5-4-187/3&4, II floor, MG Road,
Secunderabad – 500 003.
Phone: +91-40-66335551

MODI & MODI CONSTRUCTIONS

Date: 27/10/2022

To,
The Commissioner of Central Tax (Appeals-II),
7th Floor, GST Bhavan,
Opp L B Stadium,
Hyderabad-500001.

Dear Sir,

Sub: Submission of Additional submissions

Ref:

a. Personal hearing attended before your good self on 11.10.2022

b. Appeal No. 13/2022 (SC) ST filed by M/s. Modi and Modi Constructions

1. We have filed the above referred appeal and attended the personal hearing before your good self through our authorized representative on 11.10.2022. In continuation to the submissions made during the personal hearing and in appeal memorandum, we are herewith submitting the following additional submissions and humbly requests the Appellate authority to consider the following submissions in addition to the appeal filed.

Sale deed value is not liable to service tax

2. In continuation to our submissions at Para 19 to 29 and Para 34 to 35 of appeal memorandum, we would like to re-iterate that Para 4 of the Show Cause Notice has stated that the value of sale deed is not liable to service tax. However, while quantifying the demand, the SCN and the impugned order has included the value of sale deed.

3. In this regard, we would like to submit that the jurisdictional CESTAT, in one of the Appellants Group entities case in similar set of facts has clearly stated that the value of sale deed shall not be included in taxable value as the Show Cause Notice itself has stated that the value of sale deed is not liable to service tax. The same has been held in case of Alpine Estates Vs CCT, Secunderabad vide Final Order No. ST/30699/2019 read to ROM Order No. M/30226/2022 dated 11.03.2022. Hence, we request you to consider the same and set aside the order.

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केन्द्रीय उत्पाद शुल्क एवं जी एस टी आयुक्त का कार्यालय
O/o. Commissioner of Central Excise & GST
31 OCT 2022
I.C. No.................
Appeals-II Commissionerate, Hyderabad
अपील-II आयुक्तालय, हैदराबाद
31/10/2022

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Completion certificate and occupancy certificate are different

4. Without prejudice to above, we would like to submit that the amounts received during the disputed period are towards villas sold after receipt of completion certificate, therefore, the same are not liable to service tax. In this regard, we would like to reiterate the submissions made in Para 10 to 18 of appeal memorandum.

5. In continuation to submissions made in appeal memorandum, we would like to submit that the receipt of 'occupancy certificate' is not relevant for determining the service tax liability and it is only receipt of 'completion certificate' that is relevant to determine the service tax liability under section 66E(b), *ibid* which reads as under:

   (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of ***completion-certificate*** *by the* ***competent authority****.*

   Explanation.—For the purposes of this clause,—

   *(I) the expression "**competent authority**" means the Government or any authority authorised to issue **completion certificate** under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—*

   (A) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

   (B) chartered engineer registered with the Institution of Engineers (India); or

   (C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

   (II) the expression "construction" includes additions, alterations, replacements or re-modelling of any existing civil structure.

6. Further, we would like to submit that as per Section 2(g) of RERA Act, 2016 "completion certificate" (CC) *means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;*

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7. Also, as per Section 2(f) of RERA Act, 2016 occupancy certificate" (OC) *means the occupancy certificate, or such other certificate, by whatever name called, issued by the competent authority <u>permitting occupation of any building</u>, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;*

8. From the above referred definitions, it is clear that a Completion Certificate is a certificate which certifies that the building is completed as per the approved plan whereas, Occupancy Certificate is a certificate which certifies that the building is safe to occupy. Also, Completion Certificate if required to be issued, would precede the Occupancy Certificate. Further, as per Section 455 of GHMC Act, 1955, Completion Certificate needs to be submitted for applying for Occupancy Certificate.

   Sec 455: (1) Every person shall, within one month after the completion of the erection or re-erection of a building or the execution of any such work as is described in section 343 deliver or send or cause to be delivered or sent to the Commissioner at his office, a notice in writing of such completion accompanied by a certificate in the form specified in the bye-laws signed and subscribed in the manner so specified, and shall give to the Commissioner all necessary facilities for the inspection of such building or of such work and shall apply for permission to occupy the building.

9. We would like to submit that on conjoint reading of the Section 66E(b), Section 2(g) of RERA Act, 2016, Section 2(f) of RERA Act, 2016 and Section 455 of GHMC Act, 1955, it is clear that the "completion certificate" and "occupancy certificate" are completely different. The requirement under Section 66E(b) is the "completion certificate" and the receipts during the disputed period are received after the date of "completion certificate". Therefore, there is no service tax liability on such receipts. Hence, the confirmation of demand is not correct and the same needs to be set aside.

10. We would like to reply on the Advance Ruling in case of Confederation Of Real Estate Developers Association Of India (CREDAI) 2022 (59) GSTL 411 (AAR-GST)- Kerala wherein it was held that *"8.6. On a combined reading of the above provisions and the prescribed formats; it is clear that the completion certificate in respect of the construction of a building or civil structure in the State of Kerala is the certificate prescribed in sub-rule (1) of Rule 22 and Rule 20 respectively of the KMBR, 1999 and KMBR, 2019. On the basis of the discussion above, we conclude that the completion*

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certificate under any law for the time being in force mentioned in clause (b) of Paragraph 5 of Schedule II of the CGST Act, in so far as the State of Kerala is concerned is the certificate in form in Appendix F prescribed under proviso to sub-rule (1) of Rule 22 of the KMBR, 1999 or the certificate in form in Appendix E3 prescribed under proviso to sub-rule (1) of Rule 20 of the KMBR, 2019. Accordingly. <u>the date of issue of completion certificate for the purpose of clause (b) of Paragraph 5 of Schedule II of the CGST Act shall be the date of issue of the completion certificate submitted to the Secretary in form in Appendix F of the KMBR, 1999 or in form in Appendix E3 of the KMBR, 2019</u>"

11. We would like to submit that the impugned order vide Para 27 to 29 has referred to Andhra Pradesh Building Rules, 2012 and stated that obtaining Completion Certificate from Competent Authority is compulsory. However, we would like to submit that Clause 25 and 26 of the Andhra Pradesh Building Rules, 2012 requires the builder to obtain the Occupancy Certificate and have provided certain exemptions from obtaining the Occupancy Certificate. But Clause 25 and 26 do not mention anything about Completion Certificate as stated by the impugned order. This shows that the finding of the impugned order is not correct and the same needs to be set aside.

12. Without prejudice to above, even assuming but not admitting that the Occupancy Certificate is required, we would like to submit that we have obtained the building permit as per the Building Rules mentioned in GOMs No.86/2006 dated 03.03.2006 wherein clause 21 requires the developer to obtain the occupancy certificate mandatorily. However, the said GOMs has been amended vide GOMs No 171/2006 dated 19.04.2006 and stated that the Occupancy Certificate in respect of individual buildings in plots up to 200 Sq M with height up to 6 M is optional.

13. Subsequently, the above referred GO has been further amended vide GOMs No. 623 dated 01.12.2006 and made the Occupancy Certificate optional for 2 storeys building on plots up to 300 sq m. This shows that there is no requirement to obtain Occupancy Certificate, thereby, the Completion Certificate obtained by us is sufficient for the purpose of Section 66E(b) of Finance Act, 1994.

14. In the instant case, the building permit was obtained for sub-division of land into plots along the individual buildings on each plot under the group housing scheme. Subsequently, the construction is

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completed and the chartered engineer has certified that the project has been completed on 05.05.2013. Further, the completion of the project has also been certified by the license structural engineer whose services were used for building permit and structural design on 31.08.2014. In the terminology of HMDA, the issuance of "final layout" would mean the issuance of occupancy certificate.

15. Since the construction is completed, the application for final layout was made on 05.11.2014 which was processed by HMDA on 21.04.2015 by making a demand of Rs.9.03 Lakhs as *"processing charges towards final layout"*. The fees have been paid and a request was made to release final layout on 14.05.2015. Further, follow-up for the same was made on 18.05.2015 and 18.09.2015.

16. Considering the application, the HMDA after having satisfied with all the development works are completed has released the mortgaged villas by way of a registered deed dated 30.09.2015 by clearly stating that the *"releaser (HMDA) after satisfying the development work done by the releasee (developer) ….*".

17. Technically, the HMDA releases the final layout to the local gram panchayat (i.e, Rampally Gram panchayat) who in turn releases to developer. After several followups, Grampanchayat has written to HMDA on 14.09.2015 to release the final layout.

18. However, at that point of time the Government of Telangana was in the process of converting Gramp anchayats around Hyderabad into Municipalities. Ultimately, the rampally gram panchayat was merged with a newly created Nagaram Municipality by way of GO No.93 dated 18.04.2018. In this transition process, Gram panchayats were barred from issuing any permits or Occupancy certificates. After years of follow-up, the Grampanchayat and HMDA officials have stated that the Occupancy Certificate is not required since all houses in the project are upto 6 mts in heights and on plots less than 300 sq m. Accordingly, no further attempts were made to obtain the Occupancy Certificate. Even this shows that there is no requirement to obtain Occupancy Certificate and what is relevant is only Completion Certificate.

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19. From the above referred submissions, it is clear that the confirmation of the demand by the impugned order is not correct and the same needs to be set aside. We request you to take the above submissions on record while passing the order.

We shall be glad to provide any other information in this regard. Kindly acknowledge the receipt of the reply and post the hearing at the earliest.

Thanking You,
Yours faithfully,
For Modi & Modi Constructions

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Authorised Signatory

Enclosures:

a. Final Order No. ST/30699/2019 in case of Alpine Estates Vs CCT, Secunderabad read to ROM Order No. M/30226/2022 dated 11.03.2022
b. GOMs No.86/2006 dated 03.03.2006
c. GOMs No 171/2006 dated 19.04.2006
d. GOMs No. 623 dated 01.12.2006
e. Andhra Pradesh Building Rules, 2012