
VAT, Registration charges, stamp duty and other non-taxable receipts	52,46,706	38,59,385
Taxable amount	14,19,248	7,42,77,127
Abatement @ 40%	5,67,699	2,97,10,851
Service Tax as applicable	79,835	42,01,762
Actually Paid	79,835	-
Balance Demand	-	**42,01,762**

5.8 Also the following broad lines of argument are submitted by the assessee:-

i. In all cases, the "sale deed" is entered into after the completion of the building and therefore the demand cannot be justified under the said entries.

ii. Till the stage of entering into a "sale deed", the transaction is essentially one of sale of immovable property and therefore excluded from the purview of Service Tax.

iii. In any case, the deeming fiction for construction services prior to completion cannot be classified under works contract services since doing the same would render Section 66E(b) of Finance Act, 1994 & Notification 26/2012 ST dated 20.06.2012 redundant.

If at all a view is taken that the value of "sale deed" is liable to service tax, the benefit of the above notification should be granted after reclassification of the service.

5.9 The assessee submitted that similar to the claim for exclusion of sale deed value, the value attributable to stamp duty, electricity etc., need to be reduced and stated that once the above deductions are allowed, the demand would be reduced to NIL.

5.10 The assessee had made mention of the following case laws in support to his claim:-

i. Commissioner of Central Excise (Appeals) and the Hon'ble CESTAT, Bangalore in the previous period has remanded the matter back to the adjudicating authority for re-quantification of the duty liability. However, the subject show cause notice has not considered this aspect and demanded service tax and submitted that that the proposition of the subject show cause notice demanding the duty is not sustainable and requires to be dropped.

ii. The assessee alleged that the grounds of the old period is not at all applicable for the new / subsequent period due to the substantial changes took place in the provisions of service tax and submitted that once SCN raises allegation/demand based on inapplicable provisions then such allegation/demand cannot sustain and relied on Maharashtra Industrial Development Corporation Vs CCE, Nasik 2014 (36) S.T.R. 1291 (Tri. - Mumbai) wherein it was held that *"With regard to the show cause notice in Appeal No. ST/85267/14 we find that the period involved is 1-10-2011 to 30-9-2012. In the said case, the demand is for two periods - one from 1-10-2011 to 30-6-2012 and the second is from 1-7-2012 to 30-9-2012* ***when the negative list came into effect but the show cause notice has been issued on the basis of definition of Management, Maintenance and Repair service has stood prior to 1-7-2012. Therefore, as post-1-7-2012 the provisions are not existing therefore, the demands for the period post-1-7-2012 are not maintainable"***

The assessee stated that the as subject SCN is issued without any allegations, the same has not proved the burden of proof of taxability, which is essential under new service tax law. Relied on United Telecom Ltd. Vs CST 2008 (9) S.T.R 155 (Tri-Bang); Jetlite (India) Ltd. Vs CCE 2011 (21) S.T.R 119 (Tri-Del).

5.11 The assessee said that an amount of Rs. 79,835/- has already paid towards service tax on the amounts received towards construction agreements and requested the Adjudicating authority to consider the same while passing the order and also to exclude the value of land from determination of service tax liability.

5.12 The assessee mentioned that as the he has not collected service tax from the buyer, the benefit of cum-tax u/s. 67(2) of Finance Act, 1994 requires to be given and claimed that that when service tax itself is not payable, the question of interest does not arise and stated that it is a natural corollary that when the principal is not payable there can be no question of paying any interest as held by the Supreme Court in Prathiba Processors Vs. UOI, 1996 (88) ELT 12 (SC). Similarly stated that penalty also cannot be imposed in absence of the any short payment as alleged in the SCN.

5.13 Assessee submitted that for the penalty proposed under section 77, the subject Show Cause Notice has not provided any reasons as to why how penalty is applicable under section 77 of the Finance Act, 1994. Further stated that the he is already registered under service tax under works contract service and filing returns regularly to the Department, penal provisions mentioned under section 77 is not applicable for the present case and said that as the subject Show Cause Notice has not considered these essential aspects, the proposition of levying penalty under Section 77 is not sustainable and requires to be dropped.

6. **RECORD OF PERSONAL HEARING:**

The representative of the assessee Shri. Venkata Prasad, C.A., attended the personal hearing on 17.05.2021 at 1100 hours and reiterated the points made in the written submission and requested to drop the proceedings. Since there required more clarity on the amount to be factored in for the purpose of quantification, another Personal hearing was held on 20.07.2021 @ 13:00 hrs and the representative explained the tabulations made by him in the worksheet and stated he has nothing more to add.

7. **DISCUSSIONS AND FINDINGS:**

7.1 I have carefully gone through the records of the case, the allegations made in the Show Cause Notice, written submissions made by the noticee and the submissions made during personal hearing held in the case. Since the issue is a periodical notice issued under Section 73(1A), firstly I would like to briefly state the issue under dispute. The issue has been there since 2009 wherein the assessee enters into i) sale deed for sale of undivided portion of land together with semi finished portion of the flat and ii) agreement for construction, with the customers. On execution of the sale deed the right in a property gets transferred to the customer, thereby the Department contended that the construction service rendered by the assessee to their customers under agreement of construction was classifiable under "Works Contract Service" as there exists service provider and receiver relationship between them and the sale deed value plus value w.r.t agreement for construction are taken for quantification of value for service portion of the works contract under the relevant rules. This periodical notice pertains to the period April, 2015 to June, 2017.

8. The undisputed facts of the case are that the noticee had entered in to two agreements with such prospective buyers – one whereby they agreed to transfer undivided share of land relating to the flats to be constructed on works contract basis and the second, whereby they agreed to undertake construction of flats

and transfer them to buyers on terms specified which included payment of sums due at different stages of construction of the flats. The total consideration is received in to two parts- one representing the value of undivided share of land and the other the taxable value of construction services provided. The assessee seemed to have determined the taxable value of the works contract services provided to be 40% of the value of such services earmarked (after excluding land value) and claimed it to be in accordance with Rule 2(A) (ii) of the Service Tax (Determination of Value) Rules, 2006 and paid service tax accordingly. The allegation in the notice is that they had short-paid service tax in contravention of Rule 2(A) (ii) of the Service Tax (Determination of Value) Rules, 2006 since the noticee did not include the value of the land as part of the total amount charged for the works contract while arriving at the taxable value.

9. Therefore the moot point is whether the modus of paying tax @ 40% abatement on agreement for construction alone without including the land value is proper under law. In this regard ,the noticee has submitted that the till the stage of entering into a sale deed the transaction is one of sale of immovable property and therefore excluded from purview of service tax .It is of significance to mention that Rule 2A(ii), which is relevant in determining taxable value of the service portion in the execution of works contract, came to be amended with retrospective effect by section 129 of the Finance Act, 2017 whereby the proviso to Rule 2A(ii)A was substituted/an additional one inserted/substituted for certain periods in the past/future as specified in the said section. The provisos are reproduced below for ease of reference:

"Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent of the total amount charged for the works contract.

Provided further that in case of works contract for construction of residential units having carpet area up to 2000 square feet and where the amount charged per *residential unit from service recipient is less than rupees one crore and the amount charged for the works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on twenty-five per cent. of the total amount charged for the works contract"*

9.1(i) It was provided by the said section 129 of Finance act,2017 that the aforesaid amendment was to be retrospectively effective during the period from 08.05.2013 to 31.03.2016.

(ii) Thereafter, w.e.f. 01.04.2016, both the above provisos were substituted with the following proviso.

"Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent of the total amount charged for the works contract"

9.2 The legal relevance of the amendments to Rule 2A(ii) as described above which were made retrospectively applicable to the period of demand raised in the instant notice is self-evident and does not need further re-iteration by me. It is unambiguously clear that while determining taxable value of the service portion involved in the execution of works contract, the value of goods used in execution of works and land value (undivided share of land in individual cases) shall be part of the total value from which abatement as permissible is to be deducted. The test therefore, in deciding the instant case, is to determine whether the amount charged for the services provided included the value of land apart from value of all goods used. It is evident from the record that the buyers in this case had paid a consolidated amount at prescribed intervals as per the agreements. It is further evident that there was no specified value for the undivided share of land assigned to each flat other than the amount assigned by the builder unilaterally for tax purposes. There is nothing in the agreements entered which had specified the value of land so specified and assigned. Therefore, irrespective of the fact that contracts/ agreements had separately been entered into between the noticee-builder and the buyers of apartments constructed by them or that there was bifurcation of the total consideration into two, the legal position relevant was that value under Rule 2A(ii)A of the Rules for the purposes of payment of tax on works contract services in this case was to be determined taking into account the total value of the works contract which included value of undivided share of land. Permissible abatement as provided in the proviso above was to be accounted for and accordingly tax liability ought to have been paid. But the notice has failed to do so resulting in short payment of tax. Further ,the noticee has not made any acknowledgment of the legal position after the amendments carried out to the law as referred above . There is nothing in the submission to suggest that the noticee had disputed the determination of value (ie inclusive of land value) as per the afore-said Rule 2A(ii) as was made retrospectively applicable to the period. Therefore, there is nothing as regards the law to be determined or interpreted in this case.

10. The noticee took the argument that they are not liable for payment of Service tax on those flats sold after completion certificate as per Section 66 E(b) of Finance Act 1994 and that after deduction of the same, they have paid the tax @ 40 % abatement on the remaining amounts received towards agreement for construction with customers .This is undisputedly a transaction involving execution of works contract and accordingly Section 66 E (h) of Finance Act 1994 ("service portion in the execution of a works contract") read with Rule 2A (ii) of the Service Tax (Determination of Value) Rules, 2006 are the relevant legal provisions in this instant case. The clauses under Section 66 E(b) are independent of the aforesaid provisions and I am therefore of the view the clauses therein cannot be branched off and appended to existing provisions under Rule 2A (ii) of the Service Tax (Determination of Value) Rules, 2006 to keep out the consideration of those flats where total consideration was received after completion certificate. Moreover, the said Rules are very clear that the total

amount charged for the works contract is to be taken for arriving at the taxable value after abatement. In view of the above facts and law, it is held that the indivisible total consideration received by noticee on account of assignment of right in undivided share of land and the construction services thereon provided would constitute the total value of services involved and should have been the basis for determining value under Rule 2A (ii) of Valuation Rules.

11. I find that the assessee has referred to "non taxable receipts" in his worksheet which he claims has to be deducted while determining the taxable value. In his submissions, he contends that VAT, registration charges, Stamp duty, electricity charges are to be deducted. I find that the notice itself has not taken VAT and registration charges for purpose of quantification of taxable value. Therefore it is not a bone of contention between the Department and the assessee. As regards other "non taxable receipts" as claimed by the noticee, he has not provided any documents except the worksheet. Without any other material facts on record, I am not in a position to examine the nature of the supposed non taxable receipts. The onus is on the noticee to provide supporting documents to substantiate his contention that these are not to be taken into consideration for determining the taxable value. They have failed to do so. Here, I must point out that under Rule 2A(ii), *total amount* charged for the work contract is to be taken for abatement and "total amount" has been defined under the said rules as "*sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of work contract ,whether or not supplied under the same contract or any other contract after deducting*

i)the amount charged for such goods or services ,if any

ii) the value added tax or sales tax ,if any levied thereon"

Going by the above explanation under the Rules, gross amount has to be taken into consideration. It is not in dispute these amounts were in the course of execution of works contract and I therefore hold that such receipts are to be treated as part of the gross amount charged and thus ought to be taken into account for quantification of taxable value under Rule 2A(ii).

12. Further, I find that the assessee has placed reliance on the decision by Hon'ble Tribunal in the case of Maharashtra Industrial Development Corporation Vs CCE, Nasik 2014 (36) S.T.R. 1291 (Tri. - Mumbai) wherein it was held that notice was issued on the definition of Management Maintenance and Repair Service as it existed prior to introduction of negative list and with the provisions no longer existing post 01.07.2012, the demand requires to be set aside. I find that there is a reference to classification under Works Contract Service under Section 65(105) (zzza) in this notice which post negative list has been included under declared Services in terms of Section 66 E(h) of Finance Act 1994. Therefore, it cannot be said to be on the same footing as the case referred above by the noticee. The over sight error in keeping to the earlier classification does not in any way impact the core issue in the notice which is determination of value under Rule 2A (ii) of the Service Tax (Determination of Value) Rules 2006 . The retrospective amendment to this Rule makes the case law all the more irrelevant to this case. I am therefore of the view that the lack of reference to Section 66E(h) of Finance Act for the disputed period does not invalidate the notice in as much as the dispute has been correctly captured in the notice.

12.1 Accordingly, the tax liability is re-worked out as under:

Gross receipts (as per SCN)	7,81,36,512
Less VAT ,Registration charges (as per SCN)	38,59,385
Net receipt	7,42,77,127
Service tax (with abatement of 70%)	32,23,306

The said amounts of tax are liable to be recovered from them under Section 73 (2) of the Finance Act, 1994 along with applicable interest under Section 75 *ibid.*

13. As regard the proposal for penalty under Section 76 of Finance Act, 1994, I

must mention that the then prevailing legal position has been that in terms of Rule 2(A)(ii) of the Service Tax (Determination of Value) Rules, 2006 service tax was payable on the total amount charged for the works contract subject to permissible deductions. The law had not, in any case, specified that the total amount charged for the execution of works contract could exclude the value of undivided share of land. Inspite of this legal position prevailing then as well (even without amendment), the noticee is found to have attempted to undervalue taxable value of the service portion of works contract executed by them by arbitrarily assigning some part of total consideration received for a composite service to the value of land share resulting in short payment of tax. I therefore hold that the noticee is liable for penalty under Section 76 of Finance Act 1994.

14. Further, in the light of the charges specified in the notice which are based entirely on facts on record and in the light of each of such contravention of Sections 67, 68 and 70 of the Act,'94 as has been specified, they are also liable to penalty under Section 77 *ibid*.

15. In the light of above discussions and findings, I pass the following order:

ORDER

(i) I confirm the demand of an amount of Rs 32,23,306/- (including Cess) [Rupees Thirty Two Lakh Twenty Three Thousand Three Hundred and Six only] being the Service Tax payable on the taxable services rendered during the period from January April, 2015 to June, 2017, in terms of sub-section (2) of Section 73 of the Finance Act, 1994, against M/s Greenwood Estates, Secunderabad;

(ii) In terms of Section 75 of the Finance Act, 1994, I order M/s Greenwood Estates to pay interest at appropriate rates, on the Service Tax payable as mentioned at Sl.No. (i) above;

(iii) I impose a penalty of Rs.3,22,331 /- [Rupees Three Lakh Twenty Two Thousand Three Hundred and Thirty One only] (being 10% of the ST payable) on M/s. Greenwood Estates Hyderabad, under Section 76 of the Finance Act, 1994, for failure to pay Service Tax;

(iv) I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on M/s Greenwood Estates, Hyderabad, under Section 77 of the Finance Act, 1994, for failure to declare the right taxable incomes in their ST-3 return.

29/7/2021

(G. RASHMI)
ADDITIONAL COMMISSIONER

To,
M/s.Greenwood Estates,
5-4-187/3 & 4, 2nd Floor,
Soham Manrion, M.G. Road
Secunderabad-500003,
Telangana State.

// BY RPAD //

Copy submitted to:
The Commissioner, Central Tax, Secunderabad GST Commissionerate, Hyderabad

Copy to:
1. The Deputy / Assistant Commissioner, Central Tax, Secunderabad GST Division.
2. The Assistant Commissioner (Arrears), Central Tax, Hqrs. Office, Secunderabad GST Commissionerate.
3. The Superintendent of Central Tax, Ramgopalpet-1-I Range, Begumpet GST Division.
4. Master File / Spare Copy / Office Copy.